

FM AREA DIVERSION PROJECT

Property Owner Information Packet for Cass County Commission

October 19th, 2020

PROPERTY OWNER: Steve Loberg

LAND AGENT: Pat Roberts with ProSource

OIN: 9738 9739



FM AREA
DIVERSION
PROJECT

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Written Correspondence Timeline – Steve Loberg

OIN 9738 9739	Sent	Received
Offer to Purchase	3/23/2020	3/26/2020
Formal Negotiations and Written Offer of Just Compensation	6/5/2020	6/6/2020
Request for Meeting	6/29/2020	7/1/2020
Notice of Intent to Take Possession of Right-of-Way	8/5/2020	8/6/2020
Request for Approval to Take Possession of Necessary Right-of-Way and Temporary Easement	9/8/2020	9/8/2020
Invitation to Attend Public Meeting	9/11/2020	9/12/2020
Commission Meeting Date	10/19/2020	

**CASS COUNTY COMMISSION
CHECKLIST — COMPLIANCE WITH N.D. CENT. CODE § 61-16.1-09(2)
FARGO-MOORHEAD AREA DIVERSION PROJECT**

A. Subject Property Information:

1. Landowner: Steve Loberg
2. Land Agent: Patrick Roberts
3. Parcel Nos.: 53-0000-09082-000, 53-0000-09081-010
4. OIN Nos.: 9738, 9739

B. Verification:

1. NDCC § 61-16.1-09(2)(b)(1)(a) requires the Cass County Joint Water Resource District (“CCJWRD”) to conduct 60 days of informal negotiations.
 - Did CCJWRD verify at least 60 days of informal negotiations with Landowner:

2. NDCC § 61-16.1-09(2)(b)(1)(b)[1] requires CCJWRD to send the landowner an appraisal and written offer for just compensation by certified mail or commercial delivery requiring a signed receipt or other evidence of constructive notice.
 - Did CCJWRD verify it sent Landowner an appraisal and written offer for just compensation: _____
 - Did CCJWRD verify service of the appraisal and offer by certified mail or commercial delivery, and that Landowner either signed for them or had constructive notice: _____
3. NDCC § 61-16.1-09(2)(b)(1)(b)[2] requires CCJWRD to send Landowner a written request for a meeting by certified mail or commercial delivery requiring a signed receipt [if the parties have not come to an agreement within 15 days of Landowner’s receipt or notice of CCJWRD’s offer].
 - Did CCJWRD verify it sent Landowner a written request for a meeting by certified mail or commercial delivery, and that Landowner either signed for the notice or had constructive notice: _____

4. NDCC § 61-16.1-09(2)(b)(1)(b)[3] requires CCJWRD to send Landowner a written notice of intent to take possession of the right of way and temporary easement, by certified mail or commercial delivery requiring a signed receipt [if the parties have not come to an agreement within 30 days of Landowner's receipt or notice of CCJWRD's invitation to a meeting].
 - Did CCJWRD verify it sent a written notice of intent to take possession of right away by certified mail or commercial delivery, and that Landowner either signed for the notice or had constructive notice: _____
5. NDCC § 61-16.1-09(2)(b)(2) requires all written communications to Landowner to include contact information for responding to CCJWRD and a description of the required negotiation timeline.
 - Did CCJWRD verify that all written communications to Landowner included contact information for responding to CCJWRD and a description of the required negotiation timeline: _____
6. NDCC § 61-16.1-09(2)(b)(3) prohibits a district from including or utilizing any reference to quick take eminent domain during negotiations.
 - Did CCJWRD verify it did not include or utilize any reference to quick take eminent domain during negotiations: _____

If the Commission answers in the affirmative to the above questions,

RECOMMENDED MOTION:

- I move to authorize the Cass County Joint Water Resource District to utilize quick take eminent domain under Section 61-16.1-09(2) of the North Dakota Century Code to take an easement for a right of way, and temporary easement, regarding OINs 9738 and 9739.

FM Area Diversion Project

Property Negotiation Summary

October 7, 2020

Owner	Steve Loberg
Address	3518 2 nd Street East West Fargo, ND
Property Address	Mapleton Township. Borders 21 st Avenue West & 26 th Street West
Property ID & Location	OIN 9738-9739 Channel Parcels
Property Type	Agriculture
Property ID & Location	OIN 9199 Re-alignment of 38 th Street West
Property Type	Agriculture
Land Agent	Pat Roberts – ProSource

Property Need: Channel Parcel.

OIN 9738 & 9739 Owned by Steve Loberg. Appraised separately. One offer made for both parcels.

OIN 9199 is owned by Steve Loberg and Lisa Loberg who are siblings.

Valuation and Negotiation Summary:

Appraisal Value / Date	OIN 9738-9739: \$728,000 (\$5,900/acre) + Severance / April 2019
Appraisal Value / Date	OIN 9199: \$64,000 / April 2019
1 st Land Owner Counter-offer	Minimum of \$10,000/acre (67% increase)
Attorney Counter-offer	OIN 9199; 494% over appraised value OIN 9739; 356% over appraised value OIN 9738; 74% over appraised value

Negotiation Notes

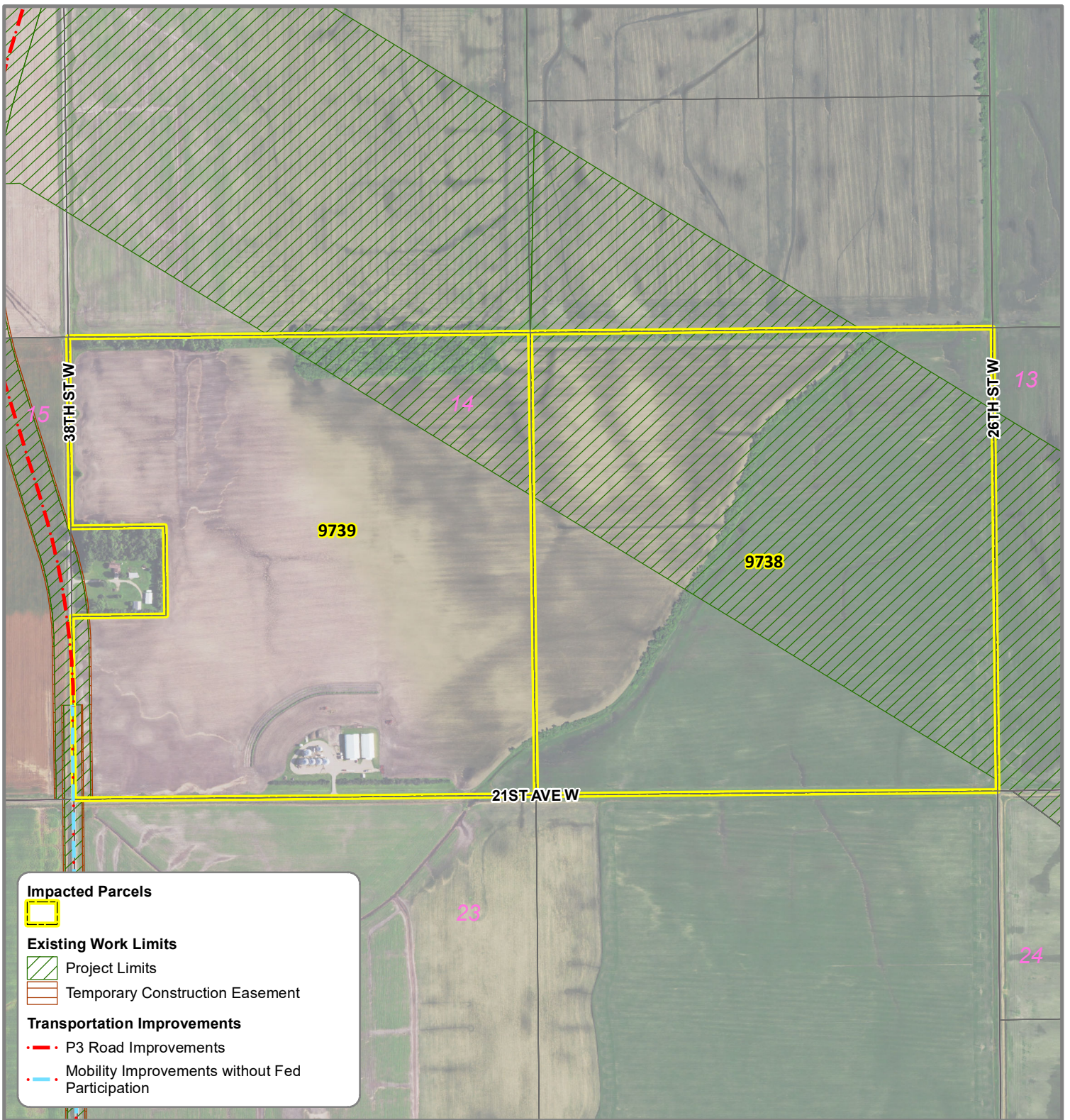
- Land agent is Patrick Roberts from ProSource.
- OIN 9738 is a parcel on the East side of the Sheyenne Diversion Channel which is the western limits of the City of West Fargo. No existing municipal sewer. Property would be serviced by rural water and private septic systems. It is a 161.85 acre parcel impacted by 103.57 acre acquisition diagonally thru the property leaving 4.12 acres to the north and 54.16 to the south of the proposed diversion. Offer on this parcel \$617,900.
- OIN 9739 is a parcel that is west of the Sheyenne Diversion & 2 miles west fo expanding residential use. It is a 155.27 acre parcel impacted by the acquisition of 18.62 acres & and .24 acre TCE with an offer of \$110,100.
- OIN 9199 is a parcel that is west of the Sheyenne Diversion and is for the re-alignment of 38th Street West.
- 8-13-19 Telephone conversation with Mr. Steve Loberg regarding these two parcels as well as a third parcel OIN 9199 that he has ownership rights with his sisiter. He advised that he will be the point contact for all three parcels and I may as well send all three to him. Shared with Mr.

October 7, 2020

Loberg the results of the appraisals on all three parcels. Mr. Loberg requested I send the appraisals and the offer letter in the mail to him.

- 8-13-19 Letter crafted to accompany the appraisals and offer letters.
- 8-13-19 Mailed sent out via Certified Mail.
- 8-19-19 Package signed for by Lisa on August 19,2019.
- 9-3-2019 Phone call & message left for Mr. Loberg.
- 9-12-2019 Phone call & message left for Mr. Loberg.
- 10-16/17-2019 Phone calls and messages left for Mr. Loberg.
- 10-23-2019 Phone call with Mr. Loberg. He is not inclined to sell until he knows the project is going to go through. Also, he does not understand why the property across the section line was offered \$7200/acre and he was offered \$5900/acre. Thinks a fair amount would be \$10,000. If you would like to submit a counter-offer of \$10,000/acre I will need to have some type of documentation to support the counter-offer. Plans to engage an attorney to assist with the process.
- 11-7/20-2019 Phone calls and messages left for Mr. Loberg.
- 1-14-2020 Phone call and message left for Mr. Loberg.
- 1-28-2020 Informal offer letter sent.
- 3-11-2020 Revised appraisals and revised offer letters sent on all three parcels to Mr. Loberg.
- 5-13/22-2020 Phone call and message left for Mr. Loberg.
- 6-9-2020 Phone call and message left for Mr. Loberg.
- 6-17-20 Call received from Mr. Loberg regarding offer and all the correspondence attempts. He advised that he is still not signing at the offer amount and now feels like \$11,000/acre is more in line with a fair counter-offer. If the board offers him that, he would take it. I advised that he needed to provide a counter-offer with supporting documentation. He advised that he was engaging the attorney out of the twin cities but did not remember the name. He would give them my contact information.
- 6-18-20 Agent received email from Angie Bengtson with Rinke Noonan Law Offices requesting I send along the appraisal & offers.
- 6-19-20 Agent sent along all three appraisals and offer letters to Angie.
- 6-22-20 Agent received an email from attorney Nick Delaney with Rinke Noonan law offices requesting feedback on an offer that Mr. Loberg advised the DA made for \$10,000/acre.
- 6-22-20 Agent replied and advised that the DA has not provided that offer, but I have in my notes that Mr. Loberg had advised in our initial conversation that \$10,000/acre is his minimum expectation.
- 6-30-30 Invitation letter to attend CCJWRD meeting mailed out.
- 8-10-20 Call from Mr. Loberg regarding the intent to possess letter. Encouraged him to speak with his legal counsel as they had received the letter as well.
- 8-21-20 Received an email forward from Ken Helvey @ SRF. The email was sent to him from Nick Delaney at Rinke Noonan advising that they are representing Steve Loberg. Ken advised it was my file.

- 8-27-20 Call from landowner's attorney office requesting verification of date these parcels will be brought forward to the Cass County Commission. Shortly after the call, I received an email from attorney Igor Lenzner providing his opinion that the appraisal was not worth the paper it was written on.
- 9-8-20 Received an email from attorney Igor Lenzner regarding a proposal to counter-offer.
- 9-14-20 Received an email from attorney Igor Lenzner with an excel spreadsheet with numbers for each parcels indicating the counter-offer amounts for each of the three parcels. Counter-offer is 494% higher than appraisal on 9199, 356% higher on 9739 and 74% higher on 9738.
- 9-26-20 Received an email from attorney Igor Lenzner requesting feedback with the idea that he was doubtful we could get anywhere. I replied I would have a reply to him by Wednesday.
- 9-30-20 Agent provided reply to attorney Lenzner advising absent some type of additional documentation to support the level of funding being requested, it will indeed be difficult for us to "get anywhere." Agent asked if there was any additional documentation to support the valuations suggested. At the end of the email agent asked if he wished the information provided be presented to the board for his counter-offer? No reply.

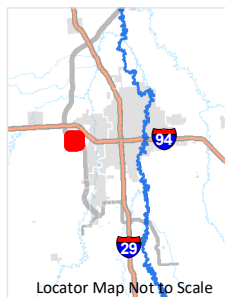
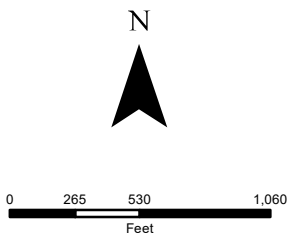


Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use.

All parcel acreages and legal descriptions shown herein are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey.

Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced by: dlee - AE2S, Inc. |

C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\IProject Wide\Individual Property Maps - General Inquiry\IndividualLayout8x10_ForDanielle_Notdatadriven.mxd



Steve Loberg

OINs: 9738 9739

Parcel ID's: 53-0000-09082-000, 53-0000-09081-010

Cass County, ND

FM AREA DIVERSION
Map Date: 9/30/2020



March 23, 2020

9219 East River Road NW
Minneapolis, Minnesota 55433
763-786-1445
Fax 763-786-1030
www.prosourcetech.com

Steve J. Loberg
3518 2nd Street E
West Fargo, ND 58078

RE: **Revised Offer to Purchase**
Parcel ID: OIN 9738, 9739
Project Title: Fargo Moorhead Diversion
PID: 53-0000-09082-000 and 53-0000-09081-010

Dear Steven J. Loberg,

It has come to our attention that a revised appraisal value was needed for your above listed parcels to document changes to our previous Offer to Purchase letter dated August 13, 2019. Our previous offer had stated that a Temporary Construction Easement would be needed on both of the above listed parcels. We also had included an amount for parcel ID 53-0000-09087-000. We have sent a separate offer letter for that parcel.

An updated certificate of survey has been completed and based on that the corrected survey, the temporary construction easements will no longer be needed. Therefore, we are presenting a new and revised Offer to Purchase.

To determine market value of the interest being acquired, CCJWRD requested the independent property appraisal firm, Compass Land Consultants to review their original appraisal and provide an updated value based on the removal of the temporary construction easement from the appraisal scope. The appraiser has determined that the market value of the interests being purchased is now **\$728,000.00**. The CCJWRD has used the market value set forth in the appraisal as the basis for determining Just Compensation for the property interests being acquired from you. A copy of the two appraisals is included with this letter and provided to you. If the purchase amount is based on any conditions or exceptions (such as terms of the transfer of possession or retention of any interest); they will be included in Exhibit A. A summary of the appraisal is provided on Exhibit A (Appraisal Summary).

The Cass County Joint Water Resource District hereby offers to pay you \$728,000.00 as Just Compensation for the property interests it must acquire from you.

Upon receipt of this letter, please sign below. Your signature indicates only that you have received this Revised Offer to Purchase, and the following documents:

- Copy of appraisal for OIN 9738 & OIN 9739 by Compass Land Consultants, Inc.
- Exhibit B (Certificate of Surveys)

Your signature DOES NOT indicate your acceptance or rejection of the offered amount. Nor does it affect your right to continue to negotiate with the CCJWRD.

On behalf of CCJWRD, we wish to thank you for your cooperation and assistance, and we look forward to working with you toward a mutually satisfactory completion of the acquisition process.

Sincerely,

Patrick Roberts
Senior Project Manager
proberts@prosourcecotech.com

I acknowledge that on _____, 20 ____, I received this letter and all documents listed above.

Landowner Name

Required Notice: For your information the contact information for Cass County Joint Water Resource District (CCJWRD) is Carol Harbeke-Lewis, Secretary-Treasurer, at 701-298-2381. The property, that is the subject of this written communication, must be acquired by CCJWRD by October 15, 2020.

Track Another Package +

Tracking Number: 70122210000082344880

[Remove X](#)

Your item was delivered at 8:47 am on March 26, 2020 in WEST FARGO, ND 58078.

Delivered

March 26, 2020 at 8:47 am
Delivered
WEST FARGO, ND 58078

Feedback

Get Updates v

Text & Email Updates



Tracking History



Product Information



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Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)	15.10	
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Steven J. Loberg
3518 2nd St E
West Fargo, ND 58078

PS Form 3800, August 2006

See Reverse for Instructions



CERTIFIED MAIL – RETURN RECEIPT REQUESTED – HAND DELIVERY

June 5, 2020

Cass County
Joint Water
Resource
District

Steve Loberg
3518 2nd Street E
West Fargo, ND 58078
Certified No. 7019 1640 0002 0398 7746

Greetings:

Dan Jacobson
Chairman
West Fargo, North Dakota

RE: Cass County Joint Water Resource District
Fargo-Moorhead Area Diversion Project
Formal Negotiations and Written Offer of Just Compensation
OINs: 9738, 9739
Parcel No.: 53-0000-09082-000, 53-0000-09081-010

Rodger Olson
Manager
Leonard, North Dakota

Ken Lougheed
Manager
Gardner, North Dakota

Jacob Gust
Manager
Fargo, North Dakota

Keith Weston
Manager
Fargo, North Dakota

The Cass County Joint Water Resource District (the "District") is in the process of acquiring property interests necessary for the Fargo-Moorhead Area Diversion Project (the "Project"), and the District has been in discussions with you regarding right of way the District must acquire from you to accommodate the Project. The District directed me to provide you this letter as the District's formal offer to purchase right of way and a temporary easement from you. More specifically, to accommodate the Project, the District must acquire right of way from you over property located in Cass County and identified as Parcel Identification Number 53-0000-09082-000 and 53-0000-09081-010. The legal description of the property to be acquired is:

Right of Way:
OIN 9738

That part of the Southeast Quarter (SE¼) of Section 14, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Commencing at the Southeast Corner of Section 14; thence N2°40'13"W on the east line of the SE¼ of said Section 14 a distance of 63.00 feet to the Point of Beginning; thence N60°37'11"W a distance of 3,129.14 feet to the west line of said SE¼; thence N2°41'18"W on said west line a distance of 939.83 feet to the Northwest Corner of said SE¼; thence N87°23'38"E on the north line of said SE¼ a distance of 1,894.54 feet; thence S60°37'11"E a distance of 894.25 feet to said east line of the

Carol Harbeke Lewis
Secretary-Treasurer

1201 Main Avenue West
West Fargo, ND 58078-1301

701-298-2381
FAX 701-298-2397
wrđ@casscountynd.gov
casscountynd.gov

SE¼; thence S2°40'13"E on said east line a distance of 2,123.70 feet to the Point of Beginning.

Said parcel contains 103.57 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record:

AND

OIN 9739

That part of the Southwest Quarter (SW¼) of Section 14, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Commencing at the Northwest Corner of the SW¼; thence N87°23'38"E on the north line of said SW¼ a distance of 1,149.61 feet to the Point of Beginning; thence continuing N87°23'38"E on said north line a distance of 1,503.48 feet to the Northeast Corner of said SW¼; thence S2°41'18"E on the east line of said SW¼ a distance of 939.83 feet; thence N60°37'11"W a distance of 1,774.20 feet to the Point of Beginning.

Said parcel contains 16.22 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

That part of the Southwest Quarter (SW¼) of Section 14, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Beginning at the Southwest Corner of the SW¼; thence N2°43'10"W on the west line of said SW¼ a distance of 1,049.00 feet to the south line of the parcel described in Doc. No. 1083412, Records of Cass County; thence N87°16'50"E on said south parcel line a distance of 91.73 feet; thence 186.42 feet on the arc of a non-tangential curve, concave to the west, having a radius of 2,100.00 feet, a central angle of 5°05'10", and a long chord length of 186.36 feet bearing S5°15'45"E; thence S2°43'10"E tangent to preceding curve a distance of 863.17 feet to the south line of said SW¼; thence S87°28'53"W on said south line a distance of 100.00 feet to the Point of Beginning.

Said parcel contains 2.40 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

Temporary Easement:

A 10-foot-wide temporary construction easement across that part of the Southwest Quarter (SW¼) of Section 14, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Commencing at the Southwest Corner of the SW¼; thence N87°28'53"E on the south line of said SW¼ a distance of 100.00 feet to the Point of Beginning; thence N2°43'10"W a distance of 863.17 feet; thence 186.42 feet on the arc of a curve tangent to preceding line, concave to the west, having a radius of 2,100.00 feet, a central angle of 5°05'10", and a long chord length of 186.36 feet bearing N5°15'45"W to the south line of the parcel described in Doc. No. 1083412, Records of Cass County; thence N87°16'50"E on said south parcel line a distance of 10.04 feet; thence 186.42 feet on the arc of a non-tangential curve, concave to the west, having a radius of 2,110.00 feet, a central angle of 5°03'43", and a long chord length of 186.36 feet bearing S5°15'01"E; thence S2°43'10"E tangent to preceding curve a distance of 863.21 feet to said south line of the SW¼; thence S87°28'53"W on said south line a distance of 10.00 feet to the Point of Beginning.

Said easement contains 0.24 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

Enclosed are appraisals regarding the value of the right of way and temporary easement the District must acquire from you, as determined by a licensed North Dakota appraiser. As you can see from the enclosed appraisals, the appraiser indicated the value of the right of way the District must acquire from you is \$720,921.00, plus damages to remainder of your Property in the amount of \$6,798.00. The required temporary easement acreage has been reduced to 0.24 acres since the original appraisals were completed, thereby reducing the purchase price of the temporary easement to \$240.00, which brings the total purchase price to \$727,959.00 rounded to \$728,000.00. The District approved the appraisals and this letter is the District's offer to you in the amount of \$728,000.00 as just compensation to purchase right of way and temporary easement from you for the Project. If you are willing to accept the District's offer, please sign the enclosed *Purchase Agreement* and return it to the District in the enclosed self-addressed, stamped envelope.

Steve Loberg
June 5, 2020
Page 4

You are encouraged to maintain contact with the land agent assigned to your property. **Patrick Roberts** of ProSource Technologies, LLC can be reached at **(763) 786-1445** or **proberts@prosourcetech.com**. Pat is your point of contact for getting answers to any questions you have about the Project and acquisition of right of way and temporary easement from you for the Project.

For your information, North Dakota law requires the District to provide you with a description of the District's negotiation timeline regarding your right of way and temporary easement. If you do not accept the District's offer of just compensation and do not return a signed purchase agreement within fifteen (15) days, the District will send you a written request to discuss the Project and required right of way and temporary easement to be acquired at an upcoming Cass County Joint Water Resource District meeting. Ultimately, the District must conclude all negotiations and complete all acquisitions by Fall 2020.

We look forward to reaching a mutually acceptable agreement to resolve this matter. Thank you for your consideration.

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



Carol Harbeke Lewis
Secretary-Treasurer
1201 Main Avenue West
West Fargo, ND 58078
(701) 298-2381
Lewisc@casscountynynd.gov

Enclosures

cc: Patrick Roberts, Land Agent
Eric Dodds, Program Manager, AE2S
Chris McShane, Ohnstad Twichell, P.C.
Chad Peterson, Cass County Commission Chair
Robert Wilson, Cass County Administrator
Birch Burdick, Cass County State's Attorney
Joel Paulsen, Executive Director, Diversion Authority

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature</p> <p>X SA K17 COMBIA <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>
<p>1. Article Addressed to:</p> <p>STEVE LOBERG 3518 2ND STREET E WEST FARGO ND 58078</p>	<p>B. Received by (<i>Printed Name</i>)</p> <p>C. Date of Delivery 6/6/2020</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
 <p>9590 9402 5989 0062 9068 84</p>	<p>3. Service Type</p> <ul style="list-style-type: none"> <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) <ul style="list-style-type: none"> <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery
<p>2 Article Number (<i>Transfer from service label</i>)</p> <p>7019 1640 0002 0398 7746</p>	
<p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>	<p>Domestic Return Receipt</p>



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

June 29, 2020

**Cass County
Joint Water
Resource
District**

Steve Loberg
3518 2nd Street E
West Fargo, ND 58078
Certified No. 7020 0090 0000 7648 4076

Greetings:

Dan Jacobson
Chairman
West Fargo, North Dakota

**RE: Cass County Joint Water Resource District
Fargo-Moorhead Area Diversion Project
Request for Meeting
OINs: 9738, 9739
Parcel No.: 53-0000-09082-000, 53-0000-09081-010**

Rodger Olson
Manager
Leonard, North Dakota

Ken Lougheed
Manager
Gardner, North Dakota

Jacob Gust
Manager
Fargo, North Dakota

Keith Weston
Manager
Fargo, North Dakota

As you know, the Cass County Joint Water Resource District (the "District") is in the process of developing the Fargo-Moorhead Area Diversion Project (the "Project"). The District previously provided you a letter dated June 5, 2020; a copy of the District's appraisal for the right of way and temporary easement needed from you; and a Purchase Agreement as the District's offer of just compensation to purchase the right of way and temporary easement from you. The District's letter specifically described the right of way and temporary easement the District must acquire from you for the Project. We have not received a signed Purchase Agreement from you, and we have not otherwise arrived at mutually acceptable terms regarding the District's purchase of right of way and temporary easement from you to accommodate the Project.

Carol Harbeke Lewis
Secretary-Treasurer

1201 Main Avenue West
West Fargo, ND 58078-1301

701-298-2381
FAX 701-298-2397
wrđ@casscountynđ.gov
casscountynđ.gov

The District requests your attendance at a meeting to discuss the District's offer to purchase right of way and temporary easement from you. The District is meeting at 8:00 a.m., on July 9, 2020, and July 23, 2020. Over the next several months, District meetings will be conducted via conference call and District board members will not be attending in person. The requirements that a meeting room be available to the public and that a speakerphone or monitor be provided at a physical location under NDCC § 44-04-19 have been suspended indefinitely pursuant to Governor Burgum's Executive Order 2020-16; therefore, we request your attendance by telephone.

The District hopes you will attend one of the above-mentioned meetings to discuss the Project and the right of way and temporary easement the District must acquire from you to accommodate the Project. If you would like to attend one of the meetings by phone, please contact me or Melissa Maertens at (701) 298-2381 at least 24 hours in advance of the meeting so the necessary arrangements can be made and the call-in information provided to you.

Steve Loberg
OINs 9738, 9739
June 29, 2020
Page 2

Please continue to maintain contact and negotiate with the land agent assigned to your property. **Patrick Roberts** of ProSource Technologies, LLC. is your point of contact for getting answers to any questions you have about the Project. Pat can be reached at (763) 786-1445 or proberts@prosourcetech.com.

North Dakota law requires the District to provide you with a description of the District's negotiation timeline regarding your right of way and temporary easement. The District must conclude all negotiations and complete the acquisition of right of way and temporary easement necessary for construction of Project components on your property by Fall of 2020.

The District hopes you will attend one of the upcoming District meetings to discuss the Project and the required right of way and temporary easement. The District looks forward to meeting with you.

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



Carol Harbeke Lewis
Secretary-Treasurer
1201 Main Avenue West
West Fargo, ND 58078
(701) 298-2381
lewisc@casscountynynd.gov

cc: Nicholas Delaney, Rinke Noonan
Patrick Roberts, Land Agent
Eric Dodds, Program Manager, AE2S
Chris McShane, Ohnstad Twichell, P.C.
Chad Peterson, Chair, Cass County Commission
Robert Wilson, Cass County Administrator
Birch Burdick, Cass County State's Attorney
Joel Paulsen, Executive Director, Diversion Authority

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

STEV LUBERG
 3518 2ND STREET E
 WEST FARGO ND 58078



9590 9402 5989 0062 9060 44

2. Article Number (Transfer from service label)

7020 0090 0000 7648 4076

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *RAJ SA CONYON* Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

7/11/2020

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

**Cass County
Joint Water
Resource
District**

August 5, 2020

Steve Loberg
3518 2nd Street E
West Fargo, ND 58078
Certified No. 7020 0090 0000 7648 3529

Dan Jacobson
Chairman
West Fargo, North Dakota

Greetings:

Rodger Olson
Manager
Leonard, North Dakota

**RE: Cass County Joint Water Resource District
Fargo-Moorhead Area Diversion Project
NOTICE OF INTENT TO TAKE POSSESSION OF RIGHT OF WAY
OINs: 9738, 9739
Parcel Nos. 53-0000-09082-000, 53-0000-09081-010**

Ken Lougheed
Manager
Gardner, North Dakota

Jacob Gust
Manager
Fargo, North Dakota

Keith Weston
Manager
Fargo, North Dakota

As you know, the Cass County Joint Water Resource District (the "District") is in the process of developing the Fargo-Moorhead Area Diversion Project (the "Project"). On behalf of the District, I previously provided you a letter dated June 5, 2020, a copy of the District's appraisal for your right of way and temporary easement, and a Purchase Agreement as the District's offer of just compensation to purchase the right of way and temporary easement from you. In addition, I also provided you a letter dated June 29, 2020, to invite you to meet with the District for purposes of discussing the acquisition of your land. The parties have conducted the informal and formal negotiation procedures required by law but, unfortunately, the parties have not yet reached a mutually-acceptable agreement regarding compensation for the District's purchase of the right of way and temporary easement from you to accommodate the Project.

Carol Harbeke Lewis
Secretary-Treasurer

1201 Main Avenue West
West Fargo, ND 58078-1301

This letter is the District's NOTICE OF INTENT TO TAKE POSSESSION OF RIGHT OF WAY. If we do not have an agreement, the District will be requesting approval from the Cass County Commission to take possession of a right of way easement and temporary easement over your property. Cass County will provide you with at least 30 days' notice of a public meeting, and will invite you to the meeting to discuss the District's request.

701-298-2381
FAX 701-298-2397
wrđ@casscountynđ.gov
casscountynđ.gov

This NOTICE does not preclude the parties from continuing negotiations. The District still hopes the parties can arrive at a mutually-acceptable agreement.

Steve Loberg
OINs 9738, 9739
August 5, 2020
Page 2

You are encouraged to maintain contact with the land agent assigned to your property. **Patrick Roberts** of **ProSource Technologies, LLC** can be reached at **(763) 786-1445** or **proberts@prosourcetech.com**. Pat is your point of contact for getting answers to any questions you have about the Project and acquisition of right of way and temporary easement from you for the Project.

North Dakota law requires the District to provide you with a description of the District's negotiation timeline regarding your right of way and temporary easement. Ultimately, the District must conclude all negotiations and complete all acquisitions by Fall 2020.

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



Carol Harbeke Lewis
Secretary-Treasurer
1201 Main Avenue West
West Fargo, ND 58078
(701) 298-2381
lewisc@casscountynd.gov

cc: Nicholas Delaney, Rinke Noonan
Patrick Roberts, Land Agent
Chris McShane, Ohnstad Twichell, P.C.
Chad Peterson, Chair, Cass County Commission
Robert Wilson, Cass County Administrator
Birch Burdick, Cass County State's Attorney
Eric Dodds, Program Manager, AE2S
Joel Paulsen, Executive Director, Diversion Authority

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
STEVE LOBERG
3518 2ND STREET E
WEST FARGO ND 58078



9590 9402 5989 0062 9064 95

2. Article Number (Transfer from service label)

7020 0090 0000 7648 3529

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X SA COVID 19 R17 Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

8/6/2020

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt



SENT VIA EMAIL wilsonro@casscountynd.gov

**Cass County
Joint Water
Resource
District**

September 8, 2020

Robert Wilson
Cass County Administrator
Cass County Commission
211 9th Street S
Fargo, ND 58103

Dan Jacobson
Chairman
West Fargo, North Dakota

Rodger Olson
Manager
Leonard, North Dakota

Ken Lougheed
Manager
Gardner, North Dakota

Jacob Gust
Manager
Fargo, North Dakota

Keith Weston
Manager
Fargo, North Dakota

Carol Harbeke Lewis
Secretary-Treasurer

1201 Main Avenue West
West Fargo, ND 58078-1301

701-298-2381
FAX 701-298-2397
wrđ@casscountynd.gov
casscountynd.gov

Greetings:

RE: Cass County Joint Water Resource District
Fargo-Moorhead Area Diversion Project
Request for Approval to Take Possession of Necessary Right of Way and
Temporary Easement
OINs: 9738, 9739
Parcel Nos.: 53-0000-09082-000, 53-0000-09081-010

As you know, the Cass County Joint Water Resource District (the "District") is in the process of acquiring the right of way necessary for the Fargo Moorhead Diversion Area Project ("Project"). I previously copied you on the following three letters whereby the District sought to negotiate the acquisition of the right of way and temporary easement from Steve Loberg (the "Landowner"):

- Letter dated June 5, 2020, enclosing the District's appraisal for the acquisition of the right of way and temporary easement from the Landowner and a proposed Purchase Agreement;
- Letter dated June 29, 2020, inviting the Landowner to meet with the District for purposes of negotiating compensation for the right of way and temporary easement to be acquired; and
- Letter dated August 5, 2020, notifying the Landowner the District planned to submit a request to the Cass County Commission seeking immediate possession of the right of way and temporary easement necessary for the Project.

The District has conducted months of negotiations with the Landowner to arrive at a mutually acceptable agreement for the District's purchase. More specifically, the District engaged in both informal and formal negotiations with the Landowner, as required under N.D. Cent. Code § 61-16.1-09(2)(b), in an effort to reach agreement regarding fair compensation to the Landowner for the acquisition of the necessary right of way and temporary easement in, on, over, across, and through certain property owned by the Landowner in Cass County, North Dakota. The legal description of the necessary right of way and temporary easement is as follows:

Right of Way Easement:

OIN 9738

That part of the Southeast Quarter (SE1/4) of Section 14, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Commencing at the Southeast Corner of Section 14; thence N2°40'13"W on the east line of the SE1/4 of said Section 14 a distance of 63.00 feet to the Point of Beginning; thence N60°37'11"W a distance of 3,129.14 feet to the west line of said SE1/4; thence N2°41'18"W on said west line a distance of 939.83 feet to the Northwest Corner of said SE1/4; thence N87°23'38"E on the north line of said SE1/4 a distance of 1,894.54 feet; thence S60°37'11"E a distance of 894.25 feet to the east line of the SE1/4; thence S2°40'13"E on said east line a distance of 2,123.70 feet to the Point of Beginning.

Said parcel contains 103.57 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

OIN 9739

That part of the Southwest Quarter (SW¼) of Section 14, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Commencing at the Northwest Corner of the SW¼; thence N87°23'38"E on the north line of said SW¼ a distance of 1,149.61 feet to the Point of Beginning; thence continuing N87°23'38"E on said north line a distance of 1,503.48 feet to the Northeast Corner of said SW¼; thence S2°41'18"E on the east line of said SW¼ a distance of 939.83 feet; thence N60°37'11"W a distance of 1,774.20 feet to the Point of Beginning.

Said parcel contains 16.22 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

That part of the Southwest Quarter (SW¼) of Section 14, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Beginning at the Southwest Corner of the SW¼; thence N2°43'10"W on the west line of said SW¼ a distance of 1,049.00 feet to the south line of the parcel described in Doc. No. 1083412, Records of Cass County; thence N87°16'50"E on said south parcel line a distance of 91.73 feet; thence 186.42 feet on the arc of a non-tangential curve, concave to the west, having a radius of 2,100.00 feet, a

central angle of 5°05'10", and a long chord length of 186.36 feet bearing S5°15'45"E;thence S2°43'10"E tangent to preceding curve a distance of 863.17 feet to the south line of said SW¼; thence S87°28'53"W on said south line a distance of 100.00 feet to the Point of Beginning.

Said parcel contains 2.40 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

Temporary Easement:

A 10-foot-wide temporary construction easement across that part of the Southwest Quarter (SW¼) of Section 14, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows: Commencing at the Southwest Corner of the SW¼; thence N87°28'53"E on the south line of said SW¼ a distance of 100.00 feet to the Point of Beginning; thence N2°43'10"W a distance of 863.17 feet; thence 186.42 feet on the arc of a curve tangent to preceding line, concave to the west, having a radius of 2,100.00 feet, a central angle of 5°05'10", and a long chord length of 186.36 feet bearing N5°15'45"W to the south line of the parcel described in Doc. No. 1083412, Records of Cass County; thence N87°16'50"E on said south parcel line a distance of 10.04 feet; thence 186.42 feet on the arc of a non-tangential curve, concave to the west, having a radius of 2,110.00 feet, a central angle of 5°03'43", and a long chord length of 186.36 feet bearing S5°15'01"E; thence S2°43'10"E tangent to preceding curve a distance of 863.21 feet to said south line of the SW¼;thence S87°28'53"W on said south line a distance of 10.00 feet to the Point of Beginning.

Said easement contains 0.24 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

As you may recall, in 2017, the North Dakota Legislature modified the process for water resource districts to acquire immediate possession of right of way necessary for water projects; the new process is set forth in Section 61-16.1-09(2)(b). The District has followed all of the necessary steps under the statute, but the parties have not reached a mutually acceptable agreement. Under the new acquisition process enumerated in Section 61-16.1-09(2)(b)(3), the District must next seek the County Commission's approval to proceed further, and to ultimately utilize quick take eminent domain to take possession of the right of way and temporary easement above to commence the Project.

More specifically, Section 61-16.1-09(2)(b)(3) requires the County Commission to hold a public meeting and to provide the Landowner no less than thirty days' notice of the meeting. The District will also attend the meeting, along with a representative of the land firm which was the Landowner's main point of contact throughout the negotiation process. Prior to the public meeting, the land firm representative and the District will verify neither the District nor any of its agents referenced or threatened quick take eminent domain during the informal and formal negotiation process.

Robert Wilson
September 8, 2020
Page 4

While the District takes all landowners' rights very seriously, the District also has an obligation, as a member of the Metro Flood Diversion Authority, to acquire the right of way and temporary easement necessary for the Project, and construction of the Project will not be possible without acquiring the right of way and temporary easement identified above. As the District will explain and verify for the Commission in more detail through this process, the District provided the Landowner with the District's appraisal as the starting point for negotiations, then attempted to negotiate further with the Landowner over the course of several months. This step is not one the District takes lightly; quick take eminent domain is a serious undertaking, and the District has negotiated in good-faith with the Landowner to avoid this process. Despite the District's efforts to be fair, friendly, and flexible in both the informal and formal negotiations with the Landowner, unfortunately, the parties have not reached a mutually acceptable agreement for the acquisition of the right of way and temporary easement.

The District respectfully requests that the Cass County Commission proceed with the public meeting process under Section 61-16.1-09(2)(b)(3) regarding the Landowner and the right of way and temporary easement identified in this letter. Further, the District respectfully requests that the Cass County Commission ultimately approve the District's use of quick take eminent domain to take possession of the right of way and temporary easement identified above by quick take eminent domain so the Project may proceed. For your information, while the County conducts the process under Section 61-16.1-09(2)(b)(3), the District still hopes the parties can arrive at a mutually-acceptable agreement.

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



Carol Harbeke Lewis
Secretary-Treasurer
1201 Main Avenue West
West Fargo, ND 58078
(701) 298-2381
lewisc@casscountynd.gov

cc: Patrick Roberts, Land Agent
Rob Stefanowicz, Larkin Hoffman Attorneys
Birch Burdick, Cass County State's Attorney
Joel Paulsen, Executive Director, Diversion Authority
Eric Dodds, AE2S Program Manager
Heather Worden, Administrative Assistant, Cass County Commission



September 11, 2020

VIA UPS – DELIVERY CONFIRMATION

Board of County Commissioners

Steve Loberg
3518 2nd Street East
West Fargo, ND 58078

Chad M. Peterson
Fargo, North Dakota

Rick Steen
Fargo, North Dakota

Ken Pawluk
Fargo, North Dakota

Duane Breitling
West Fargo, North Dakota

Mary Scherling
Stanley Township, North Dakota

Re: Cass County Commission
Fargo-Moorhead Area Diversion Project
Invitation to Attend Public Meeting
OINs: 9738, 9739
Parcel Nos.: 53-0000-09082-000, 53-0000-09081-010
UPS Tracking No. 1Z RT8 7R1 47 1693 4775

Greetings:

As you know, the METRO FLOOD DIVERSION AUTHORITY (the “Authority”) is proceeding with the Fargo Moorhead Area Diversion Project (“Project”); the Cass County Commission (the “Commission”) is a member of the Authority. The Cass County Joint Water Resource District (the “District”) is also a member of the Authority, and the Authority previously directed the District to obtain the North Dakota right of way and temporary easements necessary to accommodate the Project. You have been in negotiations with the District and its agents regarding the right of way and temporary easement the District must acquire from you for the Project. The District copied the Commission on the following three letters the District sent to you regarding the District’s negotiations with you:

- Letter dated June 5, 2020, enclosing the District’s appraisal for the acquisition of the right of way and temporary easement from you, along with a proposed Purchase Agreement;
- Letter dated June 29, 2020, inviting you to meet with the District for purposes of negotiating compensation for the right of way and temporary easement to be acquired; and
- Letter dated August 5, 2020, notifying you the District planned to submit a request to the Commission seeking immediate possession of the right of way and temporary easement necessary for the Project.

Heather Worden
Commission Assistant

P.O. Box 2806
211 9th Street South
Fargo, North Dakota 58108
701-241-5609
www.casscountynnd.gov

The District informed the Commission that you and the District have not reached a mutually-acceptable agreement, and have not signed a purchase agreement, regarding the right of way and temporary easement the District must purchase from you to accommodate the Project. With that in mind, the District recently requested approval from the Commission to utilize quick take eminent domain to take possession of the right of way and temporary easement the District must acquire from you. The legal description of the necessary right of way and temporary easement is as follows:

Right of Way Easement:

OIN 9738

That part of the Southeast Quarter (SE1/4) of Section 14, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Commencing at the Southeast Corner of Section 14; thence N2°40'13"W on the east line of the SE1/4 of said Section 14 a distance of 63.00 feet to the Point of Beginning; thence N60°37'11"W a distance of 3,129.14 feet to the west line of said SE1/4; thence N2°41'18"W on said west line a distance of 939.83 feet to the Northwest Corner of said SE1/4; thence N87°23'38"E on the north line of said SE1/4 a distance of 1,894.54 feet; thence S60°37'11"E a distance of 894.25 feet to the east line of the SE1/4; thence S2°40'13"E on said east line a distance of 2,123.70 feet to the Point of Beginning.

Said parcel contains 103.57 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

OIN 9739

That part of the Southwest Quarter (SW1/4) of Section 14, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Commencing at the Northwest Corner of the SW1/4; thence N87°23'38"E on the north line of said SW1/4 a distance of 1,149.61 feet to the Point of Beginning; thence continuing N87°23'38"E on said north line a distance of 1,503.48 feet to the Northeast Corner of said SW1/4; thence S2°41'18"E on the east line of said SW1/4 a distance of 939.83 feet; thence N60°37'11"W a distance of 1,774.20 feet to the Point of Beginning.

Said parcel contains 16.22 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

That part of the Southwest Quarter (SW $\frac{1}{4}$) of Section 14, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Beginning at the Southwest Corner of the SW $\frac{1}{4}$; thence N2°43'10"W on the west line of said SW $\frac{1}{4}$ a distance of 1,049.00 feet to the south line of the parcel described in Doc. No. 1083412, Records of Cass County; thence N87°16'50"E on said south parcel line a distance of 91.73 feet; thence 186.42 feet on the arc of a non-tangential curve, concave to the west, having a radius of 2,100.00 feet, a central angle of 5°05'10", and a long chord length of 186.36 feet bearing S5°15'45"E; thence S2°43'10"E tangent to preceding curve a distance of 863.17 feet to the south line of said SW $\frac{1}{4}$; thence S87°28'53"W on said south line a distance of 100.00 feet to the Point of Beginning.

Said parcel contains 2.40 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

Temporary Easement:

A 10-foot-wide temporary construction easement across that part of the Southwest Quarter (SW $\frac{1}{4}$) of Section 14, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Commencing at the Southwest Corner of the SW $\frac{1}{4}$; thence N87°28'53"E on the south line of said SW $\frac{1}{4}$ a distance of 100.00 feet to the Point of Beginning; thence N2°43'10"W a distance of 863.17 feet; thence 186.42 feet on the arc of a curve tangent to preceding line, concave to the west, having a radius of 2,100.00 feet, a central angle of 5°05'10", and a long chord length of 186.36 feet bearing N5°15'45"W to the south line of the parcel described in Doc. No. 1083412, Records of Cass County; thence N87°16'50"E on said south parcel line a distance of 10.04 feet; thence 186.42 feet on the arc of a non-tangential curve, concave to the west, having a radius of 2,110.00 feet, a central angle of 5°03'43", and a long chord length of 186.36 feet bearing S5°15'01"E; thence S2°43'10"E tangent to preceding curve a distance of 863.21 feet to said south line of the SW $\frac{1}{4}$; thence S87°28'53"W on said south line a distance of 10.00 feet to the Point of Beginning.

Said easement contains 0.24 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

The Commission invites you to attend the Commission's meeting on October 19, 2020, at 3:30 p.m. The District will also participate in the meeting, along with a representative

Loberg
September 11, 2020
Page 4

of the land firm which was your primary point of contact throughout the negotiation process. At the meeting, the Commission will ask the District to verify the District's compliance with Section 61-16.1-09(2) of the North Dakota Century Code. The Commission will ultimately vote on whether to approve the District's use of quick take eminent domain to take a right of way and temporary easement over your property.

~~If you wish to participate in the Commission's October 19, 2020, public meeting via conference call or Microsoft Teams, please contact Heather Worden at (701) 241-5609 or wordenh@casscountynd.gov as soon as possible so Ms. Worden can assist you with the necessary arrangements.~~

This Notice does not preclude you from continuing to work with the District regarding the right of way and temporary easement necessary for the Project. In fact, the Commission and the District encourage you to maintain contact with **Patrick Roberts** and to continue discussions about the Project. **Patrick Roberts of ProSource Technologies, LLC** is your point of contact regarding the Project. You can reach **Patrick Roberts** at **(319) 899-0433** or **proberts@prosourcetech.com**.

Finally, North Dakota law requires the Commission to provide you with a description of the District's timeline regarding your right of way and temporary easement. The District must complete the acquisition of right of way necessary for construction of Project components on your property by Fall of 2020.

Sincerely,

CASS COUNTY COMMISSION



Robert Wilson, Cass County Administrator
Cass County Commission
211 Ninth Street South
Fargo, ND 58103
(701) 241-5609

cc: Patrick Roberts, Land Agent
Nick Delaney, Rinke Noonan
Birch Burdick, Cass County State's Attorney
Joel Paulsen, Executive Director, Diversion Authority
Rob Stefonowicz, Larkin Hoffman Attorneys
Eric Dodds, AE2S Program Manager
Heather Worden, Administrative Assistant, Cass County Commission

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1ZRT87R14716934775

Weight

1.00 LBS

Service

UPS Next Day Air®
Saturday Delivery
with UPS Carbon Neutral 

Shipped / Billed On

09/10/2020

Delivered On

09/12/2020 9:14 A.M.

Delivered To

3508 2ND ST E
WEST FARGO, ND, 58078, US

Received By

DRIVER RELEASE

Left At

Met Customer Woman

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 09/15/2020 9:45 A.M. EST

AFFIDAVIT OF LAND AGENT

STATE OF Minnesota)
) ss.
COUNTY OF Anoka)

[¶1] I, Patrick Roberts, do hereby state on oath:

[¶2] I am employed by ProSource Technologies, LLC as a Land Agent. The Cass County Joint Water Resource District (“the District”) hired ProSource Technologies, LLC to negotiate and acquire the necessary right of way for the Fargo-Moorhead Area Diversion Project (the “Project”).

[¶3] The District must acquire certain interests in real property from Steve Loberg (“Landowner”) for construction, operation, and maintenance of the Project.

[¶4] Landowner’s real property where the District must acquire a Right of Way and Temporary Easement for the Project located in Cass County, North Dakota, is more fully described as follows:

Right of Way

OIN 9738

Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Commencing at the Southeast Corner of Section 14; thence N2°40'13"W on the east line of the SE¼ of said Section 14 a distance of 63.00 feet to the Point of Beginning; thence N60°37'11"W a distance of 3,129.14 feet to the west line of said SE¼; thence N2°41'18"W on said west line a distance of 939.83 feet to the Northwest Corner of said SE¼; thence N87°23'38"E on the north line of said SE¼ a distance of 1,894.54 feet; thence S60°37'11"E a distance of 894.25 feet to said east line of the SE¼; thence S2°40'13"E on said east line a distance of 2,123.70 feet to the Point of Beginning.

Said parcel contains 103.57 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

OIN 9739

That part of the Southwest Quarter (SW¼) of Section 14, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Commencing at the Northwest Corner of the SW¼; thence N87°23'38"E on the north line of said SW¼ a distance of 1,149.61 feet to the Point of Beginning; thence continuing N87°23'38"E on said north line a distance of 1,503.48 feet to the Northeast Corner of said SW¼; thence S2°41'18"E on the east line of said SW¼ a distance of 939.83 feet; thence N60°37'11"W a distance of 1,774.20 feet to the Point of Beginning.

Said parcel contains 16.22 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

That part of the Southwest Quarter (SW¼) of Section 14, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Beginning at the Southwest Corner of the SW¼; thence N2°43'10"W on the west line of said SW¼ a distance of 1,049.00 feet to the south line of the parcel described in Doc. No. 1083412, Records of Cass County; thence N87°16'50"E on said south parcel line a distance of 91.73 feet; thence 186.42 feet on the arc of a non-tangential curve, concave to the west, having a radius of 2,100.00 feet, a central angle of 5°05'10", and a long chord length of 186.36 feet bearing S5°15'45"E; thence S2°43'10"E tangent to preceding curve a distance of 863.17 feet to the south line of said SW¼; thence S87°28'53"W on said south line a distance of 100.00 feet to the Point of Beginning.

Said parcel contains 2.40 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

Temporary Easement

OIN 9739

A 10-foot-wide temporary construction easement across that part of the Southwest Quarter (SW¼) of Section 14, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Commencing at the Southwest Corner of the SW¼; thence N87°28'53"E on the south line of said SW¼ a distance of 100.00 feet to the Point of Beginning; thence N2°43'10"W a distance of 863.17 feet; thence 186.42 feet on the arc of a curve tangent to preceding line, concave to the west, having a radius of 2,100.00 feet, a central angle of 5°05'10", and a long chord length of 186.36 feet bearing N5°15'45"W to the south line of the parcel described in Doc. No. 1083412,

Records of Cass County; thence N87°16'50"E on said south parcel line a distance of 10.04 feet; thence 186.42 feet on the arc of a non-tangential curve, concave to the west, having a radius of 2,110.00 feet, a central angle of 5°03'43", and a long chord length of 186.36 feet bearing S5°15'01"E; thence S2°43'10"E tangent to preceding curve a distance of 863.21 feet to said south line of the SW¼; thence S87°28'53"W on said south line a distance of 10.00 feet to the Point of Beginning.

Said easement contains 0.24 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

The property described above is the "Necessary Property."

[¶5] Affiant is familiar with the records maintained by ProSource Technologies, LLC with respect to the Necessary Property and has reviewed all such records prior to executing this affidavit.

[¶6] ProSource Technologies, LLC has attempted to negotiate with Landowner to acquire the Necessary Property. Attached as **Exhibit A** is a log of all contacts ProSource Technologies, LLC has had with Landowner.

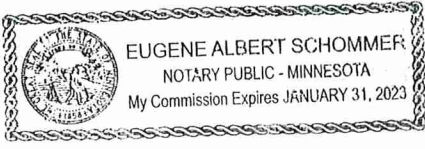
[¶7] The District has instructed ProSource Technologies, LLC to refrain from referencing, mentioning, or threatening quick take eminent domain during negotiations since August 1, 2017.

[¶8] I verify to the best of my knowledge, as Land Agent of ProSource Technologies, LLC, nobody from ProSource Technologies, LLC has referenced, mentioned, or threatened quick take eminent domain to Landowner during negotiations since August 1, 2017.

Dated this 6th day of October, 2020.

Patrick Roberts
Patrick Roberts
Land Agent

Subscribed to and sworn to before me this 6th day of October, 2020.



Eugene A. Schommer
Notary Public, County of Washington
State of Minnesota
My Commission Expires: 1-31-2023

(SEAL)

Exhibit A

OIN 9199-9738-9739	
	Contact Notes
8/13/2019	Telephone conversation with Mr. Steve Loberg regarding these two parcels as well as a third parcel OIN 9199 that he has ownership rights with his sister. He advised that he will be the point contact for all three parcels and I may as well send all three to him. Shared with Mr. Loberg the results of the appraisals on all three parcels. Mr. Loberg requested I send the appraisals and the offer letter in the mail to him.
8/13/2019	Letter crafted to accompany the appraisals and offer letters.
8/13/2019	Mailed sent out via Certified Mail.
8/19/2019	Package signed for by Lisa on August 19,2019.
9/3/2019	Phoned and left message.
9/12/2019	Phoned and left message.
10/16/2019	Phoned and left message on drive to Hickson for town hall meeting.
10/17/2019	Phoned and left message on drive back to WDM.
10/23/2019	Phone call with Mr. Loberg. He is not inclined to sell until he knows the project is going to go through. Also, he does not understand why the property across the section line was offered \$7200/acre and he was offered \$5900/acre. Thinks a fair amount would be \$10,000. If you would like to submit a counter-offer of \$10,000/acre I will need to have some type of documentation to support the counter-offer. Plans to engage an attorney to assist with the process.
11/7/2019	Phone call and message left.
11/20/2019	Phone call and message left.
1/14/2020	Phone call and message left.
1/28/2020	Informal offer letter sent.
3/11/2020	Revised appraisals and revised offer letters sent on all three parcels to Mr. Loberg.
5/13/2020	Phone call and message left.
5/22/2019	Phone call and message left.
6/9/2020	Phone call and message left.
6/17/2020	Call received from Mr. Loberg regarding offer and all the correspondence attempts. He advised that he is still not signing at the offer amount and now feels like \$11,000/acre is more in line with a fair counter-offer. If the board offers him that, he would take it. I advised that he needed to provide a counter-offer with supporting documentation. He advised that he was engaging the attorney out of the twin cities but did not remember the name. He would give them my contact information.
6/18/2020	Agent received email from Angie Bengtson with Rinke Noonan Law Offices requesting I send along the appraisal & offers.
6/19/2020	Agent sent along all three appraisals and offer letters to Angie.
6/22/2020	Agent received an email from attorney Nick Delaney with Rinke Noonan law offices requesting feedback on an offer that Mr. Loberg advised the DA made for \$10,000/acre.
6/22/2020	Agent replied and advised that the DA has not provided that offer, but I have in my notes that Mr. Loberg had advised in our initial conversation that \$10,000/acre is his minimum expectation.
6/30/2020	Invitation letter to attend CCJWRD meeting mailed out.
8/10/2020	Received a call from Mr. Steve Loberg regarding the intent to possess letter. He asked if he was required to attend. I advised he was not required but was certainly welcome to attend. Explained briefly the nature of the meeting and encouraged him to speak with his attorney as a copy of the letter was sent to Rinke Noonan and he should consult with his legal counsel. He understood and thanked me.
8/21/2020	Received an email forward from Ken Helvey @ SFR. The email was sent to him from Nick Delaney at Rinke Noonan advising that they are representing Steve Loberg. Ken advised that it was my file.
8/27/2020	Received a call from Angie for Attorney requesting verification of date these parcels will be brought forward to the Cass County Commission. Shortly after that call, I received an email from attorney Igor Lenzner providing his opinion that the appraisal was not worth the paper it was written on.
9/8/2020	Received an email from Attorney Lenzner regarding a proposal and asked if he should send it to me. I advised he should.
9/14/2020	Received an email with an excel spreadsheet with numbers for each parcel indicating the counter-offer amounts for each of the three parcels.
9/26/2020	Attorney requested feedback with the idea that he was doubtful we could get anywhere. I replied would have a reply for him by Wednesday
9/30/2020	Provided a reply to attorney Lenzner advising absent some type of additional documentation to support the level of funding being requested, it will be difficult for us to "get anywhere." At the end of the email I asked if he wished for me to present his counter-offer to the board with the information provided. No reply.

AFFIDAVIT OF DAN JACOBSON FOR CASS COUNTY COMMISSION

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

[¶1] I, Dan Jacobson, do hereby state on oath:

[¶2] I serve as Chair of the Cass County Joint Water Resource District (“the District”).

[¶3] As a member of the Metro Flood Diversion Authority, the District is responsible for acquiring the right of way in North Dakota necessary to accommodate the Fargo-Moorhead Area Diversion Project (the “Project”).

[¶4] The District has concluded acquisition of a Right of Way and Temporary Easement in and to real property owned by Steve Loberg (“Landowner”) is necessary for the Project.

[¶5] State and federal funds have been made available for the Project.

[¶6] The real property owned by Landowner where a Right of Way and Temporary Easement must be acquired by the District for the Project is located in Cass County, North Dakota, more fully described as follows:

Right of Way
OIN 9738

Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Commencing at the Southeast Corner of Section 14; thence N2°40'13"W on the east line of the SE¼ of said Section 14 a distance of 63.00 feet to the Point of Beginning; thence N60°37'11"W a distance of 3,129.14 feet to the west line of said SE¼; thence N2°41'18"W on said west line a distance of 939.83 feet to the Northwest Corner of said SE¼; thence N87°23'38"E on the north line of said SE¼ a distance of 1,894.54 feet; thence S60°37'11"E a distance of 894.25 feet to said east line of the SE¼; thence S2°40'13"E on said east line a distance of 2,123.70 feet to the Point of Beginning.

Said parcel contains 103.57 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

OIN 9739

That part of the Southwest Quarter (SW $\frac{1}{4}$) of Section 14, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Commencing at the Northwest Corner of the SW $\frac{1}{4}$; thence N87°23'38"E on the north line of said SW $\frac{1}{4}$ a distance of 1,149.61 feet to the Point of Beginning; thence continuing N87°23'38"E on said north line a distance of 1,503.48 feet to the Northeast Corner of said SW $\frac{1}{4}$; thence S2°41'18"E on the east line of said SW $\frac{1}{4}$ a distance of 939.83 feet; thence N60°37'11"W a distance of 1,774.20 feet to the Point of Beginning.

Said parcel contains 16.22 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

That part of the Southwest Quarter (SW $\frac{1}{4}$) of Section 14, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, being further described as follows:

Beginning at the Southwest Corner of the SW $\frac{1}{4}$; thence N2°43'10"W on the west line of said SW $\frac{1}{4}$ a distance of 1,049.00 feet to the south line of the parcel described in Doc. No. 1083412, Records of Cass County; thence N87°16'50"E on said south parcel line a distance of 91.73 feet; thence 186.42 feet on the arc of a non-tangential curve, concave to the west, having a radius of 2,100.00 feet, a central angle of 5°05'10", and a long chord length of 186.36 feet bearing S5°15'45"E; thence S2°43'10"E tangent to preceding curve a distance of 863.17 feet to the south line of said SW $\frac{1}{4}$; thence S87°28'53"W on said south line a distance of 100.00 feet to the Point of Beginning.

Said parcel contains 2.40 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

Temporary Easement

OIN 9739

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Commencing at the Southwest Corner of the SW $\frac{1}{4}$; thence N87°28'53"E on the south line of said SW $\frac{1}{4}$ a distance of 100.00 feet to the Point of Beginning; thence N2°43'10"W a distance of 863.17 feet; thence 186.42 feet on the arc of a curve tangent to preceding line, concave to the west, having a radius of 2,100.00 feet, a central angle of 5°05'10", and a long chord length of 186.36 feet bearing N5°15'45"W to the south line of the parcel described in Doc. No. 1083412,

Records of Cass County; thence N87°16'50"E on said south parcel line a distance of 10.04 feet; thence 186.42 feet on the arc of a non-tangential curve, concave to the west, having a radius of 2,110.00 feet, a central angle of 5°03'43", and a long chord length of 186.36 feet bearing S5°15'01"E; thence S2°43'10"E tangent to preceding curve a distance of 863.21 feet to said south line of the SW¼; thence S87°28'53"W on said south line a distance of 10.00 feet to the Point of Beginning.

Said easement contains 0.24 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

[¶7] The District has fulfilled the required negotiation steps in accordance with subsection 2 of section 61-16.1-09 of the North Dakota Century Code.

[¶8] The District sent a written offer of just compensation to Landowner by certified mail, along with an appraisal and purchase agreement, on June 5, 2020. A copy of the offer (without the appraisal that was included) is attached as **Exhibit 1**.

[¶9] On June 29, 2020, the District sent Landowner a written request for a meeting, by certified mail; the District and Landowner have not reached an agreement regarding compensation, and more than fifteen days have passed since Landowner's receipt of the offer. A copy of the written request for a meeting with Landowner is attached as **Exhibit 2**.

[¶10] The District and Landowner have not reached an agreement regarding compensation, and more than thirty days have passed since Landowner's receipt of the request for a meeting.

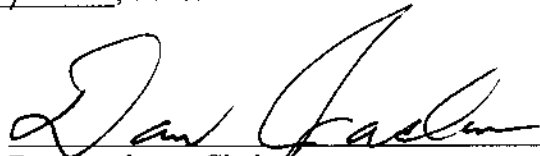
[¶11] On August 5, 2020, the District sent Landowner a written notice of intent to take possession of the Right of Way and Temporary Easement, by certified mail. A copy of the notice of intent is attached as **Exhibit 3**.

[¶12] The District has retained land agents who are in direct contact with Landowner. The District instructed our land agents not to reference, mention, or threaten quick take eminent domain during negotiations. The land agents have verified they have not referenced, mentioned,

or threatened quick take eminent domain during the course of negotiations with Landowner since August 1, 2017.

[¶13] I verify there have been no references, mention, or threats of quick take eminent domain by the District during negotiations since August 1, 2017.

Dated this 8th day of October, 2020.



Dan Jacobson, Chair
Cass County Joint Water Resource District

Subscribed to and sworn to before me this 8th day of October, 2020.



Notary Public, Cass County, State of North Dakota

(SEAL)

