

Metro Flood Diversion Authority Finance Committee Meeting Minutes

4:00 P.M. – August 23, 2023

City of Fargo Commission Chambers

A regular meeting of the Metro Flood Diversion Authority Finance Committee was held on August 23, 2023. The following members were present: Bernie Dardis, Mayor, City of West Fargo; Dr. Tim Mahoney, Mayor, City of Fargo; Rick Steen, Cass County Joint Water Resource District; Susan Thompson, interim Finance Director, City of Fargo; Lori Johnson, Clay County Auditor/Treasurer; Mike Redlinger, Administrator, City of Fargo; Tony Grindberg, Cass County Commissioner; Dave Piepkorn, Fargo City Commissioner; Shelly Carlson, Mayor, City of Moorhead; Mike Rietz, City of Moorhead Assistant City Manager and Brandy Madrigga, Cass County Finance Director.

Member(s) absent: Chad Peterson, Cass County Commissioner.

1. CALL TO ORDER

Mayor Dardis called the meeting to order at 4:00 PM. Roll call was taken, and a quorum was present.

2. APPROVE MINUTES FROM THE JULY 2023 MEETING

MOTION PASSED

Mayor Carlson moved to approve the minutes from the July 2023, meeting and Mr. Steen seconded the motion. On a voice vote, the motion carried.

3. APPROVE ORDER OF AGENDA

MOTION PASSED

Mayor Mahoney moved to approve the order of the agenda and Mr. Steen seconded the motion. On a voice vote, the motion carried.

4. APPROVAL OF BILLS

Ms. Thompson reported that the bills payable through August 15, 2023, total \$9,724,134 and are payable to the usual vendors with the largest being Cass and Clay counties.

MOTION PASSED

Mr. Steen moved to approve the bills as presented and Mr. Grindberg seconded the motion. On a roll call vote, the motion carried.

5. FINANCIAL REPORT

Ms. Thompson reported that the total assets to date are \$173,175,220, liabilities total \$684,386, and the current net position is \$172,490,834.

MOTION PASSED

Mr. Steen moved to approve the financial report and Mayor Carlson seconded the motion. On a voice vote, the motion carried.

6. EXECUTIVE DIRECTOR FINANCIAL REPORT

Mr. Nicholson reported that it has been business as usual this month and that the annual revenue is tracking as expected at \$6,000,842 and year-to-date at \$56,000,118. Actual costs to date are \$965,000,200 and the FY 2023 costs are \$80,572,555; the administrative budget continues to track as expected.

7. 2023 CASH BUDGET CHANGE REQUEST

Mr. Nicholson provided an overview of the following cash budget change request:

- This Budget Change Request (BCR) enables budget transfer from Work Package 43 OHB remaining levee construction now being performed by the USACE to Work Package 46 (WP-46) utility relocations and the P3 account. The WP-43 levee has a budget of \$15,161,522 which will be transferred to Work Package 46 and a portion of which (\$1,246,760.06) will be transferred to the P3 FY2023 budget. This is necessary in order to complete work defined under Authority Change Request 008 (ACR-008) which involves additional scope described as: "Design and construct a new water line crossing within the Project ROW perpendicular to and in the vicinity of centerline Sta. 1519+00 from Project ROW boundary to Project ROW boundary. This line shall be sized to connect to a new 10-inch PVC water line to be constructed by Cass Rural Water each direction outside the Project ROW".

Request Justification:

The Cass Rural Water (CRW) MOU scope of work technically falls under WP-46, however, due to the timing of work being performed in proximity of station 1519+00 by the Developer, it is necessary to include the CRW scope as described above. Payment will be made in two installments: Milestone 1 (Design) \$64,005.06 upon submission of RFC Documents and, Milestone 2 (Construction) \$1,182,755.00 following completion of the construction for a total payment of \$1,246,760.06. The FY2023 cash budget will be increased using reallocated program budget accordingly from \$233,798,782 to \$235,045,542.

MOTION PASSED

Mayor Carlson moved to approve the cash budget change request and Mayor Mahoney seconded the motion. On a roll call vote, the motion carried.

8. CONTRACTING ACTIONS

There were no contracting actions.

9. MOUs AND AGREEMENTS

Mr. Shockley provided an overview and summary of the following MOUs and agreements:

- **CRW & MFDA MOU – Amendment 1 SWDCAI**

This is Amendment 1 to the Cass Rural Water & MFDA MOU for the SWDCAI. The purpose of Amendment 1 addresses three (3) waterline relocation revisions that were not addressed in the original MOU.

1. The location of a new 4" waterline that per the MOU is to be constructed from 37th St SE to 38th St SE. The line was originally to be adjacent to the east ROW of 166th Ave SE and is now proposed to be constructed adjacent to the west channel ROW. This is to accommodate a future Ducks Unlimited wildlife habitat south of Drain 14C. The preliminary cost estimate for the additional design and construction is approximately \$125,000. 2. Extension of the 6" waterline along the south side of I-94 from west of the channel to the west side of Drain 14. This approximately 2,000 LF of waterline replaces an existing 1.5" line and was not in the original scope or work in the MOU. The preliminary cost estimate from the Developer for this work is \$483,000. 3. The 6-inch waterline that was originally to be placed under I-94 within the Project ROW is now proposed to be placed under the highway at a point 200 feet east of Drain 14. The preliminary cost estimate for design and construction is \$300,000.

- **Cass County & MFDA MOU for 37-Foot Improvements/37-Foot Projects**

The Cass County 37-foot Improvement MOU sets forth the roles and responsibilities for raises to County Road 31 on the north side of Fargo/Moorhead that will allow the road to remain passable during comprehensive project operation. Pursuant to the terms of the MOU, the County will be responsible for designing, bidding, and constructing the road raises, with oversight and approval from the Authority. The

County will require its contractor to secure insurance for the work and to indemnify the Authority. The Authority is responsible for reimbursing the County for all salaries, services, and/or related costs and expenses for surveying, land acquisition, design, construction, construction material, utilities, and inspections for the road raises.

- **Cass County & MFDA Upstream Mitigation Area MOU**

The Cass County UMA MOU describes coordination between the County and the Authority for the UMA prior to, during, and following comprehensive project operation. It outlines flowage easements granted by the County to allow for flooding on County-owned parcels during operation and sets forth the process the County and the Authority will follow to coordinate road closures and repairs and/or clean-ups following project operation. The Authority is responsible for reimbursing the County for repairs and/or clean-ups resulting from comprehensive project operation, following the review of quotes or bids for the work prior to completion.

- **Eagle Township & MFDA Road Raise Agreements for 54th Street, 174th Avenue SE and 175th Avenue SE UMA**

The Eagle Township road raise agreements set forth the roles and responsibilities of the Township and the Authority for road raises to 54th Street SE, 174th Avenue SE, and 175th Avenue SE. The roads will be raised to allow them to remain passable until and through a 100-year flood event. Pursuant to the terms of the agreements, the Township is responsible for acquiring the property interests necessary for the road raises, and the Authority is designing, bidding, and constructing the road raises. The Authority will require its contractor to secure insurance for the work and to indemnify the Township. The Authority is responsible for reimbursing the Township for property acquisition, design reviews, and for spreading gravel on the road raises following completion, in addition to paying for design and construction. These estimated cost for all three (3) road raises is \$1,020,000.

MOTION PASSED

Mr. Grindberg moved to approve all of the MOUs and agreements as presented and Mr. Steen seconded the motion. On a roll call vote, the motion carried.

10. **OTHER BUSINESS**

Mr. Bakkegard provided an overview and summary of the following work packages and bid awards:

- **a. Work Package 47C Test Holes and Wells**

The contract for Test Holes and Wells in Cass County, North Dakota was publicly advertised, and five (5) bids were received at the virtual public bid opening on August 10, 2023, at 1:00pm.

The Engineers Estimate for the project was \$595,850.00. Jacobs (PMC), HMG LLC (EOR), and the Authority's Legal counsel have reviewed and evaluated the bid documents and recommend the Metro Flood Diversion Authority award the contract for WP47C to LTP Enterprises Inc in the amount of \$438,600.00 as the lowest responsive bidder.

MOTION PASSED

Mayor Mahoney moved to award the bid as presented and Mr. Steen seconded the motion. On a roll call vote, the motion carried.

- **b. Work Package 47D Utility Relocation – Water System Improvements**

The contract for Utility Relocation – Water System Improvements in Cass County, North Dakota was publicly advertised, and four (4) bids were received at the virtual public bid opening on August 11, 2023, at 1:00pm.

The Engineers Estimate for the project was \$410,000.00. Jacobs (PMC), HMG LLC (EOR), and the Authority's Legal counsel have reviewed and evaluated the bid documents and recommend the Metro Flood Diversion Authority award the contract for WP47D to J R Ferche Inc in the amount of \$315,515.30 as the lowest responsive bidder.

MOTION PASSED

Mayor Mahoney moved to award the bid as presented and Mr. Steen seconded the motion. On a roll call vote, the motion carried.

- **c. Work Package 47E Utility Relocation**

The contract for Utility Relocation in Cass County, North Dakota was publicly advertised and one (1) bid was received at the virtual public bid opening on August 11, 2023, at 1:30pm.

The Engineers Estimate for the project was \$1,490,000.00. Jacobs (PMC), HMG LLC (EOR), and the Authority's Legal counsel have reviewed and evaluated the bid documents and recommend the Metro Flood Diversion Authority award the contract for WP47E to Wagner Construction, Inc in the amount of \$1,447,837.45 as the responsive bidder.

MOTION PASSED

Mr. Steen moved to award the bid as presented and Mayor Carlson seconded the motion. On a roll call vote, the motion carried.

- **d. Lands Budget Update**

Ms. Smith provided an update on the lands budget and indicated that it is tracking as expected. The estimated acquisition costs for the DCAI is \$24,000,500 and the estimated costs to acquire the necessary properties in the Southern Embankment is approximately \$14,000,000-\$15,000,000. Approximately 40% of the easements have been acquired within WP38 in the UMA.

- **e. RIMP**

Ms. Smith provided the following RIMP update and request:

OVERVIEW

The need for the RIMP was identified in late 2019. Relocation benefits required by the Uniform Relocation Act (the "URA") (and its state-level equivalents) are different for residential properties and business properties. Residential properties are eligible under the URA for the costs to acquire a substitute property, up to a certain amount. There is no similar URA benefit for commercial properties.

The differences between treatment of residential and commercial properties under the URA created challenges in negotiating with the owners of active farmsteads and rural businesses. Since these active farmsteads and rural businesses were each unique, the RIMP was developed. The RIMP is a 10-year forgivable loan for active farmsteads and rural businesses being displaced by the Comprehensive Project. The RIMP is a voluntary program being implemented by the Cass County Joint Water Resource District (CCJWRD) in North Dakota and the Moorhead Clay Count Joint Powers Agreement (MCCJPA) in Minnesota but is funded by the Metro Flood Diversion Authority (MFDA).

BOARD HISTORY

The RIMP process was brought to the Land Management Committee, the Finance Committee, and the Board in May of 2020.

A. Land Management Committee May 27, 2020:

- a. An overview of the Farmstead Reestablishment Program also called the RIMP was presented to the Committee and received positive feedback from Committee members.
- b. The Committee approved it unanimously.

B. Finance Committee May 27, 2020:

- a. An overview of the Farmstead Reestablishment Program also called the RIMP was presented to the Committee and received mixed feedback from Committee members.

- b. The RIMP was estimated to be \$5-10 million in cost and there were two properties identified over the next 6 months.
- c. Committee Chair was not comfortable with this cost range and suggested a phased approach.
- d. Committee approved to move forward on a phased approach for the two parcels identified with a cap of \$5 million.

C. Metro Flood Diversion Authority Board May 28, 2020:

- a. An overview of the Farmstead Reestablishment Program also called the RIMP was presented to the Board and received mixed feedback from Board members.
- b. The Board approved to move forward on a phased approach for the two parcels identified with a cap of \$5 million.

D. Metro Flood Diversion Authority Board April 29, 2022

- a. An overview of the Farmstead Reestablishment Program also called the RIMP was presented to the Board.
- b. The Board approved \$10 million additional funding to RIMP.

PRAM

The RIMP was then included in Version 5 of the Property Rights Acquisition and Mitigation Plan that was approved by the State of North Dakota.

SETTLEMENT

Section 25 of the Settlement Agreement between the Metro Flood Diversion Authority and the Richland-Wilkin Joint Powers Authority, Buffalo-Red Watershed District, City of Wolverton, and City of Comstock includes the requirement for the RIMP.

TO DATE

The CCJWRD has approved 11 RIMP loans for 10 different qualifying business locations totaling approximately \$10.8 million in value for businesses along the SWDCAI.

FUTURE USE OF THIS PROGRAM

As the land agents are engaging with property owners in the UMA and during the recent financial re-baselining of the entire Program, the Director of Lands and the Land Program Management team reviewed the RIMP and identified a total of approximately 20 farmsteads and rural businesses, including the three that have been offered a RIMP loan, that are eligible for RIMP with a total cost of approximately \$20 million. Additionally, this team is developing a reporting mechanism for the CCJWRD, MCCJPA, and the Finance Committee.

BUDGET

Funding for the 2022 \$10M increase for RIMP was anticipated in the 2022 Lands budget and was approved in the 2022 Cash Budget pending this phased approval. The increase of \$5M is within the Program Budget, which was re-baselined in 2022, and has been included in the latest version of the Financial Plan.

ACTION

Since the RIMP was approved at the Finance Committee and Board in a phased approach in 2020, the Finance Committee and Board would need to approve additional funding for this next phase of the RIMP.

MOTION PASSED

Mayor Mahoney moved to approve the additional \$5,000,000 to the RIMP budget and Mayor Carlson seconded the motion. On a roll call vote, the motion carried.

- **f. Program Budget Variable Review**

Mr. Barthel provided the following program budget variable review:

Overview

To maintain a healthy program budget, including costs to date, anticipated construction, lands and other costs, and the proper amount of contingency, an annual review should be performed. This is especially true with the increases in inflation and other costs over the past year. This memo summarizes the review that was just completed for the Metro Flood Diversion Authority (MFDA) and

their Program Budget.

Risk Register and Risk Review

Jacobs along with MFDA staff reviewed all 330 items in the Risk Register. This review consisted of:

- 1) verifying if the risk was still relevant or if it had been mitigated or realized
- 2) looking at the probability and consequence of each risk and adjusting if necessary
- 3) looking at the Minimum, Most Likely and Maximum cost impact and adjusting if necessary
- 4) assigning the risk to one of the following Contingency categories
 - a. System Wide
 - b. P3
 - c. P3 Compensation Events
 - d. Lands

Monte Carlo Simulation

After the Risk Register Review was complete, the data was loaded into a Monte Carlo simulation. This computer simulation utilized 10,000 trials to identify the statistical probability of the use of contingency for each of the 4 categories in the Risk Register. This simulation showed that for the 80% percent probability the overall Contingency was basically unchanged since the last run in 2022. It did show some shifting within the 4 categories, but the overall total was basically the same.

Financial Review

Also, Jacobs, the PMC, went through the Program Budget and compared the cost to date through June 2023 with the planned expenses. Then the remaining estimate to complete (ETC) was reviewed and that with the cost to date was compared with the \$2.892B Program Budget. While the cost to date is lagging behind the plan, the overall Program Budget is still on target.

Financial Plan Review

After all this was complete, all of the data was then entered into the Financial Plan and several different iterations were run. With the increased of costs of construction materials and overall inflation that has been seen, there were concerns about the long-term impacts of this elevated inflation rate. So, the Financial Plan was run with 3%, 5%, 7% and 9% inflation on the remaining construction costs. These runs showed that the break-even Sales Tax growth rate to avoid any assessments is between 2.9%-3.1%. Since 2019, the City of Fargo has seen a 8.4% sales tax average growth rate and Cass County has seen a 9.2% sales tax average growth rate.

Summary

This review shows that the while the Program is still viable, there is a need for a conservative fiscal approach. First, while it may appear that we are under budget in several areas, we are still anticipating expenses to be realized, just later in the program than was anticipated. Second, we have seen the break-even Sales Tax growth rate in the Financial Plan creep up from 2.7% to 2.9% due to inflation.

11. NEXT MEETING

The next meeting will be September 27, 2023.

12. ADJOURNMENT

The meeting adjourned at 4:42 PM.