



MEMORANDUM

**Highway
Department**

Jason Benson, P.E.
County Engineer

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

Blaine Laaveg
Superintendent

TO: Cass County Commission

FROM: Jason Benson, County Engineer *JAB*

DATE: June 12, 2022

SUBJECT: Agenda topic for June 20, 2022 Commission Meeting:
Agreement for Cass Highway 22 and Freedland Drive with Cass
County Government and the City of Harwood

Over the last four months the City of Harwood has brought forward plans for the reconstruction of Freedland Drive south of Cass County Highway 22. The City of Harwood has discussed completing several intersection improvements at the intersection of Cass 22. These improvements are needed due to several issues. First, there are a number of drainage challenges in the area that have existed for a long time and this is the best opportunity to fix this issue while the City is reconstructing the road. The most critical issue is the need for the intersection to be widened to improve access and safety for the large number of trucks and buses that use this intersection due to the close proximity to the PetroServe Truck Stop and the Harwood Elementary School. The costs associated with this project were not included in the 2022 Highway Department budget, however, the 2022 budget does have available funding to cover this \$77, 525.05 cost. If the County chose not to move forward with this agreement, we would most likely have to complete a more costly future intersection improvement project on our own.

Cass County Highway Department and City of Harwood have developed a Memorandum of Agreement (MOA) for Cass Highway 22 and Freedland Drive. The MOA spells out the responsibilities of the City and County regarding the intersection improvements to Cass Highway 22 as part of the larger City of Harwood reconstruction of Freedland Drive. Appendix A is the estimated cost breakout of the various costs associated with this project within the Cass County right of way for Highway 22. All costs outside of the right of way will be paid by the City of Harwood.

SUGGESTED MOTION:

Authorize the Commission Chair to sign the Memorandum of Agreement for Cass Highway 22 and Freedland Drive with Cass County Government and the City of Harwood and approve the intersection improvement cost of \$77, 525.05.

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

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

**Memorandum of Agreement
Cass County Government and the City of Harwood
Cass Highway 22 and the Intersection of Freedland Drive**

THIS AGREEMENT, made and entered into, by and between the City of Harwood, a North Dakota municipal corporation, having an address of 108 Main Street, PO Box 65, Harwood, North Dakota 58042 (the “City”), and Cass County, a North Dakota political subdivision, having an address of P.O. Box 2806, Fargo, North Dakota 58108-2806 (the “County”).

Background:

Cass County Highway 22 is currently owned and maintained by the County and runs 12 miles from Cass Highway 11 east to the Red River. Approximately one mile is located within the City of Harwood from I-29 going east one-half mile to Cass County Highway 81 and west one-half mile.

The City is planning on future improvements to Freedland Drive on the south side of Cass 22. This includes improving access to the Harwood Elementary School, drainage improvements, and work on the shared use path on the south side of Cass 22. All right of way for this segment of Cass 22 was purchased and is owned by the County. Both the City and the County have specific infrastructure that benefits both parties. All sanitary sewer and water mains are utilities of the City. The storm sewer benefits the County in removing runoff from the highway, but also benefits the City as it connects other City storm sewer pipe. The shared use path benefits the City and its residents by providing an effective off-street path, but also benefits the County by eliminating pedestrian traffic on the highway. Finally, the highway benefits both the City and the County by providing safe, efficient travel for residents and through traffic.

The City and the County wish to work together to maintain the improvements, pursuant to the terms and provisions of this Agreement.

Provisions of Agreement:

- 1) **Cost Share:** Cass County agrees to 100% of the intersection improvement costs share per Appendix A. The City of Harwood agrees to pay all additional costs related to the improvements to Freedland Drive but not specified in Appendix A.
- 2) **Highway Maintenance, Striping, and Signs:** The County will maintain the highway paved surface by conducting routine maintenance, sweeping, and snow removal, including any costs associated with such maintenance, sweeping or snow removal. The County will also stripe the highway on an annual basis. The County will be responsible for all signing within the County right of way with the exception that the City will install and maintain and pedestrian crossing signs and any flashing beacons or crossing systems.

- 3) **Sanitary Sewer**: The City will maintain the sanitary sewer and will be responsible for any costs associated with any highway repairs necessary for the maintenance of the sewer lines.
- 4) **Water Main**: The City will maintain the water lines and will be responsible for any costs associated with any highway repairs necessary for the maintenance of the water lines.
- 5) **Storm Sewer**: The City will maintain the storm sewer and complete any clean out or other routine maintenance and will be responsible for any costs associated therewith. The City will also be responsible for any connecting pipe coming from the City's system. The County and the City will equally share the cost for storm sewer repair or replacement under Cass 22, and any highway repairs necessary for the maintenance of the sewer lines.
- 6) **Shared Use Bike Path**: The County will be responsible for general maintenance and repairs of the shared use bike path, including any costs associated therewith. The City will be responsible for snow removal and any costs associated with such snow removal from the shared use bike path.
- 7) **Trees and Landscaping**: The City will be responsible for constructing, planting, and maintaining any trees or landscaping within the County right of way. In addition, prior to installing any trees or landscaping, the City will obtain approval from the County Engineer to ensure the trees or landscaping won't be a hazard for intersection sight distance, clear zone encroachment, or other safety or infrastructure concern.
- 8) **Term**. The term of this Agreement will be twenty (20) years. This Agreement will automatically renew for successive periods of five (5) years unless terminated by any party. Any party may terminate this Agreement by providing one (1) year written notice to the other parties.
- 9) **Liability**. The employees and officers of a party are deemed to be employees of that party. The limits of liability for some or all of the parties may not be added together to determine the maximum amount of liability for each party. Any and all liability of the parties related to the terms of this Agreement will be limited to the amounts specified by the statutory requirements set forth in North Dakota Century Code § 32-12.1-03, irrespective of whether any party may have waived the limit on liability set forth in those chapters. These statutory limitations may not be stacked to increase the maximum amount of liability for each party.
- 10) **Release and Waiver**. In consideration of the mutual promises of the parties and to the fullest extent permitted by law, each party assumes all risk of personal injury or death and property damage or loss from whatever causes arising while that party, its agents, employees or designees are conducting work pursuant to this Agreement and each party releases the other parties, their officers, employees, agents or designees relating to or arising out of that party's, its agents, employees or designees work

pursuant to this Agreement, whether known or unknown, foreseen or unforeseen, liquidated, unliquidated, fixed, contingent, material or immaterial, disputed or undisputed, suspected or unsuspected, asserted or unasserted, direct or indirect, at law or in equity, from the beginning of time, and each party understands and acknowledges the significance of such release and waiver and hereby assumes full responsibility for any injuries, damages or losses that it may incur as a result of its execution of this Agreement.

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

If to the City: City of Harwood
 ATTN: City Auditor
 108 Main Street
 PO Box 65
 Harwood, ND 58042

If to the County: Cass County
 ATTN: County Finance Director
 P.O. Box 2806
 Fargo, ND 58108-2806

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

- 12) **Time is of the Essence.** Time is of the essence of each provision of this entire Agreement and of all the conditions thereof.
- 13) **Entire Agreement.** This Agreement constitutes the entire and complete agreement between the parties and supersedes any prior oral or written agreements between the parties with respect to the subject premises. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions set forth herein, and that no modification of this Agreement and no waiver of any of its terms and conditions will be effective unless in writing and duly executed by the parties.
- 14) **Amendments.** No amendment, modification, or waiver of any condition, provision or term will be valid or of any effect unless made in writing signed by the party or parties to be bound, or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification or waiver.

- 15) **No Forbearance**. The failure or delay of any party to insist on the performance of any of the terms of this Agreement, or the waiver of any breach of any of the terms of this Agreement, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this Agreement, or the right to enforce each and every term of this Agreement.
- 16) **Remedies**. Except as expressly and specifically stated otherwise, nothing herein will limit the remedies and rights of the parties under and pursuant to this Agreement.
- 17) **Binding Effect**. All covenants, agreements, warranties and provisions of this Agreement will be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. When used herein, the singular will include the plural, the plural will include the singular, and the use of one gender will include all other genders, as and when the context so requires.
- 18) **Governing Law**. This Agreement has been made and entered into under the laws of the State of North Dakota, and said laws will control its interpretation. Any litigation arising out of this Agreement will be venued in State District Court in Cass County, North Dakota, and the parties waive any objection to venue or personal jurisdiction.
- 19) **Rules of Construction**. The parties acknowledge that they have had the opportunity to review this Agreement, and that they have an equal bargaining position in this transaction. No rule of construction that would cause any ambiguity in any provision to be construed against the drafter of this document will be operative against any party to this Agreement.
- 20) **Representation**. The parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this Agreement, and agree they have not been influenced by any representations or statements made by any other parties.
- 21) **Headings**. Headings in this Agreement are for convenience only and will not be used to interpret or construe its provisions.
- 22) **Previous Agreements Superseded**. This Agreement supersedes any previous agreement between any of the parties hereto regarding Cass Highway 22.

Approved by:

Cass County

Date:

Chair, Cass County Board of Commissioners

Finance Director, Cass County

City of Harwood

Date:

Mayor, City of Harwood

Auditor, City of Harwood



**Street Improvement District 2022-1
Freedland Drive Reconstruction
Harwood, North Dakota
Project No. 22102**

BID SCHEDULE QUANTITIES - FREEDLAND DR/DAKOTA AVE INTERSECTION

Section Title	Line Item	Item Code	Item Description	Units of Measure	Quantity	Unit Price	
Base Bid							
	1	202.0114	Removal of Concrete Pavement	SY	25	\$25.00	\$625.00
	2	202.0170	Removal of Culverts-All Types & Sizes	LF	84	\$22.00	\$1,848.00
	3	230.00001	Subgrade Preparation-Type A-12In	SY	305	\$4.00	\$1,220.00
	4	203.0120	Drainage Ditch Excavation	LF	58	\$30.00	\$1,740.00
	5	251.0300	Seeding Class III	ACRE	0.29	\$2,065.00	\$598.85
	6	253.0201	Hydraulic Mulch	ACRE	0.29	\$1,935.00	\$561.15
	7	302.0101	Salvaged Base Course	CY	32	\$50.00	\$1,600.00
	8	306.0360	Relay Blended Material	SY	228	\$4.00	\$912.00
	9	306.0510	Full Depth Reclamation	SY	228	\$4.50	\$1,026.00
	10	430.0043	Superpave FAA 43	TON	27	\$130.00	\$3,510.00
	11	550.0300	8In Non-Reinf Concrete Pvmt Cl Ae-Doweled	SY	177	\$97.00	\$17,169.00
	12	709.0151	Geosynthetic Material Type R1	SY	305	\$4.00	\$1,220.00
	13	714.0205	Pipe Conc Reinf 15In Cl III - Storm Drain	LF	105	\$118.00	\$12,390.00
	14	714.0310	Pipe Conc Reinf 18In Cl III - Storm Drain	LF	60	\$127.00	\$7,620.00
	15	714.3010	End Sect-Conc Reinf 18In	EA	1	\$1,525.00	\$1,525.00
	16	714.9696	Edgedrain Non Permeable Base	LF	35	\$18.00	\$630.00
	17	722.0100	Manhole 48In	EA	1	\$6,000.00	\$6,000.00
	18	722.3500	Inlet-Type 1	EA	1	\$3,700.00	\$3,700.00
	19	748.0140	Curb & Gutter-Type I	LF	74	\$28.00	\$2,072.00
	20	750.0115	Sidewalk Concrete 4In	SY	27	\$85.00	\$2,295.00
	21	750.2115	Detectable Warning Panels	SF	12	\$51.00	\$612.00
	22	754.0110	Flat Sheet For Signs-Type XI Refl Sheeting	SF	9.0	\$26.00	\$234.00
	23	754.0206	Steel Galv Posts-Telescoping Perforated Tube	LF	11.0	\$27.00	\$297.00
	24	754.0593	Reset Sign Support	EA	1	\$6,285.00	\$6,285.00
	25	762.1305	Preformed Patterned Pvmt Mk 4In Line-Grooved	LF	64	\$6.75	\$432.00
	26	762.1309	Preformed Patterned Pvmt Mk 8In Line-Grooved	LF	32	\$12.50	\$400.00
	27	762.1315	Preformed Patterned Pvmt Mk 12In Line-Grooved	LF	42	\$19.00	\$798.00
	28	970.0095	Herbicide Weed Control	ACRE	0.57	\$365.00	\$208.05
INTERSECTION TOTAL							\$77,528.05

Cass Highway 22

Intersection Improvements

Freedland Drive

Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, OS, NMA, Geodatastyrelsen, Rijkswaterstaat, GSA, Geoland, FEMA, Intermap and the GIS user community, Esri Community Maps Contributors, City of Fargo, County of Cass, ND, State of North Dakota, © OpenStreetMap, Microsoft, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA

Cass Highway 22 & Freedland Drive - Harwood

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Date: 6/12/2022

ArcGIS Web AppBuilder

This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features.

CASS COUNTY
GOVERNMENT

