



## Highway Department

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### MEMORANDUM

TO: Cass County Commission

FROM: Jason Benson, County Engineer 

DATE: July 10, 2023

SUBJECT: Agenda Item for July 17<sup>th</sup>, 2023 Cass County Commission. Cass County, Durbin Township, and Harmony Township Memorandum of Understanding for 158<sup>th</sup> Ave SE (Cass County Highway 9)

Cass County Highway 9 currently runs north-south on the same section line on the south side of Interstate 94 in Harmony Township. Cass County understands that this segment of road has higher traffic volumes due to Cass County Highway 9 south of Interstate 94. Cass County Highway Department also routinely uses this roadway for hauling gravel from the Durbin area. Since Cass Highway 9 does not have on/off ramps at I-94, by adding these two miles north of I-94, it provides better connectivity to Cass Highway 10.

Due to these factors, in 2021 the Cass County Highway Department submitted the budget for 2022 that included subgrade repair of the two miles of Durbin Township and Harmony Township roads between I-94 and Cass Highway 10. This project was approved and started in 2022. Unfortunately, due to cement shortages in 2022, Cass County has completed improved gravel road maintenance on this segment of road in 2023.

Now that we have completed this maintenance, it is now appropriate to transfer these two miles to Cass County and designate them as Cass Highway 9. Due to the recent roadway improvement projects, the future maintenance costs of adding these two miles of road will be relatively low with adding gravel every few years and maintaining signs.

These MOUs have been discussed with both Durbin and Harmony Townships over the last year and they are fully supportive.

#### **SUGGESTED MOTION:**

Move to approve the Memorandum of Understandings between Cass County and Durbin Township for the transfer of 158<sup>th</sup> Ave SE to Cass County from I94 to 36<sup>th</sup> St SE and Cass County and Harmony Township for the transfer of 158<sup>th</sup> Ave SE to Cass County from 36<sup>th</sup> St SE to Cass Highway 10.



**CONTRACT APPROVAL**

**REQUIRED BY DEPARTMENT:**

DEPARTMENT: Highway Department      DATE OF REQUEST: 07-12-2023

COMPANY REQUESTING CONTRACT: Durbin Township and Harmony Township

BRIEF PROJECT DESCRIPTION: MOU for 158th Ave SE

   NEW CONTRACT    OR        CONTRACT RENEWAL

**REQUIRED BY STATE'S ATTORNEY OFFICE:**

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

STATE'S ATTORNEY COMMENTS:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**MEMORANDUM OF UNDERSTANDING REGARDING 158TH AVENUE  
SOUTHEAST FROM INTERSTATE 94 NORTH TO 36TH STREET SOUTHEAST**

This Memorandum of Understanding (“MOU”) is entered into between Durbin Township, a North Dakota political subdivision whose address is: Durbin Township Chair, 3797 160 ½ Avenue Southeast, Mapleton, ND 58059 (“Township”), 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 § 58-03-01 (Powers of Township) authorizes Townships 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**, Cass County will be completing improved gravel road maintenance on this mile segment of road in 2023. Cass County understands that this segment of road has higher traffic volumes due to Cass County Highway 9 south of Interstate 94. Cass County also routinely uses this roadway for hauling gravel from the Durbin area; and

**WHEREAS**, Cass County Highway 9 currently runs north-south on the same section line on the south side of Interstate 94 in Durbin Township; and

**WHEREAS**, Township and County wish to enter into this Agreement for the purpose of transferring control and establishing the parties’ responsibilities with respect to 158<sup>th</sup> Avenue Southeast from Interstate 94 to 36<sup>th</sup> Street Southeast (see Exhibit A); 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: Cass County will assume control of 158<sup>th</sup> Avenue Southeast from Interstate 94 to 36<sup>th</sup> Street Southeast. This road segment will be renamed as Cass County Highway 9; and

1. **Drainage**. The Parties agree that Cass County agrees and understands that it is responsible for drainage maintenance associated with 158<sup>th</sup> Avenue Southeast.
2. **Snow Removal**. The Parties agree that Cass County shall be responsible for snow removal on 158<sup>th</sup> Avenue Southeast and that Township shall have no responsibility for the same.
3. **Regrading, Paving, Maintenance, and Signs**. The Parties agree that Cass County shall be responsible for contracting and paying for any new grading, graveling, and paving of 158<sup>th</sup> Avenue Southeast. Cass County agrees to complete annual striping of this road along with other routine road maintenance. Cass County will maintain any existing or new signs installed along 158<sup>th</sup> Avenue Southeast.

4. Access Control. The Parties agree that Cass County shall manage access control per County regulations and shall be responsible for reviewing and approving all new access points immediately along 158<sup>th</sup> Avenue Southeast.
5. Right of Way Management and Utility Permitting. The Parties agree that Cass County shall be responsible for all Right of Way Management associated with and adjacent to 158<sup>th</sup> Avenue Southeast with the purpose of reviewing and approving locations of both private and public utilities.
6. Speed Limits. The Parties agree that Cass County shall have authority to establish the appropriate speed limit on 158<sup>th</sup> Avenue Southeast. Cass County agrees to provide approved speed limit signage in accordance with applicable standards.
7. Easements. The Parties agree that the Township will transfer to the County any and all of its easements along 158<sup>th</sup> Avenue Southeast to the County.
8. Date of Transfer of Control. The transfer of control and maintenance of 158<sup>th</sup> Avenue Southeast will occur on Monday, August 7, 2023.
9. Term. This Agreement will terminate upon legal transfer of control to the City of Casselton.
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 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.
11. 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 Durbin Township:

Durbin Township  
ATTN: Township Chair  
3797 160 ½ Avenue Southeast  
Mapleton, ND 58059

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.

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

13. 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.

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 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.

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 MOU.

17. 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.

18. 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.

19. 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.

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 MOU, and agree they have not been influenced by any representations or statements made by any other parties.

21. 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 \_\_\_\_\_, 2023.

DURBIN TOWNSHIP, NORTH DAKOTA, a  
political subdivision

By: \_\_\_\_\_  
Keith Gohdes, Chair

ATTEST:

\_\_\_\_\_  
Darin Gross, Township Clerk

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

CASS COUNTY, NORTH DAKOTA

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Chad Peterson, Board Chairman

ATTEST:

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Brandy Madrigga, Finance Director



**MEMORANDUM OF UNDERSTANDING REGARDING 158TH AVENUE  
SOUTHEAST FROM 36TH STREET SOUTHEAST NORTH TO CASS HIGHWAY 10**

This Memorandum of Understanding (“MOU”) is entered into between Harmony Township, a North Dakota political subdivision whose address is: Harmony Township Chair, 16005 33rd Street Southeast, Casselton, ND 58012 (“Township”), 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 § 58-03-01 (Powers of Township) authorizes Townships 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**, Cass County will be completing improved gravel road maintenance on this mile segment of road in 2023. Cass County understands that this segment of road has higher traffic volumes due to Cass County Highway 9 south of Interstate 94. Cass County also routinely uses this roadway for hauling gravel from the Durbin area; and

**WHEREAS**, Cass County Highway 9 currently runs north-south on the same section line on the south side of Interstate 94 in Harmony Township; and

**WHEREAS**, Township and County wish to enter into this Agreement for the purpose of transferring control and establishing the parties’ responsibilities with respect to 158<sup>th</sup> Avenue Southeast from 36<sup>th</sup> Street Southeast north to Cass Highway 10 (see Exhibit A); 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: Cass County will assume control of 158<sup>th</sup> Avenue Southeast from 36<sup>th</sup> Street Southeast to Cass Highway 10. This road segment will be renamed as Cass County Highway 9; and

1. Drainage. The Parties agree that Cass County agrees and understands that it is responsible for drainage maintenance associated with 158<sup>th</sup> Avenue Southeast.
2. Snow Removal. The Parties agree that Cass County shall be responsible for snow removal on 158<sup>th</sup> Avenue Southeast and that Township shall have no responsibility for the same.
3. Regrading, Paving, Maintenance, and Signs. The Parties agree that Cass County shall be responsible for contracting and paying for any new grading and graveling of 158<sup>th</sup> Avenue Southeast. Cass County will maintain any existing or new signs installed along 158<sup>th</sup> Avenue Southeast.

4. Access Control. The Parties agree that Cass County shall manage access control per County regulations and shall be responsible for reviewing and approving all new access points immediately along 158<sup>th</sup> Avenue Southeast.
5. Right of Way Management and Utility Permitting. The Parties agree that Cass County shall be responsible for all Right of Way Management associated with and adjacent to 158<sup>th</sup> Avenue Southeast with the purpose of reviewing and approving locations of both private and public utilities.
6. Speed Limits. The Parties agree that Cass County shall have authority to establish the appropriate speed limit on 158<sup>th</sup> Avenue Southeast. Cass County agrees to provide approved speed limit signage in accordance with applicable standards.
7. Easements. The Parties agree that the Township will transfer to the County any and all of its easements along 158<sup>th</sup> Avenue Southeast to the County.
8. Date of Transfer of Control. The transfer of control and maintenance of 158<sup>th</sup> Avenue Southeast will occur on Monday, August 7<sup>th</sup>, 2023.
9. Term. This Agreement will terminate upon legal transfer of control to the City of Casselton.
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 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.
11. 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 Harmony Township:

Harmony Township  
ATTN: Township Chair  
16005 33rd Street Southeast  
Casselton, ND 58012

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.

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

13. 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.

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 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.

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 MOU.

17. 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.

18. 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.

19. 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.

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 MOU, and agree they have not been influenced by any representations or statements made by any other parties.

21. 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 \_\_\_\_\_, 2023.

HARMONY TOWNSHIP, NORTH DAKOTA,  
a political subdivision

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

Tom Roden, Chair

ATTEST:

\_\_\_\_\_

John Zuther, Township Clerk

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

CASS COUNTY, NORTH DAKOTA

\_\_\_\_\_  
Chad Peterson, Board Chairman

ATTEST:

\_\_\_\_\_  
Brandy Madrigga, Finance Director

Exhibit A - 158th Ave MOU Cass Co & Durbin Twp

