

**METRO FLOOD DIVERSION AUTHORITY  
JUNE 27, 2019—3:30 PM**

**1. MEETING TO ORDER**

A meeting of the Metro Flood Diversion Authority was held Thursday, June 27, 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; Fargo City Mayor Tim Mahoney; Fargo City Commissioner Tony Grindberg; Fargo City Commissioner Dave Piepkorn; Clay County Commissioner Kevin Campbell; Clay County Commissioner Grant Weyland via conference call; Cass County Joint Water Resource District Manager Dan Jacobson; and West Fargo City Commissioner Mike Thorstad. Moorhead City Mayor Johnathan Judd; Moorhead City Council Member Chuck Hendrickson; Moorhead City Council Member Joel Paulsen; and Cass County Commissioner Rick Steen were absent. Tom Dawson, Chair of the Chamber Business Leaders Task Force, was also present.

**2. INTRODUCTION AND WELCOME**

Mrs. Scherling said officials from the Army Corps of Engineers were planning to attend the meeting; however, their flight was delayed, and they will not be present at the meeting.

**3. MINUTES APPROVED**

*MOTION, passed*

**Mr. Grindberg moved and Mr. Piepkorn seconded to approve the minutes from the May 23, 2019, meeting as presented. Motion carried.**

**4. AGENDA ORDER**

*MOTION, passed*

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

**5. MANAGEMENT UPDATE**

Kim Daily from Jacobs said the actual project cost-to-date is \$465,998,454, and \$22,314,777 has been paid-to-date from the FY2019 cash budget. She reviewed contract actions approved by the Co-Executive Directors and by the Cass County Joint Water Resource District. She provided an update on activities and accomplishments over the last month, which include County Road 17 paving; substantial completion of the property structure mitigation project; approval of 40 appraisals primarily for the channel and for early/opportunistic acquisitions; and support for the NDSU Ag Impacts study.

Short-term priorities include finalization of Task Order 6 for P3 procurement and implementation; securing right-of-entry for portions of the southern embankment; and appraisal completion of all channel properties. Long-term priorities over the next six months include reactivation of the P3 procurement pending approval of Task Order 6; update to program reporting of budget and schedule; completion and implementation of financial strategy; issuance of a draft P3 Request for Proposals for the channel project; and solidify upstream structure mitigation requirements in coordination with permitting agencies.

**6. ADMINITRATIVE/LEGAL UPDATE**

*Wells Fargo Bank loan agreement*

Attorney John Shockley said Fargo and Cass County each have \$100 million loans with Wells Fargo Bank that will come due on July 31, 2019. New term sheets were prepared by Wells Fargo Bank to renew the loans and extend the maturity date to July 31, 2021. The First Amendment to Loan Agreement has been prepared for Cass County and the City Fargo of Fargo to approve.

For consideration today, is a resolution to approve the execution of the agreements between Cass County and Fargo and to consent to the amended loan agreements with Wells Fargo Bank.

***MOTION, passed***

**Mr. Grindberg moved and Mr. Peterson seconded to adopt the Resolution Approving the Execution and Delivery of the Intergovernmental Agreement (Series 2019) between Cass County, North Dakota and the City of Fargo, North Dakota; Consenting to First Amendment to Loan Agreement between Wells Fargo Bank, N.A., and Cass County, North Dakota; and Consenting to First Amendment to Loan Agreement between Wells Fargo Bank, N.A. and the City of Fargo, North Dakota. On roll call vote, the motion carried unanimously.**

*WIFIA Letter of Interest*

Mr. Shockley discussed financial assistance through the Water Infrastructure Finance and Innovation Act (WIFIA) program established by Congress, which is divided into two components: WIFIA EPA and WIFIA Army Corps of Engineers. For consideration today is a letter of interest for the WIFIA EPA program. In 2019 Congress appropriated \$60 million to issue up to \$6 billion in loans from 2019 to 2020. The Diversion Authority is applying for a portion of the project that is considered eligible for storm water, which includes the diversion channel and related infrastructure. The total amount of eligible components is around \$1.1 billion. WIFIA allows an entity to secure a loan for about 49% of the eligible costs, and the Diversion Authority would be looking for a loan of \$560 million. The advantage of this financing is it at Treasury rates and would not need to be paid until five years after substantial completion of the project with a 35-year re-payment plan. A letter has been drafted that shows the Diversion Authority's interest in applying for a loan and is the first step in the process. The Diversion Authority should hear back from the EPA within 90 to 120 days if it determines the Diversion Authority is invited to apply for a loan.

Mr. Shockley said other loan opportunities are available and will be forthcoming for consideration by the board.

***MOTION, passed***

**Mr. Grindberg moved and Mr. Peterson seconded to approve the submittal of the WIFIA Letter of Interest to the Environmental Protection Agency. On roll call vote, the motion carried unanimously.**

**7. PUBLIC OUTREACH UPDATE**

*Committee report*

The Public Outreach Committee met on June 26<sup>th</sup>. Rocky Schneider from AE2S distributed and reviewed project talking points that were drafted to provide to the public. Chair Scherling has asked for the talking points to be updated each month for board members to have available when asked questions about the project. Mr. Schneider showed the most recent public outreach video with Cass County Commissioner Vern Bennett. All of the videos are on the Diversion You Tube channel and receive a lot of interest by the public.

*Business Leaders Task Force*

Mr. Dawson anticipates the task force will meet within the next month. Mrs. Scherling thanked them for their support of the project.

**8. LAND MANAGEMENT**

*Committee report*

The Land Management Committee met on June 26<sup>th</sup>. Mrs. Scherling said one of the main issues discussed was land acquisitions needed for the project.

Moorhead-Clay County JPA

Mr. Shockley said a Minnesota Land Acquisition Joint Powers Agreement (JPA) has been drafted between the City of Moorhead and Clay County for the formation of a Minnesota lands acquisition entity. Moorhead and Clay County have both approved the JPA, which will consist of the two Clay County Commissioners from the Diversion Board, the three Moorhead City Council Members from the Diversion Board, and one member from the Buffalo-Red River Watershed District.

Mr. Campbell said the JPA is needed and will serve as a good mechanism to work with the Minnesota legislature.

***MOTION, passed***

**Mr. Campbell moved and Mr. Jacobson seconded to approve the Minnesota Land Acquisition Joint Powers Agreement as presented. On roll call vote, the motion carried unanimously.**

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.

**9. FINANCE UPDATE**Committee report

The Finance Committee met on June 26<sup>th</sup>. Mr. Grindberg briefly reviewed the financial report and said expenditures-to-date are \$476 million, and the net cash position is \$96 million.

***MOTION, passed***

**Mr. Grindberg 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 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; Ohnstad Twichell, P.C. for legal services; and Erik R. Johnson & Associates, Ltd. for legal services.

***MOTION, passed***

**Mr. Grindberg moved and Mr. Peterson seconded to approve the vouchers received through June 21, 2019, in the amount of \$1,865,154.33. On roll call vote, the motion carried unanimously.**

Recommended Contracting Actions

Michael Redlinger, Assistant Fargo City Administrator and Co-Executive Director, discussed Task Order No. 5, which was unanimously approved by the Finance Committee and is consistent with the Master Services Agreement with CH2M Hill Engineers, Inc., a subsidiary of Jacobs Engineering, Inc. The task order defines the terms and conditions for program management consultant services effective June 29, 2019, through December 31, 2021. The subtasks are defined and include program level services, permitting and permit compliance support, and federal and state legislative support. He said since an Executive Director will be hired later this year, the task order allows this person to make an assessment of the organizational structure and possibly modify some of the current services. The total budget for the task order is \$19.9 million.

***MOTION, passed***

**Mr. Grindberg moved and Mr. Peterson seconded to approve Task Order No. 5 for Program Management Services as presented. On roll call vote, the motion carried unanimously.**

**10. EXECUTIVE DIRECTOR SEARCH**

Robert Wilson, Cass County Administrator and Co-Executive Director, said Skype interviews were held this week with applicants for the Executive Director position. A list of finalists is in the process of being developed to be made public. Interviews and tours will be scheduled hopefully in July for board members to participate.

**11. 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. Mahoney 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 4:13 PM.

The executive session ended, and the meeting was re-opened to the public at 5:02 PM.

Mr. Shockley said the board met in executive session to discuss the federal litigation, and arising out of that litigation, is the matter of the decision by the Buffalo-Red River Watershed District (BRRWD) made on June 24, 2019. During that meeting the BRRWD originally voted 3-3 regarding the permit approval, and told the Diversion Authority that they were no longer going to address the permit at the meeting. All Diversion representatives and the press left the meeting. It is unclear what the tie vote would mean regarding the permit, and without notice to the Diversion Authority, press or public, the BRRWD attempted to take the matter up and denied the permit. During today's executive session there was a recommendation made that the Diversion Authority Board should take legal action regarding the permit denial.

***MOTION, passed***

**Mr. Campbell moved and Mr. Piepkorn seconded to authorize litigation counsel, Dorsey and Whitney, to take all necessary action to appeal the June 24, 2019, decision of the Buffalo-Red River Watershed District relating to the Diversion Authority's permit application and to explore other legal actions relating to the denial of the Diversion Authority's permit application. On roll call vote, the motion carried unanimously.**

**12. NEXT MEETING DATE**

The next meeting is scheduled for Thursday, July 11<sup>th</sup>. The meeting will be cancelled if there are no contracting actions, and the board would then meet on Thursday, July 25<sup>th</sup>.

**13. ADJOURNMENT*****MOTION, passed***

**On motion by Mr. Campbell, seconded by Mr. Peterson, and all voting in favor, the meeting was adjourned at 5:06 PM.**