

**MINUTES OF A PUBLIC HEARING AND REGULAR MEETING OF THE BOARD OF
NAVIGATION AND CANAL COMMISSIONERS OF THE BROWNSVILLE
NAVIGATION DISTRICT OF CAMERON COUNTY, TEXAS HELD AUGUST 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 public hearing on **Wednesday, August 21, 2024 at 5:30 p.m.** and a regular meeting of the board that commenced immediately after the conclusion of the public hearing.

The following individuals were present and absent:

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

ABSENT: John Reed

ALSO PRESENT: William Dietrich, Port Director and CEO
Daniel Rentfro, Jr., District Counsel
William Irwin, District Counsel

STAFF MEMBERS: Arturo Gomez
Michael Davis
Julio Romo

Jose Herrera
Manuel Martinez
Jorge Montero
Margie Recio
Janie Velasquez
Zeus Yanez
Yessenia Gonzalez
Tony Rodriguez

OTHERS PRESENT: Rev. Andreas Lewis
Jorge de la Colina
Shariff Gonnella
Brent Moore
Daniel Garza

PUBLIC HEARING

- 1. Public hearing to receive public comment on the proposed 2024 ad valorem tax rate that will exceed the No-New-Revenue tax rate.**

At 5:38 p.m. Chairman Guerra opened the public hearing to receive public comment on the tax rate. No person addressed the Board. Chairman Guerra then closed the public hearing at 5:39 p.m. and continued to the regular meeting agenda.

REGULAR MEETING

- 1. Meeting Called To Order**

The Chairman called the meeting to order at 5:39 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. Port Monthly Operations Summary Report**

The Board received the reports.

CONSENT AGENDA

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

- a. Approval of the Minutes of the Regular Board Meeting of August 7, 2024;
- b. Approval to authorize payments over \$25,000.00:
 1. Chemical Response & remediation Contractors Inc., the amount of \$37,379.75, for phase 2 of the tanker fire, spill, and remediation response; and
 2. HDR Engineering Inc., the amount of \$33,131.66, for PA8 study design project and channel deepening project, construction phase support; and
 3. R.R.P. Consulting Engineers, LLC., the amount of \$161,542.00, for design phase and environmental services for the fishing harbor wastewater treatment plant.

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

ACTION ITEMS

5. Discussion and possible action to approve amendments to the District's fiscal year 2024 operating budget.

Mr. Yanez addressed the Board regarding the FY 2024 amended budget which has been updated to include increases in wharfage in, storage, pipeline throughput, permit revenues, railroad track lease rentals & railroad revenue share, and security surcharge - wharfage. The FY 2024 budget amendments are based on the current year's actual revenues and expenditures to date, and projected operational needs for the remainder of the fiscal year. Staff proposes increasing budgeted operating revenues by a net \$3,075,201 from original budget projections, mostly due to increases in lease rentals, wharfage in, dockage, security surcharges, storage, and railroad revenue share offset by decreases in wharfage out revenues. Additionally, Staff is proposing decreasing budgeted operating expenditures by a net \$832,215, mainly from decreases in wages and benefit expenses, insurance costs, election costs, and services purchased, offset by increases in potable water purchased. The wage and benefit expense includes funding allocation for one new personnel request, a maintenance warehouse clerk for the Facilities and Maintenance Division. After discussion, Commissioner Lopez moved to approve the amendments as presented, Commissioner Gutierrez seconded, and the motion passed unanimously.

6. Consideration and ACTION to vote on a Resolution to adopt a 2024 property tax rate for the Brownsville Navigation District at a rate not to exceed \$0.026713 per \$100 valuation.

Mr. Yanez addressed the Board that Texas Tax Code Chapter 26 requires taxing units to adopt a tax rate by recorded vote and Resolution no later than September 30th or 60 days after the Certified Appraisal Roll is received (7/23/2024). The Cameron County Assessor & Collector assigns its own deadline of September 13th to include the District's adopted tax rate in the October 2024 property tax bills. On August 7, 2024, the Board voted to publish a Proposed Tax Rate of \$0.026713. The Proposed Tax Rate is less than the voter-approval rate of \$0.026714, which is the highest tax rate the District may adopt without holding a mandatory election to seek voter approval of the rate. The Proposed tax rate exceeds the no-new-revenue rate of \$0.025718, which means the proposed tax rate would increase property taxes for the 2024 Tax Year and as such requires a public hearing prior to adopting the tax rate. This required public hearing notice was published in the Brownsville Herald on August 14, 2024 and on the District's website. The 2024 Proposed Tax Rate, if applied to the total taxable value, would impose an amount of taxes to fund M&O expenditures for the District that would exceed the amount of taxes imposed for M&O purposes in the preceding year due to the higher 2024 proposed M&O rate of \$0.026713 compared to the 2024 no-new-revenue M&O rate of \$0.025811. Commissioner Wood moved to adopt the 2024 property tax rate of \$0.026713 per \$100 valuation, Chairman Guerra seconded, and a roll call vote was taken with Commissioner Wood and Chairman Guerra voting Aye and Commissioner Lopez and Commissioner Gutierrez voting Nay. After further discussion, Commissioner Gutierrez then moved to adopt the 2024 property tax rate of \$0.025589 per 100 valuation, being the same rate as the BND 2023 property tax rate, Commissioner Lopez seconded, and a roll call vote was taken

with Commissioner Gutierrez, Commissioner Lopez, and Chairman Guerra voting Aye and Commissioner Wood voting Nay.

7. Consideration and ACTION to approve the Port of Brownsville Business Park Rules and Regulations.

Mr. Dietrich addressed the Board that the POB Business Park Rules and Regulations for the 118.40-acre development are promulgated for the safe, orderly, and aesthetic development and maintenance of the Port of Brownsville Business Park. These standards are intended to provide a means for creating, maintaining, controlling, and preserving the property as a first-class Business Park. Prior to development, each Lessee must verify the current code requirements. The Rules and Regulations may be more restrictive in land use, site development standards, landscape requirements, or in other matters than local zoning and subdivision requirements. In every case in which the rules and regulations are at variance with public agency requirements or terms of the Lessee's lease and the Port of Brownsville's leasing policies as may be amended from time to time, the more restrictive regulations will govern. Approval of plans by the Port of Brownsville does not relieve the Lessee of required approvals of all federal, state and local regulatory agencies having jurisdiction over the project. Should the standards outlined herein conflict with requirements set forth by regulatory agencies, the stricter of the standards will prevail. The Rules and Regulations and the site planning standards are mandatory and are incorporated by reference into every lease of real property in the Business Park. Provided, however, that the Port of Brownsville, through action by its Board of Commissioners, retains the right in its sole discretion to grant variances to the rules and regulations as may be in the best interests of the Port of Brownsville. Lessee shall also be subject to the requirements of its lease and to the Port of Brownsville's leasing policies as may be amended from time to time by the Board of Commissioners. A violation of the Rules and Regulations by a Lessee shall be considered a default under that Lessee's lease. Legal Counsel has reviewed the proposed Rules and Regulations and concurs that it is ready for consideration by the BND Commission. Commissioner Lopez moved to approve the POB Business Park and Rules and Regulations, Commissioner Wood seconded, and the motion passed unanimously.

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

Mr. Dietrich addressed the Board regarding the following Items:

1. OLG Petroleum, LLC (Consent to Assignment)

OLG Petroleum, LLC under BND contract #4111 has entered into a contract for sale and purchase of leasehold improvements with Oscar Luebbert Gutierrez. The lessee is seeking the Board's consent to assign the lease to Oscar Luebbert Gutierrez. This property is located at 1900 Fisherman's Place Rd. and consists of 1.492 acres and 325 linear feet of dock space. The annual rent and security deposit required under the lease will be amended to reflect the current lease rental rates. BND Legal Counsel has reviewed the agreement and concurs that it is ready for consideration by BND Commission. The purpose of the lease agreement is for a land-borne terminal for diesel, bio diesel, lube oil and to recycle oil. Due to operations at the leased site, the lessee is required to maintain a Level 3 with pollution insurance requirement. Commissioner Lopez moved to approve the Consent to Assignment of Lease for OLG Petroleum, LLC, Commissioner Wood seconded, and the motion passed unanimously.

2. South Texas Railways, Inc. **(Lease Amendment)**

South Texas Railways, Inc. (Contract #4729) seeks an amendment of the effective date from April 1, 2024 to June 1, 2024 for the leased site located at 3960 Dry Dock Court. The lease agreement was approved at the June 5th board meeting and the lessee took possession of the site shortly afterwards. Lessee paid \$5,546.32, which represents monthly rent for April and May 2024, because the commencement date of the lease is amended to June 1, 2024, District will apply a \$5,546.32 credit to the account. Commissioner Wood moved to approve the lease amendment for South Texas Railways, Inc., Commissioner Lopez seconded, and the motion passed unanimously.

3. Guadalupe Ochoa **(New Lease)**

Guadalupe Ochoa, a current lessee, seeks a New Lease for an additional site of 0.055 acres located in the Fishing Harbor at 2345 Cajun Court. The term of this new lease will be for one year with four renewal options of one year each. The purpose is for shrimp operations, specifically seafood unloading and boat tie up. Commissioner Lopez moved to approve the New Lease for Guadalupe Ochoa, Commissioner Wood seconded, and the motion passed unanimously.

BIDS/AGREEMENTS/PURCHASES

9. Consideration and ACTION to authorize BND Staff to extend the rental of a bulldozer for the continues development of the 118-acre Industrial Park and Patio 22T expansion, pursuant to BuyBoard Contract #685-22.

Mr. Herrera addressed the Board that BND Staff is requesting the Board of Commission to authorize Staff to extend the rental of a D-8 or equivalent Bulldozer for the continued development of the 118-acre Industrial Park and expansion of Patio 22T. On March 6, 2024, Staff requested and received a quote from (NPE) Nueces Power Equipment with Buy Board contract #685-22 for a total monthly rate of \$10,800, with a onetime \$300 drop off and \$300 pickup charge. The rental of this equipment would be for an additional period of (3) three months for a maximum cost of \$32,400. Discussion followed regarding efforts made and future plans to fix the BND's bulldozer. Commissioner Lopez moved to authorize BND Staff to extend the rental of a D-8 or equivalent bulldozer for a period of three months at a monthly rate of \$10,800 per month and a maximum of \$32,400, and pay invoices once presented, Commissioner Gutierrez seconded, and the motion passed unanimously.

Chairman Guerra then left the meeting briefly and Vice Chairman Lopez assumed the Chair.

10. Consideration and ACTION on project scope change by HDR Engineering, Inc. on engineering services for the BND Cargo Dock No. 3 project, and to authorize the Port Director and CEO to execute the scope change proposal.

Mr. Martinez addressed the Board that on April 6, 2022, BND Commissioners accepted a proposal from HDR Engineering, Inc. (HDR) to perform the final design tasks, i.e., 004-Permitting and Regulatory, 005-Demolition Package, 006-Pile Procurement Package and 007-Dock Package, adding Task 008-Project Management and Controls (design phases). Tasks 001-Project Management and Controls – Data Collection, 002-Geotechnical and Site Investigation and 003-Master Plan of the Cargo Dock #3 area development had been previously performed by HDR for BND tenant American Cement Advisors (ACA). On October 04, 2023, BND Board of Commissioners approved Task 009-Cultural Resources Survey and Task 010-Project Management for Regulatory, required due to regulatory changes to Nationwide Non-Notifying Permits and Pre-Construction Notifications (PCN). As BND Staff is currently bidding BND Cargo Dock No. 3 - Phase II: Pile Procurement, HDR Engineering, Inc. is proposing an increase of \$32,500.00 to perform Task 011-Project Management Controls and Task 012- Construction Administration. Commissioner Wood moved to accept the Project Scope Change as proposed by HDR Engineering, Inc. for the engineering services on the additional Task 011 and Task 012 of the BND Cargo Dock No. 3 Phase II: Pile Procurement project for an additional fee amount of \$32,500.00 which, with the previously authorized fee of \$1,061,341.00, result in a total fee of \$1,093,841.00, Commissioner Gutierrez seconded, and the motion passed by a vote of 3-0, with Chairman Guerra not present.

Chairman Guerra then returned to the meeting and reassumed the Chair.

11. Consideration and ACTION to authorize the Port Director and CEO to execute Receipt and Release Affidavit on Oil Dock #6 Damage Repairs by R.M. Walsdorf, Inc. on behalf of Kirby Inland Marine, L.P.

Mr. Dietrich addressed the Board that on July 17, 2023, a barge movement resulted in damage to a fender on the east side of Oil Dock # 6. After claims were filed, Earl Hatfield Surveyors developed a scope of work that was subsequently reviewed by Staff and HDR. Kirby Inland Marine, L.P., the barge owner, engaged R.M. Walsdorf, Inc. to perform the repairs, which were successfully completed on August 8, 2024, and inspected by the District's Engineering Department. Kirby has requested that the BND execute a Receipt and Release Affidavit which has been reviewed by BND Legal Counsel. Discussion followed regarding the release and the warranty. Commissioner Lopez moved to authorize the Port Director and CEO to execute the Receipt and Release Affidavit for payment by Kirby Inland Marine, LP to R.M. Walsdorf, Inc. for the Oil Dock #6 damage repairs, Commissioner Wood seconded, and the motion passed unanimously.

12. Consideration and ACTION to purchase materials (specifically limestone and geogrid) for Patio 22T – 20-acre laydown area development.

Mr. Gomez addressed the Board that the Brownsville Navigation District, Gulf Steam Marine, Inc. and Ternium Procurement S.A. "Ternium" are continuing negotiations to enter into a lease and development agreement for 20-acres of patio laydown area. As these negotiations continue, the parties have agreed that it is in the best interest of all involved to continue work on the construction of this project. Commissioner Lopez moved to grant staff authority to lease equipment and

BROWNSVILLE NAVIGATION DISTRICT MINUTES

August 21, 2024

Page 6 of 7

purchase materials required to continue work on the project and issue payment once received, of up to 30,000 tons of crushed limestone (CAL-IXA Aggregates LLC., Contract No. 4637), 40 rolls of geogrid (Geo Solutions., Sole Source) and equipment rental 1 drum roller and 1 pad roller (Nueces Power Equipment, Buy Board No. 686-222) all for a price not to exceed the \$1,500,000.00, subject to first receiving payment in full from Gulf Stream Marine, Commissioner Gutierrez seconded, and the motion passed unanimously.

13. Consideration and ACTION on approval of Employment Agreement for Port Director and CEO.

Chairman Guerra addressed the Board on the Employment Agreement for the Port Director and CEO. At the August 7, 2024 regular meeting the Board appointed William Dietrich as Port Director and CEO. The Board was presented with a contract for Mr. Dietrich to serve as Port Director and CEO for a two-year term. Commissioner Lopez moved to approve the employment agreement for Port Director and CEO as presented, Commissioner Gutierrez seconded, and the motion passed unanimously.

14. 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, specifically the Interim Port Director and CEO (§551.074); and to conduct deliberations regarding economic development negotiations (§551.087).

There was none.

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

There were none.

16. Adjournment.

Commissioner Lopez moved to adjourn the meeting, Commissioner Gutierrez seconded, and the meeting was adjourned by unanimous consent at 6:42 p.m.

ATTEST



John Reed, Secretary



Esteban Guerra
Chairman of the Board