

JUL 12 2021



MEMORANDUM

**Highway  
Department**

Jason Benson, P.E.  
County Engineer

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

Blaine Laaveg  
Superintendent

TO: Cass County Commission  
FROM: Jason Benson, Cass County Engineer *JB*  
DATE: July 9, 2021

SUBJECT: Agenda topic for July 19, 2021 Commission Meeting:  
Request a public hearing for September 7<sup>th</sup> for a resolution to take over road rights-of-way and grant permission to permanently obstruct the same and the underlying section lines of portions of 112<sup>th</sup> Ave S and 57<sup>th</sup> St S.

---

Cass County has been working with the Metro Flood Diversion Authority (FMDA) on road closures for the construction of the Diversion Project. In April 2021, the FMDA, Cass County Joint Water Recourse District (CCJWRD), and Cass County approved a Memorandum of Understanding (MOU) for the construction of the diversion over road rights-of-way (ROW).

We are now being asked by the FMDA and CCJWRD to take control of and prepare to close sections of 112<sup>th</sup> Ave S and 57<sup>th</sup> St S (see attached map). These closures are required for the construction of the Southern Embankment SE-2A and the Drain 27 Wetland projects.

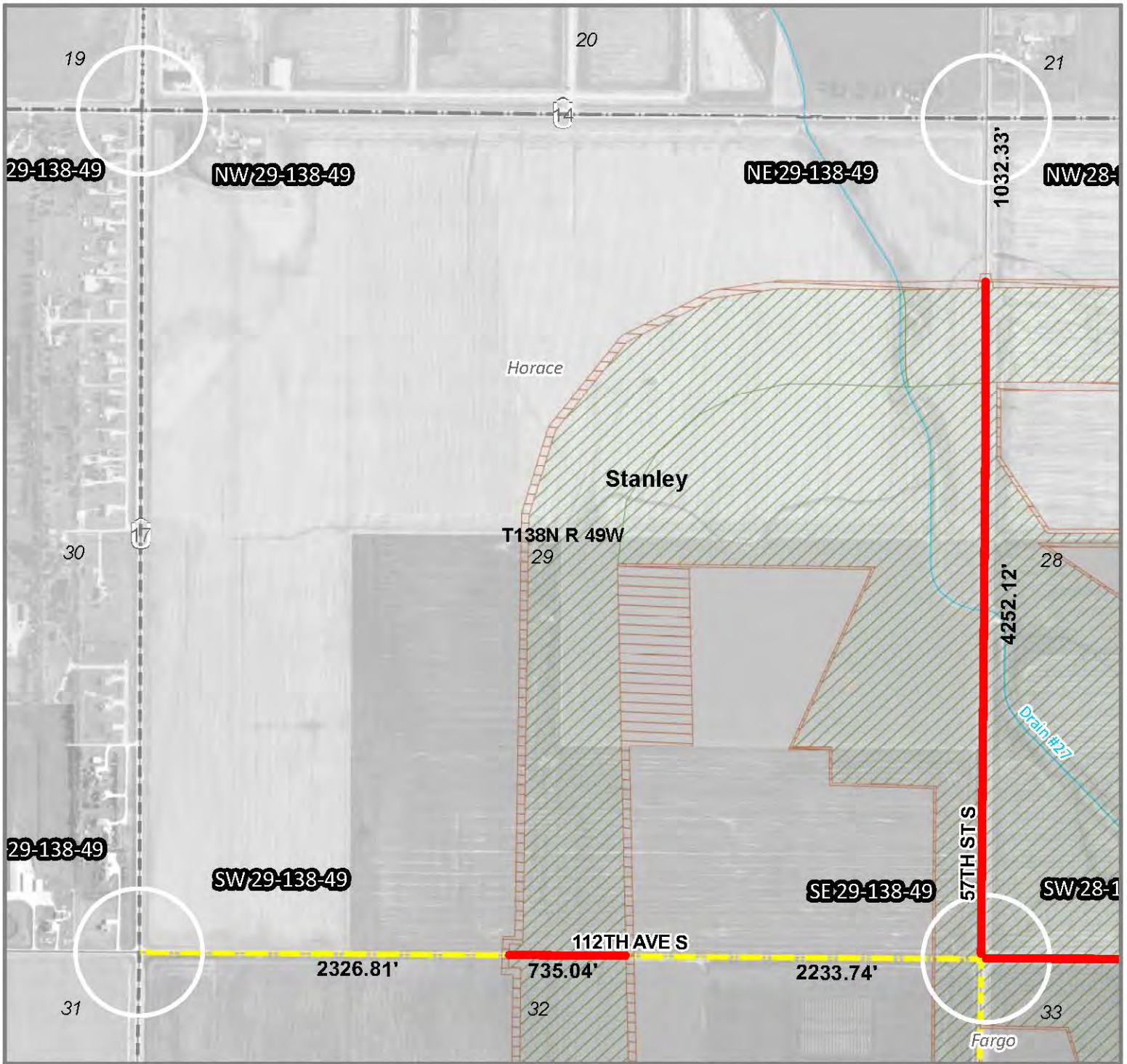
Pursuant to the terms of the MOU, the next step in the process is for Cass County to set a date and time for a public hearing on the requests. Once the public hearing date and time is set, we have agreed to issue notices of the public hearing to landowners within 1,000 feet of the requests at least 30 days prior to the hearing. The FMDA will provide the list of property owners impacted within the 1000-foot area (see attached sample letter).

I am requesting the public hearing be set for September 7th during the regular meeting of the Cass County Commission. Following the public hearing the Commission will be asked to approve a resolution taking over road ROW and granting written permission to permanently obstruct the same and the underlying section lines (see attached resolution).

**SUGGESTED MOTION:** Move that the Cass County Board of Commissioners set a public hearing for September 7th during the regular meeting of the Cass County Commission for a resolution to take over road ROW and grant written permission to permanently obstruct the same and the underlying section lines of portions of 112<sup>th</sup> Ave S and 57<sup>th</sup> St S.

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

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

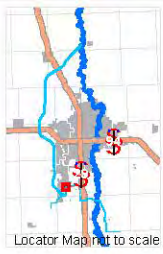
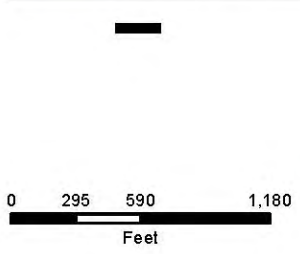


Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey.

Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By: Irecords - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\From GIS Projects Drive\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\County Res Mapbook MOU by Survey Dimensions.mxd

	Channel/SE Crossings		Road Controlled by Cass County
	Township Boundary		Road Controlled by Township
	Project Limits		County Road
	Temporary Construction Easement		State or US Highway

Vacated portions will be defined by plat.  
Dimensions are GIS measurements.



### Stanley Township

FM Area Diversion  
Map Date: 5/11/2021



# EXHIBIT A

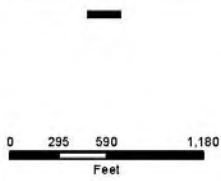
## ROAD RIGHT-OF-WAY



Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey.  
 Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By: rrecords - AE2S, Inc. |  
 C:\Data\Projects\GIS Projects\FM Area Diversion\From GIS Projects Drive\Projects\Land Acquisition\Project Work Package\IP\Project Wide\Overall LA Map\County Res Mapbook MOU by Survey Dimensions.mxd

	Channel/SE Crossings		Road Controlled by Cass County
	Township Boundary		Road Controlled by Township
	Project Limits		County Road
	Temporary Construction Easement		State or US Highway

Vacated portions will be defined by plat.  
Dimensions are GIS measurements.



### Stanley Township

FM Area Diversion  
Map Date: 5/11/2021



\_\_\_\_\_, 2021

Dear Property Owner:

Notice is hereby given that the Cass County Commission will conduct a Public Hearing to consider approval or denial of a request from the Metro Flood Diversion Authority to designate the road rights-of-way identified on Exhibit A (the "ROW") as part of the County highway system.

Additionally, notice is hereby given that the Cass County Commission will conduct a Public Hearing to consider approval or denial of a request from the Cass County Joint Water Resource District to permanently obstruct the ROW and the underlying section lines with \_\_\_\_\_ of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.

As part of the request procedure, the County is notifying adjacent property owners within 1,000 feet of the ROW. If you have any comments, please submit them or attend the Commission meeting on \_\_\_\_\_, 2021, at \_\_\_\_\_ p.m. at \_\_\_\_\_. This will be a virtual meeting, and there will be both online and phone access.

For questions, please contact me at 701-298-2375 or [puppeg@casscountynd.gov](mailto:puppeg@casscountynd.gov).

Sincerely,

Grace Puppe  
Cass County Planner

**RESOLUTION # \_\_\_\_\_**

Commissioner \_\_\_\_\_ introduced the following resolution and moved its adoption:

RESOLUTION TAKING OVER ROAD RIGHTS-OF-WAY  
AND GRANTING WRITTEN PERMISSION TO  
PERMANENTLY OBSTRUCT THE SAME AND  
THE UNDERLYING SECTION LINES  
(*Component*)

**WHEREAS**, on \_\_\_\_\_, 20\_\_, the Cass County Commission received a request from the Metro Flood Diversion Authority (the “Authority”) to take over and designate certain road rights-of-way identified on Exhibit A as part of the Cass County highway system; and

**WHEREAS**, on \_\_\_\_\_, 20\_\_, the Cass County Commission received a request from the Cass County Joint Water Resource District (“CCJWRD”) to permanently obstruct the road rights-of-way and the underlying section lines with (*Component*) of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project; and

**WHEREAS**, in conjunction with their above-described requests, the Authority and CCJWRD provided notice to property owners within 1,000 feet of the road rights-of-way of such requests; and

**WHEREAS**, upon its receipt of the requests, the Cass County Commission scheduled a public hearing to consider the requests and provided notice to property owners within 1,000 feet of the road rights-of-way of the date and time for the public hearing; and

**WHEREAS**, the Cass County Commission held a public hearing on the Authority’s and CCJWRD’s requests on \_\_\_\_\_, 20\_\_, at \_\_\_\_\_ p.m.; and

**WHEREAS**, the Cass County Commission now desires to grant the Authority’s request for Cass County to take over the road rights-of-way and to grant CCJWRD’s request to permanently obstruct the road rights-of-way and the underlying section lines.

**NOW, THEREFORE, BE IT RESOLVED** by the governing body of Cass County, North Dakota:

Section 1. Takeover of Road Right-of-way. Pursuant to N.D.C.C. § 24-05-09, Cass County hereby deems it necessary, for its present use in altering the road rights-of-way, that Cass County permanently takes over the following road rights-of-way as shown on Exhibit A:

[*insert description of road rights-of-way*]

(the “ROW”)

Such takeover will become effective immediately upon the adoption of this resolution. In conjunction with the takeover, Cass County hereby designates the ROW as part of the Cass County highway system.

Section 2. Permanent Obstruction. Pursuant to N.D.C.C. § 24-06-08(1), Cass County hereby grants CCJWRD's request to permanently obstruct the ROW and the underlying section lines with (*Component*) of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project. CCJWRD will provide advanced notice to Cass County of the timing for when the permanent obstruction will commence. Until such time, the ROW and underlying section lines will remain open for public travel unless otherwise temporarily obstructed by, or with authorization from, Cass County.

Section 3. North Dakota Law Applies. This resolution will be controlled by the laws of the State of North Dakota, and any claims arising out of or pertaining to this resolution will be filed, heard, and decided in the state district court of Cass County, North Dakota, which will have exclusive jurisdiction and venue.

Section 4. Effective Date. This resolution will take effect immediately upon adoption.

Section 5. Electronic Signatures. Electronic signatures to this resolution shall be valid as original signatures and shall be valid to bind the Authority. For purposes hereof: (i) "electronic signature" means a manually signed original signature that is then transmitted by electronic means; and (ii) "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a portable document format ("pdf") or other replicating image attached to an electronic mail or internet message.

*(Remainder of page intentionally left blank.)*

Adopted \_\_\_\_\_, 20\_\_.

**CASS COUNTY, NORTH DAKOTA**

By: \_\_\_\_\_  
\_\_\_\_\_, Chair  
Board of County Commissioners

**ATTEST**

\_\_\_\_\_  
\_\_\_\_\_, County Auditor

The motion for adoption of the foregoing resolution was duly seconded by Commissioner \_\_\_\_\_, and upon roll call vote, the following voted in favor thereof: \_\_\_\_\_ . The following were absent and not voting: none. The following voted against the same: none. The majority having voted aye, the resolution was duly passed and adopted.

**EXHIBIT A**  
**MAP OF ROAD RIGHTS-OF-WAY**

DRAFT



Manager Weston introduced the following resolution and moved its adoption:

**RESOLUTION REQUESTING AUTHORIZATION  
TO PERMANENTLY OBSTRUCT RIGHT-OF-WAY AND  
SECTION LINE (DRAIN 27 WETLAND RESTORATION PROJECT)**

WHEREAS, the Cass County Joint Water Resource District (the "District") is a North Dakota water resource district and political subdivision under Chapter 61-16.1 of the North Dakota Century Code; and

WHEREAS, the District is a member entity of the Metro Flood Diversion Authority (the "Authority") and has been tasked by the Authority to acquire all property interests necessary for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the "Comprehensive Project"); and

WHEREAS, one element of the Comprehensive Project is the Drain 27 Wetland Restoration Project; and

WHEREAS, the Drain 27 Wetland Restoration Project is a project to block Drain 27 immediately upstream of the southern embankment to create an area of approximately 320 acres of inundation and wetland; and

WHEREAS, the inundation area of the Drain 27 Wetland Restoration Project is set forth on Exhibit A and includes those portions of 57th Street South and 112th Avenue South that are depicted in the color red on Exhibit A; and

WHEREAS, on April 22, 2021, the Authority, Cass County, and the District entered into a Memorandum of Understanding (the "ROW MOU"), which outlined the roles and responsibilities of the Authority, Cass County, and the District regarding road rights-of-way acquired in North Dakota as part of land acquisition for the Comprehensive Project; and

WHEREAS, in accordance with the ROW MOU, the Authority has directed Cass County to acquire the road rights-of-way of 57th Street South and 112th Avenue South that will be impacted by the Drain 27 Wetland Restoration Project (the "ROW"); and

WHEREAS, also in accordance with the ROW MOU, the District now seeks, pursuant to N.D.C.C. § 24-06-28, permission from Cass County to permanently obstruct the ROW and underlying section lines with the Drain 27 Wetland Restoration Project.

NOW, THEREFORE, BE IT RESOLVED, pursuant to N.D.C.C. § 24-06-28, that the District hereby requests permission from Cass County to permanently obstruct the ROW and underlying section lines in the areas depicted on Exhibit A for the Drain 27 Wetland Restoration Project, with the actual timing of obstruction dependent upon the commencement of construction of the Drain 27 Wetland Restoration Project as set forth in the ROW MOU.

BE IT FURTHER RESOLVED, that the District, in accordance with the ROW MOU, will notify landowners within one thousand (1,000) feet of the ROW of its request to Cass County to permanently obstruct the ROW.

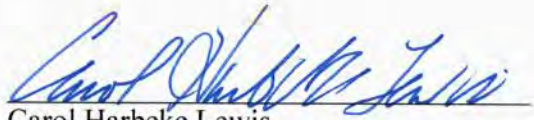
*(Signatures appear on the following page.)*

APPROVED:



Dan Jacobson, Chair

ATTEST:



Carol Harbeke Lewis  
Secretary-Treasurer

The motion for the adoption of the foregoing resolution was duly seconded by Manager Gust. On roll call vote the following Managers voted aye: Jacobson, Olson, Loughheed, Weston, Gust. The following Managers voted nay: none. The following Managers were absent: none. Upon roll call vote, the motion carried unanimously, and the resolution was duly adopted

Date Approved: June 23, 2021.

# EXHIBIT A

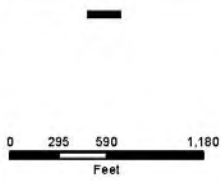
## ROAD RIGHT-OF-WAY



Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey.  
 Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By: records - AE2S, Inc. |  
 C:\Data\Projects\GIS Projects\FM Area Diversion\From GIS Projects Drive\Projects\Land Acquisition\Project Work Package\IP\Project Wide\Overall LA Map\County Res Mapbook MOU by Survey Dimensions.mxd

Channel/SE Crossings	Road Controlled by Cass County
Township Boundary	Road Controlled by Township
Project Limits	County Road
Temporary Construction Easement	State or US Highway

Vacated portions will be defined by plat.  
Dimensions are GIS measurements.



### Stanley Township

FM Area Diversion  
Map Date: 5/11/2021



**EXHIBIT B**

**ROW MOU**

*(Please see the following twenty-nine (29) pages.)*

---

**MEMORANDUM OF UNDERSTANDING**

**BY AND BETWEEN**  
**METRO FLOOD DIVERSION AUTHORITY**  
**AND**  
**CASS COUNTY, NORTH DAKOTA**  
**AND**  
**CASS COUNTY JOINT WATER RESOURCE DISTRICT**

**Dated as of April 22, 2021**

**Relating to:**

**A Memorandum of Understanding outlining the roles and responsibilities of the Parties regarding road rights-of-way acquired in North Dakota as part of land acquisition for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.**

---

# TABLE OF CONTENTS

<b>ARTICLE I</b> .....	<b>2</b>
<b>DEFINITIONS AND INTERPRETATION</b> .....	<b>2</b>
<b>SECTION 1.01</b> DEFINITIONS.....	2
<b>SECTION 1.02</b> INTERPRETATION.....	4
<b>ARTICLE II</b> .....	<b>5</b>
<b>PRE-CONSTRUCTION SITE CONTROL</b> .....	<b>5</b>
<b>SECTION 2.01</b> LAND ACQUISITION PROCESS.....	5
<b>SECTION 2.02</b> NON-FEDERAL WORK AREAS .....	5
<b>SECTION 2.03</b> FEDERAL WORK AREAS .....	6
<b>SECTION 2.04</b> PUBLIC USE OF ROAD ROW AND PLATTING .....	6
<b>SECTION 2.05</b> VACATED ROAD ROW .....	6
<b>ARTICLE III</b> .....	<b>6</b>
<b>MAINTENANCE</b> .....	<b>6</b>
<b>SECTION 3.01</b> RESPONSIBILITY .....	6
<b>SECTION 3.02</b> MAINTENANCE REQUIREMENTS.....	7
<b>SECTION 3.03</b> COUNTY REIMBURSEMENT .....	7
<b>SECTION 3.04</b> TOWNSHIP INVOLVEMENT.....	7
<b>SECTION 3.05</b> SECURING CONSTRUCTION SITES.....	7
<b>ARTICLE IV</b> .....	<b>8</b>
<b>IMPACTED LANDS</b> .....	<b>8</b>
<b>SECTION 4.01</b> ROW .....	8
<b>SECTION 4.02</b> OBLITERATION .....	8
<b>ARTICLE V</b> .....	<b>8</b>
<b>INSURANCE AND INDEMNIFICATION</b> .....	<b>8</b>
<b>SECTION 5.01</b> JOINT POWERS AGREEMENT .....	8
<b>SECTION 5.02</b> GROSSLY NEGLIGENT OR WILLFUL MISCONDUCT .....	8
<b>SECTION 5.03</b> DEVELOPER CONSTRUCTION.....	9
<b>SECTION 5.04</b> THIRD PARTY CONTRACTOR CONSTRUCTION .....	9
<b>SECTION 5.05</b> USACE CONTRACTOR CONSTRUCTION.....	9
<b>ARTICLE VI</b> .....	<b>9</b>
<b>TERM AND TERMINATION</b> .....	<b>9</b>
<b>SECTION 6.01</b> TERM .....	9
<b>SECTION 6.02</b> AGREEMENT .....	9
<b>ARTICLE VII</b> .....	<b>9</b>
<b>DISPUTE RESOLUTION</b> .....	<b>9</b>
<b>SECTION 7.01</b> INTENT AND PROCEDURE .....	9
<b>SECTION 7.02</b> MEDIATION .....	9



<b>SECTION 7.03</b>	LITIGATION IF DISPUTE NOT RESOLVED .....	10
<b>SECTION 7.04</b>	LITIGATION; VENUE .....	10
<b>SECTION 7.05</b>	WAIVER OF JURY TRIAL.....	10
<b>ARTICLE VIII.</b>	.....	<b>10</b>
<b>REIMBURSEMENT</b>	.....	<b>10</b>
<b>SECTION 8.01</b>	COSTS AND EXPENSES.....	10
<b>SECTION 8.02</b>	INVOICING .....	10
<b>ARTICLE IX.</b>	.....	<b>11</b>
<b>MISCELLANEOUS</b>	.....	<b>11</b>
<b>SECTION 9.01</b>	COMPLETE AGREEMENT .....	11
<b>SECTION 9.02</b>	COUNTERPARTS.....	11
<b>SECTION 9.03</b>	AMENDMENTS .....	11
<b>SECTION 9.04</b>	SEVERABILITY AND SAVINGS CLAUSE.....	11
<b>SECTION 9.05</b>	FORCE MAJEURE .....	12
<b>SECTION 9.06</b>	AUTHORIZED REPRESENTATIVES.....	12
<b>SECTION 9.07</b>	NOTICE .....	12
<b>SECTION 9.08</b>	GOVERNING LAW .....	13
<b>SECTION 9.09</b>	CONFLICT WITH MOU REGARDING OTHER COMPREHENSIVE PROJECT WORK.....	13
<b>SIGNATURE PAGES</b>	.....	<b>S-1 THROUGH S-3</b>
 <b>EXHIBIT A – COMPREHENSIVE PROJECT IMPACTS MAPS</b>		

## MEMORANDUM OF UNDERSTANDING

**THIS MEMORANDUM OF UNDERSTANDING** (the “MOU”) is made effective as of April 22, 2021 (the “Effective Date”), between METRO FLOOD DIVERSION AUTHORITY, a political subdivision of the State of North Dakota (the “Authority”); CASS COUNTY, NORTH DAKOTA, a political subdivision of the State of North Dakota (the “County”); and CASS COUNTY JOINT WATER RESOURCE DISTRICT, a political subdivision of the State of North Dakota (“CCJWRD”).

**WHEREAS**, Section 7002(2) of the Water Resources Reform and Development Act of 2014, Public Law 113-221, authorized construction of the locally preferred plan for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project, now defined as the Comprehensive Project; and

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

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

**WHEREAS**, the Member Entities, including the County and CCJWRD, created the Authority pursuant to the Joint Powers Agreement to undertake and fulfill the Non-Federal Sponsors’ legal obligations under the PPA; and

**WHEREAS**, one such obligation of the Authority is to acquire all property interests necessary for the construction, operation, and maintenance of the Comprehensive Project; and

**WHEREAS**, pursuant to section 4.03 of the Joint Powers Agreement, the Authority will generally allocate its responsibilities under the PPA to the Member Entities; and

**WHEREAS**, the Authority has allocated the responsibility of acquiring all property interests necessary for the construction, operation, and maintenance of the Comprehensive Project in North Dakota to CCJWRD; and

**WHEREAS**, part of CCJWRD’s responsibility to acquire all property interests includes the responsibility to obtain property interests in road rights-of-way that will be turned over to the contractors of the Comprehensive Project and obstructed by the same; and

**WHEREAS**, the County will assist CCJWRD in the acquisition of road rights-of-way for the Comprehensive Project; and

**WHEREAS**, following acquisition but prior to Turnover for construction, the Parties desire to leave the road rights-of-way open for public travel; and

**WHEREAS**, the Parties desire to enter into this MOU to set forth their respective roles and responsibilities for operating and maintaining the road rights-of-way prior to and following Turnover.

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

## **ARTICLE I. DEFINITIONS AND INTERPRETATION**

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

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

**“Best Efforts”** means an individual or entity will act in Good Faith, act in accordance with generally accepted commercial practices, and use reasonable due diligence to undertake all action contemplated by this MOU, in accordance with federal and state laws, regulations, and rules; however, the obligation to use Best Efforts does not mean a duty to take action that would be in violation of applicable federal or state law.

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

**“Cass County Joint Water Resource District”** or **“CCJWRD”** means the Cass County Joint Water Resource District, a political subdivision of the State of North Dakota.

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

**“Construction Site”** means the site defined (i) by the Project Agreement between the Authority and the Developer to be utilized by the Developer for the construction of the SWDCAI, (ii) by a construction contract between the Authority and a Third Party Contractor to be utilized

by the Third Party Contractor for construction of Non-Federal Work, or (iii) by a construction contract between USACE and its contractor to be utilized by such contractor for the construction of Federal Work.

**“County”** means Cass County, North Dakota, a political subdivision of the State of North Dakota.

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

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

**“Extraordinary Maintenance”** means any repairs or maintenance that is required for the ROW outside of Routine Maintenance.

**“Federal Work”** means that portion of the Comprehensive Project consisting of the diversion inlet structure, the control structures on the Red River and Wild Rice River; the southern embankment; the overflow embankment; construction of road and railroad raises associated with the staging area; and all mitigation features not included in the Non-Federal Work.

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

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

**“Member Entities”** means the City of Fargo, North Dakota; the City of Moorhead, Minnesota; Cass County, North Dakota; Clay County, Minnesota; and the Cass County Joint Water Resource District.

**“Non-Federal Work”** means that portion of the Comprehensive Project consisting of the SWDCAI; the in-town levees and the Oxbow-Hickson-Bakke levee; recreation features; environmental mitigation features located within the diversion channel and associated structures for the diversion channel; and applicable pre- and post-monitoring and adaptive management for the Comprehensive Project.

**“NTP1”** means as defined by the Project Agreement.

**“Original Term”** means as defined in Section 6.01.

**“Party”** means the Authority, the County, or CCJWRD, as the context requires, and its respective representatives, successors, and assigns.

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

**“PPA”** means the Project Partnership Agreement between the Department of the Army and the City of Fargo, North Dakota, the City of Moorhead, Minnesota, and the Metro Flood Diversion Authority for Construction of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated July 11, 2016, and any amendments thereto.

**“Project Agreement”** means the contract between the Authority and the Developer for the Developer to design, build, finance, operate, and maintain the SWDCAI.

**“Project Limits”** means the permanent property interests necessary for the construction of the Comprehensive Project, as currently projected on Exhibit A.

**“Renewal Term”** means as defined in Section 6.01.

**“Road ROW”** means the thirty-three (33) foot road right-of-way on either side of a section line.

**“Routine Maintenance”** means as defined in Section 3.02.

**“ROW”** means the Road ROW and Vacated ROW collectively.

**“SWDCAI”** means an approximately 30-mile, 20,000 cubic feet per second (cfs) diversion channel and associated features; the channel outlet; the Rush and Lower Rush River hydraulic structures; the Maple River aqueduct; the Sheyenne River aqueduct; the inflow design flood levee; and associated railroad bridges.

**“Third Party Contractor”** means a contractor engaged by the Authority to perform Non-Federal Work other than the SWDCAI.

**“Turnover”** means (i) in terms of a USACE contractor or a Third Party Contractor, the date, as defined by the applicable construction contract, on which the contracting entity provides control of a Construction Site to the contractor for the contractor to commence construction thereon, or (ii) in terms of the Developer, the date preceding the date on which the Developer commences construction on a Construction Site.

**“Vacated ROW”** means that portion of the thirty-three (33) foot road right-of-way on either side of 173rd Avenue Southeast that was platted and vacated in the FMD – Pleasant Subdivision, Cass County, North Dakota.

**Section 1.02 INTERPRETATION.** The definition of terms herein shall apply equally to the singular and plural forms of the term defined. Whenever the context may require, any pronoun will include the corresponding masculine, feminine, and neuter forms. The words “include,” “includes,” and “including” will be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless

the context requires otherwise (a) any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications as set forth herein), (b) any reference herein to any person shall be construed to include such person's permitted successors and assigns, (c) the words "herein," "hereof," and "hereunder," and words of similar import, shall be construed to refer to this MOU in its entirety and not to any particular provision hereof, (d) all references herein to articles, sections, exhibits, and schedules shall be construed to refer to articles and sections of, and exhibits and schedules to, this MOU, and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights.

## **ARTICLE II. PRE-CONSTRUCTION SITE CONTROL**

**Section 2.01** LAND ACQUISITION PROCESS. Road ROW in North Dakota, and the authority to construct the Comprehensive Project upon, over, and across such Road ROW, will be acquired through the following means:

(a) The Authority will request that the County take over Road ROW, pursuant to N.D.C.C. § 24-05-09, based on the design of the Comprehensive Project. The current projected Project Limits of the Comprehensive Project, and the corresponding impacted Road ROW, are included in Exhibit A.

(b) In conjunction with the Authority's request for Road ROW takeover, CCJWRD will file a request with the County to permanently obstruct such Road ROW, pursuant to N.D.C.C. § 24-06-28, with the applicable element of the Comprehensive Project. If CCJWRD's request is granted by the County, the intent is to allow the Road ROW to remain open until, as set forth in Section 3.01, construction on the applicable element of the Comprehensive Project is scheduled to commence.

(c) Upon making their requests to the County, the Authority and CCJWRD will notify all landowners, by certified mail, within a minimum distance of one thousand (1,000) feet of the Road ROW.

(d) In response to the requests, the County will set a time and place for a hearing on the requests, and at least thirty (30) days prior to the date of the hearing, it will provide notice to all landowners within a minimum distance of one thousand (1,000) feet of the Road ROW of the time and place set for the hearing.

(e) The County will hold a public hearing on the requests at the time and place set, and if appropriate following the hearing, it will (i) adopt a resolution granting the Authority's request and take over the Road ROW and (ii) adopt a resolution granting CCJWRD's request and allow the permanent obstruction of said Road ROW at an applicable time.

**Section 2.02** NON-FEDERAL WORK AREAS. Prior to the Turnover of a Construction Site that includes Road ROW from the Authority to the Developer or a Third Party Contractor, the

County will have control of the Road ROW and will have the authority to make day-to-day decisions about the operation of the Road ROW. This authority includes the ability to temporarily close a Road ROW as needed in the discretion of the County. If the County decides to temporarily close a Road ROW, it will be responsible for placing barriers and, whenever possible, providing two (2) weeks' prior notification to the Authority and CCJWRD of such closure.

**Section 2.03** FEDERAL WORK AREAS. Prior to the Turnover of a Construction Site that includes Road ROW from USACE to its construction contractor, the County will have control of the Road ROW and will have the authority to make day-to-day decisions about the operation of the Road ROW. This authority includes the ability to temporarily close a Road ROW as needed in the discretion of the County. If the County decides to temporarily close a Road ROW, it will be responsible for placing barriers and, whenever possible, providing two (2) weeks' prior notification to the Authority and CCJWRD of such closure.

**Section 2.04** PUBLIC USE OF ROAD ROW AND PLATTING. The Parties intend that although CCJWRD may have authorization to permanently obstruct the Road ROW with the Comprehensive Project, the Road ROW will remain open for public use until the notices, as described in Section 3.01, are received. Following Turnover of a Construction Site that includes Road ROW, CCJWRD will use its Best Efforts as applicable fee simple is acquired to plat and vacate the Road ROW.

**Section 2.05** VACATED ROAD ROW. CCJWRD will allow the Vacated ROW, although a private drive following vacation, to remain open for public travel. Prior to the recommencement of construction on the Vacated ROW by USACE's construction contractor, the County will have control of the Vacated ROW and will have the authority to make day-to-day decisions about the operation of the Vacated ROW. This authority includes the ability to temporarily close the Vacated ROW as needed in the discretion of the County. If the County decides to temporarily close the Vacated ROW, it will be responsible for placing barriers and, whenever possible, providing two (2) weeks' prior notification to the Authority and CCJWRD of such closure.

### **ARTICLE III. MAINTENANCE**

#### **Section 3.01** RESPONSIBILITY.

(a) Developer Works. The County will be responsible for performing all Routine Maintenance and Extraordinary Maintenance on the ROW until Turnover to the Developer, which will occur following notice from the Developer as set forth herein. The Developer will be responsible for notifying the Authority at least ninety (90) calendar days prior to the commencement of construction on the ROW. The Authority will notify the County and CCJWRD as soon as possible after its receipt of notice from the Developer. This notice will allow CCJWRD to exercise its authorization to permanently obstruct the ROW, which will include posting signs, in coordination with the County, stating the dates of the road closure and coordinating with the Developer for traffic control signage.

(b) Third Party Contractor Works. The County will be responsible for performing all Routine Maintenance and Extraordinary Maintenance on the ROW until Turnover to the Third

Party Contractor, which is currently anticipated to be close in time to the commencement of construction. The Authority must give the County and CCJWRD at least ninety (90) calendar days' written notice of when it is anticipated the Third Party Contractor will begin construction on the ROW. This notice will allow CCJWRD to exercise its authorization to permanently obstruct the ROW, which will include posting signs, in coordination with the County, stating the dates of the road closure and coordinating with the Third Party Contractor for traffic control signage.

(c) USACE Contractor Works. The County will be responsible for performing all Routine Maintenance and Extraordinary Maintenance on the ROW until Turnover to the USACE construction contractor, which is currently anticipated to be close in time to the commencement of construction. The Parties will work with USACE to get as much notice as possible regarding the scheduled date for the commencement of construction. Upon receipt of this notice, CCJWRD will exercise its authorization to permanently obstruct the ROW, which will include posting signs, in coordination with the County, stating the dates of the road closure and coordinating with the USACE Contractor for traffic control signage.

**Section 3.02** MAINTENANCE REQUIREMENTS. The County will perform, or ensure the performance of, the following maintenance tasks on the ROW (collectively, "Routine Maintenance"):

- (a) The ROW will be graded twice a calendar month.
- (b) A 3-inch minimum thickness of gravel will be maintained.
- (c) The graded cross slopes across each lane will match its existing range of two percent (2%) to four percent (4%). If the current infield slope is not within that range, it will be upgraded to the two percent (2%) to four percent (4%) range.
- (d) Class 13 gravel will be placed for any aggregate needs.
- (e) Snow removal along the ROW will be dependent on the applicable township's current plow locations. The township will need to provide information to the County if a certain ROW was being plowed as needed by the township or private individuals in the winter.

**Section 3.03** COUNTY REIMBURSEMENT. The County may seek reimbursement from the Authority, as set forth herein, for costs and expenses incurred for Routine Maintenance and Extraordinary Maintenance; provided, however, the County must seek prior written approval from both CCJWRD and the Authority before performing Extraordinary Maintenance that exceeds \$5,000.

**Section 3.04** TOWNSHIP INVOLVEMENT. The County may engage an applicable township to perform Routine Maintenance. Reimbursement for such work, however, may be submitted by either the County or the township.

**Section 3.05** SECURING CONSTRUCTION SITES. The Authority will include in the Project Agreement and in its construction contract with the Third Party Contractor that the Developer and the Third Party Contractor, respectively, are responsible for securing the ROW, upon the



commencement of construction, to limit public travel on the ROW. The Parties will work with USACE for USACE to include in its construction contract that the contractor is responsible for securing the ROW, upon commencement of construction, to limit public travel on the ROW.

#### **ARTICLE IV. IMPACTED LANDS**

**Section 4.01** ROW. As set forth herein, the County will secure ROW, either inside or outside the Project Limits, to the extent necessary to allow for construction of the Comprehensive Project. CCJWRD will be responsible for securing property interests other than ROW that are necessary to construct termination tees.

**Section 4.02** OBLITERATION. Following construction of the Comprehensive Project and the termination tees, the Parties will obliterate that portion of the ROW that exists between the termination tees and Project Limits that will no longer be utilized as a road. Timing of each obliteration will be agreed upon by the Parties. The Authority will be responsible for all costs and expenses associated with obliteration and will be responsible for hiring a contractor for the obliteration work. The Authority will indemnify the County and CCJWRD for all obliteration work done on the ROW.

#### **ARTICLE V. INSURANCE AND INDEMNIFICATION**

**Section 5.01** JOINT POWERS AGREEMENT.

(a) Pursuant to section 15.05 of the Joint Powers Agreement, the Authority agreed to defend and indemnify the Member Entities, including both the County and CCJWRD, for any liability claims arising from the Authority's activities or operations, decisions of the Authority, or arising out of or regarding the Comprehensive Project.

(b) The Parties acknowledge and agree that section 15.05 of the Joint Powers Agreement is applicable to the County's and CCJWRD's control of the ROW and the County's maintenance of the ROW. As a result, the Authority will indemnify both CCJWRD and the County from third party claims relating to the ROW.

(c) The Authority has secured a commercial general limited liability policy from the North Dakota Insurance Reserve Fund ("NDIRF") and has listed both the County and CCJWRD as additional insureds under such policy. The Authority will continue to maintain such policy, or a like policy, in accordance with the terms of the Joint Powers Agreement and continue to list both the County and CCJWRD as additional insureds during the term of this MOU.

**Section 5.02** GROSSLY NEGLIGENT OR WILLFUL MISCONDUCT. Notwithstanding anything herein to the contrary, the Authority will not indemnify the County for grossly negligent or willful misconduct committed by the Person engaged by the County to perform maintenance. In lieu of such indemnification, the County must include in its maintenance contract that the contractor shall procure and maintain commercial general liability in the amount of \$3,000,000 and must name the County, CCJWRD, and the Authority as additional insureds under such policy.

**Section 5.03 DEVELOPER CONSTRUCTION.** The Developer will be responsible for procuring and maintaining the insurance set forth in the Project Agreement. The Authority will include provisions in the Project Agreement requiring the Developer (i) to procure and maintain commercial general liability in the amount of \$1,000,000 per occurrence and \$10,000,000 annual aggregate and must name CCJWRD, the County, and the Authority as additional insureds under such policy, and (ii) to indemnify and hold harmless CCJWRD, the County, and the Authority for construction performed on the ROW.

**Section 5.04 THIRD PARTY CONTRACTOR CONSTRUCTION.** Upon Turnover, the Third Party Contractor will be responsible for procuring and maintaining insurance requirements set forth in the construction contract. The Authority will include provisions in the construction contract requiring the Third Party Contractor (i) to procure and maintain commercial general liability in the amount of \$3,000,000 and must name CCJWRD, the County, and the Authority as additional insureds under such policy, and (ii) to indemnify and hold harmless CCJWRD, the County, and the Authority for construction performed on the ROW.

**Section 5.05 USACE CONTRACTOR CONSTRUCTION.** Upon Turnover, the USACE contractor will be responsible for procuring and maintaining insurance requirements set forth in the construction contract. The Authority will coordinate with USACE regarding insurance requirements for the contractor.

## **ARTICLE VI. TERM AND TERMINATION**

**Section 6.01 TERM.** The Original Term of this MOU will be for two (2) years from the Effective Date. The MOU will automatically renew for successive one (1) year additional terms (each, respectively, a “Renewal Term”) unless the Parties mutually agree, in writing, to terminate this MOU.

**Section 6.02 AGREEMENT.** The Parties may mutually agree, in writing, at any time, to terminate this MOU.

## **ARTICLE VII. DISPUTE RESOLUTION**

**Section 7.01 INTENT AND PROCEDURE.** The Parties will cooperate and use their Best Efforts to ensure that the various provisions of this MOU are fulfilled. The Parties agree to act in Good Faith to undertake resolution of disputes in an equitable and timely manner and in accordance with the provisions of this MOU. If disputes cannot be resolved informally by the Parties, the following procedures will be used.

**Section 7.02 MEDIATION.** If there is a failure between the Parties to resolve a dispute on their own, the Parties will first attempt to mediate the dispute. The Parties will agree upon a single mediator and will equally split any costs for mediation services.

**Section 7.03** LITIGATION IF DISPUTE NOT RESOLVED. If the dispute is not resolved within forty-five (45) calendar days after the end of mediation proceedings, the Parties may litigate the matter.

**Section 7.04** LITIGATION; VENUE. All litigation between the Parties arising out of or pertaining to this MOU or its breach will be filed, heard, and decided in the State District Court of Cass County, North Dakota, which will have exclusive jurisdiction and venue.

**Section 7.05** WAIVER OF JURY TRIAL. THE PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THAT ANY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING, COUNTERCLAIM, OR DEFENSE BASED ON THIS MOU, OR ARISING OUT OF, UNDER, OR IN ANY CONNECTION WITH THIS MOU, OR WITH RESPECT TO ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS MOU. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ALL PARTIES ENTERING INTO THIS MOU. THIS PROVISION APPLIES ONLY TO SUITS BETWEEN THE PARTIES AND DOES NOT APPLY TO THIRD PARTY CLAIMS OR SUITS.

## **ARTICLE VIII. REIMBURSEMENT**

**Section 8.01** COSTS AND EXPENSES. Between the Effective Date and Turnover of a ROW, the County may seek reimbursement from the Authority for costs and expenses incurred for Routine Maintenance and Extraordinary Maintenance.

**Section 8.02** INVOICING.

(a) The County will remit hard copy invoices to the Authority at the Authority's main office, and the invoices will be processed by the Authority for the following month. The County will also submit copies of the invoices to the Authority electronically at [APInvoicesFMDiv@jacobs.com](mailto:APInvoicesFMDiv@jacobs.com), copied to [kbakkegard@fmdiversion.gov](mailto:kbakkegard@fmdiversion.gov).

(b) The County's invoices must be detailed and precise, clearly indicate fees and expenses, and include at least the following information:

- (1) The County's name and address;
- (2) The County's federal employer identification number;
- (3) Unique invoice number;
- (4) Billing period;
- (5) Description of each activity performed for each day in which services were performed;

- (6) Work order number associated with each activity;
- (7) Name, billing rate, hours worked by each person involved in each activity;
- (8) Total amount of fees and costs “billed to date,” including the preceding months;
- (9) Preferred remittance address, if different from the address on the invoice’s coversheet; and
- (10) All of the work performed during that billing period.

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

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

(e) Payment does not imply acceptance of services or that the invoice is accurate. In the event an error is identified within three (3) months of receipt of payment, the County must credit any payment error from any payment that is due or that may become due to the County under this MOU.

## **ARTICLE IX. MISCELLANEOUS**

**Section 9.01** COMPLETE AGREEMENT. This MOU contains the entire and exclusive understanding of the Parties with respect to the subject matter thereof and supersedes all prior agreements, understandings, statements, representations, and negotiations, in each case oral or written, among the Parties with respect to their subject matter.

**Section 9.02** COUNTERPARTS. This instrument may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

**Section 9.03** AMENDMENTS. This MOU may be amended only by written instrument duly executed by the Parties or their respective successors or assigns, except to the extent expressly provided otherwise in this MOU.

**Section 9.04** SEVERABILITY AND SAVINGS CLAUSE. Each provision, section, sentence, clause, phrase, and word of this MOU is intended to be severable. If any provision, section, sentence, clause, phrase, or word hereof is held by a court with jurisdiction to be illegal or invalid

for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this MOU.

**Section 9.05** FORCE MAJEURE. A Party will not be liable to the others during any period in which its performance is delayed or prevented, in whole or in part, by any of the following circumstances: war, civil war, invasion, violent act of foreign enemy, or armed conflict; nuclear, chemical, or biological contamination; ionizing radiation; or any act of terrorism. If such a circumstance occurs, the Party claiming the delay must undertake reasonable action to notify the other Parties of the same.

**Section 9.06** AUTHORIZED REPRESENTATIVES. Each Party hereby designates the following individual as its initial authorized representative, respectively, to administer this MOU on its respective behalf:

- (a) Authority Representative: Kris Bakkegard, Director of Engineering
- (b) County Representative: Jason Benson, County Engineer
- (c) CCJWRD Representative: Carol Harbeke Lewis, Secretary-Treasurer

**Section 9.07** NOTICE.

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

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

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

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

County Engineer  
1201 Main Avenue West  
West Fargo, North Dakota 58078

(d) All notices to CCJWRD will be marked as regarding the Comprehensive Project and will be delivered to the following address or as otherwise directed by the CCJWRD Representative:

CCJWRD Secretary-Treasurer  
1201 Main Avenue West  
West Fargo, North Dakota 58078

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

**Section 9.08** GOVERNING LAW. This MOU will be governed by and construed in accordance with the laws of the State of North Dakota.

**Section 9.09** CONFLICT WITH MOU REGARDING OTHER COMPREHENSIVE PROJECT WORK. Nothing in this MOU is intended to supersede, amend, or otherwise modify any other memorandum of understanding or agreement entered by and between the Parties for work regarding other aspects of the Comprehensive Project.

**IN WITNESS WHEREOF**, the Authority, the County, and CCJWRD caused this Agreement to be executed.

*(Remainder of page intentionally left blank.)*

*Signature Page for the Metro Flood Diversion Authority*

The governing body of the Metro Flood Diversion Authority approved this MOU on the 22nd day of April, 2021

METRO FLOOD DIVERSION  
AUTHORITY

By: *Shelly Carlson*  
Michelle (~~Shelly~~) A. Carlson, Chair

By: *Joel Paulsen*  
Joel Paulsen, Executive Director


ATTEST:

*Dawn Lindblom*  
Dawn Lindblom, Secretary

*Signature Page for Cass County, North Dakota*

The governing body of Cass County, North Dakota, approved this MOU on the 19 day of April, 2021.

CASS COUNTY, NORTH DAKOTA

By:   
Chad Peterson, Chair of the Board of  
County Commissioners

ATTEST:

  
Michael Montplaisir, County Auditor



*Signature Page for the Cass County Joint Water Resource District*


The governing body of the Cass County Joint Water Resource District approved this MOU on the 22 day of April, 2021.

CASS COUNTY JOINT WATER  
RESOURCE DISTRICT

By: 

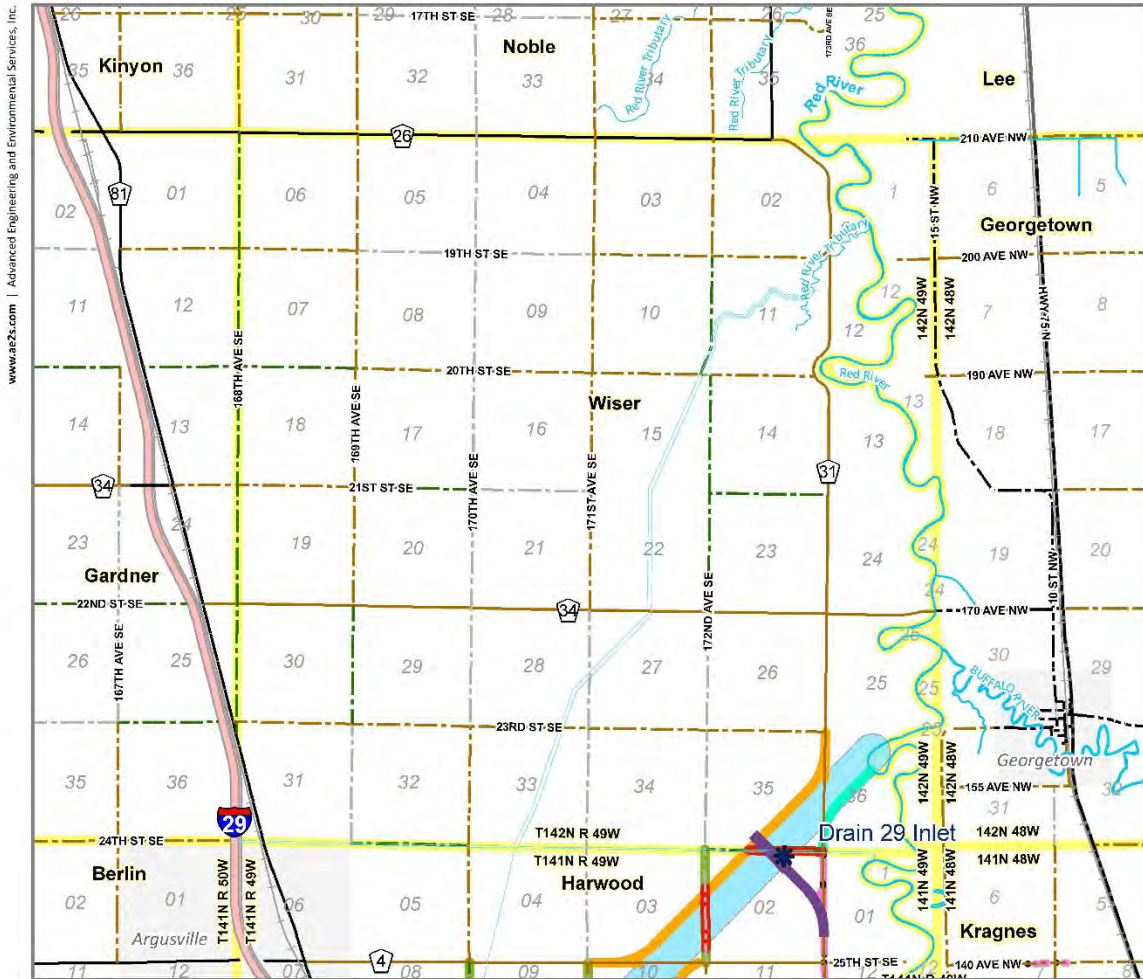
Dan Jacobson, Chair

ATTEST:

  
Carol Harbeke Lewis, Secretary-Treasurer

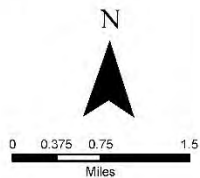
# EXHIBIT A

## COMPREHENSIVE PROJECT IMPACTS MAPS



Legend			
	Aqueduct		Township Road Closure
	Inlet Structures		Township Road Can Remain Open
	Drain Crossings		Mobility Improvements
	Channel/SE Crossings		New Gravel Road
	Channel		Other Agency Roadway Improvements
			Railroad
			Township - Trail/Grass
			Township - Unimproved
			Township - Dirt
			Township - Gravel
			Township - Paved
			County Road - Gravel
			County Road - Paved
			State or US Highway
			Interstate
			Township Boundary

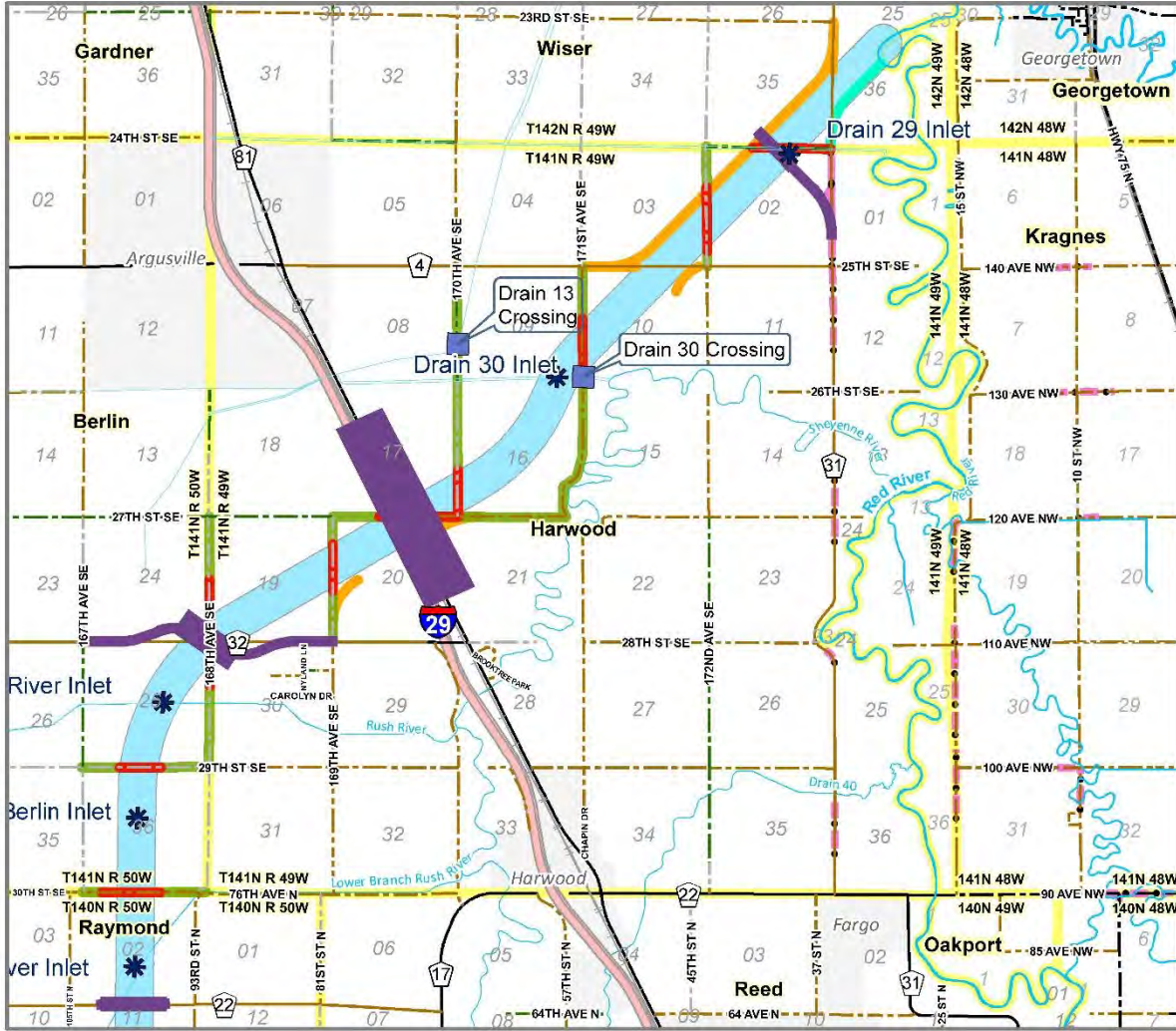
*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By: cwoikenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\LA and Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd*



### Wisner

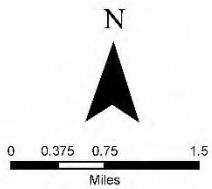
FM Area Diversion  
Map Date: 10/7/2020





Legend							
	Aqueduct		Township Road Closure		Township - Trail/Grass		County Road - Gravel
	Inlet Structures		Township Road Can Remain Open		Township - Unimproved		County Road - Paved
	Drain Crossings		Mobility Improvements		Township - Dirt		State or US Highway
	Channel/SE Crossings		New Gravel Road		Township - Gravel		Interstate
	Channel		Other Agency Roadway Improvements		Township - Paved		Township Boundary
			Railroad				

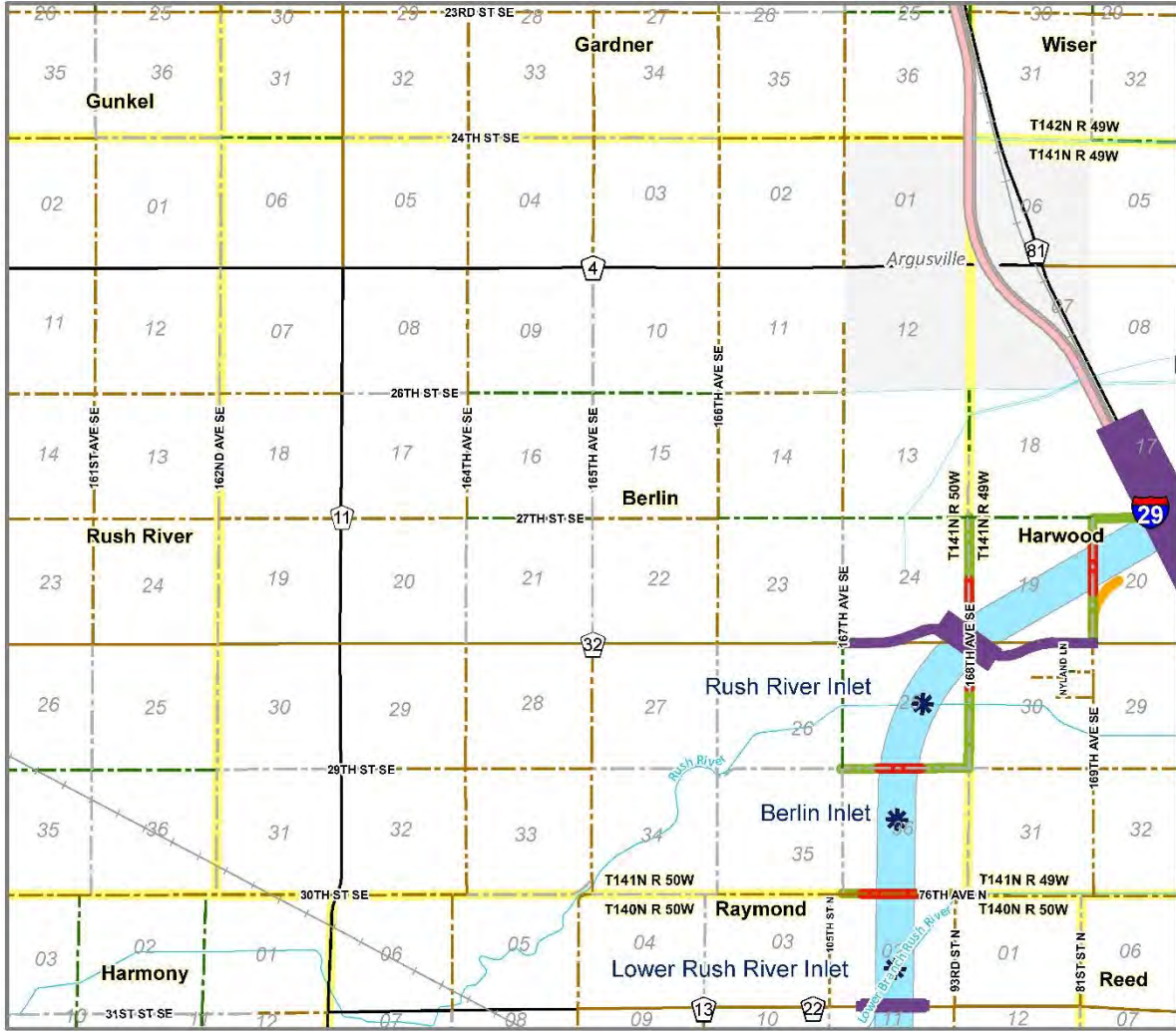
Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd



## Harwood

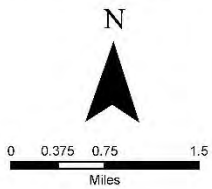
FM Area Diversion  
Map Date: 10/7/2020





Legend			
	Aqueduct		Township Road Closure
	Inlet Structures		Township Road Can Remain Open
	Drain Crossings		Mobility Improvements
	Channel/SE Crossings		Township - Dirt
	Channel		Township - Gravel
			Township - Paved
			County Road - Gravel
			County Road - Paved
			State or US Highway
			Interstate
			Township Boundary
	Railroad		

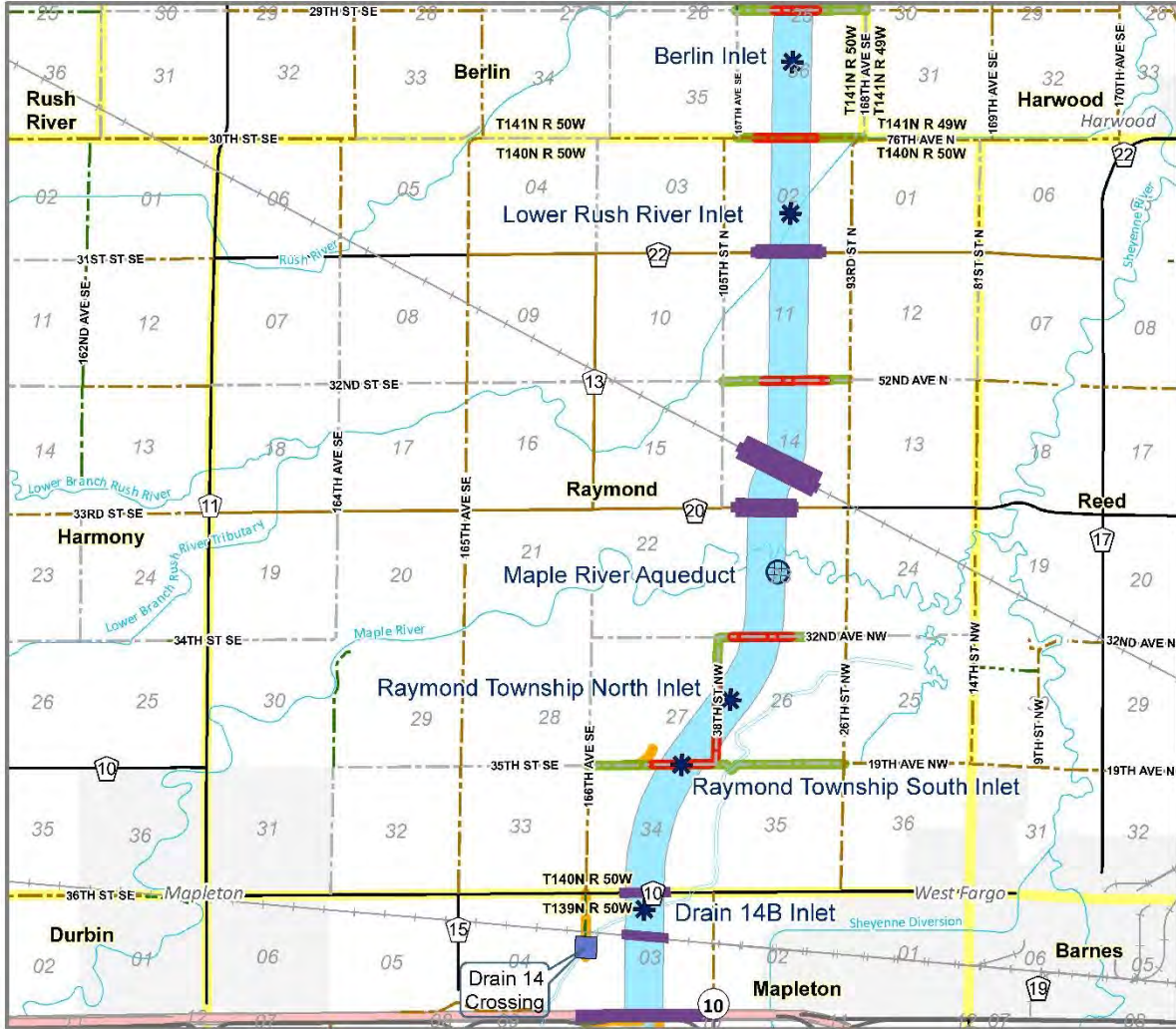
Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd



## Berlin

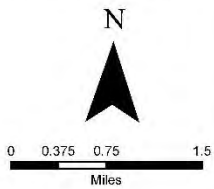
FM Area Diversion  
Map Date: 10/7/2020





Legend			
	Aqueduct		Township Road Closure
	Inlet Structures		Township Road Can Remain Open
	Drain Crossings		Mobility Improvements
	Channel/SE Crossings		New Gravel Road
	Channel		Other Agency Roadway Improvements
	Railroad		Township - Paved
	Township - Trail/Grass		Township - Unimproved
	Township - Dirt		Township - Gravel
	County Road - Gravel		County Road - Paved
	State or US Highway		Interstate
	Township Boundary		

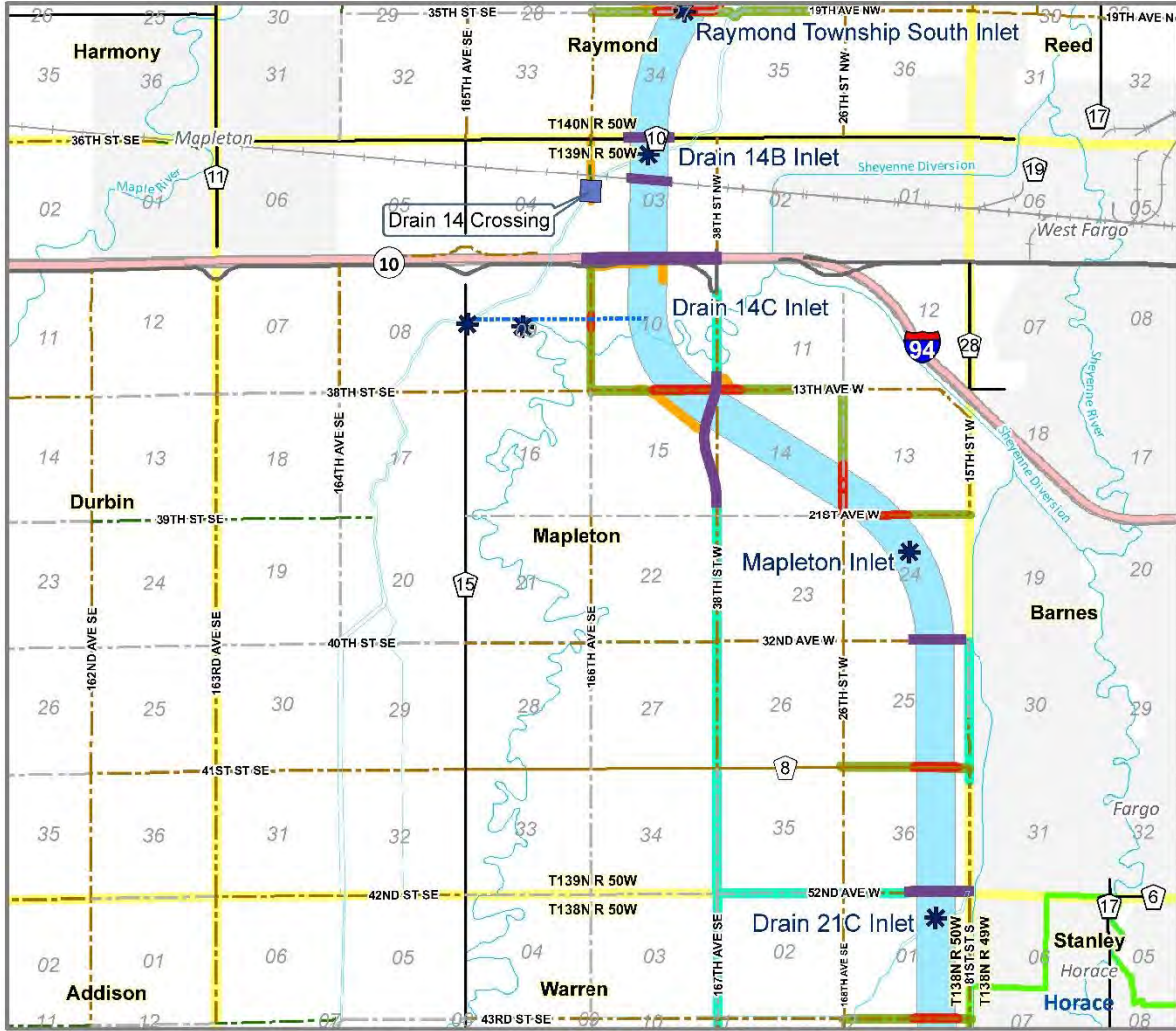
Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd



## Raymond

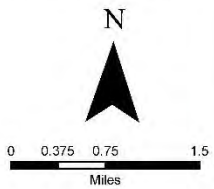
FM Area Diversion  
Map Date: 10/7/2020





Legend			
	Aqueduct		Township Road Closure
	Inlet Structures		Township Road Can Remain Open
	Drain Crossings		Mobility Improvements
	Channel/SE Crossings		New Gravel Road
	Channel		Township - Dirt
	Drain Construction		Township - Gravel
			Township - Paved
			Railroad
			County Road - Gravel
			County Road - Paved
			State or US Highway
			Interstate
			Township Boundary
			City of Horace

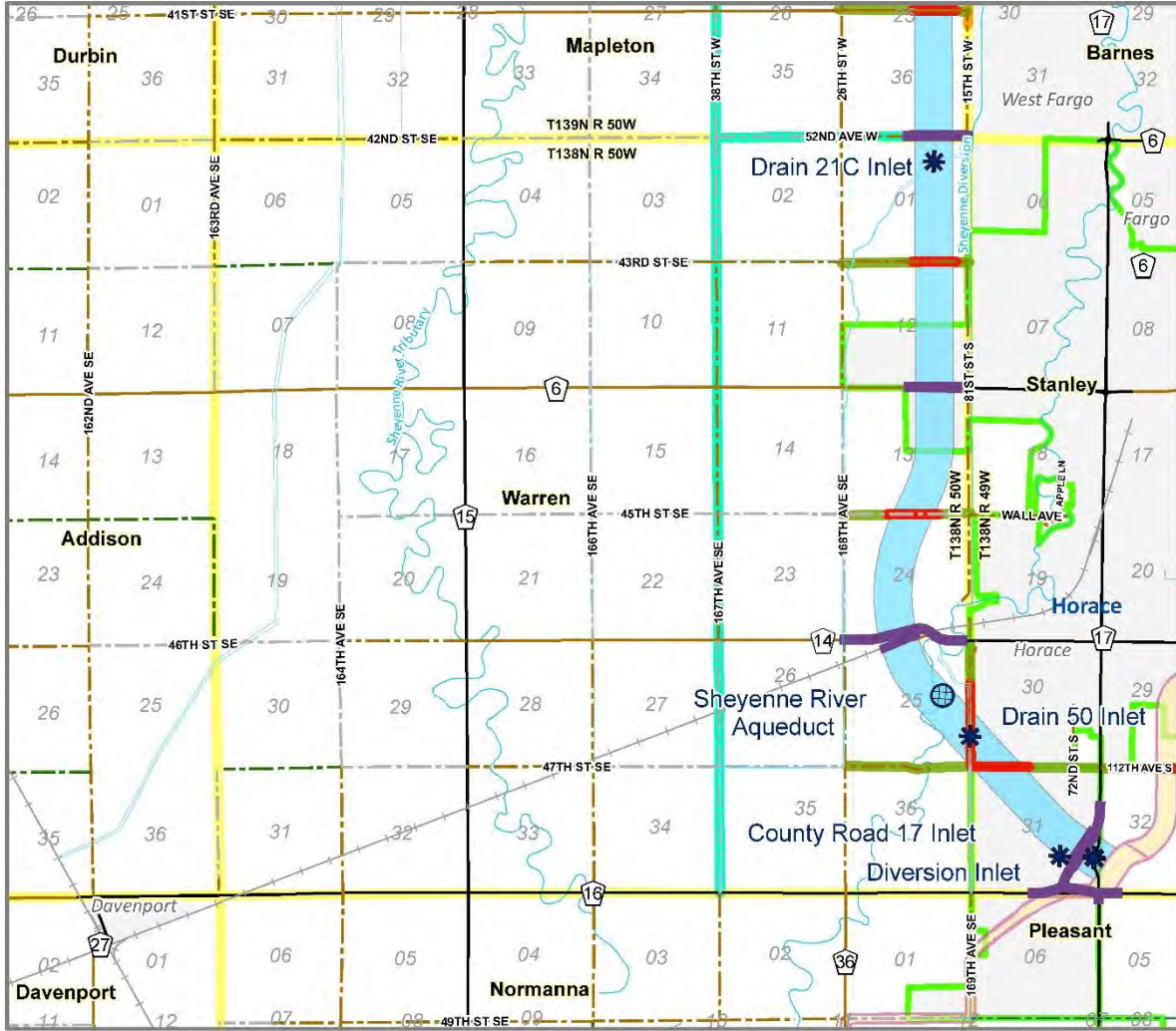
*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd*



## Mapleton

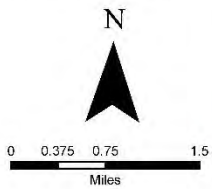
FM Area Diversion  
Map Date: 3/19/2021





Legend			
	Aqueduct		Township Road Closure
	Inlet Structures		Township Road Can Remain Open
	Drain Crossings		Mobility Improvements
	Channel/SE Crossings		New Gravel Road
	Channel		Township - Unimproved
	Southern Embankment		Township - Gravel
	Railroad		Township - Paved
	County Road - Gravel		County Road - Paved
	Township - Trail/Grass		State or US Highway
	Township - Dirt		Interstate
	Township - Gravel		Township Boundary
	Township - Paved		City of Horace

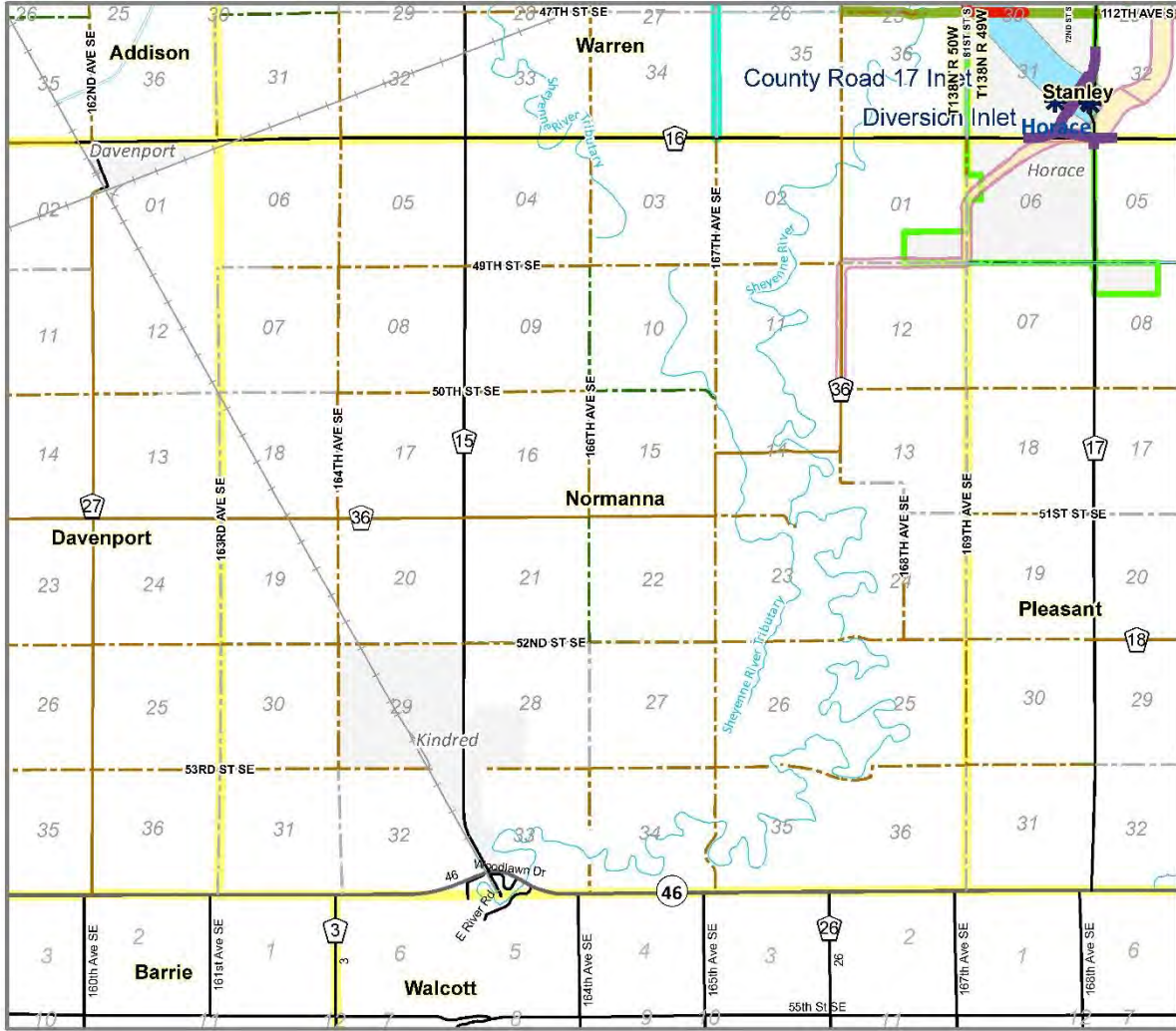
Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd



## Warren

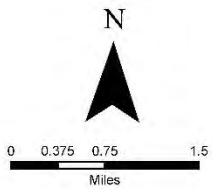
FM Area Diversion  
Map Date: 10/7/2020





Legend							
	Aqueduct		Township Road Closure		Township - Trail/Grass		County Road - Gravel
	Inlet Structures		Township Road Can Remain Open		Township - Unimproved		County Road - Paved
	Drain Crossings		Mobility Improvements		Township - Dirt		State or US Highway
	Channel/SE Crossings		New Gravel Road		Township - Gravel		Interstate
	Channel		Other Agency Roadway Improvements		Township - Paved		Township Boundary
	Southern Embankment		Railroad				City of Horace

*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd*

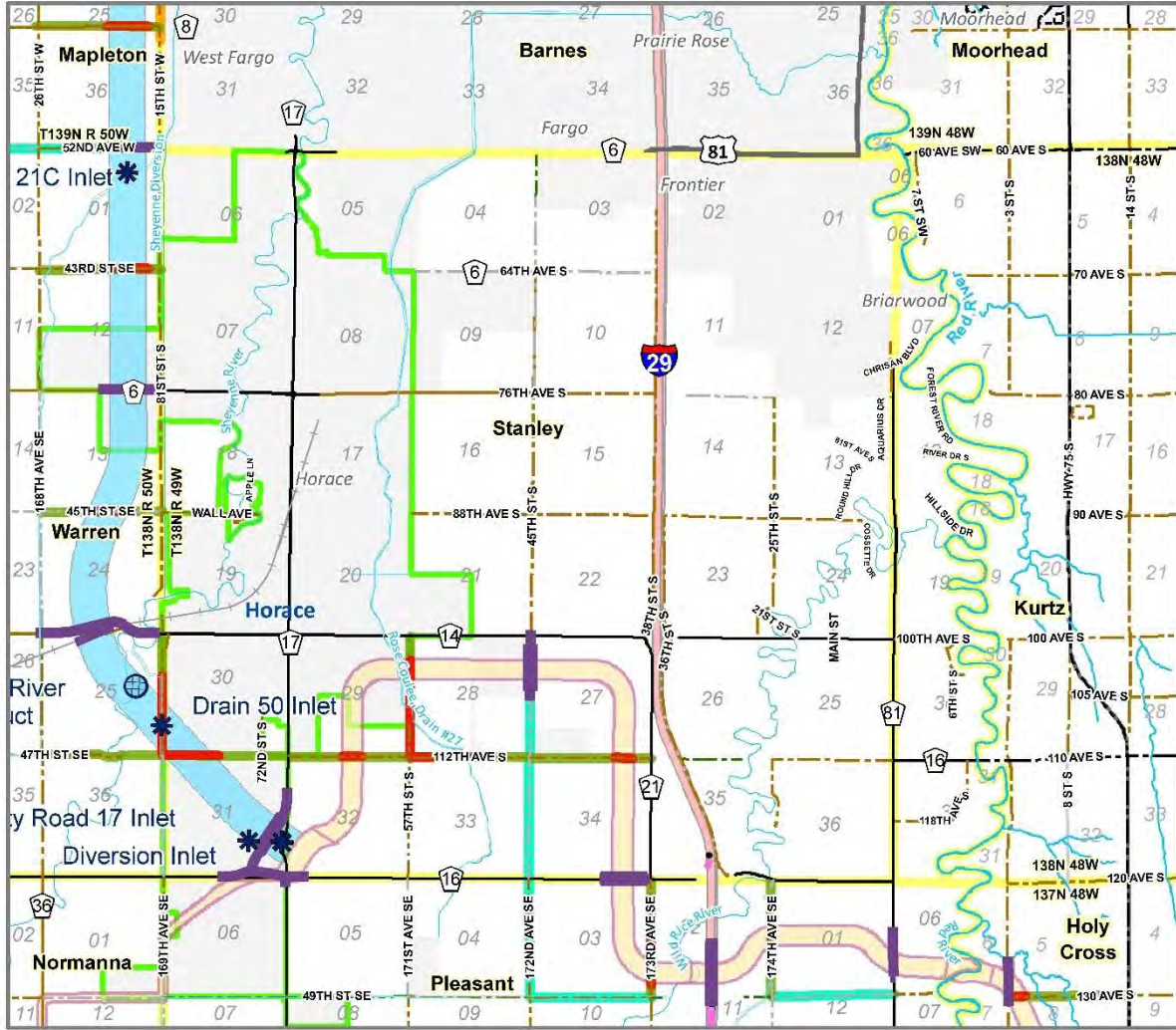


## Normanna

FM Area Diversion  
Map Date: 10/7/2020

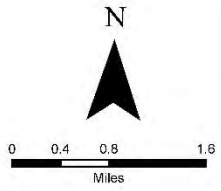






Legend			
	Aqueduct		Township Road Closure
	Inlet Structures		Township Road Can Remain Open
	Drain Crossings		Mobility Improvements
	Channel/SE Crossings		New Gravel Road
	Channel		Other Agency Roadway Improvements
	Southern Embankment		Railroad
	Township - Trail/Grass		Township - Unimproved
	Township - Dirt		Township - Gravel
	Township - Paved		Township - Paved
	County Road - Gravel		County Road - Paved
	State or US Highway		Interstate
	Township Boundary		City of Horace

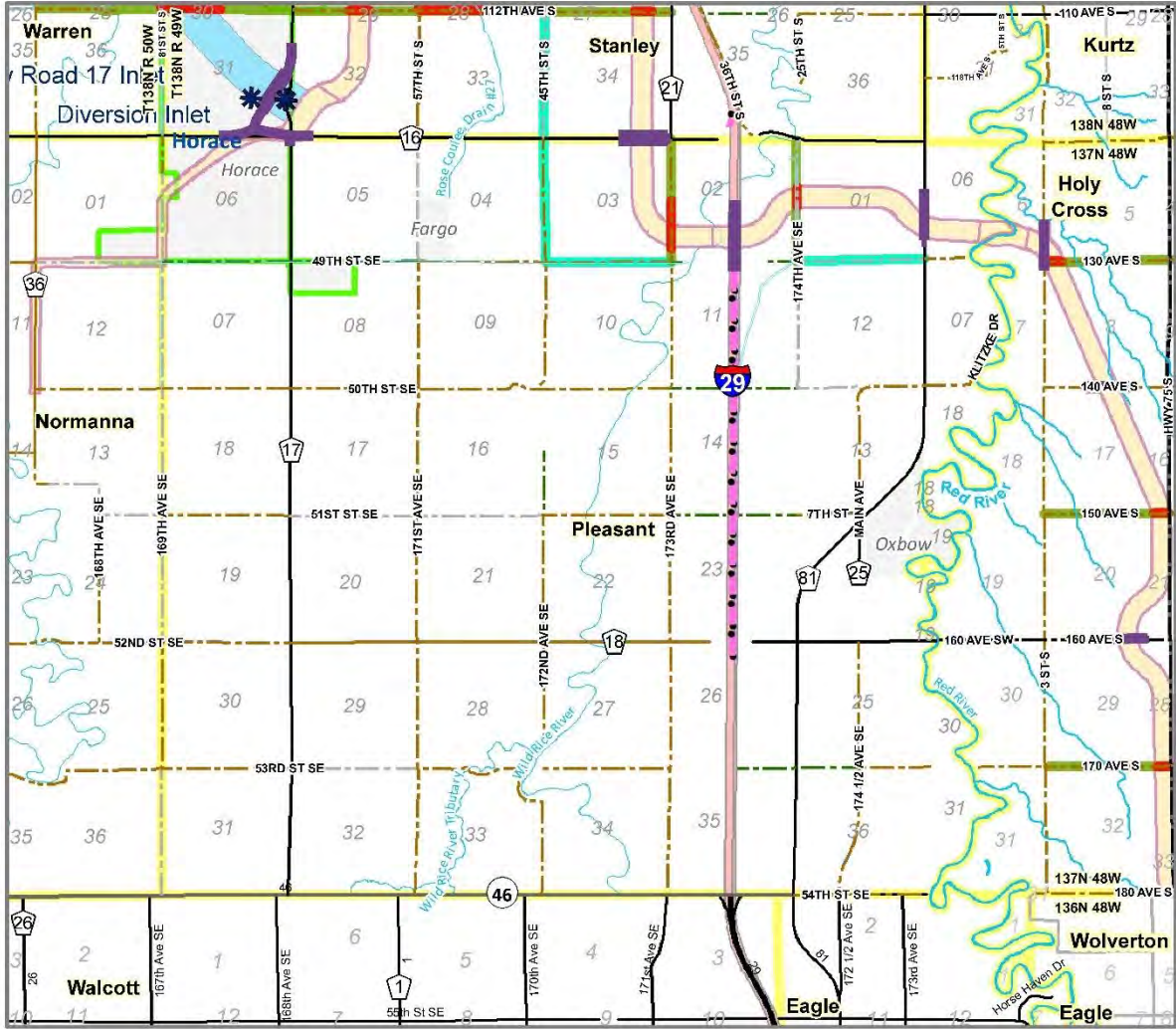
*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd*



**Stanley**

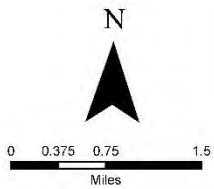
FM Area Diversion  
Map Date: 2/11/2021





Legend							
	Aqueduct		Township Road Closure		Township - Trail/Grass		County Road - Gravel
	Inlet Structures		Township Road Can Remain Open		Township - Unimproved		County Road - Paved
	Drain Crossings		Mobility Improvements		Township - Dirt		State or US Highway
	Channel/SE Crossings		New Gravel Road		Township - Gravel		Interstate
	Channel		Other Agency Roadway Improvements		Township - Paved		Township Boundary
	Southern Embankment		Railroad		City of Horace		

*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd*



## Pleasant

FM Area Diversion  
Map Date: 2/11/2021



---

**RESOLUTION REQUESTING THAT CASS COUNTY  
ACQUIRE ROAD RIGHTS-OF-WAY  
(DRAIN 27 WETLAND RESTORATION PROJECT)**

of the

**METRO FLOOD DIVERSION AUTHORITY**

Approved on June 24, 2021

---

This resolution was drafted by:  
Ohnstad Twichell, P.C.  
P.O. Box 458  
West Fargo, North Dakota 58078

**Table of Contents**

Section 1. Definitions ..... 2

Section 2. ROW Acquisition ..... 3

Section 3. Permanent Obstruction Authorization ..... 3

Section 4. Reimbursement..... 3

Section 5. Joint Powers Agreement and ROW MOU ..... 3

Section 6. North Dakota Law Applies..... 3

Section 7. Effective Date ..... 4

Section 8. Electronic Signatures ..... 4

Member Dr. Tim Mahoney introduced the following resolution and moved for its adoption:

**RESOLUTION REQUESTING THAT CASS COUNTY  
ACQUIRE ROAD RIGHTS-OF-WAY  
(DRAIN 27 WETLAND RESTORATION PROJECT)**

**WHEREAS**, the City of Moorhead, the City of Fargo, Clay County, Cass County, and the Cass County Joint Water Resource District (the “Member Entities”) entered into a Joint Powers Agreement (“JPA”), dated June 1, 2016, creating the Metro Flood Diversion Authority (the “Authority”); and

**WHEREAS**, section 4.04 of the JPA provides that the North Dakota Member Entities will be responsible for certain elements of the Comprehensive Project, including:

- (a) An approximately thirty (30) mile, 20,000 cubic feet per second (cfs) storm water diversion channel and associated features (“SWDCAI”);
- (b) The channel outlet;
- (c) The Rush and Lower Rush River hydraulic structures;
- (d) The Maple River aqueduct;
- (e) The Sheyenne River aqueduct;
- (f) The tie-in to USACE’s diversion inlet structure project;
- (g) Railroad bridges;
- (h) In-town levees located in the City of Fargo;
- (i) Road raises within the protected area, outside of any city limits;
- (j) The Oxbow-Hickson-Bakke levee;
- (k) Recreation features located in North Dakota;
- (l) Environmental mitigation features and associated structures for the SWDCAI located in North Dakota specifically within the channel mitigation features; and
- (m) Lands, easements, and rights-of-way; and

**WHEREAS**, Article 12 of the JPA provides the Authority with the authorization to request that a Member Entity undertake certain elements of the Comprehensive Project; and

**WHEREAS**, on April 22, 2021, the Authority, Cass County, and the Cass County Joint Water Resource District (“CCJWRD”) entered into a Memorandum of Understanding (the “ROW MOU”), which outlined the roles and responsibilities of the Authority, Cass County, and CCJWRD regarding road rights-of-way acquired in North Dakota as part of land acquisition for the Project; and

**WHEREAS**, pursuant to the JPA and the ROW MOU, the Authority now desires to request that Cass County, as a North Dakota Member Entity, acquire certain rights-of-way that will be impacted by the construction of the Drain 27 Wetland Restoration Project.

**NOW, THEREFORE, BE IT RESOLVED** by the governing body of the Metro Flood Diversion Authority:

Section 1. Definitions.

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

“Authority” means the Metro Flood Diversion Authority, a political subdivision of the State of North Dakota.

“Cass County” means Cass County, a political subdivision of the State of North Dakota.

“CCJWRD” means the Cass County Joint Water Resource District, a political subdivision of the State of North Dakota.

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

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

“JPA” means the Joint Powers Agreement, dated June 1, 2016, by and between the Member Entities.

“Member Entity” the City of Moorhead, the City of Fargo, Cass County, Clay County, or CCJWRD.

“North Dakota Member Entity” means the City of Fargo, Cass County, or CCJWRD.

“ROW” means the road right-of-way designated on Exhibit A as “Road Controlled by Cass County” on 57th Street South and 112th Avenue South.

“ROW MOU” means the Memorandum of Understanding, attached hereto as Exhibit B, by and between the Authority, Cass County, and CCJWRD, dated April 22, 2021, outlining the roles and responsibilities of the parties regarding road rights-of-way acquired in North Dakota as part of land acquisition for the Comprehensive Project.

“SEAI” means the Southern Embankment and Associated Infrastructure, including the diversion inlet structure, the connection channel, Red River structure, the Wild Rice structure, and the southern embankment in its entirety, to be constructed as part of the Comprehensive Project.

“SWDCAI” shall have the same meaning as how it is defined in the recitals in this resolution.

Section 2. ROW Acquisition.

(a) The Authority hereby formally requests that Cass County acquire the ROW through the process set forth in the ROW MOU for the Drain 27 Wetland Restoration Project.

(b) Following the Effective Date, the Authority will notify all landowners, by certified mail, within a minimum distance of one thousand (1,000) feet of the ROW of its request to Cass County.

Section 3. Permanent Obstruction Authorization.

In conjunction with the Authority’s request to Cass County, pursuant to the terms of the ROW MOU, CCJWRD will file a request with Cass County to permanently obstruct the ROW with the Drain 27 Wetland Restoration Project. CCJWRD will also notify all landowners within a minimum distance of one thousand (1,000) feet of the ROW of its request to Cass County.

Section 4. Reimbursement.

The Authority will reimburse Cass County for any reasonable costs or expenses related to acquisition of the ROW following the submission of a payment request from Cass County.

Section 5. Joint Powers Agreement and ROW MOU.

Nothing herein is intended to conflict with the terms and conditions of the JPA or the ROW MOU; rather, this resolution is intended to supplement the JPA and ROW MOU. In the event there is a conflict between this resolution, the JPA, and/or the ROW MOU, the JPA takes precedence over this resolution and the ROW MOU and the ROW MOU takes precedence over this resolution.

Section 6. North Dakota Law Applies.

This resolution will be controlled by the laws of the State of North Dakota, and any claims arising out of or pertaining to this resolution will be filed, heard, and decided in the state district court of Cass County, North Dakota, which will have exclusive jurisdiction and venue.

Section 7. Effective Date.

This resolution will take effect immediately upon adoption.

Section 8. Electronic Signatures.

Electronic signatures to this resolution shall be valid as original signatures and shall be valid to bind the Authority. For purposes hereof: (i) “electronic signature” means a manually signed original signature that is then transmitted by electronic means; and (ii) “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a portable document format (“pdf”) or other replicating image attached to an electronic mail or internet message.

Dated: June 24, 2021.

**METRO FLOOD DIVERSION AUTHORITY**

APPROVED:

*Shelly Carlson*  
Michelle (Shelly) A. Carlson, Chair

ATTEST:

*Dawn Lindblom*  
Dawn Lindblom, Secretary

The motion for adoption of the foregoing resolution was duly seconded by Member Peterson and upon roll call vote, the following Members voted in favor thereof: Carlson, Mahoney, Dardis, Peterson, Hendrickson, Piepkorn, Ebinger, Preston, Campbell, Scherling, Steen, Olson and Seljevoid. The following were absent and not voting: None. The following voted against the same: None. A majority of the Members having voted aye, the resolution was declared duly passed and adopted.



# EXHIBIT A

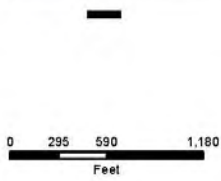
## ROAD RIGHT-OF-WAY



Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey.  
 Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By: records - AE2S, Inc. |  
 C:\Data\Projects\GIS Projects\FM Area Diversion\From GIS Projects Drive\Projects\Land Acquisition\Project Work Package\IP\Project Wide\Overall LA Map\County Res Mapbook MOU by Survey Dimensions.mxd

	Channel/SE Crossings		Road Controlled by Cass County
	Township Boundary		Road Controlled by Township
	Project Limits		County Road
	Temporary Construction Easement		State or US Highway

Vacated portions will be defined by plat.  
Dimensions are GIS measurements.



### Stanley Township

FM Area Diversion  
Map Date: 5/11/2021



**EXHIBIT B**

**ROW MOU**

*(Please see the following twenty-nine (29) pages.)*

---

**MEMORANDUM OF UNDERSTANDING**

**BY AND BETWEEN**  
**METRO FLOOD DIVERSION AUTHORITY**  
**AND**  
**CASS COUNTY, NORTH DAKOTA**  
**AND**  
**CASS COUNTY JOINT WATER RESOURCE DISTRICT**

**Dated as of April 22, 2021**

**Relating to:**

**A Memorandum of Understanding outlining the roles and responsibilities of the Parties regarding road rights-of-way acquired in North Dakota as part of land acquisition for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.**

---

# TABLE OF CONTENTS

<b>ARTICLE I</b> .....	<b>2</b>
<b>DEFINITIONS AND INTERPRETATION</b> .....	<b>2</b>
<b>SECTION 1.01</b> DEFINITIONS.....	2
<b>SECTION 1.02</b> INTERPRETATION.....	4
<b>ARTICLE II</b> .....	<b>5</b>
<b>PRE-CONSTRUCTION SITE CONTROL</b> .....	<b>5</b>
<b>SECTION 2.01</b> LAND ACQUISITION PROCESS.....	5
<b>SECTION 2.02</b> NON-FEDERAL WORK AREAS .....	5
<b>SECTION 2.03</b> FEDERAL WORK AREAS .....	6
<b>SECTION 2.04</b> PUBLIC USE OF ROAD ROW AND PLATTING .....	6
<b>SECTION 2.05</b> VACATED ROAD ROW .....	6
<b>ARTICLE III</b> .....	<b>6</b>
<b>MAINTENANCE</b> .....	<b>6</b>
<b>SECTION 3.01</b> RESPONSIBILITY .....	6
<b>SECTION 3.02</b> MAINTENANCE REQUIREMENTS.....	7
<b>SECTION 3.03</b> COUNTY REIMBURSEMENT .....	7
<b>SECTION 3.04</b> TOWNSHIP INVOLVEMENT.....	7
<b>SECTION 3.05</b> SECURING CONSTRUCTION SITES.....	7
<b>ARTICLE IV</b> .....	<b>8</b>
<b>IMPACTED LANDS</b> .....	<b>8</b>
<b>SECTION 4.01</b> ROW .....	8
<b>SECTION 4.02</b> OBLITERATION .....	8
<b>ARTICLE V</b> .....	<b>8</b>
<b>INSURANCE AND INDEMNIFICATION</b> .....	<b>8</b>
<b>SECTION 5.01</b> JOINT POWERS AGREEMENT .....	8
<b>SECTION 5.02</b> GROSSLY NEGLIGENT OR WILLFUL MISCONDUCT .....	8
<b>SECTION 5.03</b> DEVELOPER CONSTRUCTION.....	9
<b>SECTION 5.04</b> THIRD PARTY CONTRACTOR CONSTRUCTION .....	9
<b>SECTION 5.05</b> USACE CONTRACTOR CONSTRUCTION.....	9
<b>ARTICLE VI</b> .....	<b>9</b>
<b>TERM AND TERMINATION</b> .....	<b>9</b>
<b>SECTION 6.01</b> TERM .....	9
<b>SECTION 6.02</b> AGREEMENT .....	9
<b>ARTICLE VII</b> .....	<b>9</b>
<b>DISPUTE RESOLUTION</b> .....	<b>9</b>
<b>SECTION 7.01</b> INTENT AND PROCEDURE .....	9
<b>SECTION 7.02</b> MEDIATION .....	9

<b>SECTION 7.03</b>	LITIGATION IF DISPUTE NOT RESOLVED .....	10
<b>SECTION 7.04</b>	LITIGATION; VENUE .....	10
<b>SECTION 7.05</b>	WAIVER OF JURY TRIAL.....	10
<b>ARTICLE VIII.</b>	.....	<b>10</b>
<b>REIMBURSEMENT</b>	.....	<b>10</b>
<b>SECTION 8.01</b>	COSTS AND EXPENSES.....	10
<b>SECTION 8.02</b>	INVOICING .....	10
<b>ARTICLE IX.</b>	.....	<b>11</b>
<b>MISCELLANEOUS</b>	.....	<b>11</b>
<b>SECTION 9.01</b>	COMPLETE AGREEMENT .....	11
<b>SECTION 9.02</b>	COUNTERPARTS.....	11
<b>SECTION 9.03</b>	AMENDMENTS .....	11
<b>SECTION 9.04</b>	SEVERABILITY AND SAVINGS CLAUSE.....	11
<b>SECTION 9.05</b>	FORCE MAJEURE .....	12
<b>SECTION 9.06</b>	AUTHORIZED REPRESENTATIVES.....	12
<b>SECTION 9.07</b>	NOTICE .....	12
<b>SECTION 9.08</b>	GOVERNING LAW .....	13
<b>SECTION 9.09</b>	CONFLICT WITH MOU REGARDING OTHER COMPREHENSIVE PROJECT WORK.....	13
<b>SIGNATURE PAGES</b>	.....	<b>S-1 THROUGH S-3</b>
 <b>EXHIBIT A – COMPREHENSIVE PROJECT IMPACTS MAPS</b>		

## **MEMORANDUM OF UNDERSTANDING**

**THIS MEMORANDUM OF UNDERSTANDING** (the “MOU”) is made effective as of April 22, 2021 (the “Effective Date”), between METRO FLOOD DIVERSION AUTHORITY, a political subdivision of the State of North Dakota (the “Authority”); CASS COUNTY, NORTH DAKOTA, a political subdivision of the State of North Dakota (the “County”); and CASS COUNTY JOINT WATER RESOURCE DISTRICT, a political subdivision of the State of North Dakota (“CCJWRD”).

**WHEREAS**, Section 7002(2) of the Water Resources Reform and Development Act of 2014, Public Law 113-221, authorized construction of the locally preferred plan for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project, now defined as the Comprehensive Project; and

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

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

**WHEREAS**, the Member Entities, including the County and CCJWRD, created the Authority pursuant to the Joint Powers Agreement to undertake and fulfill the Non-Federal Sponsors’ legal obligations under the PPA; and

**WHEREAS**, one such obligation of the Authority is to acquire all property interests necessary for the construction, operation, and maintenance of the Comprehensive Project; and

**WHEREAS**, pursuant to section 4.03 of the Joint Powers Agreement, the Authority will generally allocate its responsibilities under the PPA to the Member Entities; and

**WHEREAS**, the Authority has allocated the responsibility of acquiring all property interests necessary for the construction, operation, and maintenance of the Comprehensive Project in North Dakota to CCJWRD; and

**WHEREAS**, part of CCJWRD’s responsibility to acquire all property interests includes the responsibility to obtain property interests in road rights-of-way that will be turned over to the contractors of the Comprehensive Project and obstructed by the same; and

**WHEREAS**, the County will assist CCJWRD in the acquisition of road rights-of-way for the Comprehensive Project; and

**WHEREAS**, following acquisition but prior to Turnover for construction, the Parties desire to leave the road rights-of-way open for public travel; and

**WHEREAS**, the Parties desire to enter into this MOU to set forth their respective roles and responsibilities for operating and maintaining the road rights-of-way prior to and following Turnover.

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

## **ARTICLE I. DEFINITIONS AND INTERPRETATION**

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

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

**“Best Efforts”** means an individual or entity will act in Good Faith, act in accordance with generally accepted commercial practices, and use reasonable due diligence to undertake all action contemplated by this MOU, in accordance with federal and state laws, regulations, and rules; however, the obligation to use Best Efforts does not mean a duty to take action that would be in violation of applicable federal or state law.

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

**“Cass County Joint Water Resource District”** or **“CCJWRD”** means the Cass County Joint Water Resource District, a political subdivision of the State of North Dakota.

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

**“Construction Site”** means the site defined (i) by the Project Agreement between the Authority and the Developer to be utilized by the Developer for the construction of the SWDCAI, (ii) by a construction contract between the Authority and a Third Party Contractor to be utilized

by the Third Party Contractor for construction of Non-Federal Work, or (iii) by a construction contract between USACE and its contractor to be utilized by such contractor for the construction of Federal Work.

**“County”** means Cass County, North Dakota, a political subdivision of the State of North Dakota.

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

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

**“Extraordinary Maintenance”** means any repairs or maintenance that is required for the ROW outside of Routine Maintenance.

**“Federal Work”** means that portion of the Comprehensive Project consisting of the diversion inlet structure, the control structures on the Red River and Wild Rice River; the southern embankment; the overflow embankment; construction of road and railroad raises associated with the staging area; and all mitigation features not included in the Non-Federal Work.

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

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

**“Member Entities”** means the City of Fargo, North Dakota; the City of Moorhead, Minnesota; Cass County, North Dakota; Clay County, Minnesota; and the Cass County Joint Water Resource District.

**“Non-Federal Work”** means that portion of the Comprehensive Project consisting of the SWDCAI; the in-town levees and the Oxbow-Hickson-Bakke levee; recreation features; environmental mitigation features located within the diversion channel and associated structures for the diversion channel; and applicable pre- and post-monitoring and adaptive management for the Comprehensive Project.

**“NTP1”** means as defined by the Project Agreement.

**“Original Term”** means as defined in Section 6.01.

**“Party”** means the Authority, the County, or CCJWRD, as the context requires, and its respective representatives, successors, and assigns.



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

**“PPA”** means the Project Partnership Agreement between the Department of the Army and the City of Fargo, North Dakota, the City of Moorhead, Minnesota, and the Metro Flood Diversion Authority for Construction of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated July 11, 2016, and any amendments thereto.

**“Project Agreement”** means the contract between the Authority and the Developer for the Developer to design, build, finance, operate, and maintain the SWDCAI.

**“Project Limits”** means the permanent property interests necessary for the construction of the Comprehensive Project, as currently projected on Exhibit A.

**“Renewal Term”** means as defined in Section 6.01.

**“Road ROW”** means the thirty-three (33) foot road right-of-way on either side of a section line.

**“Routine Maintenance”** means as defined in Section 3.02.

**“ROW”** means the Road ROW and Vacated ROW collectively.

**“SWDCAI”** means an approximately 30-mile, 20,000 cubic feet per second (cfs) diversion channel and associated features; the channel outlet; the Rush and Lower Rush River hydraulic structures; the Maple River aqueduct; the Sheyenne River aqueduct; the inflow design flood levee; and associated railroad bridges.

**“Third Party Contractor”** means a contractor engaged by the Authority to perform Non-Federal Work other than the SWDCAI.

**“Turnover”** means (i) in terms of a USACE contractor or a Third Party Contractor, the date, as defined by the applicable construction contract, on which the contracting entity provides control of a Construction Site to the contractor for the contractor to commence construction thereon, or (ii) in terms of the Developer, the date preceding the date on which the Developer commences construction on a Construction Site.

**“Vacated ROW”** means that portion of the thirty-three (33) foot road right-of-way on either side of 173rd Avenue Southeast that was platted and vacated in the FMD – Pleasant Subdivision, Cass County, North Dakota.

**Section 1.02 INTERPRETATION.** The definition of terms herein shall apply equally to the singular and plural forms of the term defined. Whenever the context may require, any pronoun will include the corresponding masculine, feminine, and neuter forms. The words “include,” “includes,” and “including” will be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless

the context requires otherwise (a) any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications as set forth herein), (b) any reference herein to any person shall be construed to include such person's permitted successors and assigns, (c) the words "herein," "hereof," and "hereunder," and words of similar import, shall be construed to refer to this MOU in its entirety and not to any particular provision hereof, (d) all references herein to articles, sections, exhibits, and schedules shall be construed to refer to articles and sections of, and exhibits and schedules to, this MOU, and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights.

## **ARTICLE II. PRE-CONSTRUCTION SITE CONTROL**

**Section 2.01** LAND ACQUISITION PROCESS. Road ROW in North Dakota, and the authority to construct the Comprehensive Project upon, over, and across such Road ROW, will be acquired through the following means:

(a) The Authority will request that the County take over Road ROW, pursuant to N.D.C.C. § 24-05-09, based on the design of the Comprehensive Project. The current projected Project Limits of the Comprehensive Project, and the corresponding impacted Road ROW, are included in Exhibit A.

(b) In conjunction with the Authority's request for Road ROW takeover, CCJWRD will file a request with the County to permanently obstruct such Road ROW, pursuant to N.D.C.C. § 24-06-28, with the applicable element of the Comprehensive Project. If CCJWRD's request is granted by the County, the intent is to allow the Road ROW to remain open until, as set forth in Section 3.01, construction on the applicable element of the Comprehensive Project is scheduled to commence.

(c) Upon making their requests to the County, the Authority and CCJWRD will notify all landowners, by certified mail, within a minimum distance of one thousand (1,000) feet of the Road ROW.

(d) In response to the requests, the County will set a time and place for a hearing on the requests, and at least thirty (30) days prior to the date of the hearing, it will provide notice to all landowners within a minimum distance of one thousand (1,000) feet of the Road ROW of the time and place set for the hearing.

(e) The County will hold a public hearing on the requests at the time and place set, and if appropriate following the hearing, it will (i) adopt a resolution granting the Authority's request and take over the Road ROW and (ii) adopt a resolution granting CCJWRD's request and allow the permanent obstruction of said Road ROW at an applicable time.

**Section 2.02** NON-FEDERAL WORK AREAS. Prior to the Turnover of a Construction Site that includes Road ROW from the Authority to the Developer or a Third Party Contractor, the

County will have control of the Road ROW and will have the authority to make day-to-day decisions about the operation of the Road ROW. This authority includes the ability to temporarily close a Road ROW as needed in the discretion of the County. If the County decides to temporarily close a Road ROW, it will be responsible for placing barriers and, whenever possible, providing two (2) weeks' prior notification to the Authority and CCJWRD of such closure.

**Section 2.03** FEDERAL WORK AREAS. Prior to the Turnover of a Construction Site that includes Road ROW from USACE to its construction contractor, the County will have control of the Road ROW and will have the authority to make day-to-day decisions about the operation of the Road ROW. This authority includes the ability to temporarily close a Road ROW as needed in the discretion of the County. If the County decides to temporarily close a Road ROW, it will be responsible for placing barriers and, whenever possible, providing two (2) weeks' prior notification to the Authority and CCJWRD of such closure.

**Section 2.04** PUBLIC USE OF ROAD ROW AND PLATTING. The Parties intend that although CCJWRD may have authorization to permanently obstruct the Road ROW with the Comprehensive Project, the Road ROW will remain open for public use until the notices, as described in Section 3.01, are received. Following Turnover of a Construction Site that includes Road ROW, CCJWRD will use its Best Efforts as applicable fee simple is acquired to plat and vacate the Road ROW.

**Section 2.05** VACATED ROAD ROW. CCJWRD will allow the Vacated ROW, although a private drive following vacation, to remain open for public travel. Prior to the recommencement of construction on the Vacated ROW by USACE's construction contractor, the County will have control of the Vacated ROW and will have the authority to make day-to-day decisions about the operation of the Vacated ROW. This authority includes the ability to temporarily close the Vacated ROW as needed in the discretion of the County. If the County decides to temporarily close the Vacated ROW, it will be responsible for placing barriers and, whenever possible, providing two (2) weeks' prior notification to the Authority and CCJWRD of such closure.

### **ARTICLE III. MAINTENANCE**

#### **Section 3.01** RESPONSIBILITY.

(a) Developer Works. The County will be responsible for performing all Routine Maintenance and Extraordinary Maintenance on the ROW until Turnover to the Developer, which will occur following notice from the Developer as set forth herein. The Developer will be responsible for notifying the Authority at least ninety (90) calendar days prior to the commencement of construction on the ROW. The Authority will notify the County and CCJWRD as soon as possible after its receipt of notice from the Developer. This notice will allow CCJWRD to exercise its authorization to permanently obstruct the ROW, which will include posting signs, in coordination with the County, stating the dates of the road closure and coordinating with the Developer for traffic control signage.

(b) Third Party Contractor Works. The County will be responsible for performing all Routine Maintenance and Extraordinary Maintenance on the ROW until Turnover to the Third

Party Contractor, which is currently anticipated to be close in time to the commencement of construction. The Authority must give the County and CCJWRD at least ninety (90) calendar days' written notice of when it is anticipated the Third Party Contractor will begin construction on the ROW. This notice will allow CCJWRD to exercise its authorization to permanently obstruct the ROW, which will include posting signs, in coordination with the County, stating the dates of the road closure and coordinating with the Third Party Contractor for traffic control signage.

(c) USACE Contractor Works. The County will be responsible for performing all Routine Maintenance and Extraordinary Maintenance on the ROW until Turnover to the USACE construction contractor, which is currently anticipated to be close in time to the commencement of construction. The Parties will work with USACE to get as much notice as possible regarding the scheduled date for the commencement of construction. Upon receipt of this notice, CCJWRD will exercise its authorization to permanently obstruct the ROW, which will include posting signs, in coordination with the County, stating the dates of the road closure and coordinating with the USACE Contractor for traffic control signage.

**Section 3.02** MAINTENANCE REQUIREMENTS. The County will perform, or ensure the performance of, the following maintenance tasks on the ROW (collectively, "Routine Maintenance"):

- (a) The ROW will be graded twice a calendar month.
- (b) A 3-inch minimum thickness of gravel will be maintained.
- (c) The graded cross slopes across each lane will match its existing range of two percent (2%) to four percent (4%). If the current infield slope is not within that range, it will be upgraded to the two percent (2%) to four percent (4%) range.
- (d) Class 13 gravel will be placed for any aggregate needs.
- (e) Snow removal along the ROW will be dependent on the applicable township's current plow locations. The township will need to provide information to the County if a certain ROW was being plowed as needed by the township or private individuals in the winter.

**Section 3.03** COUNTY REIMBURSEMENT. The County may seek reimbursement from the Authority, as set forth herein, for costs and expenses incurred for Routine Maintenance and Extraordinary Maintenance; provided, however, the County must seek prior written approval from both CCJWRD and the Authority before performing Extraordinary Maintenance that exceeds \$5,000.

**Section 3.04** TOWNSHIP INVOLVEMENT. The County may engage an applicable township to perform Routine Maintenance. Reimbursement for such work, however, may be submitted by either the County or the township.

**Section 3.05** SECURING CONSTRUCTION SITES. The Authority will include in the Project Agreement and in its construction contract with the Third Party Contractor that the Developer and the Third Party Contractor, respectively, are responsible for securing the ROW, upon the

commencement of construction, to limit public travel on the ROW. The Parties will work with USACE for USACE to include in its construction contract that the contractor is responsible for securing the ROW, upon commencement of construction, to limit public travel on the ROW.

#### **ARTICLE IV. IMPACTED LANDS**

**Section 4.01** ROW. As set forth herein, the County will secure ROW, either inside or outside the Project Limits, to the extent necessary to allow for construction of the Comprehensive Project. CCJWRD will be responsible for securing property interests other than ROW that are necessary to construct termination tees.

**Section 4.02** OBLITERATION. Following construction of the Comprehensive Project and the termination tees, the Parties will obliterate that portion of the ROW that exists between the termination tees and Project Limits that will no longer be utilized as a road. Timing of each obliteration will be agreed upon by the Parties. The Authority will be responsible for all costs and expenses associated with obliteration and will be responsible for hiring a contractor for the obliteration work. The Authority will indemnify the County and CCJWRD for all obliteration work done on the ROW.

#### **ARTICLE V. INSURANCE AND INDEMNIFICATION**

**Section 5.01** JOINT POWERS AGREEMENT.

(a) Pursuant to section 15.05 of the Joint Powers Agreement, the Authority agreed to defend and indemnify the Member Entities, including both the County and CCJWRD, for any liability claims arising from the Authority's activities or operations, decisions of the Authority, or arising out of or regarding the Comprehensive Project.

(b) The Parties acknowledge and agree that section 15.05 of the Joint Powers Agreement is applicable to the County's and CCJWRD's control of the ROW and the County's maintenance of the ROW. As a result, the Authority will indemnify both CCJWRD and the County from third party claims relating to the ROW.

(c) The Authority has secured a commercial general limited liability policy from the North Dakota Insurance Reserve Fund ("NDIRF") and has listed both the County and CCJWRD as additional insureds under such policy. The Authority will continue to maintain such policy, or a like policy, in accordance with the terms of the Joint Powers Agreement and continue to list both the County and CCJWRD as additional insureds during the term of this MOU.

**Section 5.02** GROSSLY NEGLIGENT OR WILLFUL MISCONDUCT. Notwithstanding anything herein to the contrary, the Authority will not indemnify the County for grossly negligent or willful misconduct committed by the Person engaged by the County to perform maintenance. In lieu of such indemnification, the County must include in its maintenance contract that the contractor shall procure and maintain commercial general liability in the amount of \$3,000,000 and must name the County, CCJWRD, and the Authority as additional insureds under such policy.

**Section 5.03 DEVELOPER CONSTRUCTION.** The Developer will be responsible for procuring and maintaining the insurance set forth in the Project Agreement. The Authority will include provisions in the Project Agreement requiring the Developer (i) to procure and maintain commercial general liability in the amount of \$1,000,000 per occurrence and \$10,000,000 annual aggregate and must name CCJWRD, the County, and the Authority as additional insureds under such policy, and (ii) to indemnify and hold harmless CCJWRD, the County, and the Authority for construction performed on the ROW.

**Section 5.04 THIRD PARTY CONTRACTOR CONSTRUCTION.** Upon Turnover, the Third Party Contractor will be responsible for procuring and maintaining insurance requirements set forth in the construction contract. The Authority will include provisions in the construction contract requiring the Third Party Contractor (i) to procure and maintain commercial general liability in the amount of \$3,000,000 and must name CCJWRD, the County, and the Authority as additional insureds under such policy, and (ii) to indemnify and hold harmless CCJWRD, the County, and the Authority for construction performed on the ROW.

**Section 5.05 USACE CONTRACTOR CONSTRUCTION.** Upon Turnover, the USACE contractor will be responsible for procuring and maintaining insurance requirements set forth in the construction contract. The Authority will coordinate with USACE regarding insurance requirements for the contractor.

## **ARTICLE VI. TERM AND TERMINATION**

**Section 6.01 TERM.** The Original Term of this MOU will be for two (2) years from the Effective Date. The MOU will automatically renew for successive one (1) year additional terms (each, respectively, a “Renewal Term”) unless the Parties mutually agree, in writing, to terminate this MOU.

**Section 6.02 AGREEMENT.** The Parties may mutually agree, in writing, at any time, to terminate this MOU.

## **ARTICLE VII. DISPUTE RESOLUTION**

**Section 7.01 INTENT AND PROCEDURE.** The Parties will cooperate and use their Best Efforts to ensure that the various provisions of this MOU are fulfilled. The Parties agree to act in Good Faith to undertake resolution of disputes in an equitable and timely manner and in accordance with the provisions of this MOU. If disputes cannot be resolved informally by the Parties, the following procedures will be used.

**Section 7.02 MEDIATION.** If there is a failure between the Parties to resolve a dispute on their own, the Parties will first attempt to mediate the dispute. The Parties will agree upon a single mediator and will equally split any costs for mediation services.

**Section 7.03** LITIGATION IF DISPUTE NOT RESOLVED. If the dispute is not resolved within forty-five (45) calendar days after the end of mediation proceedings, the Parties may litigate the matter.

**Section 7.04** LITIGATION; VENUE. All litigation between the Parties arising out of or pertaining to this MOU or its breach will be filed, heard, and decided in the State District Court of Cass County, North Dakota, which will have exclusive jurisdiction and venue.

**Section 7.05** WAIVER OF JURY TRIAL. THE PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THAT ANY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING, COUNTERCLAIM, OR DEFENSE BASED ON THIS MOU, OR ARISING OUT OF, UNDER, OR IN ANY CONNECTION WITH THIS MOU, OR WITH RESPECT TO ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS MOU. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ALL PARTIES ENTERING INTO THIS MOU. THIS PROVISION APPLIES ONLY TO SUITS BETWEEN THE PARTIES AND DOES NOT APPLY TO THIRD PARTY CLAIMS OR SUITS.

## **ARTICLE VIII. REIMBURSEMENT**

**Section 8.01** COSTS AND EXPENSES. Between the Effective Date and Turnover of a ROW, the County may seek reimbursement from the Authority for costs and expenses incurred for Routine Maintenance and Extraordinary Maintenance.

**Section 8.02** INVOICING.

(a) The County will remit hard copy invoices to the Authority at the Authority's main office, and the invoices will be processed by the Authority for the following month. The County will also submit copies of the invoices to the Authority electronically at [APInvoicesFMDiv@jacobs.com](mailto:APInvoicesFMDiv@jacobs.com), copied to [kbakkegard@fmdiversion.gov](mailto:kbakkegard@fmdiversion.gov).

(b) The County's invoices must be detailed and precise, clearly indicate fees and expenses, and include at least the following information:

- (1) The County's name and address;
- (2) The County's federal employer identification number;
- (3) Unique invoice number;
- (4) Billing period;
- (5) Description of each activity performed for each day in which services were performed;

- (6) Work order number associated with each activity;
- (7) Name, billing rate, hours worked by each person involved in each activity;
- (8) Total amount of fees and costs “billed to date,” including the preceding months;
- (9) Preferred remittance address, if different from the address on the invoice’s coversheet; and
- (10) All of the work performed during that billing period.

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

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

(e) Payment does not imply acceptance of services or that the invoice is accurate. In the event an error is identified within three (3) months of receipt of payment, the County must credit any payment error from any payment that is due or that may become due to the County under this MOU.

## **ARTICLE IX. MISCELLANEOUS**

**Section 9.01** COMPLETE AGREEMENT. This MOU contains the entire and exclusive understanding of the Parties with respect to the subject matter thereof and supersedes all prior agreements, understandings, statements, representations, and negotiations, in each case oral or written, among the Parties with respect to their subject matter.

**Section 9.02** COUNTERPARTS. This instrument may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

**Section 9.03** AMENDMENTS. This MOU may be amended only by written instrument duly executed by the Parties or their respective successors or assigns, except to the extent expressly provided otherwise in this MOU.

**Section 9.04** SEVERABILITY AND SAVINGS CLAUSE. Each provision, section, sentence, clause, phrase, and word of this MOU is intended to be severable. If any provision, section, sentence, clause, phrase, or word hereof is held by a court with jurisdiction to be illegal or invalid



for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this MOU.

**Section 9.05** FORCE MAJEURE. A Party will not be liable to the others during any period in which its performance is delayed or prevented, in whole or in part, by any of the following circumstances: war, civil war, invasion, violent act of foreign enemy, or armed conflict; nuclear, chemical, or biological contamination; ionizing radiation; or any act of terrorism. If such a circumstance occurs, the Party claiming the delay must undertake reasonable action to notify the other Parties of the same.

**Section 9.06** AUTHORIZED REPRESENTATIVES. Each Party hereby designates the following individual as its initial authorized representative, respectively, to administer this MOU on its respective behalf:

- (a) Authority Representative: Kris Bakkegard, Director of Engineering
- (b) County Representative: Jason Benson, County Engineer
- (c) CCJWRD Representative: Carol Harbeke Lewis, Secretary-Treasurer

**Section 9.07** NOTICE.

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

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

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

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

County Engineer  
1201 Main Avenue West  
West Fargo, North Dakota 58078

(d) All notices to CCJWRD will be marked as regarding the Comprehensive Project and will be delivered to the following address or as otherwise directed by the CCJWRD Representative:

CCJWRD Secretary-Treasurer  
1201 Main Avenue West  
West Fargo, North Dakota 58078

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

**Section 9.08** GOVERNING LAW. This MOU will be governed by and construed in accordance with the laws of the State of North Dakota.

**Section 9.09** CONFLICT WITH MOU REGARDING OTHER COMPREHENSIVE PROJECT WORK. Nothing in this MOU is intended to supersede, amend, or otherwise modify any other memorandum of understanding or agreement entered by and between the Parties for work regarding other aspects of the Comprehensive Project.

**IN WITNESS WHEREOF**, the Authority, the County, and CCJWRD caused this Agreement to be executed.

*(Remainder of page intentionally left blank.)*

*Signature Page for the Metro Flood Diversion Authority*

The governing body of the Metro Flood Diversion Authority approved this MOU on the 22nd day of April, 2021

METRO FLOOD DIVERSION  
AUTHORITY

By: *Shelly Carlson*  
Michelle (~~Shelly~~) A. Carlson, Chair

By: *Joel Paulsen*  
Joel Paulsen, Executive Director


ATTEST:

*Dawn Lindblom*  
Dawn Lindblom, Secretary

*Signature Page for Cass County, North Dakota*

The governing body of Cass County, North Dakota, approved this MOU on the 19 day of April, 2021.

CASS COUNTY, NORTH DAKOTA

By:   
Chad Peterson, Chair of the Board of  
County Commissioners

ATTEST:

  
Michael Montplaisir, County Auditor

*Signature Page for the Cass County Joint Water Resource District*


The governing body of the Cass County Joint Water Resource District approved this MOU on the 22 day of April, 2021.

CASS COUNTY JOINT WATER  
RESOURCE DISTRICT

By: 

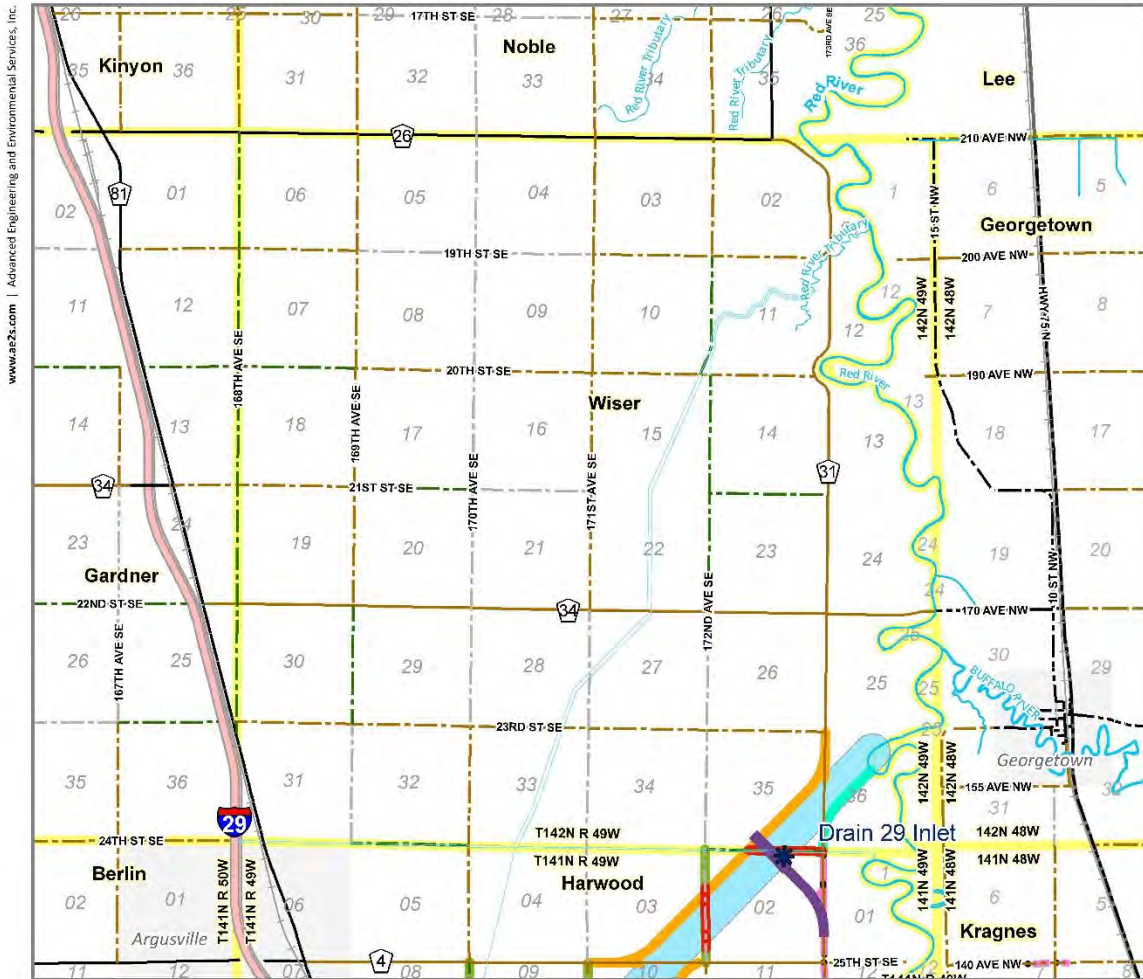
Dan Jacobson, Chair

ATTEST:

  
Carol Harbeke Lewis, Secretary-Treasurer

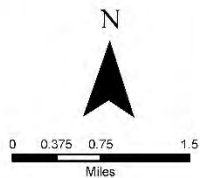
# EXHIBIT A

## COMPREHENSIVE PROJECT IMPACTS MAPS



Legend			
	Aqueduct		Township Road Closure
	Inlet Structures		Township Road Can Remain Open
	Drain Crossings		Mobility Improvements
	Channel/SE Crossings		New Gravel Road
	Channel		Other Agency Roadway Improvements
	Railroad		Township - Trail/Grass
	Township - Unimproved		Township - Dirt
	Township - Gravel		Township - Paved
	County Road - Gravel		County Road - Paved
	State or US Highway		Interstate
	Township Boundary		

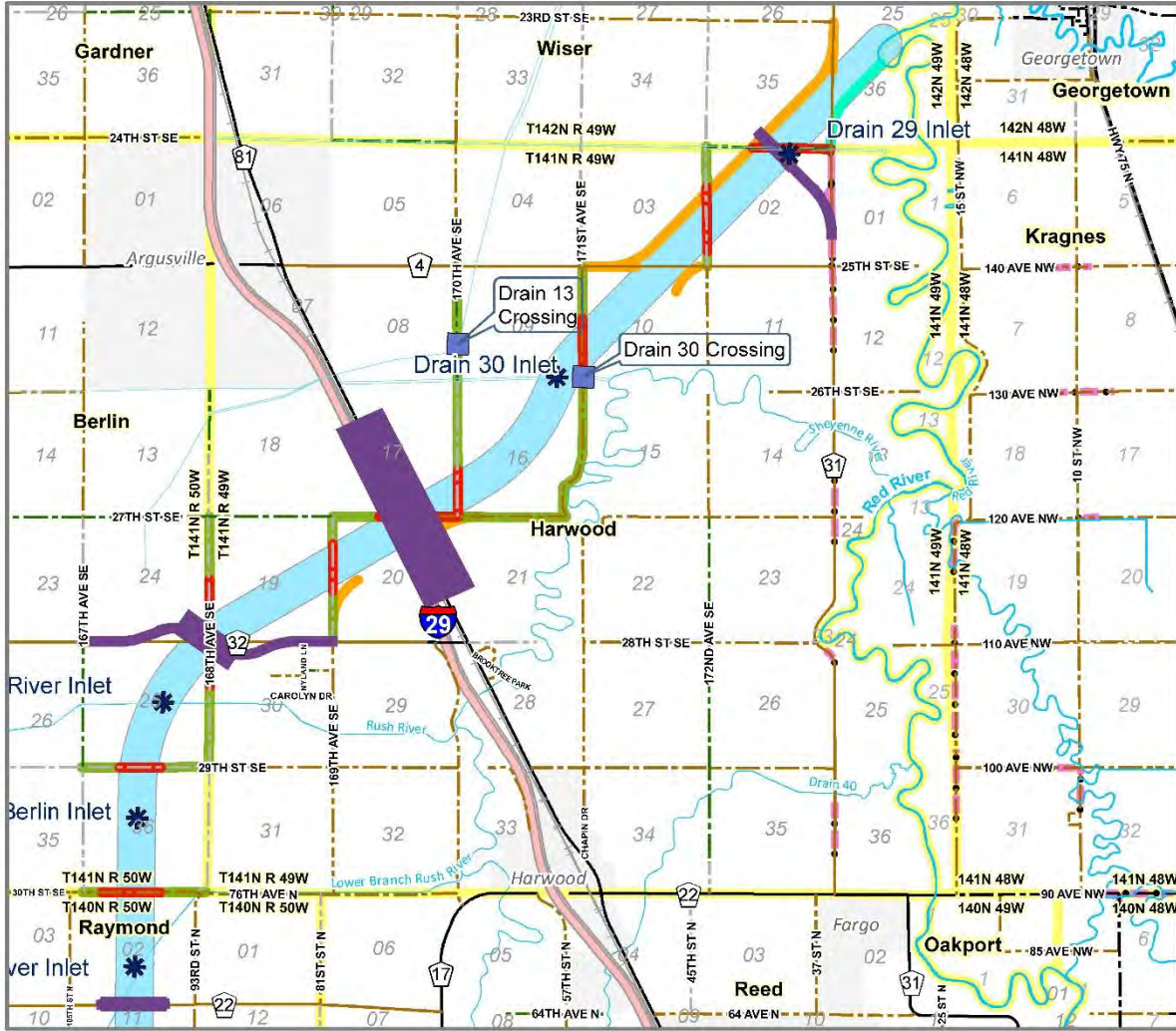
*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By: cwoikenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\LA and Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd*



### Wisner

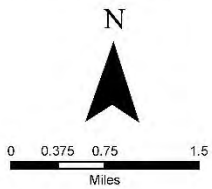
FM Area Diversion  
Map Date: 10/7/2020





Legend							
	Aqueduct		Township Road Closure		Township - Trail/Grass		County Road - Gravel
	Inlet Structures		Township Road Can Remain Open		Township - Unimproved		County Road - Paved
	Drain Crossings		Mobility Improvements		Township - Dirt		State or US Highway
	Channel/SE Crossings		New Gravel Road		Township - Gravel		Interstate
	Channel		Other Agency Roadway Improvements		Township - Paved		Township Boundary
	Railroad						

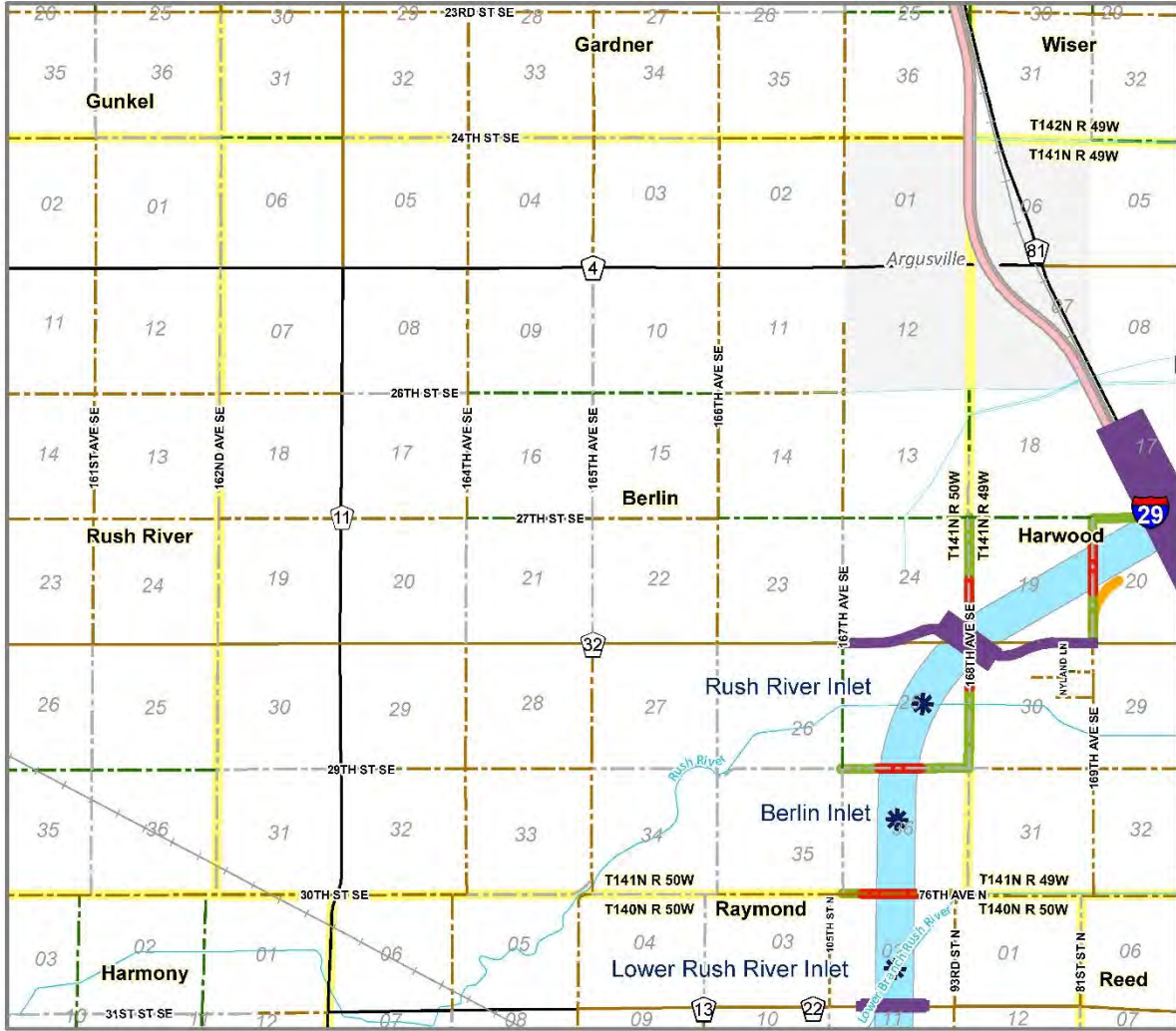
Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd



## Harwood

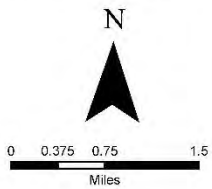
FM Area Diversion  
Map Date: 10/7/2020





Legend			
	Aqueduct		Township Road Closure
	Inlet Structures		Township Road Can Remain Open
	Drain Crossings		Mobility Improvements
	Channel/SE Crossings		Township - Dirt
	Channel		Township - Gravel
			Township - Paved
			County Road - Gravel
			County Road - Paved
			State or US Highway
			Interstate
			Township Boundary
	Railroad		

Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS\Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd

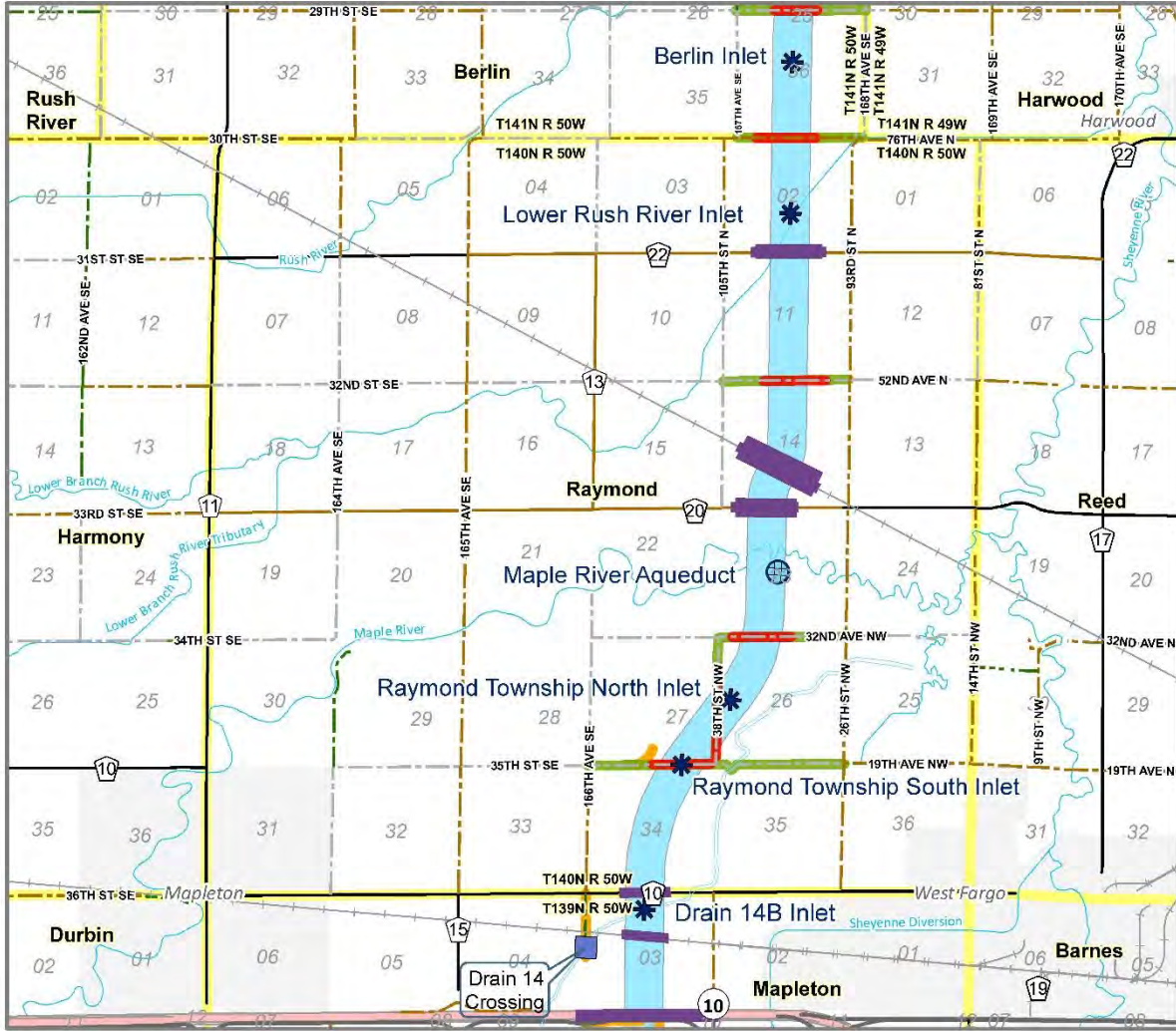


## Berlin

FM Area Diversion  
Map Date: 10/7/2020

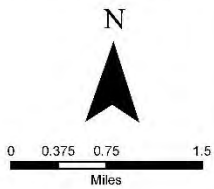






Legend			
	Aqueduct		Township Road Closure
	Inlet Structures		Township Road Can Remain Open
	Drain Crossings		Mobility Improvements
	Channel/SE Crossings		New Gravel Road
	Channel		Other Agency Roadway Improvements
	Railroad		Township - Paved
	Township - Trail/Grass		Township - Unimproved
	Township - Dirt		Township - Gravel
	Township - Gravel		County Road - Paved
	Township - Gravel		State or US Highway
	Township - Gravel		Interstate
	Township - Gravel		Township Boundary

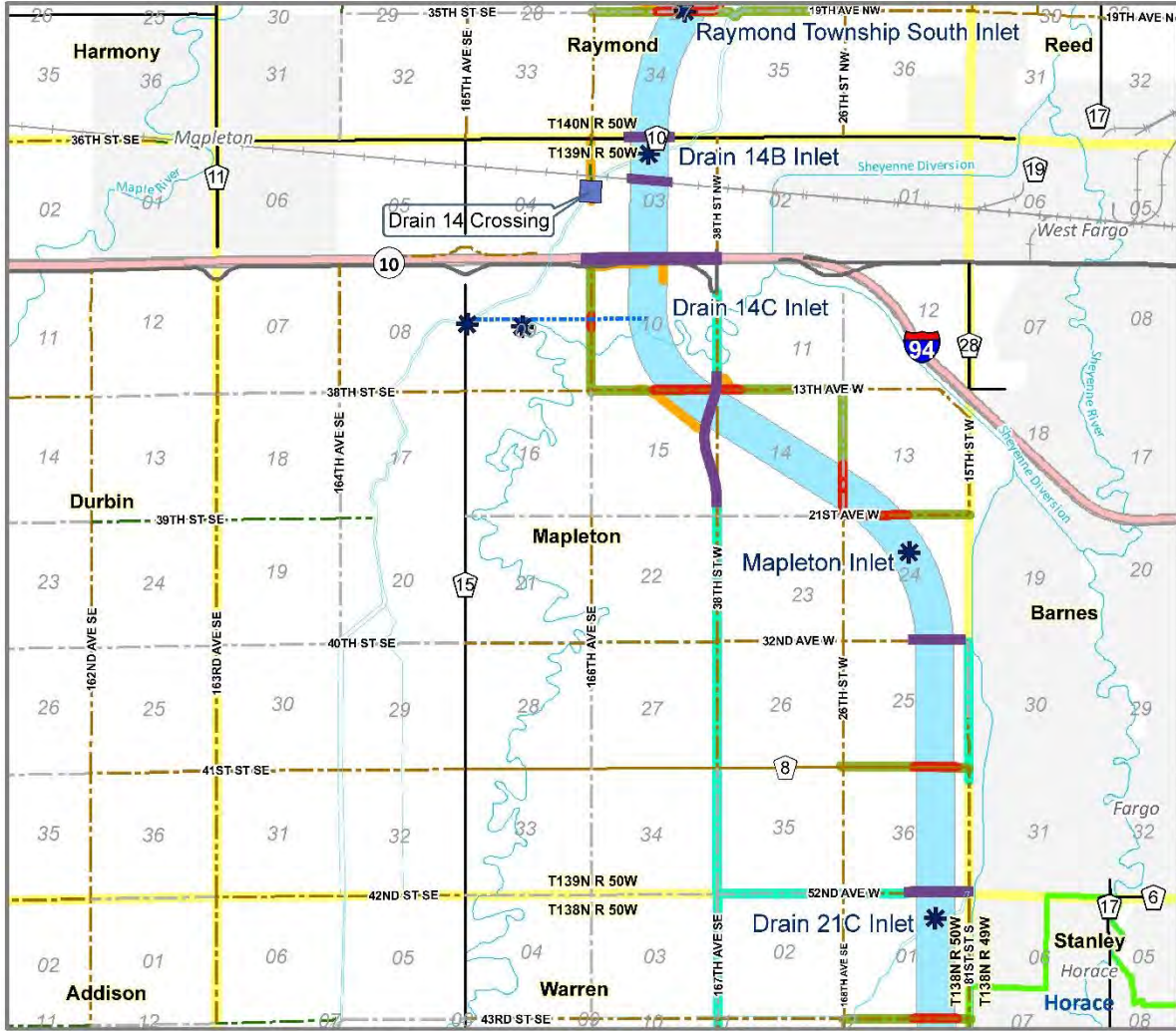
Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd



## Raymond

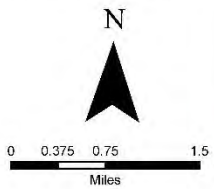
FM Area Diversion  
Map Date: 10/7/2020





Legend			
	Aqueduct		Township Road Closure
	Inlet Structures		Township Road Can Remain Open
	Drain Crossings		Mobility Improvements
	Channel/SE Crossings		New Gravel Road
	Channel		Township - Dirt
	Drain Construction		Township - Gravel
			Township - Paved
			Railroad
			County Road - Gravel
			County Road - Paved
			State or US Highway
			Interstate
			Township Boundary
			City of Horace

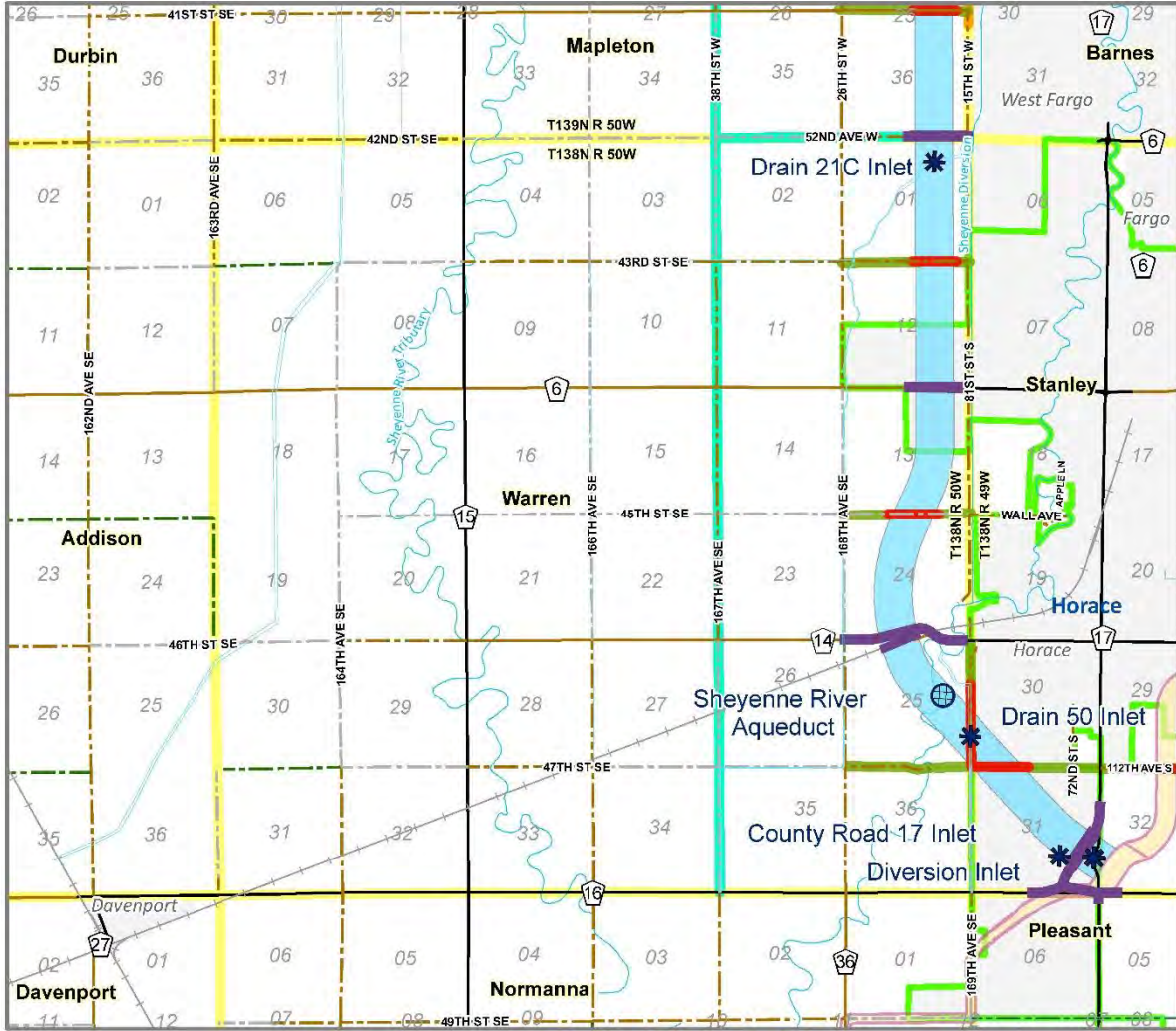
*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd*



## Mapleton

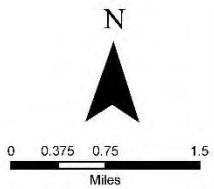
FM Area Diversion  
Map Date: 3/19/2021





Legend			
	Aqueduct		Township Road Closure
	Inlet Structures		Township Road Can Remain Open
	Drain Crossings		Mobility Improvements
	Channel/SE Crossings		New Gravel Road
	Channel		Township - Dirt
	Southern Embankment		Township - Paved
	Railroad		Township - Trail/Grass
			Township - Unimproved
			County Road - Gravel
			County Road - Paved
			State or US Highway
			Interstate
			Township Boundary
			City of Horace

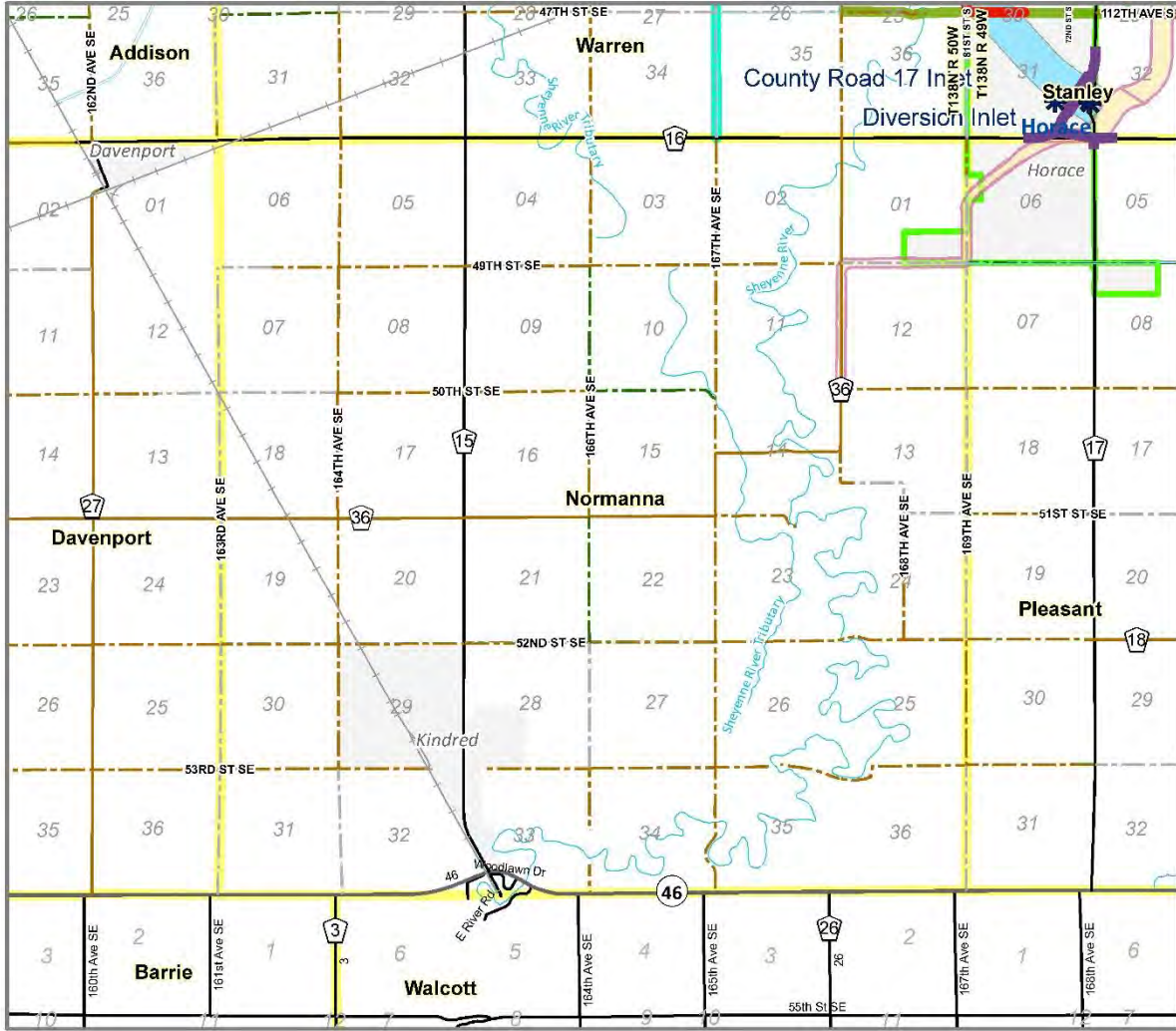
*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd*



### Warren

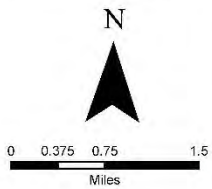
FM Area Diversion  
Map Date: 10/7/2020





Legend							
	Aqueduct		Township Road Closure		Township - Trail/Grass		County Road - Gravel
	Inlet Structures		Township Road Can Remain Open		Township - Unimproved		County Road - Paved
	Drain Crossings		Mobility Improvements		Township - Dirt		State or US Highway
	Channel/SE Crossings		New Gravel Road		Township - Gravel		Interstate
	Channel		Other Agency Roadway Improvements		Township - Paved		Township Boundary
	Southern Embankment		Railroad				City of Horace

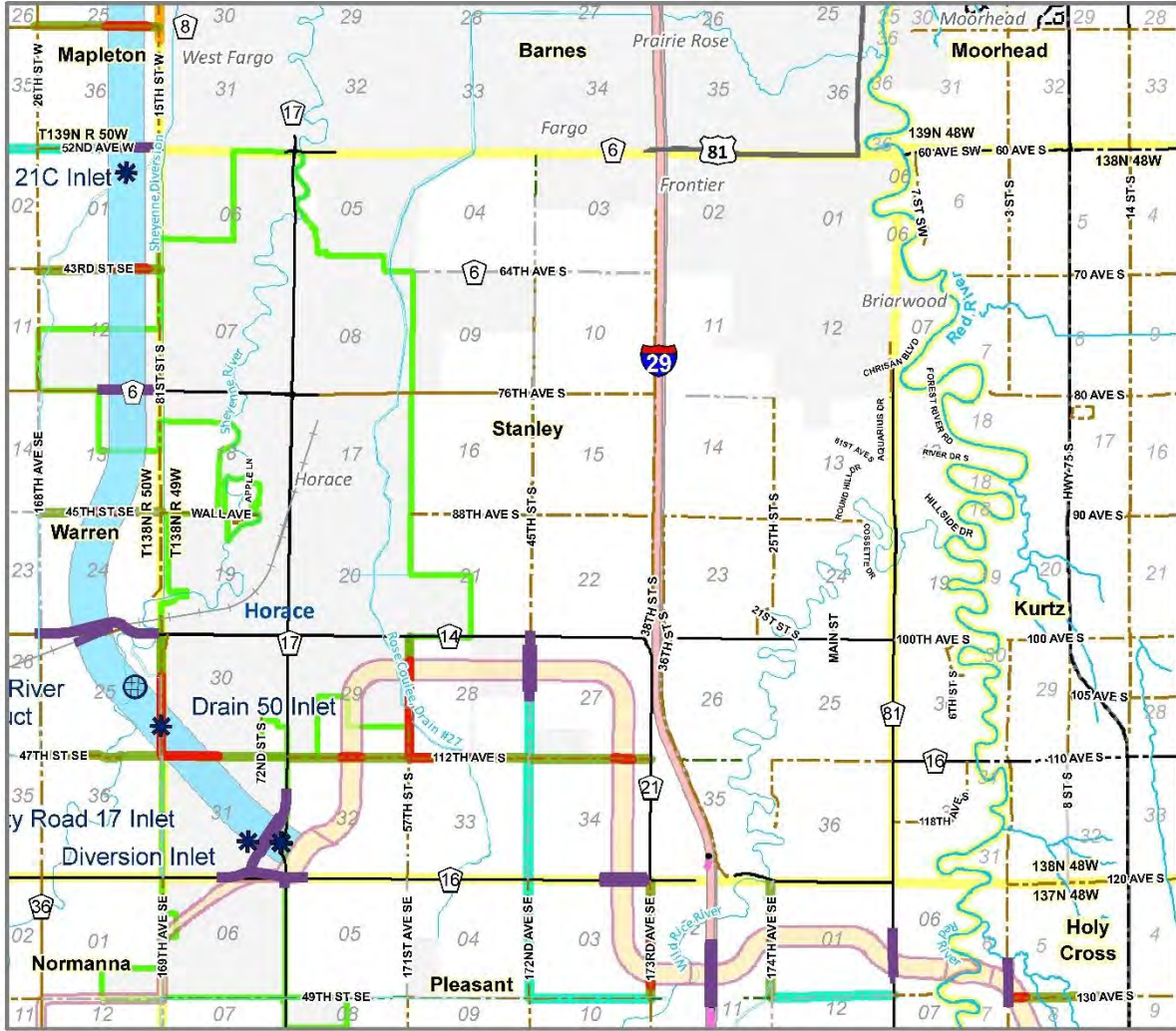
*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd*



## Normanna

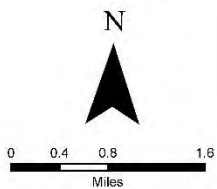
FM Area Diversion  
Map Date: 10/7/2020





Legend			
	Aqueduct		Township Road Closure
	Inlet Structures		Township Road Can Remain Open
	Drain Crossings		Mobility Improvements
	Channel/SE Crossings		New Gravel Road
	Channel		Other Agency Roadway Improvements
	Southern Embankment		Railroad
	Township - Trail/Grass		Township - Unimproved
	Township - Dirt		Township - Gravel
	Township - Paved		Township - Paved
	County Road - Gravel		County Road - Paved
	State or US Highway		Interstate
	Township Boundary		City of Horace

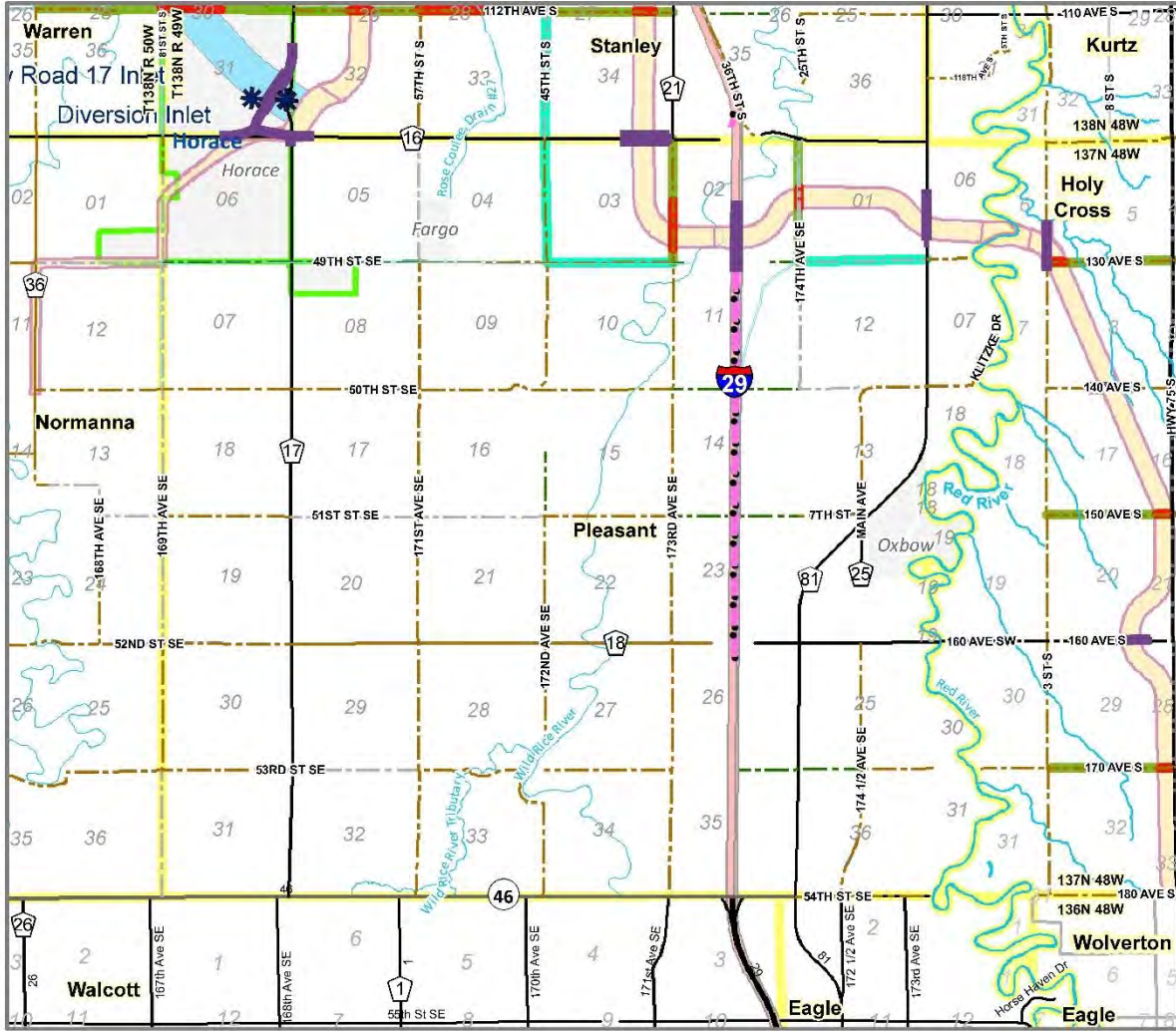
*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd*



## Stanley

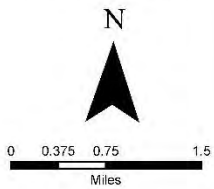
FM Area Diversion  
Map Date: 2/11/2021





Legend							
	Aqueduct		Township Road Closure		Township - Trail/Grass		County Road - Gravel
	Inlet Structures		Township Road Can Remain Open		Township - Unimproved		County Road - Paved
	Drain Crossings		Mobility Improvements		Township - Dirt		State or US Highway
	Channel/SE Crossings		New Gravel Road		Township - Gravel		Interstate
	Channel		Other Agency Roadway Improvements		Township - Paved		Township Boundary
	Southern Embankment		Railroad				City of Horace

*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd*



## Pleasant

FM Area Diversion  
Map Date: 2/11/2021



Manager Weston introduced the following resolution and moved its adoption:

**RESOLUTION REQUESTING AUTHORIZATION  
TO PERMANENTLY OBSTRUCT  
RIGHT-OF-WAY AND SECTION LINE (SE-2A)**

WHEREAS, the Cass County Joint Water Resource District (the "District") is a North Dakota water resource district and political subdivision under Chapter 61-16.1 of the North Dakota Century Code; and

WHEREAS, the District is a member entity of the Metro Flood Diversion Authority (the "Authority") and has been tasked by the Authority to acquire all property interests necessary for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the "Comprehensive Project"); and

WHEREAS, one element of the Comprehensive Project is the southern embankment and associated infrastructure ("SEAI"); and

WHEREAS, that portion of the SEAI that is located between the diversion inlet structure and the intersection of Drain 27 with the SEAI is known as SE-2a; and

WHEREAS, the location of SE-2a is set forth on Exhibit A, and it intersects that portion of 112th Avenue South that is depicted in the color red on Exhibit A; and

WHEREAS, on April 22, 2021, the Authority, Cass County, and the District entered into a Memorandum of Understanding (the "ROW MOU"), which outlined the roles and responsibilities of the Authority, Cass County, and the District regarding road rights-of-way acquired in North Dakota as part of land acquisition for the Comprehensive Project; and

WHEREAS, in accordance with the ROW MOU, the Authority has directed Cass County to acquire the road right-of-way of 112th Avenue South that will be impacted by SE-2a (the "ROW"); and

WHEREAS, also in accordance with the ROW MOU, the District now seeks, pursuant to N.D.C.C. § 24-06-28, permission from Cass County to permanently obstruct the ROW and underlying section lines with SE-2a.

NOW, THEREFORE, BE IT RESOLVED, pursuant to N.D.C.C. § 24-06-28, that the District hereby requests permission from Cass County to permanently obstruct the ROW and underlying section lines in the areas depicted on Exhibit A for SE-2a, with the actual timing of obstruction dependent upon the commencement of construction of SE-2a as set forth in the ROW MOU.

BE IT FURTHER RESOLVED, that the District, in accordance with the ROW MOU, will notify landowners within one thousand (1,000) feet of the ROW of its request to Cass County to permanently obstruct the ROW.

*(Signatures appear on the following page.)*




APPROVED:



Dan Jacobson, Chair

ATTEST:



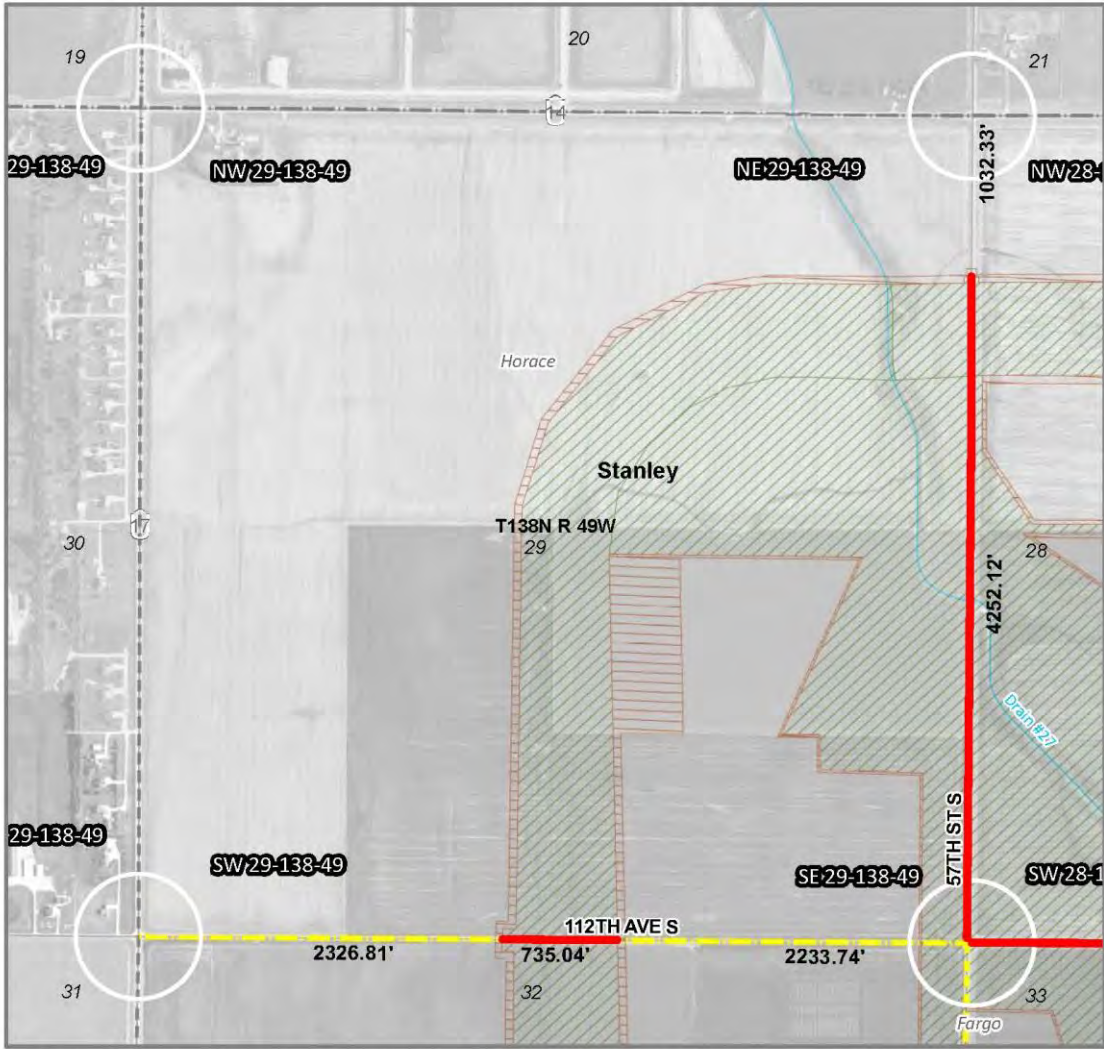
Carol Harbeke Lewis  
Secretary-Treasurer

The motion for the adoption of the foregoing resolution was duly seconded by Manager Gust. On roll call vote the following Managers voted aye: Jacobson, Olson, Lougheed, Weston, Gust. The following Managers voted nay: none. The following Managers were absent: none. Upon roll call vote, the motion carried unanimously, and the resolution was duly adopted.

Date Approved: June 23, 2021.

# EXHIBIT A

## ROAD RIGHT-OF-WAY



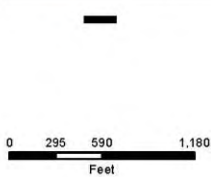
*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey.*

Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By: hrecords - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Division\FM GIS Projects Drive\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Map\County Res Mapbook\MOU by Survey Dimensions.mxd

	Channel/SE Crossings		Road Controlled by Cass County
	Township Boundary		Road Controlled by Township
	Project Limits		County Road
	Temporary Construction Easement		State or US Highway

Page: 25

Vacated portions will be defined by plat.  
Dimensions are GIS measurements.



**Stanley Township**

FM Area Division  
Map Date: 5/11/2021



**EXHIBIT B**

**ROW MOU**

*(Please see the following twenty-nine (29) pages.)*

---

**MEMORANDUM OF UNDERSTANDING**

**BY AND BETWEEN**  
**METRO FLOOD DIVERSION AUTHORITY**  
**AND**  
**CASS COUNTY, NORTH DAKOTA**  
**AND**  
**CASS COUNTY JOINT WATER RESOURCE DISTRICT**

**Dated as of April 22, 2021**

**Relating to:**

**A Memorandum of Understanding outlining the roles and responsibilities of the Parties regarding road rights-of-way acquired in North Dakota as part of land acquisition for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.**

---

# TABLE OF CONTENTS

<b>ARTICLE I</b> .....	<b>2</b>
<b>DEFINITIONS AND INTERPRETATION</b> .....	<b>2</b>
<b>SECTION 1.01</b> DEFINITIONS.....	2
<b>SECTION 1.02</b> INTERPRETATION.....	4
<b>ARTICLE II</b> .....	<b>5</b>
<b>PRE-CONSTRUCTION SITE CONTROL</b> .....	<b>5</b>
<b>SECTION 2.01</b> LAND ACQUISITION PROCESS.....	5
<b>SECTION 2.02</b> NON-FEDERAL WORK AREAS .....	5
<b>SECTION 2.03</b> FEDERAL WORK AREAS .....	6
<b>SECTION 2.04</b> PUBLIC USE OF ROAD ROW AND PLATTING .....	6
<b>SECTION 2.05</b> VACATED ROAD ROW .....	6
<b>ARTICLE III</b> .....	<b>6</b>
<b>MAINTENANCE</b> .....	<b>6</b>
<b>SECTION 3.01</b> RESPONSIBILITY .....	6
<b>SECTION 3.02</b> MAINTENANCE REQUIREMENTS.....	7
<b>SECTION 3.03</b> COUNTY REIMBURSEMENT .....	7
<b>SECTION 3.04</b> TOWNSHIP INVOLVEMENT.....	7
<b>SECTION 3.05</b> SECURING CONSTRUCTION SITES.....	7
<b>ARTICLE IV</b> .....	<b>8</b>
<b>IMPACTED LANDS</b> .....	<b>8</b>
<b>SECTION 4.01</b> ROW .....	8
<b>SECTION 4.02</b> OBLITERATION .....	8
<b>ARTICLE V</b> .....	<b>8</b>
<b>INSURANCE AND INDEMNIFICATION</b> .....	<b>8</b>
<b>SECTION 5.01</b> JOINT POWERS AGREEMENT .....	8
<b>SECTION 5.02</b> GROSSLY NEGLIGENT OR WILLFUL MISCONDUCT .....	8
<b>SECTION 5.03</b> DEVELOPER CONSTRUCTION.....	9
<b>SECTION 5.04</b> THIRD PARTY CONTRACTOR CONSTRUCTION .....	9
<b>SECTION 5.05</b> USACE CONTRACTOR CONSTRUCTION.....	9
<b>ARTICLE VI</b> .....	<b>9</b>
<b>TERM AND TERMINATION</b> .....	<b>9</b>
<b>SECTION 6.01</b> TERM .....	9
<b>SECTION 6.02</b> AGREEMENT .....	9
<b>ARTICLE VII</b> .....	<b>9</b>
<b>DISPUTE RESOLUTION</b> .....	<b>9</b>
<b>SECTION 7.01</b> INTENT AND PROCEDURE .....	9
<b>SECTION 7.02</b> MEDIATION .....	9

<b>SECTION 7.03</b>	LITIGATION IF DISPUTE NOT RESOLVED .....	10
<b>SECTION 7.04</b>	LITIGATION; VENUE .....	10
<b>SECTION 7.05</b>	WAIVER OF JURY TRIAL.....	10
<b>ARTICLE VIII.</b>	.....	<b>10</b>
<b>REIMBURSEMENT</b>	.....	<b>10</b>
<b>SECTION 8.01</b>	COSTS AND EXPENSES.....	10
<b>SECTION 8.02</b>	INVOICING .....	10
<b>ARTICLE IX.</b>	.....	<b>11</b>
<b>MISCELLANEOUS</b>	.....	<b>11</b>
<b>SECTION 9.01</b>	COMPLETE AGREEMENT .....	11
<b>SECTION 9.02</b>	COUNTERPARTS.....	11
<b>SECTION 9.03</b>	AMENDMENTS .....	11
<b>SECTION 9.04</b>	SEVERABILITY AND SAVINGS CLAUSE.....	11
<b>SECTION 9.05</b>	FORCE MAJEURE .....	12
<b>SECTION 9.06</b>	AUTHORIZED REPRESENTATIVES.....	12
<b>SECTION 9.07</b>	NOTICE .....	12
<b>SECTION 9.08</b>	GOVERNING LAW .....	13
<b>SECTION 9.09</b>	CONFLICT WITH MOU REGARDING OTHER COMPREHENSIVE PROJECT WORK.....	13
<b>SIGNATURE PAGES</b>	.....	<b>S-1 THROUGH S-3</b>
 <b>EXHIBIT A – COMPREHENSIVE PROJECT IMPACTS MAPS</b>		

## **MEMORANDUM OF UNDERSTANDING**

**THIS MEMORANDUM OF UNDERSTANDING** (the “MOU”) is made effective as of April 22, 2021 (the “Effective Date”), between METRO FLOOD DIVERSION AUTHORITY, a political subdivision of the State of North Dakota (the “Authority”); CASS COUNTY, NORTH DAKOTA, a political subdivision of the State of North Dakota (the “County”); and CASS COUNTY JOINT WATER RESOURCE DISTRICT, a political subdivision of the State of North Dakota (“CCJWRD”).

**WHEREAS**, Section 7002(2) of the Water Resources Reform and Development Act of 2014, Public Law 113-221, authorized construction of the locally preferred plan for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project, now defined as the Comprehensive Project; and

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

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

**WHEREAS**, the Member Entities, including the County and CCJWRD, created the Authority pursuant to the Joint Powers Agreement to undertake and fulfill the Non-Federal Sponsors’ legal obligations under the PPA; and

**WHEREAS**, one such obligation of the Authority is to acquire all property interests necessary for the construction, operation, and maintenance of the Comprehensive Project; and

**WHEREAS**, pursuant to section 4.03 of the Joint Powers Agreement, the Authority will generally allocate its responsibilities under the PPA to the Member Entities; and

**WHEREAS**, the Authority has allocated the responsibility of acquiring all property interests necessary for the construction, operation, and maintenance of the Comprehensive Project in North Dakota to CCJWRD; and

**WHEREAS**, part of CCJWRD’s responsibility to acquire all property interests includes the responsibility to obtain property interests in road rights-of-way that will be turned over to the contractors of the Comprehensive Project and obstructed by the same; and

**WHEREAS**, the County will assist CCJWRD in the acquisition of road rights-of-way for the Comprehensive Project; and

**WHEREAS**, following acquisition but prior to Turnover for construction, the Parties desire to leave the road rights-of-way open for public travel; and



**WHEREAS**, the Parties desire to enter into this MOU to set forth their respective roles and responsibilities for operating and maintaining the road rights-of-way prior to and following Turnover.

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

## **ARTICLE I. DEFINITIONS AND INTERPRETATION**

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

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

**“Best Efforts”** means an individual or entity will act in Good Faith, act in accordance with generally accepted commercial practices, and use reasonable due diligence to undertake all action contemplated by this MOU, in accordance with federal and state laws, regulations, and rules; however, the obligation to use Best Efforts does not mean a duty to take action that would be in violation of applicable federal or state law.

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

**“Cass County Joint Water Resource District”** or **“CCJWRD”** means the Cass County Joint Water Resource District, a political subdivision of the State of North Dakota.

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

**“Construction Site”** means the site defined (i) by the Project Agreement between the Authority and the Developer to be utilized by the Developer for the construction of the SWDCAI, (ii) by a construction contract between the Authority and a Third Party Contractor to be utilized

by the Third Party Contractor for construction of Non-Federal Work, or (iii) by a construction contract between USACE and its contractor to be utilized by such contractor for the construction of Federal Work.

**“County”** means Cass County, North Dakota, a political subdivision of the State of North Dakota.

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

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

**“Extraordinary Maintenance”** means any repairs or maintenance that is required for the ROW outside of Routine Maintenance.

**“Federal Work”** means that portion of the Comprehensive Project consisting of the diversion inlet structure, the control structures on the Red River and Wild Rice River; the southern embankment; the overflow embankment; construction of road and railroad raises associated with the staging area; and all mitigation features not included in the Non-Federal Work.

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

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

**“Member Entities”** means the City of Fargo, North Dakota; the City of Moorhead, Minnesota; Cass County, North Dakota; Clay County, Minnesota; and the Cass County Joint Water Resource District.

**“Non-Federal Work”** means that portion of the Comprehensive Project consisting of the SWDCAI; the in-town levees and the Oxbow-Hickson-Bakke levee; recreation features; environmental mitigation features located within the diversion channel and associated structures for the diversion channel; and applicable pre- and post-monitoring and adaptive management for the Comprehensive Project.

**“NTP1”** means as defined by the Project Agreement.

**“Original Term”** means as defined in Section 6.01.

**“Party”** means the Authority, the County, or CCJWRD, as the context requires, and its respective representatives, successors, and assigns.

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

**“PPA”** means the Project Partnership Agreement between the Department of the Army and the City of Fargo, North Dakota, the City of Moorhead, Minnesota, and the Metro Flood Diversion Authority for Construction of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated July 11, 2016, and any amendments thereto.

**“Project Agreement”** means the contract between the Authority and the Developer for the Developer to design, build, finance, operate, and maintain the SWDCAI.

**“Project Limits”** means the permanent property interests necessary for the construction of the Comprehensive Project, as currently projected on Exhibit A.

**“Renewal Term”** means as defined in Section 6.01.

**“Road ROW”** means the thirty-three (33) foot road right-of-way on either side of a section line.

**“Routine Maintenance”** means as defined in Section 3.02.

**“ROW”** means the Road ROW and Vacated ROW collectively.

**“SWDCAI”** means an approximately 30-mile, 20,000 cubic feet per second (cfs) diversion channel and associated features; the channel outlet; the Rush and Lower Rush River hydraulic structures; the Maple River aqueduct; the Sheyenne River aqueduct; the inflow design flood levee; and associated railroad bridges.

**“Third Party Contractor”** means a contractor engaged by the Authority to perform Non-Federal Work other than the SWDCAI.

**“Turnover”** means (i) in terms of a USACE contractor or a Third Party Contractor, the date, as defined by the applicable construction contract, on which the contracting entity provides control of a Construction Site to the contractor for the contractor to commence construction thereon, or (ii) in terms of the Developer, the date preceding the date on which the Developer commences construction on a Construction Site.

**“Vacated ROW”** means that portion of the thirty-three (33) foot road right-of-way on either side of 173rd Avenue Southeast that was platted and vacated in the FMD – Pleasant Subdivision, Cass County, North Dakota.

**Section 1.02 INTERPRETATION.** The definition of terms herein shall apply equally to the singular and plural forms of the term defined. Whenever the context may require, any pronoun will include the corresponding masculine, feminine, and neuter forms. The words “include,” “includes,” and “including” will be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless

the context requires otherwise (a) any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications as set forth herein), (b) any reference herein to any person shall be construed to include such person's permitted successors and assigns, (c) the words "herein," "hereof," and "hereunder," and words of similar import, shall be construed to refer to this MOU in its entirety and not to any particular provision hereof, (d) all references herein to articles, sections, exhibits, and schedules shall be construed to refer to articles and sections of, and exhibits and schedules to, this MOU, and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights.

## **ARTICLE II. PRE-CONSTRUCTION SITE CONTROL**

**Section 2.01** LAND ACQUISITION PROCESS. Road ROW in North Dakota, and the authority to construct the Comprehensive Project upon, over, and across such Road ROW, will be acquired through the following means:

(a) The Authority will request that the County take over Road ROW, pursuant to N.D.C.C. § 24-05-09, based on the design of the Comprehensive Project. The current projected Project Limits of the Comprehensive Project, and the corresponding impacted Road ROW, are included in Exhibit A.

(b) In conjunction with the Authority's request for Road ROW takeover, CCJWRD will file a request with the County to permanently obstruct such Road ROW, pursuant to N.D.C.C. § 24-06-28, with the applicable element of the Comprehensive Project. If CCJWRD's request is granted by the County, the intent is to allow the Road ROW to remain open until, as set forth in Section 3.01, construction on the applicable element of the Comprehensive Project is scheduled to commence.

(c) Upon making their requests to the County, the Authority and CCJWRD will notify all landowners, by certified mail, within a minimum distance of one thousand (1,000) feet of the Road ROW.

(d) In response to the requests, the County will set a time and place for a hearing on the requests, and at least thirty (30) days prior to the date of the hearing, it will provide notice to all landowners within a minimum distance of one thousand (1,000) feet of the Road ROW of the time and place set for the hearing.

(e) The County will hold a public hearing on the requests at the time and place set, and if appropriate following the hearing, it will (i) adopt a resolution granting the Authority's request and take over the Road ROW and (ii) adopt a resolution granting CCJWRD's request and allow the permanent obstruction of said Road ROW at an applicable time.

**Section 2.02** NON-FEDERAL WORK AREAS. Prior to the Turnover of a Construction Site that includes Road ROW from the Authority to the Developer or a Third Party Contractor, the

County will have control of the Road ROW and will have the authority to make day-to-day decisions about the operation of the Road ROW. This authority includes the ability to temporarily close a Road ROW as needed in the discretion of the County. If the County decides to temporarily close a Road ROW, it will be responsible for placing barriers and, whenever possible, providing two (2) weeks' prior notification to the Authority and CCJWRD of such closure.

**Section 2.03** FEDERAL WORK AREAS. Prior to the Turnover of a Construction Site that includes Road ROW from USACE to its construction contractor, the County will have control of the Road ROW and will have the authority to make day-to-day decisions about the operation of the Road ROW. This authority includes the ability to temporarily close a Road ROW as needed in the discretion of the County. If the County decides to temporarily close a Road ROW, it will be responsible for placing barriers and, whenever possible, providing two (2) weeks' prior notification to the Authority and CCJWRD of such closure.

**Section 2.04** PUBLIC USE OF ROAD ROW AND PLATTING. The Parties intend that although CCJWRD may have authorization to permanently obstruct the Road ROW with the Comprehensive Project, the Road ROW will remain open for public use until the notices, as described in Section 3.01, are received. Following Turnover of a Construction Site that includes Road ROW, CCJWRD will use its Best Efforts as applicable fee simple is acquired to plat and vacate the Road ROW.

**Section 2.05** VACATED ROAD ROW. CCJWRD will allow the Vacated ROW, although a private drive following vacation, to remain open for public travel. Prior to the recommencement of construction on the Vacated ROW by USACE's construction contractor, the County will have control of the Vacated ROW and will have the authority to make day-to-day decisions about the operation of the Vacated ROW. This authority includes the ability to temporarily close the Vacated ROW as needed in the discretion of the County. If the County decides to temporarily close the Vacated ROW, it will be responsible for placing barriers and, whenever possible, providing two (2) weeks' prior notification to the Authority and CCJWRD of such closure.

### **ARTICLE III. MAINTENANCE**

#### **Section 3.01** RESPONSIBILITY.

(a) Developer Works. The County will be responsible for performing all Routine Maintenance and Extraordinary Maintenance on the ROW until Turnover to the Developer, which will occur following notice from the Developer as set forth herein. The Developer will be responsible for notifying the Authority at least ninety (90) calendar days prior to the commencement of construction on the ROW. The Authority will notify the County and CCJWRD as soon as possible after its receipt of notice from the Developer. This notice will allow CCJWRD to exercise its authorization to permanently obstruct the ROW, which will include posting signs, in coordination with the County, stating the dates of the road closure and coordinating with the Developer for traffic control signage.

(b) Third Party Contractor Works. The County will be responsible for performing all Routine Maintenance and Extraordinary Maintenance on the ROW until Turnover to the Third

Party Contractor, which is currently anticipated to be close in time to the commencement of construction. The Authority must give the County and CCJWRD at least ninety (90) calendar days' written notice of when it is anticipated the Third Party Contractor will begin construction on the ROW. This notice will allow CCJWRD to exercise its authorization to permanently obstruct the ROW, which will include posting signs, in coordination with the County, stating the dates of the road closure and coordinating with the Third Party Contractor for traffic control signage.

(c) USACE Contractor Works. The County will be responsible for performing all Routine Maintenance and Extraordinary Maintenance on the ROW until Turnover to the USACE construction contractor, which is currently anticipated to be close in time to the commencement of construction. The Parties will work with USACE to get as much notice as possible regarding the scheduled date for the commencement of construction. Upon receipt of this notice, CCJWRD will exercise its authorization to permanently obstruct the ROW, which will include posting signs, in coordination with the County, stating the dates of the road closure and coordinating with the USACE Contractor for traffic control signage.

**Section 3.02** MAINTENANCE REQUIREMENTS. The County will perform, or ensure the performance of, the following maintenance tasks on the ROW (collectively, "Routine Maintenance"):

- (a) The ROW will be graded twice a calendar month.
- (b) A 3-inch minimum thickness of gravel will be maintained.
- (c) The graded cross slopes across each lane will match its existing range of two percent (2%) to four percent (4%). If the current infield slope is not within that range, it will be upgraded to the two percent (2%) to four percent (4%) range.
- (d) Class 13 gravel will be placed for any aggregate needs.
- (e) Snow removal along the ROW will be dependent on the applicable township's current plow locations. The township will need to provide information to the County if a certain ROW was being plowed as needed by the township or private individuals in the winter.

**Section 3.03** COUNTY REIMBURSEMENT. The County may seek reimbursement from the Authority, as set forth herein, for costs and expenses incurred for Routine Maintenance and Extraordinary Maintenance; provided, however, the County must seek prior written approval from both CCJWRD and the Authority before performing Extraordinary Maintenance that exceeds \$5,000.

**Section 3.04** TOWNSHIP INVOLVEMENT. The County may engage an applicable township to perform Routine Maintenance. Reimbursement for such work, however, may be submitted by either the County or the township.

**Section 3.05** SECURING CONSTRUCTION SITES. The Authority will include in the Project Agreement and in its construction contract with the Third Party Contractor that the Developer and the Third Party Contractor, respectively, are responsible for securing the ROW, upon the

commencement of construction, to limit public travel on the ROW. The Parties will work with USACE for USACE to include in its construction contract that the contractor is responsible for securing the ROW, upon commencement of construction, to limit public travel on the ROW.

#### **ARTICLE IV. IMPACTED LANDS**

**Section 4.01** ROW. As set forth herein, the County will secure ROW, either inside or outside the Project Limits, to the extent necessary to allow for construction of the Comprehensive Project. CCJWRD will be responsible for securing property interests other than ROW that are necessary to construct termination tees.

**Section 4.02** OBLITERATION. Following construction of the Comprehensive Project and the termination tees, the Parties will obliterate that portion of the ROW that exists between the termination tees and Project Limits that will no longer be utilized as a road. Timing of each obliteration will be agreed upon by the Parties. The Authority will be responsible for all costs and expenses associated with obliteration and will be responsible for hiring a contractor for the obliteration work. The Authority will indemnify the County and CCJWRD for all obliteration work done on the ROW.

#### **ARTICLE V. INSURANCE AND INDEMNIFICATION**

**Section 5.01** JOINT POWERS AGREEMENT.

(a) Pursuant to section 15.05 of the Joint Powers Agreement, the Authority agreed to defend and indemnify the Member Entities, including both the County and CCJWRD, for any liability claims arising from the Authority's activities or operations, decisions of the Authority, or arising out of or regarding the Comprehensive Project.

(b) The Parties acknowledge and agree that section 15.05 of the Joint Powers Agreement is applicable to the County's and CCJWRD's control of the ROW and the County's maintenance of the ROW. As a result, the Authority will indemnify both CCJWRD and the County from third party claims relating to the ROW.

(c) The Authority has secured a commercial general limited liability policy from the North Dakota Insurance Reserve Fund ("NDIRF") and has listed both the County and CCJWRD as additional insureds under such policy. The Authority will continue to maintain such policy, or a like policy, in accordance with the terms of the Joint Powers Agreement and continue to list both the County and CCJWRD as additional insureds during the term of this MOU.

**Section 5.02** GROSSLY NEGLIGENT OR WILLFUL MISCONDUCT. Notwithstanding anything herein to the contrary, the Authority will not indemnify the County for grossly negligent or willful misconduct committed by the Person engaged by the County to perform maintenance. In lieu of such indemnification, the County must include in its maintenance contract that the contractor shall procure and maintain commercial general liability in the amount of \$3,000,000 and must name the County, CCJWRD, and the Authority as additional insureds under such policy.

**Section 5.03 DEVELOPER CONSTRUCTION.** The Developer will be responsible for procuring and maintaining the insurance set forth in the Project Agreement. The Authority will include provisions in the Project Agreement requiring the Developer (i) to procure and maintain commercial general liability in the amount of \$1,000,000 per occurrence and \$10,000,000 annual aggregate and must name CCJWRD, the County, and the Authority as additional insureds under such policy, and (ii) to indemnify and hold harmless CCJWRD, the County, and the Authority for construction performed on the ROW.

**Section 5.04 THIRD PARTY CONTRACTOR CONSTRUCTION.** Upon Turnover, the Third Party Contractor will be responsible for procuring and maintaining insurance requirements set forth in the construction contract. The Authority will include provisions in the construction contract requiring the Third Party Contractor (i) to procure and maintain commercial general liability in the amount of \$3,000,000 and must name CCJWRD, the County, and the Authority as additional insureds under such policy, and (ii) to indemnify and hold harmless CCJWRD, the County, and the Authority for construction performed on the ROW.

**Section 5.05 USACE CONTRACTOR CONSTRUCTION.** Upon Turnover, the USACE contractor will be responsible for procuring and maintaining insurance requirements set forth in the construction contract. The Authority will coordinate with USACE regarding insurance requirements for the contractor.

## **ARTICLE VI. TERM AND TERMINATION**

**Section 6.01 TERM.** The Original Term of this MOU will be for two (2) years from the Effective Date. The MOU will automatically renew for successive one (1) year additional terms (each, respectively, a “Renewal Term”) unless the Parties mutually agree, in writing, to terminate this MOU.

**Section 6.02 AGREEMENT.** The Parties may mutually agree, in writing, at any time, to terminate this MOU.

## **ARTICLE VII. DISPUTE RESOLUTION**

**Section 7.01 INTENT AND PROCEDURE.** The Parties will cooperate and use their Best Efforts to ensure that the various provisions of this MOU are fulfilled. The Parties agree to act in Good Faith to undertake resolution of disputes in an equitable and timely manner and in accordance with the provisions of this MOU. If disputes cannot be resolved informally by the Parties, the following procedures will be used.

**Section 7.02 MEDIATION.** If there is a failure between the Parties to resolve a dispute on their own, the Parties will first attempt to mediate the dispute. The Parties will agree upon a single mediator and will equally split any costs for mediation services.



**Section 7.03** LITIGATION IF DISPUTE NOT RESOLVED. If the dispute is not resolved within forty-five (45) calendar days after the end of mediation proceedings, the Parties may litigate the matter.

**Section 7.04** LITIGATION; VENUE. All litigation between the Parties arising out of or pertaining to this MOU or its breach will be filed, heard, and decided in the State District Court of Cass County, North Dakota, which will have exclusive jurisdiction and venue.

**Section 7.05** WAIVER OF JURY TRIAL. THE PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THAT ANY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING, COUNTERCLAIM, OR DEFENSE BASED ON THIS MOU, OR ARISING OUT OF, UNDER, OR IN ANY CONNECTION WITH THIS MOU, OR WITH RESPECT TO ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS MOU. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ALL PARTIES ENTERING INTO THIS MOU. THIS PROVISION APPLIES ONLY TO SUITS BETWEEN THE PARTIES AND DOES NOT APPLY TO THIRD PARTY CLAIMS OR SUITS.

## **ARTICLE VIII. REIMBURSEMENT**

**Section 8.01** COSTS AND EXPENSES. Between the Effective Date and Turnover of a ROW, the County may seek reimbursement from the Authority for costs and expenses incurred for Routine Maintenance and Extraordinary Maintenance.

**Section 8.02** INVOICING.

(a) The County will remit hard copy invoices to the Authority at the Authority's main office, and the invoices will be processed by the Authority for the following month. The County will also submit copies of the invoices to the Authority electronically at [APInvoicesFMDiv@jacobs.com](mailto:APInvoicesFMDiv@jacobs.com), copied to [kbakkegard@fmdiversion.gov](mailto:kbakkegard@fmdiversion.gov).

(b) The County's invoices must be detailed and precise, clearly indicate fees and expenses, and include at least the following information:

- (1) The County's name and address;
- (2) The County's federal employer identification number;
- (3) Unique invoice number;
- (4) Billing period;
- (5) Description of each activity performed for each day in which services were performed;

- (6) Work order number associated with each activity;
- (7) Name, billing rate, hours worked by each person involved in each activity;
- (8) Total amount of fees and costs “billed to date,” including the preceding months;
- (9) Preferred remittance address, if different from the address on the invoice’s coversheet; and
- (10) All of the work performed during that billing period.

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

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

(e) Payment does not imply acceptance of services or that the invoice is accurate. In the event an error is identified within three (3) months of receipt of payment, the County must credit any payment error from any payment that is due or that may become due to the County under this MOU.

## **ARTICLE IX. MISCELLANEOUS**

**Section 9.01** COMPLETE AGREEMENT. This MOU contains the entire and exclusive understanding of the Parties with respect to the subject matter thereof and supersedes all prior agreements, understandings, statements, representations, and negotiations, in each case oral or written, among the Parties with respect to their subject matter.

**Section 9.02** COUNTERPARTS. This instrument may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

**Section 9.03** AMENDMENTS. This MOU may be amended only by written instrument duly executed by the Parties or their respective successors or assigns, except to the extent expressly provided otherwise in this MOU.

**Section 9.04** SEVERABILITY AND SAVINGS CLAUSE. Each provision, section, sentence, clause, phrase, and word of this MOU is intended to be severable. If any provision, section, sentence, clause, phrase, or word hereof is held by a court with jurisdiction to be illegal or invalid

for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this MOU.

**Section 9.05** FORCE MAJEURE. A Party will not be liable to the others during any period in which its performance is delayed or prevented, in whole or in part, by any of the following circumstances: war, civil war, invasion, violent act of foreign enemy, or armed conflict; nuclear, chemical, or biological contamination; ionizing radiation; or any act of terrorism. If such a circumstance occurs, the Party claiming the delay must undertake reasonable action to notify the other Parties of the same.

**Section 9.06** AUTHORIZED REPRESENTATIVES. Each Party hereby designates the following individual as its initial authorized representative, respectively, to administer this MOU on its respective behalf:

- (a) Authority Representative: Kris Bakkegard, Director of Engineering
- (b) County Representative: Jason Benson, County Engineer
- (c) CCJWRD Representative: Carol Harbeke Lewis, Secretary-Treasurer

**Section 9.07** NOTICE.

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

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

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

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

County Engineer  
1201 Main Avenue West  
West Fargo, North Dakota 58078

(d) All notices to CCJWRD will be marked as regarding the Comprehensive Project and will be delivered to the following address or as otherwise directed by the CCJWRD Representative:

CCJWRD Secretary-Treasurer  
1201 Main Avenue West  
West Fargo, North Dakota 58078

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

**Section 9.08** GOVERNING LAW. This MOU will be governed by and construed in accordance with the laws of the State of North Dakota.

**Section 9.09** CONFLICT WITH MOU REGARDING OTHER COMPREHENSIVE PROJECT WORK. Nothing in this MOU is intended to supersede, amend, or otherwise modify any other memorandum of understanding or agreement entered by and between the Parties for work regarding other aspects of the Comprehensive Project.

**IN WITNESS WHEREOF**, the Authority, the County, and CCJWRD caused this Agreement to be executed.

*(Remainder of page intentionally left blank.)*

*Signature Page for the Metro Flood Diversion Authority*

The governing body of the Metro Flood Diversion Authority approved this MOU on the 22nd day of April, 2021

METRO FLOOD DIVERSION  
AUTHORITY

By: *Shelly Carlson*  
Michelle (~~Shelly~~) A. Carlson, Chair

By: *Joel Paulsen*  
Joel Paulsen, Executive Director


ATTEST:

*Dawn Lindblom*  
Dawn Lindblom, Secretary

*Signature Page for Cass County, North Dakota*

The governing body of Cass County, North Dakota, approved this MOU on the 19 day of April, 2021.

CASS COUNTY, NORTH DAKOTA

By:   
Chad Peterson, Chair of the Board of  
County Commissioners

ATTEST:

  
Michael Montplaisir, County Auditor

*Signature Page for the Cass County Joint Water Resource District*


The governing body of the Cass County Joint Water Resource District approved this MOU on the 22 day of April, 2021.

CASS COUNTY JOINT WATER  
RESOURCE DISTRICT

By: 

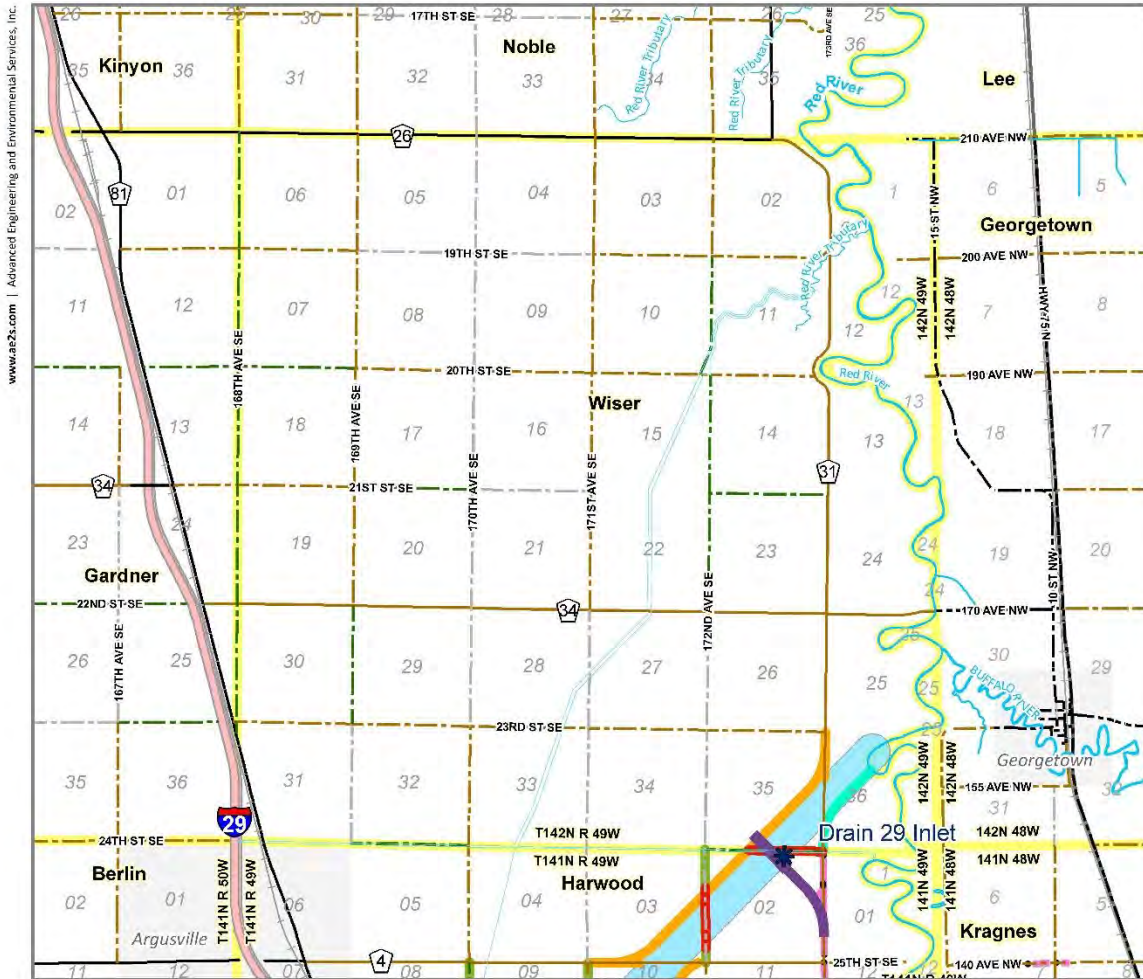
Dan Jacobson, Chair

ATTEST:

  
Carol Harbeke Lewis, Secretary-Treasurer

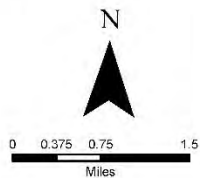
# EXHIBIT A

## COMPREHENSIVE PROJECT IMPACTS MAPS



Legend			
	Aqueduct		Township Road Closure
	Inlet Structures		Township Road Can Remain Open
	Drain Crossings		Mobility Improvements
	Channel/SE Crossings		New Gravel Road
	Channel		Other Agency Roadway Improvements
	Railroad		Township - Trail/Grass
	Township - Unimproved		Township - Dirt
	Township - Gravel		Township - Paved
	County Road - Gravel		County Road - Paved
	State or US Highway		Interstate
	Township Boundary		

*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By: cwoikenheiser - AE2S, Inc. | C:\Data\Projects\GIS\Projects\FM Area Diversion\Projects\LA and Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd*

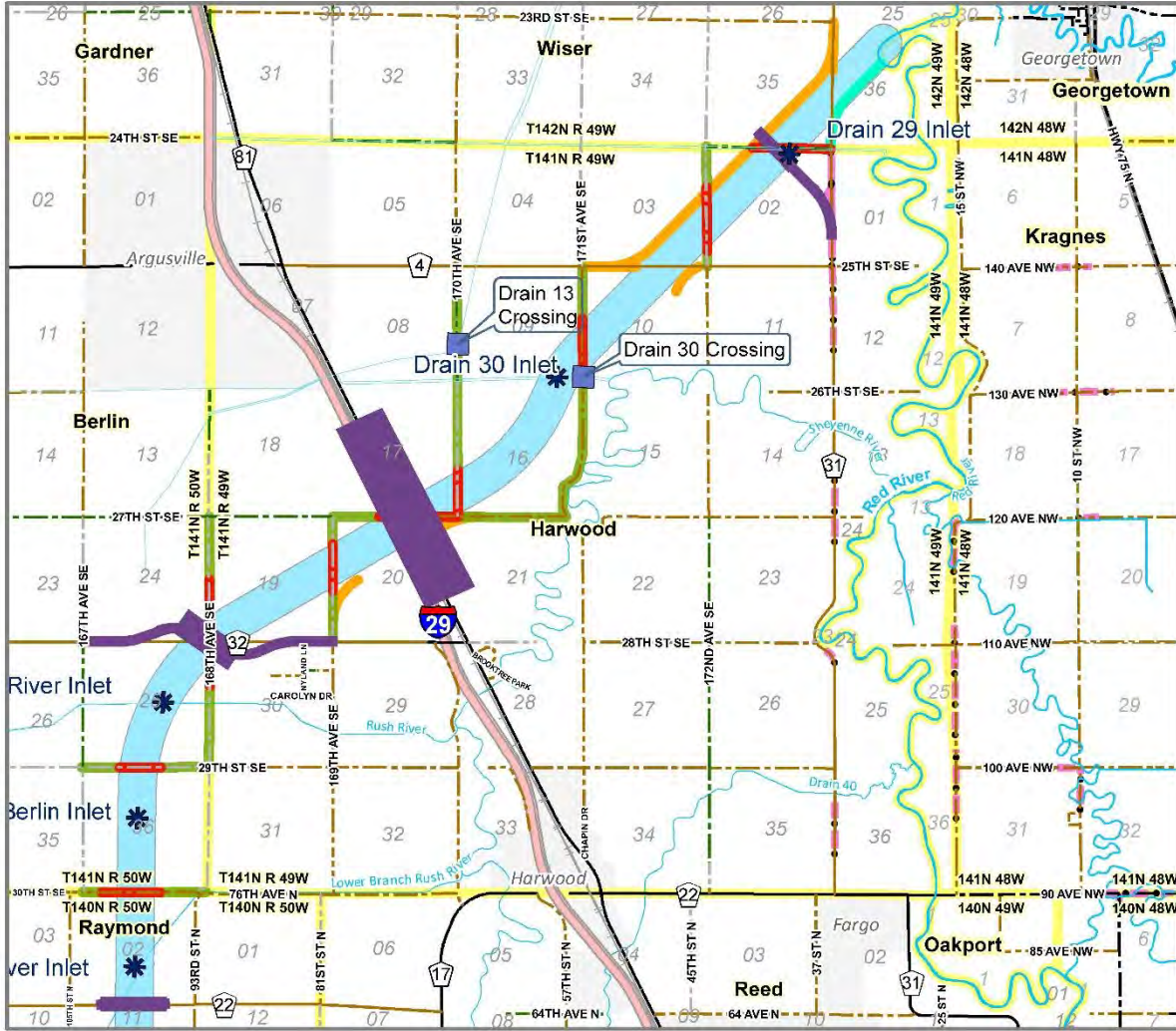


### Wisner

FM Area Diversion  
Map Date: 10/7/2020

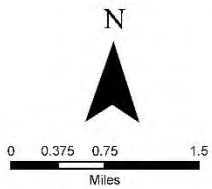






Legend							
	Aqueduct		Township Road Closure		Township - Trail/Grass		County Road - Gravel
	Inlet Structures		Township Road Can Remain Open		Township - Unimproved		County Road - Paved
	Drain Crossings		Mobility Improvements		Township - Dirt		State or US Highway
	Channel/SE Crossings		New Gravel Road		Township - Gravel		Interstate
	Channel		Other Agency Roadway Improvements		Township - Paved		Township Boundary
			Railroad				

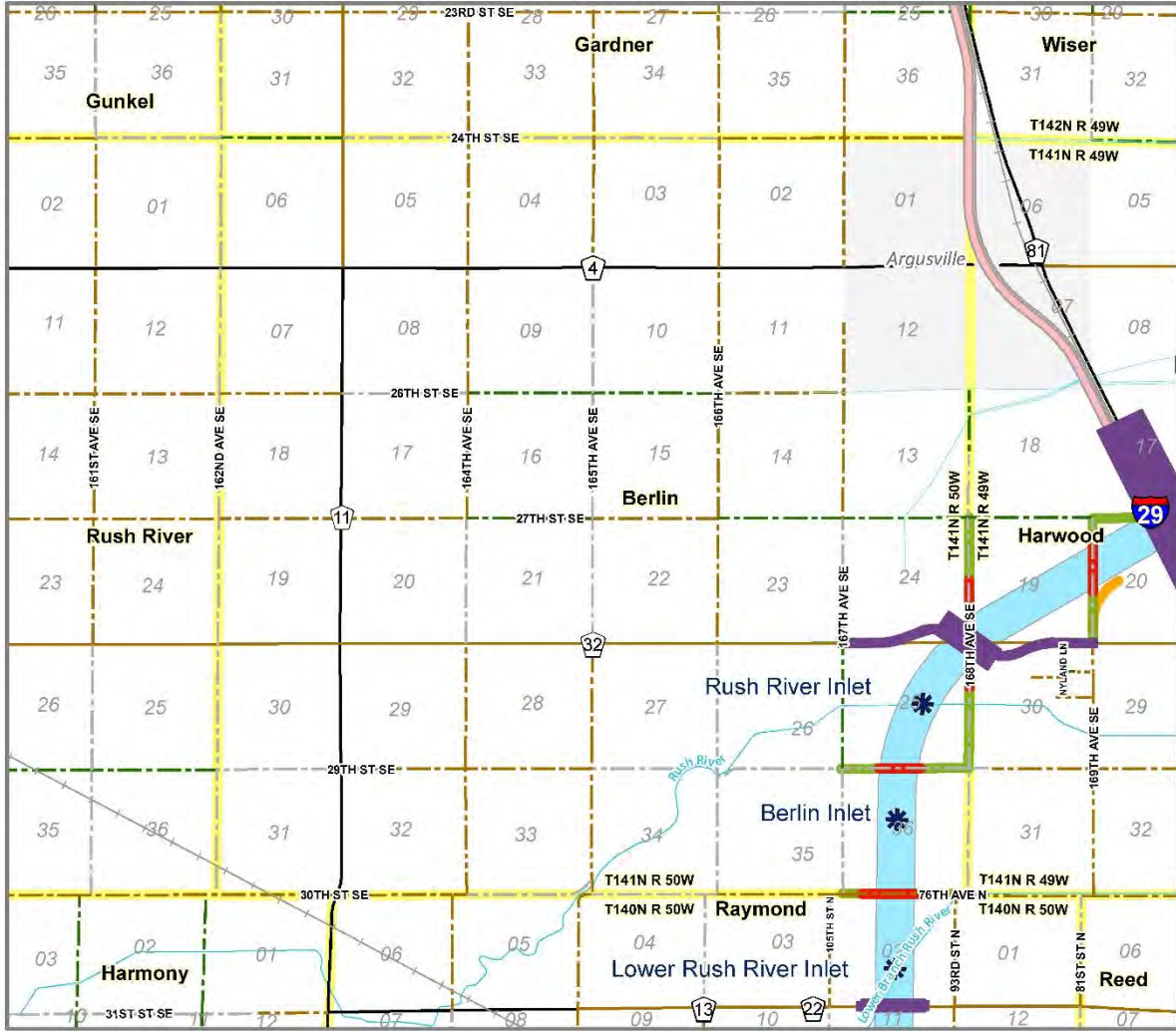
Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd



## Harwood

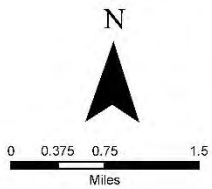
FM Area Diversion  
Map Date: 10/7/2020





Legend			
	Aqueduct		Township Road Closure
	Inlet Structures		Township Road Can Remain Open
	Drain Crossings		Mobility Improvements
	Channel/SE Crossings		Township - Dirt
	Channel		Township - Gravel
			Township - Paved
			Railroad
			Township - Trail/Grass
			Township - Unimproved
			County Road - Gravel
			County Road - Paved
			State or US Highway
			Interstate
			Township Boundary

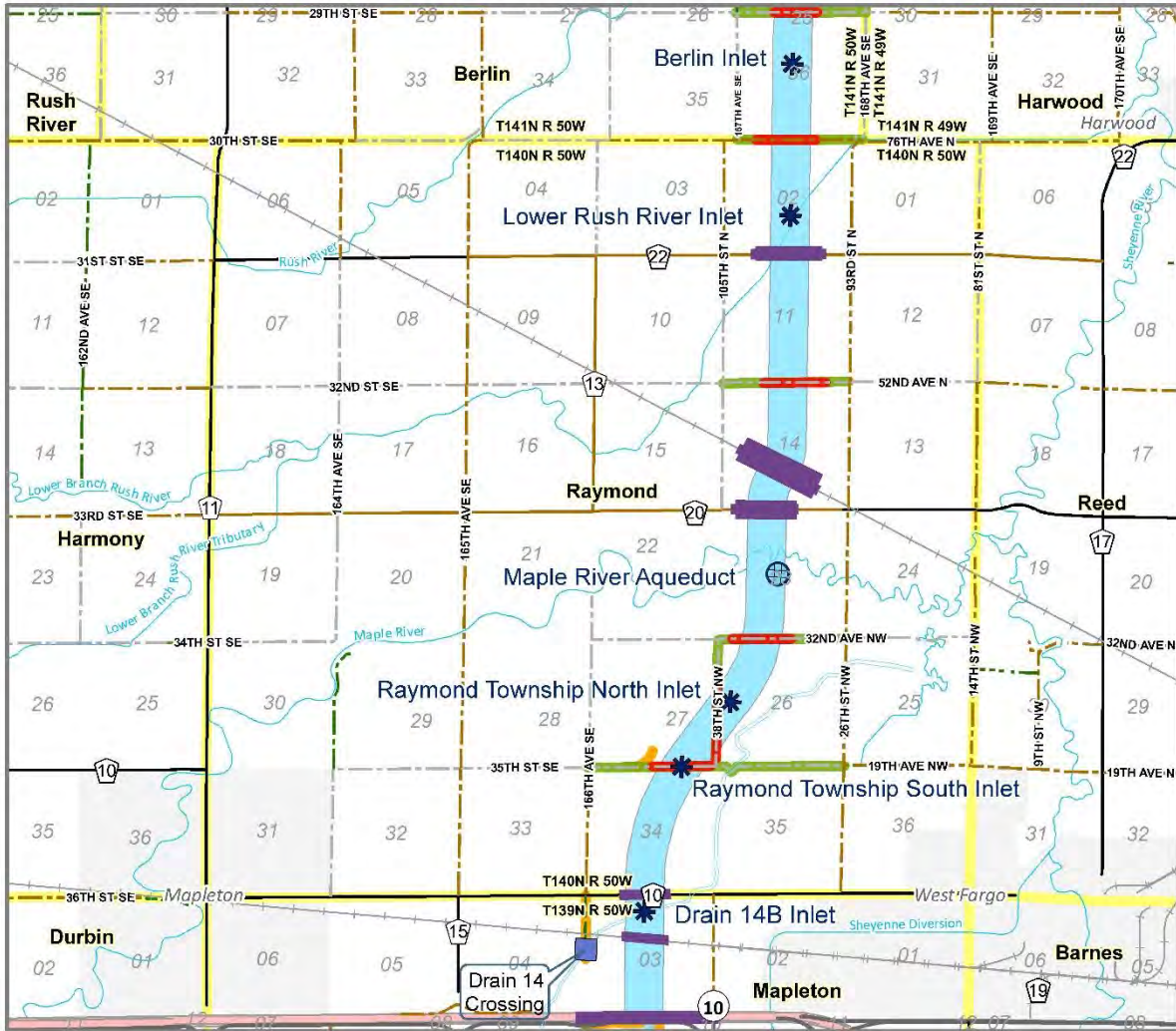
Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd



## Berlin

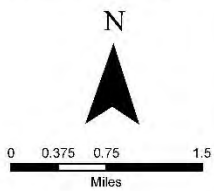
FM Area Diversion  
Map Date: 10/7/2020





Legend			
	Aqueduct		Township Road Closure
	Inlet Structures		Township Road Can Remain Open
	Drain Crossings		Mobility Improvements
	Channel/SE Crossings		New Gravel Road
	Channel		Other Agency Roadway Improvements
	Railroad		Township - Trail/Grass
	Township - Unimproved		Township - Gravel
	Township - Dirt		Township - Paved
	County Road - Gravel		Interstate
	County Road - Paved		Township Boundary
	State or US Highway		

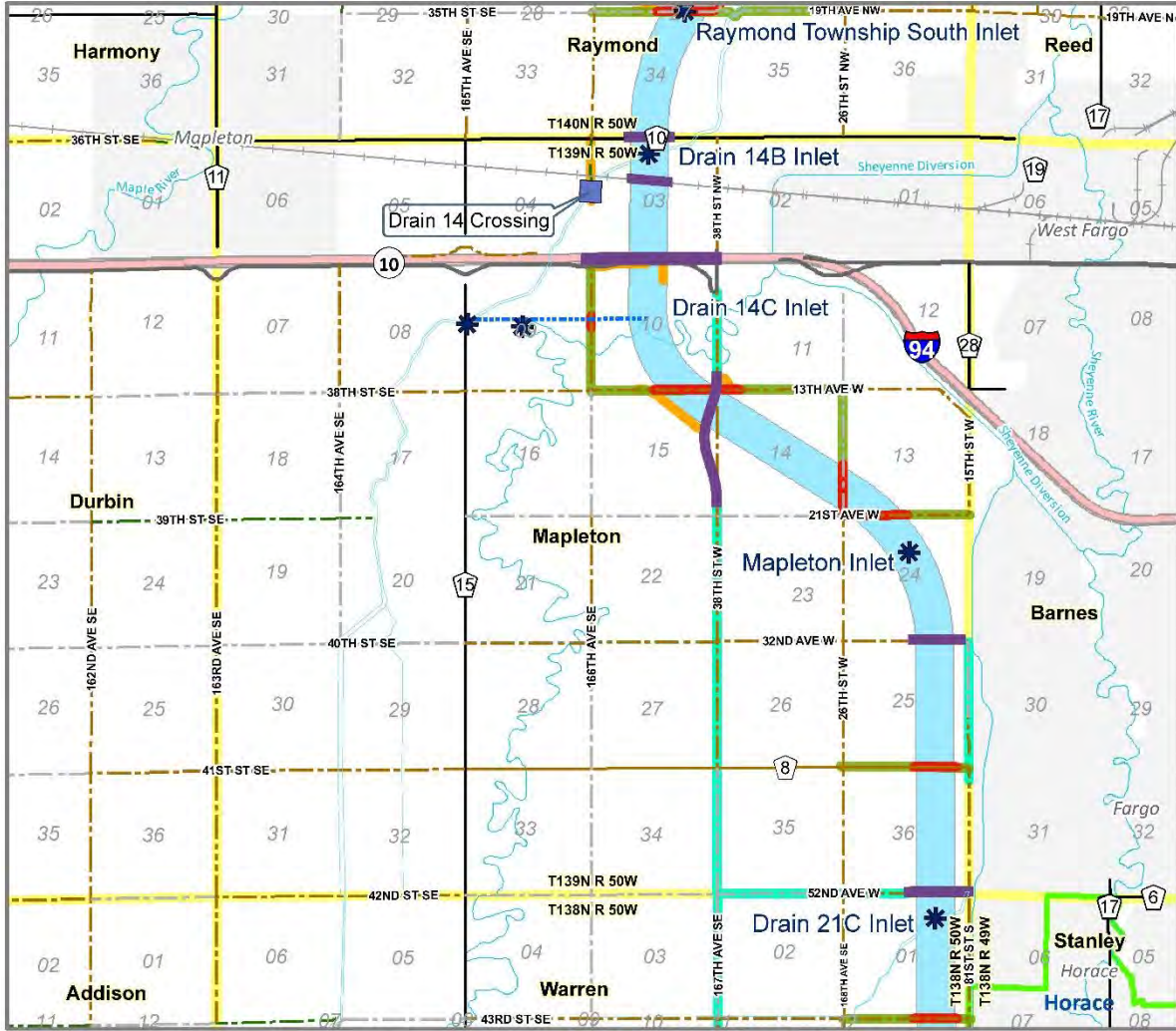
Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd



## Raymond

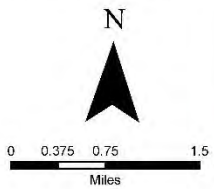
FM Area Diversion  
Map Date: 10/7/2020





Legend							
	Aqueduct		Township Road Closure		Township - Trail/Grass		County Road - Gravel
	Inlet Structures		Township Road Can Remain Open		Township - Unimproved		County Road - Paved
	Drain Crossings		Mobility Improvements		Township - Dirt		State or US Highway
	Channel/SE Crossings		New Gravel Road		Township - Gravel		Interstate
	Channel		Other Agency Roadway Improvements		Township - Paved		Township Boundary
	Drain Construction		Railroad		City of Horace		

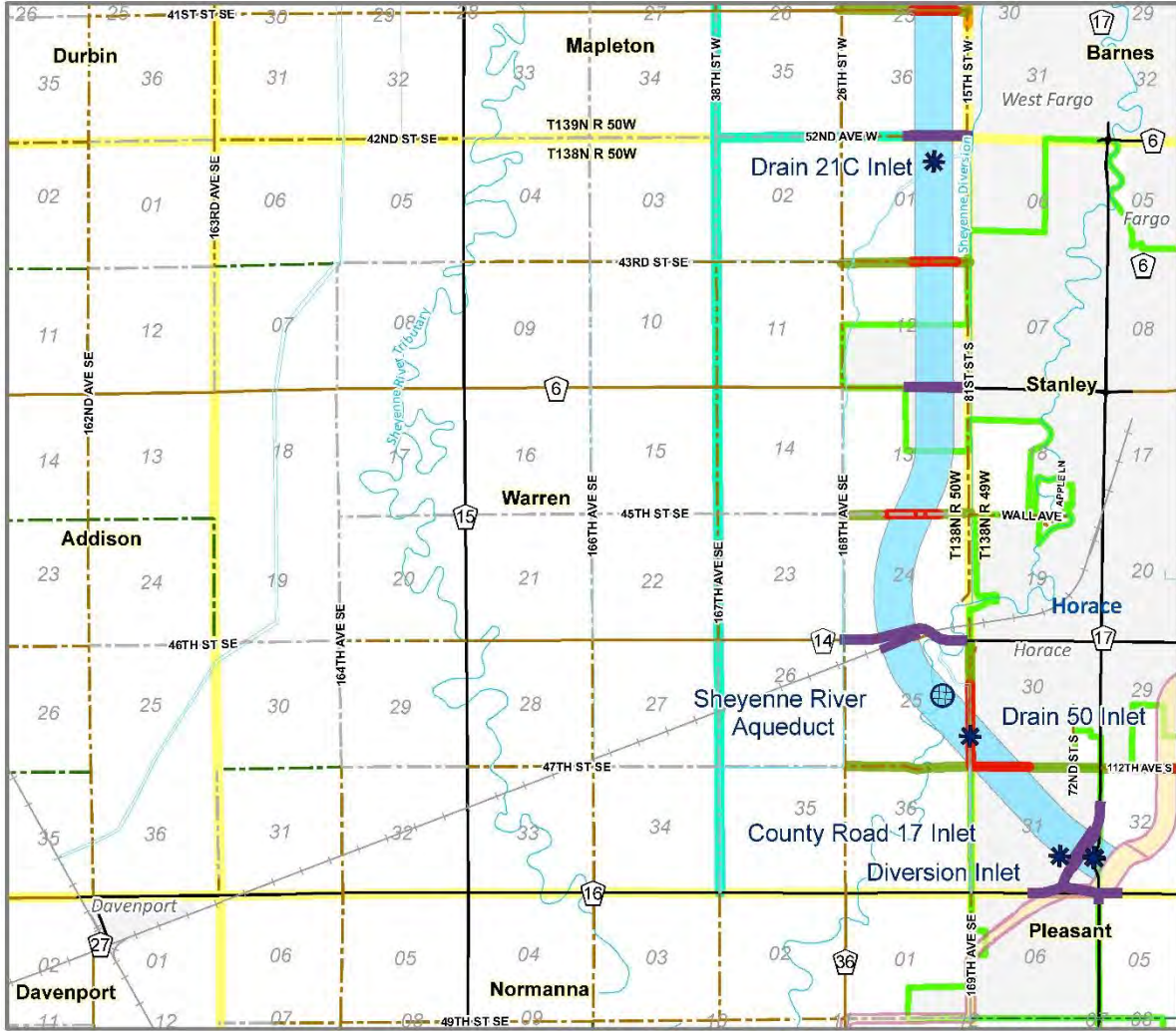
*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd*



## Mapleton

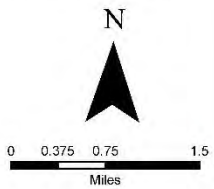
FM Area Diversion  
Map Date: 3/19/2021





Legend			
	Aqueduct		Township Road Closure
	Inlet Structures		Township Road Can Remain Open
	Drain Crossings		Mobility Improvements
	Channel/SE Crossings		New Gravel Road
	Channel		Township - Unimproved
	Southern Embankment		Township - Gravel
			Township - Paved
			County Road - Gravel
			County Road - Paved
			State or US Highway
			Interstate
			Township Boundary
			City of Horace
	Railroad		

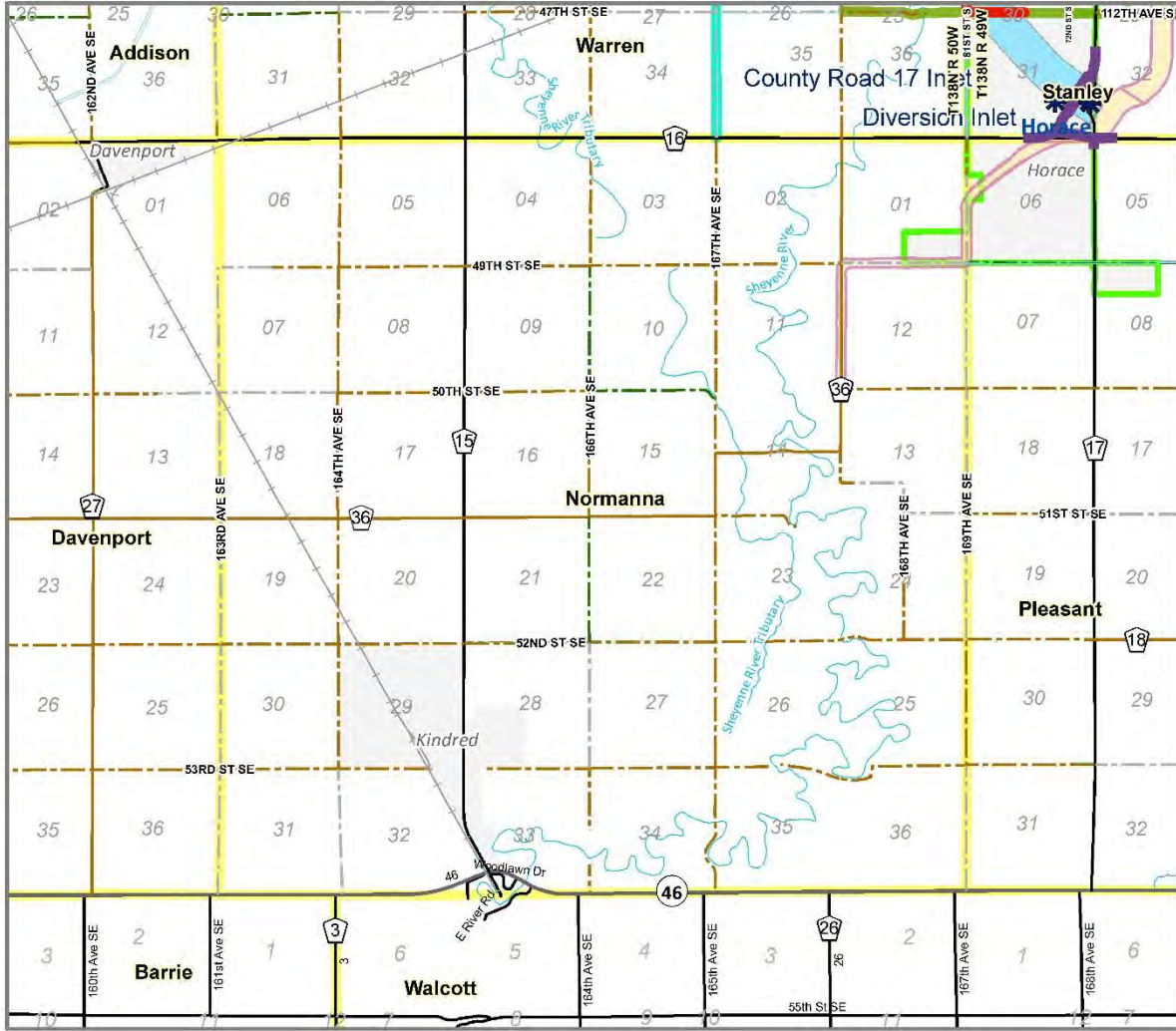
*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd*



### Warren

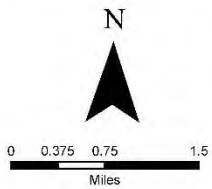
FM Area Diversion  
Map Date: 10/7/2020





Legend							
	Aqueduct		Township Road Closure		Township - Trail/Grass		County Road - Gravel
	Inlet Structures		Township Road Can Remain Open		Township - Unimproved		County Road - Paved
	Drain Crossings		Mobility Improvements		Township - Dirt		State or US Highway
	Channel/SE Crossings		New Gravel Road		Township - Gravel		Interstate
	Channel		Other Agency Roadway Improvements		Township - Paved		Township Boundary
	Southern Embankment		Railroad				City of Horace

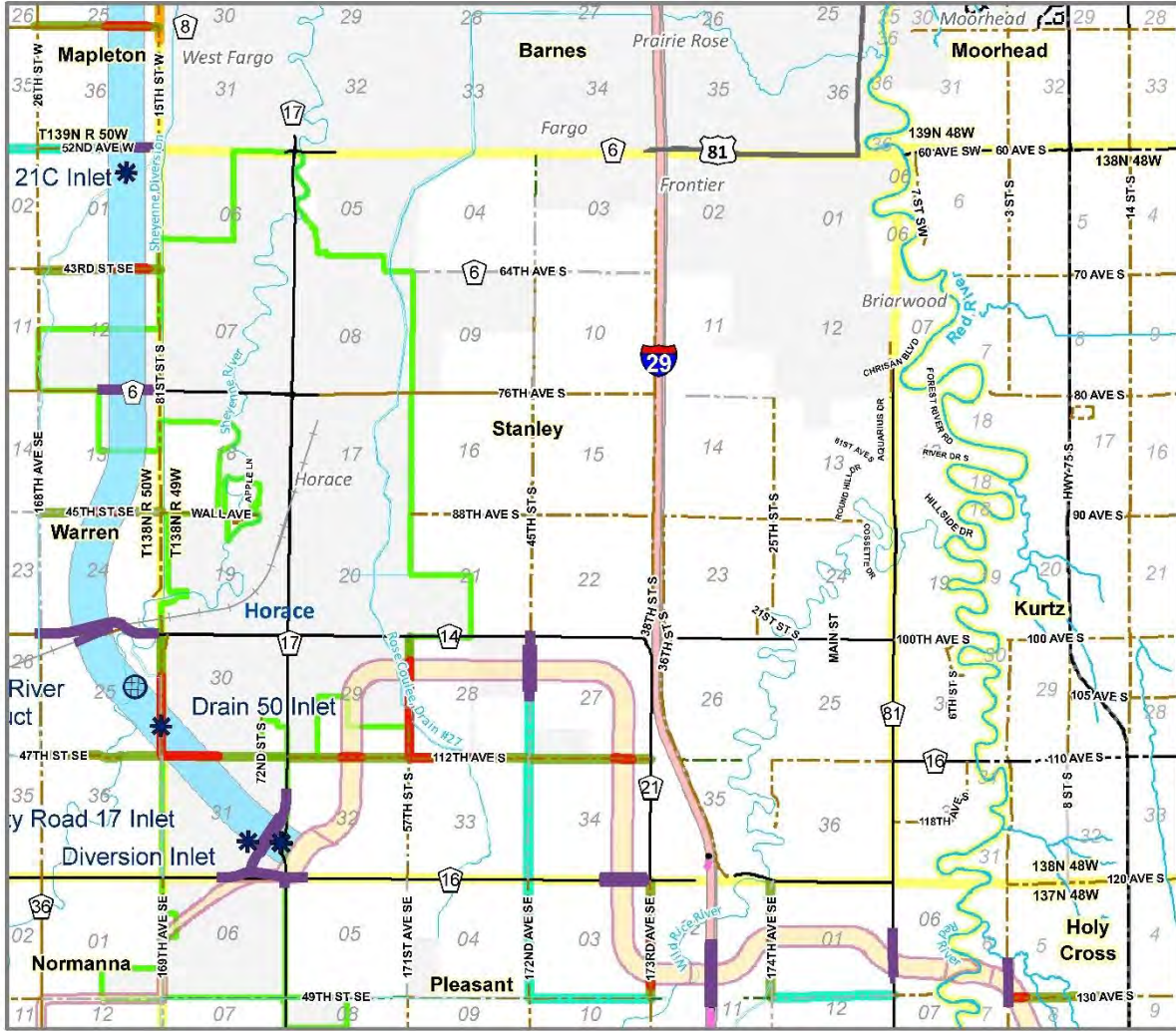
*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd*



## Normanna

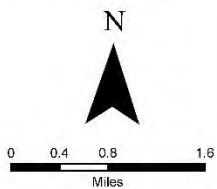
FM Area Diversion  
Map Date: 10/7/2020





Legend			
	Aqueduct		Township Road Closure
	Inlet Structures		Township Road Can Remain Open
	Drain Crossings		Mobility Improvements
	Channel/SE Crossings		New Gravel Road
	Channel		Other Agency Roadway Improvements
	Southern Embankment		Railroad
	Township - Trail/Grass		Township - Unimproved
	Township - Dirt		Township - Gravel
	Township - Paved		Township Boundary
	County Road - Gravel		City of Horace
	County Road - Paved		
	State or US Highway		
	Interstate		

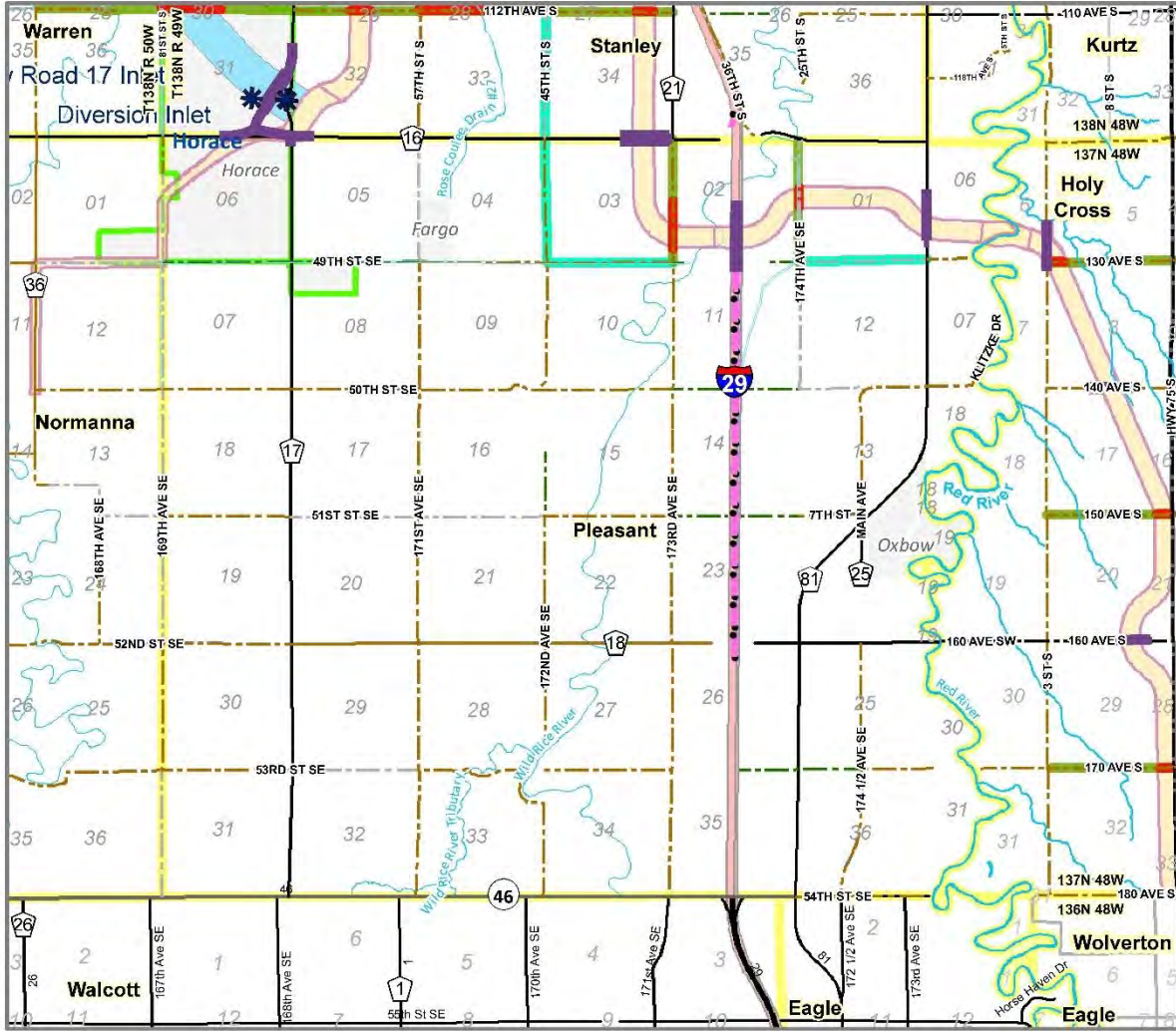
*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd*



## Stanley

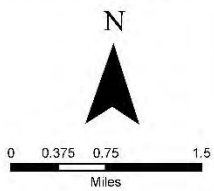
FM Area Diversion  
Map Date: 2/11/2021





Legend							
	Aqueduct		Township Road Closure		Township - Trail/Grass		County Road - Gravel
	Inlet Structures		Township Road Can Remain Open		Township - Unimproved		County Road - Paved
	Drain Crossings		Mobility Improvements		Township - Dirt		State or US Highway
	Channel/SE Crossings		New Gravel Road		Township - Gravel		Interstate
	Channel		Other Agency Roadway Improvements		Township - Paved		Township Boundary
	Southern Embankment		Railroad				City of Horace

Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd



## Pleasant

FM Area Diversion  
Map Date: 2/11/2021





---

**RESOLUTION REQUESTING THAT CASS COUNTY  
ACQUIRE ROAD RIGHTS-OF-WAY  
(SE-2A)**

of the

**METRO FLOOD DIVERSION AUTHORITY**

Approved on June 24, 2021

---

This resolution was drafted by:  
Ohnstad Twichell, P.C.  
P.O. Box 458  
West Fargo, North Dakota 58078

**Table of Contents**

Section 1. Definitions ..... 2

Section 2. ROW Acquisition ..... 3

Section 3. Permanent Obstruction Authorization ..... 3

Section 4. Reimbursement..... 3

Section 5. Joint Powers Agreement and ROW MOU ..... 3

Section 6. North Dakota Law Applies..... 3

Section 7. Effective Date ..... 4

Section 8. Electronic Signatures ..... 4

Member Dr. Tim Mahoney introduced the following resolution and moved for its adoption:

**RESOLUTION REQUESTING THAT CASS COUNTY  
ACQUIRE ROAD RIGHTS-OF-WAY  
(SE-2a)**

**WHEREAS**, the City of Moorhead, the City of Fargo, Clay County, Cass County, and the Cass County Joint Water Resource District (the “Member Entities”) entered into a Joint Powers Agreement (“JPA”), dated June 1, 2016, creating the Metro Flood Diversion Authority (the “Authority”); and

**WHEREAS**, section 4.04 of the JPA provides that the North Dakota Member Entities will be responsible for certain elements of the Comprehensive Project, including:

- (a) An approximately thirty (30) mile, 20,000 cubic feet per second (cfs) storm water diversion channel and associated features (“SWDCAI”);
- (b) The channel outlet;
- (c) The Rush and Lower Rush River hydraulic structures;
- (d) The Maple River aqueduct;
- (e) The Sheyenne River aqueduct;
- (f) The tie-in to USACE’s diversion inlet structure project;
- (g) Railroad bridges;
- (h) In-town levees located in the City of Fargo;
- (i) Road raises within the protected area, outside of any city limits;
- (j) The Oxbow-Hickson-Bakke levee;
- (k) Recreation features located in North Dakota;
- (l) Environmental mitigation features and associated structures for the SWDCAI located in North Dakota specifically within the channel mitigation features; and
- (m) Lands, easements, and rights-of-way; and

**WHEREAS**, Article 12 of the JPA provides the Authority with the authorization to request that a Member Entity undertake certain elements of the Comprehensive Project; and

**WHEREAS**, on April 22, 2021, the Authority, Cass County, and the Cass County Joint Water Resource District (“CCJWRD”) entered into a Memorandum of Understanding (the “ROW MOU”), which outlined the roles and responsibilities of the Authority, Cass County, and CCJWRD regarding road rights-of-way acquired in North Dakota as part of land acquisition for the Project; and

**WHEREAS**, pursuant to the JPA and the ROW MOU, the Authority now desires to request that Cass County, as a North Dakota Member Entity, acquire certain rights-of-way that will be impacted by the construction of SE-2a.

**NOW, THEREFORE, BE IT RESOLVED** by the governing body of the Metro Flood Diversion Authority:

Section 1. Definitions.

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

“Authority” means the Metro Flood Diversion Authority, a political subdivision of the State of North Dakota.

“Cass County” means Cass County, a political subdivision of the State of North Dakota.

“CCJWRD” means the Cass County Joint Water Resource District, a political subdivision of the State of North Dakota.

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

“JPA” means the Joint Powers Agreement, dated June 1, 2016, by and between the Member Entities.

“Member Entity” the City of Moorhead, the City of Fargo, Cass County, Clay County, or CCJWRD.

“North Dakota Member Entity” means the City of Fargo, Cass County, or CCJWRD.

“ROW” means the road right-of-way designated on Exhibit A as “Road Controlled by Cass County” on 112th Avenue South where 112th Avenue South intersects the SEAI.

“ROW MOU” means the Memorandum of Understanding, attached hereto as Exhibit B, by and between the Authority, Cass County, and CCJWRD, dated April 22, 2021, outlining the roles and responsibilities of the parties regarding road rights-of-way acquired in North Dakota as part of land acquisition for the Comprehensive Project.

“SE-2a” means that portion of the SEAI between the diversion inlet structure and the intersection of Drain 27 with the SEAI.

“SEAI” means the Southern Embankment and Associated Infrastructure, including the diversion inlet structure, the connection channel, Red River structure, the Wild Rice structure, and the southern embankment in its entirety, to be constructed as part of the Comprehensive Project.

“SWDCAI” shall have the same meaning as how it is defined in the recitals in this resolution.

Section 2. ROW Acquisition.

(a) The Authority hereby formally requests that Cass County acquire the ROW through the process set forth in the ROW MOU for SE-2a.

(b) Following the Effective Date, the Authority will notify all landowners, by certified mail, within a minimum distance of one thousand (1,000) feet of the ROW of its request to Cass County.

Section 3. Permanent Obstruction Authorization.

In conjunction with the Authority’s request to Cass County, pursuant to the terms of the ROW MOU, CCJWRD will file a request with Cass County to permanently obstruct the ROW with SE-2a. CCJWRD will also notify all landowners within a minimum distance of one thousand (1,000) feet of the ROW of its request to Cass County.

Section 4. Reimbursement.

The Authority will reimburse Cass County for any reasonable costs or expenses related to acquisition of the ROW following the submission of a payment request from Cass County.

Section 5. Joint Powers Agreement and ROW MOU.

Nothing herein is intended to conflict with the terms and conditions of the JPA or the ROW MOU; rather, this resolution is intended to supplement the JPA and ROW MOU. In the event there is a conflict between this resolution, the JPA, and/or the ROW MOU, the JPA takes precedence over this resolution and the ROW MOU and the ROW MOU takes precedence over this resolution.

Section 6. North Dakota Law Applies.

This resolution will be controlled by the laws of the State of North Dakota, and any claims arising out of or pertaining to this resolution will be filed, heard, and decided in the state district court of Cass County, North Dakota, which will have exclusive jurisdiction and venue.

Section 7. Effective Date.

This resolution will take effect immediately upon adoption.

Section 8. Electronic Signatures.

Electronic signatures to this resolution shall be valid as original signatures and shall be valid to bind the Authority. For purposes hereof: (i) “electronic signature” means a manually signed original signature that is then transmitted by electronic means; and (ii) “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a portable document format (“pdf”) or other replicating image attached to an electronic mail or internet message.

Dated: June 24, 2021.

**METRO FLOOD DIVERSION AUTHORITY**

APPROVED:

*Shelly Carlson*  
Michelle (Shelly) A. Carlson, Chair

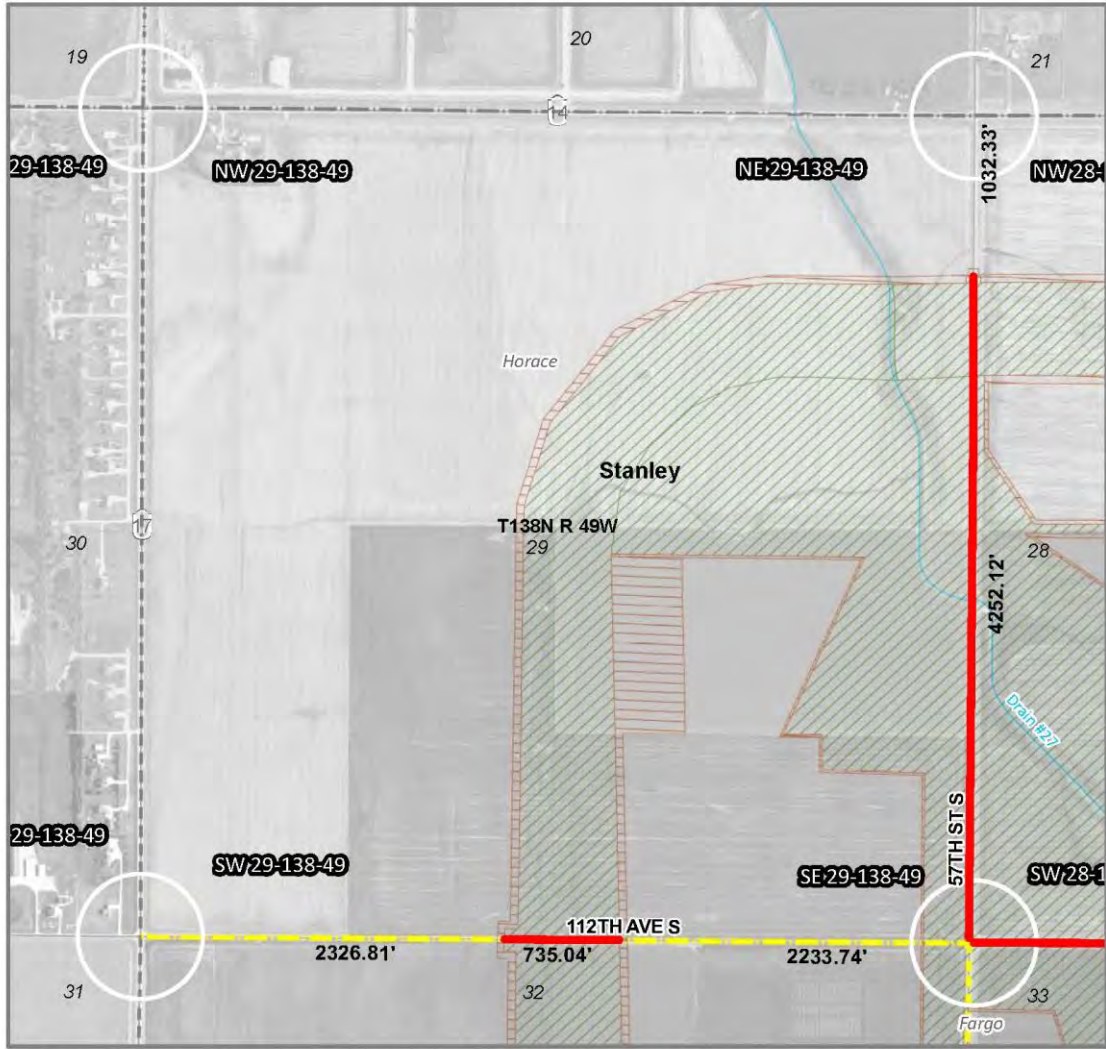
ATTEST:

*Dawn Lindblom*  
Dawn Lindblom, Secretary

The motion for adoption of the foregoing resolution was duly seconded by Member Peterson and upon roll call vote, the following Members voted in favor thereof: Carlson, Mahoney, Dardis, Peterson, Hendrickson, Piepkorn, Ebinger, Preston, Campbell, Scherling, Steen, Olson and Seljevold. The following were absent and not voting: None. The following voted against the same: None. A majority of the Members having voted aye, the resolution was declared duly passed and adopted.

# EXHIBIT A

## ROAD RIGHT-OF-WAY

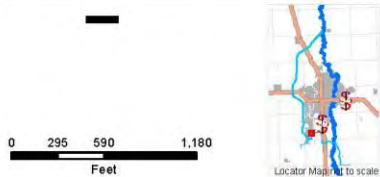


*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey.*

Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By: hrecords - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Division\FM GIS Projects Drive\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Map\County Res Mapbook\MOU by Survey Dimensions.mxd

Channel/SE Crossings	Road Controlled by Cass County
Township Boundary	Road Controlled by Township
Project Limits	County Road
Temporary Construction Easement	State or US Highway

Vacated portions will be defined by plat.  
Dimensions are GIS measurements.



### Stanley Township

FM Area Division  
Map Date: 5/11/2021



**EXHIBIT B**

**ROW MOU**

*(Please see the following twenty-nine (29) pages.)*



---

**MEMORANDUM OF UNDERSTANDING**

**BY AND BETWEEN**  
**METRO FLOOD DIVERSION AUTHORITY**  
**AND**  
**CASS COUNTY, NORTH DAKOTA**  
**AND**  
**CASS COUNTY JOINT WATER RESOURCE DISTRICT**

**Dated as of April 22, 2021**

**Relating to:**

**A Memorandum of Understanding outlining the roles and responsibilities of the Parties regarding road rights-of-way acquired in North Dakota as part of land acquisition for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.**

---

# TABLE OF CONTENTS

<b>ARTICLE I</b> .....	<b>2</b>
<b>DEFINITIONS AND INTERPRETATION</b> .....	<b>2</b>
<b>SECTION 1.01</b> DEFINITIONS.....	2
<b>SECTION 1.02</b> INTERPRETATION.....	4
<b>ARTICLE II</b> .....	<b>5</b>
<b>PRE-CONSTRUCTION SITE CONTROL</b> .....	<b>5</b>
<b>SECTION 2.01</b> LAND ACQUISITION PROCESS.....	5
<b>SECTION 2.02</b> NON-FEDERAL WORK AREAS .....	5
<b>SECTION 2.03</b> FEDERAL WORK AREAS .....	6
<b>SECTION 2.04</b> PUBLIC USE OF ROAD ROW AND PLATTING .....	6
<b>SECTION 2.05</b> VACATED ROAD ROW .....	6
<b>ARTICLE III</b> .....	<b>6</b>
<b>MAINTENANCE</b> .....	<b>6</b>
<b>SECTION 3.01</b> RESPONSIBILITY .....	6
<b>SECTION 3.02</b> MAINTENANCE REQUIREMENTS.....	7
<b>SECTION 3.03</b> COUNTY REIMBURSEMENT .....	7
<b>SECTION 3.04</b> TOWNSHIP INVOLVEMENT.....	7
<b>SECTION 3.05</b> SECURING CONSTRUCTION SITES.....	7
<b>ARTICLE IV</b> .....	<b>8</b>
<b>IMPACTED LANDS</b> .....	<b>8</b>
<b>SECTION 4.01</b> ROW .....	8
<b>SECTION 4.02</b> OBLITERATION .....	8
<b>ARTICLE V</b> .....	<b>8</b>
<b>INSURANCE AND INDEMNIFICATION</b> .....	<b>8</b>
<b>SECTION 5.01</b> JOINT POWERS AGREEMENT .....	8
<b>SECTION 5.02</b> GROSSLY NEGLIGENT OR WILLFUL MISCONDUCT .....	8
<b>SECTION 5.03</b> DEVELOPER CONSTRUCTION.....	9
<b>SECTION 5.04</b> THIRD PARTY CONTRACTOR CONSTRUCTION .....	9
<b>SECTION 5.05</b> USACE CONTRACTOR CONSTRUCTION.....	9
<b>ARTICLE VI</b> .....	<b>9</b>
<b>TERM AND TERMINATION</b> .....	<b>9</b>
<b>SECTION 6.01</b> TERM .....	9
<b>SECTION 6.02</b> AGREEMENT .....	9
<b>ARTICLE VII</b> .....	<b>9</b>
<b>DISPUTE RESOLUTION</b> .....	<b>9</b>
<b>SECTION 7.01</b> INTENT AND PROCEDURE .....	9
<b>SECTION 7.02</b> MEDIATION .....	9

<b>SECTION 7.03</b>	LITIGATION IF DISPUTE NOT RESOLVED .....	10
<b>SECTION 7.04</b>	LITIGATION; VENUE .....	10
<b>SECTION 7.05</b>	WAIVER OF JURY TRIAL.....	10
<b>ARTICLE VIII.</b>	.....	<b>10</b>
<b>REIMBURSEMENT</b>	.....	<b>10</b>
<b>SECTION 8.01</b>	COSTS AND EXPENSES.....	10
<b>SECTION 8.02</b>	INVOICING .....	10
<b>ARTICLE IX.</b>	.....	<b>11</b>
<b>MISCELLANEOUS</b>	.....	<b>11</b>
<b>SECTION 9.01</b>	COMPLETE AGREEMENT .....	11
<b>SECTION 9.02</b>	COUNTERPARTS.....	11
<b>SECTION 9.03</b>	AMENDMENTS .....	11
<b>SECTION 9.04</b>	SEVERABILITY AND SAVINGS CLAUSE.....	11
<b>SECTION 9.05</b>	FORCE MAJEURE .....	12
<b>SECTION 9.06</b>	AUTHORIZED REPRESENTATIVES.....	12
<b>SECTION 9.07</b>	NOTICE .....	12
<b>SECTION 9.08</b>	GOVERNING LAW .....	13
<b>SECTION 9.09</b>	CONFLICT WITH MOU REGARDING OTHER COMPREHENSIVE PROJECT WORK.....	13
<b>SIGNATURE PAGES</b>	.....	<b>S-1 THROUGH S-3</b>
 <b>EXHIBIT A – COMPREHENSIVE PROJECT IMPACTS MAPS</b>		

## MEMORANDUM OF UNDERSTANDING

**THIS MEMORANDUM OF UNDERSTANDING** (the “MOU”) is made effective as of April 22, 2021 (the “Effective Date”), between METRO FLOOD DIVERSION AUTHORITY, a political subdivision of the State of North Dakota (the “Authority”); CASS COUNTY, NORTH DAKOTA, a political subdivision of the State of North Dakota (the “County”); and CASS COUNTY JOINT WATER RESOURCE DISTRICT, a political subdivision of the State of North Dakota (“CCJWRD”).

**WHEREAS**, Section 7002(2) of the Water Resources Reform and Development Act of 2014, Public Law 113-221, authorized construction of the locally preferred plan for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project, now defined as the Comprehensive Project; and

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

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

**WHEREAS**, the Member Entities, including the County and CCJWRD, created the Authority pursuant to the Joint Powers Agreement to undertake and fulfill the Non-Federal Sponsors’ legal obligations under the PPA; and

**WHEREAS**, one such obligation of the Authority is to acquire all property interests necessary for the construction, operation, and maintenance of the Comprehensive Project; and

**WHEREAS**, pursuant to section 4.03 of the Joint Powers Agreement, the Authority will generally allocate its responsibilities under the PPA to the Member Entities; and

**WHEREAS**, the Authority has allocated the responsibility of acquiring all property interests necessary for the construction, operation, and maintenance of the Comprehensive Project in North Dakota to CCJWRD; and

**WHEREAS**, part of CCJWRD’s responsibility to acquire all property interests includes the responsibility to obtain property interests in road rights-of-way that will be turned over to the contractors of the Comprehensive Project and obstructed by the same; and

**WHEREAS**, the County will assist CCJWRD in the acquisition of road rights-of-way for the Comprehensive Project; and

**WHEREAS**, following acquisition but prior to Turnover for construction, the Parties desire to leave the road rights-of-way open for public travel; and

**WHEREAS**, the Parties desire to enter into this MOU to set forth their respective roles and responsibilities for operating and maintaining the road rights-of-way prior to and following Turnover.

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

## **ARTICLE I. DEFINITIONS AND INTERPRETATION**

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

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

**“Best Efforts”** means an individual or entity will act in Good Faith, act in accordance with generally accepted commercial practices, and use reasonable due diligence to undertake all action contemplated by this MOU, in accordance with federal and state laws, regulations, and rules; however, the obligation to use Best Efforts does not mean a duty to take action that would be in violation of applicable federal or state law.

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

**“Cass County Joint Water Resource District”** or **“CCJWRD”** means the Cass County Joint Water Resource District, a political subdivision of the State of North Dakota.

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

**“Construction Site”** means the site defined (i) by the Project Agreement between the Authority and the Developer to be utilized by the Developer for the construction of the SWDCAI, (ii) by a construction contract between the Authority and a Third Party Contractor to be utilized

by the Third Party Contractor for construction of Non-Federal Work, or (iii) by a construction contract between USACE and its contractor to be utilized by such contractor for the construction of Federal Work.

**“County”** means Cass County, North Dakota, a political subdivision of the State of North Dakota.

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

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

**“Extraordinary Maintenance”** means any repairs or maintenance that is required for the ROW outside of Routine Maintenance.

**“Federal Work”** means that portion of the Comprehensive Project consisting of the diversion inlet structure, the control structures on the Red River and Wild Rice River; the southern embankment; the overflow embankment; construction of road and railroad raises associated with the staging area; and all mitigation features not included in the Non-Federal Work.

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

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

**“Member Entities”** means the City of Fargo, North Dakota; the City of Moorhead, Minnesota; Cass County, North Dakota; Clay County, Minnesota; and the Cass County Joint Water Resource District.

**“Non-Federal Work”** means that portion of the Comprehensive Project consisting of the SWDCAI; the in-town levees and the Oxbow-Hickson-Bakke levee; recreation features; environmental mitigation features located within the diversion channel and associated structures for the diversion channel; and applicable pre- and post-monitoring and adaptive management for the Comprehensive Project.

**“NTP1”** means as defined by the Project Agreement.

**“Original Term”** means as defined in Section 6.01.

**“Party”** means the Authority, the County, or CCJWRD, as the context requires, and its respective representatives, successors, and assigns.

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

**“PPA”** means the Project Partnership Agreement between the Department of the Army and the City of Fargo, North Dakota, the City of Moorhead, Minnesota, and the Metro Flood Diversion Authority for Construction of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated July 11, 2016, and any amendments thereto.

**“Project Agreement”** means the contract between the Authority and the Developer for the Developer to design, build, finance, operate, and maintain the SWDCAI.

**“Project Limits”** means the permanent property interests necessary for the construction of the Comprehensive Project, as currently projected on Exhibit A.

**“Renewal Term”** means as defined in Section 6.01.

**“Road ROW”** means the thirty-three (33) foot road right-of-way on either side of a section line.

**“Routine Maintenance”** means as defined in Section 3.02.

**“ROW”** means the Road ROW and Vacated ROW collectively.

**“SWDCAI”** means an approximately 30-mile, 20,000 cubic feet per second (cfs) diversion channel and associated features; the channel outlet; the Rush and Lower Rush River hydraulic structures; the Maple River aqueduct; the Sheyenne River aqueduct; the inflow design flood levee; and associated railroad bridges.

**“Third Party Contractor”** means a contractor engaged by the Authority to perform Non-Federal Work other than the SWDCAI.

**“Turnover”** means (i) in terms of a USACE contractor or a Third Party Contractor, the date, as defined by the applicable construction contract, on which the contracting entity provides control of a Construction Site to the contractor for the contractor to commence construction thereon, or (ii) in terms of the Developer, the date preceding the date on which the Developer commences construction on a Construction Site.

**“Vacated ROW”** means that portion of the thirty-three (33) foot road right-of-way on either side of 173rd Avenue Southeast that was platted and vacated in the FMD – Pleasant Subdivision, Cass County, North Dakota.

**Section 1.02 INTERPRETATION.** The definition of terms herein shall apply equally to the singular and plural forms of the term defined. Whenever the context may require, any pronoun will include the corresponding masculine, feminine, and neuter forms. The words “include,” “includes,” and “including” will be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless

the context requires otherwise (a) any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications as set forth herein), (b) any reference herein to any person shall be construed to include such person's permitted successors and assigns, (c) the words "herein," "hereof," and "hereunder," and words of similar import, shall be construed to refer to this MOU in its entirety and not to any particular provision hereof, (d) all references herein to articles, sections, exhibits, and schedules shall be construed to refer to articles and sections of, and exhibits and schedules to, this MOU, and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights.

## **ARTICLE II. PRE-CONSTRUCTION SITE CONTROL**

**Section 2.01** LAND ACQUISITION PROCESS. Road ROW in North Dakota, and the authority to construct the Comprehensive Project upon, over, and across such Road ROW, will be acquired through the following means:

(a) The Authority will request that the County take over Road ROW, pursuant to N.D.C.C. § 24-05-09, based on the design of the Comprehensive Project. The current projected Project Limits of the Comprehensive Project, and the corresponding impacted Road ROW, are included in Exhibit A.

(b) In conjunction with the Authority's request for Road ROW takeover, CCJWRD will file a request with the County to permanently obstruct such Road ROW, pursuant to N.D.C.C. § 24-06-28, with the applicable element of the Comprehensive Project. If CCJWRD's request is granted by the County, the intent is to allow the Road ROW to remain open until, as set forth in Section 3.01, construction on the applicable element of the Comprehensive Project is scheduled to commence.

(c) Upon making their requests to the County, the Authority and CCJWRD will notify all landowners, by certified mail, within a minimum distance of one thousand (1,000) feet of the Road ROW.

(d) In response to the requests, the County will set a time and place for a hearing on the requests, and at least thirty (30) days prior to the date of the hearing, it will provide notice to all landowners within a minimum distance of one thousand (1,000) feet of the Road ROW of the time and place set for the hearing.

(e) The County will hold a public hearing on the requests at the time and place set, and if appropriate following the hearing, it will (i) adopt a resolution granting the Authority's request and take over the Road ROW and (ii) adopt a resolution granting CCJWRD's request and allow the permanent obstruction of said Road ROW at an applicable time.

**Section 2.02** NON-FEDERAL WORK AREAS. Prior to the Turnover of a Construction Site that includes Road ROW from the Authority to the Developer or a Third Party Contractor, the



County will have control of the Road ROW and will have the authority to make day-to-day decisions about the operation of the Road ROW. This authority includes the ability to temporarily close a Road ROW as needed in the discretion of the County. If the County decides to temporarily close a Road ROW, it will be responsible for placing barriers and, whenever possible, providing two (2) weeks' prior notification to the Authority and CCJWRD of such closure.

**Section 2.03** FEDERAL WORK AREAS. Prior to the Turnover of a Construction Site that includes Road ROW from USACE to its construction contractor, the County will have control of the Road ROW and will have the authority to make day-to-day decisions about the operation of the Road ROW. This authority includes the ability to temporarily close a Road ROW as needed in the discretion of the County. If the County decides to temporarily close a Road ROW, it will be responsible for placing barriers and, whenever possible, providing two (2) weeks' prior notification to the Authority and CCJWRD of such closure.

**Section 2.04** PUBLIC USE OF ROAD ROW AND PLATTING. The Parties intend that although CCJWRD may have authorization to permanently obstruct the Road ROW with the Comprehensive Project, the Road ROW will remain open for public use until the notices, as described in Section 3.01, are received. Following Turnover of a Construction Site that includes Road ROW, CCJWRD will use its Best Efforts as applicable fee simple is acquired to plat and vacate the Road ROW.

**Section 2.05** VACATED ROAD ROW. CCJWRD will allow the Vacated ROW, although a private drive following vacation, to remain open for public travel. Prior to the recommencement of construction on the Vacated ROW by USACE's construction contractor, the County will have control of the Vacated ROW and will have the authority to make day-to-day decisions about the operation of the Vacated ROW. This authority includes the ability to temporarily close the Vacated ROW as needed in the discretion of the County. If the County decides to temporarily close the Vacated ROW, it will be responsible for placing barriers and, whenever possible, providing two (2) weeks' prior notification to the Authority and CCJWRD of such closure.

### **ARTICLE III. MAINTENANCE**

#### **Section 3.01** RESPONSIBILITY.

(a) Developer Works. The County will be responsible for performing all Routine Maintenance and Extraordinary Maintenance on the ROW until Turnover to the Developer, which will occur following notice from the Developer as set forth herein. The Developer will be responsible for notifying the Authority at least ninety (90) calendar days prior to the commencement of construction on the ROW. The Authority will notify the County and CCJWRD as soon as possible after its receipt of notice from the Developer. This notice will allow CCJWRD to exercise its authorization to permanently obstruct the ROW, which will include posting signs, in coordination with the County, stating the dates of the road closure and coordinating with the Developer for traffic control signage.

(b) Third Party Contractor Works. The County will be responsible for performing all Routine Maintenance and Extraordinary Maintenance on the ROW until Turnover to the Third

Party Contractor, which is currently anticipated to be close in time to the commencement of construction. The Authority must give the County and CCJWRD at least ninety (90) calendar days' written notice of when it is anticipated the Third Party Contractor will begin construction on the ROW. This notice will allow CCJWRD to exercise its authorization to permanently obstruct the ROW, which will include posting signs, in coordination with the County, stating the dates of the road closure and coordinating with the Third Party Contractor for traffic control signage.

(c) USACE Contractor Works. The County will be responsible for performing all Routine Maintenance and Extraordinary Maintenance on the ROW until Turnover to the USACE construction contractor, which is currently anticipated to be close in time to the commencement of construction. The Parties will work with USACE to get as much notice as possible regarding the scheduled date for the commencement of construction. Upon receipt of this notice, CCJWRD will exercise its authorization to permanently obstruct the ROW, which will include posting signs, in coordination with the County, stating the dates of the road closure and coordinating with the USACE Contractor for traffic control signage.

**Section 3.02** MAINTENANCE REQUIREMENTS. The County will perform, or ensure the performance of, the following maintenance tasks on the ROW (collectively, "Routine Maintenance"):

- (a) The ROW will be graded twice a calendar month.
- (b) A 3-inch minimum thickness of gravel will be maintained.
- (c) The graded cross slopes across each lane will match its existing range of two percent (2%) to four percent (4%). If the current infield slope is not within that range, it will be upgraded to the two percent (2%) to four percent (4%) range.
- (d) Class 13 gravel will be placed for any aggregate needs.
- (e) Snow removal along the ROW will be dependent on the applicable township's current plow locations. The township will need to provide information to the County if a certain ROW was being plowed as needed by the township or private individuals in the winter.

**Section 3.03** COUNTY REIMBURSEMENT. The County may seek reimbursement from the Authority, as set forth herein, for costs and expenses incurred for Routine Maintenance and Extraordinary Maintenance; provided, however, the County must seek prior written approval from both CCJWRD and the Authority before performing Extraordinary Maintenance that exceeds \$5,000.

**Section 3.04** TOWNSHIP INVOLVEMENT. The County may engage an applicable township to perform Routine Maintenance. Reimbursement for such work, however, may be submitted by either the County or the township.

**Section 3.05** SECURING CONSTRUCTION SITES. The Authority will include in the Project Agreement and in its construction contract with the Third Party Contractor that the Developer and the Third Party Contractor, respectively, are responsible for securing the ROW, upon the

commencement of construction, to limit public travel on the ROW. The Parties will work with USACE for USACE to include in its construction contract that the contractor is responsible for securing the ROW, upon commencement of construction, to limit public travel on the ROW.

#### **ARTICLE IV. IMPACTED LANDS**

**Section 4.01** ROW. As set forth herein, the County will secure ROW, either inside or outside the Project Limits, to the extent necessary to allow for construction of the Comprehensive Project. CCJWRD will be responsible for securing property interests other than ROW that are necessary to construct termination tees.

**Section 4.02** OBLITERATION. Following construction of the Comprehensive Project and the termination tees, the Parties will obliterate that portion of the ROW that exists between the termination tees and Project Limits that will no longer be utilized as a road. Timing of each obliteration will be agreed upon by the Parties. The Authority will be responsible for all costs and expenses associated with obliteration and will be responsible for hiring a contractor for the obliteration work. The Authority will indemnify the County and CCJWRD for all obliteration work done on the ROW.

#### **ARTICLE V. INSURANCE AND INDEMNIFICATION**

**Section 5.01** JOINT POWERS AGREEMENT.

(a) Pursuant to section 15.05 of the Joint Powers Agreement, the Authority agreed to defend and indemnify the Member Entities, including both the County and CCJWRD, for any liability claims arising from the Authority's activities or operations, decisions of the Authority, or arising out of or regarding the Comprehensive Project.

(b) The Parties acknowledge and agree that section 15.05 of the Joint Powers Agreement is applicable to the County's and CCJWRD's control of the ROW and the County's maintenance of the ROW. As a result, the Authority will indemnify both CCJWRD and the County from third party claims relating to the ROW.

(c) The Authority has secured a commercial general limited liability policy from the North Dakota Insurance Reserve Fund ("NDIRF") and has listed both the County and CCJWRD as additional insureds under such policy. The Authority will continue to maintain such policy, or a like policy, in accordance with the terms of the Joint Powers Agreement and continue to list both the County and CCJWRD as additional insureds during the term of this MOU.

**Section 5.02** GROSSLY NEGLIGENT OR WILLFUL MISCONDUCT. Notwithstanding anything herein to the contrary, the Authority will not indemnify the County for grossly negligent or willful misconduct committed by the Person engaged by the County to perform maintenance. In lieu of such indemnification, the County must include in its maintenance contract that the contractor shall procure and maintain commercial general liability in the amount of \$3,000,000 and must name the County, CCJWRD, and the Authority as additional insureds under such policy.

**Section 5.03 DEVELOPER CONSTRUCTION.** The Developer will be responsible for procuring and maintaining the insurance set forth in the Project Agreement. The Authority will include provisions in the Project Agreement requiring the Developer (i) to procure and maintain commercial general liability in the amount of \$1,000,000 per occurrence and \$10,000,000 annual aggregate and must name CCJWRD, the County, and the Authority as additional insureds under such policy, and (ii) to indemnify and hold harmless CCJWRD, the County, and the Authority for construction performed on the ROW.

**Section 5.04 THIRD PARTY CONTRACTOR CONSTRUCTION.** Upon Turnover, the Third Party Contractor will be responsible for procuring and maintaining insurance requirements set forth in the construction contract. The Authority will include provisions in the construction contract requiring the Third Party Contractor (i) to procure and maintain commercial general liability in the amount of \$3,000,000 and must name CCJWRD, the County, and the Authority as additional insureds under such policy, and (ii) to indemnify and hold harmless CCJWRD, the County, and the Authority for construction performed on the ROW.

**Section 5.05 USACE CONTRACTOR CONSTRUCTION.** Upon Turnover, the USACE contractor will be responsible for procuring and maintaining insurance requirements set forth in the construction contract. The Authority will coordinate with USACE regarding insurance requirements for the contractor.

## **ARTICLE VI. TERM AND TERMINATION**

**Section 6.01 TERM.** The Original Term of this MOU will be for two (2) years from the Effective Date. The MOU will automatically renew for successive one (1) year additional terms (each, respectively, a “Renewal Term”) unless the Parties mutually agree, in writing, to terminate this MOU.

**Section 6.02 AGREEMENT.** The Parties may mutually agree, in writing, at any time, to terminate this MOU.

## **ARTICLE VII. DISPUTE RESOLUTION**

**Section 7.01 INTENT AND PROCEDURE.** The Parties will cooperate and use their Best Efforts to ensure that the various provisions of this MOU are fulfilled. The Parties agree to act in Good Faith to undertake resolution of disputes in an equitable and timely manner and in accordance with the provisions of this MOU. If disputes cannot be resolved informally by the Parties, the following procedures will be used.

**Section 7.02 MEDIATION.** If there is a failure between the Parties to resolve a dispute on their own, the Parties will first attempt to mediate the dispute. The Parties will agree upon a single mediator and will equally split any costs for mediation services.

**Section 7.03** LITIGATION IF DISPUTE NOT RESOLVED. If the dispute is not resolved within forty-five (45) calendar days after the end of mediation proceedings, the Parties may litigate the matter.

**Section 7.04** LITIGATION; VENUE. All litigation between the Parties arising out of or pertaining to this MOU or its breach will be filed, heard, and decided in the State District Court of Cass County, North Dakota, which will have exclusive jurisdiction and venue.

**Section 7.05** WAIVER OF JURY TRIAL. THE PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THAT ANY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING, COUNTERCLAIM, OR DEFENSE BASED ON THIS MOU, OR ARISING OUT OF, UNDER, OR IN ANY CONNECTION WITH THIS MOU, OR WITH RESPECT TO ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS MOU. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ALL PARTIES ENTERING INTO THIS MOU. THIS PROVISION APPLIES ONLY TO SUITS BETWEEN THE PARTIES AND DOES NOT APPLY TO THIRD PARTY CLAIMS OR SUITS.

## **ARTICLE VIII. REIMBURSEMENT**

**Section 8.01** COSTS AND EXPENSES. Between the Effective Date and Turnover of a ROW, the County may seek reimbursement from the Authority for costs and expenses incurred for Routine Maintenance and Extraordinary Maintenance.

**Section 8.02** INVOICING.

(a) The County will remit hard copy invoices to the Authority at the Authority's main office, and the invoices will be processed by the Authority for the following month. The County will also submit copies of the invoices to the Authority electronically at [APInvoicesFMDiv@jacobs.com](mailto:APInvoicesFMDiv@jacobs.com), copied to [kbakkegard@fmdiversion.gov](mailto:kbakkegard@fmdiversion.gov).

(b) The County's invoices must be detailed and precise, clearly indicate fees and expenses, and include at least the following information:

- (1) The County's name and address;
- (2) The County's federal employer identification number;
- (3) Unique invoice number;
- (4) Billing period;
- (5) Description of each activity performed for each day in which services were performed;

- (6) Work order number associated with each activity;
- (7) Name, billing rate, hours worked by each person involved in each activity;
- (8) Total amount of fees and costs “billed to date,” including the preceding months;
- (9) Preferred remittance address, if different from the address on the invoice’s coversheet; and
- (10) All of the work performed during that billing period.

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

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

(e) Payment does not imply acceptance of services or that the invoice is accurate. In the event an error is identified within three (3) months of receipt of payment, the County must credit any payment error from any payment that is due or that may become due to the County under this MOU.

## **ARTICLE IX. MISCELLANEOUS**

**Section 9.01** COMPLETE AGREEMENT. This MOU contains the entire and exclusive understanding of the Parties with respect to the subject matter thereof and supersedes all prior agreements, understandings, statements, representations, and negotiations, in each case oral or written, among the Parties with respect to their subject matter.

**Section 9.02** COUNTERPARTS. This instrument may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

**Section 9.03** AMENDMENTS. This MOU may be amended only by written instrument duly executed by the Parties or their respective successors or assigns, except to the extent expressly provided otherwise in this MOU.

**Section 9.04** SEVERABILITY AND SAVINGS CLAUSE. Each provision, section, sentence, clause, phrase, and word of this MOU is intended to be severable. If any provision, section, sentence, clause, phrase, or word hereof is held by a court with jurisdiction to be illegal or invalid

for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this MOU.

**Section 9.05** FORCE MAJEURE. A Party will not be liable to the others during any period in which its performance is delayed or prevented, in whole or in part, by any of the following circumstances: war, civil war, invasion, violent act of foreign enemy, or armed conflict; nuclear, chemical, or biological contamination; ionizing radiation; or any act of terrorism. If such a circumstance occurs, the Party claiming the delay must undertake reasonable action to notify the other Parties of the same.

**Section 9.06** AUTHORIZED REPRESENTATIVES. Each Party hereby designates the following individual as its initial authorized representative, respectively, to administer this MOU on its respective behalf:

- (a) Authority Representative: Kris Bakkegard, Director of Engineering
- (b) County Representative: Jason Benson, County Engineer
- (c) CCJWRD Representative: Carol Harbeke Lewis, Secretary-Treasurer

**Section 9.07** NOTICE.

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

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

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

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

County Engineer  
1201 Main Avenue West  
West Fargo, North Dakota 58078

(d) All notices to CCJWRD will be marked as regarding the Comprehensive Project and will be delivered to the following address or as otherwise directed by the CCJWRD Representative:

CCJWRD Secretary-Treasurer  
1201 Main Avenue West  
West Fargo, North Dakota 58078

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

**Section 9.08** GOVERNING LAW. This MOU will be governed by and construed in accordance with the laws of the State of North Dakota.

**Section 9.09** CONFLICT WITH MOU REGARDING OTHER COMPREHENSIVE PROJECT WORK. Nothing in this MOU is intended to supersede, amend, or otherwise modify any other memorandum of understanding or agreement entered by and between the Parties for work regarding other aspects of the Comprehensive Project.

**IN WITNESS WHEREOF**, the Authority, the County, and CCJWRD caused this Agreement to be executed.

*(Remainder of page intentionally left blank.)*



*Signature Page for the Metro Flood Diversion Authority*

The governing body of the Metro Flood Diversion Authority approved this MOU on the 22nd day of April, 2021

METRO FLOOD DIVERSION  
AUTHORITY

By: *Shelly Carlson*  
Michelle (~~Shelly~~) A. Carlson, Chair

By: *Joel Paulsen*  
Joel Paulsen, Executive Director


ATTEST:

*Dawn Lindblom*  
Dawn Lindblom, Secretary

*Signature Page for Cass County, North Dakota*

The governing body of Cass County, North Dakota, approved this MOU on the 19 day of April, 2021.

CASS COUNTY, NORTH DAKOTA

By:   
Chad Peterson, Chair of the Board of  
County Commissioners

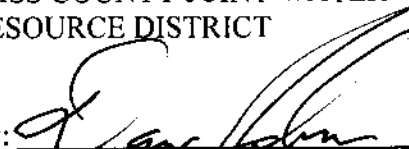
ATTEST:

  
Michael Montplaisir, County Auditor


*Signature Page for the Cass County Joint Water Resource District*

The governing body of the Cass County Joint Water Resource District approved this MOU on the 22 day of April, 2021.

CASS COUNTY JOINT WATER  
RESOURCE DISTRICT

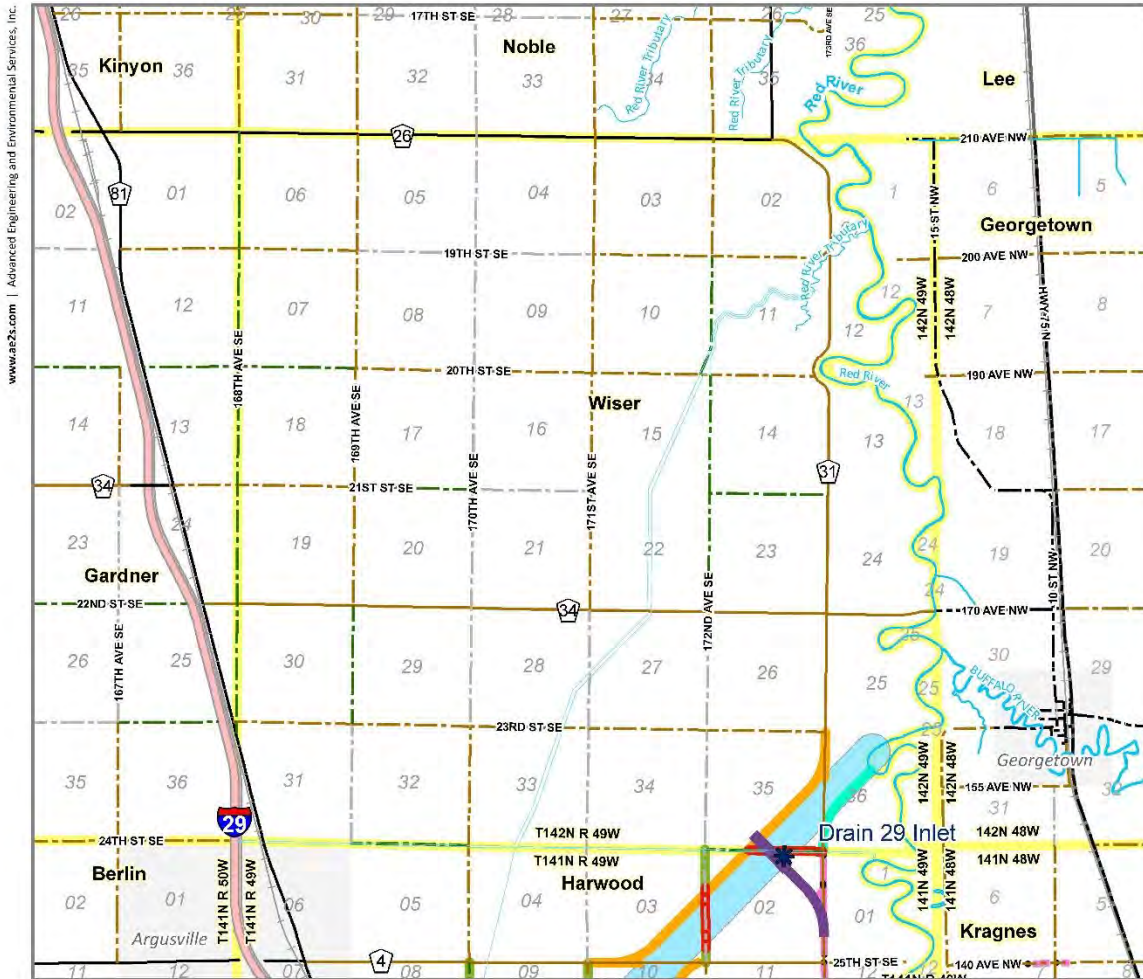
By:   
Dan Jacobson, Chair

ATTEST:

  
Carol Harbeke Lewis, Secretary-Treasurer

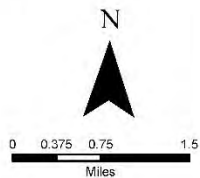
# EXHIBIT A

## COMPREHENSIVE PROJECT IMPACTS MAPS



Legend			
	Aqueduct		Township Road Closure
	Inlet Structures		Township Road Can Remain Open
	Drain Crossings		Mobility Improvements
	Channel/SE Crossings		New Gravel Road
	Channel		Other Agency Roadway Improvements
			Railroad
			Township - Trail/Grass
			Township - Unimproved
			Township - Dirt
			Township - Gravel
			Township - Paved
			County Road - Gravel
			County Road - Paved
			State or US Highway
			Interstate
			Township Boundary

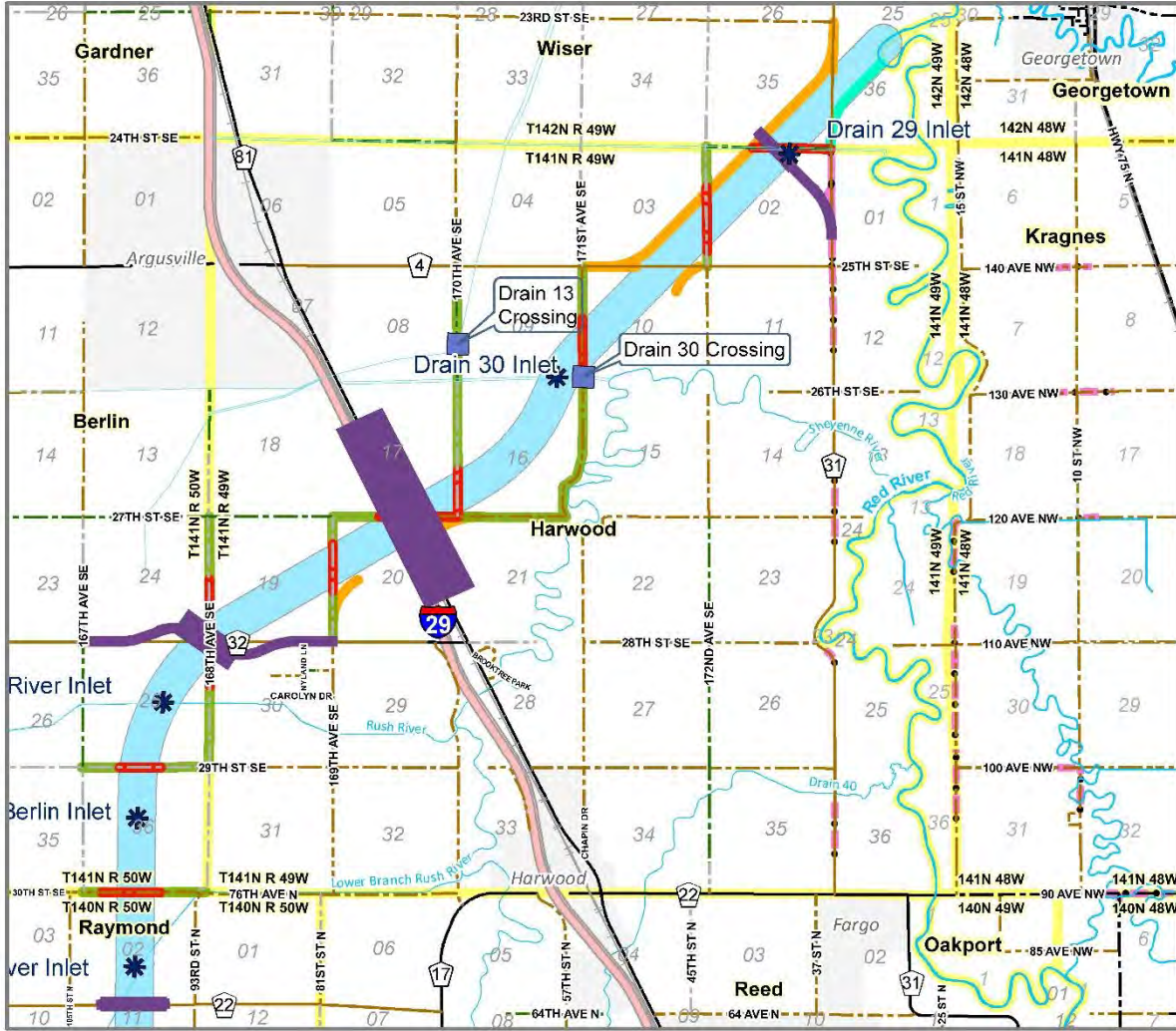
*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By: cwoikenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\LA and Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd*



### Wisner

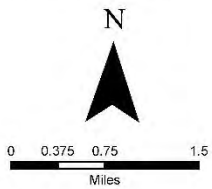
FM Area Diversion  
Map Date: 10/7/2020





Legend							
	Aqueduct		Township Road Closure		Township - Trail/Grass		County Road - Gravel
	Inlet Structures		Township Road Can Remain Open		Township - Unimproved		County Road - Paved
	Drain Crossings		Mobility Improvements		Township - Dirt		State or US Highway
	Channel/SE Crossings		New Gravel Road		Township - Gravel		Interstate
	Channel		Other Agency Roadway Improvements		Township - Paved		Township Boundary
			Railroad				

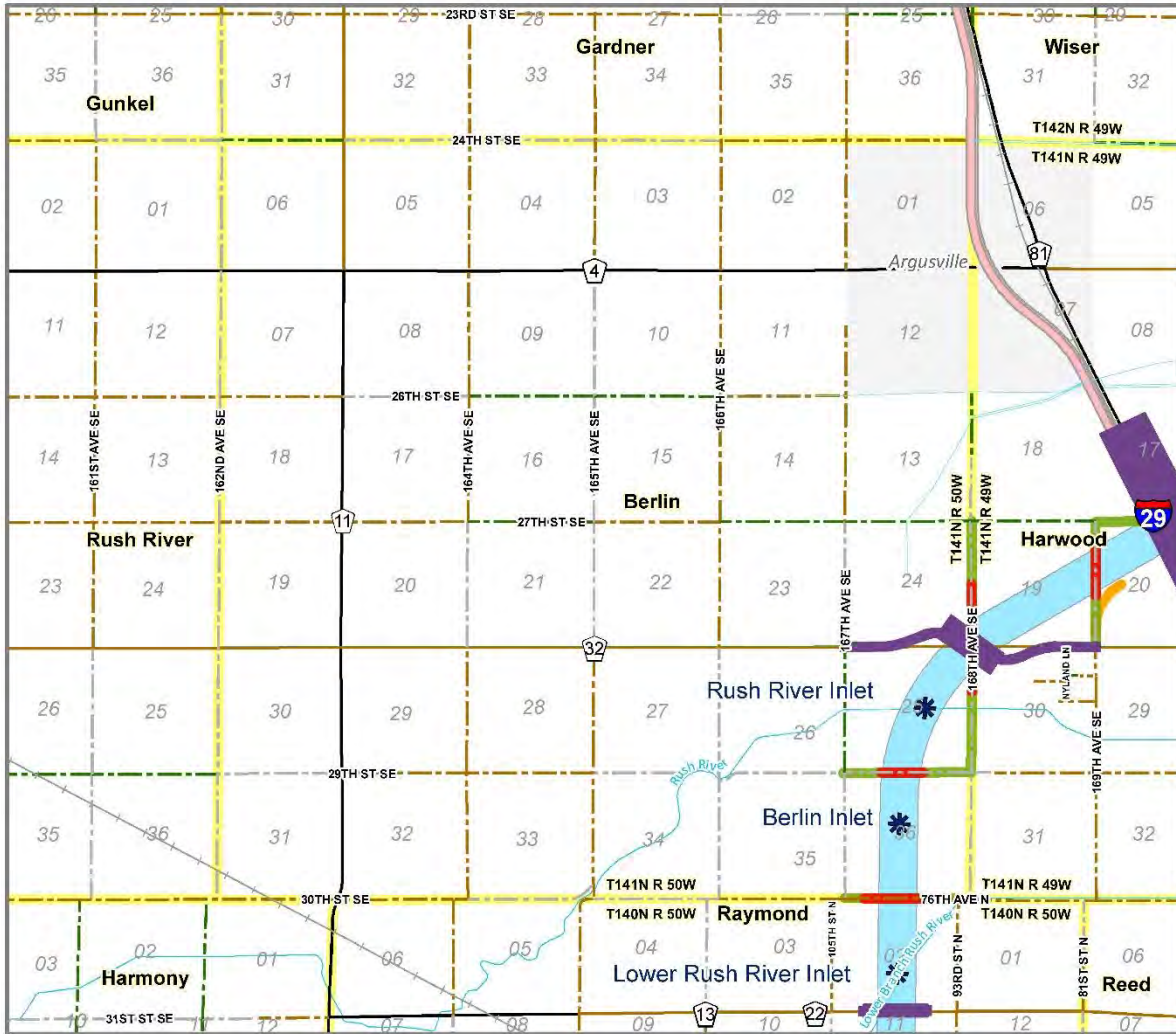
Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd



## Harwood

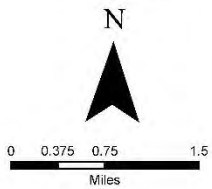
FM Area Diversion  
Map Date: 10/7/2020





Legend			
	Aqueduct		Township Road Closure
	Inlet Structures		Township Road Can Remain Open
	Drain Crossings		Mobility Improvements
	Channel/SE Crossings		Township - Dirt
	Channel		Township - Gravel
			Township - Paved
			County Road - Gravel
			County Road - Paved
			State or US Highway
			Interstate
			Township Boundary
	Railroad		

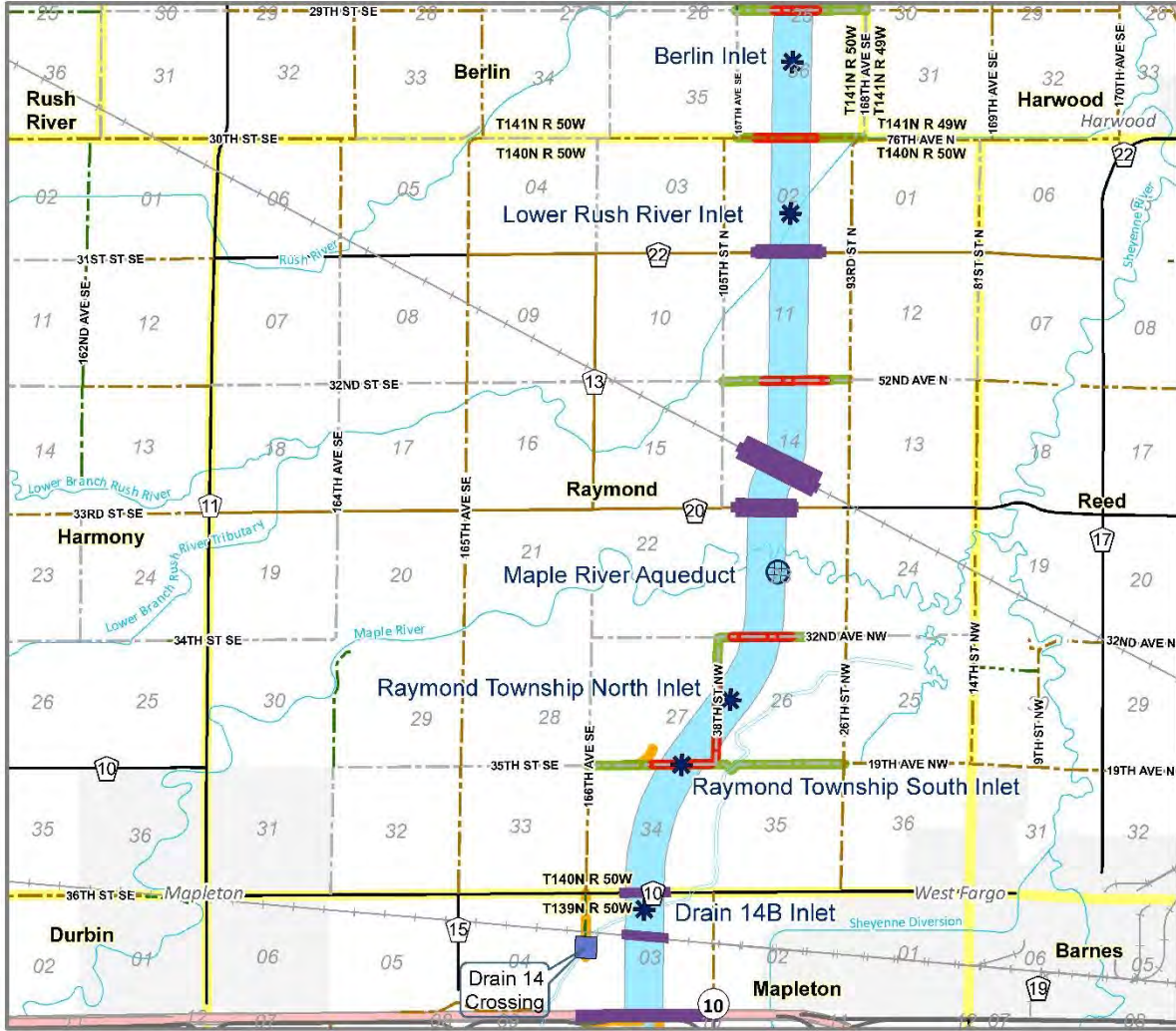
Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS\Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd



## Berlin

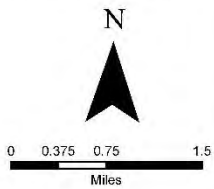
FM Area Diversion  
Map Date: 10/7/2020





Legend			
	Aqueduct		Township Road Closure
	Inlet Structures		Township Road Can Remain Open
	Drain Crossings		Mobility Improvements
	Channel/SE Crossings		Township - Dirt
	Channel		Township - Gravel
			Township - Paved
			Other Agency Roadway Improvements
			Railroad
			Township - Trail/Grass
			County Road - Gravel
			County Road - Paved
			State or US Highway
			Interstate
			Township Boundary

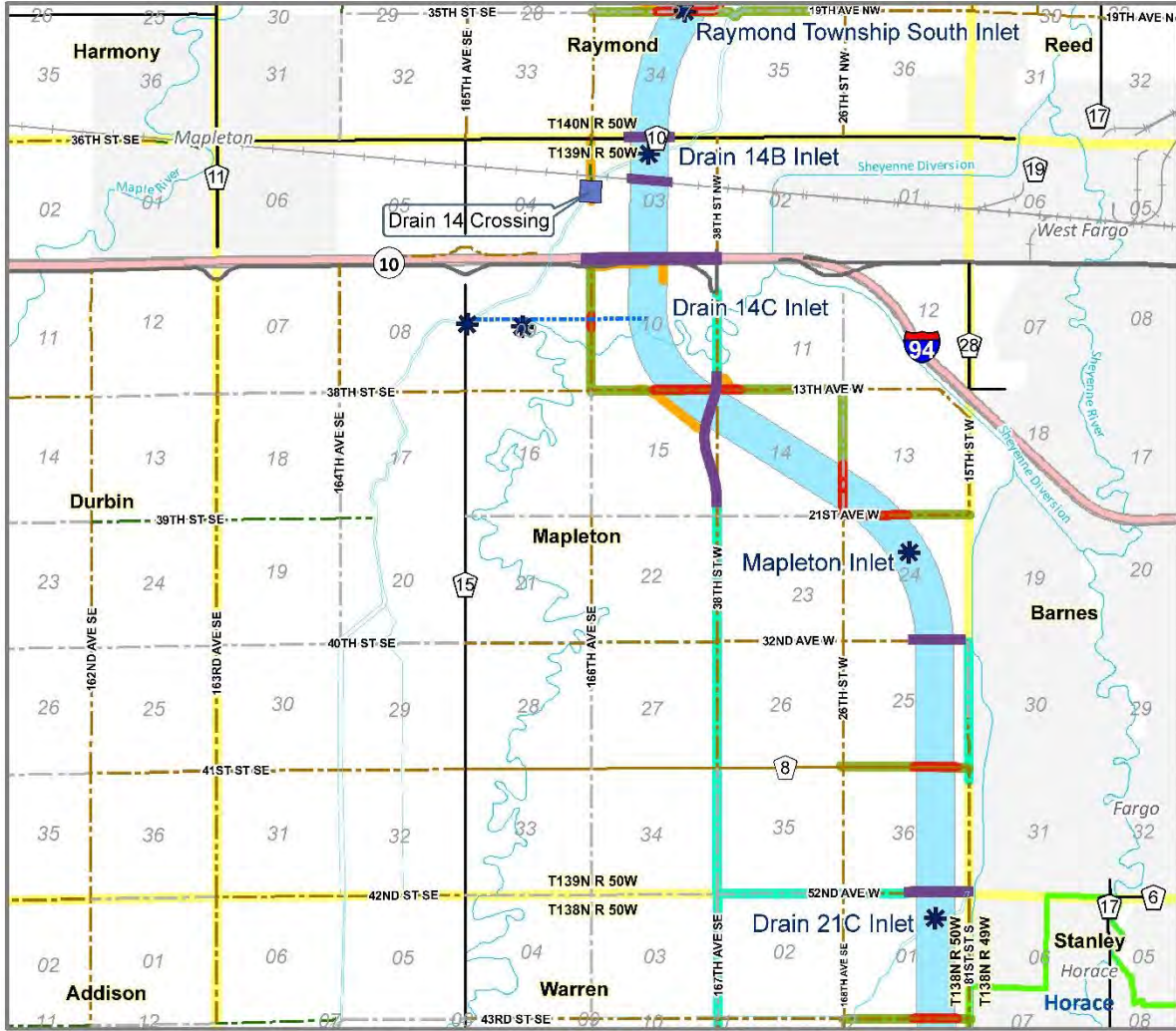
Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd



## Raymond

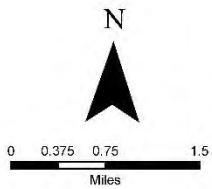
FM Area Diversion  
Map Date: 10/7/2020





Legend			
	Aqueduct		Township Road Closure
	Inlet Structures		Township Road Can Remain Open
	Drain Crossings		Mobility Improvements
	Channel/SE Crossings		New Gravel Road
	Channel		Township - Dirt
	Drain Construction		Township - Gravel
			Township - Paved
			Railroad
			County Road - Gravel
			County Road - Paved
			State or US Highway
			Interstate
			Township Boundary
			City of Horace

*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS\Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd*

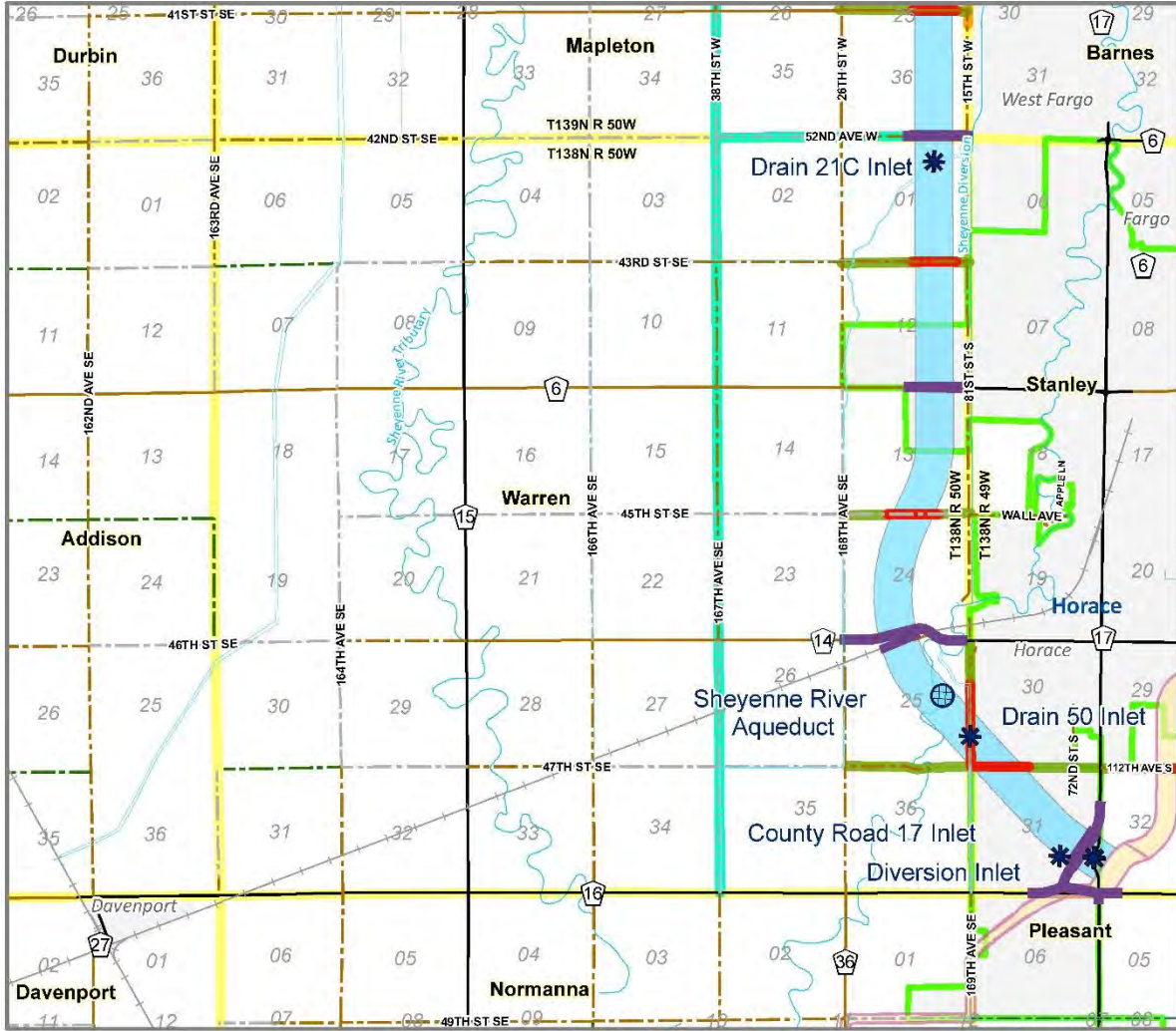


## Mapleton

FM Area Diversion  
Map Date: 3/19/2021

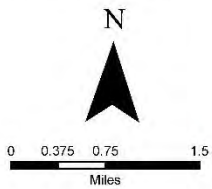






Legend			
	Aqueduct		Township Road Closure
	Inlet Structures		Township Road Can Remain Open
	Drain Crossings		Mobility Improvements
	Channel/SE Crossings		New Gravel Road
	Channel		Township - Unimproved
	Southern Embankment		Township - Paved
	Railroad		County Road - Paved
	Township - Trail/Grass		Interstate
	Township - Dirt		Township Boundary
	Township - Gravel		City of Horace

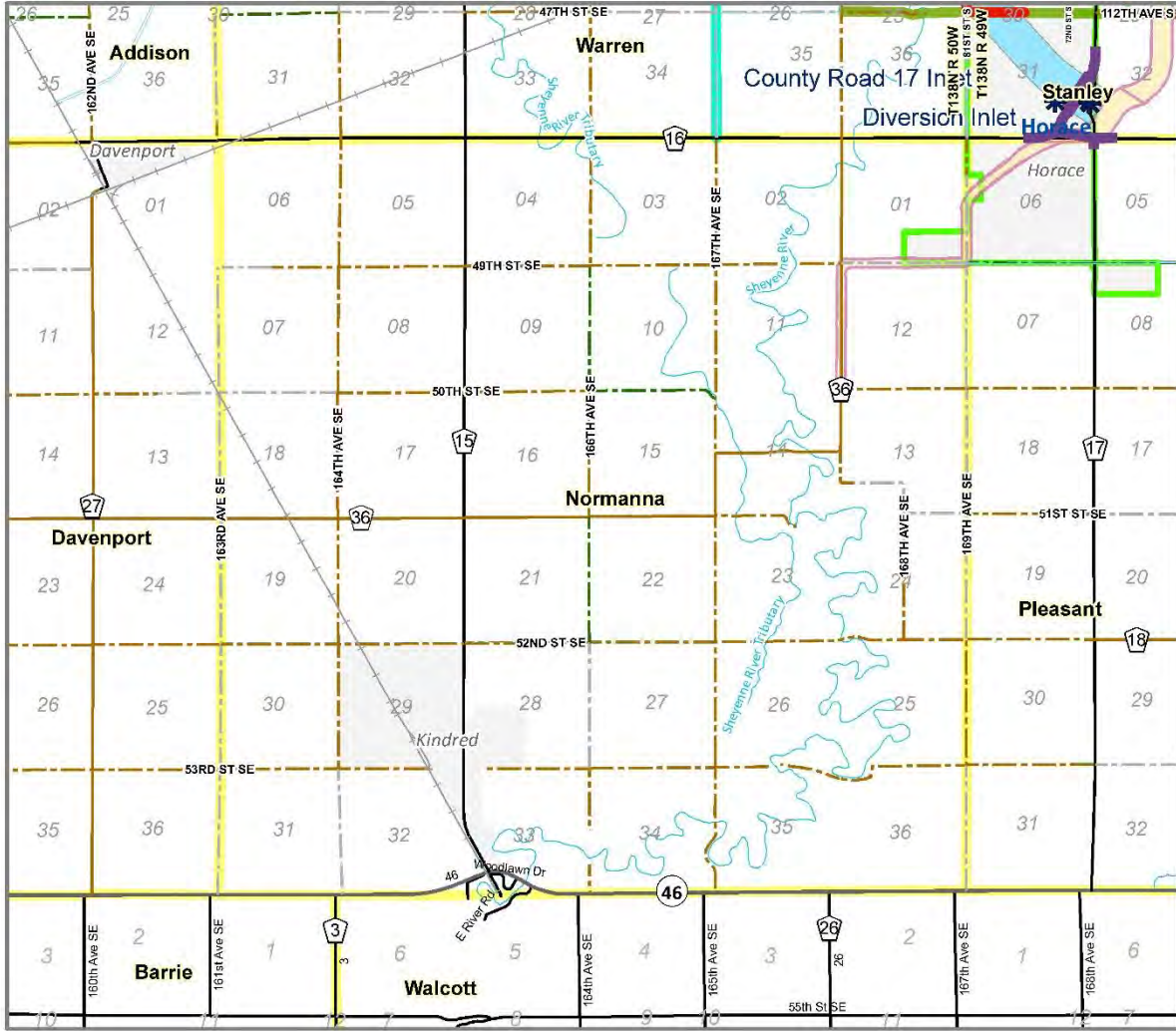
*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd*



## Warren

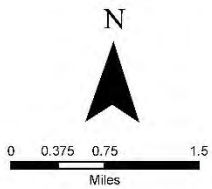
FM Area Diversion  
Map Date: 10/7/2020





Legend							
	Aqueduct		Township Road Closure		Township - Trail/Grass		County Road - Gravel
	Inlet Structures		Township Road Can Remain Open		Township - Unimproved		County Road - Paved
	Drain Crossings		Mobility Improvements		Township - Dirt		State or US Highway
	Channel/SE Crossings		New Gravel Road		Township - Gravel		Interstate
	Channel		Other Agency Roadway Improvements		Township - Paved		Township Boundary
	Southern Embankment		Railroad		City of Horace		

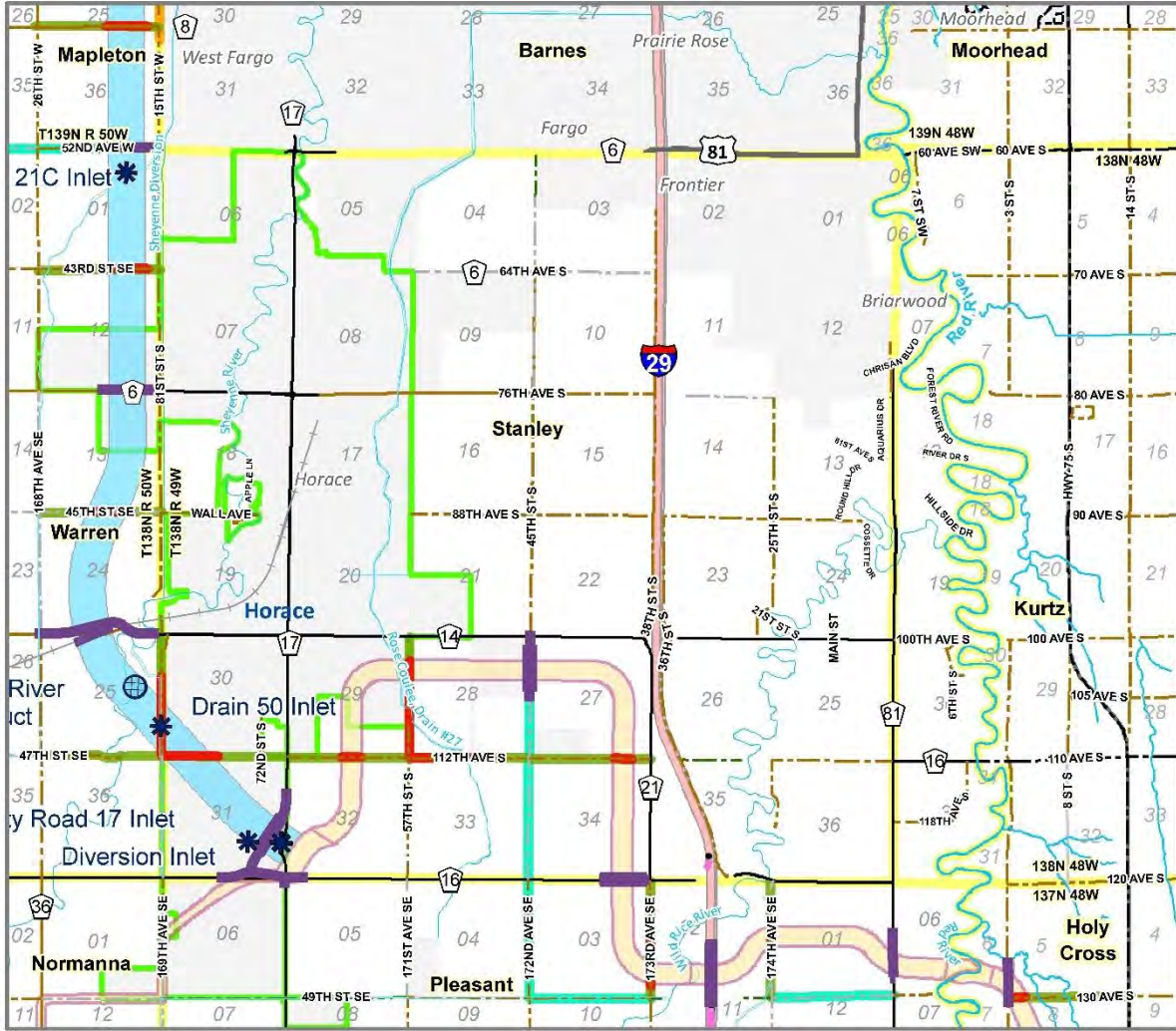
*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd*



## Normanna

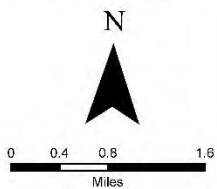
FM Area Diversion  
Map Date: 10/7/2020





Legend			
	Aqueduct		Township Road Closure
	Inlet Structures		Township Road Can Remain Open
	Drain Crossings		Mobility Improvements
	Channel/SE Crossings		New Gravel Road
	Channel		Other Agency Roadway Improvements
	Southern Embankment		Railroad
	Township - Trail/Grass		Township - Unimproved
	Township - Dirt		Township - Gravel
	Township - Paved		Township - Paved
	County Road - Gravel		County Road - Paved
	State or US Highway		Interstate
	Township Boundary		City of Horace

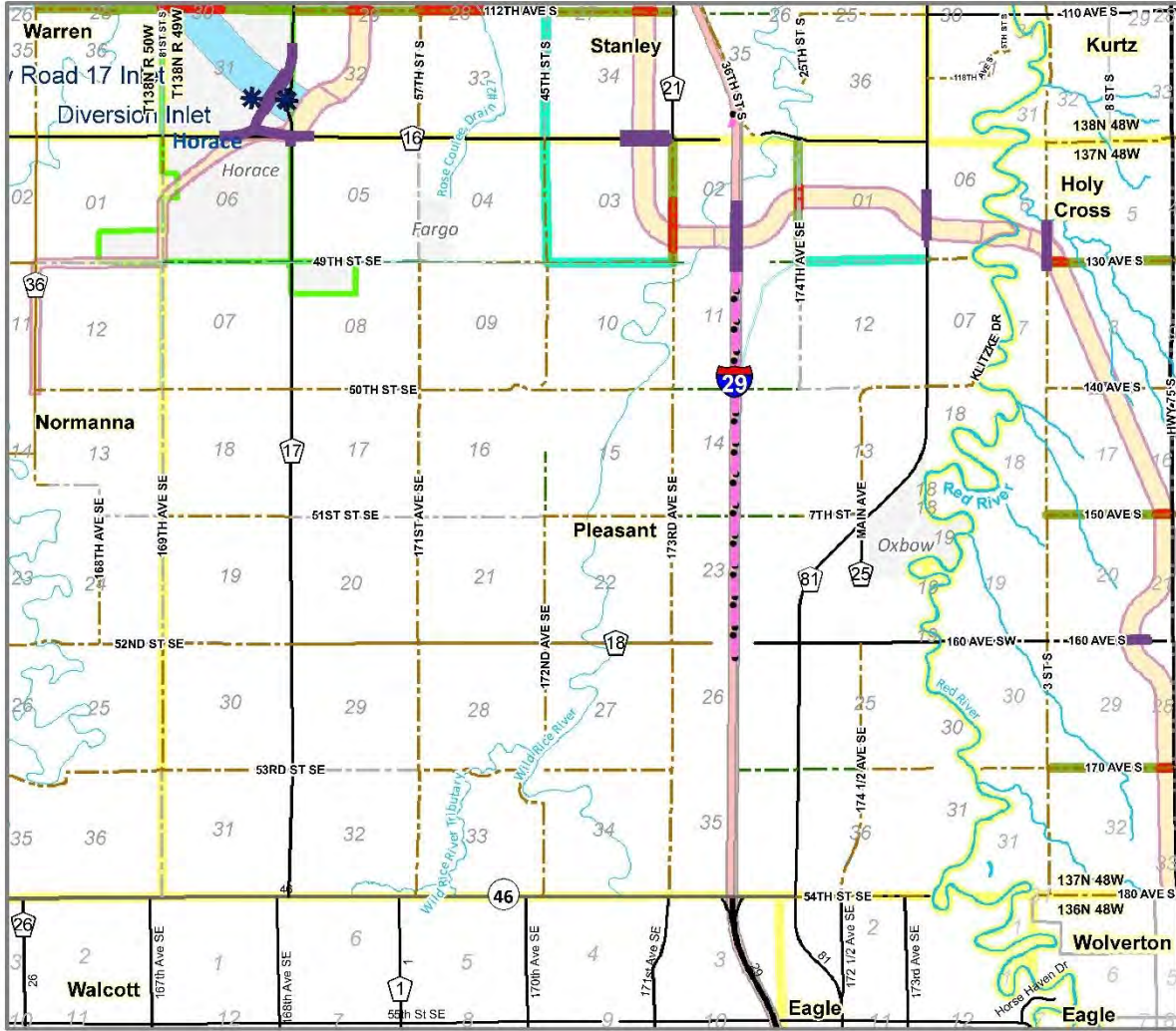
*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd*



## Stanley

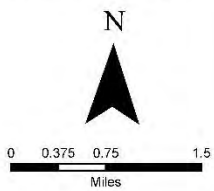
FM Area Diversion  
Map Date: 2/11/2021





Legend							
	Aqueduct		Township Road Closure		Township - Trail/Grass		County Road - Gravel
	Inlet Structures		Township Road Can Remain Open		Township - Unimproved		County Road - Paved
	Drain Crossings		Mobility Improvements		Township - Dirt		State or US Highway
	Channel/SE Crossings		New Gravel Road		Township - Gravel		Interstate
	Channel		Other Agency Roadway Improvements		Township - Paved		Township Boundary
	Southern Embankment		Railroad		City of Horace		

*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By:cwickenheiser - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Overall LA Maps\MOU byTownship 8 x11.mxd*



## Pleasant

FM Area Diversion  
Map Date: 2/11/2021

