



## Highway Department

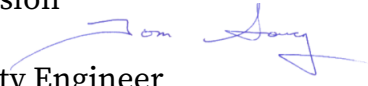
Telephone: 701-298-2370

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### MEMORANDUM

TO: Cass County Commission

FROM: Thomas Soucy, County Engineer 

DATE: January 9, 2025

SUBJECT: Agenda Item for January 21<sup>st</sup>, 2025 Commission Meeting: Request Approval of City of Horace MOU Resolution

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The City of Horace and Cass County entered into an Memorandum of Understanding (MOU) on March 1<sup>st</sup>, 2021. This MOU was in relation of the turnover of Cass County 17 from 52<sup>nd</sup> Ave S to the FM Diversion just north of Cass County 16, and 76<sup>th</sup> Ave S from 81<sup>st</sup> St S to 57<sup>th</sup> St S.

The entered into MOU stated that once the population of the City of Horace surpassed 5,000 people a two year (720 day) turnover clock would start. According to the Census Bureau, the estimated population of the City of Horace exceeded 5,000 as of July 1<sup>st</sup>, 2023.

This Resolution declares the start of the turnover clock on January 1<sup>st</sup>, 2025, thus ending and completing the turnover process of the above mentioned county highways on January 1<sup>st</sup>, 2027.

**SUGGESTED MOTION:** Resolve to adopt the turnover clock start date and authorize the Commission Chairperson and Finance Director to sign the resolution.

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**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 52<sup>nd</sup> Avenue South to the Metro Flood Diversion Project limits approximately 0.5 miles south of 112<sup>th</sup> 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 112<sup>th</sup> 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 112<sup>th</sup> 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 112<sup>th</sup> 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.

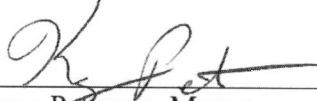
26. Headings. Headings in this MOU are for convenience only and will not be used to interpret or construe its provisions.

(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

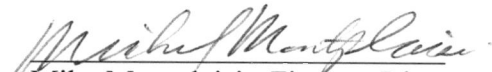
Dated this 1<sup>st</sup> <sup>March</sup> day of ~~February~~, 2021.

CASS COUNTY, NORTH DAKOTA



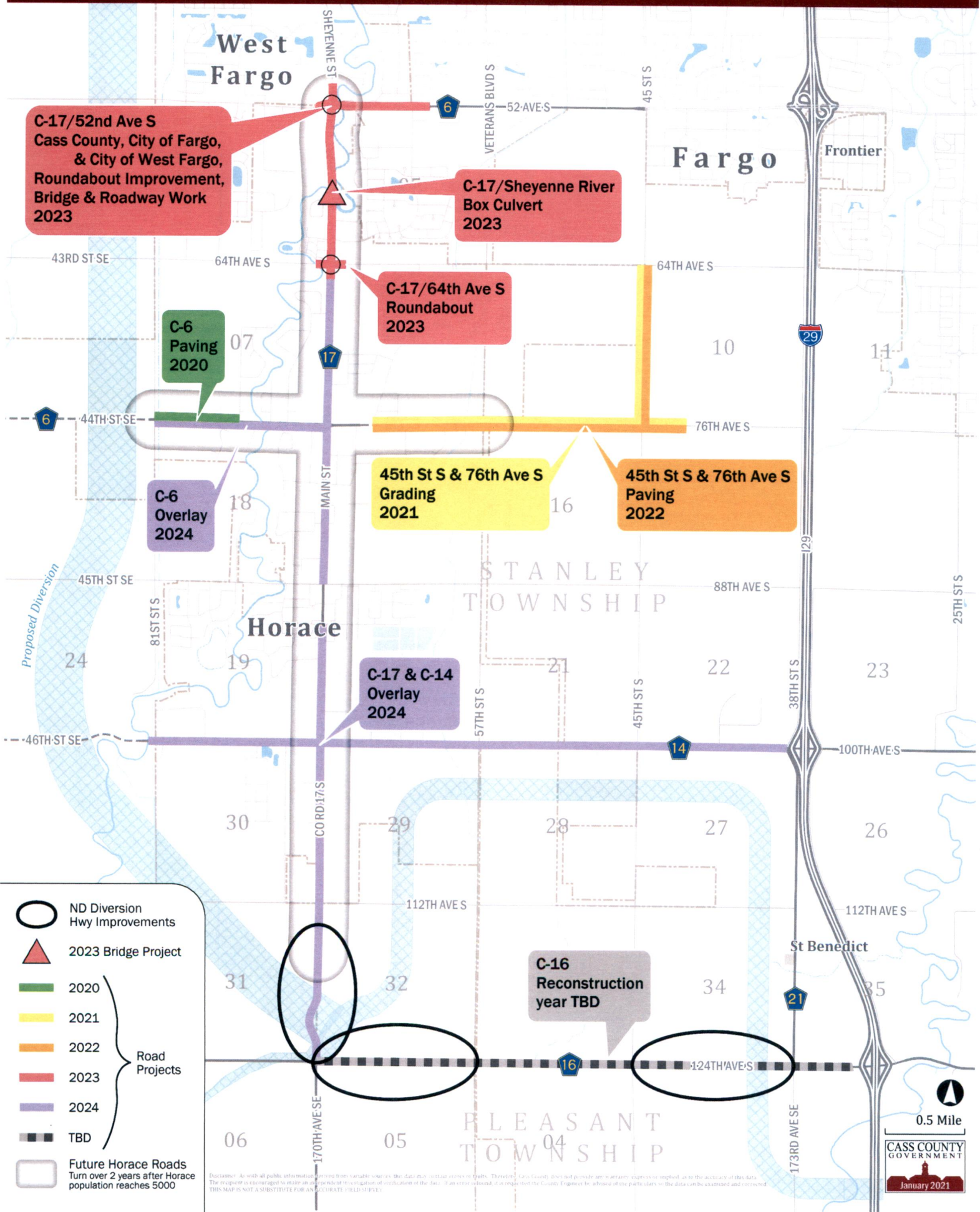
Chad M. Peterson, Board Chairman

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

Disclaimer: As with all public information derived from variable sources, this data may contain errors or omissions. Therefore, Cass County does not provide any warranty, express or implied, as to the accuracy of this data. The recipient is encouraged to utilize an independent investigation or certification of the data. If an error is found, it is requested that the County Engineer be advised of the particulars so the data can be examined and corrected. THIS MAP IS NOT A SUBSTITUTE FOR AN ACCURATE FIELD SURVEY.

# Resolution

This Resolution 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**, the City and Cass County entered into a Memorandum of Understanding (“MOU”) that was signed on March 1<sup>st</sup>, 2021;

**Whereas**, the signed MOU was in relation to the turnover of certain Cass County roads to the City;

**Whereas**, the MOU stated the turnover start date occurring on January 1<sup>st</sup> after two full years (730 days) have passed after the City’s population exceeds 5,000;

**Whereas**, the Census Bureau estimates that as of July 1<sup>st</sup>, 2023, Horace’s population exceeded 5,000;

**Whereas**, the MOU stated necessary construction improvements needed to be completed before turnover may commence;

**Whereas**, Cass County has completed all but one of the stated construction improvements needed to be completed, and the last project will take place during the 2026 construction season;

**Now, Therefore Be It Resolved**, that Cass County does hereby declare that the two year (720 day) turnover clock start on January 1<sup>st</sup> 2025, and commence on January 1<sup>st</sup>, 2027 thus finalizing the turnover of the stated county roads to the City of Horace;

Approved and adopted this \_\_\_\_ day of \_\_\_\_\_, 2025 Anno Domini

Attest:

By:

\_\_\_\_\_  
Brenton Holper, City Administrator

\_\_\_\_\_  
Jeff Trudeau, Mayor

Attest:

By:

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

\_\_\_\_\_  
Tony Grindberg, Chairperson