

**SPECIAL MEETING
FLOOD DIVERSION BOARD OF AUTHORITY
Thursday, August 28, 2014
3:30 PM**

Fargo City Commission Room
Fargo City Hall
200 3rd Street North

1. Call to order
2. Approve order of agenda Action
3. Minnesota EIS update **Item 3.** Information/action
4. Interim Agreement with Oxbow Country Club **Item 4.** Action
5. Other Business
6. Next Regular Meeting – September 11, 2014
7. Adjournment

cc: Local Media

Minnesota Department of Natural Resources

500 Lafayette Road • St. Paul, MN • 55155-40



Item 3.

August 27, 2014

Transmitted via electronic mail

Chair Darrell Vanyo
Fargo-Moorhead Diversion Board of Authority
Moorhead City Hall
P.O. Box 779
Moorhead, MN 56561-0779

RE: Fargo-Moorhead Flood Risk Management Project revised Amendment #3

Chair Vanyo:

At the request of the Diversion Authority, MDNR developed the attached revised Draft Amendment #3, which outlines the funding necessary to 'accelerate' the environmental review process and provide for a goal of publishing a Draft Environmental Impact Statement (EIS) by May 2015, with the following caveats:

1. The 'accelerated' schedule is dependent timely data submittals, reports and reviews from the Diversion Authority and the U.S. Army Corps of Engineers.
2. Unforeseen technical or policy issues may result in the need for increased resources and/or additional time to complete the EIS process.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Jill Townley'.

Jill Townley
EIS Project Manager

Cc: Craig Evans, U.S. Army Corps
Judy DesHarnais, U.S. Army Corps
Tom Crump, U.S. Army Corps
Aaron Snyder, U.S. Army Corps
Keith Berndt, Cass County
Bruce Spiller, Authority
Bob Zimmerman, City of Moorhead
Michael Redlinger, City of Moorhead
Pat Zavoral, City of Fargo



Mark Bittner, City of Fargo
Dave Schad, MDNR
Bob Meier, MDNR
Barb Naramore, MDNR
Mike Carroll, MDNR
Kent Lokkesmoe, MDNR
Steve Hirsch, MDNR
Henry Drewes, MDNR
Peter Buessler, MDNR
Julie Ekman, MDNR
Randall Doneen, MDNR
Jill Townley, MDNR
Sherry Enzler, MDNR

**AMENDMENT COVER SHEET
STANDARD AMENDMENTS
(Minn. Stat. §§ 16C.05, subd. 2(d), 16C.08, subd. 2 and 3)**

Agency: Department of Natural Resources	Name of Contractor: Fargo-Moorhead Metro Diversion Board of Authority
Current contract term: From: 1/3/2012 , To: 2/2/2015	Project Identification: Income Contract No. 39228

Amendments to contracts must entail tasks that are substantially similar to those in the original contract or involve tasks that are so closely related to the original contract that it would be impracticable for a different contractor to perform the work. The commissioner or an agency official to whom the commissioner has delegated contracting authority under section 16C. 03, subdivision 16, must determine that an amendment would serve the interest of the state better than a new contract and would cost no more. An amendment should be in effect before the contract expires.

Complete Appropriate Box(es) for the amendment submitted.

1. <input checked="" type="checkbox"/> Amendment to the end date of the contract
Proposed New End Date: March 4, 2016
Why is it necessary to amend the end date? It is necessary to amend the end date because the EIS Preparation duties have been updated.

2. <input checked="" type="checkbox"/> Amend Duties and Cost <input type="checkbox"/> Amend Duties Only
2a. If cost is amended, insert amount of original contract AND amount of each amendment below: Original Contract No. 39228 = \$230,550.00 Amendment #1 = \$115,550.00 Amendment #2 = \$1,146,618.00 Amendment #3 = \$695,289.00
2b. Describe the amendment: This amendment updates the EIS preparation duties, costs and includes a payment schedule.

3. Amendment to change other terms and conditions of the contract
Describe the changes that are being made:

Revised Amendment 3 to Income Contract Number 39228

Contract Start Date:	<u>February 3, 2012</u>	Total Contract Amount:	<u>\$ 2,188,007.00</u>
Original Contract Expiration Date:	<u>January 3, 2014</u>	Original Contract:	<u>\$ 230,550.00</u>
Current Contract Expiration Date:	<u>February 2, 2015</u>	Previous Amendment(s) Total:	<u>\$1,262,168.00</u>
Requested Contract Expiration Date:	<u>March 4, 2016</u>	This Amendment:	<u>\$ 695,289.00</u>

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 Original 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 2, 2015~~ March 4, 2016, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

REVISION 2. Clause 3 "**Payment**" is amended as follows:

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:

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

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:

The Purchaser shall remit payment on the following schedule:

~~\$598,670.00~~ 347,644.71 (50% of total estimated costs ~~plus EIS scoping phase balance~~ within 10 days of Income Contract Amendment execution)

~~\$273,974.00~~ 173,822.36 (25% total estimated costs following completion of the draft EIS chapters)

~~\$273,974.00~~ 173,822.36 (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 ~~\$1,146,648.00~~ 95,289.00, an amendment to this contract would be required and the balance is to be submitted prior to the EIS Adequacy Determination issuance.

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.

The total obligation of the Purchaser for all compensation and reimbursements to the State under this contract is ~~\$1,492,718.00~~ \$2,188,007.00. ~~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.

Except as amended herein, the terms and conditions of the original contract and all previous amendments remain in full force and effect.

1. PURCHASER

Fargo-Moorhead Metro Diversion Board of Authority

Signed: _____

Date: _____

2. STATE AGENCY

Department of Natural Resources

By: _____
(with delegated authority)

Title: _____

Date: _____

3. COMMISSIONER OF ADMINISTRATION

As delegated to Materials Management Division

By: _____

Date: _____

Minnesota EIS Time and Cost Summary - Prepared by Keith Berndt August 27, 2014

DATE APPROVED BY DA	ACTIVITY	CONTRACT TERM	COST	
February 8, 2012	Original Contract for the MN EIS Scoping and Preparation	February 3, 2012 - January 3, 2014	\$230,550	Project scoping amount
			\$750,000	Estimated EIS Prep Cost. This was an estimate pending completion of the final scoping document
			\$980,550	Estimated Total Cost
November 6, 2012	Amendment 1 due to design change by Diversion Authority	February 3, 2012 - February 1, 2014	\$115,550	Amendment
			\$1,096,100	Revised Estimated Total
January 21, 2014	Amendment 2 Extend Completion and finalize scope		\$50,722	Scoping cost overrun
		February 3, 2012 - February 2, 2015	\$346,100	Amendment
			\$1,492,718	Revised Estimated Total
Proposed August 28, 2014	Amendment 3 to complete study	February 3, 2012 - March 4, 2016	\$411,677	Revised to complete EIS Study
	Revised to accelerate to a goal of July 2015		\$283,612	Added for acceleration to try to complete by July 2015
			\$695,289	Total of Amendment 3
			\$2,188,007	Revised Grand Total

INTERIM AGREEMENT
Oxbow Golf and Country Club/Diversion Authority

THIS AGREEMENT is made and entered into this August of 2014 by and between the **METRO FLOOD DIVERSION BOARD OF AUTHORITY**, a joint powers entity established by the 2011 Limited Joint Powers Agreement, as amended, between Clay County, Minnesota, Moorhead, Minnesota, Cass County, North Dakota, Fargo, North Dakota, Cass County Joint Water Resource District and the Buffalo-Red River Watershed District [hereinafter referred to as the “Diversion Authority”] and **OXBOW GOLF AND COUNTRY CLUB**, a North Dakota nonprofit corporation, of Oxbow, North Dakota [hereinafter referred to as “Oxbow CC”].

WHEREAS, a flood risk reduction levee surrounding the communities of Oxbow, Hickson and Bakke has been designed and is being constructed [the “OHB Levee Project”]; and,

WHEREAS, construction of the proposed levee will cross through the existing golf course of the Oxbow CC which would:

require the destruction of golf holes;

require the destruction or removal of the clubhouse and related facilities, as well as the loss of landscaping, mature trees, and certain views and vistas that are unique features of the golf course;

leave certain holes (presumably the existing holes 1 through 6 and 18) on the existing golf course unprotected by the O-H-B Levee;

cause other remaining golf holes to need some level of modification as a result of the O-H-B Levee project;

require the replacement of the club house facility including the practice area, events area, pool, parking lots, and other like kind amenities, which shall be built to all applicable federal, state, and local building codes;

require funds to reimburse or compensate Oxbow G&CC for the losses recognized by the federal business acquisition process for interruption of business such as interruption during the construction phase of the project.

WHEREAS, the Diversion Authority has entered into a Memorandum of Understanding with the City of Oxbow regarding the O-H-B Levee (Oxbow MOU), to which the Oxbow CC was not a party, but which sets forth terms involving the Oxbow CC property, improvements, and buildings.

WHEREAS, pursuant to the Oxbow MOU, and as part of the OHB Levee Project certain acreage lying south of the city of Oxbow was acquired for the purpose of providing land for the routing of the levee, itself, along with land to be used for replacement residential lots, for the streets and other amenities that will serve said replacement lots, for replacement of portions of the Oxbow CC golf course and land upon which a replacement clubhouse (and surrounding facilities) will presumably be located; and,

WHEREAS, the Diversion Authority wishes to acquire portions of the real property and improvements owned by Oxbow CC, including the club house and surrounding facilities as well as a portion of the 18-hole Oxbow Golf Course—said acquisition due to the fact that the intended route of the levee will lie on or near the site of the existing clubhouse and will sever the 18-hole golf course into two portions with a number of holes lying on the easterly side of the levee and/or negatively impacted by the levee; and

WHEREAS, as part of said acquisition, the Diversion Authority will also propose certain relocation assistance including the replacement of the impacted holes to be acquired from Oxbow CC along with the relocation of several additional holes, said replacement and relocated holes to be located on the aforesaid replacement land lying south of the city of Oxbow; and

WHEREAS, construction on the replacement golf holes has already commenced with the initial earth work necessary to bring the replacement golf holes at a rough grade; however, additional earth work, fine grading and shaping is necessary to finish construction of said replacement holes and to prepare said holes to receive grass seed and other improvements (i.e. sand for bunkers, etc.) [hereinafter referred to as the “Finish Construction”]; and

WHEREAS, both Diversion Authority and Oxbow CC would like said golf course Finish Construction to commence as soon as reasonably possible and it is the hope of the parties hope that work can be completed to such stage that grass seed can be planted before the end of the customary construction season in 2014;

NOW, THEREFORE, IT IS HEREBY AGREED:

1. The Diversion Authority agrees that it shall enter into good faith negotiations for a comprehensive agreement providing funds for the following:

- 1.1 For acquisition funding to the Oxbow CC for such land, buildings (clubhouse) and improvements (pool, parking lot, events area, and related items) as is necessary for the O-H-B Levee to be constructed.
- 1.2 For acquisition funding to the Oxbow CC for any land and improvements (including land used as golf holes) that would remain unprotected from flooding induced by the Metro Flood Project.
- 1.3 To reimburse Oxbow CC for all reasonable costs incurred in modifying existing golf holes that will remain within the protected area but which will

need to be modified to adapt said holes to the re-routed golf course layout (re-routed because of the O-H-B Levee).

- 1.4 The funds provided by the Diversion Authority shall be adequate allow for replacement of an equivalent (in terms of size, design, quality, and function) clubhouse, events area, practice area, swimming pool, parking lot and provide for the replacement of the loss of landscaping, mature trees, and certain views and vistas that are unique features of the golf course. The funds provided by the Diversion Authority shall be adequate to allow for reasonable moving and business interruption costs incurred by Oxbow CC.
- 1.5 Golf Course Designer. The funding provided by the Diversion Authority will include the cost of the engagement of Robert Trent Jones, Jr., and his firm, for golf course design work to be done on the Oxbow CC, as well as the cost of the engagement of a Country Club Architect for the replacement clubhouse and related amenities. The Diversion Authority will fund the construction of displaced golf holes within this design, subject to the terms of a further agreement to be entered into with Oxbow CC.
- 1.6 Replacement Land. The Diversion Authority has or may obtain land from the City of Oxbow, or make arrangements with the City of Oxbow to provide land to Oxbow CC, to be used for replacement of existing golf holes obtained by the Diversion Authority, taking into consideration the unique nature of the existing holes, (including landscaping, mature trees, and certain views and vistas) to be taken and the value of land used for replacement.
- 1.7 Loss of Revenue. In the event that re-construction of the Oxbow CC does not allow for the Oxbow CC to fully function as contemplated in paragraph 2, the Diversion Authority shall provide funds to reimburse Oxbow CC for the loss of revenue occasioned by it not being able to fully function during the construction phase of the project.

2. Golf Course Architect Services. Diversion Authority hereby agrees to advance such funds as may be necessary for Oxbow CC to enter into a contract for the services of Robert Trent Jones, Jr., Golf Course Architect firm for the further development of drawings and construction bid specifications and for such other golf course architecture services as may be necessary or appropriate to allow construction of the golf course replacement holes to progress.

3. Golf Course Construction Bidding and Entry into Construction Agreement. Oxbow CC may move forward immediately to advertise for bids for the said Finish Construction

on any and all golf holes. Upon identification of the lowest and best bid for said construction, subject to the approval of the project managing consultant for the Diversion Project [currently, CH2M Hill engineering firm], Oxbow CC may enter into said construction contract and the Diversion Authority will advance funds necessary to fulfill Oxbow CC's payment obligations under said construction contract. The Diversion Authority intends that the sequence of construction will be staged so that construction of the new golf course holes, modification of existing golf holes that will remain within the protected area, and construction of the new clubhouse, practice area, events area, swimming pool and parking lot shall be complete prior to the removal of the existing Oxbow CC buildings and land for purposes of building the O-B-H Levee.

4. The parties recognize and agree that this is to be an interim agreement—an agreement that will be replaced or amended by a more comprehensive agreement, yet to be negotiated, agreed and executed, that will address the acquisition of real property and improvements from Oxbow CC and any relocation assistance as required by law as is set forth under paragraph 1., above.

5. The Diversion Authority recognizes and agrees that it will advance the funds as set forth under paragraphs 2 and 3 herein at its own risk and without prejudice to the interests of Oxbow CC as a property owner. Should the parties be unable to enter into such agreement or agreements for the acquisition of real property and improvements; the providing to Oxbow CC of relocation assistance as may be required by law (such as assistance allowing Oxbow CC funds for the relocation and reconstruction of a replacement clubhouse and related facilities); and any other funds or benefits as may be required by law and in the event, therefore, that such matters, or any of them, be decided by a court of law, then to the extent such court awards damages in favor of Oxbow CC for the value of such items, then the funds advanced by the Diversion Authority pursuant to this Interim Agreement shall not be offset against the damages awarded to the Oxbow CC.

Dated effective the date and year last executed by the parties below.

METRO FLOOD DIVERSION BOARD
OF AUTHORITY

DATED: _____

By: _____
Darrell Vanyo, Chairman

OXBOW GOLF AND COUNTRY CLUB, a
North Dakota nonprofit corporation

DATED: _____

By: _____
Chris Holland, its President