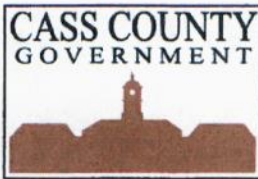


FEB 11 2019



Highway Department

Jason Benson, P.E.
County Engineer

Thomas B. Soucy, P.E.
Deputy County Engineer

Blaine Laaveg
Superintendent

MEMORANDUM

TO: Cass County Commission

FROM: Jason Benson, Cass County Engineer *MB*

DATE: February 11, 2019

SUBJECT: Agenda Item for February 19, 2019 Commission Meeting:
Project CH1904 – 76th Ave S. & Cass Hwy 17
Improvements.

Attached is the updated Joint Powers Agreement for the 76th Ave S. & Cass Hwy 17 Improvements between the City of Horace and Cass County. At the February 4th Commission meeting, the Commission approved a motion to change the funding language from “contribute an amount no less than \$1 million” to “contribute an amount up to \$1 million” and referred the Joint Powers Agreement to the City of Horace for approval.

Following the Commission meeting, Robert Wilson and I attended the Horace City Council meeting. During that meeting I discussed the County Commissions approved motion. They understood Cass County’s concern, however, they felt the language of “contribute an amount up to \$1 million” left them exposed to the potential that Cass County could pay less than \$1 million.

The City Council approved a motion to change the language that the County would “contribute One Million Dollars (\$1,000,000) to the Project”. I feel the language approved by the Horace City Council is reasonable. We know the roundabout project will cost between \$1.5-\$1.8 million, so there isn’t any chances that the County’s \$1 million would be paid to Horace and used for other projects.

SUGGESTED MOTION: Authorize chairperson to sign the Joint Powers Agreement approved by the City of Horace on February 4th for the 76th Ave S. & Cass Hwy 17 Improvements between the City of Horace and Cass County for project CH1904.

1201 Main Avenue West
West Fargo, North Dakota
58078-1301

701-298-2370
Fax: 701-298-2395

JAN 28 2019



MEMORANDUM

**Highway
Department**

Jason Benson, P.E.
County Engineer

Thomas B. Soucy, P.E.
Deputy County Engineer

Blaine Laaveg
Superintendent

TO: Cass County Commission

FROM: Jason Benson, Cass County Engineer

DATE: January 25, 2019 *JMB*

SUBJECT: Consent Agenda Item for February 4th, 2019 Commission Meeting: Project CH1904 – 76th Ave S. & Cass Hwy 17 Improvements.

Attached is the Joint Powers Agreement for the 76th Ave S. & Cass Hwy 17 Improvements between the City of Horace and Cass County.

SUGGESTED MOTION: Authorize chairperson to sign the Joint Powers Agreement, for the 76th Ave S. & Cass Hwy 17 Improvements between the City of Horace and Cass County for project CH1904.

J:\Admin-Eng\Commission Corrsp\2019 Commission Correspondence\Consent Agenda Memo JPA City of Horace Cass Roundabout 76th Ave.docx

1201 Main Avenue West
West Fargo, North Dakota
58078-1301

701-298-2370
Fax: 701-298-2395

- c) Following approval of the design of the Project by the County, administer and construct the Project, including bidding, awarding of contracts, and administration of contracts, in accordance with the design approved by the County.
 - d) Acquire any additional right of way along 76th Avenue necessary for the Project, including the necessary title to all land, easements, and other property interests, as well as any fixtures, equipment, or personal property, as necessary for the Project.
 - e) Provide construction surveying throughout the Project.
 - f) Pay all costs related to the Project not paid by the County.
 - g) Own, operate, maintain, and improve 76th Avenue from the east right-of-way limit of County 17 and continuing to a point approximately one (1) mile east.
 - h) Pay electricity and maintenance costs associated with street lighting on 76th Avenue east of County 17.
 - i) Comply with all applicable laws regarding the City's obligations under this Agreement.
3. **The County's Obligations.** The County will perform the following regarding the Project:
- a) Develop and design the Project, with assistance from the City and its Engineer; cooperate with the City regarding the design of the Project.
 - b) Review the design of the Project.
 - c) Contribute an amount ~~no less than~~ ^{up to} **One Million Dollars (\$1,000,000)** to the Project.
 - d) Own, operate, maintain, and improve County 17 and the newly constructed roundabout.
 - e) Comply with all applicable laws regarding the County's obligations under this Agreement.
4. **Joint Obligations.** The City and the County will share responsibility regarding the following obligations for the Project:
- a) Cooperate regarding the City's obligations to obtain all necessary permits, licenses, registrations, and approvals from all applicable federal, state, and other applicable government entities regarding the Project.
 - b) Cooperate regarding the design of the Project.

The chairwoman opened the public hearing for comments on Abatement #4478 for Mike and Linda Bergh, and hearing none, closed the public hearing.

MOTION, passed

Mr. Steen moved and Mr. Breitling seconded to deny the abatement application for the Mike and Linda Bergh residence and retain the 2018 valuation of \$539,800. On roll call vote, the motion carried unanimously.

8. ABATEMENT HEARING, Denied for The Shoppes at Osgood, LLC/SuperValu

Mr. Fracassi discussed an abatement application submitted by Robert Hill Law, Ltd. representing The Shoppes at Osgood, LLC/SuperValu d/b/a Hornbacher's (#4477) for property located at 4151 45th Street South in Fargo. The applicant is requesting the 2018 valuation of \$6,900,000 be lowered to \$3,306,650.

The City of Fargo denied the abatement application. Mr. Fracassi recommends no adjustment be made to the 2018 value.

The chairwoman opened the public hearing for comments on Abatement #4477 for The Shoppes at Osgood/SuperValu, and hearing none, closed the public hearing.

MOTION, passed

Mr. Breitling moved and Mr. Steen seconded to deny the abatement application for The Shoppes at Osgood, LLC/SuperValu property and retain the 2018 valuation of \$6,900,000. On roll call vote, the motion carried unanimously.

9. ROAD DEPARTMENT, Joint Powers agreement with Horace for 76th Avenue South/County Highway 17 improvements

Jason Benson, County Engineer, said a new middle school and high school will be constructed at the intersection of Cass County Highway 17 and 76th Avenue South north of Horace. The 2019 County Highway budget includes \$1 million for improvements to the intersection, which includes a roundabout. The cost estimate is \$1.3 to \$1.8 million with Cass County and Horace sharing the cost.

For consideration today is a Joint Powers Agreement (JPA) that outlines city, county and joint obligations associated with project development, design, financing, funding, construction, operation, and project maintenance. Horace will pay all costs related to the project not paid by the county; obtain necessary permits, licenses and registrations from other governmental entities; acquire additional right-of-way along 76th Avenue South; provide construction surveying; own, operate, maintain and improve 76th Avenue South from the east right-of-way limit of County 17 to approximately one mile east; and pay electricity and maintenance costs for street lighting on 76th Avenue South east of County 17. Cass County will develop and design the project; contribute an amount no less than \$1 million; and own, operate, maintain and improve County 17 and the newly constructed roundabout.

Mr. Steen said the commission previously agreed to provide funding at a cost not to exceed \$1 million and would like the JPA to reflect that language rather than "no less than \$1 million".

Mr. Benson and County Administrator Robert Wilson will attend the Horace City Council meeting tonight to clarify any issues regarding the project and the JPA.

MOTION, passed

Mr. Breitling moved and Mr. Peterson seconded to change the language in Section 3 "The County's Obligations" of the Joint Powers Agreement between Cass County and the City of Horace for 76th Avenue South and Cass County Highway 17 intersection improvements from "contribute an amount no less than \$1 million" to "contribute an amount up to \$1 million"; and to refer the Joint Powers Agreement to the City of Horace for approval. On roll call vote, the motion carried unanimously.

JOINT POWERS AGREEMENT

BY AND BETWEEN

CITY OF HORACE, NORTH DAKOTA

AND

CASS COUNTY, NORTH DAKOTA

Dated as of _____, 2019

Relating to:

76th Avenue South and Cass County Highway 17 Improvements

This instrument was drafted by:
Ohnstad Twichell, P.C.
Lukas W. Croaker
P.O. Box 458
West Fargo, North Dakota 58078

JOINT POWERS AGREEMENT

THIS JOINT POWERS AGREEMENT (the “Agreement”) is made and entered into this day of _____, 2019, (the “Effective Date”), by and between the City of Horace, a North Dakota political subdivision (the “City”); and Cass County, a political subdivision and Home Rule County of North Dakota (the “County”) (collectively, the “parties”).

WHEREAS, the City, in an effort to promote safe and efficient travel, desires to construct improvements to 76th Avenue South (“76th Avenue”) including a roundabout on Cass County Highway 17 (“County 17”); and

WHEREAS, the City owns, operates, maintains, improves, and has the authority to reconstruct 76th Avenue east of County 17; and

WHEREAS, the County owns, operates, maintains, improves, and has the authority to reconstruct County 17 and its intersection with 76th Avenue; and

WHEREAS, the City and the County agree that it is in the best interest of both parties to cooperate together to reconstruct and improve portions of County 17 and 76th Avenue to promote safe and efficient travel for the residents of the City of Horace and those traveling on the respective road systems; and

WHEREAS, under N.D.C.C. § 54-40.3-01, the City and the County have the authority to enter into joint powers agreements to provide for the cooperative administration of a project, and the parties desire to enter into this Agreement to provide the parties’ duties and obligations regarding the development, design, financing, funding, construction, operation, and maintenance of the road improvement project.

NOW THEREFORE, in consideration of the 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:

1. **Purpose.** The purpose of this project is to promote the safe and efficient travel of residents in the City of Horace. The City and the County desire to cooperate in the joint development, design, financing, funding, and construction of a roundabout located at the intersection of County 17 and 76th Avenue and to reconstruct and improve portions of 76th Avenue by paving the street and adding additional lanes to increase traffic flow (the “Project”). The parties agree the Project is necessary to ensure the efficient control of traffic along County 17 and 76th Avenue.
2. **The City’s Obligations.** The City will perform the following regarding the Project:
 - a) Assist the County with development and design of the Project, subject to approval by the County.
 - b) Obtain all necessary permits, licenses, registrations, and approvals from all applicable federal, state, and other applicable government entities regarding the Project.

- c) Following approval of the design of the Project by the County, administer and construct the Project, including bidding, awarding of contracts, and administration of contracts, in accordance with the design approved by the County.
 - d) Acquire any additional right of way along 76th Avenue necessary for the Project, including the necessary title to all land, easements, and other property interests, as well as any fixtures, equipment, or personal property, as necessary for the Project.
 - e) Provide construction surveying throughout the Project.
 - f) Pay all costs related to the Project not paid by the County.
 - g) Own, operate, maintain, and improve 76th Avenue from the east right-of-way limit of County 17 and continuing to a point approximately one (1) mile east.
 - h) Pay electricity and maintenance costs associated with street lighting on 76th Avenue east of County 17.
 - i) Comply with all applicable laws regarding the City's obligations under this Agreement.
3. **The County's Obligations.** The County will perform the following regarding the Project:
- a) Develop and design the Project, with assistance from the City and its Engineer; cooperate with the City regarding the design of the Project.
 - b) Review the design of the Project.
 - c) Contribute **One Million Dollars (\$1,000,000)** to the Project.
 - d) Own, operate, maintain, and improve County 17 and the newly constructed roundabout.
 - e) Comply with all applicable laws regarding the County's obligations under this Agreement.
4. **Joint Obligations.** The City and the County will share responsibility regarding the following obligations for the Project:
- a) Cooperate regarding the City's obligations to obtain all necessary permits, licenses, registrations, and approvals from all applicable federal, state, and other applicable government entities regarding the Project.
 - b) Cooperate regarding the design of the Project.

- c) Execute other reasonable documents and agreements as necessary to accomplish the objectives of this Agreement.
 - d) Provide each other with reasonable assistance as necessary or as requested in the performance of the parties' obligations under this Agreement.
 - e) Mutually agree which party will be responsible for any other obligations regarding the Project not identified in this Agreement.
 - f) The County will pay electricity costs for street lights along County 17 and the proposed roundabout. The City will pay maintenance costs for street lights along County 17 and the proposed roundabout, so long as County 17 is under the authority of the County.
5. **Project Access Rights.** Portions of the Project are located on property owned by the City and the County. Under this Agreement, the County grants and conveys to the City a non-exclusive license over the County's right of way for purposes of constructing the roundabout and related improvements at the intersection of County 17 and 76th Avenue on property identified in **Exhibit A** (the "License Property"). The County will continue to own the License Property; the access rights granted to the City by the County for purposes of the Project under this Agreement constitute a license, revocable by the County for cause and the license does not create for or on behalf of the City any interest or estate of any kind in the License Property, either by virtue of this Agreement or by the City's entry upon or use of the License Property. The City's access rights are limited to access, ingress and egress rights upon, over, and across the License Property, including the right to construct the Project.
6. **Ownership.** The County will continue to own, operate, maintain, and have the authority to reconstruct and improve County 17 until such time as the City reaches a population of five thousand (5,000) residents and the parties reach a written agreement evidencing a transfer in ownership. Upon completion of construction, the County will assume ownership, operation, maintenance, and have the authority to reconstruct and improve the roundabout constructed at the intersection of County 17 and 76th Avenue. Additionally, the County will continue to own, operate, maintain, and have the authority to reconstruct and improve 76th Avenue west of County 17, unless the parties agree to transfer ownership to the City, evidenced in writing with both parties agreeing to the transfer. The City will continue to own, operate, maintain, and have the authority to reconstruct and improve 76th Avenue east of County 17 to the city limits of the City of Fargo.
7. **Consultant Costs.** Each party will be responsible for paying its own consultants regarding its various obligations under this Agreement as follows:
- a) The City will pay the costs associated with construction survey consultant work.
 - b) The County will pay the costs associated with material testing consultant work.

8. **City Indemnity.** The City will release, defend, indemnify, protect, and hold harmless the County and the County's officers, agents, representatives, employees, consultants, and contractors from and against any and all claims, actions, administrative proceedings, judgments, damages, penalties, fines, costs, liabilities, interests, or losses, including costs, expenses, and attorneys' fees, arising out of or as a result of the use, operation, construction, reconstruction, repair, maintenance, modification, replacement, and improvement of the Project or the License Property by the City or the City's officers, agents, representatives, employees, consultants, or contractors, or any of the City's other invitees; any entry upon, use of, or access, ingress, and egress upon, over, or across the License Property by the City or the City's officers, agents, representatives, employees, consultants, and contractors, or any of the City's other invitees; or any act, error, or omission of the City or the City's officers, agents, representatives, employees, consultants, contractors, or any of the City's other invitees, including any failure to perform under this Agreement.

9. **County Indemnity.** The County will release, defend, indemnify, protect, and hold harmless the City and the City's officers, agents, representatives, employees, consultants, and contractors from and against any and all claims, actions, administrative proceedings, judgments, damages, penalties, fines, costs, liabilities, interests, or losses, including costs, expenses, and attorneys' fees, arising out of or as a result of the use, operation, construction, reconstruction, repair, maintenance, modification, replacement, and improvement of the Project by the County or the County's officers, agents, representatives, employees, consultants, or contractors, or any of the County's other invitees; or any act, error, or omission of the County or the County's officers, agents, representatives, employees, consultants, contractors, or any of the County's other invitees, including any failure to perform under this Agreement.

10. **Contractor Indemnity.** All of the City's and the County's contracts with any contractors performing any design, construction, cleaning, inspection, reconstruction, modification, operation, maintenance, repair, or improvement of the Project will require each contractor to release, defend, indemnify, and hold harmless the City, the County, and those parties' officers, employees, agents, consultants, subcontractors, and representatives, from and against any and all claims, losses, liabilities, damages, expenses, demands, suits, fines, judgments, costs, expenses, and fees (including all fees and charges of attorneys, engineers, and other professionals and all court, arbitration, mediation, or other resolution costs) arising out of or relating to any act or omission of any contractor regarding any design, construction, cleaning, inspection, reconstruction, modification, operation, maintenance, repair, or improvement of the Project, including all costs, expenses, and fees incurred by the City, and the County in establishing and litigating the existence, scope, or any other matters relating to each contractor's obligations to release, defend, indemnify, and hold harmless. Those contractors' obligations to defend will be free of any conflicts of interest, even if retention of separate legal counsel is necessary.

11. **Insurance.** Before permitting any contractor to commence construction of the Project, the City will require each contractor to deliver to the City copies of the insurance policies and endorsements naming the City and the County as additional insureds, and will otherwise ensure all requisite evidence that the insurance is in full force and effect. All contracts with any contractors will require each contractor to provide insurance policies and endorsements in accordance with NDDOT requirements.
12. **Term.** The parties' respective rights and obligations under this Agreement will commence upon its execution, and may terminate if necessary to comply with any laws, rules, regulations, requirements, or directives of the State of North Dakota, or any other federal or state agency with regulatory jurisdiction; or upon completion of construction of the Project; or in the event of an uncured default by the City or the County; or if terminated sooner by either party.
13. **Termination.** Either party may terminate this Agreement upon six (6) months' written notice to the other party.
14. **Forbearance.** The failure or delay of any 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. **Severability.** If any Court of competent jurisdiction declares any provision or part of this Agreement invalid or unenforceable, all remaining terms and provisions of this Agreement will remain binding and enforceable; however, the parties will reconvene negotiations and will reform or replace any invalid, illegal, or unenforceable provision or portion of this Agreement with an alternative provision that is enforceable and bears as close resemblance as possible to any provision determined invalid, illegal, or unenforceable.
16. **Successors.** The covenants, terms, conditions, provisions, and undertakings in this Agreement, or in any amendment, will be binding upon the parties' successors and assigns.
17. **Applicable Law.** This Agreement will be construed in accordance with and governed by North Dakota law.
18. **Assignment.** Neither party may transfer or assign this Agreement or any rights or obligations under this Agreement without the express written consent of the other party.
19. **Amendments.** Any modifications or amendments of this Agreement must be in writing and signed by both parties to this Agreement.
20. **Interpretation.** This Agreement will be construed as if prepared by both parties.

21. **Headings.** Headings in this Agreement are for convenience only and will not be used to interpret or construe its provisions.
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.
23. **Counterparts.** This Agreement may be signed in counterparts, meaning that the Agreement is valid if signed by both parties even if the signatures of the parties appear on separate copies of the same Agreement rather than on a single document.
24. **Effective Date.** This Agreement will become effective on the date of execution by the last party to sign.

[Signatures appear on the following pages.]

**CITY:
CITY OF HORACE**

Date: _____, 2019

Kory Peterson, Mayor

ATTEST:

Date: _____, 2019

Vance Kemmer, City Auditor

[Signatures continue on the following page.]

**COUNTY:
CASS COUNTY COMMISSION**

Date: _____, 2019

Mary Scherling, Chairwoman

ATTEST:

Date: _____, 2019

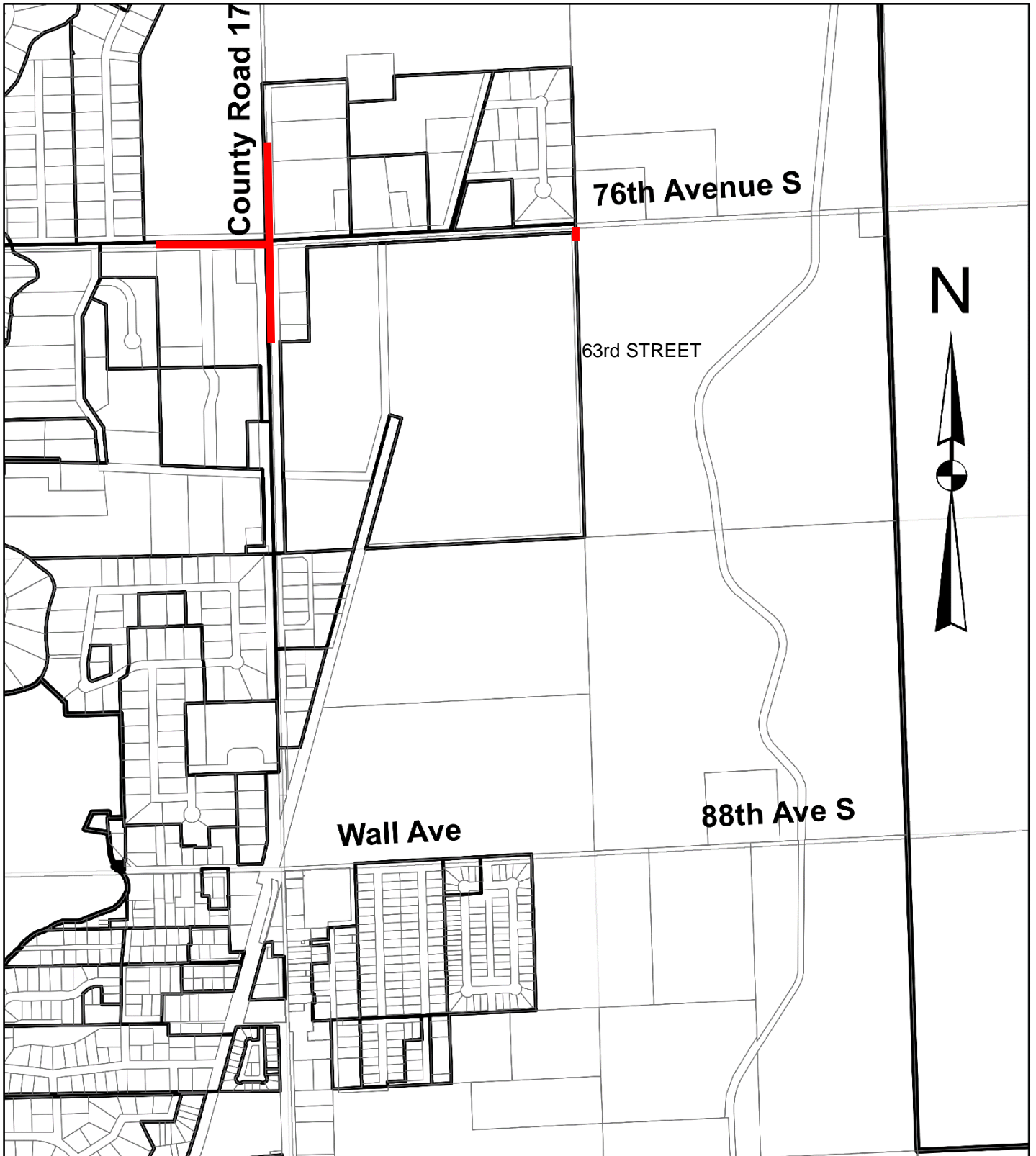
Michael Montplaisir, Cass County Auditor

EXHIBIT A

MAP OF THE LICENSE PROPERTY

76th AVENUE SOUTH
AND CASS COUNTY HIGHWAY 17
IMPROVEMENTS

EXHIBIT A



 PROJECT LOCATION