

**FLOOD DIVERSION FINANCE COMMITTEE
AUGUST 21, 2019—4:00 PM**

1. MEETING TO ORDER

A meeting of the Flood Diversion Finance Committee was held on Wednesday, August 21, 2019, at 4:00 PM in the River Room, Fargo City Hall, with the following present: Fargo Finance Director Kent Costin; Clay County Commissioner Jim Haney; Moorhead City Councilman Chuck Hendrickson; Cass County Joint Water Resource District Chairman Dan Jacobson; Fargo City Mayor Tim Mahoney; Moorhead Finance Director Karla McCall; Cass County Auditor Michael Montplaisir; Fargo City Assistant Administrator Michael Redlinger; and Cass County Commissioner Rick Steen. Fargo City Commissioner Tony Grindberg; Fargo City Commissioner Tony Gehrig; Clay County Auditor/Treasurer Lori Johnson; and Cass County Commissioner Chad Peterson were absent.

Kim Daily and Martin Nicholson of Jacobs; John Shockley of Ohnstad Twichell; Nathan Boerboom of the City of Fargo; and Eric Dodds of AE2S were also present.

2. APPROVAL OF MINUTES FROM PREVIOUS MEETING

MOTION, passed

Mr. Montplaisir moved and Mr. Henrickson seconded to approve the minutes from the July 24, 2019, meeting as presented. Motion carried.

Mr. Redlinger arrived for the remainder of the meeting.

3. APPROVAL OF BILLS

MOTION, passed

Mr. Montplaisir moved and Mr. Costin seconded to approve the bills in the amount of \$660,612.06, 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 report for July. About \$37.3 million has been expended from the FY 2019 budget, and the total disbursed for the project to date is \$491,031,490. The net position is \$91.2 million.

Mr. Costin said he recently attended a fraud seminar through Wells Fargo, and he wonders if payment information and the level of detail on vendors might open the Diversion Authority up as a potential target to hackers. Mr. Costin suggested forming a sub-committee to determine the appropriate level of financial information to disseminate publicly through the monthly reports.

Ms. McCall said the Diversion Authority is obligated to be transparent to the public about financial activities.

Mr. Steen said the vendor payments are required by law to be listed in the newspaper. Mr. Costin agreed but said a sub-committee could still study the issue.

MOTION, passed

Ms. McCall moved and Mr. Redlinger seconded to receive and file the Financial Report for July as presented. Motion carried.

5. PMC FINANCIAL REPORT

Kim Daily of Jacobs reviewed the Program Management Consultant (PMC) financial report, including the overall program status and the FY 2019 cash budget. The remaining program budget is \$2.28 billion.

MOTION, passed

Mr. Montplaisir moved and Mr. Costin seconded to receive and file the PMC Financial Report for July as presented. Motion carried.

Mr. Steen said there has been some discussion on the monthly financial reports generated by the fiscal agent and the PMC and the possibility of combining the reports to reduce redundancy.

Mr. Costin said the fiscal agent report can be discontinued as it was initiated with the ledger account system the Diversion Authority used at inception. The fiscal agent report does show revenues, which could be incorporated into the PMC financial report going forward.

Mr. Steen said if there is no opposition, Mr. Costin and Ms. Daily can work on combining the financial reports into a single document.

6. CONTRACTING ACTIONS

Attorney John Shockley was present to review the Diversion Board approval contracting actions for the month.

Task Order 6

Mr. Shockley said Task Order 6 pertains to restarting the Public-Private Partnership (P3) procurement process, which was halted in 2017 due to a federal injunction. The modification of the federal injunction in April 2019 has allowed the P3 process to proceed again.

Mr. Shockley said the task order is governed by the Master Services Agreement between the Diversion Authority and Jacobs, and costs are included in the project budget and overall financial plan.

The term of the task order is approximately six years, through the end of project completion. The general functions of the task order will be to resume the P3 procurement, assist in the selection of a preferred proposer, assist in the execution of a project agreement with a developer, assist with administering the project agreement, and provide oversight.

Mr. Shockley described the differences between traditional and P3 project deliveries and reviewed a list of specific work tasks included in the task order, including P3 Procurement Support, P3 Contract Award Support, Issuance of Notices to Proceed (NTP), Monitoring of Activities During Design and Construction, Management of Payment Mechanisms, Design & Construction Period Completions, and Management of Utilities & Third-Party

Agreements.

Mr. Shockley said the estimated budget for Task Order 6 is \$43.7 million.

Ms. McCall asked if the task order is incorporated in the 2019 budget. Martin Nicholson of Jacobs said the portion of Task Order 6 that will come out of the 2019 budget is about \$2.4 million. The total task order amount will be expended over the course of approximately six years, with the majority expended after the P3 bids.

Mr. Shockley said it is important to have the P3 bids in place before the next legislative session to provide more concrete figures on project costs, as requested by legislators.

MOTION, passed

Dr. Mahoney moved and Mr. Redlinger seconded to approve Task Order 6 with Jacobs as presented, and to forward the recommendation to the Metro Flood Diversion Authority. On roll call vote, the motion carried unanimously.

Ashurst Work Order No. 6

Mr. Shockley said Ashurst Work Order No. 6 also pertains to re-starting the P3 process. Ashurst provides legal support to the Diversion Authority for P3-related aspects to the project, limited to items specified in work orders and authorized by the Diversion Authority.

Mr. Shockley said after negotiations, Ashurst has agreed to hold rates to what they were three years ago. Mr. Shockley noted that the hourly rates are substantially higher than what is seen locally; consequently, Ashurst only performs work as requested by the Diversion Authority, on an as-needed basis.

Mr. Steen asked when to expect the re-engagement of Ashurst in the P3 process. Mr. Shockley said the first requested activity will be in September, with larger amounts of work in October. Some of the work is required to update documents to reflect changes from the implementation of Plan B, and some work is required for unresolved issues from developers that existed before the federal injunction halted work on the P3 process.

MOTION, passed

Dr. Mahoney moved and Mr. Redlinger seconded to approve Ashurst, LLP Work Order No. 6 as presented, and to forward the recommendation to the Metro Flood Diversion Authority. On roll call vote, the motion carried unanimously.

Mr. Steen asked what the approximate dollar amount will be for a forthcoming task order with Houston-Moore Group. Mr. Shockley estimated the task order will be in the range of \$10-12 million for the task order that pertains to the diversion channel.

Ms. Daily reviewed the Co-Executive Director contracting actions.

There were no Cass County Joint Water Resource District approved contracting actions.

7. SRF LOAN APPLICATION

Mr. Shockley said he is in the process of developing a State Revolving Fund (SRF) loan application. As part of an initial review, about \$50 million has been identified that could be eligible to be covered through the loan program. SRF loans can have terms up to 30-

years, with a 2% interest rate, which includes a .5% administration fee.

Mr. Shockley said the City of Minot has also been pushing to include utility crossings as an eligible loan project. If utility crossings are approved as eligible expenses, the Diversion Authority may be able to request up to \$150 million.

Mr. Shockley said there are a lot of administrative, technical, and timing issues to work through on the application, which will be brought back for approval at a subsequent meeting.

Mr. Costin noted that there is no formal close on the SRF loan transaction at the front end; it is essentially an open line of credit that can be drawn down as needed. The state has approximately \$700 million available in funds for the SRF loan program.

8. **FARGO MAINTENANCE RESOLUTION**

City of Fargo Engineer Nathan Boerboom presented a resolution to allow Fargo to takeover maintenance of some project elements located within city limits, and to allow Fargo to request reimbursement for expenses.

Mr. Boerboom said the activities will include activities such as mowing levees, maintaining lift stations, and monitoring and cleaning the lifts stations.

MOTION, passed

Mr. Jacobson moved and Mr. Montplaisir seconded to approve Resolution Requesting that the City of Fargo Undertake Maintenance of Miscellaneous Project Elements Located within the City of Fargo and Authorizing the Reimbursement of Such Maintenance Costs and Expenses as presented, and to forward the recommendation to the Metro Flood Diversion Authority. Motion carried.

9. **LAND ACQUISITION DIRECTIVES**

Eric Dodds of AE2S presented two Land Acquisition Directives (LADs) for approval. Once approved by the Finance Committee, they will go to the Cass County Joint Water Resource District for approval.

Mr. Dodds said the first LAD is for North Dakota acquisitions primarily needed for the western tieback, in addition to several opportunistic acquisitions.

Mr. Dodds said the second LAD is for Minnesota acquisitions, which will ultimately be acquired by the newly created Moorhead-Clay County Joint Powers Authority. The majority of these acquisitions are for environmental monitoring easements.

MOTION, passed

Mr. Hendrickson moved and Mr. Haney seconded to approve LAD-00038 REV-02 and LAD-MN-001 REV-01 as presented. On roll call vote, the motion carried unanimously.

10. **PROPERTY STATUS REPORT**

Mr. Dodds said over 300 properties have been acquired for the project to-date, and a great deal of progress has been made on acquisitions for the channel. This is a critical time for negotiations as the goal is to have all the properties acquired for the channel by

the spring of 2020; about half of the properties have been acquired at this time.

11. MEMORANDUM OF UNDERSTANDING WITH CASS COUNTY

Mr. Shockley said an Interim Memorandum of Understanding (MOU) between Cass County and the Diversion Authority has been approved by the Cass County Commission. The MOU relates to an interim agreement for Cass County to provide payroll, health benefits, and other miscellaneous employment benefits to the Executive Director for the Diversion Authority, as an offer has been extended to Joel Paulsen for the position.

Mr. Shockley said the concept of establishing a co-employer relationship under ND law is being studied at this time. A license and application needs to be filed with the ND Attorney General and it will take approximately six months to work through and finalize the agreement. The MOU presented today is a temporary agreement, and a final MOU will be presented once it is available.

MOTION, passed

Dr. Mahoney moved and Mr. Haney seconded to approve Interim Memorandum of Understanding by and between Cass County, North Dakota and the Metro Flood Diversion Authority as presented, and to forward the recommendation to the Metro Flood Diversion Authority. On roll call vote, the motion carried unanimously.

12. NEXT MEETING

The next meeting is scheduled for September 25th at 4:00 PM.

13. ADJOURNMENT

MOTION, passed

On motion by Mr. Montplaisir, seconded by Mr. Hendrickson and all in favor, the meeting was adjourned at 5:05 PM.