

FM AREA DIVERSION PROJECT

Property Owner Information Packet for Cass County Commission

November 16th, 2020

PROPERTY OWNER: BREI Estates LLLP

LAND AGENT: Oly Olafson with HDR

OIN: 843



FM AREA
DIVERSION
PROJECT

TABLE OF CONTENTS

WRITTEN CORRESPONDENCE TIMELINE.....	1
L.R.E.D CHECKLIST FOR COMPLIANCE WITH N.D. CENTURY CODE	2
NEGOTIATING SUMMARY	4
PARCEL EXHIBIT	5
OFFER TO PURCHASE	6
<i>Proof of Delivery</i>	7
FORMAL NEGOTIATIONS AND WRITTEN OFFER OF JUST COMPENSATION	10
<i>Proof of Delivery</i>	13
REQUEST FOR MEETING.....	14
<i>Proof of Delivery</i>	16
NOTICE OF INTENT TO TAKE POSSESSION OF RIGHT OF WAY	17
<i>Proof of Delivery</i>	19
REQUEST FOR APPROVAL TO TAKE POSSESSION OF NECESSARY RIGHT OF WAY AND TEMPORARY EASEMENT	20
INVITATION TO ATTEND PUBLIC MEETING.....	23
<i>Proof of Delivery</i>	26
AFFIDAVIT OF LAND AGENT	27
<i>Contact Log</i>	29
AFFIDAVIT OF DAN JACOBSON FOR CASS COUNTY COMMISSION.....	30

Written Correspondence Timeline – BREI Estates LLLP

OIN 843	Sent	Received
Offer to Purchase	3/16/2020	3/18/2020
Formal Negotiations and Written Offer of Just Compensation	6/5/2020	6/8/2020
Request for Meeting	6/29/2020	7/1/2020
Notice of Intent to Take Possession of Right-of-Way	8/5/2020	8/7/2020
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	9/14/2020
Commission Meeting Date	11/16/20	

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: BREI Estates, LLLP
2. Land Agent: Oly Olafson
3. Parcel No.: 57-0000-10281-000
4. OIN No.: 843

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, 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 temporary easement regarding the OIN 843.

FM Area Diversion Project

Property Negotiation Summary

Friday, November 6, 2020

Owner	BREI Estates, LLLP C/O Randall J. Bakke
Address	300 West Century Avenue/PO Box 4247, Bismarck ND 58502-4247
Property Type	Agricultural Land
Original Identification Number	843
Land Agent	Oly Olafson

Property Need

Valuation and Negotiation Summary:

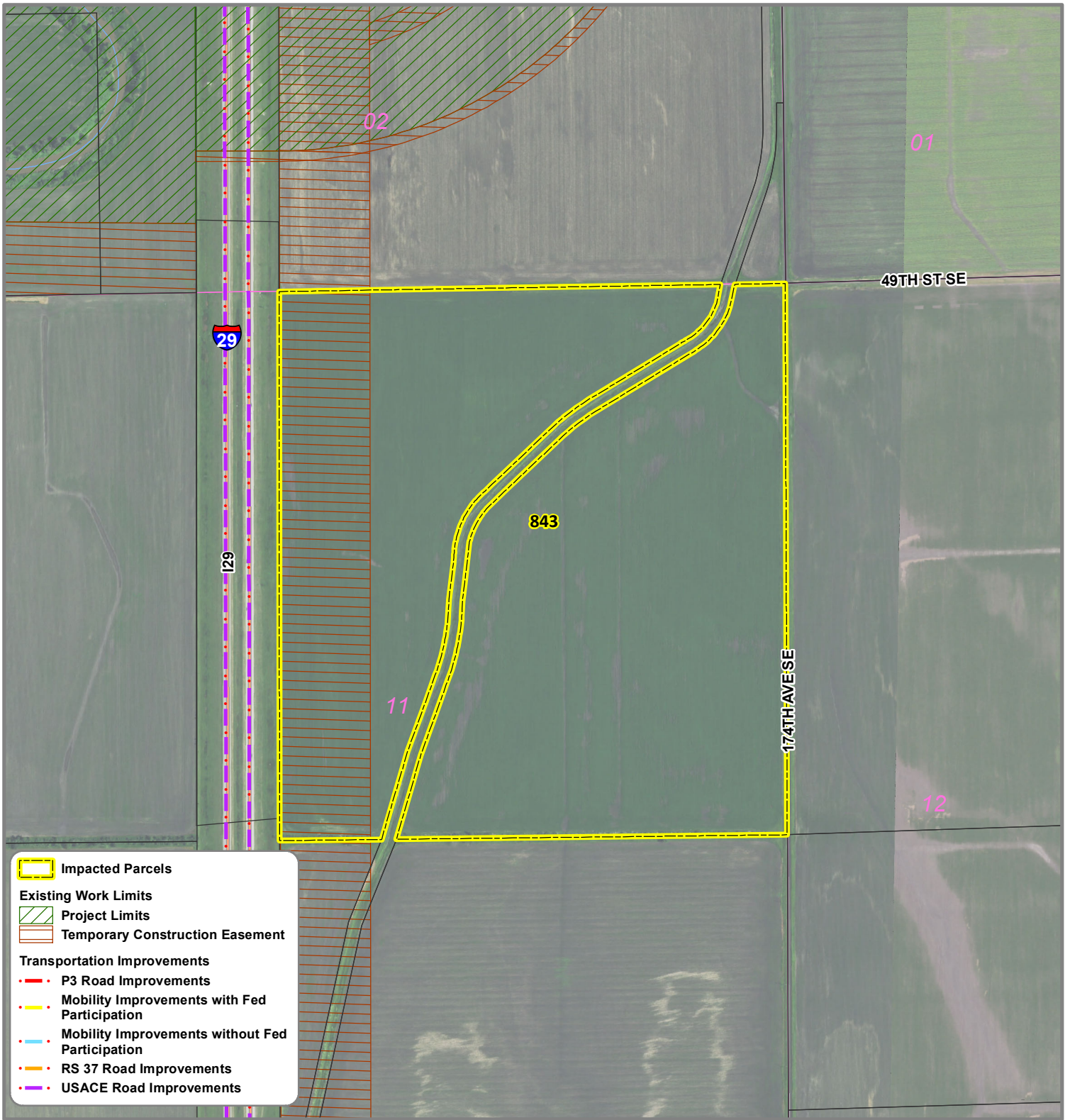
Appraisal Value / Date	February 21, 2020
Purchase Agreement Value	\$732,500 for Fee Acquisition/\$22,900 for 26.44 TCE Acres
Relocation	TBD

Miscellaneous Provisions

A Letter of Just Compensation was sent to Mr. Bakke on March 16, 2020. That offer to purchase included an offer to purchase the fee interest in the property, 140.85 acres for \$5,200.57/Acre or \$732,500. Also included in that letter of just compensation was an offer to purchase only the TCE Acres necessary for the project, \$22,900 for 26.44 acres, for a period of five years. (\$175.00/Acre).

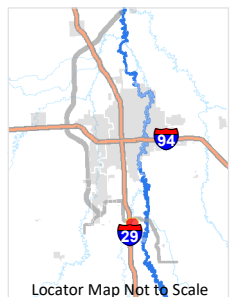
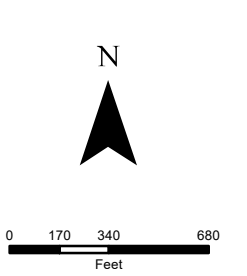
Requested Action

I brought this forward to the Joint Board at a previous meeting and it was approved by the Board. The offer was sent to Mr. Bakke, which he soundly dismissed as inadequate. Further negotiations by myself and by Chris McShane was unable to come to an agreement beneficial to both sides.



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 hereon 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: hrecords - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Individual Property Maps - General Inquiry\IndividualLayout8x10v105.mxd



OIN: 843
BREI ESTATES LLLP
Parcel ID: 57-0000-10281-000
Cass County, ND

FM AREA DIVERSION
 Map Date: 7/1/2020



March 16, 2020

PRIORITY MAIL
Certified Mail Return Receipt

BREI Estates, LLLP
C/O Randall J. Bakke
Bakke, Grinolds, & Wiederholt
300 West Century Avenue
PO Box 4247
Bismarck, ND 58502-4247

RE: **Letter Conveying Offer to Purchase**

Project Parcel ID: 843

Property Legal Description: The Northeast Quarter of Section 11, Township 137 North, Range 49 West of the 5th Principal Meridian, Cass County, North Dakota

Project Title: Fargo Flood Diversion – Retention Area & Temporary I-29 Roadway Relocation

PID: 57-0000-10281-000

Dear Mr. Bakke,

The Cass County Joint Water Resource District (CCJWRD) and other partners are constructing a flood control improvement project in the area which includes land owned by you. The CCJWRD has hired HDR, Inc. to aid in the acquisition of right-of-way for the project. You are receiving this letter as the owner/agent of the property rights that must be acquired for the project. This letter conveys CCJWRD's offer to purchase all interests in the real property that are necessary for the project. The interests being purchased (the "Parcel") are listed on Exhibit A (Acquisition Summary) and shown on Exhibit B (Parcel Sketch), and the amount stated in this letter as the purchase amount is for all of those interests. If the Parcel includes interests that another person or entity may own (for example a mortgage lender or easement holder), the CCJWRD's offer is contingent on all parties with interest agreeing to the amount and allocation of the purchase funds.

To determine market value of the interest being acquired, HDR, under contract to the CCJWRD, retained the services of the independent property appraisal firm, Tinjum Appraisal Company, Inc. The appraiser has determined that the market value of the interests being purchased is \$732,500 as of February 28, 2020. 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 appraisal is accompanying this letter and provided to you. A summary of the appraisal is provided on Exhibit A (Appraisal Summary). 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.

The Cass County Joint Water Resource District hereby offers to pay BREI Estates LLLP \$732,500 as Just Compensation for the property interests it must acquire from the owner.

Once we agree on the basic terms of an agreement for you to sell, and the CCJWRD to buy the property interests describe in this letter, a Purchase Agreement will be drafted and presented to you for approval. The Purchase Agreement will contain all of the pertinent terms and conditions of this offer, as well as several standard legal, property acquisition terms. The Purchase Agreement will be between BREI Estates LLLP and the CCJWRD.

If you have any questions about the acquisition or relocation process, please contact the representative listed below. The representative is here to help you understand the process and to assist in negotiating a fair direct purchase of the Parcels, however, he does not represent you.

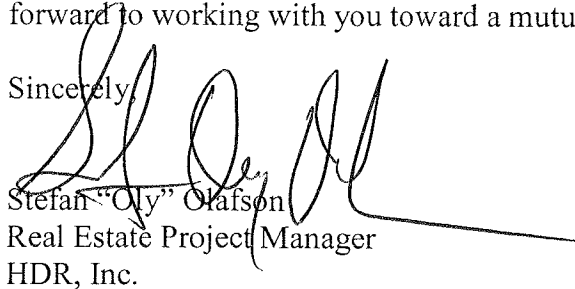
Upon receipt of this letter, please sign below. Your signature indicates only that you have received this Offer to Purchase, and the following documents:

- Copy of the appraisal for Parcel 843 completed by Tinjum Appraisal Company, Inc. and
- Exhibits A (Acquisition Summary) and (Appraisal Summary), and B (Parcel sketch)

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) or have the value of your interests determined through eminent domain proceedings.

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,

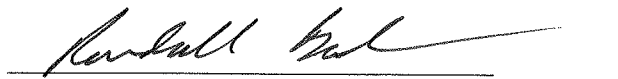


Stefan "Oly" Olafson
Real Estate Project Manager
HDR, Inc.

51 North Broadway, Suite 550
Fargo, ND 58102-4970
701-404-6463/701-205-8855
Oly.Olafson@hdrinc.com

I acknowledge that on MARCH 18, 2020, I received this letter and all documents listed above.

By:



Randall Bakke, Agent for BREI Estates, LLLP

cc: Cass County Joint Water Resource District

EXHIBIT A**ACQUISITION SUMMARY
Fargo Flood Diversion – Western Tie Back****Letter Conveying Offer to Purchase****Project Parcel ID: 843****Parcel Legal Description:** The Northeast Quarter of Section 11, Township 137 North, Range 49 West of the 5th Principal Meridian, Cass County, North Dakota**Project Title:** Fargo Flood Diversion – Retention Area & I-29 Temporary Road Relocation**PID:** 57-0000-10281-000**Recorded Fee Owner:** BREI Estates, LLLP**Other Interests or Encumbrances:** None

Description of Property Interests to be Acquired*:

Please see Exhibit B

Noted and Waived Exceptions, Reservations or Encumbrances: None

*Unless otherwise noted, any offer to purchase is contingent on the following:

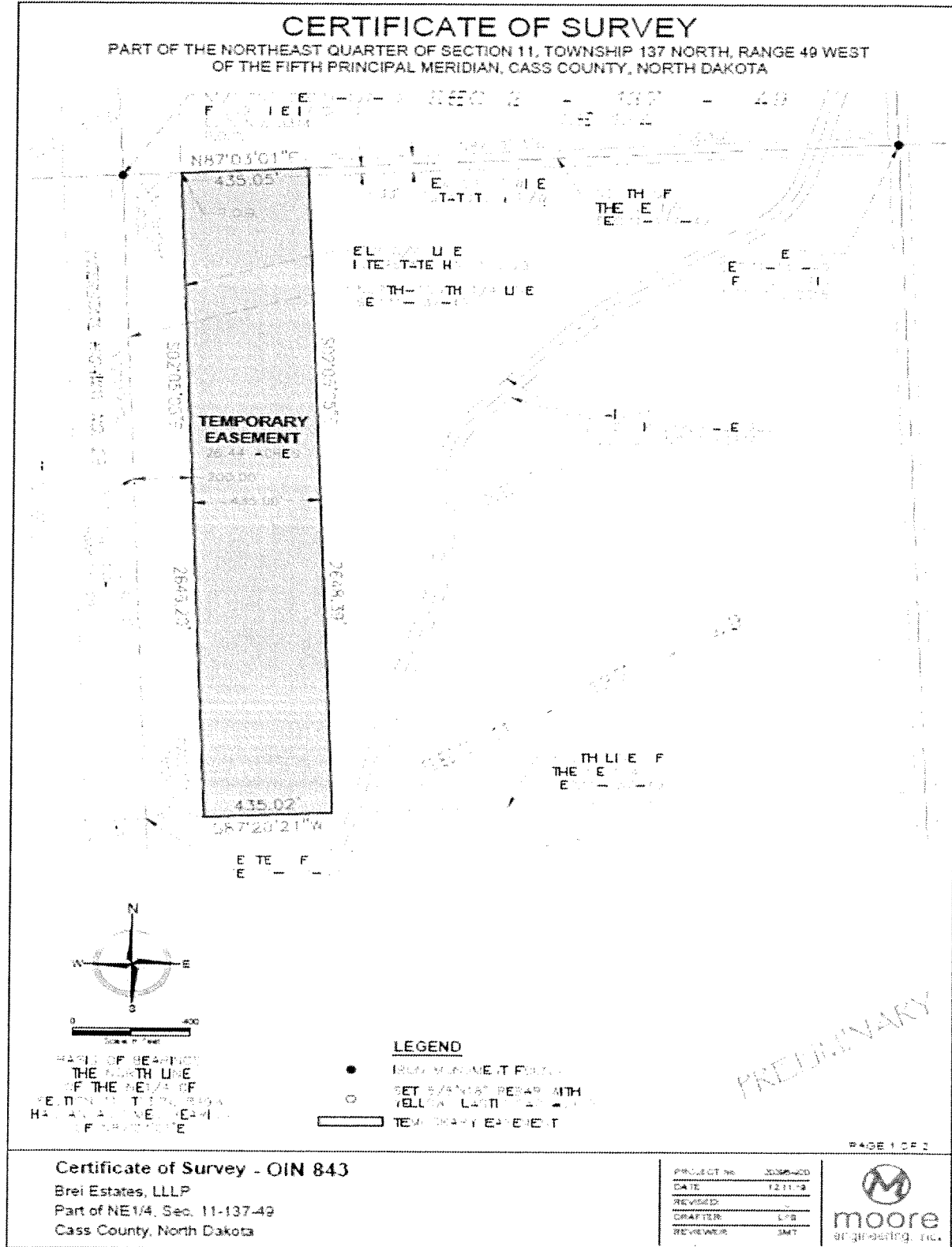
1. Demonstration of marketable title,
2. Conveyance of all interests identified, unless waived in writing by the Cass County Joint Water Resource District,
3. Execution of a purchase agreement signed by the Cass County Joint Water Resource District, or its designee.

APPRAISAL SUMMARY

Type of Interest	Amount	Per Unit	Indicated Value
Fee Simple	140.85 Acres	\$5,038	\$709,600
Net Damages to Remainder	N/A	N/A	N/A
Temporary Easement	26.44 Acres	\$160/A/5Yrs	\$22,900
Total			\$732,500

EXHIBIT B

OIN 843 Certificate of Survey





CERTIFIED MAIL – RETURN RECEIPT REQUESTED

June 5, 2020

**Cass County
Joint Water
Resource
District**

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
wrld@casscountynd.gov
casscountynd.gov

BREI Estates, LLLP
c/o Randall J. Bakke
Bakke, Grinolds, & Wiederholt
300 West Century Avenue
PO Box 4247
Bismarck, ND 58502-4247
Certified No. 7019 1640 0002 0398 7685

Greetings:

RE: Cass County Joint Water Resource District
Fargo-Moorhead Area Diversion Project
Formal Negotiations and Written Offer of Just Compensation
OIN: 843
Parcel No.: 57-0000-10281-000

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 a temporary easement 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 a temporary easement from you. More specifically, to accommodate the Project, the District must acquire a temporary easement from you over property located in Cass County and identified as Parcel Identification Number 57-0000-10281-000. The legal description of the property to be acquired is:

That part of the Northeast Quarter of Section 11, Township 137 North, Range 49 West of the 5th Principal Meridian, Cass County, North Dakota, being a strip 435.00 feet wide, lying easterly of, as measured at a right angle to and parallel with a line described as follows:

Commencing at a found iron monument which designates the north quarter corner of said Section 11; thence North 87 degrees 03 minutes 01 second East on an assumed bearing along the north line of said Northeast Quarter for a distance of 200.03 feet to the easterly right of way line of Interstate Highway No. 29, the point of beginning of said line; thence South 02 degrees 05 minutes 05 seconds East along said easterly right of way line for

a distance of 2646.20 feet to the south line of said Northeast Quarter, said line there terminates. The easterly sideline of said strip shall be lengthened or shortened as necessary to terminate on the south and north lines of said Northeast Quarter.

Said tract contains 26.44 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

Enclosed is an appraisal regarding the value of the temporary easement the District must acquire from you, as determined by a licensed North Dakota appraiser. As you can see from the appraisal, the appraiser indicated the value of the temporary easement the District must acquire from you is \$22,900.00. The District approved the appraisal and this letter is the District's offer to you in the amount of \$22,900.00 as just compensation to purchase the 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.

You are encouraged to maintain contact with the land agent assigned to your property. **Oly Olafson** of HDR, Inc. can be reached at **(701) 205-8855** or **Oly.Olafson@hdr.inc**. Oly is your point of contact for getting answers to any questions you have about the Project and acquisition of the 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 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 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.

BREI Estates, LLLP
June 5, 2020
Page 3

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@casscountynd.gov

Enclosures

cc: Oly Olafson, 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 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:

BREI ESTATES LLLP
C/O RANDALL J BAKKE
BAKKE GRINGOLD & WIEDERHOLT



9590 9402 3806 8032 1549 70

2 Article Number (Transfer from service label)

7019 1640 0002 0398 7685

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- Agent
- Addressee

B. Received by (Printed Name)

Al Soll

C. Date of Delivery

6-8-20

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

June 29, 2020

**Cass County
Joint Water
Resource
District**

BREI Estates, LLLP
c/o Randall J. Bakke
Bakke, Grinolds, & Wiederholt
300 West Century Avenue
PO Box 4247
Bismarck, ND 58502-4247
Certified No. 7020 0090 0000 7648 4052

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
Request for Meeting
OIN: 843
Parcel No.: 57-0000-10281-000**

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 temporary easement needed from you; and a Purchase Agreement as the District's offer of just compensation to purchase the temporary easement from you. The District's letter specifically described the 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 the temporary easement from you to accommodate the Project.

Carol Harbeke Lewis
Secretary-Treasurer

The District requests your attendance at a meeting to discuss the District's offer to purchase the 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.

1201 Main Avenue West
West Fargo, ND 58078-1301

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

The District hopes you will attend one of the above-mentioned meetings to discuss the Project and the 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.

BREI Estates, LLLP
OIN 843
June 29, 2020
Page 2

Please continue to maintain contact and negotiate with the land agent assigned to your property. **Oly Olafson** of HDR, Inc. is your point of contact for getting answers to any questions you have about the Project. Oly can be reached at **(701) 205-8855** or **Oly.Olafson@hdrinc.com**.

North Dakota law requires the District to provide you with a description of the District's negotiation timeline regarding the temporary easement. The District must conclude all negotiations and complete the acquisition of the 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 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@casscountynd.gov

cc: Oly Olafson, 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:
 BREI ESTATES LLLP
 410 RANDALL J BAKKE
 BAKKE, GRINGOLD & WIEDERHOLT
 300 WEST CENTURY AVENUE
 PO BOX 4247
 BISMARCK ND 58502-4247



9590 9402 5989 0062 9060 37

2. Article Number (Transfer from service label)

7020 0090 0000 7648 4052

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 X *Al Selvig* Agent Addressee

B. Received by (Printed Name) *Al Selvig* C. Date of Delivery *7-1-20*

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



3. Service Type
- | | |
|--|---|
| <input type="checkbox"/> Adult Signature | <input type="checkbox"/> Priority Mail Express® |
| <input type="checkbox"/> Adult Signature Restricted Delivery | <input type="checkbox"/> Registered Mail™ |
| <input checked="" type="checkbox"/> Certified Mail® | <input type="checkbox"/> Registered Mail Restricted Delivery |
| <input type="checkbox"/> Certified Mail Restricted Delivery | <input type="checkbox"/> Return Receipt for Merchandise |
| <input type="checkbox"/> Collect on Delivery | <input type="checkbox"/> Signature Confirmation™ |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Insured Mail | |
| <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) | |

Domestic Return Receipt



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Cass County
Joint Water
Resource
District

August 5, 2020

Dan Jacobson
Chairman
West Fargo, North Dakota

BREI Estates, LLLP
c/o Randall J. Bakke
Bakke, Grinolds & Wiederholt
300 West Century Avenue
PO Box 4247
Bismarck, ND 58502-4247
Certified No. 7020 0090 0000 7648 3499

Rodger Olson
Manager
Leonard, North Dakota

Greetings:

Ken Lougheed
Manager
Gardner, North Dakota

RE: Cass County Joint Water Resource District
Fargo-Moorhead Area Diversion Project
NOTICE OF INTENT TO TAKE POSSESSION OF RIGHT OF WAY
OIN: 843
Parcel No. 57-0000-10281-000

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 temporary easement, and a Purchase Agreement as the District's offer of just compensation to purchase the 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 the temporary easement in and to 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 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 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
wrld@casscountynnd.gov
casscountynnd.gov

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

BREI Estates, LLLP
OIN 843
August 5, 2020
Page 2

You are encouraged to maintain contact with the land agent assigned to your property. **Oly Olafson** of **HDR, Inc.** can be reached at **(701) 205-8855** or **Oly.Olafson@hdrinc.com**. Oly is your point of contact for getting answers to any questions you have about the Project and acquisition of a 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 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: Oly Olafson, 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:
 BREI ESTATES LLP
 C/O RANDALL J BAKKE
 BAKKE GRINDLOS & WIEDERHOLT
 300 WEST CENTURY AVENUE
 PO Box 4247
 BISMARCK ND 58502-4247



9590 9402 5989 0062 9065 25

2. Article Number (Transfer from service label)

7020 0090 0000 7648 3499

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Handwritten Signature]*

- Agent
- Addressee

B. Received by (Printed Name)

[Handwritten Name]

C. Date of Delivery

[Handwritten Date]

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



Cass County
Joint Water
Resource
District

SENT VIA EMAIL wilsonro@casscountynd.gov

September 8, 2020

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

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

Greetings:

RE: Cass County Joint Water Resource District
Fargo-Moorhead Area Diversion Project
Request for Approval to Take Possession of Necessary Temporary
Easement
OIN: 843
Parcel No.: 57-0000-10281-000

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 temporary easement from BREI Estates, LLLP (the "Landowner"):

- Letter June 5, 2020, enclosing the District's appraisal for the acquisition of the 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 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 temporary easement necessary for the Project.

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

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 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 temporary easement is as follows:

Temporary Easement:

OIN 843

That part of the Northeast Quarter of Section 11, Township 137 North, Range 49 West of the 5th Principal Meridian, Cass County, North Dakota, being a strip 435.00 feet wide, lying easterly of, as measured at a right angle to and parallel with a line described as follows:

Commencing at a found iron monument which designates the north quarter corner of said Section 11; thence North 87 degrees 03 minutes 01 second East on an assumed bearing along the north line of said Northeast Quarter for a distance of 200.03 feet to the easterly right of way line of Interstate Highway No. 29, the point of beginning of said line; thence South 02 degrees 05 minutes 05 seconds East along said easterly right of way line for a distance of 2646.20 feet to the south line of said Northeast Quarter, said line there terminates. The easterly sideline of said strip shall be lengthened or shortened as necessary to terminate on the south and north lines of said Northeast Quarter.

Said tract contains 26.44 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

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 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 3

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 temporary easement necessary for the Project, and construction of the Project will not be possible without acquiring the 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 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 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 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: Oly Olafson, Land Agent
Chris McShane, Ohnstad Twichell, P.C.
Birch Burdick, Cass County State's Attorney
Joel Paulsen, Executive Director, Diversion Authority
Eric Dodds, AE2S Program Manager
Sharon Oliver, Ohnstad Twichell, P.C.
Heather Worden, Administrative Assistant, Cass County Commission



September 11, 2020

VIA UPS – DELIVERY CONFIRMATION

Board of County Commissioners

BREI Estates, LLLP
C/O Randall J. Bakke
Bakke, Grinolds, & Wiederholt
300 West Century Avenue
PO Box 4247
Bismarck, ND 58502

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
OIN: 843
Parcel No.: 57-0000-10281-000
UPS Tracking No. 1Z RT8 7R1 25 3439 2742

Greetings:

As you know, the METRO FLOOD DIVERSION BOARD OF 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 temporary easement necessary to accommodate the Project. You have been in negotiations with the District and its agents regarding the 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 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 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 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.casscountynd.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 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 temporary easement the District must acquire from you. The legal description of the temporary easement is as follows:

Temporary Easement:

OIN 843

That part of the Northeast Quarter of Section 11, Township 137 North, Range 49 West of the 5th Principal Meridian, Cass County, North Dakota, being a strip 435.00 feet wide, lying easterly of, as measured at a right angle to and parallel with a line described as follows:

Commencing at a found iron monument which designates the north quarter corner of said Section 11; thence North 87 degrees 03 minutes 01 second East on an assumed bearing along the north line of said Northeast Quarter for a distance of 200.03 feet to the easterly right of way line of Interstate Highway No. 29, the point of beginning of said line; thence South 02 degrees 05 minutes 05 seconds East along said easterly right of way line for a distance of 2646.20 feet to the south line of said Northeast Quarter, said line there terminates. The easterly sideline of said strip shall be lengthened or shortened as necessary to terminate on the south and north lines of said Northeast Quarter.

Said tract contains 26.44 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

The Commission invites you to attend the Commission's meeting on October 5, 2020, at 3:30 p.m. The District will also participate in the meeting, along with a representative 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 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@casscountynynd.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 temporary easement necessary for the Project. In fact, the Commission and the District encourage you to maintain contact with **Oly Olafson** and to continue discussions about the Project. **Oly Olafson** of **HDR, Inc.** is your point of contact regarding the Project. You can reach **Oly Olafson** at (701) 205-8855 or oly.olafson@hdr.inc.com.

BREI Estates, LLP
September 11, 2020
Page 3

Finally, North Dakota law requires the Commission to provide you with a description of the District's timeline regarding your temporary easement. The District must complete the acquisition of temporary easement 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: Oly Olafson, Land Agent
Birch Burdick, Cass County State's Attorney
Joel Paulsen, Executive Director, Diversion Authority
Chris McShane, Ohnstad Twichell, P.C.
Eric Dodds, AE2S Program Manager
Sharon Oliver, Ohnstad Twichell, P.C.
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

1ZRT87R12534392742

Weight

1.00 LBS

Service

UPS Next Day Air®
with UPS Carbon Neutral 

Shipped / Billed On

09/10/2020

Delivered On

09/14/2020 9:38 A.M.

Delivered To

300 W CENTURY AVE
BISMARCK, ND, 58503, US

Received By

BAGLIVIO

Left At

Inside Delivery

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 9:42 A.M. EST

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

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

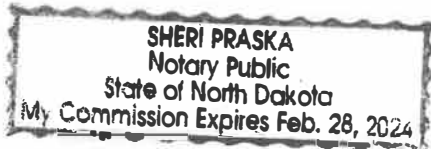
[¶8] I verify to the best of my knowledge, as Land Agent of HDR, Inc., nobody from HDR, Inc. has referenced, mentioned, or threatened quick take eminent domain to Landowner during negotiations since August 1, 2017.


Dated this 14 day of September, 2020.



Oly Olafson
HDR, Inc.

Subscribed to and sworn to before me this 14 day of September, 2020.





Notary Public, County of Cass
State of North Dakota
My Commission Expires: Feb 28, 2024

(SEAL)

Exhibit A

5/17/2019 – Discussion on selling the quarter section instead of just the TCE necessary

6/2/2019 – Sent Mr. Bakke my thoughts on a CMA/BPO rather than an appraisal

7/9/2019 – Sent Mr. Bakke the CMA and a Purchase Agreement for his consideration.

7/17/2019 – Mr. Bakke replied that the price was below what he paid for the land 5 years ago.

8/7/2019 – Offer from Randall Bakke - \$1,716,000

12/12/2019 – Mr. Bakke requested survey and appraisal information on the parcel

1/15/2020 – Mr. Bakke sent email requesting the COS, which I sent to him.

1/26/2020 – Mr. Bakke called to make sure the entire quarter (BREI holdings) would be appraised. I assured him a part of the appraisal would address that.

3/2/2020 – I sent an email to Mr. Bakke letting him know the appraisal completed by Tinjum Appraisal was in the review process. I let him know the Joint Board would review and either accept or reject the appraisal on March 12th.

3/6/2020 – I received a reply from Mr. Bakke questioning H & B Use. He's not willing to negotiate a TCE for the I-29 project or a flowage easement. He is only willing to sell the entire parcel.

3/19/2020 – I received the signed letter of Just Compensation back from Mr. Bakke.

4/21/2020 – I received a copy of the Al Leirness appraisal from Mr. Bakke.

5/3/2020 – Mr. Bakke informed me that he is willing to settle for \$1,600,000, but has to be accepted by June 1. He stated he is willing to let this go to condemnation.

5/27/2020 – Mr. Bakke emailed regarding his counter offer and why he hadn't heard anything back from the CCJWRD.

5/28/2020 – The counter was discussed by the JB but because the numbers are so far apart, they did not take any action.

6/2/2020 – I sent Mr. Bakke an email letting him know I was in receipt of his May 27th and June 2nd emails and was waiting for advice on how to respond.

6/11/2020 – Chris McShane sent a letter (email) to Mr. Bakke.

9/8/2020 – I let Mr. Bakke know the Joint Board would be discussing the BREI property at their next meeting. This was only a courtesy notice to Mr. Bakke in case he wanted to speak to the Board.

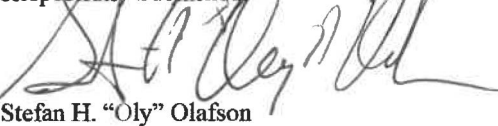
9/9/2020 – I emailed Mr. Bakke and let him know he would be given a full 30 days prior to the County Commission took up his BREI property and the next step.

9/9/2020 – I let Mr. Bakke know I am the land agent in charge of negotiations with him.

9/14/2020 – I again emailed and called Mr. Bakke to let him know that his offer was considered by the Board did not take any action. I again informed him I was the agent he was to negotiate with.

9/14/2020 – I emailed Mr. Bakke offering him 10% above the appraised value on the entire of the holdings of BREI and an increase to \$240.00/Acre from \$175.00/Acre for the TCE Acres for five years.

Respectfully Submitted,



Stefan H. "Oly" Olafson

[¶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**.

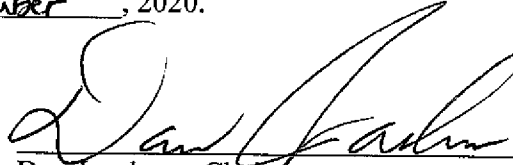
[¶10] The District and Landowner have not reached an agreement regarding compensation, and more than thirty days have passed since Landowner's receipt of the request for a meeting.

[¶11] On August 5, 2020, the District sent Landowner a written notice of intent to take possession of the 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.

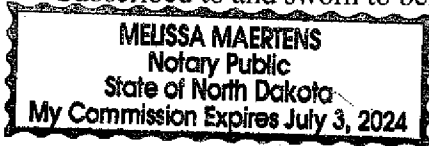
[¶13] I verify there have been no references, mention, or threats of quick take eminent domain by the District during negotiations since August 1, 2017.


Dated this 2nd day of NOVEMBER, 2020.



Dan Jacobson, Chair
Cass County Joint Water Resource District

Subscribed to and sworn to before me this 2nd day of NOVEMBER, 2020.





Notary Public, Cass County, State of North Dakota

(SEAL)