

**MINUTES OF A REGULAR MEETING OF THE BOARD OF NAVIGATION AND
CANAL COMMISSIONERS OF THE BROWNSVILLE NAVIGATION DISTRICT OF
CAMERON COUNTY, TEXAS HELD APRIL 17, 2019 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, April 17, 2019 at 5:30 p.m.** The following individuals were present and absent:

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

ABSENT: None

ALSO PRESENT: Eduardo A. Campirano, Port Director and CEO
Daniel Rentfro Jr., District Counsel
William J. Irwin, Associate District Counsel

STAFF MEMBERS: Steve Tyndal
Bea Rosenbaum
Lorena Hernandez
Ariel Chavez
Memo Rico
Jorge Montero
Lieutenant Mario Esquivel
Jaime Martinez
Joe Herrera
Michael Davis
Tony Rodriguez
Sergeant Juan Valles
Oscar Garcia
Debby Duke
Margie Recio

OTHERS PRESENT: Rev. Andreas Lewis
Jorge de la Colina
Scott Donnahoe
Maribel Guerrero
Greg Harner
Eduardo Duran
Chris Green

1. Meeting Called To Order

The Chairman called the meeting to order at 5:34 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 Director's Report

a. Receive Port Monthly Operations Summary Report

Ms. Hernandez 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 April 03, 2019.
- b. Approval to authorize payments over \$25,000.00:
 - 1. G&T Paving, the amount of \$373,186.28, for BND Port Road Improvements Phase II.

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

5. Presentation of District Funds Investment Report for the Period January 1, 2019 through March 31, 2019.

Ms. Hernandez presented the District Funds Investment Report for the Period January 1, 2019 through March 31, 2019.

6. Consideration and Action on amending Leasing Policies C306(Local) Lease Guidelines by adding an item to address Special Conditions.

Mrs. Duke addressed the Board requesting authorization on amending Leasing Policies C306(Local) Lease Guidelines by adding an item to address Special Conditions. The staff is requesting that the Leasing Policy be amended to give the staff the Board's authorization to negotiate Special Conditions that may be pertinent to a specific lease. This amendment to the Leasing Policy has been reviewed with the Policy Committee. Discussion followed regarding the addition of a requirement that potential tenants provide the BND with a business plan. Mrs. Duke noted that this requirement would be added. Commissioner Lopez moved to authorize the amendment of the Leasing Policies to amend Policy C305(Local) Lease Guidelines by adding the item "Special Conditions", to be effective April 17, 2019, Commissioner Wood seconded, and the motion passed unanimously.

7. Consideration and Action on amending Leasing Policies C306(Exhibits A, B and E), the Leasing Application, Financial Information and Credit Application and to amend the Leasing Policies C306 Lease Guidelines to remove references to these Exhibits.

Mrs. Duke addressed the Board requesting the authorization on amending Leasing Policies C306(Exhibits A, B and E), the Leasing Application, Financial Information and Credit Application and to amend the Leasing Policies C306 Lease Guidelines to remove references to these Exhibits. The staff is recommending that these documents be removed as Exhibits to the Leasing Policies.

The Financial Information and the Credit Application are no longer required to be a part of the prospective lessee's application as the information requested by these documents has been incorporated into the Lease Application. The Lease Application is being recommended for removal from the Policy to facilitate future revisions of the form. There is one reference in the Leasing Policies to Exhibit A, and this item will need to be revised to remove this reference. The new Lease Application was reviewed with the Policy Committee at the April 8th meeting. At that time, the recommendation to remove these three exhibits from the Leasing Policy was approved by the Policy Committee for presentation to the Board for their consideration and action. Commissioner Lopez moved to authorize the amendment of the Leasing Policies to remove C306 (Exhibits A, B and E) and to amend Policy C306 Lease Guidelines to remove reference to the Exhibits to be effective April 17, 2019, Commissioner Guerra seconded, and the motion passed unanimously.

8. Consideration and Action on amending Procurement Policies and Procedures to make changes to the Payment Cycle item.

Mrs. Duke addressed the Board requesting authorization on amending Procurement Policies and Procedures to make changes to the Payment Cycle item. The Payment Cycle item of the Procurement Procedures sets the deadline for the receipt of invoices by the Finance Department in order for the payment to be ready for the vendor on Friday. This had been written to require that the invoice be entered into the system by Tuesday; and the amendment is to clarify this to require that the invoice be received by Finance no later than 5:00 on Monday in order for the check to be ready for the vendor on Friday. A second provision in the Payment Cycle item is the requirement that any checks to a vendor of \$25,000 or above must be approved by the Board in open session. The staff is recommending that the exceptions to this requirement be amended to add payments to attorneys, payroll-related expenses, including employee benefits, overweight permit transactions and bond debt service payments. In addition, it was recommended that the term "credit card statements" and the listing of specific credit cards be simplified to read "credit card payments". These amendments were discussed with the Policy Committee at the April 8th meeting. The Policy Committee approved the presentation of these amendments to the Board for their consideration and action. Commissioner Guerra moved to authorize the amendment of the Policies and Procedures – Exhibit A Procurement Procedures, as proposed by the staff, with an effective date of April 17, 2019, Commissioner Cowen seconded, and the motion passed unanimously.

9. Consideration and Action on amending Procurement Policies and Procedures to establish a Local Preference Option.

Mrs. Duke addressed the Board requesting authorization on amending Procurement Policies and Procedures to establish a Local Preference Option. The Local Government Code contains a provision that allows entities such as the District to give a 3% price advantage on bids for "real property and personal property not attached to real property." The staff was asked by the Policy Committee to draft a policy that establishes a Local Preference Option for the District. This policy will be added to the Procurement Policies and Procedures as Policy C205(Local) Local Preference Option Policy. To incorporate this policy into the Procurement Policies and Procedures document, the policy statement is being amended to reference the Local Preference Option Policy and four new definitions are being added to the Procurement Policies and Procedures. The staff presented this new policy and the required policy amendments to the Policy Committee at the April 8th meeting. The Policy Committee approved the new Local Preference Option Policy for presentation to the Board for their consideration and action. Commissioner Cowen moved to authorize the amendment of the Policies and Procedures – Policy C201(Local) Policy Statement

BROWNSVILLE NAVIGATION DISTRICT MINUTES

April 17, 2019

Page 3 of 9

and Policy 203(Local) Definitions, and to add to the Procurement Policies and Procedures Policy C205(Local) Local Preference Option Policy, as presented by staff, to be effective April 17, 2019, Commissioner Wood seconded, and the motion passed unanimously.

10. Consideration and Action on amending the Utility Rate Schedule for Potable Water to add a rate for a 10" water meter and to remove the discounted rate for consumption in excess of 2 million gallons in a month.

Mrs. Duke addressed the Board requesting authorization on amending the Utility Rate Schedule for Potable Water to add a rate for a 10" water meter and to remove the discounted rate for consumption in excess of 2 million gallons in a month. The District has installed a 10" water meter in the system. There is no rate on the Utility Rate Schedule for Potable Water for a 10" water meter. Staff has researched the matter and has developed a recommended rate for a 10" water meter to be added to the Utility Rate Schedule. That rate is \$3,472.33 which includes a minimum monthly consumption of 1,100,000 gallons. Additionally, the current Utility Rate Schedule for Potable Water contains a discounted rate for monthly consumption through a meter connection that exceeds 2 million gallons. Staff is recommending that this discounted rate of \$2.40 per 1,000 gallons be removed from the Utility Rate Schedule. These recommendations were discussed with the Policy Committee at the meeting of April 8, 2019. The Policy Committee approved them for presentation to the Board for their consideration and action. Discussion followed regarding a general revision to District's water rates, which will be revisited in the future. Commissioner Cowen moved to authorize the amendment of the Utility Rate Schedule for Potable Water as proposed by the staff with an effective date of July 1, 2019, Commissioner Lopez seconded, and the motion passed unanimously.

11. Consideration and Action authorizing the Port Director & CEO to sign two Government Agency Curation Agreement forms with the Texas Archeological Research at the University of Texas at Austin.

Mr. Campirano addressed the Board requesting authorization for the Port Director & CEO to sign two Government Agency Curation Agreement forms with the Texas Archeological Research at the University of Texas at Austin. The Rio Grande LNG Pipeline Project conducted two (2) Cultural Resource Surveys on Port of Brownsville Lands. This was done in conjunction with Rio Grande LNG Pipeline project regulatory compliance efforts. As the Land owner, the Port of Brownsville is required to sign the forms. These are standard form letters required by the Texas Archeological Research Laboratory prior to the curation of archeological records. These forms simply transfer the care of project records and photographs to a certified state facility and do not place any responsibility or liability on the Port of Brownsville. Commissioner Cowen moved to authorize the Port Director & CEO to sign the forms, Commissioner Wood seconded, and the motion passed unanimously.

12. Consideration and Action authorizing the execution of the Brazos Island Harbor (BIH) Project agreement between Rio Grande LNG, LLC and the Brownsville Navigation District, including provisions for implementation of the BIH Project and the creation of conservation easements on District lands under Chapter 183 of the Texas Natural Resources Code.

Mr. Campirano addressed the Board requesting authorization to execute the Brazos Island Harbor (BIH) Project agreement between Rio Grande LNG, LLC and the Brownsville Navigation District, including provisions for implementation of the BIH Project and the creation of conservation

BROWNSVILLE NAVIGATION DISTRICT MINUTES

April 17, 2019

Page 4 of 9

easements on District lands under Chapter 183 of the Texas Natural Resources Code. The Brownsville Navigation District (BND) has been working to permit and construct the Brazos Island Harbor Channel improvement project (channel deepening). Conversely, Rio Grande LNG, LLC proposes to construct a natural gas liquefaction facility and export terminal at The Port of Brownsville. The proposed BIH agreement would establish terms and conditions for Rio Grande LNG to participate in permitting, financing and construction on the BIH channel improvement project. Included in those terms and conditions are the granting of a conservation easement on 3,000 acres (more or less) in the area of the Loma Ecological Preserve, and the payment of fair market value for that easement to the District. The BIH project agreement is not final but will be presented for the BND Commission's consideration prior to any action. Mr. Campirano and Chairman Reed made a presentation regarding the BIH project. Commissioner Lopez moved to table a vote on the item until after executive session, Commissioner Cowen seconded, and the motion passed unanimously.

13. Consideration and Action to declare the equipment and other items, including waste materials, as salvage and surplus to the District's needs and to authorize the salvage auction team to dispose of them. Such disposal to include the sale by auction of salable materials.

Mrs. Duke addressed the Board requesting authorization to declare the equipment and other items, including waste materials, as salvage and surplus to the District's needs and to authorize the salvage auction team to dispose of them. The Salvage Auction Team has been working with the Facilities Maintenance Department to clear the former Marine Metals site of waste materials (other than scrap metal) and to inventory and catalog the salable items. This includes furniture and other equipment left in the office. As the process has been nearing completion, the assessment of the equipment and other items indicates that the value of the items for sale will exceed the \$10,000 limit set in the District's Policy for the Disposition of Surplus, Salvage or Unclaimed Property. At this level, the property must be declared by the Board to be surplus, salvage or unclaimed, and the Board must authorize the sale by auction of the items. The Salvage Auction Team is preparing a sale by sealed bid. Discussion followed regarding title to the vehicles and notices that would be sent out prior to a sale of the vehicles. Commissioner Lopez moved to declare the equipment and other items on the former Marine Metals site as salvage and surplus to the District and the Salvage Auction Team be authorized to dispose of the equipment and other items to include a sale by auction of the equipment and other items, Commissioner Guerra seconded, and the motion passed unanimously.

14. Consideration and Action on approving a purchase order to Duff & Phelps for property insurance appraisal services in the amount of \$33,000.00.

Mrs. Duke addressed the Board requesting the approval on a purchase order to Duff & Phelps for property insurance appraisal services in the amount of \$33,000.00. The District purchases property insurance based on replacement values. In the past, Texas Municipal League has given the District some assistance in valuing the assets on the property insurance schedule, but the staff feels that it would be advisable to have the values reviewed. The staff consulted with Cindi Heffernan, and she was able to recommend an appraisal service that she has had good experience with in doing Insurance value appraisals, including appraisals for a number of ports that she works with. Duff & Phelps has provided a proposal to do Property Insurance Appraisal Services for the District's schedule of insured property for a fee of \$33,000.00. Chairman Reed asked that the item be tabled to allow staff to seek additional quotes. Commissioner Lopez moved to table this item,

BROWNSVILLE NAVIGATION DISTRICT MINUTES

April 17, 2019

Page 5 of 9

Commissioner Guerra seconded, and the motion passed unanimously.

15. Consideration and Action to accept proposal from consultant HDR, Inc. for Task Order #25, consisting of Environmental Services on Tract No. 9 of the Brazos Island Harbor Easements Releases in WRDA 2016.

Mr. Chavez addressed the Board requesting the acceptance of a proposal from consultant HDR, Inc. for Task Order # 25, consisting of Environmental Services on Tract No. 9 of the Brazos Island Harbor Easements Release in WRDA 2016. On March 6, 2019, BND Commissioners approved a Memorandum of Agreement (MOA) with the U.S. Army Corps of Engineers (USACE) pursuant to preparation of the Disposal Report and related matters concerning the release of Tract No.9 as provided in Section 1318 of the Water Resources Development Act of 2016. There are several requirements in the MOA related to environmental issues, cultural resources, and other information to populate the said Disposal Report. BND Staff has requested a proposal from consultant HDR, Inc. (HDR) to perform the required environmental clearance and related services. HDR has submitted a proposal to perform the work on Tract No. 9 on a time and materials basis for an estimated fee of \$33,073.00. Commissioner Guerra moved to authorize the Port Director & C.E.O. to accept the proposal for Task Order #25, consisting of Environmental Services on Tract No. 9 of the Brazos Island Harbor Easements Releases in WRDA 2016, for a not-to-exceed fee of \$33,073.00, and execute the Task Order Agreement with HDR for those services, Commissioner Lopez seconded, and the motion passed unanimously.

16. Consideration and Action to authorize Port Director to enter into a Master Professional Services Agreement with consultant CH2M HILL Engineers, Inc. and to accept CH2M's proposal for engineering design services for the Oil Docks #2 and #5 Bulkhead Repair Project.

Mr. Chavez addressed the Board requesting the authorization for Port Director to enter into a Master Professional Services Agreement with consultant CH2M HILL Engineers, Inc. and to accept CH2M's proposal for engineering design services for the Oil Docks #2 and #5 Bulkhead Repair project. BND Staff has received the Master Professional Services Agreement (MPSA) and after review and consultation with BND legal counsel Rentfro, Irwin & Irwin law firm, have finalized the MPSA. CH2M has also submitted a proposal for a time-and-materials fee not to exceed \$47,450.00 based on the designated engineering design Scope of Work, which includes design project management, and design phase services. CH2M is scheduled to present Issued-for-Bids (IFB) plans within four weeks of the Notice to Proceed. Discussion followed regarding the proposed repair project and its implications for the BND. The Board emphasized that it wanted an economic solution to the project. After discussion, Commissioner Cowen moved to authorize the Port Director to enter into a Master Professional Services Agreement with CH2M HILL Engineers, Inc. and to accept their proposal for Engineering Design Services for the Oil Docks #2 and #5 Bulkhead Repair project for an estimated fee of \$47,450.00, which will not be exceeded without BND Commissioners' authorization, Commissioner Wood seconded, and the motion passed unanimously

17. Consideration and Action on Change Order No. 2 to the Public Vessel Assembly and Erection Pad project, for the purpose of adding repairs to existing concrete beams, adding WT beam installation length, redesign of the inlet adjustments, and adjusting the contract time to cover the additional work.

Mr. Chavez addressed the Board requesting the acceptance or rejection of Change Order No. 2 to the Public Vessel Assembly and Erection Pad project, for the purpose of adding repairs to existing concrete beams, adding WT beam installation length, redesign of the inlet adjustments, and adjusting the contract time to cover the additional work. On December 5, 2018 BND Commissioners awarded the contract on the Keppel AmFELS (AmFELS) Public Vessel Assembly and Erection Pad project to L&G Construction (L&G) in the amount of \$4,486,850.00. On February 6, 2019 BND Commissioners approved Change Order No. 1 to this contract in the amount of \$486,000.00, addressing repairs to beams in the launching pad that were not included in the original contract. Upon repairing the beams, additional issues were discovered with the concrete piers supporting the beams. Further, a design change requested by Keppel AmFELS on the elevations of the pads required redesign of the storm drain inlets on the South side. L&G proposes to effect these changes for \$408,500.00, less a credit for a replaced item of \$4,524.00. This Change Order No. 2 will increase the contract price by \$403,976.00 to \$5,376,826.00. L&G is requesting an additional sixty-five (65) calendar days to the contract time to perform this extra work, which will change the contract completion date from the current May 7, 2019 to July 21, 2019. Commissioner Cowen moved to approve Change Order No. 2 to the contract with L&G Construction for the Public Vessel Assembly and Erection Pad, increasing the current contract price of \$4,972,850.00 by \$403,976.00 to \$5,376,826.00, and to extend the contract time by sixty five (65) calendar days to July 21, 2019, Commissioner Guerra seconded, and the motion passed unanimously.

18. Consideration and Action to accept proposal from Raba-Kistner Consultants, Inc. for additional construction materials observation and testing on the Public Vessel Assembly and Erection Pad project in the Port of Brownsville.

Mr. Chavez addressed the Board requesting the acceptance of proposal from Raba-Kistner Consultants, Inc. for additional construction materials observation and testing on the Public Vessel Assembly and Erection Pad project in the Port of Brownsville. On December 5, 2018 BND Commissioners awarded the contract on the Public Vessel Assembly and Erection Pad project to L&G Construction (L&G). On January 16, 2019, BND Commissioners accepted a proposal from Raba-Kistner Consultants, Inc. (Raba) for Construction Materials Observation and Testing Services in the amount of \$64,900.00. During construction phase, additional issues were discovered that required a significant amount of additional concrete work. The increase in scope will require additional testing of materials. BND Staff has requested and received a proposal from Raba for the Additional Construction Materials Observation and Testing Services for this project. Raba proposes to provide an on-call technician for the duration of the additional anticipated construction time to continue verifying soil and base densities and concrete sampling and testing for an additional amount not to exceed \$78,805.10. This fee is estimated based on on-call services implementing ongoing testing frequencies. Commissioner Guerra moved to accept the proposal from Raba-Kistner Consultants, Inc. (Raba) for Additional Construction Materials Observation and Testing Services on the Public Vessel Assembly and Erection Pad project for the amount of

\$78,805.10, which will not be exceeded without BND Commissioners' authorization, Commissioner Cowen seconded, and the motion passed unanimously

19. Consideration and Action on Change Order No. 2 to the Bulk Cargo Dock Improvements project, for the purpose extending the contract time 95 calendar days due to 42" pipe piles delivery issues.

Mr. Chavez addressed the Board requesting the acceptance or rejection of Change Order No. 2 to the Bulk Cargo Dock Improvements project, for the purpose extending the contract time 95 calendar days due to 42" pipe piles delivery issues. Russell Marine, LLC, has submitted a No Cost Change Order Request due to an unanticipated default from their vendor of the 42" Pipe Piles to be used in the new fendering structure for the Bulk Cargo Dock. Russell states that they have secured another supplier that can provide foreign steel pipe and deliver them to Brownsville in approximately ten (10) weeks. They are requesting that the contract completion date be changed to August 31, 2019, which would add a total of 95 calendar days to the contract time. Mr. Harner of Russell Marine addressed the Board regarding their request for a change order. After discussion, Commissioner Lopez moved to approve Change Order No. 2 to the contract with Russell Marine, LLC for the BND Bulk Cargo Dock Improvements project, extending the contract time by 95 calendar days, for a new contract completion date of August 31, 2019, Commissioner Wood seconded, and the motion passed unanimously

20. Consideration and Action to designate a portion of the 1,000 ft. wide Bridge Corridor land as a public road for the proposed South Port Connector Road, as required by the Texas Department of Transportation.

Mr. Chavez addressed the Board requesting the designation of a portion of the 1,000 ft. wide Bridge Corridor land as a public road for the proposed South Port Connector Road, as required by the Texas Department of Transportation. BND Staff has been working for the last three years with the Texas Department of Transportation (TxDOT), the Cameron County Regional Mobility Authority (CCRMA) and the CCRMA's consultant S & B Infrastructure, Inc. on the project known as the South Port Connector Road, which will be a connection from R. L. Ostos Road in the Port to Texas State Highway No.4 (SH 4, or Boca Chica Boulevard). This connector road will provide an entrance/exit from the South side for vehicular and truck traffic. TxDOT requires that the land to be used by the road be designated as a public right-of-way in order to fully qualify for the funding. BND Staff worked with BND Legal Counsel, Rentfro, Irwin & Irwin, to develop a document that would satisfy the public right-of-way requirement in a manner satisfactory to BND as well as addressing the BND's security issues. Since BND will be the maintaining entity, the proposed designation instrument of this tract as a public right-of-way will keep it as BND property. Commissioner Guerra moved to designate the land identified in the survey as road right-of-way for the South Port Connector Road and designate it for roadway use, subject to final review by BND legal counsel, Commissioner Lopez seconded, and the motion passed unanimously.

21. 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 conduct deliberations regarding real property (§551.072); 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 Cowen moved to adjourn into executive session, Commissioner Lopez seconded, and the motion passed unanimously. The Chairman then announced that the time was 7:21 p.m. and that the Board would adjourn into executive session.

The Chairman then announced that the time was 8:43 p.m. and that the Board had reconvened in open session.

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

The Chairman recalled Item 12 for consideration.

Discussion followed regarding the BIH project and the impact that it would have on the Port and the surrounding communities. After discussion, Commissioner Wood moved to approve the BIH project agreement as discussed in executive session, Commissioner Cowen seconded, and the motion passed unanimously.

23. Adjournment.

Commissioner Cowen moved to adjourn the meeting Commissioner Lopez seconded, and the meeting was adjourned by unanimous consent at 8:48 p.m.

ATTEST



Secretary



John Reed
Chairman of the Board