

**METRO FLOOD DIVERSION AUTHORITY
APRIL 26, 2018—3:30 PM**

1. MEETING TO ORDER

A meeting of the Metro Flood Diversion Authority was held Thursday, April 26, 2018, at 3:30 PM in the Fargo City Commission Room with the following members present: Moorhead City Mayor Del Rae Williams; Moorhead City Council Member Chuck Hendrickson; Moorhead City Council Member Joel Paulsen; Clay County Commissioner Kevin Campbell; Clay County Commissioner Grant Weyland; Fargo City Mayor Tim Mahoney; Fargo City Commissioner Tony Grindberg; Fargo City Commissioner Dave Piepkorn; Cass County Commissioner Mary Scherling via conference call; Cass County Commissioner Chad Peterson; Cass County Commissioner Rick Steen; Cass County Joint Water Resource District Manager Rodger Olson via conference call; and West Fargo City Commissioner Mike Thorstad. Also present was Mark Nisbet from the Chamber Business Leaders Task Force.

2. MINUTES APPROVED

MOTION, passed

Mr. Campbell moved and Mr. Weyland seconded to approve the minutes from the meetings held March 16, 2018, and March 22, 2018, as presented.

Motion carried.

3. AGENDA ORDER

MOTION, passed

Mr. Mahoney moved and Mr. Campbell seconded to approve the order of the agenda with the addition of S&S Landscaping Services Agreement.

Motion carried.

4. MANAGEMENT UPDATE

Martin Nicholson from CH2M provided an update on activities over the last month, which include coordination with MDNR to understand the permit application and review process; outreach presentations on Plan B to over two dozen entities; the submittal of a request to resume in-town levee and OHB levee work; and a project update to the State Water Commission. Priorities for next month include continued coordination of outreach efforts associated with Plan B; continued communication with MDNR; and preparation of advanced finance planning.

Mr. Nicholson provided a brief financial update on the overall program status and said \$424 million has been expended to date and \$9.3 million has been expended from the FY 2018 budget.

Michael Redlinger, Co-Executive Director and Assistant Fargo City Administrator, gave a brief update on behalf of the Corps of Engineers. Mr. Redlinger said Colonel Samuel Calkins, Commander of the U.S. Army Corps of Engineers, Greater Minneapolis-St. Paul Area, intends to visit on Thursday, May 3rd, and a special board meeting may be scheduled.

5. PUBLIC OUTREACH UPDATE

Committee report

The Public Outreach Committee met on April 25th. Rocky Schneider from AE2S said over two dozen public informational meetings with area entities have been held over the past few weeks. Mr. Schneider thanked board members for their participation and attendance at the meetings.

Mr. Campbell said a letter is being formulated to send out to those in newly affected areas.

Business Leaders Task Force

Mr. Nisbet said the task force continues to get the message out about the importance of the project.

6. LAND MANAGEMENT

Eric Dodds from AE2S said the Land Management Committee meeting for April was cancelled.

Mr. Dodds said biotic and geomorphic activity will continue and related field activity is expected to begin in May. Property owners are being notified.

Mr. Dodds said the recent outreach meetings pertaining to Plan B have caused an uptick in inquiries about opportunistic acquisitions from landowners who want to know if and how they will be impacted. Policy information will be formulated for the May committee meeting.

7. FINANCE UPDATE

Committee report

The Finance Committee met on April 25th. Mr. Grindberg said there are continued discussions with the technical team on updating financing forecasts and Plan B financial data.

Voucher approval

The bills for the month are with Cass County Joint Water Resource District (CCJWRD) for costs associated with the Metro Flood Diversion, 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. Steen seconded to approve the vouchers received through April 20, 2018, in the amount of \$1,103,436.76. On roll call vote, the motion carried unanimously.

Recommended Contracting Actions

Mr. Nicholson discussed two Task Order Amendments approved by the Co-Executive Directors.

Mr. Glatzmaier discussed Change Order 4 with Meyer Contracting, Inc., which addresses several items, including all claims and changes that occurred through December 31, 2017, plus stand-by time costs from January 1, 2018, through April 30, 2018. The total change order is in the amount of \$978,114.72

Mr. Paulsen asked if a winter suspension was included in the contract and if the contractor intended to work from January through April. Mr. Glatzmaier said there was no winter suspension and the intent was to work on electrical and mechanical components inside the structure.

Mr. Peterson asked if the cost of demobilizing the contractor was weighed against the cost of keeping them on stand-by as it is typical for projects to start and stop frequently. Mr. Glatzmaier said after the injunction was put in place there were discussions on a course of action but as the length of the shutdown was unknown, the decision to keep contractors on stand-by seemed to be the best alternative at the time.

Mr. Piepkorn said he is concerned with the last item in the change order, which incorporates a temporary golf cart path at the Oxbow Country Club in the amount of \$8,085. Mr. Piepkorn does not believe public funds should be used for a golf cart path.

MOTION, passed

Mr. Grindberg moved and Mr. Mahoney seconded to approve Change Order 4 with Meyer Contracting, Inc. On roll call vote, the motion carried with Ms. Williams, Mr. Hendrickson, Mr. Paulsen, Mr. Campbell, Mr. Weyland, Mr. Mahoney, Mr. Grindberg, Mrs. Scherling, Mr. Peterson, Mr. Steen, Mr. Thorstad, and Mr. Olson voting “Yes”; Mr. Piepkorn voting “No”.

Proposed 2018 HMG rates

Mr. Redlinger said proposed increases to the HMG rates were tabled at the March Finance Committee meeting with a request for additional information. Jeff Volk and Jeff Ledoux of Houston Moore Group were available at the April Finance meeting and today to provide background and clarification, and the Finance Committee unanimously approved the rate increases.

Mr. Grindberg said a change to the HMG Master Services Agreement in 2017 required Houston Moore Group to obtain additional professional liability insurance without course for reimbursement, which has been the main driver behind rate increases in 2017 and 2018.

MOTION, passed

Mr. Grindberg moved and Mr. Steen seconded to approve the proposed 2018 HMG rates as presented. Discussion: Mr. Campbell asked if the project mileage rate is for reimbursable travel mileage. Mr. Volk said yes. Mr. Campbell said typically governmental agencies follow the federal guidelines for mileage reimbursement, which are not as high as the listed rate. Mr. Volk said the rate was negotiated under the original HMG contract in 2012 and has not been changed since that time. On roll call vote, the motion carried unanimously.

Oxbow lot sales & maintenance agreement

Mr. Redlinger presented an amendment to the Oxbow MOU and an Assignment of Master Agreement that were approved unanimously by the Finance Committee. The documents modify the existing Oxbow lot sales process for the remaining lots and reassign maintenance responsibilities and associated costs to Oxbow. In addition, the Diversion Authority’s responsibility for the city park is defined.

Mr. Redlinger said Oxbow will take over the sale of the remaining 33 lots, of which the first \$1 million of net proceeds will be retained by Oxbow. After that threshold is met there will be a 65/35 revenue share split between the Diversion Authority and Oxbow, with the Diversion Authority receiving 65% of revenues and Oxbow receiving 35% of revenues. The lots must be sold for a minimum of 85% of their appraised value, unless otherwise approved by the Co-Executive Directors.

Attorney Erik Johnson drafted the documents and Cass County Auditor Michael Montplaisir provided a financial analysis to ensure that the Diversion Authority will see a positive benefit from the arrangement.

Mr. Redlinger said a cap of \$200,000 will be imposed on the Diversion Authority’s funding obligation for the Oxbow City Park, and the Diversion Authority will be removed from future golf course change orders.

Mrs. Scherling arrived for the remainder of the meeting.

MOTION, withdrawn

Mr. Grindberg moved and Mr. Mahoney seconded to approve the Second Amendment to Memorandum of Understanding between the City of Oxbow and the Metro Flood Diversion Board of Authority as presented, and to approve the Assignment of Master Agreement between the City of Oxbow, Cass County Joint Water Resource District, and Oxbow Golf and Country Club as presented.

Discussion: Mr. Olson asked if lots will still be set aside for those who are displaced by the project. Mr. Redlinger said historically, there have not been many people interested in the reserve lots but the matter can be discussed with Oxbow.

Mr. Piepkorn said the Diversion Authority provided flood protection for the lots in question and will now pay the City of Oxbow over \$2 million and Oxbow will keep sale proceeds from the lots. He said he is not in favor of being involved with the golf course. Mr. Mahoney said the Diversion Authority is already responsible for the obligations in question and this is an opportunity to void some of the previous commitments.

Mrs. Scherling said she agrees with Mr. Olson and believes lots should continue to be set aside and opportunities preserved for those displaced by the project as new people will be affected as the project changes.

Mr. Grindberg said an updated spreadsheet and documents should be prepared for approval to include the preservation of lots for those displaced by the project. The motion was withdrawn by Mr. Grindberg and Mr. Mahoney.

S&S Landscaping Services Agreement

Mr. Grindberg said the Finance Committee approved an agreement with S&S Landscaping.

Attorney John Shockley said the federal injunction halted work on Cass Highways 16 and 17 and the OHB Levee. Seeding, maintenance, and damage repair is required in some areas in order to maintain compliance with the ND Storm Water Permit. S&S Landscaping provided a cheaper quote than on-site contractors, and the agreement is in the amount of \$149,952.

MOTION, passed

Mr. Grindberg moved and Mr. Piepkorn seconded to approve the Services Agreement between the Metro Flood Diversion Authority and S&S Landscaping Company, Inc. as presented. On roll call vote, the motion carried unanimously.

8. OTHER BUSINESS

Mr. Peterson said the GFMEDC is working on an update of project impacts and the Diversion Authority will be briefed once it is completed.

9. NEXT MEETING DATE

The next meeting will be held on Thursday, May 24, 2018.

10. EXECUTIVE SESSION

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

MOTION, passed

Mr. Piepkorn moved and Mr. Peterson seconded that the Metro Flood Diversion Authority meet in Executive Session pursuant to N.D.C.C. § 44-04-19.2 and N.D.C.C. § 44-04-19.1, subdivision 9, for the purpose of receiving an update from the Diversion Authority's General Counsel and providing negotiating instructions to the Diversion Authority's General Counsel regarding modifications, amendments and/or potential claims regarding the construction contract between the Metro Flood Diversion Authority and Meyer Contracting for combined general construction, electrical and mechanical work. Motion carried.

Diversion Authority Board members, key administrative staff, and Mr. Shockley moved to the River Room at 4:36 PM.

The Executive Session ended at 5:18 PM and the meeting was re-opened to the public.

11. ADJOURNMENT

MOTION, passed

On motion by Mr. Campbell, seconded by Mr. Peterson, and all voting in favor, the meeting was adjourned at 5:19 PM.