

**MINUTES OF A REGULAR MEETING OF THE BOARD OF NAVIGATION AND
CANAL COMMISSIONERS OF THE BROWNSVILLE NAVIGATION DISTRICT OF
CAMERON COUNTY, TEXAS HELD JUNE 26, 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, June 26, 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
Ariel Chavez
Carlos Martinez
Jaime Martinez
Chief Carlos Garcia
Lieutenant Mario Esquivel
Jose Herrera
Tony Rodriguez
Lorena Hernandez
Karina Franco
Debby Duke
Margie Recio

OTHERS PRESENT:

Rev. Andreas Lewis
Jorge de la Colina
Kimberly Walsdorf
Robert Walsdorf
Roberto Ruiz
Carlos Guerrero
Joe Vega
Walter Clint
Carlos Barrera
Miguel Rodriguez
Roman Hernandez

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.

Commissioner Guerra thanked Texas A&M Chancellor John Sharp for his visit to the Port and expressed his support for continued discussion regarding the proposed Port of Brownsville Training Center.

Mr. Campirano then recognized the participants in the Port externship program. Miguel Rodriguez, of Hanna High School, and Roman Hernandez, of Veterans Memorial High School, both addressed the Board and thanked the Port for the opportunity.

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 June 5, 2019.
- b. Approval to authorize payments over \$25,000.00:
 - 1. Vulcan Materials, the amount of \$192,319.06, for crushed limestone for Patio 22 project;
 - 2. L&G Concrete Construction, the amount of \$626,343.80, for Public Vessel Assembly & Erection Pad.

Commissioner Cowen noted that a portion of Item 4b2 would be reimbursed to the Port in connection with the Port's EDA grant.

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

5. Presentation and report on progress of preliminary architectural and engineering services and preliminary cost estimate for the Port of Brownsville Training Center facility.

Mr. Campirano and Mr. Herrera addressed the Board regarding progress of preliminary architectural and engineering services and discussed a preliminary cost estimate for the Port of Brownsville Training Center facility. Discussion followed regarding the cost of the facility and preparation of a memorandum of understanding with Texas A&M and TSTC. Roberto Ruiz, the project architect, also addressed the Board. The Board asked that Mr. Herrera continue to gather information regarding the proposed facility.

Mr. Campirano then asked that Items 12-14 be taken out of order.

14. Consideration of and Action to accept work performed by contractor on track Railroad Construction, LLC on the Old SH 48 Railroad Crossings Installation project and authorize payment of \$68,649.22 less \$360.00 for ballast provision, subject to assessment of liquidated damages.

Mr. Chavez addressed the Board requesting the acceptance of work performed by contractor OnTrack Railroad Construction, LLC on the Old SH 48 Railroad Crossings Installation project and authorize payment of \$68,649.22 less \$360.00 for ballast provisions, subject to assessment of liquidated damages. OnTrack Railroad Construction, LLC (On Track) has submitted a Pay Request in the amount of \$68,649.22, leaving a savings to the BND on the project of \$9,705.78 which was the result of subgrade and base conditions allowing a reduction in the amount of material used. The project had a completion date of February 20, 2019. OnTrack achieved substantial Completion on April 4, 2019 resulting in a delay of 43 days. OnTrack claimed 9 weather delay days and 8 days lost due to a delay in bypassing traffic on the initial crossing they worked on, leaving a delay subject to liquidated damages of 26 days. The contract called for liquidated damages at the rate of \$500 per day, resulting in an amount of \$13,000.00. Additionally, in an effort to avoid more delays, BND paid Brownsville & Rio Grande International Railway \$360.00 to provide ballast for one of the crossings, and this amount must be deducted from the final payment. A representative of OnTrack addressed the Board requesting that the liquidated damages be waived. Mr. Chavez noted that the bid received from OnTrack was significantly lower than the next highest bid and that OnTrack had, aside from the delays, performed the contract as required. Mr. Chavez also noted that there was no apparent financial impact to the Port or to Port lessees due to the delay, and based on those reasons, he was not opposed to waiving the liquidated damages. Discussion followed regarding the calculation of liquidated damages. Commissioner Wood moved to accept the work performed by OnTrack Railroad Construction, LLC on the Old S.H. 48 Railroad Crossings Installation contract and authorize payment in the amount of \$68,289.22 to close out the project, and to waive the liquidated damages as discussed, Commissioner Cowen seconded, and the motion passed 4-1. Commissioner Lopez voted nay.

13. Consideration of and Action on Change Order No. 2 to the contract with G&T Paving, LLC on the 2018 BND Spot Repairs and Asphalt Surfacing project adjusting the asphalt quantities to conform to actual, to accept work performed by the contractor, and to authorize payment of \$24,272.97, including additional work and retainage.

Mr. Chavez addressed the Board requesting the approval of Change Order No. 2 to the contract with G&T Paving, LLC on the 2018 BND Spot Repairs and Asphalt Surfacing project adjusting the asphalt quantities to conform to actual, to accept work performed by the contractor, and to authorize payment of \$24,272.97, including additional work and retainage. Upon completion of the asphalt re-surfacing, quantities were measured for each line item and Change Order No.2 adjusts the contract quantity of all the items that required it to conform to actual quantities of work performed. The result was a small increase in the contract price of \$4,208.47, or 2.36% of the original contract amount, for a new contract amount of \$204,569.27. The contract time was suspended waiting for BND Maintenance Department to prepare the base in the last set of patches, but the contractor addressed them as soon as they were ready. Commissioner Lopez moved to approve Change Order No. 2 increasing the contract amount by \$4,208.47 to \$204,569.29, to accept the work performed by G&T Paving, L.L.C. on the 2018 BND Spot Repairs and Asphalt

Surfacing contract, and to authorize payment in the amount of \$24,272.95 to close out the project, Commissioner Guerra seconded, and the motion passed unanimously.

12. Consideration of and Action on request to authorize Staff to proceed with the construction of the proposed Ostos Road Truck Staging Area

Mr. Chavez addressed the Board requesting the authorization for Staff to proceed with the construction of the proposed Ostos Road Truck Staging Area. BND Staff has been working for the last few weeks with consultant Ergonomic Transportation Solutions, Inc. on a transportation analysis of the area in the vicinity of the intersection of Ostos Road and Windhaus Road for a Truck Staging area to address the increase in truck traffic within the Port of Brownsville. The objective is to provide an area of between 2.5 acres and 5 acres to stage both empty and loaded trucks. The staff examined a number of options, and the best option is to consider surfacing the area adjacent to the 5.5 Acres to the East of a vacant 5.5-acre tract adjacent to Gulfside Warehouse south of R. L. Ostos Road. A preliminary cost analysis was presented to the board, subject to final design and confirmation of the actual potential sites. Construction of the concrete entrance will be contracted out, while most of the rest of the work will be performed by BND Maintenance personnel and equipment. Chief Garcia also addressed the Board regarding the proposed staging area. Commissioner Lopez moved to authorize BND Staff to proceed with finalizing drawings, soliciting bids, ordering materials and proceeding with installation of the Ostos Road Truck Staging Area components, as appropriate, Commissioner Wood seconded, and the motion passed unanimously.

6. Consideration and Action on Assignments, Negotiations, Easements, Subleases, and Contracts in General.

Mr. Tyndal addressed the Board:

1. Rio Grande Council, Boy Scouts of America Laguna Station (New Lease)

The lease to the Boy Scouts under BND Contract 3743 expired on December 31, 2018, and they requested a new lease. The lease is approximately 3.103 acres which are located in Isla Blanca Park along the south end of South Padre Island, for operation of a high adventure camp and/or other activities or events. The lease is a 10-year contract with a provision that the Port may terminate the lease on 30 days' written notice. Commissioner Lopez moved to approve a new lease with the Rio Grande Council, Boy Scouts of America Laguna Station, Commissioner Cowen seconded, and the motion passed unanimously.

2. The Lamar Companies (New Lease)

This is a new temporary lease to The Lamar Companies to replace expired lease BND Contract 3480. It is to be effective as of July 1, 2019, on a month-to-month basis. It is for the purpose of an outdoor advertising structure (sign). The location of the sign is on the east side of Highway 48, about 1.5 miles south of Highway 100 and at a future LNG site. Commissioner Lopez moved to approve the Temporary Lease Agreement with The Lamar Companies, Commissioner Wood seconded, and the motion passed unanimously.

3. CRV Terminals, LLC (New Lease)

Mr. Campirano asked that this item be tabled. Commissioner Guerra moved to table this item, Commissioner Cowen seconded, and the motion passed unanimously.

4. R. M. Walsdorf, Inc. **(Release of Lease)**

Mr. Campirano asked that this item be tabled. Commissioner Guerra moved to table this item, Commissioner Cowen seconded, and the motion passed unanimously.

5. R. M. Walsdorf, Inc. **(Authority to negotiate)**

R. M. Walsdorf, Inc. is a current lessee at the Port of Brownsville. The lessee intends is selling its leasehold improvements to CRV Terminals, LLC. The lessee wishes to lease the site formerly leased by 905 / BMW which is approximately 4.033 acres on North Mineral Loop Rd. The purpose for this lease is for construction yard and offices. After discussion, Commissioner Cowen moved to authorize the Staff to negotiate a new lease with R. M. Walsdorf, Inc., Commissioner Lopez seconded, and the motion passed unanimously.

6. Bluewing One, LLC **(Lessor's Agreement - Subordination)**

Bluewing One, LLC under BND Contracts 4153, 4140, 3218 & 3840 has requested the Board's consent to subordinate in favor of Cadence Bank, N.A. for a loan. Proceeds will be used to continue the build out Phase II project on lease located at 10451 Old S.H. 48 BND Contract 4153, build Phase III project located at 10951 Old S.H. 48 BND Contract 4140, and upgrade the rail capabilities at operating facilities BND Contract 3218 and 3840, located at 11700 Old S.H. 48 and 1005 Anchor Road. Commissioner Wood moved to approve the Lessor's Agreement with Cadence Bank, N.A. under BND Contracts 4153, 4140, 3218 & 3840 with Bluewing One, LLC., Commissioner Lopez seconded, and the motion passed unanimously.

7. **Consideration of and Action to adjust the meeting schedule for July 2019 Board meetings.**

Mr. Campirano addressed the Board requesting approval for Staff to adjust the meeting schedule for July 2019 Board meetings. Commissioner Lopez moved to reschedule the first meeting in July to July 10th at 5:30 p.m. and to reschedule the second meeting in July to July 24th at 5:30 p.m., Commissioner Wood seconded, and the motion passed unanimously.

8. **Consideration of and Action to authorize participation with Cameron County in the submission of a CEPRA Grant for Engineering, Planning, Design and Permitting for bank stabilization of property located in Isla Blanca Park on South Padre Island.**

Mr. Campirano addressed the Board requesting authorization to participate with Cameron County in the submission of a CEPRA Grant for Engineering, Planning, Design and Permitting for bank stabilization of property located in Isla Blanca Park on South Padre Island. BND owns property within the Isla Blanca Park on South Padre Island, a portion of which is currently under lease to the Boy Scouts of America for a Sea Scout Camp. The property surrounding the BND boundary is owned by Cameron County and is presently being renovated and park amenities are being upgraded. The current shoreline from the County Boat Ramp to the jetties stabilized area has erosion issues. BND Staff was approached by the County and asked if the Port would participate in a grant application, due July 1st, with them to apply for CEPRA funds to begin work to eliminate the erosion issue. The County estimates the cost of engineering, planning, design and permitting will be approximately \$225,000.00. The CEPRA grant, if awarded, would cover 60% of the cost and the County is requesting Port share in the matching 40% cost share. Based on the estimated cost, the Port's portion of the match would be approximately \$45,000.00. CEPRA funds are controlled through the GLO and they would contract and manage the work if Cameron County and

the Port are successful with the grant application. Cameron County and the BND would also be in line to receive grant funding from CEPRA for the construction phase of the project. The total shoreline area is approximately 450 linear feet, with the BND's portion being 320 linear feet, and the County's portion being 130 linear feet. Joe Vega, of Cameron County, addressed the Board. Commissioner Wood moved to approve authorizing the Staff to participate in the grant application, Commissioner Cowen seconded, and the motion passed unanimously.

9. Consideration of and Action to acknowledge receipt of the independent audits of the financial statements of the District for Fiscal Year Ended December 31, 2018 and of the Retirement Plan for Employees of the Brownsville Navigation District for Fiscal Years Ended December 31, 2018 and 2017.

Ms. Hernandez and Carlos Barrera addressed the Board requesting the acknowledgement of receipt of the independent audit of the financial statements of the District for Fiscal Year Ended December 31, 2018. The District's external audit firm, Carr, Riggs and Ingram, LLC, have completed the audit of the District's financial statements for the Fiscal Year Ended December 31, 2018. Mr. Barrera addressed the Board on some of the specifics of the audit. Commissioner Lopez moved to accept the independent audits as presented by Carr, Riggs & Ingram, Commissioner Wood seconded, and the motion passed unanimously.

Ms. Hernandez reported that Carr, Riggs and Ingram, LLC are also performing the audit of the Retirement Plan for Employees of the Brownsville Navigation District's (the "Plan") financial statements for the Fiscal Years Ended December 31, 2018 and December 31, 2017. The Plan is sponsored and administered by the District. She reported that the field work was completed for these two audits and that the reports were being reviewed internally by the auditors. She expects to have these audits ready for presentation to the Board of Commissioners at the next meeting.

10. Consideration and Action to reject bid received for the purchase of a Pedestal-Mounted Hydraulic Marine Crane.

Mr. Garcia addressed the Board requesting the rejection of the bid received for the purchase of a Pedestal-Mounted Hydraulic Marine Crane. One bid was received by EBI Cranes, LLC. in the amount of \$227,538.00. Payment terms specified in their bid did not meet with the District's specified payment terms. BND Staff asked EBI Cranes, LLC if they could agree to the District's payment terms and they did not accept the terms. Therefore, Staff is requesting that the Board reject this bid and to allow the staff to re-advertise for the purchase. Commissioner Lopez moved to reject the bid received for the purchase of a Pedestal-Mounted Hydraulic Marine Crane from EBI Cranes, LLC due to payment terms not meeting the District's prescribed terms and to authorize Staff to continue the process to seek bids and re-advertise for the purchase, Commissioner Wood seconded, and the motion passed unanimously.

11. Consideration of and Action on request to authorize Staff to advertise for bids on Disposal of Oily Water from the Fishing Harbor Sewer Treatment Plant, and to open bids thereof.

Mr. Garcia addressed the Board requesting authorization for the Staff to advertise for bids for the Disposal of Oily Water from the Fishing Harbor Sewer Treatment Plant, and to open bids thereof. BND Staff is seeking authorization to advertise for bids for the disposal of oily water from the Fishing Harbor Sewer Treatment Plant for consideration to award an annual contract for this service. Commissioner Guerra moved to authorize BND Staff to advertise, and open bids on the

annual contract for the Disposal of Oily Water from the Fishing Harbor Sewer Treatment Plant, Commissioner Wood 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, including but not limited to (i) Trinity Scrap Processors, Inc. and Intercoastal Salvage, Inc. v. Brownsville Navigation District of Cameron County, Texas, (ii) Brownsville Navigation District of Cameron County, Texas vs. Terex MHPS Corp., Konecranes, Inc., Cummins, Inc., Diepa Drahtseilwerk Dietz GMBH & Co. KG, and (iii) Marine Metal, Inc. and Bro-Tex International Metals, LLC vs. Brownsville Navigation District of Cameron County, Texas (§551.071); 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).**

The Chairman then announced that the time was 7:05 p.m. and that the Board would adjourn into executive session.

The Chairman then announced that the time was 8:05 p.m. and that the Board had reconvened in open session.

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

Commissioner Cowen moved to approve the Settlement Agreement and Release of Claims, Contract for Purchase of New Cranes, and Contract for Trade-In of Used Crane with Konecranes, Inc. and Terex MHPS Corp., as discussed in Executive Session, Commissioner Wood seconded, and the motion passed unanimously.

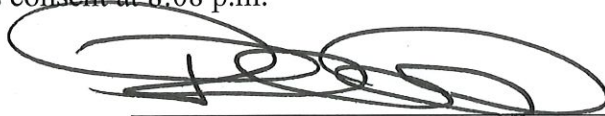
Commissioner Lopez moved to authorize the Port Director and CEO to deliver a letter to Annova LNG, LLC regarding Annova LNG's request for Port property to be designated as conservation area, as discussed in Executive Session, Commissioner Cowen seconded, and the motion passed unanimously.

17. Adjournment.

The meeting was adjourned by unanimous consent at 8:08 p.m.

ATTEST

Secretary



John Reed
Chairman of the Board