

**METRO FLOOD DIVERSION AUTHORITY
DECEMBER 19, 2019—3:32 PM**

1. MEETING TO ORDER

A meeting of the Metro Flood Diversion Authority was held Thursday, December 19, 2019, at 3:32 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 Grant Weyland; 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 Shelly Carlson; Cass County Joint Water Resource District Manager Dan Jacobson; and West Fargo City Commissioner Mike Thorstad. Clay County Commissioner Kevin Campbell was absent. Also present was Tom Dawson, Chairman of the Chamber Business Leaders Task Force.

2. MINUTES APPROVED

MOTION, passed

Mr. Steen moved and Mr. Weyland seconded to approve the minutes from the November 21, 2019, meeting as presented. Motion carried.

3. AGENDA ORDER

MOTION, passed

Mr. Grindberg moved and Mr. Weyland seconded to approve the order of the agenda. Motion carried.

4. EXECUTIVE DIRECTOR REPORT

Joel Paulsen, Executive Director, said actual expenditures-to-date are \$515 million. He reviewed information available on the financial dashboard to help track costs in real time.

Mr. Paulsen reviewed contracting items approved by the Executive Director, and task orders approved by the Cass County Joint Water Resource District (CCJWRD). Moorhead Clay County Joint Powers Authority (MCCJPA) did not have any task orders.

Mr. Paulsen discussed activities and achievements, which include bidding for the Hickson Main Avenue storm sewer project, OHB wetland mitigation, and Property Structure Mitigation for Phase B this winter; current construction projects for the 2nd Street South and Main Avenue flood mitigation, OHB pump station and levee, and Property Structure Mitigation for Phase A; development of farmland leases on project-owned lands for 2020; securing remaining rights-of-entry for Southern Embankment design in North Dakota and Minnesota; and planning for Phase 2 Flowage Easement Valuation study pending the Conditional Letter of Map Revision (CLOMR).

Mr. Paulsen discussed short-term priorities, which include the issuance of Draft 4 of the P3 Request for Proposals to Proposers in January and completion of the NDSU Ag Impacts study update to reflect Plan B.

5. CORPS OF ENGINEERS UPDATE

Terry Williams, Project Manager from the Corps of Engineers, was not present today. Mr. Paulsen provided an update, which includes continuing work on the inlet structure; contract award with Ames Construction for the Wild Rice River structure; Red River structure design; and I-29 road raise design.

6. ADMINISTRATIVE/LEGAL UPDATEWIFIA events update

Attorney John Shockley provided a monthly update on the schedule of events associated with the Water Infrastructure Finance and Innovation Act (WIFIA) loan through the Environmental Protection Agency (EPA) and referred to the handout showing the timeline.

Resolution to Reimburse Certain Expenditures from Proceeds of Authority Loans

Mr. Shockley drafted a resolution to authorize the issuance of a declaration of intent to reimburse certain costs from the proceeds of Diversion Authority loans. He said the Internal Revenue Service requires a declaration of official intent in order for the Diversion Authority to reimburse itself through loan proceeds.

MOTION, passed

Mr. Grindberg moved and Mr. Judd seconded to adopt a Resolution Authorizing the Issuance of a Declaration of Official Intent of the Metro Flood Diversion Authority to Reimburse Certain Expenditures from Proceeds of Authority Loans. On roll call vote, the motion carried unanimously.

Extension of MOU with Cass County for HR services

Mr. Shockley said an extension of the interim MOU with Cass County has been drafted for consideration today for human resource related services. Mr. Shockley said the Secretary of State's Office has some concerns with the concept of the county serving as a co-employer. He may be requesting an Attorney General opinion asking whether a political subdivision qualifies as a co-employer. An updated Memorandum of Understanding has been drafted for a two-year term beginning January 1, 2020, through December 31, 2021, that will allow leadership the time to determine the number of staff that will be needed and to sort out technical issues associated with office space, computer services, and budgeting.

MOTION, passed

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

NuStar Agreement for Re-Routing under Channel

Mr. Shockley said there are a number of utilities that run under the channel and southern embankment. NuStar Pipeline has a gas line that runs across existing right-of-way needed for the channel. An agreement has been drafted to coordinate the planning efforts to relocate the gas line and to outline the payment of costs for work to prepare the applications needed to complete the relocation project. The Finance Committee approved the agreement.

MOTION, passed

Mr. Grindberg moved and Mr. Peterson seconded to approve a contract with NuStar Pipeline Operating Partnership L.P. On roll call vote, the motion carried unanimously.

7. PUBLIC OUTREACH UPDATECommittee report

The Public Outreach Committee met on December 18th. Rocky Schneider from the Program Management Consulting team said the committee continued to review the development of a new communications plan for next year with updated goals and objectives. A survey will be sent out to determine a target audience that needs to be focused on to distribute information on the project.

8. LAND MANAGEMENTCommittee report

The Land Management Committee met on December 18th. Mrs. Scherling said work continues with land acquisitions and appraisals.

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 UPDATECommittee report

The Finance Committee met on December 18th. Mr. Grindberg referred to the financial report and said the net cash position is \$92.6 million.

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; Ohnstad Twichell, P.C. for legal services; Cass County for reimbursement of Executive Director expenses; City of Fargo for complementary in-town flood protection expenses; and North Dakota Water Users Association for annual membership dues.

MOTION, passed

Mr. Grindberg moved and Mr. Hendrickson seconded to approve the vouchers received through December 13, 2019, in the amount of \$8,345,558.55. On roll call vote, the motion carried unanimously.

10. FY2020 CASH BUDGET

Mr. Paulsen said the proposed FY2020 Cash Budget is \$138.5 million. He reviewed the Level 1 Summary and Level 2 Detail budget figures. He discussed available revenue sources through the City of Fargo sales tax, Cass County sales tax, State of North Dakota, State of Minnesota, investment income and miscellaneous income that totals \$138,458,827.

MOTION, passed

Mr. Steen moved and Mr. Judd seconded to approve the FY2020 Cash Budget as presented. On roll call vote, the motion carried unanimously.

11. RECOMMENDED CONTRACTING ACTIONS

Mr. Paulsen reviewed the recommended contracting actions, which were approved by the Finance Committee as follows:

- Industrial Builders, Inc. Change Order 04 (In-Town Levees - 2nd Street South and Main Avenue Flood mitigation)—2nd Street paving, curb and gutter work, additional traffic control, removal of unsuitable material, modification of lift station hatch cover and other miscellaneous items in the amount of \$81,248.63;
- Program Advisor Services, LC Master Services Agreement and Task Order 1—project development and implementation consulting services in the amount of \$650,000;
- Jacobs Master Services Agreement—extension of professional services agreement until March 2, 2020, at no cost to allow the Executive Director time to negotiate the terms of the agreement;
- HMG Master Services Agreement—extension of professional services agreement until March 2, 2020, at no cost to allow the Executive Director time to negotiate the terms of the agreement.

MOTION, passed

Mr. Steen moved and Mr. Peterson seconded to approve the recommended contracting actions as presented. On roll call vote, the motion carried unanimously.

12. FARGO CIVIC CENTER LEASE

Mr. Paulsen has met with the Co-Executive Directors and looked at different spaces to house the Diversion Authority Office. He said the best and most cost effective option is at the Civic Center, which is owned by the City of Fargo. The offices are located on the second floor and are already furnished. He and his staff will have use of a conference room and the former City Commission Chambers for meetings. The cost of the lease is \$840 per month and will go into effect on January 1, 2020.

The Finance Committee discussed whether there is a conflict of interest since Fargo owns the property, and Fargo City Commissioners serve as voting members on the Metro Flood Diversion Authority. Mr. Shockley said there is no personal benefit to the Fargo City Commissioners from the lease, and does not believe there is a conflict of interest.

MOTION, passed

Mr. Judd moved and Mr. Weyland seconded to approve the lease between the City of Fargo and Metro Flood Diversion Authority for office space for the Executive Director and staff at the Civic Center. On roll call vote, the motion carried unanimously.

13. PUBLIC PRIVATE PARTNERSHIP OVERVIEW

Mr. Paulsen will initiate educational sessions with the board regarding the Public Private Partnership (P3) procurement process beginning next month with a new topic to be discussed each month at board meetings throughout the year.

14. OTHER BUSINESS

Mr. Mahoney presented gifts on behalf of the board to Cass County Commissioner Mary Scherling, who has served as Diversion Chair in 2019. He thanked her for her work over the last year. Mrs. Scherling said it has been a privilege and a wonderful challenge, and thanked everyone for their efforts on the project.

15. EXECUTIVE SESSION

North Dakota state law allows the Board to meet in private session to meet with legal counsel to discuss contract negotiations.

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 44-04-19.2 to provide negotiating instructions to its attorney and P3 team regarding the terms and conditions of the draft Project Agreement for the design, construction, finance and operation of the Diversion Channel and Associated Infrastructure. Motion carried.

Diversion Authority Board members and key administrative staff moved to the River Room at 4:18 PM.

The executive session ended, and the meeting was re-opened to the public at 5:52 PM.

16. NEXT MEETING DATE

The next meeting is scheduled for Thursday, January 30, 2020.

17. **ADJOURNMENT**

MOTION, passed

On motion by Ms. Carlson, seconded by Mr. Grindberg, and all voting in favor, the meeting was adjourned at 5:53 PM.

Minutes prepared by Heather Worden, Cass County Administrative Assistant