



**Albuquerque Metropolitan
Arroyo Flood Control Authority
Special Meeting Minutes
May 16, 2007**

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1. Call to Order and Roll Call

Chairman Hernandez called the Special Meeting to order at 2:00 p.m. Wednesday, May 16, 2007. Roll was noted as follows:

Directors present: Chairman Danny Hernandez
Director Janet Saiers (arrived late)
Director Tim Eichenberg
Director Ronald D. Brown
Director Daniel Lyon

Others present: John Kelly, Executive Engineer
Jackie Bregman, Attorney
Staff
Other attendees on file at AMAFCA

A quorum was present, although Director Lyon briefly stepped out of the meeting immediately after roll call.

2. Approval of Agenda

There were no changes to the agenda. Director Brown made a motion to approve the agenda. Chairman Hernandez seconded the motion. The motion passed (3-0), with Director Lyon momentarily out of the Board Room.

3. Meetings Scheduled

- a. **May 31, 2007, 10:00 a.m. – Regular Meeting – to be held at the Mid-Region Council of Governments (MRCOG)**
- b. **June 6, 2007, 1:30 p.m. – Work Study on Project Schedule – Valley Projects – to be held at MRCOG**
- c. **June 28, 2007, 10:00 a.m. – Regular Meeting – to be held at MRCOG**

There were no changes to the meetings as scheduled. These meetings will be held at the offices of the Mid-Region Council of Governments (MRCOG) due to construction of the AMAFCA Tenant Improvements Project.

Director Saiers joined the meeting at 2:02 p.m.



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4. West I-40 Diversion Channel Extension

Mr. Kelly stated that AMAFCA staff and counsel met with Westland Devco LP/SunCal (Westland), who made minor modifications to the agreement. Staff and counsel also met with the New Mexico Department of Transportation (NMDOT), and the agreement with the NMDOT is nearly finalized. He stated action will be required at the MRCOG, followed by AMAFCA Board approval of the agreement. He asked for approval to sign a joint letter to MRCOG, along with NMDOT, to change the project lead in order to finance the project with the State Infrastructure Bank (SIB) loan.

- a. Review of Final Draft of "Agreement for Design Construction and Construction Engineering Services for Drainage Improvements required by the West I-40 DMP in conjunction with the GRIP I-40 Corridor Project Unser Boulevard to Paseo del Volcan," between AMAFCA and Westland Devco LP**

Mr. Kelly stated that Attorneys Jackie Bregman, AMAFCA General Counsel, and Duane Brown, AMAFCA Bond Counsel, had made several changes to the agreement since the Board last reviewed it.

The Board reviewed and commented on the agreement. In response to a question from Director Eichenberg, and comments from Chairman Hernandez, Directors Brown and Lyon, Ms. Bregman, Mr. Kelly, and Mr. Lovato, the Board came to the consensus that they wanted staff and counsel to verify ownership of the property involved in the agreement, and verify the corporate source of the funds. The Board's direction was that the corporate entity or entities holding the real estate and monetary assets should sign the agreement.

Mr. Kelly stated he would verify that the correct corporate entity or entities are parties to the agreement.

In response to comments from Director Eichenberg, Mr. Kelly stated that paragraph 1.7 on page six terminates an agreement for a portion of the old site of the East Amole Surge Pond. The East Amole Surge Pond is now moved further downstream, with Westland to dedicate all required right of way, and as such, the agreement for the former site is no longer needed. He also stated that the language in paragraph 3.1 on page 9 was left over from before the adoption of the updated Drainage Management Plan.

Mr. Lovato confirmed this, stating the DMP was adopted in December, 2006. He stated he would revise paragraph 3.1.



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Responding to Director Eichenberg's comments on paragraph 2.3 on page eight, Mr. Kelly stated that he would research what restraints there might be on this project, if any, based on the Westland Master Plan 2006.

Based on further comments from Director Eichenberg, Mr. Kelly stated he would reword paragraph 3.15 on page 12, and add that upstream compliance with the DMP is one of Westland's obligations. Mr. Kelly stated that paragraph 4.4 is a standard paragraph used in AMAFCA contracts; paragraph 4.3 refers to the AMAFCA agreement with NMDOT, and paragraph 4.7 refers to the agreement with Westland.

Discussion followed.

Upon a suggestion from Director Brown, Mr. Kelly and Ms. Bregman agreed to reword paragraph 4.7 to state "no other agreements other than the parallel agreement referenced in paragraph 4.3" or similar clarifying language.

- b. Review of Final Draft of "Agreement for Design Construction and Construction Engineering Services for Drainage Improvements required by the West I-40 DMP in conjunction with the GRIP I-40 Corridor Project Unser Boulevard to Paseo del Volcan – Utility Owner/Albuquerque Metropolitan Arroyo Flood Control Authority," between AMAFCA and NMDOT**

Mr. Kelly stated the cooperative agreement between AMAFCA and NMDOT was nearly finalized. The SIB loan agreement will be an attachment to the cooperative agreement. The agreement was revised to include the SIB loan since the last time the Board reviewed it. AMAFCA will provide the easements and funds it obtains from Westland, and obtain the SIB loan.

In response to questions from Director Saiers, Mr. Kelly stated that Westland does not have an agreement with NMDOT with regards to the drainage project. AMAFCA is the conduit for Westland funds and easements for this project.

- c. Review of Final Draft of State Infrastructure Bank Loan Agreement**

Mr. Kelly introduced Duane Brown, of the Modrall Law Firm, AMAFCA's Bond Counsel.

Mr. Brown stated that the draft agreement was the result of negotiations with NMDOT's engineering staff and legal counsel. AMAFCA pledges only federal funds for repayment of the loan. Changes since the last version include: article 4 now contains NMDOT



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representations and covenants. Article 5 ensures that if the project falls through, the agreement is terminated.

He stated the agreement sets a funding/loan closing date of October 1, 2007. Remedies were added to the agreement to allow recalculation of payments, reduction of interest, or reduction of the term of the agreement. One representation was added to the legal opinion from NMDOT's legal counsel, acknowledging that the failure by the federal government to appropriate the funds does not constitute default by AMAFCA.

In response to a question from Director Eichenberg, Mr. Brown stated that both the principal and interest on the SIB loan are paid from federal fund appropriations.

Responding to a question from Director Lyon, Mr. Brown replied that he did not see the need to add any further provisions to the agreement, and that all obligation to collect funds and make loan payments had been shifted to the NMDOT. AMAFCA will have incidental expenses for bookkeeping, as the SIB loan will likely show as a loan on AMAFCA's audit. The actual repayments, however, will be made by NMDOT.

Chairman Hernandez confirmed for Director Saiers that AMAFCA's only cost for the SIB loan process was the legal and professional fees incurred to have Mr. Brown, Ms. Bregman, and AMAFCA's financial advisor, Kevin Powers involved in negotiating and drafting the loan agreement and resolution.

d. Review of Draft Resolution 2007-xx, "Authorizing the Execution and Delivery of a Loan Agreement between AMAFCA and the New Mexico Department of Transportation State Infrastructure Bank"

Mr. Kelly stated that Mr. Brown had prepared a draft resolution for the Board's review and comment. Notice of the pending resolution will be published for twenty days prior to adoption.

Mr. Kelly stated that Ms. Bregman had pointed out to him that the draft resolution refers to AMAFCA's "citizens" but it should refer to citizens in AMAFCA's district. Mr. Brown stated he would correct the draft resolution.

Mr. Brown stated that Kevin Powers, of RBC Capital Markets, AMAFCA's Financial Advisor, had advised him to include language in the recitals regarding the fact that the loan will not affect AMAFCA's bonding capacity or bond rating. This change will be in the next draft of the resolution.



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Mr. Kelly summarized that the consensus of the Board is that he has been authorized to co-sign the letter with the NMDOT to MRCOG to have this issue put on the Metropolitan Transportation Board agenda, to begin the action to change the lead agency on the project to AMAFCA. The Board concurred with this statement.

Due to a prior commitment and the conclusion of agenda items needing her input, Ms. Bregman left the meeting at 2:39 p.m.

5. Discussion of On-Call Contracting Practices

Chairman Hernandez stated that, based upon comments made by Director Eichenberg at a meeting earlier in the year, he had decided to have a discussion on on-call contracting practices. Director Eichenberg had expressed concern about successive on-calls for design and construction management services on the same project, with the same firm, with combined fees greater than \$25,000.

Mr. Kelly stated that he had summarized the Board-approved and Executive Engineer-approved on-call assignments since 1990. Board-approved on-call engineering assignments had averaged a little over \$20,000 each; Executive Engineer-approved on-call engineering assignments had averaged about \$3,000 each. On-call surveying tasks approved by the Board had averaged just under \$17,000 each. On-call surveying tasks approved by the Executive Engineer averaged \$2,900 each.

Responding to a question from Director Saiers, Mr. Kelly stated that the City approves on-calls with one firm at a time, with a spending cap of typically \$200,000 to \$300,000. When the cap is reached, a new procurement is begun to hire another on-call. The City needs to hire new on-calls every 8 months for surveying, and less often in other categories.

He added that the County also uses on-call contracts. An RFP is put out for seven categories of work, and several firms are selected for each category. Category One - Large Projects has a spending cap of \$1.5 million per assignment. The other six categories have a cap of \$150,000 per assignment. The average Category One task order assignment is \$200,000. Multiple awards are given, and task order assignments are made on a rotating basis, beginning with the highest-ranked firm.

Mr. Kelly stated that AMAFCA's process is similar to the County's, except that assignments are made on a "best fit" basis, rather than a rotating basis. Availability of the firm to do the work in the timeframe needed is also considered.

He added that he would like to continue this process, with minor changes. He stated he will have the Project Manager for each proposed assignment evaluate the likelihood of further



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related work, such as combined design and construction management task orders, so that the Board can be informed of the expected total at the time the initial assignment is approved by the Board.

He also asked for guidance from the Board regarding the largest assignments they are comfortable with assigning via on-call contracts, realizing the emergency nature of some assignments.

Discussion followed. The Board expressed appreciation that the Executive Engineer has kept them informed of large on-call assignments, and in particular of the case of back-to-back assignments with the same firm on different aspects of the same project. Director Eichenberg stated his appreciation of AMAFCA's transparency.

In response to a comment from Director Eichenberg, Mr. Kelly stated that he asked several engineering firms if they would be willing to respond to a Request for Proposals for a \$60,000 contract. Most said that if they weren't busy, they probably would. He asked the same question regarding a \$50,000 contract. Most said that, due to the cost and time investment in preparing a proposal, they would probably not submit on a \$50,000 contract. Director Eichenberg responded that he had received similar feedback.

The Board discussed several options for on-call guidelines.

In response to a comment from Director Saiers, Mr. Kelly stated that he would research the current limits in the Procurement Code to be certain that any proposed change would be within allowable limits.

Director Brown suggested an on-call limit of \$75,000 per project, with careful justification to the Board beforehand on any project that would total above \$40,000 or \$50,000. He expressed a preference for the Board setting a specific dollar limit, such as \$75,000, for clarity. Projects expected to total under \$75,000 would not need to go to bid, but those expected to total \$75,000 or more would be advertised via a Request for Proposals. This could be set as a Board policy via resolution.

Further discussion followed. The consensus of the Board was support of Director Brown's proposal.

Mr. Kelly stated in addition to that proposal, his contracting limit could be set at, for example, \$20,000 for things such as equipment rentals, computers, and so on. Above that amount, bids would be approved by the Board. In the case of on-call assignments, the advertisement has already been done. The process set forth in the Procurement Code is followed to the point of negotiating a fee, thus the use of on-call contractors is allowed within the Procurement Code.



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Director Eichenberg reminded staff that if the Executive Engineer's contracting ability is increased, his bond should be checked to be sure it matches any increase.

Mr. Kelly stated he would bring a draft resolution to the Board for their review and comments.

Due to a prior commitment, Director Brown left the meeting at 3:07 p.m. Before leaving, he stated his support of the proposed modifications to the Contingency Fund.

- 6. Review and Discussion on Draft Contingency Fund Budget**
- a. Proposed Modifications to Reserve Designations in the Contingency Fund**
 - b. Proposed Resolution 2007-xx, Modifications to Reserved Amounts in the Contingency Fund**

Mr. Kelly stated that, based on the Board's input at the last meeting, he proposed several changes to the reserved funds in the Contingency Fund. He proposed to increase the amount of two reserves, drop one reserve which is no longer needed, and add three new reserves. The only proposed expenditure from the Contingency Fund was the standard \$400,000 in potential emergency expenditures. Fencing the funds allows AMAFCA to ask the State for disaster assistance without having to commit the entire Contingency Fund.

Responding to a query from Director Saiers, Chairman Hernandez stated the funds in the Contingency Fund were set aside to cover the costs of repairs to facilities that will need retrofitting in the future, or which may fail in the future.

Mr. Kelly concurred with this statement, adding that the funds are set aside from the Operating Fund, and thus are not subject to the arbitrage rules.

After discussion, the consensus of the Board was support of the proposed changes to the Contingency Fund, which results in the following fenced funds:

- Modifications of the Alameda Outlet, NDC \$1,000,000 (increase reserve amount)
- Ladera Dam Safety Modifications \$ 500,000 (increase reserve amount)
- North Diversion Channel Lining Rehab. \$1,500,000 (create new reserve)
- Parkway Channel, Unser to 98th Street \$ 500,000 (create new reserve)
- Hahn Arroyo Lining Rehabilitation \$ 500,000 (create new reserve)



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7. Unfinished Business

None.

8. New Business

Director Eichenberg reported that, at a recent MRCOG Executive Board meeting, he learned that MRCOG would like to raise member organization dues. MRCOG can receive \$500,000 from the State if membership dues also total \$500,000. Some of the member representatives supported the idea, and some did not. If AMAFCA's dues go up, they would increase from approximately \$2900 annually to approximately \$4700 annually.

He stated it would be prudent to budget funds to allow for this potential increase, although some representatives were opposed to the increase. Other representatives were in favor of the increase.

Director Eichenberg added that he would keep the Board and staff informed.

9. Items from the Floor/Public Comment

None.

10. Adjourn

With no further business to discuss, Chairman Hernandez adjourned the meeting at 3:22 p.m.

Ronald D. Brown, Asst. Sec.-Treas. 5/31/07

Recorded by Pam Woodruff, Secretary to the Executive Engineer