

**METRO FLOOD DIVERSION AUTHORITY
MARCH 23, 2017—3:30 PM**

1. MEETING TO ORDER

A meeting of the Metro Flood Diversion Authority was held Thursday, March 23, 2017, at 3:30 PM in the Fargo City Commission Room with the following members present: Fargo City Mayor Tim Mahoney; Fargo City Commissioner Dave Piepkorn; Fargo City Commissioner John Strand; Cass County Commissioner Mary Scherling; Cass County Commissioner Chad M. Peterson; Cass County Commission representative Darrell Vanyo via conference call; Moorhead City Council Member Chuck Hendrickson; Clay County Commissioner Kevin Campbell; Clay County Commissioner Grant Weyland; Cass County Joint Water Resource District Manager Rodger Olson; and West Fargo City Commissioner Mike Thorstad. Moorhead City Mayor Del Rae Williams and Moorhead City Council Member Joel Paulsen were absent.

2. MINUTES APPROVED

MOTION, passed

Mr. Weyland moved and Mr. Olson seconded to approve the minutes from the February 23, 2017, meeting as presented. Motion carried.

3. AGENDA ORDER

MOTION, passed

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

4. MANAGEMENT UPDATE

Program management consultant (PMC) report

Randy Richardson from CH2M provided an update on activities over the last month, which include support for North Dakota legislative activities; a trip to Washington, D.C. to meet with the congressional delegation and officials from the Corps of Engineers and Office of Management and Budget (OMB); meeting with Moorhead and Clay County leaders to discuss an engagement strategy with the Minnesota legislature; release of the second version of P3 RFP documents; continued Phase 1 land acquisitions; and Oxbow home removals. Priority areas for the next month include meeting with Minnesota legislative leaders; monitor and support North Dakota legislative activities; continued Phase 1 land acquisitions; and Phase 2 property appraisals.

Robert Cowen provided a brief financial update on the overall program status and 2017 cash budget with \$7.7 million spent so far this fiscal year.

Ty Smith from CH2M provided a construction update on continued work at the 4th Street North pump station generator building, and the Oxbow home demolition and relocation project. He said all seven homes along Schnell Drive in Oxbow have been removed and preparation has begun on removal of four homes on Riverbend Road.

5. CORPS OF ENGINEERS UPDATE

Terry Williams, Project Manager from the Corps of Engineers, was present to provide an update of activities by Corps of Engineers staff which includes draft technical review plans and specs for the Wild Rice control structure; completion of draft preliminary engineering report on southern embankment design; assistance with further development of the P3 RFP; identification of additional environmental mitigation sites; preparation to award contracts for geomorphic and biotic surveys, and for cultural mitigation on sites along the diversion channel alignment.

A groundbreaking ceremony for the diversion inlet control structure is scheduled for Monday, April 17th at the inlet site. A 1997 flood commemoration will also be held in conjunction with the ceremony.

6. ADMINISTRATIVE/LEGAL UPDATE

MetroCOG cost reimbursement agreement and LiDAR flight invoice

Attorney John Shockley discussed a cost reimbursement agreement with the Fargo-Moorhead Metropolitan Council of Governments (Metro COG) to assist the Diversion Authority with a multi-jurisdictional project to update digital aerial ortho imagery and contour LiDAR mapping at a cost of \$238,030.07. The Finance Committee approved the agreement and the cost invoice.

MOTION, passed

Mr. Piepkorn moved and Mrs. Scherling seconded to approve the cost reimbursement agreement with the F-M Metropolitan Council of Governments (Metro COG). On roll call vote, the motion carried unanimously.

MOTION, passed

Mr. Piepkorn moved and Mrs. Scherling seconded to approve the invoice in the amount of \$238,030.07 to Metro COG for 2017 aerial imagery and LiDAR mapping. On roll call vote, the motion carried unanimously.

Houston-Moore Group (HMG) Master Services Agreement

Mr. Shockley said last month the board approved an extension to the current Master Services Agreement with Houston-Moore Group (HMG) to continue negotiations on a new agreement. He is asking the board to approve an additional 30-day extension in order to complete the negotiations, which are close to being resolved.

MOTION, passed

Mr. Peterson moved and Mr. Campbell seconded to approve Amendment No. 2 to the Master Services Agreement with Houston-Moore Group, LLC for an additional 30-day extension. On roll call vote, the motion carried unanimously.

7. PUBLIC OUTREACH UPDATE

Committee report

The Public Outreach Committee met on March 22nd. Rocky Schneider from AE2S provided an informational sheet on Richland County and Wilkin County, which outlines the impacts and benefits from the project. Mr. Campbell suggested the handout include the impacts to all structures rather than just residences and said this will be useful information to provide to Minnesota legislators.

8. LAND MANAGEMENT

The Land Management Committee met on March 22nd. Mrs. Scherling said the committee approved the draft mitigation plan, which is a living document and subject to changes; discussed impacts to the upstream areas; and approved the sale of a project-owned property in Clay County.

Sale of Project-Owned Property

Eric Dodds from AE2S discussed the disposal of four parcels of land totaling approximately 27 acres in rural Clay County, which the Diversion Authority purchased through the medical hardship program in 2013. The Land Management Committee approved to retain Pifer's to sell the property at auction.

Mr. Dodds said in order to sell the parcels, a flowage easement is needed since the land is in the staging area. Mr. Campbell wants to ensure a precedent is not being set with future flowage easements as the cost for this one is unique and should not be used as a basis for the future.

There was discussion on the usage and estimated cost of the land. Mr. Dodds said the most likely use of the property will be for hunting. Pifer's could establish a reserve amount for the sale.

Mr. Strand prefers to wait and not sell the property now. He believes the revenue received from the sale will not cover the cost that was spent to purchase the land. Mr. Piepkorn also prefers to wait and asked if it could be part of a trade similar to other types of transactions that have occurred with area farmers. Mr. Piepkorn said there are too many unknowns to support moving forward with the sale.

Mrs. Scherling understands the concerns of Mr. Strand and Mr. Piepkorn; however, she said residents from this area are concerned with the land being used by individuals to hold parties. She supports the sale and believes the Diversion Authority should be a good neighbor to surrounding land owners.

Mr. Peterson said the land swap is not prudent as only 11 acres are considered tillable. He believes the best use of the land is for hunting purposes and supports the sale. Mr. Campbell said Clay County Commissioner Jenny Mongeau has received complaints from residents about parties and other activities occurring on this property. Mr. Campbell is concerned with ongoing trespass issues, and he supports the sale.

Mr. Dodds said the property is in the staging area and will be impacted by the project. The Diversion Authority purchased the parcels to remove the house and other buildings.

Mr. Olson supports selling the land because there is no value as an exchange property. He believes it exposes the Diversion Authority to liability if something happens. He said the home was removed because the land is needed for the project, and the Diversion Authority has received value through the purchase.

MOTION, passed

Mr. Campbell moved and Mrs. Scherling seconded to approve the sale of the four parcels in rural Clay County owned by the Diversion Authority. On roll call vote, the motion carried with Mr. Campbell, Mrs. Scherling, Mr. Vanyo, Mr. Peterson, Mr. Mahoney, Mr. Hendrickson, Mr. Weyland, Mr. Olson and Mr. Thorstad voting "Yes"; Mr. Piepkorn and Mr. Strand voting "No".

Draft Land Acquisition Status Report

A draft land acquisition status map was prepared for board members. Mr. Dodds said it shows all of the properties needed for the project and the status, i.e. appraisals pending; in negotiation; purchase agreements signed; properties acquired and easements secured; and condemnation for acquisition.

Draft Mitigation Plan

Mr. Campbell thought the intent was for the Diversion Authority to approve the draft mitigation plan. Mrs. Scherling said the plan is over 200 pages long and members have not had a chance to review it. She said the plan is a draft and will be changed. Mr. Olson said the Agricultural Policy Subcommittee will meet on April 4th to consider ag property to include in the plan. Mr. Mahoney suggested the plan be discussed at the next board meeting.

MOTION, passed

Mrs. Scherling moved and Mr. Peterson seconded to receive the draft mitigation plan for board review and discussion at the next meeting. Motion carried.

9. FINANCE UPDATE**Committee report**

The Finance Committee met on March 22nd. Michael Montplaisir, Cass County Auditor, said the Diversion Authority has \$80 million in cash on hand, has the ability to borrow \$50 million from Wells Fargo Bank, and has \$86 million in state allocations. He said two short-term loans are due in July. The financial team has been looking at different options to pay them and will bring a recommendation back to the board.

Amendment to Fiscal Services Agreement

The Diversion Authority appointed the City of Fargo as fiscal agent for the project in 2011 because of the city's ability to manage project cash receipts and disbursements and to provide a financial management and reporting system. The Finance Committee approved an amendment to the agreement to add the payroll process, handling of cash reserves, and adjustment of the fiscal agent compensation. The compensation structure will change to a fixed monthly amount due to ongoing support provided by Fargo for a grant accountant position. He also noted that interest on cash reserves will be allocated to the diversion fund, and any interest charges accrued on deficit fund balances will be paid to Fargo to recoup lost investment income.

MOTION, passed

Mrs. Scherling moved and Mr. Olson seconded to approve the amendment to the Fiscal Services Agreement with the City of Fargo. On roll call vote, the motion carried unanimously.

USACE Funds Request 002

Michael Redlinger, Assistant Fargo City Administrator and Co-Executive Director, said the Finance Committee approved Funds Request 002 from the U.S. Army Corps of Engineers (USACE) in the amount of \$1,230,000 for biotic monitoring, geomorphic surveys and cultural mitigation projects. The request is a non-federal liability and is consistent with the previous agreements with the Corps.

MOTION, passed

Mr. Campbell moved and Mr. Weyland seconded to approve USACE Funds Request 002 in the amount of \$1,230,000. On roll call vote, the motion carried unanimously.

Voucher approval

The bills for the month are with Dorsey & Whitney LLP for legal services; Warner and Company for renewal of liability insurance coverage; Ohnstad Twichell, P.C. for legal services; Cass County Joint Water Resource District (CCJWRD) for costs associated with the Metro Flood Diversion, in-town levees, Diversion Project Assessment District, OHB levee, and Oxbow Country Club golf course construction; Erik R. Johnson & Associates, Ltd. for legal services; Army Corps of Engineers for 2017 surveys and mitigation work; and Fargo-Moorhead MetroCOG for aerial imagery and LIDAR mapping.

MOTION, passed

Mr. Peterson moved and Mr. Vanyo seconded to approve the vouchers received through March 15, 2017, in the amount of \$6,359,595.13. On roll call vote, the motion carried unanimously.

Recommended Contracting Actions
Reimbursement Agreements

Mr. Montplaisir discussed two reimbursement agreements for utility relocations, which were approved by the Finance Committee:

- Midcontinent Communications (RA-MC-001 Utility Relocation)—temporary relocation of fiber optic cable for construction of Corps of Engineers Diversion inlet structure in the amount of \$54,738.44;
- AT&T (RA-AT-002 Utility Relocation)—final payment for protection of fiber communication cable in the amount of \$16,865.16.

MOTION, passed

Mr. Olson moved and Mrs. Scherling seconded to approve the appropriation of funds for the outlined utility relocations. On roll call vote, the motion carried unanimously.

10. OTHER BUSINESS

Reimbursement Rates for P3 Proposers

Mr. Shockley said the Finance Committee approved an increase to the rates of reimbursement as outlined in the Waiver of Protest and Proposal Preparation Reimbursement Agreement for the P3 proposers. He said recently one of the P3 teams withdrew from the procurement process, so there are now three P3 teams. He is requesting the board increase the reimbursement amount from \$1 million to \$1.5 million, which will be paid to the two unsuccessful bidders. He is also requesting the board increase the cancellation reimbursement amount from \$500,000 to \$1.5 million, which would only be paid to the three teams in the event the procurement is cancelled.

Mr. Peterson does not object to an increase in the cancellation amount but is struggling with the reimbursement amount. He said when contractors bid for a project, it is expected that there will be time and money invested in a proposal with no intention of being reimbursed. Mr. Vanyo said the \$3 million budget remains the same for the reimbursement rate. The budget for the cancellation rate will increase, but this would only have to be paid if the procurement is cancelled.

Mr. Weyland left for the remainder of the meeting.

MOTION, passed

Mr. Campbell moved and Mr. Vanyo seconded to increase the Maximum Cancellation Reimbursement Amount and Maximum Reimbursement Amount as set forth in the draft Waiver of Protest and Proposal Preparation Reimbursement Agreement to \$1.5 million for the P3 proposers. On roll call vote, the motion carried with Mr. Campbell, Mr. Vanyo, Mr. Mahoney, Mr. Piepkorn, Mr. Strand, Mrs. Scherling, Mr. Hendrickson, Mr. Olson and Mr. Thorstad voting “Yes”; Mr. Peterson voting “No”.

Session with Magistrate Judge

Mr. Shockley said a session will be held on April 4th with the Magistrate Judge in Duluth, Minnesota. He asked the board to authorize the chair to make decisions at the session.

MOTION, passed

Mr. Vanyo moved and Mr. Piepkorn seconded to authorize the Chair to make decisions for the Diversion Authority at the April 4, 2017, session in Duluth, Minnesota with the Magistrate Judge in the case of Richland Wilkin JPA vs. U.S. Army Corps of Engineers. On roll call vote, the motion carried unanimously.

11. NEXT MEETING DATE

The next meeting will be held on Thursday, April 27, 2017.

12. ADJOURNMENT

There being no further business, the Chairman declared the meeting adjourned at 4:55 PM.

Minutes prepared by Heather Worden, Cass County Administrative Assistant