METRO FLOOD DIVERSION AUTHORITY
AUGUST 11, 2016—3:30 PM

1. MEETING TO ORDER

A meeting of the Metro Flood Diversion Authority was held Thursday, August 11, 2016, at 3:30 PM in the Fargo City Commission Room with the following members present: Cass County Commission representative Darrell Vanyo; Cass County Commissioner Mary Scherling; Cass County Commissioner Chad M. Peterson; Fargo City Mayor Tim Mahoney; Fargo City Commissioner Dave Piepkorn; Fargo City Commissioner Tony Grindberg; Moorhead City Mayor Del Rae Williams; Moorhead City Council Member Nancy Otto; Moorhead City Council Member Chuck Hendrickson; Clay County Commissioner Kevin Campbell; Clay County Commissioner Frank Gross; Cass County Joint Water Resource District Manager Rodger Olson; and West Fargo City Commissioner Mike Thorstad.

Staff members and others present: Cass County Administrator Keith Berndt; Fargo City Administrator Bruce Grubb; Cass County Engineer Jason Benson; Moorhead City Engineer Bob Zimmerman; Mark Nisbet, Chamber of Commerce Business Leaders Taskforce; Bruce Spiller, CH2M; and Terry Williams, Project Manager, Corps of Engineers.

2. MINUTES APPROVED

MOTION, passed

Mr. Mahoney moved and Ms. Otto seconded to approve the minutes from the July 14, 2016, meeting as presented. Motion carried.

3. AGENDA ORDER

MOTION, passed

Mr. Campbell moved and Mr. Peterson seconded to approve the order of the agenda with the addition of discussion on meeting format under other business. Motion carried.

4. MANAGEMENT UPDATE

Program management consultant (PMC) report

Bruce Spiller provided an update on activities over the last month including signing of the Project Partnership Agreement (PPA), advertisement of the P3 Request for Qualifications (RFQ), and North Dakota State Water Commission briefing. Priority areas for August and September include submitting requested information to the MN DNR regarding the Minnesota dam safety permit, flowage easement development in the staging area, and Phase 1 land acquisition.

Ty Smith from CH2M provided an update on in-town levee work, Park East Apartments and Howard Johnson property demolitions, El Zagal Phase 2 levee construction, and Mickelson levee extension construction.

Corps of Engineers report

Terry Williams provided an update of activities by Corps of Engineers staff which includes Request for Proposals (RFP) for the diversion inlet control structure; design kick-off meetings for the Wiild Rice River control structure and southern embankment; continued coordination with North Dakota and Minnesota on phased permitting for the southern embankment/dam; continued support of in-town levee design and construction; and preparing the designs for future construction contracts in FY17 and FY18.

5. ADMINISTRATIVE/LEGAL UPDATE

Resolution Confirming Appointments to Land Management and Finance Committees

Mr. Shockley said now that all of the members have been appointed to the Land Management and Finance Committees, a resolution to confirm the final appointments is needed from the Diversion Board.

MOTION, passed

Mr. Campbell moved and Mrs. Scherling seconded to adopt a Resolution Confirming the Appointment of Members to the Land Management and Finance Committees of the Metro Flood Diversion Authority (see Attached Exhibit A for member listing). On roll call vote, the motion carried unanimously.

6. TECHNICAL UPDATE

Recommended Contracting Actions Summary

Task Order Amendments

- Houston-Moore Group Task Order 01 Amendment 9 (Project Management)—add budget for additional monthly reporting; and scope and budget for completed work package GIS submittals in the amount of $109,752.
- Houston-Moore Group Task Order 08 Amendment 14 (Work-in-Kind)—add budget to close out comments on U.S. Army Corps of Engineers diversion inlet design in the amount of $276,569.
- Houston-Moore Group Task Order 12 Amendment 1 (CR-10 Bridge)—delete scope and budget for the design of County Road 10 Bridge within diversion channel for a deduction in the amount of $665,000.
- Houston-Moore Group Task Order 16 Amendment 4 (Permit Submittal Preparation and Other Related Services)—review existing ordinances, develop draft and prepare updated floodplain ordinances in the amount of $50,000.
- Houston-Moore Group Task Order 18 Amendment 2 (CR-16/17 Road and Bridge Design)—add budget to complete the design of County Road 16/County Road 17 Bridge in the amount of $62,401.
- Terracon Task Order 01 Amendment 4 (Materials Testing Services)—add survey and asbestos sampling costs for on-going asbestos abatement and lead based sampling associated with Work Package 42 in the amount of $167,490.

Construction Change Orders

- ICS, Inc. Change Order 04 (4th Street Pump Station)—reconcile change items that were suspended during box culvert negotiations including time extensions and multiple small cost adjustment for engineer and owner-directed items in the amount of $15,174.67.
- Industrial Builders, Inc. Change Order 09 (2nd Street North Pump Station)—sluice gate operator covers in the amount of $5,486.80.
- Industrial Builders, Inc. Change Order 01 (2nd Street North, North of Pump Station)—water main insulation change and floodwall cap modification in the amount of $8,122.
- Industrial Builders, Inc. Change Order 10 (Flood Control – 2nd Street North, South of Pump Station)—disposal of 2B vault, differing subsurface conditions, silo disposal in Case Plaza and floodwall cap modification in the amount of $32,505.68.
- Reiner Contracting, Inc. Change Order 02 (El Zagal Area Flood Risk Management Phase 2)—plugged sanitary gravity line, tree removal, storm manhole repair, standby time due to lift station/force main problem in the amount of $34,568.20.
- Industrial Builders, Inc. Change Order 02 (Mickelson Levee Extension)—scope and budget for removal of concrete swimming pool at 16 North Terrace and additional asbestos abatement in the amount of $6,079.

MOTION, passed
Mr. Mahoney moved and Ms. Otto seconded to approve the appropriation of funds for the outlined Task Order Amendments with Houston-Moore Group. On roll call vote, the motion carried unanimously.

MOTION, passed
Mr. Mahoney moved and Mr. Piepkorn seconded to approve the appropriation of funds for the outlined Task Order Amendment with Terracon and the Construction Change Orders with ICS, Inc., Industrial Builders, Inc., and Reiner Contracting, Inc. On roll call vote, the motion carried unanimously.

7. PUBLIC OUTREACH UPDATE

Committee report

The Public Outreach Committee met on August 10th. Mr. Olson said the committee reviewed an updated communications plan which will be used as a daily tool for those communicating about the project. The committee wants to ensure when land acquisitions take place that impacted property owners, townships and the general public are informed about the process. The committee received an update on various public outreach presentations, including a presentation given to the North Dakota State Water Commission, an upcoming bus tour of area flood control efforts hosted by the North Dakota Water Education Foundation, and hosting a booth at the Minnesota Water Resources Conference in October.

Business Leaders Task Force

Mark Nisbet said business leaders continue to be involved in public outreach activities associated with the diversion project and pledge their support toward communication efforts to educate the public.

8. LAND MANAGEMENT UPDATE

Committee report

The Land Management Committee met on August 10th. Mrs. Scherling said the committee discussed land acquisitions and letters that have been sent to affected property owners. She said the committee also discussed the role of elected officials.

CCJWRD update

Mark Brodshaug referred to the handout regarding land acquisitions completed through August 9, 2016, which includes completed acquisitions, budget figures, and completed negotiations. He said Phase 1 acquisitions have begun with survey and appraisals beginning on the far north reach. An outreach plan has been developed to focus on occupied structures within the staging area in response to increased questions from the public about the buyout process and schedule.

Mr. Vanyo asked for an update on land acquisitions associated with the inlet structure. Mr. Brodshaug said three properties are needed and court action was taken because negotiations could not be reached with the owners. The CCJRWD now has access to the properties. Mr. Brodshaug said County Road 16/17 will need to be realigned as part of the inlet structure project—twelve additional properties will be needed for the road redesign. He said one out of the twelve owners has signed a purchase agreement at this time.

9. FINANCE UPDATE

Committee report

The Finance Committee met on August 10th. Mr. Grindberg was elected chair of the committee, and said as a new member, he has questions about how previously approved change orders align with the overall project budget. He said it would be helpful to have that information in a report.

Mike Montplaisir, Cass County Auditor, said financial reports have been revised to better reflect the costs paid by all of the entities. There are different ways to monitor the budget, and going forward staff will look at developing different reports for the board. Staff will also monitor market interest rates and the effect on short-term financing of the project.

Resolutions for Financing through Wells Fargo Bank, N.A.

Mr. Shockley said Fargo and Cass County previously issued $50 million each in loans through U.S. Bank for short-term financing of the project. Recently, an agreement was reached with Wells Fargo Bank, N.A. for $200 million in loans with $100 million to go toward paying off the U.S. Bank loans and $100 million for upcoming project costs. He said concurrence is needed by the Diversion Board on resolutions approving an intergovernmental agreement and draw down of funds.

MOTION, passed

Mr. Mahoney moved and Mrs. Scherling seconded to adopt a Resolution Approving Execution and Delivery of an Intergovernmental Agreement (Series 2016) between Cass County, North Dakota, and City of Fargo, North Dakota; Consenting to Loan Agreements between Wells Fargo Bank, N.A., and Cass County, North Dakota; Consenting to Loan Agreements between Wells Fargo Bank, N.A. and City of Fargo, North Dakota, and Consenting to Issuance of Temporary Sales Tax Revenue Notes by Cass County and City of Fargo. On roll call vote, the motion carried unanimously.

MOTION, passed

Mr. Mahoney moved and Mrs. Scherling seconded to adopt a Resolution Authorizing the Draw Down of Funds from Wells Fargo Bank Loans to Cass County, North Dakota and to the City of Fargo, North Dakota; and Authorizing the Draw Down of Funds Received from Temporary Sales Tax Revenue Notes of Cass County and the City of Fargo. On roll call vote, the motion carried unanimously.

Voucher approval

The bills for the month are with CCJWRD for costs associated with in-town levees, access issues, Diversion Project Assessment Committee (DPAC) work, OHB levee, and Oxbow Country Club golf course construction; Erik R. Johnson & Associates, Ltd. for legal services; Dorsey & Whitney LLP for legal services; and Ohnstad Twichell, P.C. for P3 bond counsel and research work and 4th Street Pump Station litigation.

MOTION, passed

Mr. Mahoney moved and Ms. Otto seconded to approve the vouchers in the amount of $4,577,766.42 for July, 2016. On roll call vote, the motion carried unanimously.

10. OTHER BUSINESS

Mr. Mahoney suggested a change in the seating during meetings with only board members sitting at the table. He also suggested a change in the meeting format by adding a consent agenda to address items that have been previously approved by the other

diversion committees. He questioned how much of the information needs to be repeated at the Diversion Board meeting. Mr. Campbell said if there is a change order or task order that is not already part of the budget, it should be brought up separately. Mr. Vanyo said he supports different options to improve and expedite the meeting.

11. EXECUTIVE SESSION

Attorney John Shockley said under North Dakota state law the board is allowed to meet in private session to consult with legal counsel.

MOTION, passed

Mr. Piepkorn moved and Mr. Peterson seconded that the Metro Flood Diversion Authority meet in executive session pursuant to North Dakota Century Code 44-04-19.1 for the purposes of attorney client communications and update regarding matters arising out of or related to the on-going litigation matters of: (i) the Richland County WRD vs. ND State Engineer; (ii) The Richland Wilkin JPA vs. MN DNR; and (iii) Richland/Wilkin Joint Powers Auth. v. Army Corps of Eng'rs. and City of Oxbow as intervenors. Motion carried.

Diversion Authority board members, key administrative and engineering staff, Attorney Erik Johnson and Attorney John Shockley moved to the River Room at 4:33 PM. Also present via conference call was Attorney Robert Cattanach from Dorsey & Whitney LLP.

The executive session ended at 5:25 PM and the meeting was re-opened to the public.

12. NEXT MEETING DATE

The next meeting will be held on Thursday, August 25, 2016.

13. ADJOURNMENT

MOTION, passed

On motion by Mr. Mahoney, seconded by Mr. Grindberg, and all voting in favor, the meeting was adjourned at 5:25 PM.

Minutes prepared by Heather Worden, Cass County Administrative Assistant

EXHIBIT A

Land Management Committee

Del Rae Williams	Mayor of Moorhead
Kevin Campbell	Clay County Commissioner
John Strand	Fargo City Commissioner
Nathan Boerboom	Engineer, City of Fargo
Bruce Grubb	City Administrator, City of Fargo
Heidi Durand	Moorhead City Council
Bob Zimmerman	Engineer, City of Moorhead
Mary Scherling	Cass County Commissioner
Chad Peterson	Cass County Commissioner
Jim Nyhof	Mayor of Oxbow
Jenny Mongeau	Clay County Commissioner
Rodger Olson	Cass County Joint Water Resource District

Finance Committee

Tim Mahoney	Mayor, City of Fargo
Tony Grindberg	Fargo City Commissioner
Tony Gehrig	Fargo City Commissioner
Kent Costin	Finance Director, City of Fargo
Mike Redlinger	Asst. City Administrator, City of Fargo
Nancy Otto	Moorhead City Council Member
Wanda Wagner	City of Moorhead Finance Director
Darrell Vanyo	Chair, Diversion Authority Board
Mike Montplaisir	Cass County Auditor
Rick Steen	Cass County Commissioner
Lori Johnson	Clay County Auditor
Mark Brodshaug	Southeast Water Resource District Manager