

# Minutes of the Joint Meeting of the MNAA and MPC Operations, Engineering & Strategic Planning Committees



Date: December 13, 2023

Location: Metropolitan Nashville Airport Authority  
Tennessee Boardroom

Time: 9:00 a.m.

Committee Members Present:

Bobby Joslin, Committee Chair; Nancy Sullivan, Committee Vice Chair, Dr. Glenda Glover

Committee Members Absent:

None

Other Board Members Present:

Joycelyn Stevenson, Jimmy Granbery, Bill Freeman and Andrew Byrd

MNAA Staff & Guests Present:

Doug Kreulen, Neale Bedrock, Lisa Lankford, Trish Saxman Marge Basrai, Daniel B. Brown, Chris Davidson, Kristen Deuben, Adam Floyd, Traci Holton, Ijeoma Ike, Carrie Logan, Rachel Moore, Ted Morrissey, Josh Powell, Stacey Nickens, Robert Ramsey, Davita Taylor, Colleen Von Hoene, George Cate (Bradley Arant), Laura Lowe (PFM) and Cory Czyzewski (BoFA)

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## I. CALL TO ORDER

Chair Joslin called the Joint Meeting of the MNAA and MPC Operations, Engineering & Strategic Planning (Operations) Committee to order at 9:00 a.m. pursuant to Public Notice dated December 8, 2023.

## II. BOARD CHAIR STATUS REPORT

Board Chair Stevenson stated that following the Board's vote at the last Board meeting to obtain outside counsel, a Letter of Engagement has been executed with Adams and Reese LLP. Two initial issues were flagged - how to handle the approval of the October 2023 minutes and the de facto officer doctrine. The Board has been provided memos from Adams and Reese with guidelines related to those issues. Regarding approval of the minutes, Adams and Reese LLP suggested affidavits for staff who prepared the minutes as well as some language around the affidavits. Adams and Reese LLP also provided an opinion on the de facto officer doctrine. The Board has also been provided with outside opinions provided by other counsel to MNAA. The next step is for this Operations Committee and the other Committees today to figure out a path forward now that they have this information.

III. PUBLIC COMMENTS

Chair Joslin stated there were 5 requests for public comment received. The deadline was December 11, 2023 at 9:00 p.m.

Chair Joslin called Mr. Wallace Dietz.

- Wallace Dietz, Metropolitan Nashville and Davidson County, Agenda Item IV

Mr. Dietz thanked the Chair and Commissioners. He stated that he has concerns if this Board does not review, analyze, and ratify the contracts entered into by the State Board when they were in office, as those contracts could be subject to attack in litigation. Mr. Dietz stated there has been a lot of talk about the de facto government doctrine. He mentioned the doctrine to the media early on as being an applicable factor. He recognized his esteemed predecessors here today. The de facto officer doctrine is not the end all, as there is a doctrine called the void ab initio doctrine that says if a body was unconstitutional from its beginning and there was a protest lodged, then every action taken by that body is invalid. He could not tell the Board which doctrine the court would apply, and therefore, there is risk, and he would encourage the Board to review and utilize their independent counsel to review these contracts. He stated that he is sure that most, if not all of the actions taken, are proper and should be ratified, but that the Board needs to put their stamp of approval on them to remove any risks. Thank you.

Chair Joslin thanked Mr. Dietz and called Mr. Jon Cooper.

- Jon Cooper, Holland & Knight, Agenda Item II

Mr. Cooper stated that he was present at the request of Commissioner Granbery. Mr. Cooper stated his opinion is that the de facto officer doctrine clearly applies to this situation for a number of reasons. First, the State law in question did not create a new entity. It has been the Metropolitan Nashville Airport Authority throughout, it is one entity. Second, the de facto officer doctrine was created under common law to essentially be an exception to the void ab initio doctrine. It recognizes that when Boards are acting under the color of law and the courts have been clear that laws are presumed to be constitutional until a court says otherwise. When they are acting under a color of law, then their actions during that period are valid. So, his opinion is that all actions taken during those 4 months by the State Board are legal, binding, and valid. As to the Board members themselves, there can be no effective resignation, again, because it is the same entity, it was the same office. He encouraged the

Board, as an attorney who has researched this at the request of Commissioner Granbery, to apply the de facto officer doctrine in this context.

Chair Joslin thanked Mr. Cooper and called Mr. Saul Solomon.

- Saul Solomon, Klein Solomon Mills, Agenda Item II

Mr. Solomon thanked Chair Joslin. Mr. Solomon stated he is a former Metro law director as Mr. Cooper is, and also a former Board Commissioner member. Mr. Solomon stated his firm has looked at this and believes a great weight of legal authority would come down to the side of upholding the actions of the State law Board. And this is really not surprising, as most of the time the law tries to come up with solutions that make the most sense. He asked what answer the person in the streets would choose if presented with this issue. Plain and simple, while the debate goes on about the acts of constitutionality and it continues whether it is in the media and the courts, the airport for the good of all has to continue doing business. Some of this business requires Board approval. If the law were to say that the actions of the State Board were void, then that means that the airport while this is contested could basically do no business. And that does not make any sense, the man or woman on the street would be scratching their heads as it does not make sense. Mr. Solomon stated that if this Board decides not to honor these contracts, there is a very good chance the counterparty would sue. Ask any lawyer in this room if they want to win the case, which side would they rather have, and they would choose the counterparty side. He said he was completely convinced of that. Being a Board member is not easy, as we have learned. It requires time to put aside your personal feelings about what is right for the airport as a whole. The law tells you that the best path forward is for you not to undo what has been done. He urged the Board to follow that path forward.

Chair Joslin thanked Mr. Solomon and called Mr. George Cate.

- George H. Cate III, Bradley Arant Boult Cummings LLP, Agenda Item II

Mr. Cate stated he is not a former Metro law director. Mr. Cate stated he agrees with the statements made by Mr. Cooper and Mr. Solomon with respect to the validity of the actions of the Board made July through October. Mr. Cate stated the de facto officer doctrine has been around since the 1800s, and 175 years since it was recognized. Mr. Cate stated there are numerous decisions that have been upheld, that even where an individual's appointment

is invalid, whether because of a constitutional issue or otherwise, the actions of that individual are lawful and binding while they are in place. That includes the situation where the appointment may be defective because of some constitutional issue. There are important policy reasons behind this as the Supreme Court indicated in a case called *Jordan v. Knox County*. It is for the protection of the third party who may be dealing with the Airport Authority and they need to be able to rely upon the decisions and the actions that are made. And this would include our situation, as Mr. Solomon said, a situation where other parties entered into contracts with the Airport Authority between July through October or have taken action and relied on what the Board did. Because of the doctrine, taking the additional step of ratifying what the Board has done is unnecessary. Mr. Cate stated there is no downside to ratifying the previous actions. In fact, as Mr. Dietz indicated, really you cannot tell one way or another which way a court may go and one way to make sure you do not have risk either way is to ratify all of the decisions. As to the void ab initio doctrine which Mr. Murphy will talk about a little more, our research indicates the de facto officer doctrine in this context, would control, but even if the void ab initio doctrine was in play there is an exception to it that says, "where third parties have relied upon an action and it changes their position of reliance on it".

Ms. Saxman informed Chair Joslin time is up. Mr. Cate thanked the Board for the time to talk.

Chair Joslin thanked Mr. Cate and called Mr. Jim Murphy.

- Jim Murphy, Bradley Arant Boult Cummings LLP, Agenda Item II

Mr. Murphy stated fortunately he is the last of the law directors. Mr. Murphy stated as Mr. Cate mentioned, he will talk briefly about the void ab initio doctrine and how it interplays with the de facto officer doctrine. One thing that is important about the void ab initio doctrine is the case law that does apply to the void ab initio doctrine has not done so in a situation where a challenge was based on the acts of an official who was appointed and pursuant to statute was later declared unconstitutional. In those circumstances the void ab initio doctrine has not been applied and the de facto officer doctrine has been applied so that the validity of the actions of those officials will not be challenged. If you did not apply the de facto officer doctrine and you applied the void ab initio doctrine that would mean any contract that was approved by that Board that was subsequently declared unconstitutional would be invalid.

Therefore, any payments that the Authority had made pursuant to those contracts would have to be recovered by this Authority since they were illegal payments not authorized by valid action. Not only are you exposed to liability from the parties that will likely sue you for breach of contract, you also have made payments that are illegal and have to be recovered. That is why the courts have created the de facto officer doctrine to prevent those kinds of situations from occurring. Lastly, as Mr. Cate mentioned, even if you apply the void ab initio doctrine, there is an exception where third parties have relied on the action, such as entering into contracts and starting performance under those contracts, and in those circumstances the courts refused to apply the void ab initio doctrine because it creates the consequences.

Ms. Saxman informed Chair Joslin time is up.

Mr. Murphy thanked the Board for their time.

Chair Joslin thanked Mr. Murphy and stated he appreciated all of the information. Chair Joslin asked Board Chair Stevenson, who is also a practicing attorney, to give her take and her recommendation on the 5 gentlemen who have spoken. Board Chair Stevenson stated first that all of the attorneys are wonderful. As she mentioned before, as a former executive director and former president of the Nashville Bar Association, she knows all of them very well and has worked at one of the firms and has nothing but positive things to say about all of the attorneys including Board counsel and the Authority legal department. She appreciates everyone having an interest in this and wants to weigh in. Last month the Board had this discussion regarding the de facto officer doctrine and talked about receiving a legal opinion. At that time, she mentioned that in reviewing it, she felt it made sense and was the way to go. However, she understood that this Board has not been in these seats for about 4 months and if there are people that have a better comfort level with wanting to have outside counsel, getting an opinion and figuring out what they feel, she feels that is important and the Board has done that. Board Chair Stevenson stated that for her it is about getting the Board enough information so that individually they can come to a conclusion as to a path forward. For her, she accepts, and in some ways thinks it makes sense to apply the de facto officer doctrine but she also understands that the majority of this Board may not feel this way. To George Cate's point, Board Chair Stevenson stated she is also fine with ratifying what has already been done. That is a path forward, or a bridge forward, for the Board to move on, and she is about that as well.

Board Chair Stevenson stated the Board has gone through these contracts in two previous meetings, and also has backup for these contracts. The Board had questions and MNAA staff provided additional information. One meeting was 5 hours and the other was 2.5 hours. Board Chair Stevenson stated for her, she does not feel like she needs to go back through the 19 contracts. Unless somebody has a reason to believe that something was incorrectly done, or the process was not followed, or the process somehow veered from all the other presentations we have heard over the last few years. But she has not heard that and no one has told her that, so she thinks the Board has a path forward based on all the legal opinions, to accept the de facto officer doctrine or to say out of an abundance of caution to ratify. Board Chair Stevenson stated she looks forward to hearing what other Board members think and ultimately this Committee will make a recommendation that she hopes can flow through the other Committees so we can get through this and get on with the business of the airport.

Chair Joslin said very well put and called on Commissioner Byrd. Commissioner Byrd stated he would like to hear from Board counsel about their opinion on this. Chair Joslin called on Board counsel, Ms. Cindy Barnett with Adams and Reese LLP.

Ms. Barnett stated that she also has had the pleasure of working with all these fine lawyers and is happy to see them all here. Ms. Barnett stated from their position, they appreciate the fact that the Board voted at the last meeting to bring Adams & Reese LLP in to represent the Board as independent counsel to try to help the Board move forward and that is exactly why she is here. Ms. Barnett stated that the Board members have all had an opportunity to look at their memo, which is an executive summary, and if the Board would like to read all about the legal doctrines, she would be happy to provide their in-depth internal memo on those points. At the end of the day, their recommendation, as said in their memo, is that the Board should also act on these contracts. That is the best protection for the Board and eliminates risks for all the parties. As Mr. Cate said, which she totally agrees with, there is no downside that she can see. It can be done quickly. They are not suggesting the Board undo these contracts, which are assumed to be commercially reasonable and negotiated, and they have obviously all have been recommended by staff. But we think these contracts should also have your vote of Board approval on them. Because you have a very unique fact pattern and we have all read a lot of case law and she won't bring all that to the Board's attention, but these are unique facts and that is when courts make unique rulings. Adams and Reese LLP cannot guarantee the Board that by not acting, everything will be preserved as it is, and that is the reason for their recommendation,

balancing all of these arguments, all of which are great arguments. Obviously, you have got some wonderful lawyers that disagree with the approach which to them means there is some element of uncertainty, so Adams and Reese LLP stands by their recommendation that this Board should act quickly. Ms. Barnett thanked the Board. Commissioner Byrd asked if it were possible to get the various contracts that were approved previously in the hands of the Board counsel so they could review those and come back with an opinion about enforceability and we could rapidly move forward with approving these contracts.

Chair Joslin called on Commissioner Glover. Commissioner Glover stated she already read the contracts and the Board has looked through them, so she does not have an issue with the contracts, any issues she had were resolved. Some questions she had were regarding the minority participation numbers, and she had her questions answered. The question is not about going back through all the old contracts, but her question is whether or not the Board even needs to ratify the actions that occurred between July through October. Commissioner Glover stated she thinks we do need to ratify the actions of the prior Board and do it for their own comfort. The memo says we need to ratify the contracts and so she is willing to accept what the counsel recommends. Commissioner Glover stated she read through all the documents over and over again and she found no issues with the 12 contracts we are talking about. She also read the 2 doctrines and respects both doctrines and it is her thinking that the actions are deemed valid and if that is the case, even if they had the true authority, they had the apparent authority to act. She thinks we do not need to go back and look at every contract, and if there are some issues with some of them, then the Board brings those out and look at those issues, but let's take the counsel's word and go ahead and ratify them and be cautious. That is her opinion.

President Kreulen stated we need to get to the approval of the minutes first, but if the Board would like to keep discussing, then that is fine. Board Chair Stevenson asked if we have to do it that way. Commissioner Glover stated she would like to keep discussing.

Chair Joslin called on Commissioner Byrd. Commissioner Byrd stated he has one further point, he has reviewed in detail, read the minutes, read the reports, looked at executive summaries that were provided from the staff recommendations, but he has not seen the actual contracts, he has not seen the written documents. He thinks those written documents need to be provided to the Board counsel to review and get back to the Board with recommendation about ratification. He is very interested in

moving forward as quickly as possible but he does think that we have an obligation to the people of the city of Nashville that we represent to review these contracts and make sure that these contracts are proper in their approach.

Chair Joslin called on Vice Chair Sullivan. Vice Chair Sullivan stated that she has a related question for President Kreulen, and asked when these contracts were prepared if there were there any unusual language added to the contracts. We have standard verbiage for our contracts depending on the type, and she asked if these contracts deviate from those in any way. President Kreulen replied no and referenced the spreadsheet he had provided listing the 19 action items covering all three Committee.

President Kreulen stated in the Operations Committee specifically, there are 12 contracts that total \$205,259,789, and six of those have not been executed. Commissioner Glover stated she thought there were five and asked if there were six. President Kreulen replied, yes, there are six; one that we do not have the paperwork on yet, it may be hung up in procurement, but five are ready to go via DocuSign. Commissioner Glover asked if the process has changed at all because this Board has always listened to the presentation and asked questions and asked if that same process was followed in the four-month period. President Kreulen replied yes.

President Kreulen stated Adams and Reese LLP recommended to the Board that staff provide an affidavit on the procedures for producing minutes. This morning he also sent an Affidavit from the CEO, CFO, COO and General Counsel to the Board, and he has paper copies if any Commissioners would like them, that basically states that the same process before the State Board came in, four months while the State Board was here, and since the State Board is no longer here, we have not deviated from procurement procedures, bylaws and state law and federal law. MNAA has not changed how it does business before, during or after the previous Board. We presented those items to the previous Board and we presented on November 7<sup>th</sup> and November 8<sup>th</sup> all 19 of these items to this Board. We did the same thing with this Board before the State Board and we treated the State Board the same way. We give the Board the analysis and then generally the contract as it goes to the counsel for an outside review. You get the facts, the staff analysis and we either sell it or not and if it was a blow up for some reason, then we would get outside counsel involved. The process has not changed. Vice Chair Sullivan asked for confirmation that the contract language did not change. President

Kreulen stated correct, there may be a difference in a comma or something, but the templates that we use apply through the myriad of different types of avenues that we do. That is the job of procurement to make sure that the language is consistent with state and federal law requirements as well as any other MNAA procedures. In both cases, you have affidavits from the MNAA CEO on down verifying and affirming that the minutes are correct as we never have changed that procedure and those 19 contracts were done the same way. Mr. Bedrock stated Vice Chair Sullivan the form agreements that existed July 1<sup>st</sup> through the end of October exist today. Commissioner Byrd asked if Board counsel has seen these agreements.

Chair Joslin stated Commissioner Byrd with all due respect, we have 5 great lawyers that have offered their opinion to accept and ratify. Commissioner Byrd asked if they had seen the contracts. Chair Joslin replied he does not think they need to; they are going on the case law. Commissioner Byrd stated the Board counsel has not been able to see these contracts. Board Chair Stevenson stated she would like to answer that. Chair Stevenson stated that because the Board did not authorize her to send the Board counsel contracts. The Board authorized the retaining of outside legal counsel and to get advice on whether or not we even had to even look at the contracts in the first place. The process that is usually followed here, that we have all gone through, is that we get the information from MNAA staff, they answer our questions and we get huge packets of information backing up the contracts. Normally there are contracts that she and Commissioner Byrd have to sign as Chair and Secretary, but for the most part there is no extra level counsel, because MNAA counsel has already reviewed the contracts.

Board Chair Stevenson stated if this Board wanted her to send Adams and Reese LLP contracts and if there is a consensus to do that, she will be happy to do that once the Board meets again and as a group makes that determination. Commissioner Glover stated there is a little confusion on her part, because in her mind from the last meeting, she was not aware that all the contracts were on the table. She thought what was on the table was whether the Board was going to ratify or not. But just to be cautious the Board should ratify them, and she was not aware that we wanted to go all the way back and get all the contracts to look at them. She can see going through the ones that the Board may have concerns about, some may take more processes to correct, but as far as the process has not changed and the amount of our exposure now that the Board has gone through that. She had one

more question, what is the hurt or harm this will do to minority businesses if we decide to undo these contracts. Chair Joslin stated we might put some of them out of business.

Commissioner Granbery asked if this is a Committee meeting or are all Board members allowed to speak. Chair Joslin asked Board Chair Stevenson to please respond. Board Chair Stevenson responded that part of this is for us to talk, we have a Board meeting next week, but ultimately the Operations Committee makes a decision and if Chair Joslin wants to shut this down and move on, it is his decision. Chair Joslin stated he is ready to shut it down and move on. Commissioner Glover stated she wants to know if somebody can tell her if we do not ratify the contracts, which minority firms are relying on, what is the exposure for them and for us too and what is that dollar amount that are we talking about. President Kreulen replied there are 12 contracts for the Operations Committee, item V on the agenda, and there are 29 SMWBE firms that are part of the prime and small businesses, and \$19,794,612 in contracts. Commissioner Glover asked if we have already started those. President Kreulen replied 6 of them have already started, so about \$11M, and \$8,196,186 that will hopefully move forward. Commissioner Glover asked what document he is looking at. President Kreulen presented a handout to the Board that listed the 19 contracts, amounts and SMWBE participation.

President Kreulen stated the document that you have highlights in yellow the contracts that have not been executed—MNAA is behind 45 days going on 60 days, and you can see the dollar amounts on the far side. Commissioner Glover asked regarding items 1-12, what are those. President Kreulen replied item 10 is in procurement, but items 9, 11a, b, c and 12 are sitting in DocuSign ready for the President and CEO, Board Chair and Board Secretary to sign. We are waiting for the Board ratification or approval. Affidavits have been provided from all the senior staff members that the procedures staff used to put together these contracts before, during and after are identical. Commissioner Glover stated this sheet is good and bad, it is good that it shows where we are and same for bad. There are some firms that have 0% participation, and while that is not the subject of this meeting, which she gets, but having 0% DBE is pretty bad.

President Kreulen stated he knew Commissioner Glover would acknowledge that one, so on the SAAB Sensis, that is the software company that will design the virtual ramp control system and that was determined to have no goal because there were not any minority firms that had the capability to create the software. The solicitation for staff augmentation (Items 11a, 11b and 11c) was issued with

two solicitations as small business target market and two solicitations as prime and did not have a goal. Commissioner Byrd stated he is very interested in proceeding ahead, there is no way he wants to hold up these contracts, he wants to get this done as soon as possible, and he just wants the actual verbatim text of the contract delivered to the Board counsel for review as quickly as possible so we can move forward as quickly as possible.

Chair Joslin replied to Commissioner Byrd that he appreciated that, but he is not on this Committee to be able to make that recommendation. Commissioner Byrd stated he is just stating for the benefit of the Chairman what his approach would be. Chair Joslin stated he is going to shut this down and we will move on with the Operations Committee, there are three members of the Operations Committee here, himself, Commissioner Glover, and Vice Chair Sullivan.

#### IV. APPROVAL OF MINUTES

Chair Joslin made a motion to approve the October 11, 2023 Minutes of the Joint Meeting of the MNAA and MPC Operations, Engineering & Strategic Planning Committees based on the memo received from Adams and Reese LLP dated December 5, 2023 and received December 11, 2023, which recommended specific motion and staff affidavits. Chair Joslin asked if he should do it separately or both together. President Kreulen told Chair Joslin that the Adams and Reese LLP affidavits and recommended language you have in front of you is for the October 11, 2023 Minutes. President Kreulen suggested Chair Joslin add Adams and Reese LLP's language and recommendation that an affidavit from the minute taker and preparer of the Prior Minutes, certifying that the Prior Minutes were taken and prepared in accordance with MNAA's standard meeting procedures and are an accurate record of the same. The minutes will become part of MNAA's official records. President Kreulen stated that the affidavits were provided to each Commissioner. The minutes will become part of MNAA's official records.

Chair Joslin stated in the motion to approve the minutes per Adams and Reese LLP, the prior minutes are approved solely for the purpose of documenting the records of MNAA, including the date, time, location, attendance, and actions that occurred on the relevant meeting dates by the relevant body, and per Adams and Reese LLP, such approval does not in any way comment on the legality or substance of the proceedings and actions taken or any contract considered with any such actions. Chair Joslin asked for a motion to approve as presented.

Chair Joslin made a motion and Vice Chair Sullivan seconded the motion. Chair Joslin asked Ms. Saxman for a roll call:

Chair Joslin – Yes

Vice Chair Sullivan – Yes

Commissioner Glover – Yes

The motion was passed with a vote of 3 to 0.

President Kreulen stated the October 11, 2023 minutes are approved and we read the caveat from Adams and Reese LLP and the Board has the affidavits attesting to how we put the minutes together. President Kreulen stated for the November 8, 2023 minutes, this Board was in charge and it will be regular Committee approval.

Chair Joslin asked for a motion to approve the November 8, 2023 Minutes of the Joint Meeting of the MNAA and MPC Operations, Engineering & Strategic Planning Committees. Vice Chair Sullivan made a motion and Commissioner Glover seconded the motion. Chair Joslin asked Ms. Saxman for a roll call:

Chair Joslin - Yes

Vice Chair Sullivan - Yes

Commissioner Glover – Yes

The motion was passed with a vote of 3 to 0.

#### JULY – OCTOBER 2023 OPERATIONS COMMITTEE ACTION ITEMS

President Kreulen stated now the minutes are approved and we are on to the Committee approving or ratifying the 12 items that were presented earlier with the data that you had on the spreadsheet and the affidavits from the staff that the procedures have been identical. Vice Chair Sullivan asked if the contracts are public documents. President Kreulen replied yes, 24 hours a day public records requests are received. Contractors want to see what their competitors ask for, so yes, they are public documents.

Chair Joslin asked for a motion to ratify, per Adams and Reese LLP's recommendation, the 12 July – October 2023 Operations Committee Action Items. Vice Chair Sullivan made a motion and Commissioner Glover seconded the motion. Chair Joslin asked Ms. Saxman for a roll call:

Chair Joslin – Yes

Vice Chair Sullivan – Yes

Commissioner Glover – Yes

The motion was passed with a vote of 3 to 0.

President Kreulen stated the Minutes for the October 11, 2023 and November 8, 2023 were approved and the July – October 2023 Operations Committee Actions were ratified, and now we can continue with the new airport business for the Operations Committee.

V. CHAIR'S REPORT

Chair Joslin stated if any of the attorneys would like to go, they are welcome to do so. Several attorneys left. Commissioner Byrd told Commissioner Glover he wanted the Board counsel to have the opportunity to review the contracts.

VI. ITEMS FOR APPROVAL

1. Amendment to Contract for On-Call Snow & Ice Removal Services

President Kreulen introduced Daniel B. Brown, C.M., AVP, Maintenance, Environmental and Safety, to brief the Committee on the Amendment. Mr. Brown stated this is an Amendment to the On Call Snow and Ice Removal contract. MNAA currently has Grade A Construction under contract which started on October 1, 2022 for one 6-month term, with one 6-month renewal. MNAA has not used the renewal term yet because there had not been any snow events this year. Last year the Authority spent \$1.3M on snow and ice removal for two snow events on December 22, 2022 and December 26, 2022. The funding source is Operations and Maintenance budget of \$1.5M NTE. The SMWBE goal is 9.55% MBE and/or WBE.

Mr. Brown requested the Operations Committee recommend to the Board of Commissioners that it authorize the Chair and President and CEO to accept the proposed amendment to the contract with Grade A for on-call snow and ice removal services; and authorize the Chair and President to execute the proposed amendment for \$1.5M NTE.

Chair Joslin asked for a motion to approve as presented. Vice Chair Sullivan made a motion and Commissioner Glover seconded the motion. Chair Joslin asked Ms. Saxman for a roll call:

Chair Joslin – Yes

Vice Chair Sullivan – Yes

Commissioner Glover – Yes

The motion was passed with a vote of 3 to 0.

2. Professional Services Contract for Runway 2L Extension EIS

President Kreulen introduced Traci Holton, VP, Chief Engineer, to brief the Committee on the Professional Services Contract for Runway 2 Left Extension for an Environmental Impact Statement (“EIS”). Ms. Holton stated this is phase 1 of 2 to provide analysis and assist the FAA to prepare an EIS to assess and disclose the potential environmental impacts of Runway 2 Left Extension up to 12k feet. The FAA has determined that this needs to proceed as an EIS, which is a process that FAA runs but MNAA pays for. The FAA allows the sponsor/owner to do the selection of the consultants and then the FAA runs the process from there. MNAA advertised a Request for Qualifications (“RFQ”) on September 25, 2023 and received 3 Statements of Qualification (“SOQ”) on October 25, 2023 from Harris Miller Miller & Hanson (“HMMH”), Landrum & Brown, Inc. and TTL USA, Inc. The selection committee reviewed the proposals based on experience on similar projects; key personnel qualifications; subconsultant qualifications; approach to potential challenges and DBE participation. The selection committee interviewed HMMH and Landrum & Brown on November 17, 2023, with scoring based on policies and procedures mentoring and developing DBE relationships; explanation of probability of EIS being downgraded to EA; and approach to address project challenges and how they will address it. The selection committee determined Landrum & Brown, Inc. to be most qualified. Landrum & Brown, Inc. have worked with the Memphis ADO, which is our airport’s district office and they have also done two EISs which were downgraded to EAs in Charlotte and Raleigh. Landrum & Brown, Inc. had the most experience with similar situations and they provided the most detailed approach to moving forward in dealing with the ADO and working through the process. The DBE participation goal is 7.98% and Landrum and Brown, Inc. committed to 8.00% utilizing duGuard Communications and LTL-Schock Group.

Ms. Holton stated this contract will be completed in two phases – Phase 1 will be project definition, purpose and need; runway length justification; and environmental screening of all of the agencies. In about six months staff hope it will be downgraded to an EA, that 6-month process will tell us if we will be downgraded. This is a \$3.5M NTE because FAA negotiates the scope.

Ms. Holton requested the Operations Committee recommend to the Board of Commissioners that it authorize the Chair and President & CEO to execute the proposed Professional Services Contract for the Runway 2L Extension EIS with Landrum & Brown, Inc. for \$3.5M NTE for Phase 1.

Chair Joslin asked about the 2<sup>nd</sup> or 3<sup>rd</sup> vendor in this and what their scores were, and if this was negotiated. Ms. Holton replied nothing was negotiated and no cost has been finalized, because FAA must negotiate the scope. The selection was all qualification based. President Kreulen replied that Landrum & Brown, Inc. scored 384 and HMMH scored 353. Vice Chair Sullivan asked how likely they think it will be downgraded. Ms. Holton replied they reviewed and based on what the master plan previously established and that they do not think that anything is able to be mitigated, the determination is usually that it will be downgraded. Vice Chair Sullivan asked if it is \$3.5M if it is downgraded. Ms. Holton replied \$3.5M is just the starting point and the current remaining budget. We do not know the scope yet to negotiate. If it is downgraded, if it exceeds the \$3.5M NTE, and when it goes to Phase 2, staff will come back to the Operations Committee for a future amendment.

Commissioner Granbery stated about 2 years ago the Board approved a \$15M budget that was encompassing this project. It took 2 years to even get to this point with the FAA because they were sitting on it in Memphis. He asked if that \$15M included other things besides this study, and if this \$3.5M is part of that total budget. Ms. Holton replied that is correct, the \$15M was divided into \$5M for property, \$5M for preliminary design and \$5M for environmental. MNAA originally had a different contract for an EA, in which about \$1.5M of that was spent, and that is where the \$3.5M came from. \$3.5M is the remaining budget for now to work from and that is why we are asking for that today until more is known. Commissioner Granbery stated \$1.5M has been spent and you are asking for \$3.5M today and asked if as you get granular if you can bring exact numbers to the Board. Ms. Holton replied correct, and the good news is that the report from \$1.5M that was spent on the EA, the FAA allowed MNAA to provide them and the consultant

that documentation so hopefully that \$1.5M will not go to waste and will be utilized at the starting point here.

Chair Joslin asked if there were any other questions. Commissioner Byrd asked if this is basically the situation where we are extending our runway to allow for international flights for Asia. President Kreulen stated the \$15M that was approved before is in 3 fives and in one of those fives, there is \$3.5M left. This needs to be approved because we actually are going to put Landrum & Brown, Inc. under contract. The Board previously approved MNA spending the other \$1.5M with another contractor. This is just to do the environmental study that if we lengthen this runway from 8K feet to 12K feet, or whatever the FAA decides, 10.6K feet or something like that, then environmentally what are the challenges that are in front of us. Commissioner Byrd asked if he was correct that this is what the FAA brought up recently in July when we went to them and we are seeking approval for this runway and they said great idea but you have not done the environmental study and so we want to get that done first. President Kreulen replied we have been negotiating with them for two years to sign a Memorandum of Understanding (“MOU”) to start this and once we executed the MOU, we have gone out and procured a contractor and now we are cleared to go forward. FAA and MNA agree on the rules and now we both agree on this contractor. Commissioner Byrd asked if this is basically what the FAA was pushing for, getting this environmental study done, and we are undertaking that environmental study in coordination with them. President Kreulen replied yes, the FAA wanted to do a more detailed study than an Environmental Assessment (“EA”), and so we acquiesced to that and went forward with an EIS, a detailed study. It may get downgraded as it did at the other 2 big airports that did the same thing. Chair Joslin stated it is also to get the timeline reduced from 5 years to maybe 2. Ms. Holton replied the FAA has 2 years to get the record of decision issued, but it is once they file it federally that they are doing an EIS. There is a time frame of about 6 months, that we are going to push for faster, for FAA to do the runway length justification and determine if it is an EIS or EA. Once FAA has gone through that part of the process and they file it for record of decision, that will be when the 2-year marker starts. Chair Joslin stated it is great to be at this point.

Ms. Holton requested the Operations Committee recommend to the Board of Commissioners that it authorize the Chair and President and CEO to execute the proposed Professional Services Contract for the Runway 2L Extension EIS with Landrum & Brown, Inc. for \$3.5M NTE.

Chair Joslin asked for a motion to approve as presented. Commissioner Glover made a motion and Vice Chair Sullivan seconded the motion. Chair Joslin asked Ms. Saxman for a roll call:

Chair Joslin – Yes

Vice Chair Sullivan – Yes

Commissioner Glover – Yes

The motion was passed with a vote of 3 to 0.

### 3. Professional Services Contract for On-Call Architectural Services

Ms. Holton presented the Professional Services Contract for On-Call Architectural Services to provide architectural design services for all capital projects. One of the contracts that the Board ratified today was for on-call engineering services. The engineering department relies on outside consultants and our procurement process for individual projects can take up to four months. We need to be able to react more expeditiously in order to meet and deliver projects on schedule. MNAA advertised an RFQ on August 28, 2023 and received 8 SOQs on September 27, 2023. The selection committee evaluated based on team structure; key personnel qualifications; experience on similar projects; approach to address the variety of tasks/projects requested; and SMWBE participation. The selection committee interviewed Gresham Smith and TM Partners on October 25, 2023 and selected Gresham Smith based on policies and procedures for mentoring and developing SMWBE relationships; process for executing a task order, and approach to performing a task with construction value <\$100K and >\$25M. Gresham Smith is a local firm and the SMWBE goal was 6% MBE and/or WBE and Gresham Smith committed to meeting or exceeding that utilizing Connico and Shrewsberry and Logan Patri Engineering. This will be a 1-year term with two 1-year renewals at \$5M NTE/year and we will be issuing task orders against this if approved today.

Ms. Holton requested the Operations Committee recommend to the Board of Commissioners that it authorize the Chair and President and CEO to execute the On Call Architecture Services Contract with Gresham Smith for \$5M NTE per year.

Chair Joslin asked for a motion to approve as presented. Commissioner Glover made a motion and Chair Joslin seconded the motion. Vice Chair Sullivan stated her husband works at Gresham Smith and will abstain.

Chair Joslin asked Ms. Saxman for a roll call:

Chair Joslin – Yes

Vice Chair Sullivan – Abstained

Commissioner Glover – Yes

The motion was passed with a vote of 2 to 0, 1 abstained.

#### 4. Construction Contract for Taxiway Bravo 5 Repairs

Ms. Holton presented the Construction Contract for Taxiway Bravo 5 repairs to replace asphalt at Taxiway B5 with full depth, full strength concrete. On October 16, 2023, MNAA put out an Invitation to Bid (“ITB”) and received 2 bids on November 16, 2023 from Hi-Way Paving at \$970K and The Harper Company at \$981K. The bids were \$11K apart and although they were much higher than the engineers estimate, 2 bids that close together represent the market price so staff recommends proceeding. MNAA already has a runway closure plan to be able to do this work at the same time and minimize operational impacts. The SMWBE goal is 8.17% MBE and 7.15% WBE and Hi-Way Paving committed to 8.25% MBE and 7.19% WBE utilizing Archangel Protective Services, E3 Materials & Logistics, and Gibco Construction. This will be about a 30-day project at \$970,100.

Ms. Holton requested the Operations Committee recommend to the Board of Commissioners that it authorize the Chair and President and CEO to execute the proposed contract with Hi-Way Paving, Inc. in the amount of \$970,100.

Chair Joslin asked for a motion to approve as presented. Vice Chair Sullivan made a motion and Commissioner Glover seconded the motion. Chair Joslin asked Ms. Saxman for a roll call:

Chair Joslin – Yes

Vice Chair Sullivan – Yes

Commissioner Glover – Yes

The motion was passed with a vote of 3 to 0.

5. Progressive Design-Build Contract for Infrastructure for Virtual Ramp Control

Ms. Holton presented the Progressive Design-Build Contract for Infrastructure for Virtual Ramp Control to provide structural, mechanical and communications infrastructure for the Virtual Ramp Control System and Virtual Ramp Control Room. On October 16, 2023 MNA issued a Request for Proposal (“RFP”) and received one proposal from Hensel Phelps on November 16, 2023. This is not a super big or super attractive project and Hensel Phelps is on location and very familiar with our building. Although she urged other contractors to participate, only one proposal was received. The selection committee determined Hensel Phelps qualified based on qualifications, relevant project experience and proposed project schedule. This is a progressive design build and this approval item today is for Component Guaranteed Maximum Price (“CGMP”) 1 for \$5M, which will cover everything except for furniture, fixtures, and equipment. This is a 229-calendar day project, which needs to be completed by August 30, 2024, because the requirement of the overall schedule is October 31, 2024 for the whole system to be in place. The SMWBE participation goal is 5.33% MBE/WBE and HP is committed to meeting that goal.

Ms. Holton requested the Operations Committee recommend to the Board of Commissioners that it authorize the Chair and President and CEO to execute the proposed contract with Hensel Phelps for the Component Guaranteed Maximum Price #1 of \$5M.

Chair Joslin asked if Southwest is paying for this. Ms. Holton replied airlines are paying for all of it and called on Ms. Basrai. Ms. Basrai replied yes. Vice Chair Sullivan asked what reasons the other contractors gave for not bidding. Ms. Holton replied we only had 2 show up for this and Messer is the one she spoke with before the solicitation went out. This was not attractive to them at the time. JE Dunn and HP both showed up to the proposal meeting but only 1 proposal was received. President Kreulen replied generally the feedback is that it is hard to do work out here because you have to get all of your employees badged and escorted to do work in a secured area. The contractors that are already here tend to have figured that out. HP has completed approximately \$1B in projects out here and they are still here finishing up and it is just a convenience for them. Commissioner Byrd asked what the relationship is between SAAB and HP. Ms. Holton replied there is no relation. President Kreulen replied that SAAB Sensis is one of the 6 contracts that was ratified earlier. SAAB Sensis is the technology company that is going to do the software that will

control the cameras, talk with the airplanes, and put the images up on those screens. This contract is \$5M to build this room inside our maintenance facility and lay it out similar to the Kansas City Airport control center. Commissioner Byrd asked if this contract is for the new building or for the temporary facility. President Kreulen replied that the temporary control tower is already in operation, and this is for a new room inside the maintenance building that will hold it all. Currently they are in a temporary location on the top of Concourse C. Commissioner Byrd stated he understands they will be there for a year and then move to the new maintenance facility thereafter, so SAAB is providing the digital, technical, and visual capability that will be illustrated on that screen. President Kreulen stated yes, HP will build a room and SAAB will come in and assemble the monitors and software and make sure it all communicates.

Chair Joslin asked for a motion to approve as presented. Commissioner Glover made a motion and Vice Chair Sullivan seconded the motion. Chair Joslin asked Ms. Saxman for a roll call:

Chair Joslin – Yes

Vice Chair Sullivan – Yes

Commissioner Glover – Yes

The motion was passed with a vote of 3 to 0.

## VII. INFORMATION ITEMS

President Kreulen stated there are 4 information items to update the Commissioners and he will present them fast to get back on track and still make the timeline for the Hilton BNA tour.

### 1. Satellite Concourse Performance Update

President Kreulen stated that the Satellite Concourse has 8 gates and has 40 nonstop destinations which is more than the Memphis and Knoxville Airports combined. The Satellite Concourse has been operating 24 hours a day since it opened on October 21, 2023 and there are a large number of bags that are moved out there. There are thousands of shuttle trips back and forth which operate close to 2.5 minutes to the Satellite Concourse and 4.5 minutes back to terminal which is basically loading time. Five of the 8 shuttles are running, and one was damaged in an accident and is being repaired. Optimally 5 are running while 3 are charging. The capability exists to run all 8, but if they all run at the same time, they will eventually have to be pulled out to charge. Commissioner Granbery asked it gets down to a situation where buses are charging and you need

back up, if there are any gas or diesel buses available. President Kreulen replied yes, we could pull our CNG buses, which were switched off diesel to CNG. Additionally, we could pull the electric shuttles that are charging off after an hour and they could operate an hour or two and get through a surge. We want to keep them moving. Commissioner Glover asked if all Spirit flights are out of the Satellite Concourse. President Kreulen replied yes, Spirit and Allegiant have rented 5 of the 8 gates, and the others are common use which different airlines are in and out of. Commissioner Glover asked if passengers know they will be going to the Satellite Concourse when they purchase the ticket. President Kreulen stated their ticket will have gate C4 – C11 and when passengers walk down the Concourse C, they will be directed to the Satellite Concourse. Commissioner Glover asked if it is printed on the ticket. President Kreulen stated he will verify, but most of the airline's apps will let passengers know. Spirit and Allegiant are satisfied being out there. Vice Chair Sullivan asked about deicing the ramp. President Kreulen stated you just approved \$1.5M to clean the ramp and that is part of that contract. As you recall, the satellite is elevated so the planes can have jet bridges and when going to the Satellite Concourse where the drop off and pickup is, you have to drive up a little bit of a ramp. That ramp has glycol in the concrete, so heated glycol melts the snow and ice so that the buses are not going to have a problem getting up the little slope to pick up and drop off passengers.

2. 2023-2024 Snow and Ice Control Plan

President Kreulen stated MNAA has invested a lot of money for snow and ice and always continues to have the latest equipment. For the Snow and Ice Control Plan, FAA Part 139 requires MNAA to have the following: Airport Snow & Ice Control Committee (SICC); Snow Control Center (SCC) and Snow & Ice Control Plan (SICP). The FAA recertifies BNA annually. MNAA starts the snow season in August getting the vehicles ready and reviewing the plans. Meetings are held with the airlines, concessionaires, and tenants every October to review the rules, who will get priority, and what is going to get cleaned first. Staff makes sure that everyone is in agreement with the plan. The new guitar pick area will be utilized for de-ice operations and the planning will be managed by Interim Ramp Control. This has significantly improved our capability. President Kreulen stated he, Lisa Lankford, and Josh Powell met with Southwest on December 4, 2023 and discussed their meltdown last Christmas across the United States. Southwest has completed the 300 action items they identified. BNA had approximately 30 action items that pertained to the airport, and all were completed. Last year it was Southwest's software and crew scheduling that got them in a bind

and they bought all new deicing equipment. We hope not to have a white Christmas, but if we do, we are prepared. Commissioner Granbery asked if part of the prep work is being fully stocked for deicing. President Kreulen replied yes, and that is what Mr. Brown and his team do. Mr. Brown replied that the airport has approximately 87K gallons and 13K has been ordered for a total of 100K gallons. It takes about 30K gallons for a good 24-hour period for a snow event. President Kreulen asked about the cost per gallon. Mr. Brown replied that it is \$7.99 per gallon. President Kreulen replied that E36 potassium acetate is expensive. It is sprayed on the taxiway and runways because those chemicals do not degrade the brakes or the hubs of the airplane aluminum wheels. Commissioner Sullivan asked what the life expectancy or expiration is. President Kreulen replied that we normally burn through it every year, but it should be good for 3-4 years. Commissioner Granbery asked if the new snow equipment had been delivered. Mr. Brown replied that two heavy duty snow sweepers had been received, the deicer is due by the end of December, and snow removal sweepers are due in the July-August timeframe.

3. BNA Development Update: Visual Arts

President Kreulen stated MNAA has a very active arts program and recently executed a contract with Don Hardin Group for Visual Arts Consulting Services. Tre Hardin and Morgan Thompson have joined as curators and will work to keep MNAA's art registered, inventoried and refreshed. Commissioner Byrd asked if they are new employees. President Kreulen replied they are contract employees through the Don Hardin Group. Don Hardin has done a lot of great work at BNA over time on the engineering side and as he has expanded his business. His firm was hired to help with art curation. Commissioner Glover stated he is great.

4. BNA Development Update: Roadways & Parking

President Kreulen stated staff are working on 17 initiatives to improve traffic flow. The media is starting to pick up on the accurate reflection on the different actions. MNAA is coming close to an agreement with TDOT and Superior to speed up Donelson Pike. With the rate change to go to 30 minutes of free parking implemented on December 1, 2023, for the first 10 days of December there were 2,202 more people using the garage for the 30 minutes free than previously. Overall, 12,147 people stayed less than 2 hours which is a 20% jump in that area. Compared to November, almost 1,380 more people in just 10 days use it which helps pull the cars off the roads. Vice Chair

Sullivan asked if it helps the cell phone lot. President Kreulen replied yes, and people need to understand if you circle 3 times you should have gone to the cell phone lot because it is the same distance. Commissioner Byrd asked if this is a positive development. President Kreulen replied yes, very positive, and it is being tracked to understand the impact to revenue. It is estimated to be about \$1M cost over a year time period, if there is not a change in behavior. Commissioner Byrd asked if staff would continue to publicize this availability in Nashville so they are not parking on the side of the road. President Kreulen replied yes.

5. BNA Development Update: December 4<sup>th</sup> Visit to Southwest

President Kreulen reported that the December 4, 2023 visit to Southwest was very positive. Southwest now has 29 gates and would like to get to 39 gates at the completion of Concourse A and are very interested in Terminal II. Southwest is interested in possibly investing and building a \$100M hangar on the westside of the airfield to support simultaneous maintenance of 3 x 737's. MNA will continue to do more work and research how Baltimore Washington International ("BWI") did it. Southwest would also like another hole filled so they have more room to park jets overnight. There is a very busy long-range future for us. President Kreulen showed an image of the Air Freight Building that will be demoed in the first part of next year, for the Concourse D extension. The Multipurpose Building will eventually go away when Donelson Pike is complete. The hybrid is going to be where the old Donelson used to be, and he explained how much rock and dirt will have to be moved to get that down to the right elevation to put the new Airfreight Multipurpose Building. Commissioner Byrd asked what President Kreulen's impression was regarding what Southwest wants from BNA. President Kreulen replied bigger, faster, and more of it. Commissioner Byrd asked if they want to double what they are doing now. President Kreulen replied he cannot speak for Southwest, but it appears to be pretty close to doubling. Southwest has 600 flights a day and they are half of that and are planning to go to 600 flights a day, which will take us to 1K flights a day. That is why we have the New Horizon Program to get us from 54 gates to 70 gates. That is why Terminal II will be critical to the long-range future of the city and state. Commissioner Byrd asked if this is something we want. President Kreulen replied if we do not find a way to do it, then we will be restricting the success of the city and the state to continue attracting businesses. Commissioner Byrd asked if we are coordinating with the Mayor, economic development, CVC, and the Chamber. President Kreulen replied yes, the Mayor has been generous with his time and discussions. President Kreulen stated he has meetings scheduled with

the traffic side of the house in the January time period and the Mayor is looking at the calendar to meet with staff. Commissioner Byrd stated it is a major change to the city of Nashville and a major change to BNA. President Kreulen stated he has spoken with the Mayor, Chief of Staff, Director of Operations, and the head of NDOT and has a meeting scheduled with WeGo soon. TDOT knows the roads are an issue and that the roads being fixed today need to allow BNA to go from 25M to 35M passengers. The question for Nashville and the state is what is going to be done for 70M passengers, so the next terminal is huge for everyone.

6. JWN Development Update

President Kreulen stated Hangar 1 is almost all skinned, and the steel is arriving for Hangar 2. All of the North Development area is leased out, and Parcels 2/3 and 4/5 are in development. MNAA has substantially completed the \$10.8M project to get the roads, power, and utilities in and build the connecting taxiway and ramp. Now you are going to start seeing buildings popping up. Chair Commissioner Granbery asked what the schedule is for the MNPD helicopter parcel. Ms. Holton replied that it should be going out for bid in the March/April 2024 timeframe, and design is underway. Commissioner Granbery stated potentially we can get that back out of parameters of what they want us to build. Ms. Holton replied right now we are in their price range.

President Kreulen concluded the presentation of the informational items.

VIII. ADJOURN

There being no further business brought before the Operations Committee, Chair Joslin adjourned the meeting at 10:16 a.m.



Andrew W. Byrd, Board Secretary