

MINUTES OF A REGULAR MEETING OF THE BOARD OF NAVIGATION AND CANAL COMMISSIONERS OF THE BROWNSVILLE NAVIGATION DISTRICT OF CAMERON COUNTY, TEXAS HELD JUNE 3, 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, June 3, 2020 at 5:30 p.m.** The following individuals were present and absent:

PRESENT: John Reed, Chairman
John Wood
Esteban Guerra

ABSENT: Sergio Tito Lopez
Ralph Cowen

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

STAFF MEMBERS: Donna Eymard (via telephone)
Ariel Chavez
Steve Tyndal
Chief Carlos Garcia
Lieutenant Mario Esquivel
Oscar Garcia
Margie Recio
Janie Velasquez

OTHERS PRESENT: Rev. Andreas Lewis
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

The Chairman acknowledged that the reports were in the agenda books. The Board had no questions about 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 May 20, 2020.
- b. Approval to authorize payments over \$25,000.00:

1. Vulcan Materials Company, the amount of \$65,704.77, for Crushed Limestone for Patio 22.

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

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

Mr. Tyndal addressed the Board regarding the following items:

1. Ocean Port Maintenance Inc. (**Authority to negotiate**)

The lease to Ocean Port Maintenance, Inc. BND Contract #3761 expired March 31, 2020. The purpose of the lease is for the operation of shrimp boats. The lease is to take effect April 1, 2020 replacing BND contract #3761. Commissioner Guerra moved to grant authority to negotiate a new lease for the term of five years and an additional five-year option, Commissioner Wood seconded, and the motion passed unanimously.

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

The lease to Guadalupe Ochoa under BND Contract 3755 expired on December 31, 2019. The purpose of the lease is for shrimp unloading, boat tie up and boat repairs. The lease is to take effect January 1, 2020 replacing BND #3755. Commissioner Wood moved to approve the new lease to Guadalupe Ochoa, Commissioner Guerra seconded, and the motion passed unanimously.

3. Lighthouse Docks, Inc. (**New Lease**)

This Lease to Lighthouse Docks, Inc. expired on June 30, 2019, with no additional renewal options, and the lessee is requesting a new lease. The purpose of this lease is for a dock unloading facility for shrimping boats. Commissioner Wood moved to approve the new lease to Lighthouse Docks, Inc., Commissioner Guerra seconded, and the motion passed unanimously.

6. Consideration and Action delaying the implementation of the new lease rates associated with the annual adjustment of the Table of Lease Rental Rates for existing tenants until January 1, 2021.

Mr. Campirano addressed the Board requesting authorization to delay the implementation of the new lease rates associated with the annual adjustment of the Table of Lease Rental Rates for existing tenants until January 1, 2021. The Brownsville Navigation District Lease Policy calls for the annual adjustment of the Table of Lease Rental Rates to be effective July 1st and will be in effect for the entire year through the following June 30th. The basis for the annual adjustment is the Consumer Price Index (CPI) and this year's CPI Adjustment is 1.9%. Given the current economic climate associated with the COVID-19 pandemic, staff is asking the Board to consider delaying any rate adjustments for existing tenants until January 1, 2021. This action will only apply to existing tenants and does not apply to new lease agreements. Commissioner Guerra moved to approve delaying the Lease Rental Rate Adjustment for existing tenants until January 1, 2021, Commissioner Wood seconded, and the motion passed unanimously.

Mr. Campirano then addressed the Board regarding Items 7 through 10, all of which pertain to the retirement plans. Resolutions to be adopted in connection with Items 7 through 10 were in the Board's agenda book.

7. Consideration and Action to amend and restate the Brownsville Navigation District TX Deferred Compensation Plan for Public Employees (Nationwide Plan) and appoint members of Plan Administrator Committee.

The Port currently offers employees two separate 457(b) voluntary retirement plans: one with VALIC and another with Nationwide. Staff is now requesting that the Nationwide Plan be amended and restated in connection with a transition of the plan to a new record keeper, Alliance Benefit Group (whose Administrative Service Agreement has been approved by the Board). The main reason for the amendment and restatement is to change the Nationwide Plan document to the preferred version used by ABG with its record-keeping customers. The few notable substantive changes are to provide that the plan administrator will be a committee and to add provisions to implement the liability protection available to governmental entities under Chapter 609 of the Texas Government Code. Also, the name of the Nationwide Plan will change to the Brownsville Navigation District Voluntary Deferred Compensation Plan. Assets of the Nationwide Plan will be transferred from a group annuity contract issued by Nationwide to custodial accounts established with Matrix Trust Company, without any action required by participants. Also, the resolutions formally appoint those persons who are serving as trustees of the Retirement Plan for Employees of Brownsville Navigation District as members of the committee serving as Plan Administrator of the amended and restated Nationwide Plan.

8. Consideration and Action to amend the Brownsville Navigation District Deferred Compensation Plan (VALIC Plan) and transfer participant elections to the other 457(b) plan sponsored by the Port.

Staff is requesting that the VALIC Plan be amended to prohibit any new contributions from employees after June 30, 2020. Furthermore, staff is requesting that any existing salary deferral elections under the VALIC Plan be transferred to the Nationwide Plan, so that after June 30 any participant contributions that would have otherwise been made to the VALIC Plan will instead be made to the Nationwide Plan. The VALIC Plan will continue to be maintained after June 30, because plan assets are held in individual annuity contracts that the Port has no control over. However, participants in the VALIC Plan may transfer their accounts to the Nationwide Plan if they so choose.

9. Consideration and Action to (1) amend and restate the Retirement Plan for Employees of Brownsville Navigation District (Pension Plan); (2) delegate authority to adopt a future Pension Plan that may be required by the IRS; and (3) to name members of a committee to serve as Plan Administrator.

The Pension Trustees, Bill Fisher, employee benefits attorney, and Hunter Stanco have been working on a way to enhance participation in the 457(b) Plan by BND employees for some time now. The parties felt that offering a matching contribution on participant deferrals in the 457(b) Plan would achieve this goal. After much discussion, Mr. Fisher felt the best place to contribute the matching contributions on those participant deferrals would be to the existing Pension Plan. At the same time, and in connection with the transfer of actuarial and record keeping services for the Pension Plan to ABG, Mr. Fisher has recommended that the Pension Plan be amended and restated and has prepared an amended and restated document in consultation with ABG. In addition to implementing the matching contribution discussed above, the amended and restated version of the Pension Plan make various other expansions (most notably, expanded provisions relating to USERRA make-up contributions and Qualified Domestic Relations Orders), revisions (such as a new hierarchy of default beneficiaries), and non-substantive streamlining (such as the condensed provisions concerning required minimum distributions and Code Section 415 limitations) The amended and restated Pension Plan will be submitted to the IRS for a favorable determination letter. As part of its review the IRS may require some technical amendments be made to the Pension Plan document, and in order to

expedite this process staff is also requesting that the Board authorize the Port Director and CEO or his delegate to adopt any amendment requested by the IRS on behalf of the District. Staff is also requesting the Board name a committee to serve as Plan Administrator, composed of the same persons who serve as Plan Trustees.

10. Consideration and Action to establish two (2) custodial accounts with Matrix Trust Company in connection with the Brownsville Navigation District Voluntary Deferred Compensation Plan and the Retirement Plan for Employees of Brownsville Navigation District.

Matrix Trust Company will serve as the custodian for all the assets of the Brownsville Navigation District Voluntary Deferred Compensation Plan (amended and restated 457(b) plan) and the matching contribution account assets of The Retirement Plan for Employees of Brownsville Navigation District (BND Pension Plan). Staff presented both Custodial Account Agreement documents for the Board's review and consideration. Both documents require approval of the Board, and the agreement for the Pension Plan also requires approval of the Trustees, which will be obtained separately.

Commissioner Wood moved to approve items 7-10 inclusive and authorize the execution of the necessary documents and resolutions as presented to the Board, Commissioner Guerra seconded, and the motion passed unanimously.

11. Consideration and Action to ratify the binding of coverages on the District's Property, Liability and Excess insurance renewal policies and to authorize the payment of the invoices once received.

Mr. Campirano addressed the Board requesting ratification of the binding of coverages on the District's Property Liability and Excess insurance renewal policies and authorization to pay the invoice once received. At the Board meeting of May 20, the Board of Commissioners authorized binding coverage for the Crime, Fiduciary and Cyber Insurance renewals. Ms. Cindi Heffernan from McGriff, Siebels & Williams, Inc advised the board that because of issues of uncertainty in the industry and COVID-19 she had not received all the final bids for the Property and Liability, which also include the Public Officials and Hull coverage insurance renewals. The Board then authorized Mr. Campirano to bind coverage for the remaining policies once staff received the proposal from Ms. Heffernan. She submitted the proposal for the remaining coverages on May 27. **Property Coverage:** McGriff recommends continuation of Property coverage with Lloyds of London Underwriters. The total renewing premium for the coverage of the total exposure of \$294.5 million is \$568,193.40 plus the required taxes and stamping fees. This is a 30.27% increase from the expiring coverage which had a premium of \$436,164. The increase is due to industry-wide increasing rates because of loss history (hurricanes, wildfires, tornados, etc.), the COVID-19 pandemic, and an increase in the District's Total Insured Values of 13.9%. **Liability Coverage:** The Liability of \$20 million is carried in a primary layer of \$10 million and an excess layer of \$10 million. McGriff recommends continuation of the Liability coverage with Lloyds of London Underwriters. The total premium for the Liability renewal is \$77,513.40 plus the required taxes and stamping fees. This is a 50.18% increase from the expiring coverage which had a premium of \$51,615. The increase is due to industry-wide rate increases, and a 36.5% increase in the District's revenues. Commissioner Wood moved to ratify the binding of the insurance coverages proposed by McGriff, Siebels & Williams, Inc., for the premium of \$645,706.80

plus required taxes and stamping fees and to authorize the payment of the invoices once received, Commissioner Guerra seconded, and the motion passed unanimously.

12. Consideration and Action on bids for the removal of an old roof and the installation of a new roof located at 400 Windhaus Rd., Brownsville, TX 78521 and to authorize payment of the invoice when received.

Mr. Garcia addressed the Board requesting the award of bid for the removal of an old roof and the installation of a new roof for the building located at 400 Windhaus Rd., and to authorize payment of the invoice when received. The District requested sealed bids for the removal of an old roof and the installation of a new roof located at 400 Windhaus Rd., Brownsville, TX 78521 with a bid opening date of May 21, 2020. Packets were sent to J&N King Inc., Sechrist-Hall Company, A's Contracting Services, Las Misiones and Pesa Enterprises, Inc. Sechrist-Hall Company did not submit a bid bond and J&N King submitted a personal check instead of a cashier's check for their bid bond. Therefore, staff considers those two bids non-responsive. Commissioner Guerra moved to award the bid to Las Misiones, the lowest responsive bidder, in the amount of \$58,100.00, and to authorize payment of the invoice when received, Commissioner Wood seconded, and the motion passed unanimously.

13. Consideration and Action on proposal from consultant HDR, Inc. for Task Order #3A Amendment on the Brazos Island Harbor Deepening project for the Bend Easing Sampling and Analysis Plan, consisting of the pre-dredge evaluation of the sediment, water, and elutriate of the Brownsville Ship Channel Bend Easing Material.

Mr. Campirano addressed the Board requesting approval of a proposal from consultant HDR, Inc. for Task Order #3A Amendment on the Brazos Island Harbor Deepening project for the Bend Easing Sampling and Analysis Plan, consisting of the pre-dredge evaluation of the sediment, water and elutriate of the Brownsville Ship Channel Bend Easing Material. BND Staff has been working with the U.S. Army Corps of Engineers (USACE) on permitting towards construction of the Brazos Island Harbor (BIH) Deepening project., and with Liquefied Natural Gas (LNG) companies planning to construct terminals at BND. The LNGs involved and BND Staff concurred that there is a need to ease the bend in the Ship Channel. On April 3, 2019 BND Commissioners authorized Task Order #3 for consultant HDR Engineering, Inc. to evaluate the proposed Bend Easing between Ship Channel Stations 0+000 and 7+000. After their review, USACE staff determined that the material to be dredged needed to be sampled and analyzed as per their new procedures. The Sampling and Analysis Plan has been submitted to and approved by USACE Galveston District (SWG) staff. HDR has now submitted Task Order #3A Amendment for the Bend Easing Sampling and Analysis Plan, which will consist of the pre-dredge evaluation of the sediment, water, and elutriate of the material to be dredged from the BIH Bend Easing, for a fee not to exceed \$297,705.00. NextDecade LNG and Annova LNG have expressed their concurrence with the Task Order #3A Amendment. Commissioner Wood moved to authorize the Port Director & C.E.O. to accept the proposal for Task Order #3A Amendment for the Bend Easing Sampling and Analysis Plan on the Brazos Island Harbor Deepening project, for a not-

to-exceed fee of \$297,705.00, and to execute the Task Order Agreement with HDR for those services, Commissioner Guerra seconded, and the motion passed unanimously.

Commissioner Guerra then announced that he would participate in the balance of the meeting via telephone, and excused himself from the room.

Commissioner Guerra then identified himself as participating in the meeting via telephone.

14. Consideration and Action on bids received for the Oil Dock No. 6 North Pipe Bridge project, and to authorize BND Staff to issue the Notice of Award to the successful bidder.

Mr. Chavez addressed the Board regarding bids received for the Oil Dock No. 6 North Pipe Bridge project. On March 4, 2020 the Board authorized Task Order #28 by consultant HDR Engineering, Inc. (HDR) to design the two additional pipe bridges for Oil Dock #6 and prepare drawings and specifications for bidding and construction of the North bridge. HDR submitted the drawings and specifications on April 21, 2020. On April 22, 2020 the Board authorized Staff to publish an Invitation to Bid on the Oil Dock #6 North Pipe Bridge, and to open bids once received. With the design drawings in hand, Staff finalized the Bid Document package with a Base Bid for the concrete-filled pipe piles, support beam and structure for the North Pipe Bridge and an Alternate #1 Bid for installation of the two concrete-filled pipe piles that will support the West Pipe Bridge when installed in the future. Staff published the Invitation to Bid on April 30 and May 7, 2020, posted the project's Bid Document and Drawings on the Port website, and invited known structural contractors by email. Staff hosted the Pre-Bid Meeting by phone on May 14, 2020 with five potential bidders attending. On May 27, 2020, bids were received from R.M. Walsdorf with a \$260,000.00 Base Bid and an \$83,921.50 Alternate #1 Bid for a total bid of \$343,921.50; from Russell Marine with a \$321,050.00 Base Bid and a \$56,000.00 Alternate #1 Bid for a total bid of \$377,050.00; and from A&I Custom Manufacturing with a \$358,500.00 Base Bid and a \$119,000.00 Alternate #1 Bid for a total bid of \$477,500.00. After review, all bids were deemed responsive. Mr. Chavez recommended that the Board award the contract to R.M. Walsdorf for both the base bid and Alternate # 1. Commissioner Wood moved to award the contract to lowest responsive bidder R.M. Walsdorf in the amount of \$343,921.50 including Alternate #1 and to authorize BND Staff to issue the Notice of Award, Commissioner Guerra seconded, and the motion passed unanimously.

15. Consideration and Action authorizing BND Director of Engineering Services Mr. Ariel Chavez II, PE/RPLS and Port Legal Counsel Mr. Daniel Rentfro to execute on behalf of the District the U.S. Army Corps of Engineers' Consent to Easement and License for Keppel AmFELS' 200' X 200' East Quay Dredging project.

Mr. Campirano addressed the Board requesting authorization for Director of Engineering Services, Ariel Chavez II, and Port Legal Counsel, Daniel Rentfro to execute on behalf of the District the U.S. Army Corps of Engineers' Consent to Easement and License for Keppel AmFELS' 200' X 200' East Quay Dredging project. BND lessee Keppel AmFELS's consultant Freese and Nichols, Inc. and BND Engineering Staff have been working with the Real Estate department of the Galveston District of the Army Corps of Engineers (USACE) on permits for their proposed 200 ft. X 200 ft. dredging project at their East Quay. After satisfying all Corps requirements, USACE SWG issued the License document on May 7, 2020, indicating their authorization for placement by Keppel AmFELS of the material from their 200' X 200' East Quay dredging in our Dredged Material Placement Area #7. The document requires signatures by the Port's Director of Engineering Services and by Port Legal Counsel, Mr.

Daniel Rentfro. Commissioner Wood moved to authorize Mr. Chavez and Mr. Rentfro to execute the License document, Commissioner Guerra seconded, and the motion passed unanimously.

16. Consideration and Action on bids received for the 2020 Turning Basin WWTP Clarifier Rehabilitation project, and to authorize BND Staff to issue the Notice of Award to the successful bidder.

Mr. Chavez addressed the Board regarding bids for the 2020 Turning Basin WWTP Clarifier Rehabilitation project. On March 4, 2020 BND Commissioners authorized BND Staff to publish an invitation to bid on the 2020 Turning Basin Wastewater Treatment Plant Clarifier Rehabilitation project, and to open bids once received. After working with BND Staff Certified Wastewater Systems Operator Felipe Cantu and industry contractors, BND Staff developed the Bid Document, published the Invitation to Bid on April 29 and May 6, 2020, posted the project's Bid Document on the Port website, and invited known contractors by email and by phone. BND Staff hosted the Pre-Bid Meeting by phone on May 13, 2020 with six potential bidders attending. Bids were received and opened on May 28, 2020 as follows: from RenoWorks a \$126,182.00 Base Bid and a \$20,143.50 Additive #1 Bid for a total bid of \$146,325.50; from RM Walsdorf a \$175,000.00 Base Bid and a \$68,250.00 Additive #1 Bid for a total bid of \$243,250.00; and from Pederson Construction a \$280,000.00 Base Bid and a \$54,600.00 Additive #1 Bid for a total bid of \$334,600.00. After review, all bids were deemed to be responsive. Mr. Chavez recommended that the Board award the contract to low bidder RenoWorks in the total amount of \$146,325.50, including Additive # 1. After discussion, Commissioner Wood moved to award the contract for the 2020 Turning Basin Wastewater Treatment Plant (WWTP) Clarifier Rehabilitation project to lowest responsive bidder RenoWorks in the amount of \$146,325.50 and authorize BND Staff to issue the Notice of Award, Commissioner Guerra seconded, and the motion passed unanimously.

17. 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).

The Chairman then announced that the time was 6:20 p.m. However, there was no need for an executive session.

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

There was none.

19. Adjournment.

Commissioner Guerra moved to adjourn the meeting, Commissioner Wood seconded, and the motion carried unanimously, adjourning the meeting at 6:20 p.m.

ATTEST



70K Secretary



John Reed
Chairman of the Board