



**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 13, 2022

SUBJECT: Agenda topic for June 20, 2022 Commission Meeting:  
Agreement for Cass Highway 11 Shared Use Path between Carl  
Olsen Drive and Sunset Drive with Cass County Government and  
the City of Mapleton

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In 2021 Cass County and the City of Mapleton applied for grant funding through Garrison Diversion Conservancy District for a Shared Use Path along Cass Highway 11 between Carl Olsen Drive and Sunset Drive. The City was awarded \$50,000 in grant funding and the Cass County Highway Department budgeted funding for this project for 2022. This project will be bid on Thursday, June 16<sup>th</sup>, and contract documents brought to the Cass County Commission for approval at the June 20<sup>th</sup>, 2022 meeting.

Along with the contract documents for the Shared Use Path, Cass County Highway Department and City of Mapleton have developed a Memorandum of Agreement (MOA) for this Shared Use Path on Cass Highway 11. The MOA spells out the responsibilities of the City and County regarding the improvements to Cass Highway 11. Appendix A is the estimated cost breakout of the various costs associated with this project within the Cass County right of way for Highway 11. This is generally a 50:50 cost share between the City and the County for work within the County right of way. Costs for additional work outside of the right of way will be paid by the City of Mapleton.

**SUGGESTED MOTION:**

Authorize the Commission Chair to sign the Memorandum of Agreement for Cass Highway 11 Shared Use Path between Carl Olsen Drive and Sunset Drive with Cass County Government and the City of Mapleton and approve the intersection improvement cost share as per Appendix A.

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 Mapleton  
Cass Highway 11 and Multi-Use Path from  
Carl Olsen Drive to Sunset Drive**

**THIS AGREEMENT, made and entered into, by and between the City of Mapleton, a North Dakota municipal corporation, having an address of P.O. Box 9, Mapleton, North Dakota, 58059 (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 11 is currently owned and maintained by the County and runs 29 miles from I-94 north to the City of Grandin. The south two miles are located within the City of Mapleton from I-94 to Cass County Highway 10 West.

The City is interested in future development along Cass 11 north of Knutson Street and installing a shared use path on both the east and west sides of Cass 11 with a pedestrian crossing of Cass 11 just north of Sunset Drive. All right of way for this segment 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 to 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:** All parties agree to cost share plan per 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 11, 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 Mapleton  
                                  ATTN: City Auditor  
                                  P.O. Box 9  
                                  Mapleton, ND 58059

If to the County:       Cass County  
                                  ATTN: County Auditor  
                                  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 11 and the multi-use path from Carl Olsen Drive to Main Street, or its predecessor.

Approved by:

Cass County

Date:

\_\_\_\_\_  
Chair, Cass County Board of Commissioners

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

City of Mapleton

Date:

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Mayor, City of Mapleton

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Auditor, City of Mapleton

EXHIBIT A

CASS COUNTY HIGHWAY DEPARTMENT						CITY OF MAPLETON (COST SHARE)			CASS COUNTY (COST SHARE)			
PROJECT NO. MS-2201 CASS COUNTY HIGHWAY 11 SHARED USE PATH						APPROX. QUANTITY	TOTAL	PERCENT	APPROX. QUANTITY	TOTAL	PERCENT	
ITEM	SPEC NO.	DESCRIPTION	UNITS	APPROX. QUANTITY	UNIT COST	TOTAL	APPROX. QUANTITY	TOTAL	PERCENT	APPROX. QUANTITY	TOTAL	PERCENT
1	103	CONTRACT BOND	L SUM	1	\$8,800.00	\$8,800.00	0.5	\$4,400.00	50.00%	0.5	\$4,400.00	50.00%
2	201	REMOVAL OF TREES 10IN	EA	3	\$1,500.00	\$4,500.00	1.5	\$2,250.00	50.00%	1.5	\$2,250.00	50.00%
3	202	REMOVAL OF STRUCTURE-SITE 1	L SUM	1	\$6,200.00	\$6,200.00	0.5	\$3,100.00	50.00%	0.5	\$3,100.00	50.00%
4	202	REMOVAL OF CONCRETE PAVEMENT	SY	51	\$24.65	\$1,257.15	40.5	\$998.33	79.41%	10.5	\$258.83	20.59%
5	202	REMOVAL OF CURB & GUTTER	LF	105	\$23.05	\$2,420.25	57	\$1,313.85	54.29%	48	\$1,106.40	45.71%
6	202	REMOVAL OF BITUMINOUS SURFACING	SY	161	\$14.00	\$2,254.00	80.5	\$1,127.00	50.00%	80.5	\$1,127.00	50.00%
7	202	REMOVAL OF CULVERTS - ALL TYPES & SIZES	LF	53	\$26.00	\$1,378.00	26.5	\$689.00	50.00%	26.5	\$689.00	50.00%
8	202	REMOVAL OF CATCH BASIN	EA	1	\$800.00	\$800.00	0.5	\$400.00	50.00%	0.5	\$400.00	50.00%
9	203	TOPSOIL	CY	2,041	\$15.10	\$30,819.10	1,020.5	\$15,409.55	50.00%	1,020.5	\$15,409.55	50.00%
10	203	EMBANKMENT-TYPE C	CY	1,146	\$19.85	\$22,748.10	573	\$11,374.05	50.00%	573	\$11,374.05	50.00%
11	251	SEEDING CLASS III	ACRE	2.53	\$2,750.00	\$6,957.50	1.3	\$3,478.75	50.00%	1.3	\$3,478.75	50.00%
12	253	HYDRAULIC MULCH	ACRE	5.06	\$2,420.00	\$12,245.20	2.5	\$6,122.60	50.00%	2.5	\$6,122.60	50.00%
13	261	FIBER ROLL 12IN	LF	310	\$4.50	\$1,395.00	155	\$697.50	50.00%	155	\$697.50	50.00%
14	261	REMOVE FIBER ROLL 12IN	LF	310	\$1.20	\$372.00	155	\$186.00	50.00%	155	\$186.00	50.00%
15	302	AGGREGATE BASE COURSE CL 5	TON	579	\$46.90	\$27,155.10	289.5	\$13,577.55	50.00%	289.5	\$13,577.55	50.00%
16	430	COMMERCIAL GRADE HOT MIX ASPHALT	TON	60	\$450.00	\$27,000.00	30	\$13,500.00	50.00%	30	\$13,500.00	50.00%
17	702	MOBILIZATION	L SUM	1	\$40,675.00	\$40,675.00	0.5	\$20,337.50	50.00%	0.5	\$20,337.50	50.00%
18	704	TRAFFIC CONTROL	L SUM	1	\$4,300.00	\$4,300.00	0.5	\$2,150.00	50.00%	0.5	\$2,150.00	50.00%
19	708	INLET PROTECTION-SPECIAL	EA	12	\$215.00	\$2,580.00	6	\$1,290.00	50.00%	6	\$1,290.00	50.00%
20	708	REMOVE INLET PROTECTION-SPECIAL	EA	12	\$27.50	\$330.00	6	\$165.00	50.00%	6	\$165.00	50.00%
21	714	PIPE CONC REINF 15IN CL III - STORM DRAIN	LF	271	\$138.75	\$37,601.25	183.5	\$25,460.63	67.71%	87.5	\$12,140.63	32.29%
22	714	PIPE CONC REINF 24IN CL III - STORM DRAIN	LF	58	\$129.40	\$7,505.20	29	\$3,752.60	50.00%	29	\$3,752.60	50.00%
23	714	END SECT - CONC REINF 15IN	EA	2	\$1,650.00	\$3,300.00	1.5	\$2,475.00	75.00%	0.5	\$825.00	25.00%
24	714	END SECT - CONC REINF 24IN	EA	1	\$1,980.00	\$1,980.00	0.5	\$990.00	50.00%	0.5	\$990.00	50.00%
25	714	PIPE CONDUIT 8IN	LF	40	\$54.75	\$2,190.00	20	\$1,095.00	50.00%	20	\$1,095.00	50.00%
26	714	PIPE CONDUIT 12IN	LF	61	\$51.00	\$3,111.00	30.5	\$1,555.50	50.00%	30.5	\$1,555.50	50.00%
27	714	PIPE CONDUIT 15IN	LF	365	\$45.75	\$16,698.75	182.5	\$8,349.38	50.00%	182.5	\$8,349.38	50.00%
28	714	PIPE CONDUIT 18IN	LF	60	\$71.80	\$4,308.00	30	\$2,154.00	50.00%	30	\$2,154.00	50.00%
29	714	PIPE CONDUIT 24IN	LF	199	\$120.95	\$24,069.05	99.5	\$12,034.53	50.00%	99.5	\$12,034.53	50.00%
30	714	REMOVE & RELAY END SECTION-ALL TYPE & SIZES	EA	3	\$950.00	\$2,850.00	1.5	\$1,425.00	50.00%	1.5	\$1,425.00	50.00%
31	714	UNDERDRAIN PIPE PVC PERFORATED 4IN	LF	110	\$14.85	\$1,633.50	55	\$816.75	50.00%	55	\$816.75	50.00%
32	722	MANHOLE 48IN	EA	3	\$6,150.00	\$18,450.00	1.5	\$9,225.00	50.00%	1.5	\$9,225.00	50.00%
33	722	MANHOLE 60IN	EA	1	\$9,940.00	\$9,940.00	0.5	\$4,970.00	50.00%	0.5	\$4,970.00	50.00%
34	722	INLET - TYPE 2	EA	1	\$5,089.50	\$5,089.50	1	\$5,089.50	100.00%	1	\$5,089.50	100.00%
35	722	INLET SPECIAL-TYPE 1 48IN	EA	1	\$6,000.00	\$6,000.00	0.5	\$3,000.00	50.00%	0.5	\$3,000.00	50.00%
36	722	INLET CATCH BASIN-TYPE A	EA	2	\$4,225.00	\$8,450.00	1	\$4,225.00	50.00%	1	\$4,225.00	50.00%
37	722	ADJUST GATE VALVE BOX	EA	1	\$600.00	\$600.00	0.5	\$300.00	50.00%	0.5	\$300.00	50.00%
38	748	CURB & GUTTER - TYPE I	LF	232	\$64.35	\$14,929.20	121	\$7,754.18	51.94%	112	\$7,175.03	48.06%
39	750	PIGMENTED IMPRINTED CONCRETE	SY	7	\$270.00	\$1,890.00	3.5	\$945.00	50.00%	3.5	\$945.00	50.00%
40	750	SIDEWALK CONCRETE 4IN	SY	66	\$73.25	\$4,834.50	66	\$4,834.50	100.00%	66	\$4,834.50	100.00%
41	750	SIDEWALK CONCRETE 5IN	SY	2,168	\$73.40	\$159,131.20	1,084	\$79,565.60	50.00%	1,084	\$79,565.60	50.00%
42	750	DRIVEWAY CONCRETE REINF 7IN	SY	138	\$91.30	\$12,599.40	69	\$6,299.70	50.00%	69	\$6,299.70	50.00%
43	750	DETECTABLE WARNING PANELS	SF	280	\$57.00	\$15,960.00	140	\$7,980.00	50.00%	140	\$7,980.00	50.00%
44	754	FLAT SHEET FOR SIGNS-TYPE XI REFL SHEETING	SF	99	\$22.00	\$2,184.00	49.7	\$1,092.30	50.00%	49.7	\$1,092.30	50.00%
45	754	STEEL GALV POSTS-TELESCOPING PERFORATED TUBE	LF	174	\$14.65	\$2,549.10	87	\$1,274.55	50.00%	87	\$1,274.55	50.00%
46	762	EPOXY PVMT MK 6IN LINE-GROOVED	LF	373	\$11.00	\$4,103.00	186.5	\$2,051.50	50.00%	186.5	\$2,051.50	50.00%
47	762	EPOXY PVMT MK 24IN LINE-GROOVED	LF	140	\$31.00	\$4,340.00	70	\$2,170.00	50.00%	70	\$2,170.00	50.00%
48	762	EPOXY PVMT MK MESSAGE-GROOVED	SF	44	\$27.50	\$1,210.00	22	\$605.00	50.00%	22	\$605.00	50.00%
49	770	1IN DIAMETER RIGID CONDUIT	LF	750	\$11.00	\$8,250.00	375	\$4,125.00	50.00%	375	\$4,125.00	50.00%
50	770	UNDERGROUND CONDUCTOR NO 6-TYPE RHW	LF	1,700	\$2.75	\$4,675.00	850	\$2,337.50	50.00%	850	\$2,337.50	50.00%
51	770	UNDERGROUND CONDUCTOR NO 8-TYPE RHW	LF	900	\$2.50	\$2,250.00	450	\$1,125.00	50.00%	450	\$1,125.00	50.00%
52	770	UNDERGROUND CONDUCTOR NO 10-TYPE RHW	LF	1,300	\$2.00	\$2,600.00	650	\$1,300.00	50.00%	650	\$1,300.00	50.00%
53	772	FLASHING BEACON-POST MOUNTED	EA	4	\$5,940.00	\$23,760.00	2	\$11,880.00	50.00%	2	\$11,880.00	50.00%
54	910	TRASH RACK	EA	1	\$875.00	\$875.00	0.5	\$437.50	50.00%	0.5	\$437.50	50.00%
55	920	OUTLET STRUCTURE	EA	1	\$4,500.00	\$4,500.00	1	\$4,500.00	100.00%	1	\$4,500.00	100.00%
56	970	HERBICIDE WEED CONTROL	ACRE	5	\$465.00	\$2,352.90	2.5	\$1,176.45	50.00%	2.5	\$1,176.45	50.00%
57	970	TREES	EA	28	\$655.75	\$18,361.00	28	\$18,361.00	100.00%	28	\$18,361.00	100.00%
<b>TOTAL CONSTRUCTION</b>						<b>\$649,317.55</b>	<b>\$349,299.33</b>	<b>53.79%</b>	<b>\$300,018.23</b>	<b>46.21%</b>		
Studies & Report						\$20,000.00	\$10,758.97		\$9,241.03			
Funding Administration						\$20,000.00	\$10,758.97		\$9,241.03			
Design & Construction						\$120,000.00	\$64,553.81		\$55,446.19			
Legal & Administration						\$15,000.00	\$8,069.23		\$6,930.77			
Contingencies						\$65,682.45	\$35,333.77		\$30,348.68			
<b>TOTAL PROJECT COST</b>						<b>\$890,000.00</b>	<b>\$478,774.06</b>		<b>\$411,225.94</b>			
Garrison Diversion Grant						\$50,000.00	\$26,897.42		\$23,102.58			
<b>TOTAL LOCAL SHARE</b>						<b>\$840,000.00</b>	<b>\$451,876.64</b>		<b>\$388,123.36</b>			

# CONTRACT APPROVAL REQUEST

COMPANY REQUESTING CONTRACT:

Excavating, Inc., 651 5<sup>th</sup> St. Ct. NW, West Fargo, ND 58078

DATE OF REQUEST: June 16, 2022

DATE OF EXPECTED RETURN TO THE COMMISSION OFFICE: June 20, 2022

DEPARTMENT HEAD REQUESTING SIGNATURE: Jason Benson, 701-298-2372 

STATE'S ATTORNEY SIGNATURE: \_\_\_\_\_

STATE'S ATTORNEY COMMENTS: \_\_\_\_\_

PORTFOLIO COMMISSIONER SIGNATURE: \_\_\_\_\_

Request for bids for Shared Use Path on Cass Highway 11 through Mapleton from Sunset Dr. to Sunrise Dr. in Cass County. was received.

<u>Engineer's Estimate</u>	<u>MS2201 BASE BID</u>	<u>OPTION #1</u>	<u>OPTION #2</u>	<u>LOWEST TOTAL</u>
	\$477,170.00	\$189,560.00	\$167,220.00	<b>\$644,390.00</b>

The bids were received as follows:

<u>Contractor</u>	<u>MS2201 BASE BID</u>	<u>OPTION #1</u>	<u>OPTION #2</u>	<u>LOWEST TOTAL</u>
Excavating, Inc	\$485,351.85	\$180,174.40	\$163,965.70	<b>\$649,317.55</b>
Strata Corporation	\$736,477.15	\$246,024.00	\$234,854.00	<b>\$971,331.15</b>

**SUGGESTED MOTION:** AUTHORIZE CHAIRPERSON TO SIGN PURCHASE ORDER AND CONTRACT DOCUMENTS WITH EXCAVATING, INC. FOR THE SHARED USE PATH ON THE CASS COUNTY HIGHWAY STATED ABOVE SUBJECT TO STATE'S ATTORNEYS APPROVAL.



**CASS COUNTY HIGHWAY DEPARTMENT  
CONTRACT**

This agreement made and entered into by Cass County, North Dakota, party of the first part, **Excavating, Inc., 651 5<sup>th</sup> St. Ct. NW, West Fargo, ND 58078** party of the second part (hereinafter called Contractor), WITNESSETH:

1. That for and in consideration of the payments to be made by the party of the first part, the contractor promises and agrees to furnish and deliver all labor, equipment, and materials, and to pay or cause to be paid as they become due, all claims for any work, labor, materials, equipment, including equipment rental or repair, and other supplies or insurance premiums, all of which are attributable to or utilized in and about the improvement and construction of **Project MS2201**. In accordance and in conformity with the provisions of this contract, the project proposal, the standard specification, supplemental specifications, special provisions, and all of which are hereby made a part of this agreement as fully and to the same effect as if the same had been set forth in the body of this agreement. References in the Standard Specifications for Road and Bridge Construction, 2022 edition, to the North Dakota Department of Transportation or Department must be construed as referring to the owner. Likewise, a reference by the same works to engineer or director must be construed as referring to the owner of the project.

2. The party of the first part agrees and promises to pay to the Contractor for said work, when completed and accepted in accordance with the provisions of this contract, the price set forth in the said proposal, amounting approximately to **Six Hundred Forty Nine Thousand, Three Hundred Seventeen Dollars and Fifty Five Cents (\$649,317.55)** payments to be made as provided in said specifications upon presentation of the proper certificates of the County Engineer, or his representatives, and under the terms of this contract.

3. The said work shall be done in accordance with the terms of this contract, and the laws of the State of North Dakota, under direct supervision and to the entire satisfaction of the County Highway Department, subject at all times to the inspection and approval of the engineer.

4. The decision of the engineer upon questions connected with the execution of this agreement or any failure or delay in the prosecution of the work by the Contractor shall be final and conclusive.

5. In the employment of labor, other things being equal, preference shall be given to honorably discharged Veterans of the Armed Forces, and bona fide North Dakota residents, as determined by NDCC Section 43-07-20.

6. The Contractor shall begin construction work when so ordered by the Cass County Highway Department and shall maintain at all times thereon a maximum and efficient working force necessary to complete the work within the time established by this contract.

IN WITNESS THEREOF, the parties to this contract have set their hands and seal this \_\_\_\_ day of \_\_\_\_\_ 2022.

CASS COUNTY NORTH DAKOTA

\_\_\_\_\_  
Chairperson, Cass County Board of Commissioners

\_\_\_\_\_  
Contractor

WITNESS TO CONTRACTOR'S SIGNATURE

By \_\_\_\_\_

Title \_\_\_\_\_

CASS COUNTY HIGHWAY DEPARTMENT  
CONTRACT BOND

Project No. MS2201

KNOW ALL PERSONS BY THESE PRESENTS, that we Excavating, Inc., 651 5<sup>th</sup> St. Ct. NW, West Fargo, ND 58078

as principal, and \_\_\_\_\_  
NAME AND ADDRESS OF SURETY

as surety, are held and firmly bound unto Cass County, North Dakota, as owner in the penal sum of Six Hundred Forty Nine Thousand, Three Hundred Seventeen Dollars and Fifty Five Cents (\$649,317.55) for the use of the owner and also for the use of any person having any lawful claim against the principal or any subcontractor on account of labor or supplies or materials as set forth in the conditions hereof; for the payment of which well and truly to be made we jointly and severally bind ourselves, and each of our heirs, executors, administrators, and successors, firmly by these presents.

WHEREAS, said principal has entered into a written contract with the owner for: \_\_\_\_\_  
\_\_\_\_\_;

Type of Work: Shared Use Path

MS2201, in Cass County, North Dakota, which contract and incorporated plans and specifications are by this reference made a part hereof, and are hereinafter referred to as the contract.

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS THAT** if the principal shall: (1) perform all the terms, covenants and conditions of said contract; (2) protect the owner against any loss or damage from any cause arising out of said contract; (3) pay or cause to be paid all bills and claims against the principal or any subcontractor on account of labor or services performed and all materials, equipment or supplies furnished, whether directly or indirectly arising out of the performance of said contract; (4) pay all insurance premiums and all items for which payment under the terms of the contract is to be made or guaranteed by the principal; (5) have made or will make, prior to the commencement of any work by the principal or any subcontractor under such contract, full and true report to the Worker's Compensation Bureau of the payroll expenditures for the employees to be engaged in such work, and that the principal has paid, or will pay, the premium thereon prior to the commencement of such work; (6) pay or cause to be paid all contributions due to the Unemployment Compensation Division; and (7) pay or cause to be paid any and all taxes that may be assessed or levied or to be a charge against such contractor or any subcontractor under such contract by the state or any of its subdivisions; then this obligation shall be null and void; otherwise it will remain in full force and effect.

And the said surety hereby stipulates and agrees that any change, extension, alteration, deduction or addition, with or without notice to the surety, in or to the terms of said contract or the plans or the specifications accompanying the same as provided for therein, shall not in anywise affect the obligation and liability of said surety on this bond.

SIGNED and SEALED this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

PRINCIPAL

(SEAL OF PRINCIPAL)

By: \_\_\_\_\_

Title: \_\_\_\_\_

SURETY

COMPLETE MAILING ADDRESS

(SEAL OF SURETY)

By: \_\_\_\_\_

Title: \_\_\_\_\_

COMPLETE MAILING ADDRESS

**IMPORTANT NOTICE**

An individual doing business under a firm name must give both names, and the individual shall designate himself as sole owner.

If a partnership, so state, and at least one member of such partnership must sign.

If a corporation, the full corporate name must be used and the execution must be by an officer of the corporation.

Any other person executing for the principal or surety must attach a power of attorney.

**NOTICE TO SURETY**

**Section 26.1-03-01, N.D.C.C. Provides:**

**"Limitation on risks acceptable by company.** An insurance company transacting an insurance business in this state may not expose itself to loss on any one risk or hazard to an amount exceeding ten percent of its paid-up capital and surplus if a stock company, or ten percent of its surplus if a mutual company, unless the excess is reinsured."

If excess reinsurance agreements are required on this bond, an affidavit executed by an officer of the surety shall be attached, stating that such reinsurance agreements have been entered into and are in effect at the time the bond is executed, giving the name and address of all companies with whom such agreements have been entered, and that copies of such reinsurance agreements will be furnished to the North Dakota commissioner of insurance.

**ACKNOWLEDGMENT OF PRINCIPAL**

State of \_\_\_\_\_

ss.

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_ 2022, before me a notary public in and for the state of \_\_\_\_\_, personally appeared \_\_\_\_\_, known to me to be (title) of the principal described in the within instrument and who executed the same and acknowledged to me that the same was executed for and on behalf of said principal.

Notary Public, State of \_\_\_\_\_

\_\_\_\_\_  
(Notary Public must print or type name here.)

(NOTARY SEAL)

My Commission expires \_\_\_\_\_

**ACKNOWLEDGMENT OF SURETY**

State of \_\_\_\_\_

SS.

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_ 2022, before me a notary public in and for the state of \_\_\_\_\_, personally appeared \_\_\_\_\_, known to me to be (title) of the surety described in the within instrument and who executed the same and acknowledged to me that the same was executed for and on behalf of said surety.

\_\_\_\_\_

Notary Public, State of \_\_\_\_\_

\_\_\_\_\_  
(Notary Public must print or type name here.)

(NOTARY SEAL)

My commission expires \_\_\_\_\_

Approved as to form this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

\_\_\_\_\_  
Cass County States Attorney

Approved by owner this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

By \_\_\_\_\_  
Chairperson, Cass County Board of Commissioners