

BOARD OF CITY COMMISSIONERS  
Fargo, North Dakota

Special Meeting:    Saturday:    March 13, 2010:

Agreeable with a call for a Special Meeting issued by Mayor Walaker, the Board of City Commissioners of the City of Fargo, North Dakota, convened in a Special Meeting in the City Commissioners' Room at the City Hall at 8:00 o'clock a.m., on Saturday, March 13, 2010.

The Commissioners present or absent were as shown following:

Present:        Piepkorn (via conference call), Williams, Walaker.

Absent:         Mahoney, Wimmer.

Mayor Walaker presiding.

Purchase/Rental Agreements for Alternate Flood Protection Measures Approved:

Commissioner Williams moved purchase/rental agreements for alternate flood protection measures be approved.

Second by Piepkorn. On call of the roll Commissioners Williams, Piepkorn and Walaker voted aye.

Absent and not voting: Commissioners Mahoney and Wimmer.

The motion was declared carried.

Contracts for Project No. 5934 Awarded:

The Board received a communication from City Engineer Mark Bittner recommending the contracts for Project No. 5934 be awarded at the following locations:

Project No. 5934-1 - North Oaks - No award recommended on this section.

Project No. 5934-2 - Timberline - The Committee recommends bid award to Strata Corporation in the amount of \$499,200.00.

Project No. 5934-4 - Rose Creek Golf Course (west) - The Committee recommends bid award to Northern Improvement in the amount of \$226,973.60.

Project No. 5934-7 - Drain 53 at 64th Avenue South - The Committee recommends bid award to Master Construction in the amount of \$146,200.00.

Project Nos. 5934-3, 5934-5 and 5934-6 will be installed by the Corps of Engineers under normal flood emergency installation procedures.

Commissioner Williams moved the contracts for Project No. 5934 be awarded as recommended.

Second by Piepkorn. On call of the roll Commissioners Williams, Piepkorn and Walaker voted aye.

Absent and not voting: Commissioners Mahoney and Wimmer.  
The motion was declared carried.

Resolution Adopted Requesting Emergency Flood Assistance from the Corps of Engineers:

Commissioner Williams offered the following Resolution and moved its adoption:

WHEREAS, Public Law 84-99, as amended, (33 U.S. Code, Section 701n) provides a means of preparing for and combating damage by floods and flood waters; and

WHEREAS, Fargo, North Dakota has exhausted all resources available to it for flood fighting and rescue operations; and

WHEREAS, On the date of this Resolution, flood fighting is needed and assistance required for the purpose of rescue operations.

NOW, THEREFORE, BE IT RESOLVED, That the U.S. Army Corps of Engineers be, and is hereby, requested to furnish assistance in flood fighting and rescue operations.

BE IT FURTHER RESOLVED, That in consideration of such assistance the above named Governmental body agrees to:

- a. Provide to the United States all lands, easements and rights-of-way for the emergency work, including, but not limited to, levee, borrow, spoil and access rights-of-way.
- b. Hold and save the United States free from all claims for damages attributable to the construction works except for damages due to the fault or negligence of the United States or its contractors.
- c. Operate and maintain the emergency construction works for the duration of the flood emergency.
- d. Provide common labor.
- e. Provide as required under the applicable provisions of Public Law 91-646, relocation assistance payments to those eligible because of dislocation of persons or property from their dwellings, farms or businesses due to the acquisition of rights-of-way for the emergency flood construction work.
- f. Remove, after the flood emergency, without cost to the U.S. Army Corps of Engineers, any temporary emergency works constructed for the flood emergency, with the initiation of the removal within 30 days of the conclusion of the flood event as determined by the U.S. Army Corps of Engineers.

BE IT FURTHER RESOLVED, That the Mayor of the City of Fargo, North Dakota be authorized to enter into agreements with the Corps of Engineers in furtherance of this Resolution and as to the means of supplementing the local flood emergency preparation and flood fighting and rescue operations.

Second by Piepkorn. On the vote being taken on the question of the adoption of the Resolution Commissioners Williams, Piepkorn and Walaker voted aye.

Absent and not voting: Commissioners Mahoney and Wimmer.

The Resolution was adopted.

Cooperation Agreement with the Corps of Engineers Approved:

Commissioner Williams moved the cooperation agreement with the Corps of Engineers be approved as follows:

THIS AGREEMENT, entered into this 13th day of March, 2010, by and between THE DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government") acting by and through the District Engineer, St. Paul District, U.S. Army Corps of Engineers, and the City of Fargo, (hereinafter referred to as the "Public Sponsor"), acting by and through the Mayor.

WITNESSETH THAT:

WHEREAS, 33 USC 701n authorizes the Chief of Engineers to flood fight and perform rescue operations; and

WHEREAS, The Public Sponsor has requested assistance under 33 USC 701n and the Public Sponsor qualifies for such assistance in accordance with the established policies of the U.S. Army Corps of Engineers; and

WHEREAS, The Public Sponsor hereby represents that it has the authority and legal capability to furnish the non-Federal cooperation hereinafter set forth and is willing to participate with the terms of this agreement.

NOW, THEREFORE, The parties agree as follows:

1. The Government will perform the work described in its scope of work (Exhibit A) that is made a part of this agreement.
2. Pursuant to 33 CFR 203.82, the Public Sponsor will:
  - a. Provide without cost to the Government all lands, easements, rights-of-ways, relocations, and borrow and dredged or excavated material disposal areas necessary for the work. All land acquisition shall comply with Public Law 91-646, as amended by Title IV of Public Law 100-17 and 49 CFR Part 24.
  - b. Hold and save the Government free from damages arising from construction, operation, maintenance, repair, replacement, and rehabilitation of the work, except damages due to the fault or negligence of the Government or its contractors.
  - c. Operate, maintain, repair, replace, and rehabilitate the completed work in a manner satisfactory to the Government.
  - d. Remove, at no cost to the Corps of Engineers under Public Law 84-99, all temporary work constructed by the Government when the emergency has passed as determined by the Government.

3. The Public Sponsor does hereby agree and pledge that it will truly and faithfully perform the following conditions, to wit:
  - a. If the Government provides sandbags to the Public Sponsor for use in flood fighting activities, the Public Sponsor will use these sandbags in accordance with Government standards and guidelines. The Public Sponsor may want to consider building backup levees where sandbag structures are used in the construction of closures, main levees, or other flood protection structures.
  - b. All work completed will be restricted from the designated floodway, which the parties to this agreement will determine prior to the construction of any flood protection works.
  - c. The Public Sponsor will be held accountable for possession, maintenance and return of all Government equipment provided for use in flood fighting activities. Government equipment damaged, destroyed or lost while in the Public Sponsor's possession, including equipment incorporated into temporary emergency construction, will be repaired or restored by the Public Sponsor and at the Public Sponsor's expense to its condition prior to the Public Sponsor's obtaining possession of the Government equipment.
  - d. The Public Sponsor has established a flood response organization and designated an Incident Commander. The Public Sponsor's Incident Commander is identified at the end of this agreement.
  - e. The Public Sponsor will operate and maintain the emergency flood construction works for the duration of the flood emergency.
  - f. The Public Sponsor will provide common labor.
  - g. The Public Sponsor will provide, as required under the applicable provisions of Public Law 91-646, relocation assistance payments to those eligible because of dislocation of persons or property from their dwellings, farms or businesses due to the acquisition of rights-of-way for the emergency flood construction work.
  - h. The Public Sponsor will remove, after the flood emergency, without cost to the U.S. Army Corps of Engineers, any temporary emergency flood works constructed for the flood emergency. In removing temporary emergency works, the Public Sponsor will avoid damage to non-expendable Government equipment (such as HESCO baskets) incorporated into construction.
  
4. ATTACHMENTS:
  - a. Exhibit A - Government Scope of Work.
  - b. Exhibit B - Resolution (certifies the person executing this document on behalf of the Public Sponsor has the authority to sign).

The Public Sponsor, as part of the aforesaid consideration, does hereby agree to indemnify, hold harmless, and release and forever discharge the Government, its

officers, employees, contractors, agents and assigns, in the prosecution of the proposed emergency flood control work herein contemplated, from all claims, demands, and causes of action whatsoever, which may arise by reason of, or in any manner have grown out of or alleged to have grown out of, the construction of the said flood control work as herein contemplated, except to the extent to the such claims, demands, or causes of arise from the negligence or fault of the Government or its contractors.

The Public Sponsor by execution of this document, assures that it has obtained or will obtain the necessary lands and right-of-way needed for the purpose of performing the emergency flood control work herein contemplated and hereby grants PERMISSION to the Government, its officers, employees, agents, and assigns, and the Government contractors, their officers, employees, subcontractors, agents, and assigns to enter upon Public Sponsor's lands, and rights-of-way acquired by it, for the purpose of performing the emergency flood control work hereinabove described.

It is hereby certified that the undersigned have the legal authority to execute the above agreement, that the assistance herein requested is beyond the capability of local authorities, and that every possible effort shall continue to be made at the local level to accomplish effective protection from the flood.

Public Sponsor Incident Commander:

Name: Pat Zavoral

Phone: 701-241-1310

Office Address: 200 3rd Street North, Fargo, ND 58102

IN WITNESS WHEREOF, The parties hereto have executed this agreement as of the day and year first above written.

Second by Piepkorn. On call of the roll Commissioners Williams, Piepkorn and Walaker voted aye.

Absent and not voting: Commissioners Mahoney and Wimmer.

The motion was declared carried.

Commissioner Williams moved that the Board adjourn.

Second by Piepkorn. All the Commissioners present voted aye and the motion was declared carried.

The time at adjournment was 8:16 o'clock a.m.