



US Army Corps
of Engineers[®]
St. Paul District

FARGO MOORHEAD DIVERSION PROJECT

MONTHLY UPDATE

May 3, 2018

1 Federal Funding

Funding in an FY18 Work Plan would be used to complete the engineering and environmental analysis for the "Plan B" project changes proposed in the Diversion Authority's permit application submitted to the MnDNR on 16 March 2018.

2 Supplemental NEPA Documentation

The St. Paul District is preparing a supplemental environmental assessment (SEA) with supporting engineering documentation to disclose project changes and impacts to the public. Given a transition to an EIS is not required, the schedule is as follows:

- Draft EA to public: mid-July
- 30-day public comment period ends: mid-August
- Public comments incorporated/final EA: late-August
- Final NEPA document: mid-September

3 Coordination with MnDNR

Regular communication is occurring, including weekly and Bi-weekly meetings, to determine/provide additional information required for the permit application and to coordinate the MnDNR's Supplemental Environmental Impact Statement (SEIS) and the Corps' SEA.

4 Geomorphic Surveys

St. Paul District survey crew will begin setting monuments week of May 7 – 22 June. Field work by Corps contractor will begin in late summer 2018. Approximately 150 notification letters were sent to landowners (see reverse). This work was allowed via court order dated 1 November 2017.

5 Diversion Inlet Control Structure

Only work allowed by courts continues and includes Storm Water Pollution Prevention Plan inspections, surveys of preloaded areas, and contractor submittals. The contract is currently suspended until 15 September 2018 and the District continually reassesses whether to maintain the suspension or terminate.

April 27, 2018

U.S. Army Corps of Engineers
Program and Project Management Division
Project Management Branch A
180 East 5th Street
St. Paul, MN 55101

Dear Landowner,

The U.S. Army Corps of Engineers (the Corps), in cooperation with the Diversion Authority, is continuing studies related to flooding in the Fargo-Moorhead area. This letter serves to update you on upcoming geomorphic monitoring work which is expected to begin in May 2018 and will be conducted through late fall. You will be notified by phone or your requested form of contact prior to anyone accessing your property. All work will be conducted per the terms and conditions described in the Right of Entry for your property.

The Corps will be placing permanent survey markers along the stream corridor to aid in future geomorphic monitoring. Markers are expected to be placed starting in May 2018 and will be installed such that the top of each marker is flush with the ground. Permanent markers will not be placed within farm fields or yards. The work will include walking over land to access rivers within the monitoring areas. Survey crews may also require access to property using road vehicles and/or all-terrain vehicles in order to bring equipment to the stream corridor.

Later in the field season, geomorphic monitoring efforts will be done in two phases. The first phase will include measurements of width, depth, velocity, and discharge of stream flow as well as observation of vegetation types, collection of sediment samples, and placement of temporary field stakes marking features that need to be surveyed. The second phase will include topographic surveying. After the surveying is completed, the temporary field stakes will be removed at each site. The geomorphic monitoring work helps to provide an understanding of the existing river system conditions.

Crew members will be respectful of all persons and property.

Please contact me if you have additional questions or concerns at (651) 290-5327 or kimberly.a.warshaw@usace.army.mil.

Sincerely,

Kimberly Warshaw
Project Management
U.S. Army Corps of Engineers



Ecological and Water Resources
500 Lafayette Road, St. Paul MN 55155

April 27, 2018

Michael Redlinger
Metro Flood Diversion Authority
200 3rd Street North
Fargo, ND 58102

Mr. Redlinger,

This is to acknowledge that on March 16, 2018, we received a permit application from the Metro Flood Diversion Authority for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project. We have designated the application as #2018-0819 and have invoiced and received payment (\$1,000) for the permit application.

Additional Information Needs

We have completed an initial review of the application and determined that we need some additional information to proceed with next steps. We have included a document entitled *Information Needed* that identifies additional items we'll need from you before we send your application to Local Governments for their review. The items needed include additional maps and mapping details, references updated to reflect the current application, explanation of how the project addresses Minnesota law, operations details, and additional details on the proposed Red River control structure. The *Information Needed* document also includes a preliminary list of other items that will be needed as we progress through the application review process.

Environmental Needs Determination

After reviewing the proposed project reflected in your application, the DNR has determined that there are substantial revisions to the proposed project that was evaluated in the Fargo-Moorhead Metropolitan Area Flood Risk Management Project EIS (adequacy determination June 2016). Furthermore, these changes affect the potential significant adverse effects of the project. The substantial revisions include: 1) the realignment of the southern embankment that would change miles of direct footprint impact as well as a substantial shift in the proposed inundation area of the project, 2) modification to operation of the control structure and 3) using the entire period of record to calculate the 100-year flood event. As a result of these changes, per the Minnesota Environmental Policy Act, the DNR will need to prepare a Supplemental Environmental Impact Statement (SEIS) prior to making a decision on the permit application.

SEIS Process

The first formal step in this process is for DNR to publish an SEIS preparation notice that includes a proposed scope of what will be evaluated in the SEIS. This notice begins a 20-day public comment period for persons to

submit objections to the proposed scope. After considering these comments, DNR will proceed with drafting the SEIS. Responses to comments received on the proposed scope will be included in the draft SEIS. The draft SEIS is subject to an approximate 30-day comment period that includes a public informational meeting. Following the informational meeting on the draft SEIS, the process is the same as for a typical EIS, including preparing a Final SEIS and responses to comments, followed by DNR's adequacy determination.

We are aware that the U.S. Army Corps of Engineers plans to prepare a Supplemental Environmental Assessment (EA) to determine if a federal SEIS is needed. DNR intends to rely on technical analysis prepared for the U.S. Army Corps of Engineers' Environmental Assessment to the degree these federal analyses cover the state's scoped issues and we can support the data, methodology and conclusions of those analyses. DNR also intends to use information developed during the SEIS process to support consideration of the permit application. To the maximum extent possible, DNR's SEIS and application evaluation will occur simultaneously.

As you are likely aware, the first step for beginning an EIS is to execute an income agreement between the Diversion Authority and DNR to compensate staff time and actual costs for preparing the SEIS. At your earliest convenience, we would like to consult with both the Diversion Authority and the U.S. Army Corps of Engineers regarding the proposed scope of the federal and state environmental review. This will allow us to develop an estimated cost and income contract for execution.

If you have questions, please contact me at 651-259-5674 or Julie.ekman@state.mn.us.

Sincerely,



Julie Ekman, Manager
Conservation Assistance & Regulations Section

CC: Nathan Boerboom, City of Fargo
Bob Zimmerman, City of Moorhead
Terry Williams, U.S. Army Corps of Engineers

Enclosure

STATE OF MINNESOTA INCOME CONTRACT

This contract is between the State of Minnesota, acting through its commissioner of natural resources ("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. Under Minn. Stat. § 116D.045, Subd. 3 and Minn. Rules part 4410.6000 to 4410.6200 the State is empowered to enter into income contracts.
2. The Purchaser is in need of meeting the procedural requirement of having a Supplemental Environmental Impact Statement (SEIS) completed for their proposed Fargo-Moorhead Metropolitan Flood Risk Management Project (project) before it can proceed. The required scoping procedures must be conducted prior to work commencing on the SEIS.
3. The State represents that it is duly qualified and agrees to provide the services described in this contract.

Contract

1 Term of Contract

- 1.1 **Effective date:** May 3, 2018, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.
- 1.2 **Expiration date:** December 31, 2018, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

2 State's Duties

The State will:

Pursuant to Minnesota Rules Part 4410.300, the DNR will: prepare and publish in the EQB Monitor a notice to prepare a supplement to the Fargo-Moorhead Metropolitan Flood Risk Reduction Environmental Impact Statement with a proposed scope of issues to be analyzed; consider and respond to scoping comments; review materials submitted by the Diversion Authority, U.S. Army Corps of Engineers and contractors for consideration of use to support the SEIS; prepare and publish the SEIS; hold a public meeting; respond to comments and prepare a Final SEIS; and prepare adequacy determination. These duties are specified in Exhibit A which is attached and incorporated into this contract.

3 Payment

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:

Payment Schedule

- 1 50% within 10 days of SEIS contract execution
- 2 50% total estimated costs when adequacy decision is published

The total obligation of the Purchaser for all compensation and reimbursements to the State under this contract is \$445,489.00.

If costs to the State exceed \$445,489.00, an amendment to this contract would be required and the balance is to be submitted prior to the agency issuing any permit decision.

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 SEIS costs. The refund shall be paid within 30 days of the completion of the State of the accounting of the SEIS costs.

4 Authorized Representatives

The State's Authorized Representative is Jill Townley; Planner Principal; 500 Lafayette Road, St. Paul, MN 55155; 651-259-5168, or her successor.

The Purchaser's Authorized Representative is Bob Zimmerman; City Engineer; City of Moorhead; City Hall, P.O. Box 779, Moorhead MN 56561-0779; 218-299-5383; or his successor.

5 Amendments, Waiver, and Contract Complete

5.1 **Amendments.** Any amendment to this contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original contract, or their successors in office.

5.2 **Waiver.** If the State fails to enforce any provision of this contract, that failure does not waive the provision or its right to enforce it.

5.3 **Contract Complete.** This contract contains all negotiations and agreements between the State and the Purchaser. No other understanding regarding this contract, whether written or oral, may be used to bind either party.

6 Liability

Each party will be responsible for its own acts and behavior and the results thereof.

7 Government Data Practices

The Purchaser must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the Purchaser or the State.

If the Purchaser receives a request to release the data referred to in this Clause, the Purchaser must immediately notify the State. The State will give the Purchaser instructions concerning the release of the data to the requesting party before the data is released.

8 Publicity

Any publicity regarding the subject matter of this contract must not be released without prior written approval from the State's Authorized Representative.

9 Audit

Under Minn. Stat. § 16C.05, subd. 5, the Purchaser's books, records, documents, and accounting procedures and practices relevant to this contract are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a total of six years.

10 Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this contract. Venue for all legal proceedings out of this contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

11 Termination

Either party may terminate this agreement at any time, with or without cause, upon 30 days' written notice to the other party.

1. PURCHASER

By: _____

Title: _____

Date: _____

2. STATE AGENCY

By: _____

(with delegated authority)

Title: _____

Date: _____

3. COMMISSIONER OF ADMINISTRATION

As delegated to the Office of State Procurement

Date: _____

Project Name: FARGO-MOORHEAD FLOOD RISK MANAGEMENT

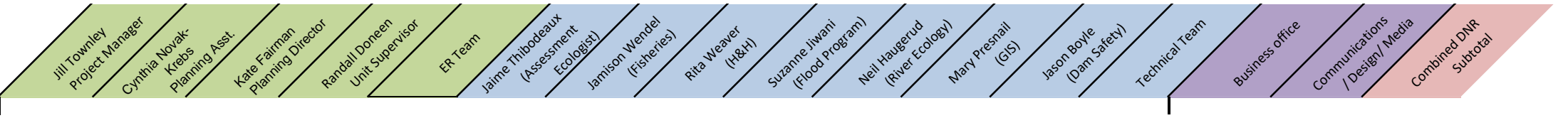
SEIS Estimated Costs

Start Date 5/14/2018 (estimated)

End Date 11/1/2018 (estimated)

Project Steps	Project Team				Subtotal	Technical Team							Subtotal	Business office	Communications / Design / Media	Combined DNR Subtotal
	Jill Townley Project Manager	Cynthia Novak-Krebs Planning Asst.	Kate Fairman Planning Director	Randall Doneen Unit Supervisor		ER Team	Jaime Thibodeaux (Assessment Ecologist)	Jamison Wendel (Fisheries)	Rita Weaver (H&H)	Suzanne Jiwani (Flood Program)	Neil Haugenud (River Ecology)	Mary Presnail (GIS)				
SEIS Scoping Phase																
Scoping Document	17	1	15	33	1	1	1	4	1	0	4	12	0	2	47	
Identify Need for New data/studies/alternatives			1	1				2			2	4			5	
Write Scope	4		4	8								0			8	
Review Scope	1	1	1	3	1	1	1	1	1		1	6			9	
Post Scope	1		1	2								0		1	3	
Review Responses	4		4	8				1			1	2			10	
Edit Scope	4		1	5								0			5	
Finalize Scope	2		2	4								0			4	
Post Scope	1		1	2								0		1	3	
				0								0			0	
Draft SEIS Phase																
DSEIS Check-in Meeting (Kick-off)	2	2	2	6	2	2	2	2	2	2	2	14	1	1	22	
Agency Meeting (May 10)				0	11	11		11	11		11	55				
Sections				0								0			0	
Front and Back Material (summary, maps, etc)	54	14	14	82	0	0	0	2	0	19	2	23	0	0	105	
Creation	40			40						12		12			52	
Review & Comment	6	6	6	18				2		1	2	5			23	
Editing	6	6	6	18						6	0	6			24	
Approval (Final Meeting on study)	2	2	2	6							0	0			6	
Introduction and Plan B Alternative	10	10	14	34	0	0	0	4	0	0	4	8	0	0	42	
Creation			4	4				4			4	8			12	
Review & Comment	4	4	4	12								0			12	
Editing	4	4	4	12								0			12	
Approval (Final Meeting on study)	2	2	2	6								0			6	
Hydrology & Hydraulics	8	12	12	32	0	0	18	18	0	0	10	46	0	0	78	
New Model Discussion	4		4	8	0		4	4			4	12			20	
Creation	2	2	2	6			4	4				8			14	
Review & Comment		4	4	8			8	8			4	20			28	
Editing		4	4	8								0			4	
Approval (Final Meeting on study)	2	2	2	6			2	2			2	6			12	
FEMA	12	10	12	34	0	0	0	16	0	0	0	16	0	0	50	
Creation	2		2	4				6				6			10	
Review & Comment	4	4	4	12				4				4			16	
Editing	4	4	4	12				4				4			16	
Approval (Final Meeting on study)	2	2	2	6				2				2			8	
Stream Stability	22	14	22	58	22	22	0	0	22	0	0	66	0	0	124	
Creation	8		8	16	8	8			8			24			40	
Review & Comment	6	6	6	18	6	6			6			18			36	
Editing	6	6	6	18	6	6			6			18			36	
Approval (Final Meeting on study)	2	2	2	6	2	2			2			6			12	
Wetlands	12	8	12	32	4	0	0	0	0	0	0	4	0	0	36	
Creation	4		4	8								0			8	
Review & Comment	2	2	2	6	2							2			8	
Editing	4	4	4	12								0			12	
Approval (Final Meeting on study)	2	2	2	6	2							2			8	
Fish Passage and Bio Connectivity	22	14	22	58	22	22	0	0	0	0	0	44	0	0	102	
Creation	8		8	16	8	8						16			32	
Review & Comment	6	6	6	18	6	6						12			30	
Editing	6	6	6	18	6	6						12			30	
Approval (Final Meeting on study)	2	2	2	6	2	2						4			10	
Infrastructure and Public Services	12	8	12	32	0	0	0	8	0	0	8	16	0	0	48	
Creation	4		4	8				2			2	4			12	
Review & Comment	2	2	2	6				2			2	4			10	
Editing	4	4	4	12				2			2	4			16	
Approval (Final Meeting on study)	2	2	2	6				2			2	4			10	
Land Use Plans and Regulations	22	14	22	58	0	0	0	16	0	0	0	16	0	0	74	
Creation	8		8	16				2				2			18	
Review & Comment	6	6	6	18				6				6			24	
Editing	6	6	6	18				6				6			24	
Approval (Final Meeting on study)	2	2	2	6				2				2			8	
Social (no economics)	42	30	42	114	0	0	0	30	0	0	18	48	0	0	162	
Meeting to determine direction	16	16	16	48				8			8	16			64	
Creation	12		12	24				8				8			32	
Review & Comment	6	6	6	18				6			8	14			32	
Editing	6	6	6	18				6				6			24	
Approval (Final Meeting on study)	2	2	2	6				2			2	4			10	
Dam Safety	10	8	10	28	0	0	0	8	0	0	21	29	0	0	57	
Creation	2		2	4				2			4	6			10	
Review & Comment	4	4	4	12				2			10	12			24	
Editing	2	2	2	6				2			5	7			13	
Approval (Final Meeting on study)	2	2	2	6				2			2	4			10	
Eval. of Mitigation strategies	26	24	24	74	29	26	19	31	31	0	19	155	0	0	229	

Project Steps	
Total Rate Charge	\$ 241,539.00



Pass Through Expenses

Project Manager 1.0 FTE at 75%	\$ 150,336.00
Printing and Distribution	\$ 3,000
Mailing and Communication	\$ 1,000
Travel, lodging, meals (public mtg)	\$ 1,765
Misc. FM meeting (3 ppl. Overnight)	\$ 5,150
Meeting room rental	\$ 1,200
Stenographer	\$ 1,000
Subtotal	\$ 163,451

TOTAL RATE PLUS PASS-THROUGH	\$ 404,990
10% Contingency	\$ 40,499
TOTAL RATE PLUS CONTINGENCY	\$ 445,489

Payment Schedule

**ASSIGNMENT OF
MASTER AGREEMENT**

**Oxbow Golf and Country Club/Cass County
Joint Water Resource District
and
City of Oxbow**

THIS AGREEMENT, is made and entered into as of the effective day hereof, as set forth below, by and between the **CITY OF OXBOW**, a North Dakota municipal corporation [hereinafter "City of Oxbow"]; **CASS COUNTY JOINT WATER RESOURCE DISTRICT** [hereinafter "Water Resource District"] and **OXBOW GOLF AND COUNTRY CLUB**, a North Dakota nonprofit corporation, of Oxbow, North Dakota [hereinafter "Oxbow CC"].

WHEREAS, the Water Resource District, acting as a delegated member of the Metro Flood Diversion Authority, and Oxbow CC entered into a Master Agreement effective the 8th day of January, 2015, that set forth terms by which Oxbow CC's clubhouse would be relocated and replaced and the golf course reconfigured [the "Master Agreement"]; and,

WHEREAS, as of the Effective Date, hereof, the Water Resource District has performed many of its agreed-upon obligations under the Master Agreement have already been performed; and

WHEREAS, The City of Oxbow and the Metro Flood Diversion Board of Authority, a joint powers entity of which the Water Resource District is a member, entered into a Memorandum of Understanding ["MOU"] the effective date which was October 24, 2013, in which MOU addressed a number of aspects pertaining to mitigation of impacts of the Metro Flood Project; and,

WHEREAS, the City of Oxbow and the Metro Flood Diversion Board of Authority wish to amend the MOU, particularly with respect to the sale of the remaining lots developed pursuant to the MOU and, in addition, the discussion of the parties has contemplated the City of Oxbow assuming all responsibilities from the Water Resource District with respect to the Master Agreement; and,

WHEREAS, pursuant to the Oxbow CC Master Agreement, the Water Resource District owes Oxbow CC the sum of \$2,433,697.25, said amount includes all payment obligations to, or on behalf of, Oxbow CC through the 31st day of December, 2017, but not including any change orders for work to be done from and after said date; and,

WHEREAS, Oxbow CC desires that the Oxbow CC Master Agreement be assigned by the Water Resource District to the City of Oxbow because Oxbow CC expects that the City of Oxbow will be in a better position to work with Oxbow CC to complete performance of the remaining obligations under said Master Agreement; and,

WHEREAS, the City of Oxbow is willing to assume the obligations and rights thereof the Water Resource District as set forth therein, provided that the City of Oxbow's payment obligation is limited as hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the parties hereto agree as follows:

1. Oxbow CC represents and agrees that the remaining amount owed by the Water Resource District to Oxbow CC is the sum of Two Million Four Hundred Thirty Three Thousand, Six Hundred Ninety-Seven and 25/100 Dollars (\$2,433,697.25), said amount including all other payment obligations to, or on behalf of, Oxbow CC through the 31st day of December, 2017, but not including any change orders for work to be done from and after said date.
2. The Water Resource District will remit payment to Oxbow CC the sum of \$2,433,697.25 as payment in full under the Master Agreement, except for change orders for work to be done after December 31, 2017.
3. Subject to the terms of this Agreement, the Water Resource District shall, and hereby does, assign to the City of Oxbow the Master Agreement including all of the rights, obligations, and commitments of the Water Resource District as expressed therein and the City of Oxbow hereby accepts said assignment and, except as limited by this Agreement, assumes any and all obligations and commitments set forth therein.
4. Oxbow CC hereby consents and agrees:
 - a. to said assignment and hereby releases the Water Resource District, the Metro Flood Diversion Authority, and its member entities from any demands, claims, or obligations thereunder, whether such demand, claim or obligation stems from, or occurred prior, to the Effective Date hereof; and,
 - b. that with respect to paragraph 5 of the Oxbow Master Agreement, referring to golf course construction costs, including the following provision:

... Oxbow CC will be responsible for the cost of any change orders for materials or labor outside the scope of the construction contractor in excess of the total gross dollar value of the construction contract, unless such change orders are approved by the Water Resource District. The Water Resource District will not have any contractual relationship with, and will

not have any obligations regarding, the Golf course Construction Contractor or any other contractors, consultants, subconsultants, subcontractors, material suppliers, or any other parties regarding the construction of the replacement golf holes or regarding modifications to the remaining existing holes, other than the obligation to make payment to Oxbow CC as set forth above....

Oxbow CC agrees that the gross dollar value of any change orders requested from and after the Effective Date shall not exceed One Million Dollars (\$1,000,000) and the payment obligations and liability of the City of Oxbow or the Water Resource District under this Agreement, either jointly or severally, will not exceed said amount.

5. Effective Date. The assignment of the Master Agreement shall be deemed to be effective the 1st day of January, 2018, said date referred to herein as the "Effective Date".
6. Signature in Counterpart. This Assignment Agreement may be signed in counterpart. It shall be considered to be fully executed when it has been signed by all parties hereto.
7. This Assignment Agreement shall be contingent upon the approval and execution of a Second Amendment to the MOU which second amendment pertains to the sale of remaining lots established and developed as contemplated therein.

[Remainder of page intentionally left blank]

CASS COUNTY JOINT WATER RESOURCE
DISTRICT

DATED: _____

By: _____
_____, Chairman

OXBOW GOLF AND COUNTRY CLUB, a
North Dakota nonprofit corporation

DATED: _____

By: _____
_____, its President

CITY OF OXBOW, a North Dakota
municipal corporation

DATED: _____

By: _____
James Nyhof, Mayor

ATTEST:

City Auditor

**SECOND AMENDMENT TO
MEMORANDUM OF UNDERSTANDING**

**CITY OF OXBOW, NORTH DAKOTA AND METRO FLOOD
DIVERSION BOARD OF AUTHORITY**

This Second Amendment [“Second Amendment”] to the Memorandum of Understanding is entered into as of the Effective Date, below, by and between the **METRO FLOOD DIVERSION BOARD OF AUTHORITY** [the “Diversion Authority”], and the **CITY OF OXBOW, a North Dakota municipal corporation** [the “City” or the “City of Oxbow”].

RECITALS:

WHEREAS, the Diversion Authority and the City of Oxbow entered into a Memorandum of Understanding [the “Oxbow MOU”] dated effective October 24, 2013, with the three North Dakota member-entities to the Diversion Authority also approving the Oxbow MOU; and,

WHEREAS, the parties to the Oxbow MOU entered into an amendment of the Oxbow MOU, dated effective the 30th day of November, 2015 [the “First Amendment to Oxbow MOU”]; and,

WHEREAS, as was contemplated by the Oxbow MOU, the Cass County Joint Water Resource District entered into an agreement with Oxbow Golf and Country Club (“Oxbow CC”) effective January 8, 2015, that established the terms by which Oxbow CC’s clubhouse would be relocated and replaced and the golf course reconfigured and much of the agreed-upon obligations under the agreement has been performed, said agreement to be referred to as the “Oxbow CC Master Agreement”; and,

WHEREAS, since the effective date of the Oxbow MOU, approximately 98 new lots have been platted and infrastructure has been installed to service said lots; and,

WHEREAS, approximately 65 of the newly established lots have been sold—many sold as replacement lots—with 33 lots, more or less, remaining unsold; and,

WHEREAS, as a result of the Governors’ Task Force meetings starting in late 2017, some design changes are being contemplated to the Metro Flood Diversion Project that may cause a change in the staging area which change may cause residents within the staging area to desire to relocate to a home within the OHB levee; and,

WHEREAS, the City of Oxbow has proposed, and Metro Flood Diversion Board of Authority is willing to agree to, a second amendment of the Oxbow MOU; and,

WHEREAS, the City of Oxbow has also proposed that the Water Resource District, would assign the obligations and rights of the Water Resource District as provided in the Oxbow CC Master Agreement to the City of Oxbow under certain terms and conditions, which assignment would occur simultaneously with, and would be contingent upon, the approval and execution of this Second Amendment; and,

WHEREAS, the parties are agreeable thereto;

NOW, THEREFORE, IT IS HEREBY AGREED:

Section I. The Oxbow MOU, as amended by the First Amendment to Oxbow MOU, is hereby further amended as follows.

Section II. Contingency--City of Oxbow to Assume Obligations of Oxbow CC Agreement. This Second Amendment shall be contingent upon the approval and execution of an Assignment of Master Agreement, said contingency to be for the benefit of both the City of Oxbow and the Diversion Authority and its members that are a party hereto.

Section III. Allocation of Sales Proceeds of Remaining Oxbow Lots. As to the sale of the remaining 33 unsold lots, a list of which is attached as Exhibit “A”, [hereinafter referred to as the “Post 2017 Unsold Lots”], Paragraph 2.3 is hereby amended to add subparagraphs 2.3.9 and 2.3.10, as follows:

2.3 Proceeds from the sale of the Replacement Lots, shall be allocated and paid-out as follows:

* * *

2.3.9 Sale of the Post 2017 Unsold Lots. The first One Million and no/100s Dollars (\$1,000,000.00) of net proceeds from the sale of one or more of the Post 2017 Unsold Lots shall be retained by the City of Oxbow, or by the Oxbow Job Development Authority as the case may be, and thereafter net proceeds from the Post 2017 Unsold Lots shall be split between the City of Oxbow or its Job Development Authority and the Diversion Authority with sixty-five percent (65%) to go to the Diversion Authority and thirty-five percent (35%) to go to the City of Oxbow or its Job Development Authority. Net proceeds shall mean the agreed upon sales price for the parcel less real estate commissions paid by the seller and less reasonable and appropriate closing costs. The City of Oxbow represents that it is authorized to bind, and hereby does bind, its Job Development Authority to the terms hereof. With respect to the sale of the \$1,000,000 of Post 2017 Unsold Lots, the City of Oxbow represents and agrees that said sales must be market-value sales. In that all said unsold lots have been appraised by a qualified appraiser, to the extent that any sale is to occur at less than 85% of the appraised value, the City of Oxbow will notify and obtain consent in advance from the Diversion Authority Executive Director before entering into a binding commitment to such sale.

2.3.10 Lots for Staging Area Residents. In order to accommodate the potential relocation of existing residential properties located within the upstream staging area of the Project, the City of Oxbow and the Diversion Authority will negotiate in good faith to identify a suitable number of the remaining Post 2017 Unsold Lots to be reserved for sale to upstream staging area residents as a relocation option, said number not to exceed ten (10). The parties agree to further discuss this requirement upon request of either party. Further, it is understood and agreed that should such reserved lots remain unsold as of December 31, 2020, any such remaining lots may be sold to the general public thereafter. The City of Oxbow will provide, at least semi-annually and more frequently upon reasonable request, a report to the Diversion Authority as to sales of the Post 2017 Unsold Lots, said report to identify the lot or lots sold, the proceeds from the sale, name or names of the purchaser and whether the purchaser is someone relocating from within the upstream staging area.

Section IV. Maintenance of Unsold Lots. The City of Oxbow shall assume responsibility for the maintenance of the remaining unsold lots and shall be assume responsibility for the payment of all costs associated with such maintenance; however, at such time as the above-stated

\$1,000,000 of Post 2017 Unsold Lots has been achieved and the division of sales proceeds shifts to the 65%/35% split, then at that time the costs of such maintenance will also be shared in accordance with the same ratio.

Section V. Oxbow City Park. With respect to the obligation of the Diversion Authority to fund the replacement of the Oxbow city park, as contemplated in Section 2.5 of the Oxbow MOU, the parties agree that the Diversion Authority's obligation to provide such funding shall not exceed the sum of \$200,000 and the City of Oxbow shall be responsible for any costs in excess thereof.

Section VI. Interpretation of Conflicting Provisions. To the extent that the terms of this Second Amendment conflict with the original Oxbow MOU, the terms of this Second Amendment shall govern. In all other respects, the terms of the original Oxbow MOU, as amended by the First Amendment, shall remain in full force and effect.

Section VII. Effective Date. This Second Amendment to the Oxbow MOU will be deemed effective the date of the last signature of all the parties hereto, provided that to the extent any of the parties have taken action pursuant to this agreement prior to said effective date, the same shall be deemed to have been authorized by this memorandum of understanding.

[Remainder of this page intentionally left blank.]

**METRO FLOOD DIVERSION BOARD
OF AUTHORITY**

Dated: _____

By: _____
_____, its Chair

CITY OF OXBOW, a North Dakota
municipal corporation

Dated: _____

By: _____
James Nyhof, its Mayor

ATTEST:

City Auditor

CITY OF FARGO, a North Dakota
municipal corporation

DATED: _____

By _____
Timothy J. Mahoney, M.D., its Mayor

ATTEST:

Steven Sprague, City Auditor

COUNTY OF CASS,
NORTH DAKOTA

DATED: _____

By _____
_____, its Chair

CASS COUNTY JOINT WATER RESOURCE
DISTRICT

DATED: _____

By _____
_____, its Chair