



LEASING POLICY

Table Lease Rental Rates Effective Date 7/01/2022



BROWNSVILLE NAVIGATION DISTRICT OF CAMERON COUNTY, TEXAS

LEASING
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OVERVIEW

The Brownsville Navigation District owns approximately 40,000 acres of land and is dedicated to being a good steward for the use of its land. It is the policy of the Brownsville Navigation District to lease land for development rather than to sell land.

The primary purpose of the Brownsville Navigation District is to serve the people of the Brownsville area and surrounding region by providing first-class port facilities, which will stimulate sound and balanced economic growth and enhance the quality of life for the people of the area.

The leasing policies of the Brownsville Navigation District are consistent with its basic long-range objectives, which are as follows:

1. To provide for safe navigation for all water carriers serving the port.
2. To provide adequate facilities for safe and efficient transfer of cargo.
3. To stimulate trade development.
4. To provide sound and balanced industrial development for the area.
5. To protect the environment of the port area for the health, safety and welfare of the citizens of the area.
6. To administer the Navigation District, practicing sound fiscal responsibility, in such a manner as to continuously strengthen its economic condition.
7. To strive to make the Port of Brownsville a better place in which to work.

LEASING
OBJECTIVES

LEASING OBJECTIVES To put Brownsville Navigation District land available for leasing to use in its highest and best possible advantage.

 To attract industries that will create jobs for the area and tonnage for the port.

 To earn enough income to pay interest and principal on the revenue bonds issued by the Brownsville Navigation District to improve all port facilities.

LAND ACQUISITION

The District is always willing to entertain land acquisition opportunities offered by adjacent land owners.

LAND CLASSIFICATION	<p>Standard lease rates are established by the Board of Commissioners for each land class and all property owned by the District shall be assigned to a classification. The <i>Table of Lease Rental Rates</i> is discussed in detail in Policy C305(Local) – Lease Pricing.</p> <p>The Board of Commissioners approves any change in land values, the assignment of any particular tract of land to a particular classification and the percentages upon which rental rates are charged.</p> <p>The revaluation of lease rates is done on a port-wide basis and not on an individual lease basis.</p> <p>A map showing these values shall be available to the public during regular business office hours.</p>
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LEASING
LEASE PRICINGTABLE OF LEASE
RENTAL RATES

The District recognizes the importance of keeping the lease rates in accordance with the going regional market values. Lessees will be charged lease rental rates according to the *Table of Lease Rental Rates* that is in effect on the date that the lease application is received by the Real Estate Services Department. Leases that have a contiguous lease site that contains lease property of more than one land classification will be charged the land rental rate of the highest valued property for the entire tract. At the beginning of each exercised renewal option, the lease rental rate will be adjusted to the then-current rental rate for the appropriate land classification in the *Table of Lease Rental Rates*.

***Table of Lease Rental Rates**

Site Description	Effective 07/01/2022
Turning Basin Properties	
Waterfront	\$7,031.00/acre/year
Highway Frontage	\$4,598.00/acre/year
Port Entrance Sites	\$4,096.00/acre/year
Street Frontage	\$2,439.00/acre/year
Remote sites	Negotiated Rate
Fishing Harbor Properties	
Waterfront	\$5,410.00/acre/year
Minimum monthly lease rental	\$364.00/month*
Off-Water	\$5,001.00/acre/year
Minimum monthly lease rental	\$364.00/month*
Fishing Harbor Dock	\$1.52 per lin. foot/month
Fishing Harbor Unimproved Bank Space	\$.92 per lin. foot/month
Easements and Rights of Way	
Transmission Line Easements/ROW	\$.51/lin. foot/year
Pipeline Throughput	\$.084/barrel
Pipeline Easements	
All easements except from terminal to dock	\$.51/linear foot/year
Easements from terminal to dock	No Charge
Channel Crossing/Usage Fee	
Initial Fee, per pipeline	Negotiated Rate
Annual Renewal Fee, per pipeline	Negotiated Rate
Miscellaneous Properties	
Grazing Leases	\$2.73/acre/year
Tower Sites (100' x 100')	\$20,449/site/year
Sign Sites	
Up to 4' x 8' (32 sq. ft.)	\$124.00/site/year
Up to 6' x 12' (72 sq. ft.)	\$184.00/site/year
Up to 8' x 16' (128 sq. ft.)	\$243.00/site/year
Over 128 sq. ft.	Not available
Fish Camp Rentals	\$604.00/camp/year
Billboards	Market Rate

Unimproved bank space will be defined as the land in the Barge Fleeting Area and the land fronting the Fishing Harbor and the Ship Channel not served with a BND-owned dock

LEASING
LEASE PRICINGANNUAL
MAINTENANCE OF
THE *TABLE OF LEASE
RENTAL RATES*

In order to maintain the lease rental rates in their relation to market rates, the rates in the *Table of Lease Rental Rates* will be annually adjusted based on the Consumer Price Index. This adjustment is an automatic administrative duty of the staff, and new lease rental rates shall take effect without action by the Board of Commissioners.

The process for the annual maintenance adjustment of the *Table of Lease Rental Rates* is:

1. The basis for the annual adjustment is the *Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, for the South Urban area, All Items (1982-84=100), City Size B/C*, for the month of February, compared to the same index for the month of February in the previous year. If the index has not increased in the subject period of time, there will be no adjustment in the *Table of Lease Rental Rates*.
2. The first adjustment to the *Table of Lease Rental Rates* for CPI increases will be effective on July 1, 2016, and will be based on the CPI increase, if any, between the months of February, 2015 and February, 2016.
3. The *Table of Lease Rental Rates* shall be adjusted during the month of May and the adjusted *Table of Lease Rental Rates* is to be effective on July 1st of that year and will be in effect for the entire year through the following June 30th.
4. All leases that begin an exercised renewal option will be adjusted to the then-current lease rental rate for their classification of land in the *Table of Lease Rental Rates* in effect on the day of their renewal.
5. A notice of the adjusted *Table of Lease Rental Rates* shall posted on the District's web site and shall be mailed to each lessee during the month of June. *Failure to perform this action does not invalidate the adjustment of the Table of Lease Rental Rates or prevent the implementation of adjustments.*
6. All lessees will be subject to a lease rental rate increase at the end of each primary term or any renewal term; however, lessees shall be subject to a lease rental rate increase no less often than once every five years. In the event that a lessee requests a primary or a renewal term that is in excess of five years, that lessee shall be subject to a lease rental rate increase every five years during the term of the lease and at the end of the primary or renewal term.

LEASING
LEASE PRICING

7. All lease Rental on the *Table of Lease Rental Rates* are subject to annual CPI adjustment.
8. Lease rental rate adjustments do not increase the security deposit requirement. If a new lease is negotiated, the security deposit will be recalculated and will be based on the lease rental rate in effect at the time of the new lease or the lease amendment. If new property is added to the lease during the original term of the lease or during one of the renewal terms of the lease, an additional security deposit will be required for the new property, and will be based on the additional annual rental for the new property only.
9. The *Table of Lease Rental Rates* shall be re-evaluated every five years to determine if the system of CPI adjustments has adequately maintained the lease rental rates in relation to market values. The Board of Commissioners may order that the *Table of Lease Rental Rates* be amended, based on the results of the re-evaluation study. This amendment will replace the annual CPI adjustment in the year that the amendment is implemented. The decision to amend the *Table of Lease Rental Rates* based on the re-evaluation study in lieu of the annual CPI adjustment must be made no later than April 30th of any year in which implementation will be effective on July 1st.
10. The rate charged for rental of the Fishing Harbor Docks shall be a part of the re-evaluation study.
11. The maximum lease rental rate increase, based on either a CPI adjustment or a property revaluation, that may be applied to the Table of Lease Rental Rates in any rolling five-year cycle is a cumulative 25%.
12. A sample calculation of the annual CPI Adjustment:

The annual lease rental rate for Waterfront Properties at the Turning Basin will be calculated in the following manner. CPI increases between March, 2010 and March, 2011 will be used for this example.

Annual lease rental rate – Waterfront Property at the Turning Basin		\$ 5,844.00
CPI-U – South Urban Area – City Size B/C		
February, 2010	133.575	
February, 2011	136.625	
Increase in the CPI	3.050	
Percentage Increase	2.3%	
Annual increase per acre (rounded up)		135.00
New annual lease rental rate – Waterfront Property at the Turning Basin		\$ 5,979.00

LEASING
LEASE PRICINGGRAZING LEASES
AND FISH CAMPS

These leases can be terminated on a 30-day, written notice. A maximum of 17 fish camp leases may be authorized on a first-come, first-served basis.

DISTRICT-OWNED
FACILITIES -
BUILDINGS

If a District-owned building is located on a site that is to be leased, the building's Net Book Value will be established by the Salvage Auction Team under the provisions of the *Policy for Disposition of Salvage, Surplus or Abandoned Property* and the rental rate is 20% per year of the Net Book Value for the first five years of the lease. The Net Book Value shall not be less than the appraised value. This building rental is in addition to the land rent.

When a lease application is received for a site on which a District-owned building is located, negotiation for the ground lease of the property is assumed to include the negotiation of a lease/purchase agreement with the ultimate goal of transferring title of the District-owned building to the lessee as follows:

- a. The building will be considered to have been declared surplus to the District's needs when the staff is given authority to negotiate for the ground lease.
- b. The building will be leased to the tenant for the 20% of the greater of its Net Book Value or appraised value annually. The Net Book Value will be determined under the provisions of the *Policy and Procedure for Disposition of Surplus, Salvage, or Unclaimed Property*.
- c. The primary term of the ground lease shall not be less than 5 years.
- d. The lease/purchase agreement for the building will be for a period of 5 years, although the lease purchase/agreement will be considered to be terminated when the total of payments under the lease/purchase agreement have equaled the Net Book Value of the building.
- e. Once the Net Book Value of the building has been paid, title for the building shall be transferred to the lease.
- f. The lease may pre-pay the balance due under the lease/purchase agreement at any time during the lease period.
- g. No interest will be charged for unpaid balances due under the lease/purchase agreement with the exception of the service charges for delinquent installments at the same annual percentage rate as is charged for delinquent ground lease rentals for the lease site.
- h. Title for the building is subject to delinquent property taxes that may have accrued from prior ownership of the building and to removal of the improvements upon the expiration or earlier termination of the lease.

LEASING
LEASE PRICING

District-owned buildings under lease are to be removed from the District's windstorm and property insurance schedules.

Lessees who are already leasing a District-owned building at November 1, 2008 may choose to receive title to the building once the total of their lease payments for the building meets or exceeds 100% of the cost basis used to determine the annual lease rental for the building. Current lessees of District-owned buildings at November 1, 2008 may also choose to defer application of this policy provision to the building until the end of their current lease term.

DISTRICT-OWNED
FACILITIES –
IMPROVEMENTS
OTHER THAN
BUILDINGS

District-owned facilities (improvements) are existing site improvements including, but not limited to: fences, concrete slabs, buildings, rail spurs, ground stabilization, etc., but not including buildings. If improvements are located on a site that is to be leased, the Net Book Value will be established by the Salvage Auction Team under the provisions of the *Policy for Disposition of Salvage, Surplus or Abandoned Property* and the rental rate is 15% per year of the Net Book Value, with the exception of Port-owned buildings. The Net Book Value shall not be less than the appraised value. This improvement rental is in addition to the land rent.

District-owned improvements under lease are to be removed from the District's windstorm and property insurance schedules.

IMPROVEMENT
SURVEY

In order to identify improvements, an improvement survey will be performed at the same time as the boundary survey for each ground lease negotiated at the Turning Basin and Fishing Harbor, with the exception of negotiations for easements and special leases such as grazing leases, fish camps and tower site.

LESSEE
RESPONSIBILITY

The lessee will be responsible for the insurance, maintenance and upkeep of the District-owned buildings and/or improvements for the term of the lease, or any extensions thereof.

SIGN SITES

Sign sites may be leased only to Port tenants and only for the purpose of indicating the location of their business. Leases will be on a year-to-year basis.

Lessees must submit plans for the sign to the District's Director of Engineering Services for approval before installation of the sign may begin.

Signs must be maintained by the lessee and must be removed upon demand. In the event that a sign is not maintained to the District's satisfaction or a sign is neither maintained within 30 days of the District's demand for its maintenance nor removed within 30 days of the District's demand for its removal, the District will remove such

LEASING
LEASE PRICING

sign at the lessee's expense. The sign site lease will be terminated, and a new sign site lease will not be approved for that lessee.

BILLBOARD SPACE

Sites that will be approved by the District for Billboard Space leasing along State-maintained highways will be sites that must first receive approval from the Texas Department of Transportation (TxDOT) and will follow the requirements for outdoor advertising pursuant to the Texas Highway Beautification Act, Transportation Code, Chapter 391 and Title 43, Texas Administrative Code, Chapter 21, Subchapter I. for highways on the primary system and Rural Road Act, Transportation Code, Chapter 394 for rural roads with the exception that spacing for all signs located within the Port of Brownsville property must be no less than 1,500 ft. from one another. On S.H. 48, billboard signs will not be permitted within two (2) miles from the Carl Joe Gayman Bahia Grande Restoration Channel. Signs located 2.0 to 2.28 miles from the Gayman Channel will not be lit.

A person wishing to lease a site to erect a billboard will fill out an application with the District for billboard space defining the location. Staff will inspect the site to ensure that safety, existing land use, potential land development, and aesthetics will not be compromised by the installation of a sign in the designed location. The application will be submitted to the Board for its consideration and approval to negotiate with the applicant for a defined site, with a recommendation from staff. If in its sole discretion, taking into account the District's dual interests of landowner and public authority, the Board authorizes the negotiation of a lease, a survey fee of \$200.00 per location may be required of applicant to survey the property if District deems such a survey is necessary. This fee is non-refundable.

Staff and the applicant will negotiate rental and terms. The Board's authorizing negotiations shall not create any expectation of a lease, and the Board shall be free to approve or reject the lease, in the Board's sole discretion, when the lease is presented for final approval.

Once both parties have agreed to the proposed terms and conditions a final lease will be prepared for the Board's approval and signing. In no case will issuance of a lease create a property right in the applicant beyond the leasehold interest created by the lease. The applicant may then apply with the Texas Department of Transportation for an outdoor advertising license and permit. If license and permit are not obtained for the proposed site then the lease will be null and void.

It is the Board's intent that income from billboard leases be maximized, without compromising the District's interest in safety, land use, land development, and the general welfare of Port users and the general public. Therefore, in negotiating leases,

LEASING
LEASE PRICING

staff shall take into account lease revenue rates for similarly placed billboards, the cost of construction and maintenance, and space and production revenue anticipated to be received by the applicant; and whether the proposed billboard is one or two sided.

Nothing in this policy is intended to restrict the District's right to award billboard leases through alternate methods in the future, such as by accepting bids for specific locations once it is determined that the specific locations qualify for the issuance of a permit and license by the Texas Department of Transportation.

TRANSMISSION
LINES & PIPELINE
RIGHTS OF WAY

Transmission lines and pipeline rights of way will be charged at the flat rate per linear foot reflected in the *Table of Lease Rental Rates* on the date that the lease application for the easement or right of way is received by the Real Estate Services Department. The annual rental charge is based on the flat rate times the number of linear feet of easement or right of way required over District property. Easements and rights of way will not exceed 30' in width. Easements for pipelines connecting a lessee's terminal on their lease site to the dock shall not be charged, except for easements that cross under the ship channel.

THROUGHPUT

The District shall assess a throughput charge on product moving to or from Port properties by pipeline that is not assessed wharfage charges. The throughput rate that will be charged is the wharfage rate for the product that is reflected in the Port of Brownsville Tariff currently in effect plus 1.5¢. The lessee is responsible for reporting product volumes subject to throughput charges to the District on a monthly basis. The lessee shall authorize the District to receive third-party meter reporting. The District reserves the right to audit the records of the lessee to verify the volume reports.

LEASING
LEASE GUIDELINES

APPROVAL OF LEASES	All leases with the District must be in writing and must be approved by the Board of Commissioners of the District.
SUBORDINATION AGREEMENTS	<p>The District's standard lease form grants the District a contractual lien on certain classes of personal property, securing the Lessee's obligations under the rent. In addition, the District has a statutory landlord's lien. The standard lease form contains language subordinating the District's lien to a security interest granted by the Lessee to a third party in and to any property owned by Lessee and located upon the leased premises ("Lessee's Property") to the extent such security interest was granted for the purpose of securing payment (i) to the Seller for the purchase price paid by Lessee for Lessee's Property or any portion of such purchase price, or (ii) to a lender advancing funds for such purchase price or any portion of such purchase price or for the construction of improvements upon the leased premises by Lessee.</p> <p><i>Under no circumstances will the District waive its landlord's lien.</i> However, to facilitate Lessee attempts to secure financing, the District will execute a subordination agreement or lender/tenant agreement confirming the subordination of the District's interest in specified personal property of the Lessee. The District has developed a Standard Subordination Agreement - C306(Exhibit F). The Port Director and CEO is authorized to sign the Standard Subordination Agreement form with a Lessee, without Board action, provided the Lessee's account with the District is in good standing.</p> <p>If a Lessee or their lender desire to make revisions to the Standard Subordination Agreement, or require the use of an alternative Subordination Agreement, the revisions to the Standard Subordination Agreement or the alternative Subordination Agreement must be reviewed by the District's legal counsel and approved by the Board of Commissioners. There is a fee of \$500.00 for this review.</p> <p>Any agreement that is not in the standard form must be submitted to the Board of Commissioners at an open meeting for their consideration and action, prior to execution of the form by a representative of the District. Any requests for a non-standard form must be submitted no less than fifteen business days prior to the projected date for closing of the loan or other critical date.</p>
APPLICATION FOR LEASE SITE	The applicant must complete a Lease Application which must be signed and submitted to the District's Real Estate Services Department. Lease Applications are available from the District's Real Estate Services Department and are also available on the Port of Brownsville web site. Applicants will be required to consent to a credit check and will provide bank references. Upon

LEASING
LEASE GUIDELINES

receipt of the completed lease application with all required attachments, the Real Estate Services Department will then obtain authority to negotiate and to begin the preparation of a lease contract.

LIMITATION ON
NEGOTIATION PERIOD

Once the staff has received authority to negotiate and to prepare a lease contact for an applicant, that authority will expire 60 days after the date that the authority to negotiate is granted. If lease negotiations have not been completed by the 60-day deadline, the District staff may administratively extend the negotiation period by 30 days. Should the lease negotiations not be completed, however, by the end of this extended period, the staff must request that the Board authorize any further extension of the negotiation period.

Applicants who are unable to complete lease negotiations within the 60-day or 90-day negotiation period, as applicable, will be required to enter into an Option to Lease for the subject lease site in order to continue to negotiate for a lease with the District unless the Board of Commissioners grants an extension of the negotiation period.

PURPOSE OF LEASE

The purpose of the lease must be stated in the lease contract and may be changed only with approval of the Board of Commissioners. Approval will not be unreasonably withheld.

TERM OF LEASE

Lease terms of up to 50 years are permitted for ground lease rentals under Texas law. Lease terms in excess of 50 years are available if advertised for competitive bidding in the manner provided in Section 60.035 of the Water Code.

(effective September 1, 2015)

The primary term of the lease may be for any period of time, and the lease may contain options for renewal so long as the total of the primary term and the option terms do not exceed fifty years, unless the lease has been advertised as per the above provision.

All leases will be subject to a lease rental rate increase at the end of each primary term or any renewal term; however, lessees shall be subject to a lease rental rate increase no less often than once every five years. In the event that a lessee requests a primary or a renewal term that is in excess of five years, that lessee shall be subject to a lease rental rate increase every five years during the term of the lease and at the end of the primary or renewal term.

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COLLECTION POLICY -
LEASES

With a few exceptions, for negotiated agreements that contain their own specific delinquency provisions. Any invoices for ground lease rentals or any other rentals that remain unpaid 30 days or more past the invoice date will be assessed an interest charge at the maximum rate allowable by law per annum on the unpaid balance for each 30-day period that it remains unpaid.

Written notice of any dispute must be furnished to the District's Director of Finance at accts@portofbrownsville.com within twenty (20) days from the date of the invoice or else interest charges and a late fee will apply.

All delinquent lease invoices for lease sites where the lessee is no longer in possession of the site will be immediately submitted for legal collection efforts.

Delinquent lease invoices that are 90 days delinquent or more where the lessee is still in possession of the site will be submitted to the Board of Commissioners for approval for submission for legal collection efforts.

Any account that has an invoice that is turned over for legal collection efforts will be assessed the cost of collection.

EXPIRATION OF LEASE
NOT IN DEFAULT –
HOLD-OVER PERIOD

Leases with the District contain a lease expiration date. Once a lease has been allowed to expire, Lessees who have complied with the terms of their lease have the right for thirty (30) days (the "Hold-Over Period"), and no longer, to remove their improvements from the lease site.

Lessees may remove all of their improvements of any kind and character from the lease site, except all water mains, gas mains, railroad tracks, power lines, fences, wharves or bulkheads, which shall become the property of the District upon the expiration, cancellation or any other termination of the lease. This removal is subject to the provision that the leased premises shall be restored to the same condition that they are received after the removal of said improvements. All excavations (except slips) must be filled and all refuse of every kind and character must be removed from the lease site.

The rental for the thirty-day hold-over period will be the then-current rental rate for the lease site as indicated in the *Table of Lease Rental Rates* contained in Policy C305(Local). There will be no proration for a partial month. The lessee has no right to occupy the lease site after the expiration of the hold-over period. Improvements remaining on the lease site at the expiration of the hold-over period become the property of the District.

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EXPIRATION OF LEASE IN
DEFAULT – NO HOLD-
OVER TENANCY

Lessees who have been issued written notice of default under the terms of their lease with the District, and who have not cured the default by the expiration date of the lease, shall not have any right to additional time, nor the right to remove their improvements and will be expected to vacate the lease site as of the day the current term of the lease expires by its own terms. Improvements remaining on the lease site at the expiration date of the lease which is in default at the date of expiration become the property of the District.

REQUEST FOR A NEW
LEASE

Lessees whose leases have no remaining option periods that may be exercised must notify the District in writing of their desire to enter into a new lease with the District by filing a new lease application. This application **should** be received by the District no later than ninety (90) days prior to the expiration of the current lease term in order that a new lease may be executed prior to the expiration of the lease.

In the event that a new lease has not been executed for the premises prior to the expiration date of the expiring lease, the Lessee will be considered to be in a hold-over tenancy (see above) for the first month following the expiration of the lease. In the event that a new lease has not been executed for the premises at the end of the hold-over tenancy, the Lessee will be considered to be in a month-to-month tenancy (see below) for any month or part of a month until such time as a new lease has been executed for the premises.

Month-to-month tenancy is subject to termination by the District at the District's sole discretion should the Lessee evidence a failure to work with the District toward the preparation and execution of a new lease for the premises.

The District will not enter into negotiations for a new lease on the same premises if the Lessee has allowed the lease to expire while in a default status until the default has been cured. Once the default has been cured, the District may enter into negotiation with the Lessee at the District's sole discretion.

MONTH-TO-MONTH
TENANCY

In the event that a Lessee continues to occupy their lease site after the expiration of the hold-over period, then this continued occupancy may be considered by the District, and at the District's sole option, a month-to-month tenancy binding the Lessee to all terms and conditions as set forth in the expired lease with the exception that the Lessee shall pay monthly rent in the amount of one and one-half times (150%) the then-current rental rate for the lease site as indicated in the *Table of Lease Rental Rates* contained in Policy C305(Local) for the subject lease site.

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Rental for the month-to-month tenancy shall be due and payable on the first day of each monthly period of tenancy thereafter until the tenancy is terminated by law or as a remedy elected by the District under the terms of the lease and this policy.

Month-to-month tenancy may be terminated by the District at its sole discretion with a 30-day notice mailed to the Lessee's address of record. Lessee may terminate the month-to-month tenancy at any time, however; there will be no pro-ration of rental charges for a partial month.

Lessees who are occupying a site on a month-to-month tenancy basis while they are negotiating a new lease with the District will be charged a month-to-month tenancy rental rate of one and one-half times (150%) the then-current rental rate for the lease site as indicated in the *Table of Lease Rental Rates* contained in Policy C305(Local) for the subject lease site until such time as they have complied with all of the District's requirements to obtain a new lease. Thereafter, while the District is preparing a new lease for the site, the month-to-month rental rate will return to the then-current rental rate for the lease site as indicated in the *Table of Lease Rental Rates* contained in Policy C305(Local) for the subject lease site beginning with the next monthly invoice and continuing until the execution of the new lease.

Lessees who have been issued written notice of default under the terms of their lease with the District, and who have not cured the default by the expiration date of the lease, shall not have any right to a month-to-month tenancy and will be expected to vacate the lease site as of the day the current term of the lease expires by its own terms.

OPTION TO EXTEND
LEASE FORFEITED –
LESSEE IN DEFAULT

Lessees who have been issued written notice of default under the provisions of their lease with the District, and who have not cured the default by the expiration date of current term of the lease, shall not have any right to exercise any option to extend the lease. The lease will be terminated as of the expiration date of the lease and any unexercised option(s) shall be forfeited by the Lessee. The Lessee has no right to additional time on the premises to remove their improvements and will be expected to vacate the lease site as of the day the current term of the lease expires. Improvements remaining on the lease site at the expiration date of the lease which is in default at the date of expiration become the property of the District.

Lessees who find themselves in this situation who cure their default may apply to the District for a new lease for the same site, providing that a lease application from another party has not been received for the site before the

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Lessee's new application is received. However, there is no guarantee that the District's Board of Commissioners will approve a new lease. The new lease will be subject to the current terms and conditions imposed by the District on new lessees and lease rental shall be at the then-current rental rate for the lease site as indicated in the *Table of Lease Rental Rates* contained in Policy C305(Local). Improvements remaining on the lease site are the property of the District and will be leased to the lessee under terms contained in this Policy.

A fee of \$1,500.00 will be assessed for the preparation of the new lease. Lessees who continue to occupy the site while they are negotiating a new lease with the District do so as month-to-month tenants, subject to the provisions above for such tenancy.

ADMINISTRATIVE LEASE
AMENDMENTS

Amendments to the provisions of agreements or contracts between the District and its lessees must be approved by the Board of Commissioners with the exception of administrative amendments to change the address of record for the lessee or to shorten the installment term of payment (for example, from annual in advance to monthly in advance). A change in the installment term of payment does not include a change in the amount of rent owed under the lease. These administrative amendments may be processed by the Real Estate Services Department with approval by the Port Director and CEO.

SUB-LEASE OF LEASE

Board of Commissioners' approval is required in advance of any sub-lease. The granting of or the withholding of approval for any particular sublease is in the sole discretion of the Board. Failure to obtain this approval in advance constitutes a default of the lease and makes the lease subject to termination. If approval of the District is obtained, then Lessees who thereafter sub-lease their lease site, or a portion of their lease site, will be assessed a sub-lease fee of \$500.00. Thereafter, the lessee will be assessed a sub-lease renewal fee of \$250.00 for each year or part of a year that the sub-lease continues to be in effect. It is the responsibility of the lessee to notify the District in writing that a sub-lease has terminated. Sub-lease fees are non-refundable. Failure to pay sub-lease fees will constitute a default under the terms of the lease.

Lessees who are on a rental rate that is less than the current rental rate will immediately be revalued to the then-current rental rate for the lease site as indicated in the *Table of Lease Rental Rates* contained in Policy C305(Local) at the effective date of the sub-lease and at each annual renewal of the sub-lease thereafter. Once the District has received written notice that the sub-lease has been terminated, the rental rate will be revalued at the end of each

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lease term thereafter, but no less than once each five years. Once the rental rate has been advanced to the current rental rate, it will not be reduced to a prior rental rate.

The sub-lease document must be submitted to the District for the Board of Commissioners' review. Rental rates charged to the sub-lessee under the sub-lease must specify rental for land and improvements that are owned by the District separately from rental for improvements that are owned by the lessee. Rental rates charged to the sub-lessee for land and improvements that are owned by the District must not exceed the rental rates paid by the lessee under their contract with the District.

The purpose of the sub-lease must adhere to the purpose clause of the lease.

WATERFRONT PROPERTY

Waterfront property is defined as land between the ship channel and the first improved road parallel to the ship channel. All waterfront property will be leased as a parcel from the waterfront to the road.

Waterfront property will be leased only to a business producing waterborne trade or requiring waterfront activity to provide employment.

All waterfront property will be leased at current waterfront property rates regardless of usage.

RESTRICTIONS

Building setbacks are required by the lease contract. Any variances shall require prior approval of the Board of Commissioners. The District requires compliance with the Southern Building Code and the Fire Protection Association Code. County building permits must be obtained before construction starts and after the District's Engineer has approved the plans.

The District reserves the right to reserve utility easements through lease sites which may restrict the use of the property.

The properties of the District are industrial in nature. The District does not permit its lessees to reside on District properties, either on a temporary or a permanent basis. Residing or allowing others to reside on lease sites shall be grounds for termination of a lease.

LEASE TERMINATION

Clauses are in the lease allowing the District to cancel the lease for default by lessee after due notice has been given. The Port Director and CEO or his designee has the authority to terminate leases.

Once a lease has been terminated for cause, the District shall not entertain an application for a new lease from the lessee, and officer, director, or employee of the lessee until the lessee pays any outstanding balance on the terminated

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lease account, and all fees assessed by the District in connection with the termination process, as determined by the chart below. Should the District, in its sole discretion, enter into negotiation for a new lease, the new lease will, at a minimum, require the payment of a security deposit equal to six months' land rental, and the payment of the first six month's rent in advance. A lessee whose lease has twice been terminated for cause shall not be considered for a new lease.

Fee Chart for Lease Termination Actions

<u>Action</u>	<u>Fee</u>
Issuance of Termination Letter	\$ 250.00
Lock Out/Eviction Proceedings	500.00
Writ of Possession Proceedings	500.00
Preparation of New Lease	<u>1,500.00</u>
Total Possible Fees	\$ 2,750.00

NON-PRODUCTIVE
LEASES

Ground leases contain a purpose clause. Leases may be terminated by the Board of Commissioners of the District at any time that the lessee discontinues the use of the premises for the purpose(s) named in the purpose clause of the lease, or uses the premises for a prohibited purpose, or uses such premises for any other purpose, provided that in the case of nonuse such default of said lessee shall exist for a period of ninety (90) days at any time after the commencement of the operation of the lessee. The District may determine that such lease site is a non-productive lease, subject to termination.

In addition, lease sites on which the lessee has not commenced operations for a period of (90) days after the effective date of the lease contract for the lease site may be determined by the District to be non-productive leases.

In the event that the District determines that a lease site is a non-productive lease, the lessee shall be issued notice of this determination by certified mail, return receipt requested. Such notice will additionally inform lessee that an item will be placed on the agenda of the first Board of Commissioners meeting to occur after the expiration of 30 days from the date of the notice.

The Lessee shall have 30 days from the date of the notice to meet with the staff-level Leasing Committee of the District to dispute the determination and to show cause why the lease should not be terminated. Failure to meet with the staff-level Leasing Committee of the District to dispute the determination of the District will result in the lease being terminated as of the 30th day following the date of the notice. If Lessee meets with the staff-level Leasing Committee of the District to dispute the determination within 30 days from the date of the notice, then an item will be placed on the agenda for the next Board of Commissioners meeting to provide Lessee with the

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opportunity to show adequate cause as to why the lease should not be terminated. If the District determines that adequate cause has not been shown, then such failure will result in the lease being terminated.

(The members of the Leasing Committee include the Deputy Port Director as Chair, Director or Manager of Real Estate Services and may include other department directors as needed.)

SEWER CONNECTIONS

The District requires connections to a sanitary sewer system and the payment of charges as set forth in Policy G201(Local) Waste Water (Sanitary Sewer) Rate Schedule.

EASEMENTS FOR
UTILITY LINES

The District reserves the right to reserve utility easements through lease sites which may restrict the use of the property. [Policy C306(Local) Restrictions]

The District has the right to cross leased land with certain utility lines in District-approved locations. The District has the right to install markers to delineate easements on leased premises.

Lessee shall allow the District unrestricted access to the utility easements. Lessee shall not construct any improvements on the easement, nor shall they accumulate equipment or material on the easement. Obstruction of an easement shall constitute an event of default.

The Lessee shall be responsible for any damage to the utility lines in the established easement caused by their operations.

The easement shall be included as a part of the leased premises. In the event that the Lessee desires to relocate the utility line(s), the Lessee shall submit a written request for the relocation to the District. Should the District, in its sole discretion, agree to the relocation of the utility line(s), any costs of the relocation, including engineering costs, shall be borne by the Lessee.

TRANSFER OF UTILITY
SERVICE

The Finance Department receives and processes *Utility Service Orders* for new utility service and for changes or discontinuation of utility service from the District's lessees. The District's utility services are governed by Policy G101(Local) - Potable Water Rate Schedule, Policy G201(Local) - Waste Water (Sanitary Sewer) Rate Schedule, and Policy G102(Local) - Port Service Discontinuation Policy. New lessees must complete a *Utility Service Order* and *Backflow Preventer Agreement* at the time that they apply for a lease with the District. Lessees who are leaving the District should submit a *Utility Service Order* to discontinue their service.

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In the event that a lessee transfers a lease with active utility service to a new lessee on the site and has not submitted a *Utility Service Order* to transfer the utility service, the utility service will be considered to be transferred on the day following the Board of Commissioners' approval of the lease for the new lessee. The new lessee will be required to complete a *Utility Service Order* and a *Backflow Preventer Agreement* within ten days of the date of the transfer of service or the utility service will be subject to being discontinued as per Policy G102(Local) - Port Service Discontinuation Policy.

AD VALOREM PROPERTY
TAXES

Ad Valorem property taxes are assessed on lessee's improvements, inventories and the value of the leasehold interest. Lessee shall pay all taxes and assessments legally levied and assessed against its leasehold interest and its improvements on said property during the term if their lease and any extension thereof before such taxes and assessments become delinquent. If Lessee, by legal proceedings, contests the legality of same, such taxes and assessments shall be promptly paid upon the judicial determination thereof.

Ad Valorem property taxes typically are levied on October 1st annually and become delinquent on the following February 1st. Lessees must provide to the District proof of compliance with this requirement by submitting a receipt for the full payment of ad valorem property taxes and other assessments before March 1st annually. Failure to pay ad valorem property taxes or other assessments is an event of default under the terms of the lease with the District, and the lease is subject to termination.

The District is a tax-exempt entity, and ordinarily does not pay taxes on its real estate. Should a lease result in the local taxing authorities assessing ad valorem property taxes on the District's ownership interest in the property, the lessee shall also be responsible to reimburse the District for those taxes.

APPROVAL REQUIRED
FOR LEASE SITE
IMPROVEMENTS

Lessees must obtain the District's prior, written approval of plans for any improvements or modifications to be made on their lease site. Complete plans must be submitted to the District as a part of the approval process. The District must be notified of modifications to the plans once they have been approved. Prior, written approval must be received for modifications to the approved plans.

Written approvals issued under this item must be signed by the Port Director and CEO or the Deputy Port Director.

Upon ten days' written notice to the Lessee, the District shall have the right to enter a lease site and to remove, or cause to be removed, any improvement that has not been approved at the expense of the lessee. The District may

assess an administrative fee of up to 25% of the cost of the removal of the unauthorized improvement(s).

Violations of the set-back requirements contained in the lease or violations of County Building Permit provisions will be considered to be conditions of default under the terms of the lease.

PERMITS

The lessee must apply for all needed permits. The District is the applicant and holder of Corps of Engineers permits, and these permit applications will be submitted by the District. Copies of all permit applications and approvals should be provided to the District.

Building permits for improvements on the lease sites must be obtained from Cameron County and a copy of the building permit must be submitted to the District and must be initialed by the Port Director and CEO or the Deputy Port Director and the District's Director of Engineering Services in advance of making the improvements.

INSURANCE

In addition to the standard "hold harmless" clause in the lease, the lessee is required to keep in full force and effect Bodily Injury Liability and Property Damage Liability and Comprehensive Automobile Liability insurance covering its operations to be carried out upon or in connection with their lease and Pollution Insurance as specified in Policy C306(Exhibit D) – Insurance Requirements of this policy and to furnish the District proof of same.

Lessee shall also carry replacement cost Fire and Extended Coverage Insurance on all improvements to the leased premises owned by the District and leased to the lessee.

The District shall be named as an additional insured. Coverages shall contain a waiver of subrogation in favor of the District for each coverage and shall contain a clause that the insurance will not be canceled or changed without giving the District thirty (30) days prior written notice. The limits of liability and other insurance particulars shall be set from time to time by the Board of Commissioners and will be shown in Policy C306(Exhibit D) – Insurance Requirements of this policy.

The District will from time to time evaluate both the types of insurance required and the limits of insurance, and any revisions either to the types required or the limits of insurance shall be effective and applicable to all Lessees immediately upon approval by the Board of Commissioners.

Certificates of insurance shall be furnished to the District and the District reserves the right to receive a copy of the full policy upon demand.

Non-compliance with this requirement is considered a default under the terms of the lease and is grounds for termination of the lease due to default.

OPTIONS TO LEASE

The District is willing to consider granting an Option to Lease on certain property to any lessee, or potential lessee. The fee for the Option to Lease (annual) will be a percentage of the leased rate per acre per year of the subject property based on the table below and will be for one year or any portion of a year that exceeds 6 months. The fee for the Option to Lease (semi-annual) will be a percentage of one-half of the leased rate per acre of the subject property and will be for 6 months or any portion of the six-month period.

<u>Option Fee Table</u>	
<u>Option Acreage Segment</u>	<u>Segment Percentage</u>
Up to 10 acres	20%
From 10 acres up to 50 acres	15%
From 50 acres up to 100 acres	12%
100 acres and over	10%

The request for an Option to Lease is to be in writing, must be paid in advance, and must be approved by the Board of Commissioners. The request must be accompanied by a written development plan for activation of a formal lease on the subject property with a timeline which is acceptable to the District.

Should a lessee or potential lessee request additional time, an additional Option to Lease may be granted subject to a review of the development plan and the demonstration of acceptable progress under its time line.

Any monies paid on an Option to Lease are not transferable or refundable.

An Option to Lease may be terminated by the District on 30 days' notice to the lessee should the District deem the property covered by this option necessary for the construction or improvement of docks, sheds, roads, railroads, or other public facilities. Should the District terminate an Option to Lease, the District shall refund to lessee the unearned portion of the fee paid by the lessee.

An Option to Lease does not grant either a right of access to the property or the right of use of the property.

SAMPLE OPTION CALCULATIONS:

For an option of 250 acres of land for one year at a leased rate of \$5,844.00 per year.

First 10 acres	$10 \times \$5,844 \times 20\%$	\$ 11,688.00
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Acres 11 to 50	40 x \$5,844 x 15%	\$ 35,064.00
Acres 51 to 100	50 x \$5,844 x 12%	\$ 35,064.00
Acres 101 to 250	150 x \$5,844 x 10%	\$ 87,660.00
Total for 250-acre option		\$ 169,476.00
Average Option Rate		11.6%

For an option of 250 acres of land for six months at a leased rate of \$5,844.00 per year.

First 10 acres	10 x \$2,922 x 20%	\$ 5,844.00
Acres 11 to 50	40 x \$2,922 x 15%	\$ 17,532.00
Acres 51 to 100	50 x \$2,922 x 12%	\$ 17,532.00
Acres 101 to 250	150 x \$2,922 x 10%	\$ 43,830.00
Total for 250-acre option		\$ 84,738.00
Average Option Rate		11.6%

BOUNDARY AND
IMPROVEMENT SURVEY

Upon receipt of the Board of Commissioner's authority to negotiate a lease, the Real Estate Services Department shall notify prospective lessees of any special conditions that the Board of Commissioners requires be included in the lease contract.

The lessee shall then have a boundary and improvement survey of the subject lease prepared. The survey shall be in the name of the Brownsville Navigation District and the lessee. Upon receipt of the survey, the Real Estate Services Department shall initiate action to prepare the lease contract.

SECURITY DEPOSIT

The District requires a security deposit equivalent to three months' lease rental on its leases. This deposit is due prior to the completed lease being taken to the Board of Commissioners for execution. This security deposit will be increased to six months' lease rental for a lessee who has had a previous lease terminated for default.

The security deposit will be held by the District, without accruing interest to the lessee, so long as the lessee maintains a lease on the site. Reduction in acreage will not reduce the security deposit. However, an increase in acreage will result in an additional security deposit which is equal to three month's lease rental (or six months' lease rental in the case of a lessee with a history of default) on the additional property.

At the expiration or termination of the lease, the lease site is to be returned to the District in the same condition as lessee received it, ordinary wear and tear excepted, and except for any improvements or remediation required of lessee by the lease. In the event that any of the lease premises is not returned in the proper condition, as will be defined in the terms of the lease, the District will

have the right to use any or all of the security deposit to restore the condition of the items in question.

The remaining balance of the security deposit, after deductions for the cost of any work required to return the lease premises to the proper condition, and deductions for any remaining account balances due to the District by the lessee, will be refunded to the lessee and will be returned by certified mail to the lessee's last address of record on file with the District.

ACREAGE REDUCTION

Reduction in acreage will **only** be considered at the following times or for the following reasons:

1. At the end of a primary term.
2. At the end of a renewal option term.
3. To accommodate another lessee's need for land.
4. To accommodate the District's own need for the land.

The lessee's request for reduction must be made in writing at least 90-days prior to expiration of the then current term and is subject to approval by the Board of Commissioners.

Lessees requesting a reduction in acreage will pay for the survey needed to amend the metes and bounds description, except if the reduction is to accommodate another lessee or the District's own needs.

WITHHOLDING OF BOARD OF COMMISSIONERS' APPROVAL OF LEASES, SUBLEASES, ASSIGNMENT OF LEASES, OR LEASE AMENDMENTS

In addition to its general discretion to approve or reject any proposed contract, the Board of Commissioners specifically reserves the right to withhold approval of any lease, sublease, assignment of lease or lease amendment if the party requesting such approval (the "Applicant") or any affiliate of such party has an account with the District which is not current.

The Board of Commissioners shall also have the complete discretion to withhold approval of a lease, sublease, or assignment of lease to a party if that applicant or an affiliate of that applicant has previously had an agreement terminated for cause by the District.

"Affiliate", as used herein, shall include all normal and customary meanings of such term, including, but not limited to: a person who owns, controls, or holds with power to vote, five (5) percent or more of the outstanding voting securities of the applicant; a corporation, 10 percent or more of whose outstanding voting securities are owned, controlled, or held with power to vote, by the applicant or a person who owns, controls, or holds, with power to vote, five (5) percent or more of the outstanding voting securities of the applicant; a person whose business is operated by the applicant under a lease or other agreement, or a person substantially all of whose assets are controlled by the applicant; a person who operates the applicant's business under a lease or other agreement or controls substantially all of the applicant's assets; a director or officer of the applicant; a person in control of the

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(LOCAL)

applicant; a partnership in which the applicant is a general partner; a corporation of which any officer, director, or person in control of the applicant is a director, officer, or person in control; a general partner in a partnership in which the applicant is a general partner; and a relative of a general partner, director, officer, or person in control of the applicant; an officer, director, person in control, or affiliate of an affiliate as if the affiliate were the applicant; or a managing agent of the applicant.

SALE OF ALCOHOLIC
BEVERAGES

Authorization for the sale of alcoholic beverages on Port of Brownsville leased sites outside of the secured area of the Turning Basin and outside of the fenced area of the Fishing Harbor will be limited to the sale for off-premises consumption only.

The Board may authorize the sale of alcoholic beverages for on-premises consumption on a case-by-case basis. Lessees who are authorized to sell alcoholic beverages for on-premises consumption must also maintain liquor liability insurance as required in Policy C306(Exhibit D).

The sale of alcohol within the secured area of the Turning Basin or within the fenced area of the Fishing Harbor will not be permitted.

ENCROACHMENT

Any tenant found to be encroaching will be sent a certified letter to advise them that they are in violation of their lease and will be given 30 days to cure the default by moving off of the encroached area or by entering into negotiations to add the encroached area to their lease. Failure to cure the default within the 30-day period will result in the lessee being subject to termination for default.

SPECIAL CONDITIONS

In addition to the provisions in the Standard Lease, the District may identify a number of Special Conditions to be included in a particular lease. The District's staff is authorized to identify and negotiate Special Conditions on a case-by-case basis.

Exhibit A: Removed – 04/17/2019

Exhibit B: Removed – 04/17/2019

Exhibit C: Leasing Referral Memorandum

Exhibit D: Insurance Requirements

Exhibit E: Removed – 04/17/2019

Exhibit F: Standard Subordination Agreement

LEASING
EXHIBIT C – LEASING REFERRAL MEMORANDUM

EXHIBIT C

LEASING REFERRAL MEMORANDUM

Referrals by authorized agents, when signed by both Customer and Agent, are by the Brownsville Navigation District (BND) for six months. The referral imposes no obligation or additional lease cost upon the customer.

CUSTOMER INFORMATION:

Name of Firm: _____

Name of Representative: _____

Mailing Address: _____

Phone Number: _____ Fax Number: _____

Date: _____ Signature: _____

AGENT INFORMATION:

Name of Agent: _____

Mailing Address: _____

Phone Number: _____ Fax Number: _____

Date: _____ Signature: _____

Real Estate Services Department Ph. (956) 831-4592 – Fax. (956) 831-6185 Revised: 01/27/2021

Brownsville Navigation District
1000 Foust Road • (956) 831-4592 • (800) 378-5395 • Fax (956) 831-5006
www.portofbrownsville.com

LEASING
EXHIBIT D – INSURANCE REQUIREMENTS**EXHIBIT D****BROWNSVILLE NAVIGATION DISTRICT
INSURANCE REQUIREMENTS
Level One**

These requirements are applicable to lessees who meet the following criteria and who have no employees who are not officers or family members.

- Sole Proprietors, Partnerships, or Limited Liability Corporations
- Lease sites up to 5 acres (all sites for a particular lessee will be combined for comparison to this qualification)
- Lessees who do not operate liquid bulk terminals
- Lessees who do not perform ship breaking or ship repairs
- Lessees who do not receive, process or store scrap materials
- Lessees who do not handle hazardous materials

Workers' Compensation

Not Required - *The requirement for Workers' Compensation Insurance is waived for lessees who meet the above criteria.*

Comprehensive General Liability

Comprehensive General Liability including Broad Form Liability, Personal Injury Liability, Contractual Liability, Products/completed operations Liability and including coverage for:

- (1) Explosion, collapse, and underground, and
- (2) For goods, vessels and property of whatever description belonging to others while in the care, custody, and control of the lessee.

An acceptable option would be Warehouse Legal and/or Wharfingers Legal Liability coverage.

a. Bodily Injury	\$ 1,000,000 Each occurrence
b. Property Damage	\$ 2,000,000 Each aggregate
c. Alternate to a. & b.	Combined single limit of \$ 2,000,000

Comprehensive Automobile Liability

a. Bodily Injury	\$ 1,000,000 each person	\$ 1,000,000 each occurrence
b. Property Damage	\$ 1,000,000 each occurrence	
c. Alternate to a. & b.	Combined single limit of \$ 1,000,000	

Automobile Liability Coverage to include any auto.

Personal automobile liability policies used to satisfy all or part of this requirement must be submitted in full and must not contain an exclusion for business use of a vehicle.

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EXHIBIT D – INSURANCE REQUIREMENTS

Hull, Protection and Indemnity (P & I)	
If a vessel is to be used by the lessee, P & I must be provided to include the vessel and the crew. Hull coverage must be equal to the value of the vessel.	Value of the vessel or \$1,000,000 limit, whichever is greater.

Pollution Liability Insurance		
The following types of Pollution Liability Insurance are required:		
X	Environmental Site Liability (property/location specific – must include coverage for above-ground storage tanks and systems)	\$ 1,000,000 Each occurrence
X	Water/Shipyard Pollution Liability	\$ 5,000,000 Each occurrence
Additional Limits for Storage Tank Liability (<i>if storage tanks are located on the lease site</i>)		
X	Above-Ground Storage Tank Liability (per tank)	\$ 1,000,000 Each occurrence
X	Underground Storage Tank Liability – must satisfy state and federal financial assurance requirements, if applicable, and can be endorsed onto an Environmental Site Policy	\$ 10,000,000 Each occurrence, however, this must satisfy state and federal financial assurance requirements

Subcontractor Insurance Requirements	
<ul style="list-style-type: none"> Each subcontractor hired by the lessee must carry, at the minimum, the same levels of insurance coverage that is required by the lessee. The subcontractor must adhere to the same requirements listed in “Additional Insurance and Notice of Cancellation or Change Endorsements”, “Endorsements Required”, below. Subcontractors will be required to carry “Contractor’s Pollution Liability” and/or “Errors and Omissions Coverage”, as appropriate. Certificates of Insurance and other Proofs of Insurance must be provided to, and must be maintained by the lessee. 	

Deductible
These insurance policies shall have a combined deductible and/or self-insured retention of no more than \$1,000.00.

Proof of Insurance Required
Certificates of insurance as well as the declarations page from all policies will be submitted to the District as proof of insurance.

Additional Insured and Notice of Cancellation or Change Endorsements
All policies shall be endorsed to name the Brownsville Navigation District d/b/a The Port of Brownsville as an additional insured and shall be endorsed to require that the insurance will not be cancelled or changed without giving the District 30 days’ prior written notice.

LEASING
EXHIBIT D – INSURANCE REQUIREMENTS

Endorsements Required

Copies of endorsements regarding deductible and/or self-insurance and the required additional insured and notice of cancellation or change notices must be submitted. Copies of all endorsements that limit coverage or impose exclusions to coverage must also be submitted.

Notes

The above minimum requirements may be covered exclusively by primary insurance or may be covered by a combination of primary and umbrella liability insurance. The insurance shall have a combined deductible and/or self-insured retention of no more than \$1,000.00.

The District reserves the right to request a copy of any and all insurance policies for review.

Individual exceptions to any of the above requirements may be granted or required due to unavailability of coverage, risk factor, magnitude of operations, or other individual reasons.

<i>The requirements and limits in this document are acceptable for the lessee at the time of the preparation of the lease. The District reserves the right to amend these requirements in response to changes in the lessee's business, such as the addition of outside employees or a change in the lessees' business organization or the purpose of the lease.</i>

LEASING
EXHIBIT D – INSURANCE REQUIREMENTS

**Brownsville Navigation District
INSURANCE REQUIREMENTS**

Workers' Compensation Insurance Disclaimer

The Insurance Requirements – Level One of the Brownsville Navigation District do not impose a requirement for certain lessees to carry Workers' Compensation Insurance. In order for a lessee to qualify for this level of insurance, the following criteria must be met:

Level One Insurance requirements are applicable to lessees who have no employees who are not officers or family members, and meet the following additional criteria:

- They are Sole Proprietors, Partnerships, or Limited Liability Corporations
- They lease sites up to 5 acres
- They do not operate liquid bulk terminals
- They do not perform ship breaking or ship repairs
- They do not receive, process or store scrap materials
- They do not handle hazardous materials

By signing below, I certify that I meet all of the following criteria and am therefore qualified for Insurance Requirements – Level One.

Signature

Date

LEASING

EXHIBIT D – INSURANCE REQUIREMENTS

**Brownsville Navigation District
INSURANCE REQUIREMENTS
Level Two**

These requirements are applicable to lessees who meet the following criteria and who have employees who are not officers or family members:

- Small Business, other than Sole Proprietors, Partnerships and Limited Liability Corporations
- Lease sites up to 5 acres (all sites for a particular lessee will be combined for comparison to this qualification)
- Lessees who do not operate liquid bulk terminals
- Lessees who do not perform ship breaking or ship repairs
- Lessees who do not receive, process or store scrap materials
- Lessees who do not handle hazardous materials

Workers' Compensation	
a. Employer's Liability	\$1,000,000 limit
b. Longshoremen and Harbormaster's Act (if applicable)	Statutory
c. Jones Act (if applicable) <small>Jones Act coverage may be included in the P & I policy, if required.</small>	\$1,000,000
Waiver of Subrogation Endorsement in favor of the Brownsville Navigation District d/b/a The Port of Brownsville for this policy must be submitted.	

Comprehensive General Liability	
Comprehensive General Liability including Broad Form Liability, Personal Injury Liability, Contractual Liability, Products/completed operations Liability and including coverage for:	
(1) Explosion, collapse, and underground, and	
(2) For goods, vessels and property of whatever description belonging to others while in the care, custody, and control of the lessee	
An acceptable option would be Warehouse Legal and/or Wharfingers Legal Liability coverage.	
a. Bodily Injury	\$ 1,000,000 Each occurrence
b. Property Damage	\$ 2,000,000 Each aggregate
c. Alternate to a. & b.	Combined single limit of \$ 2,000,000

LEASING
EXHIBIT D – INSURANCE REQUIREMENTS

Comprehensive Automobile Liability		
a. Bodily Injury	\$ 1,000,000 each person	\$ 1,000,000 each occurrence
b. Property Damage	\$ 1,000,000 each occurrence	
c. Alternate to a. & b.	Combined single limit of \$ 1,000,000	
Automobile Liability Coverage to include any auto.		
Personal automobile liability policies used to satisfy all or part of this requirement must be submitted in full and must not contain an exclusion for business use of a vehicle.		

Hull Protection and Indemnity (P & I)	
If a vessel is to be used by the lessee, P & I must be provided to include the vessel and the crew. Hull coverage must be equal to the value of the vessel.	Value of the vessel or \$1,000,000 limit, whichever is greater.

Pollution Liability Insurance		
The following types of Pollution Liability Insurance are required:		
X	Environmental Site Liability (property/location specific – must include coverage for above-ground storage tanks and systems)	\$ 1,000,000 Each occurrence
X	Water/Shipyard Pollution Liability	\$ 5,000,000 Each occurrence
Additional Limits for Storage Tank Liability (<i>if storage tanks are located on the lease site</i>)		
X	Above-Ground Storage Tank Liability (per tank)	\$ 1,000,000 Each occurrence
X	Underground Storage Tank Liability – must satisfy state and federal financial assurance requirements, if applicable, and can be endorsed onto an Environmental Site Policy	\$ 10,000,000 Each occurrence, however, this must satisfy state and federal financial assurance requirements

Subcontractor Insurance Requirements	
<ul style="list-style-type: none"> Each subcontractor hired by the lessee must carry, at the minimum, the same levels of insurance coverage that is required by the lessee. The subcontractor must adhere to the same requirements listed in “Additional Insurance and Notice of Cancellation or Change Endorsements”, “Endorsements Required”, below. Subcontractors will be required to carry “Contractor’s Pollution Liability” and/or “Errors and Omissions Coverage”, as appropriate. Certificates of Insurance and other Proofs of Insurance must be provided to and must be maintained by the lessee. 	

Deductible
Each of the required policies should not have a deductible and/or self-insured retention in excess of: \$2,500.00. Umbrella policies may carry a self-insured retention of up to \$25,000.

LEASING
EXHIBIT D – INSURANCE REQUIREMENTS

Proof of Insurance Required

Certificates of insurance as well as the declarations page from all policies will be submitted to the District as proof of insurance.

Additional Insured and Notice of Cancellation or Change Endorsements

All policies shall be endorsed to name the Brownsville Navigation District d/b/a The Port of Brownsville as an additional insured and shall be endorsed to require that the insurance will not be cancelled or changed without giving the District 30 days' prior written notice. All policies must be endorsed with a Waiver of Subrogation in favor of the District.

Endorsements Required

Copies of endorsements regarding deductible and/or self-insurance and the required additional insured and notice of cancellation or change notices must be submitted. Copies of all endorsements that limit coverage or impose exclusions to coverage must also be submitted.

Notes

The above minimum requirements may be covered exclusively by primary insurance or may be covered by a combination of primary and umbrella liability insurance. The insurance shall have a combined deductible and/or self-insured retention of no more than \$2,500.00.

The District reserves the right to request a copy of any and all insurance policies for review.

Individual exceptions to any of the above requirements may be granted or required due to unavailability of coverage, risk factor, magnitude of operations, or other individual reasons.

<i>The requirements and limits in this document are acceptable for the lessee at the time of the preparation of the lease. The District reserves the right to amend these requirements in response to changes in the lessee's business, such as the addition of outside employees or a change in the lessees' business organization or the purpose of the lease.</i>

LEASING

EXHIBIT D – INSURANCE REQUIREMENTS

**Brownsville Navigation District
INSURANCE REQUIREMENTS
Level Three**

These requirements are applicable to lessees who meet the following criteria and who have employees who are not officers or family members:

- Lease sites of more than 5 acres but less than 20 acres (all sites for a particular lessee will be combined for comparison to this qualification)
- Lessees who do not operate liquid bulk terminals
- Lessees who do not perform ship breaking or ship repairs
- Lessees who do not receive, process or store scrap materials
- Lessees who do not handle hazardous materials

Workers' Compensation	
a. Employer's Liability	\$1,000,000 limit
b. Longshoremen and Harbormaster's Act (if applicable)	Statutory
c. Jones Act (if applicable) Jones Act coverage may be included in the P & I policy, if required.	\$1,000,000
Waiver of Subrogation Endorsement in favor of the Brownsville Navigation District d/b/a The Port of Brownsville for this policy must be submitted.	

Comprehensive General Liability	
Comprehensive General Liability including Broad Form Liability, Personal Injury Liability, Contractual Liability, Products/completed operations Liability and including coverage for:	
(1) Explosion, collapse, and underground, and	
(2) For goods, vessels and property of whatever description belonging to others while in the care, custody, and control of the lessee	
An acceptable option would be Warehouse Legal and/or Wharfingers Legal Liability coverage.	
a. Bodily Injury	\$ 3,000,000 Each occurrence
b. Property Damage	\$ 3,000,000 Each aggregate
c. Alternate to a. & b.	Combined single limit of \$ 3,000,000

Comprehensive Automobile Liability		
a. Bodily Injury	\$ 1,000,000 each person	\$ 1,000,000 each occurrence
b. Property Damage	\$ 1,000,000 each occurrence	
c. Alternate to a. & b.	Combined single limit of \$ 1,000,000	
Automobile Liability Coverage to include any auto.		

LEASING
EXHIBIT D – INSURANCE REQUIREMENTS

Hull Protection and Indemnity (P & I)	
If a vessel is to be used by the lessee, P & I must be provided to include the vessel and the crew. Hull coverage must be equal to the value of the vessel.	Value of the vessel or \$1,000,000 limit, whichever is greater.

Pollution Liability Insurance		
The following types of Pollution Liability Insurance are required:		
X	Environmental Site Liability (property/location specific – must include coverage for above-ground storage tanks and systems)	\$ 2,000,000 Each occurrence
X	Water/Shipyard Pollution Liability	\$ 5,000,000 Each occurrence
Additional Limits for Storage Tank Liability (<i>if storage tanks are located on the lease site</i>)		
X	Above-Ground Storage Tank Liability (per tank) (<i>if storage tanks are located on the lease site</i>) All underground and above-ground storage tanks need to be included for coverage.	\$ 2,000,000 Each occurrence
X	Underground Storage Tank Liability – must satisfy state and federal financial assurance requirements, if applicable, and can be endorsed onto an Environmental Site Policy	\$ 10,000,000 Each occurrence, however, this must satisfy state and federal financial assurance requirements

Subcontractor Insurance Requirements	
<ul style="list-style-type: none"> Each subcontractor hired by the lessee must carry, at the minimum, the same levels of insurance coverage that is required by the lessee. The subcontractor must adhere to the same requirements listed in “Additional Insurance and Notice of Cancellation or Change Endorsements”, “Endorsements Required”, below. Subcontractors will be required to carry “Contractor’s Pollution Liability” and/or “Errors and Omissions Coverage”, as appropriate. Certificates of Insurance and other Proofs of Insurance must be provided to, and must be maintained by the lessee. 	

Deductible
Each of the required policies should not have a deductible and/or self-insured retention in excess of: \$10,000.00.

Proof of Insurance Required
Certificates of insurance as well as the declarations page from all policies will be submitted to the District as proof of insurance.

Additional Insured and Notice of Cancellation or Change Endorsements
All policies shall be endorsed to name the Brownsville Navigation District d/b/a The Port of Brownsville as an additional insured and shall be endorsed to require that the insurance will not be cancelled or changed without giving the District 30 days’ prior written notice. All policies must be endorsed with a Waiver of Subrogation in favor of the District.

LEASING
EXHIBIT D – INSURANCE REQUIREMENTS

Endorsements Required

Copies of endorsements regarding deductible and/or self-insurance and the required additional insured and notice of cancellation or change notices must be submitted. Copies of all endorsements that limit coverage or impose exclusions to coverage must also be submitted.

Notes

The above minimum requirements may be covered exclusively by primary insurance or may be covered by a combination of primary and umbrella liability insurance. The insurance shall have a combined deductible and/or self-insured retention of no more than \$10,000.00.

The District reserves the right to request a copy of any and all insurance policies for review.

Individual exceptions to any of the above requirements may be granted or required due to unavailability of coverage, risk factor, magnitude of operations, or other individual reasons.

<i>The requirements and limits in this document are acceptable for the lessee at the time of the preparation of the lease. The District reserves the right to amend these requirements in response to changes in the lessee's business, such as the addition of outside employees or a change in the lessees' business organization or the purpose of the lease.</i>

LEASING

EXHIBIT D – INSURANCE REQUIREMENTS

**Brownsville Navigation District
INSURANCE REQUIREMENTS
Level Four**

These requirements are applicable to lessees of all business types who have lease sites that are:

- Lease sites of more than 20 acres (all sites for a particular lessee will be combined for comparison to this qualification)
- Lessees who do not operate liquid bulk terminals
- Lessees who do not perform ship breaking or ship repairs
- Lessees who do not receive, process or store scrap materials
- Lessees who do not handle hazardous materials
- Lessees of tower sites

Workers' Compensation	
a. Employer's Liability	\$1,000,000 limit
b. Longshoremen and Harbormaster's Act (if applicable)	Statutory
c. Jones Act (if applicable) Jones Act coverage may be included in the P & I policy, if required.	\$1,000,000
Waiver of Subrogation Endorsement in favor of the Brownsville Navigation District d/b/a The Port of Brownsville for this policy must be submitted.	

Comprehensive General Liability	
Comprehensive General Liability including Broad Form Liability, Personal Injury Liability, Contractual Liability, Products/completed operations Liability and including coverage for:	
(1) Explosion, collapse, and underground, and	
(2) For goods, vessels and property of whatever description belonging to others while in the care, custody, and control of the lessee	
An acceptable option would be Warehouse Legal and/or Wharfingers Legal Liability coverage.	
a. Bodily Injury	\$ 5,000,000 Each occurrence
b. Property Damage	\$ 5,000,000 Each aggregate
c. Alternate to a. & b.	Combined single limit of \$ 5,000,000

Comprehensive Automobile Liability		
a. Bodily Injury	\$ 1,000,000 each person	\$ 1,000,000 each occurrence
b. Property Damage	\$ 1,000,000 each occurrence	
c. Alternate to a. & b.	Combined single limit of \$ 1,000,000	
Automobile Liability Coverage to include any auto.		

LEASING
EXHIBIT D – INSURANCE REQUIREMENTS

Hull Protection and Indemnity (P & I)	
If a vessel is to be used by the lessee, P & I must be provided to include the vessel and the crew. Hull coverage must be equal to the value of the vessel.	Value of the vessel or \$1,000,000 limit, whichever is greater.
Tower's and Charter's Liability must be provided as appropriate.	

Pollution Liability Insurance		
The following types of Pollution Liability Insurance are required:		
X	Environmental Site Liability (property/location specific – must include coverage for above-ground storage tanks and systems)	\$ 5,000,000 Each occurrence
X	Water/Shipyard Pollution Liability	\$ 5,000,000 Each occurrence
Additional Limits for Storage Tank Liability (<i>if storage tanks are located on the lease site</i>)		
X	Above-Ground Storage Tank Liability (per tank)	\$ 2,000,000 Each occurrence
X	Underground Storage Tank Liability – must satisfy state and federal financial assurance requirements, if applicable, and can be endorsed onto an Environmental Site Policy	\$ 10,000,000 Each occurrence, however, this must satisfy state and federal financial assurance requirements

Subcontractor Insurance Requirements	
<ul style="list-style-type: none"> Each subcontractor hired by the lessee must carry, at the minimum, the same levels of insurance coverage that is required by the lessee. The subcontractor must adhere to the same requirements listed in “Additional Insurance and Notice of Cancellation or Change Endorsements”, “Endorsements Required”, below. Subcontractors will be required to carry “Contractor’s Pollution Liability” and/or “Errors and Omissions Coverage”, as appropriate. Certificates of Insurance and other Proofs of Insurance must be provided to, and must be maintained by the lessee. 	

Deductible
Each of the required policies should not have a deductible and/or self-insured retention in excess of: \$50,000.00.

Proof of Insurance Required
Certificates of insurance as well as the declarations page from all policies will be submitted to the District as proof of insurance.

Additional Insured and Notice of Cancellation or Change Endorsements
All policies shall be endorsed to name the Brownsville Navigation District d/b/a The Port of Brownsville as an additional insured and shall be endorsed to require that the insurance will not be cancelled or changed without giving the District 30 days prior written notice. All policies must be endorsed with a Waiver of Subrogation in favor of the District.

LEASING
EXHIBIT D – INSURANCE REQUIREMENTS

Endorsements Required

Copies of endorsements regarding deductible and/or self-insurance and the required additional insured and notice of cancellation or change notices must be submitted. Copies of all endorsements that limit coverage or impose exclusions to coverage must also be submitted.

Notes

The above minimum requirements may be covered exclusively by primary insurance or may be covered by a combination of primary and umbrella liability insurance. The insurance shall have a combined deductible and/or self-insured retention of no more than \$50,000.00.

The District reserves the right to request a copy of any and all insurance policies for review.

Individual exceptions to any of the above requirements may be granted or required due to unavailability of coverage, risk factor, magnitude of operations, or other individual reasons.

<i>The requirements and limits in this document are acceptable for the lessee at the time of the preparation of the lease. The District reserves the right to amend these requirements in response to changes in the lessee's business, such as the addition of outside employees or a change in the lessees' business organization or the purpose of the lease.</i>

LEASING

EXHIBIT D – INSURANCE REQUIREMENTS

**Brownsville Navigation District
INSURANCE REQUIREMENTS
Level Five**

These requirements are applicable to lessees of all business types who have lease sites that are:

- Lessees who operate liquid bulk terminals
- Lessees who perform ship breaking or ship repairs
- Lessees who receive, process or store scrap materials
- Lessees who handle hazardous materials
- Pipeline or transmission line operators

Workers' Compensation	
a. Employer's Liability	\$1,000,000 limit
b. Longshoremen and Harbormaster's Act (if applicable)	Statutory
c. Jones Act (if applicable) <small>Jones Act coverage may be included in the P & I policy, if required.</small>	\$1,000,000
Waiver of Subrogation Endorsement in favor of the Brownsville Navigation District d/b/a The Port of Brownsville for this policy must be submitted.	

Comprehensive General Liability	
Comprehensive General Liability including Broad Form Liability, Personal Injury Liability, Contractual Liability, Products/completed operations Liability and including coverage for:	
(1) Explosion, collapse, and underground, and	
(2) For goods, vessels and property of whatever description belonging to others while in the care, custody, and control of the lessee.	
An acceptable option would be Warehouse Legal and/or Wharfingers Legal Liability coverage.	
a. Bodily Injury	\$ 25,000,000 Each occurrence
b. Property Damage	\$ 25,000,000 Each aggregate

Comprehensive Automobile Liability		
a. Bodily Injury	\$ 1,000,000 each person	\$ 1,000,000 each occurrence
b. Property Damage	\$ 1,000,000 each occurrence	
c. Alternate to a. & b.	Combined single limit of \$ 1,000,000	
Automobile Liability Coverage to include any auto.		

LEASING
EXHIBIT D – INSURANCE REQUIREMENTS

Hull, Protection and Indemnity (P & I)	
If a vessel is to be used by the lessee, P & I must be provided to include the vessel and the crew. Hull coverage must be equal to the value of the vessel.	Value of the vessel or \$1,000,000 limit, whichever is greater.
Vessels/Rigs/Barges brought into the Port of Brownsville to be scrapped or to be repaired must have P & I coverage for the duration of the port call. Proof of this insurance is to be submitted with the Berth Application.	
Towers' and Charterer's Liability must be provided as appropriate.	

Pollution Liability Insurance		
The following types of Pollution Liability Insurance are required:		
X	Environmental Site Liability (property/location specific – must include coverage for above-ground storage tanks and systems)	\$ 10,000,000 Each occurrence
X	Water/Shipyard Pollution Liability	\$ 10,000,000 Each occurrence
Additional Limits for Storage Tanks (<i>if storage tanks are located on the lease site</i>)		
X	Above-Ground Storage Tank Liability	
	• Up to 500,000 bbl. capacity	\$ 2,000,000 Each occurrence
	• 500,000 to 1,000,000 bbl. capacity	\$ 5,000,000 Each occurrence
	• 1,000,000 to 1,500,000 bbl. capacity	\$ 10,000,000 Each occurrence
	• 1,500,000 bbl. and over capacity	\$ 15,000,000 Each occurrence
X	Underground Storage Tank Liability – must satisfy state and federal financial assurance requirements, if applicable, and can be endorsed onto an Environmental Site Policy	\$ 10,000,000 Each occurrence, however, this must satisfy state and federal financial assurance requirements

Subcontractor Insurance Requirements	
<ul style="list-style-type: none"> Each subcontractor hired by the lessee must carry, at the minimum, the same levels of insurance coverage that is required by the lessee. The subcontractor must adhere to the same requirements listed in “Additional Insurance and Notice of Cancellation or Change Endorsements”, “Endorsements Required”, below. Subcontractors will be required to carry “Contractor’s Pollution Liability” and/or “Errors and Omissions Coverage”, as appropriate. Certificates of Insurance and other Proofs of Insurance must be provided to, and must be maintained by the lessee. 	

Deductible
Each of the required policies should not have a deductible and/or self-insured retention in excess of: \$100,000.00.

LEASING
EXHIBIT D – INSURANCE REQUIREMENTS

Proof of Insurance Required

Certificates of insurance as well as the declarations page from all policies will be submitted to the District as proof of insurance.

Additional Insured and Notice of Cancellation or Change Endorsements

All policies shall be endorsed to name the Brownsville Navigation District d/b/a The Port of Brownsville as an additional insured and shall be endorsed to require that the insurance will not be cancelled or changed without giving the District 30 days prior written notice. All policies must be endorsed with a Waiver of Subrogation in favor of the District.

Endorsements Required

Copies of endorsements regarding deductible and/or self-insurance and the required additional insured and notice of cancellation or change notices must be submitted. Copies of all endorsements that limit coverage or impose exclusions to coverage must also be submitted.

Notes

The above minimum requirements may be covered exclusively by primary insurance or may be covered by a combination of primary and umbrella liability insurance. The insurance shall have a combined deductible and/or self-insured retention of no more than \$100,000.00.

The District reserves the right to request a copy of any and all insurance policies for review.

Individual exceptions to any of the above requirements may be granted or required due to unavailability of coverage, risk factor, magnitude of operations, or other individual reasons.

<i>The requirements and limits in this document are acceptable for the lessee at the time of the preparation of the lease. The District reserves the right to amend these requirements in response to changes in the lessee's business, such as the addition of outside employees or a change in the lessees' business organization or the purpose of the lease.</i>

LEASING
EXHIBIT D – INSURANCE REQUIREMENTS**Brownsville Navigation District
INSURANCE REQUIREMENTS
Level Six**

These requirements are applicable to lessees who meet the following criteria and who have no employees who are not officers or family members.

- Grazing Leases
- Fish Camps
- Sign Spaces
- Other Miscellaneous Leases that do not meet the criteria for Levels One through Five

Workers' Compensation

Not Required - *The requirement for Workers' Compensation Insurance is waived for lessees who meet the above criteria.*

Comprehensive General Liability

Comprehensive General Liability including Broad Form Liability, Personal Injury Liability, Contractual Liability, Products/completed operations Liability and including coverage for:

- (3) Explosion, collapse, and underground, and
- (4) For goods, vessels and property of whatever description belonging to others while in the care, custody, and control of the lessee

An acceptable option would be Warehouse Legal and/or Wharfingers Legal Liability coverage.

d. Bodily Injury	\$ 250,000 Each occurrence
e. Property Damage	\$ 250,000 Each aggregate

Comprehensive Automobile Liability

d. Bodily Injury	\$ 25,000 each person	\$ 50,000 each occurrence
e. Property Damage	\$ 25,000 each occurrence	

Automobile Liability Coverage to include any auto.

Personal automobile liability policies used to satisfy all or part of this requirement must be submitted in full and must not contain an exclusion for business use of a vehicle (except for Fish Camp leases).

Hull Protection and Indemnity (P & I)

If a vessel is to be used by the lessee, P & I must be provided to include the vessel and the crew. Hull coverage must be equal to the value of the vessel.	Value of the vessel or \$1,000,000 limit, whichever is greater.
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LEASING
EXHIBIT D – INSURANCE REQUIREMENTS**Subcontractor Insurance Requirements**

- Each subcontractor hired by the lessee must carry, at the minimum, the same levels of insurance coverage that is required by the lessee. The subcontractor must adhere to the same requirements listed in “Additional Insurance and Notice of Cancellation or Change Endorsements”, “Endorsements Required”, below.
- Subcontractors will be required to carry “Contractor’s Pollution Liability” and/or “Errors and Omissions Coverage”, as appropriate.
- Certificates of Insurance and other Proofs of Insurance must be provided to, and must be maintained by the lessee.

Deductible

Each of the required policies should not have a deductible and/or self-insured retention in excess of:
\$500.00.

Proof of Insurance Required

Certificates of insurance as well as the declarations page from all policies will be submitted to the District as proof of insurance.

Additional Insured and Notice of Cancellation or Change Endorsements

All policies shall be endorsed to name the Brownsville Navigation District d/b/a The Port of Brownsville as an additional insured and shall be endorsed to require that the insurance will not be cancelled or changed without giving the District 30 days’ prior written notice. All policies must be endorsed with a Waiver of Subrogation in favor of the District.

Endorsements Required

Copies of endorsements regarding deductible and/or self-insurance and the required additional insured and notice of cancellation or change notices must be submitted. Copies of all endorsements that limit coverage or impose exclusions to coverage must also be submitted.

Notes

The above minimum requirements may be covered exclusively by primary insurance or may be covered by a combination of primary and umbrella liability insurance. The insurance shall have a combined deductible and/or self-insured retention of no more than \$1,000.00.

The District reserves the right to request a copy of any and all insurance policies for review.

Individual exceptions to any of the above requirements may be granted or required due to unavailability of coverage, risk factor, magnitude of operations, or other individual reasons.

LEASING
EXHIBIT D – INSURANCE REQUIREMENTS

The requirements and limits in this document are acceptable for the lessee at the time of the preparation of the lease. The District reserves the right to amend these requirements in response to changes in the lessee's business, such as the addition of outside employees or a change in the lessees' business organization or the purpose of the lease.

LEASING
EXHIBIT D – INSURANCE REQUIREMENTS

**Brownsville Navigation District
INSURANCE REQUIREMENTS**

Workers' Compensation Insurance Disclaimer

The **Insurance Requirements – Level Six** of the Brownsville Navigation District do not impose a requirement for certain lessees to carry Workers' Compensation Insurance. In order for a lessee to qualify for this level of insurance, the following criteria must be met:

- They are Sole Proprietors, Partnerships, or Limited Liability Corporations
- They lease sites up to 5 acres, or sites used for grazing

And

- They have a Grazing Lease, or
- They have a Fish Camp Lease, or
- They have a Sign Space Lease, or
- They have another Miscellaneous Lease that does not meet the criteria for Levels One through Five

By signing below, I certify that I meet the above criteria and am therefore qualified for the waiver of the requirement to carry Worker's Compensation Insurance.

Signature

Date

LEASING

EXHIBIT D – INSURANCE REQUIREMENTS

**Brownsville Navigation District
INSURANCE REQUIREMENTS
Liquor Liability**

These requirements are applicable to lessees of all business types who have lease sites that are:

- Lessees who offer alcoholic beverages for on-premises consumption

Liquor Liability	
Liquor Liability Insurance is required as an add-on to the General Liability policy or as a separate liability policy.	
Defense costs must not reduce coverage.	
The policy must not exclude:	
<ol style="list-style-type: none"> 1. Assault and Battery Coverage 2. Employees as Patrons 3. Mental Damages must not be excluded from the definition of “Damages” 	
Primary Limits	\$ 1,000,000 Each occurrence
Aggregate Limits	\$ 2,000,000 Each aggregate
Defense Costs	Unlimited

LEASING
EXHIBIT D – INSURANCE REQUIREMENTS

**Brownsville Navigation District
Insurance Requirements
Pollution Insurance Coverages**

Effectively there are two primary environmental or pollution policy types, Environmental Site Liability (ESL) and Contractor's Pollution Liability (CPL) available to U.S. industry in general. These products are a crucial part of the Brownsville Navigation District's (Port) risk management program by providing a means for the Port to transfer environmental risks to Insurance Carriers. The policies are also intended to provide protection to our contractors and vendors. Other stand-alone policy types applicable to the Port include Underground Storage Tank, Professional Liability, and marine specialty products. These policy types can be combined with other policy types or specific coverages that can be added or deleted by endorsement depending upon the specific project and need.

The Port requires one or more of these policy types depending upon the specific lease or project. Leases are assigned to a set of insurance requirements identified as Levels 1-7 and each has differing requirements for policy types, limits and deductibles. Requirements for individual projects will be determined on a case-by-case basis.

This discussion is intended to provide guidance about the insurance products and does not eliminate the need for our lessees and contractors to fully understand the coverages and provide the level of coverage required by the District. Further it is very important to understand that these policies have general and operational or site specific exclusionary language which could leave you exposed or only partially covered.

Environmental Site Liability (ESL) policies are claims-made policies that generally cover the environmental liabilities of the District's active business operations and those stemming from historic operations. The definition of a pollution condition in these policies can be broad, and the policy forms are very well vetted legally, having evolved over the last 40 years. The policies were created as a result of the categorical pollution exclusion added to commercial general liability (CGL) policies in the 1970's.

- An ESL policy, proprietary versions of which are offered by over 20 carriers, covers most types of regulated pollution releases or incidents. The ESL is location-specific and intended to cover liability for pollution at, and migrating from, the Port's real property. Coverage can be extended to multiple locations / sites.
- These policies are usually manuscripted by endorsement to obtain the broadest coverage and least exclusions. While generally similar in intent, differences in policy wording, terms, conditions and definitions vary from carrier to carrier.
- An ESL policy should cover liability to first and third parties for bodily injury and property damage, remediation (cleanup) costs and the associated legal defense expenses. These coverage areas can be offered for both on site and off site exposures and for new (pollution conditions that occur after policy inception) and historic pollution conditions (pollution conditions that occurred before policy inception).
- Enhancements are many and should include coverage for natural resource damage claims, contingent business interruption, non-criminal fines and penalties, property diminution in value, underground storage tanks/above-ground storage tanks, pollution incidents resulting from vehicles transporting hazardous materials and liability that the insured has for wastes delivered to disposal facilities, such as landfills and incinerators.
- A stand-alone ESL policy covering risk associated with pre-existing conditions could be expected to have a maximum policy period of 10 years; active operations are generally limited to 5 years. Minimum limits are \$1M and minimum term is 1 year. Limits can be up to \$50M (higher limits are available by purchasing excess policies).

LEASING
EXHIBIT D – INSURANCE REQUIREMENTS

Deductibles or self-insured retentions can be negotiated and limits (as well as terms and conditions) are not shared with other coverage lines, unless desired.

- These policies should cover both gradual and sudden and accidental releases. Some property (and contractor's pollution liability) policies will contain sudden and accidental coverage for pollution but often with limits which are much lower than the full policy limits (sub-limited). This can augment the ESL, but is not a substitute as many pollution incidents are gradual in nature and thus would be excluded under these other policy forms.
- In some cases, only sudden and accidental coverage will be available for an ESL, particularly if little or no historic information is available.
- Above-ground storage tanks are covered without being scheduled to the policy form. Underground storage tanks must be scheduled. Coverage will generally be denied for a known, unscheduled underground storage tank.
- Certain exclusions are going to be present and must be disclosed to and accepted by the District in writing.

Contractor's Pollution Liability (CPL) is a very popular insurance product offered by over 40 Insurers. It is designed to protect the District against third party claims for damages caused by "pollution conditions" arising from a District's contractor's covered contracting operations, by or on behalf of the insured. The CPL will not cover the contractor's owned location, unless specifically endorsed to the policy. A CPL policy is now required by the District for most of our projects. While CPL and ESL have fundamental differences, coverage and definitions are often similar.

- These policies are available as claims-made (less expensive) and occurrence-based. Occurrence-based coverage is preferred as a claim can be made against the policy at any time, even if it is no longer in effect.
- The coverage can be provided on a project specific or blanket basis for the insured's overall operations.
- The policy term is for the project duration or 1 year.
- Premiums are usually based on the construction costs (including subcontractors) of the specific project.
- This coverage is a vital component of the insurance program for any contractor involved in construction activities at mines. Coverage can be extended to the insured's owned and leased properties.
- Transportation, non-owned disposal sites, and emergency response are significant coverage offerings.
- Coverage extending to the Insured's subcontractors is generally included in a CPL and is required.
- Consulting, contracting, design and field work performed by architects, design firms, engineers, environmental consultants and contractors can result in significant claims, thus CPL's are often paired with professional liability coverage.
- CPL coverage can respond to pollution conditions created by both current and completed operations. Long term completed operations coverage (tail) can be added to the claims-made policy.
- Coverage limits are generally in the \$5M-\$10M range but limits of \$50M+ are not unusual for the larger projects. Minimum limits are \$1M.
- A CPL can be structured within or outside of an OCIP / CCIP program.
- As with the ESL, while generally similar in intent, differences in policy wording, terms, conditions and definitions vary from carrier to carrier.

Professional Liability Policies – This coverage is required of all general and trade contractors (including but not limited to): concrete; excavation and grading; HVAC; mechanical, electrical and plumbing; street and road; utility; environmental contractors and consultants, and testing laboratories. Coverage is to be included for professional liability (acts, errors and omissions in covered professional services); Mitigation/Rectification expenses and protective loss. This may be a stand-alone policy or may be purchased in conjunction with a Contractor's Pollution Liability policy.

LEASING
EXHIBIT D – INSURANCE REQUIREMENTS

Storage Tank Liability – These policies are used to provide coverage for third-party bodily injury and/or property damage claims resulting from pollution releases from above-ground and/or underground storage tanks, cleanup or corrective action due to releases from scheduled tanks, and defense expenses. This policy type also provides an efficient way for insureds to comply with government-mandated storage tank financial responsibility requirements. They are typically stand-alone policies but underground storage tanks can be scheduled to ESL policies eliminating the need for the storage tank policy. It is very important to recognize that this coverage can be very narrow and limited to the tanks, pumps and associated lines. As an example, pollution incidents arising from loading and unloading and nearby equipment such as a generator may not be covered. These are usually renewed yearly and require that the tanks maintain compliance with state and federal regulations.

Water Pollution Liability Insurance – These policies are part of broader commercial marine risk product portfolios. These policies protect vessel owners and operators, cargo owners, shipyards, mobile drilling units, tow risks, marina operators and non-vessel owners from pollution incidents arising from their covered locations, transportation, operations or equipment, typically off shore or near shore. They cover open water or near shore pollution incidents not normally covered by the site-specific pollution legal liability or excluded by an operations specific contractor's pollution liability. This type of pollution insurance may be purchased through a specialty insurer such as the Water Quality Insurance Syndicate.

**EXHIBIT F
STANDARD SUBORDINATION AGREEMENT**

BROWNSVILLE NAVIGATION DISTRICT

DATE:

**TO: (NAME OF CREDITOR)
(ADDRESS OF CREDITOR)**

In connection with an existing or proposed loan or other extension of credit to or for the account of (*Name of Tenant*) (“Borrower”) of (*Tenant’s address*), including the renewal or extension of any thereof, the undersigned hereby agrees that any lien or security interest of any kind that the undersigned may now have or hereafter acquire in the personal property described below shall be subordinate, inferior, and subject to any lien or security interest in such property that you, your successors or assigns, may now have or hereafter acquire,

DESCRIPTION OF PROPERTY

together with all accessories, attachments, parts, equipment, accessions and repairs now or hereafter affixed thereto or used in connection therewith and substitutions, replacements, and proceeds thereof.

This document neither creates any security interest in any real or personal property owned by the undersigned, nor authorizes the placement of any lien or security interest on any real or personal property owned by the undersigned. This document also does not impair the undersigned’s rights under the real property lease between the undersigned and Borrower. This document merely establishes the relative priority rights between the undersigned and you under Section 9.339 of the Texas Business and Commercial Code.

Very truly yours,
BROWNSVILLE NAVIGATION DISTRICT

By: _____
Eduardo A. Campirano
Port Director and CEO

LEASING

LEASE SITES NOT SERVED BY THE DISTRICT'S UTILITY SERVICE

LEASE SITES NOT
SERVED BY THE
DISTRICT'S UTILITY
SERVICE

Most of the properties at the Turning Basin and Fishing Harbor are served by the District's utility services, either with water or water and sewer. If a lease site under consideration by a prospective lessee is not served by the District's utility services, the District is not under any obligation to provide utility service to the site. The District may consider assisting the lessee to install water and/or sewer service to the site, providing that the lease has a minimum primary term of five years.

The District provides no utilities nor accepts any liability or responsibility for same on remote sites, grazing leases, fish camp leases, or unimproved land leases. The District leases these lands as a service to the public for limited purposes and they are considered as lands not needed in the near future for expansion of Port facilities.

The District will not furnish utility services, sewer, potable water or raw water through District facilities to lands not owned or controlled by the District.

LEASING
LEASE PAYMENT

LEASE PAYMENT

Lease payment terms are variable (monthly, quarterly, semi-annually, and annually) and can be tailored to the lessee depending on the type of lease. All port tariff rates, rules and regulations are applicable to all lessees.

The District reserves the right to impose a change in lease payment terms in the event that a lessee becomes delinquent.

LEASING
REAL ESTATE BROKER'S FEE

C309
(LOCAL)

REAL ESTATE
BROKER'S FEE

The District will deal with the "first through the door" real estate agent with a client and will pay the broker a fee if the client leases from the District, provided a leasing referral memorandum is completed at the initial client meeting with the District. (C306 Exhibit C – Leasing Referral Memorandum).

The fee is 6% of the first year's rentals payable when the first year's rental payment is received in full from the lessee for credit to his account, if the account is non-delinquent at the time of receipt.

Industrial development consultants will be paid on a different basis under separate agreements reached with them upon approval by the Board of Commissioners. Any fees paid to industrial development consultants, if based on lease rentals, shall be paid only in accordance with the provisions of the Real Estate License Act, Tex. Rev. Civ. Stat. art. 6573a.