

**METRO FLOOD DIVERSION AUTHORITY
AUGUST 25, 2016—3:30 PM**

1. MEETING TO ORDER

A meeting of the Metro Flood Diversion Authority was held Thursday, August 25, 2016, at 3:30 PM in the Fargo City Commission Room with the following members present: Cass County Commission representative Darrell Vanyo via conference call; Cass County Commissioner Mary Scherling; Cass County Commissioner Ken Pawluk; Fargo City Mayor Tim Mahoney; Fargo City Commissioner Dave Piepkorn; Fargo City Commissioner John Strand; Moorhead City Council Member Nancy Otto; 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. Moorhead City Mayor Del Rae Williams and Moorhead City Council Member Chuck Hendrickson were absent.

2. MINUTES APPROVED

MOTION, passed

Mrs. Scherling moved and Mr. Brodshaug seconded to approve the minutes from the August 11, 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. ADMINISTRATIVE/LEGAL UPDATE

Attorney John Shockley said the Public Private Partnership (P3) procurement team continues to respond to requests for information from interested parties.

5. MANAGEMENT UPDATE

Program management consultant (PMC) report

Randy Richardson from CH2M said staff continue to respond to the Minnesota DNR to questions regarding the Minnesota permit. He said there should be a response from the MN DNR in about two weeks.

Mr. Richardson said Lieutenant General Todd Semonite, Commanding General of the U.S. Army Corps of Engineers, was in town this week to visit with local leaders regarding the project. Mr. Piepkorn was pleased to hear that the Commander believes the FM Area Diversion will be used as an example for other Corps projects.

6. TECHNICAL UPDATE

Recommended Contracting Actions Summary

Ty Smith from CH2M reviewed two change orders and one work change directive:

Construction Change Orders

- Industrial Builders Change Order 10 (2nd Street North Pump Station)—decorative fence modifications and differing subsurface conditions—removals in the amount of \$42,312.57.
- Industrial Builders, Inc. Change Order 11 (Flood Control - 2nd Street North, South of Pump Station)—differing subsurface conditions—removals, repair existing storm manholes, contaminated soil removal, storm structure modification, impressed concrete addition, bid item accounting correction, and update owner's rep and engineer roles and responsibilities in the amount of \$52,242.85.

MOTION, passed

Mr. Campbell moved and Ms. Otto seconded to approve the appropriation of funds for the outlined Construction Change Orders with Industrial Builders, Inc. On roll call vote, the motion carried unanimously.

Work Change Directive

Mr. Smith discussed Work Change Directive No. 6 with ICS, Inc. to install two still wells in the wet well and relocate ultrasonic transducers (level sensors). The work is necessary so the level sensors are working correctly at the 4th Street pump station. He discussed the difference between a Work Change Directive (WCD) and a Change Order (CO). A WCD is a tool used to authorize work to be done before the construction price is finalized and in many instances, the work is time sensitive. He estimates the cost will be \$25,000 to \$30,000 and will impact the project schedule by 7-10 days. The request is for the board to approve the WCD, which will authorize the work to be done, but the contractor will not be paid until after the CO is brought back to the board for approval.

Mr. Pawluk has some concerns and is trying to understand the basis of the request. Mr. Smith said some type of change needs to be implemented in order for the pumps to work. There was discussion on the responsibility of the engineer and associated cost for the repair. Mr. Mahoney said the WCD could be approved with the stipulation that the engineer's responsibility is reviewed.

MOTION, passed

Mr. Piepkorn moved and Mr. Campbell seconded to proceed with the repair as outlined in the Work Change Directive with ICS, Inc. and determine the cost liability before approval of the change order. Discussion: Mr. Campbell asked if this is a warranty issue. Mr. Smith said the problem was discovered when the pump was tested, so it wouldn't have been discovered until then and therefore is not a warranty issue. Mrs. Scherling said there does not appear to be a formal process in place on change orders. Mr. Mahoney suggested the technical committee give a presentation on the subject at a future meeting. There was discussion on the financial impact to the budget due to change orders. Mr. Richardson said a presentation will be given at the September 8th board meeting regarding basic budget reporting. Mr. Brodshaug said it is reasonable to expect a certain number of change orders, but agreed that the process on how they are handled may need some improvements. On roll call vote, the motion carried unanimously.

7. 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. Campbell moved and Mrs. Scherling 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. Discussion: Mr. Strand asked about including more detailed statutory language regarding the executive session on the agenda. Mr. Shockley said if the board wishes, that protocol can be used for future executive sessions. Motion carried.

Diversion Authority board members, key administrative and engineering staff, Attorney Erik Johnson and Attorney John Shockley moved to the River Room at 3:58 PM. Also present via conference call was Attorney Robert Cattnach from Dorsey & Whitney LLP.

The executive session ended at 4:38 PM and the meeting was re-opened to the public.

MOTION, passed

Ms. Otto moved and Mr. Campbell seconded that the Metro Flood Diversion Authority intervene in the case of Richland-Wilkin Joint Powers Authority v. State of Minnesota Department of Natural Resources so as to represent and protect the interests of the Metro Flood Diversion Authority, and support the Minnesota DNR in its defense of its determination that the Minnesota EIS is adequate, and direct the law firm of Dorsey & Whitney, LLP to file the documents necessary to undertake such action with the Minnesota Court of Appeals. On roll call vote, the motion carried unanimously.

8. NEXT MEETING DATE

The next meeting will be held on Thursday, September 8, 2016.

9. ADJOURNMENT

MOTION, passed

On motion by Mr. Piepkorn, seconded by Mr. Strand, and all voting in favor, the meeting was adjourned at 4:45 PM.