

## MINUTES OF THE BOARD OF SUPERVISORS

### ISLE OF PALMS SPECIAL DISTRICT

October 12, 2022

Board President Ken Wright opened the meeting; calling it to order at approximately 1831 hours with a Roll Call of all Board members present at the San Pablo Public Library. Other Board members/officers present were Vice President Paul Raudenbush, Secretary Brad Radloff, and Member David Touring. Member Josh Reichert was not present but available via call-in/speaker. A quorum was established with four Board members present at the meeting. Board Attorney Wayne Flowers of Lewis, Longman & Walker (LLW) was also present at the meeting and Charlene Stroehlen, P.E., the Project Manager with Wood, PLC, as representative for the District's Engineer of Record to administrate the dredging efforts, in attendance via call-in/speaker. Both Lance Young of Brance Diversified, Inc. (BDI), the dredging contractor along with an entourage of six of his dredging crew members, and his attorney, Lindsey Brock, also attended the meeting. There were 4 homeowners from the District physically attending the meeting with an unknown number of all-in attendee(s). The meeting was held in a Community Meeting Room of the Pablo Creek Regional Library at 13295 Beach Boulevard, Jacksonville, FL 32246 but could also have been attended via Skype-based audio-only teleconference. The call-in phone number was (904) 348-0303 and the meeting ID 809 721 327.

#### **Agenda-Specific Public Comments [Agenda Item 1]-**

As a result of a Florida Statute, *public comments of Agenda items only* (no general items) are to be taken prior to addressing the Meeting Agenda. There were no public comments on any of the Agenda items from homeowners - either present (if so) or from those that may have called-in to the meeting.

#### **OTHER AGENDA ITEMS**

2. Vote on approval of the Meeting Minutes from the monthly Board meeting of September 14, 2022.

**MOTION:** To approve the minutes of the Board meeting held on September 14, 2022, by KWright.

**The motion was seconded by PRaudenbush and PASSED unanimously by the Board members present.**

3. Treasurer's Report. PRAudenbush provided an update to the Treasurer's Report for this meeting and reported that he was not able to log into the bank accounts at the time of the meeting and therefore did not have access to the District's current bank balance(s). There was one new bill(s)/invoice(s) needing approval for payment: \$1,550.00 to LLW for legal fees during the month of September. As a special note, there is a dual signature requirement that is in place for all checks/bill payments. Also, now that the District has obtained a loan for the dredging, all the dredging invoices have to be pre-reviewed by the Bank prior to providing such funds to the District to make the payments.

**MOTION:** To approve payment for the LLW invoice, as described above, by PRAudenbush.

**Motion was seconded by BRadloff and PASSED unanimously by the Board members present.**

4. Review dredging progress, follow-up on status since last meeting. [**HISTORY:** At the meeting in June meeting, PRAudenbush and WFlowers provided any updates to communications with BDI and/or Lindsey Brock which was little to none since Lindsey Brock's submittal of BDI's Change Orders shortly after the May meeting. PRAudenbush provided a brief summation of where the District currently is after having received BDI's change orders, IOPSD issued the NoD, rejection of certain of BDI's change orders (#4), dispute resolution between the District and BDI, and BDI's plan for recovery. More discussion was held between Board members regarding the legalities revolving around addressing BDI's non-responsiveness to the contract, their recovery from the dispute, and potential mediation proceedings. WFlowers went over the contract process for attempting to resolve any disputes that arise under this contract and the timelines associated with those.

KWright and BRadloff suggested that the Board should specifically go over the Change-orders, at the June meeting, in an effort to allow PRAudenbush to know how to respond back to BDI and Lindsey Brock. Opinions from various Board members seemed to be generally in agreement that most of the change-orders were not acceptable but that given certain assurances from BDI that they will complete the dredging in a timely fashion, the District *might* consider agreeing to portions of a change-order, in an effort to keep the dredging going and remove as much sediment as possible. After much discussion, KWright passed out a draft counter-response to BDI that he wanted the Board to consider for the next meeting in July. It outlined, in detail, his perception of where he thought the District and the project/contract stands, what the District's options might be going forward and where the District would like to be in the near future. After much discussion, it was decided that a counter change-order from the District to BDI should be withheld pending the timeline for BDI to provide their recovery plan with change-orders and that until then the Board members will individually review KWright's

draft C.O. for consideration at the July meeting. At the last July meeting, KWright began the discussion for this agenda item by indicating that a letter, dated June 15, 2022, was received from BDI that was intended to be a “recovery plan” in response to the District’s issuance of a Notice of Default, dated May 16, 2022, and summarized said letter. He also indicated that he thought that the content of the letter was inaccurate in many respects and PRAudenbush agreed. KWright and PRAudenbush brought up some of the BDI proposed change orders and how the Board may or may not agree with the said change orders, either in whole or in part. KWright suggested that a meeting should be arranged between BDI and their lawyers and a team from the District’s Board to sit down and try and work something out. According to Mr. Brock, BDI asserts that the District changed the dredge template after the initial Change Order #1 (to change the template which, actually, was at BDI’s request) and none of the Board members have any recollection of any such additional template change nor is there any documentation to indicate such. PRAudenbush suggested that much of what BDI thinks are disparities with the contract are primarily based upon misunderstanding and miscommunication and that by simply clearing up these misunderstandings and just following the contract, the dredging might be continued. Mr. Brock also indicated that there is confusion about what depth the contract calls for to be completed, either 5’ or 6’ at mean low tide, and where the dredging is to be completed, down a swath in the center of the canal or basically all over. Some discussion ensued between Mr. Brock and the Board to try to come to some understanding on those aspects of the dredging. Charlene Stroehlen, with Wood, provided a definition for “over-dredge” pursuant to the ACOE Permit issued for this project. Mr. Brock also brought up BDI’s case for the additional costs and why he thinks the Board should consider paying said costs. At the August meeting, KWright began this agenda item with a summarization of the results of the meeting held between BDI and his attorney and the two IOPSD appointed Board members (KWright and PRAudenbush) chosen to conduct negotiations with BDI at separately prearranged meeting date. KWright’s impression of the meeting immediately afterward was optimistic as it seemed that everybody was in general agreement about the results of the meeting; however, communications with BDI representatives, days later, seemed to indicate that there was no agreement. PRAudenbush added that the meeting started out with change-order issues that the Board was aware of, but then Lindsey Brock brought up additional other issues. He also discussed an email that was sent out to the Board members that was a remaining volume calculation (by Wood) of approximately 36,000 cubic yards to be dredged that would be used in the five-point agreement. Either way, based upon the email sent out by WFlowers on August 9, 2022 with a draft document outlining “IPSD-BDI Settlement Points” that seemed to have been the five points agreed to at the meeting, were discussed between the Board members to determine whether the “Points” would be agreeable (the outline with the settlement points are attached to this document). Much discussion ensued about the “points” and included concerns over which canals were considered finished and which were not and who would determine that, language in the agreement that revolved around the definition of “additional materials,” additional individual/homeowner’s dredging and increasing the originally contracted/quoted rate to do so, paying the escalated fuel costs since the project was initiated, when the individual homeowner dredging should occur relative to when the

baseline dredging is completed, and how will volumes of individual dredging be tracked. After the discussions, KWright indicated that although he thought approval of the 5-point Agreement would be a “wind-fall” for BDI, it would be less expensive to work with BDI to get this dredging complete (as opposed to going through the process of getting the bonding company to complete it) with the goal of trying to get as much sediment removed from the canals as possible, especially in light the fact that if the dredging stops now, it will likely be years before the remaining dredging is completed via the bonding company. As such, KWright motioned that the draft document (prepared by WFlowers) be revised, as discussed during the meeting, and otherwise finalized for presentation to BDI. A motion was made to approve the five settlement points with the discussed revision indicating a maximum fuel adjustment of \$200,000 and was passed by the Board 4-1 (BRadloff dissented). At the previous September meeting, KWright briefly indicated that the Board had approved a settlement agreement with BDI that was forwarded to them for their approval but he had not heard back from them. However, PRAudenbush indicated that a response had been received from BDI, on September 12, 2022, by Wayne Flowers that they were declining the settlement agreement for various reasons but Wayne did not sense that BDI was done or not interested in discussing the settlement any longer. PRAudenbush also indicated that he had met with BDI (without WFlowers) to renegotiate the settlement points and briefly described what those points were and that BDI would need to resubmit change orders for those points. One of BDI’s proposed settlement points is to increase the individual homeowner dredging rate and neither KWright nor PRAudenbush think said rate should change from the already contracted rate of \$35/yard. The discussion ensued with suggestions for revising the settlement agreement one more final time and giving BDI a deadline to respond and if they do not respond favorably the bonding company would be notified that a Notice-to-Terminate the contract would be issued. Three Motions were approved by the Board: 1) To authorize Board Attorney Wayne Flowers to send a letter to the Surety Company indicating the Board’s intent to issue a Notice-To-Terminate the contract with BDI, which passed unanimously, 2) To revise the most recent proposed settlement agreement, that BDI declined previously, to include the discussed changes regarding the individual dredging rate with BDI responding by a certain dateline date (10/10/22), which passed but with one dissenting vote by BRadloff, and 3) To approve an amendment to the loan agreement with Wells Fargo Bank that would revise certain terms related to the draw period and the proposed extension of the contract to BDI, which passed unanimously.] At this October meeting, a letter received by WFlowers from the Surety Company was shared with the Board members, and discussed briefly, as it contained instructions requesting certain information/documentation from the District regarding the contract default of BDI. WFlowers also shared a letter from BDI’s attorney, received on the deadline date as required by the District, that attempts to provide a response to the District’s final Five Settlement Points (should BDI and the District come into agreement on the settlement points, the District would withhold the intended Letter to Terminate to the Surety). As such, BDI’s attorney, Mr. Brock, summarized their response to the settlement points, to which Board members, primarily PRAudenbush and KWright responded with their positions and requested clarifications from Brock and Lance Young. The most contested disagreement appeared to be the rate to be charged the

homeowners for individual dredging and some of the discussion became somewhat heated mostly by Mr. Young. Mr. Young also apparently brought with him several homeowners that would be willing to pay BDI's requested higher than agreed to contract rate for individual dredging and a couple of those homeowners spoke that that effect. Still more discussion ensued (mostly regarding BDI's adjustments to the new/final settlement) with some clarifications being made along with some misunderstandings straightened out after WFlowers presented BDI's proposed adjustments. As a result of such discussions, PRAudenbush was able to revise and print out the settlement agreement, during the meeting, and toward the end of the discussion Brock and Young left the room to discuss their position privately. After returning to the room, Brock indicated that BDI would agree to the revised Settlement, as adjusted by PRAudenbush during the meeting.

**MOTION:** To approve Change Order #2, as adjusted during the meeting; by KWright.

**Motion was seconded by PRAudenbush and PASSED 4-1 by the Board members present, with BRadloff having the dissenting vote.**

5. Update on getting cost share from the City. DTouring reported that he has nothing new from the City except that they are having IT issues. DTouring suggested that he would check into it again with his City contact and see where they are.
6. New Business. None

### ***General Public Comment -***

There were no other comments from the public at the end of the meeting (comments/questions were taken during the meeting, if any).

### ***Adjournment -***

KWright adjourned the meeting at 1945 hrs.

### ***Future Meeting Dates -***

Meetings are held on the second Wednesday of the month (6:30 PM), at the "Pablo Creek Regional Library," 13295 Beach Blvd. Jacksonville 32246. **It is recommended to check the District's website ([isleofpalmsjax.com](http://isleofpalmsjax.com)) for any updates to the location of the upcoming meetings.**

Future meeting dates listed below:

November 9, 2022   December 14, 2022