

**METRO FLOOD DIVERSION AUTHORITY
AUGUST 22, 2019—3:30 PM**

1. MEETING TO ORDER

A meeting of the Metro Flood Diversion Authority was held Thursday, August 22, 2019, at 3:30 PM in the Fargo City Commission Chambers with the following members present: Cass County Commissioner Mary Scherling; Cass County Commissioner Chad Peterson; Cass County Commissioner Rick Steen; Clay County Commissioner Kevin Campbell; Clay County Commissioner Grant Weyland; Fargo City Mayor Tim Mahoney; Fargo City Commissioner Tony Grindberg; Moorhead City Mayor Johnathan Judd; Moorhead City Council Member Chuck Hendrickson; Moorhead City Council Member Shelly Carlson; Cass County Joint Water Resource District Manager Rodger Olson; and West Fargo City Commissioner Mike Thorstad. Fargo City Commissioner Dave Piepkorn was absent.

2. MINUTES APPROVED

MOTION, passed

Mr. Steen moved and Mr. Weyland seconded to approve the minutes from the special meetings held July 17, 2019 and August 8, 2019, as presented. Motion carried.

3. AGENDA ORDER

MOTION, passed

Mr. Campbell moved and Mr. Steen seconded to approve the order of the agenda with the following changes: add Project Cost Share Agreement with Horace under Administrative/Legal update and move the Finance Committee report after the Administrative/Legal update. Motion carried.

4. MANAGEMENT UPDATE

Kim Daily from Jacobs said the expenditures-to-date are \$491,031,490, actual project cost-to-date is \$474,480,538, and \$37,298,470 has been paid-to-date from the FY2019 cash budget. She reviewed contract actions approved by the Co-Executive Directors. She provided an update on activities and accomplishments over the last month, which include work on the 2nd Street South flood mitigation, Oxbow pump station, and home demolition and removal projects; approval of 45 appraisals primarily for the channel and for early/opportunistic acquisitions; acquisition of five parcels and signing of five purchase agreements; Request for Proposals (RFP) for appraisal work for the Red River control structure, Western Tieback levee, I-29 road raise, and various upstream properties; securing rights-of-entry to support I-29 road raise and Southern Embankment design; support for initial meetings of the Minnesota lands acquiring entity; and continued support for the NDSU Ag Impacts study.

Short-term priorities include confirmation of the P3 proposers' re-mobilization schedule; finalization of interim funding and financial strategy; development of the FY2020 cash budget; coordination of upstream property rights; mitigation requirements with North Dakota State Engineer's Office; continuation to secure right-of-entry for the Southern Embankment; initiate land acquisition activities in Minnesota; appraisal work for the Western Tieback levee and Red River control structure; and production of a 30-minute video to air on public access television.

Long-term priorities over the next six months include reactivation of the P3 procurement; update program reporting of budget and schedule; solidify upstream structure mitigation requirements in coordination with permitting agencies; substantial completion of the 2nd Street South and Main Avenue pump station project; and negotiation on the scope for Phase 2 of the Flowage Easement Valuation.

5. CORPS OF ENGINEERS UPDATE

Terry Williams, Project Manager from the Corps of Engineers, provided an update, which included excavation of the Diversion inlet structure construction site; issuance of RFPs for the Wild Rice River structure with an anticipated contract award in November; construction of a physical model of the Red River structure design; geotechnical borings and ongoing design to incorporate Plan B into the Southern Embankment; and cultural resources mitigation of two archaeological sites along the Diversion channel.

Mr. Grindberg asked about the timeline for the work being done by the Corps. Ms. Williams said they are meeting their goals and are on schedule. She said work is getting back on track and next year there will be more construction on the Corps projects.

6. ADMINITRATIVE/LEGAL UPDATE*SRF Loan Application*

Attorney John Shockley said part of the financing package for the project will include loans. He is working on an application through the North Dakota revolving loan program, which will be part of the agenda next month for board consideration.

Executive Director Employment Agreement

Mr. Shockley said a successful employment agreement was reached with Joel Paulsen to serve as Executive Director for the Metro Flood Diversion Authority. The agreement is for a three-year term effective September 1, 2019, and a salary of \$195,000 per year with benefit and retirement packages to be provided through Cass County. He will be allowed the use of any vehicles that are part of the Cass County motor pool, and will be provided with a cell or smart phone at no cost to the employee.

MOTION, passed

Mr. Olson moved and Mr. Campbell seconded to approve the employment agreement with Joel Paulsen as Executive Director of the Metro Flood Diversion Authority. Discussion: Mr. Peterson asked about Mr. Paulsen's other duties as President of the North Dakota State University Chapter of Engineers without Borders, USA and City Engineer for Middle River, Minnesota. Mr. Shockley said the agreement includes limitations on these duties and includes language that his full focus is his role as Executive Director for the Diversion Authority. On roll call vote, the motion carried unanimously.

Resolution – Fargo to Undertake Maintenance of Certain Project Elements

Mr. Shockley said a resolution has been drafted requesting the City of Fargo to maintain certain miscellaneous project elements within Fargo, i.e. mowing and electricity, which would be billed and reimbursed by the Diversion Authority. He said the resolution formalizes the relationship and identifies project elements.

MOTION, passed

Mr. Steen moved and Mr. Judd seconded to adopt the 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. On roll call vote, the motion carried unanimously.

New Public Outreach Committee Member

Mr. Shockley said there is a vacancy on the Public Outreach Committee as a result of Joel Paulsen resigning from the Diversion Authority and being hired as Executive Director. The City of Moorhead recommends Council Member Shelly Carlson be appointed to the committee.

MOTION, passed

Mr. Campbell moved and Mr. Judd seconded to appoint Moorhead City Council Member Shelly Carlson to the Public Outreach Committee. On roll call vote, the motion carried unanimously.

Memorandum of Understanding with Cass County

Mr. Shockley said discussions were held about how to administer human resource related services for Diversion Authority employees. He said an interim Memorandum of Understanding (MOU) between the Metro Flood Diversion Authority and Cass County was created for human resource related services for a six-month period through December 31, 2019. A long-term MOU will be drafted after some administrative items are finalized. A new state law will allow Cass County and the Diversion Authority to be co-employers. He said some minor changes were suggested at the Finance Committee, which will be incorporated into the document.

MOTION, passed

Mr. Steen moved and Mr. Peterson seconded to approve the interim Memorandum of Understanding between Cass County and the Metro Flood Diversion Authority for human resource related services. On roll call vote, the motion carried unanimously.

Project Cost Share Agreement with Horace

Mr. Shockley said a cost share agreement between the Metro Flood Diversion Authority and the City of Horace has been drafted. The agreement outlines the Diversion Authority infrastructure fund and cost share responsibilities of both entities for public infrastructure projects undertaken by Horace. The intent is for the Diversion Authority to share in expenses related to infrastructure that may potentially be affected by the project and mitigate the impact of project activities within and adjacent to the city. The Horace City Council plans to approve the cost share agreement next week during a special meeting of the council.

The Diversion Authority will contribute \$5 million to the infrastructure fund and will contribute 80% of infrastructure project costs and Horace will contribute a 20% match. As outlined in the agreement, the city may secure funding from other sources to help with financing, including through the State Water Commission.

Mr. Grindberg asked where the \$5 million will come from to cover this expense. Martin Nicholson from Jacobs said the cost will be paid from the mitigation line item that is already included in the project budget.

MOTION, passed

Mr. Campbell moved and Mr. Mahoney seconded to approve the Project Cost Share Agreement with the City of Horace. On roll call vote, the motion carried unanimously.

7. FINANCE UPDATE*Committee report*

The Finance Committee met on August 21st. Mr. Steen referred to the financial report and said the net cash position is \$91,176,919.

MOTION, passed

Mr. Steen moved and Mr. Peterson seconded to accept the financial report as presented. On roll call vote, the motion carried unanimously.

Voucher approval

The bills for the month are with Cass County Joint Water Resource District (CCJWRD) for costs associated with the Metro Flood Diversion right-of-entry and land acquisitions, OHB levee, and in-town levees; Dorsey & Whitney for legal services; and Ohnstad Twichell, P.C. for legal services.

MOTION, passed

Mr. Steen moved and Mr. Grindberg seconded to approve the vouchers received through August 16, 2019, in the amount of \$660,612.06. On roll call vote, the motion carried unanimously.

Task Order 6—P3 Procurement Support, Design and Construction Contract Monitoring Activities

Mr. Shockley discussed Task Order 6 budgeted in the amount of \$43,710,115 with Jacobs for Public-Private Partnership (P3) procurement services, which will restart the process since the federal injunction was modified this year to allow P3 work to proceed. The work included in Task Order 6 is governed by the Master Services Agreement (MSA) with Jacobs that was approved by the Diversion Authority in January of 2017.

Mr. Shockley said general functions of the task order are to resume the P3 procurement, assist in selection of the preferred proposer, assist in execution of a project agreement with a developer, assist with administration of the project agreement, and provide oversight. All costs are included within the project cost estimate.

Mr. Shockley discussed the differences between traditional and P3 project deliveries. He outlined the scope of work tasks within Task Order 6, which include P3 procurement support, P3 contract award support, issuance of notices to proceed, monitoring of activities during design and construction, management of payment mechanisms, design and construction period completions, and management of utilities and third-party agreements.

Mr. Olson asked if this task order with Jacobs will create competition among local engineering firms. Mr. Shockley said Task Order 6 is for work associated with the Diversion channel and there will be a need for local services to be provided. He said Jacobs has experience with P3 projects, and it is important to have that knowledge to ensure the requirements are met and in compliance.

Mr. Shockley said AE2S is one of the sub-consultants working with Jacobs, and is a local company that is handling the land acquisitions for the project. Mr. Mahoney anticipates the new Executive Director will do his best to ensure as much of the work associated with the project will stay locally. Mr. Shockley said there will be an additional task order with local consultant Houston-Moore Group (HMG) for the board to consider in the next few months.

MOTION, passed

Mr. Mahoney moved and Mr. Peterson seconded to approve Task Order 6 with Jacobs for P3 procurement services. On roll call vote, the motion carried unanimously.

Mr. Steen left the meeting.

Work Order No. 6

Mr. Shockley discussed Work Order No. 6 in the amount of \$3,900,000 with Ashurst LLP for legal advice and support in relation to P3 aspects of the project. He said the firm is knowledgeable in P3 projects and may be needed during the P3 process. Ashurst has agreed not to increase their hourly rates as quoted a few years ago, and the firm will only be used when a request for work is needed. The effective dates of the work order are July 1, 2019, through December 31, 2020.

MOTION, passed

Mr. Grindberg moved and Mr. Judd seconded to approve Work Order No. 6 with Ashurst LLP. On roll call vote, the motion carried unanimously.

Mr. Grindberg left the meeting.

8. PUBLIC OUTREACH UPDATECommittee report

The Public Outreach Committee did not meet this month. Mr. Olson said outreach regarding the Conditional Letter of Map Revision (CLOMR) is important to keep the public informed.

Mrs. Scherling said there still appears to be some confusion with the public regarding Plan A and Plan B for the Diversion project. Mr. Olson said the committee has discussed holding public meetings to address this issue.

MetroCOG Recreation Plan

Joni Giese, SRF Consulting Group, was present to discuss the Fargo-Moorhead Diversion recreation plan. The Metropolitan Council of Governments (MetroCOG) and the Metro Flood Diversion Authority teamed up with SRF Consulting, Contour Design Studio, and HR&A to develop the Fargo-Moorhead Recreation Plan. The diversion project will provide flood protection, but also has the potential to provide a wide variety of year-around recreation activities. Plan goals include restoring native plants and creating a habitat, providing an interconnected system of recreational features including trails, and complementing adjacent existing or planned land uses. She discussed the operations and maintenance funding for the recreation project, which will include traditional grants and public funding. She said recreation activities may also generate revenue.

9. LAND MANAGEMENTCommittee report

The Land Management Committee did not meet this month as there were no action items to consider. Mrs. Scherling said work continues with land acquisitions and appraisals.

Eric Dodds from AE2S said 300 parcels have been acquired to date, and the next few months will be critical with negotiations on certain properties needed for the project.

Mr. Campbell and Mr. Judd said the Moorhead-Clay County Joint Powers Authority (MCCJPA) has held its first two meetings to begin the process of acquiring the necessary property rights in Minnesota for the project.

Property Acquisition Status Report

The Property Acquisition Status Report is updated monthly and shows the status of all parcels required for the project. The information is helpful to understand all the land purchases taking place and to monitor their progress.

10. NEXT MEETING DATE

The next meeting is scheduled for Thursday, September 26, 2019.

11. ADJOURNMENT***MOTION, passed***

On motion by Mr. Peterson, seconded by Mr. Campbell, and all voting in favor, the meeting was adjourned at 4:54 PM.