

CASS COUNTY BOARD OF COMMISSIONERS
SPECIAL MEETING AGENDA
MARCH 25, 2021—2:00PM

1. Call Meeting to Order
2. Kevin Biffert & KNB Properties Agreement Information/action
3. Construction Contracts for Jail Intake Expansion Project Information/action
4. Adjournment

M E M O



**County
Administrator**

Robert W. Wilson
701-241-5770
wilsonro@casscountynd.gov

TO: Cass County Commissioners
FROM: Robert W. Wilson
DATE: March 24, 2021
SUBJECT: March 25th Special Meeting Items

At a special meeting on March 25th, 2021 the Board may consider approving an agreement between Cass County and KNB Properties, LLC.

In late 2019 KNB Properties installed an unapproved access to its business location off County Highway 16, just east of the I-29 exit (3301 124th Ave. South, Section 35). The access violates two county ordinances. On January 21, 2020, the Commission authorized sending KNB Properties a letter outlining the violations and a demand to remedy the violations within 20 days. That letter was dated the following day and signed by States Attorney Birch Burdick.

Within the 20-day time period KNB Properties responded, through counsel, to Mr. Burdick indicating a willingness to work with the county to find a more suitable access location. In a February 12th email Mr. Burdick made a record of a meeting earlier that day involving Cass County and KNB Properties representatives. The email indicates the 20-day timeline would be suspended as the parties attempt to work towards a mutually agreeable solution.

On March 11th County Engineer Jason Benson met with KNB Properties representatives to discuss specific timelines and processes Cass County would develop to modify the existing access (at KNB Properties expense) to meet county ordinance requirements. There were no further communications between the parties until May 29, 2020, when Mr. Benson contacted KNB properties again, reiterating a willingness to work in good faith with them.

Mr. Benson received a response from KNB Properties legal counsel on July 13th, providing the first indication the business was not in agreement with several steps Mr. Benson outlined to bring the approach into compliance.

On July 21st county staff approached the Commission requesting Mr. Burdick contact KNB Properties legal counsel and inform them the hold on the 20-day requirement to remedy the violation was lifted, and if action were not completed the county would act. A motion was approved authorizing the County to take enforcement action on or after August 25th.

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211 Ninth Street South
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Cass County Commission
March 24, 2021

In a letter to Mr. Burdick dated August 5th KNB Properties legal counsel described the virtues of the business operating out of the property in question. That letter included the following statement, *“despite these positives, KNB finds itself subject to increasingly intensified actions and threats by Cass County.”* The Commission was briefed on the status of this issue on August 17th.

On August 31st, the Cass County State’s Attorney, Administrator and Engineer meet with Highway Portfolio Commission Duane Breitling about appropriate litigation steps to resolve the matter. Commissioner Breitling recommended engaging legal counsel from the North Dakota Insurance Reserve Fund (NDIRF). If the dispute resulted in litigation NDIRF would be involved, and the County would be well served to receive their input prior to initiating action.

NDIRF-appointed attorney Mr. Dan Gaustad reviewed the history of the dispute and provided feedback to Mr. Burdick on October 27, 2020. Including Mr. Gaustad in this effort extended the length of an already lengthy process. It also contributed greatly to pursuing the County’s interests. Mr. Gaustad’s feedback included additional clarifications and documentation requested of the County Highway Department. Mr. Benson provided the requested information in a letter dated December 9, 2020.

Having received Mr. Gaustad’s input, Mr. Burdick again reached out by letter to KNB Properties legal counsel on January 29, 2021 indicating the business had until March 3rd to remedy the approach. This letter indicated that if KNB Properties failed to remedy the violations, the County would take corrective action. KNB Properties legal counsel responded in writing on February 4, 2021 with a letter that opened with the line, *“it is unfortunate we are having ultimatums handed out by the Cass County.”* That is a creative interpretation of the hundreds of hours of staff time Mr. Burdick and Mr. Benson’s offices have devoted to reaching a mutually agreeable resolution to this matter.

Nevertheless, the February 4th letter spurred a flurry of recent meetings and exchanges of drafts resulting in an agreement, expected to be signed by representatives of KNB Properties. The agreement remedies the ordinance violations to Cass County’s satisfaction, under Cass County’s supervision and at KNB Properties expense.

A natural question is why did we not hold this matter until the next regular meeting on April 5th. Cass County intends to complete this project in 2021. Since it is nearly April, time is getting short and saving a week-and-a half will be significant to bidding and completing this project on schedule.

A copy of the agreement is attached for your review. At your request I can also provide any of the referenced documents.

Suggested Motion: Move to authorize the Chair to sign the agreement between Cass County and KNB Properties, LLC for reconstruction of a portion of County Highway 16.

AGREEMENT

THIS AGREEMENT is made the 23 day of March, 2021 by and between the **CASS COUNTY, NORTH DAKOTA**, whose address is 211 Ninth Street South, Fargo, ND 58108 (hereinafter referred to as the “County”); and **KNB PROPERTIES LLC**, whose post office address is 1609 124th Avenue South, Horace, ND 58047-9558 (hereinafter referred to as the “KNB”).

RECITALS:

A. On August 3, 2015, the County adopted Cass County Ordinance 2007-1 Amended (Cass County Highway Access) (38.19), a copy of which is attached hereto as Exhibit 1 (hereinafter referred to as the “Access Ordinance”).

B. On September 8, 2015, the County adopted Cass County Ordinance 2015-2 (Right of Way Encroachment) (38.28), a copy of which is attached hereto as Exhibit 2 (hereinafter referred to as the “Encroachment Ordinance”).

C. The Access Ordinance and Encroachment Ordinance provide rules, regulations, standards, and guidelines for, among other matters, obtaining authorization and permission, and in turn the design and construction of permanent access facilities to and from property that borders and abuts a County road, highway and/or right-of way.

D. The County was conveyed, by Right of Way Deed dated June 3, 1976, a strip of land 140.0 feet wide, being 70.0 feet on either side of the centerline described in such deed, located in the SE¼ of Section 35, Township 138 North, Range 49 West, Cass County, North Dakota, and containing 4.86 acres. A copy of said Right of Way Deed is attached hereto as Exhibit 3.

E. The 4.86-acre tract of land conveyed to the County in the Right of Way Deed became and is currently part of Cass County Highway 16 corridor.

F. KNB was transferred, conveyed and is the owner of the following described parcel of real property located in Cass County, North Dakota to KNB pursuant to that certain warranty deed dated October 24, 2017 and recorded October 25, 2017 in the Cass County Recorder’s Office as Document Number 1523874 (hereinafter referred to as the “KNB Parcel”):

Auditor’s Lot No. 1 of the South Half of the Southeast Quarter of Section Thirty-five, in Township One Hundred Thirty-eight North of Range Forty-nine West of the Fifth Principal Meridian, situated in the County of Cass and the State of North Dakota.

G. The southern boundary of the KNB Parcel abuts the northern boundary of Cass County Highway 16 corridor, and the Wild Rice River is within a short distance from the southern boundary of Cass County Highway 16 corridor. The location of the KNB Parcel, Cass County Highway 16 corridor and the Wild Rice River is depicted on Exhibit 4.

H. KNB removed an existing field access facility that had provided access to KNB Parcel to and from Cass County Highway 16, and constructed and installed a new access facility for access to and from Cass County Highway 16 (said new permanent access facility shall be referred to herein as the "Existing KNB Access Facility." The Existing KNB Access Facility is shown in the pictures attached as Exhibit 5 and the location of the Existing KNB Access Facility is depicted on Exhibit 6 attached hereto.

I. The parties have reached an agreement and desire to memorialize their agreement.

NOW THEREFORE, FOR A VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, IT IS AGREED:

1. **Recitals.** The Recitals and all Exhibits described above are true and accurate and by this reference are incorporated into and an integral part of this Agreement.

2. **Re-construct County Highway 16.**

2.1. Subject to possible changes that may occur pursuant to the terms of Section 2.1.3, the County shall, pursuant to N.D.C.C. chs. 25-04 and 48-01, bid and enter into a contract with the lowest responsible bidder to accomplish the work described in Sections 2.1.1 and 2.1.2:

2.1.1 Reconstruction and widening of Cass County Highway 16 proposed in the area depicted on Exhibit 7, (herein referred to as the "Highway 16 Reconstruction Area") to install a right turning lane (used for west bound traffic) and a bypass lane (used for east bound traffic) for use in turning from Cass County Highway 16 onto the KNB Parcel and other property abutting Cass County Highway 16 within the Highway 16 Reconstruction Area (attached as Exhibit 9 is illustration of the turning and bypass lanes), and

2.1.2 Upon completion of the New KNB Access Facility, removal, in its entirety, of the Existing KNB Access Facility, and to return such area to the condition that existed prior to the installation of the Existing KNB Access Facility, and the installation of a new permanent access facility for access to the KNB Parcel and onto Cass County Highway 16 at a proposed location west of the Existing KNB Access Facility. The new permanent access facility to be constructed under this Section 2.1.2 shall be referred to herein as the "New KNB Access Facility."

2.1.3 KNB is hiring, at its sole cost, a traffic engineering specialist to perform a Comprehensive Traffic Study to determine a traffic plan for the area of Cass County Highway 16 which is under consideration. Both the County Engineer and KNB will have input into the Comprehensive Traffic Study. The Comprehensive Traffic Study is to assist in determining appropriate access and safety of those using Cass County Highway 16 and/or the property served by County Highway 16. Results of the Comprehensive Traffic Study will be shared with both the County Engineer and KNB and its representatives. The County Engineer and KNB will discuss what, if any, changes should be made to the work described in Sections 2.1.1. and 2.1.2 in light of the results of the Comprehensive Traffic Study. If after such discussion the

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County Engineer and KNB do not agree on incorporation of changes, if any, to the work described in Sections 2.1.1. and 2.1.2, then the County Engineer, in the exercise of its reasonable discretion, shall make the final determination on changes, if any, to be made to the work described in Section 2.1.1 and/or 2.1.2. In assisting the County Engineer's decision under this Section 2.1.3 and in resolving any area of dispute, the County and KNB may, at KNB's sole cost, jointly select a third party with an engineering and traffic background to make recommendations for consideration by the County Engineer.

2.1.4. All the work described in this Section 2.1 to be performed pursuant to this Agreement will hereinafter be referred to as the "Highway 16 Reconstruction."

2.2. The terms and conditions of the bid documents and contract for the Highway 16 Reconstruction shall include the following terms, conditions and requirements all of which shall be the sole responsibility of and performed and/or provided by each contractor or subcontractor:

2.2.1 The Highway 16 Reconstruction shall be in accordance and in conformity with terms of this Agreement, the laws of the State of North Dakota, and applicable construction standards and requirements, including those set out in the Standard Specifications for Road and Bridge Construction, 2020 edition (references therein to the North Dakota Department of Transportation or Department must be construed as referring to the County), all compaction and strength of concrete/pavement standards, and all specifications and requirements of the County, including but not limited to all specifications and requirements under the Access Ordinance, Encroachment Ordinance, any other ordinance of the County.

2.2.2 The Highway 16 Reconstruction shall at all times, be subject to the inspection, approval and entire satisfaction of the County, as determined through its engineer. In the event all or any part of the Highway 16 Reconstruction is not approved or found to be unsatisfactory, or otherwise does not comply with any term or condition of this Agreement, such work shall be cured and remedied so as to cause the Highway 16 Reconstruction to be approved, found to be satisfactory and in compliance with all of the terms and conditions of this Agreement.

2.2.3 All contractors and subcontractors performing any work on the Highway 16 Reconstruction shall be required to comply with all of the terms and conditions of this Agreement (including without limit the provisions described in Sections 4, 5, 6, 7, 8, 9, 11 and 12 below), and this Agreement shall be made a part of and incorporated into all contracts or agreements with any contractor or subcontractor performing any work on the Highway 16 Reconstruction.

2.2.4 Subject to Section 2.2.5 below, the performance of services, construction and installation of the Highway 16 Reconstruction shall not interfere with or otherwise obstruct the continuous, uninterrupted, access and full use and enjoyment of any private or public right-of-way including, any sidewalk, street, traffic flow, traffic control equipment or functions, public utility, sanitary sewers, watermains, storm drains, storm sewers, gas mains, poles, aerial and underground electrical and utility wires, cable television and other

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telecommunications, municipal property or other public or private improvement, and/or any right, privilege or easement of the County.

2.2.5 During the Highway 16 Reconstruction, there shall be erected and maintained good and sufficient guards, barricades, signage and signals at or near the Highway 16 Reconstruction Area (including erecting and maintaining such guards, barricades, signage and signals as required under the current version of the Manual of Uniform Traffic Control Devices), and shall in all cases maintain a safe passageway at all streets, road crossings, sidewalks, crosswalks and street intersections. In the event safe passageway at any street, road crossing, sidewalk, crosswalk or street intersection cannot be maintained, there shall be erected and maintained such guards, barricades and signals as required under the current version of the Manual of Uniform Traffic Control Devices for the temporary closure thereof. The contractor or subcontractor, as the case may be, shall be solely responsible for initiating, maintaining and supervising all safety precautions and measures in connection with the performance of this Agreement, and shall take all safety precautions with respect to the Highway 16 Reconstruction and shall comply with all applicable laws, ordinances, rules and regulations, and lawful orders of any public or governmental authority for the safety of persons or property, including from the County's engineer. Without limiting the foregoing, but in addition thereto, the Highway 16 Reconstruction shall be conducted and performed in such a manner as to not create any unsafe condition for pedestrians, bicyclists or motorists.

2.3 KNB Payment.

2.3.1 KNB shall be solely responsible to pay or cause to be paid as they become due, all costs, expenses and fees (including any claims by contractors and/or subcontractors) for any work, labor, materials, equipment, including but not limited to equipment rental or repair, compaction, strength of concrete and/or other testing requirements of the County (inclusive of Comprehensive Traffic Study), and other supplies or insurance premiums, which are relating to, arising from, attributable to, utilized in and about, required for or determined, found or otherwise adjudged by a court or other tribunal to be due and owing for the Highway 16 Reconstruction (herein referred to as the "Highway 16 Reconstruction Costs and Expenses"). The County shall not, under any circumstance, be responsible or otherwise liable for any Highway 16 Reconstruction Costs and Expenses.

2.3.2 In the event any land rights are necessary to be granted to the County for the Highway 16 Reconstruction, the purchase price, and all costs, fees and expenses for such land rights acquisition shall be paid by KNB (herein referred to as the "Highway 16 Reconstruction Land Rights Costs"). KNB and the County shall cooperate with each other in the acquisition and conveyance to the County of any land rights. The County shall not, under any circumstance, be responsible or otherwise liable for any Highway 16 Reconstruction Land Rights Costs.

2.3.3 Within thirty (30) days after the finalized Highway 16 Plans have been approved by the County, pursuant to Section 3.3.3 below, KNB shall deposit with the County an amount of cash or immediately available funds that is equivalent to the sum of (a) the average of the Engineer's Cost Estimate and the County's Cost Estimate, as determined under Section 3.3.3

below and (b) the County's estimate for the Highway 16 Reconstruction Land Rights Costs, (said funds shall be referred to herein as the "Original Deposit").

2.3.4 In the event the bid amount submitted by the lowest responsible bidder selected to perform the Highway 16 Reconstruction plus the actual amount paid for Highway 16 Reconstruction Land Rights Costs exceeds the Original Deposit, then within thirty (30) days after the County has executed a construction contract with the selected lowest responsible bidder, KNB shall deposit with the County an additional amount of cash or immediately available funds that is equal to the difference between the Original Deposit and sum of (a) the bid amount submitted by the lowest responsible bidder selected to perform the Highway 16 Reconstruction plus (b) the actual Highway 16 Reconstruction Land Rights Costs (said additional funds shall be referred to as the "Additional Deposit). The Original Deposit and Additional Deposit shall be referred to as the "Highway 16 Reconstruction Funds."

2.3.5 In the event a change order is issued for the Highway 16 Reconstruction which increases the amount of the construction contract for the Highway 16 Reconstruction, KNB, within thirty (30) days of said change order being approved by the Construction Engineer, shall deposit with the County an amount of cash or immediately available funds equivalent to the amount of said change order. The deposit under this Section 2.3.5 shall be included within and be a part of the Highway 16 Reconstruction Funds.

2.3.6 The County shall be authorized and directed to use, withdraw and apply the Highway 16 Reconstruction Funds to pay for Highway 16 Reconstruction Costs and Expenses and the Highway 16 Reconstruction Land Rights Costs.

2.3.7 If after all Highway 16 Reconstruction Costs and Expenses and Highway 16 Reconstruction Land Rights Costs have been paid, and all waivers for any further payment have been received from all contractors or subcontractors and there remains any amount of Highway 16 Reconstruction Funds that have not been expended, such excess shall be returned to KNB by the County.

2.3.8. In the event KNB fails to make the deposits required in this Section 2.3 or otherwise fails to pay for all or any part of the Highway 16 Reconstruction Costs and Expenses and/or the Highway 16 Reconstruction Land Rights Costs, in addition to the remedies provided under Section 14.2, the County shall be authorized, and KNB does hereby consent, to have such unpaid amount or amounts to be charged and shall become part of the real property taxes levied against the KNB Parcel, and collected in the same manner as other real property taxes are collected.

3. Plans and Specifications.

3.1. KNB shall prepare, develop, create and provide to the County engineered plans and specifications for the Highway 16 Reconstruction (herein referred to as the "Highway 16 Plans").

3.2. The Highway 16 Plans shall be prepared, developed and created by an engineer licensed within the State of North Dakota (herein referred to as the “Engineer”). The appropriate professional engineer (P.E.) and/or land surveyor (L.S.) endorsement shall be placed on the Highway 16 Plans, and/or any other documents, plans, or plats provided by the Engineer relating to the Highway 16 Reconstruction.

3.3. KNB shall enter into a written contract with the Engineer to prepare, develop and create the Highway 16 Plans, and shall provide to the County a copy of said written agreement. The following terms and conditions shall be required to be made a part of and incorporated into the written contract between KNB and the Engineer:

3.3.1. Any and all costs, expenses and fees charged or incurred by the Engineer to prepare, develop and create the Highway 16 Plans or to oversee or manage the Highway 16 Reconstruction shall be paid by KNB, and the County shall not, under any circumstances, be responsible or otherwise liable for any of such costs, expenses and fees.

3.3.2. The Engineer shall comply and be bound by all of the terms and conditions of this Agreement.

3.3.3. Within (five) 5 weeks after this Agreement is executed, preliminary drafts of the Highway 16 Plans shall be provided to the County for review. The County’s engineer and the Engineer shall meet to discuss and resolve any comments or issues raised by the County engineer’s review of the preliminary draft of the Highway 16 Plans. Within nine (9) weeks after the Agreement is executed, the finalized the Highway 16 Plans shall be provided to the County for review. The County, by and through its engineer, shall determine, in the exercise of its reasonable discretion, that the Highway 16 Plans (preliminary drafts and/or final) meet all applicable engineering and construction standards and requirements, including but not limited to standards and requirements set out in the Standard Specifications for Road and Bridge Construction, 2020 edition, and all specifications and requirements of the County, including but not limited to all specifications and requirements of the Access Ordinance, Encroachment Ordinance, other ordinance of the County and other policy or standard of the County (inclusive that all driving lanes, turn lanes and bypass lanes have a minimum of 12” of aggregate base and 7” of asphalt, the turn and bypass lane requirements noted on Exhibit 9 and to account for appropriate location of improvements to account for Wild Rice River). In the event the County finds that all, or any part of, the Highway 16 Plans (preliminary drafts and/or final) do not meet such standards and requirements, the Engineer shall be required to modify, amend and change the Highway 16 Plans so as to cause to remedy the unacceptable provisions. The modified, amended or changed Highway 16 Plans shall likewise be subject to review by the County, by and through its engineer, to determine whether such plans do comply with the herein described standards, requirements and specifications. Seven (7) days prior to the Highway 16 Plans being submitted for final approval by the County, the Engineer shall submit a bid item list with estimated quantities to the County Engineer. On the date of final plan submittal, the Engineer will prepare an estimate of Highway 16 Reconstruction Costs and Expenses (the “Engineer’s Cost Estimate”) and likewise the County, by and through its engineer, shall prepare an estimate of the Highway 16 Reconstruction Costs and Expenses (the “County’s Cost Estimate”). In the event the Engineer’s Cost Estimate is less than ninety percent (90%) of the County’s Cost Estimate, then the parties

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shall engage a licensed engineer to prepare an estimate of the Highway 16 Reconstruction Costs and Expenses (the "Independent Engineer's Cost Estimate"). KNB shall pay the cost and expense for the Independent Engineer's Cost Estimate.

3.3.4. The Engineer shall comply with all applicable federal state and local laws together with all applicable ordinances and regulations applicable to the work and require the engineer to procure all licenses, permits, and other rights necessary for the fulfillment of the obligations under this Agreement.

3.3.5. The Engineer shall comply with Title VI of the Civil Rights Act of 1964, Executive Order 112246 and Executive Order 11375.

3.3.6. The Engineer shall permit the duly authorized representatives of the County, the North Dakota Department of Transportation, Federal Highway Administration (FHWA), to the extent such state or federal governmental entities are involved in any part of the development of the Highway 16 Plans and/or the reconstruction of Cass County Highway 16, and KNB to inspect and copy the Engineer's books, documents, papers, plans, files, and records relating to the work performed pursuant to this Agreement, and that all of books, documents, papers, accounting records, and other evidence pertaining to the costs incurred for the work relating to this Agreement shall be retained by the Engineer and available for inspection by the County, North Dakota Department of Transportation, or FHWA for a period of three years after the date of final payment to the Engineer.

3.3.7. The original copies of all drawings, prints, plans, and field notes prepared by the Engineer, shall, upon completion of the Highway 16 Reconstruction, become the property of the County.

3.3.8. The Engineer, its agents, officers, employees, contractors and sub-contractors shall indemnify, save and hold the County, its agents, officers, employees, contractors and other sub-contractors harmless from any and all actions, claims, demands, liabilities, losses, damages, fines, penalties, expenses or fees, including attorneys' fees and disbursements, which arise out of, result from, relate to or are in connection with the Engineer's work on Highway 16 Plans, the Highway 16 Reconstruction, or otherwise to be performed by the Engineer under the terms or conditions of this Agreement. Without limiting the foregoing, the indemnification obligation of the Engineer shall include the obligation and duty to defend the County, from and against all claims, lawsuits, actions or other matters relating to or in any manner arising from the Engineer's indemnification obligations hereunder. The indemnification under this Section 3.3.8 applies during the entire term of this Agreement and shall continue to apply after the Highway 16 Reconstruction has been Substantially Completed, for the period of time described in N.D.C.C. § 28-01-44.

4. Licenses/Permits. The Engineer and each contractor or subcontractor performing any work or services relating to the Highway 16 Reconstruction or the Highway 16 Plans, shall, secure any and all required licenses, permits or similar authorizations as may be necessary or requested by the County to perform or install any part of the Highway 16 Reconstruction, including

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without limit, any permit, authorization or other approval from the North Dakota Department of Transportation or the County.

5. Competent Persons to the Employed. All services for the Highway 16 Reconstruction and the Highway 16 Plans shall be performed in a competent and professional manner. The Engineer and each contractor or subcontractor performing any services relating to Highway 16 Reconstruction or the Highway 16 Plans shall employ or contract suitable employees, engineers, contractors and subcontractors to perform the Highway 16 Reconstruction and/or prepare the Highway 16 Plans, and to extent required, all such employees, engineers, contractors and subcontractors shall have a valid license for the services or work to be performed hereunder. If any employee, engineer, contractor and subcontractor appear incompetent, disorderly or disobedient to the County, or does not have the required license, such person or entity shall, upon request of the County, by and through the County's engineer, be immediately discharged, at the sole cost and expense of the contractor and/or subcontractor.

6. Compliance with Laws/Non-Discrimination.

6.1. Without limiting any other provision herein, all contractors and subcontractors performing any services relating to Highway 16 Reconstruction shall be required to comply with any and all federal, state, county, local and municipal laws, statutes, codes, regulations, resolutions, rules and ordinances effective where the Highway 16 Reconstruction or the preparation of the Highway 16 Plans are to be performed, and to pay all costs and expenses connected with such compliance, to pay all fees and taxes, including sales and use taxes, and also to pay all taxes imposed by any federal, state, county, local or municipal law, statute, code, regulation, resolution, rule or ordinance for any employment insurance, pensions, old age retirement funds or any similar purpose and to furnish all necessary reports and information to the appropriate federal, state, county, local and municipal agencies with respect to all of the foregoing and to hold the County harmless from any and all loss or damage occasioned by the failure to comply with the terms of this Section 6.1.

6.2 All contractors and subcontractors performing any services relating to the Highway 16 Reconstruction and/or preparation of the Highway 16 Plans shall be required to covenant and agree that no person on the grounds of sex, creed, race, religion, disability, marital status, age, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the providing of the services hereunder.

6.3 Without limiting the foregoing, but in addition thereto, all the terms and conditions described on Exhibit 8 attached hereto, being the North Dakota Department of Transportation Title VI Assurances, are incorporated into and included as a part of this Agreement, and all contractors and subcontractors performing any services relating to the Highway 16 Reconstruction and/or preparation of the Highway 16 Plans shall be required to comply all of said terms and conditions.

6.4. All contractors and subcontractors performing any services relating to the Highway 16 Reconstruction and/or preparation of the Highway 16 Plans shall be required to

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comply with Title VI of the Civil Rights Act of 1964, Executive Order 112246 and Executive Order 11375.

7. Completion/Delivery of Highway 16 Reconstruction/Force Majeure

7.1. The Highway 16 Reconstruction shall be Substantially Completed on or before October 1, 2021, unless extended pursuant to Section 7.5 below. As used herein, "Substantially Completed" shall be the time at which the Highway 16 Reconstruction (or a specified part thereof) has progressed to the point where, in the opinion of County, as determined by the County's engineer, the Highway 16 Reconstruction (or a specified part thereof) is sufficiently complete, in accordance with the terms hereof, so that the Highway 16 Reconstruction (or a specified part thereof) can be utilized for the purposes for which it is intended. The County's engineer shall provide written notice to the contractor and KNB upon determining the Highway 16 Reconstruction is Substantially Completed.

7.2. The Highway 16 Reconstruction shall be Finally Completed on or before October 15, 2021, unless otherwise mutually agreed by the parties or extended pursuant to Section 7.5 below. As used herein, "Finally Completed" shall mean the date the Highway 16 Reconstruction has been finally and fully completed to the satisfaction of and accepted by the County, as determined by the County's engineer. The County's engineer shall provide written notice to KNB upon determining the Highway 16 Reconstruction is Finally Completed.

7.3. The County, by the County's engineer or other County representative, shall have the right to inspect the Highway 16 Reconstruction at any time, including but not limited to inspection to determine compliance with the terms of this Agreement and whether Highway 16 Reconstruction is Substantially Completed and Finally Completed.

7.4. In the event that any contractor and subcontractor performing any services relating to the Highway 16 Reconstruction or the County is unable to perform its obligations due to any cause, a natural disaster, pandemic, social unrest or action, order or decree of a governmental body with appropriate jurisdiction that is beyond the control of the said contractor or subcontractor, or the County (hereinafter referred to as a "Force Majeure Event"), the party affected by the Force Majeure Event shall immediately give notice to the other party of such fact and shall do everything possible to resume its performance. Upon the receipt of such notice, each party's obligations hereunder shall be suspended for the period of such Force Majeure Event. If the Force Majeure Event lasts for a period of sixty (60) days or more from the date that the other party receives notice of such Force Majeure Event and the party that received such notice has been able to perform its obligations hereunder despite such Force Majeure Event, the party that received such notice may terminate this Agreement by giving notice thereof to the party unable to perform because of such Force Majeure Event and shall be under no further obligations to the other party under this Agreement.

7.5. In the event the lowest responsible bid received by the County to perform the Highway 16 Reconstruction for the 2021 construction season is more than one hundred ten percent (110%) of the Cost Estimate, then the County will re-bid and have a bid opening no later than February 1, 2022 for the Highway 16 Reconstruction to be performed during the 2022

construction season and date the Highway 16 Reconstruction is to be Substantially Completed shall be extended to August 31, 2022 and the date the Highway 16 Reconstruction is to be Finally Completed shall be extended to September 15, 2022. For purpose of this Section 7.5, Cost Estimate shall mean the average of the Engineer's Cost Estimate and the County's Cost Estimate, as determined under Section 3.3.3, provided, however, if an Independent Engineer's Cost Estimate is obtained pursuant to Section 3.3.3, then for purposes of this Section 7.5, Cost Estimate shall mean the Independent Engineer's Cost Estimate.

8. Contractor Work Defects. All contractors and subcontractors performing any services relating to the Highway 16 Reconstruction shall be required to adequately and properly protect the Highway 16 Reconstruction performed by it, to be responsible for damages to persons and property occasioned by its failure to do so and to be responsible for any defective or improper work or material caused by its failure to do so. In the event any contractor and subcontractor fails to correct, replace and/or re-execute faulty or defective work done and/or materials furnished under this Agreement, when and as required by the County's engineer or other County representative, or shall fail to complete or diligently proceed with this Agreement, or are unable to proceed with the work, the County upon one (1) days' notice to contractors and subcontractors whether written or oral, shall have the right, but not the obligation, to correct, replace and/or re-execute such faulty or defective work, or to take over this Agreement and complete the same either through its own employees or through a contractor or sub-contractor of its choice, and to charge all costs, expenses and fees thereof to contractors and subcontractors.

9. Indemnification; Risk of Loss.

9.1. All contractors and sub-contractors performing any services relating to the Highway 16 Reconstruction shall be required (1) to and shall indemnify, save and hold the County, its agents, officers, employees, contractors and other sub-contractors harmless from any and all actions, claims, demands, liabilities, losses, damages, fines, penalties, expenses or fees, including attorneys' fees and disbursements, which arise out of, result from, relate to or are in connection with the Highway 16 Reconstruction to be performed hereunder and/or the obligations of the respective contractor and/or subcontractor under the terms or conditions of this Agreement, (2) to assume the entire risk, responsibility, payment and liability for all actions, claims, demands, liabilities, losses, damages or injury to all persons, whether employees or otherwise, and to all property, arising out of, resulting from, relating to or in any manner connected with, the execution of the Highway 16 Reconstruction provided for in this Agreement or occurring or resulting from the use of materials, equipment, instrumentalities or other property, whether the same be owned by the County or third parties, and (3) to indemnify, save and hold the County its agents, officers, employees, contractors and other sub-contractors harmless from all such claims and legal fees and disbursements paid or incurred to enforce the provisions of this Agreement.

9.2. Without limiting the foregoing, the indemnification obligation described under this Section 9 shall include the obligation and duty to defend the County, from and against all claims, lawsuits, actions or other matters relating to or in any manner arising from indemnification obligations under this Agreement. It is intended that the indemnity and risk of loss provisions in this section shall be interpreted so as to be enforceable to the fullest extent permitted by law. Further, the provisions of this section shall survive the termination of this

Agreement and the completion of the Highway 16 Reconstruction hereunder and shall apply to all claims regardless of whether they arise before or after completion of the Highway 16 Reconstruction under this Agreement.

9.3. Without in any manner limiting the provisions of Sections 9.1 or 9.2 above, all contractors and subcontractors performing any services relating to the Highway 16 Reconstruction shall be required to assume all risk of loss relating to any damage to the Highway 16 Reconstruction and all supplies, materials and/or equipment incorporated in and/or used to complete the Highway 16 Reconstruction prior to Highway 16 Reconstruction being Finally Completed.

9.4 The provisions of this Section 9 shall not apply to the Engineer and instead the applicable indemnification by the Engineer is as set out in Section 3.3.8 above.

10. Ownership of Highway 16 Reconstruction.

10.1 The County shall be the sole and exclusive owner of all portions of the Highway 16 Reconstruction (which includes the New KNB Access Facility) upon the Highway 16 Reconstruction being Finally Completed, and this Agreement, along with documentation of the Highway 16 Reconstruction being Finally Completed shall be the documentation of the conveyance, transfer, grant and assignment of the Highway 16 Reconstruction to the County, except that KNB, for itself, its successors and assigns, shall grant an easement for use of its property necessary for the Highway 16 Reconstruction and subsequent road and access purposes, as long as the land of KNB on which an easement is granted is used for road and/or access purposes. KNB will, for all purposes and forever, have and shall be deemed to have terminated, cancelled, abandoned, acquitted, quitclaimed, discharged, released, relinquished, surrendered and waived any and all right, title, interest and/or claims KNB has to the Highway 16 Reconstruction right of way land, except for the land of KNB for which an easement is granted. KNB will not have or assert any claim to any part of the Highway 16 Reconstruction, except for any part of Highway 16 construction which occurs on KNB's land for which KNB will grant an easement for road and access purposes. The New KNB Access Facility will extend to the northern right of way boundary of Cass County Highway 16 and/or to the northern boundary of the easement granted by KNB for road right of way or access for Cass County Highway 16. If the road right of way changes or if the easement area changes, the northern boundary of the road right of way will change accordingly.

11. Insurance.

11.1. All contractors and sub-contractors performing any services relating to the Highway 16 Reconstruction and/or preparation of the Highway 16 Plans shall be required to obtain, maintain, and pay for such workers' compensation insurance for all of its employees as may be required by law; comprehensive general liability insurance, builder's risk and comprehensive automobile liability insurance, in amounts requested by the County (with a minimum of \$1,000,000 bodily injury, \$500,000 property damage and \$2,000,000 umbrella for general liability policy limits, and \$250,000 per person, \$1,000,000 per incident and \$100,000 property damage for automobile policy limits) and with reputable insurance companies which

policies shall protect the County from and against claims for bodily injury or death, for damage to property occurring upon, in or about the area in which the work is to be performed, and to insure against all matters in which the respective contractor and/or subcontractor has an indemnification obligation under this Agreement.

11.2. All contractors and sub-contractors performing any services relating to the Highway 16 Reconstruction and/or preparation of the Highway 16 Plans shall cause the County to be named as an additional insured under each of said insurance policies covering the County for all matters arising from or related to this Agreement and the obligations of the contractor or subcontractor, which endorsement as an additional insured shall include a “waiver of subrogation” waiving any right of recovery by the applicable insurance company from the County and also requiring that such policy and/or additional insured endorsement may not be cancelled or modified without thirty (30) days written notice to the County.

11.3. Prior to commencing the Highway 16 Reconstruction, all contractors and sub-contractors performing any services relating to the Highway 16 Reconstruction shall provide the County with certificates of insurance showing the coverage required hereunder in a form acceptable to the County. All certificates shall show the County as the certificate holder.

11.4. All insurance required under this Agreement shall be continuously maintained until the Highway 16 Reconstruction is Finally Completed.

12. Paragraph intentionally deleted -- numbering retained.

13. **KNB Representations and Warranties.** KNB represents and warrants to the County, which the County has relied upon and shall continue to rely upon, as follows:

13.1. KNB is duly qualified to transact business in North Dakota, and has the requisite power and authority to enter into and perform this Agreement.

13.2. This Agreement has been duly executed and delivered by KNB and is a valid and binding obligation of KNB enforceable in accordance with its terms.

13.3. This Agreement and the documents and instruments required to be executed and delivered by KNB pursuant hereto have each been duly authorized by all necessary corporate action on the part of KNB and that such execution, delivery and performance does and will not conflict with or result in a violation of any judgment, order or decree of any court or arbiter to which KNB is a party, or any agreement to which KNB is subject.

13.4. KNB has not (1) made a general assignment for the benefit of creditors, (2) filed any involuntary petition in bankruptcy or suffered the filing of any involuntary petition by KNB’s creditors, (3) suffered the appointment of a receiver to take possession of all or substantially all of KNB’s assets, (4) suffered the attachment or other judicial seizure of all, or substantially all, of KNB’s assets, (5) admitted in writing its inability to pay its debts as they come due, or (6) made an offer of settlement, extension or composition to its creditors generally

13.5. That there are no claims currently pending or threatened nor does the KNB have any reason to believe that any claims would be brought or threatened in the future against the KNB's rights, ownership, title or interest in and to the Highway 16 Reconstruction completed hereunder.

14. Default of KNB.

14.1 An event of default by KNB shall occur if

14.1.1 KNB fails to act or otherwise observe or perform any of the terms or conditions of this Agreement,

14.1.2 KNB admits in writing its inability to pay its debts generally as they become due,

14.1.3 KNB admits in writing the fact that its debts exceed a fair valuation of its property,

14.1.4 KNB commences a voluntary proceeding under any applicable federal or state bankruptcy, insolvency or other similar law,

14.1.5 KNB makes an assignment for the benefit of its creditors,

14.1.6 KNB consents to the entry of an order for relief in an involuntary proceeding under any applicable federal or state bankruptcy, insolvency or other similar law, or

14.1.7 KNB has entered against it by a court of competent jurisdiction a decree or order granting relief in any involuntary case under any applicable federal or state bankruptcy law, or appointing, with or without the consent of the KNB, a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the KNB or for any substantial part of its property, or approving a plan for reorganization of the KNB, or ordering the winding up or liquidation of their affairs, and such decree or order shall not be vacated, set aside or stayed for a period of thirty (30) consecutive days.

14.2 Upon the occurrence of an event of default by KNB, the County may pursue any and all other available legal or equitable remedies against KNB for such default, including but not limited to the termination of all of KNB rights under this Agreement, pursuing any remedies available under the Access Ordinance, Encroachment Ordinance, and/or seeking recovery for all damages or other remedies available to the County. All rights and remedies of the County from an event of default shall be cumulative, and the exercise or partial exercise of any such right or remedy shall not preclude the exercise of any other right or remedy.

15. Release

15.1 The parties hereto release and forever discharge each other of and from any and all manner and types of claims, demands, actions, causes of action, liabilities, suits, debts,

KNB

sums of money, accounts, bonds, bills, covenants, contracts, controversies, agreements, promises, damages, and judgments whatsoever, state or federal, in law or equity, and whether the claims or damages are developed or undeveloped, known or unknown, foreseen or unforeseen, asserted or unasserted, suspected or unsuspected, anticipated or unanticipated, permanent or progressive, or from which recovery is uncertain and indefinite, and any and all consequences of any and all such claims, demands, actions, and causes of action, emotional distress, economic damages, non-economic damages, payments and/or distributions under any state or federal statute, special damages, compensatory damages, punitive damages, costs, disbursements, expert witness fees, and attorneys' fees arising from or in any manner related to the KNB's access to the KNB Parcel, KNB's installation and removal of the Existing KNB Access Facility and/or KNB's installation of the New KNB Access Facility, any of the parties may now have or claim to have against any party hereto upon, or by reason of any matter, event, cause or thing whatsoever, arising out of, based in whole or in part upon, relating to, or existing by reason of the facts, circumstances, transactions, events, occurrences, acts, omissions or failures to act, of whatever kind or character whatsoever, with respect to any and all matters relating to KNB's access to the KNB Parcel, KNB's installation and removal of the Existing KNB Access Facility and/or KNB's installation of the New KNB Access Facility.

15.2 Notwithstanding anything to the contrary, the release described in this Section 15 does not extend to any of the parties' obligations under this Agreement.

15.3. The parties further acknowledge and agree that nothing in this Agreement waives, releases or in any manner alters any right, title, interest, claim, assertion, allegation, averment, defense, demand, action and/or cause of action relating to KNB's alleged compliance or alleged failure to comply with the County's Ordinance #2006-1 Amended (Cass County Subdivision Ordinance) (38.18) (herein the "Subdivision Ordinance"), including without limit, County's assertion and claim that KNB is subject to and has failed to comply with the Subdivision Ordinance as it relates to the KNB Parcel and having constructed a building and other improvements that are located within the minimum disturbance zone and limited disturbance zone, none of which are admitted by KNB, and KNB's assertion and claim it is not subject to the and is not required to comply with the Subdivision Ordinance, none of which is admitted by the County. The parties understand and acknowledge the disputes regarding the Subdivision Ordinance is not in any manner the subject of this Agreement, and in turn is to be resolved either by subsequent court review or agreement of the parties. The parties further agree and acknowledge that any resolution of the Subdivision Ordinance dispute shall not alter, modify or change any term of this Agreement, including the Highway 16 Reconstruction.

16. Notices. Any notice, request, instruction or other document to be given hereunder by any party hereto to any other party shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, overnight express mail service, e-mail transmission or other acceptable method of transmission, (including U.S. postal delivery) that assures receipt thereof, addressed as follows:

If to County: County Engineer
 1201 Main Avenue West
 West Fargo, ND 58078

KNB

If to KNB

KNB Properties, LLC
Attn: Kevin Biffert
700 Main Avenue
Fargo, ND 58103

or at such other address for a party as shall be specified by like notice. Any notice which is delivered personally in the manner provided herein shall be deemed to have been duly given to the party to whom it is directed upon actual receipt by such party (or its agent for notices hereunder). Any notice which is addressed and mailed in the manner herein provided shall be conclusively presumed to have been duly given to the party to which it is addressed at the close of business, local time of the recipient, on the third day after the day it is so placed in the mail.

17. Continuation of Warranties and Obligations. All representations, warranties, rights, duties and obligations within this Agreement, shall be binding upon and inure to the benefit of the parties to this Agreement, their respective successors, heirs and assigns, and it is the express intention of the parties that said representations, warranties, rights, duties and obligations shall survive and continue to be effective subsequent to the date of this Agreement.

18. Status of Parties. It is understood by and between the parties hereto that the KNB (including all employees, engineers, contractors, subcontractors, agents or representatives of KNB), while engaged in conducting or performing any services, activities and/or undertakings pursuant to this Agreement and/or complying with any terms of this Agreement is not, and shall not be a contractor, subcontractor, independent contractor, officer, agent, representative, servant or employee of the County.

19. Nonwaiver. A waiver by any party of any default or breach by any other party of any of the representations, warranties, rights, duties, covenants, terms or conditions of this Agreement shall not bar the party waiving the default of the other from enforcing such representations, warranties, rights, duties, covenants, terms or conditions or to pursue its rights arising out of any subsequent default or breach thereafter.

20. Entire Agreement. This Agreement is the entire agreement between the parties, and supersedes all prior negotiations, understandings and agreements, if any. This Agreement may be amended, modified, or supplemented only by an instrument in writing duly executed by all parties hereto.

21. Time. Time is of the essence of this Agreement.

22. Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. As used herein, "counterparts" shall include full copies of this Agreement signed and delivered by mail, electronically, e-mail transmission or by facsimile transmission, as well as photocopies of such documents.

KNB

23. **Assignment.** KNB shall not assign this all or any part of this Agreement, or any work KNB shall perform hereunder, without the prior written consent of the County.

24. **Interpretation.** This Agreement has been made and entered into in the State of North Dakota and shall be governed by the laws of the State of North Dakota.

25. **No Construction Against Author.** This Agreement shall not be construed more strictly against one party than against the other by virtue of the fact that it may have been drafted or prepared by counsel for one of the parties, it being recognized that both parties have each contributed substantially and materially to the preparation of this Agreement.

26. **Severability.** If any provision of this Agreement shall be held by any court of competent jurisdiction to be illegal, void or unenforceable, such provision shall be of no force and effect, but the illegality, voiding or unenforceability of any such provision shall have no effect upon and shall not impair the enforceability of any other provision of this Agreement.

27. **Headings.** The headings used herein are for convenience only and shall not be construed as a part of this Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

28. **Binding Effect.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective legal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CASS COUNTY, NORTH DAKOTA

KNB PROPERTIES LLC

By: _____
Its: Chairperson



By: Kevin Biffert
Its: President

Exhibit 1

CASS COUNTY
COMMISSION POLICY MANUAL

38.19

SUBJECT: ORDINANCE #2007-1 AMENDED (CASS COUNTY HIGHWAY ACCESS)

ADOPTED DATE: AUGUST 3, 2015

PAGE 1 OF 2

AN ORDINANCE REGULATING ACCESS ONTO HIGHWAYS IN CASS COUNTY:

WHEREAS, The County of Cass has a Home Rule Charter, enacted in 1994 pursuant to North Dakota Century Code Section 11-09.1; and

WHEREAS, within the Home Rule Charter Article 2, the electors granted the Cass County Board of Commissioners authority to provide for the adoption, amendment, repeal, initiation, referral, enforcement, and penalties for violation of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety and welfare; and

WHEREAS, within the Home Rule Charter Article 2, the electors granted the Cass County Board of Commissioners authority to lay out or vacate public grounds, and provide for the construction, use, operation, designation, and regulation of a county road system; and

WHEREAS, N.D.C.C. §24-01-30 provides county highway authorities the power to establish controlled-access facilities for public use wherever such authority or authorities are of the opinion that traffic conditions, present or future, will justify such special facilities. Said highway authorities of the county, in addition to the specific powers granted by law, also have and may exercise, relative to controlled-access facilities, any and all additional authority now or hereafter vested in them relative to highways or streets within their respective jurisdictions. Said units may regulate, restrict, or prohibit use of such controlled-access facilities by the various classes of vehicles or traffic in a manner consistent with the definition of a controlled-access facility; and

WHEREAS, the primary function of County Highways is to carry large volumes of through traffic and a secondary and subservient function is to provide access to abutting property; and

WHEREAS, the absence of reasonable controls and regulations for access results in a reduction of roadway capacity and safety. Unregulated access substantially increases delay and congestion to the motoring public using the County Highway system; and

WHEREAS, conflicts between vehicles using a County Highway and vehicles entering and exiting via access facilities are minimized through the application of appropriate design standards. Therefore, the application of controlled-access will promote consistent driver expectations resulting in maximum operational efficiencies and safety, and protect the public investment in County Highways.

Exhibit 1

CASS COUNTY
COMMISSION POLICY MANUAL

38.19

SUBJECT: ORDINANCE #2007-1 AMENDED (CASS COUNTY HIGHWAY ACCESS)

ADOPTED DATE: AUGUST 3, 2015

PAGE 2 OF 2

NOW, THEREFORE, be it ordained by the Board of Commissioners of the County of Cass that the Cass County Highway Access Ordinance, which is attached and incorporated by reference, is hereby enacted this 2nd day of April, 2007.

APPROVED:

ss/Chad M. Peterson
Chad M. Peterson, Chairman
Board of Commissioners of the
County of Cass

ATTEST:

ss/Michael Montplaisir
Michael Montplaisir, County Auditor

(SEAL)

First Reading: 07/06/2015
Second Reading: 08/03/2015
Final Passage: 08/03/2015
Publication: 07/13/2015

HISTORICAL REFERENCE DATE: APRIL 2, 2007

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CHAPTER 1 Title, Introduction, Purpose, and Commentary

1.1 Title

This Ordinance shall be known as and may be referred to as the "Cass County Highway Access Ordinance," hereinafter referred to as the Ordinance.

1.2 Introduction

The owner of a parcel of land abutting a County Highway has a property right to reasonably access that County Highway. However, this right does not guarantee the right to access the County Highway at any and/or all points along a property's frontage on the County Highway. The County, through the use of its police power, may restrict access or require the use of indirect access to serve a property. As long as the exercise of that power leaves the landowner with reasonable access, there is no taking of a property right and no compensation is due.

Through the authority granted by the laws of the State of North Dakota, the County may, in accordance with regulations adopted by the County Commission, regulate the access to County Highways. To provide for the efficient movement of traffic, safeguard the motoring public, and reduce congestion on the public ways, it is hereby declared to be the policy of the County to regulate access to County Highways for public and private use through the standards and specifications established by this Ordinance. The standards and specifications contained in this Ordinance were developed to minimize the frequency and severity of conflicts between vehicles using a County Highway and vehicles entering or exiting at approved access facilities. The review of a request for access to a County Highway will involve the consideration of all factors affecting the operation, capacity, and safety of the County Highway and the proposed access facility.

1.3 Purpose

The primary function of County Highways is to carry large volumes of through traffic. A secondary and subservient function is to provide access to abutting property.

The absence of reasonable controls and regulations for access results in a reduction of roadway capacity and safety. Unregulated access substantially increases delay and congestion and decreases safety to the motoring public using the County Highway system.

Conflicts between vehicles using a County Highway and vehicles entering and exiting via access facilities are minimized through the application of appropriate design standards. Therefore, the

Exhibit 1

application of the regulations and standards contained in this Ordinance will promote consistent driver expectations, resulting in maximum operational efficiencies and safety, and protect the public investment in County Highways.

This Ordinance is adopted for the following purposes:

- To protect and provide for the public health, safety, and general welfare of the County;
- To preserve an acceptable level of service on County Highways;
- To minimize conflicts between vehicles using County Highways and vehicles entering and leaving via access facilities on County Highways;
- To promote and ensure the safety of the motoring public using County Highways;
- To preserve the ability of the County to provide adequate and safe highway facilities to serve the general public;
- To provide for the proper location and limit the number of access facilities to regulate safe and reasonable access from County Highways to abutting property and to provide sufficient spacing between access points to minimize interference with traffic using adjacent access facilities;
- To establish reasonable standards and design specifications for access facility improvements on County Highways to protect the public infrastructure;
- To minimize congestion and delay on County Highways which are the results of providing access to abutting property, and reduce air pollution;
- To prohibit the use of a County Highway as a portion of the internal circulation system of abutting property;
- To provide for the establishment of sufficient pavement, right of way, and easement widths; and
- To establish reasonable requirements for performance and maintenance guarantees, to ensure the proper construction of required improvements, and to ensure that required improvements are completed in an expeditious manner in accordance with current American Association of State Highway and Transportation (AASHTO) and North Dakota Department of Transportation (NDDOT) standards and specifications.

1.4 Commentary

Whenever a section of this Ordinance requires additional explanation to clarify the intent, subsections prefaced "COMMENTARY" are included. They are intended solely as a guide for both officials and the general public to aid in the administration and interpretation of this Ordinance.

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CHAPTER 2 Definitions

2.1 Purpose

It is the purpose of this Chapter to define words, terms, and phrases contained in this Ordinance.

2.2 General Word Usage

In the interpretation of this Ordinance, the following provisions shall be observed and applied except when the context clearly requires otherwise:

1. Words used or defined in one tense or form shall include other tenses and derivative forms.
2. Words in the singular shall include the plural, and words in the plural shall include the singular.
3. The masculine gender shall include the feminine, and the feminine gender shall include the masculine.
4. The word "shall" is mandatory.
5. The word "must" is mandatory.
6. The word "may" is permissive.
7. The word "should" is advisory.
8. In the event of any difference of meaning or implication between the text of this Ordinance and any caption, illustration, or table, the text shall control.
9. Terms not specifically defined in this Ordinance have the meaning commonly associated in conversation and/or in similar ordinances.

2.3 Definitions

Words, terms, and phrases underlined in the definitions are those, which are themselves defined in this Section. The following words, terms, and phrases are hereby defined and shall be interpreted as such throughout this Ordinance.

Access. A means of vehicular entry to or exit from a property.

Access Facility. A Private or public driveway or road providing service to and/or from abutting property to a highway.

Exhibit 1

Access Permit. A permit issued by Cass County granting access to a County Highway from abutting property and allowing construction or reconstruction of an access facility in accordance with the provisions of this Ordinance.

Applicant. A municipality, property owner, or utility company that makes application for a permit.

Average Daily Traffic (ADT). The number of vehicles using a road (in both directions) during a twenty-four (24) hour period.

Clear Zone. Roadside border area available for safe use by errant vehicles. The desired minimum width is dependent upon traffic volumes and speeds.

County: County of Cass, North Dakota, also Cass County, North Dakota.

County Commission. The County Commission of Cass County, North Dakota.

County Engineer. The Cass County Engineer acting directly, or his designee.

County Highway. A public road designated by the Cass County Commission as part of the county highway system.

Dedication. The transfer of property interests from private to public ownership for a public purpose. The transfer may be of fee-simple interest or of a less than fee interest.

Design Speed. A speed determined for design and correlation of the physical features of a highway that can influence vehicle operation. It is the maximum safe speed that can be maintained over a specified section of highway when conditions are so favorable that the design features of the highway govern.

Driveway. A private or public way, for the use of vehicles, providing service between a highway and abutting property.

Emergency Access. An access which is designated and utilized solely by emergency vehicles.

Exhibit 1

Facility. A non-roadway object, structure, or device, manmade or natural, that is designed, constructed, located, or placed to serve a specific function, purpose, or perform a particular service. Facilities include, but are not limited to, sidewalks, bike paths, sewer lines, water lines, street lighting, signage, trees, or any other non-highway appurtenance.

Frontage. The distance, as measured along the highway right of way line, between the property lines of the abutting property.

Frontage Road. A road which is adjacent to or included in the right of way of a highway or railroad, and which provides access to abutting properties and separation from through traffic.

Geometric Plan. A preliminary plan identifying proposed roadway improvements as warranted by the traffic study.

Highway Department. The Cass County Highway Department.

Intersection. The general area where an access facility and a road, two or more roads, or two access facilities join or cross.

ITE. The Institute of Transportation Engineers.

ITE Trip Generation. The most recent edition of, and any supplements thereto, of the informational report ITE Trip Generation, and any successor documents.

Land-Use. See Use.

Land-Use Density. An intensity measurement usually expressed in terms of the number of units or square feet of a particular land-use permitted to be built, constructed, or placed on a defined parcel of land.

MUTCD. Manual on Uniform Traffic Control Devices for Streets and Highways.

Negative Access Easement: An easement, usually designated on a plat, which operates to deny direct access to a street or public way from the lot or lots adjacent to such street or way.

Exhibit 1

Legal Lot. A designated parcel, tract, or area of land established by a plat or otherwise permitted by law at the time of its creation to be used, developed, or built upon as a unit.

Lot, Corner. A lot abutting two roads at their juncture.

Parcel. See legal lot.

Peak-Hour Volume. The highest hourly vehicular volume observed, or anticipated, at the point of analysis during a normal day.

Performance Guarantee. A check (cashier's or personal), bank draft, or bank money order made payable to the Cass County Highway Department to protect the county highway system and ensure compliance with this Ordinance for the construction or modification of all access facilities.

Permit. A formal, written document authorizing an access point onto a County Highway and authorizing certain work to be performed within the right of way of a County Highway which sets forth the terms and conditions applicable to the access point and of said work in conformance of this Ordinance.

Posted Speed. The speed limit of the County Highway as indicated on the regulatory sign.

Private Road. A road in which there is no public interest and for which no public agency has jurisdictional or maintenance responsibilities.

Right of Way. A strip of land occupied or intended to be occupied for public road purposes.

Right of Way Line. The boundary between the land acquired for or dedicated to highway use and abutting property.

Shared Access. An access facility used jointly by two or more properties.

Use. The purpose or activity for which land, or any structure thereon, is designed, arranged, or intended, or for which it is occupied or maintained.

Exhibit 1

CHAPTER 3 Administrative Provisions

This Chapter sets forth the administrative provisions for this Ordinance.

3.1 Authority

The North Dakota Century Code, as amended, provides for the County Commission and the County Engineer to have authority over supervision of County Highways. This Ordinance is hereby adopted to preserve and protect the public safety, health, and general welfare as it relates to the operation and use of County Highways, and associated right of ways.

Pursuant to Section 24-05-17 of the North Dakota Century Code, as amended, the Cass County Board of County Commissioners has sole authority and responsibility to acquire land for, construct, maintain, and operate the county highway system. Section 39-10-21 of the North Dakota Century Code, as amended, provides Cass County the authority by ordinance to prohibit the use of any such roadway by any class or kind of traffic which is found incompatible with the normal and safe movement of traffic with respect to any controlled-access roadway.

Section 24-01-30 provides county highway authorities the power to establish controlled-access facilities for public use wherever such authority or authorities are of the opinion that traffic conditions, present or future, will justify such special facilities. Said highway authorities of the county, in addition to the specific powers granted by law, also have and may exercise, relative to controlled-access facilities, any and all additional authority now or hereafter vested in them relative to highways or streets within their respective jurisdictions. Said units may regulate, restrict, or prohibit use of such controlled-access facilities by the various classes of vehicles or traffic in a manner consistent with the definition of a controlled-access facility.

Section 39-10-20 of the North Dakota Century Code restricts any person from driving onto or from any controlled-access roadway except at such entrances and exits as are established by public authority.

Article 2 of the Home Rule Charter states that the electors granted the Cass County Board of Commissioners authority to provide for the adoption, amendment, repeal, initiation, referral, enforcement, and penalties for violation of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, and welfare.

Exhibit 1

Article 2 of the Home Rule Charter states that the electors granted the Cass County Board of Commissioners authority to lay out or vacate public grounds, and provide for the construction, use, operation, designation, and regulation of a county highway system.

3.2 Jurisdiction

This Ordinance shall apply to all access facilities providing, or proposed to provide, service from and/or to a County Highway to any property after the enactment of this Ordinance by the County Commission.

This Ordinance shall not be construed in any manner or form to limit or restrict the power or authority of the County or the County Engineer to maintain, operate, improve, construct, reconstruct, manage, widen, or expand any County Highway as may be best determined, as provided by law, including the modification, restriction, or elimination of any access facility permitted under this Ordinance or any access facility permitted prior to the adoption of this Ordinance.

3.3 Enactment

This Ordinance shall be in full force and effect from and after its passage and effective date according to law except for all access requests submitted prior to the adoption of this Ordinance and which have received written preliminary approval. All requests submitted prior to adoption of this Ordinance, which have not been given written preliminary approval, and all requests submitted subsequent to the adoption of this Ordinance shall be governed by the provisions of this Ordinance as finally enacted.

3.4 Repealer and Savings Clause

The prior policies establishing rules, regulations, and specifications governing access to County Highways are hereby repealed, provided such repeal shall not affect the right of the County to institute any action at law or in equity to require compliance or prosecute violations thereunder, it being the County's intention to preserve all such causes of action and not to excuse any violation under the prior rules, regulations, and specifications.

Exhibit 1

3.5 Interpretation and Separability

3.5.1 Interpretation

The County Engineer shall render any interpretations of this Ordinance, which are necessary to promote efficient administration and review of access requests. This Ordinance shall be interpreted strictly and in accordance with the standards set forth herein. Whenever any provision of this Ordinance overlaps, contradicts, or covers the same subject matter as any other provision of this Ordinance or any other County Ordinance regulation or rule, the more restrictive or higher standard shall control.

3.5.2 Separability

Each chapter, section, subsection, paragraph, subparagraph, sentence, clause, phrase, word, provision, rule and regulation, or restriction established by this Ordinance or any amendments thereto are hereby declared to be separable and independent, in accordance with the following.

- a. If any court of competent jurisdiction shall adjudge any provision of this Ordinance to be invalid, such judgment shall not affect any provision of this Ordinance not specifically included in the judgment.
- b. If any court of competent jurisdiction shall adjudge invalid the application of any provision of this Ordinance to a particular property, access, highway improvement, or access facility, such judgment shall not affect the application of the provisions to any property, access, highway improvement, or access facility not specifically included in the judgment.

3.5.3 Law Governing

In any controversy or dispute under this Ordinance or in any claims arising hereunder or related hereto, whether in contract or tort, they shall be governed by the laws of North Dakota. Any suit regarding requirements of this Ordinance must be brought in a court of competent jurisdiction in Cass County, North Dakota.

3.5.4 Compliance

No new access facility shall be approved or constructed, and no existing access facility shall be modified, which does not comply with the provisions set forth in this Ordinance.

Exhibit 1

Should an access be illegally placed within the County right of way, it may be removed by the Highway Department at the owner's expense.

3.6 Amendments

In order to promote the public health, safety, and general welfare, the County Commission may from time to time amend the regulations imposed by this Ordinance.

3.7 Types of Access

The following types of access, described more fully in Chapters 7, 8 and 9, are hereby established:

(a) Permanent, (b) Temporary, and (c) Field Drive.

3.8 Variance

3.8.1 General

Where the County Engineer finds that hardships or practical difficulties may result from strict compliance with this Ordinance, the County Engineer may approve a variance to the requirements of this Ordinance so that substantial justice may be done and the public interest subserved thereby, provided that such variances shall not have the effect of nullifying the intent and purpose of this Ordinance.

The County Engineer may require that a Traffic Impact Study, studies, or data be submitted when reviewing a request for a variance from the provisions of this Ordinance.

3.8.2 Variance Requests

A petition for any variance shall be submitted in writing to the County Engineer by the applicant. The applicant must prove that the variance will not be contrary to the public interest and that a practical difficulty or hardship will result if it is not granted.

3.8.3 Standards for Variance

No variance in the strict application of the provisions of this Ordinance shall be granted unless it is found that the following relevant requirements and conditions are satisfied. The County Engineer may grant variances whenever it is determined that all of the following have been met.

Exhibit 1

- a. The granting of the variance shall be in harmony with the general purpose and intent of the regulations imposed by this Ordinance and shall not result in undue delay or congestion or be detrimental to the safety of the motoring public using the County Highway.
- b. There must be proof of unique or existing special circumstances or conditions where the strict application of the provisions of this Ordinance would deprive the applicant of reasonable access. Circumstances that would allow reasonable access by a road or street other than a County Highway, circumstances where indirect or restricted access can be obtained, or circumstances where engineering or construction solutions can be applied to mitigate the condition shall not be considered unique or special.
- c. There must be proof of practical difficulty or hardship. It is not sufficient to show that greater profit or economic gain would result if the variance would be granted. Furthermore, the hardship or difficulty cannot be self-created or self-imposed; nor can it be established on this basis by the applicant who purchases with or without knowledge of the provisions of this Ordinance. The difficulty or hardship must result from the strict application of this Ordinance and it must be suffered directly and solely by the applicant of the property in question.
- d. The variance is the least deviation from the provisions of this Ordinance which will mitigate the hardship or practical difficulty.

3.8.4 Action by the County Engineer

Upon receipt of all the relevant information, facts, data, and a review by the County Engineer, the County Engineer shall render a decision in writing to the applicant. The County Engineer may, in the decision for a variance, stipulate conditions or impose requirements in granting of a variance from the provisions of this Ordinance.

Exhibit 1

3.9 Appeals Procedure

3.9.1 County Engineer

All objections to any action or decision concerning access shall be filed in writing with the County Engineer. The County Engineer shall consider the objections, and after a decision has been made shall inform the applicant the action taken on said objection.

3.9.2 County Commission

If the applicant is dissatisfied with the action or decision of the County Engineer, a written objection may be filed with the County Commission and the County Commission will consider the objection and formulate a response. The County Commission may modify or overturn any previous action or decisions.

3.10 Violations and Penalties

The provisions of this Ordinance shall not be deemed exclusive and shall not be deemed to prevent the maintenance of any other action or proceeding in law or equity to enforce the provisions of this Ordinance or to vacate and remove any access facility constructed in violation of this Ordinance.

The County Engineer shall have the authority to delay the issuance of permits to an applicant due to the failure of the applicant to comply with the provisions of other permits issued to the applicant or if the property served by the permitted work or facility is in violation of or has not complied with the provisions of the Access Ordinance or any other ordinance, statute, regulation or administrative order that may apply to such property. Approval will not be unreasonably denied.

3.10.1 Newly constructed Access Facility

Any owner of a newly constructed access facility in violation of the requirements of this Ordinance shall be notified by the Highway Department and ordered to remove the access facility by an appropriate removal date established by the County Engineer. The County Engineer may also place temporary barricades blocking said access facility until such point the owner has removed the access facility which is in violation of this Ordinance.

Whoever shall construct, or cause to be constructed, any access facility in violation of the requirements of this Ordinance and who has also failed to remove the access facility by the removal date established by the County Engineer shall be subject to a fine of \$250.00

Exhibit 1

for each access facility so constructed. Each day the access facility is in place in violation of this Ordinance shall constitute a separate offense, subject to the above penalties. A violation shall also include any access facilities to County Highways built without approval and a permit as required by this Ordinance as well as approved facilities built with substandard designs and specifications.

3.10.2 Change in Land-Use or Land-Use Density

Any owner or person utilizing an existing access facility in violation of the requirements of this Ordinance because change in land-use or land-use density has occurred shall be notified by the Highway Department and ordered to immediately cease use of said access facility and the County Engineer may place temporary barricades blocking said access facility.

Whoever shall use any existing access facility in violation of the requirements of this Ordinance because change in land-use or land-use density has occurred and who continues using the access facility after notification by the Highway Department shall be subject to a fine of \$250.00. Each day the access facility is continued to be used following the notification of the Highway Department shall constitute a separate offense, subject to the above penalties.

3.11 Responsibility for Damage Claims

The applicant shall indemnify, save harmless, and defend the Highway Department and the County, its officers, agents, and employees against all loss, damage, or expense that it or they may sustain as a result of any suits, actions, or claims of any character brought on account of property damage, injury to or death of any person or persons, including all persons performing any work under the access permit, which may arise in connection with the work to be performed under the access permit.

The access permit is not intended by any of the Provisions of any part of the access permit to make the public or any member thereof a third party beneficiary of the Access Permit, or to authorize any one not a party to the access permit to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the access permit. The duties, obligations, and responsibilities of the parties to the access permit with respect to third parties shall remain as imposed by law.

Exhibit 1

CHAPTER 4 Classification of Access Types and General Requirements

An access permit shall be required for the construction of any new access facility or the modification of any existing access facility within the right of way of a County Highway when the work is to be done by any person or public agency other than Cass County or when the use of an existing facility is changed. An access permit shall not be required for a public agency when a joint agreement covers the work involved therein or at such times as the County Engineer is exercising statutory supervisory authority. The County Engineer may, upon written request, extend the term of an access permit for such a period as seen fit. The access type corresponds to specific design standards and specifications. The applicant must specify the type of access being requested: Permanent, Temporary, or Field Drive Access.

4.1 General Requirements

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 improvements to a County Highway as required by this Ordinance to accommodate the access facility and the traffic using the access facility.

CHAPTER 5 Right of Way

5.1 Right of Way Requirements

This section sets forth right of way requirements, including minimum widths and restoration.

5.1.1 General

The 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. If the property abutting a County Highway is to be subdivided or a permanent access facility is being requested, the owner shall dedicate, at no cost to the County, sufficient land to satisfy this right of way requirement.

5.1.2 Restoration of Right of Way

Upon completion of any construction work within the right of way, the right of way shall be restored in accordance with the permitted plans acceptable to the County Engineer.

COMMENTARY: Additional right of way required in this section is needed to accommodate future highway improvements because of the cumulative traffic generation

Exhibit 1

of developments and to accommodate access facilities. Right of way widths are also needed to accommodate roadway drainage, snow storage, utilities and facilities, and to provide for traffic and pedestrian safety.

CHAPTER 6 Subdivision Plats

6.1 Subdivision Plats

When property abutting a County Highway is to be subdivided or developed, direct access to a County Highway shall not be used in lieu of an adequate internal traffic circulation system and any direct access to a County Highway shall meet the Cass County Highway Access Ordinance and be approved by the County Engineer.

6.2 Direct Access

Direct access, either to or from the County Highway shall be restricted and shown on the plat with a negative access easement.

6.3 Negative Access Easement

The negative access easement shall be depicted on the plat with a legible hatched area of appropriate width and shall include the following language on the plat:

Negative Access Easement, as noted on this plat, is an easement dedicated as part of the right of way dedication which easement denies direct vehicular access to a street or public way from the lot or lots adjacent to such street or way. The negative access easement is not a strip of land of any certain width, but is a line coterminous with the boundary of the adjacent lot or lots.

CHAPTER 7 Requirements for Permanent Access Facilities

7.1 Permit Process and Requirements

The process for a Permanent Access Permit consists of the following steps:

1. The applicant shall sign and submit an application to the County Engineer along with a nonrefundable application fee.
2. A performance guarantee (see Chapter 13) in an acceptable form for \$1000 dollars shall be submitted and made payable to the Cass County Highway Department.

Exhibit 1

3. The Highway Department will make an onsite survey to determine the culvert length and diameter, as applicable. In addition, the Highway Department will verify the access location and determine if the location will provide safe ingress and egress to the lot.
4. The County Engineer may require other additional studies, plans, and information in order to review and evaluate the applicant's application. At the County Engineer's discretion the applicant shall provide the following studies, plans, and information:
 - Traffic Impact Study
 - Traffic Signal Warrant Analysis
 - Sight Distance Study
 - Geometric Plan
 - Pavement Design
 - Engineering Plans
 - On-site Engineering Plan
 - Cost Estimate
 - Photographs of the existing right of way at 100 foot intervals. All photographs must be taken parallel, not perpendicular to, the right of way.

All submitted documents shall be signed and sealed by a professional engineer. Specific direction will be given at the initial meeting or in the initial review letter.

5. Upon receipt and approval of items 1-4 in Section 7.1, the Permanent Access Permit will be issued and construction of the new approach or modification of an existing approach may commence as per the installation start date.
6. When construction has been completed and all required reports have been submitted, the applicant or applicant's representative shall notify the Highway Department in writing and request a final inspection (see Section 12.6). Depending on seasonal workload, please allow 1-2 weeks for final inspection to be completed.
7. At such time as all work has been done to the complete satisfaction of the Highway Department, the performance guarantee shall be released.

Exhibit 1

CHAPTER 8 Requirements for Temporary Access Facilities

8.1 Permit Process and Requirements

The process for a Temporary Access Permit consists of the following steps:

1. The applicant shall sign and submit an application to the County Engineer along with a nonrefundable application fee.
2. A performance guarantee (see Chapter 13) in an acceptable form for \$1000 dollars shall be submitted and made payable to the Cass County Highway Department.
3. The Highway Department will make an onsite survey to determine the culvert length and diameter, as applicable. In addition, the Highway Department will verify the access location and determine if the location will provide safe ingress and egress to the lot.
4. Upon receipt and approval of items 1-3 listed in Section 8.1, the Temporary Access Permit will be issued and construction of the new approach may commence as per the permit installation date. The removal date of the approach will be included with the approved permit.
5. When construction has been completed, the applicant or applicant's representative shall notify the Highway Department in writing and request a final inspection (see Section 12.6). Depending on seasonal workload, please allow 1-2 weeks for final inspection to be completed.
6. At such time as all work has been done to the complete satisfaction of the Highway Department, the performance guarantee shall be released.

CHAPTER 9 Requirements for Field Drive Access Facilities

9.1 Permit Process and Requirements

The process for a Field Drive Access Permit consists of the following steps:

1. The applicant shall sign and submit an application to the County Engineer along with a nonrefundable application fee.

Exhibit 1

2. A performance guarantee (see Chapter 13) in an acceptable form for \$1000 dollars shall be submitted and made payable to the Cass County Highway Department.
3. A Field Drive Access will be permitted where, in the determination of the County Engineer, the field has no other reasonable access. Typically, one field drive access may be granted to a property under the same ownership or controlling interest. Additional Field Drive Accesses may be permitted if the necessity for such additional access is demonstrated due to topography or ongoing agricultural activities. Field Drive Accesses will be kept to the minimum necessary in order to provide reasonable access. The permit for a Field Drive Access will state the conditions as to its use by agricultural equipment only.

If a change in land-use occurs and an existing field drive access is proposed to be used, the owner shall sign and submit an application to the Highway Department to continue use of the existing access facility. The application shall be reviewed as per the requirements for a new access facility and all the provisions of this Ordinance shall apply.

4. Upon receipt and approval of items 1-2 in Section 9.1, the Field Drive Access Permit will be issued and construction of the new approach or modification of an existing approach may commence as per the installation start date.
5. When construction has been completed, the applicant or applicant's representative shall notify the Highway Department in writing and request a final inspection (see Section 12.6). Depending on seasonal workload, please allow 1-2 weeks for final inspection to be completed.
6. At such time as all work has been done to the complete satisfaction of the Highway Department, the performance guarantee shall be released.

CHAPTER 10 Access Policies

Any owner of property abutting a County Highway has the right of reasonable access. The following policies shall be applied to all types of access.

Exhibit 1

10.1 Access Criteria

This Section describes criteria applicable to all access facilities. The criteria presented include the maximum number of access facilities and their permissible location with respect to adjacent access facilities and intersecting streets.

10.1.1 Alignment with Existing Access Facilities or Roads

Where an existing access facility or road is on the opposite side of the County Highway from an abutting property for which access is being requested, the proposed access point shall be aligned with the existing access facility or road whenever possible. Given site specific characteristics or operational considerations on the County Highway, the County Engineer may waive this requirement.

10.1.2 Spacing of Adjacent Access Points and Intersecting Streets

To function effectively, adjacent access points and intersecting streets shall be spaced to ensure safe and efficient traffic movements and operations. **Access shall generally be restricted to one access per one-quarter mile.**

If a property has inadequate frontage to meet this spacing requirement, the County Engineer shall determine the location of the access point using the standards and provisions established by the Ordinance. The County Engineer may require that the access facility be shared, that indirect access be used, or that the access facility restrict turning movements.

10.2 Restricted Turning Movements

In certain instances, turning movements may be restricted. Conditions under which turning movements may be restricted are listed below.

1. Where numerous low-volume access points exist and the spacing between them does not permit adequate left-turn tapers and storage bays for inbound vehicles without blocking adjacent access points.
2. At access points close to an intersection where inbound or outbound left turns would have to be made within areas where traffic is queued during any period of the day.

Exhibit 1

3. Where other conditions, such as sight distance, prevent left turns in or left turns out from being made safely.
4. Where a particular parcel is provided with more than one access point and volumes do not justify left-turn access into and/or from both access points, restrictions may be required at one or both access points.
5. When a parcel has access provided by both a signalized access point and an unsignalized access point, left turns in and left turns out may be prohibited at the unsignalized location.
6. When the median opening for left-turning vehicles would be too close to another median opening, left turns may be prohibited at one of the access points.
7. When other capacity, delay, operational, or safety conditions make specific left turns in or left turns out detrimental to the public interest. These conditions will be identified on a site-specific basis.

Turning movement restrictions shall be enforced with barrier median channelization or driveway channelization. The County Engineer shall determine the type of channelization on a case-by-case basis. Signing shall also be required. The signing shall conform to the provisions of the MUTCD.

10.3 Indirect Access

10.3.1 Access to Other Streets

Access to a County Highway may be prohibited when a property abutting a County Highway has frontage on one or more other streets and reasonable access can be provided from said streets. The County Engineer shall determine, on a site-specific basis whether access will be permitted to the County Highway.

10.3.2 Access to Property Being Subdivided or Developed

When property abutting a County Highway is to be subdivided or developed, direct access to a County Highway shall not be used in lieu of an adequate internal traffic circulation system. Indirect access to individual lots shall be required from an internal traffic circulation system which itself provides access to the County Highway or other street. The

Exhibit 1

County Engineer shall determine, on a site-specific basis, which lots abutting the County Highway may have direct access and which lots shall have indirect access.

COMMENTARY: As an area develops and subdivisions are platted contiguous to one another, the internal street system should interconnect. Such interconnection permits local movement between subdivisions without forcing trips between subdivisions to use major roads such as County Highways as part of an internal circulation system.

For commercial developments, outlots and service to individual businesses should be provided by an internal circulation system. The purpose of major roads such as County Highways is to carry traffic to and from such sites, not to augment or be a part of an internal circulation system.

10.4 Changes in Land-Use

If a change in land-use or land-use density occurs and an existing access facility is proposed to be used, the owner shall make application to the Highway Department to continue use of the existing access facility. The application for use of the existing access facility shall be reviewed as if it were a new access facility and all the provisions of this Ordinance shall apply.

COMMENTARY: Changes in land-use or land-use density result in a change in the number of vehicles using an access facility; therefore, modifications, improvements, or revisions may be required to the access facility and/or the County Highway to accommodate the change.

10.5 Access to Subdivided or Previously Platted Parcels

Access to land subdivided prior to the adopted date of this Ordinance April 2, 2007, shall comply with the requirements of this Ordinance to the extent possible. Owners of such property for which access is being requested and for which compliance with this Ordinance cannot be attained may request the County Engineer to grant access. Such access granted by the County Engineer shall be the least deviation from the rules, regulations, and specifications of this Ordinance.

COMMENTARY: Many older existing subdivisions were platted with small lots fronting on County Highways. In these instances shared access or indirect access can be used to reduce the number of access points on a County Highway.

Exhibit 1

10.6 Shared Access

Certain geometric, land-use, and site conditions may require shared access among two or more developments or properties. This would occur when frontages are small and each development or property is unable to meet the requirements of this Ordinance. In these instances, shared access shall be provided to adjacent developments or properties. The County Engineer shall determine on a site-specific basis when shared access shall be required.

CHAPTER 11 Design Standards

The design of highway improvements and access facilities shall comply with the standards and specifications set forth in this Ordinance (see Figure 11.1). Any deviations from these specifications must be filed as a variance (refer to Section 3.8) unless otherwise specified.

11.1 General

11.1.1 Crown

The pavement crown shall have a 2.5 percent slope for gravel access facilities and 2.1 percent slope for hard surface access facilities.

11.1.2 Side slopes

The access facility shall have 8:1 side slopes within the clear zone of the intersecting highway.

11.1.3 Driving Surface

The access facility shall have a minimum 24 foot driving surface for field access and very low volume private drives. Width requirements for higher volume facilities will be determined by the County Engineer.

11.1.4 Culvert

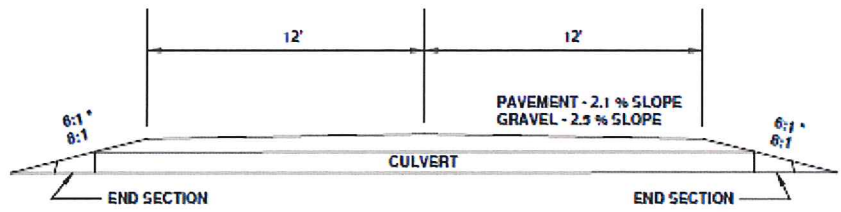
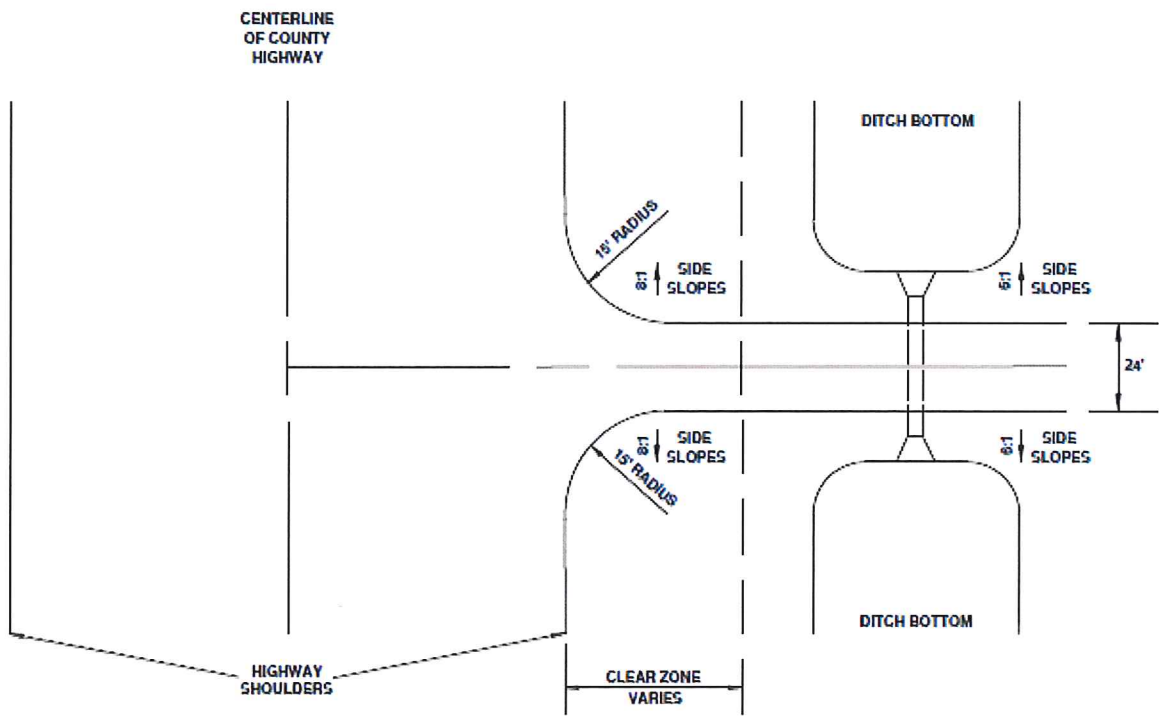
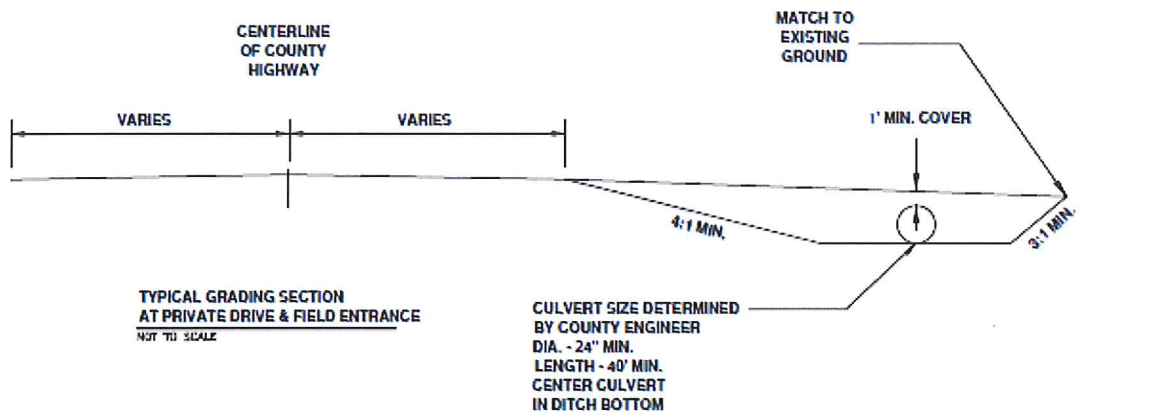
The culvert diameter shall be a minimum of 24 inches and the length of the culvert shall be a minimum of 40 feet as determined by the County Engineer. Private and field drive entrance culverts shall be installed in the center of the ditch bottom.

11.1.5 Radius

The access facility shall have a minimum 15 foot radius for field accesses and very low volume private drives. Radius requirements for higher volume facilities will be determined by the County Engineer.

Exhibit 1

Figure 11.1



TYPICAL PRIVATE DRIVE & FIELD ENTRANCE CULVERT INSTALLATION CROSS SECTION
NOT TO SCALE

* 8:1 WITHIN CLEAR ZONE; 6:1 OUTSIDE OF CLEAR ZONE

Exhibit 1

11.2 Design Speed

The design speed to be used for designing improvements under the provisions of this Ordinance shall be equal to or exceed the posted or regulatory speed of the County Highway to which the improvement is being made.

11.3 Auxiliary Lanes

Where appropriate, the County Engineer may require additional traffic lanes to facilitate vehicular turning movements at existing or proposed highway access facilities.

11.3.1 Turn Lanes

Turn lane installation will generally be calculated using Figure 11.2, as it presently exists or may hereafter be amended.

Warrants are determined by plotting thru traffic volume and turning traffic volume on Figure 11.2 for two-lane highways. Traffic volumes should be adjusted for the percentage of heavy vehicles. Divide each approach volume by the appropriate correction factor from Table 11.1 before plotting on Figure 11.2.

Design year ADT is used to determine left-turn lane warrants. A left-turn lane provides a full-width lane for vehicle storage. If a left-turn lane is warranted on only one approach of the mainline at a four-way intersection, a left-turn lane should be provided on the opposite approach as well.

Warrants for right-turn lanes are based upon present ADT and are divided into two categories – major and minor. A major right-turn lane provides a full-width lane for deceleration from the design speed on the mainline. A minor right-turn lane assumes vehicles will decelerate to 30 mph on the mainline before entering the auxiliary lane.

11.3.2 Design

Turn lanes shall be constructed to the design and specifications of the County Engineer.

11.3.3 ADT

The latest average daily traffic (ADT) for the road shall be utilized in the calculation, unless such figure is out of date or significant change to the road, traffic, or area has occurred since the ADT was last collected, as determined by the County Engineer. Projected ADT's may be used if significant increases in traffic are anticipated by the

Exhibit 1

County Engineer.

11.3.4 Trip Generation

The developments ADT shall be calculated by trip generation rates prepared by the ITE as indicated in Table 11.2 or as listed in the latest edition of the ITE Generation Manual. Trip generation rates from other sources may be used if the applicant demonstrates that these sources better reflect local conditions.

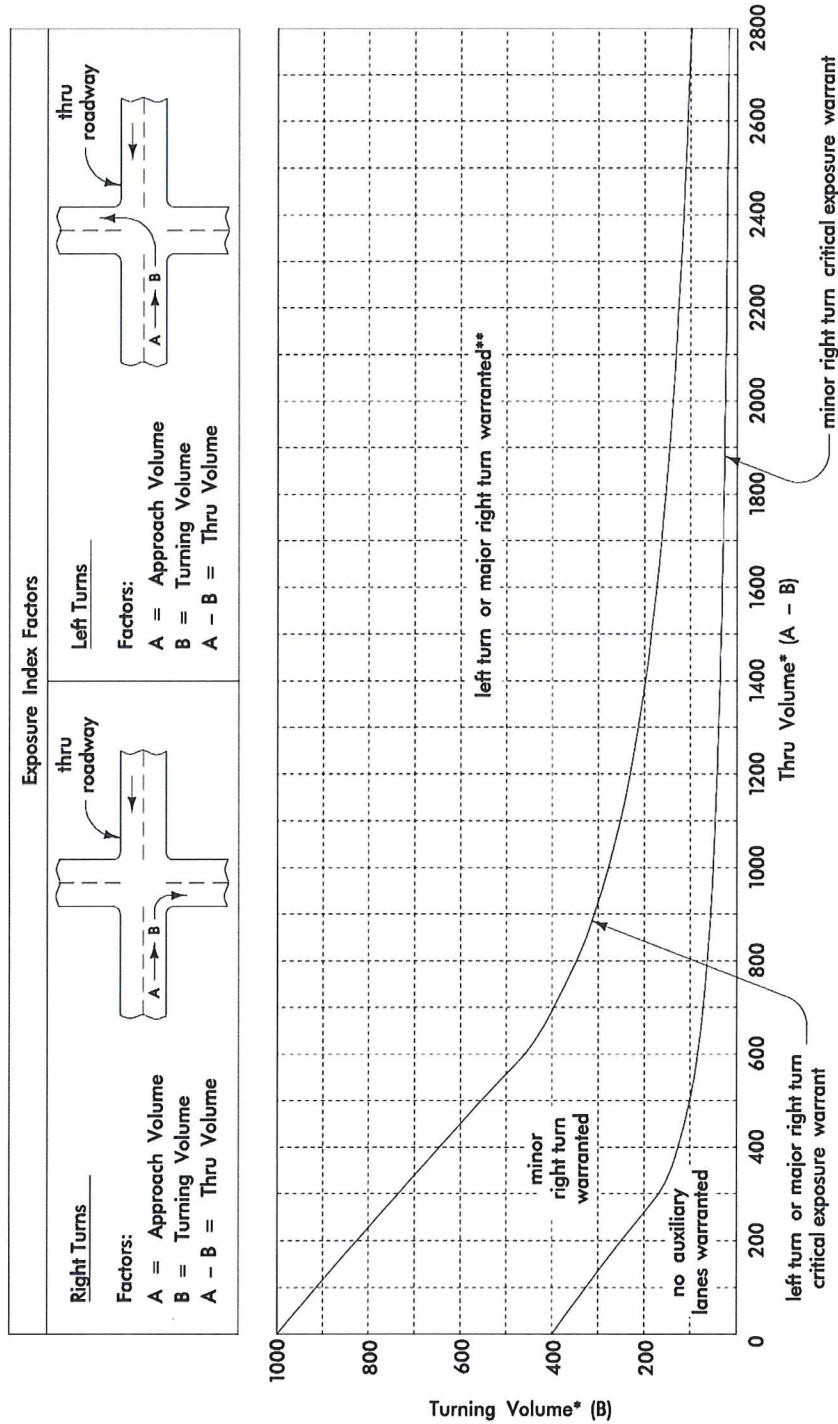
11.3.5 Improvement Costs

If a turn lane is warranted, the cost of such improvement shall be the responsibility of the applicant and constructed to the design and specifications of the County Engineer.

Figure 11.2

Rural Two-Lane Highways

Rural Two-Lane Highways



Traffic volume is based on current ADT for right turns, and design year ADT for left turns.

*Traffic volume must be adjusted for trucks based on Table 1.

**At gravel road intersections, use minor right turn.

Source: Iowa Department of Transportation Office of Design. 2004. [Horizontal intersection design: rural two lanes \(6A-1\)](#). Ames, Iowa: Iowa Department of Transportation Office of Design.

Exhibit 1

Table 11.1

Truck adjustment factors. Divide each approach volume by the appropriate factor.

Truck %	Correction Factor	Truck %	Correction Factor	Truck %	Correction Factor	Truck %	Correction Factor
0	1.05	6	0.99	12	0.93	18	0.87
1	1.04	7	0.98	13	0.92	19	0.86
2	1.03	8	0.97	14	0.91	20	0.85
3	1.02	9	0.96	15	0.90	25	0.80
4	1.01	10	0.95	16	0.89	30	0.75
5	1.00	11	0.94	17	0.88	35	0.70

Source: Iowa Department of Transportation Office of Design. 2004. [Horizontal intersection design: rural two lanes \(6A-1\)](#). Ames, Iowa: Iowa Department of Transportation Office of Design.

Exhibit 1

Table 11.2

INSTITUTE OF TRANSPORTATION ENGINEERS COMMON TRIP GENERATION RATES (PM Peak Hour)

(Trip Generation Manual, 9th Edition)

Code	Description	Unit of Measure	Trips Per Unit	Code	Description	Unit of Measure	Trips Per Unit
PORT AND TERMINAL							
30	Truck Terminal	Acres	6.55	432	Golf Driving Range	Tees / Driving Positions	1.25
90	Park and Ride Lot with Bus Service	Parking Spaces	0.62	433	Batting Cages	Cages	2.22
INDUSTRIAL							
110	General Light Industrial	1,000 SF	0.97	435	Multi-Purpose Recreational Facility	Acres	5.77
120	General Heavy Industrial	Acres	2.16	437	Bowling Alley	1,000 SF	1.71
130	Industrial Park	1,000 SF	0.85	441	Live Theater	Seats	0.02
140	Manufacturing	1,000 SF	0.73	443	Movie Theater without Matinee	1,000 SF	6.16
150	Warehousing	1,000 SF	0.32	444	Movie Theater with Matinee	1,000 SF	3.80
151	Mini-Warehouse	1,000 SF	0.26	445	Multiplex Movie Theater	1,000 SF	4.91
152	High-Cube Warehouse	1,000 SF	0.12	452	Horse Race Track	Acres	4.30
170	Utilities	1,000 SF	0.76	454	Dog Race Track	Attendance Capacity	0.15
RESIDENTIAL							
210	Single-Family Detached Housing	Dwelling Units	1.00	460	Arena	Acres	3.33
220	Apartment	Dwelling Units	0.62	473	Casino / Video Lottery Establishment	1,000 SF	13.43
221	Low-Rise Apartment	Dwelling Units	0.58	480	Amusement Park	Acres	3.95
230	Residential Condominium / Townhouse	Dwelling Units	0.52	488	Soccer Complex	Fields	17.70
240	Mobile Home Park	Dwelling Units	0.59	490	Tennis Courts	Courts	3.88
251	Senior Adult Housing - Detached	Dwelling Units	0.27	491	Racquet / Tennis Club	Courts	3.35
252	Senior Adult Housing - Attached	Dwelling Units	0.25	492	Health / Fitness Club	1,000 SF	3.53
253	Congregate Care Facility	Dwelling Units	0.17	493	Athletic Club	1,000 SF	5.96
254	Assisted Living	Beds	0.22	495	Recreational Community Center	1,000 SF	1.45
255	Continuing Care Retirement Community	Dwelling Units	0.16	INSTITUTIONAL			
LODGING							
310	Hotel	Rooms	0.60	520	Elementary School	1,000 SF	1.21
320	Motel	Rooms	0.47	522	Middle School / Junior High School	1,000 SF	1.19
330	Resort Hotel	Rooms	0.42	530	High School	1,000 SF	0.97
RECREATIONAL							
411	City Park	Acres	0.19	536	Private School (K-12)	Students	0.17
412	County Park	Acres	0.09	540	Junior / Community College	1,000 SF	2.54
413	State Park	Acres	0.07	560	Church	1,000 SF	0.55
415	Beach Park	Acres	1.30	565	Daycare Center	1,000 SF	12.46
416	Campground / Recreation Vehicle Park	Camp Sites	0.27	566	Cemetery	Acres	0.84
417	Regional Park	Acres	0.20	571	Prison	1,000 SF	2.91
420	Marina	Berths	0.19	580	Museum	1,000 SF	0.18
430	Golf Course	Acres	0.30	590	Library	1,000 SF	7.30
431	Miniature Golf Course	Holes	0.33	591	Lodge / Fraternal Organization	Members	0.03
				MEDICAL			
				610	Hospital	1,000 SF	0.93
				620	Nursing Home	1,000 SF	0.74
				630	Clinic	1,000 SF	5.18
				640	Animal Hospital / Veterinary Clinic	1,000 SF	4.72

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Code	Description	Unit of Measure	Trips Per Unit
OFFICE			
710	General Office Building	1,000 SF	1.49
714	Corporate Headquarters Building	1,000 SF	1.41
715	Single Tenant Office Building	1,000 SF	1.74
720	Medical-Dental Office Building	1,000 SF	3.57
730	Government Office Building	1,000 SF	1.21
732	United States Post Office	1,000 SF	1.22
733	Government Office Complex	1,000 SF	2.85
750	Office Park	1,000 SF	1.48
760	Research and Development Center	1,000 SF	1.07
770	Business Park	1,000 SF	1.29
RETAIL			
812	Building Materials and Lumber Store	1,000 SF	4.49
813	Free-Standing Discount Superstore	1,000 SF	4.35
814	Variety Store	1,000 SF	6.82
815	Free Standing Discount Store	1,000 SF	4.98
816	Hardware / Paint Store	1,000 SF	4.84
817	Nursery (Garden Center)	1,000 SF	6.94
818	Nursery (Wholesale)	1,000 SF	5.17
820	Shopping Center	1,000 SF	3.71
823	Factory Outlet Center	1,000 SF	2.29
826	Specialty Retail Center	1,000 SF	2.71
841	New Car Sales	1,000 SF	2.62
842	Recreational Vehicle Sales	1,000 SF	2.54
843	Automobile Parts Sales	1,000 SF	5.98
848	Tire Store	1,000 SF	4.15
850	Supermarket	1,000 SF	9.48
851	Convenience Market (Open 24 Hours)	1,000 SF	52.41
852	Convenience Market (Open 15-16 Hours)	1,000 SF	34.57
853	Convenience Market with Gasoline Pumps	1,000 SF	50.92
854	Discount Supermarket	1,000 SF	8.34
857	Discount Club	1,000 SF	4.18
860	Wholesale Market	1,000 SF	0.88
861	Sporting Goods Superstore	1,000 SF	1.84
862	Home Improvement Superstore	1,000 SF	2.33
863	Electronics Superstore	1,000 SF	4.50
864	Toy / Children's Superstore	1,000 SF	4.99
866	Pet Supply Superstore	1,000 SF	3.38
867	Office Supply Superstore	1,000 SF	3.40
875	Department Store	1,000 SF	1.87

Code	Description	Unit of Measure	Trips Per Unit
876	Apparel Store	1,000 SF	3.83
879	Arts and Craft Store	1,000 SF	6.21
880	Pharmacy / Drugstore without Drive-Through Window	1,000 SF	8.4
881	Pharmacy / Drugstore with Drive-Through Window	1,000 SF	9.91
890	Furniture Store	1,000 SF	0.45
896	DVD/Video Rental Store	1,000 SF	13.60
SERVICES			
911	Walk-In Bank	1,000 SF	12.13
912	Drive-In Bank	1,000 SF	24.30
918	Hair Salon	1,000 SF	1.93
925	Drinking Place	1,000 SF	11.34
931	Quality Restaurant	1,000 SF	7.49
932	High-Turnover (Sit-Down) Restaurant	1,000 SF	11.15
933	Fast Food Restaurant without Drive-Through Window	1,000 SF	26.15
934	Fast Food Restaurant with Drive-Through Window	1,000 SF	33.84
935	Fast Food Restaurant with Drive-Through Window and No Indoor Seating	1,000 SF	153.85
936	Coffee / Donut Shop without Drive-Through Window	1,000 SF	40.75
937	Coffee / Donut Shop with Drive-Through Window	1,000 SF	42.8
938	Coffee / Donut Shop with Drive-Through Window and No Indoor Seating	1,000 SF	75
940	Bread / Donut / Bagel Shop with Drive-Through Window	1,000 SF	18.99
941	Quick Lubrication Vehicle Shop	Service Bays	5.19
942	Automobile Care Center	1,000 SF	3.11
943	Automobile Parts and Service Center	1,000 SF	4.46
944	Gasoline / Service Station	Fueling Positions	13.87
945	Gasoline / Service Station with Convenience Market	Fueling Positions	13.51
946	Gasoline / Service Station with Convenience Market and Car Wash	Fueling Positions	13.94
947	Self Service Car Wash	Stalls	5.54
948	Automated Car Wash	1,000 SF	14.12
950	Truck Stop	1,000 SF	13.63

Note: All land uses in the 800 and 900 series are entitled to a "passby" trip reduction of 60% if less than 50,000 ft² or a reduction of 40% if equal to or greater than 50,000 ft².

* Approximated by 10% of Weekday average rate.

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Definitions of Land-use Categories

The following land-use definitions are derived from the *ITE Trip Generation* (9th Edition) publication. They have been modified as appropriate for the City of Portland. ITE land-use codes are shown; where multiple codes are listed, the code used for trip generation is marked with an asterisk (*).

Residential

Single Family, detached: Includes all single-family detached homes on individual lots and clustered homes of up to 3 units. (ITE # 210)

Multi Family: A building or buildings designed to house four or more families living independently of each other. Includes low-rise, mid-rise, and high-rise apartments. (ITE # 220)

Senior Housing: Residential units similar to apartments or condominiums restricted to senior citizens. (ITE # 251)

Accessory Dwelling Unit. A second dwelling unit created on lot with a house, attached house, or manufactured home. The second unit is created auxiliary to, and is always smaller than the house, attached house, or manufactured home. (ITE # 210 calculated at 50% of the trip generation rate)

Row House / Townhouse/ Condo: A building or buildings designed to house two or more families living independently of each other. Includes condos and attached townhouses of 2 units or more. (ITE # 230)

Nursing Home: A facility whose primary function is to provide chronic or convalescent care for persons who by reason of illness or infirmity are unable to care for themselves. Applies to rest homes and convalescent centers. (ITE # 620)

Congregate Care/Assisted Living: One or more multi-unit buildings designed for people who are unable to live independently due to physical or mental handicap. Facilities may contain dining rooms, medical facilities, and recreational facilities. (ITE # 253)

Commercial-Services

Bank: A building, with or without a drive-up window, for the custody or exchange of money, and for facilitating the transmission of funds. (ITE # 911, 912*)

Day Care: A facility for the care of infant and preschool age children during the daytime hours. Generally includes classrooms, offices, eating areas, and a playground. This also includes preschools. (Note: This does not apply to day care homes, family day care, mini-day care centers or mini-schools, rates for which must be separately calculated.) (ITE # 520)

Library: A public facility for the use, but not sale, of literary, musical, artistic, or reference materials. (ITE # 590)

Post Office: A building with service windows for mailing packages and letters, post office boxes, offices, vehicle storage areas, and sorting and distribution facilities for mail. (ITE # 732)

Hotel/Motel: A place of lodging providing sleeping accommodations. May include restaurants, cocktail lounges, meeting and banquet rooms or convention facilities. (ITE # 310*, 320)

Service Station/Gasoline Sales: A facility used for the sale of gasoline, oil, and lubricants. May include areas for servicing or repairing vehicles. May include a minimart (not to exceed 1,500 square feet) and/or carwash. (ITE # 946)

Movie Theater: Consists of audience seating, with one or more screens, and a lobby and refreshment

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stand. Typically includes matinee showings. (ITE # 444)

Carwash: Manual operations where the driver parks and washes the vehicle in a stall, or an automated facility for the same purpose. (ITE # 947)

Health Club: Privately owned facility that may include swimming pools and whirlpools, saunas, weight-lifting and gymnastics equipment, exercise classes, tennis, racquetball, and handball courts. Features exercise sports and other active physical conditioning, as well as a broader range of services such as juice bars and meeting rooms. (ITE #s 492*, 493)

Marina: A facility providing moorage for boats. (ITE # 420)
Commercial-Institutional

School, K-12: Covers full range of primary and secondary schools. Includes elementary, junior high, middle school and high school uses. Both public and private schools are included in this land use. (ITE# 520, 530, average)

University/College: Facilities of higher education including two-year, four-year and graduate-level institutions. (ITE # 550)

Church: A building providing public worship facilities. Generally houses assembly hall or sanctuary, meeting rooms, classrooms, and occasionally dining facilities. (ITE # 560)

Hospital: A building or buildings designed for the medical, surgical diagnosis, treatment and housing of persons under the care of doctors and nurses. Rest homes, nursing homes, convalescent homes and clinics are separate uses. (ITE #610)

Park: Parks are typically owned and operated by the City, but may include private uses. They can vary widely as to location, type and number of facilities, including boating or swimming facilities, ball fields, campsites and picnic facilities. (ITE # 411)
Commercial-Restaurant

Restaurant: An eating establishment that sells prepared food or beverages and generally offers accommodations for consuming the food or beverage on the premises. Usually serves breakfast, lunch, and/or dinner; generally does not have a drive-up window. (ITE # 931)

Quick Service Restaurant (Drive-through): An eating establishment that offers quick food service and a limited menu of items. Food is generally served in disposable wrappings or containers, and may be consumed inside or outside the restaurant building. Restaurants in this category have a drive-up window. (ITE # 934)
Commercial-Retail

Miscellaneous Retail: Small strip shopping centers or retail space within a mixed-use building up to 199,999 square feet that contain retail shops specializing in quality apparel, hard goods, and services, such as small restaurants (under 3000 square feet), real estate offices, dance studios, and florists. (ITE #826)

For the purpose of this definition a mixed-use building consists of two or more of the following land use categories; residential, shopping/retail, entertainment, hotel/motel, or office. These land use categories have similar internal trip-making characteristics. Other land use categories, such as warehouse or manufacturing, do not share the same internal trip-making characteristics.

Shopping Center: An integrated group of commercial establishments that is planned, developed,

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owned, or managed as a unit and are 200,000 square feet and over. Onsite parking facilities are provided, and administrative office areas are usually included. In addition to the integrated unit of shops in one building or enclosed around a mall, Shopping Centers may include certain peripheral buildings located on the perimeter of the center adjacent to the streets and major access points. (ITE #820)

Supermarket: Retail store (greater than 5,000 gross square feet [GSF]) that sells a complete assortment of food, food preparation and wrapping materials, and household cleaning and servicing items. Supermarkets may also include ATMs, bakeries, books and magazines, floral shops, limited service banks, photo centers, pharmacies and video rental areas. Some facilities may be open 24 hours a day. If gasoline sales are included on-site, use Gasoline Sales TSDC times number of fueling positions to calculate additional trips. (ITE # 850)

Convenience Market: A use that combines retail food sales with fast food or take-out food service; generally open long hours or 24 hours a day. If gasoline sales are included on-site, use Service Station/Gasoline Sales TSDC rate. (ITE # 851)

Free-standing Discount Store: A free-standing store or warehouse that offers centralized cashiering and a wide range of merchandise and/or food products. May include items sold in large quantities or bulk. Often is the only store on a site, but can be found in mutual operation with its own or other supermarkets, garden centers and service stations, or as part of community-sized shopping centers. Fred Meyer stores, Costco, and big box consumer electronic/ computer/toy stores are examples of this land use. If gasoline sales are included on-site, use Gasoline Sales TSDC rate times number of fueling positions to calculate additional trips. (ITE #s 813, 815*)

Car Sales (New/Used): Facilities are generally located as strip development along major arterial streets that already have a preponderance of commercial development. Generally included are auto services and parts sales along with a sometimes substantial used-car operation. Some dealerships also include leasing activities and truck sales and servicing. (ITE # 841)

Commercial-Office

Administrative Office: An administrative office building houses one or more tenants and is the location where affairs of a business, commercial or industrial organization, professional person or firm are conducted. The building or buildings may be limited to one tenant, either the owner or lessee, or contain a mixture of tenants including professional services, insurance companies, investment brokers, and company headquarters. (ITE # 710)

Medical Office/Clinic: A facility that provides diagnoses and outpatient care on a routine basis but does not provide prolonged in-house medical/surgical care. A medical office is generally operated by either a single private physician/dentist or a group of doctors and/or dentist. (ITE # 720)

Industrial

Light Industrial/Manufacturing: A facility that may contain industrial or manufacturing uses. Manufacturing facilities have the primary activity of converting raw materials or parts into finished products. In addition to the actual production of goods, manufacturing facilities may also have office, warehouse, research and associated functions. Light Industrial facilities may be characterized by a mix of manufacturing, service and warehouse functions. Many produce goods by assembling other products, such as assembly of computers or other electronics. (ITE # 130)

Warehouse/Storage: Warehouses are primarily devoted to the storage of materials, but may also include limited office and maintenance areas. (ITE # 150)

Self Storage: Buildings in which a number of storage units or vaults are rented for the storage of goods. Each unit is physically separated from other units, and access is usually provided through an

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overhead door or other common access point. (ITE # 151)

Truck Terminal: A facility where goods are transferred between trucks, trucks and railroads, or trucks and ports. (ITE #30)

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11.4 Signage within the Right of Way

Standard signs and signage, as specified in the MUTCD, shall be used. The type, size, and location of all traffic control signage shall be determined by the County Engineer.

As per Sections 4.1 and 12.4, the developer shall be responsible for all costs associated with traffic control signage required for an access facility.

CHAPTER 12 Construction Requirements

12.1 Notification of Utility Companies

The County, all applicable utility companies, and North Dakota One Call must be notified before construction work commences.

12.2 Modifications to Plans

Any modifications to approved engineering plans prior to permit issuance must be submitted and approved by the Highway Department.

12.3 Traffic Control

Traffic control and protection measures are required during the construction phases, if deemed appropriate by the County Engineer. In such cases, a traffic control plan, engineering plan, and specifications shall be submitted to the Highway Department. Should adequate traffic control measures not be in place, a representative of the Highway Department has the authority, but not the duty, to halt the construction until such time as the traffic control measures are in place to safely and efficiently move traffic through the construction area.

The first infraction will result in the halting of construction until such time as traffic control measures are corrected. The second infraction will result in the halting of construction for the remainder of that day. Traffic control measures must be established prior to the start of the next workday. Should there be a third infraction, the permit shall be revoked and there shall be a meeting with the applicant and Highway Department to discuss what measures will be taken to reinstate the permit.

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12.4 Responsibility for Improvements

Regardless of contracts, agreements, or inspections performed, the responsibility for the installed improvements required by this Ordinance shall rest solely with the applicant. The total cost of all construction and maintenance of the work specified shall be borne by the applicant.

12.5 Construction of Improvements

12.5.1 General Requirements

Construction of improvements required by this Ordinance shall be in accordance with the rules, regulations, and specifications as set forth in this Ordinance.

The construction of any improvements within the right of way shall not commence until an access permit is issued.

The construction of improvements must begin within six months of the date of issuance of an access permit and must be completed within 12 months of the issuance of an access permit. These time periods may be extended by the County Engineer upon receipt of a written request detailing sufficient cause.

12.5.1 Maintenance During Construction

a. Emergency Work

If any emergency repairs or actions are required of the Highway Department on a County Highway due to construction of an improvement as approved by this Ordinance, the Highway Department may perform such emergency repairs or actions and charge the applicant for all the costs associated with such work.

b. Debris Removal

The applicant shall be responsible for cleaning and maintaining the right of way of the County Highway. The pavement surface shall be kept clean and free of mud, gravel, debris, trash, and other extraneous material at all times. Should the applicant fail to keep the pavement clean and free of mud and debris or the drainage functioning properly, the County shall have the right, but not the duty to clean the pavement and restore drainage to maintain a safe and passable

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highway. The applicant shall be responsible for all costs incurred by the County for the pavement cleaning.

Persistent failure by the applicant to comply with this section will result in the Highway Department revoking the permit and taking any action necessary to keep the pavement clean and drainage functioning properly. Should the permit be revoked, there shall be a meeting with the applicant and Highway Department to discuss what measures will be taken to reinstate the permit.

c. Erosion and Sedimentation Controls

The applicant shall minimize the erosion and sedimentation that occurs during the construction of the access facility. The applicant shall develop and implement an erosion control plan consistent with the North Dakota Department of Transportation (NDDOT) Erosion and Sediment Control Handbook, as it presently exists or may hereafter be amended.

d. Damage to Utilities

Any damage caused to any utilities during construction shall be repaired at the applicant's expense to the satisfaction of the authority owning such utility. The Highway Department and owner of the utility shall be notified immediately by the applicant after damage has occurred, and the applicant shall outline the steps to be taken to repair the facility.

e. Winter Maintenance

No construction involving the widening of a County Highway will be allowed to commence after September 15th. Construction may resume when asphalt plants open the following spring.

Prior to the suspension of construction for the winter months, the applicant shall contact the Highway Department. The Highway Department shall perform a field inspection to identify any potential winter maintenance problems. The applicant shall correct any problems identified by the Highway Department to the satisfaction of the Highway Department. The applicant shall be solely responsible for all costs to correct any problems identified by the Highway Department.

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12.6 Final Inspection and Acceptance

Upon written notification by the applicant or applicant's representative that construction has been completed and all required reports have been submitted, the Highway Department shall perform a final inspection. Prior to final approval and acceptance by the Highway Department, the applicant shall correct any deficiencies noted by the Highway Department. Depending on seasonal workload, please allow 1-2 weeks for final inspection to be completed.

At such time as all work has been done to the complete satisfaction of the Highway Department, the performance guarantee shall be released.

CHAPTER 13 Performance Guarantees

13.1 Performance Guarantees

An acceptable Performance Guarantee to protect the County Highway System and ensure compliance with this Ordinance and with issued permits shall be provided prior to the issuance of a permit as provided for in this Ordinance. A Performance Guarantee shall be in an acceptable form for all Permanent, Temporary, and Field Drive access permits constructing a new access or modifying an existing access. The County Engineer shall be, and is hereby authorized to act for the County in all matters relating to Performance Guarantees. The County Engineer may, upon receipt of written application from an applicant substantiating good and reasonable cause, waive this requirement.

All performance guarantees shall be \$1000 dollars for the construction or modification of all access facilities and may be increased at the discretion of the County Engineer. The performance guarantee shall be made payable to the Cass County Highway Department and shall be submitted to the County Engineer. The type of performance guarantee provided may be a Check (cashier's or personal), Bank Draft, or Bank Money Order.

13.1.1 Default

If the applicant fails to perform the work with sufficient work force and equipment; with sufficient materials to insure the completion of said work within the specified time; performs the work unsuitably as determined by the County Engineer; neglects or refuses materials or performs anew such work as shall be rejected as defective and unsuitable; discontinues the execution of the work; or for any other cause whatsoever does not carry

Exhibit 1

on the work in an approved manner, the County Engineer shall give notice to the applicant and specify the corrective measures required. After said notice, the County Engineer shall then draw on the Performance Guarantee to complete the necessary work, in accordance with the terms of the Ordinance, permit, and Performance Guarantee, and the applicant will be billed for the cost associated with completing said work. If the bill remains unpaid for two consecutive months, the bill will be certified to the County Auditor and all of the expenses shall be charged against the land and shall become a part of the taxes to be levied against the land for the ensuing year and shall be collected in the same manner as other real estate taxes are collected.

Exhibit 1

ACCESS PERMIT APPLICATION



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

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. Submit an application and fee for each access requested.

Applicant		Applicant's Representative	
Address		Address	
City, State Zip	Phone	City, State Zip	Phone
Email Address		Email Address	

Type of Permit Requested				
<input type="checkbox"/> New Access <input type="checkbox"/> Modify Existing Access <input type="checkbox"/> Remove Existing Access		<input type="checkbox"/> Permanent <input type="checkbox"/> Temporary <input type="checkbox"/> Field Drive		
Address, City, State Zip of Property to be Served by Permit (if applicable)				
Parcel ID	Subdivision	Section	Township	Range
On what county highway are you requesting the access?		What side of the highway? <input type="checkbox"/> N <input type="checkbox"/> S <input type="checkbox"/> E <input type="checkbox"/> W		
Current land use of property? <input 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 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 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				

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.

 Applicant Signature _____
 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	Installation Completion Date	Temporary Access Removal Date	Permitted Length of Time of Traffic Disruption
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 Authorized Highway Department Signature _____
 Date

Exhibit 1

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 devise (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 drainage 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. No construction shall be considered as completed until checked and approved by the County Highway Department. 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.

OFFICE USE ONLY		
Application Fee Received:	Amount \$	Date:
Performance Guarantee Received:	Amount \$	Date:
Onsite Survey Completed By:		Date:
Requirements:		
Approved Permit Sent to Applicant:	Date:	
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 2

SUBJECT: ORDINANCE #2015-2 (RIGHT OF WAY ENCROACHMENT)

ADOPTED DATE: SEPTEMBER 8, 2015

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PURPOSE

The purpose of this policy is to prohibit encroachments, obstructions, signs, and hay within the right of way. These encroachments and obstructions have negative impacts on the safety and function of our roads, ditches, and right of way. In addition, a majority of the Cass County highways are on the Federal Aid System. Cass County is responsible for preventing right of way encroachments regarding county highway projects funded through the Federal Aid Highway program, pursuant to 23 CFR Part 1.23, Rights of Way, and Part 710 Subpart D, Right of Way, Real Property Management.

GENERAL PROVISIONS

The NDDOT is, according to Title 23 United States Code and 23 CFR 1.27, required to maintain, or cause to maintain, all federally funded highway projects. Title 23 United States Code 101 defines maintenance as: "...the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the highway."

Title 23 further requires a State transportation department to maintain each project constructed with Federal-aid funds until such time that it no longer constitutes a part of the Federal-aid system. It is the Federal Highway Administration's (FHWA) role to see that maintenance of Federal-aid projects is adequate and to provide technical assistance in disseminating information on successful maintenance techniques.

It is the policy of the NDDOT to require all county and city projects receiving federal dollars to enter into an agreement with the Department to ensure that as recipients of federal money the counties and cities agree to abide by the terms and conditions required. The agreement will require counties receiving federal funds to provide an annual certification that all federally funded highway projects constructed are being maintained as required.

In addition, the North Dakota Century Code (N.D.C.C.) has several sections that refer to right of way encroachments, obstructions, signs, and hay. This policy consolidates these codes and outlines their enforcement. The following sections of the N.D.C.C. are references for this policy:

- N.D.C.C. 24-01-12 Regulation of advertising signs on highways.
- N.D.C.C. 24-01-12.2 Hay disposal
- N.D.C.C. 24-05-23 Encroachment upon county roads, ditches, approaches - Liability for damages.
- N.D.C.C. 24-05-24 County and township road rights of way - Removal of obstructions.

Exhibit 2

SUBJECT: ORDINANCE #2015-2 (RIGHT OF WAY ENCROACHMENT)

ADOPTED DATE: SEPTEMBER 8, 2015

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N.D.C.C. 24-06-29 Removal of permanent obstructions - Removal of obstructions and traffic safety hazards - Cost.

N.D.C.C. 39-10-07.2 Display of unauthorized signs, signals, or markings

N.D.C.C. 63-05-01 Landowners or operators along county and township highways to cut weeds and grasses.

ADMINISTRATION

Marking the Right of Way: Right of way boundaries will be marked with right of way markers. Markers will be generally placed at the section line and quarter line, or other locations where the right of way changes or deviates. When installing right of way markers in a previously unmarked area, the Cass County Engineer will send out a notice to the adjacent landowner regarding the placement of markers and the encroachment policy. Those landowners damaging or removing highway right of way markers will be held responsible for the repair or replacement of the markers as discussed below.

Inspecting the Right of Way: The County will perform routine inspections for right of way encroachments in late summer and fall, with re-inspections in the spring or as necessary. Efforts will be made to enforce right of way encroachments prior to seeding or after harvest. However, if necessary, the County may take steps to enforce the right of way prior to harvest.

Notification of Right of Way Encroachments: The Cass County Commission authorizes the County Engineer or his designee to notify landowners in writing regarding any right of way encroachment.

Remediation of Right of Way Encroachments: In accordance with N.D.C.C. 24-05-23, the landowner must remove the encroachment within twenty days of receipt of this notice. The County Engineer may authorize a landowner to deviate from the twenty day requirement in order to allow the landowner until the end of harvest season to correct the encroachment. Corrective action will include, but not be limited to, replacement of approved or recommended grass seed and mulch as well as correction of slopes or ditches that have been altered as a result of the encroachment. Failure to remedy this situation will cause the landowner to be liable to the County for damages resulting from the encroachment. If the landowner fails to correct the encroachment, the County will complete the necessary work to repair the encroachment and the landowner will be billed for the cost associated with correcting the damages. The landowner may also be billed for damages to right of way markers or County signs. If the bill remains unpaid for two consecutive months, the bill will be certified to the County Auditor and all of the expenses shall be charged against the land and shall become a part of the taxes to be levied against the land for the ensuing year and shall be collected in the same manner as other real estate taxes are collected.

Exhibit 2

SUBJECT: ORDINANCE #2015-2 (RIGHT OF WAY ENCROACHMENT)

ADOPTED DATE: SEPTEMBER 8, 2015

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Safety: When a right of way encroachment poses an imminent safety threat, the County will take necessary action to remove the encroachment. When possible, attempts will be made to notify the landowner to remove the encroachment. If the County incurs a cost to remove the encroachment, the cost may be levied against the landowner as stated above.

Obstructions in the Right of Way: In accordance with N.D.C.C. 24-06-29, if a person places or causes to be placed an obstruction or traffic safety hazard within the right of way of any highway road surface, the board of County Commissioners, County Engineer, or his designee shall issue a written order to the person who caused the obstruction or traffic safety hazard to be placed there to remove the obstruction or traffic safety hazard. If the person notified fails to remove the obstruction or traffic safety hazard as soon as practical after the notice is received, the board of County Commissioners, County Engineer, or his designee shall remove the obstruction or traffic safety hazard. The person responsible for placement of the obstruction or traffic safety hazard is responsible and may be billed for any costs incurred by the County for removal of the obstruction or traffic safety hazard. These obstructions or hazards may include, but are not limited to signs, landscaping timbers, rocks, or other hazards. In addition, landowners are not authorized to push snow into the right of way and ditches of County highways which include the roadway in-slope, ditch bottom, and back-slope of the roadway. This practice can exaggerate drifting problems experienced on highways and can create obstructions for motorists. If a landowner is notified of an unauthorized snow pile, they are responsible for removing the obstruction. The County will only notify the landowner once during the winter season. Costs incurred to remove any future obstructing snow piles will be levied against the landowner.

Harvesting Hay in the Right of Way: Every person harvesting hay on the County right of way, who stores the harvested hay on the right of way for later removal, shall store the harvested hay at the outer edge of the rights of way. The County Engineer may remove any hay that is not stored safely as prescribed above. All hay stored on the right of way must be removed by November first of each year.

Unauthorized Signs: N.D.C.C. 24-01-12 (regulation of advertising signs on highways) outlines that private signs are not authorized in the right of way. It also states that signs or billboards on private property cannot be placed within one thousand feet of any highway grade crossing in such a manner as to obstruct or interfere with a free and clear view of such crossing from any highway or railroad intersecting threat. The Cass County Commission authorizes the County Engineer or his designee to notify landowners, sign companies, or any persons placing an unauthorized sign in writing regarding the right of way encroachment. Any advertisement in or upon a public highway or private property which is deemed to be a hazard to traffic, or in the future may tend to create a hazard to traffic, may be taken down, removed, or destroyed by direction of the County Engineer or his designee.

Exhibit 2

CASS COUNTY
COMMISSION POLICY MANUAL

38.28

SUBJECT: ORDINANCE #2015-2 (RIGHT OF WAY ENCROACHMENT)

ADOPTED DATE: SEPTEMBER 8, 2015

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Landowners Responsibility to Maintain Right of Way: N.D.C.C 63-05-01 (Cutting weeds and grasses on highways) states it is the duty of landowners or operators with land adjoining regularly traveled County roads to cut all weeds and grasses along the regularly traveled County roads adjoining their lands, including weeds and grasses growing within the public right of way bordering the highways and their lands. Further, N.D.C.C. 63-05-03 states that any cost the County incurs due to a landowners failure to mow can be levied against the land for the ensuing year and shall be collected in the same manner as other real estate taxes are collected, and placed to the credit of the respective subdivisions entitled thereto.

APPROVED:

ss/Chad M. Peterson
Chad M. Peterson, Chairman
Board of Commissioners
County of Cass

ATTEST:

ss/Michael Montplaisir
Michael Montplaisir
Cass County Auditor

(SEAL)

First Reading: August 3, 2015
Second Reading: September 8, 2015
Final Passage: September 8, 2015
Publication: August 10, 2015

HISTORICAL REFERENCE DATE: SEPTEMBER 8, 2015

RIGHT OF WAY DEED.

This Indenture, Made this 3rd day of June in the year of our Lord one thousand nine hundred and Seventy Six between George Harold and Judith A.J. Hemkin, husband & wife

parties of the first part, and the County of Cass in the State of North Dakota, a municipal corporation, party of the second part:

WITNESSETH, that the said parties of the first part, for and in consideration of the sum of Two thousand five hundred sixty eight and 38/100 DOLLARS, to them in hand paid by said party of the second part, the receipt of which is hereby acknowledged, do by these presents GRANT, BARGAIN, SELL and CONVEY, subject to the exceptions and reservations hereinafter set forth, unto said party of the second part, and for a right of way for public road over and across said premises FOREVER, all this tract or parcel of land lying and being in the County of Cass, and State of North Dakota, and described as follows, to-wit:

That part of the Southeast 1/4 of Section 35, Township 138 North, Range 49 West of the 5th Principal Meridian, Cass County, North Dakota lying within a strip of land 140.0 feet wide being 70.0 feet on each side of the following described centerline:

Commencing at a point on the ^{South} ~~West~~ line of Section 36, Township 138 North, Range 49 West, Cass County, North Dakota a distance of 449.73 feet East of the common corner of said Sections 35 and 36; thence Westerly along a 4 degree curve to the right for a distance of 403.33 feet; thence along the tangent to the afore described curve for a distance of 68.62 feet to the East line of said Section 35, the point of beginning; thence continue along the afore described tangent for a distance of 703.56 feet; thence along a 4 degree curve to the left for a distance of 815.83 feet; thence along the tangent to the afore described curve for a distance of 7.19 feet, there terminating.

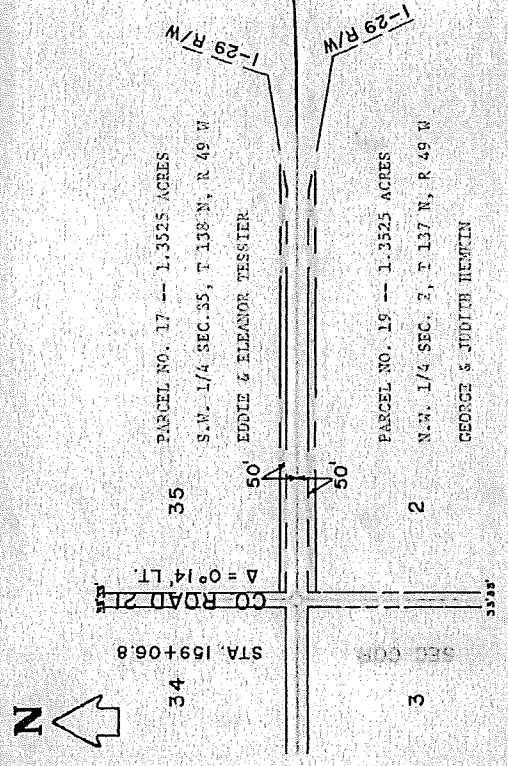
Tract contains 4.86 acres, more or less.

Also, including all right of access, being the right of ingress to and egress from the remaining property to and from the highway right-of-way, except that the abutting owner shall retain the right of access, 24 feet wide at one point, the location of said point to be designated by the County Engineer.

TO HAVE AND TO HOLD THE SAME, Together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, to the said party of the second part, FOREVER. And the said George Harold and Judith A.J. Hemkin, husband & wife parties of the first part, for themselves, their heirs, executors and administrators, do covenant with the party of the second part, that they are well seized in fee of the land and premises aforesaid and have good right to sell and convey the same in manner and form aforesaid; that the same are free from all incumbrances, and the above granted and bargained land and premises for right of way as aforesaid, in the quiet and peaceable possession of the said party of the second part, subject as aforesaid, against all persons lawfully claiming or to claim the whole or any part thereof, the

This deed is being re-recorded because of error in description. This deed has been corded in book 406 page 46.

COUNTY: CASS
 CLAS: CP68-16C-06A 17-19 35-2 138-137 49 7.5650 500.4 OF 5



PARCEL NO. 18 -- 4.86 ACRES
 S.E. 1/4 SEC. 35, T 138 N, R 49 W
 GEORGE & JUDITH HEMIN

PARCEL NO. 17 -- 1.3525 ACRES
 S.W. 1/4 SEC. 35, T 138 N, R 49 W
 EDDIE & ELEANOR TESSIER

PARCEL NO. 19 -- 1.3525 ACRES
 N.W. 1/4 SEC. 2, T 137 N, R 49 W
 GEORGE & JUDITH HEMIN

PARCEL NO. 17

The North 37 feet of the South 70.0 feet of the West 1625.3 feet of the Southwest 1/4 Section 35, Township 138 North, Range 49 West, of the 5th Principal Meridian, excepting that portion within 33 feet of the West section line.
 Tract contains 1.3525 acres, more or less.

Also, including all right of access, being the right of ingress to and egress from the remaining property to and from the highway right-of-way, except that the abutting owner shall retain the right of access 24 feet wide, at one point, the location of said point to be designated by the County Engineer.

PARCEL NO. 18

That part of the S.E. 1/4 of Section 35, Township 138 North, Range 49 West of the 5th Principal Meridian, Cass County, North Dakota lying within a strip of land 140.0 feet wide being 70.0 feet on each side of the following described centerline: Commencing at a point on the South line of Section 36, Township 138 North, Range 49 West, Cass County, North Dakota a distance of 449.75 feet East of the common corner of said Sections 35 and 36; thence Westerly along a 4 degree curve to the right for a distance of 403.33 feet; thence along the tangent to the above described curve for a distance of 65.62 feet to the East line of said Section 35, the point of beginning; thence continue along the above

described tangent for a distance of 703.56 feet; thence along a 4 degree curve to the left for a distance of 813.83 feet; thence along the tangent to the above described curve for a distance of 7.19 feet, thence terminating.
 Tract contains 4.86 acres, more or less.

Also, including all right of access, being the right of ingress to and egress from the remaining property to and from the highway right-of-way, except that the abutting owner shall retain the right of access 24 feet wide at one point, the location of said point to be designated by the County Engineer.

PARCEL NO. 19

The North 37 feet of the North 70 feet of the West 1625.3 feet of the Northwest 1/4 Section 2, Township 137 North, Range 49 West of the 5th Principal Meridian, excepting that portion within 33 feet of the West Section line.
 Tract contains 1.3525 acres, more or less.

RIGHT OF WAY PLAT

Also, including all right of access, being the right of ingress to and egress from the highway right-of-way, except that the abutting owner shall retain the right of access, 24 feet wide at one point, APPROVED: *[Signature]*
 the location of said point to be designated by the County Engineer. DATE 6/1/76

Exhibit 4: Location Map of KNB Parcel

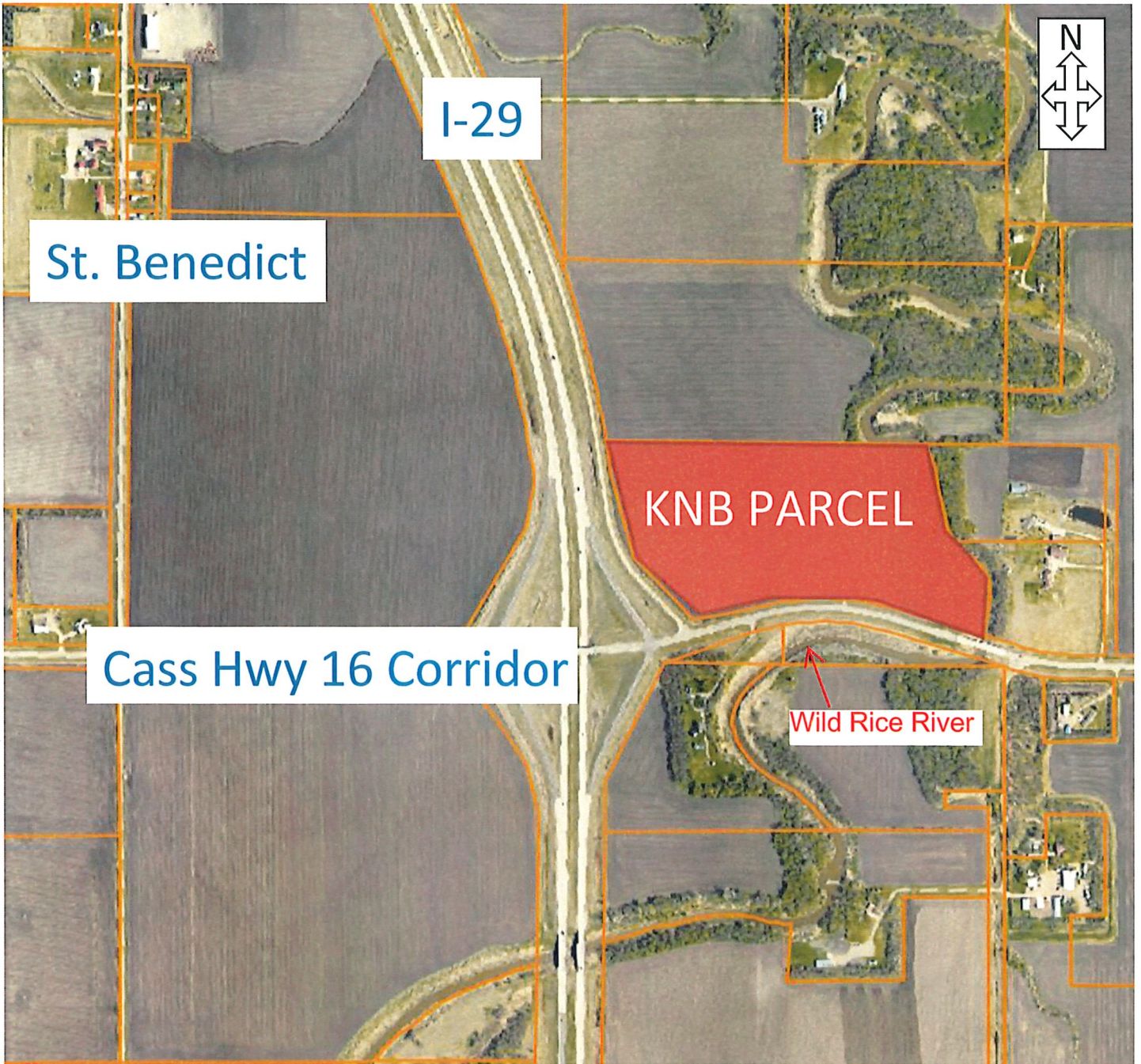


Exhibit 5: Existing KNB Access Facility

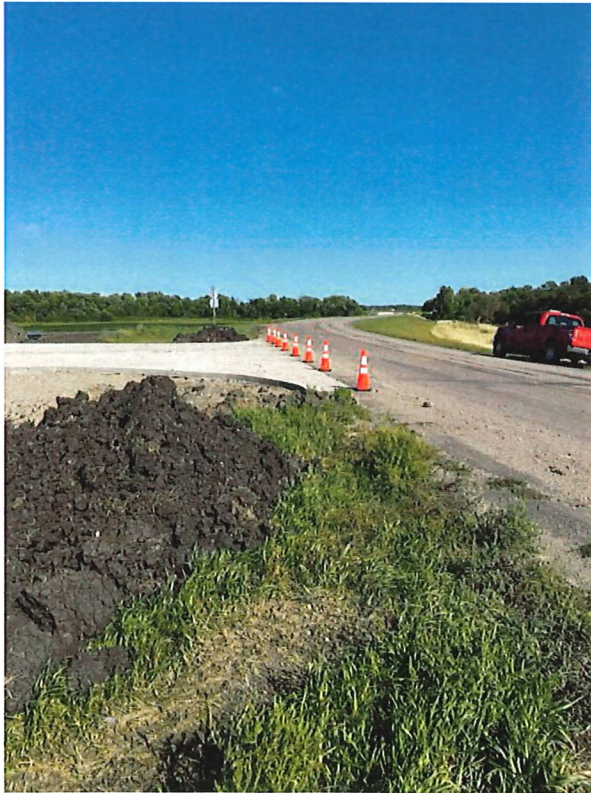


Exhibit 6: Existing KNB Access Facility Location

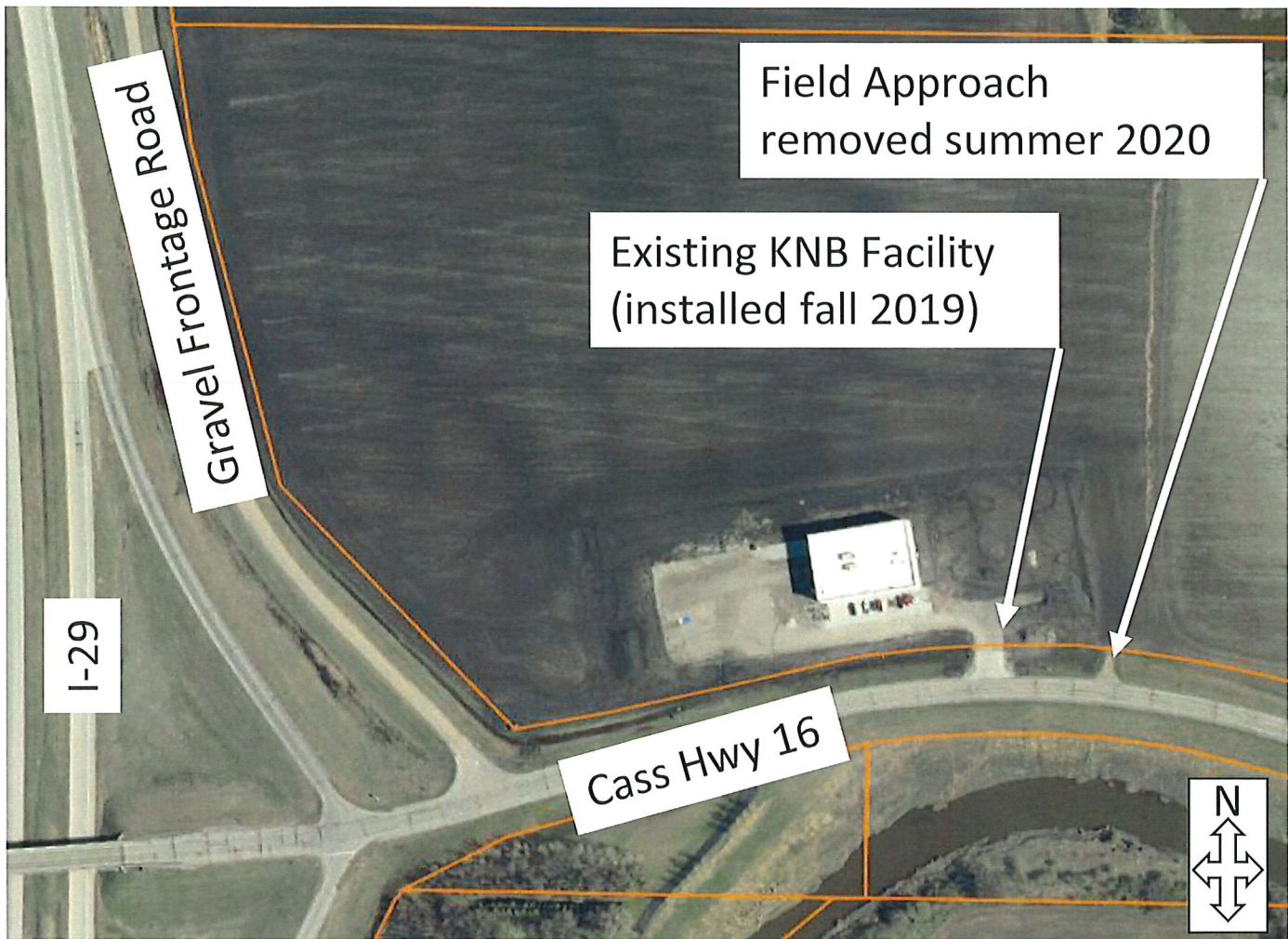


Exhibit 7: Highway 16 Corridor Reconstruction Area Location Map



Locations of New KNB Access Facility, turn lane and bypass lane are only approximate and are illustrated for the general locations within the Highway 16 Reconstruction Area

Exhibit 8

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION APPENDIX A OF THE TITLE VI ASSURANCES

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees as follows:

1. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. Non-discrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Recipient or the Federal Highway Administration as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.



*KNB PROPERTIES
COUNTY HWY 16
TURN LANE/BYPASS LANE CONFIGURATIONS*

