METRO FLOOD DIVERSION AUTHORITY
OCTOBER 13, 2016—3:30 PM

1. MEETING TO ORDER

A meeting of the Metro Flood Diversion Authority was held Thursday, October 13, 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 Ken Pawluk; 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 Grant Weyland; Cass County Joint Water Resource District Manager Mark Brodshaug; and West Fargo City Commissioner Mike Thorstad.

2. MINUTES APPROVED

MOTION, passed

Mr. Mahoney and Mrs. Scherling seconded to approve the minutes from the September 8, 2016, and October 5, 2016, meetings as presented. Motion carried.

3. AGENDA ORDER

MOTION, passed

Mr. Weyland moved and Mr. Campbell seconded to approve the order of the agenda. Motion carried.

4. MANAGEMENT UPDATE

Program management consultant (PMC) report

Randy Richardson from CH2M provided an update on activities over the last month including responses to the Request for Qualifications (RFQ) for the P3 contract, delivery of the mitigation plan to the MN DNR for their comments, release of the draft P3 technical requirements for review, Phase 1 land acquisition and opportunistic land acquisitions, and support of the Army Corps of Engineers design efforts on the southern embankment inlet structure. He said priority areas for the next month are development of the Request for Proposals (RFP) for the P3 contract, a trip to Washington, D.C. to meet with officials from the Office of Management and Budget (OMB), draft 2017 annual budget, continued Phase 1 land acquisitions, continued in-town construction, and I-29 conceptual designs.

5. CORPS OF ENGINEERS UPDATE

Aaron Snyder, Branch Chief for Project Management & Development, Corps of Engineers was present. The MN DNR recently released their decision to deny the permit that was submitted by the Diversion Authority. He said the Corps of Engineers remains committed to the project, which will provide permanent flood protection for the area. The Corps continues to work on minimizing the impacts to upstream residents. He said Corps staff met with Tom Landwehr, MN DNR Commissioner, to discuss ways to work toward a solution regarding their questions on the mitigation plan submitted by the Diversion Authority.

6. ADMINISTRATIVE/LEGAL UPDATE

Presentation of SOQ Evaluation/Approval of Resolution for Short-List of SOQ Agencies

Attorney John Shockley provided a brief overview on the P3 developer short list. The P3 contract will be for the construction of the diversion channel. He discussed the timeline and said Request for Qualifications (RFQ) were issued in July with Statement of Qualifications (SOQ) due September 14th. An evaluation team reviewed the SOQ's and interviewed six teams last week: Lake Agassiz Partners, Red River Alliance, Red River Infrastructure Solutions, Red River Partners, Red River Valley Alliance, and Red River Valley Partners.

The Finance Committee and Cass County Joint Water Resource District approved the SOQ Evaluation Report and short list of four respondents, which are Lake Agassiz Partners, Red River Partners, Red River Valley Alliance, and Red River Valley Partners. Mr. Shockley said the next step in the process is Request for Proposals (RFP) from the four teams, who will be competing for the best technical and financial solutions. He said Diversion Authority members should not contact the teams; any contact should be between the Diversion Authority and the proposer's authorized representatives. He anticipates the commercial close on the P3 contract will be done the last quarter of 2017, and the financial close will be done the first quarter of 2018.

Mike Redlinger, Co-Executive Director of the Diversion Authority, said this is the conclusion of the first 90-day process. The thanked the technical and evaluation teams, Corps of Engineers, CH2M staff and John Shockley for their efforts. He concurs with their findings and recommends the board support the short list as presented.

MOTION, passed

Mr. Mahoney moved and Ms. Otto seconded to approve the "Resolution Approving the Report of the Evaluation Team Summarizing the Evaluation and Scoring of Statements of Qualifications Submitted in Response to Request for Qualifications to Design, Build, Finance, Operate and Maintain the Diversion Channel and Associated Infrastructure Work Package of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project and Short Listing Respondents for the Request for Proposals Phase of the Procurement". On roll call vote, the motion carried unanimously.

Mr. Shockley thanked the evaluation team and consultants for their work on the SOQ process.

Draft Resolution – Procedure to Approve Contracts and Change Orders

Mr. Shockley distributed a draft "Resolution Confirming the Procedure for Approval of Construction Contracts; Contracts for Engineering, Architectural, and other Professional Services; and Change Orders and Amendments" to the board. The resolution will establish procedures to follow when contracting actions are approved. He is not asking the board to take any action on this item today. The Finance Committee also reviewed the resolution, which he said needs to be further developed before it is approved. He asked board members to review the document and provide any comments to him.

Mr. Grindberg said this resolution generated significant discussion at the Finance Committee meeting held yesterday and suggested a working group consisting of himself, Mr. Vanyo and technical committee members meet and review the draft document with the goal to formally approve the resolution in November.

7. TECHNICAL UPDATE

Recommended Contracting Actions Summary

Randy Richardson reviewed the following Task Order Amendments:

Task Order Amendments

- AECOM Task Order 1 Amendment 5 (Cultural Resources Investigations)—reallocate funds from closed subtasks to active subtasks and extend period of performance to December 31, 2017, at no cost.
- HMG Task Order 20 Amendment 0 (Southern Embankment and Associated Infrastructure)—I-29 grade raise design in the amount of $81,000.

MOTION, passed

Mr. Pawluk moved and Mr. Brodshaug seconded to approve the appropriation of funds for the outlined Task Order Amendments.

Discussion: Ms. Williams asked whether the Finance Committee approved the amendments. Mr. Grindberg said these are the types of items that will be addressed in the draft resolution previously discussed. On roll call vote, the motion carried unanimously.

Ty Smith from CH2M reviewed the Change Orders and said they have been validated by the technical team and are not added scope items. Mr. Pawluk said he relies on the advice and review provided by the technical team. Mr. Grindberg said the process will be clear after final approval of the resolution, which will include procedures for change orders and contracts.

Construction Change Orders

- ICS, Inc. Change Order 6 (4th Street Pump Station)—stilling wells and other outstanding change items in the amount of $147,079.47.
- Industrial Builders, Inc. Change Order 3 (2nd Street North, North of Pump Station)—plan sheet updates, retaining wall column, and additional bridge lighting for a deduction in the amount of $22,030.50.
- Industrial Builders, Inc. Change Order 13 (2nd Street North, South of Pump Station)—utility vault adjustment, 1st Avenue North bridge spall removal, pump station elevation discrepancy, flared end section rip rap, and Case Plaza parking lot in the amount of $75,899.63.
- Hough, Inc. of Detroit Lakes Change Order 1 (2nd Street South)—additional traffic control, differing subsurface conditions, repair existing storm sewer catch basin casting, gate valve and pipe, pavement markings, unsuitable material, and plan updates in the amount of $206,886.08.
- Reiner Contracting, Inc. Change Order 3 (El Zagal Flood Risk Management Phase 2)—flood wall pier caps, sanitary lift station start-up, sidewalk tree removal, storm inlet structure casting, and property drainage adjustment in the amount of $9,401.21.

MOTION, passed

Mr. Pawluk moved and Mr. Grindberg seconded to approve the appropriation of funds for the outlined Change Orders. On roll call vote, the motion carried unanimously.

Mr. Richardson reviewed one utility relocation in which the Diversion Authority previously agreed to reimburse the City of Fargo to relocate a fiber optic cable on 2nd Street South.

Utility Relocation

- City of Fargo—reimbursement to the City of Fargo for fiber optic cable relocation along 2nd Street in the amount of $307,983.70.

MOTION, passed

Mrs. Scherling moved and Ms. Otto seconded to approve the appropriation of funds for the outlined Utility Relocation. On roll call vote, the motion carried unanimously.

8. PUBLIC OUTREACH UPDATE

Committee report

The Public Outreach Committee met on October 12th. Rocky Schneider from AE2S said the Business Leaders Task Force launched a campaign regarding the upcoming sales tax vote. He said Mayor Mahoney and Board Chairman Darrell Vanyo testified before the Water Topics Overview Committee in September and provided a project update to the North Dakota State Water Commission earlier this month. The outreach team continues to participate in various community outreach activities and presentations. He said the newsletter continues to see a steady increase in subscribers with a significant click through rate of 49%.

9. FINANCE UPDATE

Committee report

The Finance Committee met on October 12th. Mr. Grindberg said the committee discussed the SOQ short list and the Contract/Change Order process.

Voucher approval

The bills for the month are with CCJWRD for costs associated with the Metro Flood Diversion, in-town levees, OHB levee, and Oxbow Country Club golf course construction; Dorsey & Whitney LLP for legal services; Erik R. Johnson & Associates, Ltd. for legal services; and Ohnstad Twichell, P.C. for P3 bond counsel.

Kent Costin, Fargo Finance Director, said $5 million of the $8.9 million in total bills for the last month is for the Diversion Authority's share of the Mid America Steel property acquisition.

MOTION, passed

Mr. Grindberg moved and Mr. Pawluk seconded to approve the vouchers in the amount of $8,993,205.83 for September, 2016. On roll call vote, the motion carried unanimously.

10. 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

Ms. Otto moved and Mrs. Scherling seconded that the Metro Flood Diversion Authority meet in executive session pursuant to N.D.C.C. § 44-04-19 for the purpose of attorney client consultation and update regarding matters arising out of or related to the Minnesota DNR's decision to deny the Dam Safety and Public Waters Work Permit Application submitted by the Metro Flood Diversion Authority. Motion carried.

Diversion Authority board members, key administrative and engineering staff, and Attorney John Shockley moved to the River Room at 4:41 PM. Also present via conference call was Attorney Robert Cattanach from Dorsey & Whitney LLP.

The executive session ended at 5:45 PM and the meeting was re-opened to the public.

11. NEXT MEETING DATE

The next meeting will be held on Thursday, October 27, 2016.

12. ADJOURNMENT

MOTION, passed

On motion by Mr. Pawluk, seconded by Ms. Otto, and all voting in favor, the meeting was adjourned at 5:46 PM.

Minutes prepared by Heather Worden, Cass County Administrative Assistant