FLOOD DIVERSION BOARD OF AUTHORITY
MAY 12, 2016—3:30 PM

1. MEETING TO ORDER

A meeting of the Flood Diversion Board of Authority was held Thursday, May 12, 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; West Fargo City Commissioner Mike Thorstad; Fargo City Mayor Tim Mahoney; Fargo City Commissioner Mike Williams; Fargo City Commissioner Melissa Sobolik; Cass County Joint Water Resource District Manager Mark Brodshaug; Clay County Commissioner Kevin Campbell; and Moorhead City Council Member Nancy Otto. Also present was ex-officio member Gerald VanAmburg, Buffalo-Red River Watershed District.

Staff members and others present: Cass County Administrator Keith Berndt; Clay County Administrator Brian Berg; Cass County Engineer Jason Benson; Fargo City Director of Engineering Mark Bittner; Fargo City Engineer April Walker; Moorhead City Engineer Bob Zimmerman; Elly Peterson, Chamber of Commerce Business Leaders Taskforce; Martin Nicholson, CH2M Hill; and Terry Williams, Project Manager, Corps of Engineers.

2. MINUTES APPROVED

MOTION, passed
Ms. Sobolik moved and Ms. Otto seconded to approve the minutes from the April 28, 2016, meeting as presented. Motion carried.

3. AGENDA ORDER

MOTION, passed
Mr. Campbell moved and Ms. Otto seconded to approve the order of the agenda. Motion carried.

4. MANAGEMENT UPDATE

Program management consultant (PMC) report

Martin Nicholson provided an update on activities over the last month including completion of Oxbow residential buyouts; acquisition support for critical in-town properties; development, submittal and follow-up responses for the North Dakota State Water Commission diversion inlet control structure permit; completion of Project Partnership Agreement (PPA) negotiations with the Corps of Engineers; and educational information provided to business leaders on steps needed to begin construction. He said priority areas for May and June include the presentation of the financial plan, approval of the Joint Powers Agreement (JPA) by member entities, approval of the PPA, and Public Private Partnership (P3) Industry Day to be held on June 7th.

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 final plans and specifications for the diversion inlet control structure; public release by the MN DNR of the final MN EIS scheduled for May 16, 2016; continued coordination with North Dakota and Minnesota on phased permitting for the southern embankment/dam; continued support of in-town levee design and construction; development of RFP and reference documents on alternate financing and split delivery plan; and coordination with Corps of Engineers headquarters and project sponsors on the PPA with execution of the agreement anticipated in July.

Ms. Williams said Colonel Daniel Koprowski will be leaving the St. Paul District for his next assignment effective June 30th. Col. Koprowski and his replacement, Colonel Samuel L. Calkins, plan to attend the June 9th Diversion Authority meeting.

Industry Day

Mr. Nicholson said staff worked with the Corps of Engineers to organize Industry Day, which will be held on Tuesday, June 7th at the Hilton Garden Inn in Fargo. The event will provide information about the FM Diversion project, its P3 opportunities, and Corps-led construction components.

5. ADMINISTRATIVE/LEGAL UPDATE

Attorney John Shockley said the finance team has been working with Ernst & Young and Springsted to develop the financial model and the P3 procurement. He said work has also begun to secure third-party agreements with utility companies in anticipation of utility line relocations along the diversion channel.

Joint Powers Agreement (JPA)

Mr. Shockley said several informational meetings have been held with the six member entities to discuss the Diversion Joint Powers Agreement (JPA). He provided an updated draft, which is the "near final version" of the document.

Mr. Mahoney thanked Mr. Shockley for his efforts to meet with all the entities to draft the JPA. Mr. Vanyo said the input provided by all the entities served the document well.

MOTION, passed

Mr. Mahoney moved and Mr. Campbell seconded to approve the Diversion Joint Powers Agreement in its near final form, forward the document to the six member entities for review and approval, and authorize the Diversion Authority Board chairman to sign after approval by the member entities. On roll call vote, the motion carried unanimously.

Project Partnership Agreement (PPA)

Mr. Shockley provided a draft of the Project Partnership Agreement (PPA) for the board to review, which staff have been working on with the Corps of Engineers. He said a P3 Memorandum of Understanding (MOU) is also being drafted which outlines the interface between the Corps of Engineers and non-federal sponsors on the P3 procurement. He said a memorandum is also being prepared for land acquisitions. He said in the next few months, the board will be asked to approve the addition of an insurance advisor to the P3 team to provide analysis on policies and coverage needed for the diversion project.

6. TECHNICAL UPDATE

Recommended Contracting Actions Summary

Martin Nicholson reviewed the following contracting actions with the board:

Authority Work Directive

- Houston-Moore Group, LLC Authority Work Directive (Services During Construction)—add 2nd Street North – North of Pump Station services during construction; and 2nd Street South services during bidding in the amount of $45,000.

Change Orders

- Landwehr Construction, Inc. Change Order 1 (Demolition/Renovation of Howard Johnson Hotel, Old Shakey's Pizza, Fargo Public Schools)—add abatement of additional asbestos containing material in the amount of $138,613.57;
- Industrial Builders, Inc. Change Order 6 (2nd Street North – South of Pump Station)—add modification of floodwall contract interface and incentive and disincentive changes to agreement in the amount of $89,243.21;

- Industrial Builders, Inc. Change Order 1 (Mickelson Levee Extension)—add abatement of additional asbestos containing material in the amount of $65,000.

Utility Relocation Agreements

- AT&T utility relocation agreement (South of 1st Avenue North)—relocate fiber communication cable running parallel and south of 1st Avenue North in the amount of $125,238.30;
- 702 Communications utility relocation agreement (South and North of 1st Avenue North)—relocate fiber communication cables running parallel to 1st Avenue North at 2nd Street South and north of bridge in the amount of $50,381;
- CenturyLink utility relocation agreement (North of 1st Avenue North)—relocate fiber communication cable running parallel and north of 1st Avenue North in the amount of $74,195.92;
- Consolidated Communication, Inc. utility relocation agreement (North of 1st Avenue North))—relocate fiber communication cable running parallel and north of 1st Avenue North in the amount of $25,000;
- City of Fargo utility relocation agreement (North of 1st Avenue North)—relocate fiber communication cable running parallel and north of 1st Avenue North in the amount of $14,720;
- Xcel Energy utility relocation agreement (North of 1st Avenue North)—provide temporary power to lift station near 2nd Street North and 3rd Avenue North in the amount of $34,545.76.

Mr. Nicholson said the utility relocation agreements are still being reviewed by legal staff, and he asked for them to be approved subject to legal review.

MOTION, passed

Mr. Mahoney moved and Ms. Otto seconded to approve the appropriation of funds for the outlined authority work directive; change orders; and utility relocation agreements, which are subject to review and approval by legal staff and recommend approval of the appropriation of funds by the Dakota Metro Flood Board for the Diversion Authority. On roll call vote, the motion carried unanimously.

7. PUBLIC OUTREACH UPDATE

Committee report

The Public Outreach Committee met on May 11th. Mr. Campbell said the committee discussed three more members to add to the committee and recommend the Diversion Board approve the appointment of Elly Peterson (Chamber Business Leaders Task Force), Jason Benson (Cass County Engineer), and Jake Gust (CCJWRD).

MOTION, passed

Mr. Campbell moved and Mr. Mahoney seconded to approve the appointment of Elly Peterson, Jason Benson and Jake Gust to the Public Outreach Committee. Discussion: Mr. Campbell said it would be helpful to have another representative from Fargo City on the committee. Mr. Mahoney said he will look into this request. Motion carried.

Mr. Campbell said the committee received an update on various public outreach presentations given over the last month; and discussed maps being drafted by staff and the Corps of Engineers which show different channel alignments that have been considered with their associated timelines. He said once the maps and other information are completed, they will be posted on the Diversion website.

Business Leaders Task Force

Elly Peterson said the task force met on April 19th with about 40 business leaders in attendance. The next meeting will be held on May 25th. Mr. Vanyo appreciates the participation by area business leaders.

8. LAND MANAGEMENT UPDATE

Committee report

The Land Management Committee met on May 11th and discussed the timeline for cemetery mitigations; flowage easements; and two property acquisitions—one hardship property and a portion of the parking lot at Case Plaza in Fargo.

CCJWRD update

Mark Brodshaug referred to the handout regarding land acquisitions completed through May 12, 2016, which includes completed acquisitions, budget figures, and completed negotiations. Activities from last month include the successful negotiation with Case Plaza on the right to enter and construct; ongoing purchase agreement negotiations with Mid-America Steel; property acquisition efforts for diversion inlet area lands; and rights of entry and boundary survey work for diversion channel properties from the outlet to I-29 area.

Mr. Brodshaug said the committee also received an update on land acquisitions associated with the diversion inlet control structure. The Corps of Engineers FY2016 work plan includes federal appropriations for project construction. The Corps intends to obligate the federal funds for the diversion inlet control structure with construction starting this fall. The structure will be located just south of Horace, North Dakota. The Corps identified 15 parcels that will be needed for the inlet control structure and associated realignment of County Highways 16 and 17. Three parcels will be needed this year for construction to begin on the outlet. The next focus area for property acquisitions will be the northern channel area and the Maple River and Sheyenne River aqueduct structures.

9. FINANCE UPDATE

Committee report

Mike Montplaisir, Cass County Auditor, said the Finance Committee met on May 11th. He said the cumulative spent on the project to date is almost $207 million. He said the committee approved two property acquisitions—one hardship property and a portion of the parking lot at Case Plaza in Fargo. He said the Diversion Authority has received $2.9 million in revenues from the sale of lots in Oxbow. He provided an update on the dollars spent for in-town flood control work which at this time totals $61 million.

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; Fredrikson & Byron, P.A. for government relations services; Dorsey & Whitney LLP for legal services; Erik R. Johnson & Associates, Ltd. for legal services; and Ohnstad Twichell, P.C. for P3 bond counsel.

MOTION, passed

Mr. Mahoney moved and Ms. Otto seconded to approve the vouchers in the amount of $3,044,470.89 for April, 2016. On roll call vote, the motion carried unanimously.

10. NEXT MEETING DATE

The next meeting will be held on Thursday, May 26, 2016.

11. ADJOURNMENT

MOTION, passed

On motion by Ms. Sobolik, seconded by Mr. Mahoney, and all voting in favor, the meeting was adjourned at 4:20 PM.

Minutes prepared by Heather Worden, Cass County Administrative Assistant