



- g. Applications for Games of Chance:
- (1) MDA "Old Fashioned Motorcycle Run" for a raffle on 6/4/11.
  - (2) Gateway Lions for a raffle on 7/20/11.
  - (3) Mitch Rath Benefit Fund for a raffle on 3/18/11; Public Spirited Resolution.
  - (4) El Zagal Director's Staff for a raffle on 9/18/11.
  - (5) YWCA Cass Clay for a raffle on 4/4/11.
  - (6) Jennifer Anderson Benefit for a raffle on 4/15/11; Public Spirited Resolution.
  - (7) Fargo Jaycees for a raffle on 5/2/11.
- h. Plat of T Lofts Addition.
- i. Receive and file NDSU Bicycle and Pedestrian Access Plan.
- j. Bid award for Radisson Ramp lighting upgrades to Rick Electric.
- (1) Contract and bond.
- k. Quit Claim Deed to Fred M. Hector to accomplish an agreed upon boundary line adjustment on the north-south boundary line between City owned property and Hector property located in the SE 1/4 of Section 35, Township 139 North, Range 49 West.
- l. Warehousing Agreement with Reile's Transfer & Delivery, Inc. for transportation, handling and storage of filled sandbags.
- m. Amendment to Joint Powers Agreement for MNDNR funding for Project No. 5153-3.
- n. Contract time extension for Project No. 5747-25.
- o. Final Balancing Change Order No. 1 for an increase of \$6,804.55 for Project No. 5970.
- p. Change Order No. 2 for an increase of \$19,770.50 for Project No. 5906.
- q. Contracts and bonds for Project Nos. 5946-1, 5958-1, 6002-1, 6003, 6004, 6005 and 6006.
- r. Bills in the amount of \$6,135,899.99.

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

No Commissioner being absent and none voting nay, the motion was declared carried.

Bids Received for P.C. Concrete Pavement, Concrete Curb and Gutter, Asphalt Pavement and Incidentals Improvement District No. 5969-3:

The bids for P.C. Concrete Pavement, Concrete Curb and Gutter, Asphalt Pavement and Incidentals Improvement District No. 5969-3 in the City of Fargo, North

Dakota were opened at 11:30 o'clock a.m., March 2, 2011 and the bids were found to be as follows:

|   |                                   |
|---|-----------------------------------|
| Dakota Underground Company<br>Bid:        | Fargo, ND<br>\$3,338,703.88       |
| Northern Improvement Company<br>Bid:      | Fargo, ND<br>\$3,590,677.52       |
| Master Construction Company, Inc.<br>Bid: | Fargo, ND<br>\$3,800,273.76       |
| Opp Construction Company<br>Bid:          | Grand Forks, ND<br>\$4,108,013.22 |

Contract for P.C. Concrete Pavement, Concrete Curb and Gutter, Asphalt Pavement and Incidentals Improvement District No. 5969-3 Awarded to Dakota Underground Company in the Amount of \$3,338,703.88:

Commissioner Mahoney offered the following Resolution and moved its adoption:

WHEREAS, The City Engineer has prepared and filed a detailed statement of the estimated costs of P.C. Concrete Pavement, Concrete Curb and Gutter, Asphalt Pavement and Incidentals Improvement District No. 5969-3; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received March 2, 2011, for P.C. Concrete Pavement, Concrete Curb and Gutter, Asphalt Pavement and Incidentals Improvement District No. 5969-3 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for P.C. Concrete Pavement, Concrete Curb and Gutter, Asphalt Pavement and Incidentals Improvement District No. 5969-3 shows the bid of Dakota Underground Company of Fargo, North Dakota, in the sum of \$3,338,703.88 to be the lowest and best bid received.

NOW, THEREFORE, BE IT RESOLVED, That the Board of City Commissioners finds and declares the bid received from Dakota Underground Company in the sum of \$3,338,703.88 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for P.C. Concrete Pavement, Concrete Curb and Gutter, Asphalt Pavement and Incidentals Improvement District No. 5969-3 in the City of Fargo, North Dakota, be and the same is hereby awarded to Dakota Underground Company for the sum of \$3,338,703.88, subject to the supervision, inspection and approval of the City Engineer, and in accordance with the Plans and Specifications filed in the office of the City Auditor.

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

No Commissioner being absent and none voting nay, the Resolution was adopted.

Water Distribution, Water Main Replacement and Incidentals Improvement District No. 5730 (South University Drive from 30th Avenue to 40th Avenue):

Commissioner Mahoney moved the following action be taken in connection with Water Distribution, Water Main Replacement and Incidentals Improvement District No. 5730:

Adopt Resolution Creating Improvement District No. 5730:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 5730 in the City of Fargo, North Dakota, be created

On University Drive from 30th Avenue to 40th Avenue South.

COMPRISING:

Lots 2 through 6, inclusive, Block 2.  
All in Brunsdale First Addition.

Lots 1 and 2, inclusive, Block 1.  
All in Mutchler's First Addition.

Lots 1 through 6, inclusive, Block 8.  
All in Marydale Addition.

Lots 2 through 17, inclusive, Block 1.  
All in Schultz & Williams Addition.

Lot 1, Block 1.  
All in Replat of a Portion of Schultz & Williams Addition.

Lot 1, Block 1.  
All in Southgate Racquet Club Addition.

Lots 1 through 3, inclusive, Block 1.  
All in Courts Plus Addition.

Lots 12, 13 and 16, Block 7.  
All in Burrett-Kennedy Addition.

Lots 1 and 2, inclusive, Block 1.  
All in Elim Second Addition.

Lot 1, Block 1.  
All in Lemke Addition.

Lots 1 through 17, inclusive, Block 1.  
All in Waterford Addition.

Lot 1, Block 1.  
All in Villa Maria Addition.

Lot 1, Block 1.  
All in YMCA Addition.

The unplatted in the northeast 1/4 of Section 25, east of University Drive right-of-way, Township 139 North, Range 49 West.

All of the foregoing located in the City of Fargo, Cass County, North Dakota.

NOW, THEREFORE, BE IT RESOLVED, That Water Distribution, Water Main Replacement and Incidentals Improvement District No. 5730 in the City of Fargo, North Dakota, be and the same is hereby created.

Request Report and Estimate of Cost From the City Engineer for Improvement District No. 5730:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 5730 in the City of Fargo, North Dakota; as well as an estimate of the approximate cost of said construction. (The Engineer's estimate of cost is \$2,705,000.00.)

Order Plans and Specifications for Improvement District No. 5730:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 5730 in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 5730:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 5730 in the City of Fargo, North Dakota, as required by law; and

WHEREAS, Plans and Specifications and the Engineer's Report prepared by the City Engineer, have been considered.

NOW, THEREFORE, BE IT RESOLVED, That the Plans and Specifications and Engineer's Report for the construction of Improvement District No. 5730 in the City of Fargo, North Dakota, be and the same are hereby approved and ordered filed in the Office of the City Auditor.

Adopt Resolution Declaring Water Distribution, Water Main Replacement and Incidentals Necessary:

BE IT RESOLVED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF FARGO:

That it be and is hereby declared necessary to construct Water Distribution, Water Main Replacement and Incidentals Improvement District No. 5730 in the City of Fargo, North Dakota, according to the Engineer's Report for this district and the Plans and Specifications approved by the Board of City Commissioners of the City of Fargo, North Dakota, filed in the Office of

the City Auditor, and open for public inspection. A map of the district is attached hereto and incorporated as if fully set forth herein.

That the entire cost of said improvement be specially assessed against the benefited property in said improvement district in amounts proportionate to and not exceeding the benefits to be derived by them respectively from said improvement.

Protests against the proposed Water Distribution, Water Main Replacement and Incidentals must be in writing and must be filed with the City Auditor's Office within 15 days after the first publication of this Resolution.

BE IT FURTHER RESOLVED, That the City Auditor's Office is hereby instructed to publish this Resolution, as required by law.

Direct City Auditor's Office to Call for Bids for Improvement District No. 5730:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 5730 in the City of Fargo, North Dakota.

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

No Commissioner being absent and none voting nay, the motion was declared carried.

Asphalt Wearing Course and Incidentals Improvement District No. 5988 (Various Locations in South Fargo):

Commissioner Mahoney moved the following action be taken in connection with Asphalt Wearing Course and Incidentals Improvement District No. 5988:

Adopt Resolution Creating Improvement District No. 5988:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 5988 in the City of Fargo, North Dakota, be created

(Section 1):

On Harrison Street South from 35th Avenue South to 36th Avenue South.

On Polk Street South from 35th Avenue South to 36th Avenue South.

On Taylor Street South from 35th Avenue South to 36th Avenue South.

On Fillmore Street South from 35th Avenue South to 36th Avenue South.

On 43rd Street South from 35th Avenue South to 128' north of 35th Avenue South.

On Pierce Street South from 35th Avenue South to 36th Avenue South.

On Buchanan Street South from 35th Avenue South to 36th Avenue South.

On Lincoln Street South from 35th Avenue South to 36th Avenue South.

On 35th Avenue South from Lincoln Street South to Harrison Street South.

On 36th Avenue South from 42nd Street South to 45th Street South.

(Section 2):

On Norman Court South from 37th Avenue South to 37th Avenue South.

On all of Dorothea Court South.

On 37th Avenue South from 45th Street South to 140' west of Dorothea Court South.

LOCATION (Section 3):

On 47th Street South from 40th Avenue South to 250' south of 45th Avenue South.

On 48th Street South from 44th Avenue South to 45th Avenue South.

On 49th Street South from 44th Avenue South to 45th Avenue South.

On 50th Street South from 44th Avenue South to 45th Avenue South.

On 52nd Street South from Farmstead Court South to 44th Avenue South.

On 53rd Street South from Farmstead Court South to 921' south of 44th Avenue South.

On 54th Street South from Farmstead Court South to 44th Avenue South.

On 55th Street South from 40th Avenue South to 44th Avenue South.

On 44th Avenue South from 45th Street South to Veterans Boulevard South.

On 45th Avenue South from 47th Street South to 50th Street South.

On Clock Tower Lane South from 47th Street South to 44th Avenue South.

On Townsite Place South from 47th Street South to 47th Street South.

On Sunflower Lane South from 55th Street South to 55th Street South.

On all of Farmstead Court South.

(Section 4):

On 13 Circle South from 14th Street South to 63rd Avenue South.

On 14th Street South from 62nd Avenue South to 63rd Avenue South.

On 16th Street South from 62nd Avenue South to 63rd Avenue South.

On Martens Way from 14th Street South to 63rd Avenue South.

On 63rd Avenue South from 13 Circle South to 16th Street South

On Martens Way cul de sac east of 14th Street South.

COMPRISING (Section 1):

Lots 1 through 29, Block 1.

Lots 1 through 21, Block 2.

Lots 1 through 19, Block 3.

Lots 1 through 16, Block 4.

Lots 1 through 14, Block 5.

Lots 1 through 14, Block 6.

Lots 1 through 14, Block 7.

Lots 1 through 19, Block 8.

All in Pointe West 2nd Addition.

Lots 1 through 9, Block 1.

Lots 1 through 27, Block 2.

Lots 1 through 30, Block 3.

Lots 1 through 33, Block 4.

Lots 1 through 12, Block 5.

Lots 1 through 25, Block 6.

All in Pointe West 3rd Addition.

Lots 1 through 3, Block 1.  
Lots 1 through 11, Block 3.  
Lot 1, Block 4.  
Lots 3 through 9, Block 4.  
All in Vista Village Addition.

Lots 1 through 75, Block 1, Vista Village 2nd Addition.

Lots 1 through 3, Block 1, Vista Village 3rd Addition.

COMPRISING (Section 2):

Lots 1 through 26, Block 1.  
Lots 1 through 18, Block 2.  
Lots 1 through 27, Block 3.  
Lots 1 through 10, Block 4.  
All in Sincebaugh Addition.

COMPRISING (Section 3):

Lots 1 through 7, Block 1, The Shoppes at Osgood 1st Addition.

Lots 1 through 6, Block 1, Osgood Townsite City Center 1st Addition.

Lots 1 through 10, Block 1, Osgood Townsite 2nd Addition.

Lots 1 and 2, Block 1, Shoppes at Osgood Southwest 1st Addition.

Lots 1 through 4, Block 1, Osgood Townsite Marketplace Addition.

Lot 1, Block 1.  
Lot 3, Block 1.  
All in Osgood Townsite 6th Addition.

Lots 1 through 4, Block 1, Osgood Townsite 3rd Addition.

Lots 1 through 14, Block 2.  
Lots 1 through 37, Block 3.  
Lots 1 through 12, Block 4.  
Lot 3, Block 5.  
Lots 1 through 23, Block 6.  
Lots 1 through 19, Block 7.  
Lots 1 through 18, Block 8.  
Lots 1 through 24, Block 9.  
All in Osgood Townsite 1st Addition.

Lots 1 through 12, Block 1.  
Lots 15 through 27, Block 1.  
Lots 1 through 36, Block 2.  
Lots 1 through 34, Block 3.



Lots 1 through 35, Block 4.  
Lots 1 through 46, Block 5.  
Lot 48, Block 5.  
Lots 1 through 19, Block 6.  
Lots 1 through 13, Block 7.  
Lots 1 through 10, Block 8.  
Lot 15, Block 8.  
Lots 2 through 12, Block 9.  
All in Osgood Farms 1st Addition.

Lots 1 through 44, Block 1, Osgood Estates Addition.

Lots 1 through 51, Block 1, Osgood Estates 2nd Addition.

Lots 32 and 33, Block 1, Tuscan Villas at Osgood.

Lots 1 through 16, Block 1.  
Lots 1 through 7, Block 2.  
All in Tuscan Villas at Osgood 2nd Addition.

Lots 1 through 3, Block 1, Osgood Kindergarten Center and Park Addition.

Lots 1 and 2, Block 1, Bluestem Addition.

COMPRISING (Section 4):

Lots 1 through 19, Block 5.  
Lots 23 through 26, Block 5.  
Lot 46, Block 5.  
Lots 1 through 14, Block 6.  
Lots 1 through 21, Block 7.  
Lots 1 through 25, Block 8.  
All in Martens Way Addition.

Lots 1 through 6, Block 1, Martens Way Salem Court Townhomes 1st Addition.

Lots 1 through 14, Block 1, Wellington Court.

Lots 1 through 3, Block 1, Martens Southwest Townhomes Addition.

Lots 1 through 24, Block 1, Martens Way West Heritage Addition.

All of the foregoing located in the City of Fargo, Cass County, North Dakota.

NOW, THEREFORE, BE IT RESOLVED, That Asphalt Wearing Course and Incidentals Improvement District No. 5988 in the City of Fargo, North Dakota, be and the same is hereby created.

Request Report and Estimate of Cost From the City Engineer for Improvement District No. 5988:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 5988 in the City of Fargo, North Dakota; as well as an estimate of the approximate cost of said construction. (The Engineer's estimate of cost is \$2,038,740.00)

Order Plans and Specifications for Improvement District No. 5988:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 5988 in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 5988:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 5988 in the City of Fargo, North Dakota, as required by law; and

WHEREAS, Plans and Specifications and the Engineer's Report prepared by the City Engineer, have been considered.

NOW, THEREFORE, BE IT RESOLVED, That the Plans and Specifications and Engineer's Report for the construction of Improvement District No. 5988 in the City of Fargo, North Dakota, be and the same are hereby approved and ordered filed in the Office of the City Auditor.

Adopt Resolution Declaring Asphalt Wearing Course and Incidentals Necessary:

BE IT RESOLVED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF FARGO:

That it be and is hereby declared necessary to construct Asphalt Wearing Course and Incidentals Improvement District No. 5988 in the City of Fargo, North Dakota, according to the Engineer's Report for this district and the Plans and Specifications approved by the Board of City Commissioners of the City of Fargo, North Dakota, filed in the Office of the City Auditor, and open for public inspection. A map of the district is attached hereto and incorporated as if fully set forth herein.

That the entire cost of said improvement be specially assessed against the benefited property in said improvement district in amounts proportionate to and not exceeding the benefits to be derived by them respectively from said improvement.

Protests against the proposed Asphalt Wearing Course and Incidentals must be in writing and must be filed with the City Auditor's Office within 30 days after the first publication of this Resolution.

BE IT FURTHER RESOLVED, That the City Auditor's Office is hereby instructed to publish this Resolution, as required by law.

Direct City Auditor's Office to Call for Bids for Improvement District No. 5988:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 5988 in the City of Fargo, North Dakota.

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

No Commissioner being absent and none voting nay, the motion was declared carried.

Recommendation to Appoint Six Additional Non-voting Members to the Sign Code Committee Approved:

The Board received a communication from Senior Planner Jim Hinderaker stating at the February 22nd City Commission meeting, staff was directed to add three non-voting members to the existing Sign Code Committee. He said to provide better balance of the non-voting membership, staff is recommending the non-voting membership be increased to a total of six members, including three from the sign industry and three from the residential neighborhoods. He said the individuals recommended for appointment to the Sign Code Committee as non-voting members are as follows:

## Representing the Sign Industry:

Russ Newman, Off-Premise Sign Industry  
Bernie Dardis, On-Premise Sign Industry  
Jim Patterson, Portable Sign Industry

## Representing Residential Neighborhoods:

Natasha Neihart, Hawthorne Neighborhood  
Rebecca Knutson, Clara Barton Neighborhood  
David Shultz, Clara Barton Neighborhood

Commissioner Mahoney moved the recommendations from staff to appoint six additional non-voting members to the Sign Code Committee be approved.

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

No Commissioner being absent and none voting nay, the motion was declared carried.

First Reading of an Ordinance Amending Section 10-0318 of Article 10-03 of Chapter 10 of the Fargo Municipal Code Relating to States of Emergency - Declaration and Duration:

The Board received a communication from City Attorney Erik Johnson proposing revisions to the initial draft Ordinance amending Section 10-0318 pertaining to the Mayor's Declaration of a State of Emergency and powers that are implemented as a result of such declaration. The main revision, he said, is for the Incident Commander to confer with the Mayor and the City Engineer, in addition to the Chief of Police, prior to ordering the evacuation of any portion of the City. He said Commissioner Piepkorn has commented with respect to the powers to order

evacuation of portions or all of the City, that language should be inserted that requires decision makers to confer with the Mayor and other City Commissioners to the extent possible. Commissioner Piepkorn also suggests, he said, the Mayor and City Commission be consulted when reasonably possible regarding closure of businesses during emergencies. He said verbiage could be added to the draft ordinance to convey Commissioner Piepkorn's suggestions.

Commissioner Piepkorn stated the City has wonderful staff and everyone works very well together; however, major flood decisions should be made by elected officials. He said this is a very important piece of work and the Commission should not rush into making a decision.

City Administrator Pat Zavoral stated he agrees with the Commission that if the City needs to close businesses or issue an evacuation notice for the entire City or half of the City that clearly needs to come from the elected officials; however, in some of these minor events some sort of protocol needs to be in place that would not require a City Commission meeting be called every time staff needs to make a decision.

Commissioner Mahoney moved first reading of the Ordinance Amending Section 10-0318 of Article 10-03 of Chapter 10 of the Fargo Municipal Code Relating to States of Emergency - Declaration and Duration be placed on first reading.

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

No Commissioner being absent and none voting nay, the motion was declared carried.

#### Presentation Regarding the Downtown Parking System:

The Board received a communication from Senior Planner Robert Stein stating at the February 7th City Commission meeting further information was requested regarding the downtown parking system. Mr. Stein made a power point presentation providing information regarding revenues, expenses, individual parking funds, occupancy, rates, specific projects and upcoming needs for the downtown parking system.

At 6:00 p.m. the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

#### Revisions to the Flood Protection Incentive Program Approved:

The Board received a Report of Action from the Public Works Projects Evaluation Committee recommending revisions to the current Flood Protection Incentive Program (FPIP). They stated the revisions being proposed are quite significant in the eligibility, elevation and funding standards and would establish much higher minimum recommended protection elevations. The revisions, they said, are intended to provide consistency in design standards and City cost participation between FPIP projects completed privately and City sponsored public projects.

City Engineer Mark Bittner stated the FPIP has been successfully used since the 1997 flood when Deputy City Engineer Dave Johnson came up with the concept. Now, he said, significant changes are being seen, predominantly due to the fact that flood protection needs to be higher and a lot of properties cannot get that high because the property is too close to the river. Therefore, he said, the City has to buy the property or put a flood wall behind it.

Senior Engineer April Walker stated one of the changes to the FPIP is that a new category will be added to reimburse property owners 100% by the City, up to 50% of the assessed property value. She said the current policy has a cap of 75%; however, to be eligible for the 100% reimbursement property owners will have to build their levees to 44 feet or higher. The current policy also states, she said, property owners are eligible for 75% reimbursement if levee work is done to 39.8 feet or greater; however, with the revisions, levee work would have to be done to 41 feet in order to get 75% reimbursement from the City. Property owners building to 41 feet will have to leave enough room for emergency deployment to 44 feet, she said, which was not a previous requirement. She stated other eligible expenses that have been added are landscaping up to \$5,000 per property to regain useable yard and the capping of existing sprinkler lines. She said another change to the policy is that property owners will no longer be able to encroach into the floodway.

Commissioner Williams stated with City expansion the City has been encroaching into areas of retention and needs to be careful when speaking about floodway and being so absolute about floodway, when the City has not done all that it could have to reduce the encroachment. He said some of the areas, particularly Belmont Park and South River Road, have increased their properties up to 40 feet on their own dime and are not encroaching on the floodway. He said he just wants to make sure that the City is being fair across the board to residents. When looking at the cost shares, they look to be about the same percentages, he said, but those most able to pay look like they are getting the best deal and some of those that have been taxpayers for many years are not getting as good a deal. He said he is wondering if the Commission should look at prorating some of cost for these residents.

City Administrator Pat Zavoral stated there are issues if flood walls are used such as who will put the walls in place, where the walls will be stored and what type of easements will be needed. He said a maintenance agreement will be needed as well. There is also the issue of river lot property owners wanting their properties to be appraised at pre-flood values, he said. He asked if that is the standard the City wants to apply or if the floodway and floodwaters will make the determination of the value of the property.

Mayor Walaker stated the revisions to the FPIP plan are fine for the time being; however, for the City Commission to make a final determination, the Commission would need to see how many properties would be involved and how many properties the City cannot put protection behind.

Commissioner Mahoney moved the revisions to the Flood Protection Incentive Program be approved as presented with the additional changes to be made and brought back to the City Commission for final approval.

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

No Commissioner being absent and none voting nay, the motion was declared carried.

#### City Attorney to Draft an Amendment to the River Setback Policy:

The Board received a Report of Action from the Public Works Projects Evaluation Committee stating the City has been attempting to raise the level of protection for the entire City to 44 feet; however, a large number of homes cannot be protected to the 44 foot level. These homes, they said, are located along the Red

River with rear yards of insufficient depth to allow for installation of any type of flood protection device and in many instances prevent placement of levees or flood walls for flood protection. They said the current building structure to river setback requirements are not adequate and need immediate attention. Current policy for river setback requires a 100 foot building setback from the floodway line, he said, and Cass County's policy requires a 450 foot setback from the centerline of the river. They said they are suggesting building setbacks from rivers at the greater of the following two standards:

1. 100 feet from the floodway line.
2. 450 feet from centerline of the adjacent river.

In response to a question from Commissioner Piepkorn wondering whether or not this policy would include drains, Senior Engineer April Walker stated drains will be brought to the City Commission separately. She said Engineering is still evaluating the recommendations and the discussions that the engineers have had.

Commissioner Williams moved the City Attorney be directed to draft an amendment to the river setback policy as recommended.

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

No Commissioner being absent and none voting nay, the motion was declared carried.

#### 2011 Flood Preparations Status Update:

Enterprise Director Bruce Grubb said as of this morning the City has 2,050,000 sandbags filled and he believes by the end of the week there should be about 2.6 million sandbags filled. He said by the end of the week the plan is to go into standby mode at Sandbag Central leaving everything setup in case there is a need to start it back up at a later date. Work is also being done on a draft deployment plan, he stated.

Commissioner Mahoney moved approval of the Contract Change Order for Dakota Underground for Project No. 5946-1 to extend rear-yard clay levees north and south of North Oaks as requested by adjacent property owners and reviewed by Engineering staff for effectiveness.

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

No Commissioner being absent and none voting nay, the motion was declared carried.

Commissioner Mahoney moved the following emergency operations authority be granted to the City Engineer after consultation with the Mayor and City Administrator:

- "1) Require removal of rear-yard obstructions that threaten ability to construct emergency protection levees.
- 2) Require ring dike construction around houses that cannot meet minimum levee standards.

- 3) Post-flood permanent protection options to be evaluated under FPIP to determine potential for restoration of deck-gazebo compatible with flood protection plan.”

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

No Commissioner being absent and none voting nay, the motion was declared carried.

City Engineer Mark Bittner explained that right of entry is needed for accessing rear yard flood protection at a critical location on Harwood Drive South. He said City staff is concerned about the reliability of floodwalls incorporated into the foundation structure of the house for use as primary line of flood protection.

Commissioner Mahoney moved approval of an emergency order for access and rear-yard and/or ring dike construction along Harwood Drive South.

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

No Commissioner being absent and none voting nay, the motion was declared carried.

At 7:02 p.m. the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

Commissioner Mahoney moved approval of the Change Order for North Pine for Project No. 5958-01 to extend the clay levee east from 2130 Sterling Rose Lane to the Milwaukee Bike Trail with post-flood floodwall construction.

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

No Commissioner being absent and none voting nay, the motion was declared carried.

Commissioner Mahoney moved approval of emergency clay levee construction to 44' east of Drain 53 from Rose Creek Parkway to Rose Coulee/Drain 27.

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

No Commissioner being absent and none voting nay, the motion was declared carried.

Commissioner Mahoney moved approval of Contract Change Order for Riley Brothers for Project No. 6003-01 to complete the east containment levee between 52nd and 58th Avenues South.

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

No Commissioner being absent and none voting nay, the motion was declared carried.

Commissioner Mahoney moved approval of RFP solicitation of Trap Bag deployment contractors and contract with Aggregate Industries for mixing and delivery of sand/compost fill material.

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

No Commissioner being absent and none voting nay, the motion was declared carried.

Commissioner Wimmer moved approval of Contract Change Orders for Demolition Project Nos. 5747-24 and 5747-27 for recently acquired flood prone property.

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

No Commissioner being absent and none voting nay, the motion was declared carried.

Commissioner Mahoney moved approval of consultant selection, assignment and contract award for 2011 Flood Assistance as follows:

| <u>Task</u>                     | <u>Area</u> | <u>Preferred Consultant</u> | <u>Cost Proposal</u> |
|---------------------------------|-------------|-----------------------------|----------------------|
| Field Support                   | 1           | AE2S                        | \$ 51,500.00         |
| Field Support                   | 2           | Houston                     | \$ 86,602.50         |
| Field Support                   | 3           | Houston                     | \$119,461.00         |
| Field Support                   | 4           | Ulteig                      | \$108,130.00         |
| Field Support                   | 5           | Apex                        | \$ 27,860.00         |
| Office Support                  |             | N/A                         | SRF                  |
| Contingency Planning            |             | N/A                         | Apex                 |
| High Water Elevation Monitoring |             | N/A                         | Moore                |
| Survey Services                 | 1, 2&3      | Houston                     | \$ 31,698.50         |
| Survey Services                 | 4&5         | Ulteig                      | \$ 5,385.00          |

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

No Commissioner being absent and none voting nay, the motion was declared carried.

Commissioner Mahoney moved the bid for Lift Station Protection, Project No. 5951-01 be awarded to Wanzek Construction, Inc. in the amount of \$31,500.00.

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

No Commissioner being absent and none voting nay, the motion was declared carried.

Senior Engineer April Walker presented a document outlining storm water procedures that need to be taken under an Emergency Declaration. A similar document was drafted and used during the 2009 and 2010 flood events and this document, she said, has been updated for the 2011 event. The document, she



said, outlines the basic activities the City undertakes during a flood event to limit the potential for discharges into the City's sewer system or directly into the Red River. She said this plan recognizes the importance of the flood fighting activities, benefits and pollution prevention associated with keeping floodwater from overtaking the City.

Commissioner Mahoney moved the NPDES Storm Water Procedures under Emergency Declaration – Flood Response dated March 3, 2011 be adopted as recommended.

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

No Commissioner being absent and none voting nay, the motion was declared carried.

Commission Piepkorn offered the following Resolution and moved its adoption:

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

WHEREAS, The City of 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 and emergency assistance is required for the purposes of preserving life and public property.

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, determined to be necessary by the Corps for purposes of providing the requested assistance.
- b. Hold and Save the United States free from all claims for damages attributable to the construction, operation, maintenance, repair, replacement, and rehabilitation of emergency work, 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 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 Dennis R. Walaker, Mayor, be authorized to enter into agreements in furtherance of this Resolution, with the U.S. Army Corps of Engineers, as a means of supplementing the local flood emergency preparation and flood fighting and rescue operations.

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

No Commissioner being absent and none voting nay, the Resolution was adopted.

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

THIS AGREEMENT, entered into this 7th day of March, 2011, 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, North Dakota, (hereinafter referred to as the "Public Sponsor"), acting by and through the Mayor.

WITNESSETH THAT:

WHEREAS, 33 U.S.C., § 701n, authorizes the Chief of Engineers to flood fight and perform rescue operations; and

WHEREAS, the Public Sponsor has requested assistance under 33 U.S.C., § 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 attached to and 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, borrow, and borrow and dredged or excavated material disposal areas determined to be necessary by the Corps for purposes of providing the requested assistance. 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 emergency 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 Government, all temporary work constructed by the Government when the emergency has passed as determined by the Government.
  - e. Be required to return loaned equipment and reimburse the US Army Corps of Engineers for expended supplies. Reimbursement may be in the form of (a) replacement in kind with an equivalent quality to those issued; or (b) paying the cost for the Corps of Engineers to replace the supplies with those of an equivalent quality; or (c) returning in good, usable condition those supplies not used; or (d) any combination of the above. I understand that the Public Sponsor will be billed for supplies not replaced, and agree to remit payment within 30 days of the bill date.
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.
  - 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 property and equipment provided for use in flood fighting activities. Government property or equipment damaged, destroyed or lost while in the Public Sponsor's possession, including property or equipment incorporated into temporary emergency construction, will be repaired or restored by the Public Sponsor at the Public Sponsor's expense to its condition prior to the Public Sponsor's obtaining possession of the Government property or 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. 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 - Scope of Work.
- b. Exhibit B - Resolution.

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 assistance 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 assistance as herein contemplated, except to the extent 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 work.

It is hereby certified that the undersigned has the legal authority to execute this agreement and that the assistance herein requested is beyond the capability of the Public Sponsor.

This agreement shall be effective when signed below or in counterpart, and photocopy, facsimile, electronic, or other copies shall have the same effect for all purposes as a signed original.

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 Williams. On the call of the roll Commissioners Piepkorn, Williams, Wimmer, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Commissioner Wimmer moved the Engineering Department be authorized to solicit bids for Lift Station Flood Protection in the Fargo Country Club area.

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

No Commissioner being absent and none voting nay, the motion was declared carried.

Commissioner Wimmer moved the Board approve and confirm the above motions relative to flood control.

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

No Commissioner being absent and none voting nay, the motion was declared carried.

Legislative Update:

City Administrator Pat Zavoral reviewed the matrix indicating the 2011 legislative bills the City supports and opposes and a summary of hearings taking place this week.

Commissioner Mahoney moved that the Board adjourn to 5:00 o'clock p.m., Monday, March 21, 2011.

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

The time at adjournment was 7:34 o'clock p.m.