



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 *JPB*

DATE: October 7, 2022

SUBJECT: Agenda Item for October 17th, 2022 Commission Meeting:
Agreement between Fargo, West Fargo, and Cass County for
the 52nd Ave S Construction

Cass County has been working with the cities of Fargo and West Fargo for the past several years on planning the reconstruction, widening, and bridge improvements on 52nd Ave (Cass County Highway 6) between 63rd St S and Sheyenne St S (Cass County Highway 17). This project will be bid in early November. The funding for this project was presented at the Cass County budget hearings in July 2022 and is in the 2023 budget.

The 2023 budget was based on preliminary estimates and was budgeted for the engineering services, bridge, and road construction for a total of \$4.1 million. This new agreement has the updated Federal Funding and Cass County's share is now estimated to be \$2.8 million. This final cost for Cass County will be dependent on the bid amount as per the agreement. In addition, the agreement allows Cass County to submit a check for half of the total amount due to the City of Fargo on or before October 1, 2023. The remaining amount will be paid to the City of Fargo on or before October 1, 2024. This will allow more flexibility in funding our other 2023 projects.

Finally, this agreement addresses the transfer of ownership of 52nd Ave to the City of Fargo and City of West Fargo. This will eliminate any segment of 52nd Ave S from being designated as Cass County Highway 6.

SUGGESTED MOTION: Authorize the Commission Chair to sign the Memorandum of Agreement for 52nd Ave S with Cass County Government the City of Fargo, and the City of West Fargo.

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

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

AGREEMENT

52nd Avenue S Reconstruction

THIS AGREEMENT, made and entered into this _____ day of _____, 2022 (the “Effective Date”), by and between the City of Fargo, the City of West Fargo, and Cass County (the “Project Partners”). This Agreement outlines the mutually developed responsibilities between the Project Partners regarding the reconstruction of 52nd Avenue South (aka Cass County Highway 6) between 63rd Street South and County Road 17 (Sheyenne Street) (the “Project”).

WHEREAS, Cass County Highway 6 is currently owned and maintained by Cass County from County Rd 17 east to Interstate 29, a distance of three miles; and

WHEREAS, funding formulas for distribution of the State Highway Distribution Funds and Federal highway funds in North Dakota are based on the premise that county highways have traditionally been turned over to the larger cities as the land adjacent to the highways is annexed; and

WHEREAS, these formulas are population based, resulting in increased city funding and decreased county funding as annexations take place; and

WHEREAS, counties have no authority to levy special assessments for highway improvements within an incorporated area; and

WHEREAS, the 2022-2025 Metropolitan Transportation Improvement Program (TIP) includes the Project; and

WHEREAS, the Project Partners agree elements of project development will be cooperatively developed in coordination with the NDDOT as follows; and

WHEREAS, the Project Partners agree that the Project will be developed through a project steering committee composed of the Project Partners, and NDDOT; and

WHEREAS, the Project Partners agree that the construction for the Project will be administered through the use of an engineering consulting firm (the “Construction Administration Consultant”) procured through a publicly advertised “Request for Proposal”; and

WHEREAS, the Project Partners agree that ownership of the project corridor, also known as Cass County Highway 6, will transfer upon completion of the reconstruction project; and

WHEREAS, the estimated total cost of the Project is \$19,664,845; and

WHEREAS, the Project will be funded partially with Federal funds provided by the North Dakota Department of Transportation (NDDOT) through the Surface Transportation Program (STP), in the amount of \$9,000,000; and

WHEREAS, the Project Partners agree to split the remaining Project costs, the non-Federal share, according to the terms of this Agreement; and

WHEREAS, the Project Partners are interested in working in a cooperative manner to undertake the Project pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Purpose. This Agreement is made pursuant to N.D.C.C. § 54-40-1, which authorizes the joint and cooperative exercise of power common to the contracting parties. The intent of this Agreement is to increase efficiencies with respect to the Project, and to prevent delays with respect to the scheduling of work for the Project. This Agreement does not create a separate political subdivision.
2. Term. The term of this Agreement is for ten (10) years beginning on the Effective Date of this Agreement and ending ten (10) years after the Effective Date (the “Original Term”). Thereafter, this Agreement will automatically be extended by one (1) additional ten (10) year term, unless either party gives written notice to the other party a minimum of ninety (90) days prior to the expiration of the Original Term. The parties by mutual agreement may terminate this Agreement at any time or extend this Agreement for additional terms.
3. Process. The City of Fargo will work cooperatively with the City of West Fargo and Cass County to refine the recommended alternative for construction during environmental documentation phase and prior to completion of design plans. The City of Fargo will be the lead agency for the Project.
4. Procedures. Fargo will undertake the Project pursuant to and in accordance with Chapter 40-22 of the North Dakota Century Code. Fargo will be responsible for inspection, review and observation of work performed on the Project.
5. Transfer of Ownership and Maintenance Responsibility. The City of West Fargo will assume ownership of Cass County Highway 6 from the intersection with County Rd 17 (Sheyenne Street), east to the centerline of the Sheyenne River, and the City of Fargo will assume ownership of Cass County Highway 6 from the centerline of the Sheyenne River east to Interstate 29. The transfer of all ownership, liability and maintenance responsibility will occur upon the substantial completion of the Project. All future maintenance and costs for the intersection of Sheyenne St S and 52nd Ave S will be split with 75% to the City of West Fargo and 25% to Cass County. The east-west section line between Sections 32 and 5 and Sections 31 and 6 serve as the line of responsibility for maintenance work on the roundabout. As per Cass County’s agreement (see attached agreement, Exhibit A) with the City of Horace signed on March 1st, 2021, when County Rd 17 is transferred to the City of Horace, the City of Horace will assume all maintenance responsibilities for County Rd 17.

6. Apportionment of Costs related to the Project. The Project will be partially funded with Federal funds provided by the North Dakota Department of Transportation (NDDOT) through the Surface Transportation Program (STP), along with a non-Federal share of contributions from the Project Partners. The Project Partners agree to split the non-Federal share of the Project as represented in the Engineer's Report attached hereto as Exhibit B, to be revised upon award of the Bid for the Project. The amounts to be paid by the parties shall be trued up at the completion of the Project, costs to be shared as follows:

Engineer's Estimated Construction Cost Exhibit B.
(Included in this cost is a 20% inflation markup, a 10%
construction contingency, a 4% Fargo administration fee, 4%
Fargo interest fee, and 3% Fargo legal/miscellaneous fee)

Bridge Portion (excluding City of Fargo Water Plant Gates on Bridge
Structure)

Local funding breakouts: 25% WF, 25% Fargo, 50% Cass County

Roadway west of Bridge (including roundabout modifications)

Local funding breakouts: 50% WF, 50% Cass County

Roadway east of Bridge

Local funding breakouts: 40% Fargo, 40% WF, 20% Cass County

City of Fargo Water Plant Gates on Bridge Portion

Local funding breakouts: 100% Fargo

City of Fargo Watermain on east Portion

Local funding breakouts: 100% Fargo

Estimated Cost for NEPA, Preliminary and Final Engineering Design,
Construction Administration Services, Right of Way, and Utility
Relocations

Overall project funding breakouts: 46% Fargo, 27% West Fargo, 27%
Cass County

7. Project Costs. Each of the Project Partners will be responsible for obtaining financing for its own portion of the costs of the Project, as set forth above. This responsibility includes any and all costs related to creation of any special assessment district and bonding related to the Project.

8. Cass County Contribution. Cass County shall make payment to Fargo to the project based on the bid amount as follows: as follows: Cass County will submit a check for half of the total amount due to the City of Fargo on or before October

1, 2023. The remaining amount will be paid to the City of Fargo following certification of costs.

9. Processing of Pay Requests and Change Orders. The Construction Administration Consultant will approve contractor payments from the NDDOT. The NDDOT will then invoice the City of Fargo for the local share of the contractor payments. The City of Fargo will invoice the City of West Fargo the contractor expenses incurred in the responsible bid items.
10. Final Punch List. The City of West Fargo and the City of Fargo will coordinate with respect to developing a final punch list.
11. Right of Way. This Project required the acquisition of both temporary construction easements and permanent right of way; as such, each party will be responsible for acquisition of right of way within that party's jurisdiction. The costs of acquiring property will be the sole responsibility of the party responsible for the property acquisition.
12. No Stacking of Claims Permitted. For the purposes of N.D.C.C. § 32-12.1-03 the employees and officers of a party are deemed to be employees of that party. Under no circumstances shall a party, irrespective of whether it may have waived the limit on liability set forth in N.D.C.C. § 32-12.1-03, be required to pay on behalf of itself or the other party, any amounts in excess of the limits on liability established in N.D.C.C. § 32-12.1-03 applicable to any one 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.
13. Waiver of Jury Trial/Venue/Selection. FARGO AND WEST FARGO HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING, COUNTERCLAIM OR DEFENSE BASED ON THIS CONTRACT, OR IN ARISING OUT OF, UNDER OR IN ANY CONNECTION WITH THIS CONTRACT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS CONTRACT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR FARGO AND WEST FARGO ENTERING INTO THIS CONTRACT. THE PARTIES STIPULATE AND AGREE THAT THE DISTRICT COURT OF CASS COUNTY, NORTH DAKOTA, SHALL BE THE SOLE AND EXCLUSIVE VENUE FOR ANY LAWSUIT PERTAINING TO THIS CONTRACT AND CONSENT TO THE PERSONAL JURISDICTION IN SAID COURT IN THE EVENT OF ANY SUCH LAWSUIT.
14. Merger Clause. This Agreement constitutes the entire agreement by and between the parties, and any other prior representations or agreements are deemed merged herein, and those not specified herein do not represent any agreements or promises or covenants or representations on the part of either party hereto.

15. Previous Agreements Superseded. This Agreement supersedes any previous agreement between any of the parties hereto regarding the items addressed herein.
16. Written Amendment Required. 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. Any waiver by any party of any default of another party will not affect or impair any right arising from any subsequent default. Except as expressly and specifically stated otherwise, nothing herein will limit the remedies and rights of the parties thereto under and pursuant to this Agreement.
17. Grammatical Construction. Whenever the singular number is used herein, the same includes the plural where appropriate, and the words of any gender include any other genders where appropriate.
18. Default. Upon the occurrence of any non-performance of any party's obligations under this Agreement which has not been cured within thirty (30) days after notice to the breaching party, a non-breaching party may take any one or more of the following remedial steps: (a) terminate this Agreement; (b) suspend the non-breaching party's performance under this Agreement until it receives assurances from the breaching party satisfactory to the non-breaching party that the breaching party will cure such Event of Default and perform its obligations under this Agreement; (c) commence legal or administrative proceedings for the collection of any amounts due hereunder or the enforcement of any covenant, agreement or obligation of the breaching party.
19. Severability Clause. Each provision, section, sentence, clause, phrase, and word of this Agreement is intended to be severable. If any provision, section, sentence, clause, phrase, and 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 Agreement.
20. Force Majeure. No party will be liable to any other party during any period in which its performance is delayed or prevented, in whole or in part, by circumstance beyond its reasonable control. Circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind), fire, war, act of a public enemy or terrorist, act of sabotage, strike or other labor dispute, riot, misadventure of the sea, inability to secure materials and/or transportation, or a restriction imposed by legislation, an order or a rule or regulation of a governmental entity. If such a circumstance occurs, the party claiming the delay must undertake reasonable action to notify the other party of the same.
21. Notice. All notices, certificates or other communications required under this Agreement will be deemed sufficiently given when delivered or deposited in the

Signature page for the agreement between the City of Fargo, the City of West Fargo, and Cass County regarding the reconstruction of 52nd Avenue South (Cass County Highway 6) between 63rd Street South and County Road 17 (Sheyenne Street):

CITY OF FARGO, A NORTH DAKOTA MUNICIPAL CORPORATION

BY: _____ Date: _____
Dr. Timothy J. Mahoney, M.D.
Mayor

ATTEST: _____ Date: _____
Steven Sprague
Auditor

Signature page for the agreement between the City of Fargo, the City of West Fargo, and Cass County regarding the reconstruction of 52nd Avenue South (Cass County Highway 6) between 63rd Street South and County Road 17 (Sheyenne Street):

CITY OF WEST FARGO, A NORTH DAKOTA MUNICIPAL CORPORATION

BY: _____ Date: _____
Bernie Dardis
President of the Board of
City Commissioners

ATTEST: _____ Date: _____
Tina Fisk
City Administrator

Signature page for the agreement between the City of Fargo, the City of West Fargo, and Cass County regarding the reconstruction of 52nd Avenue South (Cass County Highway 6) between 63rd Street South and County Road 17 (Sheyenne Street):

COUNTY OF CASS, STATE OF NORTH DAKOTA

BY: _____ Date: _____
Rick Steen
Commissioner

ATTEST: _____ Date: _____
Robert Wilson
Administrator

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. Dispute Resolution.

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

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

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

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

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

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

If to Horace:

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

If to Cass County:

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

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

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

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

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

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

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

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

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

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

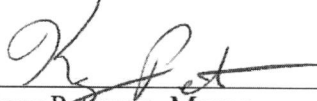
25. Representation. The parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this MOU, and agree they have not been influenced by any representations or statements made by any other parties.

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

(Signatures appear on the following pages)

Dated this _____ day of February, 2021.

CITY OF HORACE, NORTH DAKOTA, a
municipal corporation

By: 
Kory Peterson, Mayor

ATTEST:


Brenton Hölper, City Administrator

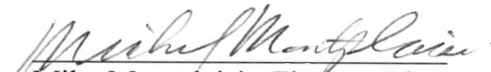
Dated this 1st ^{March} day of ~~February~~, 2021.

CASS COUNTY, NORTH DAKOTA



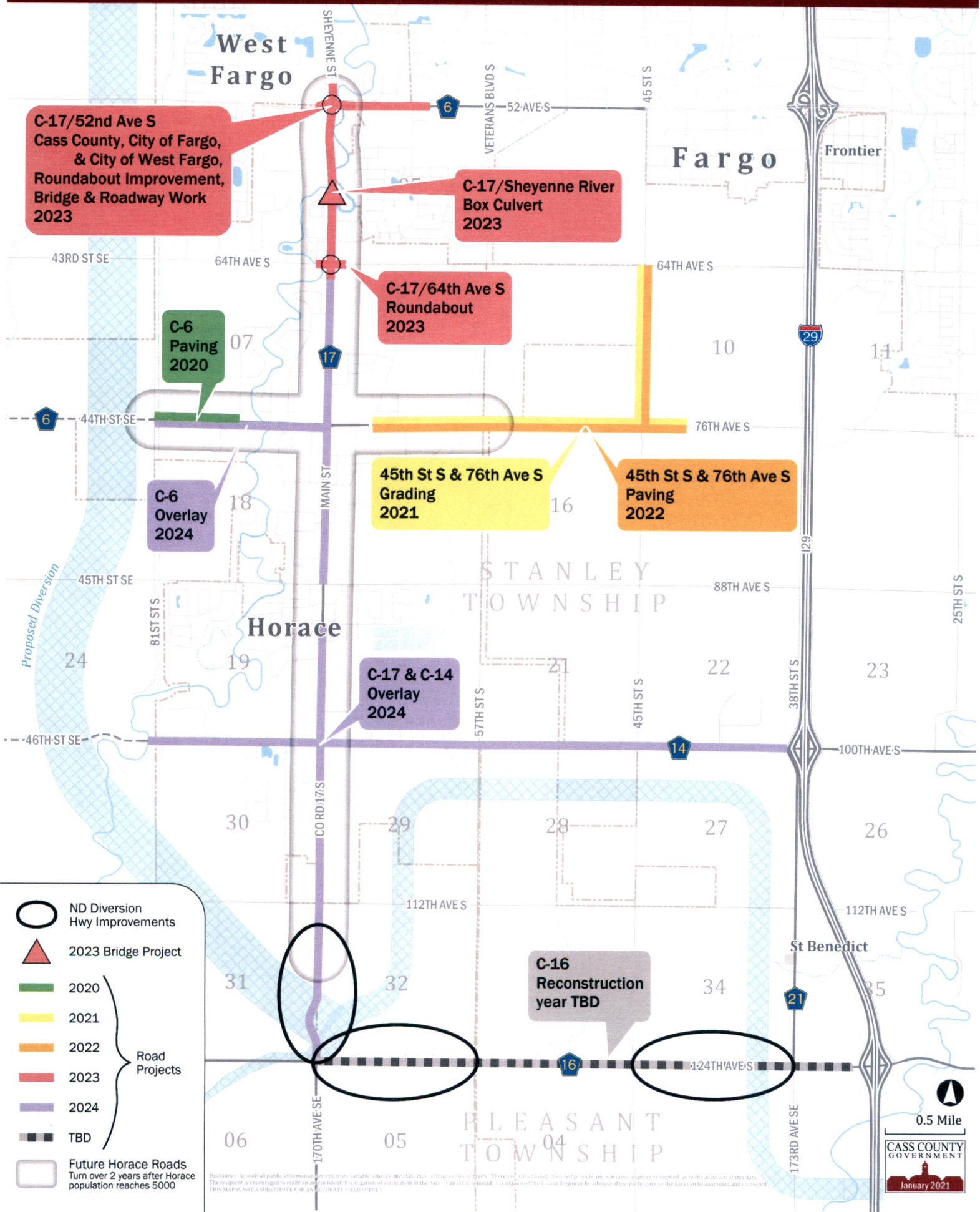
Chad M. Peterson, Board Chairman

ATTEST:



Mike Montplaisir, Finance Director

HORACE AREA TRANSPORTATION IMPROVEMENTS



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

C-17/Sheyenne River
Box Culvert
2023

C-17/64th Ave S
Roundabout
2023

C-6
Paving
2020

C-6
Overlay
2024

45th St S & 76th Ave S
Grading
2021

45th St S & 76th Ave S
Paving
2022

C-17 & C-14
Overlay
2024

C-16
Reconstruction
year TBD

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

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ENGINEER'S REPORT
 NEW PAVING AND UTILITY CONSTRUCTION
 IMPROVEMENT DISTRICT NO. BN-23-A

Nature & Scope

This project is being completed in partnership with the City of Fargo, the City of West Fargo, and Cass County and will urbanize 52nd Avenue South (Sheyenne Street/County Road 17 to west of 63rd Street South) from a rural asphalt roadway section to a divided urban concrete street section with curb and gutter, storm sewer, bridge over the Sheyenne River and pedestrian systems.

Purpose

This project will urbanize the existing roadway and install necessary infrastructure for the continued growth of the City of Fargo, West Fargo, and Cass County. The new bridge over the Sheyenne River will include features necessary for the operation of the water intake structure just south of the new bridge. This project will also install important pedestrian upgrades along the corridor and make improvements to the roundabout at the intersection of Sheyenne St/County Road 17 and 52nd Avenue South.

The project will be funded by a combination of Federal Funds, City of Fargo Infrastructure Sales Tax, funds from the City of West Fargo, funds from Cass County, and Special Assessments to the benefiting properties. Special Assessments will be applied per City policy.

Feasibility

The estimated cost of construction is \$ 16,148,736.95. The cost breakdown is as follows:

Project area west of the bridge		\$ 1,632,814.99
Amount Federally Funded		\$ 1,025,242.33
Amount Locally Funded		\$ 607,572.66
Plus 4% Administration Fee:		\$ 24,302.91
Plus 3% Legal Fee:		\$ 18,227.18
Plus 4% Interest Fee:		\$ 24,302.91
Plus 10% Contingency:		\$ 60,757.27
Total Estimated Cost:		\$ 735,162.92
City of Fargo:	0.00%	\$ -
City of West Fargo:	75.00%	\$ 551,372.19
Cass County:	25.00%	\$ 183,790.73

Bridge structure (not including water intake portion)		\$	7,087,624.80
Amount Federally Funded		\$	4,450,310.06
Amount Locally Funded		\$	2,637,314.74
Plus 4% Administration Fee:		\$	105,492.59
Plus 3% Legal Fee:		\$	79,119.44
Plus 4% Interest Fee:		\$	105,492.59
Plus 10% Contingency:		\$	263,731.47
Total Estimated Cost:		\$	3,191,150.83
City of Fargo:	25.00%	\$	797,787.71
City of West Fargo:	25.00%	\$	797,787.71
Cass County:	50.00%	\$	1,595,575.42

Water intake portion of the bridge structure		\$	1,781,943.60
Amount Federally Funded		\$	-
Amount Locally Funded		\$	1,781,943.60
Plus 4% Administration Fee:		\$	71,277.74
Plus 3% Legal Fee:		\$	53,458.31
Plus 4% Interest Fee:		\$	71,277.74
Plus 10% Contingency:		\$	178,194.36
Total Estimated Cost:		\$	2,156,151.76
City of Fargo:	100.00%	\$	2,156,151.76
City of West Fargo:	0.00%	\$	-
Cass County:	0.00%	\$	-

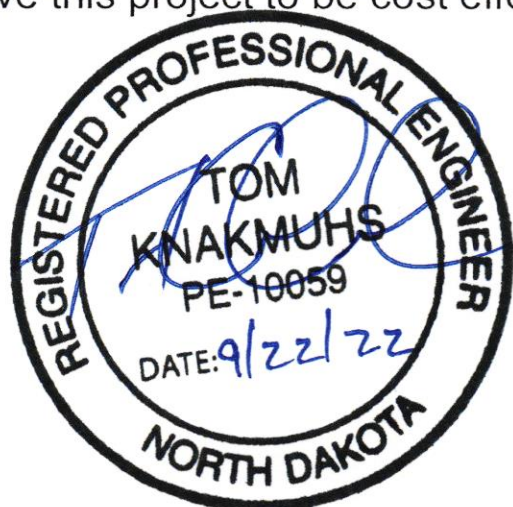
Water Mains		\$	33,270.00
Amount Federally Funded		\$	-
Amount Locally Funded		\$	33,270.00
Plus 4% Administration Fee:		\$	1,330.80
Plus 3% Legal Fee:		\$	998.10
Plus 4% Interest Fee:		\$	1,330.80
Plus 10% Contingency:		\$	3,327.00
Total Estimated Cost:		\$	40,256.70
City of Fargo:	100.00%	\$	40,256.70
City of West Fargo:	0.00%	\$	-
Cass County:	0.00%	\$	-


Project area east of the bridge		\$	5,613,083.56
Amount Federally Funded		\$	3,524,447.60
Amount Locally Funded		\$	2,088,635.95
Plus 4% Administration Fee:		\$	83,545.44
Plus 3% Legal Fee:		\$	62,659.08
Plus 4% Interest Fee:		\$	83,545.44
Plus 10% Contingency:		\$	208,863.60
Total Estimated Cost:		\$	2,527,249.50
City of Fargo:	40.00%	\$	1,010,899.80
City of West Fargo:	40.00%	\$	1,010,899.80
Cass County:	20.00%	\$	505,449.90

Miscellaneous Costs			
Right-of-Way and Easements:		\$	250,000.00
Utility Relocation		\$	150,000.00
Outside Engineering:		\$	1,679,825.00
Incentive		\$	-
Total Miscellaneous Costs:		\$	2,079,825.00
City of Fargo:		\$	956,719.50
City of West Fargo:		\$	561,552.75
Cass County:		\$	561,552.75
Federal Funds:		\$	-

Project Funding Summary			
Special Assessments - City of Fargo	11.02%	\$	2,174,857.22
Special Assessments - Cass Rural Water	0.20%	\$	40,256.70
Special Assessments - Water Utility	10.93%	\$	2,156,151.76
City of Fargo - Infrastructure Sales Tax	2.99%	\$	590,549.78
City of West Fargo	14.81%	\$	2,921,612.45
Cass County	14.43%	\$	2,846,368.80
Federal Funds	45.62%	\$	9,000,000.00
Total Estimated Project Cost		\$	19,729,796.71

We believe this project to be cost effective.




 Tom Knakmuhs, P.E.
 Assistant City Engineer