# FLOOD DIVERSION BOARD OF AUTHORITY Tuesday, January 21, 2014 1:30 PM

# Fargo City Commission Room Fargo City Hall 200 3<sup>rd</sup> Street North

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2.	Approve minutes from previous meeting	Item 2.	Action
3.	Contract amendment with Minnesota DNR for EIS	Item 3.	Action
4.	Next Meeting – February 13, 2014		
5.	Adjournment		

cc: Local Media

# FLOOD DIVERSION BOARD OF AUTHORITY DECEMBER 19, 2013—3:30 PM

Item 2.

# 1. MEETING TO ORDER

A meeting of the Flood Diversion Board of Authority was held Thursday, December 19, 2013, at 3:30 PM in the Fargo City Commission Room with the following members present: Cass County Commissioner Darrell Vanyo; Cass County Commissioner Ken Pawluk; West Fargo City Commissioner Mike Thorstad; Fargo Mayor Dennis Walaker; Fargo City Commissioner Tim Mahoney; Fargo City Commissioner Brad Wimmer; Cass County Joint Water Resource District Manager Rodger Olson; Clay County Commissioner Kevin Campbell; and Moorhead City Council Member Nancy Otto. Also present was ex-officio member Gerald Van Amburg, Buffalo-Red River Watershed District.

Staff members and others present: Cass County Administrator Keith Berndt; Fargo City Administrator Pat Zavoral; Clay County Administrator Brian Berg; Moorhead City Engineer Bob Zimmerman; Cass County Engineer Jason Benson; Bruce Spiller, CH2MHill; Brett Coleman, Project Manager, Corps of Engineers; and Terry Williams, Project Manager, Corps of Engineers.

# 2. MINUTES APPROVED

MOTION, passed

Mr. Walaker moved and Mr. Campbell seconded to approve minutes from the November 14, 2013, meeting as presented. Motion carried.

# 3. AGENDA ORDER

MOTION, passed

Mr. Pawluk moved and Mr. Olson seconded to approve the order of the agenda. Motion carried.

# 4. MANAGEMENT UPDATE

# Program management consultant (PMC) report

Bruce Spiller provided an update on activities over the last month including ongoing geotechnical and survey work on the Oxbow/Hickson/Bakke (O/H/B) levee; continued work on land acquisition activities and policies; coordination with the new Fargo City Hall project regarding in-town levees; and monitoring of the WRDA/WRRDA bills, which are in conference committee.

# Corps of Engineers report

Brett Coleman provided an update of activities by Corps of Engineers staff including continued support for the Minnesota EIS (Environmental Impact Statement) process; continued design work associated with the O/H/B levee; meeting with the Rush River Water Resource Board to discuss drains as they relate to the project; work on the Maple River aqueduct physical modeling; and development of a cemetery study to update information included in the feasibility study. The project continues to await federal authorization.

# 5. LEGAL UPDATE

Attorney Erik Johnson provided a brief update on the lawsuit filed by the Richland-Wilkin Joint Powers Authority vs. the U.S. Army Corps of Engineers. The Corps has authorized for the Flood Diversion Board of Authority to intervene. He discussed the schedule to respond to the lawsuit, which is in the initial stages.

# 6. TECHNICAL UPDATE

# Design Contracts / Task Orders

Mr. Spiller reviewed a contract amendment with the Minnesota Department of Natural Resources (MN DNR) Amendment No. 2 to complete the Environmental Impact Statement (EIS) scoping decision document and preparation of the MN EIS in an amount of \$780,000. The DNR required additional hours to respond to public comments and evaluate the socioeconomic component, which increased the scoping budget by approximately \$30,000. The original contract with the DNR included \$750,000 to prepare the EIS, and if the amendment is approved today, the final EIS will be drafted.

# MOTION, passed

Mr. Campbell moved and Ms. Otto seconded to approve an increase to the MN EIS scoping budget by approximately \$30,000 as part of Amendment No. 2 to the contract with the Minnesota DNR. On roll call vote, the motion carried unanimously.

# MOTION, passed

Mr. Mahoney moved and Mr. Walaker seconded to authorize Diversion Authority staff to negotiate the EIS preparation budget with an estimated cost of \$750,000 and execute Amendment No. 2 to the contract with the Minnesota DNR. On roll call vote, the motion carried unanimously.

Mr. Spiller discussed AWD-00034 (Authority Work Directive) with Houston Moore Group (HMG) not to exceed \$25,000 to amend Task Order No. 9 to update the river and drain structures for hydrology and hydraulic modeling.

# MOTION, passed

Mr. Wimmer moved and Ms. Otto seconded to approve AWD-00034, Update River and Drain Structures in HEC-RAS Model, at a cost not to exceed \$25,000. On roll call vote, the motion carried unanimously.

# Red River Basin Commission update

Mark Brodshaug said modeling work is done on the Halstad Upstream Retention (HUR) Project. After peer review comments are received, the final report will be prepared. He said the HUR study will be presented at the annual conference of the Red River Basin Commission next month.

Zac Herman discussed the timeline for full implementation of the plan and reviewed some funding graphs using a 10-year cycle. Pat Downs from the Red River Retention Authority discussed the next steps to establish a funding mechanism for the Diversion Authority, and said the funding assistance committee will hold its first meeting on January 6<sup>th</sup>.

# 7. PUBLIC OUTREACH UPDATE

# Committee report

Rodger Olson said the Public Outreach Committee met on December 18<sup>th</sup>. He discussed numerous outreach activities including: attendance at the North Dakota Water Users Conference in Bismarck; development of a flyover video by the Corps of Engineers to illustrate the path of the diversion project and its design features; attendance at a public meeting with Oxbow residents regarding the timeline for construction of the ring levee; and continued communication with federal congressional offices regarding project authorization through the WRDA/WRRDA legislation.

# Business Leaders Task Force update

Ann McConn from the Business Leaders Task Force said the committee will hold their next meeting in early January.

# 8. LAND MANAGEMENT UPDATE

## Committee report

Mr. Walaker said the Land Management Committee met earlier this afternoon. He said the committee received updates on land acquisitions, right of entry status, and cultural resources easement acquisitions.

Mr. Berndt discussed a handout on the status of land acquisitions, and a recommended motion. The Cass County Joint Water Resource Board (CCJWRB) has been designated by the Diversion Authority to acquire land for the project, and sometimes decisions need to be made promptly, which makes full Authority Board decisions difficult and impractical. The 2014 budget includes \$38 million for land acquisition, and considering a potential 50% cost share from the State of North Dakota through the State Water Commission, total available funds could be near \$76 million. Also, the Finance Committee has been empowered to oversee financial matters related to the Diversion Authority. The Land Management Committee approved action for the CCJWRB to purchase land that may be needed within the footprint of the project.

# MOTION, passed

Mr. Pawluk moved and Mr. Mahoney seconded to authorize the Cass County Joint Water Resource Board (CCJWRB) to spend up to \$76 million for land acquisition in 2014. The CCJWRB is authorized to make decisions regarding which parcels to purchase, timing of the purchase, and purchase price on behalf of the Diversion Board of Authority. In addition to property within the footprint, the CCJWRB may also purchase property located elsewhere for future land trades. The CCJWRB will consult as necessary with Fargo and Cass County Administrators and with the Finance Committee. The CCJWRB will periodically report to the Diversion Board of Authority but need not seek Finance Committee or Board of Authority approval for individual land purchases. On roll call vote, the motion carried unanimously.

# 9. FINANCE UPDATE

# Committee report

Michael Montplaisir, Cass County Auditor, said the Finance Committee met on December 18<sup>th</sup>. He said land has been purchased in Oxbow for the levee, and closing on the property was completed earlier this week. The project continues to be financed on a cash basis.

Mr. Berndt said the committee approved the engineering rate schedule for 2014 with Houston Moore Group. There was discussion about the amount of the increase. Mr. Berndt said rates include a 6% increase from 2012, which is competitive considering inflationary costs over the past two years.

# MOTION, passed

Mr. Wimmer moved and Ms. Otto seconded to adopt the 2014 engineering rate schedule for Houston Moore Group. Motion carried.

# Voucher approval

MOTION, passed

Mr. Mahoney moved and Ms. Otto seconded to approve the vouchers for November, 2013. On roll call vote, the motion carried unanimously.

# 10. NEXT MEETING DATE

The January board meeting is cancelled unless there is any pending business. The next meeting will be held on Thursday, February 13, 2014, at 3:30 PM.

# 11. ADJOURNMENT

MOTION, passed

On motion by Mr. Wimmer, seconded by Mr. Walaker, and all voting in favor, the meeting was adjourned at 4:25 PM.

Minutes prepared by Heather Worden, Cass County Administrative Assistant



# County Administrator

Keith Berndt

## MEMO

TO:

Flood Diversion Board of Authority

FROM:

Keith Berndt

Cass County Administrator

DATE:

January 17, 2014

SUBJECT:

Special Meeting – Minnesota DNR Contract Amendment

During the December 19<sup>th</sup> Flood Diversion Board of Authority meeting, staff was authorized to negotiate a contract with the Minnesota Department of Natural Resources (DNR) for EIS preparation at an estimated cost of \$750,000.

Recent negotiations with the Minnesota DNR have resulted in an estimated contract of \$1,146,618; therefore, a special meeting is being called to authorize this cost increase.

The proposed breakdown of costs is attached for your review.

# SUGGESTED MOTION:

Move to approve a contract amendment with the Minnesota DNR for EIS preparation in the estimated amount of \$1,146,618.

Box 2806 211 Ninth Street South Fargo, North Dakota 58108

701-241-5720 Fax 701-297-6020 www.casscountynd.gov berndtk@casscountynd.gov Start Date 2/10/2014 (estimated) End Date 12/31/2014 (estimated) 12/31/2014 (estimated)

Project Steps Subtotal aft EIS Phase
Contracting
DEIS Check-Leh Meeting (Kick-off)
Special Studies
Section 2.2-No Action Attensive
Section 2.2-No Included Storage Attensive
Section 3.2-I-Charbound Storage Attensive
Section 3.2.2-No Section 3.2-Included Storage Attensive
Section 3.2.2-No Section 3.2-Included Storage Attensive
Section 3.2.2-Included Storage Attensive
Section 3.2.2-Included Storage Attensive
Section 3.2.2-Included Storage Section 3.2-Included Section 3.2.3-Included Section 3.2.3-Included Section 3.2.3-Included Section 3.2.3-Included Section 3.2.3-Included Section 3.2.5-Included Section 3.2.5-Include Draft EIS Phase 30.5 58 27 46 43.5 105 21.5 107.5 120 Final EIS Phase Response to Draft EIS Comments
Final EIS Document
Stakeholder Participation Adequacy Determination Adequacy Determination
Response to Final EIS Comments
Final EIS Evaluation
EIS Project Closure Hours Subtotal Hours Rate Subtotal 0 350 548 218 1116 273 22 17 147 241 299 130 221 136 1486 85 65 2805 3 96.00 \$ 12 51 0 96.00 \$ 66.00 1,056.00 \$ 3,366.00 \$ 621,043.50 \$ 1 1 Total Hours (DNR)
Total Rate Charge (including Wenck) stimated rate 879,261.50 Pass Through Expenses Project Manager 1.0 FTE at 75% 150.336.00 2088 \$ 96.00 0.75 1566 3,000 \$96 per night, \$36 per diem, \$375 fleet \$96 per night, \$36 per diem, \$125 fleet plus hourly wage (2 days)

Project Manager 1.0 FTE at 75%
Printing and Distribution
Mailing and Communication
Travel, lodging, meals (public mtg)
Misc. FIM meeting (1)
Meeting room rental
Stenographer
Agency Direct
State Register
Subtotal 1,695 10 people 5,129 3 ppl 1,200 600 per meeting 1,000 500 per meeting 18,000 4500 per quarte DWSC (8% of subtotal less contractor)
TOTAL ESTIMATED EIS PREP COST Outstanding scoping costs
TOTAL OBLIGATION (Amend #2)

Item 3.

## **Amendment 2 to Income Contract Number 39228**

Contract Start Date:	February 3, 2012	Total Contract Amount:	\$ 1,492,718.00
Original Contract Expiration Date:	January 3, 2014	Original Contract:	\$ 230,550.00
Current Contract Expiration Date:	February 1, 2014	Previous Amendment(s) Total:	\$ 115,550.00
Requested Contract Expiration Date:	February 2, 2015	This Amendment:	\$ 1,146,618.00

This amendment is by and between the State of Minnesota, through its Commissioner of Department of Natural Resources ("DNR" or "State") and Fargo-Moorhead Metro Diversion Board of Authority c/o City of Moorhead, Moorhead City Hall, P.O. Box 779, Moorhead, MN 56561-0779 ("Purchaser").

## **Recitals**

- 1. The State has a contract with the Purchaser identified as Income Contract Number 39228 ("Original Contract") to reimburse the State for reasonable expenses incurred in preparation of an Environmental Impact Statement (EIS) for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (Project).
- 2. The Contract is being amended to extend the expiration date of the contract and to provide additional funding for the State, and its EIS Contractor, to complete EIS preparation work through the adequacy determination.
- 3. The State and the Contractor are willing to amend the Original Contract as stated below.

#### **Contract Amendment**

**REVISION 1.** Clause 1.2 "Expiration Date" is amended as follows:

**1.2 Expiration date:** February 1, 2014, February 2, 2015, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

REVISION 2. Clause 2 "State's Duties" is amended as follows:

## 2 State's Duties

The State will:

Pursuant to Minnesota Rules Parts 4410.21002000 to 4410.2800, the DNR will: document federal process, prepare and publish in the EQB Monitor a Scoping Environmental Assessment Worksheet and a Draft Scoping Decision Document with supporting information; provide for a public scoping period to end; conduct a public scoping meeting; prepare a Final Scoping Decision; compare the Final Scoping Decision to available federal EIS for the same project to determine level of effort for EIS preparation; secure consultants/contractors as appropriate for EIS Scoping and preparation efforts; issue an EIS Preparation Notice; host an EIS Preparation Kick-off meeting; conduct and/or evaluate special studies as outlined in the Scoping Decision Document; prepare a Draft EIS and hold a public meeting; respond to comments and prepare a Final EIS; and prepare adequacy determination that meets the requirements for adequacy established in Minnesota Rules Part 4410.2800.

# **REVISION 3.** Clause 3 "Payment" is amended as follows:

#### 3 Payment

The Purchaser will pay the State for all services performed by the State under this contract as follows:

EIS Scoping:

Purchaser shall receive an invoice and pay to the State \$230,550 as reimbursement for services related to staff costs, legal costs, travel, public meetings, public notification, printing and distribution related to the Fargo-Moorhead Metropolitan Flood Risk Management Project's EIS scoping and consultant selection incurred by the state.

Upon execution of Amendment 1, Purchaser shall receive an invoice and pay to the State \$115,550 as reimbursement for additional services to cover the State's anticipated increase in costs for the modified EIS scoping process. If costs to the State exceed \$346,100.00, balance to be submitted prior to the EIS Preparation Notice issuance; If costs to the

State total less than \$346,100.00, balance to be credited toward EIS preparation, or refunded, at Purchaser's discretion. Costs to the State for the modified EIS scoping process exceeded \$346,100.00 by \$50,722.00. The exceeded amount of \$50,722.00 shall be paid to the State prior to the State issuing an EIS Preparation Notice.

## EIS Preparation:

Costs for EIS preparation are estimated at \$750,000. This estimate will be revised at the completion of EIS Scoping and the contract will be amended to reflect these costs. A payment schedule for these costs will be developed as part of the contract amendment after completion of EIS scoping.

A cost breakdown and payment schedule is included in Exhibit A-and, Exhibit B and Exhibit C, which are attached to and incorporated into this contract.

<u>Pursuant to Minn. Rules part 4410.6500, subp. 1(a)-(c), the Purchaser will pay the State for all services performed by the State under this contract as follows:</u>

The Purchaser shall remit payment on the following schedule:

\$ 598,670.00 (50% of total estimated costs plus EIS scoping phase balance within 10 days of Income Contract execution)

\$ 273,974.00 (25% total estimated costs following completion of the draft EIS chapters)

\$ 273,974.00 (25% total estimated costs following the end of the public comment period)

Final Payment on any outstanding RGU/consultant costs (EIS adequacy determined)

The State will invoice the Purchaser for all services performed under this contract.

If costs to the State exceed \$1,146,618.00, an amendment to this contract would be required and the balance is to be submitted prior to the EIS Adequacy Determination issuance.

<u>Pursuant to Minn. Rules part 4410.6500, subp. 1(d), the State shall refund the overpayment, if the cash payments made by the Purchaser exceed the State's actual EIS costs. The refund shall be paid within 30 days of completion of the State of the accounting of the EIS costs.</u>

The total obligation of the Purchaser for all compensation and reimbursements to the State under this contract is \$1,096,100.00 \$1,492,718.00. The \$750,000 cost estimate for EIS preparation will be revised at the completion of EIS scoping and this contract will be amended to reflect the revised EIS preparation costs. The total obligation costs include the original contract amount, Amendment 1, revised EIS preparation costs, and the balance from the EIS scoping process.

The Purchaser must complete all reimbursements of State costs before any state agency permit can be issued.

REVISION 4. Clause 4 "Authorized Representatives" is amended as follows:

#### **4 Authorized Representatives**

The State's Authorized Representative is Stuart Arkley Jill Townley, EIS Project Manager, Division of Ecological and Water Resources, Minnesota Department of Natural Resources, 500 Lafayette Road, St. Paul, MN 55155, 651-259-5089-5168, or hisher successor.

The Purchaser's Authorized Representative is Bob Zimmerman, City of Moorhead, City Hall, P.O. Box 779, Moorhead, MN 56561-0779, or his successor.

The Original Contract and any previous amendments are incorporated into this amendment by reference.

# 1. PURCHASER 2. STATE AGENCY Fargo-Moorhead Metro Diversion Board of Authority Department of Natural Resources Signed: Ву: (with delegated authority) Date: Title: 39228-Amendment 2 Date: 1-17-2014 FB 3. COMMISSIONER OF ADMINISTRATION As delegated to Materials Management Division By: Date:

#### **EXHIBIT C**

Project Name: FARGO-MOORHEAD FLOOD RISK MANAGEMENT (1-17-2014, FINAL)

EIS Estimated Costs

 Start Date
 2/10/2014 (estimated)

 End Date
 12/31/2014 (estimated)

Project Steps						didite Combined i		
			5CO Nº	orojes	3. The chair	The state of the s	ren /	didir antine si
Project Steps	Apr.	/ .		/ Y	1			/ 0
, ,				Subtotal	Subtotal			
Draft EIS Phase								
Contracting	2	0		13	0	0	0	15
DEIS Check-in Meeting (Kick-off)	0	0		6	18	2	2	28
Special Studies	- U	Ü			10			20
Section 2.2-No Action Alternative	0	0		22	58	0	0	80
Section 2.5.1-Distributed Storage Alternative	0	0		42	117	6	6	171
Section 2.5.2-Northern Alignment Alternative	0	0		32	97	6	6	141
Section 3.2.1-Phase I & II ESAs	0	0		10	0	0	0	10
Section 3.2.2-Cover Types	0	0		7	10	0	0	17
Section 3.2.3.1 (IBIs)	0	0		14	31	12	0	57
Section 3.2.3.2-State special species	0	0		5	10	4	3	22
Section 3.2.3.3Inv. Species Concerns	0	0		4	16	0	0	20
Section 3.2.4.1-arch./cultural resources	0	0		3	0	0	0	3
Section 3.2.5-Land Use Plans and regulations	0	0		8	20	0	0	28
Section 3.2.6-Infrastructure and public services	0	0		12	20	10	0	42
Section 3.2.8.1-Hydrology	0	0		30.5	69	0	0	99.5
Section 3.2.8.2-Socioeconomic	0	0		58	62	0	0	120
Section 3.2.8.3-Dam Safety	0	0		8	29	0	0	37
Section 3.3.1.1-Stream Stability	0	0		14	40	0	0	54
Section 3.3.1.2-Wetlands	0	0		14	36	0	0	50
Section 3.3.1.3-Cold Weather Impacts	0	0		9	14	7	0	30
General-Eval. of mitigation strategies	0	0		35	153	7	7	202
Weekly PM meetings (48 at 1hr)				46	42	0	0	88
Meeting Coordination				27	105	5	5	142
Preliminary Draft EIS (Chapters)	0	0		46	83	7	7	143
Preliminary Draft EIS (Compiled)	0	0		43.5	55	5	5	108.5
Final DEIS (Public Review Version)	1	7		61	16	0	0	85
Stakeholder Participation		22		107.5	120	0	0	250.5
Draft EIS Phase Closure	0	0		5	0	0	0	5
Draft EIS Phase Evaluation	0	0		5	0	0	0	5
Final EIS Phase								
Response to Draft EIS Comments	0	0		152	78	4	4	238
Final EIS Document	1	15		125	79	4	4	228
Stakeholder Participation	0	0		4	2	0	0	6
Adequacy Determination								
Adequacy Determination	1	7		68.5	70	0	0	146.5
Response to Final EIS Comments	0	0		51	36	6	6	99
Final EIS Evaluation	0	0		5	0	0	0	5
EIS Project Closure	6	0		23	0	0	0	29
Hours Subtotal			0	1116	1486	85	55	2805
Hours Subtotal Hours	12							
	<b>12</b> \$ 96.00	\$ 66.00		\$ 96.00	VARIES	\$ 89.00	\$ 89.00	VARIES
Hours			\$ 621,043.50					
Hours Rate	\$ 96.00 \$1,056.00	\$ 66.00		\$ 96.00	VARIES	\$ 89.00	\$ 89.00	VARIES

# Pass Through Expenses

Project Manager 1.0 FTE at 75% \$ 150,336

Printing and Distribution \$ 3,000

Mailing and Communication \$ 1,000

Travel, lodging, meals (public mtg) \$ 1,695

Misc. FM meeting (1) \$ 5,129

Meeting room rental \$ 1,200

Stenographer \$ 1,000

Agency Direct \$ 18,000

State Register \$ 1000

Subtotal \$ 1,060,722

DWSC (8% of subtotal less contractor) \$ 35,174

TOTAL ESTIMATED EIS PREP COST \$ 1,095,896

Outstanding scoping costs \$ \$50,722

TOTAL OBLIGATION (Amend #2) \$ 1,146,618

proposal total (\$564,585) + 10% contingency