



MEMORANDUM

**Highway
Department**

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County Engineer

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Blaine Laaveg
Superintendent

TO: Cass County Commission

FROM: Jason Benson, Cass County Engineer *JJB*

DATE: November 25, 2020

SUBJECT: Memorandum of Understanding between Metro Flood
Diversion Authority and Cass County

Cass County has been working with the Metro Flood Diversion Authority on completing a Memorandum of Understanding (MOU) for the construction of the diversion project for the last several months. Much of this latest work on the MOU surrounds previous discussions with the MFDA over the last several years. The MOU outlines respective roles and responsibilities for the design, construction, and relocation of road facilities in conjunction with the Storm Water Diversion Channel and Associated Infrastructure of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.

Over the last two months a small team of Cass County staff including Commissioner Breitling, Robert Wilson, Birch Burdick, Robert Vallie, Matt Stamness, and Jason Benson have worked with MFDA staff to finalize this MOU.

SUGGESTED MOTION: Move that the Cass County Board of Commissioners grant approval of the Memorandum of Understanding (MOU) with the Metro Flood Diversion Authority for the design, construction, and relocation of road facilities in conjunction with the Storm Water Diversion Channel and Associated Infrastructure of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.

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MEMORANDUM OF UNDERSTANDING

BY AND BETWEEN

METRO FLOOD DIVERSION AUTHORITY

AND

CASS COUNTY, NORTH DAKOTA

Dated as of _____, 2020

Relating to:

A Memorandum of Understanding outlining respective roles and responsibilities for the design, construction, and relocation of road facilities in conjunction with the Storm Water Diversion Channel and Associated Infrastructure of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.

This instrument was drafted by:
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SIGNATURE PAGESS-1 THROUGH S-2

EXHIBIT A – EXISTING ROADS

EXHIBIT B – MINIMUM DESIGN STANDARDS

EXHIBIT C – EXISTING ROAD RECONSTRUCTION DESIGN CRITERIA

EXHIBIT D – BRIDGE DESIGN CRITERIA

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EXHIBIT G – COUNTY PROPERTY INTERESTS AND GRANTS TO AUTHORITY

EXHIBIT H – RIVER INLET AND DRAIN INLET INTERFACE DATA SHEETS

EXHIBIT I – UTILITY PERMIT APPLICATION

EXHIBIT J – FEDERAL CERTIFICATION FORMS

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (hereinafter the “MOU”) is made and entered into this _____ day of _____, 2020 (the “Effective Date”), by and between METRO FLOOD DIVERSION AUTHORITY, a political subdivision of the State of North Dakota, and CASS COUNTY, NORTH DAKOTA, a political subdivision and home rule county of the State of North Dakota.

WHEREAS, construction of the locally preferred plan for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (hereinafter the “Comprehensive Project”) at the Fargo, North Dakota, and Moorhead, Minnesota, Metropolitan Area was authorized by Section 7002(2) of the Water Resources Reform and Development Act of 2014, Public Law 113-121; and

WHEREAS, the Authority, the City of Fargo, North Dakota, and the City of Moorhead, Minnesota, are the Non-Federal Sponsors for the Comprehensive Project and have entered into a Project Partnership Agreement (the “PPA”) with the United States Army Corps of Engineers (hereinafter “USACE”) for the construction, operation, and maintenance of the Comprehensive Project; and

WHEREAS, the PPA sets forth a split delivery method for the Comprehensive Project, establishing the respective responsibilities of both the Non-Federal Sponsors and USACE; and

WHEREAS, pursuant to the PPA, USACE will be responsible for completing the Diversion Inlet Structure; the approximately six (6) mile connecting channel; the Red River Control Structure and the Wild Rice River Control Structure; the SEAI; the overflow embankment; construction of road and railroad raises associated with the staging area; and all mitigation features that are not the responsibility of the Non-Federal Sponsors; and

WHEREAS, pursuant to the PPA, part of the Non-Federal Sponsors’ responsibility will be to design, construct, manage, operate, and maintain the Storm Water Diversion Channel and Associated Infrastructure or the SWDCAI; and

WHEREAS, the Non-Federal Sponsors’ responsibilities under the PPA also include the acquisition of real estate interests necessary for the SWDCAI and the operation and maintenance of the SWDCAI when constructed; and

WHEREAS, the Authority, pursuant to the Joint Powers Agreement, is the entity responsible for the Non-Federal Sponsors’ obligations under the PPA; and

WHEREAS, to facilitate the design, construction, operation, and maintenance of the SWSWDCAI, on September 2, 2015, the Authority approved a Notice of Intent to develop a Public-Private Partnership (“P3”) with a Developer pursuant to North Dakota Century Code chapter 48-02.1; and

WHEREAS, on July 14, 2016, the Authority authorized the release of a Request for Qualifications for the P3 Procurement, and on December 15, 2016, the Authority authorized the release of a draft Request for Proposals for the P3 Procurement; and

WHEREAS, the Authority anticipates the Developer will operate and maintain the SWSWDCAI for an approximately thirty (30) year term following completion; and

WHEREAS, the County is a fee owner and/or holders of certain rights-of-way on which the County is operating and maintaining Existing Roads, which will be affected by the construction, operation, and maintenance of the SWDCAI; and

WHEREAS, it is necessary for the construction, operation, and maintenance of the SWDCAI that the Authority acquire rights and privileges from the County, and that portions of said Existing Roads of the County be moved, rearranged, and/or altered; and

WHEREAS, the County participated in studies to develop the North Red River Diversion Master Transportation Plan and the South Red River Diversion Master Transportation Plan that lay out the effects of the SWDCAI on Existing Roads and provide a response thereto; and

WHEREAS, the County is willing to grant to the Authority certain rights and privileges in and to said property and/or rights-of-way for construction of the SWDCAI and for maintenance as required by this MOU between the Authority and the County, and to relocate the Existing Roads located thereon, in consideration of the payment by the Authority of all reasonable and legitimate costs of relocating said Existing Roads at such locations, and in such a manner as to facilitate the construction, development, and use of the SWDCAI; and the County agrees that said consideration constitutes full, just, and complete compensation for the acquisition by the Authority of the County's rights and property.

NOW, THEREFORE, in consideration of the faithful performance of each Party of the mutual covenants and agreements herein set forth, it is mutually agreed as follows:

**ARTICLE I.
DEFINITIONS AND INTERPRETATION**

Section 1.01 DEFINITIONS. All capitalized terms used and not otherwise defined herein shall have the meanings given to them in this MOU and as defined in this Section unless a different meaning clearly applies from the context.

“Alternate Crossing” means the road approaches, bridges, and appurtenances over the SWDCAI at County Road 14.

“Alternate Township Crossing” means the road approaches, bridges, and appurtenances over the SWDCAI at 52nd Avenue West.

“Applicable Law” means, collectively, the Constitutions of the United States and of the State, all common law and principles of equity, and all Federal, State, and local laws including, without limitation, all environmental laws, statutes, treaties, codes, acts, rules, regulations, guidelines, ordinances, resolutions, orders, judgments, decrees, injunctions, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any governmental authority charged with the enforcement, interpretation, or administration thereof, all

governmental approvals, and all administrative orders, awards, directed duties, requests, licenses, certificates, authorizations, and permits of, and agreements with, any governmental authority, and, with respect to any Person, the articles of incorporation, bylaws, or other organizational or governing documents of such Person, in each case whether or not having the force of law, that are applicable now or are applicable at any time hereafter to the Authority, the County, or the SWDCAI.

“Authority” means the Metro Flood Diversion Authority, a political subdivision of the State of North Dakota and a permanent joint powers entity formed through the Joint Powers Agreement to provide the Fargo-Moorhead metropolitan area with permanent and comprehensive flood protection. References to the Authority throughout this MOU include references to other entities engaged by the Authority, including the Developer, to complete such work.

“Authority-Retained Responsibilities” has the meaning set forth in Section 10.02.

“Authority Representative” has the meaning set forth in Section 16.06.

“Betterment” means any improvement in design, construction, or capacity over and above what is required to provide road facilities of equal service and utility to the County. Notwithstanding the foregoing, the following are not considered Betterments:

- (a) Any upgrades from current infrastructure required for accommodation of the SWDCAI;
- (b) Replacement devices or materials that are of equivalent standards although not identical;
- (c) Replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size;
- (d) Any upgrading required by Applicable Law;
- (e) Replacement devices or materials used for reasons of economy (e.g., it may be uneconomical to purchase non-stocked items); and
- (f) Any upgrading required by a utility owner’s applicable utility relocation standards.

“Bridge” means a bridge that will be constructed pursuant to this MOU to move, relocate, and/or alter an Existing Road to accommodate construction, operation, and maintenance of the SWDCAI.

“Bridge Acceptance” means agreement by the County and the Authority of Bridge Completion.

“Bridge Completion” means the completion of all major Construction Work on a Bridge, that such Bridge is suitable to convey traffic.

“Buildable Unit” means discrete and/or identifiable portions of the SWDCAI, as determined in the discretion of the Authority, that will be designed and constructed individually, and that when completed, make up a Bridge, the Drain Inlet, a Township Project Element, or another SWDCAI element, and ultimately the entire SWDCAI.

“Business Day” means any day that is not a Saturday, a Sunday, or a federal public holiday.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601-9675).

“Cities” means West Fargo, North Dakota, a Home Rule city and municipal corporation of the State of North Dakota, and Horace, North Dakota, a Home Rule city and municipal corporation of the State of North Dakota, as applicable.

“Compensation Event” means as defined in the Project Agreement.

“Comprehensive Project” means the Fargo-Moorhead Metropolitan Area Flood Risk Management Project authorized by Section 7002(2) of the Water Resources Reform and Development Act of 2014, as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo Moorhead Metropolitan Area Flood Risk Management, dated July 2011 and approved in accordance with the Chief’s Report, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the U.S. Army Engineer, St. Paul, on September 19, 2013, and as amended by the Second Supplemental Environmental Assessment dated August 27, 2018 (2018 SEA), and the Engineering Documentation Report, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, ND and MN, Modifications Through February 2019.

“Construction Work” means all labor, materials, equipment, and incidentals necessary to construct or complete the Bridges, Roads, Frontage Road, Drain Inlet, and Township Project Elements in accordance with the Project Agreement.

“Construction Bypass Route” means a temporary bypass route constructed prior to construction of Bridges to accommodate traffic.

“County” means Cass County, North Dakota, a political subdivision and home rule county of the State of North Dakota.

“County Guidelines” means any guidelines or provisions provided by the County, including Exhibits B, C, and D for the design and construction of Bridges and Roads.

“County Engineer” means the Engineer of Cass County, North Dakota.

“County Representative” has the meaning set forth in Section 16.06.

“Data Sheets” means the River Inlet and Drain Inlet Interface Data Sheets attached hereto as Exhibit F.

“Design Documents” means all drawings (including plans, profiles, cross-sections, notes, elevations, typical sections, details, and diagrams), specifications, reports, studies, working drawings, shop drawings, calculations, electronic files, records, and submittals necessary for, or related to, the design of the SWDCAI.

“Developer” means the individual, partnership, corporation, or joint venture that enters the Project Agreement with the Authority to design, finance, build, operate, and maintain the SWDCAI. References to the Developer throughout this MOU include references to other entities engaged by the Developer to complete such work.

“Design Work” means all Work related to design, redesign, engineering, or architecture.

“Diversion Inlet Structure” means the hydraulic structures being constructed by USACE at the confluence of County Road 16 and County Road 17.

“Drain Inlet” means the inlet for the Raymond Township South Drain or the inlet for the County Road 17 into the SWDCAI as shown on Exhibit H.

“Drain Inlet Acceptance” means agreement by the County and the Authority of Drain Inlet Completion.

“Drain Inlet Completion” means completion of all major Construction Work on a Drain Inlet, that such the Drain Inlet is operable to its intended use.

“Drain Crossings” means a crossing constructed on 166th Avenue Southeast over Drain 14 and a crossing constructed on 171st Avenue Southeast over Drain 30.

“Drop Structures” means the structures installed along the west EMB to accommodate the lowering of the road drainage ditches along 40th Avenue West and 52nd Avenue West.

“Effective Date” means the date on which both Parties have executed this MOU.

“EMB” or **“Excavated Material Berm”** means a berm constructed from materials that have been excavated from within the Project Limits.

“Engineer of Record” means an individual, or individuals, properly registered as an engineer, responsible for preparing the design for the SWDCAI.

“Environment” or **“Environmental”** means air, soils, surface waters (including wetlands), groundwater, land, stream sediments, surface or subsurface strata, biological resources, including endangered, threatened and sensitive species, natural systems, including ecosystems, and cultural, historic, archaeological and paleontological resources.

“Executive Director” means the chief administrative officer of the Authority as set forth in the Joint Powers Agreement.

“Existing Road” means a road owned by the County that is currently in existence, as identified in Exhibit A, and includes County Road 14 if the Authority exercises the option for the Alternate Crossing.

“Final Design Submittal” means the design for a Buildable Unit that has reached ninety-five percent (95%) completion, as determined by the Authority.

“Force Majeure Flood Event” means (i) until Project Substantial Completion, the gauge height for USGS gauge 05054000 (Red River) meets or exceeds 43 feet; and (ii) on or after Project Substantial Completion, more than 46,600 cfs is permitted to flow through the Diversion Inlet Structure.

“Frontage Road” means 37th Street Southeast, on the south side of I-94, between 166th Avenue Southeast and 38th Street West.

“Good Faith” means the observance of reasonable commercial standards of fair dealing in a given trade or business.

“Good Industry Practice” means the industry practices and standards that would be exercised by a prudent and experienced developer, designer, engineer, contractor, operator, or maintenance provider engaged in the same kind of undertakings and under similar circumstances as those applying to the work.

“Hazardous Materials” means any element, chemical, compound, mixture, material or substance, whether solid, liquid or gaseous, which at any time is defined, listed, classified or otherwise regulated in any way under any Applicable Law (including CERCLA), or any other such substances or conditions (including mold or other mycotoxins, fungi or fecal material) which may create any unsafe or hazardous condition or pose any threat or harm to the Environment or human health or safety.

“HEC-RAS Model” means the unsteady Hydrologic Engineering Center’s River Analysis System (HEC-RAS) flow model utilized by the Authority for the Comprehensive Project.

“IDF Line of Protection” means the line of protection consisting of flood protection elements (such as floodwalls and levees) that provide certifiable protection for the one percent (1%) annual chance (i.e., 100-year) flood and a top elevation equal to or greater than the water surface resulting from the IDF flow.

“Indemnified Party” means a party identified by the Project Agreement as such.

“Inflow Design Flood” or **“IDF”** means the Red River of the North peak design flow labeled as the IDF in the HEC-RAS Model.

“Initial Design Submittal” means the design for a Buildable Unit that has reached sixty percent (60%) completion, as determined by the Authority.

“Insurance Policies” means the insurance policies the Authority is required to carry or ensure are carried by the Developer.

“Intellectual Property” means any and all patents, trademarks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United States or any part of the world together with all or any goodwill relating or attached thereto which is created, brought into existence, acquired, used, or intended to be used by the Authority for the purposes of carrying out the Work or otherwise for the purposes of this MOU.

“Joint Powers Agreement” means the agreement entered into by and between the City of Moorhead, Minnesota; the City of Fargo, North Dakota; Clay County, Minnesota; Cass County, North Dakota; and the Cass County Joint Water Resource District, dated as of June 1, 2016, to create the Authority.

“Losses” means any loss, damage, injury, liability, obligation, costs, response cost, expense, fee, charge, judgment, penalty, or fine. Losses include injury to or death of Persons, damage or loss of property, and harm or damage to natural resources.

“MAI” means mitigation and associated infrastructure.

“Maintenance Termination Date” means October 1 following the twenty-ninth (29th) anniversary of Project Substantial Completion.

“Material Change or Modification” means a change or modification affecting the operation or performance of a Bridge, Road, or Township Project Element.

“Mobility Improvement” means a gravel improvement to an ancillary unimproved section line to account for increased traffic volumes as outlined in the memorandums of understanding by and between the Townships and the Authority for the SWDCAI, which will be constructed in accordance with the standards of Exhibit B for Two-Lane Township Gravel Section road, or as otherwise agreed to by the County Engineer.

“NDDOT” means the North Dakota Department of Transportation.

“New Gravel Road” means a gravel road that will be opened and constructed to provide access to a Parcel Without Access as outlined in the memorandums of understanding by and between the Townships and the Authority for the SWDCAI, which will be constructed in accordance with the standards of Exhibit B for Two-Lane Township Gravel Section road, or as otherwise agreed to by the County Engineer.

“Non-Routine Maintenance” means (A) re-striping Bridge deck and Road; (B) plowing snow from the Bridge deck and Road; (C) controlling ice and snow (e.g., application of salts, chlorides, sand, etc.) on Bridge deck and Road; and (D) removing roadkill.

“Parcel Without Access” means a parcel of land that, as a result of the construction of the SWDCAI, will be left without an access point or whose access will be severed, excluding property that can be accessed by adjoining parcels with a matching owner.

“Party” means the Authority or the County, as the context may require, and their respective legal representatives, successors, and permitted assigns, and wherever a reference in this MOU is made to any Parties hereto, **“Parties”** means the Authority and the County, collectively, and their respective legal representatives, successors, and permitted assigns.

“Performance and Measurement Table” means Attachment 4-1 of Exhibit 5 to the Project Agreement.

“Person” means an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization, or a governmental authority.

“Preliminary Design” means a preliminary design for a Buildable Unit, designed to an extent as determined by the Authority.

“Program Management Consultant” or **“PMC”** means the Authority’s management consultant that will coordinate the implementation of this MOU on the Authority’s behalf.

“Project Agreement” means the contract to design, build, finance, operate, and maintain the SWDCAI that the Authority will enter with the Developer.

“Project Data” means:

(g) Design Documents; and

(h) Any other information, documents, or data acquired or brought into existence or used in relation to the Work or this MOU,

in each case, that is used by or on behalf of the Authority in connection with the provision of the Work or the performance of the Authority’s obligations under this MOU.

“Project Limits” means the permanent property interests necessary for the SWDCAI, as currently projected in Exhibit E.

“Project Operation” means operation by the Authority of either the Red River Control Structure or the Wild Rice River Control Structure to restrict the flow into the area generally east of the IDF Line of Protection.

“Project Substantial Completion” means the completion of all substantial completion conditions as outlined in the Project Agreement for the substantial completion of the SWDCAI.

“Proposal” means the bid package submitted by a Proposer in response to the Request for Proposals.

“Proposers” means those teams that were short listed by the Authority to participate in the Request for Proposals phase of the P3 Procurement.

“P3 Procurement” means the public-private-partnership solicitation process, including the Request for Qualifications and the Request for Proposals, undertaken by the Authority to select and retain a Developer as defined herein.

“Record Drawings Deliverable” means an organized set of plans, details, specifications, calculations, and related documentation that accurately represents the structure constructed, and the conditions encountered during construction, all as described in the Technical Requirements.

“Red River Control Structure” means the control structure on the Red River of the North to be procured by USACE.

“Released for Construction Documents” means all drawings, specifications, revisions thereto, and any other items necessary to construct the work, signed and sealed by an Engineer of Record.

“Relief Event” means as defined in the Project Agreement.

“Request for Proposals” means the solicitation that was issued by the Authority as part of the P3 Procurement, which outlines proposal requirements and seeks proposals to design, finance, build, operate, and maintain the SWDCAI, and all applicable addenda. The Authority released the draft RFP on December 16, 2016, and will continue to finalize the RFP until a final RFP is released. The Authority anticipates releasing the final RFP in January 2021.

“Request for Qualifications” means the solicitation that was issued by the Authority as part of the P3 Procurement seeking statements of qualifications to design, finance, build, operate, and maintain the SWDCAI, and all applicable addenda.

“River Crossings” means crossings constructed on 105th Street North at the Lower Branch of the Rush River and 167th Avenue Southeast at the Rush River.

“Road” means the sub-surfaces and surfaces, as applicable, which are constructed atop a Bridge or the SWDCAI Crossing, upon which vehicles travel.

“Road Acceptance” means agreement by the County and the Authority of Road Completion.

“Road Completion” means the completion of all major Construction Work on a Road or the Frontage Road, that such Road or the Frontage Road is suitable to convey traffic.

“Routine Maintenance” means the maintenance activities necessary to meet the requirements listed in the Performance and Measurement Table.

“SEAI” means the southern embankment and associated infrastructure portion of the Comprehensive Project, to be procured by USACE.

“Shop Drawings and Samples” means shop drawings, laying drawings, erection drawings, fabrication drawings, product information, catalog information, samples, mock-ups, plans (e.g., traffic management and dewatering), test procedures and results, descriptions of services, descriptions of specific means and methods and related documentation prepared for the Buildable Units, Bridges, Township Project Elements, and/or Roads.

“State” means the State of North Dakota.

“Storm Water Diversion Channel and Associated Infrastructure” or **“SWDCAI”** means the approximately thirty (30) mile, 20,000 cubic feet per second (cfs) channel and associated features, including the outlet, river and drain inlets, road bridges, railroad bridges, aqueducts, and recreational features, to be constructed as part of the Comprehensive Project.

“SWDCAI Crossings” means the roadway approaches, bridge, and appurtenances over the SWDCAI at 38th Street West and 32nd Avenue West and the Alternate Township Crossing if exercised by the Authority.

“Technical Requirements” means the technical requirements for the SWDCAI to be determined by the Authority, including those requirements supplied by the County, and included in the Request for Proposals.

“Third Party Claims” means any and all claims, disputes, disagreements, causes of action, demands, suits, actions, investigations or administrative proceedings brought by a Person that is not an Indemnified Party, including the County, with respect to damages, injuries, liabilities, obligations, losses, costs, penalties, fines, or expenses (including attorneys’ fees and expenses) sustained or incurred by such Person.

“Township Element Acceptance” means agreement by the County and the Authority of Township Completion.

“Township Element Completion” means the completion of all major Construction Work on a Township Project Element, that such Township Project Element is suitable to convey traffic, and meets any other requirements for each Township Project Element set forth in the applicable memorandum of understanding entered by and between the applicable jurisdictions and the Authority for the SWDCAI.

“Township Project Elements” means those elements of the Project under the authority of Townships and/or Cities in North Dakota that will require design review, including the SWDCAI Crossings, River Crossings, Drain Crossings, New Gravel Roads, Drop Structures, Township Road Terminations, and Mobility Improvements.

“Township Road Termination” means a cul-de-sac constructed on an existing Township road that will be terminated as a result of the construction of the SWDCAI.

“Townships” includes Wisner Township, Harwood Township, Berlin Township, Raymond Township, Mapleton Township, Barnes Township, Warren Township, and Stanley Township, as applicable.

“Traffic Mitigation Routes” means existing roads that may be used as detour routes during construction of the SWDCAI.

“USACE” means the United States Army Corps of Engineers.

“Utility Relocation” means each relocation (temporary or permanent), abandonment, protection in place, adjust in place, removal, replacement, reinstallation, and/or modification of existing utilities necessary to accommodate construction, operation, maintenance, and/or use of the SWDCAI.

“Wild Rice River Control Structure” means the control structure on the Wild Rice River to be procured by USACE.

“Work” means the Design Work, Construction Work, and Routine Maintenance, and all other work, services, and obligations required to be furnished, performed, and provided by the Authority under this MOU.

Section 1.02 TERMS GENERALLY. The definition of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words “include,” “includes,” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications as set forth herein), (b) any reference herein to any person shall be construed to include such person’s permitted successors and assigns, (c) the words “herein,” “hereof,” and “hereunder,” and words of similar import, shall be construed to refer to this MOU in its entirety and not to any particular provision hereof, (d) all references herein to articles, sections, exhibits, and schedules shall be construed to refer to articles and sections of, and exhibits and schedules to, this MOU, and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights.

ARTICLE II. INTENT

Section 2.01 INTENT. The Authority, in conjunction with USACE, is designing, constructing, operating, and maintaining the Comprehensive Project. One element of the

Comprehensive Project is the SWDCAI, which the Authority intends to deliver through a public-private partnership with a Developer. The Authority intends to transfer the majority of the obligations set forth in this MOU to the Developer pursuant to the terms and conditions of the Project Agreement. If an obligation is not transferred to the Developer, the Authority will undertake such obligation itself or assign the same to a third party.

ARTICLE III. DESIGN

Section 3.01 BRIDGES, ROADS, AND DRAIN INLETS.

(a) The Authority will, using an Engineer of Record, design the Bridges, Roads, and any physical alterations necessary to relocate Existing Roads and the Drain Inlets for construction, operation, and maintenance of the SWDCAI. The Authority will submit the designs to the County as Buildable Units and may submit up to twenty (20) total Buildable Units at one (1) time. The Engineer of Record will provide designs for each Bridge, Road, or physical alteration that retain the functional capabilities of the County's existing facilities and will provide designs for each Drain Inlet that satisfy the requirements of the Data Sheets. Minimum Road design standards are attached hereto as Exhibit B. The reconstruction and design criteria requirements for each Existing Road are attached hereto as Exhibit C, and the design criteria for Bridges is attached hereto as Exhibit D.

(b) The Authority will be responsible for selecting the Engineer of Record, any necessary contracting to accomplish the designs, and paying all costs associated with completing the Work described in this Section.

(c) The Authority will be solely responsible for ensuring the design of the Buildable Units and the Bridges, Roads, and Drain Inlets allows for construction of the SWDCAI.

(d) The Preliminary Design, the Initial Design Submittal, and the Final Design Submittal for each Buildable Unit will conform to the County Guidelines, Data Sheets, and any additional requirements included in the Technical Requirements, as applicable, unless otherwise agreed to by the County.

Section 3.02 TOWNSHIP PROJECT ELEMENTS. The Authority, using an Engineer of Record, will additionally design Township Project Elements in accordance with the terms of the applicable memorandum of understanding entered with a respective Township and/or City, if applicable. The Authority will submit the designs to the County as Buildable Units and may submit up to twenty (20) total Buildable Units at one (1) time. The Preliminary Design, the Initial Design Submittal, and the Final Design Submittal for each Buildable Unit of a Township Project Element must conform to the requirements of its respective memorandum of understanding and any additional requirements included in the Technical Requirements, unless otherwise agreed to by the County Engineer.

Section 3.03 TECHNICAL REQUIREMENTS.

(a) Prior to the Authority finalizing the Request for Proposals and the Technical Requirements, the County will identify and provide any additional requirements for the construction of the Bridges, Roads, Drain Inlets, and Township Project Elements. The County will have the continuing obligation to update these requirements if changes are made, but in no event will the County update the requirements later than the Effective Date.

(b) The Authority will include these requirements as Technical Requirements for the Bridges, Roads, Drain Inlets, and Township Project Elements in its final Request for Proposals for the SWDCAI.

Section 3.04 INITIAL REVIEW OF PROPOSALS.

(1) During the Request for Proposals phase of the P3 Procurement, the County may be asked to conduct an initial review of Proposers' design proposals. If a Proposer submits an initial design to the County for review, the County will not share the design with external consultants or external sources or any other Proposers. The proposals are additionally protected from open records requests pursuant to N.D.C.C. § 44-04-18.4. If it is necessary for the County to share any design submitted by a Proposer with external consultants or external sources who are not other Proposers, the County will require that the external consultant or external source execute a confidentiality agreement indicating the design will not be shared with any other Proposer and return the confidentiality agreement to the Authority prior to sharing any such design. The Authority will reimburse the County for costs incurred in connection with review of the designs. The County will submit an invoice in accordance with Section 12.01 for those allowable costs outlined in Article XI incurred as a result of its reviews.

(2) Due to the confidential nature of the Proposers' design proposals, review by the County or any of its external consultants or external sources will occur either in a restricted area designated by the Authority or via a secure online system. The County and its external consultants or external sources will not be permitted to exit the restricted area with copies, notes, or prints and will not have the capability to download or print from the secure online system. If a Proposer submits a design proposal to the Authority that necessitates County review, the Authority Representative will inform the County Representative, and the County Representative must select at the time of notification whether the County will access the proposal in the restricted area, via the secure online system, or through both.

(3) If (i) the County approves of an interim design proposal under this Section, and (ii) the Proposer incorporates that interim design proposal into its Proposal, and (iii) the Authority selects the Proposer as the Developer for the SWDCAI, then the County will be deemed to have approved that Buildable Unit, or any portion thereof, that was the subject of the interim design proposal as an acceptable modification to the County Guidelines, Data Sheets, or other criteria included in the Technical Requirements for the Bridge, Road, Drain Inlet, or Township Project Element. Those interim design proposals approved by the County shall automatically become part of this MOU and shall be attached to this MOU as exhibits following the execution of the Project Agreement with the Developer.

Section 3.05 NOTICE.

(a) Within a reasonable time after the Authority and the Developer execute the Project Agreement, the Authority will provide notice of such, and that Design Work will be commencing, to the County Representative. The notice provided by the Authority will include the identity and description of the Engineer of Record who will be working on the designs for the Bridges, Roads, Drain Inlets, and Township Project Elements.

(b) The Authority currently anticipates execution of the Project Agreement will occur sometime in the first quarter of 2021.

Section 3.06 BETTERMENTS. The County agrees that the relocation, rearrangement, and/or alteration to be accomplished under this MOU will provide the County with facilities equal in service and utility to those now in existence. If the County desires any Betterments, the County will notify the Authority of each individual Betterment sought by the Effective Date, and the County will be responsible for all costs of Betterments.

Section 3.07 COUNTY REVIEW AND CONCURRENCE.

(a) The County will complete four (4) reviews of the designs for each Buildable Unit comprising a Bridge, Road, Drain Inlet, or Township Project Element: (i) a review of the Preliminary Design; (ii) a review of the Initial Design Submittal; (iii) a review of the Final Design Submittal; and (iv) a review of Shop Drawings and Samples, if any. The Authority may submit up to twenty (20) Buildable Units at one (1) time to the County for review. The County's review is limited to whether the design is in compliance with the County Guidelines, Data Sheets, the Township and/or City memorandum of understanding, and other criteria included in the Technical Requirements for the Bridges, Roads, Drain Inlets, and the Township Project Elements, as applicable, or as otherwise agreed to in accordance with Section 3.04.

(b) When the design of a Bridge, Road, Drain Inlet, or Township Project Element has reached its Preliminary Design, Initial Design Submittal, or Final Design Submittal or Shop Drawings and Samples have been prepared, the Authority will submit the documents or the design to the County Representative for County review and concurrence. The County will complete its review within twenty-one (21) calendar days after receipt by the County Representative. If the County finds the document or the design does not meet the County Guidelines, the Township and/or City memorandum of understanding, or the criteria included in the Technical Requirements for the Bridges, Roads, Drain Inlets, or Township Project Elements, or as otherwise agreed to in accordance with Section 3.04, the County Representative will notify the Authority of such fact within the 21-day period and the Authority will promptly correct such deficiency in the document or the design and resubmit for review and concurrence. The County will have seven (7) calendar days to review a resubmittal, and review is limited to the matters necessitating the resubmittal.

(c) In the event the County fails to respond to a design, Shop Drawing, or Sample within the time periods specified in this Section, the Authority will provide written notice to the County Representative of the failure to respond. Within five (5) Business Days of the County Representative receiving this written notice and a failure of the County to respond, the Authority may treat the County's failure to respond as concurrence in the design, Shop Drawing, or Sample and may commence further Design Work or begin Construction Work, as applicable.

(d) Once the Authority has prepared Released for Construction Documents, it will provide copies to the County Representative.

(e) The Authority will reimburse the County for costs incurred in connection with County review of the Shop Drawings and Samples and designs. The County will submit an invoice in accordance with Section 12.01 for those allowable costs outlined in Article XI.

(f) The County has the ability, in its sole discretion, to waive any of the design reviews afforded by this Section.

Section 3.08 RELEASE. The County warrants that the designs to which it concurs will accommodate its operations. Concurrence by the County of any design will only mean the plans and specifications meet the subjective standards of the County, and approval by the County will not be deemed to mean that the plans and specifications or construction will be structurally sound and appropriate or that the plans and specifications meet Applicable Law.

Section 3.09 OWNERSHIP OF WORK. The designs resulting from this MOU will be the property of the Authority.

ARTICLE IV. PRELIMINARY PLANNING AND ENGINEERING ACTIVITIES

Section 4.01 INTENT. The Parties intend that the Authority will be the lead agency for coordination with USACE for planning and engineering activities. The Parties understand and agree that the SWDCAI and the components described herein must comply with USACE rules and regulations to the extent that such rules and regulations are applicable.

Section 4.02 SITE TESTING. The Authority will perform all preliminary engineering activities for the Bridges, Roads, Drain Inlets, Frontage Road, and Township Project Elements including: (a) technical studies and analyses; (b) geotechnical, seismic, flooding, and biological investigations; (c) utility subsurface investigations and mapping; (d) Hazardous Materials investigations; and (e) archeological, paleontological, and cultural investigations.

Section 4.03 MITIGATION. The Authority is responsible, at its sole cost and expense, for dealing with all Hazardous Materials discovered as a result of the SWDCAI, including the construction of any Bridge, Drain Inlet, or Township Project Element or any physical alterations or relocations of a Road necessary to accommodate construction, operation, and maintenance of the SWDCAI.

Section 4.04 ENVIRONMENTAL REVIEWS. The Authority will coordinate with USACE to ensure that all Work complies with applicable Environmental laws and regulations and receives all necessary environmental clearances.

Section 4.05 UTILITY RELOCATION.

(a) The Authority is responsible for coordinating and/or performing Utility Relocations of all utilities. As detailed herein, the County generally authorizes the Authority to affix or embed relocated or future utilities to or within Bridges, Roads, or the SWDCAI Crossings, but it must receive and review a utility permit application prior to granting permission. County review of applications for the location of utility infrastructure under, across, on, in, or otherwise affixed to County right-of-way shall be limited to determining compliance with the provisions of the Utility Permit Application requirements listed in Exhibit I. Should the County fail to approve or deny a Utility Permit Application within five (5) calendar days of submission by a utility or the Authority, the submission shall be deemed approved as submitted and will require no further approval from the County.

(b) If the County approves, electrical and communication utility crossings may be in conduits within Bridges.

(c) Dry utilities may be placed on the Bridges.

(d) Petroleum and gas lines may not be installed on Bridges.

(e) The Authority must comply with the following for wet utility apparatus, including sewer force mains, rural water supply, and grey water:

(i) The apparatus must be designed with a real time monitoring system that monitors the span of the pipe along the length of the Bridge plus an additional ten (10) feet beyond the end of each of the Bridge abutments, such that the system should notify the utility owner.

(ii) The utility apparatus owner must provide the County with proof of liability insurance with an insurance rider to cover clean up such that if a break, leak, seal separation, or rupture were to happen, along with a document that states the utility owner indemnifies the Authority, the Developer, and the County against all liabilities for the utility apparatus, during and after completion of utility apparatus placement.

(iii) The placement of the utility apparatus through levees must comply with the requirements set forth in the Technical Requirements.

Section 4.06 PERMITS AND APPROVALS. The Authority is responsible for securing any necessary permits and/or approvals for construction of the Bridges, Roads, Drain Inlets, Frontage Road, and Township Project Elements. Except as otherwise specifically set forth herein, the County will not require additional permits and/or approvals from its Governing Body. The Authority must also obey and abide by all Applicable Law. The Authority will submit County approach applications for all temporary and permanent access points. The County will waive application fees and deposits for such applications.

Section 4.07 PLATTING. The Authority intends to plat the Project Limits and will file the necessary documentation with the County as required under Applicable Law. The County will review such documentation in Good Faith and will use its Best Efforts to work with the Authority

in the platting process. The Authority will utilize platting to define the Project Limits, which are currently projected on Exhibit E.

Section 4.08 REOPENING OF SECTION LINES. The County retains the ability to reopen section lines crossing the SWDCAI with the approval of the Authority. The County may request to reopen a section line for such things as adding an additional crossing over the SWDCAI. The Authority will not unreasonably withhold approval of the County's request to reopen. If the request is made during the operations and maintenance period of the Project Agreement, the Authority may consider cost implications of the Developer and permit requirements from the North Dakota Office of the State Engineer and under Federal law.

Section 4.09 ROAD VACATION. If not platted, the Authority will seek authorization from the County, as necessary, to vacate any roads under the County's jurisdiction, including streets that have been opened as a result of the subdivision of land within the County, which will need to be relocated or vacated as a result of the construction of the SWDCAI. The Authority will seek County authorization as required under Applicable Law.

Section 4.10 OPTIONS FOR ALTERNATE CROSSING AND ALTERNATE TOWNSHIP CROSSING. The Authority, in its sole discretion, will determine whether to exercise the options to design and construct the Alternate Crossing and the Alternate Township Crossing. The Authority will exercise such options on or before June 30, 2021, and will provide written notice to the County of its election. In the event the Authority elects to design and construct the Alternate Crossing and/or the Alternate Township Crossing, all provisions of this MOU that are applicable to the Alternate Crossing or the Alternative Township Crossing, as applicable, will be implemented. If the Authority elects not to exercise an option due to a lack of funding, the Authority and the County will work in Good Faith to determine and secure another source of funding for the construction of crossings on County Road 14 and 52nd Avenue West.

ARTICLE V. PROPERTY INTEREST ACQUISITION

Section 5.01 ACQUISITION. The Authority will, at its sole cost and expense, obtain all easements, rights-of-way, or other interests in real property necessary for the relocation and/or alteration of the Bridges, Roads, Drain Inlets, and Township Project Elements. In the event the Authority is unable to acquire any easement, right-of-way, or other interest following a Good Faith attempt, the Authority will notify the County, and the County will be responsible for acquiring such easement, right-of-way, or other interest. Following the acquisition of such, the County may seek reimbursement from the Authority for reimbursable costs as set forth in Article XI for the acquisition.

Section 5.02 TRANSFERS OF RIGHTS, PRIVILEGES, AND INTERESTS.

(a) The Authority will convey to the County the necessary right-of-way needed to construct, operate, and maintain the County's constructed, relocated, or altered Bridges and Roadways on any lands acquired by the Authority.

(b) The property interests held by the County in locations that will be crossed by the SWDCAI are outlined on the maps attached as Exhibit G. The County will convey to the Authority the rights or privileges outlined in the table affixed in Exhibit G to construct the Bridges, Roads, and the SWDCAI on or across the County's property. For those property interests in which the County holds right-of-way, the County will grant a single permit allowing access to all of the applicable rights-of-way.

(c) NDDOT will convey its interest in the Frontage Road to the County under the terms of the memorandum of understanding entered by and between the NDDOT and the Authority for the SWDCAI.

ARTICLE VI. CONSTRUCTION

Section 6.01 INTENT. The Parties intend that the Authority will be the lead agency for coordination with USACE for construction. The Parties understand and agree that the SWDCAI and the components described herein must comply with USACE rules and regulations to the extent that such rules and regulations are applicable.

Section 6.02 BRIDGES, ROADS, AND DRAIN INLETS. The Authority will construct the Bridges and Roads and any physical alterations necessary to relocate Existing Roads and the Drain Inlets for construction, operation, and maintenance of the SWDCAI. Construction of the Bridges, Roads, Drain Inlets, and any physical alterations will occur based upon the Released for Construction Documents, except as otherwise provided in Section 6.09. The Authority will sequence the Work at combined crossing locations to maintain access and minimize closures.

Section 6.03 TOWNSHIP PROJECT ELEMENTS. The Authority will construct the Township Project Elements in accordance with the memorandums of understanding entered with a respective Township and/or City and the Released for Construction Documents, except as otherwise provided in Section 6.09.

Section 6.04 FRONTAGE ROAD. Between 166th Avenue Southeast and the SWDCAI, the Authority will convert the Frontage Road to a minimum maintenance road by reclaiming/milling the existing asphalt and adding four (4) inches of gravel. The Authority will install a road closure gate on the east side of the 166th Avenue Southeast intersection per NDDOT Standard Drawing D900-3. On the east side of the SWDCAI, the Authority will dead end the Frontage Road and will construct a T-Type cul-de-sac for a single unit vehicle as shown in Figure 5-1G of the AASHTO A Policy on Geometric Design of Highways and Streets. The cul-de-sac will have a minimum of 7 inch HBP FAA-42 Superpave and 4 inch HBP FAA-42 Superpave shoulders. The Authority will provide end-of-road object markers and advance warnings signs per the FHWA Manual of Uniform Traffic Control Devices.

Section 6.05 SIGNAGE AND LANE CLOSURES. The Authority will be responsible for traffic flow during construction and will place and maintain appropriate signage during construction of the Bridges, Roads, Drain Inlets, Township Project Elements, Frontage Road, and SWDCAI, as necessary. The Authority will maintain traffic signals and traffic control devices in like new condition and located in their required positions. Additionally, the Authority will provide

advanced notification to the County and the public of road closures, lane closures, and/or traffic switches.

Section 6.06 CONSTRUCTION BYPASS ROUTES. The Authority will construct temporary Construction Bypass Routes directly adjacent to the following Existing Roads prior to the closure of the Existing Roads for Bridge construction: (i) County Road 6; (ii) County Road 10; (iii) County Road 14; (iv) County Road 20; (v) County Road 22; (vi) County Road 32; and (vii) County Road 81. All Construction Bypass Routes will be gravel except for temporary shooflies constructed for County Road 10 and County Road 81 which will have an asphalt surface if open to traffic between November 1 and April 1. During the time that traffic is detoured on a Construction Bypass Route, the Authority will maintain the Construction Bypass Route in a condition that is smooth and free from holes, ruts, ridges, bumps, and standing water. The County will be responsible for Non-Routine Maintenance on Construction Bypass Routes. The Authority will remove Construction Bypass Routes once traffic commences on the adjacent Bridge.

Section 6.07 TRAFFIC MITIGATION ROUTES. The Authority will utilize Traffic Mitigation Routes, most likely Township and local roads, to maintain adequate mobility and construction access along the SWDCAI during construction. Once the Authority has identified Traffic Mitigation Routes, it will inform the County. The use of Traffic Mitigation Routes may or may not entail upgrading an existing earthen or dirt road to a gravel road, which a decision entirely within the Authority's discretion. During the time that traffic is detoured on a Traffic Mitigation Route, the Authority will maintain the Traffic Mitigation Route in a condition that is smooth and free from holes, ruts, ridges, bumps, and standing water. The County will be responsible for Non-Routine Maintenance on Construction Bypass Routes. Once the detour along the Traffic Mitigation Route is terminated, the Authority will either remove the road for construction of the SWDCAI or will restore the detour route to a condition that is equivalent to that which existed prior to its use.

Section 6.08 HAUL ROUTES. Prior to beginning construction, the Authority will identify existing public roads that it may utilize as haul routes and inform the County. The Authority will use its best efforts to utilize County roads, in lieu of Township roads, as haul routes and will work with the County Engineer in doing so. The Authority will operate and maintain the condition of these roads during construction and make any necessary adjustments to the existing roads to accommodate the vehicles hauling construction material. The County will provide Non-Routine Maintenance on haul routes. The Authority will comply with seasonal and other load restrictions on existing public roads. After construction of the SWDCAI is complete, the Authority will restore those roads used as haul routes to a condition equivalent to that which existed prior to their use. Any resubmittals of haul routes will be forwarded to the County for review and comment.

Section 6.09 MATERIAL CHANGES OR MODIFICATIONS. Any Material Change or Modification to the Released for Construction Documents during construction will be subject to written approval by the County. The County's review of any proposed Material Change or Modification will occur in accordance with the parameters and timelines set forth in Section 3.07 hereof. The County has the ability, in its sole discretion, to waive any of the design reviews afforded by this Section. Additionally, if the County fails to respond to a design, Shop Drawing, or Sample, after the notice provided under Section 3.07(c), the Authority may treat the County's

failure to respond as concurrence in the design, Shop Drawing, or Sample and may commence further Design Work or Construction Work, as applicable. The Authority will reimburse the County for costs incurred in connection with County review of a Material Change or Modification. The County will submit an invoice in accordance with Section 12.01 for those allowable costs outlined in Article XI.

Section 6.10 CONSTRUCTION SCHEDULE. To facilitate scheduling for Construction Work, the Authority will provide the County Representative a proposed construction schedule and at least thirty (30) calendar days advanced written notice of the proposed start date for each Bridge, Road, Drain Inlet, or Township Project Element.

Section 6.11 BRIDGE, ROAD, DRAIN INLET, AND TOWNSHIP COMPLETION. The Authority will provide the County Representative with written notice of any anticipated Bridge Completion, Road Completion, Drain Inlet Completion, or Township Element Completion at least sixty (60) calendar days and fifteen (15) Business Days prior to the anticipated date for Bridge Completion, Road Completion, Drain Inlet Completion, or Township Element Completion. Within ten (10) Business Days of the anticipated date for Bridge Completion, Road Completion, Drain Inlet Completion, or Township Element Completion, the County and the Authority will conduct an inspection of the Bridge, Road, Drain Inlet, or Township Project Element to determine whether the structure meets the Released for Construction Documents and any Material Changes or Modifications made pursuant to Section 6.09. The County and the Authority will inspect the Frontage Road to determine whether the structure meets the requirements of this MOU. If the County finds the construction is not in accordance with the Released for Construction Documents or any approved Material Change or Modification or this MOU, the County will notify the Authority of such fact and the Authority will correct such deficiency in the Construction Work and re-notify for inspection. Once the County finds a Bridge, Road, Drain Inlet, the Frontage Road, or Township Project Element has reached Bridge Completion, Road Completion, Drain Inlet Completion, or Township Completion, as applicable, the County will provide a certificate of Bridge Acceptance, Road Acceptance, Drain Inlet Acceptance, or Township Element Acceptance. The Authority will reimburse the County for costs incurred in connection with inspecting for Bridge Completion, Road Completion, Drain Inlet Completion, or Township Element Completion. The County will submit an invoice in accordance with Section 12.01 for those allowable costs outlined in Article XI.

Section 6.12 OWNERSHIP.

(a) Upon Bridge Acceptance, Road Acceptance, or Drain Inlet Acceptance, the Authority will transfer ownership of the respective Bridge, Road, Frontage Road, or Drain Inlet to the County.

(b) Upon Township Element Acceptance of the SWDCAI Crossing, the River Crossings, or a Drain Crossing, as provided in a respective memorandum of understanding between a Township and/or a City and the Authority for the SWDCAI, the Authority will transfer ownership of the respective SWDCAI Crossing or River Crossing to the County and will transfer ownership of the Drain Crossing to the respective Township.

(c) The Authority will transfer ownership of the Drop Structures, New Gravel Roads, and Mobility Improvements to the Township and/or City having jurisdiction over the improvement based upon the terms of the memorandum of understanding entered by and between the respective Township and/or City and the Authority for the SWDCAI.

(d) Within ninety (90) calendar days of a turnover of ownership of a Road to the County, the Authority will provide two (2) hard copy sets of Record Drawings Deliverable of the structure turned over to the County Representative. Prior to opening Bridges, the SWDCAI Crossings, the River Crossings, or the Drain Crossings to traffic, the Authority will provide two (2) hard copy sets of Record Drawings Deliverable of the Bridges, the SWDCAI Crossings, the River Crossings, or the Drain Crossings to the County Representative. The County will have the opportunity to review and comment on the Record Drawings Deliverable.

Section 6.13 INSPECTION AND ACCEPTANCE. The County will have the right to inspect the Construction Work to be performed hereunder at any time during its progress and to make final inspection upon notification of anticipated Bridge Completion, Township Element Completion, Drain Inlet Completion, or Road Completion. The Authority will permit and facilitate reasonable access to the County for the reasonable inspection of the Bridges, Roads, Drain Inlets, the Frontage Road, and Township Project Elements and shall cooperate fully with County inspection personnel. Inspections may only be made upon reasonable notice to the Authority, during business hours, and the County must comply with the Authority's site safety requirements. In an emergency, the County may access the site as needed and provide notice as soon as reasonably possible to the Authority. The presence or absence of a County inspector does not relieve the Authority from any requirement in this MOU, nor is any County inspector authorized to change any term or condition of this MOU.

Section 6.14 EXTRA MATERIAL PILES. By Project Substantial Completion, the Authority will have stockpiled the following amounts of excavated materials in the following locations:

(a) Approximately fifty thousand (50,000) cubic yards near the County Road 4 and County 31 crossing of the SWDCAI;

(b) Approximately twenty-five thousand (25,000) cubic yards near the County Road 32 crossing of the SWDCAI;

(c) Approximately twenty-five thousand (25,000) cubic yards near the County Road 22 crossing of the SWDCAI;

(d) Approximately twenty-five thousand (25,000) cubic yards near the County Road 20 crossing of the SWDCAI;

(e) Approximately forty thousand (40,000) cubic yards on the south side of the County Road 10 crossing of the SWDCAI;

(f) Approximately seventy-five thousand (75,000) cubic yards on the north side of the 32nd Avenue West crossing of the SWDCAI;

(g) Approximately fifty thousand (50,000) cubic yards on the south side of the 32nd Avenue West crossing of the SWDCAI;

(h) Approximately fifty thousand (50,000) cubic yards on the north side of the 52nd Avenue West crossing of the SWDCAI;

(i) Approximately fifty thousand (50,000) cubic yards on the south side of the 52nd Avenue West crossing of the SWDCAI;

(j) Approximately seventy-five thousand (75,000) cubic yards on the north side of the County Road 6 crossing of the SWDCAI;

(k) Approximately fifty thousand (50,000) cubic yards on the south side of the County Road 6 crossing of the SWDCAI; and

(l) Approximately twenty-five thousand (25,000) cubic yards near the County Road 14 crossing of the SWDCAI.

The County, as well as neighboring townships, will have the opportunity to utilize these materials, in the discretion of the Authority. If the County desires to utilize these materials, it must contact the Authority for authorization. All removals must be more than two thousand (2,000) cubic yards and no more than three (3) separate withdrawals will be authorized per calendar year. The County will be responsible for all costs associated with removal of the excavated materials from the deposit site.

ARTICLE VII. OPERATION AND MAINTENANCE

Section 7.01 MAINTENANCE LIMITS. The maintenance limits for Roads are the asphalt or concrete approaches to Bridges or SWDCAI Crossings. The maintenance limits for Bridges, the SWDCAI Crossings, and the River Crossings are between the ends of the longest guardrail projection at each end of the bridge or crossing.

Section 7.02 ROUTINE MAINTENANCE.

(a) Following Bridge Completion, Drain Inlet Completion, or Road Completion of a Road or Township Element Completion of a SWDCAI Crossing, the Authority, at its sole cost and expense, will operate and perform Routine Maintenance on the structure until the Maintenance Termination Date. Following the Maintenance Termination Date, the County, except as otherwise provided, will be responsible for operation and maintenance of all Roads, Bridges, Drain Inlets, and the SWDCAI Crossings.

(b) Following Road Completion of the Frontage Road, the County will conduct any and all maintenance of the remaining paved portions of the Frontage Road. The Authority will perform the following maintenance on the gravel portions of the Frontage Road until the Maintenance Termination Date: grading, repairing ruts and washouts, and maintaining cross slopes

every April and as needed to maintain a smooth surface. Following the Maintenance Termination Date, the County, except as otherwise provided, will be responsible for any and all maintenance of the gravel portions of the Frontage Road.

(c) Following Township Element Completion of a River Crossing, the County, at its sole cost and expense, will operate and perform all maintenance, including Routine Maintenance, on the River Crossing.

(d) Following Project Substantial Completion, the respective Township and/or City, in accordance with the applicable memorandum of understanding by and between the Township and/or the City and the Authority for the SWDCAI, will operate and perform all maintenance on the Drop Structures.

(e) Notwithstanding Section 7.04, in the event the Authority closes a Bridge, Road, or SWDCAI Crossing for maintenance, the Authority will be responsible for removing snow and other obstructions on the Bridge, Road, or SWDCAI Crossing that could create standing water or other hazardous ice buildup.

Section 7.03 PERPETUAL MAINTENANCE. Although the County will be responsible for Routine Maintenance of each Bridge and Road and the SWDCAI Crossing following the Maintenance Termination Date, if an element of the SWDCAI has been incorporated by the Authority into a Bridge or Road or the SWDCAI Crossing, the Authority will be responsible for maintaining that element in perpetuity.

Section 7.04 NON-ROUTINE MAINTENANCE. At all times following Bridge Completion or Road Completion, or Township Element Completion of a SWDCAI Crossing, or the River Crossings, the County, at its sole cost and expense, will conduct Non-Routine Maintenance on each element in accordance with Good Industry Practice. If at any time the Authority, in its sole discretion, believes maintenance falls below Good Industry Practice, it will notify the County of such and allow a thirty (30) calendar day deficiency correction period. If the County fails to bring maintenance into compliance with Good Industry Practice during that thirty (30) calendar day period, then the Authority may perform the maintenance. The County will reimburse the Authority for costs incurred in connection with this maintenance. The Authority will submit an invoice to the County Representative in accordance with Section 12.01 for those maintenance expenses.

Section 7.05 NOTICE. The Authority will generally coordinate Routine Maintenance with the County through the comprehensive operations and maintenance manual prepared in accordance with Section 7.11. If maintenance by the Authority requires a lane closure, the Authority will notify the County on the first day of the month in which closures are scheduled of the closures for that month and any planned for the following month. If changes occur in the Authority's schedule of planned maintenance for which a closure is required, the Authority will request and obtain approval from the County at least fourteen (14) calendar days before undertaking the Work that requires such closure. If an emergency or incident requires closure of a Road, a Bridge, a SWDCAI Crossing, a River Crossing, or a Drain Crossing, in the Authority's discretion, the Authority will immediately notify the County.

Section 7.06 INSPECTION AND ACCESS. The County will have the right to inspect the maintenance work to be performed under the MOU. The Authority will permit and facilitate reasonable access for the County for the reasonable inspection of the Bridges, Roads, Drain Inlets, SWDCAI Crossings, River Crossings, Frontage Road, and the Drain Crossings and will cooperate fully with County inspection personnel. Inspections may only be made upon reasonable notice to the Authority and during business hours, and the County must comply with the Authority's site safety requirements. In an emergency, the County may access the site as needed and provide notice as soon as reasonably possible. The presence or absence of a County inspector does not relieve the Authority from any requirement in this MOU, nor is any County inspector authorized to change any term or condition of this MOU.

Section 7.07 TRAFFIC MANAGEMENT PLAN. The Authority will prepare a traffic management plan for maintaining traffic from Project Substantial Completion until the Maintenance Termination Date. The Authority will include the traffic management plan in the comprehensive operations and maintenance manual prepared in accordance with Section 7.11.

Section 7.08 WINTER INSPECTION. Prior to November 1 each year, beginning after a Bridge Completion, Road Completion, and Township Element Completion of a SWDCAI Crossing and lasting until the Maintenance Termination Date, the Authority and the County will jointly inspect the Bridges, Roads, and the SWDCAI Crossings. Additionally, the Authority and the County will jointly inspect the trailhead parking lot and entrance to the trailhead located on or adjacent to the Frontage Road near 38th Street Northwest.

Section 7.09 ANNUAL INSPECTION. Prior to July 1 each year, beginning after Bridge Completion and Township Element Completion of a SWDCAI Crossing and lasting until the Maintenance Termination Date, the Authority will have a certified bridge safety inspector inspect each Bridge and SWDCAI Crossing. The Authority will be responsible for the cost of such annual inspections. Following any alert codes identified by an annual inspection, the Authority will develop a corrective action plan. A corrective action plan must address the following conditions at a minimum: (i) repair a deck, substructure, or superstructure when a condition rating of seven (7) or greater (as defined in the *North Dakota Bridge Inspection Procedures Manual*) is not achieved; and (ii) repair approach slabs when elevation exceeds one (1) inch from the original plan profile. The Authority is responsible for all costs associated with a corrective action plan.

Section 7.10 HANDBACK INSPECTION. Three (3) years prior to the Authority ceasing to provide maintenance on the Bridges and the SWDCAI Crossings, the Authority and the County will jointly inspect all Bridges and the SWDCAI Crossings in accordance with NDDOT procedures. The inspection will include a deck delamination survey per NDDOT guidance. Within one (1) month of the inspection, with input from the NDDOT and the County, the Authority will create a scope of work document outlining necessary repairs or replacements to Bridges and the SWDCAI Crossings prior to the Maintenance Termination Date. The final version of the scope of work document is subject to NDDOT approval. The Authority will perform the Work required by the scope of work document, and within six (6) months of handback to the County, the Authority and the County will again jointly inspect all Bridges and the SWDCAI Crossings and identify any necessary repairs or replacements remaining. The Authority and the County will continue to jointly inspect the structures until the Authority has completed all necessary repairs or replacements in full compliance with the NDDOT requirements.

Section 7.11 COMPREHENSIVE O&M MANUAL. The Authority will prepare a comprehensive operations and maintenance manual with one (1) year and five (5) year planning windows. The County will review the comprehensive operations and maintenance manual and ensure it is in compliance with this MOU.

Section 7.12 COUNTY STEP-IN RIGHTS. The Routine Maintenance requirements are set forth in the Performance and Measurement Table. The County may step-in and perform maintenance requirements as outlined herein if the Authority is failing to do so, but prior to stepping in, the County and the Authority must take the following steps:

(a) In the event the County believes the Authority is not meeting any of the outlined maintenance requirements, it shall provide written notification to the Authority Representative indicating which maintenance requirements in the Performance and Measurement Table are not being met on which structure. The notification shall also include the action the County wishes to take, the date it wishes to commence such action, the time period which it believes will be necessary for such action, and to the extent practicable, the effect on the Authority and its obligation to carry out the Work during the period such action is being taken.

(b) Upon receiving notification from the County, or upon otherwise becoming aware of the failure to abide by the maintenance requirements of the Performance and Measurement Table, the Authority will have the response time provided in the Performance and Measurement Table, Column (e), plus the additional corresponding cure period from the Performance and Measurement Table, Column (i), plus forty-five (45) calendar days to correct the maintenance defect.

(c) In the event the Authority does not correct the maintenance defect during the time period outlined in this Section, the County may undertake the maintenance of the structure. The Authority will reimburse the County for costs incurred in connection with County maintenance under its step-in rights. The County will submit an invoice in accordance with Section 12.01 for those allowable costs outlined in Article XI.

ARTICLE VIII. STORM WATER DIVERSION CHANNEL AND ASSOCIATED INFRASTRUCTURE

Section 8.01 CONSTRUCTION AND MAINTENANCE. The Authority will be responsible for constructing and maintaining the SWDCAI in accordance with the Project Agreement.

Section 8.02 COMPLETION DATE. The Authority will advise the County Representative, in writing, of Project Substantial Completion within thirty (30) calendar days after Project Substantial Completion.

Section 8.03 OPERATION. After a declaration of a probable flood, the Authority will inspect the Bridges and the SWDCAI Crossings and correct any identified deficiencies prior to Project Operation. Within thirty (30) calendar days after Project Operation, the Authority will again inspect the Bridges and the SWDCAI Crossings and will complete actions or repairs required

as a result of Project Operation to return the Bridges and the SWDCAI Crossings to operational readiness.

Section 8.04 VEGETATION. By completion of the SWDCAI, the Authority will plant vegetation on the County's property where the SWDCAI is situated. The vegetation will be of uniform coverage with native grass over at least ninety percent (90%) of the vegetated area, and there will be no contiguous areas without uniform coverage greater than one hundred (100) square feet.

ARTICLE IX. FUTURE CHANGES OR ADDITIONS

Section 9.01 BRIDGES, ROADS, AND DRAIN INLETS.

(a) The County retains the ability, at its sole cost and expense, to adjust or alter a Bridge, SWDCAI Crossing, Drain Inlet, or Road to the extent such may be accomplished without adversely affecting, changing, or altering the SWDCAI upon written approval by the Authority.

(b) If it becomes necessary or desirable to change, alter, widen, or reconstruct the SWDCAI to accommodate the County's project, the cost of such work, if approved by the Authority, including any cost incidental to alteration of a Bridge, SWDCAI Crossing, Drain Inlet, or Road or flood control facilities, including the SWDCAI, made necessary by any such changes, will be the expense of the County.

(c) In the event the County desires to add an additional crossing of the SWDCAI, the County must secure written approval from the Authority, and the County will be responsible for all costs and expenses of such.

Section 9.02 SWDCAI.

(a) The Authority retains the ability, at its sole cost and expense, to adjust or alter the SWDCAI to the extent such may be accomplished without adversely affecting, changing, or altering a Bridge, SWDCAI Crossing, or Road.

(b) If it becomes necessary or desirable to change, alter, widen, or reconstruct a Bridge, SWDCAI Crossing, or Road to accommodate the SWDCAI, the cost of such work, if approved by the County, including any incidental costs made necessary by any such changes, will be the expense of the Authority.

ARTICLE X. INSURANCE AND LIABILITY

Section 10.01 INSURANCE.

(a) The Authority will procure and maintain the following insurance coverage until Bridge Completion or Road Completion of all Bridges, the Frontage Road, and Roads, Township

Element Completion of the SWDCAI Crossings, the River Crossings, and Drain Crossing, and Drain Inlet Completion of the Drain Inlets:

1. Commercial General Liability Insurance including coverage for premises and operations, bodily injury (including death), personal injury, property damage (including loss of use), product and completed operations, explosion, collapse and underground, and contractual liability of limits of at least \$1,000,000 per occurrence and \$10,000,000 annual aggregate. The County is to be named as additional insured on a primary, non-contributory basis.

2. Workers' Compensation and Employer's Liability Insurance including coverage for, but not limited to, the statutory liability under the State of North Dakota's workers' compensation laws and employer's liability with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, and \$500,000 by disease each employee.

3. Claims Made Project Specific Errors & Omissions (Professional Liability) Insurance in connection with design and construction with a minimum combined total period of ten (10) years for design, construction, and extended reporting with limits of at least \$2,000,000 per claim and in the aggregate.

4. All Risk Insurance in completed value form including coverage for permanent and/or temporary works executed and in the course of execution, materials, supplies, equipment, and other goods of at least \$10,000,000.

(b) The Authority will procure and maintain the following insurance coverage after Bridge Completion or Road Completion of all Bridges, the Frontage Road, and Roads, Township Element Completion of the SWDCAI Crossings, and Drain Inlet Completion of the Drain Inlets until the Maintenance Termination Date:

(1) Commercial General Liability Insurance including coverage for premises and operations, bodily injury (including death), personal injury, property damage (including loss of use), product and completed operations, explosion, collapse and underground, and contractual liability of limits of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate. The County is to be named as additional insured on a primary, non-contributory basis.

(2) Workers' Compensation and Employer's Liability Insurance including coverage for, but not limited to, the statutory liability under the State of North Dakota's workers' compensation laws and employer's liability with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, and \$500,000 by disease each employee.

Section 10.02 RELEASE OF LIABILITY AND INDEMNITY.

(a) Except as set forth in the following Section, to the fullest extent permitted by Applicable Law, the Authority will require that the Developer release, defend, indemnify, and hold harmless the County on demand from and against any and all liability for Losses arising from Third Party Claims, in each case, to the extent such Losses arise out of, or as a consequence of,

any breach of the MOU by the Developer or any negligence of the Developer. Additionally, the Authority will retain responsibility for the following key decisions and matters relating to the scope of the SWDCAI and the Comprehensive Project and the interaction of the SWDCAI with the SEAI and MAI (“Authority-Retained Responsibilities”):

- (1) The decision to undertake the SWDCAI and the Comprehensive Project;
- (2) The decision to deliver the Comprehensive Project through a split procurement model with the Authority procuring the SWDCAI and USACE procuring the SEAI and the MAI;
- (3) The decision as to the location and the alignment of the Project Limits;
- (4) The decision as to the form of the flood management system and the level of flood protection to be delivered through the SWDCAI and the Comprehensive Project;
- (5) The design, construction, operation, and maintenance of the SEAI and the MAI; and
- (6) From time to time, the decision as to whether or not to operate the Red River Control Structure, the Wild Rice River Control Structure, or the Diversion Inlet Structure.

Section 10.03 EXCLUSIONS FROM INDEMNIFICATION. The Authority will not require the Developer to be responsible or to be obliged to release, defend, indemnify, or hold harmless the County with respect to any liability or Losses to the extent that the same arise as a direct result of:

- (a) The Authority-Retained Responsibilities;
- (b) A Compensation Event or Relief Event;
- (c) The presence of Hazardous Materials for which the Authority is responsible under the terms of the Project Agreement;
- (d) The fraud, negligence, recklessness, bad faith, or willful misconduct of the County;
- (e) Any Losses suffered by the County under a contract with a third party;
- (f) Any breach of the MOU by the Authority; or
- (g) Any Losses suffered by the County with respect to use of the Project Data, or any Intellectual Property related to the Project Data, other than any use specifically for the SWDCAI.

Section 10.04 CONDUCT ON THIRD PARTY CLAIMS.

(a) Where the County is entitled to make a claim under this MOU against the Developer in relation to a Third Party Claim, the County shall give notice of the relevant claim to the Developer promptly, setting out the full particulars of the claim.

(b) Subject to the rights of the insurers under the Insurance Policies, the Developer may at its own expense, and with the assistance and cooperation of the County, conduct and control the Third Party Claim including its settlement and the County shall not, to the extent that the Developer has elected to conduct and control the relevant Third Party Claim, take any action to settle or prosecute the Third Party Claim.

(c) The Developer shall, if it wishes to have conduct and control of any Third Party Claim, reimburse the County for any cost or liability arising out of the conduct and control of the Third Party Claim by the Developer within thirty (30) calendar days of receiving an invoice from the County with respect to such costs.

(d) The County shall at all times take all reasonable steps to minimize and mitigate any loss for which the County is entitled to bring a claim against the Developer pursuant to this MOU.

Section 10.05 CERTIFICATES OF INSURANCE. Prior to commencing Construction Work under this MOU, the Authority will furnish to the County Representative certificates of insurance evidencing the coverages, endorsements, and amendments described herein. The Authority will notify the County in writing at least five (5) calendar days prior to any cancellation, non-renewal, substitution, or material alteration of insurance.

Section 10.06 NO WAIVER OF LIMITATION ON LIABILITY. The indemnity and hold harmless provisions herein shall not be deemed as waiver by the Authority of the limits of liability set forth in N.D.C.C. § 32-12.1-03, as amended from time to time, or a waiver of any available immunities or defenses.

ARTICLE XI. REIMBURSEMENT OF COSTS

Section 11.01 REIMBURSABLE COSTS. Subject to the availability of funds, the Authority will reimburse the County for salaries, services, and/or related costs and expenses as expressly provided in this MOU. Reimbursable costs are salaries, services, fees, and related costs and expenses paid by the County to any person, consultant, contractor, or firm for time spent performing any task required or identified under this MOU when supported by adequate records. Salaries, services, and related costs and expenses paid to the County's employees, officers, agents, or representatives may not be reimbursed.

Section 11.02 BETTERMENTS. The County agrees that it will not submit any costs or expenses for reimbursement by the Authority incurred for Betterments.

ARTICLE XII. INVOICING AND AUDIT

Section 12.01 COUNTY INVOICES. As necessary hereunder, the County will submit monthly properly certified invoices for reimbursable costs to the PMC at APInvoicesFMDiv@jacobs.com and to PaulsenJ@FMDiversion.gov in such form as outlined in Exhibit F. Each invoice will be supported by a statement of the claimed reimbursable cost, as

provided in Article XI, for performing this MOU. Prior to commencing any work for which reimbursement will be sought, the County will submit final cost estimates to the Authority for review and approval.

Section 12.02 AUDIT AND DISPUTE. All original time cards, payrolls, material records, and other accounts for all charges and expenditures for which reimbursement will be claimed by the County from the Authority will be available at all reasonable times to allow the Authority to check and audit the invoices submitted by the County. The ability of the Authority to audit the County's invoices will extend for a period of three (3) years from the date final payment has been received by the County. Any overpayment or underpayment discovered during the audit will be treated as a dispute under Article XIV.

Section 12.03 PAYMENT. Subject to the availability of funds, the Authority will make payments to the County when requested as Work progresses, but no more than once per month. Payment will be made within thirty (30) calendar days of an invoice's dated date. If payment is not timely made, the County reserves the right to apply a one percent (1%) monthly finance charge to the invoice.

Section 12.04 FINAL ACCOUNTING. The County will provide one (1) final and complete billing of all incurred costs within one (1) year following completion of the reimbursable Design Work and Construction Work. The Authority may in Good Faith, after conducting a final audit, make adjustments to the amount of compensation due to the County under this MOU.

Section 12.05 BETTERMENTS. In the event the Authority constructs Betterments upon request of the County, the Authority will invoice the County for those costs and expenses incurred for construction of the Betterments in accordance with the procedure laid out in this Article.

Section 12.06 AUTHORITY INVOICES. As necessary hereunder, the Authority will submit monthly properly certified invoices for reimbursable costs to the County. Such invoices will be due and payable in full to the Authority within thirty (30) calendar days of their dated date. If payment is not timely made, the Authority reserves the right to apply a one percent (1%) monthly finance charge to the invoice.

ARTICLE XIII. TERM AND TERMINATION

Section 13.01 TERM. This MOU will continue in full force and effect until either (i) the termination of the Original Term or a Renewal Period as provided herein; or (ii) this MOU is terminated or rescinded in accordance with the terms and conditions of this MOU.

Section 13.02 PROJECT AGREEMENT. The original term of this MOU will be from the Effective Date until the date of termination of the Project Agreement (the "Original Term"). The MOU will automatically renew following the Original Term for successive ten (10) year periods (a "Renewal Period") unless a Party provides three hundred sixty-five (365) days' prior written notice to the other Party that renewal is not desired.

Section 13.03 TERMINATION.

(a) The Parties must mutually agree, in writing, to terminate this MOU. The Parties may not terminate this MOU prior to the termination of the Project Agreement.

(b) Upon termination, the County will submit a final termination invoice to the Authority in the form and with the certification prescribed by the Authority. The County will submit the invoice promptly, but no later than one (1) year after the effective date of termination, unless extended in writing by the Authority upon written request of the County within this one (1) year period. If the Authority determines, however, that the facts justify it, a termination settlement invoice may be received and acted on after one (1) year or any extension. If the County fails to submit the invoice within the time allowed, the Authority may determine, on the basis of information available, the amount, if any, due the County because of the termination and will pay the amount determined.

(c) If the Authority and the County fail to agree in whole or in part on the amount of costs and/or fees to be paid because of the termination of work, the failure to agree will be treated as a dispute under Article XIV.

ARTICLE XIV. DISPUTE RESOLUTION

Section 14.01 INTENT AND PROCEDURE. The Parties will cooperate and use their best efforts to ensure that the various provisions of this MOU are fulfilled. The Parties agree to act in Good Faith to undertake resolution of disputes in an equitable and timely manner and in accordance with the provisions of this MOU. If disputes cannot be resolved informally by the Parties, the following procedure will be used.

Section 14.02 MEDIATION. If there is a failure between the Parties to resolve a dispute on their own, the Parties will first attempt to mediate the dispute. The Parties will agree upon a single mediator or, if an agreement cannot be reached within ten (10) calendar days, the mediator shall be selected by the American Arbitration Association (“AAA”) in accordance with its Commercial Industry Mediation Rules and Procedures then in effect. Any mediator selected by mutual agreement of the Parties or through the AAA selection process must have no current or on-going relationship with either Party. The Parties agree that only one (1) mediator shall be selected as the AAA mediator, and the Parties will each pay fifty percent (50%) of any costs for mediation services.

Section 14.03 LITIGATION IF DISPUTE NOT RESOLVED. If the dispute is not resolved within forty-five (45) calendar days after the selection of the mediator pursuant to Section 14.02, the Parties may litigate the matter.

Section 14.04 LITIGATION; VENUE. All litigation between the Parties arising out of or pertaining to this MOU or its breach will be filed, heard, and decided in the District Court of Cass County, North Dakota, which will have exclusive jurisdiction and venue.

Section 14.05 WAIVER OF JURY TRIAL. The Parties hereby knowingly, irrevocably, voluntarily, and intentionally waive any rights that any may have to a trial by jury with respect to

any action, proceeding, counterclaim, or defense based on this MOU, or arising out of, under, or in any connection with this MOU, or with respect to any course of conduct, course of dealing, statements (whether oral or written) or actions of any party hereto relating to this MOU. This provision is a material inducement for all Parties entering into this MOU. This provision applies only to suits between the Parties and does not apply to third party claims or suits.

**ARTICLE XV.
THIRD PARTY BENEFICIARIES**

Section 15.01 DEVELOPER. The Authority and the County specifically agree, acknowledge, and covenant that portions of the County's property or right-of-way will be used by the Developer in order to construct, operate, and maintain the SWDCAI. As a result, the Authority and the County agree and acknowledge that, at any time during which one or more of the Parties is in breach or default of its respective obligations arising out of or related to this MOU, the Developer may enforce the terms and conditions of this MOU including, without limitation, by securing a court order directing the Party to perform its obligations under the MOU. In addition to the foregoing, the Developer shall have all other rights available to it at law or in equity, and all of the rights and remedies provided hereunder are deemed cumulative and not exclusive of any rights or remedies provided by law or otherwise available to the Developer.

**ARTICLE XVI.
MISCELLANEOUS**

Section 16.01 COMPLETE AGREEMENT. This MOU contains the entire and exclusive understanding of the Parties with respect to the subject matter thereof and supersedes all prior agreements, understandings, statements, representations, and negotiations, in each case oral or written, between the Parties with respect to their subject matter.

Section 16.02 COUNTERPARTS. This instrument may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

Section 16.03 AMENDMENTS. This MOU may be amended only by written instrument duly executed by the Parties or their respective successors or assigns, except to the extent expressly provided otherwise in this MOU.

Section 16.04 SEVERABILITY AND SAVINGS CLAUSE. Each provision, section, sentence, clause, phrase, and word of this MOU is intended to be severable. If any provision, section, sentence, clause, phrase, or word hereof is held by a court with jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this MOU.

Section 16.05 FORCE MAJEURE. Neither the Authority nor the County will be liable to the other during any period in which its performance is delayed or prevented, in whole or in part, by any of the following circumstances: war, civil war, invasion, violent act of foreign enemy, or armed conflict; nuclear, chemical, or biological contamination; ionizing radiation; Force Majeure Flood Event; or any act of terrorism. If such a circumstance occurs, the Party claiming the delay

must promptly (and in any event within ten (10) Business Days) notify the other Party of the same. The Parties will consult with each other in Good Faith and use all reasonable efforts to agree on appropriate terms to mitigate the effects of the force majeure event and facilitate the continued performance of this MOU.

Section 16.06 AUTHORIZED REPRESENTATIVES. Each of the Authority and the County hereby designates the following individuals as its initial authorized representatives, respectively, to administer this MOU on its respective behalf:

(a) Authority Representative: Kris Bakkegard, Director of Engineering

(b) County Representative: Jason Benson, Cass County Engineer

Section 16.07 NOTICE.

(a) All notices under the MOU will be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) sent by email communication followed by a hard copy, to the following addresses.

(b) All notices to the Authority will be marked as regarding the SWDCAI and will be delivered to the following addresses or as otherwise directed by the Authority Representative:

Jacobs
64 4th Street North, Suite 300
Fargo, North Dakota 58102

and

Executive Director
Box 2806
207 4th Street North
Suite A
Fargo, North Dakota 58102

(c) All notices to the County will be marked as regarding the SWDCAI and will be delivered to the following address or as otherwise directed by the County Representative:

1201 Main Avenue West
West Fargo, North Dakota 58078

(d) Notices will be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private courier, or other person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. CST and all other notices received after 5:00 p.m. CST will be deemed received on the first Business Day following delivery.

Section 16.08 GOVERNING LAW. This MOU will be governed and construed in accordance with the laws of the State of North Dakota.

Section 16.09 CONFLICT WITH MOU REGARDING OTHER COMPREHENSIVE PROJECT WORK. Nothing in this MOU is intended to supersede, amend, or otherwise modify any other memorandum of understanding or agreement entered by and between the Authority and the County for work regarding other aspects of the Comprehensive Project.

Section 16.10 FEDERAL LOBBYING RESTRICTIONS. Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract. These requirements are implemented for the United States Environmental Protection Agency (“EPA”) in 40 CFR Part 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, which are not subject to this prohibition. On or prior to the Effective Date, the County will complete and submit to the Authority the certification and disclosure forms in Appendix A and Appendix B to 40 CFR Part 23, which are attached within Exhibit J to this MOU. The County will also require all subcontractors and suppliers of any tier awarded a subcontract over \$100,000 to similarly complete and submit the certification and disclosure forms pursuant to the process set forth in 40 CFR 34.110.

Section 16.11 DEBARMENT AND SUSPENSION. The County certifies it will not knowingly enter into a contract with anyone who is ineligible under 40 CFR Part 32 to participate in the Comprehensive Project. Suspension and debarment information can be accessed at <http://www.sam.gov>. The County represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its subcontracts under this MOU. On or prior to the Effective Date, the County will complete and submit to the Authority the federal certification form regarding debarment and suspension, which is attached within Exhibit J to this MOU.

Section 16.12 CIVIL RIGHTS OBLIGATIONS. The County will comply with the following, federal non-discrimination requirements:

- (a) Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
- (b) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
- (c) The Age Discrimination Act of 1975, which prohibits age discrimination.
- (d) Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
- (e) 40 CFR Part 7, as it relates to the foregoing.
- (f) Executive Order No. 11246.

On or prior to the Effective Date, the County will complete and submit to the Authority the federal certification form regarding civil rights, which is attached within Exhibit J to this MOU.

IN WITNESS WHEREOF, the Parties caused this Agreement to be executed.

(Remainder of page intentionally left blank.)

Signature Page for Metro Flood Diversion Authority

The Governing Body of the Metro Flood Diversion Authority approved this MOU on the _____ of _____, 2020.

METRO FLOOD DIVERSION AUTHORITY

By: _____
TIMOTHY J. MAHONEY, Chair

By: _____
JOEL PAULSEN, Executive Director

ATTEST:

By: _____
HEATHER WORDEN, Secretary

Signature Page for Cass County, North Dakota

The Governing Body of Cass County, North Dakota, approved this MOU on the _____ of _____, 2020.

CASS COUNTY, NORTH DAKOTA

By: _____
CHAD PETERSON, Chair of the Board of
County Commissioners

ATTEST:

By: _____
MICHAEL MONTPLAISIR, County Auditor

EXHIBIT A
EXISTING ROADS

1. County Road 4
2. County Road 6
3. County Road 10
4. County Road 17
5. County Road 20
6. County Road 22
7. County Road 31
8. County Road 32
9. County Road 81

Alternate Crossing

1. County Road 14

EXHIBIT B

MINIMUM DESIGN STANDARDS

<i>Cass County Minimum Design Standards for New or Reconstruction of Existing Infrastructure</i>							
Typical Section	Design Speed	Right of Way	Road Width	Turn Lanes	Minimum Section Thickness	Access Controls	Bike/Ped Facilities
Two-Lane Township Gravel Section	55 mph	100 feet	24 feet	No	4 inches gravel	¼ mile spacing	Not Applicable
Two-Lane Rural Gravel Section	55 mph	200 feet	36 feet	No	6 inches gravel	¼ mile spacing	Not Applicable
Two-Lane Rural Paved Section	55 mph	200 feet	32 feet	No	12 inches base + HBP	¼ mile spacing	4-foot paved shoulder
Two-Lane Village Paved Section	25 mph	200 feet	32 feet	No	12 inches base + HBP	Varies	4-foot paved shoulder
Two-Lane City Paved Section	25 mph	200 feet	36 feet	No	12 inches base + HBP	Varies	6-foot paved shoulder
Two-Lane Metro Paved Section	40-55 mph	200 feet	36 feet	No	12 inches base + HBP	¼ mile spacing	6-foot paved shoulder
Three-Lane Metro Paved Section	40-55 mph	200 feet	50 feet	¼ mile spacing	12 inches base + HBP	¼ mile spacing	6-foot paved shoulder and separated path
Bridge Clear Roadway Width (Paved Section)	-	-	40 feet	-	-	-	-
Bridge Clear Roadway Width (Gravel Section)	-	-	36 feet	-	-	-	-

EXHIBIT C

EXISTING ROAD RECONSTRUCTION DESIGN CRITERIA

1. Design and construct a bridge, roadway approaches, and appurtenances over the SWDCAI at the County Road 16 and County Road 17 crossing to tie into separate Comprehensive Project elements in accordance with the following design criteria.
2. Design and construct a bridge, roadway approaches, and appurtenances over the SWDCAI at County Road 6 in accordance with the following design criteria.
3. Design and construct a bridge, roadway approaches, and appurtenances over the SWDCAI at County Road 10. Design and construct County Road 10 driving lanes with a minimum of 7-inch HBP FAA-42 Superpave and 4-inch HBP FAA-42 Superpave shoulders, as well as in accordance with the following design criteria.
4. Design and construct a bridge, roadway approaches, and appurtenances over the SWDCAI at County Road 14 in accordance with the following design criteria.
5. Design and construct a bridge, roadway approaches, and appurtenances over the SWDCAI at County Road 20 in accordance with the following design criteria.
6. Design and construct a bridge, roadway approaches, and appurtenances over the SWDCAI at County Road 22 in accordance with the following design criteria.
7. Design and construct a bridge, roadway approaches, and appurtenances over the SWDCAI at County Road 32 in accordance with the following design criteria.
8. Design and construct a bridge, roadway approaches, and appurtenances over the SWDCAI at County Road 81. Design and construct County Road 81 driving lanes with a minimum of 7-inch HBP FAA-42 Superpave and 4-inch HBP FAA-42 Superpave shoulders, as well as in accordance with the following criteria.
9. Combine County Road 4 and County Road 31 into one crossing over the SWDCAI. Construct a bridge, roadway approaches, and appurtenances over the SWDCAI in accordance with the following design criteria.

Design Criteria for Diversion Crossings

Name	Temp Bypass Design Speed (mph)	Temp Crossover Design Speed (mph)	Design Speed (mph)	Pavement Design Life (years)	Pavement Type	Bridge Design Life (years)	Clear Zone (ft)	Inslope	Number of Travel Lanes Each Direction	Min Lane Width (ft)	Lane Cross Slope (Typical) (%)	Max Shoulder Cross Slope (%)	Max Superelevation (ϵ_{max})	Max Profile Grade at Bridge (%)	Bridge Width (Clear Roadway) (ft)
CR 31 & CR 4	N/A	N/A	55 (45 at bridge)	20	HBP and Aggregate	75	18 (14)	4:1	1	12	2.1 on HBP and 4.0 on Aggregate	8 (6 Max Rollover)	6	+/-1.0	40
CR 81	55	N/A	55	20	HBP	75	18	4:1	1	12	2.1	8 (6 Max Rollover)	6	+/-1.0	40
CR 32	N/A	N/A	55	20	HBP and Aggregate	75	18	4:1	1	12	2.1 on HBP and 4.0 on Aggregate	8 (6 Max Rollover)	6	+/-1.0	40
CR 22	N/A	N/A	55	20	HBP and Aggregate	75	18	4:1	1	12	2.1 on HBP and 4.0 on Aggregate	8 (6 Max Rollover)	6	+/-1.0	40
CR 20	45	N/A	55	20	HBP and Aggregate	75	18	4:1	1	12	2.1 on HBP and 4.0 on Aggregate	8 (6 Max Rollover)	6	+/-1.0	40
CR 10	45	N/A	55	20	HBP	75	18	4:1	1	12	2.1	8 (6 Max Rollover)	6	+/-1.0	40
CR 6	N/A	N/A	55	20	HBP and Aggregate	75	18	4:1	1	12	2.1 on HBP and 4.0 on Aggregate	8 (6 Max Rollover)	6	+/-1.0	40
CR 14	45	N/A	55	20	HBP and Aggregate	75	18	4:1	1	12	2.1 on HBP and 4.0 on Aggregate	8 (6 Max Rollover)	6	+/-1.0	40
CR 17	N/A	N/A	45	20	HBP and Aggregate	75	18 (14)	4:1	1	12	2.1 on HBP and 4.0 on Aggregate	8 (6 Max Rollover)	6	+/-1.0	40

Design Criteria for Roads

Name	Pavement Type	Design Speed (mph)	Pavement Design Life (years)	Concrete Pavement				Asphalt Pavement				Gravel Thickness (inches)
				Concrete Pavement Thickness (inches)	Joint Spacing	Dowels-1.25"	Dense Graded Base (inches)	HMA Pavement Thickness (inches)	Aggregate Base Course (inches)	HBC Shoulder Thickness (inches)	HBC Shoulder Thickness (inches)	
CR 31 & CR 4	HBP and Aggregate	55	20	N/A	N/A	N/A	N/A	N/A	5	7	4	6
CR 81	HBP and Aggregate	55	20	N/A	N/A	N/A	N/A	N/A	5	7	4	6
CR 32	HBP and Aggregate	55	20	N/A	N/A	N/A	N/A	N/A	5	7	4	6
CR 22	HBP and Aggregate	55	20	N/A	N/A	N/A	N/A	N/A	5	7	4	6
CR 20	HBP and Aggregate	55	20	N/A	N/A	N/A	N/A	N/A	5	7	4	6
CR 10	HBP	55	20	N/A	N/A	N/A	N/A	N/A	5	7	4	N/A
CR 6	HBP and Aggregate	55	20	N/A	N/A	N/A	N/A	N/A	5	7	4	6
CR 14	HBP and Aggregate	55	20	N/A	N/A	N/A	N/A	N/A	5	7	4	6

Design Criteria for Roads

Name	Pavement Type	Design Speed (mph)	Pavement Design Life (years)	Concrete Pavement				Asphalt Pavement				Gravel Thickness (inches)
				Concrete Pavement Thickness (inches)	Joint Spacing	Dowels- 1.25"	Dense Graded Base (inches)	HMA Pavement Thickness (inches)	Aggregate Base Course (inches)	HBC Shoulder Thickness (inches)	HBC Shoulder Thickness (inches)	
CR 17	HBP and Aggregate	45	20	N/A	N/A	N/A	N/A	N/A	5	7	4	6

EXHIBIT D
BRIDGE DESIGN CRITERIA

1. Design and construct Bridges in accordance with the following:

- A. AASHTO *LRFD Bridge Design Specifications*
- B. NDDOT *Design Manual Chapters IV and V*
- C. NDDOT *Standard Specifications for Road and Bridge Construction*

For cases where AASHTO specifications conflict with NDDOT standards and policies, the NDDOT standards and policies take precedence.

2. Bridge requirements:

- A. Provide a minimum one (1) foot clearance between the 1.0 percent ACE (100-year) Red River Peak Design Flow water surface elevation and the bottom of the lowest girder flange or appurtenance within each bridge span.
- B. Permissible bridge types are as follows:
 - a. Pre-stressed concrete I girder
 - b. Steel plate girders
 - c. Wide flange rolled girders
 - d. Cast-in-place and precast concrete box culverts
- C. Bridges utilizing fracture critical members are not allowed.
- D. Design and construct Bridges with concrete decking.
- E. Design bridges on “straight” or tangent sections. Horizontal curves or curve transitions are not permitted in the geometric design.
- F. Design and construct bridges with a steel H-pile foundation in which the piles are driving to the required bearing capacity.
- G. Design and construct bridges with 1” expansion joints at each bridge end in accordance with NDDOT *CADD Standard Drawing D550-04 – Transverse Expansion Joint Detail*.
- H. Obtain an individual bridge number for each structure from the NDDOT; include this bridge number on design and plan sheets.

- I. Design and construct concrete bridge barrier rail with a Kansas Corral Rail in compliance with the Technical Requirements.

EXHIBIT E

PROJECT LIMITS

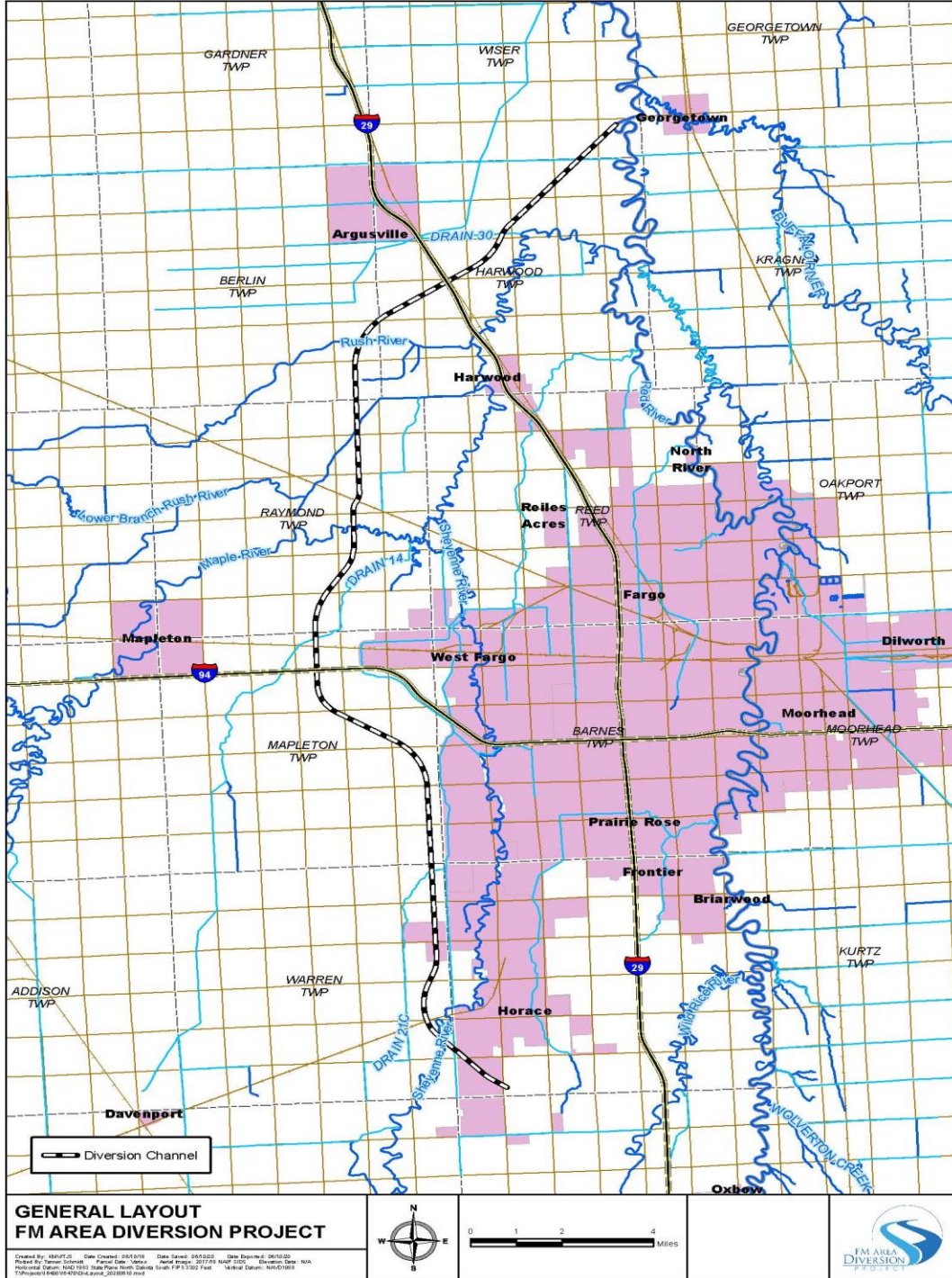


EXHIBIT F

AUTHORITY INVOICING REQUIREMENTS

The Metro Flood Diversion Authority (the “Authority”) has engaged with the United States Army Corps of Engineers (hereinafter “USACE”) to design and construct the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the “Comprehensive Project”). For the design and construction of the Storm Water Diversion Channel and Associated Infrastructure (“SWDCAI”), a component of the Comprehensive Project, the Authority has entered memorandums of understanding with Third Parties for the relocation of the Third Parties’ facilities. Work completed for the relocation of a Third Party’s facilities will be invoiced according to the Authority Invoicing Requirements (the “Procedure”) set forth therein. Details for the submission of an invoice are outlined in each individual MOU.

1. Invoicing

Invoices are to be submitted monthly and will be processed in accordance with the invoicing and payment terms of this Procedure. Separate invoices are required for each month in which costs are incurred for work performed, not to exceed the agreement amount(s) for the authorized scope of services.

The scope of services that the Third Party shall complete are defined by the MOU. As provided in the MOU, the Third Party shall submit final cost estimates to the Authority for review and approval prior to commencing work (“Final Cost Estimate”). Each Final Cost Estimate will detail the scope of services, work schedule, and cost budget. The Authority may make or approve changes to the Final Cost Estimates within the scope of services as defined by the MOU. As applicable, an equitable adjustment will be made through an amendment to the Final Cost Estimate.

To ensure prompt processing and payment, please submit all FM Diversion project related invoices to the following email address: APIInvoicesFMDiv@jacobs.com, copied to PaulsenJ@FMDiversion.gov.

In order to process invoices efficiently and to facilitate accurate cost tracking on the SWDCAI, the Authority requires specific and detailed information on each invoice. Please ensure each invoice includes the following items:

- A) A cover page with information that reflects all costs and expenses incurred for the invoicing period by providing the following at a minimum:
 - 1) Company Name and Address;
 - 2) Company’s preferred remittance address, if different from the address on the invoice’s coversheet;
 - 3) Company federal employer identification number;
 - 4) Invoice Number and Date (each invoice, including resubmittals, are to be uniquely numbered);
 - 5) Invoicing Period (month that charges were incurred);
 - 6) Purchase Order Number (to be issued by the Authority); and

- 7) Provide a table listing (see Table 1 below) outlining the total amount for each Final Cost Estimate number under this MOU (original estimated/quoted cost) with the following:
- Agreement Number / Task Title (to be issued by the Authority);
 - Schedule Activity ID (to be issued by the Authority);
 - Original Amount – dollar amount estimated in the Final Cost Estimate;
 - Amendment Amount – as applicable (total dollar amount of all authorized amendments as of the date of the invoice);
 - Total Amount – total of Original Amount and Amendment Amount;
 - Previously Invoiced Amount – total dollar amount previously invoiced under the MOU (not including the current invoice);
 - Amount Due this Invoice – total dollar amount for the current invoice;
 - Balance Remaining – difference between the Total Amount and the sum of the Previously Invoiced Amount and the Amount Due This Invoice; and
 - Estimate at Completion (EAC) – total estimated costs at the completion of the scope of work outlined in each Final Cost Estimate under the MOU. This would include all costs invoiced through the current invoice and any future work. If costs are anticipated to exceed the Total Agreement amount, please provide notification to the Authority.

B) Provide amount of invoice and supporting documentation by task:

- For allowable expenses as provided in the MOU.
- If unallowable costs are determined during the invoice approval process, the Third Party will be notified. The invoice will be returned with comments and can be resubmitted after the comments are addressed in accordance with the MOU.
- Monthly Status Report. Provide summary of work activities performed during the invoicing period.

TABLE 1 – Budget Tracking

Final Cost Estimate Number / Task Title (a)	Activity ID (b)	Original Amount (c)	Amendment Amount (d)	Total Amount (e)	Previously Invoiced Amount (f)	Amount Due this Invoice (g)	Balance Remaining (h)	Estimate At Completion (i)
TBD	TBD	\$	As applicable	\$	\$	\$	\$	\$
TBD	TBD	\$	As applicable	\$	\$	\$	\$	\$
Totals								

2. Payments and Final Accounting

A) The Authority shall remit payment to a Third Party for such balance due within thirty (30) calendar days after receiving a proper invoice.

B) The Third Party agrees to provide the Authority with estimates of any differences in the Final Cost Estimate anticipated to be five percent (5%) or greater than the figure included in the Final Cost Estimate by the Third Party.

C) The Third Party will submit a final accounting to the Authority in accordance with the terms of the MOU.

3. **Miscellaneous**

A) If any term or other provision of this Procedure is deemed invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Procedure shall remain in full force and effect. Upon such determination, the Parties shall negotiate in good faith to modify this Procedure so as to give effect the original intent of the Parties, as closely as possible and in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

B) This Procedure shall be governed by and enforced in accordance with the laws of the State of North Dakota.

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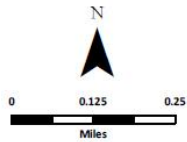
EXHIBIT G

COUNTY PROPERTY INTERESTS AND GRANTS TO AUTHORITY



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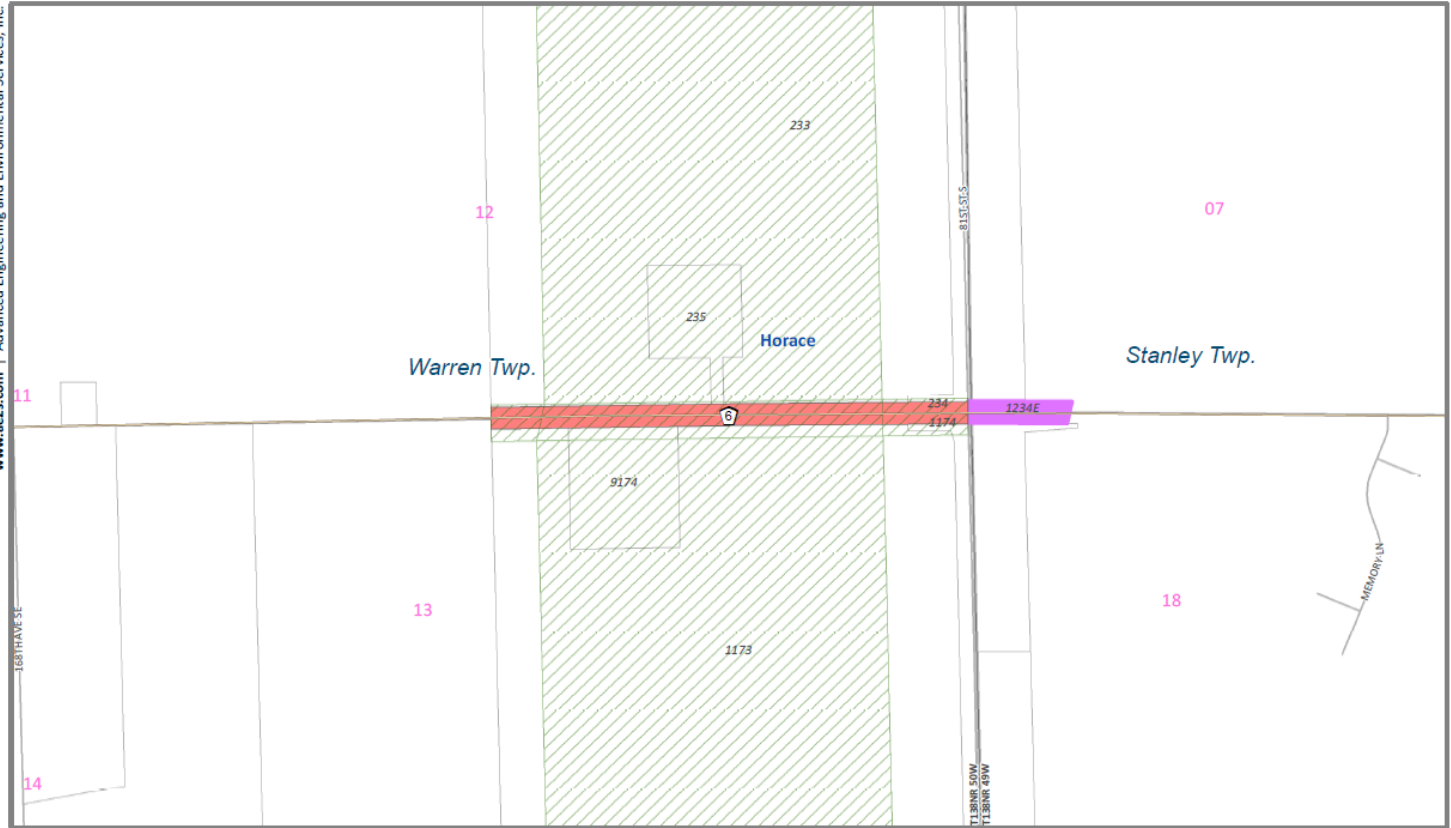
County Road ROW in Channel ROW type	ND County Roads
 Statutory	 Other Impacted Parcels
	 Project Limits
	 Temporary Construction Easement

PENDING MOU'S CASS COUNTY OWNED AND DEEDED ROW

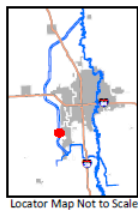
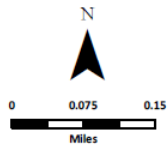
Berlin Township
County Road 32

FM AREA DIVERSION
Map Date: 7/7/2020





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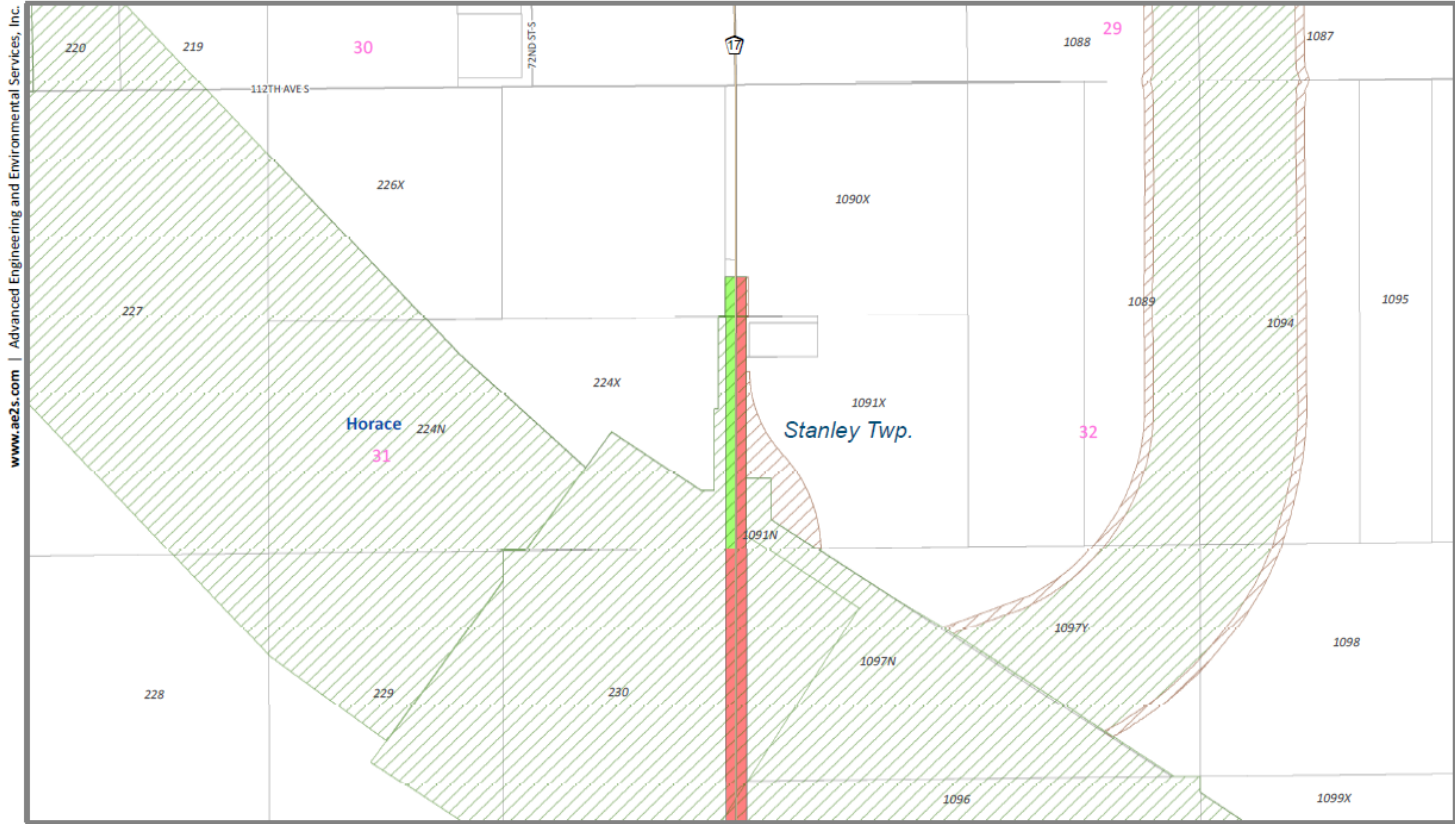


County Road ROW in Channel		ND County Roads	
	Easement		Other Impacted Parcels
	Deeded ROW		Project Limits
			Temporary Construction Easement

**PENDING MOU'S
 CASS COUNTY OWNED
 AND DEEDED ROW**
 Warren Township
 County Road 6

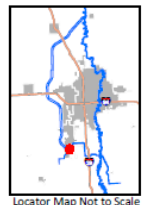
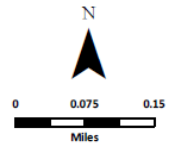
FM AREA DIVERSION
 Map Date: 7/7/2020





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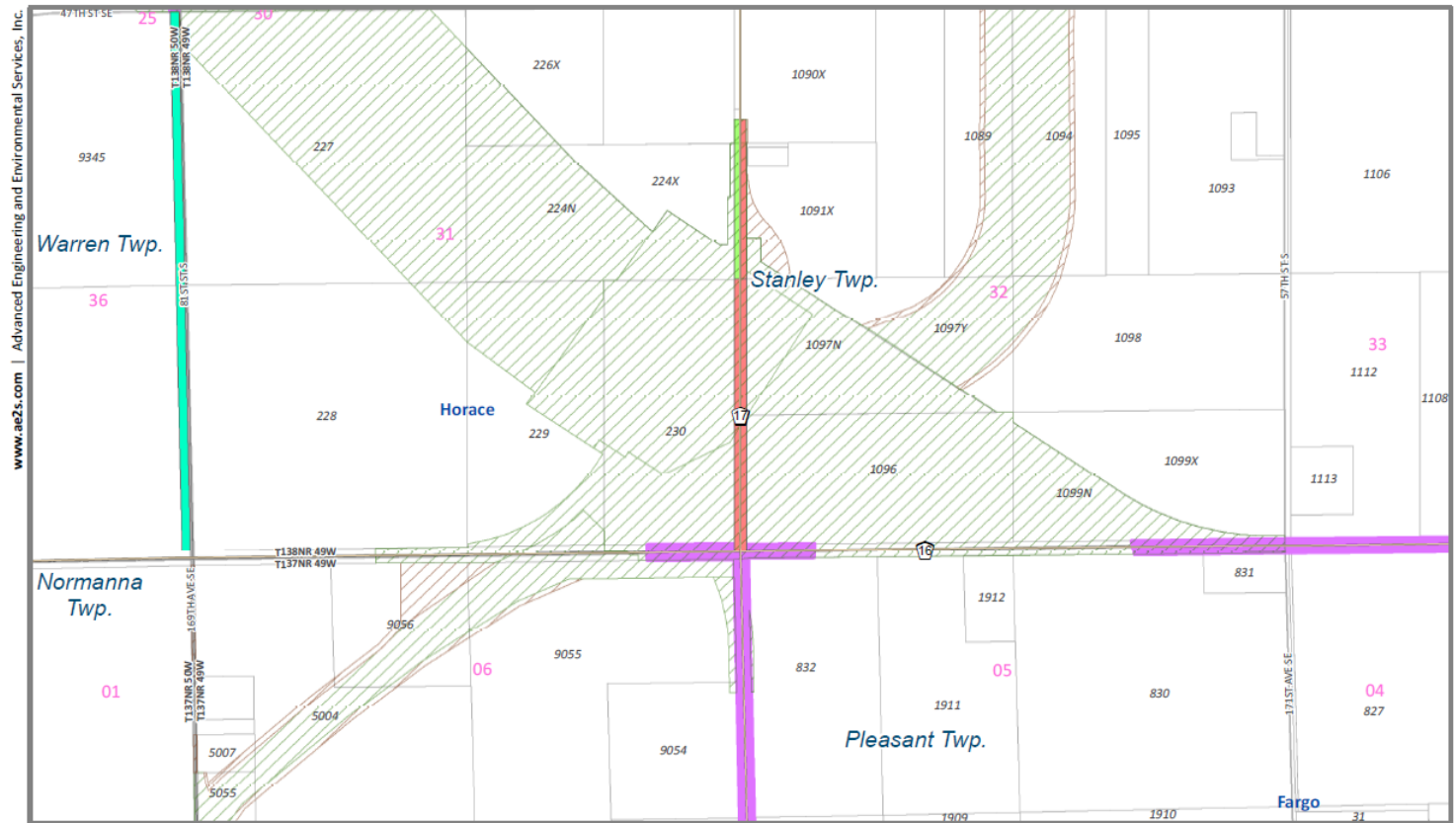


County Road ROW in Channel	ND County Roads
Deed (Green hatching)	Other Impacted Parcels (Grey hatching)
Easement (Red hatching)	Project Limits (Diagonal hatching)
	Temporary Construction Easement (Red diagonal hatching)

**PENDING MOU'S
CASS COUNTY OWNED
AND DEEDED ROW**
Stanley Township
County Road 17

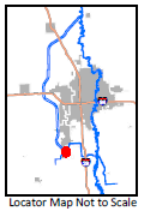
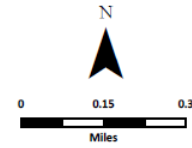
FM AREA DIVERSION
Map Date: 7/7/2020





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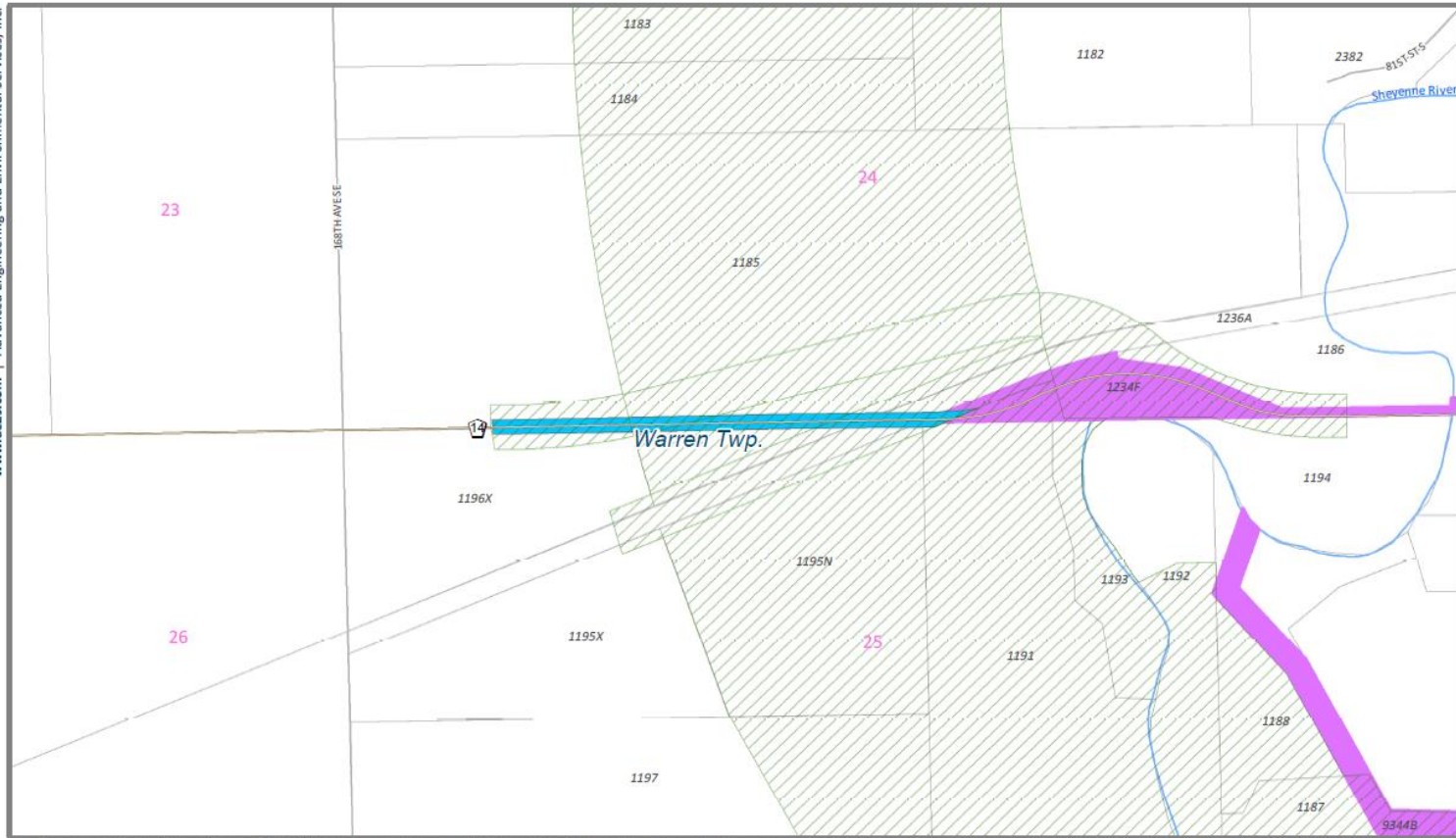


County Road ROW in Channel		ND County Roads	
	Deed		Other Impacted Parcels
	Easement		Project Limits
	County Drains		Temporary Construction Easement
	Deeded ROW		

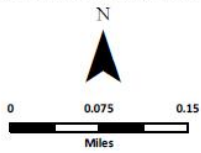
**PENDING MOU'S
CASS COUNTY OWNED
AND DEEDED ROW**
Stanley Township
County Road 17

FM AREA DIVERSION
Map Date: 7/7/2020





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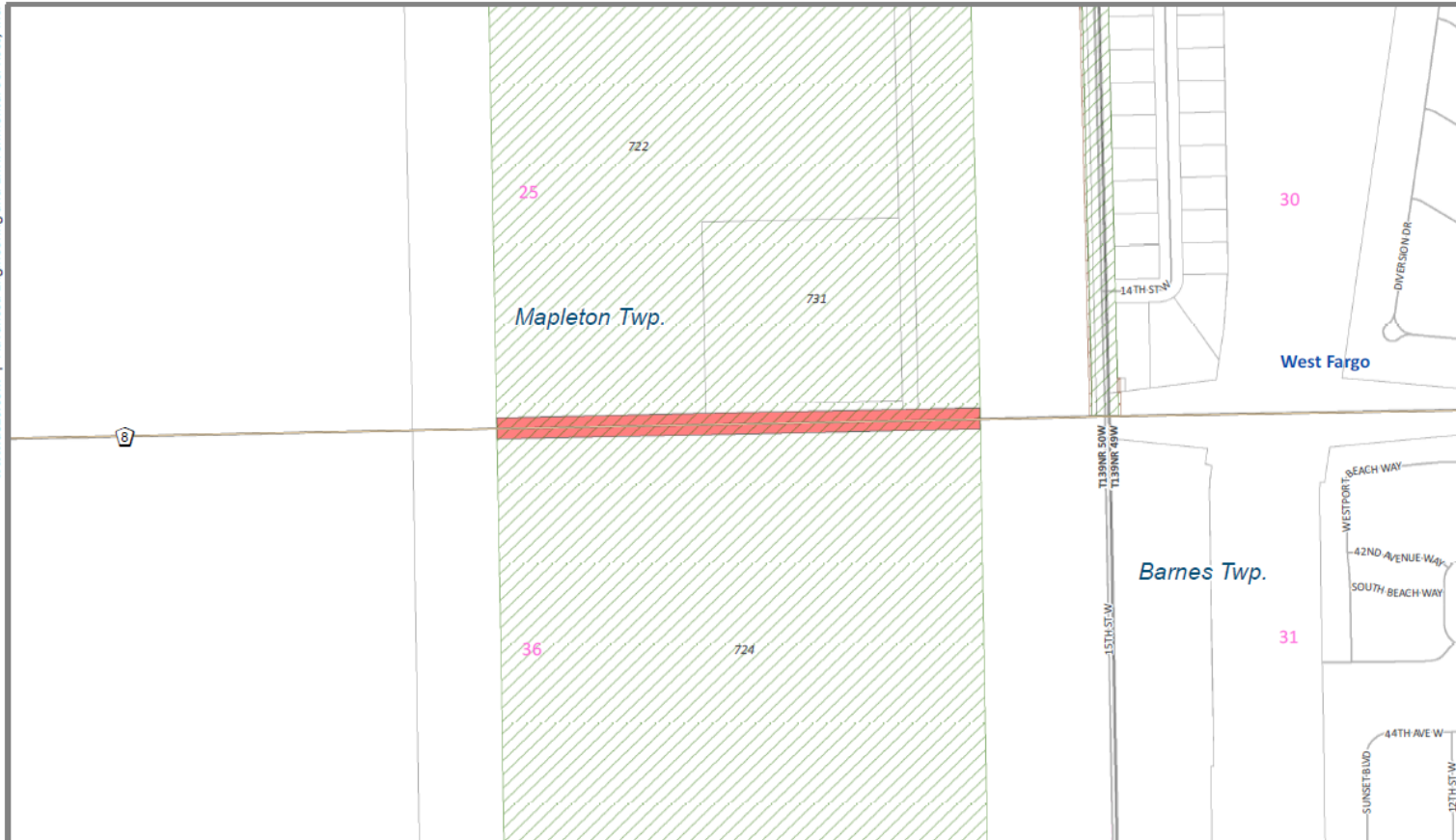


County Road ROW in Channel		ND County Roads	
Statutory	Other Impacted Parcels	Other Impacted Parcels	Other Impacted Parcels
County Owned Parcels	Project Limits	Project Limits	Project Limits
Deeded ROW	Temporary Construction Easement	Temporary Construction Easement	Temporary Construction Easement

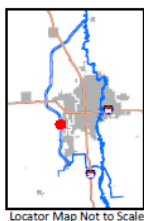
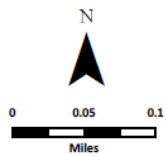
**PENDING MOU'S
CASS COUNTY OWNED
AND DEEDED ROW**
Warren Township
County Road 14

FM AREA DIVERSION
Map Date: 7/7/2020





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County Road ROW in Channel ROW type	ND County Roads
Easement	Other Impacted Parcels
	Project Limits
	Temporary Construction Easement

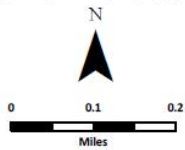
**PENDING MOU'S
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 AND DEEDED ROW**
 Mapleton Township
 County Road 8

FM AREA DIVERSION
 Map Date: 7/7/2020





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County Road ROW in Channel ROW type	ND County Roads
Deed	Other Impacted Parcels
	Project Limits
	Temporary Construction Easement

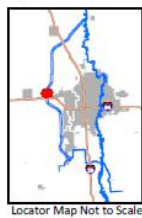
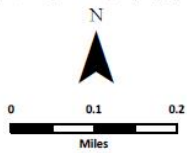
**PENDING MOU'S
CASS COUNTY OWNED
AND DEEDED ROW**
Mapleton Township
County Road 10

FM AREA DIVERSION
Map Date: 7/7/2020





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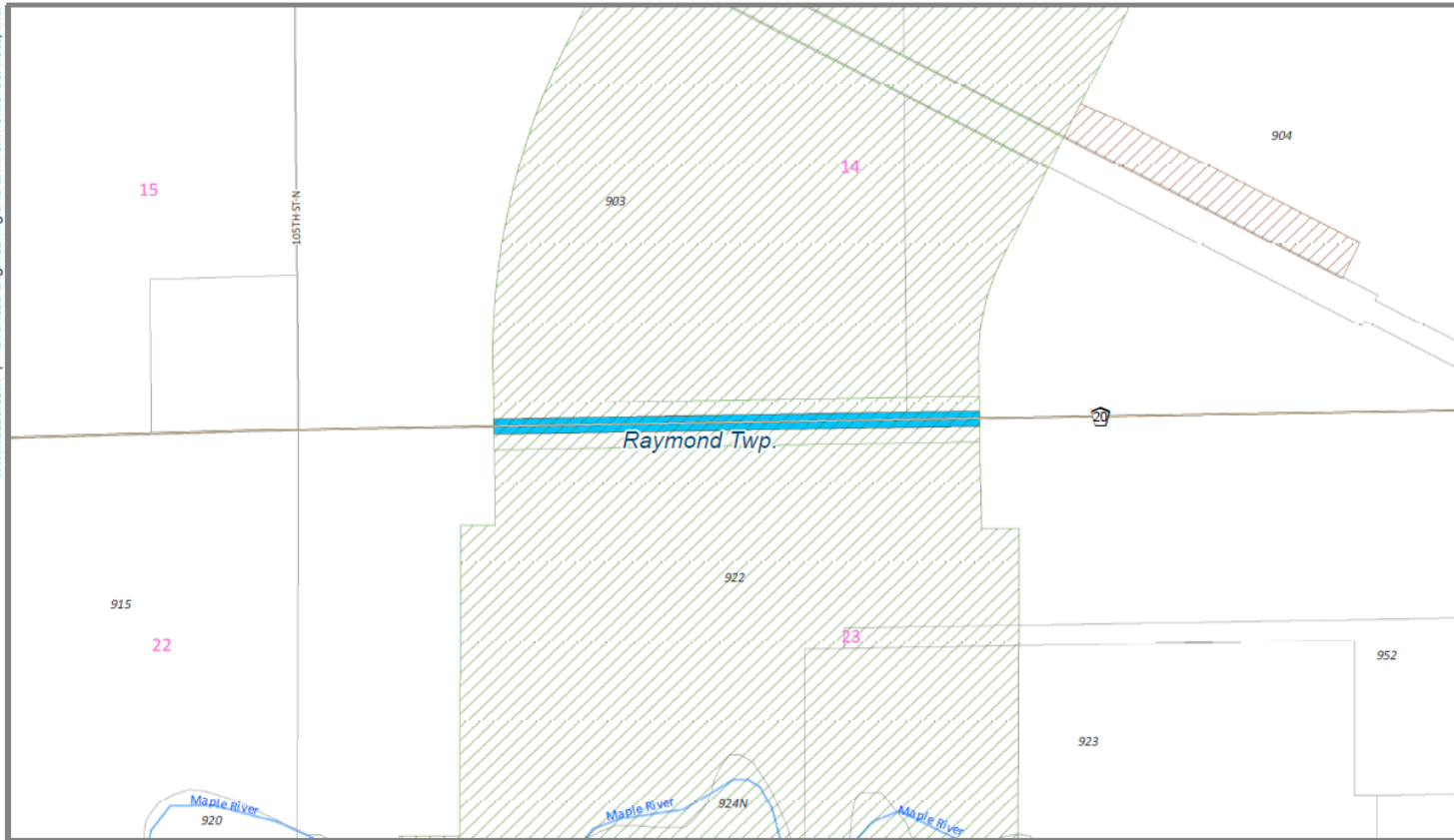


County Road ROW in Channel	ND County Roads
ROW type	
Deed	Other Impacted Parcels
	Project Limits
	Temporary Construction Easement

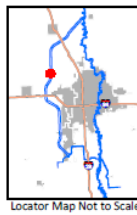
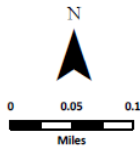
**PENDING MOU'S
CASS COUNTY OWNED
AND DEEDED ROW**
Raymond Township
County Road 10

FM AREA DIVERSION
Map Date: 7/7/2020





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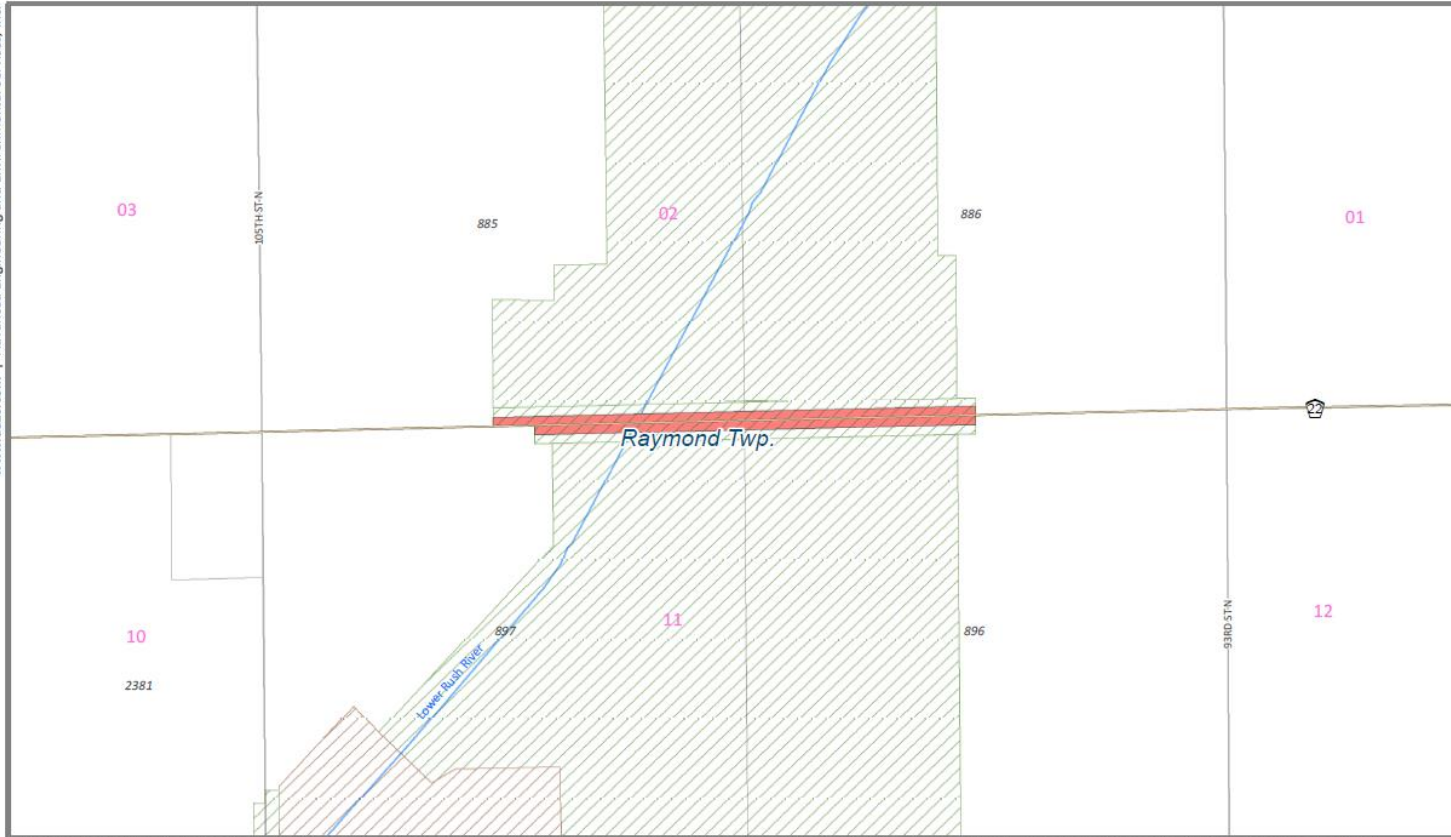


County Road ROW in Channel ROW type	ND County Roads
Statutory	Other Impacted Parcels
	Project Limits
	Temporary Construction Easement

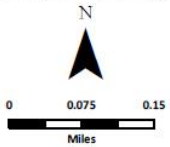
**PENDING MOU'S
CASS COUNTY OWNED
AND DEEDED ROW**
Raymond Township
County Road 20

FM AREA DIVERSION
Map Date: 7/7/2020





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 Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Map produced by AE2S, Inc. - cwickenheiser C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOUs_CassCountyProperty_bytownship.mxd



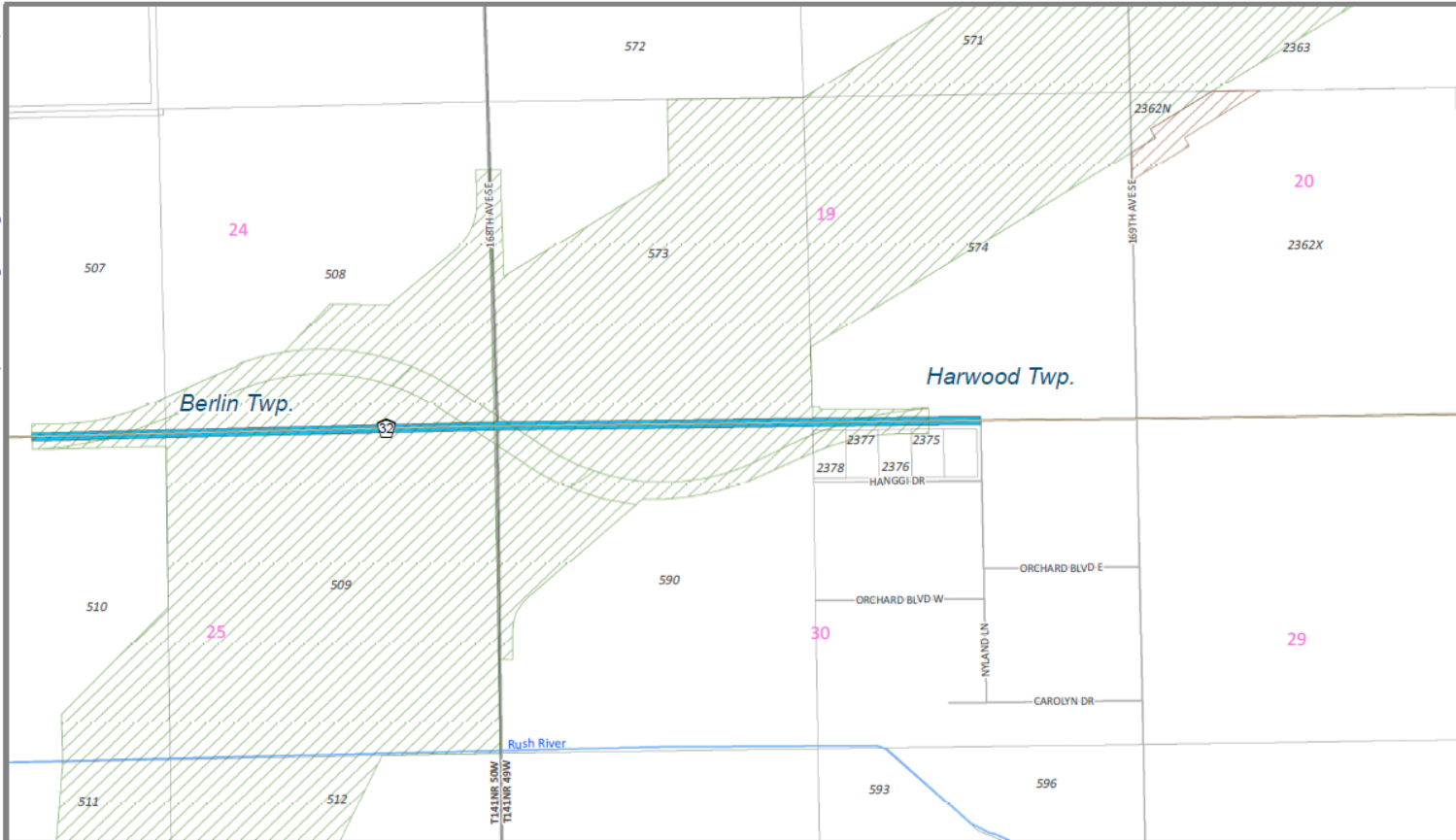
Locator Map Not to Scale

County Road ROW in Channel		ND County Roads	
	Easement		Other Impacted Parcels
	Project Limits		Project Limits
	Temporary Construction Easement		Temporary Construction Easement

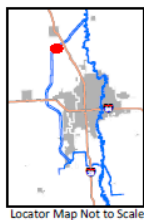
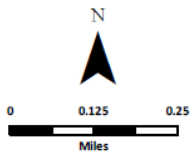
**PENDING MOU'S
 CASS COUNTY OWNED
 AND DEEDED ROW**
 Raymond Township
 County Road 22

FM AREA DIVERSION
 Map Date: 7/7/2020





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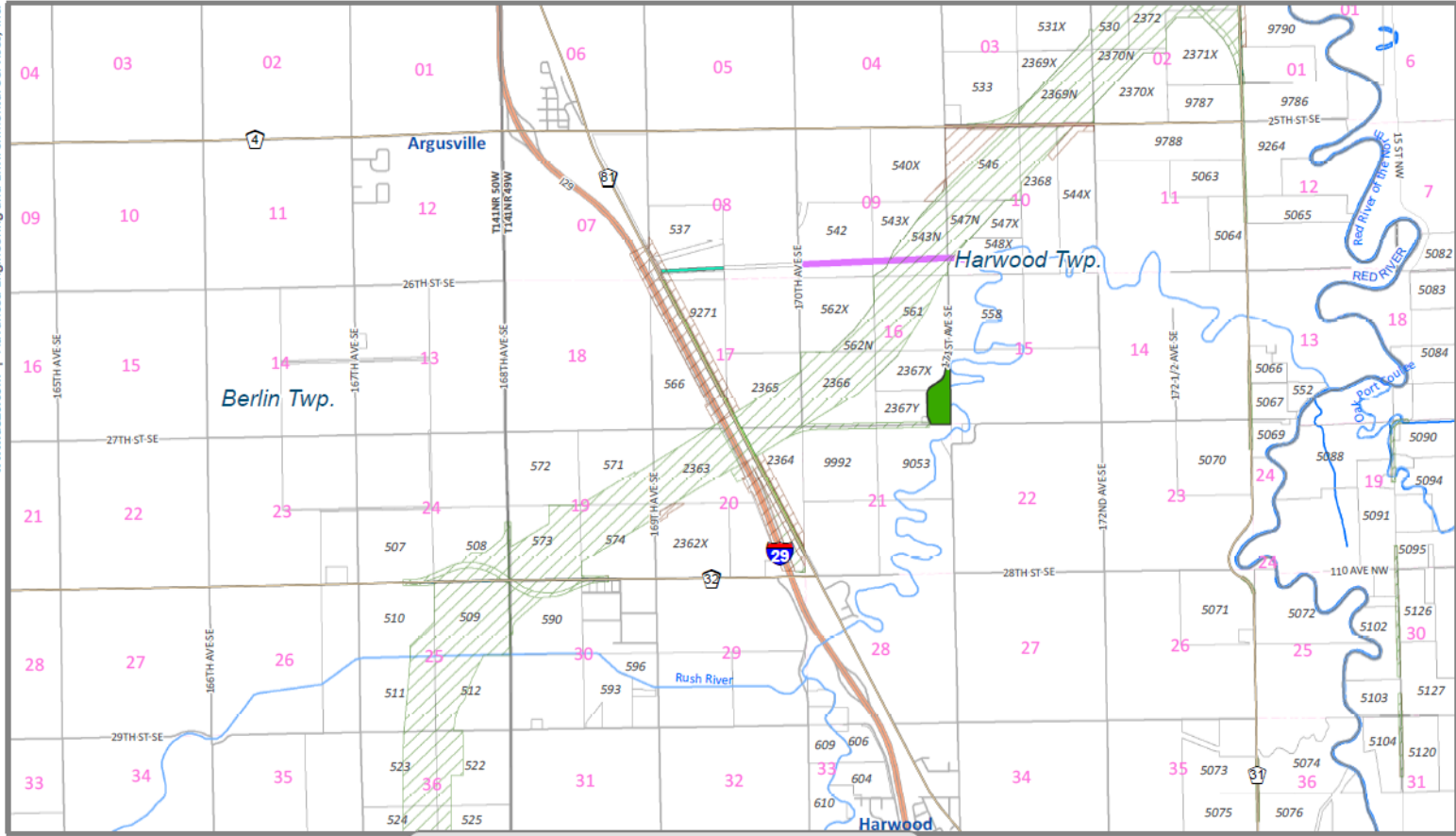


County Road ROW in Channel ROW type	ND County Roads
Statutory	Other Impacted Parcels
	Project Limits
	Temporary Construction Easement

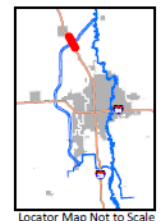
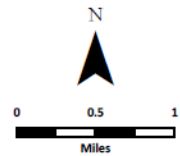
**PENDING MOU'S
CASS COUNTY OWNED
AND DEEDED ROW**
Harwood Township
County Road 32

FM AREA DIVERSION
Map Date: 7/7/2020





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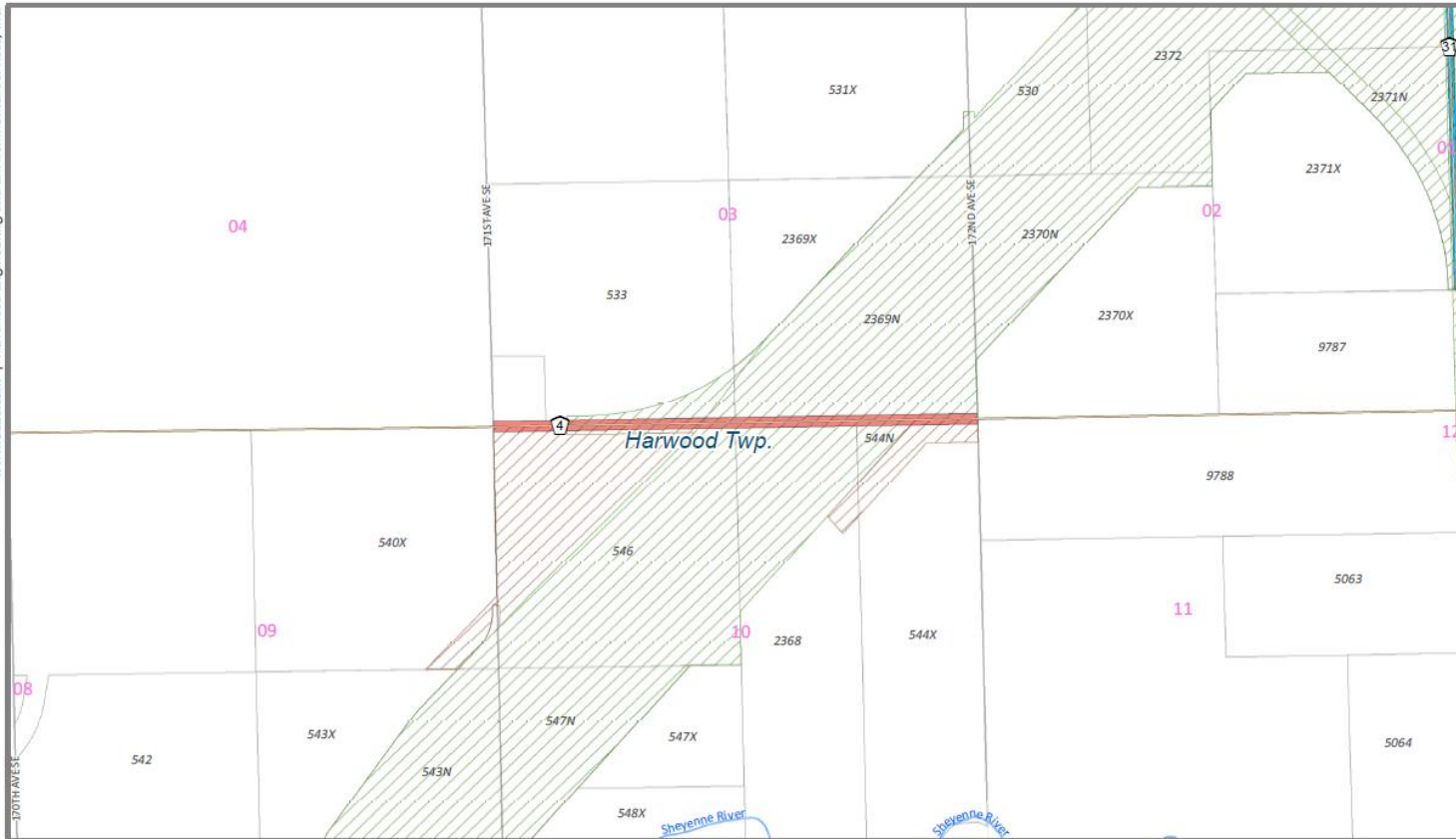


ROW Type		County Road ROW in Channel		ND County Roads	
	Deed		County Road ROW in Channel		Other Impacted Parcels
	Easement		County Road ROW in Channel		Project Limits
	Statutory		County Road ROW in Channel		Temporary Construction Easement
County Owned Parcels			Cass County Flood Property		County Drains
	Cass County Flood Property		County Drains		Deeded ROW

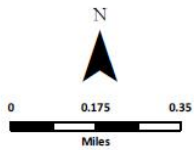
**PENDING MOU'S
CASS COUNTY OWNED
AND DEEDED ROW**
Harwood Township
County Road 81

FM AREA DIVERSION
Map Date: 7/7/2020





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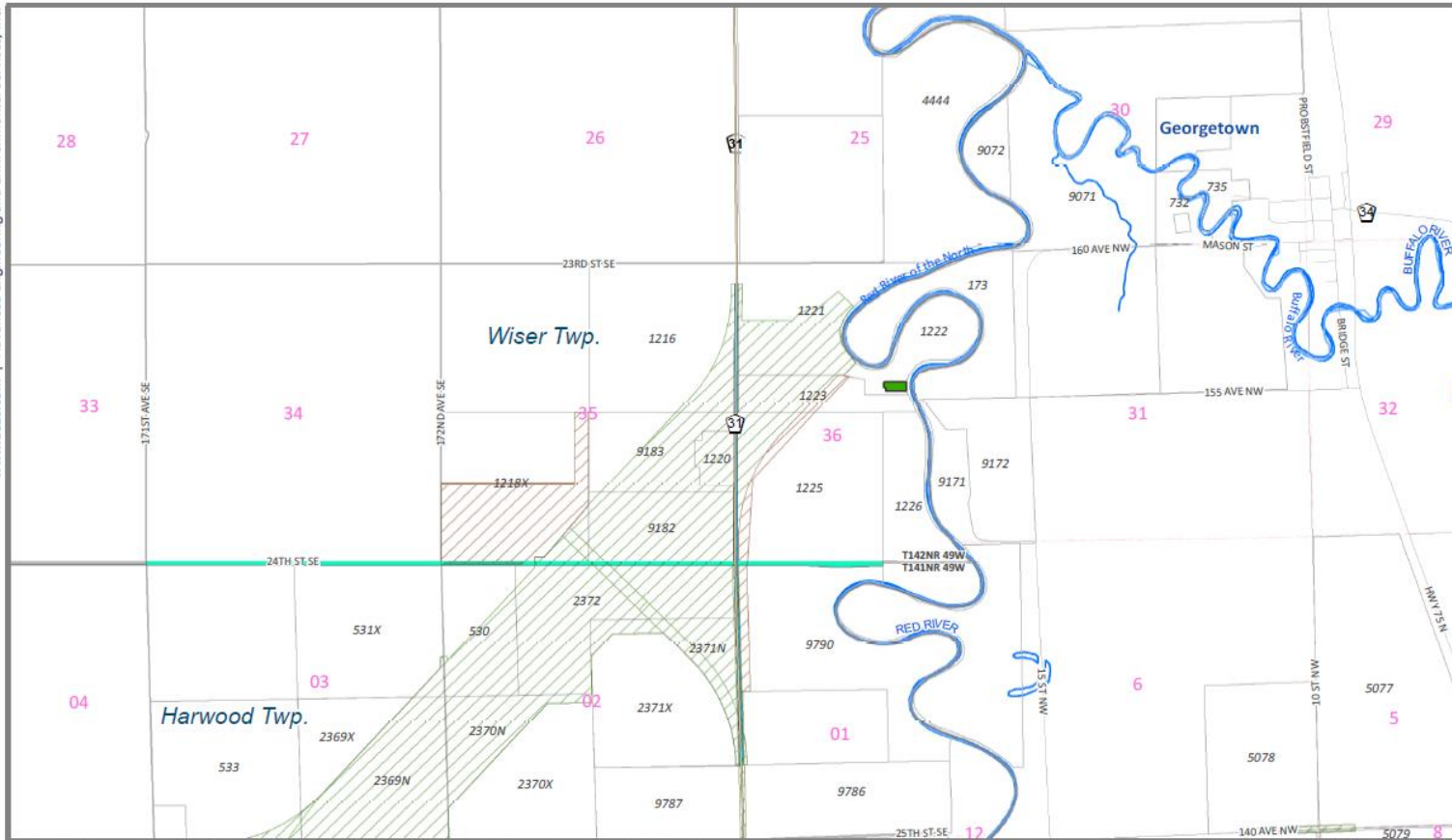


County Road ROW in Channel		ND County Roads	
ROW type			
	Easement		Other Impacted Parcels
	Statutory		Project Limits
			Temporary Construction Easement

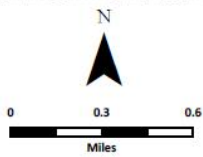
**PENDING MOU'S
CASS COUNTY OWNED
AND DEEDED ROW**
Harwood Township
County Road 4

FM AREA DIVERSION
Map Date: 7/7/2020





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County Road ROW in Channel ROW type	ND County Roads
Statutory	Other Impacted Parcels
County Owned Parcels	Project Limits
Cass County Flood Property	Temporary Construction Easement
County Drains	

**PENDING MOU'S
CASS COUNTY OWNED
AND DEEDED ROW**
Wiser Township
County Road 31

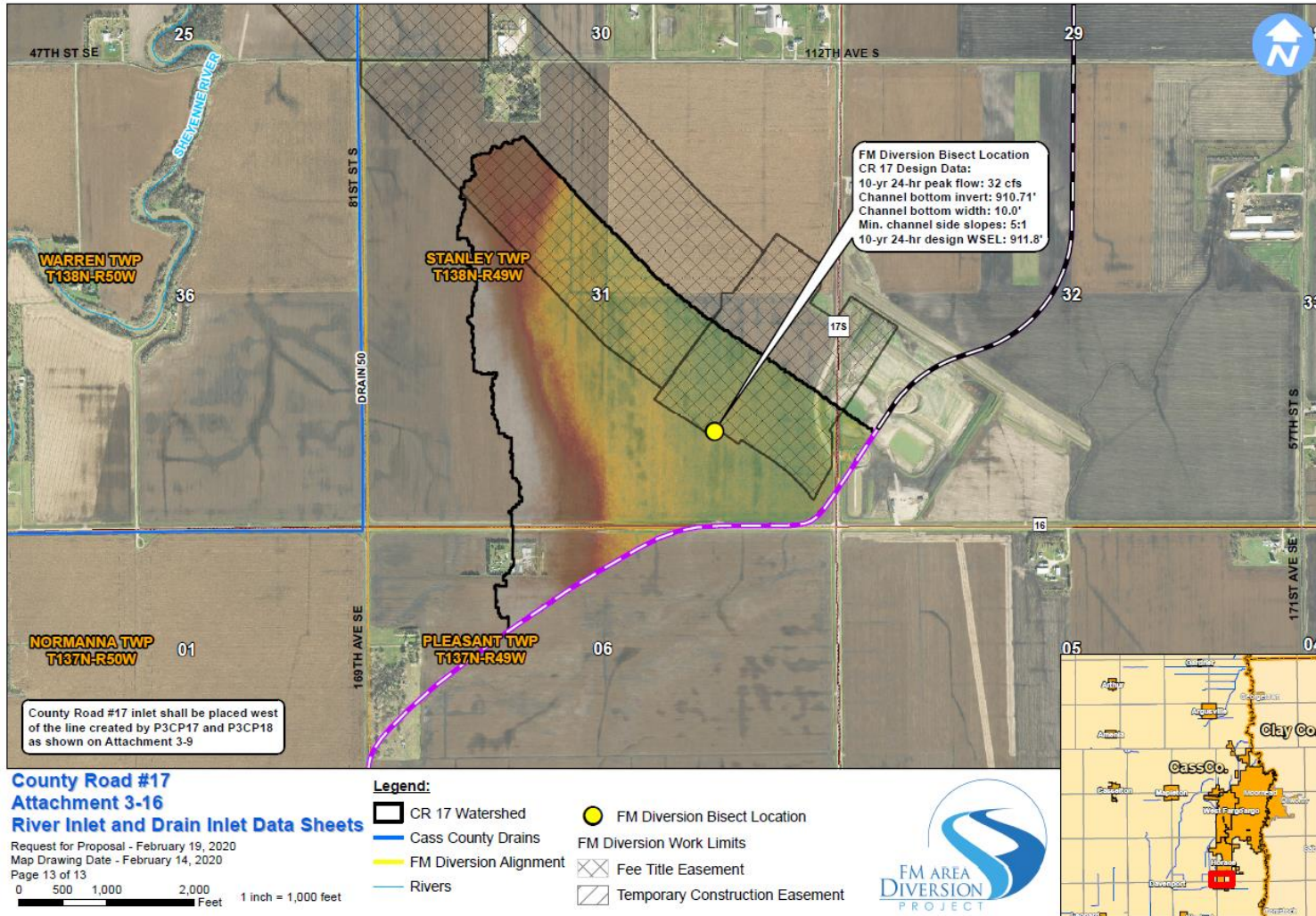
FM AREA DIVERSION
Map Date: 7/7/2020

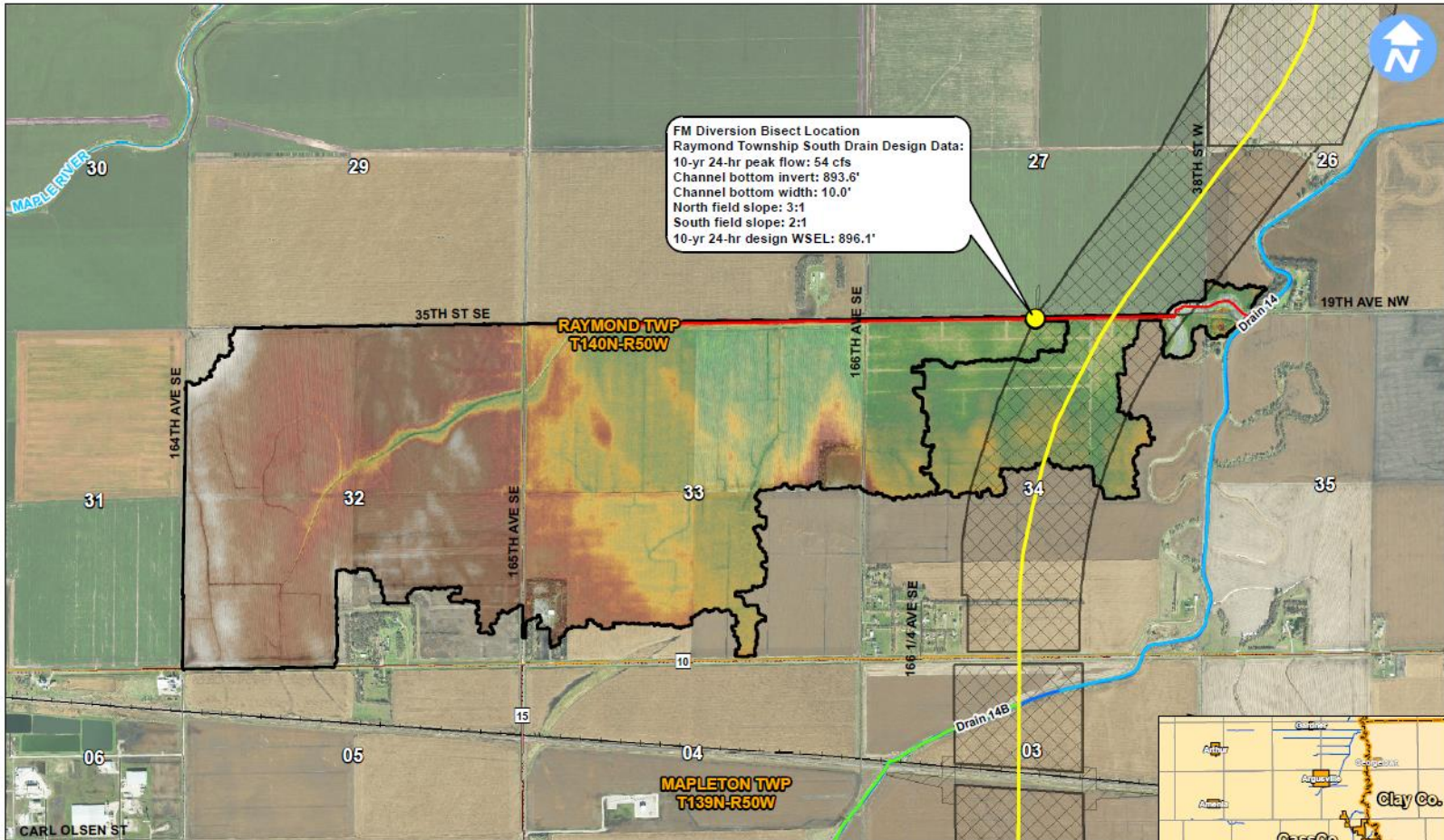


<i>Location</i>	<i>County Property Interest at Crossing of SWDCAI</i>	<i>Grant to Authority at Crossing of SWDCAI</i>
County Road 4	Easement	Assignment of Easement
County Road 6	Easement	Assignment of Easement
County Road 8	Easement	Assignment of Easement
County Road 10	Right-of-way Deed	Assignment of Easement
County Road 14	Statutory Right-of-way and Right-of-way Deed	Permit and Assignment of Easement
County Road 17	Right-of-way Deed and Easement	Assignment of Easement
County Road 20	Statutory Right-of-way	Permit
County Road 22	Easement	Assignment of Easement
County Road 31	Statutory Right-of-way	Permit
County Road 32	Statutory Right-of-way	Permit
County Road 81	Right-of-way Deed	Assignment of Easement

EXHIBIT H

RIVER INLET AND DRAIN INLET INTERFACE DATA SHEETS





**Raymond Township South Drain
Attachment 3-16
River Inlet and Drain Inlet Data Sheets**

Request for Proposal - February 19, 2020
Map Drawing Date - February 14, 2020
Page 8 of 13

0 750 1,500 3,000 Feet 1 inch = 1,500 feet

Legend:

- Raymond Twp South Drain
- South Drain Watershed
- Cass County Drains
- FM Diversion Alignment
- Rivers
- FM Diversion Bisect Location
- FM Diversion Work Limits
- Fee Title Easement
- Temporary Construction Easement



EXHIBIT I

UTILITY PERMIT APPLICATION

UTILITY PERMIT APPLICATION

Please Print or Type **Instructions:** Complete all questions that apply, sign, attach necessary documents, and submit to the Cass County Highway Department, along with a nonrefundable application fee in the amount of \$50. Submit an application and fee for each permit requested.



Highway Department
 1201 Main Avenue West
 West Fargo, ND 58078
www.casscountynd.gov
 Phone: 701-298-2370
 Fax: 701-298-2395

Applicant (Owner of Facility)	Applicant's Representative (Consultant/Engineer/Contractor)
Address	Address
City, State Zip	City, State Zip
Phone	Phone
Email Address	Email Address

Type of Facility Requested			
<input type="checkbox"/> Open Trenching <input type="checkbox"/> Boring or Jacking <input type="checkbox"/> Repair <input type="checkbox"/> Other (Describe) _____		Please attach a plan showing the location(s) of proposed facilities. Include dimensions from existing roads and other permanent structures. Include size and location of boring/jacking pits, appurtenances, and other pertinent information that will aid in the permit approval. The size of the plan should preferably be 8½ x 11.	
Address, City, State Zip of Property to be Served by Permit (if applicable)			
On what county highway are you requesting the utility?	Section-Township-Range	What side of the highway? <input type="checkbox"/> N <input type="checkbox"/> S <input type="checkbox"/> E <input type="checkbox"/> W	<input type="checkbox"/> Along <input type="checkbox"/> A cross
Description of proposed work			
Estimated Project Start Date		Estimated Project Completion Date	

By signing below, the Applicant agrees to perform all work in accordance with this Permit and to indemnify and hold harmless the County, its officers, and employees from all liability, judgments, costs, expenses, and claims growing out of damages, or alleged damages, of any nature whatsoever, to any person or property arising out of performance or nonperformance of said work, or the existence of said utilities.

 Applicant Signature Date

Upon approval and issuance of the permit, the Applicant is hereby granted permission to install and maintain the utilities applied for as shown on the plans attached hereto and made a part hereof, as per the Estimated Project Start Date, within the deeded right of way or easement or will obtain proper easements via the landowner.

 Authorized Highway Department Signature Date

TERMS AND CONDITIONS: Installation and maintenance of said utilities on highway right of way shall be subject to the following terms and conditions:

1. Installation, maintenance, relocation, and removal of said utilities on highway right of way shall be done in a manner satisfactory to the Board of County Commissioners or County Engineer.
2. No work under this application is to be started until the application is approved and the permit is issued.
3. Where work on or near the traveled roadway is necessary, proper signs, channelizing devices, warning lights, and barricades must be erected to protect traffic, employees, and pedestrians. All traffic control devices and methods shall conform to the Manual on Uniform Traffic Control Devices.
4. No foreign material such as dirt, gravel, or bituminous material shall be deposited or left on the road during the construction or installation said facilities.
5. Roadside must be cleaned up after work is completed.
6. Proper erosion control and sedimentation devices shall be used.
7. Surfacing may be omitted on field entrances if so specified in the application.
8. The Applicant shall repair or replace highway structures, appurtenances, and any existing facilities located on, over, or under highway right of way, which may be damaged as a result of the installation and maintenance of said utilities on highway right of way.
9. Applicant shall promptly remove said utilities from highway right of way, shall relocate, or adjust said utilities, at its sole cost and expense when requested to so do by the Board of County Commissioners.
10. The Applicant is responsible for obtaining all utility locates prior to beginning any work within the highway right of way.
11. The Applicant shall be required to wear an ANSI/ISEA 107-2004 Class II high visibility garment while within the highway right of way as per the requirements of 23 CFR 634.
12. The County shall not be liable for damage to said utilities resulting from reconstruction or maintenance of the highway.
13. Within thirty (30) days after construction, maintenance, relocation, or removal of said utilities, any right of way scars shall be removed and disturbed areas shall be seeded and restored to original conditions. The area will be maintained by the Applicant for a period of one (1) year from the date of final inspection.
14. The utility shall be placed at a minimum depth of forty-two (42) inches below the ditch elevation and/or culvert within one hundred (100) feet from the centerline of the County Highway.
15. The utility shall be placed under all County Highways by means of casing pipe or boring at a minimum depth of forty-two (42) inches under the road surface or below the lowest ditch elevation. No open cuts allowed 42 inches below any culvert.
16. Marker posts shall be installed on all crossings on the right of way line or farther from the centerline of the road.
17. After construction is completed, the Applicant shall notify the Cass County Highway Department that the work is completed and is ready for final inspection.
18. No construction shall be considered complete until checked and approved by the County Highway Department. The applicant will notified of any deficiencies. Failure to complete the repairs will cause the applicant to be liable to the County for the cost of the repairs, as outlined in Ordinance #2015-2 and NDCC § 24-05-23.

OFFICE USE ONLY		
Application Fee Received:	Amount \$	Date:
Approved Permit Sent to Applicant:	Date:	
Notification Received From Applicant that work is complete:	Date:	
Final Inspection Completed By:		Date:
Final Inspection Approved:	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Comments:		

EXHIBIT J
FEDERAL CERTIFICATION FORMS
CERTIFICATION REGARDING FEDERAL LOBBYING

The undersigned certifies to the best of his or her knowledge and belief that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in any award documents for any of its subcontractors at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into a contract with the Authority. By executing this certificate the undersigned agrees and acknowledges that he/she has been duly authorized to execute this certificate.

Company/
Entity Name: _____

Signed: _____

Its: _____

Date: _____

PLEASE RETURN TO:
Metro Flood Diversion Authority
P.O. Box 2806
Fargo, ND 58108-2806

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
AND OTHER RESPONSIBILITY MATTERS**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 *Federal Register* (pages 19160-19211).

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON PAGE 2)

- (1) The official representative of the party contracting with the Metro Flood Diversion Authority certifies to the best of its knowledge and belief that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application had one or more public transactions, including contracts (Federal, State, or local) terminated for cause or default.
 - (e) Are not presently debarred, suspended, declared ineligible or voluntarily excluded from performing work for the State of North Dakota, the State of Minnesota, the Metro Flood Diversion Authority or any of its Member Entities.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.
- (3) The Official signing this certificate has been and is duly authorized to sign this certificate on behalf of the entity or entities which intend to enter into a contract with the Metro Flood Diversion Authority.

Official Business Name _____

Date: _____

By: _____

Name and Title of Authorized
Representative

PLEASE RETURN TO:

Metro Flood Diversion Authority
P.O. Box 2806
Fargo, ND 58108-2806

Signature of Authorized Representative

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this certification, the prospective contracting party is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective contracting party shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Metro Flood Diversion Authority's (the "Authority") determination whether to enter into this transaction. However, failure of the prospective contracting party to furnish a certification or an explanation shall disqualify such person from entering into contracts with the Authority.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Authority determined to enter into a contract with the prospective contracting party. In order to qualify for participation in the U.S. EPA WIFIA program the Authority is required to obtain this certification. If it is later determined that the prospective contracting party knowingly rendered an erroneous certification, in addition to other remedies available to both the Authority and the Federal Government, the Authority may terminate this transaction for cause or default.
4. The prospective contracting party shall provide immediate written notice to the Authority to which this Certificate is submitted if at any time the prospective contracting party learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Authority for assistance in obtaining a copy of those regulations (13 CFR Part 145).
6. The prospective contracting party agrees by submitting this certification that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Authority.
7. The prospective contracting party further agrees by submitting this certification that it will require a "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," from all sub-contractors without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A contracting party in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A contracting party may decide the method and frequency by which it determines the

ineligibility of its principals.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a contracting party is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a contracting party in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Authority may terminate this transaction for cause or default.

ASSURANCE OF COMPLIANCE – CIVIL RIGHTS CERTIFICATE

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, SECTION 504 OF THE REHABILITATION ACT OF 1973, THE AGE DISCRIMINATION ACT OF 1975, SECTION 13 OF THE FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972, 40 CFR PART 7, AND EXECUTIVE ORDER NO. 11246

The undersigned provides this assurance for the purpose of entering into a contract with the Metro Flood Diversion Authority (Authority) related to the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (Project), which is receiving federal financial assistance. Specifically, the US EPA WIFIA Program requires this assurance of all contractors and subcontractors providing services for the Project.

The undersigned assures that it will comply with:

1. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, or national origin including limited English proficiency (LEP);
2. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against persons with disabilities;
3. The Age Discrimination Act of 1975, as amended, which prohibits age discrimination;
4. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex;
5. 40 CFR Part 7, as it relates to the foregoing; and
6. Executive Order No. 11246.

The undersigned understands that this Assurance is binding on the undersigned, its successors, transferees, and assignees at any time during which federal financial assistance is provided to the Project. The undersigned will ensure that all contractors, subcontractors, or others with whom it arranges to provide services or benefits are not discriminating in violation of items 1-6. Otherwise, the contracts for services can be terminated for cause and the undersigned can be declared ineligible to contract for the Project.

By signing this form, the undersigned is agreeing to the above provisions and that he/she is duly authorized to execute this form.

Signature of Authorized Official

Title

Print Name

Name of Institution or Agency

Date

Street

City, State, Zip Code

PLEASE RETURN TO:
Metro Flood Diversion Authority
P.O. Box 2806
Fargo, ND 58108-2806

Office Email Address