

**MINUTES OF A REGULAR MEETING OF THE BOARD OF NAVIGATION AND
CANAL COMMISSIONERS OF THE BROWNSVILLE NAVIGATION DISTRICT OF
CAMERON COUNTY, TEXAS HELD FEBRUARY 21, 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, February 21, 2024 at 5:30 p.m.** The following individuals were present and absent:

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

ABSENT: Ralph Cowen

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

STAFF MEMBERS: Miguel Barajas
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
Peter Bryn
Shannon Carraway
Eduardo Campirano
Shariff Gonnella
Carlos Garcia
Jorge De La Colina
Eli Jasso
Louis Klusmeyer
Abelardo Ochoa
Jorge Sanchez
Indira Soto

REGULAR MEETING

1. Meeting Called To Order

The Chairman called the meeting to order at 5:35 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 person registered to address the Board.

3. Receive Monthly Operations Summary Report

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

CONSENT AGENDA

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

- a. Approval of the Minutes of the Regular Board Meeting of February 7, 2024.
- b. Approval to authorize payments over \$25,000.00:
 1. RBL Contracting, Inc., the amount of \$289,437.30, for 2022 Placement Areas 5B, 7, & 8 Improvements Project.

5. Consideration and ACTION on Steamship Agent License renewal application for Moran Shipping Agencies, Inc.

6. Consideration and ACTION on Solid Waste Collection and Disposal license renewal application for Republic Services and Brownsville GMS, Ltd.

Commissioner Reed moved to approve all consent agenda items, Commissioner Wood seconded, and the motion passed unanimously.

7. Consideration and ACTION to authorize Port Director and CEO to sign Memorandum of Understanding between Brownsville Navigation District and Sam Houston State University College of Criminal Justice Institute for Homeland Security.

Mr. Dietrich addressed the Board to authorize the Port Director and CEO to sign a Memorandum of Understanding (“MOU”) between the Brownsville Navigation District and Sam Houston State University College of Criminal Justice Institute for Homeland Security. The MOU is an agreement for the parties to form a collective partnership for the purposes of advancing and disseminating knowledge, conducting research, and providing education and training services. This MOU is for a term of five years and can be terminated or extended by giving thirty days advance written notice. Under the MOU, IHS and BND would collaborate in joint research, educational activities, and work collaboratively to provide innovative, value-added knowledge tailored to the needs of industry and public institutions, to protect critical infrastructure supporting Texas and the nation’s economy. A training proposal for executive level training focused on Critical Infrastructure Protection (“CIP”) topics will be developed. The training program will equip practitioners responsible for protecting critical infrastructure with the necessary skills and knowledge to enhance security risk management operations and understand compliance requirements. Additional training opportunities will be available through the IHS Security Studies Department. Discussion followed regarding the program. Commissioner Wood moved to approve the MOU

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and training proposal, Commissioner Lopez seconded, and the motion passed unanimously.

8. Consideration and ACTION on amending the Records Management Policy.

Mr. Dietrich and Ms. Recio addressed the Board and made a presentation amending the Records Management Policy. The proposed amendments focus on policy cleanup and adding sections to define procedures and practices. Discussion followed regarding current practices and the possibility of outsourcing portions of the records management policy. Commissioner Wood moved to approve the policy amendments as presented, Commissioner Reed seconded, and the motion passed unanimously.

9. Consideration and ACTION on amending Tariff Number 6, Item 050 – Definitions of Terms.

Mrs. Recio addressed the Board on amending Tariff Number 6, Item 050. Upon review of the current definition of “Heavy Lift,” BND Staff recommends defining Heavy Lift as “any cargo that cannot be handled with a single lift machine or weighs more than 45 metric tons (50 short tons).” Commissioner Lopez moved to approve the amendment as presented, Commissioner Wood seconded, and the motion passed unanimously.

10. Consideration and ACTION on amending Tariff Number 6, Item 275 – Wharfage Charges (Heavy Lift / Project Cargo Charges).

Mrs. Recio addressed the Board on amending Tariff Number 6, Item 275. BND Staff have reviewed the current item that imposes the wharfage charge for Heavy Lift and Project Cargo; This item contains language that limits the application of this rate. BND Staff does not believe that this language complies with the intent of the item and is recommending that the language “*each single piece or package of cargo weighing in excess of or equal to 5 m/t, only when such cargo is loaded or unloaded to and from railroad cars, and trucks*” be removed and to eliminate the dual rate. BND Staff recommends a charge be assessed on “*all cargo except on cargo that are on a negotiated contract*” and for heavy lift in excess of equal to 45 m/t and project cargo be listed as individual considerations for application of the tariff rate of \$10.00. Discussion followed regarding the implications of the amendments regarding definition of heavy lifts in the policy. Commissioner Lopez recommended that Item 9 be revisited at a subsequent meeting. Commissioner Lopez moved to table Item 10, Commissioner Reed seconded, and the motion passed unanimously.

11. Consideration and ACTION on amending Tariff Number 6, Item 277 – Security Surcharge.

Mrs. Recio addressed the Board on amending Tariff Number 6, Item 277. BND Staff have reviewed the current item that assesses a security surcharge on all vessels and barges utilizing services or facilities at the Port of Brownsville. The District has not revised its rates since January 1, 2016. After discussion, Commissioner Wood moved to adopt the amendment as presented, Commissioner Reed seconded, and the motion passed unanimously.

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

Mr. Gomez addressed the Board regarding the following Items:

1. South Texas Railways Inc. **(Authority to Negotiate)**

South Texas Railways, Inc. is interested in leasing approximately 4.97 acres located at 3960 Dry Dock Court. Staff requested authority to negotiate a New Lease for a term of one year with four renewal options of one year each. The purpose of this lease is for a dry dock and marine repair facility. Commissioner Reed moved to approve the authority to negotiate a new lease, Commissioner Lopez seconded, and the motion passed unanimously.

2. Brownsville Gulfside Warehouse Inc. **(Authority to Negotiate)**

Brownsville Gulfside Warehouse Inc. is a current lessee and staff requested authority to negotiate a lease for an additional site of 2.08 acres located at 16100 R.L. Ostos Road. The entity is requesting a term of five years with five renewal options of five years each. The purpose of this amendment is for a bulk material handling patio. Commissioner Lopez moved to approve authority to negotiate a new lease, Commissioner Wood seconded, and the motion passed unanimously.

3. Enbridge (USA) Inc. **(Option to Lease)**

Enbridge (USA) Inc. is seeking an Option to Lease for 516 acres for a term of one year with one renewal option of one year. The purpose of this lease is for due diligence (blue ammonia and green H2). This will create 4,000 construction jobs and 100 permanent jobs. Commissioner Reed moved to approve the Option to Lease as presented, Commissioner Wood seconded, and the motion passed unanimously.

13. Consideration and ACTION to amend BND Contract #4343 with Finston, Friedman, Fisher Law Group LLP to reflect new hourly rates.

Mr. Yanez addressed the Board on amending BND Contract #4343. In August of 2018, staff engaged Mr. William Fisher of Finston, Friedman, Fisher Law Group (“Law Group”) to assist with legal matters related to the District Retirement Plans. In March 2020, the Commission approved the first amendment to Contract #4343 to accept the Law Group’s new hourly rates. Their rates have changed since the first amendment. Staff is requesting the Commission approve a second amendment to reflect the Law Group’s new hourly rates. BND Staff will be working with Mr. Fisher to review matters related to the retirement plan documents. Discussion followed regarding the project assigned to Bill Fisher. Commissioner Lopez asked that the engagement be limited to 20 billable hours. Commissioner Wood moved to approve amendment, Commissioner Lopez seconded, and the motion passed unanimously.

14. Consideration and ACTION to ratify authorization for BND Staff to solicit bids for the disposal of oily water from the Fishing Harbor Sewer Treatment Plant, and to open bids thereof.

Mr. Herrera addressed the Board regarding BND Staff seeking ratification to solicit bids for the disposal of oily water from the Fishing Harbor Sewer Treatment Plant, and to open bids once received. Bids will then be tabulated and presented to the Board for consideration to award an annual contract for services. BND Staff seeks services for the disposal of oily water for a term of one year with three renewal options of one year each. The District’s procurement policy allows for the Port Director and CEO to authorize BND Staff to proceed with advertising requirements

pending Board approval; however, bids may not be opened until the Board has approved the solicitation of bids. The bid documents were published on February 14, 2024 and the bidding is scheduled to close on March 6, 2024. Commissioner Lopez moved to ratify authorization, Commissioner Wood seconded, and the motion passed unanimously.

15. Consideration and ACTION on request to authorize BND Staff to advertise for bids on the Ostos Road Pavement Striping, Signage, and Markings project, and to open bids thereof.

Mr. Chavez addressed the Board on authorizing BND Staff to advertise for bids on the Ostos Road Pavement Striping, Signage, and Markings project, and to open bids thereof. BND Staff prepared drawings of the completed pavement rehabilitation on Ostos Road for the Ostos Road Pavement Striping, Signage, and Markings project. This project is comprised of all applications needed, such as: striping, symbols, railroad crossings, guardrails, signage, road and dock nomenclature, and pavement markers. The purpose of this project is to improve visibility, reduce risks, and increase safety on the road. BND Staff requested authorization to advertise to solicit bids, and to open bids once received. Commissioner Lopez moved to approve BND Staff prepare an invitation to bid, and to open bids once they are received, Commissioner Reed seconded, and the motion passed unanimously.

16. Consideration and ACTION to authorize BND Staff to advertise for bids to purchase Rails, Ties, Ballast, and other railroad crossing materials for railroad improvements on Foust Road, Bill Reed Road, and Windhaus Road, and to open bids thereof.

Mr. Chavez addressed the Board regarding BND Staff requesting authorization to solicit and open bids for railroad crossing materials on Foust Road, Bill Reed Road, and Windhaus Road. These improvements will be performed in coordination with OmniTRAX, who will contract the labor for installation of such materials. The list of materials includes wooden ties, rails, and other steel components, ballast, perforated drainpipes, and rubberized or concrete crossing planks. Commissioner Reed moved to approve BND Staff prepare an invitation to bid, and to open bids once they are received, Commissioner Wood seconded, and the motion passed unanimously.

17. Consideration and ACTION on Change Order No. 3 to the 2023 Ostos Road Pavement Rehabilitation project to provide for overruns, delete unused items and adjust the contract time as needed, and to accept work performed by contractor on this project and authorize final payment of \$2,798,431.56, which includes retainage and all completed work.

Mr. Chavez addressed the Board to approve Change Order No. 3. Foremost Paving Inc., working under contract #4622 on the 2023 Ostos Road Pavement Rehabilitation project in the amount of \$6,944,007.89, has submitted Change Order proposal No. 3 in the amount of \$48,513.69, providing for overruns on contracted items and the deletion of items that were not used during the execution of this project, for a new contract amount of \$7,026,129.58. The additional work performed includes an increase on patching areas, removal of existing pipe found while installing new drainage concrete boxes, and the installation of reinforced concrete pipes under patio 20 driveway. All concrete items being adjusted are in the current contract. The contractor is requesting 10 weather days and 25 calendar days due to additional work performed. Substantial completion was

achieved on February 13, 2024, within the contracted time. Commissioner Reed moved to approve Change Order No. 3, Commissioner Lopez seconded, and the motion passed unanimously.

Mr. Guerra briefly left the Board Room.

18. Consideration and ACTION to accept Jacobs’ proposal for professional engineering services on the dock upgrades vessel analysis as required for the BIH Channel Deepening project and to authorize the Interim Port Director and CEO to execute the Master Professional Services Agreement.

Mr. Chavez addressed the Board to accept Jacobs’ proposal for professional engineering services on the dock upgrades vessel analysis as required for the BIH Channel Deepening project and to authorize the Interim Port Director and CEO to execute the Master Professional Services Agreement. On November 1, 2023, BND Commissioners authorized the Port Director and CEO to negotiate contracts with top ranked firms after evaluation by BND Staff of the submitted Statements of Qualifications (SOQs) from consultants for the BND’s Dock Upgrades projects as needed and required for the BIH Channel Deepening project in the Port. The Port Director, CEO, and BND Engineering Staff met with Jacobs and Discussed the scope for the analysis of vessels likely to call on the Port after the deepening of the Brownsville Ship Channel to -52 feet. Jacobs submitted a Master Professional Services Agreement (MSA) which was reviewed by BND Staff and Legal Counsel, with concurrence from both. Jacobs also submitted a proposal to perform the analysis for a Time & Materials fee of \$185,100.00, which will not be exceeded without BND Commissioners’ approval. The scope of work will cover the following tasks: (1) Perform a study to determine the ships likely to call at the Port of Brownsville from the Gulf of Mexico and Atlantic Ocean; (2) Perform a desktop maneuvering study to determine the ability of the available ships to transit the Port of Brownsville ship channel, including applicable variables; and, (3) Perform passing vessel studies at select berths that may have excessive ship movement due to ships transiting the ship channel. Commissioner Lopez moved to authorize BND’s Interim Port Director and CEO to sign the Agreement, Commissioner Reed seconded, and the motion passed 3-0. Chairman Guerra was not present and voting.

Chairman Guerra returned to the Board Room.

19. Consideration and ACTION on corrected Resolution adopting the Advance Funding Agreement with the Texas Department of Transportation for the reconstruction of Cargo Dock #3 in the Port of Brownsville; designating a signatory for the AFA; designating a responsible person in charge; and designating a Project Manager. (79)

Mr. Chavez addressed the Board on the corrected Resolution adopting the Advance Funding Agreement with the Texas Department of Transportation (“TxDOT”) for the reconstruction of Cargo Dock #3. 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 off Windhaus Road, next to the Harbormaster’s office. The AFA submitted to TxDOT contains a typographical error in the grant amount that needs to be corrected. The correct State funding grant amount is \$11,565,621.00, while the approved Resolution shows the amount as \$11,656,621.00. The correction has been made. BND must adopt the Resolution with the correct amount, and it will become part of the AFA. This will allow TxDOT to move forward and finalize the AFA so we can initiate the construction phase of the project. The Cargo Dock #3 Reconstruction construction cost is estimated at \$35,000,000.00, with TxDOT funding the stated \$11,565,621.00

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as approved and provided by the Texas Transportation Commission. Commissioner Wood moved to approve the corrected resolution, Commissioner Reed seconded, and the motion passed unanimously.

20. 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).

The Chairman then announced that the time was 6:37 p.m., and that the Board would adjourn into executive session. Commissioner Lopez moved to adjourn into executive session, Commissioner Reed seconded, and the motion passed unanimously.

The Chairman then announced that the time was 7:29 p.m., and that the Board had reconvened in open session.

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

There was none.

22. Adjournment.

Commissioner Lopez moved to adjourn the meeting, Commissioner Reed seconded, and the meeting was adjourned by unanimous consent at 7:29 p.m.

ATTEST



John Wood, Secretary



Esteban Guerra
Chairman of the Board