




Highway Department

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

MEMORANDUM

TO: Cass County Commission

FROM: Thomas Soucy, County Engineer 

DATE: February 20, 2025

SUBJECT: Agenda Item for March 5th, 2025 Commission Meeting: Request Approval of City of Tower City MOA - Sidewalk

Cass County has recently been working with the City of Tower City on completing a Memorandum of Agreement (MOA) for the reconstruction of Cass Highway 10 from Cass County Hwy 1 East one mile the extents of the City of Tower City city limits. This reconstruction project includes a complete regrade of this section, storm sewer, and sidewalk. This project has been programmed for the 2025 construction year and has been approved by the Cass County Commission.

Costs for the reconstruction project will be covered entirely by Cass County in lieu of Right of Way donation by Tower City necessary to complete the project. Tower city will also be responsible for snow maintenance on the sidewalk.

SUGGESTED MOTION: Authorize the Commission Chair to sign the Memorandum of Agreement (MOA) for Cass Highway 10 with Cass County Government and the City of Tower City.

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**Memorandum of Agreement
Cass County Government and the City of Tower City
Cass Highway 10 and Sidewalk from
Cass Highway 1 to Detroit Street**

THIS AGREEMENT, made and entered into, by and between the City of Tower City, a North Dakota municipal corporation, having an address of P.O. Box 55, Tower City, North Dakota, 58071 (the “City”), and Cass County, a North Dakota political subdivision, having an address of P.O. Box 2806, Fargo, North Dakota 58108-2806 (the “County”).

Background:

Cass County Highway 10 is currently owned and maintained by the County and runs 36 miles from Cass Highway 1 to the City of West Fargo, ND. The western most mile is located within the City of Tower City from Cass Highway 1 to Detroit Street.

The County has a proposed construction project taking place during the 2025 construction year along Cass 10 from Cass Highway 1 to State Highway 38. This project includes reconstructing Cass Highway 10 as well as installation of storm sewer and a sidewalk on the north side of Cass Highway 10 through the city limits of the City. All right of way for this segment will be purchased and owned by the County. Both the City and the County have specific infrastructure that benefits both parties. All sanitary sewer and water mains are utilities of the City. The storm sewer benefits the County in removing runoff from the highway, but also benefits the City as it connects other City storm sewer pipe. The sidewalk benefits the City and its residents by providing an effective off-street path, but also benefits the County by eliminating pedestrian traffic on the highway. Finally, the highway benefits both the City and the County by providing safe, efficient travel for residents and through traffic.

The City and the County wish to work together to maintain the improvements, pursuant to the terms and provisions of this Agreement.

Provisions of Agreement:

- 1) **Cost Share:** The County will cover all construction costs of proposed improvements related to the project. The City will donate the necessary land required to complete the project.
- 2) **Highway Maintenance, Striping, and Signs:** The County will maintain the highway paved surface by conducting routine maintenance and snow removal, including any costs associated with such maintenance or snow removal. The County will also stripe the highway on an annual basis. The County will be responsible for all signing within the County right of way.

- 3) **Sanitary Sewer**: The City will maintain the sanitary sewer and will be responsible for any costs associated with any highway repairs necessary for the maintenance of the sewer lines.
- 4) **Water Main**: The City will maintain the water lines and will be responsible for any costs associated with any highway repairs necessary for the maintenance of the water lines.
- 5) **Storm Sewer**: The County will maintain the storm sewer and complete any clean out or other routine maintenance and will be responsible for any costs associated therewith. The County will be responsible for the cost for storm sewer repair or replacement along Cass Highway 10, and any highway repairs necessary for the maintenance of the sewer lines.
- 6) **Sidewalk**: The County will be responsible for general maintenance and repairs of the sidewalk, including any costs associated therewith. The City will be responsible for snow removal and any costs associated with such snow removal from the sidewalk.
- 7) **Construction Detour**: The proposed detour route for this project during construction of Cass Highway 10 will be on Michigan Ave. and 134th St SE from Cass Highway 1 to Cass Highway 10. The County will be responsible for maintaining, spot graveling, and placing chloride on the proposed detour. Upon completion of construction additional gravel will be placed on proposed detour route to restore to existing condition. The County will also be responsible for all construction signage required for proposed detour will be responsible for any costs associated therewith.
- 8) **Term**. The term of this Agreement will be twenty (20) years. This Agreement will automatically renew for successive periods of five (5) years unless terminated by any party. Any party may terminate this Agreement by providing one (1) year written notice to the other parties.
- 9) **Liability**. The employees and officers of a party are deemed to be employees of that party. The limits of liability for some or all of the parties may not be added together to determine the maximum amount of liability for each party. Any and all liability of the parties related to the terms of this Agreement will be limited to the amounts specified by the statutory requirements set forth in North Dakota Century Code § 32-12.1-03, irrespective of whether any party may have waived the limit on liability set forth in those chapters. These statutory limitations may not be stacked to increase the maximum amount of liability for each party.
- 10) **Release and Waiver**. In consideration of the mutual promises of the parties and to the fullest extent permitted by law, each party assumes all risk of personal injury or death and property damage or loss from whatever causes arising while that party, its agents, employees or designees are conducting work pursuant to this Agreement and each party releases the other parties, their officers, employees, agents or designees relating to or arising out of that party's, its agents, employees or designees work

pursuant to this Agreement, whether known or unknown, foreseen or unforeseen, liquidated, unliquidated, fixed, contingent, material or immaterial, disputed or undisputed, suspected or unsuspected, asserted or unasserted, direct or indirect, at law or in equity, from the beginning of time, and each party understands and acknowledges the significance of such release and waiver and hereby assumes full responsibility for any injuries, damages or losses that it may incur as a result of its execution of this Agreement.

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

If to the City: City of Tower City
 ATTN: City Auditor
 P.O. Box 55
 Tower City, ND 58071

If to the County: Cass County
 ATTN: Finance Director
 P.O. Box 2806
 Fargo, ND 58108-2806

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

- 12) **Time is of the Essence.** Time is of the essence of each provision of this entire Agreement and of all the conditions thereof.
- 13) **Entire Agreement.** This Agreement constitutes the entire and complete agreement between the parties and supersedes any prior oral or written agreements between the parties with respect to the subject premises. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions set forth herein, and that no modification of this Agreement and no waiver of any of its terms and conditions will be effective unless in writing and duly executed by the parties.
- 14) **Amendments.** No amendment, modification, or waiver of any condition, provision or term will be valid or of any effect unless made in writing signed by the party or parties to be bound, or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification or waiver.

- 15) **No Forbearance**. The failure or delay of any party to insist on the performance of any of the terms of this Agreement, or the waiver of any breach of any of the terms of this Agreement, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this Agreement, or the right to enforce each and every term of this Agreement.
- 16) **Remedies**. Except as expressly and specifically stated otherwise, nothing herein will limit the remedies and rights of the parties under and pursuant to this Agreement.
- 17) **Binding Effect**. All covenants, agreements, warranties and provisions of this Agreement will be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. When used herein, the singular will include the plural, the plural will include the singular, and the use of one gender will include all other genders, as and when the context so requires.
- 18) **Governing Law**. This Agreement has been made and entered into under the laws of the State of North Dakota, and said laws will control its interpretation. Any litigation arising out of this Agreement will be venued in State District Court in Cass County, North Dakota, and the parties waive any objection to venue or personal jurisdiction.
- 19) **Rules of Construction**. The parties acknowledge that they have had the opportunity to review this Agreement, and that they have an equal bargaining position in this transaction. No rule of construction that would cause any ambiguity in any provision to be construed against the drafter of this document will be operative against any party to this Agreement.
- 20) **Representation**. The parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this Agreement, and agree they have not been influenced by any representations or statements made by any other parties.
- 21) **Headings**. Headings in this Agreement are for convenience only and will not be used to interpret or construe its provisions.

Approved by:

Cass County

Date:

Chair, Cass County Board of Commissioners

Finance Director, Cass County

City of Tower City

Date:

Mayor, City of Tower City

Auditor, City of Tower City

CONTRACT APPROVAL REQUEST

COMPANY REQUESTING CONTRACT:

City of Tower City, PO Box 55, Tower City, ND 58071

DATE OF REQUEST: February 20, 2025

DATE OF EXPECTED RETURN TO THE COMMISSION OFFICE: March 5th, 2025

DEPARTMENT HEAD REQUESTING SIGNATURE: **Thomas Soucy, 701-298-2374**

STATE'S ATTORNEY SIGNATURE: *Matthew Aarvorn*

STATE'S ATTORNEY COMMENTS: Approved as to form.

PORTFOLIO COMMISSIONER SIGNATURE: _____

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