FLOOD DIVERSION BOARD OF AUTHORITY
Thursday, February 25, 2016
1:00 PM
Fargo City Commission Room
Fargo City Hall
200 3rd Street North

1.	Call to order		
2.	Approve minutes from previous meeting	Item 2.	Action
3.	Approve order of agenda		Action
4.	Administrative/Legal	Item 4.	Information
5.	Technical		Information/action
	a. Recommended Contracting Actions	Item 5a.	
6.	Finance		
	a. CH2M Task Order		
	b. Ernst & Young Task Order		
7.	Other Business		
8.	Next Meeting – March 10, 2016		
9.	Adjournment		

cc: Local Media

FLOOD DIVERSION BOARD OF AUTHORITY
FEBRUARY 11, 2016—3:30 PM

1. MEETING TO ORDER

A meeting of the Flood Diversion Board of Authority was held Thursday, February 11, 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 Ken Pawluk; West Fargo City Commissioner Mike Thorstad; Fargo City Mayor Tim Mahoney; Fargo City Commissioner Melissa Sobolik; Fargo City Commissioner Mike Williams; 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 Breanna Paradeis-Kobiela, Buffalo-Red River Watershed District.

Staff members and others present: Cass County Administrator Keith Berndt; Interim Fargo City Administrator Bruce Grubb; Moorhead City Manager Michael Redlinger; 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; Tom Dawson, Chairman, Chamber of Commerce Business Leaders Taskforce; Bruce Spiller, PE, CH2M; Colonel Dan Koprowski, St. Paul District Commander, Corps of Engineers; Aaron Snyder, Branch Chief for Project Management & Development, Corps of Engineers; Terry Williams, Project Manager, Corps of Engineers; and Judy DesHarnais, Deputy of Programs and Project Management, Corps of Engineers.

2. MINUTES APPROVED

MOTION, passed

Mr. Mahoney moved and Ms. Otto seconded to approve the minutes from the January 14, 2016, meeting as presented. Motion carried.

3. AGENDA ORDER

MOTION, passed

Mr. Campbell moved and Mr. Pawluk seconded to approve the order of the agenda with one change to move the Corps of Engineers report as the first item under the Management update. Motion carried.

4. MANAGEMENT UPDATE

Corps of Engineers report

The U.S. Army Corps of Engineers released its 2016 work plan on February 9th, which includes $5 million in construction funding. Colonel Dan Koprowski congratulated the Corps and F-M area teams on this critically important milestone. He said the goal is to award the first federal construction contract this fall.

Mr. Pawluk asked about collaborative efforts between the Corps and Minnesota DNR on the EIS. Col. Koprowski said Corps staff are in constant communication with the DNR.

Col. Koprowski provided an update of activities by Corps of Engineers staff which includes the final review of plans and specifications on the diversion inlet structure; assistance with answering comments as part of the final MN EIS preparation; and permit coordination with North Dakota and Minnesota for the diversion inlet structure and southern embankment/dam.

Program management consultant (PMC) report

Bruce Spiller provided an update on activities over the last month including work on in-town levees; completion of Park East Apartments demolition; develop responses to public comments associated with the Minnesota Draft EIS (MN DEIS); develop Request for Qualifications (RFQ), Request for Proposals (RFP) and procurement strategy for the Public Private Partnership (P3); and finalize the updated cost estimate and draft financial plan.

5. ADMINISTRATIVE/LEGAL UPDATE

Attorney John Shockley said staff have been meeting with Ernst & Young to develop a financial plan, and Ashurst LLP is working on the Project Partnership Agreement (PPA) as part of the P3 component. He said staff have also been working on amendments to the Joint Powers Agreement (JPA).

6. TECHNICAL UPDATE

Recommended Contracting Actions Summary

Task Orders

- HMG Task Order No. 8 Amendment 12—work-in-kind for additional cemetery assessment team support and additional baseline stream bank erosion evaluation in the amount of $34,190;
- HMG Task Order No. 9 Amendment 15—hydrology and hydraulic modeling associated with Maple River Aqueduct physical model, updates for Phase 8 model and updates of NDSU agricultural study in the amount of $98,021;
- HMG Task Order No. 13 Amendment 12—levee design and design support in the amount of $610,000;
- HMG Task Order No. 17 Amendment 2—services during construction for Work Package 42 which includes 2nd Street pump station, 4th Street pump station and 2nd Street South flood wall, 2nd Street North/North of pump station, El Zagal Levee Phase 2, Mickelson Levee extension, and Park East, Howard Johnson Hotel, Shakey's and Fargo Public School office building demolition in the amount of $1,605,000.

MOTION, passed

Mr. Mahoney moved and Mr. Williams seconded to approve the appropriation of funds for the task orders with HMG as outlined, 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.

Income Contract Amendment

- MN DNR Income Contract Amendment 4—labor and expenses to complete the final EIS and prepare adequacy information in the amount of $137,464.92.

Mr. Pawluk said the contract does not include a schedule of due dates for the final EIS and determination of adequacy. Bob Zimmerman said based on the schedule from the MN DNR, the final EIS is to be completed in May with the determination of adequacy in July.

Ms. Sobolik asked if there will be additional funding requests after today. Mr. Spiller does not believe there will be any more requests from the MN DNR.

MOTION, passed

Ms. Otto moved and Mr. Thorstad seconded to approve Income Contract Amendment 4 with the Minnesota DNR in the amount of $137,464.92, 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.

Contract Award

- Landwehr Construction, Inc.—award contract for In-Town Levees 2nd Street/Downtown Area Demolition for Howard Johnson Hotel, Shakey's and Fargo Public Schools office building in the amount of $668,870;

MOTION, passed

Mr. Mahoney moved and Ms. Sobolik seconded to approve the appropriation of funds for a contract award with Landwehr Construction in the amount of $668,870 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.

Work Order

- Ashurst LLP—work order in an amount not to exceed $124,000 for on-going review of the PPA and negotiations with the Corps of Engineers, review of the Notice of Intent, and review of amended Joint Powers Agreement (JPA).

  MOTION, passed

  Mr. Pawluk moved and Ms. Otto seconded to approve the appropriation of funds for a work order with Ashurst LLP in an amount not to exceed $124,000 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

Mr. Olson said the Public Outreach Committee met on February 10th. He said some board members and staff attended the Red River Basin Commission Conference in Grand Forks, which provided an opportunity to interact with others from different parts of the region. He said outreach efforts include meetings with the Moorhead Rotary Club and the City of Horace.

Business Leaders Task Force

Tom Dawson said chamber members attended a press conference earlier this week when it was announced that the diversion project is part of the Corps' 2016 work plan and will receive construction funding. Board members asked about help from the business community on outreach efforts with Moorhead City Council members and Minnesota legislators. Mr. Dawson said they can assist with outreach efforts.

8. LAND MANAGEMENT UPDATE

Committee report

Mr. Mahoney said the Land Management Committee met on February 10th and approved one property acquisition in the City of Oxbow.

CCJWRD update

Mr. Brodshaug referred to the handout regarding land acquisitions completed through January 31, 2016, which includes completed acquisitions, budget figures, and completed negotiations. A purchase and lease agreement has been signed for the Fargo Public Schools property and documents for the Shakey's properties have been finalized and access for demolition has been granted.

9. FINANCE UPDATE

Committee report

Kent Costin, Fargo Finance Director, said the Finance Committee met on February 10th. The committee reviewed the monthly financial report and vouchers, approved one property acquisition in Oxbow and approved a contract amendment with the Minnesota DNR. He said the cumulative spent on the project to date is $184.4 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; Erik R. Johnson & Associates, Ltd. for legal services; Army Corps of Engineers for cost share funds; Ohnstad Twichell, P.C. for legal services; and Ashurst LLP for legal services.

MOTION, passed

Mr. Mahoney moved and Mr. Olson seconded to approve the vouchers in the amount of $4,347,514.07 for January, 2016. On roll call vote, the motion carried unanimously.

10. NEXT MEETING DATE

The next meeting will be held on Thursday, February 25, 2016.

11. ADJOURNMENT

MOTION, passed

On motion by Mr. Mahoney, seconded by Mr. Pawluk, and all voting in favor, the meeting was adjourned at 4:24 PM.

Minutes prepared by Heather Worden, Cass County Administrative Assistant

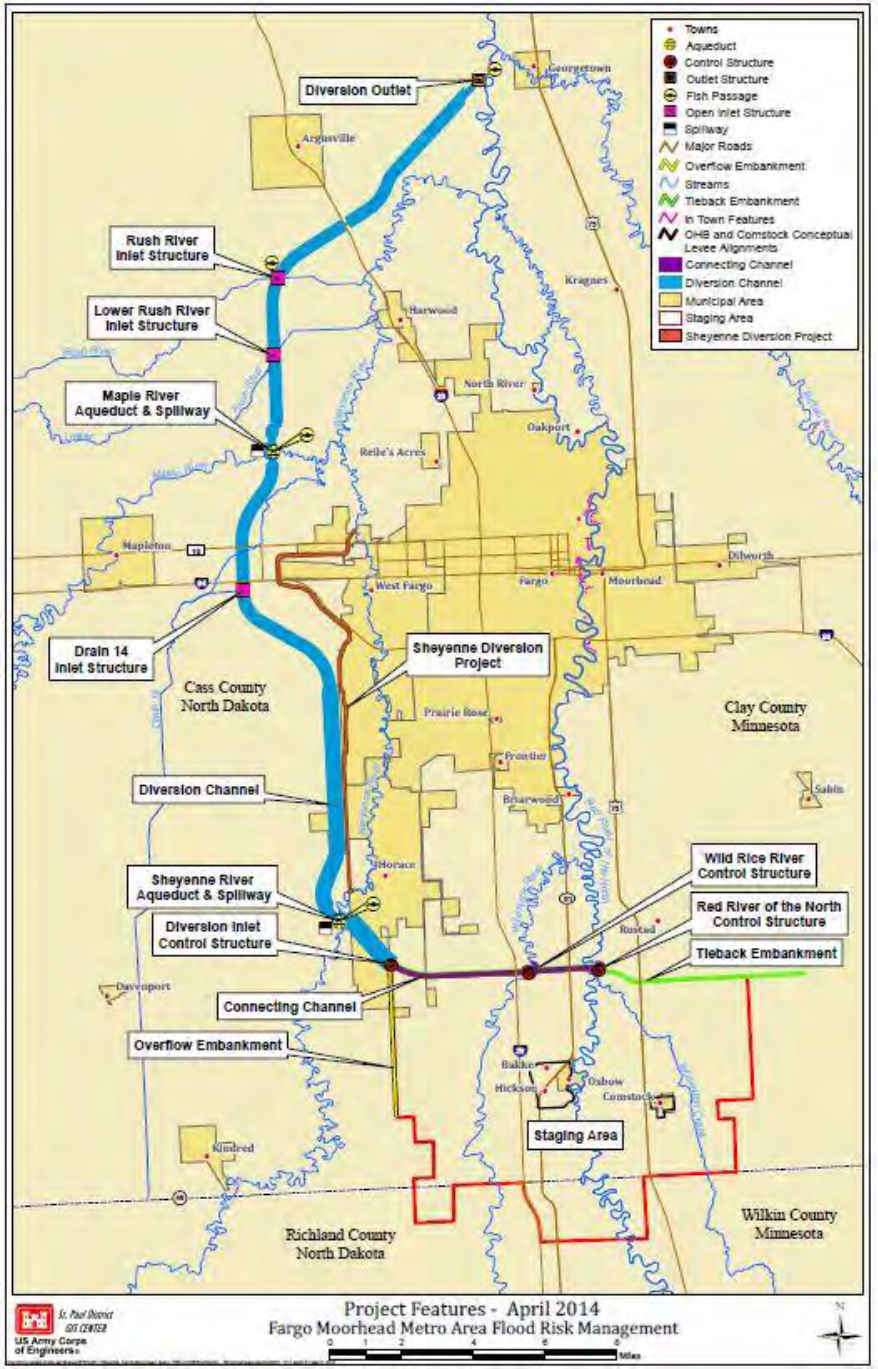
Item 4.

FM Area Diversion Project

P3 Basics

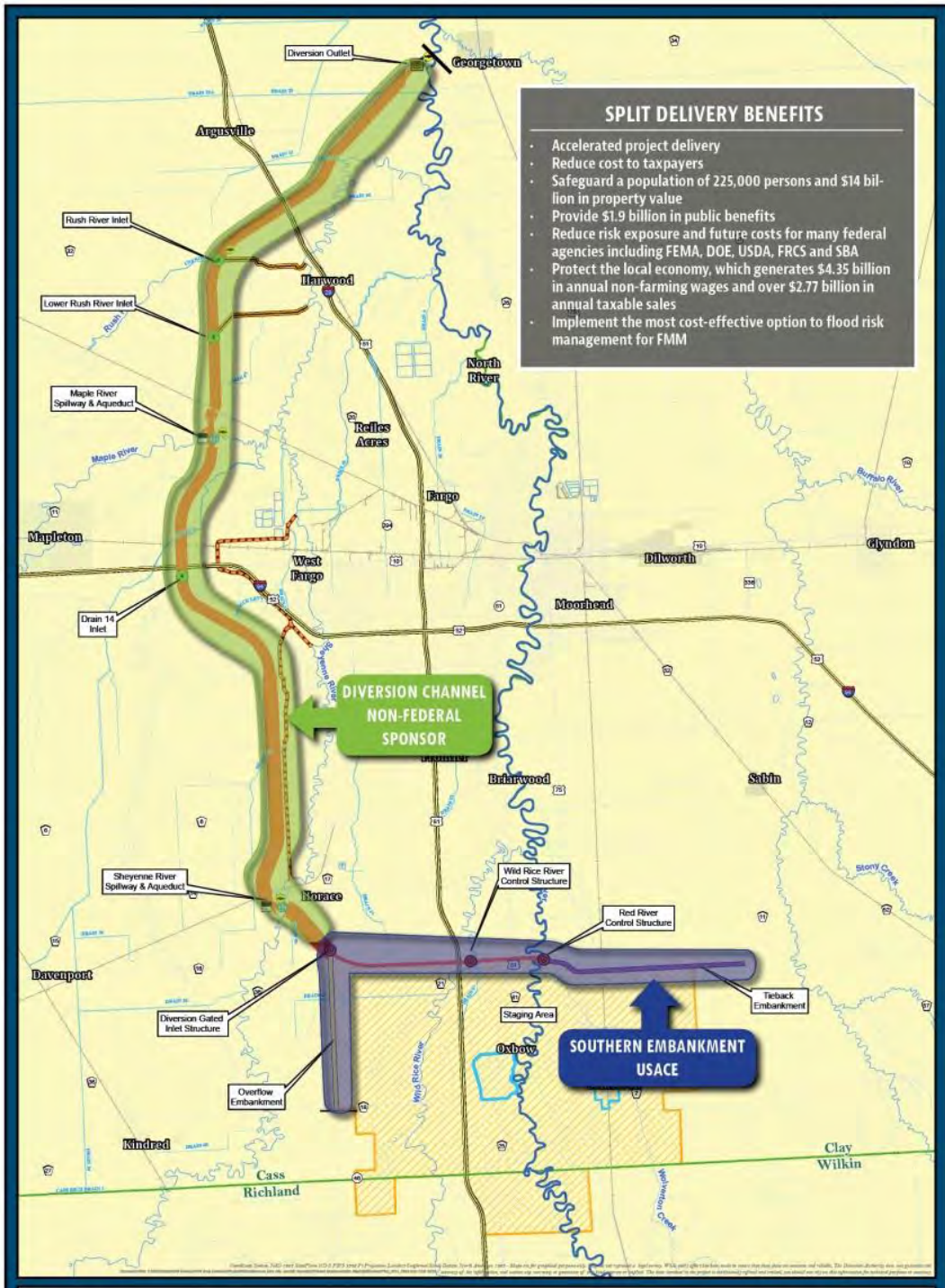
February 25, 2016

FLOOD DIVERSION AUTHORITY


Diversion Outlet
Rush River Inlet Structure
Lower Rush River Inlet Structure
Maple River Aqueduct & Spillway
Drain 14 Inlet Structure
Sheyenne Diversion Project
Diversion Channel
Sheyenne River Aqueduct & Spillway
Diversion Inlet Control Structure
Connecting Channel
Overflow Embankment
Wild Rice River Control Structure
Red River of the North Control Structure
Tieback Embankment
Staging Area
Cass County North Dakota
Clay County Minnesota
Richland County North Dakota
Wilkin County Minnesota
Towns
Aqueduct
Control Structure
Outlet Structure
Fish Passage
Open Inlet Structure
Spillway
Major Roads
Overflow Embankment
Streams
Tieback Embankment
In Town Features
OHB and Comstock Conceptual Levee Alignments
Connecting Channel
Diversion Channel
Municipal Area
Staging Area
Sheyenne Diversion Project
Project Features - April 2014
Fargo Moorhead Metro Area Flood Risk Management
US Army Corps of Engineers

PPP Split Delivery Plan

- **Diversion Channel and Associated Infrastructure**
  - **Non-Federal Sponsors (Diversion Authority)**
- **Southern Embankment and Associated Infrastructure, and Mitigation**
  - **USACE**



P3 – WHAT IS IT?

P3 = PUBLIC PRIVATE PARTNERSHIP

"A contractual agreement between a Public Agency (federal, state, or local) and a private sector entity. Through this agreement, the skills, and assets of each sector (public and private) are shared in delivering a service or facility for the use of the general public. In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the services and/or facility."

- The National Council for Public-Private Partnerships, "Testing Tradition Assessing the Added Value of Public-Private Sector Partnerships," (Arlington, Virginia 2012) p.2, http://www.ncppp.org/wp-content/uploads/2013/03/WhitePaper2012-FinalWeb.pdf

HISTORY

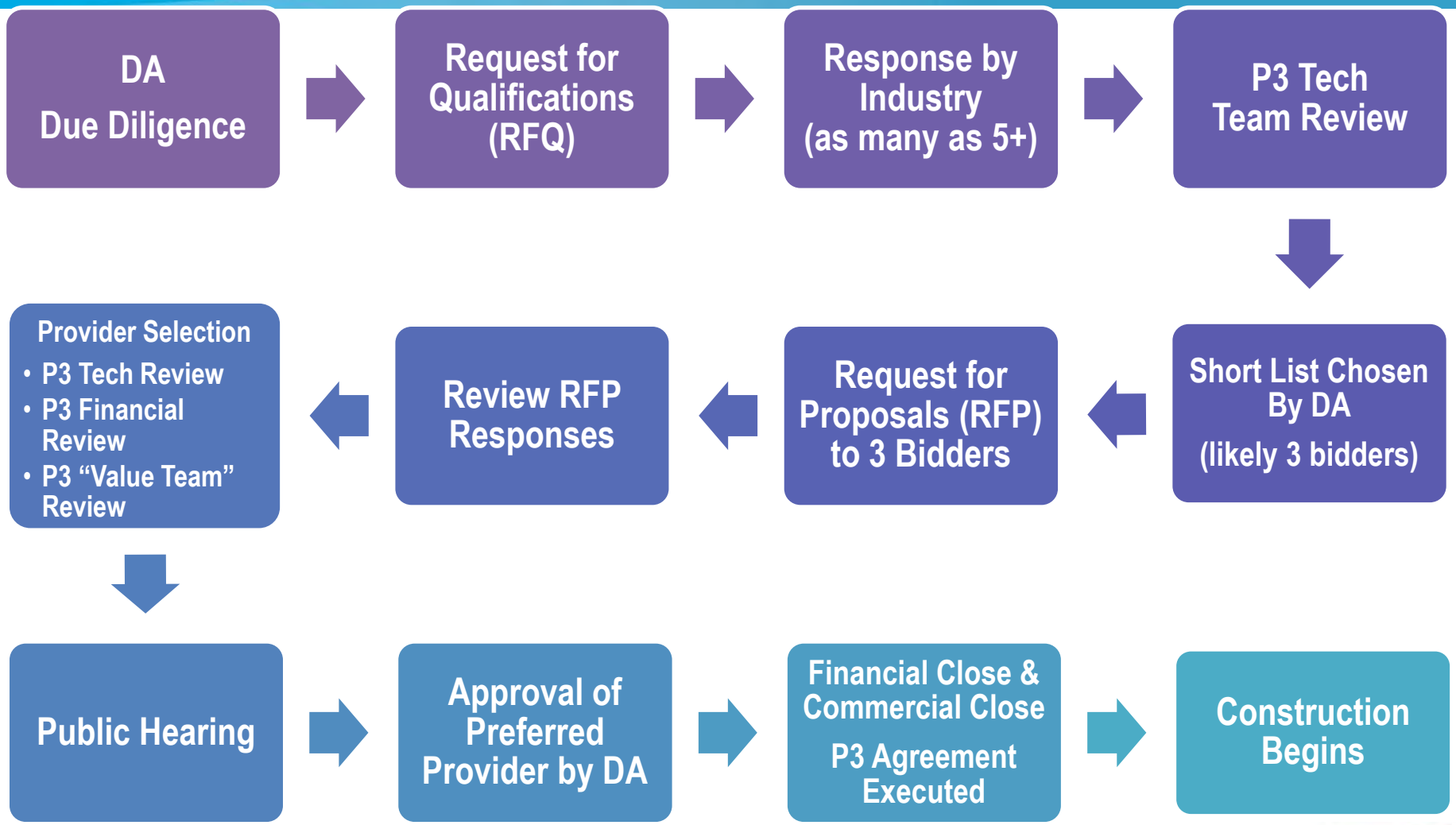
Use of P3s in the U.S. predates American Revolutionary War

- 1652: Boston Water Works Company, 1st private entity to supply drinking water to U.S. citizens
- 1793: Lancaster Turnpike, toll road built by private sector with public sector oversight and rights of way
- 1825: Erie Canal
- 1868: First Transcontinental Railroad
  - *Funded by stock issued by private companies that were chartered by Congress*
  - *As tracks were completed, federal lands adjacent to tracks were granted to railroads for private development, provided return to investors*

P3 vs. Privatization

- "Public Private Partnership" & "Privatization" often used interchangeably, but ***are not*** synonymous
- In P3, the Public Sector Partner retains ownership & control over the asset, even when some responsibilities are transferred to Private Sector
- Public Sector retains control over establishment of user rates, operating standards, other requirements
- Degree to which responsibilities are retained or shared is defined in the P3 Agreement
- In Privatization, Public Sector sells some or all of asset to the Private Sector

HOW DOES IT WORK?



FLOOD DIVERSION AUTHORITY

HOW WILL IT BE USED FOR PROJECT?

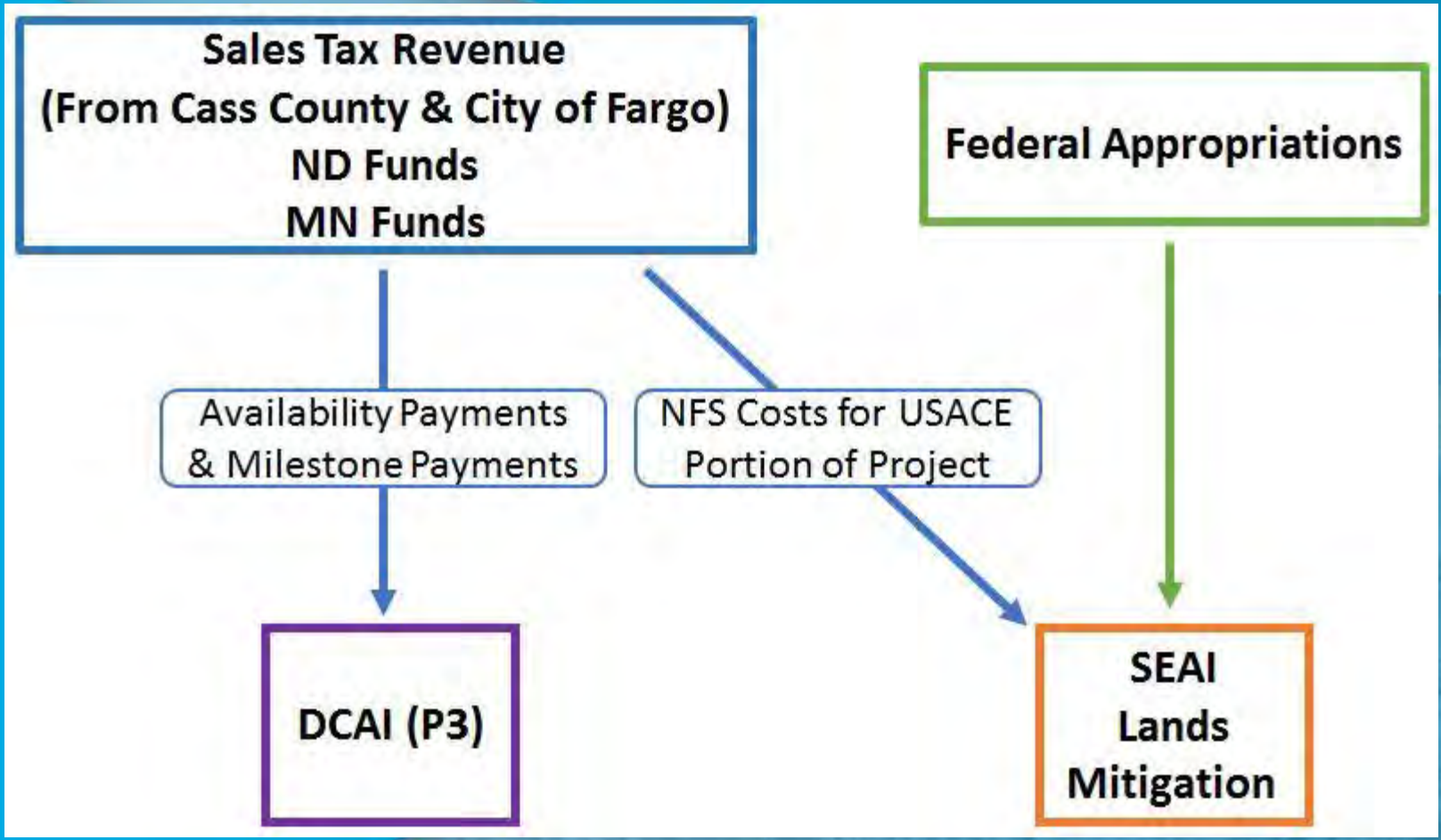
- P3 will ***only*** be used for NFS Element (Diversion Channel and Associated Infrastructure, DCAI)

  (Split-delivery)
- Not used for
  - *Land acquisition*
  - *Tie-back levees*
  - *Red River Control Structure*
  - *Wild Rice Inlet and Control Structure*

  These items will be constructed using traditional bidding and procurement practices.

(NFS= Non-Federal Sponsor, DA)

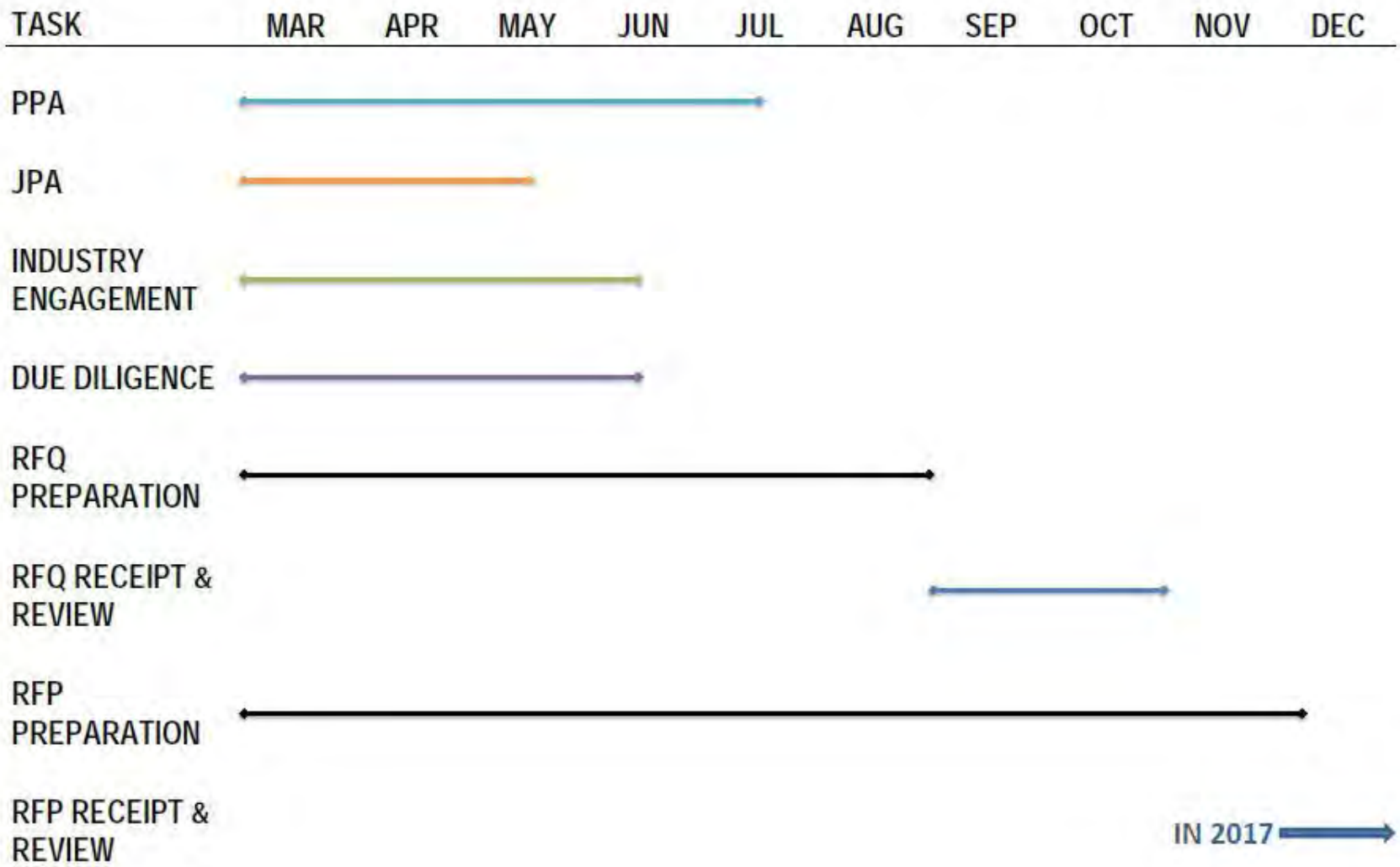
FLOOD DIVERSION AUTHORITY


Sales Tax Revenue
(From Cass County & City of Fargo)
ND Funds
MN Funds
Federal Appropriations
Availability Payments
& Milestone Payments
NFS Costs for USACE
Portion of Project
DCAI (P3)
SEAI
Lands
Mitigation

HOW DO WE PAY FOR IT?

- Milestone Payments
  - *Payments to the P3 Developer for achievement of agreed upon construction or progress milestones in the P3 Agreement*
- Availability Payments
  - *Periodic performance payments to the P3 Developer for the term for the P3 Agreement, for the design, construction, financing, operation, and maintenance of the Project in accordance with the agreed technical requirements*
- Term = Generally 30-50 years

2016 TIMELINE



Questions

Item 5a.

Recommended Contracting Actions Summary

Date: February 25, 2016

Description	Company	Budget Estimate ($)
Construction Contract Awards		
WP-42H.2 - El Zagal Area Flood Risk Management – Phase 2 • Recommendation of Award for constructing approximately 1,000 linear feet of earthen levee and flood wall, temporary floodwall closure, 1 Gatewell structure, 8 residential demolitions with landscape removal, Sanitary Lift Station, 550 feet of Storm Sewer, 500 feet of Sanitary Sewer, and other components.	Reiner Contracting, Inc.	1,515,798.64
WP-42I.1 Mickelson Levee Extension • Recommendation of Award for constructing an earthen levee, road reconstruction, and underground utility relocation.	Industrial Builders, Inc.	659,910.00

Fargo Office
520 Main Avenue
Suite 601
Fargo ND 58103
Tel 701-566-5470
Fax 701-634-9954

February 25, 2016

Metro Flood Diversion Authority
Attention: Darrell Vanyo, Chairman
211 9th Street South, Box 2806
Fargo, ND 58108

Subject: **Recommendation of Award**
Work Package 42H.2, El Zagal Area Flood Risk Management – Phase 2

Dear Board Members:

CH2M (Program Management Consultant) recommends the Metro Flood Diversion Authority award Work Package 42H.2, El Zagal Area Flood Risk Management – Phase 2 to Reiner Contracting, Inc. in the amount of $1,515,798.64 as the lowest and best bid.

We conducted a public Bid Opening for this project on January 26, 2016. See attached Bid Summary for details. Reiner Contracting's bid for Construction is approximately 14% lower than the Engineer's Opinion of Probable Cost.

Contact me at 208-771-1686 or tyler.smith@ch2m.com if you have any questions regarding this recommendation.

Sincerely,

Tyler Smith, P.E.
Construction Manager
CH2M HILL
Owner's Representative

c: Mark Bittner/City of Fargo
April Walker/City of Fargo
Nathan Boerboom/City of Fargo
Keith Berndt/Cass County
Heather Worden/Cass County
Gregg Thielmann/HMG
Kurt Lysne/HMG
Bruce Spiller/CH2M
John Glatzmaier/CH2M

Work Package 42H.2
El Zagal Area Flood Risk Management - Phase 2
BID OPENING: January 26, 2016

BID SUMMARY

Bidder Name	Bid Price	Bid Bond	Contractor Lic.	Addenda
Reiner Contracting, Inc.	$1,515,798.64	✓	✓	✓
Hough, Inc.	$1,626,764.92	✓	✓	✓
Industrial Builders, Inc.	$1,716,953.00	✓	✓	✓
Landwehr Construction, Inc.	$1,719,352.20	✓	✓	✓
Master Construction	$1,836,613.75	✓	✓	✓
Sellin Brothers, Inc.	$1,870,659.00	✓	✓	✓
Rachel Contracting	$1,933,496.75	✓	✓	✓
H&S Contracting, Inc.	$2,088,844.50	✓	✓	✓
Park Construction Company	$2,756,241.85	✓	✓	✓
KPH, Inc.	Non-conforming bid	✓	✓	×

Fargo Office
520 Main Avenue
Suite 601
Fargo ND 58103
Tel 701-566-5470
Fax 701-634-9954

February 25, 2016

Metro Flood Diversion Authority
Attention: Darrell Vanyo, Chairman
211 9th Street South, Box 2806
Fargo, ND 58108

Subject: **Recommendation of Award**
Work Package 42I.1 Mickelson Levee Extension

Dear Board Members:

CH2M (Program Management Consultant) recommends the Metro Flood Diversion Authority award Work Package 42I.1 Mickelson Levee Extension to Industrial Builders, Inc. in the amount of $659,910.00 as the lowest and best bid.

We conducted a public Bid Opening for this project on February 9, 2016. See attached Bid Summary for details. Industrial Builder's Bid for Construction is approximately 60% lower than the Engineer's Opinion of Probable Cost.

Contact me at 208-771-1686 or tyler.smith@ch2m.com if you have any questions regarding this recommendation.

Sincerely,

Tyler Smith, P.E.
Construction Manager
CH2M HILL
Owner's Representative

c: Mark Bittner/City of Fargo
April Walker/City of Fargo
Nathan Boerboom/City of Fargo
Keith Berndt/Cass County
Heather Worden/Cass County
Gregg Thielmann/HMG
Kristen Lotvedt/HMG
Bruce Spiller/CH2M
John Glatzmaier/CH2M

Work Package 42I.1
Mickelson Levee Extension
BID OPENING: February 9, 2016

BID SUMMARY

Bidder Name	Location	Bid Price	Bid Bonds	Contractor Lic.	Addenda
Industrial Builders, Inc.	West Fargo, ND	$659,910.00	✓	✓	✓
Landwehr Construction, Inc.	Saint Cloud, MN	$698,838.21	✓	✓	✓
Master Construction	Fargo, ND	$707,362.25	✓	✓	✓
Excavating Inc.	West Fargo, ND	$749,941.00	✓	✓	✓
Reiner Contracting Inc.	Hutchinson, MN	$782,857.41	✓	✓	✓
Hough, Inc. of Detroit Lakes	Detroit Lakes, MN	$829,039.40	✓	✓	✓
R.J. Zavoral and Sons, Inc.	East Grand Forks, MN	$851,186.75	✓	✓	✓
H & S Contracting Inc.	Moorhead, MN	$869,351.20	✓	✓	✓