



MEMORANDUM

**Highway
Department**

Jason Benson, P.E.
County Engineer

Thomas B. Soucy, P.E.
Deputy County Engineer

Blaine Laaveg
Superintendent

TO: Cass County Commission

FROM: Jason Benson, County Engineer *MB*

DATE: February 19, 2021

SUBJECT: Agenda topic for March 1, 2021 Commission Meeting:
Agreement for 76th Avenue South and 45th Street South with Cass
County Government and the City of Fargo

Cass County Highway Department and City of Fargo Engineering Department have developed a Memorandum of Understand (MOU) for 76th Ave S and 45th St S. The MOU takes a phased approach to turning over this two-mile segment of highway to the City. This phased approach allows the County to turn over specific components of the highway and right of way as the City annexes land surrounding both sides of the highway. This allows City to take over access, right of way control, and utility control to new properties annexed into the City, while the County will continue to with general maintenance such as snow plowing, striping, signs.

The phased turn-over developed in this MOU is a coordinated process that will allow the City to effectively manage development and annexation of property along 76th Ave S and 45th St S.

SUGGESTED MOTION:

Authorize the Commission Chair to sign the Memorandum of Understanding for 76th Avenue South and 45th Street South with Cass County Government and the City of Fargo

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

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

**MEMORANDUM OF UNDERSTANDING REGARDING 45TH STREET SOUTH
FROM 64TH AVENUE SOUTH TO 76TH AVENUE SOUTH AND 76TH AVENUE SOUTH
FROM 45TH STREET SOUTH TO 57TH STREET SOUTH**

This Memorandum of Understanding (“MOU”) is entered into between the City of Fargo, a North Dakota municipal corporation whose address is 225 Fourth Street North, Fargo, North Dakota 58102 (“City” or “Fargo”), and Cass County, North Dakota, a North Dakota political subdivision, whose address is 211 9th Street South, Fargo, North Dakota 58103 (“Cass County”).

WHEREAS, North Dakota Century Code § 40-05.1-6 and Article 3 of Fargo’s Home Rule Charter authorizes Fargo to enter into contracts; and

WHEREAS, North Dakota Century Code § 11-09.1-05 and Article 2 of Cass County’s Home Rule Charter authorizes the Cass County to enter into contracts; and

WHEREAS, Development on Fargo’s south side, Horace, and the West Fargo School District has resulted in the need for expanded use of existing Stanley Township roads of 76th Avenue South and 45th Street South. Modifications to the roads to accommodate the increased traffic anticipated from such expansion is required and Stanley Township does not have the financial capacity to improve these road segments; and

WHEREAS, Cass County Highway 6 currently continues west of Cass County Highway 17 on 76th Avenue South. Cass County Highway 6 east of Cass County Highway 17 along 52nd Avenue South will be turned over to the Cities of Fargo and West Fargo through a separate MOU; and

WHEREAS, Cass County has coordinated with Stanley Township to take over ownership of 76th Avenue South from the Horace city limits to 45th Street South and of 45th Street South from 76th to 64th Avenue South. Cass County will coordinate with Horace to take over ownership of 76th Avenue South within the Horace city limits. These road segments will be renamed as Cass County Highway 6; and

WHEREAS, City and Cass County wish to enter into this Agreement for the purpose of establishing the parties’ responsibilities with respect to 76th Avenue South from 57th Street South to 45th Street South and of 45th Street South from 76th Avenue South to 64th Avenue South as future annexation of land by the City occurs adjacent to these roadways, and to permit the City to exercise a greater level of responsibility and control along these roadways prior to annexation of the property adjacent to the roadways. In anticipation of the future annexation by the City, 45th Street South will become right of way of the City once annexation progresses as follows: (1) both east and west sides of 45th Street South from 64th Avenue South to 76th Avenue South; (2) both north and south sides of 76th Avenue South from 45th Street South to 57th Street South; and

NOW THEREFORE, in consideration of the mutual terms, covenants, conditions, and agreements contained herein, it is hereby agreed by and between the parties as follows:

1. Maintenance, Striping and Signage. The parties agree that Cass County will initially be responsible for the maintenance, striping and signage of 76th Avenue South. Cass County agrees it will continue to maintain 76th Avenue South to acceptable standards until such time as both the east and west sides of the roadway on 45th Street South are annexed into the City. The City will also take responsibility of 76th Avenue South once both the north and south sides of 76th Avenue South are annexed into the City. However, 76th Avenue South will not become the responsibility of the City unless 45th Street South has been fully annexed into the City.

2. Drainage. The parties agree that Cass County remains responsible for drainage maintenance associated with 76th Avenue South until such time it is annexed by the City.

3. Snow Removal. The parties agree that Cass County shall be responsible for snow removal on both 45th Street South and 76th Avenue South and that City shall have no responsibility for the same. The parties further understand and agree that once the City annexes property on both the east or west sides of 45th Street South down to 76th Avenue South, the City shall be responsible for snow removal on 45th Street South. In addition, the parties understand and agree that as the City annexes property on both the north and south sides of 76th Avenue South between 45th Street South and 57th Street South, the City shall be responsible for snow removal on 76th Avenue South. In no event will Cass County be prevented from entering, accessing or removing snow from this stretch of 45th Street South or 76th Avenue South in the event Cass County is able to address the snow conditions in advance of City. There shall be no remuneration for snow removal completed by either party.

4. Regrading, Paving, and Maintenance. The parties agree that Cass County shall be responsible for contracting and all costs associated with the initial regrading, graveling, and paving of 45th Street South and 76th Avenue South. Cass County agrees to complete annual striping of this road until turned over to the City. Cass County also agrees to complete crack sealing and chip sealing one year after paving. Cass County also agrees to complete a second crack sealing and chip sealing in 2031. However, should annexation take place prior to 2031, the City will incur the costs to complete the crack sealing, chip sealing, or other maintenance on 45th Street South and/or 76th Avenue South.

5. Access Control. The parties agree that the City shall be immediately responsible for reviewing and approving all new access points on 45th Street South north of 76th Avenue South. The City shall be responsible for reviewing and approving all new access points on 76th Avenue South from 45th Street South to 57th Street South once the City has annexed land on the north side of 76th Avenue South. The determination on acceptable access locations shall be made by the City in accordance with its Land Development Code. All costs associated with designing and constructing all new access points are the responsibility of the City. The City shall provide completed designs to Cass County twenty (20) days in advance of bid advertisement for

concurrence of the design specifications. If Cass County fails to make any timely design comments within such period, the City shall provide written notice to Cass County of such failure to respond. If Cass County fails to provide design comments within ten (10) business days following such notice from the City, the design shall be deemed to be approved. Cass County agrees to maintain the road improvements installed by City until the road is annexed by City.

6. Right of Way Management and Utility Permitting. The parties agree that the City shall be responsible for all Right of Way Management responsibilities associated with and adjacent to 45th Street South north of 76th Avenue South and on 76th Avenue South from 45th Street South to 57th Street South with the purpose of reviewing and approving locations of both private and public utilities. Actual permitting of private and public utilities will remain with Cass County until 45th Street South and 76th Avenue South right of way becomes located within the City, at which time it will become the responsibility of the City. Cass County shall not approve any permits without written concurrence from the City. Any fees and costs collected by Cass County associated with utility permitting shall remain with Cass County.

7. Streetlights and Traffic Signals. The City may deem it necessary to install streetlights and/or traffic signals within the 45th Street South or 76th Avenue South right of ways where the City has annexed portions of the land adjacent to said right of ways. The City shall be responsible for all installation and maintenance costs of any streetlights or traffic signals installed by the City. The locations of any streetlights or traffic signals, deemed necessary by the City, shall be at the sole discretion of the City. In areas where the City has not annexed adjacent land, Cass County may deem it necessary to install streetlights at one or multiple locations along 45th Street South or 76th Avenue South. In these locations, Cass County may install streetlights at their discretion and cost, including maintenance costs.

8. Speed Limits. The parties agree that Cass County shall be responsible for establishing speed limits on 45th Street South and 76th Avenue South until such time that these roadways become the responsibility of the City pursuant to this Agreement.

9. Dispute Resolution.

a. Fargo and Cass County will each designate a representative who will be the party's representative with respect to any matters relating to the repair and/or maintenance of the elements identified in this MOU which may be in dispute or requiring agreement under the terms of this Agreement. Such representative may be changed from time to time. The representatives will be responsible for resolving any dispute between the parties concerning this Agreement and for the scheduling of maintenance and repairs.

b. If the designated representatives cannot agree with respect to any matter requiring agreement or with respect to any dispute concerning this Agreement, the parties will submit the matter to their respective Boards (or a committee established by the Board) to resolve the dispute.

10. Easements. Each party will grant to the other party any and all necessary easements to enable the other party to perform their obligations under the terms of this Agreement.

11. Term. The term of this Agreement will be twenty (20) years, with an expiration date of December 31, 2040. This Agreement will automatically renew for successive periods of twenty (20) years unless the City has taken over the responsibility of these roadways pursuant to this Agreement. 57th Street South

12. Release and Waiver. In consideration of the mutual promises of the parties and to the fullest extent permitted by law, each party assumes all risk of personal injury or death and property damage or loss from whatever causes arising while that party, its agents, employees or designees are conducting work pursuant to this MOU and each party releases the other party, its officers, employees, agents or designees relating to or arising out of that parties', agents, employees or designees work pursuant to this MOU, whether known or unknown, foreseen or unforeseen, liquidated, unliquidated, fixed, contingent, material or immaterial, disputed or undisputed, suspected or unsuspected, asserted or unasserted, direct or indirect, at law or in equity, from the beginning of time, and each party understands and acknowledges the significance of such release and waiver and hereby assumes full responsibility for any injuries, damages or losses that it may incur as a result of its execution of this MOU.

13. Notice. Any notice or election required or permitted to be given or served by any party to this MOU upon any other will be deemed given or served in accordance with the provisions of this MOU if said notice or election is (a) delivered personally, or (b) mailed by United States certified mail, return receipt requested, postage prepaid, and in any case properly addressed as follows:

If to Fargo:

City of Fargo
ATTN: City Auditor
Fargo City Hall
225 Fourth Street North
Fargo, ND 58102

If to Cass County:

ATTN: County Administrator
211 9th Street South
Fargo, ND 58103

Each such mailed notice or communication will be deemed to have been given on the date the same is deposited in the United States mail. Each such delivered notice or communication will be deemed to have been given upon the delivery. Any party may change its address for service of notice in the manner specified in this MOU.

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

15. Entire Agreement. This MOU constitutes the entire and complete agreement between the parties and supersedes any prior oral or written agreements between the parties. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions set forth herein, and that no modification of this MOU and no waiver of any of its terms and conditions will be effective unless in writing and duly executed by the parties.

16. Amendments. No amendment, modification, or waiver of any condition, provision or term will be valid or of any effect unless made in writing signed by the party or parties to be bound, or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification or waiver.

17. No Forbearance. The failure or delay of any party to insist on the performance of any of the terms of this MOU, or the waiver of any breach of any of the terms of this MOU, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this MOU, or the right to enforce each and every term of this MOU.

18. Remedies. Except as expressly and specifically stated otherwise, nothing herein will limit the remedies and rights of the parties under and pursuant to this MOU.

19. Binding Effect. All covenants, agreements, warranties and provisions of this MOU will be binding upon and inure to the benefit of the parties and their respective representatives, successors and assigns.

20. Governing Law. This MOU has been made and entered into under the laws of the State of North Dakota and said laws will control its interpretation. Any litigation arising out of this MOU will be venued in State District Court in Cass County, North Dakota, and the parties waive any objection to venue or personal jurisdiction.

21. Rules of Construction. The parties acknowledge that they have had the opportunity to review this MOU, and that they have an equal bargaining position in this transaction. No rule of construction that would cause any ambiguity in any provision to be construed against the drafter of this document will be operative against any party to this MOU.

22. Representation. The parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this MOU, and agree they have not been influenced by any representations or statements made by any other parties.

23. Headings. Headings in this MOU are for convenience only and will not be used to interpret or construe its provisions.

(Signatures appear on the following pages)

Dated this _____ day of March 2021.

CITY OF FARGO, NORTH DAKOTA, a
municipal corporation

By: _____

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

ATTEST:

Steve Sprague, City Auditor

Dated this ____ day of March 2021.

CASS COUNTY, NORTH DAKOTA

Chad M. Peterson, Board Chairman

ATTEST:

Mike Montplaisir, Finance Director



MEMORANDUM

**Highway
Department**

Jason Benson, P.E.
County Engineer

Thomas B. Soucy, P.E.
Deputy County Engineer

Blaine Laaveg
Superintendent

TO: Cass County Commission

FROM: Jason Benson, County Engineer *JAB*

DATE: February 24, 2021

SUBJECT: Agenda topic for March 1, 2021 Commission Meeting:
Agreement for Cass Highway 17 and 76th Ave S with Cass
County Government and the City of Horace

Cass County Highway Department and City of Horace have developed a Memorandum of Understand (MOU) for Cass Highway 17 and 76th Ave S (Cass Highway 6). The MOU spells out the responsibilities of the City and County regarding the two miles of 76th Ave S and roughly 6.5 miles of Cass Highway 17 within the Horace City limits. This MOU takes a phased approach to turning over these roads to the City. This phased approach allows the County to turn over specific components of the highway and right of way in the two-year period following the City population reaching 5,000. This allows the County to efficiently turn over these road segments to the City including access control, right of way control, utility control, pavement maintenance, and general maintenance such as snow plowing, striping, signs.

Over the next several years Cass County has identified and committed to complete road and bridge improvements on Cass Highway 17 and 76th Ave S as per the MOU and Exhibit A. After these roads are turned over, Cass County will be relieved of any ownership, financial, or maintenance.

SUGGESTED MOTION:

Authorize the Commission Chair to sign the Memorandum of Understanding for Cass Highway 17 and 76th Ave S with Cass County Government and the City of Horace.

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

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

**MEMORANDUM OF UNDERSTANDING REGARDING
CASS COUNTY HIGHWAY 6 TO INCLUDING 76TH AVENUE SOUTH FROM 45TH
STREET SOUTH TO 81ST STREET SOUTH AND CASS HIGHWAY 17 FROM 52ND
AVENUE SOUTH TO CASS 14 (100TH AVENUE SOUTH)**

This Memorandum of Understanding (“MOU”) is entered into between the City of Horace, a North Dakota municipal corporation whose address is 215 Park Drive East, Horace, North Dakota 58047 (“City” or “Horace”), and Cass County, North Dakota, a North Dakota political subdivision, whose address is 211 9th Street South, Fargo, North Dakota 58103 (“Cass County”).

WHEREAS, North Dakota Century Code § 40-05.1-06 and Article 3 of Horace’s Home Rule Charter authorizes Horace to enter into contracts; and

WHEREAS, North Dakota Century Code § 11-09.1-05 and Article 2 of Cass County’s Home Rule Charter authorizes the Cass County to enter into contracts; and

WHEREAS, Development in Horace and the West Fargo School District has resulted in the need for expanded use of existing Stanley Township roads of 76th Avenue South and 45th Street South. Modifications to the road to accommodate the increased traffic anticipated from such expansion is required and Stanley Township does not have the financial capacity to improve these road segments; and

WHEREAS, Cass County Highway 6 currently continues west of Cass County Highway 17 on 76th Avenue South. Cass County Highway 6 east of Cass County Highway 17 along 52nd Avenue will be turned over to the Cities of Fargo and West Fargo; and

WHEREAS, Cass County will coordinate with Stanley Township to take over control of 76th Avenue from the Horace city limits to 45th Street South and of 45th Street South from 76th to 64th Avenue S. Cass County will coordinate with Horace to take over ownership of 76th Avenue within the Horace city limits. These road segments will be renamed as Cass County Highway 6 (“Cass Highway 6”); and

WHEREAS, City constructed a concrete four lane roadway on 76th Avenue South from the round about on Cass Highway 17 east approximately 2700 feet to just east of 63rd Street.

WHEREAS, City and County wish to enter into this Agreement for the purpose of establishing the parties’ responsibilities with respect to 76th Avenue from the Horace city limits at 57th Street South to Cass Highway 17, future transfer of control and operations of Cass Highway 6 west of Cass Highway 17 to 81st Street South and Cass Highway 17 from 52nd Avenue South to the Metro Flood Diversion Project approximately 0.5 miles south of 112th Avenue South. To permit the City to exercise a greater level of responsibility and control from along these roadways prior to full transfer of control of the easements or right of way along these County highways. In anticipation of the future growth of Horace above a population of 5,000 residents; and

WHEREAS, County Commission Policy 9.35 “County Highways within Annexed Cities” states that in cities with populations over 5,000, County highways should be targeted to be turned

over to the city within two years. The policy recognizes that segments should be turned over with logical termini and Cass County should work cooperatively with the cities to accomplish an orderly transfer of ownership. This policy supports interim partnership arrangements during transitional periods to provide for logical and efficient delivery of government services; and

NOW THEREFORE, in consideration of the mutual terms, covenants, conditions, and agreements contained herein, it is hereby agreed by and between the parties as follows:

1. Future Turnover Date for Cass Highways 6 and 17. Full turnover of ownership, maintenance, operations, and control of Cass Highway 6 from 57th Street South to 81st Street South and Cass Highway 17 from 52nd Avenue South to the Metro Flood Diversion Project approximately 0.5 miles south of 112th Avenue South will occur on the January 1st after two full years (730 days) have passed after the City's population exceeds 5,000.
2. Maintenance, Striping and Signage. The parties agree that Cass County will be responsible for the maintenance, striping and signage until turnover to the City of:
 - a. 76th Avenue South within the City limits from 57th Street South west to 81st Street South.
 - b. Cass Highway 17 within the City limits from 52nd Avenue South to the Metro Flood Diversion Project limits approximately 0.5 miles south of 112th Avenue South
3. Drainage. The parties agree that Cass County remains responsible for drainage maintenance associated with Cass County Highways 6 and 17 until turnover to the City.
4. Snow Removal. The parties agree that Cass County shall be primarily responsible for snow removal on Cass County Highways 6 and 17 until turnover to the City. The City shall have the ability to assist Cass County in snow removal as they deem necessary or as available such as when the City snowplows are traveling on County highways. There shall be no remuneration for snow removal completed by either party.
5. Highway and Bridge Regrading, Reconstruction, Paving, and Maintenance - Cass County Responsibility (see Exhibit A). The parties agree that Cass County shall be responsible for funding and executing the following improvements or maintenance:
 - a. 76th Avenue South approximately 2,600 feet from immediately east of 63rd Street South to 57th Street South, Cass County will pay for the initial regrading, graveling, and paving.
 - b. 76th Avenue South from Cass Highway 17 east approximately 2,700 feet to 63rd Street South, Cass County will complete Concrete pavement maintenance and sealing.
 - c. Cass Highway 6 from Cass Highway 17 west to 81st Street South, Cass County will complete an asphalt overlay.
 - d. Intersection of Cass Highway 17 and 64th Avenue South, Cass County will construct a roundabout.
 - e. Cass Highway 17 Sheyenne River bridge approximately 2,800 feet south of 52nd Avenue South, Cass County will reconstruct this bridge and approach roadways.
 - f. 52nd Avenue South Sheyenne River bridge approximately 250 feet east of Cass Highway 17, Cass County, in conjunction with the Cities of Fargo and West Fargo, will reconstruct this bridge and approach roadways.

g. Cass Highway 17 from 52nd Avenue South continuing south to the Metro Flood Diversion Project approximately 0.5 miles south of 112th Avenue South, Cass County will complete an asphalt overlay.

h. Cass County also agrees to complete crack sealing and chip sealing two years after any asphalt paving.

i. Cass County also agrees to complete a second crack sealing and chip sealing 10 years after the first chip seal. However, should turnover take place prior this second chip seal, the City will take over and incur the costs to complete the crack sealing, chip sealing, or other maintenance of Cass Highways 6 and 17.

6. Highway and Bridge Regrading, Reconstruction, Paving, and Maintenance – City of Horace Responsibility (see Exhibit A). The parties agree that the City shall be responsible for:

a. 76th Avenue South approximately 2,600 feet from immediately east of 63rd Street South to 57th Street South, the City will pay for underground City utilities, street lighting, shared use paths, and other City requested features outside of the normal road reconstruction, to include the storm sewer arch pipe.

b. 76th Avenues South from Cass Highway 17 east approximately 2,700 feet to 63rd Street South, the City will maintain the underground City utilities, street lighting, and shared use paths.

c. Cass Highway 6 from Cass Highway 17 west to 81st Street South, the City will be responsible for any underground City utilities, or future street lighting and shared use paths

d. Intersection of Cass Highway 17 and 64th Avenue South, the City will pay for underground City utilities, street lighting, shared use paths, and other City requested features outside of the normal road reconstruction of a roundabout.

e. Cass Highway 17 Sheyenne River bridge approximately 2,800 feet south of 52nd Avenue South, the City will pay for underground City utilities, street lighting, shared use paths, and other City requested features outside of the normal road/bridge reconstruction.

f. 52nd Avenue South Sheyenne River bridge approximately 250 feet east of Cass Highway 17, the City will pay for underground City utilities, street lighting, shared use paths, and other City requested features outside of the normal road/bridge reconstruction..

g. Cass Highway 17 from 52nd Avenue South continuing south to the Metro Flood Diversion Project approximately 0.5 miles south of 112th Avenue South, the City will be responsible for any underground City utilities, or future street lighting and shared use paths.

7. Access Control. The parties agree that once the City reaches a population of 5,000 and starts the two year timeline for turnover, the City will assume responsibility for reviewing and approving all new access points on Cass Highway 6 from 57th Street South to 81st Street South and Cass Highway 17 from 52nd Avenue South to the Metro Flood Diversion Project approximately 0.5 miles south of 112th Avenue South. The determination on acceptable access locations shall be made by the City in accordance with its Land Development Code. All costs associated with designing and constructing all new access points in the previously described highway segments shall be the City's responsibility. Any turnlanes or additional traffic control measures needed due to the City's approved access points shall be the City's responsibility. The City shall provide completed designs to Cass County thirty (30) days in advance of bid advertisement for concurrence of the design specifications. If Cass County fails to make any timely design comments within such period, the City shall provide written notice to Cass County of such failure to respond. If Cass County fails to provide design comments within ten (10)

business days following such notice from the City, the design shall be deemed to be approved. Cass County agrees to maintain the road improvements installed by City until the road is turned over to the City. Upon full turnover of Cass Highways 6 and 17, the City will have full responsibility for access control without review by Cass County.

8. Utility Permitting. Cass County will remain responsible for all utility permitting associated with and adjacent to Cass Highway 6 from 57th Street South to 81st Street South and Cass Highway 17 from 52nd Avenue South to the Metro Flood Diversion Project approximately 0.5 miles south of 112th Avenue South with the purpose of reviewing and approving locations of both private and public utilities. Any fees and costs collected by Cass County associated with utility permitting shall remain with Cass County. Upon full turnover of Cass Highways 6 and 17, the City will have full responsibility for utility permitting without review by Cass County.

9. Streetlights and Traffic Signals. The parties agree to permit City to design and install streetlights and/or traffic signals within Cass Highway 6 and 17 rights of way and appropriate access points thereto. The City shall be responsible for all installation and maintenance costs of all new or existing streetlights and traffic signals installed. The locations of any streetlights or traffic signals shall be at the sole discretion of the City. The City shall provide completed designs to Cass County thirty (30) days in advance of bid advertisement for concurrence of the design specifications. If Cass County fails to make any timely design comments within such period, the City shall provide written notice to Cass County of such failure to respond. If Cass County fails to provide design comments within ten (10) business days following such notice from the City, the design shall be deemed to be approved. Cass County agrees to maintain the road improvements installed by City until the road is turned over to the City. The City agrees to pay all electrical costs or fees for the any streetlights or traffic signals.

10. Speed Limits. The parties agree that the County will retain authority to establish the appropriate speed limit on Cass Highways 6 and 17 until turnover. Cass County shall undertake an appropriate traffic study and provide the data to the City for review of the proposed speed limit modifications. Cass County agrees to provide approved speed limit signage in accordance with applicable standards.

11. Transfer of County Lots along Cass Highway 17. Cass County will quit claim the properties located at:

Immediately north of the Casey's gas station on Cass 17 at 314 Main Street North, Rud's Addition Lot 4 Block 1, to the City for the sole purpose of use as a public street corridor.

Property south of 52nd Avenue South to the Sheyenne River on the west side of Cass 17 at 5358 County Road 17 S. This property would be for the sole purpose of public land for park or recreation use with a sole access at the far south end of the property.

This property transfer will occur once an approved re-plat has been recorded that includes platting of this lot as a street corridor. The City must include Cass County in planning and platting discussions of this property during the platting approval process.

12. Dispute Resolution.

a. Horace and Cass County will each designate a representative who will be the party's representative with respect to any matters relating to the repair and/or maintenance of the elements identified in this MOU which may be in dispute or requiring agreement under the terms of this Agreement. Such representatives may be changed from time to time. The representatives will be responsible for resolving any dispute between the parties concerning this Agreement and for the scheduling of maintenance and repairs.

b. If the designated representatives cannot agree with respect to any matter requiring agreement or with respect to any dispute concerning this Agreement, the parties will submit the matter to their respective Boards (or a committee established by the Board) to resolve the dispute.

13. Easements or Right of Way. Each party will grant to the other party any and all necessary easements or right of way to enable the other party to perform their obligations under the terms of this Agreement. Upon the transfer of control and operations of Cass Highway 6 from 57th Street South to 81st South and Cass Highway 17 from 52nd Avenue South to the Metro Flood Diversion Project 0.5 miles south of 112th Avenue South, Cass County will quit claim all deeded right of way and easements from Cass County to the City.

14. Term. The term of this Agreement will be twenty (20) years, with an expiration date of March 31, 2041 unless the City reaches a population of 5,000 triggering the turnover process outlined in this agreement. This Agreement will automatically renew for successive periods of twenty (20) years until turnover.

15. Release and Waiver. In consideration of the mutual promises of the parties and to the fullest extent permitted by law, each party assumes all risk of personal injury or death and property damage or loss from whatever causes arising while that party, its agents, employees or designees are conducting work pursuant to this MOU and each party releases the other party, its officers, employees, agents or designees relating to or arising out of that parties' agents, employees or designees work pursuant to this MOU, whether known or unknown, foreseen or unforeseen, liquidated, unliquidated, fixed, contingent, material or immaterial, disputed or undisputed, suspected or unsuspected, asserted or unasserted, direct or indirect, at law or in equity, from the beginning of time, and each party understands and acknowledges the significance of such release and waiver and hereby assumes full responsibility for any injuries, damages or losses that it may incur as a result of its execution of this MOU.

16. Notice. Any notice or election required or permitted to be given or served by any party to this MOU upon any other will be deemed given or served in accordance with the provisions of this MOU if said notice or election is (a) delivered personally, or (b) mailed by United States certified mail, return receipt requested, postage prepaid, and in any case properly addressed as follows:

If to Horace:

City of Horace
ATTN: City Administrator
Horace City Hall
215 Park Drive East
Horace, ND 58047

If to Cass County:

ATTN: County Administrator
211 9th Street South
Fargo, ND 58103

Each such mailed notice or communication will be deemed to have been given on the date the same is deposited in the United States mail. Each such delivered notice or communication will be deemed to have been given upon the delivery. Any party may change its address for service of notice in the manner specified in this MOU.

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

18. Entire Agreement. This MOU constitutes the entire and complete agreement between the parties and supersedes any prior oral or written agreements between the parties. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions set forth herein, and that no modification of this MOU and no waiver of any of its terms and conditions will be effective unless in writing and duly executed by the parties.

19. Amendments. No amendment, modification, or waiver of any condition, provision or term will be valid or of any effect unless made in writing signed by the party or parties to be bound, or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification or waiver.

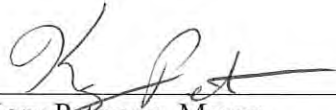
20. No Forbearance. The failure or delay of any party to insist on the performance of any of the terms of this MOU, or the waiver of any breach of any of the terms of this MOU, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this MOU, or the right to enforce each and every term of this MOU.

21. Remedies. Except as expressly and specifically stated otherwise, nothing herein will limit the remedies and rights of the parties under and pursuant to this MOU.

22. Binding Effect. All covenants, agreements, warranties and provisions of this MOU will be binding upon and inure to the benefit of the parties and their respective representatives, successors and assigns.

Dated this _____ day of February, 2021.

CITY OF HORACE, NORTH DAKOTA, a
municipal corporation

By: 
Kory Peterson, Mayor

ATTEST:


Brenton Hölper, City Administrator

Dated this ____ day of February, 2021.

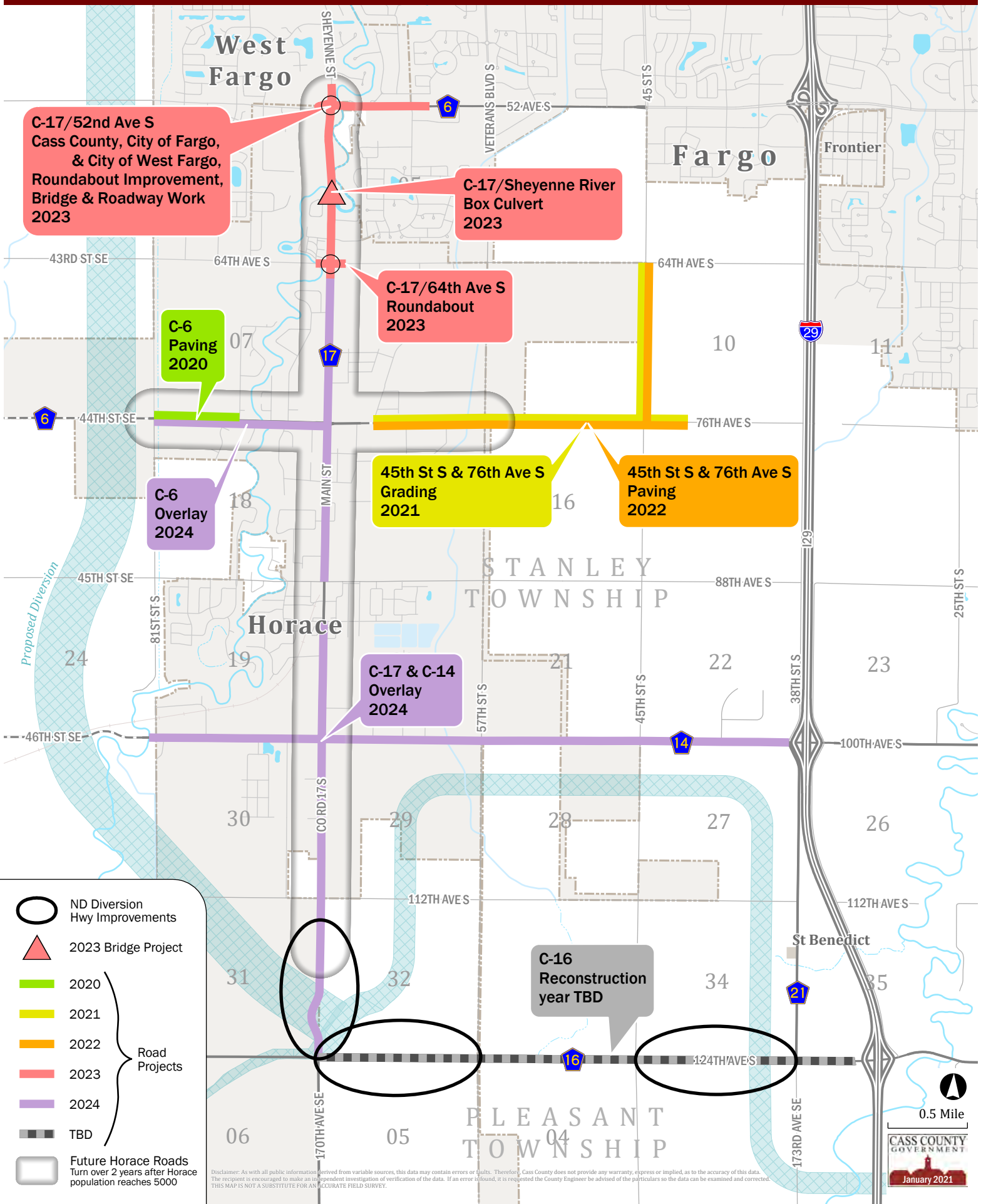
CASS COUNTY, NORTH DAKOTA

Chad M. Peterson, Board Chairman

ATTEST:

Mike Montplaisir, Finance Director

Exhibit A HORACE AREA TRANSPORTATION IMPROVEMENTS



C-17/52nd Ave S
Cass County, City of Fargo,
& City of West Fargo,
Roundabout Improvement,
Bridge & Roadway Work
2023

C-17/Sheyenne River
Box Culvert
2023

C-17/64th Ave S
Roundabout
2023

C-6
Paving
2020

C-6
Overlay
2024

45th St S & 76th Ave S
Grading
2021

45th St S & 76th Ave S
Paving
2022

C-17 & C-14
Overlay
2024

C-16
Reconstruction
year TBD

- ND Diversion Hwy Improvements
- 2023 Bridge Project
- 2020
- 2021
- 2022
- 2023
- 2024
- TBD
- Future Horace Roads Turn over 2 years after Horace population reaches 5000

Disclaimer: As with all public information derived from variable sources, this data may contain errors or omissions. Therefore, Cass County does not provide any warranty, express or implied, as to the accuracy of this data. The recipient is encouraged to make an independent investigation or verification of the data. If an error is found, it is requested the County Engineer be advised of the particulars so the data can be examined and corrected. THIS MAP IS NOT A SUBSTITUTE FOR AN ACCURATE FIELD SURVEY.



MEMORANDUM

**Highway
Department**

Jason Benson, P.E.
County Engineer

Thomas B. Soucy, P.E.
Deputy County Engineer

Blaine Laaveg
Superintendent

TO: Cass County Commission

FROM: Jason Benson, County Engineer *JPB*

DATE: February 19, 2021

SUBJECT: Agenda topic for March 1, 2021 Commission Meeting:
Agreement for 76th Avenue South and 45th Street South between
Cass County Government and Stanley Township

Cass County Highway Department and Stanley Township have developed a Memorandum of Understand (MOU) for 76th Ave S and 45th St S. The MOU outlines the turn-over of these gravel township roads from Township control to Cass County control. This allows Cass County to take over access, right of way control, and utility control, along with general maintenance such as snow plowing, striping, signs.

The County be completing a road reconstruction and asphalt paving on these two miles over the next two years per the 2021-2025 Highway Comprehensive Plan and 2021 Highway Budget.

SUGGESTED MOTION:

Authorize the Commission Chair to sign the Memorandum of Understanding for 76th Avenue South and 45th Street South between Cass County Government and Stanley Township.

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

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

**MEMORANDUM OF UNDERSTANDING REGARDING 45TH STREET SOUTH
FROM 64TH AVENUE SOUTH TO 76TH AVENUE SOUTH AND 76TH AVENUE SOUTH
FROM 45TH STREET SOUTH TO 57TH STREET SOUTH**

This Memorandum of Understanding (“MOU”) is entered into between Stanley Township, a North Dakota political subdivision whose address is: Township Chairman, 2005 124th Avenue South, Horace, ND 58047 (“Township”), and Cass County, North Dakota, a North Dakota political subdivision, whose address is 211 9th Street South, Fargo, North Dakota 58103 (“Cass County”).

WHEREAS, North Dakota Century Code § 58-03-01 (Powers of Township) authorizes Townships to enter into contracts; and

WHEREAS, North Dakota Century Code § 11-09.1-05 and Article 2 of Cass County’s Home Rule Charter authorizes the Cass County to enter into contracts; and

WHEREAS, Development on Fargo’s south side, Horace, and the West Fargo School District has resulted in the need for expanded use of existing Stanley Township roads of 76th Avenue South and 45th Street South. Modifications to the road to accommodate the increased traffic anticipated from such expansion is required and Stanley Township does not have the financial capacity to improve these road segments; and

WHEREAS, Cass County Highway 6 currently continues west of Cass County Highway 17 on 76th Avenue South. Cass County Highway 6 east of Cass County Highway 17 along 52nd Avenue will be turned over to the Cities of Fargo and West Fargo; and

WHEREAS, Cass County will coordinate with the City of Horace to take over control of 76th Avenue from the Horace city limits to Cass County Highway 17 within the Horace city limits. These road segments will be renamed as Cass County Highway 6; and

WHEREAS, Township and County wish to enter into this Agreement for the purpose of transferring control and establishing the parties’ responsibilities with respect to 76th Avenue from the Horace city limits to 45th Street South and of 45th Street South from 76th Avenue South to 64th Avenue South.

NOW THEREFORE, in consideration of the mutual terms, covenants, conditions, and agreements contained herein, it is hereby agreed by and between the parties as follows: Cass County will assume control of 76th Avenue South from the Horace city limits (57th Street South also known as 57th Street South) to 45th Street South and of 45th Street South from 76th Avenue South to 64th Avenue South. Cass County will coordinate with Horace to take over maintenance and control of 76th Avenue within the Horace city limits. These road segments will be renamed as Cass County Highway 6; and

1. Maintenance, Striping and Signage. The Parties agree that Cass County will be responsible for the maintenance, striping and signage of 45th Street South and 76th Avenue South. Cass County agrees it will continue to maintain these road segments to acceptable standards until such time as the east or west side of the roadway on 45th Street South or north side of 76th Avenue South is annexed into the City.
2. Drainage. The Parties agree that Cass County agrees and understands that it remains responsible for drainage maintenance associated with 45th Street South and 76th Avenue South.
3. Snow Removal. The Parties agree that Cass County shall be responsible for snow removal on both 76th Avenue South from 57th Street South to 45th Street South and 45th Street South from 76th Avenue South to 64th Avenue South and that Township shall have no responsibility for the same.
4. Regrading, Paving, and Maintenance. The Parties agree that Cass County shall be responsible for contracting and paying for the initial regrading, graveling, and paving of 76th Avenue South from 57th Street South to 45th Street South and 45th Street South from 76th Avenue South to 64th Avenue South. Cass County agrees to complete annual striping of this road along with other road maintenance. While conducting grading, paving, and maintenance work, Cass County is authorized to extend its work limits on 76th Avenue South to a point east of 45th Street South approximately 500 feet and 45th Street South to a point south of 76th Avenue South approximately 500 feet.
5. Access Control. The Parties agree that Cass County shall manage access control per County regulations and shall be responsible for reviewing and approving all new access points immediately on 45th Street South north of 76th Avenue South. If the Cities of Horace or Fargo annex property or begin developing in close proximity to these corridors, the County may transfer the access control to the City for reviewing and approving all new access points in accordance with the City of Fargo Code or City of Horace Code.
6. Right of Way Management and Utility Permitting. The Parties agree that Cass County shall be responsible for all Right of Way Management associated with and adjacent to 76th Avenue South from 57th Street South to 45th Street South and 45th Street South from 76th Avenue South to 64th Avenue South with the purpose of reviewing and approving locations of both private and public utilities. If the Cities of Horace or Fargo annex property or begin developing in close proximity to these corridors, the County may transfer the Right of Way Management responsibilities to the City of Fargo for reviewing and approving all new Right of Way or utility locations in accordance with the City of Fargo Code.
7. Speed Limits. The Parties agree that Cass County shall have authority to establish the appropriate speed limit on 76th Avenue South from 57th Street South to 45th Street South and 45th Street South from 76th Avenue South to 64th Avenue South. Cass County agrees to provide approved speed limit signage in accordance with applicable standards. If the Cities of Horace or

Fargo annex property or begin developing in close proximity to these corridors, the County may transfer the Speed Limit Management responsibilities to the City.

8. Easements. The Parties agree that the Township will transfer to the County any and all of its easements along 76th Avenue South from 57th Street South to 45th Street South and 45th Street South from 76th Avenue South to 64th Avenue South to the County.

9. Future Agreements. The Parties agree that Cass County may develop future agreements with the Cities of Horace and Fargo to turn over the control and maintenance of 76th Avenue from 57th Street South to 45th Street South and of 45th Street South from 76th Avenue South to 64th Avenue South.

10. Date of Transfer of Control. The transfer of control and maintenance of 76th Avenue from 57th Street South to 45th Street South and of 45th Street South from 76th Avenue South to 64th Avenue South will occur on Friday, April 16, 2021.

11. Term. This Agreement will terminate upon legal transfer of control to the City of Fargo or City of Horace.

12. Release and Waiver. In consideration of the mutual promises of the parties and to the fullest extent permitted by law, each party assumes all risk of personal injury or death and property damage or loss from whatever causes arising while that party, its agents, employees or designees are conducting work pursuant to this MOU and each party releases the other party, its officers, employees, agents or designees relating to or arising out of that parties', agents, employees or designees work pursuant to this MOU, whether known or unknown, foreseen or unforeseen, liquidated, unliquidated, fixed, contingent, material or immaterial, disputed or undisputed, suspected or unsuspected, asserted or unasserted, direct or indirect, at law or in equity, from the beginning of time, and each party understands and acknowledges the significance of such release and waiver and hereby assumes full responsibility for any injuries, damages or losses that it may incur as a result of its execution of this MOU.

13. Notice. Any notice or election required or permitted to be given or served by any party to this MOU upon any other will be deemed given or served in accordance with the provisions of this MOU if said notice or election is (a) delivered personally, or (b) mailed by United States certified mail, return receipt requested, postage prepaid, and in any case properly addressed as follows:

If to Stanley Township:

Stanley Township
ATTN: Township Chairman
2005 124th Avenue South
Horace, ND 58047

If to Cass County:

ATTN: County Administrator
211 9th Street South
Fargo, ND 58103

Each such mailed notice or communication will be deemed to have been given on the date the same is deposited in the United States mail. Each such delivered notice or communication will be deemed to have been given upon the delivery. Any party may change its address for service of notice in the manner specified in this MOU.

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

15. Entire Agreement. This MOU constitutes the entire and complete agreement between the parties and supersedes any prior oral or written agreements between the parties. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions set forth herein, and that no modification of this MOU and no waiver of any of its terms and conditions will be effective unless in writing and duly executed by the parties.

16. Amendments. No amendment, modification, or waiver of any condition, provision or term will be valid or of any effect unless made in writing signed by the party or parties to be bound, or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification or waiver.

17. No Forbearance. The failure or delay of any party to insist on the performance of any of the terms of this MOU, or the waiver of any breach of any of the terms of this MOU, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this MOU, or the right to enforce each and every term of this MOU.

18. Remedies. Except as expressly and specifically stated otherwise, nothing herein will limit the remedies and rights of the parties under and pursuant to this MOU.

19. Binding Effect. All covenants, agreements, warranties and provisions of this MOU will be binding upon and inure to the benefit of the parties and their respective representatives, successors and assigns.

20. Governing Law. This MOU has been made and entered into under the laws of the State of North Dakota and said laws will control its interpretation. Any litigation arising out of this MOU will be venued in State District Court in Cass County, North Dakota, and the parties waive any objection to venue or personal jurisdiction.

21. Rules of Construction. The parties acknowledge that they have had the opportunity to review this MOU, and that they have an equal bargaining position in this transaction. No rule of

construction that would cause any ambiguity in any provision to be construed against the drafter of this document will be operative against any party to this MOU.

22. Representation. The parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this MOU, and agree they have not been influenced by any representations or statements made by any other parties.

23. Headings. Headings in this MOU are for convenience only and will not be used to interpret or construe its provisions.

(Signatures appear on the following pages)

Dated this 9th day of February, 2021.

STANLEY TOWNSHIP, NORTH DAKOTA, a
political subdivision

By: Todd Z Ellig
Todd Ellig, Chairman

ATTEST:

Emily Jo Schultz
Emily Jo Schultz, Township Clerk

Dated this ____ day of February, 2021.

CASS COUNTY, NORTH DAKOTA

Chad M. Peterson, Board Chairman

ATTEST:

Mike Montplaisir, Finance Director