

**METRO FLOOD DIVERSION AUTHORITY
APRIL 25, 2019—3:30 PM**

1. MEETING TO ORDER

A meeting of the Metro Flood Diversion Authority was held Thursday, April 25, 2019, at 3:30 PM in the Fargo City Commission Chambers with the following members present: Cass County Commissioner Mary Scherling via conference call; Cass County Commissioner Chad Peterson; Cass County Commissioner Rick Steen; Fargo City Mayor Tim Mahoney; Fargo City Commissioner Tony Grindberg; Fargo City Commissioner Dave Piepkorn; Moorhead City Mayor Johnathan Judd; Moorhead City Council Member Chuck Hendrickson; Moorhead City Council Member Joel Paulsen; Clay County Commissioner Kevin Campbell; Clay County Commissioner Grant Weyland; Cass County Joint Water Resource District Chairman Dan Jacobson; and West Fargo City Commissioner Mike Thorstad. Cass County Joint Water Resource District Manager Rodger Olson was absent.

2. MINUTES APPROVED

MOTION, passed

Mr. Steen moved and Mr. Peterson seconded to approve the minutes from the March 28, 2019, meeting as presented. Motion carried.

3. AGENDA ORDER

MOTION, passed

Mr. Steen moved and Mr. Hendrickson seconded to approve the order of the agenda. Motion carried.

4. MANAGEMENT UPDATE

Kim Daily from Jacobs provided an update on activities and accomplishments over the last month, which include the partial lifting of the federal injunction, allowing for work on USACE projects and the Public-Private Partnership (P3); coordination with the Buffalo-Red River Watershed District on review of the permit application; work with the ND Legislature on funding; submission of a revised CLOMR to FEMA; continuation of the land acquisition process; and development of the scopes for the next phases of Ag Impacts and Flowage Easement studies.

Priorities include initiating review of the financial plan with technical and financial advisors; coordinating with USACE on commencement of inlet structure construction; continuing discussions with local and state permitting agencies; requesting an extension for a State Water Commission permit for construction; awarding WP-50A (rural structure removals); and continuing with land acquisitions and appraisals for remaining property for the channel.

The project cost-to-date is \$458 million, and \$14.7 million has been spent out of the FY2019 first quarter cash budget of \$8.5 million. More work was completed during the first quarter than previously anticipated; the quarter one budget figures will be rolled into the full FY2019 cash budget.

5. PUBLIC OUTREACH UPDATE

Committee report

The Public Outreach Committee met on April 24th.

Rocky Schneider of AE2S said an educational tour opportunity to see the Red River Floodway in Winnipeg has been postponed. The tour will offer participants a chance to see the floodway in operation.

Mr. Schneider said a new “3 Questions” video with USACE Lieutenant General Semonite was recorded and posted on the website.

Business Leaders Task Force

Mr. Nisbet said he was proud of the engagement of the Business Leaders Task Force during the legislative session as an additional \$480 million in funding was secured over the past few months.

6. LAND MANAGEMENT

The Land Management Committee met on April 24th. Mr. Schneider discussed the Property Acquisition Status Report map, which is updated monthly and shows the acquisition status of all parcels required for the project.

Mr. Campbell said almost all the land needed for the inlet structure and the Wild Rice inlet have been secured.

7. FINANCE UPDATE

Committee report

The Finance Committee met on April 24th. Mr. Grindberg reviewed the financial report and said the net cash position is \$83,765,213.

FY2019 full cash budget

Michael Redlinger, Co-Executive Director and Assistant Fargo City Administrator, said the full FY2019 cash budget was reviewed and approved by the Finance Committee.

MOTION, passed

Mr. Grindberg moved and Mr. Steen seconded to approve the FY2019 Cash Budget as presented. Discussion: Mr. Steen said the cash budget does not reflect USACE project expenditures. Martin Nicholson of Jacobs said the PMC will track all expenditures against the overall program budget.

Mr. Mahoney asked if P3 expenditures will appear in the budget. Mr. Nicholson said yes; P3 expenditures will appear as progress payments.

Mr. Piepkorn asked if full funding for the P3 is needed up front. Mr. Nicholson said the P3 is a single contract that is bid as annual payments for a 30-year period. Total payments will include the \$700 million progress payments plus the 30-year annual payments. The P3 developers will look for assurance that the Diversion Authority can cover the payments. Attorney John Shockley said specifics on the financial plan will be determined over the next 60-90 days.

Mr. Piepkorn asked if the P3 payments can be paid off early if additional funding is secured. Mr. Shockley said the ability to pre-pay will be worked through during the procurement. Public debt is also a priority to pay off early if funds are available.

On roll call vote, the motion carried unanimously.

Voucher approval

The bills for the month are 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; and Ohnstad Twichell, P.C. for legal services.

MOTION, passed

Mr. Grindberg moved and Mr. Steen seconded to approve the vouchers received through April 18, 2019, in the amount of \$1,006,160.10. On roll call vote, the motion carried unanimously.

PMC Task Order No. 2

Mr. Redlinger said Task Order 2, Amendment 3, extends the period of performance for the PMC to May 24, 2019, to allow time to shape Task Order 5, which is the successor task order.

The Finance Committee recommends approval.

MOTION, passed

Mr. Grindberg moved and Mr. Steen seconded to approve PMC Task Order 2, Amendment 3, as presented. On roll call vote, the motion carried unanimously.

Mr. Grindberg left for the remainder of the meeting.

Mr. Piepkorn asked if contractors previously put on standby have been reactivated. Mr. Shockley said it is his understanding that the Corps contractor for the diversion inlet has been notified to recommence mobilization.

Ernst & Young Statement of Work

Mr. Shockley said a past work order with Ernst & Young has expired. Statement of Work 5, Amendment 0, assumes a full P3 start-up and will allow work to be completed on a new financial plan to incorporate recent funding updates.

Mr. Shockley said services are billed as requested, and this work order is included in the FY2019 budget. Hourly rates have not changed from last year and rates are consistent with the market.

The Finance Committee recommends approval.

MOTION, passed

Mr. Steen moved and Mr. Peterson seconded to approve Ernst & Young Statement of Work 5, Amendment 0, as presented. On roll call vote, the motion carried unanimously.

2019 Braun Intertec Corporation billing rates

Ms. Daily said the Braun Intertec rate increase was tabled at the March Finance Committee meeting with a request for justification on the rate increase, to which Braun Intertec provided a letter. Braun Intertec has not received a rate increase since 2017 while increasing employee wages and benefits annually, in addition to the increased costs of goods and services.

The Finance Committee recommends approval.

MOTION, passed

Mr. Steen moved and Mr. Jacobson seconded to approve the Braun Intertec 2019 rate increase as presented. Discussion: Mr. Paulsen asked if there should be a policy to escalate yearly rate increases based on a benchmark as the requests are frequent; and if contractor increases are included in the overall program budget. Ms. Daily said escalations for contractor rate increases are included in the overall program budget, and each entity is allowed to request an annual rate increase as outlined in each contract.

Mr. Campbell said he assumes all contracted services were initially bid out and at what point services must be re-bid. Ms. Daily said typically when procuring consultant services the initial rates are negotiated based on qualifications; subsequent rate increases must be requested and approved.

On roll call vote, the motion carried unanimously.

Mr. Mahoney said perhaps the Finance Committee could have a discussion on a policy for contractor rate increases. Mr. Redlinger said the topic can be discussed by the Finance Committee, and if there is a desire from the board to streamline the process for administrative review that could be discussed going forward.

8. OTHER BUSINESS, Task Orders 5 and 6

Mr. Redlinger discussed Task Order No. 5 for the continuation of Program Management services, which will include the P3 scope and activities related to the partial lifting of the federal injunction. It will be brought for approval at the May meeting.

Mr. Shockley discussed Task Order No. 6, which pertains to the PMC role in regards to the P3 procurement. The intent is to present a draft of the task order in June.

9. NEXT MEETING DATE

The next meeting is scheduled for Thursday, May 9, 2019. The meeting will be cancelled if there are no contracting actions, and the board would then meet on Thursday, May 23, 2019.

10. EXECUTIVE SESSION

North Dakota state law allows the Board to meet in private session to consult with legal counsel to discuss ongoing litigation.

MOTION, passed

Mr. Piepkorn moved and Mr. Peterson seconded that the Metro Flood Diversion Authority meet in executive session, as authorized by North Dakota Century Code § 44-04-19.1, subsections 2 and 9, to consult with its attorneys regarding the ongoing litigation in the matter of Richland/Wilkin JPA and MNDNR v. the United States Army Corps of Engineers and Fargo Moorhead Flood Diversion Authority as Intervenor, Civil File No. 0:13-cv-02262-JRT-LIB. Motion carried.

Diversion Authority Board members and key administrative staff moved to the River Room at 4:06 PM.

The executive session ended at 4:45 PM, and the meeting was re-opened to the public.

11. ADJOURNMENT

MOTION, passed

On motion by Mr. Steen, seconded by Mr. Peterson, and all voting in favor, the meeting was adjourned at 4:47 PM.