

**FLOOD DIVERSION BOARD OF AUTHORITY  
JULY 14, 2016—3:30 PM**

**1. MEETING TO ORDER**

A meeting of the Flood Diversion Board of Authority was held Thursday, July 14, 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 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 Rodger Olson; and West Fargo City Commissioner Mike Thorstad. Moorhead City Mayor Del Rae Williams was absent.

Staff members and others present: Cass County Administrator Keith Berndt; Fargo City Administrator Bruce Grubb; 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; Bruce Spiller, CH2M; and Randy Richardson, CH2M.

**2. MINUTES APPROVED**

***MOTION, passed***

**Mr. Mahoney moved and Mrs. Scherling seconded to approve the minutes from the June 23, 2016, meeting as presented. Motion carried.**

**3. AGENDA ORDER**

***MOTION, passed***

**Mr. Pawluk moved and Mr. Weyland seconded to approve the order of the agenda with the addition of a cost share reimbursement agreement with the State Water Commission. Motion carried.**

**4. MANAGEMENT UPDATE**

**Program management consultant (PMC) report**

Bruce Spiller provided an update on activities over the last month including attendance at a Public Private Partnership (P3) Infra America conference; trip to Washington, D.C. by Diversion Board members and staff; and the Project Partnership Agreement (PPA) signing event held on July 11<sup>th</sup>. He said priority areas for July and August include P3 Request for Qualifications (RFQ), Minnesota permits, in-town levee construction, flowage easement development, and Phase 1 land acquisition.

Mr. Spiller 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.

**5. ADMINISTRATIVE/LEGAL UPDATE**

**Committee Membership Appointments**

Attorney John Shockley said two Diversion Board members need to be appointed to the Land Management Committee and to the Finance Committee per the new Joint Powers Agreement (JPA).

***MOTION, passed***

**Mr. Mahoney moved and Ms. Otto seconded to appoint Diversion Board members Del Rae Williams and Kevin Campbell to the Land Management Committee and appoint Oxbow Mayor Jim Nyhof as a non-voting member. Motion carried.**

***MOTION, passed***

**Mr. Pawluk moved and Mr. Thorstad seconded to appoint Diversion Board members Tim Mahoney and Tony Grindberg to the Finance Committee. Motion carried.**

***P3 Resolution for Issuing RFQ***

Mr. Shockley reviewed the “Resolution Establishing Procedures and Protocols for the Request for Qualifications Phase of the P3 Procurement and Approving, Issuing and Authorizing Publication of the 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”. If approved, the RFQ’s will be sent to market today and will be submitted for publication in *The Forum*. He said bidders will propose their qualifications, which will be due September 7<sup>th</sup>. He said evaluation criteria will be developed over the next few months to be used during the review of proposals. He said between eight to ten teams have expressed interest, and he anticipates three or four firms will be forwarded for consideration to the Diversion Authority Board.

Mr. Campbell asked about the timeframe to hire an Executive Director. He thinks this position should be involved with the RFQ process. Mr. Berndt said he and Mr. Grubb have received a draft position description. Mr. Shockley said the Executive Director is not part of the evaluation process, however the position will be hired before a P3 contractor is chosen. Mr. Shockley also said potential bidders are not supposed to have contact with board members and should contact Bruce Spiller to ensure the process is fair.

Mr. Shockley said member entities will be asked to submit names of individuals to be appointed to the evaluation team. There was a question on the time commitment involved for those on the evaluation team. Mr. Spiller said there will be a 5-week period of intense review of the RFQ’s.

Mr. Shockley said the Finance Committee approved the resolution to establish the protocol and to issue RFQ’s. He asked the board to consider approval of the same today.

***MOTION, passed***

**Mr. Piepkorn moved and Ms. Otto seconded to approve the Resolution Establishing Procedures and Protocols for the Request for Qualifications Phase of the P3 Procurement and Approving, Issuing and Authorizing Publication of the 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. Discussion: Ms. Otto asked who should be on the evaluation committee. Mr. Shockley said engineering and professional staff from the member entities should be considered due to the technical nature of the RFQ review process. On roll call vote, the motion carried unanimously.**

***Short-Term Financing***

Mr. Shockley said the legal team and finance team are working on short-term financing for the project. He said the board will be asked to consider this item at the next meeting on July 28<sup>th</sup>.

**6. TECHNICAL UPDATE*****Recommended Contracting Actions Summary******Task Order Amendment***

- Houston-Moore Group Task Order 10 Amendment 8 (Utility Relocations)—add relocation design (allowance) and Red River levees utility relocation plan in the amount of \$15,500.

Construction Change Orders

- Industrial Builders, Inc. Change Order 09 (Flood Control – 2<sup>nd</sup> Street North, South of Pump Station)—add differing subsurface conditions, add floodwall utility penetrations, add City of Fargo signal light pull boxes, add concrete utility conduit removal, and deduct City Hall construction coordination for a deduction in the amount of \$55,349.74.
- Industrial Builders, Inc. Change Order 08 (2<sup>nd</sup> Street North Pump Station)—deduct unused hazardous fill removal and disposal for a deduction in the amount of \$47,876.36.
- Landwehr Construction, Inc. Change Order 03 (HoJo, Shakey's, Fargo Public School Demolitions)—add removal of ACM pipe, add insulated doors, deduct mulching, deduct over excavation, and deduct foundation wall removal in the amount of \$15,109.28.

***MOTION, passed***

**Mr. Pawluk moved and Mr. Campbell seconded to approve the appropriation of funds for the outlined Task Order Amendment and Construction Change Orders. On roll call vote, the motion carried unanimously.**

Third-Party Services Agreement

- Aconex (Service Agreement and Phase 2 Services Order)—eight-year multi-party platform electronic data management system and services to manage and store program records in the amount of \$1,322,146.

Randy Richardson said the Finance Committee approved the agreement with Aconex subject to a change in the cancellation provisions, which have been clarified to allow a 90-day cancellation notice to be given to Aconex if the Diversion Authority wishes to discontinue with the contract.

Mr. Grindberg is the newest member to the board and asked what services will be provided. Mr. Richardson said Aconex will provide document control software and will serve as a permanent repository for project documents. The software will also automate the handling and transmittal of documents and is a cloud-based service. A local copy will be kept on the hard drive maintained by the City of Fargo.

Mr. Hendrickson asked about ownership of the information. The Diversion Authority will retain ownership of all documents and data within the system.

***MOTION, passed***

**Mr. Mahoney moved and Ms. Otto seconded to approve the appropriation of funds for the Aconex services agreement. On roll call vote, the motion carried unanimously.**

Cost Share Reimbursement Agreement

- State Water Commission (2015-2017) Cost Share Reimbursement Agreement)—agreement is necessary to proceed with reimbursements to the Diversion Authority based on claim vouchers documenting actual eligible costs.

Mr. Vanyo said a cost share reimbursement agreement was received from the State Water Commission (SWC) for the 2015-2017 biennium to provide a grant of \$69,000,000 on actual eligible costs for the project. Kent Costin, Fargo Finance Director, said the previous agreements with the SWC were with the City of Fargo. This agreement is the same and allows the cost of dwellings to be used as a match for other expenses. The SWC clarified some language in the new agreement regarding this issue.

***MOTION, passed***

**Mr. Mahoney moved and Mr. Weyland seconded to approve the Cost Share Reimbursement Agreement for 2015-2017 with the State Water Commission. On roll call vote, the motion carried unanimously.**

**7. PUBLIC OUTREACH UPDATE**Committee report

The Public Outreach Committee met on July 13<sup>th</sup>. Mr. Olson said with the signing of the PPA, the project enters into the construction phase and becomes its own entity. He said a project logo has been created as a result. He said an updated and expanded communications plan is almost complete that will guide outreach efforts in a consistent and effective way. The committee received an update on various public outreach presentations given over the last month, including publication of an article in the North Dakota Water Magazine regarding the Diversion Authority's financial plan and P3 Industry Day held last month. He said comments on the website increased significantly after the PPA was signed and final approval of the project was given by the Corps of Engineers.

**8. LAND MANAGEMENT UPDATE**Committee report

The Land Management Committee met on July 13<sup>th</sup>. Mrs. Scherling said the committee approved the purchase/exchange of organic farmland.

CCJWRD update

Mark Brodshaug referred to the handout regarding land acquisitions completed through July 13, 2016, which includes completed acquisitions, budget figures, and completed negotiations. He said the CCJWRD also approved the purchase of organic farmland which will allow the operator time to transition to new organic farmland. The CCJWRD will close on two hardships acquisitions in Minnesota which were approved but on hold until the MN EIS was completed.

**9. FINANCE UPDATE**Committee report

The Finance Committee met on July 13<sup>th</sup>. Kent Costin, Fargo Finance Director, said the cumulative spent on the project to date is \$226,505,699.

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; Dorsey & Whitney LLP for legal services; Erik R. Johnson & Associates, Ltd. for legal services; Ohnstad Twichell, P.C. for P3 bond counsel and 4<sup>th</sup> Street pump station litigation work; and Springsted Inc. for financial feasibility analysis services.

***MOTION, passed***

**Mr. Mahoney moved and Ms. Otto seconded to approve the vouchers in the amount of \$2,787,728.30 for June, 2016. Discussion: Mr. Pawluk asked about the Springsted Inc. bill for \$24,136.77. Mr. Costin said Springsted is the financial advisor for bonding services. On roll call vote, the motion carried unanimously.**

Management of Cash Balances

Mr. Costin said currently cash balances from sales taxes generated by Fargo and Cass County are collected in the treasury of each entity. The Finance Committee approved a recommendation to begin pooling the cash into a fiscal agent account maintained by the City of Fargo on behalf of the Diversion Authority. Mr. Pawluk questioned how the funds will be transferred since the county will need to approve the transfers. Mr. Costin said the proposal will need to be considered by Cass County and Fargo.

***MOTION, passed***

**Mr. Mahoney moved and Mrs. Scherling seconded to approve the recommendation on the management of cash balances subject to approval by the City of Fargo Commission and Cass County Commission. On roll call vote, the motion carried unanimously.**

**10. NEXT MEETING DATE**

The next meeting will be held on Thursday, July 28, 2016.

**11. ADJOURNMENT**

***MOTION, passed***

**On motion by Mr. Pawluk, seconded by Ms. Otto, and all voting in favor, the meeting was adjourned at 4:46 PM.**

Minutes prepared by Heather Worden, Cass County Administrative Assistant