

**MINUTES OF A REGULAR MEETING OF THE BOARD OF NAVIGATION AND
CANAL COMMISSIONERS OF THE BROWNSVILLE NAVIGATION DISTRICT OF
CAMERON COUNTY, TEXAS HELD JANUARY 24, 2024 AT 5:30 P.M.**

The Board of Navigation and Canal Commissioners of the Brownsville Navigation District of Cameron County, Texas, held a Regular meeting on **Wednesday, January 24, 2024 at 5:30 p.m.** The following individuals were present and absent:

PRESENT: Esteban Guerra, Chairman
Ralph Cowen
John Wood
John Reed
Sergio Tito Lopez

ABSENT: None

ALSO PRESENT: William Dietrich, Interim Port Director and CEO
William J. Irwin, District Counsel

STAFF MEMBERS:
Ariel Chavez
Michael Davis
Karina Franco
Arturo Gomez
Jose Herrera
Jorge Montero
Margie Recio
Memo Rico
Tony Rodriguez
Julio Romo
Janie Velasquez
Zeus Yanez

OTHERS PRESENT: Rev. Andreas Lewis
Jorge de la Colina
Eduardo Campirano
Maria Nuria Ruiz
Ruben Lopez
Humberto Torres
Roque Leal
Nicolas Rodriguez
Fernando Gonzalez
Alejandro Ochoa

REGULAR MEETING

1. Meeting Called To Order

The Chairman called the meeting to order at 5:31 p.m. Rev. Andreas Lewis offered a prayer. The Chairman then led those present in the Pledge of Allegiance to the United States and Texas flags.

2. Public Audience

1. Maria Nuria Ruiz addressed the Board regarding overweight permits and issues relating to the trucking industry.
2. Ruben Lopez addressed the Board regarding overweight permits and issues relating to the trucking industry.

3. Receive Monthly Operations Summary Report

Zeus Yanez made the report to the Board. Discussion followed.

Commissioner Wood asked about the commitment of TRZ funds. Discussion followed.

INFORMATION

4. Presentation of District's Investment Report

Zeus Yanez made the Presentation of the District's Investment Report to the Board for the quarter ended December 31, 2023. Discussion followed.

CONSENT AGENDA

5. Consideration and Action on the Following Consent Agenda Items:

- a. Approval of the Minutes of the Pilot and Regular Board Meeting of January 10, 2024.
- b. Approval to authorize payments over \$25,000.00:
 1. HDR Engineering, Inc., the amount of \$58,460.46, for Channel Deepening Project – Construction Phase Support;
 2. R.M. Walsdorf, Inc., the amount of \$462,070.94, for BND Dock 11 Concrete Pad Project.

6. Consideration and ACTION on the Engagement Letter for the Annual Financial Statement Audit of the Retirement Plan for the Employees of the Brownsville Navigation District.

On November 1, 2023, the Board selected Carr, Riggs & Ingram, LLC as the independent CPA firm for the District's and Retirement Plan's external audit services for Fiscal Years 2023-2025. Prior to initiating the annual audits, an engagement letter is submitted for each audit that provides details on the scope and objectives of the audit; as well as other information related to the audit that auditors are required to communicate to management and those charged with governance. The FY 2023 audit is estimated not to exceed \$25,650.00.

7. Consideration and ACTION on the Engagement Letter for the Annual Financial Statement Audit of the Brownsville Navigation District.

On November 1, 2023, the Board selected Carr, Riggs, & Ingram, LLC as the independent CPA firm for the District's and Retirement Plan's external audit services for the Fiscal Years 2023-2025. Prior to initiating the annual audits, an engagement letter is submitted for each audit that provides details on the scope and objective of the audit; as well as other information related to the audit that auditors are required to communicate to management and those charged with governance. The FY 2023 audit is estimated not to exceed \$51,050.00.

Commissioner Sergio Tito Lopez moved to approve all consent agenda items, Commissioner John Wood seconded, and the motion passed unanimously.

8. Consideration and ACTION to approve the District's Fiscal Year 2024 Operating and Capital Budgets.

Mr. Yanez addressed the Board to approve the Fiscal Year 2024 Operating and Capital Budgets. Draft versions of the FY 2024 Operating and Capital budgets were presented for the Board's review at the January 18, 2024 Commission workshop. The FY 2024 budgets have been updated to reflect changes recommended at the meeting. BND Staff are requesting one position for an Administrative Service Clerk CT2. Commissioner Reed moved to approve the District's FY 2024 Operating and Capital Budgets request, Commissioner Lopez seconded, and the motion passed unanimously.

9. Consideration and ACTION on Amending Leasing Policy; including Exhibit D – Insurance Requirements.

Ms. Recio addressed the Board to Amend Leasing Policy, including Exhibit D – Insurance Requirements. BND Staff have reviewed the Leasing Policy and working in conjunction with the Policy Committee, the following amendments to the policy are proposed:

The removal of the Table Lease Rental Rates from the policy document, making it accessible only through a request to the Real Estate Service Department. Additionally, eliminating all references to the Table of Lease Rental Rates from applicable selections within the policy; and,

The net book value for District owned buildings to be leased shall not be less than the appraised value, plus 20%. Currently, district owned buildings are leased to tenants for the primary term of 5 years at an annual rate of 20% of their net book value. Once the net book value of the building has been paid, title for the building is transferred to the tenant; and,

Because these revisions are extensive in various sections, the Policy Committee recommends the revised Leasing Policy be adopted as a single document, rather than enumerating the individual amendments to the policy. A red-lined version is attached to this item with explanatory notes regarding the revisions to the policy; and,

When the District approved the insurance requirements in 2017, one of the approved revisions was to develop a set of insurance requirements that recognized that there is a wide variety in the nature of the District's tenants. However, there were concerns that some of the limits contained in the schedules were not easily acquirable by some tenants in the fishing and shrimping industry, therefore the Policy Committee requested that Staff review all the current level insurance requirements and provide feedback. The proposed revised insurance requirement levels have been

presented and reviewed by the Policy Committee, District’s insurance consultant, and legal counsel. If approved, Staff will notify all leases of the new insurance level requirements and will collaborate with those tenants currently not in compliance to fulfill their insurance requirement. Discussion followed regarding the insurance requirements and staff responsibilities for reviewing the insurance provided. All lessees will have a sixty day period to comply after notices have been issued regarding new insurance requirements.

Commissioner Wood moved to adopt the amended BND Leasing Policy as presented by the Staff, to be effective immediately, Commissioner Cowen seconded, and the motion passed unanimously.

10. Consideration and ACTION on waiving the policy insurance limit requirement currently in place for Cameron County Sheriff’s Department.

Ms. Recio addressed the Board to waive the policy insurance limit requirement currently in place for Cameron County Sheriff’s Department. The Cameron County Sheriff’s Department (“Department”) under BND Contract 4371 is requesting to exercise their 5-year term option to renew for the purpose of law enforcement firearms training. One of the requirements for a lessee to exercise their option is full compliance within the insurance level requirements as specified in their lease contract under Exhibit – Insurance. The Department provided a Certificate of Insurance (COI) with their renewal, however their COI did not meet the specific requirements for a Level 1 lessee. They have indicated to BND Staff that the Department operated within the constraints set forth by the Texas Tort Claims Act, specifically under Section 101.023. The Texas Tort Claims Act establishes maximum damage limits on liability for governmental entities, for actions brought under the Act. For the Department, the liability caps are outlined as follows: \$100,000 for each person and \$300,000 for each single occurrence for bodily injury or death; and, \$100,00 for each single occurrence for injury to or destruction of property. Staff is requesting consideration waiving the Level 1 policy insurance limit requirements mandated by the Texas Tort Claims Act. Commissioner Reed moved to waive the Policy Insurance requirements applicable to the Department and to approve the Department’s COI, Commissioner Cowen seconded, and the motion passed unanimously.

11. Consideration and ACTION on Leases, Assignments, Negotiations, Easements, Subleases, and Contracts in general.

Chairman Guerra briefly left the meeting room and Commissioner Cowen assumed the chair.

Mr. Dietrich addressed the Board regarding the following items:

1. Friends of RGV Reef (Authority to Negotiate)

The lease with Friends of RGV Reef under BND Contract 4435 expired on January 19, 2024, with no renewal options. The lessee seeks authority to negotiate a new lease for a term of three years. This site is located at 501 Express Doc Road. The purpose of this lease is for an artificial reef building made of concrete and steel. Commissioner Wood moved to authorize staff to negotiate a new lease with Friends of RGV Reef, Commissioner Reed seconded, and the motion passed unanimously.

2. Enbridge (USA) Inc. (**Authority to Negotiate**)

Enbridge (USA) Inc. is seeking authority to negotiate an Option for approximately 516 acres for a term of one year with one renewal option of one year. The purpose of this Option is for due diligence (blue hydrogen, ammonia, Co2 capture project). This job is estimated to create 4,000 construction jobs and 100 permanent jobs. Commissioner Reed asked staff to review the recently proposed facility in Ingleside. Commissioner Wood moved to authorize staff to negotiate an Option to Lease with Enbridge (USA) Inc., Commissioner Reed seconded, and the motion passed unanimously.

Chairman Guerra then returned to the meeting and then re-assumed the chair.

3. C.R. Logistics RS LLC / C.R. Trucking LLC (**Authority to Negotiate**)

C.R. Logistics RS LLC. (C.R. Trucking LLC), a current lessee, seeks authority to negotiate a new lease for an additional site of 2.21 acres located off Old SH 48 and E. Terminal Road. The company is requesting a term of five years with two renewal options of five years each. The purpose of this new lease is for a public scale. Commissioner Lopez moved to table this item, Commissioner Reed seconded, and the motion passed unanimously.

12. Consideration and ACTION to authorize BND Staff to purchase materials (limestone and geogrid) for patio 22T, 19.94 acre laydown area development

Mr. Gomez addressed the Board to authorize BND Staff to purchase materials for patio 22T, 19.94 acre laydown area development. The District, Gulf Stream Marine, Inc. and Ternium Procurement S.A. "Ternium" are finalizing negotiations to enter into a Lease and Development agreement for 19.94 acre patio laydown area. As these negotiations continue, the parties have agreed that it is in the best interest of all involved to commence work on this project immediately. The estimated cost of the project is \$6,000,000.00 and negotiations have established a schedule of payments. BND has invoiced Gulf Stream Marine, Inc. \$1,200,000.00 as advance payment for the purchase of materials to commence work on Patio 22T. Commissioner Reed moved to grant Staff authority to purchase required materials and issue payment on invoice(s) once approximately 30,000 tons of crushed limestone from CAL-IXA Aggregates LLC (Contract No. 4637) and 45 rolls of geogrid from Geo Solutions is received, subject to receipt of payment from Gulf Stream Marine, Inc. and Ternium, Commissioner Wood seconded, and the motion passed unanimously.

13. Consideration and ACTION to authorize BND Staff to advertise for proposals for the materials required to repair Sheds 11-14 and Sheds 15 and 15E.

Jose Herrera addressed the Board to authorize BND Staff to advertise for proposals for the materials required to repair sheds 12-14. Mr. Herrera noted that the agenda item listed additional sheds, but made the correction that the item being presented only relates to items 12-14. Staff requests authorization to advertise to solicit proposals for the materials required to repair Sheds 12-14 siding, roof, doors, lights, electrical infrastructure, and replacement of doors with electrical infrastructure to shed 15 and 15 East. Commissioner Lopez asked if the repairs themselves would be performed by Port staff. Mr. Herrera stated that the repairs would be performed by Port staff. Commissioner Lopez moved to authorize BND Staff to advertise to solicit for proposals for the materials required to repair Sheds 12 -14, Commissioner Reed seconded, and the motion passed unanimously.

14. Consideration and ACTION to reject the proposals received for janitorial services and to authorize BND Staff to re-advertise to solicit proposals for janitorial services for District buildings.

Ms. Recio addressed the Board to reject the proposals received for janitorial services and to authorize BND Staff to re-advertise to solicit proposals for janitorial services for District buildings. The District currently contracts out cleaning services for the Harbormaster's office, the Command Center and the Overweight Permit office three days a week. A request for proposals was issued to service these buildings along with the Wastewater Treatment office and the Crane office three times a week for a term of one year. A total of 6 proposals were received. After an evaluation of the proposals and the scope of the work, Staff is requesting to reject the proposals received and authorization to re-advertise to solicit proposals to include the following District buildings (Harbor Master's office, Command Center, Overweight Permit office, Wastewater Treatment office, Crane office Pod A and B, Guard houses, and the restrooms located at the docks and sheds). Staff is requesting services to be provided five days a week for a term of one year with three renewal options of a term of one year each. Commissioner Tito Lopez moved to reject the proposals received and authorize Staff to re-advertise to solicit proposals for janitorial services for District buildings, Commissioner Reed seconded, and the motion passed unanimously.

15. Consideration and ACTION on revised Resolution adopting Advance Funding Agreement with the Texas Department of Transportation for the Reconstruction of Cargo Dock #3 in the Port of Brownsville and designating a Signatory and a Project Manager.

Mr. Dietrich addressed the Board to adopt the revised Resolution adopting Advance Funding Agreement with the Texas Department of Transportation ("TxDOT") for the Reconstruction of Cargo Dock #3 in the Port of Brownsville and designate a Signatory and a Project Manager. BND Staff have been working with TxDOT Maritime Division on a grant and on an Advanced Funding Agreement ("AFA") for the reconstruction of Cargo Dock #3 project in the Port of Brownsville off Windhaus Road approximately 0.81 miles South of TX State Hwy No. 48. The AFA must be executed between the BND and the State for the State funding grant of \$11,565,621. BND Commissioners approved the resolution last year. However, TxDOT has requested revisions, which have been made. BND must adopt the revised Resolution approving the proposed AFA, which will become part of the AFA. This will allow BND to move forward to initiate the construction phase of the project. The estimated construction cost of the Cargo Dock #3 Reconstruction is approximately \$35,000,000.00 and the Texas Transportation Commission approved a grant in the above stated amount of \$11,565,621.00 on their September 28, 2023 meeting for the said Dock's reconstruction. Commissioner Wood moved to adopt the revised resolution accepting the \$11,565,621.00 grant, approve the AFA with the State of Texas for the reconstruction of BND Cargo Dock #3 project, designating BND Interim Port Director Mr. William Dietrich as signatory of the AFA and BND Director of Engineering Mr. Ariel Chavez II, P.E./R.P.L.S. as the local government responsible person in charge and Project Manager for this endeavor, Commissioner Reed seconded, and the motion passed unanimously.

16. Consideration and ACTION on Change Order #1 to contract with Electro-Hi LLC on the Waterlines Replacement Borings project deleting bore across Ostos Rd., adding bore across West Plains Driveway, to accept work performed by contractor on this project, and authorizing final payment of \$318,782.40, which includes retainage and all completed work.

Mr. Dietrich addressed the Board to approve Change Order #1 to contract with Electro-Hi LLC on the Waterlines Replacement Borings project deleting bore across Ostos Rd., adding bore across West Plains Driveway, to accept work performed by contractor on this project, and authorizing final payment of \$318,782.40, which includes retainage and all completed work. Electro-Hi LLC, working under Contract 4651 on the Waterlines Replacement Boring project in the amount of \$486,480.89, has submitted Change Order Proposal No. 1 in the amount of (\$38,400.00.) The Change Order includes the deletion of a 200 LF bore across Ostos Road and additional 20” steel casing installation under an existing 40-foot driveway. In addition, Electro-Hi LLC is requesting the acceptance of their work and the release of final payment. Contractor is not requesting 12 weather days and substantial completion was achieved on November 17, 2023, within the contract time. Commissioner Reed moved to approve Change Order #1 to the Waterlines Replacement Borings contract with Electro-Hi, LLC, decreasing the current \$486,480.00 contract amount by (\$38,400.00), for a new contract amount of \$448,080.00, accept the work performed by contractor and release final payment in the amount of \$318,782.40 including 10% retainage, Commissioner Wood seconded, and the motion passed unanimously.

17. Consideration and ACTION on Change Order No. 1 to the BND Dock 11 Concrete Pad Project, adding demolition of concrete pad underground and deleting unused limestone base quantities.

Mr. Dietrich addressed the Board to approve Change Order No. 1 to the BND Dock 11 Concrete Pad Project, adding demolition of concrete pad underground and deleting unused limestone base quantities. Working under Contract 4667 for the BND Dock 11 Concrete Pad project in the amount of \$2,349,672.09, contractor R.M. Walsdorf, Inc. (“RMW”) has submitted Change Order Proposal No. 1 in the amount of (\$167,060.70). This change order includes the addition of concrete excavation and removal work due to an underground slab as well as deletion of unused Limestone Base material due to suitability of existing material. The new contract amount will be \$2,182,411.30. Commissioner Wood moved to approve Change Order No. 1 to the BND Dock 11 Concrete Pad contract with RMW, decreasing the current \$2,349,472.00 contract amount by \$167,060.70, for a new contract amount of \$2,182,411.30, Commissioner Reed seconded, and the motion passed unanimously.

18. Consideration and ACTION on request to authorize Staff to advertise for bids on the Cargo Dock #10 Maintenance Dredging project, and to open bids thereof.

Mr. Dietrich addressed the Board to authorize Staff to advertise for bids on the Cargo Dock #10 Maintenance Dredging project, and to open bids thereof. BND Staff has been working on the Dock 10 Maintenance Dredging project, which will consist of dredging approximately 34,400 CY of shoaled sediment material, USACE permitting is being coordinated by BND Staff, who are requesting for authorization to advertise to solicit bids and to open bids on this project once received. Upon approval, BND Staff will publish an Invitation to Bid in the local newspaper and Bid Net, as well as invite known contractors by email and/or by phone to submit bids. Publishing the advertisement for bids will cost approximately \$2,000.00. Commissioner Lopez moved to

authorize BND Staff to prepare an Invitation to Bid on the Cargo Dock #10 Maintenance Dredging project, to publish in the local newspaper, and to open bids once they are received, Commissioner Cowen seconded, and the motion passed unanimously.

19. Adjourn into Executive Session, as authorized by Subchapter D of Chapter 551 of the Government Code to discuss with attorneys pending or contemplated litigation, and matters in which the duty of the attorneys under the Rules of Professional Conduct clearly conflict with Chapter 551; to deliberate the purchase, exchange, lease, or value of real property; to deliberate the deployment of security personnel or devices (§551.076); to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee (§551.074); and to conduct deliberations regarding economic development negotiations (§551.087).

There was none.

20. Possible action on matters or items discussed in Executive Session.

There was none.

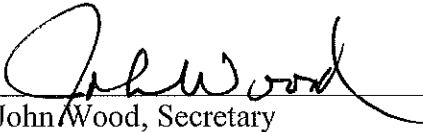
21. Adjournment.

Commissioner Wood moved to adjourn the meeting, Commissioner Reed seconded, and the meeting was adjourned by unanimous consent at 6:39 p.m.

ATTEST



Esteban Guerra,
Chairman of the Board



John Wood, Secretary