



Engineering Department

225 4th Street North

Fargo, ND 58102

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www.FargoND.gov

July 24, 2020

RECEIVED
CASS COUNTY COMMISSION

JUL 24 2020

County Commission
Cass County Courthouse
211 9th St. S
Fargo, ND 58103

RE: August 3, 2020 Agenda Item

The City of Fargo is in the final design planning for a North Side Flood Risk Management Levee. This project consists of constructing an earthen levee along the northern edge of Fargo's City limits. Once completed, there will be a continuous line of protection from Cass County Highway 81 (near 64th Avenue N) to University Drive N (near 46th Avenue N). The line of protection utilizes existing levees along the project alignment, which are located at Fargo's wastewater lagoons. The project also includes relocating existing storm sewer lift station #53, within Southeast Cass Water Resource District's Drain 10, from 40th Avenue N to 52nd Avenue N. Additional storm sewer improvements include construction of three gate wells within the line of protection to prevent floodwaters from entering into the protected area. This project has been identified as being necessary to allow the proposed 1% annual chance flood level (37-foot river gage height) to pass through Fargo, without any emergency measures, once the Fargo-Moorhead Diversion Project (Diversion) is completed. Prior to the Diversion being completed, this project will also reduce the need for emergency levees during spring flood events.

Fargo has been working closely with the Cass County Engineer to develop the project design. There will be two County Roads that will be effected by the project, CR 81 and CR 31. Fargo has developed a Memorandum of Understanding document, which is attached. Fargo would request Cass County approve and sign this document. Once signed, please return to this office for signature by the Fargo Mayor.

Thank you.

Sincerely,

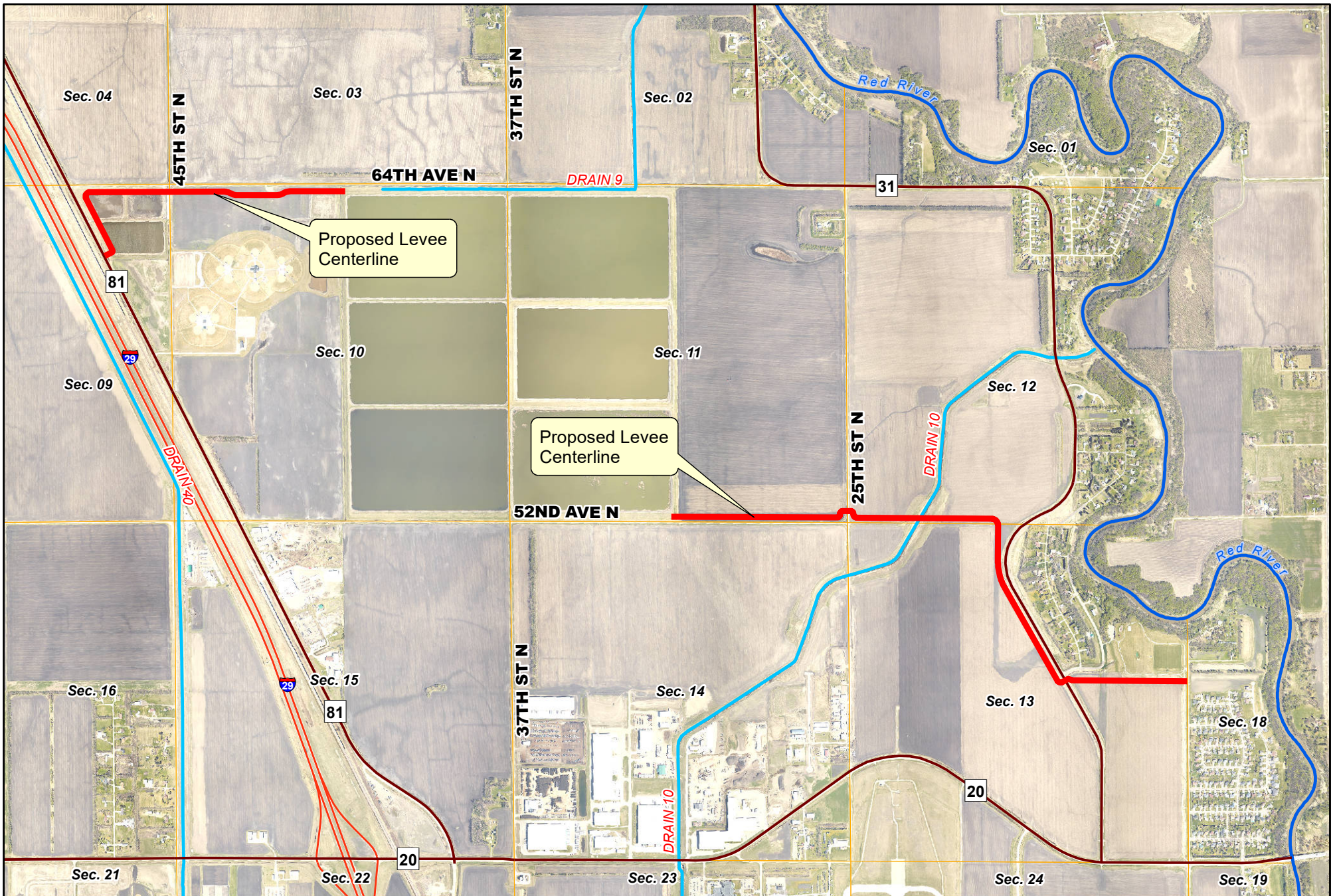
Roger E. Kluck, PE, CFM

Engineer II-Storm Sewer/Floodplain Division

REK/jmg
Attachment

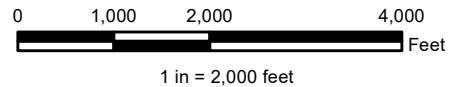
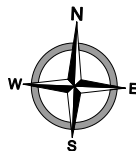
SUGGESTED MOTION:

Move to authorize the chairman to sign the Memorandum of Understanding with the City of Fargo for the North Side Flood Risk Management Levee project.



**EXHIBIT
ALIGNMENT
FARGO, NORTH DAKOTA**

Created By: KMV Date Created: 06/18/20 Date Saved: 07/28/20 Date Exported: 07/28/20
 Plotted By: kyle.volk Parcel Date: N/A Aerial Image: 2017 SIDS Elevation Data: N/A
 Horizontal Datum: Fargo Ground Coordinate System Vertical Datum: NAVD1988
 T:\Projects\19100\19189A\19189A_Alignment_Exhibit.mxd



CONTRACT APPROVAL REQUEST

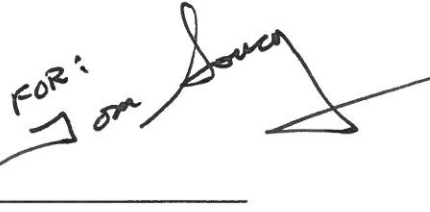
COMPANY REQUESTING CONTRACT:

City of Fargo, 225 4th St. N., Fargo, ND 58102

DATE OF REQUEST: July 27, 2020

DATE OF EXPECTED RETURN TO THE COMMISSION OFFICE: August 3, 2020

DEPARTMENT HEAD REQUESTING SIGNATURE: Jason Benson, 701-298-2372

FOR: 

STATE'S ATTORNEY SIGNATURE: _____

STATE'S ATTORNEY COMMENTS: _____

PORTFOLIO COMMISSIONER SIGNATURE: _____

The City of Fargo is in the final design planning for a North Side Flood Risk Management Levee. This project consists of constructing an earthen levee along the northern edge of Fargo's City limits. Once completed, there will be a continuous line of protection from Cass County Highway 81 (near 64th Avenue N) to University Drive N (near 46th Avenue N). The line of protection utilizes existing levees along the project alignment, which are located at Fargo's wastewater lagoons. The project also includes relocating existing storm sewer lift station #53, within Southeast Cass Water Resource District's Drain 10, from 40th Avenue N to 52nd Avenue N. Additional storm sewer improvements include construction of three gate wells within the line of protection to prevent floodwaters from entering into the protected area. This project has been identified as being necessary to allow the proposed 1% annual chance flood level (37-foot river gage height) to pass through Fargo, without any emergency measures, once the Fargo-Moorhead Diversion Project (Diversion) is completed. Prior to the Diversion being completed, this project will also reduce the need for emergency levees during spring flood events.

Fargo has been working closely with the Cass County Engineer to develop the project design. There will be two County Roads that will be effected by the project, CR 81 and CR 31. Fargo has developed a Memorandum of Understanding document, which is attached. Fargo would request Cass County approve and sign this document. Once signed, please return to this office for signature by the Fargo Mayor.

SUGGESTED MOTION: AUTHORIZE CHAIRPERSON TO MOU WITH THE CITY OF FARGO FOR THE FM16A1 NORTH SIDE FLOOD RISK MANAGEMENT LEVEE MOU STATED ABOVE SUBJECT TO STATE'S ATTORNEYS APPROVAL.

**MEMORANDUM OF UNDERSTANDING
REGARDING RIGHT OF WAY ENCROACHMENT AND ROAD MAINTENANCE**

This Memorandum of Understanding (“MOU”) is entered into between the City of Fargo, a North Dakota municipal corporation whose address is 225 Fourth Street North, Fargo, North Dakota 58102 (“City” or “Fargo”), and Cass County, North Dakota, a North Dakota political subdivision, whose address is 211 9th Street South Fargo, North Dakota 58103 (“Cass County”).

WHEREAS, North Dakota Century Code § 40-05.1-6 and Article 3 of Fargo’s Home Rule Charter authorizes Fargo to enter into contracts; and

WHEREAS, North Dakota Century Code § 11-09.1-05 authorizes the Cass County to enter into contracts; and

WHEREAS, Fargo is undertaking a flood mitigation project to protect its infrastructure from flood waters and the project will impact portions of the right of way of Cass County Highways 31 (CR 31) and 81 (CR 81); and

WHEREAS, Cass County currently owns and maintains both CR 31 and CR 81 and pursuant to the terms of this MOU will allow Fargo to enter into the right of way of both highways for the construction of a levee. The following are the planned flood mitigation project impacts within the CR 31 and CR 81 right of ways:

CR 31: The levee will enter into the CR 31 right of way approximately 100-feet south of the intersection of CR 31 and 48th Avenue N. The levee will cross the entire width of the right of way perpendicular and will require the reconstruction of approximately 26-feet of the CR 31 pavement surface for the inclusion of a concrete sleeper slab. The sleeper slab will produce levee continuity through the right of way crossing to enable levee certification.

CR 81: The levee will perpendicularly enter into CR 81 right of way approximately 1,200 feet south of the intersection of CR 81 and 64th Avenue N. The levee will tie into the existing east shoulder of CR 81 at an elevation of 892.0 (NAVD88), at which point the new levee construction will terminate and not require the removal of any existing road pavement. However, the line of protection created by the levee will utilize the CR81 embankment south of the connection point of 892.0 (NAVD88) down to 40th Avenue N.

Within the CR 81 right of way from the levee tie in point down to 40th Avenue N, there are seven storm water culverts that are crossing underneath CR 81. These culverts will be replaced by the City as part of the flood mitigation project. The replacement culverts will match the existing culverts diameters and invert elevations. The City will install sluice (slide) gates on the west end of each culvert, which Fargo will close during a flood event.

NOW THEREFORE, in consideration of the mutual terms, covenants, conditions, and agreements contained herein, it is hereby agreed by and between the parties as follows:

1. Highways. The parties agree that future maintenance and reconstruction of CR 31 and 81 will be the responsibility of Cass County. Cass County shall coordinate with the City for any maintenance or reconstruction activities that may impact the flood mitigation improvements the City has constructed within the CR 31 and CR 81 right of ways. Cass County will not remove, modify, or lower any of the flood mitigation improvements without prior written consent from Fargo. Cass County shall also not lower the CR 81 road surface south of the flood mitigation levee tie-in point below an elevation of 892.0 (NAVD88) without prior written approval from Fargo.

2. Drainage. Both parties agree that during and after construction of the flood protection project, Fargo will design and construct storm water drainage to maintain pre-project conditions during periods of normal river levels. The parties further agree that during periods of high water on the river, Fargo may need to close the sluice gates installed on all of the replaced culverts that cross underneath CR 81, to block the existing drainage pattern until the river levels recede. Fargo shall notify Cass County a minimum of three calendar days of when the sluice gates are closed and reopened. Fargo shall be responsible for all, inspection, operation and maintenance of the sluice gates, including replacement if any should become inoperable.

If Cass County shall become aware of any damage to a sluice gate, they shall notify Fargo within 30 days of awareness. Cass County will not be responsible for annual inspections of sluice gates. Cass County shall be responsible for the operation and maintenance of the replaced storm water culverts.

3. General Maintenance of Flood Protection Components and Right of Entry. The parties agree that future maintenance and repairs of the levees and sleeper slab within the CR 31 and 81 right of ways will be the responsibility of Fargo and Fargo shall have the ability to enter into Cass County rights of way at any time to complete required maintenance, repairs and inspections.

4. Dispute Resolution.

- a. Fargo and Cass County will each designate a representative who will be the party's representative with respect to any matters relating to the repair and/or maintenance of the elements identified in this MOU, including the flood protection measures, which may be in dispute or requiring agreement under the terms of this Agreement. Such representative may be changed from time to time. The representatives will be responsible for resolving any dispute between the parties concerning this Agreement and for the scheduling of maintenance and repairs.
- b. If the designated representatives cannot agree with respect to any matter requiring agreement or with respect to any dispute concerning this Agreement, the parties will submit the matter to their respective Boards (or a committee established by the Board) to resolve the dispute.

8. Easements. Each party will grant to the other party any and all necessary easements to enable the other party to perform their obligations under the terms of this Agreement.

9. Term. The term of this Agreement will be twenty (20) years, with an expiration date of December 31, 2040. This Agreement will automatically renew for successive periods of twenty (20) years unless terminated by any party. Any party may terminate this Agreement by providing one (1) year written notice to the other party.

10. Release and Waiver. In consideration of the mutual promises of the parties and to the fullest extent permitted by law, each party assumes all risk of personal injury or death and property damage or loss from whatever causes arising while that party, its agents, employees or designees are conducting work pursuant to this MOU and each party releases the other party, its officers, employees, agents or designees relating to or arising out of that parties', agents, employees or designees work pursuant to this MOU, whether known or unknown, foreseen or unforeseen, liquidated, unliquidated, fixed, contingent, material or immaterial, disputed or undisputed, suspected or unsuspected, asserted or unasserted, direct or indirect, at law or in equity, from the beginning of time, and each party understands and acknowledges the significance of such release and waiver and hereby assumes full responsibility for any injuries, damages or losses that it may incur as a result of its execution of this MOU.

11. Notice. Any notice or election required or permitted to be given or served by any party to this MOU upon any other will be deemed given or served in accordance with the provisions of this MOU if said notice or election is (a) delivered personally, or (b) mailed by United States certified mail, return receipt requested, postage prepaid, and in any case properly addressed as follows:

If to Fargo:

City of Fargo
ATTN: City Auditor
Fargo City Hall
225 Fourth Street North
Fargo, ND 58102

If to Cass County:

Cass County
ATTN: Board of County Commissioners
211 9th Street South
Fargo, ND 58103

Each such mailed notice or communication will be deemed to have been given on the date the same is deposited in the United States mail. Each such delivered notice or communication will be deemed to have been given upon the delivery. Any party may change its address for service of notice in the manner specified in this MOU.

12. Time is of the Essence. Time is of the essence of each provision of this entire MOU and of all the conditions thereof.

13. Entire Agreement. This MOU constitutes the entire and complete agreement between the parties and supersedes any prior oral or written agreements between the parties. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions set forth herein, and that no modification of this MOU and no waiver of any of its terms and conditions will be effective unless in writing and duly executed by the parties.

14. Amendments. No amendment, modification, or waiver of any condition, provision or term will be valid or of any effect unless made in writing signed by the party or parties to be bound, or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification or waiver.

15. No Forbearance. The failure or delay of any party to insist on the performance of any of the terms of this MOU, or the waiver of any breach of any of the terms of this MOU, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this MOU, or the right to enforce each and every term of this MOU.

16. Remedies. Except as expressly and specifically stated otherwise, nothing herein will limit the remedies and rights of the parties under and pursuant to this MOU.

17. Binding Effect. All covenants, agreements, warranties and provisions of this MOU will be binding upon and inure to the benefit of the parties and their respective representatives, successors and assigns.

18. Governing Law. This MOU has been made and entered into under the laws of the State of North Dakota, and said laws will control its interpretation. Any litigation arising out of this MOU will be venued in State District Court in Cass County, North Dakota, and the parties waive any objection to venue or personal jurisdiction.

19. Rules of Construction. The parties acknowledge that they have had the opportunity to review this MOU, and that they have an equal bargaining position in this transaction. No rule of construction that would cause any ambiguity in any provision to be construed against the drafter of this document will be operative against any party to this MOU.

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

21. Headings. Headings in this MOU are for convenience only and will not be used to interpret or construe its provisions.

(Signatures appear on the following pages)

Dated this _____ day of August, 2020.

CITY OF FARGO, NORTH DAKOTA, a
municipal corporation

By:

— Dr. Timothy J. Mahoney, M.D., Mayor

ATTEST:

Steve Sprague, City Auditor

Dated this ____ day of August, 2020.

CASS COUNTY, NORTH DAKOTA

Chad M. Peterson, Board Chairman

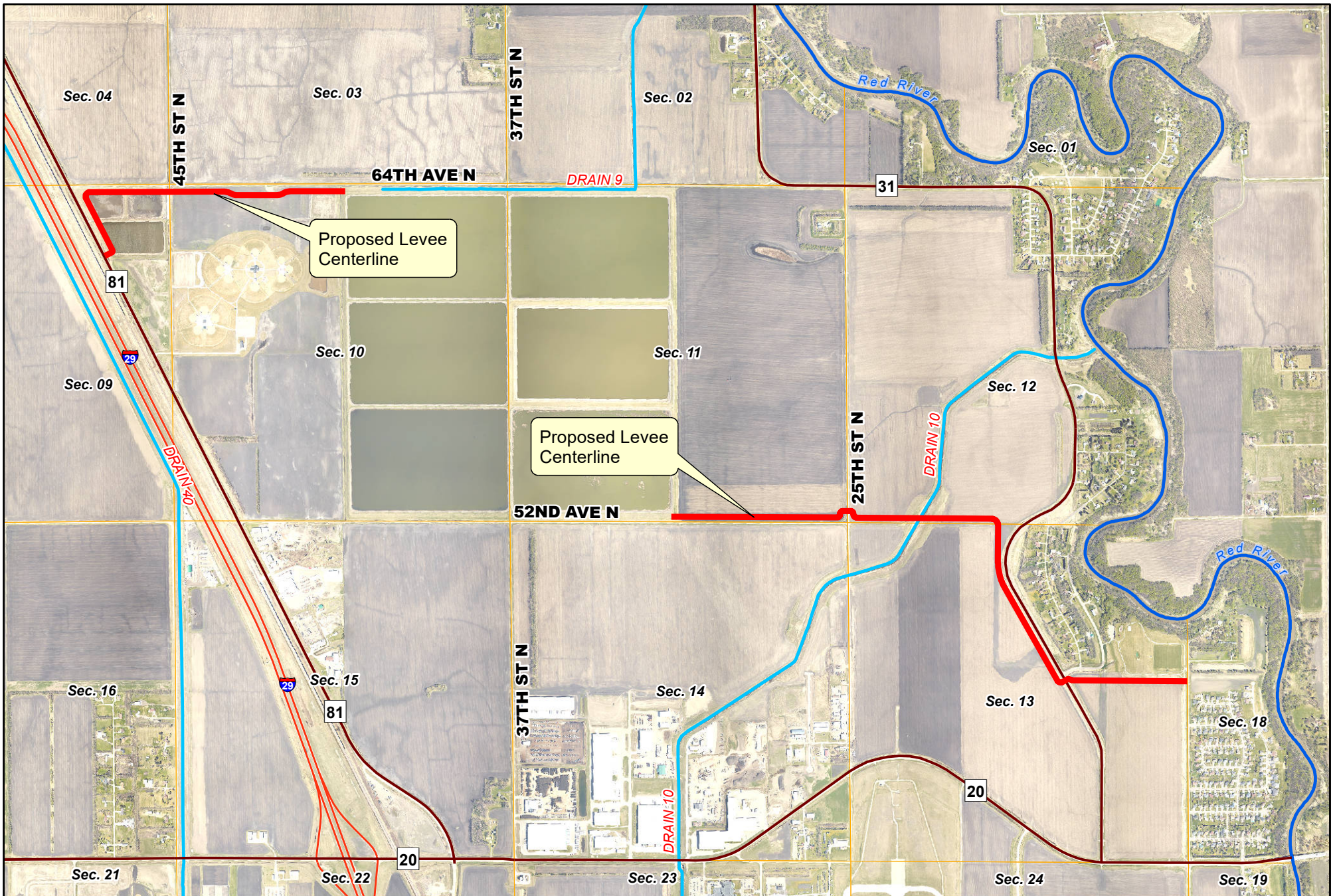
ATTEST:

Mike Montplaisir, Finance Director

Exhibit "A"

Aerial View and Depiction of
North Side Flood Protection Project

[See Attached]



**EXHIBIT
ALIGNMENT
FARGO, NORTH DAKOTA**

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 Plotted By: kyle.volk Parcel Date: N/A Aerial Image: 2017 SIDS Elevation Data: N/A
 Horizontal Datum: Fargo Ground Coordinate System Vertical Datum: NAVD1988
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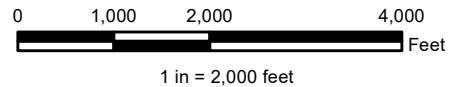
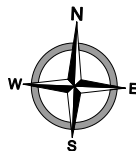


Exhibit "B"

Aerial View and Depiction of
North Side Flood Protection Project CR 31 crossing

[See Attached]

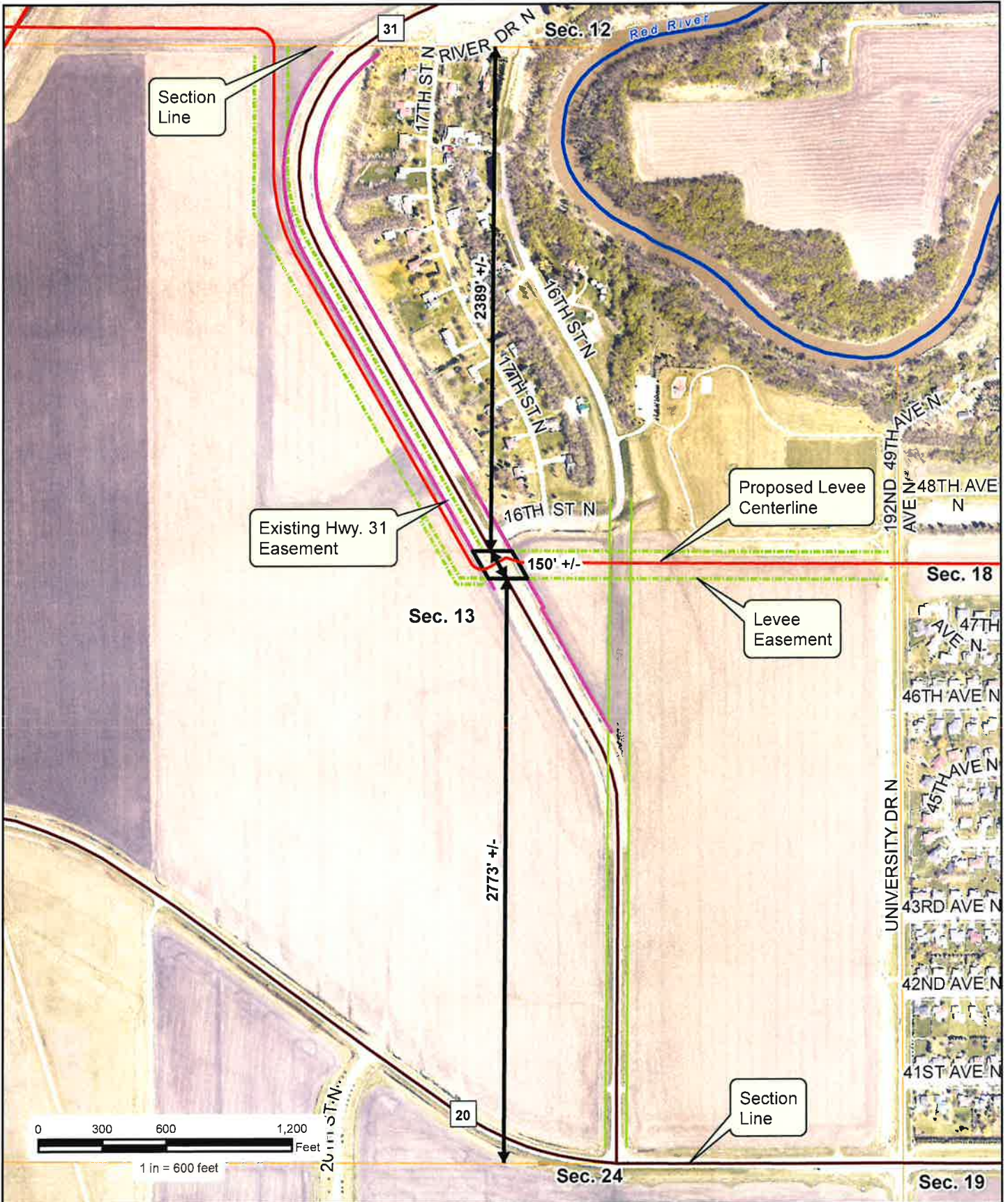


EXHIBIT
COUNTY HIGHWAY 31
FARGO, NORTH DAKOTA

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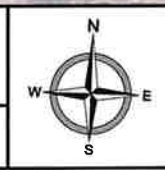


Exhibit "C"

Aerial View and Depiction of
North Side Flood Protection Project CR 81 Levee

[See Attached]

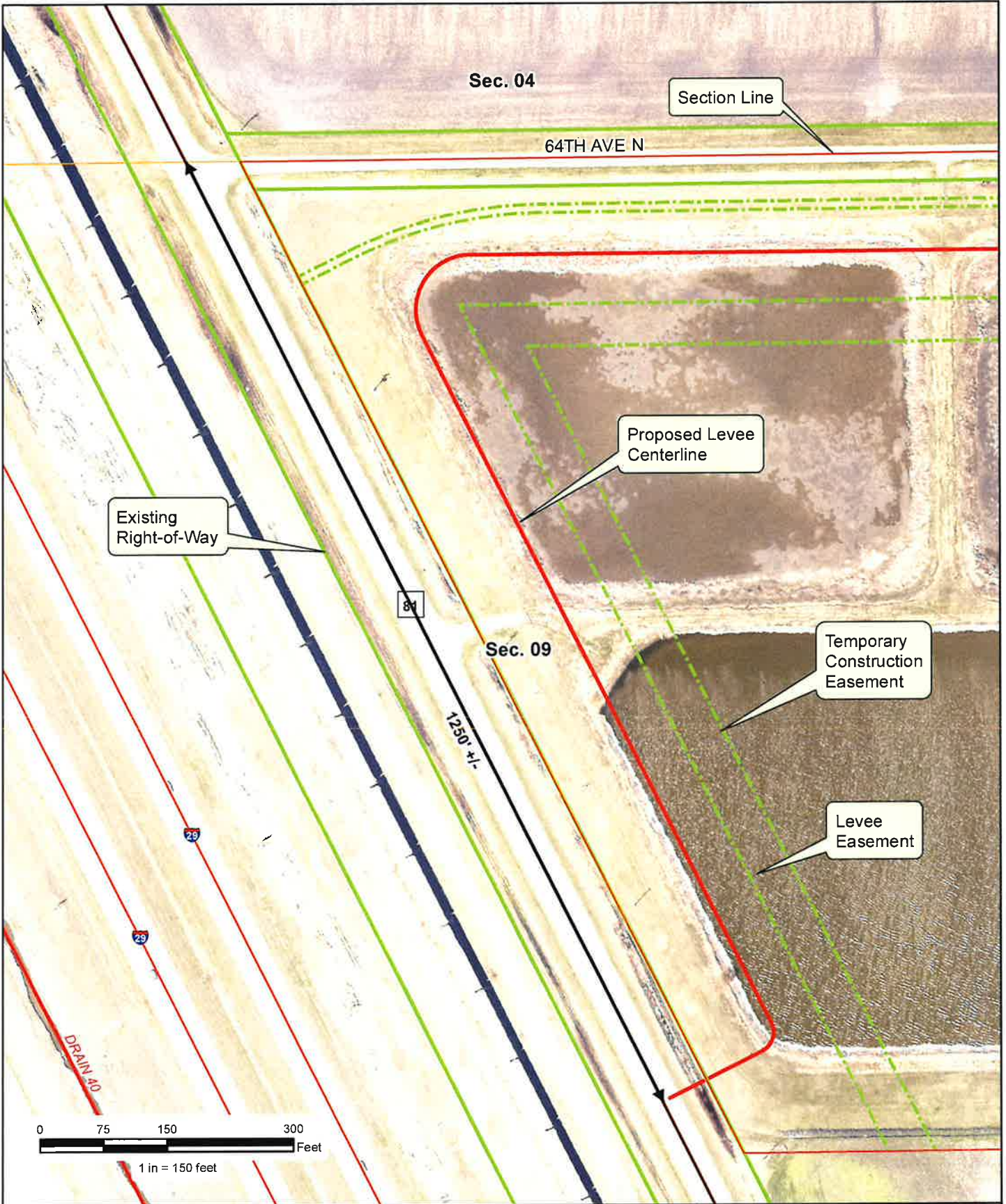


EXHIBIT
COUNTY HIGHWAY 81
FARGO, NORTH DAKOTA

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