

METRO FLOOD DIVERSION PROJECT
RIGHT OF ENTRY AGREEMENTS

SUGGESTED MOTION:

Move to authorize the U.S. Army Corps of Engineers and Cass County Joint Water Resource District and their contractors and consultants access to county-owned properties to conduct surveys and testing of land needed as part of the Metro Flood Diversion Project, and authorize the County Administrator to sign all future Right of Entry Agreements on behalf of Cass County.



RECEIVED
CASS COUNTY COMMISSION

AUG - 2 2016

July 25, 2016

Cass County
Joint Water
Resource
District

Cass County Flood Property
P.O. Box 2806
Fargo, ND 58108-2806

Greetings:

RE: Metro Flood Diversion Project – Right of Entry

Mark Brodshaug
Chairman
West Fargo, North Dakota

Rodger Olson
Manager
Leonard, North Dakota

Dan Jacobson
Manager
West Fargo, North Dakota

Ken Lougheed
Manager
Gardner, North Dakota

Jake Gust
Manager
Fargo, North Dakota

The Cass County Joint Water Resource District (the "District"), in cooperation with the U.S. Army Corps of Engineers (the "Corps"), is seeking access to your property. Access to your property is necessary to conduct surveys and testing required to design the flood control and protection project that includes a diversion channel and related structures. The surveys currently planned through the end of 2018, that may impact property you own, include environmental surveys, cultural surveys, geotechnical surveys, land surveys, and wetland surveys.

Enclosed is a Right of Entry Agreement that will allow the District, the Corps, and their agents to access your property to conduct the surveys identified above. The District is asking that you sign the Right of Entry Agreement to allow the District, the Corps, and/or their agents to enter your property and complete the necessary survey work. The property covered by the enclosed Agreement is identified by the county tax identification number and by a map attached to the Agreement. After you have signed and returned the Agreement in the enclosed self-addressed stamped envelope, the District will sign it and a copy of the fully signed document will be sent to you. Signing the enclosed Agreement does not impact the process that will take place if acquiring your property becomes necessary for the Diversion Project.

Everyone accessing your property will be instructed to contact you before entering the property. The Right of Entry Agreement includes a place for you to include your phone number and an e-mail address. Please notify us if the contact information changes. Any individual accessing your property will have proper identification and be able to provide a letter indicating their scope of work and that they are working on behalf of a sponsor of the project. All individuals on your property will be respectful to you and your property. Although crop damage is unlikely, the District agrees to pay for any crop damages brought to the District's attention that were caused by those entering your property to do surveys.

If you have any questions concerning this request, please feel free to contact us at 701-298-2381.

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT

Carol Harbeke Lewis
Secretary-Treasurer

Carol Harbeke Lewis
Secretary-Treasurer
1201 Main Avenue West
West Fargo, ND 58078-1301

701-298-2381
FAX 701-298-2397
wrд@casscountynd.gov
casscountygov.com

Enclosures

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT, is made this _____ day of _____, 2016, by and between the Cass County Joint Water Resource District, a North Dakota political subdivision (the "District"); and the undersigned owner of certain real property in Cass County, North Dakota (the "Landowner").

RECITALS

A. The United States Army Corps of Engineers (the "Corps") and a joint powers entity called The Diversion Authority are currently in the process of designing and analyzing a permanent flood control and protection project that includes a diversion channel to reduce flood damages and risks for the region. To complete the design, the Corps, The Diversion Authority, and their contractors must have opportunities to enter upon certain parcels of real property to determine which parcels are suited for the construction of various features and components of the flood control project.

B. The District is the North Dakota entity responsible for seeking and obtaining access to parcels in North Dakota necessary for various project features and components.

C. Landowner agrees to grant the District, its officers, employees, contractors, consultants, representatives, and agents, including, but not limited to, employees of the Corps, access to and entry upon certain real property owned by Landowner, subject to the terms of this Agreement.

In consideration of the parties' mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

AGREEMENT

1. **Access.** Landowner grants to the District, and its officers, employees, consultants, contractors, agents, and representatives - including employees, contractors, agents, and designees of the Corps - access and right-of-way in, on, over, through, and across real property located in North Dakota, identified as Cass County Parcel Number 57-0000-10201-020 (the "Property"). Attached as **Exhibit A** is a map showing the boundaries of the Property. The District's temporary rights under this Agreement include the right to enter upon and occupy the Property to conduct surveys and examinations for environmental, geotechnical, cultural, and mapping purposes. The District's temporary rights include the right to conduct soil borings.

2. **Term.** The rights and privileges granted under this Agreement will begin immediately and will continue until the District completes the tasks identified in Section 1 above, but no later than December 31, 2018.

Cass County Joint Water Resource District
Right of Entry Agreement
Object ID# 9390

3. **Condition of the Property.** The District will return the Property as nearly as practicable to its original condition. The District will pay Landowner, or Landowner's tenant, a reasonable amount for any damage to growing crops caused by access conducted pursuant to this Agreement. The District agrees to indemnify and hold Landowner harmless from any and all claims, damages, or losses to the Property caused by the District's negligence on the Property.

4. **Governing Law.** This Agreement will be governed and enforced in accordance with North Dakota law. The parties agree the venue for any litigation arising out of this Agreement will be in State District Court within the State of North Dakota, and the parties waive any objection to personal jurisdiction. If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining terms and provisions of this Agreement will remain binding and enforceable.

5. **Entire Agreement.** This Agreement, together with any amendments, constitutes the entire agreement between the parties regarding the matters described in this Agreement, and this Agreement supersedes any previous oral or written agreements between the parties. Any modifications or amendments of this Agreement must be in writing and signed by both parties to this Agreement.

6. **Representation.** The parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this Agreement, and agree they have not been influenced by any representations or statements made by any other parties.

IN WITNESS WHEREOF, the parties executed this Agreement on the date written above.

CASS COUNTY JOINT WATER
RESOURCE DISTRICT

By: _____
Carol Harbeke Lewis
Secretary-Treasurer

*Cass County Joint Water Resource District
Right of Entry Agreement*

Page 3

LANDOWNER

Cass County, North Dakota

By _____
Its _____

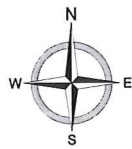
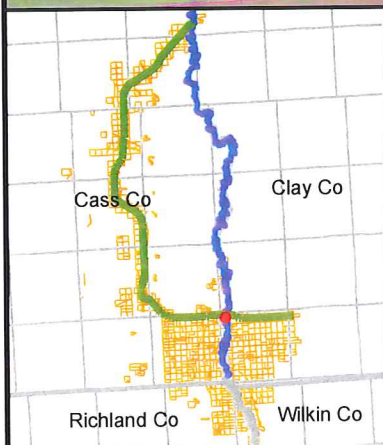
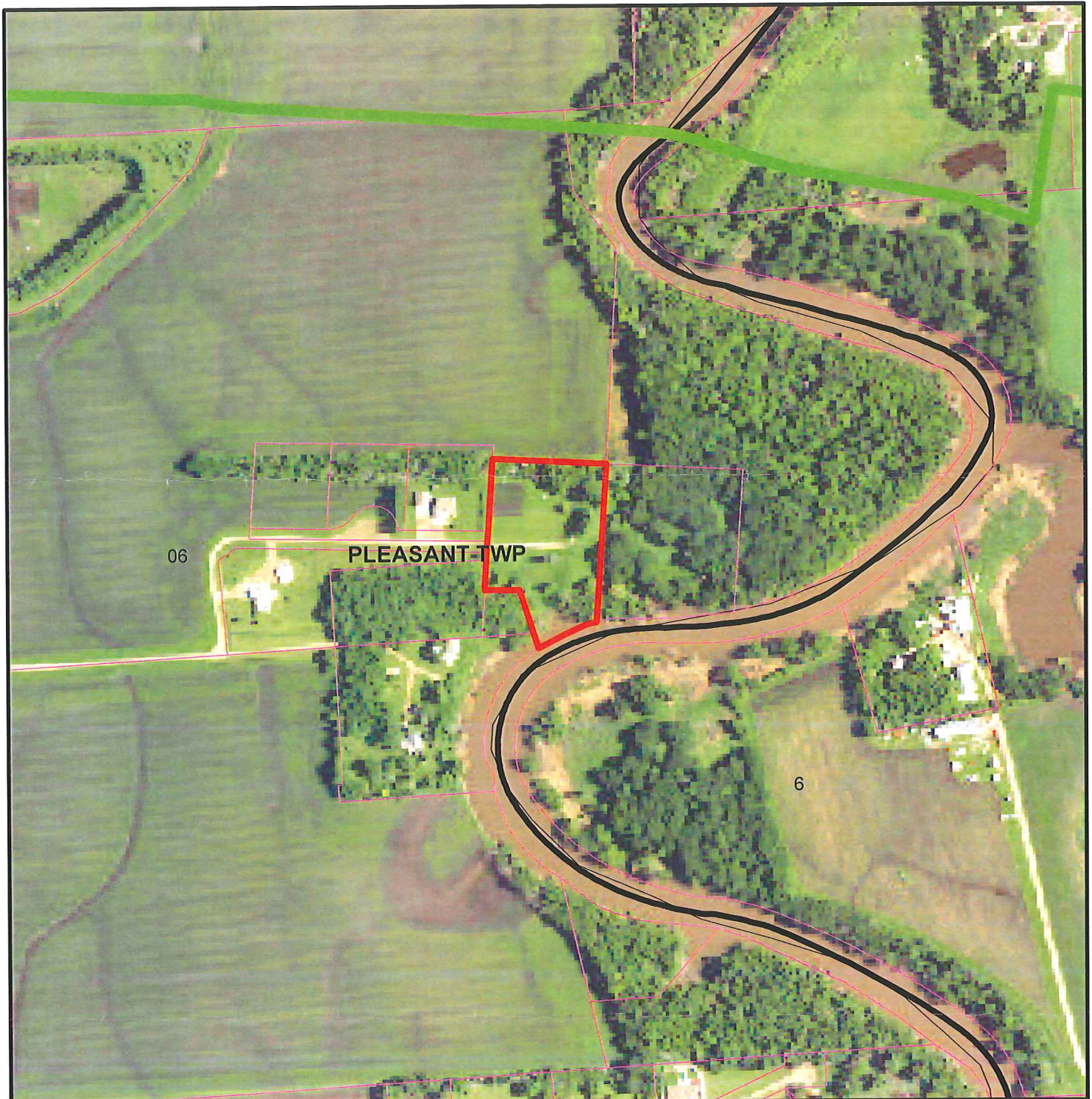
Phone Number

E-mail address

EXHIBIT A

Map of the Property

4



1 inch = 400'

Legend

- Centerline_Alignment_
- ROE parcel
- ROE_02_21_2015

**CASS COUNTY FLOOD PROPERTY,
Parcel # 57-0000-10201-020
Orig_ID 9390**

Created By: GZ Date Created: 2/21/2015
 Aerial Image: 2014 County NAIP SIDS
 Date Exported: 02/21/15
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