

**MINUTES OF A REGULAR MEETING OF THE BOARD OF NAVIGATION AND
CANAL COMMISSIONERS OF THE BROWNSVILLE NAVIGATION DISTRICT OF
CAMERON COUNTY, TEXAS HELD APRIL 22, 2020 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 22, 2020 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: Donna Eymard
Janie Velasquez
Ariel Chavez
Chief Carlos Garcia
Alejandro Villareal

OTHERS PRESENT: Rev. Andreas Lewis
Norma Torres
Jorge de la Colina

1. Meeting Called To Order

The Chairman called the meeting to order at 5:30 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

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 March 18, 2020 and Special Board Meeting of March 27, 2020.

- b. Approval to authorize payments over \$25,000.00:
 1. Action Supply, the amount of \$140,000.00, for Fixed Boom Pedestal Crane;
 2. HDR Engineering INC., the amount of \$14,424.60, for BIH Project Task Order #1, #3 and Dike 5B Relocation Project;
 3. RM Walsdorf, the amount of \$132,768.00, for BND Oil Dock 5 Bulkhead Repairs (ratify);
 4. RM Walsdorf, the amount of \$25,695.00, for BND Oil Dock 5 Bulkhead Repairs;
 5. Terracon, the amount of \$61,026.32, for Project: Former Esco Marine Inc.; and
 6. Vulcan Materials Company, the amount of \$55,385.68, for Crushed Limestone for various projects (ratify).
5. **Presentation of District Funds Investments Report for the period of January 1, 2020 through March 31, 2020.**
6. **Consideration and Action to extend the agreement for Security Services at the Fishing Harbor between the District and American Surveillance for one year.**
7. **Consideration and Action amending the agreement between Annova LNG and the Brownsville Navigation District to increase the Brazos Island Harbor Project cost cap for completion of the PED Phase of the Brazos Island Harbor Channel Improvement Project and the Bend Easing Project.**
8. **Consideration and Action amending the agreement between NEXTDECADE LNG and the Brownsville Navigation District to increase the Brazos Island Harbor Project cost cap for completion of the PED Phase of the Brazos Island Harbor Channel Improvement Project and the Bend Easing Project.**
9. **Consideration and Action to extend Master Agreement for Professional Services with consultant HDR Engineering, Inc. to May 31, 2022, for professional engineering services on current projects, and other related services.**
10. **Consideration and Action to ratify signature by Board Chairman Mr. John Reed accepting Deeds Without Warranty and Release of Easements by the United States Army Corps of Engineers (USACE) of USACE Easement Tracts Nos. 1, 4, 5 and 11.**

After discussion, Mr. Campirano noted that Items 4b1, 4b4, 4b5, 9, and 10 would be considered separately from the rest of the consent agenda. Commissioner Guerra noted that he would be abstaining on Item 4b5.

Commissioner Guerra moved to approve all consent agenda items except for Items 4b1, 4b4, 4b5, 9, and 10, Commissioner Lopez seconded, and the motion passed unanimously.

Mr. Campirano called Item 4b1 for consideration. After discussion regarding the use for the fixed boom pedestal crane, Commissioner Cowen moved to approve Item 4b1, Commissioner Lopez seconded, and the motion passed unanimously.

Mr. Campirano then called Item 4b4 for consideration. After discussion, Commissioner Lopez moved to approve Item 4b4, Commissioner Cowen seconded, and the motion passed unanimously.

Mr. Campirano then called Item 4b5 for consideration. After discussion regarding the nature of Terracon's work, Commissioner Cowen moved to approve Item 4b5, Commissioner Lopez seconded, and the motion passed by a vote of 4-0. Commissioner Guerra abstained.

Mr. Campirano then called Item 9 for consideration. After discussion regarding the proposed Master Agreement and ongoing projects at the Port, Commissioner Cowen moved to approve Item 9, Chairman Reed seconded, and the motion passed by a vote of 3-2 with Commissioner Wood voting Aye, and Commissioner Guerra and Commissioner Lopez voting Nay.

Mr. Campirano then called Item 10 for consideration. After discussion regarding the action required by the USACE, Commissioner Cowen moved to approve Item 10, Commissioner Lopez seconded, and the motion passed unanimously.

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

Mrs. Eymard addressed the Board regarding the following items:

1. American Oxygen Company - AOC (New Lease)

The new lease for American Oxygen Company is to be effective April 22, 2020, for 5 years with three (3) renewal options of five (5) years each. AOC produces and sells industrial gasses, including (but not limited to) Oxygen, Argon, Helium, Nitrogen and Acetylene, among others. It also sells a variety of welding implements and supplies. AOC intends to market these products to regional industrial customers from a retail and distribution facility on the leased premises. AOC will receive and store a variety of gasses in cylinders and tank on-site, and deliver or prepare for customers pickup on the property. Welding and cutting activities will not take place on leased site. The staff recommended that the Board approve and sign the new lease to American Oxygen Company, LLC. Chairman Reed asked staff to inquire about the condition of the buildings and any plans for renovations by AOC. Commissioner Lopez moved to approve the new lease to AOC as presented, Commissioner Cowen seconded, and the motion passed unanimously.

2. Brownsville Shrimp Unloading Dock, LLC (Authority to Negotiate)

Brownsville Shrimp Unloading Dock, LLC. has been established since 2015. They are a shipping and receiving company for shrimp. The purpose of their business is to provide shrimp boat loading. The company is interested in leasing the site formerly leased by Chavez Shrimp. The staff requested the authority to negotiate lease for Brownsville Shrimp Unloading Dock, LLC. for the term of five (5) years with no renewal options. Commissioner Guerra moved to grant staff authority to negotiate a new lease to Brownsville Shrimp Unloading Dock, LLC, Commissioner Lopez seconded, and the motion passed unanimously.

3. Cumberworth Investments, Inc. / Palo Alto Brownsville, LLC (Authority to Negotiate)

Palo Alto Brownsville, LLC is a real estate holding company formed in November 2019 for the sole purpose of holding the title to the building located at 3150 N. Indiana Avenue, which is currently owned by Cumberworth Investments, Inc. They plan to purchase the building from Mr. Cumberworth, refurbish and then sign a long-term lease with Camin Cargo, which is a testing lab for the oil terminals at the Port. Mark Helmke will personally guaranty the lease. On December

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4, 2019 staff came to the board to request authority to negotiate directly with Camin Cargo for the purchase of the building but they have now found someone willing to purchase the property and sublease to them, which is what they wanted initially. Their company does not own any of their other facilities, all are long term leases. Staff is now requesting the Board rescind the authority to negotiate with Camin Cargo and to authorize staff to negotiate with Palo Alto Brownsville, LLC for a new lease and prepare a release of lease to Cumberworth Investments, Inc. once the new lease is signed. The staff recommends that the Board rescind the authority to negotiate with Camin Cargo and approve the authority to negotiate with Palo Alto Brownsville, LLC and release Cumberworth Investments, Inc. once new lease is signed. There is a closing set for this transaction on May 22, 2020. Commissioner Lopez moved to rescind authority to negotiate with Camin Cargo and to grant staff authority to negotiate with Palo Alto Brownsville, LLC for a new lease and to negotiate a release of lease to Cumberworth Investments, Inc., Commissioner Guerra seconded, and the motion passed unanimously.

4. Purata Trawlers, Inc. (New Lease)

This new lease to Purata Trawlers, Inc. is replacing BND Contract #3757 to same lessee. It is to be effective as of March 20, 2020 for five (5) years with one (1) renewal option of five (5) years. It is for the purpose of commercial fishing vessels, unloading and maintenance of ship vessels. The staff recommended that the board approve and sign the new lease to Purata Trawlers, Inc. Commissioner Guerra moved to approve the new lease to Purata Trawlers, Inc., Commissioner Cowen seconded, and the motion carried unanimously.

12. Consideration and Action to authorize staff to submit application for the FY 2020 Port Security Grant Program.

Mrs. Eymard addressed the Board requesting authorization for staff to submit an application for the FY 2020 Port Security Grant Program. Staff is proposing to submit several projects that will support the foundation that has been laid in previous grant year funded projects. Project #1 – Maintenance and Sustainment of Security Technology Systems – The proposed project would include the maintenance and sustainment, through replacement, of systems previously installed using PSGP funds. Est Budget: \$952,665. Project #2 – New Secure Access Point for Port Connector Road – The proposed project would include the purchase of a portable guardhouse and associated area fencing with gates to provide access control capabilities to the Port via the new Port Connector Road Est Budget for Guard House, Guards and Associated Fencing \$482,052.60. Commissioner Cowen moved to approve the submission of the grant application, Commissioner Guerra seconded, and the motion passed unanimously.

13. Consideration and Action on amendment to Lease Agreement No. 4375 with Rio Grande LNG, LLC.

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

14. Consideration and Action on bids received for the 2020 BND Railroad Crossings Materials in the 2020 BND Road Improvements, project, and authorize BND Staff to issue the pertinent purchase orders.

Mr. Chavez addressed the Board requesting that the Board make an award on bids received for the 2020 BND Railroad Crossings Materials in the 2020 BND Road Improvements, project, and authorize BND Staff to issue the pertinent purchase orders. On March 4, 2020 BND

Commissioners authorized Staff to solicit bids on construction and materials for the 2020 BND Road Improvements project, which included several Railroad Crossings for which OmniTRAX and the Brownsville & Rio Grande International Railway (BRG) will be providing the labor and the BND will be providing materials. The Invitation to Bid on the 2020 BND Railroad Crossings Materials was published in the Brownsville Herald on March 10 and 17, 2020, and known railroad material suppliers were invited by email. On April 8, 2020 bids were received from Menard's Railroad Materials, Railworks Trach Systems and HiRail Crossings, with pricing as shown in the itemized bid tabulation. After review of the bids with OmniTRAX and BRG, the recommendation is that BND purchase the materials bid under Alternate #1 by HiRail Crossings in the amount of \$76,647.00 and purchase the rest of the materials from Menard Railroad Materials in the amount of \$119,011.40. Commissioner Cowen moved to award purchase of Alternate #1 materials from HiRail Crossings in the amount of \$76,647.00, to award purchase of the rest of the materials from Menard Railroad Materials in the amount of \$119,011.40, and to authorize BND Staff to issue the pertinent purchase orders for the materials, Commissioner Guerra seconded, and the motion passed unanimously.

15. Consideration and Action on Change Order No. 2 to the Oil Dock #5 Bulkhead Repairs project, for the purpose of adding ultra-high pressure washing and coal-tar epoxy coating of the rusted sheet piles and extending the contract time for that work.

Mr. Chavez addressed the Board requesting approval on Change Order No. 2 to the Oil Dock #5 Bulkhead Repairs project, for the purpose of adding ultra-high pressure washing and coal-tar epoxy coating of the rusted sheet piles and extending the contract time for that work. On September 4, 2019, BND Commissioners awarded the contract on the Oil Dock #5 Bulkhead Repairs project to lowest responsive bidder R.M. Walsdorf, Inc. (Walsdorf) in the amount of \$353,150.00 for the Alternate Bid of Helical Anchors to stabilize the leaning bulkhead between Oil Docks #2 and #5. After discovery of significant rusting and deterioration in the Sheet Piles, on February 19, 2020 BND Commissioners approved Change Order No. 1 for \$3,500.00 to perform Ultrasonic Testing (UT) measurements of the Sheet Piles. Upon review of the measurements, project consulting engineer CH2M recommend pressure washing and coal-tar epoxy coating of the Sheet piles above the water line. Walsdorf has submitted a proposal to perform that work using a 3,500 to 4,000 psi pressure washer for \$15,650.00, which will only remove surface scale and rust but will not remove pitted rust. However, to remove pitted rust down to bare metal, they propose to use an ultra-high pressure washer of 8,000 to 10,000 psi for an additional \$5,500.00, for a total contract price increase of \$21,150.00 to \$377,800.00, and requests 30 days to perform that work. CH2M and BND Staffs concur that the pressure wash should be done with the ultra-high pressure washer to clean down to bare metal. Walsdorf request an additional 30 calendar days to perform this extra work. Change Order #2 would change the contract price and time accordingly. Commissioner Lopez moved to approve Change Order No. 2 to the contract with R.M. Walsdorf, Inc. for the Oil Dock #5 Bulkhead Repairs project, increasing the contract price by \$21,150.00 to \$377,800.00 and extending the contract time by thirty (30) calendar days to May 3, 2020, Commissioner Cowen seconded, and the motion passed unanimously.

16. Consideration and Action to authorize Port Staff to Advertise for Bids on the Oil Dock No. 6 Additional Pipe Bridge project, and to open bids thereof.

Mr. Campirano addressed the Board requesting authorization for Port Staff to Advertise for Bids on the Oil Dock No. 6 Additional Pipe Bridge project, and to open bids thereof. On Dec. 21, 2016, BND Commissioners awarded the Oil Dock No. 6 Construction, Oil Dock No. 3 Fender System

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Replacement & Facility Enhancements, and Maintenance Dredging contract, which was completed in 2019. After additional current and future users came forth requiring additional capacity to connect product pipelines to the new Oil Dock, on March 4, 2020 BND Commissioners accepted a proposal from consultant HDR Engineering, Inc. (HDR) and authorized Task Order #28 to design the two (2) additional pipe bridges and prepare drawings and specifications for bidding and construction of these bridges. HDR stated that they will submit the design, drawings and specification by April 17, 2020. BND Staff is requesting authorization to advertise for bids on the Oil Dock #6 Additional Pipe Bridge, and to open bids once received. At this time the urgency is to build the Pipe Bridge to the North, so the bid will be only for that first bridge. Once authorized, BND Staff will publish an Invitation to Bid in the local newspaper, place the project's Bid Documents on the Port website, and invite known structural contractors by email and/or by phone. Commissioner Lopez moved to authorize BND Staff to prepare the required Invitations to Bid on the Oil Dock #6 Additional Pipe Bridge project, to publish it in the local newspaper as required by BND Purchasing procedures, and to open bids once they are received, Commissioner Guerra seconded, and the motion passed unanimously.

17. Consideration and Action on bids received for the 2020 BND Road Improvements project, and to authorize BND Staff to issue the Notice of Award to the successful bidder.

Mr. Chavez addressed the Board requesting award on bids received for the 2020 BND Road Improvements project, and authorization for BND Staff to issue the Notice of Award to the successful bidder. On March 4, 2020 BND Commissioners authorized Staff to solicit bids on construction and materials for the 2020 BND Road Improvements project, comprised of rehabilitation and/or reconstruction of Chemical Road, and concrete and asphalt paving at the BND Shop Yard and the BND Shop Office Parking Lot. The Invitation to Bid was published in the Brownsville Herald on March 6 and 13, 2020, and known paving contractors were invited by email. On April 8, 2020 bids were received from R.M Walsdorf for \$1,626,771.00, G&T Paving for \$1,938,957.25 and Foremost Paving for \$2,007,978.00. After the bid opening, Walsdorf noticed errors in their bid and requested that Staff allow them to correct the errors, which would increase their bid by \$64,894.00 to \$1,691,665.00. They stated that if correction of the error was not allowed, they would request to withdraw their bid with no prejudice or penalty. After reviewing the request, BND Staff determined that a change in bid unit price after bid opening cannot be allowed. Commissioner Wood asked whether the BND could accept a revised bid from Walsdorf given that their bid was significantly lower than G&T's bid. Commissioner Wood also noted that the error was clearly a scrivener's error. Mr. Irwin noted that Texas law would not allow Walsdorf to amend its bid since the mistake was discovered by Walsdorf after all bids had been opened. Mr. Irwin also noted that, under the circumstances, the BND could allow Walsdorf to withdraw its bid without making a claim on the bid bond and the BND could then award the contract to the next lowest bidder. After discussion, Mr. Rentfro noted that he had a comment that would be better suited for executive session because it is subject to attorney-client privilege. Commissioner Guerra moved to table this item, Commissioner Lopez seconded, and the motion passed unanimously.

18. 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). Adjourn into Executive Session, as authorized by Subchapter D of Chapter 551 of the Government Code to discuss with attorneys pending or contemplated litigation, including The City of Port Isabel, Texas, JJ Zamora, and Martin Cantu vs. Brownsville Navigation District of Cameron County, Texas, 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, including a proposed option to lease to Intercoastal Storage Terminal Facilities, LLC (§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 6:27 p.m. Commissioner Lopez moved to adjourn into executive session, Commissioner Guerra seconded, and the motion passed unanimously.

The Chairman then announced that the time was 7:22 p.m. Commissioner Lopez moved to reconvene in regular session, Commissioner Guerra seconded, and the motion passed unanimously.

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

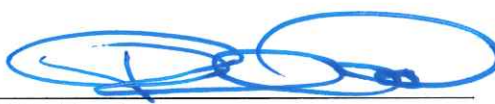
There was none.

20. Adjournment.

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

ATTEST


Secretary


John Reed
Chairman of the Board