

**FLOOD DIVERSION FINANCE COMMITTEE
AUGUST 22, 2018 — 4:00 PM**

1. MEETING TO ORDER

A meeting of the Flood Diversion Finance Committee was held on Wednesday, August 22, 2018, at 4:00 PM in the City Commission Chambers, Fargo City Hall, with the following present: Fargo City Commissioner Tony Grindberg; Cass County Commissioner Vern Bennett; Fargo Finance Director Kent Costin; Fargo City Assistant Administrator Michael Redlinger; Cass County Commissioner Rick Steen; Moorhead Finance Director Wanda Wagner; Clay County Auditor/Treasurer Lori Johnson; Fargo Mayor Tim Mahoney; Clay County Commissioner Jim Haney; and Cass County Auditor Michael Montplaisir.

Moorhead City Councilman Chuck Hendrickson; Cass County Joint Water Resource District Chairman Dan Jacobson; and Fargo City Commissioner Tony Gehrig were absent.

Robert Cowen, Martin Nicholson and Kim Daily of Jacobs; Rocky Schneider of AE2S; and Katie Bertsch of Ohnstad Twichell were also present.

2. APPROVAL OF MINUTES FROM PREVIOUS MEETING

MOTION, passed

Mr. Mahoney moved and Mr. Steen seconded to approve the minutes from the July 25, 2018, meeting as presented. Motion carried.

3. APPROVAL OF BILLS

Mr. Costin said the bills for August are with Cass County Joint Water Resource District (CCJWRD) for costs associated with the Metro Flood Diversion, OHB levee and in-town levees; Dorsey & Whitney for legal services; Ohnstad Twichell for legal services; Cass County government for dust control on County Highway 17; and Buildings and Grounds Management for lawn service on Diversion-owned lots.

MOTION, passed

Mr. Steen moved and Mr. Costin seconded to approve bills in the amount of \$155,404.93 and to forward them to the Metro Flood Diversion Authority. On roll call vote, the motion carried unanimously.

4. FINANCIAL UPDATE

Mr. Costin reviewed the financial statement for August and said the majority of the payments are procedural and contract payments related to existing obligations.

Mr. Steen asked if the bills presented today were previously approved due to the fact he had not seen them. He said last month, Fargo City Commissioner Dave Piepkorn asked about a certain line item expense at the Diversion Authority meeting and since there were no answers, he withheld his approval. He said he received an inquiry from a resident asking if a moving bill had been paid and he said he wanted to know details about the \$504,000.00 payment to the Cass County Joint Water Resource District.

Mr. Costin said the moving bill was approved last month and paid out of the Water Resources account. He said the \$504,000.00 payment was for a buyout in the Butcher Block Subdivision. He said Cass County handles all of the land purchases then issues a spreadsheet to the Finance Committee.

Robert Cowen of Jacobs said once he sees bills have been approved by the Finance Committee, they show up on the subsequent month summary. He said the pre-approved bills do not go through formal approval.

Mr. Steen said it is confusing that it came up at the Authority meeting and the groups essentially voted twice.

In response to a question from Mr. Bennett asking if a bill could be paid twice, Mr. Costin said there are three or four levels of approval and three or four sets of eyes on each contract payment.

Mr. Grindberg wanted it noted in the minutes there was no motion on the financial update.

5. **PMC UPDATE**

Mr. Cowen reviewed the Program Management Consultant (PMC) report, including the overall program status and the Fiscal Year (FY) 2018 cash budget. He said some terms of the bills are payments for signage and others are consistent with other expenses in previous months.

In response to a question from Mr. Costin asking about the process of adjusting budgets and if there should be an allocation, Mr. Cowen said the Joint Powers Agreement (JPA) denotes the Finance Committee can move those numbers around. He said last month he asked how the Finance Committee wants to proceed on how to balance the contingency or balance other accounts to compensate.

Mr. Costin said the Finance Committee needs a directive and should be notified to make those adjustments and have some detail for stewardship.

Mr. Cowen said the Finance Committee can make a motion to make those adjustments and present them as a draft. He said the FY 2019 cash budget is also coming up so it would be good to tackle those two items at once.

In response to a question from Ms. Wagner asking if it would be more appropriate to address this when the Committee gets new budget numbers, Mr. Montplaisir said the Committee should look at it now before work starts on the 2019 budget.

MOTION, passed

Mr. Montplaisir moved and Mr. Steen seconded that a draft revision for approval of adjustments to line item amounts be available for a vote at the next Finance Committee meeting. On roll call vote, the motion carried unanimously.

6. **CONTRACT EXTENSION WITH FREDRICKSON & BYRON, P.A.**

Mr. Schneider of AE2S reviewed the contract extension regarding the representation by Fredrickson & Byron, P.A. of the Diversion Board of Authority in Minnesota for an additional six months from June 30, 2018 to December 31, 2018. He said the monthly flat fee of \$3,500.00 shall continue to be paid on a monthly basis under the same terms of the prior agreement. He said Fredrickson & Byron suggested since the process is moving into the funding request phase and given the uncertain times, they want to develop a two-year bonding cycle plan through the end of the year, which they feel is safer.

Mr. Steen said if Fredrickson & Byron is the lobbyist, the Committee should be getting updates and reports from them. He said he does not recall anyone reporting what Fredrickson & Byron has done for the Authority.

Mr. Schneider said Fredrickson & Byron gives information through public outreach and has done activities with Moorhead and Clay County because it is a Minnesota effort. He said they have been getting more visibility in Minnesota.

Mr. Steen said he would like to know what the Authority is getting for the money paid to Fredrickson & Byron and hear what they are supposed to be doing.

Mr. Schneider said Moorhead Mayor Del Rae Williams asked for a lobbyist on the Minnesota side, and he will request that Fredrickson & Byron give regular progress reports. Mr. Mahoney said Matt Chiller of Jacobs, the Diversion Authority's lobbyist in Washington, gives the Authority weekly or monthly reports and it would nice to get some feedback from the Minnesota group.

In response to a question from Mr. Mahoney asking if anyone on the Moorhead side has seen reports from Fredrickson & Byron, Mr. Haney and Ms. Johnson both said they had not.

MOTION, passed

Mr. Mahoney moved and Mr. Redlinger seconded to approve the contract extension with Fredrickson & Byron, P.A. On roll call vote, all the members voted aye, except Mr. Steen who voted nay and the motion was declared carried.

7. POLICY ON APPROVAL OF CONTRACTS

Katie Bertsch, Ohnstad Twichell, gave an overview of the Executive Summary of Procedure for Approval of Metro Flood Diversion Authority Contracts. She said there are two types of contracts and changes: a Master Services Agreement provides generalities, such as who the parties are, what they are going to charge and a description of work. She said the other type is a traditional construction contract, which lays out all the terms and the Authority work directive is attached with a Master Services Agreement that defines specific roles. She said a task order is agreed upon by both parties about time and costs and a directive authority can give authority to a service provider, but it is not agreed. She said once terms are agreed, it becomes a task order. She said with construction contracts, if there is a change in schedule or expenses, it is a change order. She said if there is a work change directive that does not have a negotiated price and once it is set, then it becomes a change order. She said statutory legislation needs to be incorporated regarding bidding in North Dakota. She said the state raised the allowance for entering bidding from \$100,000.00 to \$150,000.00. In Section 5c2, change orders in construction contracts allows the Co-Executive Directors to approve changes of \$10,000.00. She said Section 5e4 deals with work change directives of \$10,000.00 or less and Sections 5f2 and 5g2 deal with master service agreements of \$150,000.00 or less or an authority work directive of \$150,000.00 or less. She asked for feedback from the Finance Committee, in particular with work change directives. She said it is complicated with turnaround times, and she asked if the Committee could direct limits. She said \$10,000.00 changes are insignificant when looking at large contracts such as this, and she suggests a limit of \$25,000.00 to \$50,000.00

Mr. Steen said \$10,000.00 seems low and \$50,000.00 sounds more reasonable in a project this size.

Mr. Costin said there has been consultation with program management staff about what is an appropriate amount and they should weigh in on what the amount should be. He said there have been many P3 meetings and discussions about moving decisions quickly and having a streamlined protocol so as not to trigger delays. He said the limits should be set as reasonably high as possible due to the fact it has a direct impact on the P3 performance.

Mr. Steen asked what is appropriate for the phase the project is currently in and the amounts should be for where we are now. He said the amounts can be raised; however, they need to be reasonable.

Mr. Redlinger said the Committee is trying to balance accountability to responsiveness. He said this is being decided by a resolution, which can be changed. He said if the Committee can make it easier now, the future Executive Director can make those decisions. He said the Committee can receive it today and act on it next month; however, the sentiment is more flexibility is going to be wanted later. He said this is not set in stone, and he does not want to paralyze the effort. If the

limit is \$50,000.00 to \$100,000.00 and then require consultation with the Chairman of the Finance Committee for anything above \$100,000.00, that shows some visibility.

Mr. Steen suggested a proposed policy change to \$50,000.00 to the two pieces of the contract change orders.

MOTION, passed

Mr. Steen moved and Mr. Mahoney seconded to approve the policy on approval of contracts. On roll call vote, the motion carried unanimously.

8. RECOMMENDED CONTRACTING ACTIONS

Kim Daily of Jacobs, said Task Order 3 in the amount of \$107,000.00 will create a basis of cost estimates with the U.S. Army Corps of Engineers and in-town levees to move forward the P3 process. She said Jacobs went back to the books and worked through some adjustments that will bring all components together to move forward, to adjust the cost estimate based on risk assessment, determine an appropriate contingency and to determine soft costs. She said Jacobs is ready to move forward if the Board approves the Task Order.

Mr. Steen said he has concerns and one of the big risks is exactly what project will it be. He said the Committee can guess; however, the Committee has been wrong in the past and the question is will there be a permit or a project. He said the meeting on September 11th might be the appropriate time to discuss this issue and at this time, he is hesitant to approve another task order.

Mr. Mahoney said he thinks Plan B will move forward. He said the risk is we have to talk to somebody about money and Minnesota has been told firmer numbers will be available for them by fall. He said the Committee has to take some leaps of faith to move forward. He said there have been in-town savings, and this project has been sitting idle for five months. He said he talked to the Minnesota DNR and is confident the environmental aspect of Plan B will be met. He said he sees the permit coming from the DNR if the environmental impact statement is favorable.

Mr. Mahoney said he expects to see a final number after work is done on the Task Order 3 and Ms. Daily assured him there would be a number. Mr. Mahoney said there are minor adjustments to the alignment which are broad-based but still relevant whether it is Plan A or Plan B.

Mr. Steen said with either Plan A or Plan B, the project is different. He said the original plan was at risk of use every 1 to 5 years and now it is once every 20 years, therefore that changes the parameters of the project. He said low water crossings should also be evaluated.

MOTION, passed

Mr. Mahoney moved and Mr. Costin seconded to approve Task Order 3 in the amount of \$107,000.00 and to forward the recommendation to the Metro Flood Diversion Authority. On roll call vote, all the members present voted aye, except Mr. Steen voted nay, and the motion was declared carried.

9. LAND REPORT

Rocky Schneider of AE2S said there was not a Land Management Committee meeting today and everything is on hold. He said there is a lot of anxiety knowing things need to start.

Mr. Steen reminded the group the Diversion Authority will vote tomorrow to replace Oxbow Mayor Jim Nyhof on the Land Management Committee with Horace Mayor Kory Peterson. Mr. Peterson will be a non-voting member.

10. OTHER BUSINESS

No other business to discuss.

11. NEXT MEETINGS

The next meetings are scheduled for September 11th at 4:00 PM and September 26th at 4:00 PM.

12. ADJOURNMENT

MOTION, passed

Mr. Steen moved, Mr. Redlinger seconded and all were in favor. The meeting adjourned at 4:49 PM.

Minutes prepared by Dianna Baumann, Principal Office Associate, Fargo City Commission