



MEMORANDUM

**Highway
Department**

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TO: Cass County Commission
FROM: Jason Benson, Cass County Engineer *JAB*
DATE: February 5, 2021

SUBJECT: Agenda topic for February 16, 2021 Commission Meeting:
Memorandum of Understanding between Metro Flood Diversion Authority
and Cass County Regarding the Southern Embankment and Associated
Infrastructure

Cass County has been working with the Metro Flood Diversion Authority on completing a Memorandum of Understanding (MOU) for the construction of the diversion Southern Embankment and Associated Infrastructure (SEAI) for the last several months. The MOU outlines respective roles and responsibilities for the design, construction, and relocation of road facilities in conjunction with the SEAI. This MOU is similar in function and language to the recently approved MOU for 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 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 Southern Embankment 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 _____, 2021

Relating to:

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

This instrument was drafted by:
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MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the “MOU”) is made and entered into this _____ day of _____, 2021 (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 (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 entered into a Project Partnership Agreement (the “PPA”) on July 11, 2016, with the United States Army Corps of Engineers (the “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 the USACE; and

WHEREAS, pursuant to the PPA, USACE will be responsible for completing the Diversion Inlet Structure; the connecting channel; the Red River Control Structure and the Wild Rice River Control Structure; the southern embankment; the overflow embankment (collectively, the “Southern Embankment or Associated Infrastructure” or “SEAI”); construction of road raises associated with the staging area; and all mitigation features that are not the responsibility of the Non-Federal Sponsors (collectively with the SEAI, the “Federal Work”); and

WHEREAS, pursuant to the PPA, the Non-Federal Sponsors will be responsible for an approximately 30 mile 20,000 cubic feet per second storm water diversion channel and associated features; the channel outlet; the Rush and Lower Rush River hydraulic structures; the Maple River aqueduct; the Sheyenne River aqueduct; the inflow design flood levee; associated railroad bridges (collectively, the “Storm Water Diversion Channel and Associated Infrastructure” or “SWDCAI”); the in-town levees and the Oxbow-Hickson-Bakke levee; recreation features; environmental mitigation features located within SWDCAI; and applicable pre- and post-monitoring and adaptive management for the Comprehensive Project (collectively with the SWDCAI, the “Non-Federal Work”); and

WHEREAS, although USACE is responsible for completing the Federal Work, the Non-Federal Sponsors are responsible for providing all real property interests, relocations, and disposal area improvements necessary for USACE; 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, the County owns infrastructure that will be impacted by the design, construction, operation, and maintenance of the Federal Work; and

WHEREAS, the Authority and the County now desire to enter into this MOU to define each Party's roles and responsibilities for the Work associated with the SWDCAI and the Federal Work.

NOW THEREFORE, in consideration of the mutual covenants made herein and for other valuable consideration, the receipt of which is hereby acknowledged, the Authority and the County agree as follows:

ARTICLE I. DEFINITIONS AND INTERPRETATION

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

“Applicable Law” means, collectively, the Constitutions of the United States and of the State of North Dakota, 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 by any governmental authority charged with enforcement, interpretation, or administration, 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, in each case whether or not having the force of law, that are applicable now or are applicable at any time to the Authority, the County, or the work described herein.

“Authority” means the Metro Flood Diversion Authority, a political subdivision of the State of North Dakota and permanent joint powers entity, formed through the Joint Powers Agreement to provide the Fargo-Moorhead metropolitan area with permanent and comprehensive flood protection.

“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 SEAI;
- (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.

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

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

“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.

“Contractor” means a Person that contracts with USACE to perform Work.

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

“County Engineer” means the Cass County Engineer.

“Culvert Improvement” means the replacement and expansion of a culvert underlying County Road 36 in the location identified on Exhibit C attached hereto.

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

“Drain 27 Wetland Restoration Project” means a project to block Drain 27 immediately upstream of the SEAI to create an area of approximately 320 acres of inundation and wetland.

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

“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, archeological, and paleontological resources.

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

“Federal Work” means those portions of the Comprehensive Project allocated to USACE under the terms of the PPA and described in the Recitals.

“Final Completion” means the time at which the work performed under the construction contract between USACE and its contractor has progressed to the point of being complete, as defined by such contract.

“Final Design” means the design has reached ninety-five percent (95%) completion, as determined by USACE.

“GAAP” means accounting principles generally accepted in the United States as set forth in the opinions and pronouncements of the Accounting Principles Board, the American Institute of Certified Public Accountants, and the Financial Accounting Standards Board, or in such other statements by such other entity as may be in general use by significant segments of the accounting profession as in effect on the date hereof.

“Governing Body” means the Cass County Commission.

“Intermediate Design” means the design has reached sixty-five percent (65%) completion, as determined by USACE.

“Hazardous Materials” means any hazardous, toxic, radioactive, or infectious substance, material, or waste as defined, listed, or regulated under any Environmental Law.

“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.

“Material Modification” means a modification affecting the operation or performance of a Project Element or Township Element.

“Non-Federal Work” means those portions of the Comprehensive Project allocated to the Non-Federal Sponsors under the terms of the PPA and described in the Recitals.

“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.

“PPA” means the Project Partnership Agreement, dated June 11, 2016, by and between the Department of the Army and the City of Fargo, North Dakota, the City of Moorhead, Minnesota, and the Metro Flood Diversion Authority for construction of the Comprehensive Project, and any amendments thereto.

“Project Elements” means the SE-1, SE-2, SE-3, the SEAI Crossings, the Culvert Improvement, the Reconstructs, the Diversion Inlet Structure, the Relocations, the Drain 27 Wetland Restoration Project, the Wild Rice River Control Structure, and the Red River Control Structure.

“Reconstructs” means (i) the reconstruction of County Road 18 from the east side of the Interstate 29 Hickson Interchange to 174 ½ Avenue South and (ii) the reconstruction of County Road 81 from County Road 18 to approximately South Schnell Drive, to facilitate the reconstruction of Interstate 29 to cross the SEAI.

“Relocations” means the relocations of County Road 16 and County Road 17 south of the SWDCAI, as preliminarily mapped on Exhibit B.

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

“SE-1” means that portion of the Southern Embankment and Associated Infrastructure that will be constructed south and west of the Diversion Inlet Structure.

“SE-2” means that portion of the Southern Embankment and Associated Infrastructure that will be constructed between the Diversion Inlet Structure and the Wild Rice River Control Structure.

“SE-3” means that portion of the Southern Embankment and Associated Infrastructure that will be constructed between the Wild Rice River Control Structure and the Red River Control Structure.

“Southern Embankment and Associated Infrastructure” or **“SEAI”** means the Diversion Inlet Structure, the connecting channel, the Red River Control Structure, the Wild Rice River Control Structure, and the southern embankment in its entirety (including SE-1, SE-2, and SE-3), to be constructed as part of the Comprehensive Project.

“SEAI Crossing” means the raising of County Road 16 or County Road 81, as applicable, from its current location to over top of the SEAI.

“State” means the State of North Dakota.

“Substantial Completion” means the time at which the work performed under the construction contract between USACE and its contractor has progressed to the point of being substantially completed, as defined by such contract.

“Township Crossing” means a crossing of the SEAI at 45th Street South, if exercised in the discretion of the Authority, in the approximate location shown on Exhibit D.

“Township Elements” means the Mobility Improvements to 169th Avenue Southeast and 49th Street Southeast in Normanna Township and the Township Crossing.

“Uniform Act” means the Relocation Assistance and Real Property Acquisition Policies Act of 1970.

“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 SEAI.

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

“Work” means design work, construction work, and maintenance work, 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 in this MOU will apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun will include the corresponding masculine, feminine, and neuter forms. The words “include,” “includes,” and “including” will be deemed to be followed by the phrase “without limitation.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument, or other document in the MOU will be construed as referring to the agreement, instrument, or other document as amended, supplemented, or otherwise modified (subject to any restrictions on amendments, supplements, or modifications in the MOU); (b) any reference in the MOU to any person will be construed to include the person’s permitted successors and assigns; (c) all references in the MOU to articles, sections, exhibits, and schedules will be construed to refer to articles and sections of, and exhibits and schedules to, this MOU; and (e) the words “asset” and “property” will 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. Pursuant to the terms of the PPA, the Authority is responsible, on behalf of USACE, for obtaining the interests and authorizations necessary for construction, operation, and maintenance of the SEAI, which will be designed and constructed by USACE. As a result, the Parties desire to enter this MOU to address the Parties’ respective rights and obligations relating to the design, construction, operation, and maintenance of the SEAI. The Authority intends to transfer certain obligations set forth in this MOU to USACE based on the terms of the PPA.

ARTICLE III. DESIGN

Section 3.01 INTENT. The Parties intend that the Authority will be the lead agency for coordination with USACE for design. The Parties understand and agree that the SEAI and the components described herein must comply with USACE rules and regulations to the extent that such rules and regulations are applicable.

Section 3.02 USACE RESPONSIBILITY. USACE is responsible for designing the Project Elements and the Township Elements and will submit a Preliminary Design, an Intermediate Design, and a Final Design to the County Engineer for review and comment. In the event USACE does not share designs with the County Engineer, the Authority will share these above-provided designs with the County Engineer for review and relay any comments from the County Engineer to USACE. The County Engineer will review and provide any comments on designs within twenty-eight (28) days of receipt.

Section 3.03 FINANCING. The County will not be responsible for any costs or expenses associated with the design of the Project Elements or Township Elements. The County may seek reimbursement from the Authority for design reviews as set forth in this MOU.

Section 3.04 RELEASE. Review by the County of any designs will not be deemed to mean the plans and specifications or construction will be structurally sound and appropriate or that the plans and specifications meet Applicable Law.

Section 3.05 BETTERMENTS. The County agrees that the relocation, arrangement, and/or alteration associated with the Relocations and SEAI Crossings to be accomplished under this MOU will provide the County with facilities equal in service as to those in existence on the Effective Date of this MOU. If the County desires any Betterments for the Relocations or an SEAI Crossing, the County will notify the Authority and USACE of each individual Betterment sought on or prior to the Effective Date. The Authority will initially pay the costs and expense of such Betterments to USACE prior to the contract award or, if a contract modification, prior to the execution of the modification and will thereafter invoice the County. All invoicing as between the Authority and the County will be done in accordance with the procedure set forth in Article XI.

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 SEAI 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 coordinate with USACE to ensure all preliminary engineering activities for the Project Elements and Township Elements, including: (a) technical studies and analyses; (b) geotechnical, seismic, flooding, and biological investigations; (c) right-of-way mapping, surveying, and appraisals; (d) utility subsurface investigations and mapping; (e) Hazardous Materials investigations; and (f) archeological, paleontological, and cultural investigations are completed.

Section 4.03 MITIGATION. The Authority will ensure remediation and removal of all Hazardous Materials necessary to complete construction of the Project Elements and Township Elements is completed.

Section 4.04 ENVIRONMENTAL REVIEW. The Authority will ensure all work described in this MOU is compliant with applicable Environmental laws and regulations.

Section 4.05 UTILITY RELOCATIONS. The Authority is responsible for coordinating and/or performing Utility Relocations of all utilities and will be responsible for costs incurred for these Utility Relocations relating to the construction of the Project Elements and Township Elements.

Section 4.06 PERMITS AND APPROVALS. The Authority is responsible for securing any necessary permits and/or approvals for construction of the Project Elements and Township 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.

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 A.

Section 4.08 REOPENING OF SECTION LINES. The County retains the ability to reopen section lines crossing the SEAI 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 SEAI. The Authority will not unreasonably withhold approval of the County's request to reopen.

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 which will need to be relocated or vacated as a result of the construction of the SEAI. The Authority will seek County authorization as required under Applicable Law.

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 Project Elements and Township Elements. In the event the Authority is unable to acquire any easement, right-of-way, or other interest pertaining to a roadway improvement contained within a Project Element or Township Element, 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 as set forth in Article XI for the acquisition.

Section 5.02 TRANSFERS OF RIGHTS, PRIVILEGES, AND INTERESTS.

(a) The property interests held by the County in the locations where USACE will construct the Culvert Improvement, the Reconstructs, SE-1, and the SEAI Crossings are outlined on the maps attached as Exhibit E. The County will convey to the Authority the rights or privileges outlined in the table affixed in Exhibit E to construct the SEAI Crossings, the Reconstructs, SE-1, and the Culvert Improvement on or across the County's property. Although County Road 36 will not be reconstructed for SE-1, aside from the Culvert Improvement, the road must remain as currently constructed to maintain flood control for the Comprehensive Project. The Parties intend that the property interest acquired by the Authority will result in County Road 36 maintaining its current dimensions. 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.

(b) The Authority will convey to the County the necessary easements or rights-of-way needed to operate and maintain the Relocations, the SEAI Crossings, the Reconstructs, and the Culvert Improvement upon the completion of such improvements. For those portions of the Relocations that are not constructed atop the Diversion Inlet Structure, the Authority's intent will be to convey a one hundred (100) foot road easement on either side of the center of the roadway, wherever possible, to the County. For those portions of the Relocations that are constructed atop the Diversion Inlet Structure, the Authority's intent will be to convey an easement that is wide enough to operate and maintain the road but not so wide to interfere with the other functions of the Diversion Inlet Structure.

(c) The Authority will receive and convey the property interests for the Township Elements as set forth in the memorandum of understanding between the Authority and Normanna Township for such elements.

Section 5.03 COUNTY ROAD 81 ACCESS PERMIT. To facilitate construction of the bypass of Interstate 29, USACE will construct a haul route that will cross County Road 81. The Authority submitted an access permit application to the County for such crossing, attached hereto as Exhibit F, and received necessary County approval.

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 SEAI 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 USACE RESPONSIBILITY. USACE will be constructing the Project Elements and Township Elements. Construction will occur based upon the Final Design, except as otherwise provided in Section 6.05.

Section 6.03 WORK ZONE TRAFFIC CONTROL. The Authority will coordinate with USACE to replace appropriate work zone traffic control signs during construction of the Project Elements and the Township Elements, as necessary.

Section 6.04 BYPASSES. USACE will not construct bypasses for County Roads 16, 36 or 81 during improvement or relocation construction.

Section 6.05 MATERIAL CHANGES OR MODIFICATIONS. Any Material Modification to a Final Design during construction will be subject to review and comment by the County. The County will review any proposed Material Modification within fourteen (14) days of receipt or on a truncated time period, as required by the Authority or USACE, in the event of a critical or emergency change. The County reserves the ability to request additional information relating to any proposed Material Modification, including but not limited to specifications for the modified material and information on how the specifications were determined, from either the Authority or USACE, and its 14-day review period will not commence until the receipt of such requested information.

Section 6.06 COORDINATION OF PARTIES. The County will coordinate and work through the Authority and USACE on any and all questions that develop during construction. The County agrees and acknowledges that it cannot direct the Contractor performing work on the Project Elements or the Township Elements.

Section 6.07 CONSTRUCTION SCHEDULE. To facilitate scheduling for construction of the Project Elements and Township Elements, the Authority will coordinate with USACE to provide the County with a proposed construction schedule and with monthly construction schedule updates.

Section 6.08 EXISTING ROADS. During the process of constructing the Project Elements, the Authority will coordinate with USACE to provide for the deconstruction or removal of any remaining portions of County roads, where deemed necessary by the County, as a result of the construction described herein.

Section 6.09 REVIEW AND INSPECTION. The Authority will coordinate with USACE to allow for worksite control rules that permit and facilitate reasonable access to the County for the reasonable inspection and review of work. The presence or absence of a County inspector does not relieve the Authority from any requirement in this MOU, nor is any inspector authorized to change any term or condition of this MOU. The County agrees that during any review or inspection contemplated under this section that its staff will follow USACE construction safety practices when visiting a construction site (e.g., register at field office and wear personal safety equipment).

Section 6.10 PRE-FINAL INSPECTION. The Authority will provide the County with written notice of any anticipated Substantial Completion of the Culvert Improvement, a Reconstruct, a Relocation, an SEAI Crossing, or a Township Element at least fifteen (15) calendar days prior to the anticipated date for Substantial Completion. Within ten (10) calendar days of the anticipated date for Substantial Completion, all parties will conduct at least one joint pre-final inspection of the Culvert Improvement, Reconstruct, Relocation, SEAI Crossing, or Township Element to verify the contract requirements have been met, the completed construction meets the Final Design and any Material Modification made pursuant to Section 6.05, and that the flood risk management certification requirements are met. If the County finds the construction is not in accordance with the Final Design or any approved Material Modification, the County will notify

the Authority to develop a written punch list of items not constructed in accordance with the Final Design or approved Material Modifications. The Authority will coordinate with USACE's contracting officer regarding the issue to ensure such issue is completed in a reasonable amount of time as determined by the Authority and the County.

Section 6.11 FINAL INSPECTION. Following the pre-final inspection and resolution of any punch list items, the County will conduct a final inspection of the Culvert Improvement, a Reconstruct, a Relocation, an SEAI Crossing, or a Township Element to determine whether the work meetings the Final Design and any Material Modification made pursuant to Section 6.05. If the County finds the construction is not in accordance with the Final Design or any approved Material Modification, the County will notify the Authority of such fact and the Authority will coordinate with USACE regarding such deficiency in the construction work in the form of a written punch list.

Section 6.12 TURN BACK AND TURNOVER. Following close-out of a USACE contract for the Culvert Improvement, a Reconstruct, a Relocation, or an SEAI Crossing, USACE will turn back control of the road to the County. Following close-out of a USACE contract for other Project Elements and the Township Elements, USACE will turn over control of those elements to the Authority. The Authority will turn over control of the Township Elements to Normanna Township as set forth in the memorandum of understanding between the Authority and Normanna Township.

Section 6.13 AS-BUILT DRAWINGS. The Authority will coordinate with USACE to provide as-built drawings of the Culvert Improvement, the Reconstructs, the Relocations, the SEAI Crossings, and the Township Elements to the County.

Section 6.14 WARRANTY. USACE may include a standard Federal Acquisition Regulation clause 52.246-21 Warranty of Construction in its construction contract. The clause includes a 1-year warranty provision. In the event the Authority and/or the County identifies a deficiency in workmanship or defective product or material, the Authority and/or the County will notify USACE.

ARTICLE VII. OPERATION AND MAINTENANCE

Section 7.01 COUNTY RESPONSIBILITY. Following a turn back of the Culvert Improvement, a Reconstruct, a Renovation, or an SEAI Crossing, the County will have full control of all items on County-owned property interest, excluding only the SEAI and its components.

ARTICLE VIII. FUTURE CHANGES OR ADDITIONS

Section 8.01 CULVERT IMPROVEMENT AND COUNTY ROAD 36.

(a) The County retains the ability, at its sole cost and expense, to perform normal operation and maintenance activities, such as replacing gravel surfacing, without separate written approval by the Authority or USACE.

(b) The County retains the ability, at its sole cost and expense, to perform any construction activities that involve excavation of the SE-1 embankment section along County Road 36 or to adjust or alter the Culvert Improvement or the overall roadway section on County Road 36 upon separate written approval by the Authority and USACE. USACE's written approval will be through the issuance of a 408 permit or successor USACE permitting regime.

(c) In the event there is a need to excavate the SE-1 embankment section along County Road 36, the County may perform such work without a temporary levee if the work is performed outside the normal spring flood season. Any replacement section of the SE-1 embankment section along County Road 36 must be reconstructed in accordance with the specifications required of other embankment sections of the SEAI.

(d) If it becomes necessary or desirable to change, alter, widen, or reconstruct the SEAI to accommodate a County-initiated project, the cost of such work, if approved by the Authority and USACE, including any cost incidental to alteration of the Culvert Improvement or flood control facility, including the SEAI, made necessary by any such changes, will be the expense of the County.

Section 8.02 SEAI CROSSINGS.

(a) The County retains the ability, at its sole cost and expense, to adjust or alter the SEAI Crossings to the extent such may be accomplished without adversely affecting, changing, or altering the SEAI, upon separate written approval by the Authority and USACE. USACE's written approval may be through the issuance of a 408 permit or successor USACE permitting regime. For purposes of this MOU, the Parties understand and agree that alteration of the SEAI will result if the County has to perform work one (1) foot below the subgrade of the SEAI Crossing and the top of the SEAI elevation.

(b) If it becomes necessary or desirable to change, alter, widen, or reconstruct the SEAI to accommodate a County-initiated project, the cost of such work, if approved by the Authority and USACE, including any cost incidental to alteration of the SEAI Crossing or flood control facility, including the SEAI, made necessary by any such changes, will be the expense of the County.

Section 8.03 RELOCATIONS.

(a) The County retains the ability, at its sole cost and expense, to adjust or alter the Relocations to the extent such may be accomplished without adversely affecting, changing, or altering the SEAI, upon separate written approval by the Authority and USACE. USACE's written approval may be through the issuance of a 408 permit or successor USACE permitting regime. For purposes of this MOU, the Parties understand and agree that alteration of the SEAI will result if the County has to perform work one (1) foot below the subgrade of the road and the top of the SEAI elevation.

(b) If it becomes necessary or desirable to change, alter, widen, or reconstruct the SEAI to accommodate a County-initiated project, the cost of such work, if approved by the Authority

and USACE, including any cost incidental to alteration of the Relocations or flood control facility, including the SEAI, made necessary by any such changes, will be the expense of the County.

Section 8.04 RECONSTRUCTS.

(a) The County retains the ability, at its sole cost and expense, to adjust or alter the Reconstructs to the extent such may be accomplished without adversely affecting, changing, or altering the SEAI, upon separate written approval by the Authority and USACE. USACE's written approval may be through the issuance of a 408 or successor USACE permitting regime.

(b) If it becomes necessary or desirable to change, alter, widen, or reconstruct the SEAI to accommodate a County-initiated project, the cost of such work, if approved by the Authority and USACE, including any cost incidental to alteration of the Reconstructs or flood control facility, including the SEAI, made necessary by any such changes, will be the expense of the County.

Section 8.05 SEAI AND OTHER PROJECT COMPONENTS.

(a) The Authority retains the ability, at its sole cost and expense, to adjust or alter the SEAI or other elements of the Comprehensive Project to the extent such may accomplished without adversely affecting, changing, or altering the Culvert Improvement, a Reconstruct, an SEAI Crossing, or a Relocation.

(b) If it becomes necessary or desirable to change, alter, widen, or reconstruct the Culvert Improvement, an SEAI Crossing, or a Relocation to accommodate the SEAI or other elements of the Comprehensive Project, the cost of such work, if approved by the County and USACE, including any incidental costs made necessary by such changes, will be the expense of the Authority.

**ARTICLE IX.
INSURANCE AND LIABILITY**

Section 9.01 INDEMNIFICATION. As set forth in the Joint Powers Agreement, the Authority, to the fullest extent authorized by law, shall at all times hereinafter, defend and indemnify the County for any liability claims arising from Authority activities or operations, decisions of the Authority, or arising out of or regarding the Comprehensive Project. The indemnity and hold harmless provision shall not be deemed as a 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. Nothing herein shall be construed to provide insurance coverage or indemnification to any officer, employee, or volunteer of the County for any act or omission for which the officer, employee, or volunteer is guilty of malfeasance in office, willful neglect of duty, or bad faith. In the event the County seeks indemnification, it will abide by section 15.07 of the JPA to first apply available and/or applicable insurance proceeds against said claim.

**ARTICLE X.
REIMBURSEMENT OF COSTS**

Section 10.01 REIMBURSABLE COSTS. When funds are, or become, available, 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 expense 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 10.02 BETTERMENTS. The County agrees that it will not submit any costs or expenses for reimbursement by the Authority incurred for Betterments.

ARTICLE XI. INVOICING AND AUDIT

Section 11.01 COUNTY INVOICES.

(a) 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 the following section. 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.

(b) The County’s invoices must be detailed and precise, must clearly indicate fees and expenses for the current billing period month, and must include at least the following information:

- (i) The County’s name and address;
- (ii) The County’s federal employer identification number;
- (iii) Unique invoice number;
- (iv) Billing period;
- (v) Description of each activity performed for each day in which services were performed;
- (vi) Work order number associated with each activity;
- (vii) Name, billing rate, and hours worked by each person involved in each activity;
- (viii) Total amount of fees and costs “billed to date,” including the preceding months;
- (ix) Preferred remittance address, if different from the address on the invoice’s coversheet; and

(x) All of the work performed during that billing period.

(c) After the Authority receives the County's invoice, the Authority will either process the invoice for payment or give the County specific reasons, in writing within fifteen (15) Business Days, why part or all of the Authority's payment is being withheld and what actions the County must take to receive the withheld amount.

(d) In the event of disputed billing, only the disputed portion will be withheld from payment, and the Authority will pay the undisputed portion. The Authority will exercise reasonableness in disputing any bill or portion thereof. Interest will accrue on any disputed portion of the billing determined to be due and owing to the County.

(e) Payment does not imply acceptance of services or that the invoice is accurate. In the event an error is identified following payment, the County will credit any payment in error from any payment that is due or that may become due to the County under this MOU.

(f) The Authority will be charged interest at the rate of one-half percent (1/2%) per month, or the maximum percent permitted by Applicable Law if lesser, on all past-due amounts starting thirty (30) calendar days after receipt of invoice. Payments will first be credited to interest and then to principal.

Section 11.02 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 XIII.

Section 11.03 FINAL ACCOUNTING. The County will provide one (1) final and complete billing of all incurred costs within one (1) year following completion of the Project Elements and Township Element. 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 11.04 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 11.05 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 XII. TERM AND TERMINATION

Section 12.01 TERM. This MOU will be an original term of ten (10) years from the Effective Date (the “Original Term”) and shall automatically renew for subsequent renewal terms of ten (10) years (a “Subsequent Renewal Term”) unless terminated in accordance with this MOU.

Section 12.02 TERMINATION. A Party may terminate performance of work during the Original Term or any Subsequent Renewal Term in whole or in part after providing at least one (1) year’s written notice to the other Party.

Section 12.03 EFFECTS OF TERMINATION. Upon receipt of a notice of termination, except as directed by the other Party, the Parties shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amount due under this clause:

(a) Place no further contracts or orders, except as necessary to complete the continued portion of the MOU.

(b) With approval or ratification of the Authority Representative, settle all outstanding liabilities and termination settlement proposals arising from the termination of contracts or responsibilities as proposed in this MOU, the cost of which would be reimbursable in whole or in part, under this MOU. Approval or ratification will be final for purposes of this section.

(c) Transfer title if not already transferred.

(d) Complete performance of the work not terminated.

(e) Take any action that may be necessary, or that the Authority Representative may direct, for the protection and preservation of the property related to this MOU that is in the possession of the County and in which the Authority has or may acquire an interest.

ARTICLE XIII. DISPUTE RESOLUTION

Section 13.01 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 13.02 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 13.03 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 the preceding Section, the Parties may litigate the matter.

Section 13.04 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 13.05 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 XIV. THIRD PARTY BENEFICIARY

Section 14.01 USACE. 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 USACE in order to construct, operate, and maintain the SEAI. 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, USACE 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, USACE 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 USACE.

ARTICLE XV. MISCELLANEOUS

Section 15.01 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 15.02 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 15.03 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 15.04 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 15.05 FORCE MAJEURE. No Party will be liable to another Party during any period in which its performance is delayed or prevented, in whole or in part, by circumstances beyond its reasonable control. Circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind), fire, war, act of a public enemy or terrorist, act of sabotage, strike or other labor dispute, riot, misadventure of the sea, inability to secure materials and/or transportation, or a restriction imposed by legislation, an order or a rule or regulation of a governmental entity. If such a circumstance occurs, the Party claiming the delay must undertake reasonable action to notify the other Parties of the same.

Section 15.06 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 15.07 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 SEAI 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

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

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

County Engineer
Cass County Highway Department
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 15.08 GOVERNING LAW. This MOU will be governed and construed in accordance with the laws of the State of North Dakota.

Section 15.09 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 working regarding other aspects of the Comprehensive Project.

Section 15.10 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 G 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 15.11 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 G to this MOU.

Section 15.12 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 G to this MOU.

Section 15.13 CONFLICT WITH JOINT POWERS AGREEMENT. Nothing in this MOU is intended to conflict with the provisions of the Joint Powers Agreement. In the event there is a conflict, the provisions of the Joint Powers Agreement will control.

IN WITNESS WHEREOF, the Authority and the County 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 _____, 2021.

METRO FLOOD DIVERSION AUTHORITY

By: _____
JOHNATHAN JUDD, Chair

By: _____
JOEL PAULSEN, Executive Director

ATTEST:

By: _____
DAWN LINDBLOM, Secretary

Signature Page for Cass County, North Dakota

The Governing Body of Cass County, North Dakota, approved this MOU on the _____ of _____, 2021.

CASS COUNTY, NORTH DAKOTA

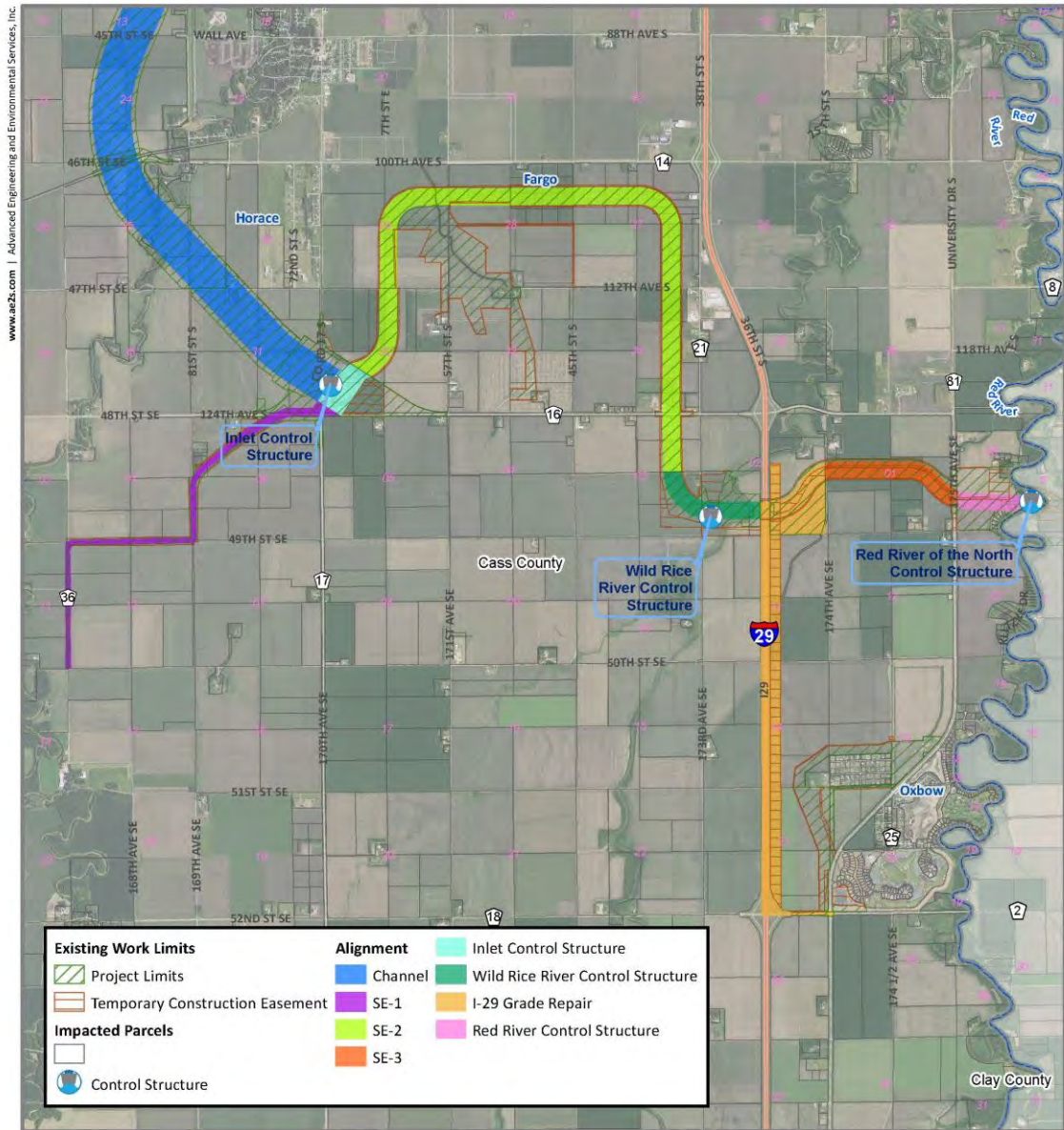
By: _____
CHAD PETERSON, Chair of the Board of
County Commissioners

ATTEST:

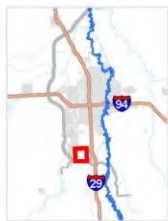
By: _____
MICHAEL MONTPLAISIR, County Auditor

EXHIBIT A

SEAI PROJECT LIMITS MAP



Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use.
 All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey.
 Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced by: dlee, AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\WP27-Red River West Embankment\SEAI_ND_overall.mxd



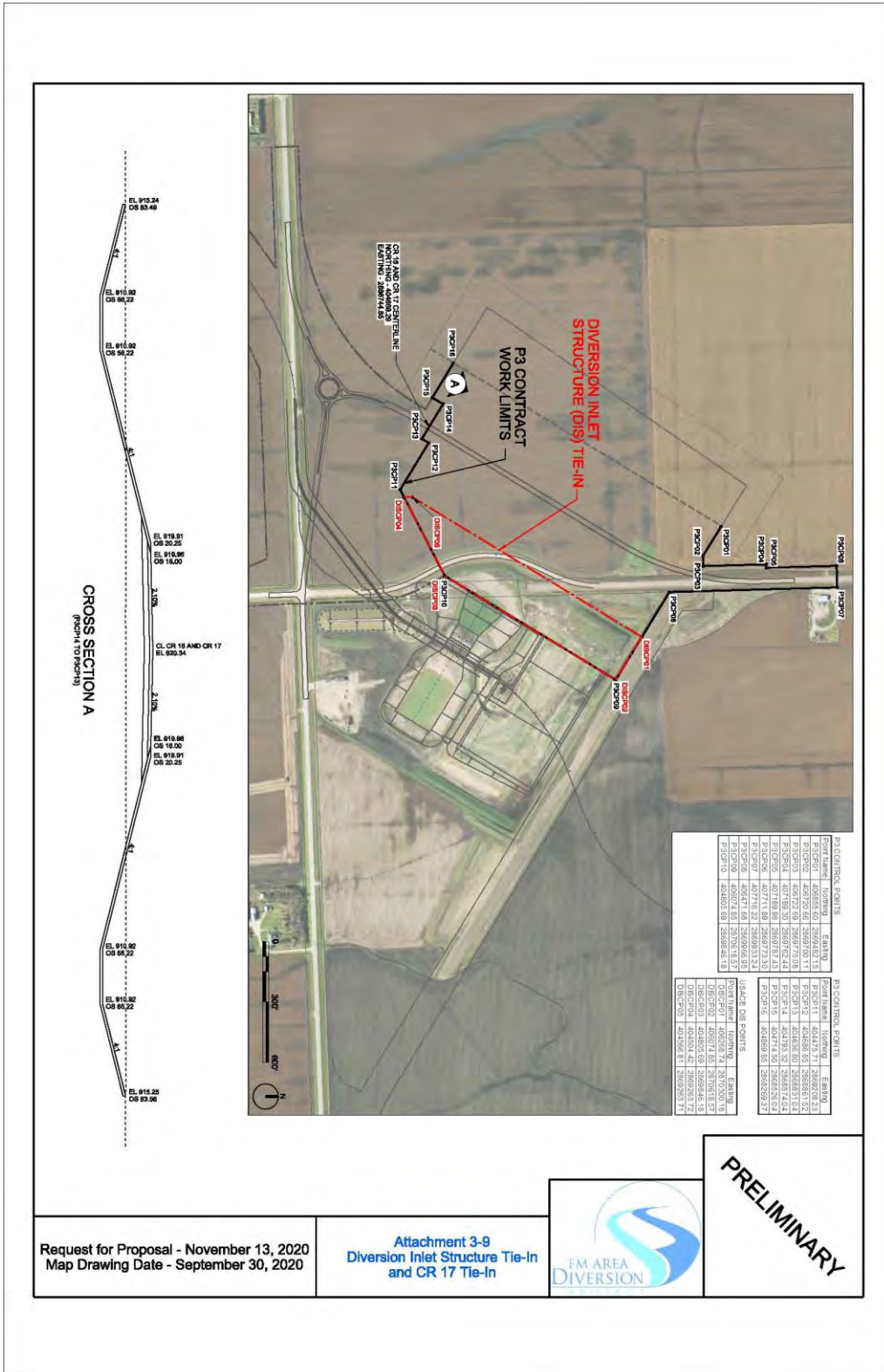
SOUTHERN EMBANKMENT (ND) AND ASSOCIATED INFRASTRUCTURE

FM AREA DIVERSION
Map Date: 9/30/2020



EXHIBIT B

COUNTY ROADS 16 AND 17 RELOCATIONS MAP



Request for Proposal - November 13, 2020
Map Drawing Date - September 30, 2020

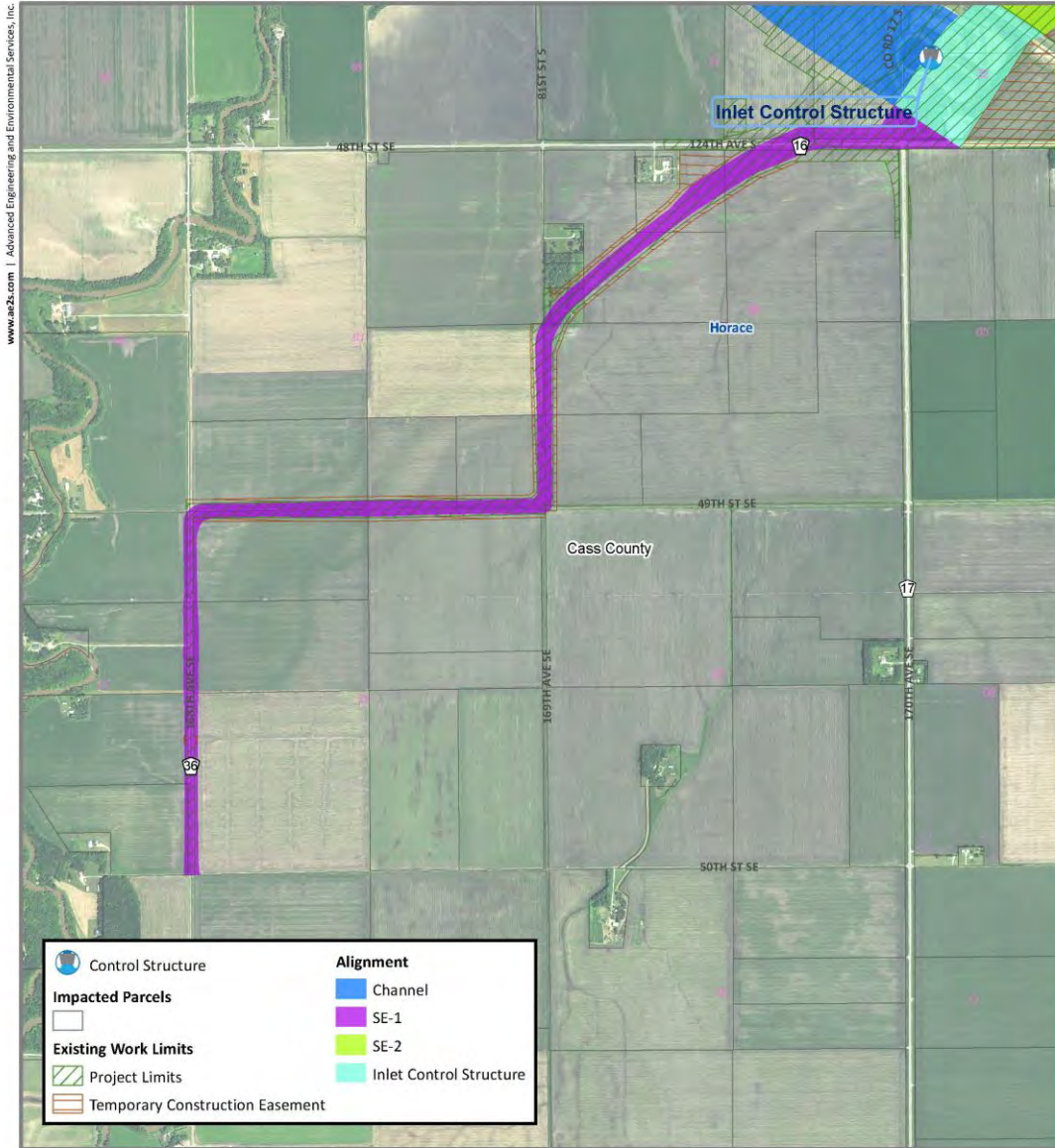
Attachment 3-9
Diversion Inlet Structure Tie-In
and CR 17 Tie-In



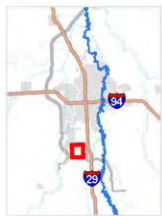
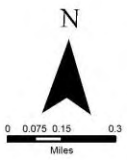
PRELIMINARY

EXHIBIT C

SE-1 AND COUNTY ROAD 36 CULVERT MAPS



Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown herein are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced by: cwickenheiser, AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\WP27-Red River West Embankment\SEAI_ND_SE_1_for_MOU.mxd



SOUTHERN EMBANKMENT (ND) SE-1

FM AREA DIVERSION
Map Date: 10/1/2020



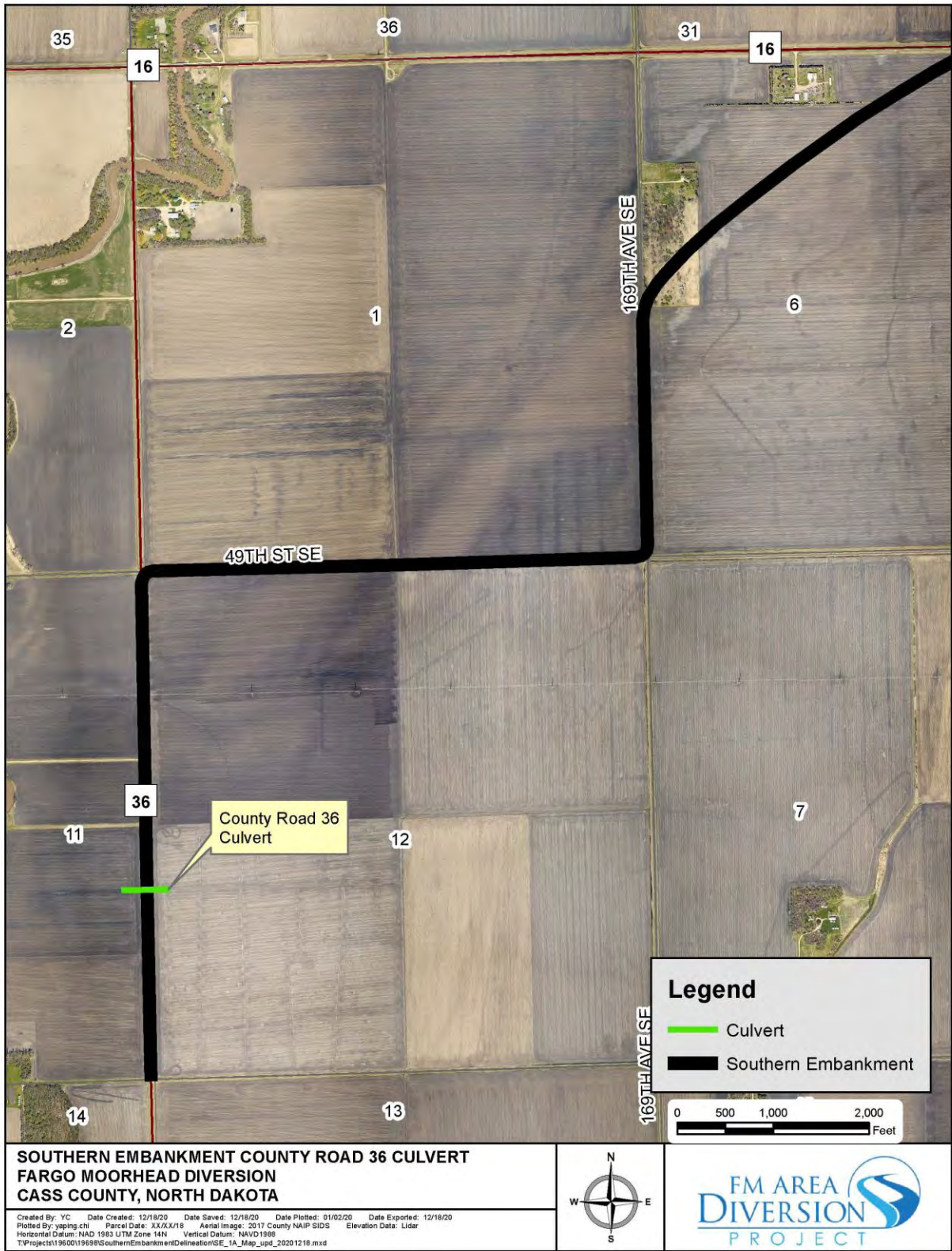
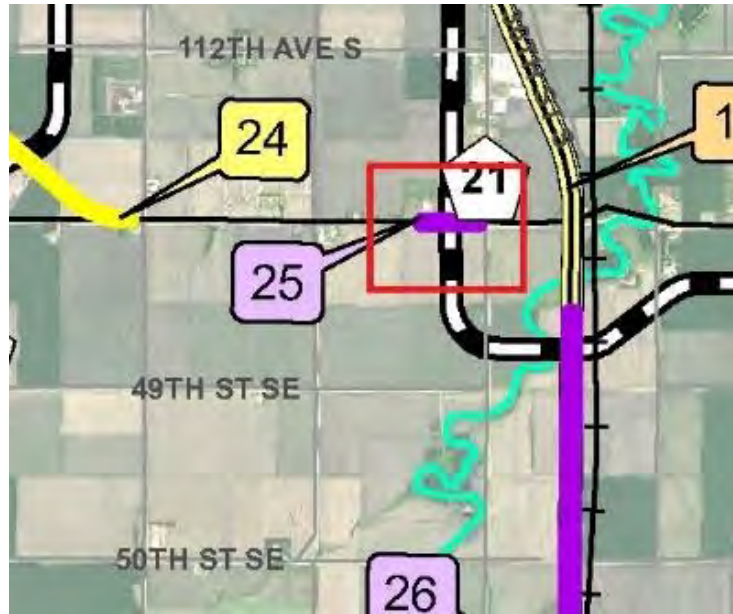
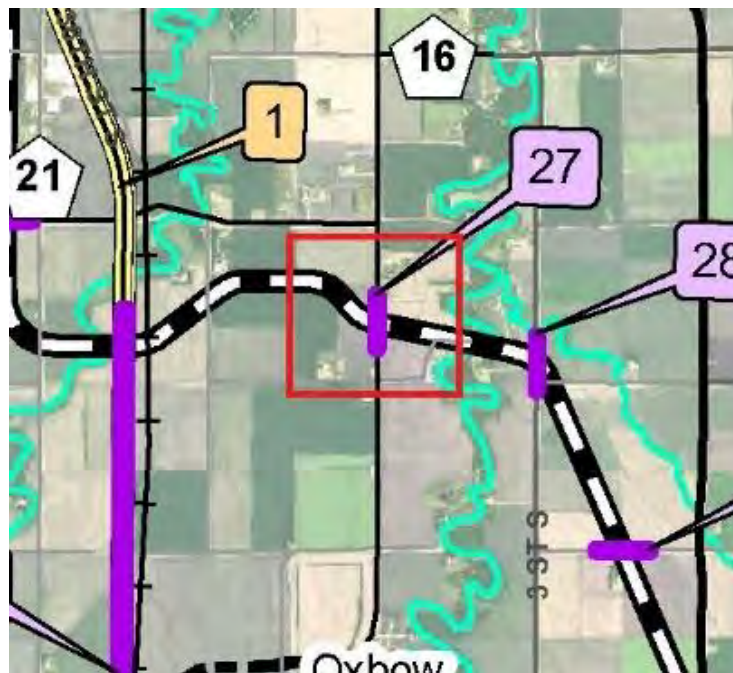


EXHIBIT D
SEAI CROSSINGS

COUNTY ROAD 16



COUNTY ROAD 81



COUNTY ROAD 45 – POSSIBLE CROSSING LOCATION

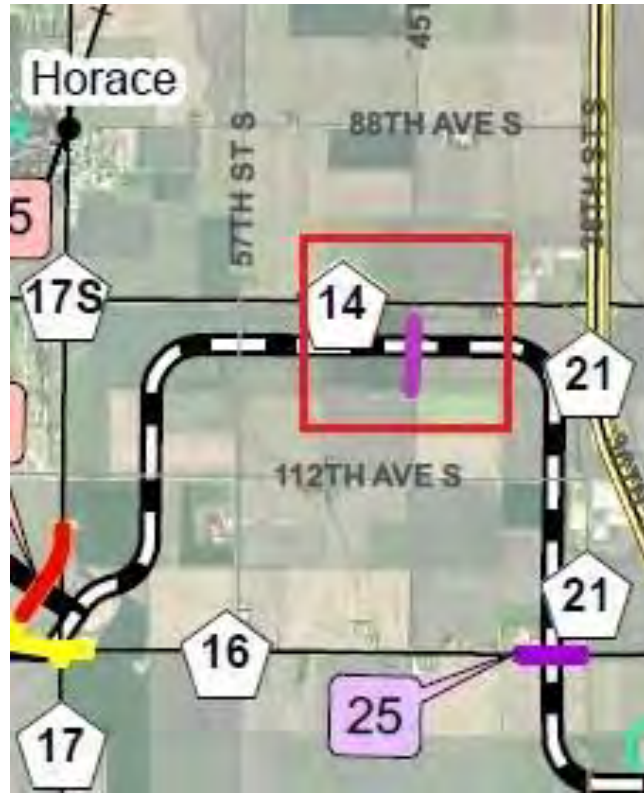


EXHIBIT E

PROPERTY INTEREST GRANTS

<i>Location</i>	<i>Current County Property Interest</i>	<i>Grant to Authority</i>
County Road 36 from 49th Street Southeast to 50th Street Southeast (SE-1)	Easement	Permit
County Road 36 (Culvert Improvement)	Easement	Permit
Country Road 16 (SEAI Crossing)	Easement and Statutory Right-of-way	Permit
County Road 81 (SEAI Crossing)	Easement and Statutory Right-of-way	Permit
County Road 81 (Reconstruct)	Fee Simple and Statutory Right-of-way	Permit
County Road 18 (Reconstruct)	Right-of-way Deed and Statutory Right-of-way	Permit

EXHIBIT F

HIGHWAY 81 ACCESS PERMIT

ACCESS 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 and a \$1000 refundable performance guarantee. Submit an application and fee for each access requested.



Highway Department
1201 Main Avenue West
West Fargo, ND 58078
www.casscountynd.gov
Phone: 701-268-2370
Fax: 701-268-2395

Applicant Fargo Moorhead Diversion Authority		Applicant's Representative Kris Bakkegard	
Address 207 4th St. N, Suite A		Address 207 4th St. N, Suite A	
City, State Zip Fargo, ND 58102	Phone 701-660-0903	City, State Zip Fargo, ND 58102	Phone 701-660-0903
Email Address bakkegardk@fmdiversion.gov cc: stamnessm@casscountynd.gov		Email Address bakkegardk@fmdiversion.gov cc: stamnessm@casscountynd.gov	

Type of Permit Requested				
<input checked="" type="checkbox"/> New Access <input type="checkbox"/> Modify Existing Access <input type="checkbox"/> Remove Existing Access		<input type="checkbox"/> Permanent <input checked="" type="checkbox"/> Temporary <input type="checkbox"/> Field Drive		
Address, City, State Zip of Property to be Served by Permit (if applicable) N/A				
Parcel ID	Subdivision	Section 1	Township 137	Range 49
57000010222020 57000010204003	N/A	6	137	48
On what county highway are you requesting the access? County Highway 81S		What side of the highway? <input type="checkbox"/> N <input type="checkbox"/> S <input checked="" type="checkbox"/> E <input checked="" type="checkbox"/> W		
Current land use of property? <input checked="" type="checkbox"/> Agricultural <input type="checkbox"/> Residential <input type="checkbox"/> Business <input type="checkbox"/> Other:				
Will this activity disrupt normal traffic and/or functionality of the roadway? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes If yes, describe and submit a traffic safety plan per MUTCD on separate sheet (include timeline).				
Are there other existing or dedicated public streets, roads, highways, or access easements bordering or within the property? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes If yes, list them on the plans and indicate the proposed and existing access points.				
Description of proposed work The accesses are needed to provide a path for the borrow from the RRS to be stockpiled for the I-29 road raise project.				

By signing below, the Applicant agrees to perform all work in accordance with the Cass County Highway Access Ordinance and 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 drives.

Kris Bakkegard
Applicant Signature
11-19-2020
Date

Upon approval and issuance of the permit, the Applicant is granted permission to commence the work described herein as per the Installation Start Date. At such time as all work has been done to the complete satisfaction of the Highway Department, the performance guarantee shall be released.

Installation Start Date Spring 2021	Installation Completion Date	Temporary Access Removal Date	Permitted Length of Time of Traffic Disruption
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Brian Burt
Authorized Highway Department Signature
11/30/2020
Date

ACCESS PERMIT REQUIREMENTS

1. The applicant shall be solely responsible for paying all costs associated with the design and construction of an access facility and all costs associated with the design and construction of any improvement to a County Highway as required to accommodate the access facility and the traffic using the access facility.
2. No work under this application is to be started until the application is approved and the permit is issued.
3. The total cost of all construction and maintenance of the work specified shall be borne by the Applicant, its grantees, successors, and assigns; except that the County will maintain the shoulder of the roadway.
4. It is understood by the Applicant that the County does not assume any responsibility for the removal or clearance of snow, ice or sleet, or the opening of windrows of such material, upon any portion of the drive even though snow, ice, or sleet is deposited or windrowed on said drive by its authorized representative engaged in normal winter maintenance operations.
5. A drive, as referred to in this Permit, shall be the traveled area between the highway roadway-surface and the adjacent right-of-way line. Said drive shall be used only for the purpose of providing entrance to and exit from the Applicant's property.
6. The granting of this permit does not vest the applicant with the exclusive use of the drive. Cass County Highway Department retains the right to diminish and expand the use of the drive as required in the interest of the safety of highway traffic.
7. 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 device (MUTCD).
8. It is understood by the Applicant that the location, construction, and maintenance of drives are under the supervision of the County at all times, and that in granting this permit the County waives none of its powers or rights to direct the removal, relocation, and/or proper maintenance in the future of any drives within the right of way of the County Highway.
9. No foreign material such as dirt, gravel, or bituminous material shall be deposited or left on the road during the construction or installation of access facilities.
10. Roadside must be cleaned up after work is completed.
11. No improvement constructed on the highway right of way shall be altered or relocated without permission of the County Engineer of the County Highway Department.
12. Right of way widths for County Highways shall be 100 feet from the centerline of the county highway to the right of way line on both sides of the highway, unless the County Engineer determines an increase or decrease in width is appropriate.
13. Driveway side slopes shall be constructed 8:1 and shall be hand finished and seeded.
14. Proper erosion control and sedimentation devices shall be used.
15. Surfacing may be omitted on field entrances if so specified in the application.
16. After construction is completed the applicant shall notify the Cass County Highway Department that the work is completed and is ready for inspection.
17. No construction shall be considered complete until checked and approved by the County Highway Department. The applicant will be notified of any deficiencies. Failure to complete the repairs will cause the applicant to forfeit the performance deposit, and 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 \$ N/A BAB	Date: 11/30/2020
Performance Guarantee Received:	Amount \$ N/A LS	Date: N/A LS
Onsite Survey Completed By:		Date:
Requirements:		
Approved Permit Sent to Applicant:	Date: 11-30-20 LS	
Written Notification Received From Applicant:	Date:	
Final Inspection Completed By:		Date:
Final Inspection Approved:	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Performance Guarantee Released:	Date:	
Comments:		

EXHIBIT G

**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

EXHIBIT H

RECONSTRUCTS MAP

