

MASTER AGREEMENT
Oxbow Golf and Country Club/Cass County Joint Water Resource District

THIS AGREEMENT is made and entered into the 8th day of January, 2015 by and between the **CASS COUNTY JOINT WATER RESOURCE DISTRICT** [hereinafter referred to as the Water Resource District"] 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, the Water Resource District, by resolution, declared that acquisition of real property from Oxbow CC is necessary in order to construct the OHB Levee Project which, therefore, would require, if necessary, the use by the Water Resource District of the power of eminent domain to acquire said real property; and,

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

requires the destruction of golf holes;

requires the relocation or replacement of the clubhouse and related facilities;

will leave certain holes on the existing golf course on the "wet side" of the O-H-B Levee and which will cause a severance of existing golf course;

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

requires the replacement of the club house facility including the practice area, events area, swimming pool, parking lots, and other like kind amenities;

may cause some interruption of business of Oxbow CC; and,

WHEREAS, certain acreage lying south of the city of Oxbow was acquired for the purpose of providing land for the routing of a levee along with land to be used, among other things, for replacement and relocation of portions of the Oxbow CC golf course and replacement of a clubhouse (and surrounding facilities); and,

WHEREAS, the parties have, through negotiations, established mutually agreeable terms by which the Water Resource District will acquire portions of the real property and improvements owned by Oxbow CC, including the clubhouse and surrounding facilities and a portion of the 18-hole Oxbow golf course and in which relocation costs paid in accordance with

relocation assistance law, and which terms, therefore, provide for such acquisition and relocation in lieu of an eminent domain acquisition process;

NOW, THEREFORE, IT IS HEREBY AGREED:

1. Purchase/Sale of real property and improvements.
 - A. Existing clubhouse. Oxbow CC will sell, and the Water Resource District will purchase that certain real property situate in the County of Cass and State of North Dakota more fully described in the attached Exhibit "A-1" [referred to as the "Existing Clubhouse Lot", whether one or more lots] to the purchase agreement for said parcel and in the attached Exhibit "B-1" [referred to as the "Existing Seven Golf Holes Lot", whether one or more lots] to the purchase agreement for said parcel, the closing date for which shall occur at such date as may be agreed by the parties, but no later than January 31, 2015. The purchase price shall be the sum of \$3,250,000 [hereinafter the "Clubhouse Purchase Price"] for the Existing Clubhouse Lot and an additional sum of \$600,000 for the Existing Seven Golf Holes Lot. The terms of the purchase of the Existing Clubhouse Lot shall be set forth in a Purchase Agreement, the form of which is attached hereto as Exhibit "A". The terms of the purchase of the Existing Seven Golf Holes Lot shall be set forth in a Purchase Agreement, the form of which is attached hereto as Exhibit "B". At the time of said purchases by the Water Resource District, the Water Resource District will lease the Existing Clubhouse Lot, including buildings and improvements, back to Oxbow CC for the use by Oxbow CC for the period ending September 6, 2016 (the Tuesday following Labor Day 2016), which lease shall be in a form substantially similar to Exhibit "C", attached hereto, and the Water Resource District will lease the Existing Seven Golf Holes Lot, including buildings and improvements, back to Oxbow CC for the use by Oxbow CC, which lease shall be in a form substantially similar to Exhibit "D", attached hereto. Also, at the time of the above-referenced purchase by the Water Resource District of the Existing Seven Golf Holes Lot, Oxbow CC shall grant to the Water Resource District a Temporary Construction Easement, the terms of which are to be substantially in conformance with an easement attached as Exhibit "G", and the Water Resource District shall remit payment to Oxbow CC the sum of \$1.00.
 - B. Relocation—replacement clubhouse lot(s). The Water Resource District will sell, and Oxbow CC will purchase that certain real property situate in the County of Cass and State of North Dakota more fully described in the attached Exhibit "E-1" [referred to as the "Replacement Clubhouse Lot", whether one or more lots] the closing date for which shall occur at such date as may be agreed by the parties, but no later than July 3, 2016. The purchase

price shall be the sum of \$1.00. The terms of the purchase of said property shall be set forth in a Purchase Agreement, the form of which is attached hereto as Exhibit “E”.

C. Relocation—replacement golf holes lot(s). The Water Resource District will sell, and Oxbow CC will purchase that certain real property situate in the County of Cass and State of North Dakota more fully described in the attached Exhibit “F-1”, the closing date for which shall occur at such date as may be agreed by the parties, but no later than July 3, 2016. The purchase price shall be the sum of \$1.00 [referred to as the “Replacement Golf Holes Lot”, whether one or more lots]. The terms of the purchase of said property shall be set forth in a Purchase Agreement, the form of which is attached hereto as Exhibit “F”.

2. Relocation. The Water Resource District and Oxbow CC agree that a functionally equivalent clubhouse with a floor plan of equivalent size, adjusted as needed to accommodate modern code requirements, and including a swimming pool and related equipment and amenities, appropriate landscaping (to include trees, lighting, retaining wall and other elements) will cost an estimated sum, in addition to the sum to be paid for the Existing Clubhouse Lot and the Existing Seven Golf Holes Lot as identified in subparagraph 1.A above, of \$6,650,000. The Water Resource District agrees to remit payment to Oxbow CC in the amount of \$6,650,000, said sum referred to herein as either the “Clubhouse Relocation/Replacement Payment” or the “Clubhouse Relocation/Replacement Funds”. Oxbow CC will engage the services of an architect to design a functionally equivalent clubhouse including a swimming pool and related facilities, and will construct said functionally equivalent clubhouse including a swimming pool and related facilities [referred to as the “Replacement Clubhouse and Facilities”] as a replacement of the existing clubhouse which will be acquired and subsequently demolished as a result of the placement of the construction of the OHB Levee. To the extent that Oxbow CC has incurred any expense for such architect to date, the Water Resource District agrees to reimburse Oxbow CC for such expense. The Water Resource District will not have any contractual relationship with, and will not have any obligations regarding, any architects, contractors, consultants, subconsultants, subcontractors, material suppliers, or any other parties regarding the design and construction of a replacement clubhouse.
3. The Water Resource District shall advance to Oxbow CC the Clubhouse Relocation/Replacement Payment simultaneously with the closing on the sale to Oxbow CC of the Replacement Clubhouse Lot, subject to the restrictions as set forth under this paragraph. Oxbow CC agrees that it will segregate and keep the Clubhouse Relocation/Replacement Funds separate from its general account;

that such funds in said segregated account shall be expended solely upon expenses related to the design and construction of the Replacement Clubhouse and Facilities and that the Clubhouse Relocation/Replacement Funds and the segregated account shall be subject to a security interest in favor of the Water Resource District by Oxbow CC. As such Oxbow CC will grant and hereby does grant to the Water Resource District a security interest in said Clubhouse Relocation/Replacement Funds and the segregated account to be established therefor, and authorizes the Water Resource District to file a financing statement to perfect said security interest. In addition, as further collateral for its obligation to use the Clubhouse Relocation/Replacement Funds for such limited purposes and its obligation to construct the Replacement Clubhouse and Facilities, Oxbow CC shall also grant to the Water Resource District a collateral real estate mortgage pursuant to NDCC §35-03-17 against all of the real property owned by Oxbow CC to be held as a lien against said property for the repayment of the full amount of the Clubhouse Relocation/Replacement Funds, less such sums that are properly expended from time to time in accordance with this Agreement. The collateral real estate mortgage shall be in a form substantially in conformance with Exhibit H, attached hereto. Any obligation by Oxbow CC to repay such amount to the Water Resource District shall bear interest at a rate equal to the interest rates on judgments under North Dakota law, commencing from the time such funds are, or were, advanced by the Water Resource District to Oxbow CC. No interest shall accrue on any sums properly expended as provided in this agreement. Oxbow CC shall not transfer or spend any of the Clubhouse Relocation/Replacement Funds for any purpose other than those as set forth herein. The Water Resource District shall have the right to an accounting of the Clubhouse Relocation/Replacement Funds upon request, but no more frequently than monthly. The parties agree to execute such instrument or instruments as may be necessary to give effect to this provision. Following the site inspection that verifies compliance, as set forth in paragraph 11 below, the restrictions and accounting right as set forth in this paragraph shall terminate, the mortgage described herein will be satisfied and any remaining Clubhouse Relocation/Replacement Funds shall belong to Oxbow CC without restriction. Oxbow CC agrees to allow the collateral real estate mortgage in place, and it will not request a release of said mortgage (as is provided by NDCC §35-03-17) until such time as said site inspection occurs which verifies the completion of the Replacement Clubhouse and Facilities. Oxbow CC will accept the Clubhouse Relocation/Replacement Payment in full and complete satisfaction of any and all obligations by Water Resource District, the Metro Flood Diversion Authority or any of its member-entities, with respect to the relocation or replacement of the clubhouse, swimming pool and related amenities. Oxbow CC will bear any and all

risks associated with construction delays, cost overruns, losses due to fire, theft or other destruction, and any and all other risks.

4. Golf course architect. Oxbow CC has, with the consent of the Water Resource District, entered into an engagement contract with Robert Trent Jones III golf course architects for architecture services for the design and construction of the replacement golf holes and for the remodeling or redesign of the remaining existing holes (to connect said holes with the replacement golf holes). Said engagement contract was entered into as of the ___ day of ____, 2014. The Water Resource District has agreed, and does agree herein, to pay in a timely manner funds to Oxbow CC for payment to said architecture firm as may be the obligations of Oxbow CC pursuant to said engagement contract. Oxbow CC will be responsible for the cost of any change orders, unless such change orders are otherwise approved by the Water Resource District. The Water Resource District will not have any contractual relationship with, and will not have any obligations regarding, Robert Trent Jones III or any other architects, consultants, subconsultants, subcontractors, or any other parties regarding the design and construction of the replacement golf holes or regarding the remodeling or redesign of the remaining existing holes, other than the obligation to make payment to Oxbow CC as set forth above.

5. Golf course construction costs. Oxbow CC has, with the consent of the Water Resource District, entered into a contract with Landscapes Unlimited for the construction of the replacement golf holes and for all construction work associated with the remodeling or redesign of the remaining existing holes to allow the remaining existing holes to connect with the replacement golf holes as contemplated by the golf course architect engaged by Oxbow CC. Said construction contract was entered into as of the ___ day of ____, 2014. The Water Resource District has agreed, and hereby does agree, to advance funds to Oxbow CC to pay the contractor, Landscapes Unlimited, [hereinafter referred to as the "Golf Course Construction Contractor"] as may be the obligation of Oxbow CC pursuant to said contract. 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. To the extent a

change order is required that is within the scope of the construction contract but may result in the total gross dollar value of the construction contract being exceeded, the project manager for the Water Resource District shall be authorized to approve said change order.

- A. Golf Course Construction Payment Schedule. As the Golf Course Construction Contractor submits payment requests to Oxbow CC, and as Oxbow CC approves and authorizes the requests, Oxbow CC will submit written requests for payment to the Water Resource District to seek reimbursement of all amounts due the Golf Course Construction Contractor. If, in the opinion of Oxbow CC the Golf course Construction Contractor has made adequate and timely progress, the District will remit the requested amount to Oxbow CC for payment to the golf Course Construction Contractor. The Water Resource District shall make said payments to the Oxbow CC within 30 days of the date such written requests are submitted by Oxbow CC.

 - B. Additional Construction Items. In addition to the construction work covered by the Landscapes Unlimited contract, the Water Resource District has agreed and hereby does agree, to advance funds to cover the following costs of the golf course construction items which are not within the Landscapes Unlimited contract:
 - 1. Design and construction of golf course bridges;
 - 2. Design and construction of pump house, enclosure, slab, (pump, piping, related mechanical and electrical by others) for irrigation;
 - 3. Engineering costs (owner's items) excluded from Landscapes Unlimited contract.

 - C. Existing Costs. To the extent that Oxbow CC has incurred any expense for such golf course construction costs to date, the Water Resource District agrees to reimburse Oxbow CC for such expense.
6. Project management. The Water Resource District shall reimburse Oxbow CC for the cost of engaging a project manager to oversee and manage the golf course construction project, the clubhouse (including swimming pool and other amenities related to the clubhouse and swimming pool) construction project over a period of up to 24 months at a cost not to exceed \$315,000. The Water Resource District will not have any contractual relationship with, and will not have any obligations regarding, any project manager retained by Oxbow CC.

7. Clubhouse Site Work. The parties recognize that clubhouse site work will be necessary before commencement of construction of the replacement clubhouse. The architect for Oxbow CC will provide a rough grading plan to Oxbow CC and Oxbow CC will be responsible for making arrangements for a contractor to provide the site work in accordance with the rough grading plan, the actual cost of which is to be borne by the Water Resource District.
8. Soil Testing. The parties recognize that soil testing and analysis will be necessary upon completion of said site work. The Water Resource District will be responsible for reimbursement to Oxbow CC for all actual costs associated with said soil testing and analysis. In the event that such analysis requires that additional site work be completed before construction of the replacement can be commenced, the Water Resource District shall be responsible for the actual costs of such additional site work.
9. Coordination of Construction and Relocation. The planning for staged construction of the OHB Levee Project is intended to provide sufficient time for the golf course replacement holes to be constructed, for golf course turf to be sufficiently established and for reconfiguration of the remaining, existing holes to be completed and such turf sufficiently established before use of the severed golf holes (the "wet holes") must be abandoned as a result of the construction of the OHB levee. Similarly, such planning is also intended to provide sufficient time for the replacement clubhouse, swimming pool and related amenities to be constructed and ready for occupancy and use before the existing clubhouse and surrounding facilities must be vacated and demolished to accommodate construction of the OHB levee. The parties recognize; however, that despite the best efforts of all concerned, plans and schedules will vary. In this regard, the Water Resource District will endeavor, in good faith, to coordinate construction of the OHB Levee Project so as to minimize the interruption of business of Oxbow CC. Oxbow CC acknowledges and agrees, as well, that it will endeavor, in good faith, to complete the construction of its clubhouse, the construction of its golf course replacement holes and reconfiguration of the remaining, existing holes in a timely manner so that occupancy of the new clubhouse may be accomplished with a minimum of interruption to Oxbow CC's business. The timeline for phasing of construction, occupancy, use of land and conveyance of ownership is as follows:
 - A. Grow-in of the Replacement Golf Holes will occur through 2015 and early 2016 with the expectation that the holes will be ready for play by July 4, 2016.
 - B. Construction by Oxbow CC of their replacement clubhouse, swimming pool

and related amenities will be complete and Oxbow CC will commence occupancy of the same no later than July 4, 2016 and further use by Oxbow CC of the existing clubhouse shall be governed by the lease of said premises. Oxbow CC will be allowed to continue the use and occupancy of the Existing Seven Golf Holes Lot, less such area that is identified and reserved for use by the Water Resource District for purposes of construction of the OHB Levee Project, from and after July 4, 2016, during the “Interim Golf Hole Period” as described below.

- C. Work Package 43C includes construction of a levee from the northeasterly corner of the city of Oxbow generally along what is now Schnell Drive, extending through the existing Oxbow CC clubhouse, practice green area and continuing to extend in a southerly direction to tie into the northernmost reach of the portion of the levee constructed in summer 2014. [Referred to herein as the “Work Package 43C Levee”]. The Work Package 43C Levee is to be constructed commencing on or after July 5, 2016.
- D. Occupancy by Oxbow CC of the Existing Clubhouse Lot and of the Existing Seven Holes Lot will be governed by separate lease agreements, as referred to in paragraph 1 above.
- E. During the period beginning on or about July 4, 2016 and the time when the work is completed to reconfigure the remaining existing golf holes and the tie-in work is completed on the northeastern-most existing golf hole (i.e. existing hole #10), the parties expect that Oxbow CC will use (a) the Replacement Golf Holes, (b) the existing seven holes (the “Existing Seven Golf Holes Lot”) and (c) two holes from the remaining existing holes to comprise the 18-hole golf course they will play. This interim period shall be referred to as the “Interim Golf Course Period” and the configuration of the holes as such shall be referred to as the “Interim Golf Course Configuration”. The Water Resource District will establish, at its expense, an asphalt-paved cart path that will connect the Replacement Golf Holes Lot with the existing seven holes and will establish a temporary point of access over the levee at an appropriate slope and grade to allow carts and maintenance vehicles to gain access (ingress and egress) to the said existing seven holes.
- F. In the event that action or inaction by the Water Resource District in constructing the OHB levee does not allow Oxbow CC to fully function during the re-construction phase of the Project, the Water Resource District shall provide funds to reimburse Oxbow CC for the loss of revenue. “Action or inaction by the Water Resource District” shall not include delays caused by

weather-related events or other acts of God or delays caused by the act or failure to act by Oxbow CC.

10. Timing of conveyance—golf holes. The Replacement Golf Hole Lot will be conveyed to Oxbow CC, as provided in paragraph 1 above at a closing date in June, 2016, to be agreed by the parties in order to accommodate the intended schedule as set forth in paragraph 9 above.
11. Site inspection—functionally equivalent clubhouse, swimming pool and related amenities. Oxbow CC is obligated to construct replacement golf holes, to reconfigure the remaining, existing golf holes and to construct a functionally replacement clubhouse, swimming pool and related amenities as provided herein—identified herein as the “Replacement Clubhouse and Facilities”. Oxbow CC will allow access to the Water Resource District and its designees for the purpose of inspection and verification of said obligation. Upon completion of this inspection and verification, which shall be completed in a reasonable time frame, the restrictions on use of the Clubhouse Relocation/Replacement Funds as described in paragraph 3 above shall be released, the remaining funds in the said segregated account shall be the unencumbered property of Oxbow CC and may be transferred to any account of Oxbow CC’s choosing, the security interest shall terminate and the mortgage shall be deemed released and satisfied. The Water Resource District shall execute and record such instruments necessary to effect such termination and release.
12. Moving and relocation costs. The Water Resource District will bear the cost of, or reimburse Oxbow CC for, the actual costs of moving personal property of Oxbow CC from the existing clubhouse, pool and related amenities to the replacement clubhouse, pool and related amenities as required by law. The Water Resource District will also bear the costs of any other relocation assistance as required by law.
13. Contingency. This agreement and the obligations of the Water Resource District hereunder are contingent upon the Water Resource District obtaining marketable record title to all real property to which the Water Resource District is obligated to convey or transfer to Oxbow CC. This contingency shall be for the benefit of the Water Resource District and shall remain in effect as to all parcels or any individual parcel until such time as it is either waived in writing by the Water Resource District or until the closing of the transfer or conveyance of any such parcel to Oxbow CC.
14. Forbearance or Waiver. The failure or delay of either party to insist on the timely

performance of any of the terms of this Agreement, or the waiver of any particular breach of any of the terms of this Agreement, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred.

15. **Survival.** The terms of this Agreement will survive the closing of the purchase of the Clubhouse Lot and the closing of the Replacement Golf Hole Lots.
16. **Assignment.** The Water Resource District may assign this agreement to the Metro Flood Diversion Authority or to any of the member entities of the Metro Flood Diversion Authority; however, otherwise, neither party will transfer or assign this Agreement or any rights or obligations under this Agreement without the express written consent of the other party.
17. **Governing Law.** This Agreement will be construed and enforced in accordance with North Dakota law. The parties agree that any litigation arising out of this Agreement will be venued in Cass County, North Dakota, and the parties waive any objection to venue or personal jurisdiction.
18. **Severability.** If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or in unenforceable, that portion will be deemed severed from this Agreement, and all remaining terms and provisions of this Agreement will remain binding and enforceable.
19. **Entire Agreement.** This Agreement, together with the relevant closing documents, interim agreements, construction agreements, relocation assistance documents, as well as any deeds, and including any amendments to those documents, constitutes the entire agreement between the parties regarding the matters described in this Agreement, and this agreement supersedes any previous oral or written discussions or agreements between the parties.
20. **Modifications.** Any modifications or amendments of this Agreement must be in writing and signed by both parties to this Agreement.
21. **Binding Effect.** The covenants, terms, conditions, provisions, and undertakings in this Agreement, or in any amendment, will be binding upon the parties' successors and assigns.
22. **Cooperation.** The parties agree to cooperate fully, to execute any and all additional documents, and to take any and all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent

of this Agreement and to accomplish the purposes of this Agreement. The parties recognize and agree that the Water Resource District may designate an agent for review, verification and authorization of payment requests on its behalf and Oxbow CC will cooperate with the Water Resource District and its designee for such review and approval process.

23. Headings. Headings in this Agreement are for convenience only and will not be used to interpret or construe its provisions.
24. Effective Date. This Agreement shall be effective as of the date last executed by the parties below.

[Remainder of this page intentionally left blank]


CASS COUNTY JOINT WATER RESOURCE DISTRICT

DATED: 1/8/15

By: Mark Brodshanz, Chairman

OXBOW GOLF AND COUNTRY CLUB, a
North Dakota nonprofit corporation

DATED: 12/31/14

By: 
Chris Holland, its President