

**MINUTES OF A REGULAR MEETING OF THE BOARD OF NAVIGATION AND
CANAL COMMISSIONERS OF THE BROWNSVILLE NAVIGATION DISTRICT OF
CAMERON COUNTY, TEXAS HELD FEBRUARY 19, 2025 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 of the board on **Wednesday, February 19, 2025 at 5:30 p.m.**

The following individuals were present and absent:

PRESENT: Esteban Guerra, Chairman
Sergio Tito Lopez
John Reed
Ernesto Gutierrez
John Wood

ABSENT: None

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

STAFF MEMBERS: Arturo Gomez
Miguel Barajas
Jose Herrera
Jorge Montero
Margie Recio
Janie Velasquez
Zeus Yanez
Yessenia Gonzalez
Ariel Chavez
Michael Davis
Tony Rodriguez
Estela Rangel
Memo Rico
Edgar Garcia
Juan Resendez

OTHERS PRESENT: Rev. Andreas Lewis
Michael Hart
Nancy Gaytan
Shariff Gonnella
Jorge de la Colina
Mauricio Perez
Robert Taylor
Andrea Meneses
Indira Soto

Viejo

REGULAR MEETING**1. Meeting Called To Order**

The Chairman called the meeting to order at 5:30 p.m. Reverend 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

No public audience addressed the Board.

3. Port Monthly Operations Summary Report

Mr. Yanez presented the report to the Board.

Mr. Dietrich then asked that Items 7(5) and 8 be tabled for discussion in executive session. Commissioner Lopez moved to table Items 7(5) and 8, Commissioner Reed seconded, and the motion passed unanimously.

CONSENT AGENDA**4. Consideration and ACTION on the Following Consent Agenda Items:**

- a. Approval of the Minutes of the Regular Board Meeting of February 05, 2025.

Commissioner Lopez moved to approve the Consent Agenda Item as presented, Commissioner Reed seconded, and the motion passed unanimously.

5. Consideration and ACTION on a Master Service Agreement and the Engagement Letters for the annual Financial Statement Audits of the Brownsville Navigation District and the Retirement Plan for the employees of the Brownsville Navigation District.

Mr. Yanez addressed the Board that 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 with management and those charged with governance. Commissioner Reed moved to approve the Master Service Agreement between Carr, Riggs & Ingram and the District and the engagement letters for the District and Retirement Plan's annual financial statement audits, Commissioner Lopez seconded, and the motion passed unanimously.

6. Consideration and ACTION on Solid Waste Collection and Disposal license renewal

applications for Republic Services and Brownsville GMS, LTD.

Ms. Recio addressed the Board that Republic Services and Brownsville GMS, LTD both hold a Solid Waste Collection and Disposal License to operate in the Port of Brownsville, which are due to expire February 28, 2025. Both renewal applications, along with the appropriate attachments, have been received. Their renewal will be for a one-year term beginning on March 1, 2025. Commissioner Lopez moved to authorize the renewal of the Solid Waste Collection and Disposal Licenses for Republic Services and Brownsville GMS, LTD to be effective March 1, 2025, Commissioner Wood seconded, and the motion passed unanimously.

ACTION ITEMS

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

Mr. Dietrich addressed the Board regarding the following Items:

1. Wolfe Sandblasting & Industrial Painting (New Lease)

This new lease with Wolfe Sandblasting & Industrial Painting will replace BND contract #4011 for the 0.358-acre site located in the Fishing Harbor at 1800 Bayou Court. The term will be for one year with four renewal options of one year each. Commissioner Reed moved to approve the new lease for Wolfe Sandblasting & Industrial Painting, Commissioner Wood seconded, and the motion passed unanimously.

2. Castro Trawlers, Inc. (Consent to Sublease)

Castro Trawlers, Inc. is a current lessee under BND Contract #4143, located at 3520 Gator Court. The Lessee is requesting the Board's consent to sublease to Ismael Garcia M. for the purpose of parking his personal shrimp vessels, which are used for shrimping operations. As per District's leasing policy, rent for District land/improvements must not exceed rates charged under the primary lease. Castro Trawlers, Inc currently pays \$2,375.59 per quarter for leasing the premises. Ismael Garcia M. (sublessee) will be charged by the lessee \$1,187.80 per quarter. Commissioner Lopez asked that staff take photos prior to commencement of the sublease and at the end of the sublease term. Commissioner Lopez moved to approve the Consent to Sublease for Castro Trawlers, Inc., Commissioner Reed seconded, and the motion passed unanimously.

Commissioner Gutierrez noted he would be abstaining from Item 7(3).

3. Texas Cement Inc. (Lease Amendment)

The current lease agreement for the 8.49-acre site located at 3801 Foust Road with Texan Cement Inc. (BND Contract #4229) has a primary term of five years with four five-year renewal options that commenced on June 20, 2018. The lessee is seeking an amendment to its current lease to add two five-year renewal options. This amendment would reflect the increase in the number of options to renew from four additional five-year terms to six additional five-year terms, each. Commissioner Reed moved to approve the Lease Amendment for Texan Cement Inc., Commissioner Wood seconded, and the motion passed by a vote of 4-0. Commissioner Gutierrez abstained.

4. Duro Hilex Poly, LLC (**Lease Amendment**)

The current lease agreement (Contract #2216) for the 13.84-acre site located at 3401 David Shor Road with Duro Hilex Poly, LLC (formerly Duro Bag Manufacturing Company) is set to expire on February 28, 2025, with no renewal options. This amendment proposes extending the lease term for three additional years, from March 1, 2025, to February 28, 2028. Lessee shall provide the District information detailing the number of employees working on the premises and their average compensation and any benefit packages offered. Duro will complete the removal of the equipment from the unusable warehouse and vacate the area on or before September 1, 2026. The parties will enter into further amendment to remove these portions of the premises from the lease effective as of September 1, 2026. Duro will notify the Port of its decision (whether to relocate at the Port, or vacate the site) on or before March 1, 2027. Commissioner Lopez moved to approve the Lease Amendment for Dura Hilex Poly, LLC, Commissioner Gutierrez seconded, and the motion passed unanimously.

5. Element Fuels Processing, LLC f/k/a ARX Energy, LLC (**Lease Amendment and Parent Guaranty**)

Element Fuels Processing, LLC, formerly known as ARX Energy, LLC, a current lessee under BND Contract #4612, entered into a lease with the District on October 25, 2022, and on October 26, 2023 the lessee provided the Effective Date Notice to the District. The lessee is seeking an amendment to the lease to expand the purpose clause of the lease to include hydrogen, to amend deadlines in the lease to commence operations, and to reflect the change in name of the lessee. The First Amendment to the Lease addresses the following: ARX Energy, LLC has changed its name to Element Fuels Processing, LLC. A certificate of amendment filed with the Texas Secretary of State has been provided and is attached to the lease amendment. The lease amendment amends the purpose clause to reflect changes in the proposed project to include hydrogen. Specifically, the purpose clause as amended allows construction, operation, and maintenance of facilities to intake, store, process, produce, ship, and use crude oil, refined hydrocarbons, industrial gases including hydrogen, renewable fuels, and other related or derivative clean products. The facilities would include a storage terminal, a rail component, facilities to receive or ship any of their commodities by rail, barge, ship, or truck, and a refinery component. Lessee has requested an amendment to the purpose clause to allow for construction and operation of a power plant and substation on the premises, but that request has been rejected. The lease provides that commencement of construction would commence before March 31, 2024. The lease further provides that commencement of commercial operations on the storage terminal and rail components of the project will commence on or before October 25, 2025, and that commencement of commercial operations on the refinery component of the project would commence on or before October 20, 2026. The lease amendment removes these deadlines and replaces them with the following deadlines: Lessee must commence commercial operations by June 30, 2027, and if Lessee does not commence commercial operations, then the lease will terminate unless Lessee can demonstrate that it has committed \$200 million to the project, in such event the lease will continue until June 30, 2028, and if Lessee does not commence commercial operations by June 30, 2028, then the lease will terminate unless Lessee can demonstrate that it has committed \$500 million toward the project, in such event the lease will continue until June 30, 2029. If Lessee has not commenced commercial operations by June 30, 2029, the lease will terminate. Lessee will be required to prove the financial commitments by providing consolidated audited financial statements prepared at

Lessee's expense by a firm approved by the District in its reasonable discretion, and provided further that the firm is independent of Lessee and has no conflicts of interest in preparing the financial statements. Salaries and bonuses paid to managers, officers, members, or employees of Lessee will not be considered in determining whether Lessee has made the required financial commitments. Exhibit C to the Lease is amended to update the list of required permits and licenses for the facilities and the status of those permits and licenses. As a condition to execution of the lease amendment, Lessee's parent company, Element Fuels Holdings, LLC, which owns 100%, Lessee, has executed a parent guaranty of the lease. Provisions in the lease relating to the indemnification agreement previously entered into by Lessee and District in connection with the bankruptcy adversary litigation are deleted as Lessee's obligations under the indemnification have been fulfilled.

8. Consideration and ACTION on selection of consultant to provide federal government affairs services to the District.

Mr. Dietrich addressed the Board that the District solicited proposals for governmental affairs consultants at the state and federal levels. Previously, the District engaged Cornerstone Government Affairs, Inc. to provide government affairs at the State level. The District's committee has reviewed the proposals received for consultants offering to provide governmental affairs services at the Federal level, and has interviewed Akin Gump Strauss Hauer & Feld LLP, Holland & Knight LLP, and LeMunyon Group, LLC. Akin Gump Strauss Hauer & Feld LLP (Akin) received the highest scores from the committee considering the proposer's qualifications, experience and resources (40%), the proposer's approach to the scope of work (30%), the responsiveness of the proposal to the solicitation (15%), and cost (15%). The term of the proposed agreement with Akin would be for one year commencing February 19, 2025, with one option for the District to renew the term for an additional year provided, however, either party may terminate the engagement immediately for any reason or no reason upon written notice to the other party.

9. Consideration and ACTION to ratify authorization for Port Staff to solicit requests for bids for the purchase and delivery of two (2) sets of hoisting wire ropes and cables for Model 6 Cranes.

Mr. Davis addressed the Board that BND Staff is seeking authorization to solicit Request for Bids for two (2) sets of Hoisting Wire Ropes/Cables for the Model 6 Cranes. Lead time for these items is between 6-32 weeks. The department was asked to keep items in stock to prevent any crane delays due to damaged cables. The Bid documents will be advertised in the local newspaper, Bidnet, and the Port's website on February 12, 2025. The solicitation is scheduled to close on February 26, 2025. Commissioner Lopez moved to ratify authorization to solicit request for Bids for the Purchase of two (2) sets of Hoisting Wire Ropes/Cables, Commissioner Reed seconded, and the motion passed unanimously.

10. Consideration and ACTION to authorize Port Staff to extend the annual contract for the port wide janitorial services.

Mr. Herrera addressed the Board that Staff is requesting BND Commission's authorization to extend the contract to M & R Elite Janitorial Services for Port wide janitorial services. M & R Elite Janitorial Services has agreed to extend the contract upon the same terms and conditions, with no increase in unit pricing. This would be the second year of a possible four-year contract, to

be effective starting March 20, 2025, at a cost of \$5,375.00 per month and a total yearly cost of \$64,500. Commissioner Lopez moved to extend the annual contract to M & R Elite Janitorial Services upon the same terms and conditions, with no increase in unit pricing, Extension is for a period of one year at a cost of \$5,375.00 per month and total yearly cost of \$64,500, Commissioner Wood seconded, and the motion passed unanimously.

11. Consideration and ACTION on proposal for the purchase and installation of new fuel tanks to be utilized for fuel storage at the Port.

Mr. Herrera addressed the Board that on November 6, 2024, the Board of Commission authorized Staff to advertise for the purchase and installation of two new 4000-gallon fuel tanks, one for gasoline and one for diesel. These tanks will be utilized for storage of fuel on site for all Port rolling stock. Staff advertised on the Port website, Bidnet, and the local newspaper for the purchase and installation of fuel tanks. Staff received four proposals. On January 9, 2025 and on February 11, 2025, the evaluation committee met to evaluate and rate the four proposals received. ACTERRA Group received the highest rank for the purchase and installation of two 4,000-gallon tanks. Vendor is to provide new pumps, new controls, a new monitoring system, cap all existing lines, and remove the existing tanks and pumps for a total cost of \$432,500. The proposal calls for a 10% down payment with the remainder of the fee payable as the work progresses. A detailed scope of work and project timeline are included with the proposal. Discussion followed regarding staff's ranking of the proposals. The Commission directed staff to carefully review the lowest priced proposal and to clarify to the Board which proposal provides the best value to the District. Commissioner Reed moved to table this item, Commissioner Wood seconded, and the motion passed unanimously.

12. Consideration and ACTION to authorize Port staff to purchase 250 cubic yards of 4,000 PSI concrete for the 8,000 sf yard hanger for heavy equipment project.

Mr. Herrera addressed the Board that on October 4, 2023, the Board of Commissioners entered into an agreement with J&R Services / J&R Lumber Co. for the purchase of 350 cubic yards of concrete. Staff have already purchased approximately 80 CY and is requesting authorization to purchase 250 CY of 4000 PSI from J&R Services / J&R Lumber Co. at a cost of \$184.50 CY and a total cost of \$46, 125. This material will be utilized for the 8000-sf slab for the building to be used as a hanger for port vehicles and heavy equipment. Commissioner Lopez moved to authorize Staff to proceed with the purchase of 250 CY of 4000 PSI concrete from J&R Services / J&R Lumber Co. at a cost of \$184.50 CY and a total cost of \$46, 125.00, Commissioner Gutierrez seconded, and the motion passed unanimously.

13. Consideration and ACTION on proposal by Carollo Engineers, Inc. for professional engineering design services for chlorine booster system for the NextDecade water line extension project.

Mr. Chavez addressed the Board that for several years BND Staff has been working with BND lessee NextDecade on the system extensions to provide Potable Water Distribution and Wastewater Collection services to their 1,000 Acre lease site off State Highway No. 48. Both system extensions have been installed and inspected. However, due to the long distance, the water loses chlorination and there is a high risk of the chlorine levels falling below required parameters. BND is required to furnish potable water to the tenant, so a chlorine booster system is required. To that end, BND Staff has requested and received a proposal from Carollo Engineering, Inc.

Carollo proposes to design the required chlorination system for a not-to-exceed fee of \$59,865.00. Discussion followed regarding the proposal and possible alternatives to using the chlorine booster system. The Commission directed staff to review and consider other alternatives. Commissioner Reed moved to table this item, Commissioner Lopez seconded, and the motion passed unanimously.

14. Consideration and ACTION on proposal by Lanier & Associates Consulting Engineers, Inc. for professional engineering services to perform a structural condition survey of the relieving platform at Docks 7 and 8.

Mr. Chavez addressed the Board that the BND recently experienced two incidents of dock damage in some of BND's oldest docks. At Cargo Dock #4, there was a deck failure during a stevedore's operation. At Cargo Dock #7, there was a spontaneous collapse due to voids under the dock deck. BND Staffs opinion is that these issues need to be addressed in the short term. To that end, BND Staff requested and received a proposal from Lanier & Associates Consulting Engineers, Inc. (Lanier) to perform a Structural Condition Survey of the Relieving Platform at Docks 7 and 8. The survey will include below water (i.e. diving) inspection of the dock face, a geophysical survey with support from ground penetrating radar (GPR) equipment to scan the soil support under the dock area of, as well as the necessary visual inspection and technical support to develop recommendations on options for repair or replacement of the docks or dock components. Lanier proposes to perform the required surveys, studies and analyses and prepare a report with findings, conclusions and recommendations for a fee of \$40,000.00. for the area at and within 200 feet of the crane support structure, or for the entire docks for a fee of \$47,000.00. The fee will not be exceeded without Board approval. Legal counsel clarified that the fee was an estimate not a not-to-exceed amount. Commissioner Reed moved to accept the Proposal from Lanier & Associates Consulting Engineers, Inc. for Professional Engineering Services to perform a Structural Condition Survey of the Relieving Platform at Docks 7 and 8 for an estimated fee of \$47,000.00 for the entire docks and authorize BND Staff to sign the proposal, Commissioner Lopez seconded, and the motion passed unanimously.

15. 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).

Commissioner Reed moved to adjourn into executive session, Commissioner Gutierrez seconded, and the motion passed unanimously. The Board adjourned into executive session at 6:25 p.m.

At 7:16 p.m. the Board reconvened in open session.

16. Possible ACTION on matters or items discussed in Executive Session.

Chairman then recalled items 7(5) and 8.

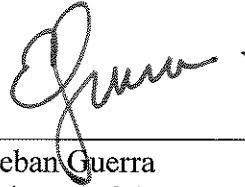
Commissioner Wood moved to approve the First Amendment and Parent Guaranty for Element

Fuels Processing, LLC, formerly known as ARX Energy, LLC, Commissioner Gutierrez seconded, and the motion passed by a vote of 3-2, with Commissioners Wood, Gutierrez, and Lopez voting “Aye” and Chairman Guerra and Commissioner Reed voting “Nay”.

Chairman Guerra moved to select Akin Gump Strauss Hauer & Feld LLP as the District's consultant at the Federal level and approve the engagement letter as presented, Commissioner Lopez seconded, and the motion passed unanimously.


17. Adjournment.

Commissioner Reed moved to adjourn the meeting, Commissioner Gutierrez seconded, and the meeting was adjourned by unanimous consent at 7:20 p.m.



Esteban Guerra
Chairman of the Board

ATTEST



John Reed, Secretary