METRO FLOOD DIVERSION AUTHORITY
Thursday, October 12, 2017
3:30 PM
Fargo City Commission Room
Fargo City Hall
200 3rd Street North

1. Call to order
2. Approve minutes from previous meeting — Item 2. — Action
3. Approve order of agenda — Action
4. Contracting action
   a. Change Order #01 – In-Town Levee Landscaping — Item 4a. — Action
5. Other Business
6. Next Meeting – October 26, 2017
7. Executive session pursuant to N.D.C.C. § 44-04-19.1, subsections 2 and 9, to consult with its Attorneys regarding the ongoing litigation in the matters of Richland/Wilkin JPA and MNDNR v. the United States Army Corps of Engineers and Fargo Moorhead Flood Diversion Authority as Intervenor, Civil File No. 0:13-cv-02262-JRT-LIB and the contested case hearing before the Minnesota Office of Administrative Hearings regarding the MNDNR permit for Metro Flood Diversion Authority
8. Adjournment

cc: Local Media

METRO FLOOD DIVERSION AUTHORITY
SEPTEMBER 28, 2017—3:35 PM

1. MEETING TO ORDER

A meeting of the Metro Flood Diversion Authority was held Thursday, September 28, 2017, at 3:35 PM in the Fargo City Commission Room with the following members present: Fargo City Mayor Tim Mahoney; Fargo City Commissioner Dave Piepkorn; Fargo City Commissioner Tony Grindberg; Cass County Commissioner Mary Scherling via conference call; Cass County Commissioner Chad M. Peterson; Cass County Commission representative Darrell Vanyo; Moorhead City Mayor Del Rae Williams; Moorhead City Council Member Chuck Hendrickson; Moorhead City Council Member Joel Paulsen via conference call; Clay County Commissioner Kevin Campbell; Cass County Joint Water Resource District Manager Mark Brodshaug; and West Fargo City Commissioner Mike Thorstad. Clay County Commissioner Grant Weyland was absent. Also present was Tom Dawson, Chairman, Chamber of Commerce Business Leaders Task Force.

2. MINUTES APPROVED

MOTION, passed

Mr. Campbell moved and Mr. Vanyo seconded to approve the minutes from the August 24, 2017, August 31, 2017, and September 14, 2017, meetings as presented. Motion carried.

3. AGENDA ORDER

MOTION, passed

Mr. Piepkorn moved and Ms. Williams seconded to approve the order of the agenda. Motion carried.

4. NORTH DAKOTA BUILDING TRADES UNION

Jason Ehlert, President of the North Dakota Building Trades Union, was present. He said their organization supports the Metro Flood Diversion project because it will provide permanent flood protection to the area. He extended an invitation to the board to tour the Operating Engineers Local 49 Training Center in Hinkley, Minnesota on Friday, October 20th. Information will be provided on different building trades and on training that their organization offers to the next generation of the area workforce.

5. MANAGEMENT UPDATE

Program management consultant (PMC) report

Randy Richardson from CH2M provided an update on activities over the last month. As a result of the injunction ruling by the federal court earlier this month, discussions have been held between North Dakota Governor Doug Burgum and Minnesota Governor Mark Dayton regarding permanent flood protection. OHB levee construction continues in accordance with a stipulated agreement allowing construction through 2017 and with concurrence from the MN DNR. New in-town levee construction, County Road 16 and 17 realignment construction, P3 procurement activities, and land acquisitions are on hold as a result of the injunction. He discussed upcoming priorities which include discussions with the MN DNR and other parties to resolve the legal dispute and advance a flood control solution; continued OHB home removals and construction as previously authorized; obtaining court approval to install a temporary roadway for the County Road 16 and 17 intersection; support increased communication between the Diversion Authority and upstream parties; and downsizing PMC staff and level of efforts to accommodate the court order, while at the same time remaining in a position to resume activities.

Mr. Piepkorn asked how the delay affects the costs per day and asked for a report on the financial impacts to construction and other activities.

Robert Cowen from CH2M provided a brief financial update on the overall program status and said $387 million has been expended to date. He said $54 million has been expended out of the $240 million FY2017 budget.

Greg Baisch from CH2M provided a construction update on continued work on in-town levees, landscaping and plantings, and Oxbow home demolition and relocation projects. He said construction has been suspended on the County Road 16 and 17 realignment project and a Work Change Directive will be discussed later in the meeting to build a County Road 17 bypass.

6. PUBLIC OUTREACH UPDATE

Committee report

The Public Outreach Committee met on September 27th. Rocky Schneider from AE2S said the focus of public outreach has shifted to provide information and hold discussions with upstream residents.

Business Leaders Task Force

Tom Dawson said the Business Leaders Task Force held a meeting earlier today. A subcommittee was created to develop a strategy to help with public outreach activities.

7. LAND MANAGEMENT UPDATE

The Land Management Committee met on September 27th. Mr. Brodshaug said property acquisitions and management are on hold until clarification is received from the court. He said four proposers have submitted RFQs for the flowage easement study; however, the committee agreed to hold off on awarding a contract until the Diversion Authority receives more information on what activities may or may not continue. He said there are a variety of proposals based on the depth of the study. Mr. Brodshaug said the study would include meetings with landowners in the staging area, and the committee preferred to have clarification from the court before moving forward with a contract award.

Land Acquisition Status Report

Eric Dodds from AE2S referred to the map showing the status of property acquisitions. He said all property appraisals and purchases are on hold as a result of the injunction.

8. FINANCE UPDATE

Committee report

The Finance Committee met on September 27th. Mr. Grindberg briefly discussed the financial report and said the Diversion Authority has $69 million in cash on hand.

Voucher approval

The bills for the month are with the Cass County Joint Water Resource District (CCJWRD) for costs associated with the Metro Flood Diversion, Diversion Project Assessment District, OHB levee, and Oxbow Golf and Country Club; Springsted Incorporated for financial services associated with the 2017 loan agreement; and Ohnstad Twichell, P.C. for legal services.

MOTION, passed

Mr. Grindberg moved and Ms. Williams seconded to approve the vouchers received through September 21, 2017, in the amount of $3,351,177.37. On roll call vote, the motion carried unanimously.

Recommended Contracting Actions

Mr. Shockley said based on emails between all parties, he does not believe continuing construction on the OHB levee and other work in Oxbow conflicts with the recent injunction issued by the federal court. However, work has been halted on the County Road 16 and 17 realignment construction, and P3 work has ceased as well.

County Road 16 and 17 West Bypass

The construction work on the County Road 16 and 17 realignment project has stopped as a result of the injunction. Michael Redlinger, Assistant Fargo City Administrator, provided information on a Work Change Directive with Riley Bros. to construct a west bypass at the diversion inlet south of Horace. The bypass will be about 1,500 feet long and can be constructed in approximately two weeks at a cost of $250,000. He said a gravel base will be used to provide for two-way traffic and will remain a gravel road over the winter. The bypass will provide a route for residents living in the area. The construction is contingent on a stipulation agreement or other court action. This detour is not part of the project and should proceed with a party agreement.

- Riley Bros. (WCD 01 County Road 16 and 17 Realignment)—work change directive in the amount of $9,500.00 to relocate topsoil berm;
- Riley Bros. (WCD 02 County Road 16 and 17 Realignment)—work change directive in the amount of $250,000.00 to add temporary gravel bypass road for County Road 17;
- Riley Bros. (Change Order 01 County Road 16 and 17)—change order in the amount of $31,155.84 for relocation of top soil berm authorized in WCD 01 and drainage modifications.

  MOTION, passed

  Mr. Grindberg moved and Ms. Williams seconded to approve the appropriation of funds for the work change directives and change order with Riley Bros. Discussion: Mr. Peterson said the residents in the area have asked for the road to be returned to its original location. Jason Benson, Cass County Engineer, said due to the soil stability this time of the year, the bypass is the best option this late in the construction season. The bypass will be made purely of gravel and will work through the winter. On roll call vote, the motion carried unanimously.

Robert Cowen from CH2M discussed the following contracting actions, which were approved by the Finance Committee and Technical Team:

- CenturyLink (Reimbursement Agreement/Utility Relocation)—cost proposal in the amount of $20,000.00 for relocation of impacted facilities.

  MOTION, passed

  Mr. Grindberg moved and Mr. Piepkorn seconded to approve the appropriation of funds for the reimbursement agreement with CenturyLink. On roll call vote, the motion carried unanimously.

OHB Levee

- Cass Rural Water Users District (Utility Relocation Agreement OHB Ring Levee)—water line relocation in the amount of $213,335.00.

  MOTION, passed

  Mr. Brodshaug moved and Mr. Piepkorn seconded to approve the appropriation of funds for the utility relocation agreement with Cass Rural Water Users District. On roll call vote, the motion carried unanimously.

- Meyer Contracting (Change Order 01 OHB Ring Levee Phases C and D)—change order in the amount of $7,383.47 for pipe heat shrink sleeves, additional pipe bedding and backfill and one day of contract time associated with the OHB levee;
- Meyer Contracting (WCD 01 OHB Ring Levee Phases C and D)—work change directive in the amount of $285,000.00 to remove unsuitable soil material remaining from utilities and under OHB levee footprint; additional traffic control; excavation near Oxbow Drive and levee crossing; and installation of pipe and pipe casing for Cass Rural Water utility relocation under levee.

MOTION, passed
Mr. Vanyo moved and Mr. Grindberg seconded to approve the appropriation of funds for the Change Order and Work Change Directive with Meyer Contracting. On roll call vote, the motion carried unanimously.

9. NEXT MEETING

The next meeting will be held on Thursday, October 12, 2017.

10. EXECUTIVE SESSION

Attorney John Shockley said North Dakota state law allows the board to meet in private session to consult with legal counsel to discuss ongoing litigation and contract negotiations.

MOTION, passed
Mr. Peterson moved and Mr. Grindberg seconded that the Metro Flood Diversion Authority meet in executive session pursuant to N.D.C.C. § 44-04-19.1, subsections 2 and 9, to consult with its Attorneys regarding the ongoing litigation in the matters of Richland/Wilkin JPA and MNDNR v. the United States Army Corps of Engineers and Fargo Moorhead Flood Diversion Authority as Intervenor, Civil File No. 0:13-cv-02262-JRT-LIB and the contested case hearing before the Minnesota Office of Administrative Hearings regarding the MNDNR permit for Metro Flood Diversion Authority and to provide an update to the Board regarding the negotiations for an employment contract with the finalist (Jay Neider) selected for the position of Executive Director. On roll call vote, the motion carried unanimously.

Diversion Authority board members, key administrative staff, and Attorney John Shockley moved to the River Room at 4:17 PM.

The executive session ended at 4:59 PM, and the meeting was re-opened to the public.

11. ADJOURNMENT

MOTION, passed
On motion by Mr. Campbell, seconded by Mr. Hendrickson, and all voting in favor, the meeting was adjourned at 5:01 PM.

Minutes prepared by Heather Worden, Cass County Administrative Assistant

Technical Advisory Group Recommendation

Meeting Date: 10/4/2017

RECOMMENDATION FOR ACTION:

The Technical Advisory Group has reviewed and recommends approval of the following Contract Action(s).

SUMMARY OF CONTRACTING ACTION:

Per the contract review and approval procedures that were adopted by the Diversion Authority on November 10, 2016, the Owner's Program Management Consultant (PMC) or Engineer of Record (EOR) shall submit a construction Change Order request to the Technical Advisory Group. The Technical Advisory Group shall review the Change Order request, and make a recommendation as to approval or denial of the Change Order request.

The Owner's Representative has reviewed and recommends the following Contract Action(s):

Description	Budget Estimate ($)
WP-42G: Hoffman & McNamara Co.	
Change Order #01	*($24,152.76)*

- **Add additional native seeding in NE Corner**
- **Decrease live staking and add maintenance along River**
- **Revise Bench Arms**
- **Decrease Topsoil Strip and Import**
- **Add Turf Grass and Mulch**

Summary of Contracting History and Current Contract Action:

The MFDA awarded the WP-42G (2nd Street/Downtown Area, In-Town Levees: General Landscaping and Plantings) construction contract to Hoffman and McNamara, Inc. on May 10, 2017. Notice to Proceed was issued August 15, 2017.

Since the start of construction, several contract change items have been identified. Change Order No. 1 adds additional native seeding, decreases live staking and adds maintenance along River; revises Bench Arms; decreases Topsoil Strip and Import; and adds Turf Grass and Mulch.

Below is a summary of contracting history to date along with the current contracting action.

Original Agreement or Amendment	Budget ($) Change	Original Project Cost	Revised Project Cost	Project Start	Project Completion	Comments
WP-42G Contract		519,954.74		15-Aug-17	15-Jun-2024	Awarded In-Levees General Landscape and Plantings
Change Order 1	(24,152.76)		495,801.98	15-Aug-17	15-Jun-2024	Add additional native seeding in NE Corner; Decrease live staking and add maintenance along River; Revise Bench Arms; Decrease Topsoil Strip and Import; Add Turf Grass and Mulch

Financial Considerations:

Attached for your review and recommendation is draft CO-01. This change order decreases the total Contract Price **$24,152.76** and contains five items. The Change Order consists of the following items:

1. NE Corner Additional Area. The work for this item was authorized in Field Order 001 and the costs associated with this item are being incorporated into this change order. It adds 2,020 SY of native grass planting at the NE corner of the project which was turf grass installed by the WP-42F1N contractor.
    a. The reason for this change is the Contractor and RPR decided in the field on the first day of work to include this area in the Native Seeding area, although it wasn't part of this Contract. The Contractor began work in this area (assuming it was part of the Contract) and sprayed herbicide to kill the grass and performed Subsoiling work (deep tilling of the soil).
    b. At this point it was ascertained that the work was not part of the Contract. The issue was reviewed by the Landscape Architect and Owner's Representative, it was determined that this additional area could be included in the project as native grass seeding, but costs incurred under WP-42F1N for the turf grass planting should be a cost share with the Contractor.
    c. RFI 12 sought compensation for this additional area and the Contractor was given a choice:
        i. Option 1, replace the turf grass at their expense.
        ii. Option 2, plant it with Native Seed minus the cost of the WP-42F1N contractor's seed and mulch. The Contractor chose Option 2.
    d. This results in a net increase of $4,217.54 as follows:
        i. Line Item 0010, Subsoiling: add 2,020 SY at the contract unit price for an increase of $1,010.00.
        ii. Line Item 0014, Short Height Riparian Seed Mix: add 7.0 LB at the contract unit price for an increase of $301.00.
        iii. Line Item 0016, Short Height Mesic Seed Mix: add 8.0 LB at the contract unit price for an increase of $360.00.
        iv. Add Line Item 0034, CO1 Erosion Control and Seeding Type C: this adds Erosion Control Blanket and Seeding Type C minus WP-42F1N contract price for turf grass seed and hydromulch at the negotiated lump sum price of $2,546.54 as follows:
            1. Weed Control Type A: reimbursement of this cost not allowed.
            2. Mulching Type 1 – Hydro: reimbursement of this cost not allowed.
            3. Erosion Control Blanket Type 2, Wood: allowed, less WP-42F1N unit price of $0.37/SY for mulch. The negotiate price of $1.13/SY is applied to 1,038 SY for an increase of $1,172.94.
            4. Seeding Type C – Native Seeding: allowed, less WP-42F1N unit price of $0.32/SY for turf grass seed. The negotiate price of $0.68/SY is applied to 2,020 SY for an increase of $1,373.60.
2. Adjustments to Areas Along River. This item was included in Field Order 001. This change accommodates the notes on several plan sheets that state that changes may be necessary based on decisions to be made in the field. The Landscape Architect in consultation with the Contractor during site visits decreased the number and location of live stakes and requested a weed mitigation maintenance plan.
    a. Line Item 0020, Live Stake: remove 572 EA at the contract unit price of $8.00 EA. The reduction of live stakes is a decrease of $4,576.00.

b. Implement a 5-year weed control maintenance plan to areas adjacent to the river and native seeding areas. This includes:

   i. Line Item 0029, Weed Control Type B: add 1,400 SY at the contract unit price.

   ii. Add Line Item 0036, CO1 Spot Mowing Weeds: add 1,400 SY at the negotiated unit price of $0.32/SY.

   iii. Add Line Item 0037, CO1 Spot Spraying Weeds: add 1,400 SY at the negotiated unit price of $0.32/SY.

   iv. This change increases the contract price by $2,296.00.

3. Custom Radius Bench Arms. This change is due to a discrepancy in the product model number specified and the descriptions in the plan notes. The model number specified included an iron strap style arm rest and the description of all benches included a different 1-inch solid steel arm rest. To have the style of the Custom Radius Bench match the style of the other benches being installed, the arm style needs to be changed. This results in a $900.00 increase to the cost of the Custom Radius Bench as follows:

   i. Line Item 0033, Custom Radius Bench: delete item at Lump Sum price of $10,000.

   ii. Add Line Item 0033A, CO1 Custom Radius Bench: add item at revised Lump Sum price of $10,900.

4. Topsoil Strip and Import Prices and Quantities. The reason this is a change item is that the project Engineer for WP-42F1N determined that the areas requiring topsoil removal and replacement could be significantly reduced for a savings to the Owner. This resulted in a line item decrease of over 20 percent and a total contract value change of over 5 percent, allowing the Contractor to renegotiate these unit rates. The changes required additional equipment and more detail work than assumed at the time of bidding. This change includes:

   i. Line Item 0008, Topsoil Strip: delete 2,679 CY at the contract unit price.

   ii. Add Line Item 0008A, CO1 Topsoil Strip: add 1,400 CY at the negotiated unit price of $22.85/CY.

   iii. Line Item 0009, Topsoil Import: delete 2,679 CY at the contract unit price.

   iv. Add Line Item 0009A, CO1 Topsoil Import: add 1,400 CY at the negotiated unit price of $27.26/CY.

   v. This change decreases the contract price by $28,140.30.

5. Turf Grass Between Curb and Sidewalk. This change recommendation was done in conjunction with the topsoil area change noted above. A small area of approximately 210 SY was originally planted with turf grass under the WP-42F1S contract, and not included in this Landscaping Contract. The area is a strip on the NE side of 2nd St. N running between the curb and sidewalk for approximately 260 ft. The Engineer for WP-42F1S inspected the area and recommended that the topsoil in this area should be replaced. The topsoil replacement cost is included in the above topsoil change, and this change adds the turf grass reseeding and mulch.

   a. This adds Line Item 0035, CO1 Turf Grass and Mulch: $1,150.00 LS.

The PMC and the Landscape Architect have reviewed CO-01 and feel the proposed costs and level of effort are reasonable.

ATTACHMENT(S):

1. Draft Change Order No. 01 with back-up documentation

Submitted by:

John W. Glatzmaier

John Glatzmaier
CH2M
Metro Flood Diversion Project

October 4, 2017
Date

Nathan Boerboom, Diversion Authority Project Manager
Concur: *October 4, 2017* *Non-Concur:* _____

Robert Zimmerman, Moorhead City Engineer
Concur: *October 4, 2017* *Non-Concur* _____

Mark Bittner, Fargo Director of Engineering
Concur: *October 5, 2017* *Non-Concur:* _____

Jason Benson, Cass County Engineer
Concur: *October 4, 2017* *Non-Concur* _____

David Overbo, Clay County Engineer
Concur: *October 4, 2017* *Non-Concur:* _____

Jeff Ebsch, Assistant Cass County Engineer, Diversion Authority Project Manager
Concur: *October 4, 2017* *Non-Concur* _____