



**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, County Engineer *JAB*

DATE: September 28, 2020

SUBJECT: Agenda topic for October 5, 2020 Commission Meeting:  
Agreement for Cass 81 with Cass County Government and the  
City of Fargo

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Cass County Highway Department and City of Fargo Engineering Department have developed a Memorandum of Understand (MOU) for Cass County Highway 81 from 40<sup>th</sup> Ave N to 64<sup>th</sup> Ave N. During the discussion last month's County Commission meeting on Cass 81 and the City of Fargo's levee project, County Commissioners discussed what the process for turning this section of road over to the City. Following the Commission's discussion, engineering staff from the City developed a MOU in consultation with County staff.

The MOU takes a phased approach to turning over this two-mile segment of highway to the City. This phased approach allows the County to turn over specific components of the highway and right of way as the City annexes land to the east of the highway. This allows City to take over access, right of way control, and utility control to new properties annexed into the City, while the County will continue to with general maintenance such as snow plowing, striping, signs.

Long term, the County has a goal for pavement rehabilitation by completing an asphalt overlay with paved shoulders in the next 10 years. This MOU specifies that the County will complete this overlay project prior to turn over or cost share with the City at an estimated cost of the overlay if the City determines a more extensive highway reconstruction is needed.

The phased turn-over developed in this MOU is a coordinated process that will allow the City to effectively manage development and annexation of property along Highway 81.

**SUGGESTED MOTION:**

Authorize the Commission Chair to sign the Memorandum of Understanding for Cass Highway 81 with the City of Fargo.

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

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

MEMORANDUM OF UNDERSTANDING REGARDING CASS COUNTY HIGHWAY 81

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 and Article 2 of Cass County’s Home Rule Charter authorizes the Cass County to enter into contracts; and

**WHEREAS**, Development on Fargo’s north side has resulted in the need for expanded use of existing Cass County Highway 81 (“CR81”) and modifications to the road to accommodate the increased traffic anticipated from such expansion; and

**WHEREAS**, Cass County currently owns and maintains CR 81, and pursuant to the terms of this MOU will allow Fargo to immediately enter into the right of way for the purposes of Right of Way Management, including but not limited to, establishing Access Control and Utility Permitting from 40<sup>th</sup> Avenue N to 64<sup>th</sup> Avenue N in accordance with the Fargo Land Development Code in existence at the time of the development; and

**WHEREAS**, City and County wish to enter into this Agreement for the purpose of establishing the parties’ responsibilities with respect to CR81 as annexation of land by the City occurs adjacent to CR81, and to permit the City to exercise a greater level of responsibility and control from 40<sup>th</sup> Avenue N to 64<sup>th</sup> Avenue N prior to annexation of CR81 right of way. In anticipation of the future annexation by the City, segments of CR81 shall become right of way of the City once annexation progresses as follows: (1) east side of CR81 from 40<sup>th</sup> Avenue N to 44<sup>th</sup> Avenue N; (2) east side of CR81 from 44<sup>th</sup> Avenue N to 52<sup>nd</sup> Avenue N; and (3) east side of CR81 from 52<sup>nd</sup> Avenue N to 64<sup>th</sup> Avenue N.

**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. Maintenance, Striping and Signage. The parties agree that Cass County is presently responsible for the maintenance, striping and signage of CR81. Cass County agrees it will continue to maintain CR81 to acceptable standards until such time as the east side of the roadway is annexed into the City.
2. Drainage. Cass County agrees and understands that it remains responsible for drainage maintenance associated with CR81 until such time it is annexed by the City.

3. Snow Removal. The parties agree that Cass County shall be primarily responsible for snow removal on CR81 from 44<sup>th</sup> Avenue North to 64<sup>th</sup> Avenue North, and that City shall have no responsibility for the same. The parties further understand and agree that City shall be primarily responsible for snow removal on CR81 between 40<sup>th</sup> Avenue North and 44<sup>th</sup> Avenue North, but in no event will Cass County be prevented from entering, accessing or removing snow from this stretch of CR81 in the event Cass County is able to address the snow conditions in advance of City. There shall be no remuneration for snow removal completed by either party.

4. Repair or Reconstruction. Cass County shall be responsible for contracting and paying for a concrete rehabilitation project of CR81, including a crack and seal project and an asphalt overlay in advance of annexation. However, should annexation be imminent and the City determines that urbanization of CR81 is warranted, and Cass County has not already completed the concrete rehabilitation of CR81, then Cass County agrees to cost participate in the City project to the extent that Cass County would have incurred costs to complete the concrete rehabilitation of CR81.

5. Access Control. City shall be responsible for reviewing and approving all new access points on CR 81 from 40<sup>th</sup> Avenue North to 64<sup>th</sup> Avenue North. The determination on acceptable access locations shall be made by the City in accordance with its Land Development Code. All costs associated with designing and constructing any and all new access points in the previously described segment of CR81 shall be the City's responsibility. The City shall provide completed designs to Cass County twenty (20) days in advance of bid advertisement for concurrence of the design specifications. If Cass County fails to make any timely design comments within such period, the City shall provide written notice to Cass County of such failure to respond. If Cass County fails to provide design comments within ten (10) business days following such notice from the City, the design shall be deemed to be approved. Cass County agrees to maintain the road improvements installed by City until the road is annexed by City.

6. Right of Way Management and Utility Permitting. City shall be responsible for all Right of Way Management responsibilities associated with and adjacent to CR81 from 40<sup>th</sup> Avenue North to 64<sup>th</sup> Avenue North for purposes of reviewing and approving locations of both private and public utilities. Actual permitting of private and public utilities will remain with the County until CR81 right of way becomes located within the City, at which time it will become the responsibility of the City. The County shall not approve any permits without written concurrence from the City. Any fees and costs collected by the County associated with utility permitting shall remain with the County.

7. Street Lights and Traffic Signals. Cass County agrees to permit City to design and install street lights and/or traffic signals within CR81 right of way from 40<sup>th</sup> Avenue North to 64<sup>th</sup> Avenue North and appropriate access points thereto. City shall be responsible for all installation and maintenance costs of all street lights and traffic signals installed. The locations of any street lights or traffic signals shall be at the sole discretion of the City.

8. Speed Limits. City shall have authority to establish the appropriate speed limit on CR81 from 40<sup>th</sup> Avenue North to 64<sup>th</sup> Avenue North, taking into account the anticipated development and resulting increased traffic. City shall undertake an appropriate traffic study and provide the data to Cass County for review and concurrence of the proposed speed limit modifications. Cass County agrees to provide approved speed limit signage in accordance with applicable standards.

9. 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 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.

10. 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.

11. 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 CR81 is annexed into the City from 40<sup>th</sup> Avenue to 64<sup>th</sup> Avenue N and this agreement is thus terminated by operation of law.

12. 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.

13. 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:

ATTN: County Administrator  
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.

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

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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 October, 2020.

CITY OF FARGO, NORTH DAKOTA, a  
municipal corporation

By: \_\_\_\_\_

Dr. Timothy J. Mahoney, M.D., Mayor

ATTEST:

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Steve Sprague, City Auditor

Dated this \_\_\_\_ day of October, 2020.

CASS COUNTY, NORTH DAKOTA

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Chad M. Peterson, Board Chairman

ATTEST:

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Mike Montplaisir, Finance Director