# **Highway Department**

Telephone: 701-298-2370 Fax: 701-298-2395 SMB-HWY@casscountynd.gov

## **MEMORANDUM**

TO: Cass County Commission

FROM: Jason Benson, County Engineer

DATE: July 7, 2023

SUBJECT: Agenda Item for July 17<sup>th</sup>, 2023 Cass County Commission. Amended Cass County and Metro Flood Diversion Authority Memorandum of Understanding.

Cass County previously signed the original Memorandum of Understanding with a different intent for the Frontage Road recently acquired from NDDOT now known as County Road 40. The original design of the portion of the Frontage Road west of the Channel was to be reduced to a gravel road up until 166<sup>th</sup> Avenue Southeast with a gate and the east side of the Channel along the Frontage Road would end with Termination-T cul-de-sac at the work limits. A request was made by the Cass County Highway Department to change the design to keep the largest amount of the original asphalt road in place with Termination Branches situated on either side. This request was accepted and will be reflected in the project work along the Channel. The amended Memorandum of Understanding shows the changes in the Exhibit E plan sheets.

Another change from the original Memorandum of Understanding was a design description change to a specific standard for the bridge barrier rail. This request from the Cass County Highway Department was made due to the standard is now being utilized on County bridges but was not at that the time the original was signed.

Both changes benefit Cass County. The first change along the Frontage Road saves Cass County on maintenance costs and the second change increases safety along the bridges.

## **SUGGESTED MOTION:**

Move to approve the Amended Cass County and Metro Flood Diversion Authority Memorandum of Understanding.







# **CONTRACT APPROVAL**

# **REQUIRED BY DEPARTMENT:**

DEPARTMENT: Highway Department	DATE OF REQUEST:	07-12-2023
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COMPANY REQUESTING CONTRACT: \_\_\_\_\_ Diversion Authority

BRIEF PROJECT DESCRIPTION: Amendment to MOU

× NEW CONTRACT OR \_\_\_\_CONTRACT RENEWAL

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

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

STATE'S ATTORNEY COMMENTS:







**Execution Version** 

#### FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING

#### **BY AND BETWEEN**

#### METRO FLOOD DIVERSION AUTHORITY

AND

CASS COUNTY, NORTH DAKOTA

Dated as of \_\_\_\_\_, 2023

**Relating to:** 

A First Amendment to the Memorandum of Understanding outlining roles and responsibilities for the design, construction, and relocation of road facilities in conjunction with the Storm Water Diversion Channel and Associated Infrastructure of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.

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

#### FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING

THIS FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING (the "First Amendment") is made and entered into this \_\_\_\_\_\_ day of \_\_\_\_\_\_, 2023 (the "Effective Date"), by and between METRO FLOOD DIVERSION AUTHORITY, a political subdivision of the State of North Dakota (the "Authority"), and CASS COUNTY, NORTH DAKOTA, a political subdivision and home rule county of the State of North Dakota (the "County").

**WHEREAS**, construction of the locally preferred plan for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the "Comprehensive Project") at the Fargo, North Dakota, and Moorhead, Minnesota, metropolitan area was authorized by Section 7002(2) of the Water Resources Reform and Development Act of 2014, Public Law 113-121; and

**WHEREAS**, the Authority is the local sponsor responsible for delivering the Comprehensive Project; and

**WHEREAS**, on December 17, 2020, the Authority and the County entered into a Memorandum of Understanding (the "MOU") outlining the roles and responsibilities of the Parties for the SWDCAI of the Comprehensive Project; and

**WHEREAS**, the Authority and the County now desire to enter into this First Amendment to modify some of the terms of such roles and responsibilities.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements made herein, the Authority and the County agree as follows:

1. <u>Amendments</u>. The Parties agree to amend the MOU as set forth in this paragraph. Text that is <u>underlined</u> indicates an addition to the MOU and text that has a <del>strikethrough</del> indicates a deletion to the MOU.

A. Section 6.04 of the MOU is amended as follows:

**Section 6.04**. FRONTAGE ROAD. Between 166th Avenue Southeast and the SWDCAI38th <u>Street West</u>, the Authority will convert the Frontage Road to a minimum maintenance road by reclaiming/milling the existing asphalt and adding four (4) inches of gravel. The Authority will install a road closure gate on the east side of the 166th Avenue Southeast intersection per NDDOT Standard Drawing D900-3. On the east side of the SWDCAI, the Authority will dead end the Frontage Road and will construct a T-Type cul-de-sac for a single unit vehicle as shown in Figure 5-1G of the AASHTO A Policy on Geometric Design of Highways and Streets. The cul-de-sac will have a minimum of 7 inch HBP FAA-42 Superpave and 4 inch HBP FAA-42 Superpave shoulders. The Authority will provide end-of-road object markers and advance warnings signs per the FHWA Manual of Uniform Traffic Control Devices construct improvements in accordance with BU-R22 – 37th St SE East of the Diversion Channel and BU-R23 – 37th St SE West of the Diversion Channel design documents, attached hereto as Exhibit E.

B. Exhibit D to the MOU is hereby modified as shown on the attached Exhibit D.

C. Exhibit E attached to this First Amendment is incorporated into the MOU as Exhibit E.

2. <u>Governing Law</u>. This First Amendment will be construed and enforced in accordance with North Dakota law.

3. <u>Survival of Agreement</u>. If any court of competent jurisdiction finds any provision or part of this First Amendment is invalid, illegal, or unenforceable, that portion will be deemed severed from this First Amendment, and all remaining terms and provisions of this First Amendment will remain binding and enforceable, and the Parties' obligations under this First Amendment will remain binding and enforceable.

4. <u>Entire Agreement</u>. This First Amendment, along with the MOU, and any other related documents, as well as any amendments to those agreements and documents, constitutes the entire agreement between the Parties regarding the matters described in this First Amendment.

5. <u>Modifications</u>. Any modifications or amendments to this First Amendment must be in writing and signed by all Parties of this First Amendment.

6. <u>Binding Effect</u>. The covenants, terms, conditions, provisions, and undertakings in this First Amendment, or in any amendment thereto, will be binding upon the Parties' permitted successors and assigns.

7. <u>Representation</u>. The Parties, having been represented by counsel or having waived the right to counsel, have carefully read the contents of this First Amendment and agree they have not been influenced by any representations or statements by any other parties.

8. <u>Headings</u>. Headings in this First Amendment are for convenience only and will not be used to interpret or construe its provisions.

9. <u>Electronic Signatures</u>. The Parties agree that an electronic signature to this First Amendment shall be valid as an original signature of the Party and shall bind the signatories of this MOU.

**IN WITNESS WHEREOF**, the Authority and the County caused this First Amendment to be executed.

(Remainder of page intentionally left blank.)

## Signature Page for Metro Flood Diversion Authority

The Governing Body of the Metro Flood Diversion Authority approved this First Amendment on the \_\_\_\_\_ day of \_\_\_\_\_\_, 2023.

# METRO FLOOD DIVERSION AUTHORITY

By:

Dr. Timothy J. Mahoney, Chair

By:

Joel Paulsen, Executive Director

ATTEST:

Dawn Lindblom, Secretary

## Signature Page for Cass County, North Dakota

The Governing Body of Cass County, North Dakota, approved this First Amendment on the \_\_\_\_\_ day of \_\_\_\_\_\_, 2023.

## CASS COUNTY, NORTH DAKOTA

By:

Chad M. Peterson, Chairman of the Board of County Commissioners

ATTEST:

Brandy Madrigga, County Finance Director

#### **EXHIBIT D**

#### **BRIDGE DESIGN CRITERIA**

- 1. Design and construct Bridges in accordance with the following:
  - A. AASHTO LRFD Bridge Design Specifications
  - B. NDDOT Design Manual Chapters IV and V
  - C. NDDOT Standard Specifications for Road and Bridge Construction

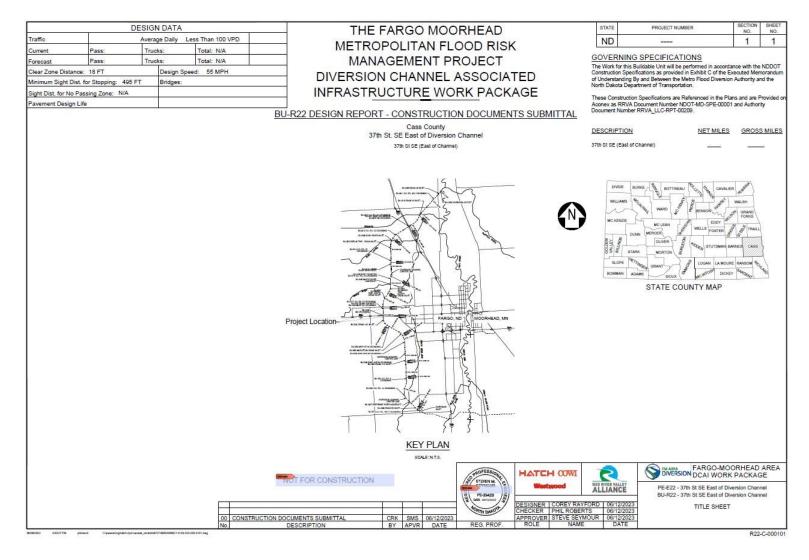
For cases where AASHTO specifications conflict with NDDOT standards and policies, the NDDOT standards and policies take precedence.

- 2. Bridge requirements:
  - A. Provide a minimum one (1) foot clearance between the 1.0 percent ACE (100-year) Red River Peak Design Flow water surface elevation and the bottom of the lowest girder flange or appurtenance within each bridge span.
  - B. Permissible bridge types are as follows:
    - a. Pre-stressed concrete I girder
    - b. Steel plate girders
    - c. Wide flange rolled girders
    - d. Cast-in-place and precast concrete box culverts
  - C. Bridges utilizing fracture critical members are not allowed.
  - D. Design and construct Bridges with concrete decking.
  - E. Design bridges on "straight" or tangent sections. Horizontal curves or curve transitions are not permitted in the geometric design.
  - F. Design and construct bridges with a steel H pile foundation in which the piles are driving to the required bearing capacity.
  - G. Design and construct bridges with 1" expansion joints at each bridge end in accordance with NDDOT *CADD Standard Drawing D550-04 Transverse Expansion Joint Detail.*
  - H. Obtain an individual bridge number for each structure from NDDOT; include this bridge number on design and plan sheets.

I. Design and construct concrete bridge barrier rail with a Kansas Corral Rail an open style concrete railing that is rated TL-3 or better under MASH 2016 in compliance with the Technical Requirements.

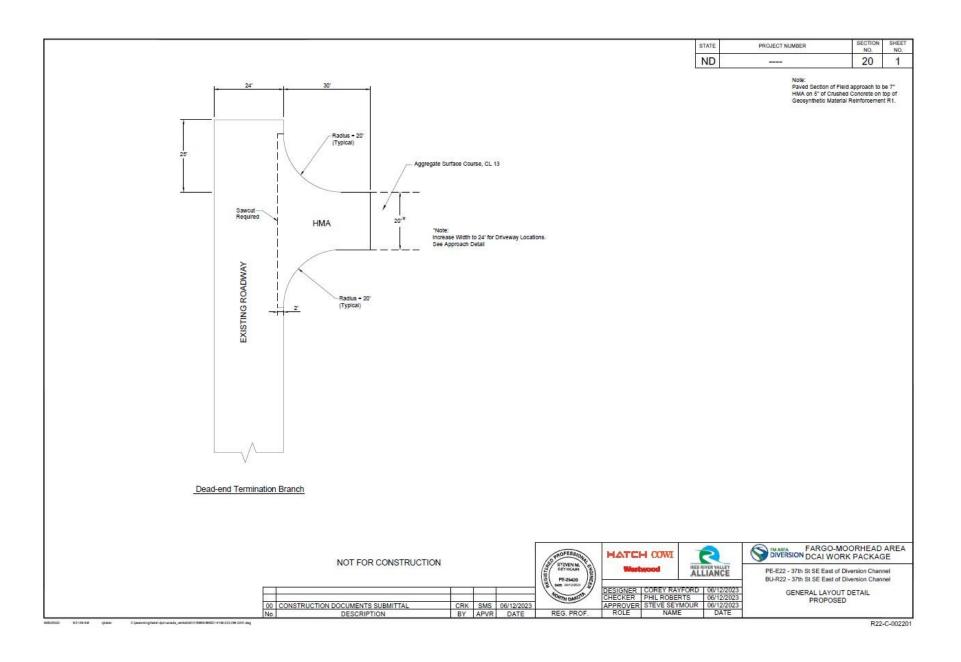
#### EXHIBIT E

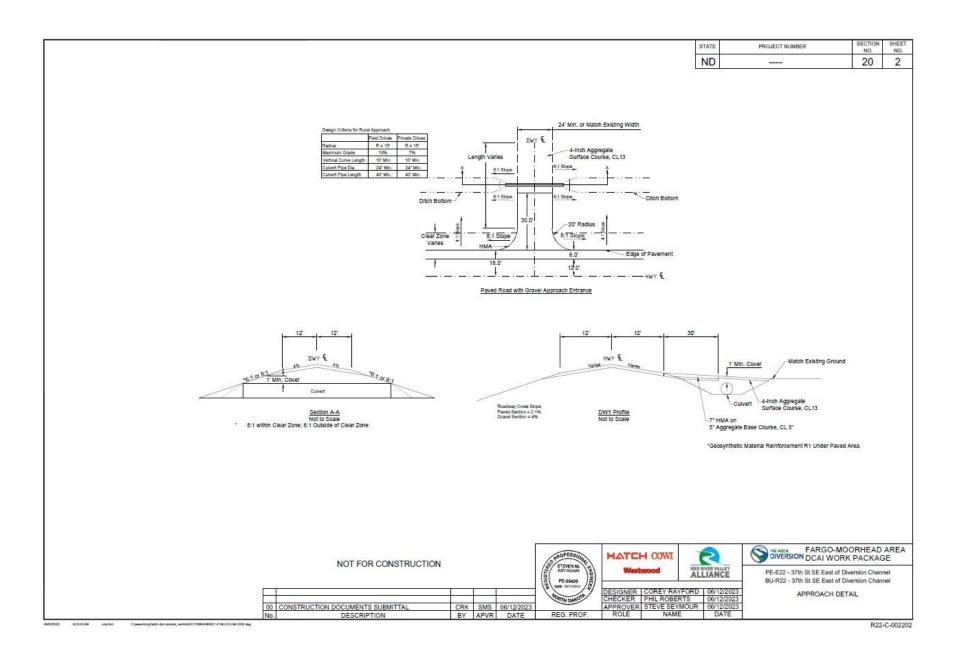
#### **BU-R22 AND BU-R23 DESIGN REPORTS**

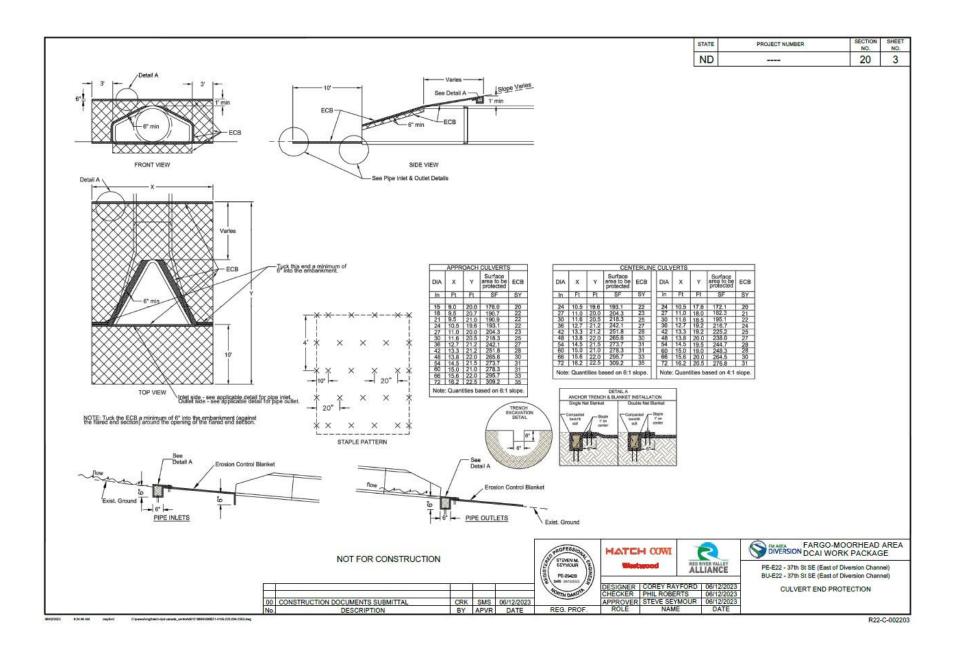


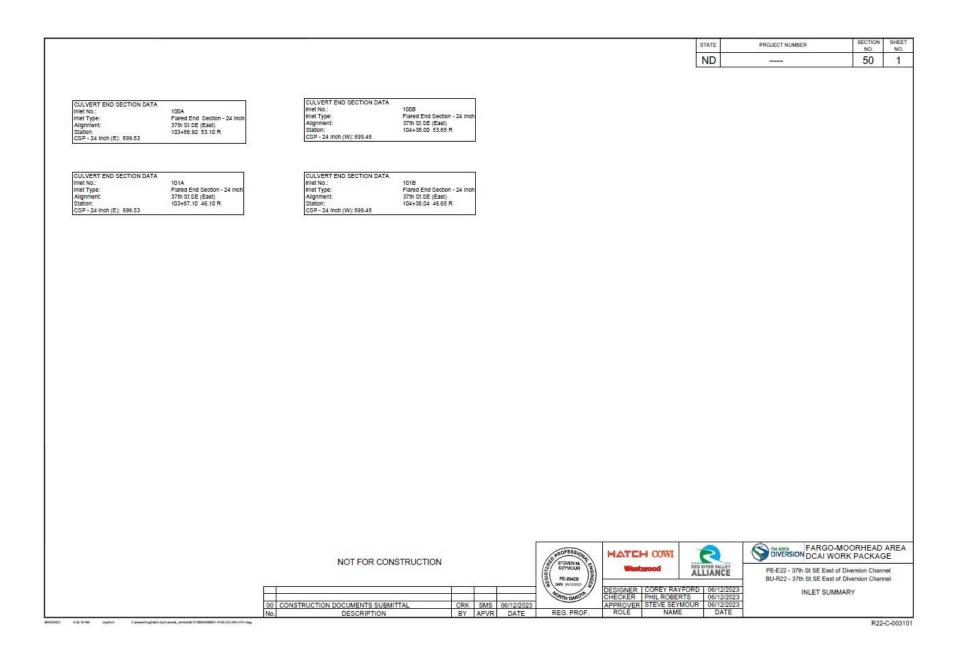
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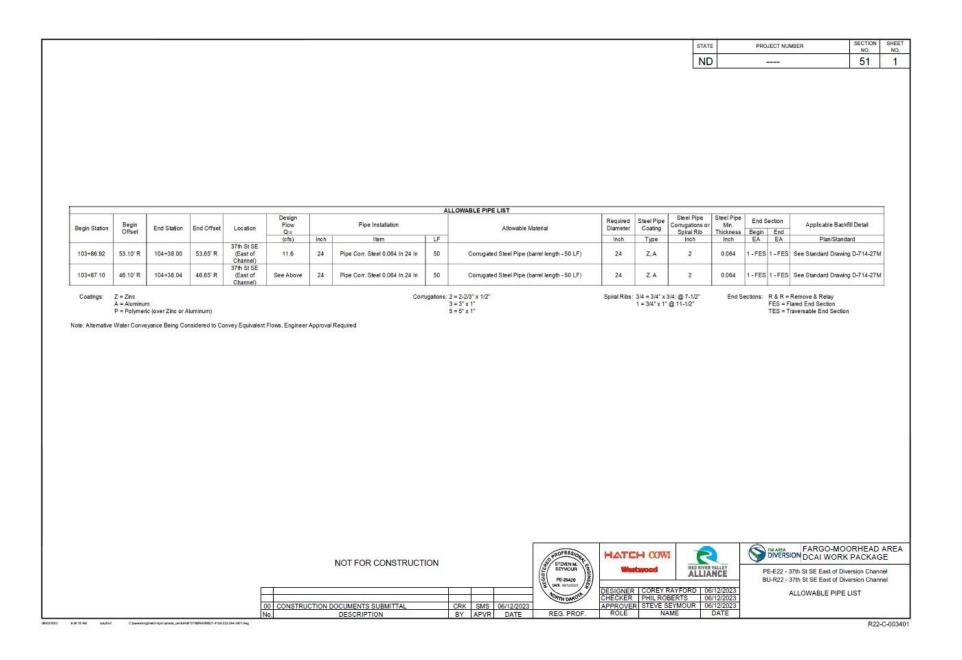
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	SOIL INFORMATION AND BORING LOGS: Bore locations are referenced on the Section 4 Scope of Work plan sheets. Additional soil information including bore logs can be found in the project Geotechnical Design Report.		MULCHING: All excavation and embankment areas shall be stabilized with mulch after the completion of the earth moving operations.				
202-P01	REMOVE AGGREGATE MATERIALS: This item shall include the salvaging or removal of aggregate material at locations shown in Section 40 of the plans. Upon salvaging or removal the material	430-P01	HMA: The 7" hot bituminous pavement to be placed on the field approach shall be paver laid in 3 lifts. The first lift shall be 2.5" thick, the second lift shall be 2.5" thick, and the third lift shall be 2" thick.				
	becomes property of the contractor. If salvaging, material must meet requirements of Section 816 of the NDDOT Standard Specification as executed in the Memorandum of Understanding for the Metro Flood Diversion Authority Project.	704-P01	MAINTAINING ACCESS: The contractor shall be responsible for providing continuous access to all residential dwellings and business establishments along and adjacent to this project. The contractor will be responsible for coordinating and communicating with adjacent taidowners and residents regarding access control at the site.				
	COMPACTION AND DENSITY CONTROL: Compaction and density controls shall be in accordance with Section 203.4 E.2.b of the specification, "ND T-99" for day embankment material and "ND T-160" for granular embankment material. Manipulate embankment material with disking equipment.	950-P01	UTILITY COORDINATION: Coordinate all utility relocation, lowering, and adjustments to finished grade with utility owner including adjustments to all handholes, pedestais, and appurtenances. Maintain minimum 4' cover death with cover death for water mains to be 7.5' minimum. Roadway				
	ROADWAY OBLITERATION: Limits of the roadway obliteration are as detailed in Section 40 of the plans. The work associated with this litem shall include removal of base aggregate and topsol within the existing roadway and rotation distributions are regarding of the roadway and rothes to match existing grades adjacent to the area while maintaining drainage. Existing ditching will remain where continuity of the drainage is needed. Remove a minimum of 30 for elel neght of the roadbed beyond the proposed roadway limits to a depth of 2 feet below the existing road grade.		Manifain Infinitiani 4 cover deput will cover deput to water mans to be 7.5 membran. Rodoway crossings to be installed in conduit meeting the utility owner requirements.				
203-P02	ROADWAY EMBANKMENT: The road embankment for the dead-end terminations will consist of clay fill sourced from the Sherrack formation as excavated from the Diversion Channel excavation work.						
	ROADWAY SUBGRADE PREPARATION AND PROOF ROLLING: All subgrade areas to receive fill materials shall be inspected and approved by the Contractor. Fill materials shall not be placed on unstable or soft surfaces; in addition, the subgrade surface shall be free of ponding water, not frozen, or covered with snow or ice. Subgrades for roadways embankments and levees shall be proof rolled as noted below.						
	The proof rolling shall be performed on the exposed subgrade, free of surface water which would promote degradation of the subgrade. The test shall be a single pass for every 10 of roadway width including shoulders, for the full length of the roadway embankment alignment. Acceptable equipment type are dump truck, articulated truck, scraper loaded with 4 cubic yards of soil or a minimum of 15 tons of material, pneumabit there tonier (for cohesive soil subgrades) or a steel-wheeled roller (for cohesionises soil subgrades), or other equipment as accepted by the geotechnical engineering representative.						
	The proof rolling equipment shall operate systematically to ensure that the equipment has passed over all areas, and at speeds between 2.5 and 5.0 miles per hour. The subgrades shall be considered acceptable if 2 inches or less of deflection (i.e., that includes both recoverable and non-recoverable deformation) for new construction and 1.2 nch deflection for re-constructed or stabilized subgrade, as well as no pumping and cracking, is observed during the proof rolling activities. All proof rolling activities will be performed in the presence of a geotechnical engineering representative.						
	Unstable ground conditions shall be addressed as directed by the geotechnical engineering representative and accepted by the Engineer of Record.						
	CONTROL OF SURFACE WATER: The Contractor shall be responsible for managing the control of surface water onto and off the work areas such that it does not interfere with performing the Work as required by the Design and Construction requirements. The Contractor shall put in pace water management procedures to intercept all points or areas of surface water and overtand flow that may un-onto the projectivon areas. Off-site surface water run-on shall be diverted through or around the project work areas in a way that does not introduce construction related pollution, sedimentation, or erosion.						
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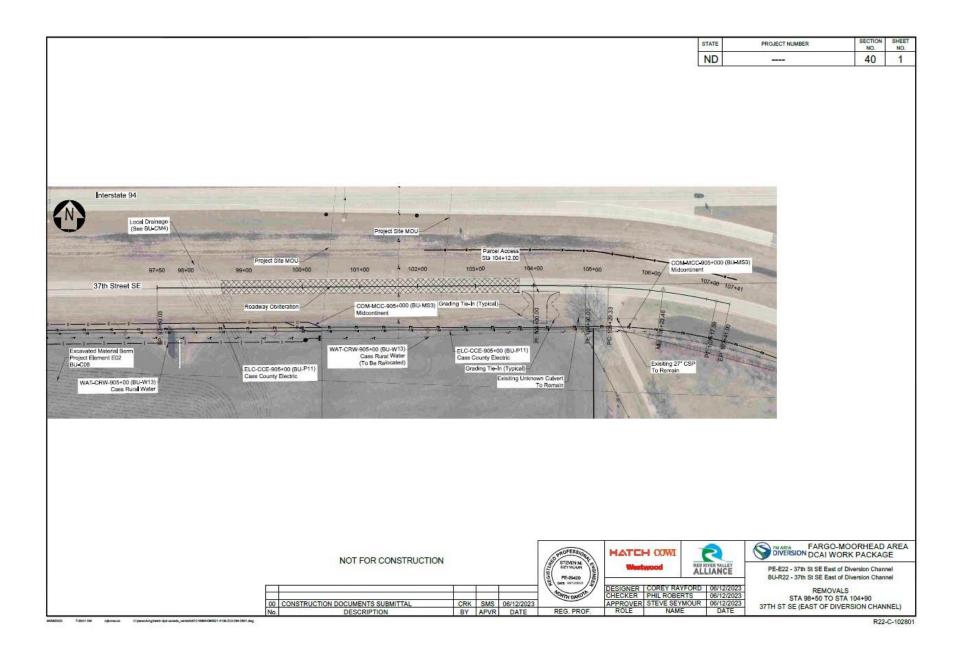


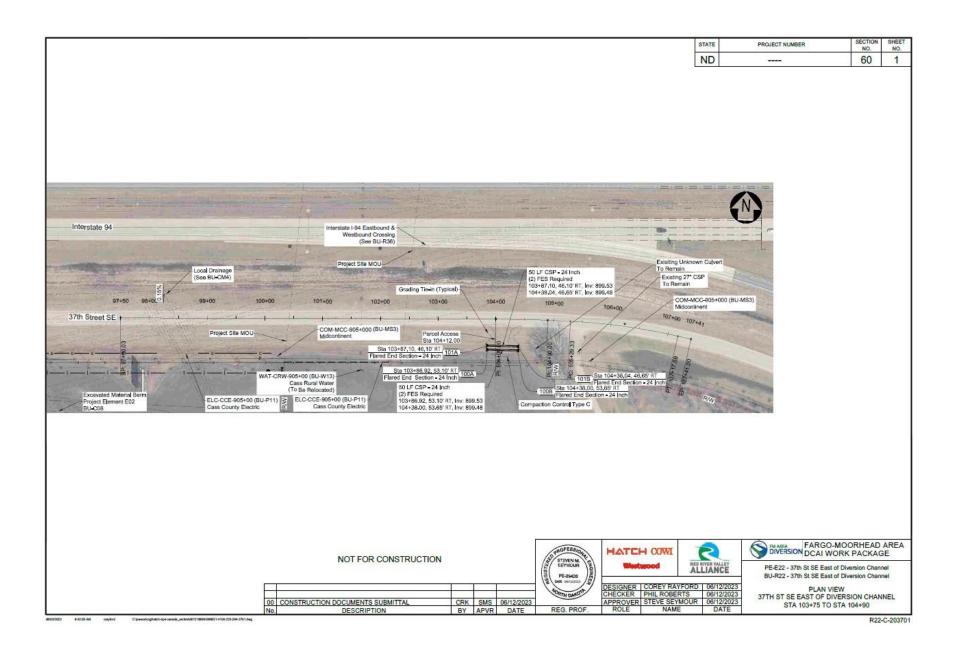


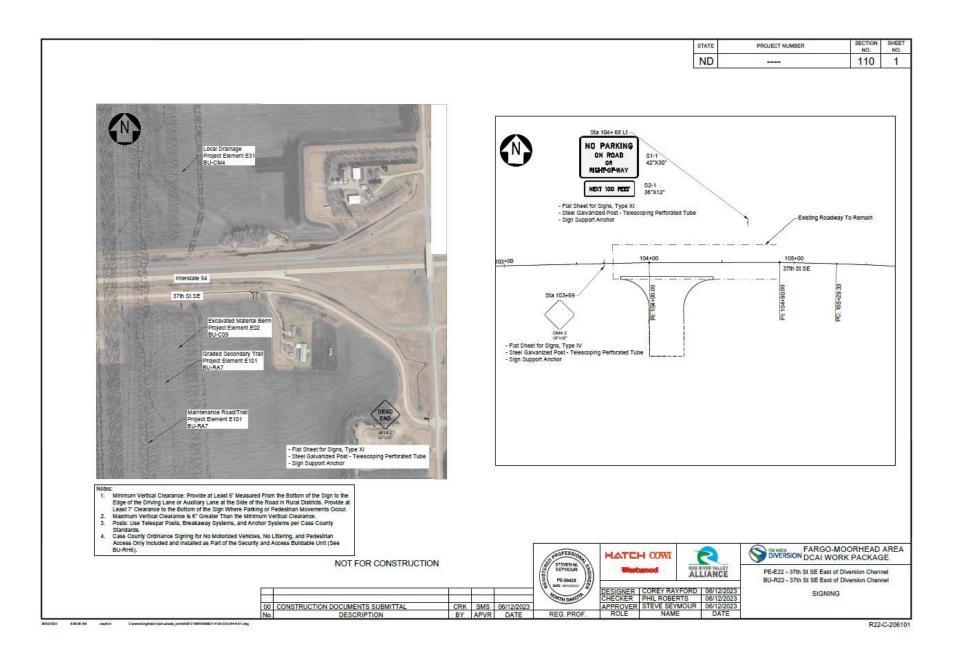


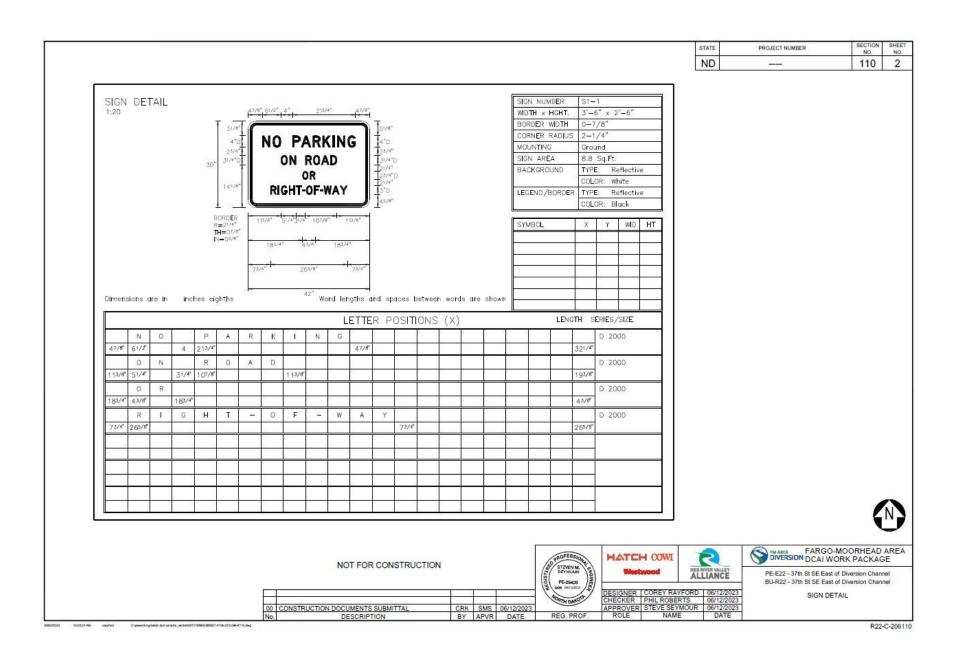


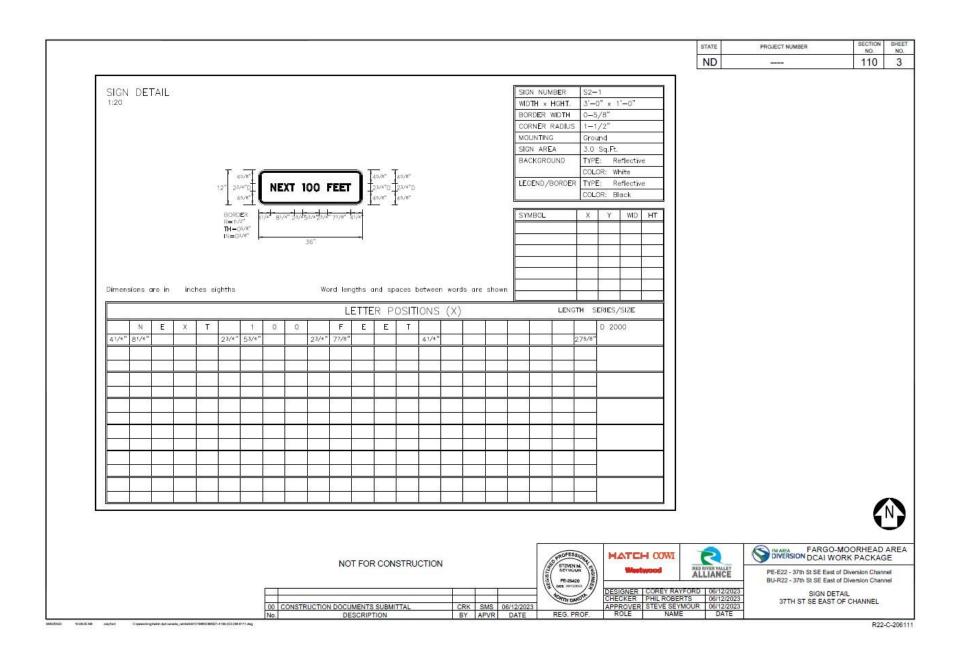
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rse - \$79" 48" 28.16"E Dist: 23.4121"	NOT FOR CONSTRUCTION	gent Data							
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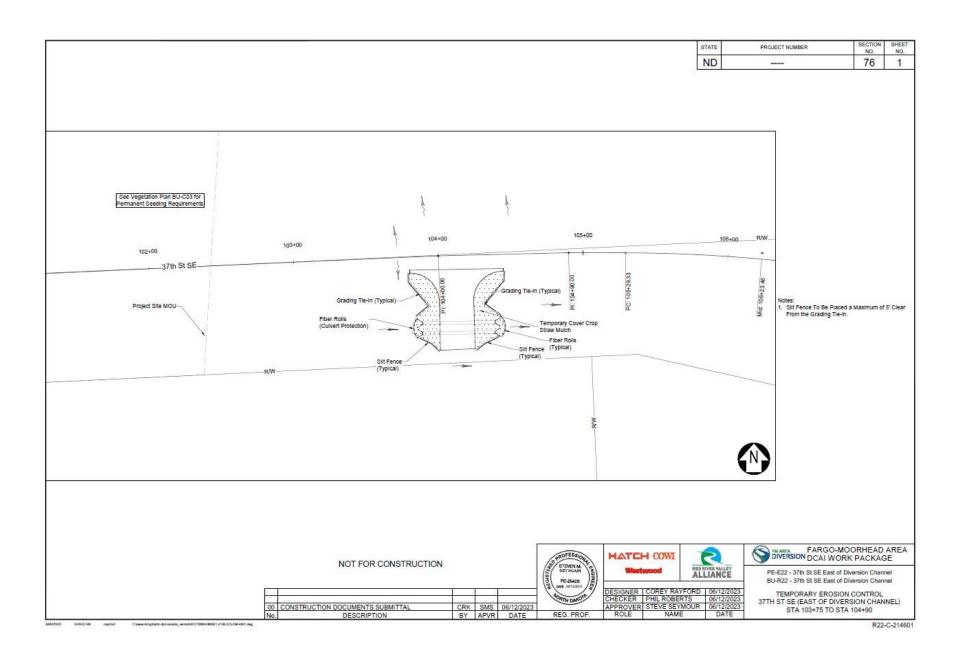


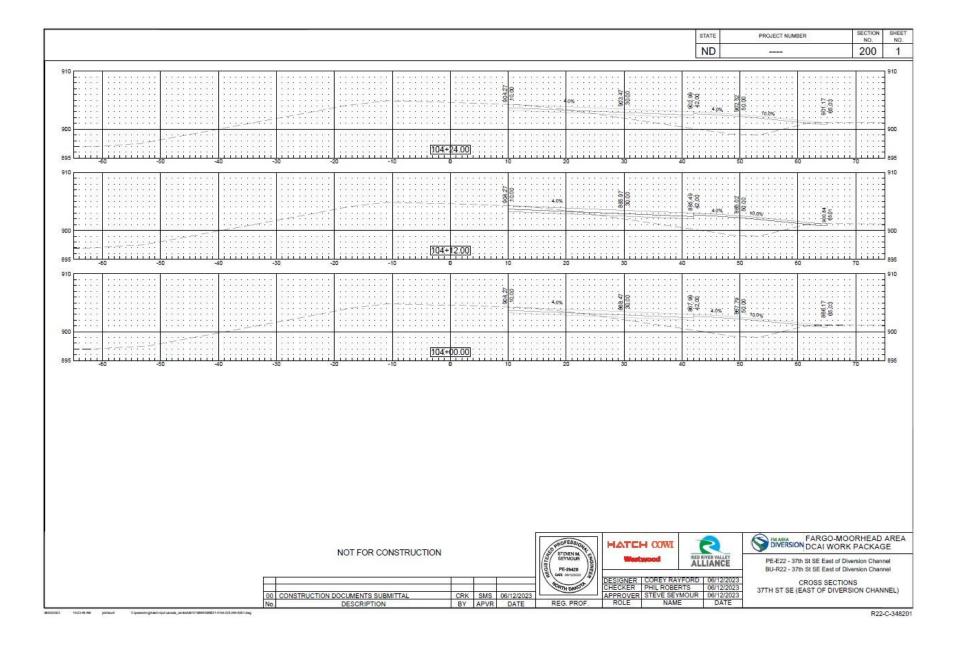


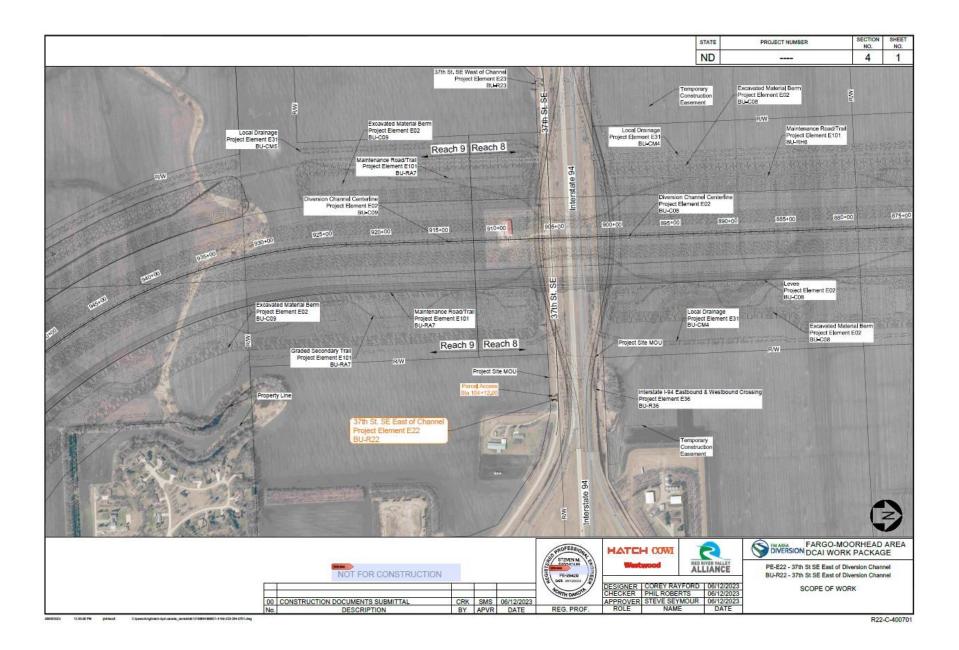












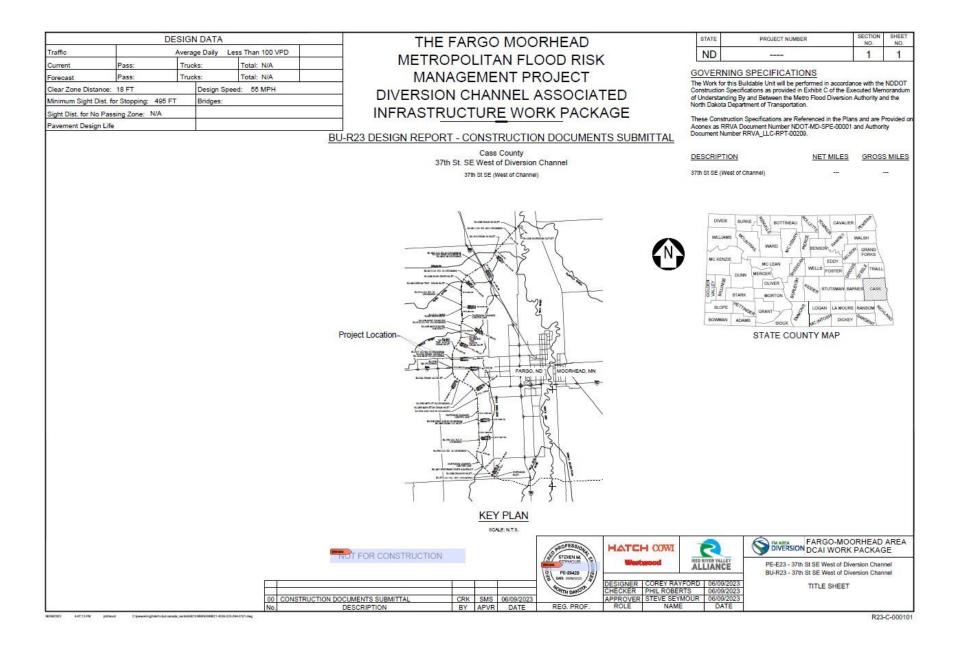
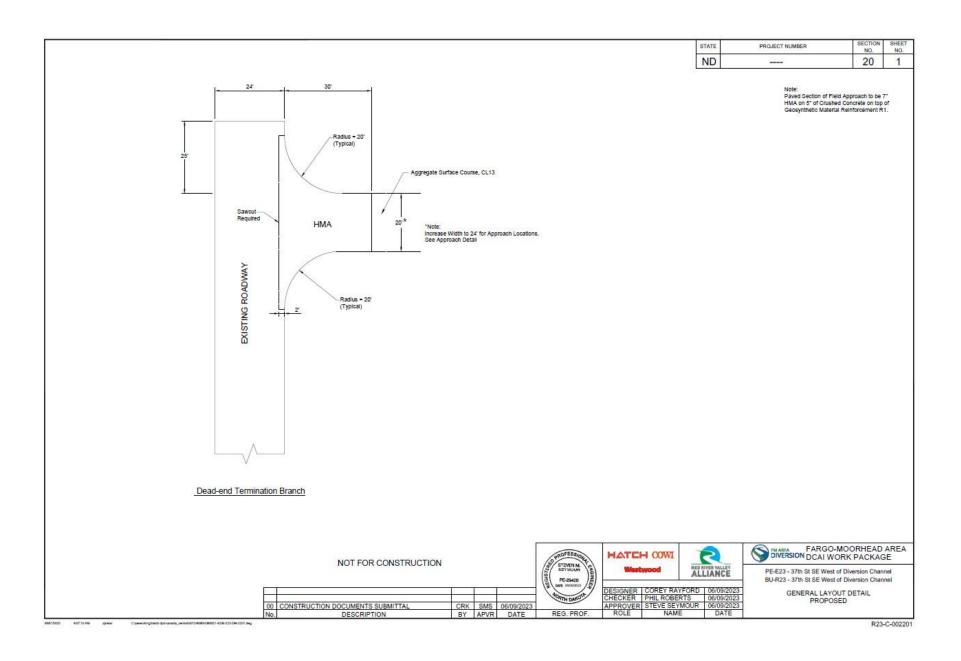
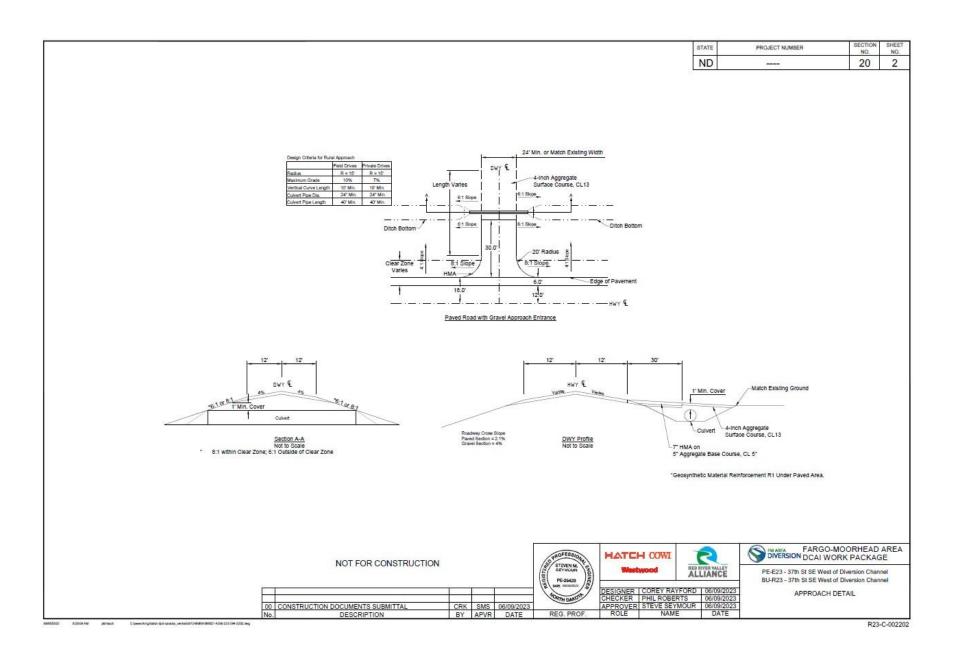
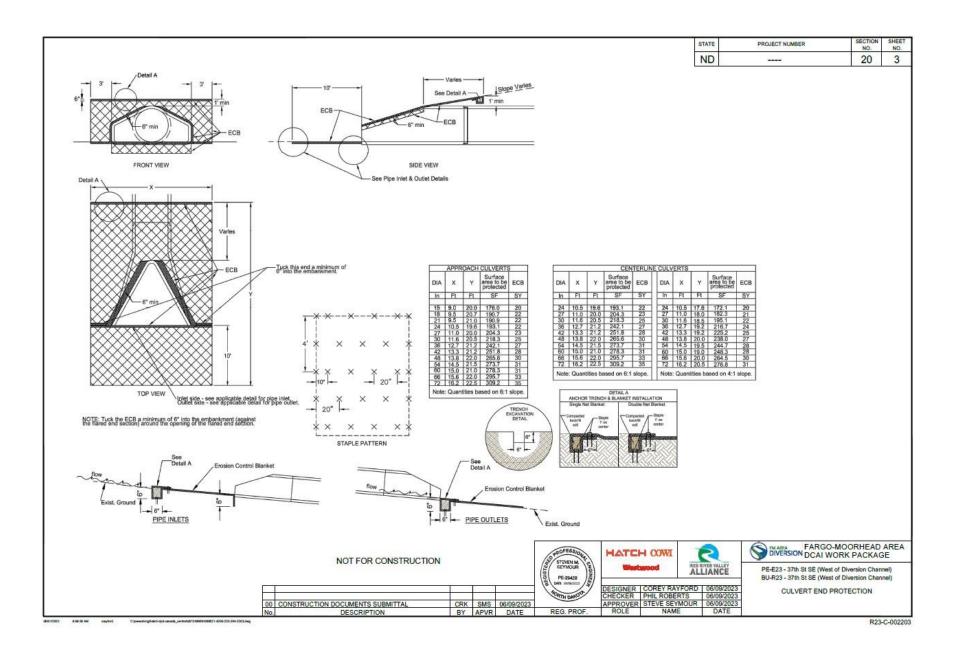


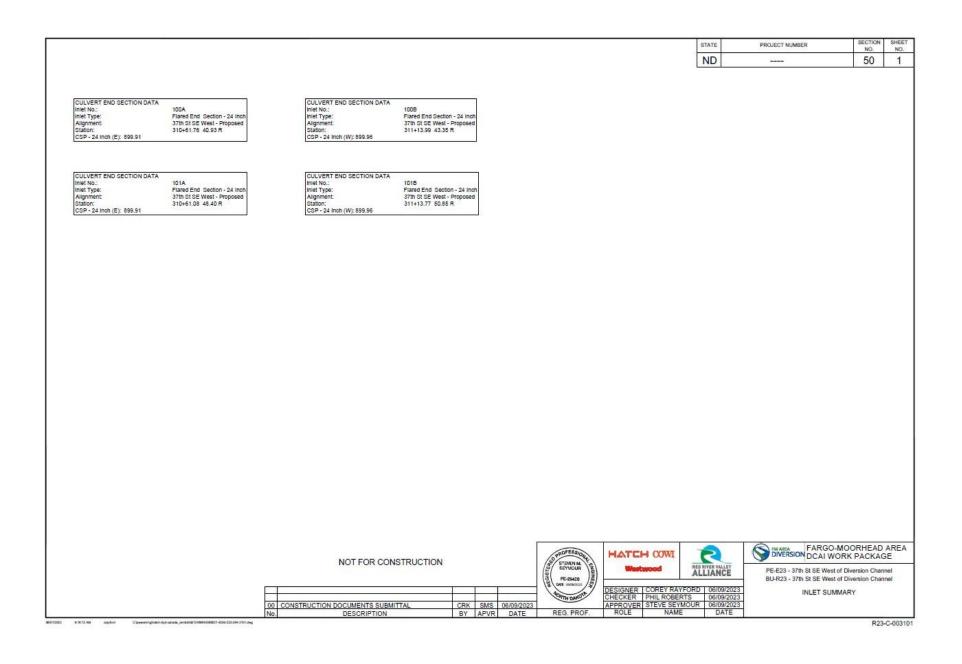
				TABLE OF CO	ONTENTS		ND STATE	PROJECT NUMBER	NO.
Section 1 2 4 6 20 40	1 1 1 1-3 1	PLAN SECTIO Description Cover Sheet Table of Contents Scope of Work Notes General Details Removals	NS		<u>Standard No</u> D101-01 D101-02 D101-03 D101-04 D101-20 D101-21	STANDARD DRAN Description NDDOT Abbreviations NDDOT Abbreviations NDDOT Abbreviations NDDOT Abbreviations Line Styles	WING LIST		
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	<u>- NC</u>	DTES					
102-P01	SOIL INFORMATION AND BORING LOGS: Bore locations are referenced on the Section 4 Scope of Work plan sheets. Additional soil information including bore logs can be found in the project Geolechnical Design Report.	253-P01	MULCHING: All excavation and embankment areas shall be stabilized with mulch after the completion of the earth moving operations.				
202-P01	REMOVE AGGREGATE MATERIALS: This item shall include the salvaging or removal of aggregate material at locations shown in Section 40 of the plans. Upon salvaging or removal the material	430-P01	HMA: The 7" hot bituminous pavement to be placed on the field approach shall be paver laid in 3 lifts. The first lift shall be 2.5" thick, the second lift shall be 2.5" thick, and the third lift shall be 2" thick.				
	becomes properly of the contractor. If salvaging material must meet requirements of Section 516 of the NDOOT Standard Specification as executed in the Memorandum of Understanding for the Metro Flood Diversion Authority Project.	704-P01	MAINTAINING ACCESS: The contractor shall be responsible for providing continuous access to all redidential dwellings and business establishments along and adjacent to this project. The contractor will be responsible for coordinating and communicating with adjacent landowners and residents regarding access control at the site.				
203-360	COMPACTION AND DENSITY CONTROL: Compaction and density controls shall be in accordance with Section 203.4 £.2.b of the specification, "ND T-99" for clay embankment material with disking equipment. - 169" for granular embankment material. Manpluate embankment material with disking equipment.	950-P01					
	ROADWAY OBLITERATION: Limits of the roadway obliteration are as detailed in Section 40 of the plans. The work associated with this item shall include removal of base aggregate and topsoil within the existing roadbed and roadsile dithesis, and lengrading of the roadway and dithesis to match existing grades adjacent to the area while maintaining drainage. Existing ditahing will remain where continuity of the drainage is needed. Remove a minimum of 50 teel length of the roadbed beyond the proposed roadway limits to a depth of 2 feet below the existing road grade.		crossings to be installed in conduit meeting the utility owner requirements.				
	ROADWAY EMBANKMENT: The road embankment for the dead-end terminations will consist of clay fill sourced from the Sherrack formation as excavated from the Diversion Channel excavation work.						
	ROADWAY SUBGRADE PREPARATION AND PROOF ROLLING: All subgrade areas to receive fill materials shall be hispected and approved by the Contractor. Fill materials shall not be placed on unstable or sol surfaces, in addition, the subgrade surface shall be free of ponding water, not if ocen, or covered with snow or loe. Subgrades for roadways embankments and levees shall be proof rolled as noted be/ow.						
	The proof rolling shall be performed on the exposed subgrade, free of surface water which would promote degradation of the subgrade. The test shall be a single pass for every 10° of roadway width including anoulders, for the full engly of the roadway entionarkment alignment. Acceptate equipment, type are dump truck, articulated truck, scrager loaded with 4 cubic yards of soil or a minimum of 15 tons of material, pneumatic time for other grade we soil subgrades) or a site-immediate flor ochesioniess soil subgrades), or other equipment as accepted by the geotechnical engineering representative.						
	The proof rolling equipment shall operate systematically to ensure that the equipment has passed over all areas, and at speeds between 2.5 and 5.0 miles per hour. The subgrades shall be considered acceptable if 2 inches or ites of deflection (i.e., that includes both recoverable and non-recoverable deformation) for new construction and 1/2 inch deflection for re-constructed or stabilized subgrade, as well as no pumping and tracking, is observed during the proof rolling activities. All proof rolling activities will be performed in the presence of a geotechnical engineering representative.						
	Unstable ground conditions shall be addressed as directed by the geotechnical engineering representative and accepted by the Engineer of Record.						
	CONTROL OF SURFACE WATER: The Contractor shall be responsible for managing the control of surface water onto and of the work areas such that it does not interfere with performing the Work as required by the Design and Construction requirements. The Contractor shall put in pace water management procedures to intercept all points or areas of surface water and overland flow that may uni-onto the projectivork areas. Of-selie surface water run-on table to diverted frougen or anound the project work areas in a way that does not introduce construction related pollution, sedimentation, or erosion.						
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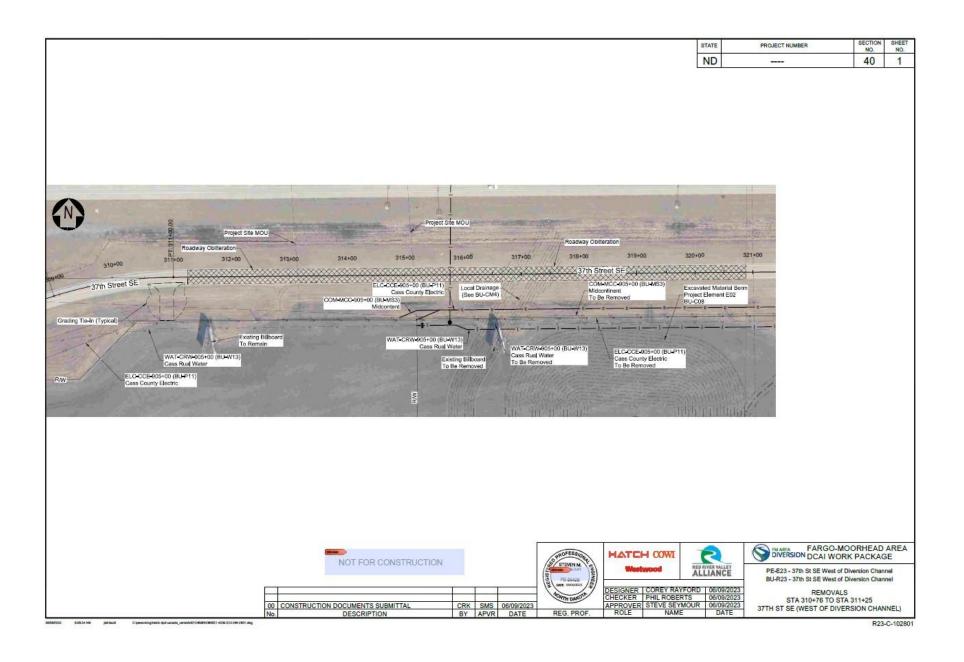


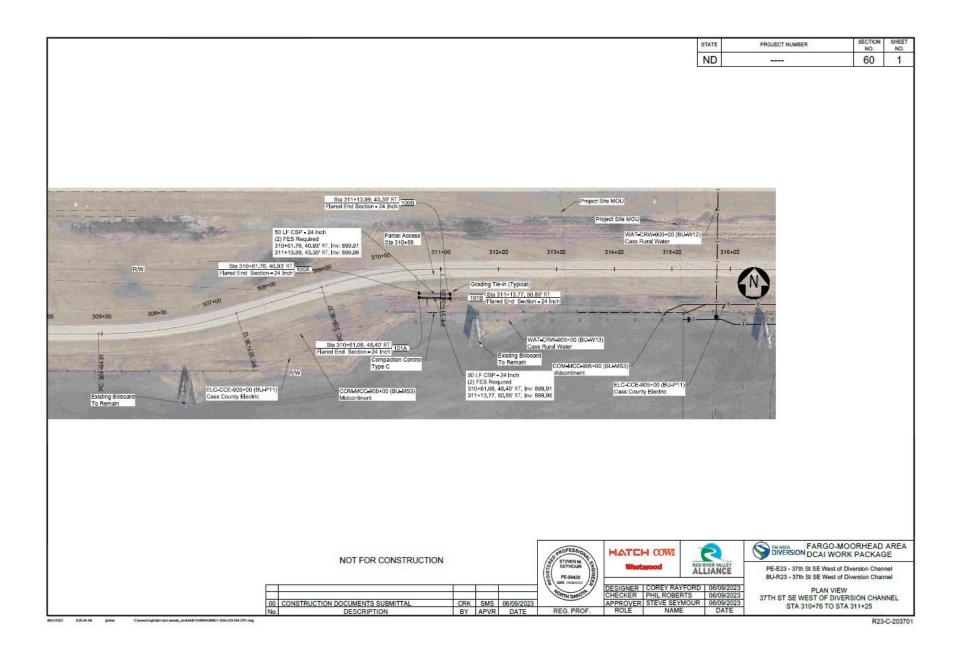


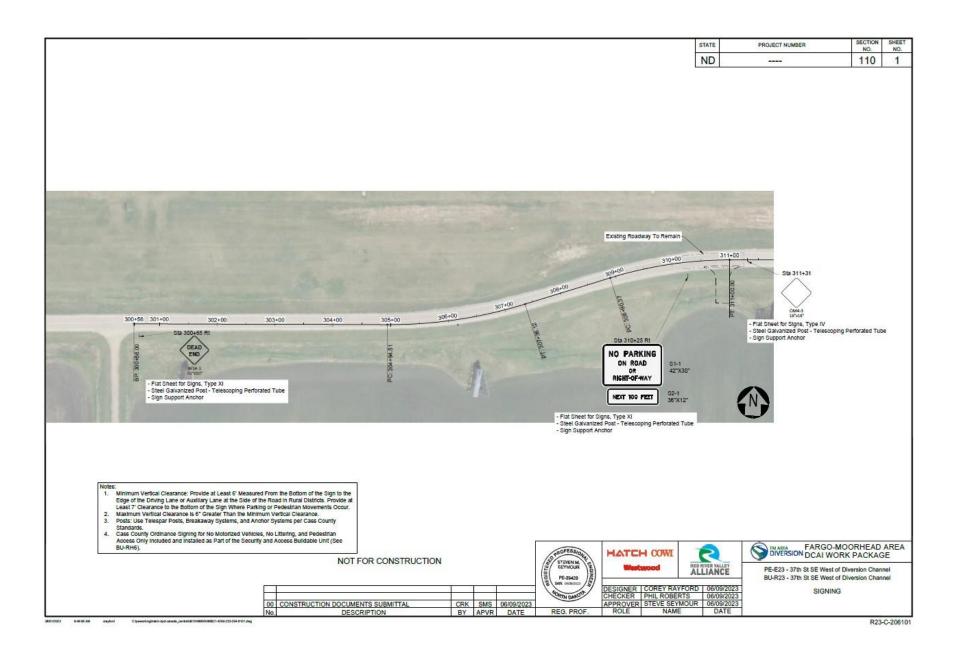


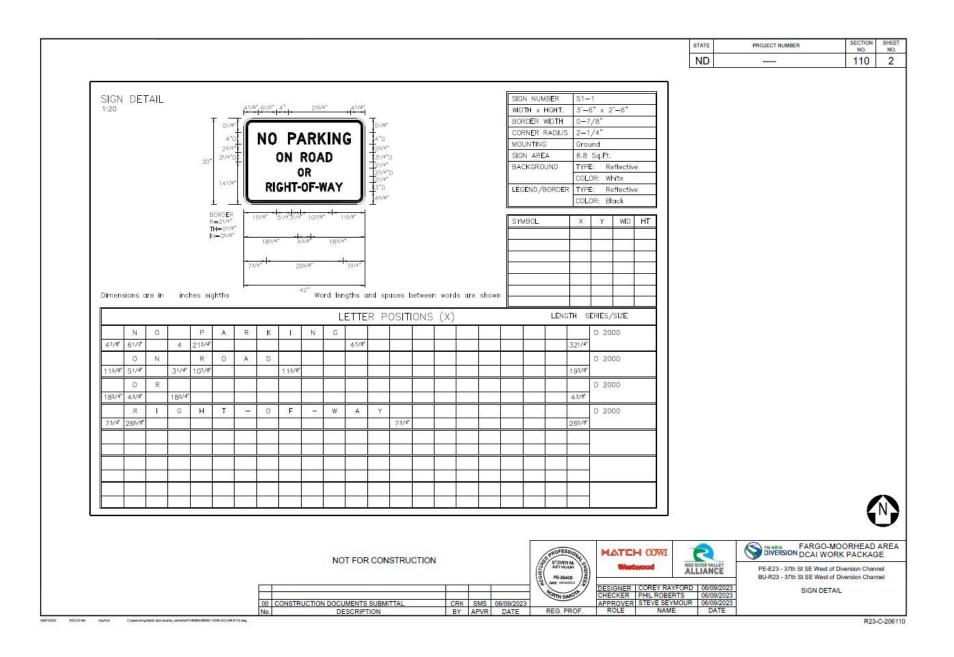
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									LOWABLE PIPE LIST						10
Begin Station	Begin Offset	End Station	End Offset	Location	Design Flow Q10		Pipe Installation		Allowable Material	Required Diameter	Steel Pipe Coating	Steel Pipe Corrugations or Spiral Rib	Thickness	End Section Begin End	Applicable Backfill Detail
310+61.76	40.93' R	311+13.99	43.35' R	37th StSE (West of	(cfs) 2.3	Inch 24	Item Pipe Corr. Steel 0.064 In 24 In	LF 50	Corrugated Steel Pipe (barrel length - 50 LF)	Inch 24	Type Z, A	Inch 2	Inch 0.064	EA EA 1-FES 1-FES	Plan/Standard See Standard Drawing D-714-27M
310+61.08	48.40' R	311+13.77	50.85' R	Channel) 37th St SE (West of Channel)	See Above	24	Pipe Corr. Steel 0.064 In 24 In	50	Corrugated Steel Pipe (barrel length - 50 LF)	24	Z, A	2	0.064	1 - FES 1 - FES	See Standard Drawing D-714-27M
		m to (overZinc orA ayance Being Co		nvey Equivalent	Flows. Engineer	Approval	Required		= 3' x 1" 5 = 5" x 1"		1 = 3/4" x 1" i	£ 11-1/2°		FES = F TES = T	lamd End Section
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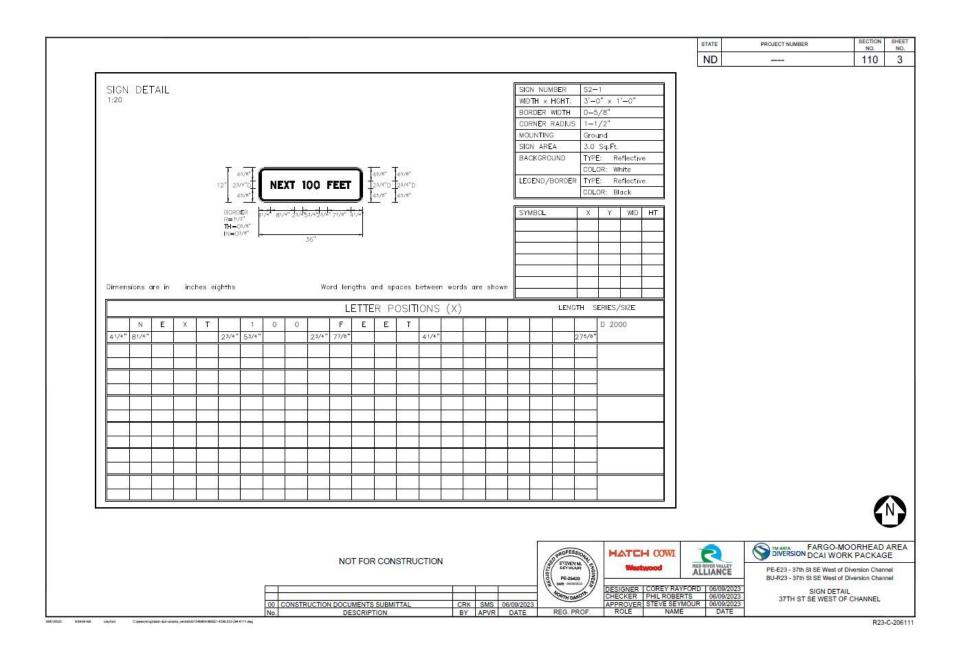
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							ND		82	
th St SE West o ingent Data	of Channel									
art Point -	N: 460,908.3839 E: 2,846,082.7888 Sta: 300+56.00 N87* 27' 53.72"E Dist: 438.5098'									
	N8/* 2/ 53.72*E Dist 438.5098 N: 460,927.7796 E: 2,846,520.8694 Sta: 304+94.51									
I. Station -										
elta -	N: 460,933.1640 E: 2,846,642.4828 Sta 306+16.24 17* 18' 15.13*									
egree - angent -	7* 09' 43.15" 121.7326'									
ngth -	241.6118									
adius - demai -	799.9984" 9.2088'									
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Id. Ord. = .C. Station =	9.1040' N: 460,927.7796 E: 2,846,520.8694 Sta 304+94.51									
.T. Station =	N: 460,974.4779 E: 2,846,756.9904 Sta 307+36.12 N: 461,726.9951 E: 2,846,485.4847									
	N: 461,726.9951 E: 2,646,465,4647 N87* 27' 53.72"E									
head -	N70" 09' 38.59"E N78" 48' 46.16"E									
angent Data										
art Point - ourse -	N: 460,974,4779 E: 2,846,756.9904 Sta: 307+36.12 N70* 09' 38.59"E Dist: 154.2467'									
id Point -	N: 461,026.8267 E: 2,846,902.0823 Sta: 308+90.37									
. Station -	N: 461,062.6678 E: 2,847,001.4213 Sta 309+95.97									
elta -	17" 09' 31.38" 8" 11' 06.46"									
angent -	105.6069'									
ength -	209.6329' 699.9986'									
xternal -	7.9215									
ong Chord - lid. Ord	208.8504' 7.8329'									
.C. Station =	N: 461,026.8267 E: 2,846,902.0823 Sta 308+90.37 N: 461,067.6068 E: 2,847,106.9126 Sta 311+00.00									
.C	N: 460,368.3741 E: 2,847,139.6499									
ack -	N70" D9' 38.59"E N87" 19' D9.96"E									
hord Bear -	N78* 44' 24.28"E									
angent Data tart Point -	N: 461,067.6068 E: 2,847,106.9126 Sta: 311+00.00									
ourse -	N87* 19' 09.98"E Dist: 2,783.8277" N: 461,197.7997 E: 2,849,887.6942 Sta: 338+83.83									
	1. 401,197.1997 E. E. 499,001,094E Ob. 000100.00									
					PROFESSION			S DIVERSION DCAL	-MOORHEAD	) A GE
			NOT FOR CONSTRUCTION		STEVEN M. SEYMOUR	Westwoo		PE-R23 - 37th St SE Wes	t of Diversion Char	inne
		F T		<u> </u>	C PE-25420	DESIGNER LCOM	REY RAYFORD   06/09/2023	BU-R23 - 37th St SE Wes		mne
					NORTH DANOT	CHECKER PHI	L ROBERTS 06/09/2023	ALIGNMENT	TABLES	
			ON DOCUMENTS SUBMITTAL	CRK SMS 06/	09/2023		NAME DATE			
		No.	DESCRIPTION	BY APVR 0	DATE REG. PRO	F. ROLE	DATE			

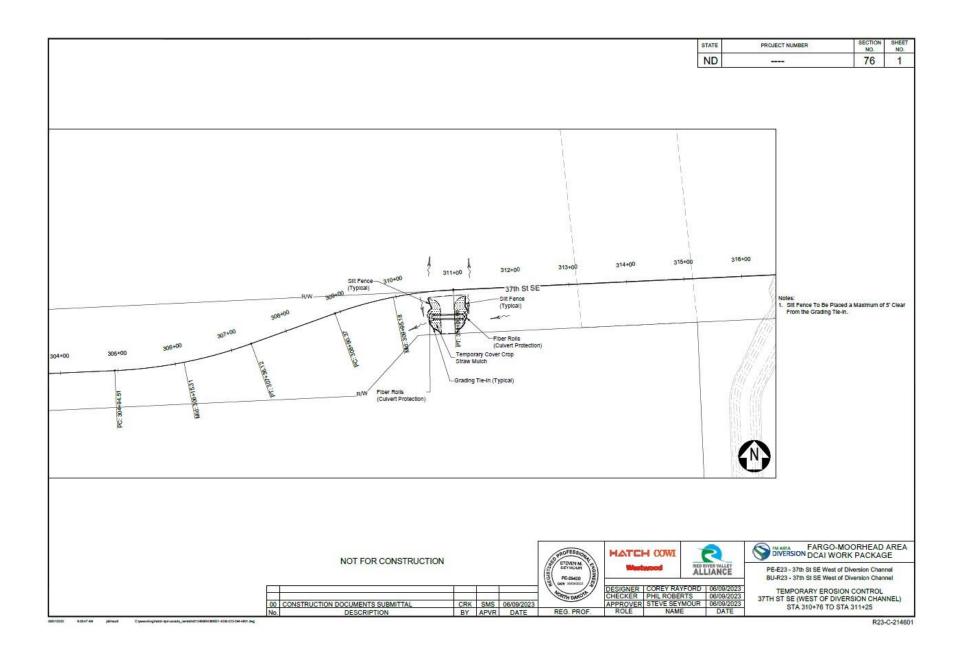












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			20 30 		50 50 70	910 910 910 910 910 910
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227 1521.55.46 aybut Ciyyuntightitingi area, waakat Shinki 60620 40620 344 4301 ay	NOT FOR CONSTRUCTION	CRK SMS 06/09/2023 BY APVR DATE	STATUS	Westwood Westwood NER COREY RAYFORD 06 KER PHIL ROBERTS 06 OVER STEVE SEYMOUR 06 LE NAME	BU-N23 - STUT SE SE WEST UT D	iversion Channel iversion Channel

