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Arroyo Flood Control Authority
Regular Meeting Minutes
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1. Call to Order and Roll Call

Chairman Hernandez called the Regular Board Meeting to order at 2:05 p.m., Tuesday, September 25, 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
Directors excused:	None
Others present:	John Kelly, Executive Engineer Eric Loman, Bregman Law Firm, Attorney Staff Other attendees on file at AMAFCA

A quorum was present.

2. Approval of Agenda

Director Brown made a motion to approve the agenda. Director Eichenberg seconded the motion, which passed (4-0).

3. Meetings Scheduled

- a. October 25, 2007, 12:00 noon – Regular Meeting**
- b. November 15, 2007, 1:30 p.m. – Regular Meeting**
- c. December 13, 2007, 10:00 a.m. – Regular Meeting**

No changes were made to the meeting schedule. Director Eichenberg noted that he had heard comments from members of the public stating their preference that AMAFCA meetings be consistently held on Thursday mornings.



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4. AMAFCA General Legal Counsel Services – Selection Advisory Committee Meeting – Interviews with Top Two Ranked Firms, Recommendation, and Selection

In response to a question from Chairman Hernandez about whether or not the meeting could be closed for the attorney interviews, to avoid any advantage to one firm or the other, Directors Eichenberg and Lyon opined that it could not.

Director Brown suggested that the meeting could remain open, but with disinterested parties voluntarily excusing themselves from the audience. All members of the audience, except the attorneys present for the interviews, left at this point.

Attorney Eric Loman stated that the possible sections of the Open Meetings Act which might allow the meeting to be closed included §10-15-1 (6), for discussing competitive sealed proposals in the contract negotiation process, and (7), for meetings subject to the attorney-client privilege.

Directors Brown and Eichenberg opined that those exceptions did not apply to attorney interviews, as they would not be discussing sealed proposals or negotiating a contract. The proposals had been opened and were no longer sealed. Also, as the attorney had not been hired yet, attorney-client privilege did not apply.

Duane Brown, of Modrall, Sperling, Harris & Sisk, stated that he planned to recuse himself during the Robles, Rael & Anaya interview. Marcus J. Rael, Jr., of Robles, Rael & Anaya, stated he planned to do the same thing during the Modrall, Sperling, Harris & Sisk interview. This was satisfactory to the Chairman and the Board.

a. Interview with Robles, Rael & Anaya

Marcus Rael, Jr., of the Robles, Rael & Anaya law firm, introduced himself and gave a brief presentation to the Board. He then answered a number of questions from the Board. He stated that Christina Anaya would be the secondary contact at the firm, and he would be the primary contact.

b. Interview with Modrall, Sperling, Harris & Sisk, P.A.

Duane Brown, of the Modrall, Sperling, Harris & Sisk law firm, introduced himself and Margaret Meister, and gave a brief presentation to the Board. He stated the primary contact on the contract would be Maria O'Brien, who was unable to attend the meeting due to a court hearing. The primary backups on the contract would be Duane Brown and Christopher



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Muirhead. Margaret Meister also addressed the Board, then both attorneys answered a number of questions from the Board.

At the conclusion of the interviews, the audience returned to the Board room. Directors Brown and Lyon, and Chairman Hernandez, commented on the interviews. Director Eichenberg stated he was ready to vote.

Director Lyon made a motion that the Board hire the Robles, Rael & Anaya law firm as AMAFCA's General Legal Counsel. Chairman Hernandez seconded the motion, which failed on a 2-2 tie. Directors Brown and Eichenberg voted against the motion.

Director Eichenberg made a motion that the Board hire the Modrall, Sperling, Harris & Sisk law firm as AMAFCA's General Legal Counsel. Director Brown seconded the motion, which failed on a 2-2 tie. Chairman Hernandez and Director Lyon voted against the motion.

Director Eichenberg made a motion that the Board direct staff to send out a new RFP for General Legal Counsel. The motion failed for lack of a second.

Discussion followed. In response to a question from Director Eichenberg, Mr. Kelly stated that he could only comment on Selection Advisory Committees where he was the Chair. In cases of a tie, the committee would continue to evaluate, discuss, and rescore until they were able to come up with one top-ranked firm to recommend to the Board.

Mr. Kelly stated that, to the best of his knowledge, the Board had never rejected the Selection Advisory Committee's selection. However, in one case, the Board rejected the contract negotiated with the top-ranked firm, and directed staff to negotiate a contract with the second-ranked firm. He added that on another occasion, the Committee Chair had broken a tie vote to come up with a selection. The Board discussed the selection and near-tie, and decided to reject the first selection and go with the number two-ranked firm. The only other similar situation had been with the first General Counsel RFP this summer.

Chairman Hernandez noted that, having defeated both possible motions, the Board appeared to be unable to choose either of the firms, and was unable to reconsider either motion. Director Brown suggested the Board further discuss their next action at the end of the meeting, during Old Business, when Director Saiers would be present.

5. Approval of Minutes

a. August 23, 2007

Director Saiers arrived at 3:27 p.m.



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Director Eichenberg made a motion to approve the minutes of the August 23, 2007 Regular Board Meeting. Director Brown seconded the motion, which passed unanimously (5-0).

b. September 17, 2007

Director Brown made a motion to approve the minutes of the September 17, 2007 Special Board Meeting. Director Lyon seconded the motion, which passed (4-0). Director Eichenberg abstained as he had not been present at the meeting.

6. Financial Matters

a. Approval of August, 2007 Expenditures

Irene Jeffries, AMAFCA Business Manager, presented the August, 2007 Expenditure Report.

There being no questions, Director Brown made a motion to approve the August, 2007 Expenditure Report. Director Saiers seconded the motion, which passed unanimously (5-0).

b. Investment Report for August, 2007

For information.

c. Financial Recap August 16, 2007, through September 15, 2007

For information. Ms. Jeffries noted that the Amole Arroyo Phase III special account had been closed out, and staff was in the process of closing out the Isleta special account.

d. Financial Forecast September 16, 2007, through October 15, 2007

Ms. Jeffries presented the Financial Forecast for the period September 16, 2007, through October 15, 2007. There were no questions.

Director Brown made a motion to approve the Financial Forecast. Director Lyon seconded the motion, which passed unanimously (5-0).

e. Sandoval County Debt Service Tax Collection for FY-2007

Ms. Jeffries stated that, while closing the books and preparing for the audit, she discovered the taxes Sandoval County had distributed to AMAFCA for Debt Service were substantially less than the amount distributed last year. A recently received letter from Lorraine Dominguez,



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Sandoval County Treasurer, explained that an incorrect distribution rate had been entered into their computer system, affecting distributions for the months of November 2006 through July 2007.

Ms. Jeffries stated that Ms. Dominguez indicated the November 2006 through July 2007 tax distributions are being recalculated, and her office expected to provide corrected distribution amounts by the end of September, 2007.

7. Legal Report

Mr. Kelly stated that Attorneys Sam and Jackie Bregman had reviewed the report to the Board. He stated that the only outstanding item involving the Bregman Law Firm was the West I-40 project property condemnation. Other items are being closed out for a smooth transition to a new law firm. Attorney Eric Loman did not have anything to add to the legal report.

8. Notification of On-Call Services Task Orders

Mr. Kelly stated that the notifications of On-Call Services task orders were for information only. Items 8 a, b, and c were to support the evaluation of the levee that is the subject of agenda item 17, and 8 d was the final Dam Crest Surveys.

a. AMEC Earth & Environmental for Geotechnical Engineering Services Task Orders #3 & #4 for Atrisco Riverside Drain Levee Analysis

The memo from Mr. Kelly stated that AMEC Earth & Environmental was assigned Geotechnical Engineering Services Task Orders #3 and #4 for Atrisco Riverside Drain Levee Analysis. Task #3 was on a time and materials basis, not to exceed \$12,000. Under this task order, AMEC identified potential failure mechanisms for a spoil bank levee. The analysis included seepage and slope stability analysis for existing conditions.

The memo stated that Task #4 was on a time and materials basis, not to exceed \$16,000. Under this task order, AMEC performed a 35% design analysis for three levee configurations. The analysis included seepage and slope stability analysis for a soil mixed levee section, a sheet pile levee section, and a new levee section.

b. Albuquerque Survey, Inc., for Surveying Services Task Order #9 for Atrisco Riverside Drain Cross Section Survey

The memo from Mr. Kelly stated that Albuquerque Survey, Inc., was assigned Surveying Services Task Order #9 for Atrisco Riverside Drain Cross Section Survey, with a fee not to



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exceed \$8,800. Under this task order, Albuquerque Surveying provided current topographical information for three miles of levee including 25 cross sections.

c. Mussetter Engineering, Inc., for Engineering Services Task Order #4 for the Atrisco Riverside Drain Levee Flow Analysis

The memo stated that Mussetter Engineering, Inc., was assigned Engineering Services Task Order #4 for Atrisco Riverside Drain Levee Flow Analysis, for a lump sum of \$7,200. Under this task order, Mussetter Engineering performed FLO-2D modeling to give AMAFCA a preliminary assessment of potential floodplain mapping in the south valley, on both sides of the Rio Grande, in three different "no levee" scenarios.

d. Bohannon Huston, Inc., Surveying Task Order #10 for Dam Crest Surveys

The memo from Mr. Kelly stated that Bohannon Huston, Inc., was assigned Surveying Task Order #10 for Dam Crest Surveys, for a lump sum of \$6,060. Under this task order, Bohannon Huston performed the final two Dam Crest Surveys at McCoy and Pino Dams, including establishing the initial survey and setting five new monuments at McCoy Dam.

Consent Agenda:

Chairman Hernandez introduced Kurt Browning, of Ranch Joint Venture, LLP. Mr. Browning introduced Kevin Pitts, also of Ranch Joint Venture. They thanked the Board for considering their request, and congratulated AMAFCA on a successful bond sale.

There were no questions from the Board about any of the items on the Consent Agenda.

9. West Branch Calabacillas Arroyo Storm Water Management Facility – Consent of Assignment of Turnkey Agreement from Sandia Properties to Ranch Joint Venture

The memo from Lynn Mazur, AMAFCA Development Review Engineer, stated that the Board had approved a Turnkey Agreement with Sandia Properties at the April 2006 meeting. Ranch Joint Venture, LLP, has since taken over development of the property. Kurt Browning, Vice President of Land Development of Ranch Joint Venture, has requested AMAFCA's concurrence with the assignment of the Turnkey Agreement from Sandia Properties to Ranch Joint Venture.



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10. Embudo Arroyo Under Carlisle Bridge Concrete Channel Rehab – Authorization to Advertise for Construction Bids

The memo from Kurt Wagener, AMAFCA Field Engineer, requested authorization to advertise for construction bids for the Embudo Arroyo Under Carlisle Bridge Concrete Channel Rehab Project.

11. AMAFCA 2008 Miscellaneous Project and Concrete Channel Rehab – Authorization to Advertise for Construction Bids

The memo from Mr. Wagener requested authorization to advertise for construction bids for the 2008 Miscellaneous Project and Concrete Channel Rehab Project.

12. AMAFCA On-Call Engineering Services – Consideration of Selection Advisory Committee Recommendations

The memo from Ms. Mazur stated that fourteen proposals for three categories of work were received in response to the On-Call Engineering Services RFP. Proposals from two firms were rejected for not including the Campaign Contribution Disclosure Form. Firms could submit on one, two, or all three categories.

Ten firms submitted in Category 1. The SAC recommended that the first four firms, Bohannon Huston, Inc., URS Corporation, Smith Engineering Company, and Easterling Consultants, be selected for Category 1. Staff recommended using four firms for this category, instead of the three used previously, due to an increase in anticipated work for dam inundation mapping to meet the Office of the State Engineer's compliance schedule for AMAFCA's dams.

Nine firms submitted in Category 2. The SAC recommended that the first four firms, Bohannon Huston, Inc., Boyle Engineering Corporation, Wilson & Company, and Smith Engineering, Inc., be selected for Category 2. Staff recommended using four firms for this category, as four firms have been used previously, and approximately the same amount of on-call work in this category is anticipated.

Six firms submitted in Category 3. The SAC recommended that the first two firms, Mussetter Engineering, Inc., and Ayres Associates, be selected for Category 3. Staff recommended using two firms, instead of the three used in previous years, as not much work is anticipated in this category.



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13. Consideration of Turnkey Agreement for Fountain Hills Plaza Pond

The memo from Ms. Mazur stated that the Board had been briefed at the April 2007 meeting about the flooding problems on Eagle Ranch Road from the undeveloped property at Paseo del Norte and Eagle Ranch Road. The owner agreed to construct a temporary berm and silt fence to prevent sediment from leaving the site and washing across the roadway.

Since then, the owner has contracted with Bohannon Huston to proceed with construction plans for the site. The drainage plan will include a storm drain system, to be maintained by the City of Albuquerque, and enlarging the existing AMAFCA pond. A water quality manhole next to the pond will collect debris and sediment before the storm drain discharges to the pond. Bohannon Huston, on behalf of the owner, has requested that AMAFCA maintain the detention pond via a Turnkey Agreement.

14. Authorization to Advertise for Lease Bids

a. Herring Property Adjacent to South Diversion Channel

The memo from Loren Hines, AMAFCA Real Estate Manager, stated that the Herring Property Lease with Ron Maestas is nearing the end of its final extension, which expires in November 2007. He recommended the property be advertised for lease with a two year initial period, and an option to extend the lease on the same terms for up to two additional one year periods on written mutual agreement. The Notice of Request for Bids would be advertised following the requirements of Resolution 2006-12, *Real Property Lease Policy*.

b. Rutherford Property at Isleta and Malpais

The memo from Mr. Hines stated that the Rutherford Property Lease with Marvin Abeita is nearing the end of its final extension, which expires soon. AMAFCA will need to use the property for flood control in conjunction with the Corps of Engineers Southwest Valley Flood Reduction Project, but it is not anticipated that the property will be needed for that project for another year or two at the earliest. He recommended the property be advertised for lease with a one year initial period, and an option to extend the lease on the same terms for up to three additional one year periods on written mutual agreement. Terms would also be included allowing for early termination and rent rebate in the event the Corps' project needs the property before the lease expires.

The memo stated that the Notice of Request for Bids would be advertised following the requirements of Resolution 2006-12, *Real Property Lease Policy*.



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There being no further items on the Consent Agenda, Director Brown made a motion that the Board:

- Consent to the assignment of the "Agreement to Provide Maintenance for (the) West Branch Calabacillas Arroyo Storm Water Management Facility at Quail Ranch Phase 1" from Sandia Properties Ltd., Co., to Ranch Joint Venture LLP;
- Authorize the Executive Engineer to advertise for construction bids for the Embudo Arroyo Under Carlisle Bridge Concrete Channel Rehabilitation;
- Authorize the Executive Engineer to advertise for construction bids for AMAFCA 2008 Miscellaneous Project and Concrete Channel Rehab;
- Accept the recommendations of the Selection Advisory Committee and authorize the Executive Engineer to commence negotiations per the New Mexico State Procurement Code for On-Call Engineering Services with the selected firms;
- Approve the Agreement, substantially the same as attached, and authorize the Chairman to execute the Turnkey Agreement for Detention Pond Improvements as Related to Fountain Hills Plaza;
- Authorize the Executive Engineer to advertise the Herring Property for lease; and
- Authorize the Executive Engineer to advertise the Rutherford Property for lease.

Director Saiers seconded the motion, which passed unanimously (5-0).

Regular Agenda:

15. Adoption of Resolution 2007-12, 2007 General Obligation Bond Award Resolution

Mr. Kelly introduced Kevin Powers of RBC Capital Markets, AMAFCA's Financial Advisor.

Director Eichenberg briefly left the meeting during Mr. Powers' presentation.

Mr. Powers reviewed the results of the Bond Sale, held earlier that day, with the Board. He stated that the sale had gone very well. Twelve bids were submitted by the deadline, including bids by many of the nation's largest financial institutions. Bidding was very competitive. Banc of America Securities LLC was the low bidder with a true interest cost of 3.603852%. He added that he and his staff had verified the accuracy of the bond sale results.



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He gave the Board handouts regarding the results of the Bond Sale, and the relative bond ratings of other agencies in New Mexico. AMAFCA is the only agency in New Mexico with AAA ratings from both Standard & Poors and Moody's. This contributed to the excellent sale results, as an AAA/Aaa rating is very unusual.

Mr. Powers added that the timing for this sale in the marketplace was very good, giving AMAFCA a better rate than anticipated, as the yield curve was also advantageous at this time.

He quoted a sentence in the Moody's bond rating report, stating "the Authority has consistently demonstrated sound financial management, and Moody believes that the quality of management at the district is comparable to other Aaa rated credits." He commented that there are very few other AAA rated credits in the country. He also quoted Standard and Poors, stating, "the Authority has strong budgeting and long-term capital planning processes in place that drive financial operations."

Mr. Kelly stated that Duane Brown had prepared Resolution 2007-12, *2007 General Obligation Bond Award Resolution*. There were no questions from the Board about the Resolution or the bond sale.

Director Brown made a motion that the Board adopt Resolution 2007-12, *2007 General Obligation Bond Award Resolution*. Director Lyon seconded the motion, which passed (4-0). Director Eichenberg was not present for the vote.

16. Embudo Arroyo at Jefferson Lease Parcel – Review and Approval of Advertisement for Lease Bids

Mr. Hines stated that the property in question is located west of Jefferson between Cutler and Prospect, on top of a concrete box culvert that carries flows from the I-40 right of way to the Embudo open concrete channel. The surrounding businesses had expressed an interest in using the property as a parking lot.

He stated that, based on input from the Board, the initial term of the lease is for five years, with options for two additional two year extensions. Any improvements required by the City of Albuquerque for use as a parking lot will be performed at the expense of the lessee. Access to the maintenance gates on the west side of the leased parcel will be negotiated and reserved.

Mr. Hines added that the Notice of Request for Bids would be advertised following the requirements of Resolution 2006-12, *Real Property Lease Policy*.



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Director Lyon made a motion that the Board authorize the Executive Engineer to advertise the Embudo at Jefferson property for lease. Director Brown seconded the motion, which passed (4-0). Director Eichenberg was not present for the vote, although he returned to the meeting shortly thereafter.

17. Albuquerque West Levee – Briefing on FEMA Flood Plain Remapping and Proposed Reconstruction of Levee

Jerry Lovato, AMAFCA Drainage Engineer, introduced Subhas Shah, Chief Engineer with the Middle Rio Grande Conservancy District (MRGCD), and Ray Gomez, Assistant Engineer with the MRGCD. He also introduced Roger Paul, Bernalillo County Public Works Technical Services Director.

Mr. Lovato briefed the Board regarding ongoing Federal Emergency Management Agency (FEMA) flood plain remapping in Bernalillo County, and the proposed reconstruction of the Albuquerque West Levee. This is a levee section located on the west side of the Rio Grande, north of I-25. This levee section was built in the 1930's as a spoil bank levee, by a hydraulic fill process. It was modified in the 1960's by the Bureau of Reclamation. It has been maintained by MRGCD, but the original construction and design cannot be certified to provide 100 year event protection.

Mr. Lovato stated that the issue of certification for this levee came up because FEMA had contracted with URS Corporation to re-map Bernalillo County's Flood Insurance Rate Maps (FRIM) in 2003, and convert the maps into a digital format (DFRIM). The draft DFRIM's were reviewed by local government agencies without any substantial comments in December, 2005.

In the meantime, and as a result of the levee failures in New Orleans during Hurricane Katrina, FEMA developed new procedures to clarify the responsibilities of local officials and levee owners, and to verify levees were designed correctly and have been maintained. URS contacted the logical owners/operators of the levees requesting design and construction certification and certification of the maintenance of all levees throughout Bernalillo County. Some of this was delayed by uncertainty over who owned certain levees, including the levee in question.

Mr. Lovato stated that the US Army Corps of Engineers (COE) certified the design and construction of the federally constructed levees throughout the Albuquerque Reach, and the MRGCD certified the maintenance of all the levees throughout Bernalillo County. However, URS identified approximately 6 miles of levee in the south valley that was not constructed by the COE and lacked design and construction certification. The six miles of levee includes both sides of this three-mile section of the river. FEMA notified the City of Albuquerque and Bernalillo County that if levee certification was not received by FEMA, FEMA would place



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lands west of the levee into a Zone A floodplain. Property owners in that area would be required to purchase flood insurance.

Several meetings were held with MRGCD, AMAFCA, the City of Albuquerque, and Bernalillo County. The Corps of Engineers, FEMA, and Bureau of Reclamation (BOR) also attended a meeting on May 24, 2007 to discuss the levee in question. With the lack of certification, FEMA determined that additional hydraulic analysis was necessary to determine the extent of the new floodplain west of the levee located on the west side of the Rio Grande. The area east of the east side levee was already encumbered by a floodplain, so no additional work was required on that side of the river. This additional work is currently being done by URS.

AMAFCA engaged AMEC Earth and Environmental to investigate possible geotechnical failures associated with a spoil bank levee, and possible methods to minimize said failures. Mussetter Engineer was engaged to identify the impact of a levee failure and the extent of flooding associated with different failure modes. Albuquerque Surveying was engaged to obtain current survey information for the levee section in question.

Mr. Lovato stated that staff from MRGCD, BOR, COE, Bernalillo County and AMAFCA came up with several possible solutions, including rebuilding the levee. Officials of the MRGCD and Bernalillo County have been briefed on the implications of lack of levee certification, including the need for additional flood insurance.

He added that he had recently learned that the removal and replacement of the levee qualified under the COE 593 Environmental Infrastructure Program for Federal reimbursement at a 75% level. However, Federal funding would not be available until 2010.

Mr. Lovato stated that the MRGCD Board has authorized their Chief Engineer to pursue federal funds to replace the levee and work with local government agencies to accelerate the project by fully funding the project. With federal funds available for the project, FEMA may allow the area to be temporarily placed in a Zone A99 (area to be protected from a 1% annual chance flood by a Federal flood protection system under construction) during construction of the project.

Mr. Lovato stated that the cost of removal and replacement of the levee is currently estimated to be \$6,000,000, including design, construction, and certification to FEMA. MRGCD has \$4,000,000 available for the project. The addition of Bernalillo County and AMAFCA funds to the project would accelerate the project by at least two years.

He stated that staff has estimated approximately 2,500 parcels would be affected by the floodplain remapping. The estimated cost to constituents for floodplain insurance is \$1.875 M per year. The proposed funding agreement would have AMAFCA place \$1,000,000 in a special



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project account. The account would be used to fund design, construction, and certification of the project. AMAFCA and Bernalillo County would be proportionately reimbursed by the MRGCD when federal funding becomes available. AMAFCA funding would come from the Contingency Fund.

Mr. Kelly added that simply rehabilitating the levee would cost \$4,000,000, and this would have been wasted money when the Corps of Engineers later rebuilds the levee to the higher standards they are using elsewhere in Albuquerque. For \$6,000,000, the levee could be rebuilt to the higher standard seven to eight years before the Corps of Engineers could get to this area. With the funding agreement for reconstructing the levee in place, FEMA either would not place the area west of the levee into a floodplain, or would place it in a floodplain for only a very short time.

Mr. Kelly stated that, currently, builders in the south valley are told to put houses on one foot of fill. If the area is declared a floodplain, homes might have to be put on up to six feet of fill.

After discussion, the Board acknowledged that the levee in question was owned and operated by the MRGCD, but that the levee protected both MRGCD and AMAFCA constituents. The consensus of the Board was support of AMAFCA contributing \$1,000,000 towards design, construction, and certification of the levee, to include removing and rebuilding the levee, with 75% reimbursement from the Federal government in the future. Staff was directed to begin negotiating the funding agreement.

18. Unfinished Business

Director Saiers inquired about the Board's next course of action regarding item 4. Chairman Hernandez stated he would review Roberts' Rules of Order to determine the next course of action.

19. New Business

None.

20. Items from the Floor/Public Comment

Chairman Hernandez introduced Paul Smith and Bruce Hale, of the Albuquerque International Balloon Fiesta. Mr. Smith and Mr. Hale thanked AMAFCA and the Board for allowing the use of AMAFCA facilities, making the Balloon Fiesta possible. He invited Board members to attend the Balloon Fiesta, and in particular, the 2007 Gala de Balloon Fiesta on Saturday, October 6, 2007, during Saturday evening's gas balloon launch. The Board thanked the Balloon Fiesta for their contribution to the community.



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21. Adjourn

With no further business to discuss, Chairman Hernandez adjourned the meeting at 4:13 p.m.

Tim Eichenberg, Secretary-Treasurer 10/25/07

Recorded by Pam Woodruff, Secretary to the Executive Engineer