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MEMORANDUM

CASS COUNTY COMMISSION

**Highway
Department**

TO: Cass County Commission

FROM: Jason Benson, County Engineer *JB*

DATE: December 14, 2015

SUBJECT: Agenda topic for December 21, 2015 Commission Meeting:
Approval of a Joint Powers Agreement (JPA) with Southeast Cass
Water Resource District and the City of West Fargo for Highway
10/12th Avenue and 26th Street

Jason Benson, P.E.
County Engineer

Richard S. Sieg
Superintendent

Thomas B. Soucy, P.E.
Assistant County Engineer

Landowners in the vicinity of the intersection of Highway 10/12th Avenue and 26th Street recently approached the Southeast Cass Water Resource District to request pursuit of a project to improve drainage and to alleviate flooding issues.

Through discussions with the Southeast Cass Water Resource District, I feel it is in the best interest of Cass County and West Fargo to resolve these drainage issues and to have a more formal way to maintain effective drainage.

The cost to Cass County will be limited to constructing the ditch from Highway 10 south to the Sheyenne Diversion. This is something that we would look at either bidding out or constructing with our own crew. In either instance, I estimate the cost would be less than \$25,000.

I feel this project is a benefit to Cass County and will eliminate future costs to both the City of West Fargo and the County. This project will also improve the drainage in our ditch which has long been an issue and would cost much more if we were to construct this whole project on our own.

SUGGESTED MOTION:

Approval the Joint Powers Agreement (JPA) with Southeast Cass Water Resource District and the City of West Fargo for Highway 10/12th Avenue and 26th Street.

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

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

Worden, Heather

From: Benson, Jason
Sent: Wednesday, December 02, 2015 9:33 AM
To: Sean M. Fredricks; Burdick, Birch; Chris Brungardt (Chris.Brungardt@westfargond.gov); tina.fisk@westfargond.gov; John T. Shockley
Cc: Lewis, Carol; Montplaisir, Michael; Worden, Heather; klysne@mooreengineeringinc.com; Dustin T. Scott (DScott@mooreengineeringinc.com); Lovgren, Brenda
Subject: RE: Highway 10/Drain 76 Project

Sean,

Thanks for the update on this project. I'll work to get this on the December 21st Commission meeting. This project will help alleviate many of the drainage issues in that area and I fully support this concept. I'll review the agreement and get back to you.

Thanks,

*Jason Benson
County Engineer
Cass County Highway Department
1201 Main Ave West
West Fargo, ND 58078
701-298-2372*

From: Sean M. Fredricks [mailto:SFredricks@OhnstadLaw.com]
Sent: Wednesday, December 2, 2015 8:59 AM
To: Benson, Jason <BensonJ@casscountynd.gov>; Burdick, Birch <BurdickB@casscountynd.gov>; Chris Brungardt (Chris.Brungardt@westfargond.gov) <Chris.Brungardt@westfargond.gov>; tina.fisk@westfargond.gov; John T. Shockley <JShockley@OhnstadLaw.com>
Cc: Lewis, Carol <LewisC@casscountynd.gov>; Montplaisir, Michael <MontplaisirM@casscountynd.gov>; Worden, Heather <WordenH@casscountynd.gov>; klysne@mooreengineeringinc.com; Dustin T. Scott (DScott@mooreengineeringinc.com) <DScott@mooreengineeringinc.com>; Lovgren, Brenda <LovgrenB@casscountynd.gov>
Subject: Highway 10/Drain 76 Project

Jason, Birch, Chris, Tina, and John:

Kurt Lysne has discussed a possible joint drainage improvement project between Southeast Cass WRD, Cass County, and the City of West Fargo with Jason and Chris. The proposed project would be along Highway 10 half a mile west of the City's lagoons. Landowners in that area have requested a solution to their drainage problem out there for quite a while and the parties have come up with a concept to resolve those issues.

Attached is a draft Joint Powers Agreement between the three entities that outlines the terms the parties have discussed, along with the three exhibits referenced in the Agreement (all are maps that will be helpful to visualize the proposed project).

Since John Shockley represents the City of West Fargo and I represent Southeast Cass, our respective clients approved and executed the attached consent letter. For everyone's information, I drafted this JPA (John did not participate and, in fact, this will be John's first review of the agreement as well). Anyway, I thought I should let everyone know we have addressed that conflict issue.

At any rate, please review the draft agreement and let me know if anyone has any questions, comments, or proposed revisions. Alternatively, feel free to prepare redline comments on the attached draft. Southeast Cass approved this agreement already but would certainly entertain proposed revisions.

Otherwise, if the County and the City could get this agreement on your next agendas for consideration and approval, we would appreciate that. Southeast Cass is prepared to proceed with an assessment district vote of benefitting landowners but will have to wait until the parties approve this JPA.

Thanks!

Regards,

Sean M. Friedrichs

Attorney at Law

OHNSTAD TWICHELL, P.C.

901 - 13th Avenue East

P.O. Box 458

West Fargo, North Dakota 58078-0458

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JOINT POWERS AGREEMENT

THIS AGREEMENT is entered into by the Southeast Cass Water Resource District, a North Dakota political subdivision (the "District"); County of Cass, North Dakota, a North Dakota political subdivision (the "County"); and the City of West Fargo, North Dakota, a North Dakota municipal corporation (the "City").

RECITALS

A. The District is a North Dakota water resource district with statutory authority to construct, operate, and maintain legal assessment drains within its jurisdictional boundaries in Cass County, North Dakota; the District's legal drain capabilities include legal authority to create special assessment districts to finance construction of legal assessment drains under Chapter 61-16.1 of the North Dakota Century Code.

B. The County has statutory authorities regarding construction, operation, and maintenance of the county road system, and the County operates and maintains Cass County Highway 10 ("Highway 10").

C. The City has statutory authorities regarding construction, operation, and maintenance of its municipal road system, and the City operates and maintains 12th Avenue Northwest ("12th Avenue") and 26th Street Northwest ("26th Street") within its city limits; 12th Avenue becomes Highway 10 outside of city limits, and 26th Street intersects Highway 10/12th Avenue approximately one-half mile west of the City's lagoons.

D. Landowners in the vicinity of the intersection of Highway 10/12th Avenue and 26th Street recently approached the District to request pursuit of a project to improve drainage and to alleviate flooding issues.

E. The District investigated potential options and conferred with the County and the City, and the parties agree construction of a drainage project in the area would benefit landowners, Highway 10, and the City's lagoons.

F. The District has agreed to conduct legal assessment drain procedures for purposes of creating a special assessment district to finance and fund the construction, operation, and maintenance of a new legal assessment drain.

G. The parties refer to the proposed project as the REED TOWNSHIP IMPROVEMENT DISTRICT NO. 76 PROJECT (the "Drain 76 Project"); attached as **Exhibit A** is a map of the proposed Drain 76 Project.

H. Under Section 54-40.3-01 of the North Dakota Century Code, the District, the County, and the City have the authority to enter into a joint powers agreement to provide for the cooperative administration of a project, and the parties wish to enter into this Agreement to provide the parties' duties and obligations regarding the development, design, financing, funding, construction, operation, and maintenance of the Drain 76 Project.

*Joint Powers Agreement
Southeast Cass Water Resource District
Cass County
City of West Fargo
Drain 76 Project*

Page 2

In consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

AGREEMENT

1. **The Drain 76 Project.** The parties agree the Drain 76 Project is necessary and will provide drainage improvements in the vicinity of the intersection of Highway 10/12th Avenue and 26th Street; construction and operation of the Drain 76 Project will benefit the watershed, Highway 10, and the City's lagoons; and construction of the Drain 76 Project in the 26th Street road ditch will be a cost-effective and efficient manner to construct drainage improvements and to alleviate flooding in the area. The parties will provide cost-share, easements, and other contributions necessary for the development, design, financing, funding, construction, operation, and maintenance of the Drain 76 Project in accordance with the terms of this Agreement. The parties agree the Drain 76 Project, as depicted in **Exhibit A**, will include construction of ditch and drainage improvements in the east road ditch along 26th Street, south of Highway 10/12th Avenue; ditch and drainage improvements in the south road ditch along Highway 10/12th Avenue, west of 26th Street; and culvert and road crossing improvements through the north-south intersection of 26th Street and Highway 10/12th Avenue, on the east side of 26th Street.

2. **The District's Obligations.** The District will perform the following regarding the Drain 76 Project:

- a) in cooperation with the County and the City, design the Drain 76 Project;
- b) surveying and staking the Drain 76 Project prior to construction by the parties;
- c) in accordance with Chapter 61-16.1 of the North Dakota Century Code, develop a proposed special assessment district, comprised of properties and political subdivisions that would benefit from the Drain 76 Project;
- d) in accordance with Chapter 61-16.1, conduct the requisite public meetings of the proposed special assessment district, submit the Drain 76 Project to a vote of the benefited landowners and political subdivisions, and otherwise perform all other statutory obligations and requirements regarding creation of a special assessment district regarding Drain 76;

***Joint Powers Agreement
Southeast Cass Water Resource District
Cass County
City of West Fargo
Drain 76 Project***

Page 3

- e) following construction of the Drain 76 Project, own, operate, and maintain the Drain 76 Project as a legal assessment “project” in accordance with Chapter 61-16.1;
- f) levy special assessments and an annual maintenance levy against benefitted properties and political subdivisions within the Drain 76 special assessment district to finance and fund the operation and maintenance of the Drain 76 Project;
- g) acquire any additional right of way necessary for the Drain 76 Project, including the necessary title to all land, easements, and other property interests, as well as any fixtures, equipment, or personal property, as necessary for the Drain 76 Project, as determined jointly by the County and the District;
- h) obtain all necessary permits, licenses, registrations, and approvals from all applicable federal, state, and other applicable government entities regarding the Drain 76 Project;
- i) seek, secure, and administer cost-share, to the extent available, from outside sources to reduce the costs of the Drain 76 Project;
- j) acquire, construct, and install culvert and road crossing improvements through the north-south intersection of 26th Street and Highway 10/12th Avenue, on the east side of 26th Street, including all bidding, awarding of contracts, and administration of contracts, and pay half the costs associated with the improvements;
- k) following construction of the Drain 76 Project, own, operate, and maintain the Drain 76 Project as a legal assessment drain in accordance with North Dakota law; and
- l) comply with all applicable laws regarding construction of the Drain 76 Project, and the District’s other obligations under this Agreement.

*Joint Powers Agreement
Southeast Cass Water Resource District
Cass County
City of West Fargo
Drain 76 Project*

Page 4

3. **The County's Obligations.** The County will perform the following regarding the Drain 76 Project:

- a) cooperate with the District regarding the design of the Drain 76 Project;
- b) convey to the District the requisite easements on the County's property as necessary for the District's ownership, operation, and maintenance of the Drain 76 Project;
- c) convey an easement to the District in the north road ditch along Highway 10/12th Avenue, on the east side of 26th Street, as depicted in **Exhibit C**;
- d) convey an easement to the District in the south road ditch along Highway 10/12th Avenue, on the west side of 26th Street, as depicted in **Exhibit C**;
- e) convey or transfer ownership of any fixtures, equipment, or personal property as necessary for ownership, operation, and maintenance of the Drain 76 Project (e.g., culverts or flap gates), to the District by bill of sale;
- f) administer and construct the ditch and drainage improvements in the east road ditch along 26th Street, including all bidding, awarding of contracts, and administration of contracts, in accordance with the Drain 76 Project plans prepared by the District;
- g) consent to inclusion of County property that will benefit from the Drain 76 Project within the Drain 76 assessment district;
- h) provide cost-share regarding the Drain 76 Project in accordance with the terms of this Agreement; and
- i) comply with all applicable laws regarding the County's obligations under this Agreement.

*Joint Powers Agreement
Southeast Cass Water Resource District
Cass County
City of West Fargo
Drain 76 Project*

Page 5

4. **The City's Obligations.** The City will perform the following regarding the Drain 76 Project:

- a) cooperate with the District regarding the design of the Drain 76 Project;
- b) convey an easement to the District in the east road ditch along 26th Street, south of Highway 10/12th Avenue, as depicted in **Exhibit B**;
- c) convey an easement to the District in the south road ditch along Highway 10/12th Avenue, on the west side of 26th Street, as depicted in **Exhibit B**;
- d) reimburse the District for half of all costs, expenses, and liabilities regarding the acquisition, construction, installation, and other costs of the culvert and road crossing improvements through the north-south intersection of 26th Street and Highway 10/12th Avenue, on the east side of 26th Street;
- e) convey or transfer ownership of any fixtures, equipment, or personal property as necessary for ownership, operation, and maintenance of the Drain 76 Project (e.g., culverts or flap gates), to the District by bill of sale;
- f) consent to inclusion of City property that will benefit from the Drain 76 Project within the Drain 76 assessment district;
- g) provide cost-share regarding the Drain 76 Project in accordance with the terms of this Agreement; and
- h) comply with all applicable laws regarding the City's other obligations under this Agreement.

5. **Joint Obligations.** The District, the County, and the City will share responsibility regarding the following obligations for the Drain 76 Project:

- a) cooperate regarding the District's obligations to obtain all necessary permits, licenses, registrations, and approvals from all applicable federal, state, and other applicable government entities regarding the Drain 76 Project;

*Joint Powers Agreement
Southeast Cass Water Resource District
Cass County
City of West Fargo
Drain 76 Project*

Page 6

- b) cooperate regarding the District's design of the Drain 76 Project;
- c) cooperate regarding the District's obligations to seek, secure, and administer cost-share from outside sources to reduce the costs of the Drain 76 Project;
- d) execute other reasonable documents and agreements as necessary to accomplish the objectives of this Agreement;
- e) provide each other with reasonable assistance as necessary or as requested in the performance of the parties' obligations under this Agreement; and
- f) mutually agree which party will be responsible for any other obligations regarding the Drain 76 Project not identified in this Agreement.

6. **City Easement.** The City will grant the District easements in the east road ditch along 26th Street, south of Highway 10/12th Avenue; and in the south road ditch along Highway 10/12th Avenue, on the west side of 26th Street, both for purposes of owning, constructing, operating, and maintaining the Drain 76 Project, as depicted in the attached **Exhibit B** (collectively, the "City Easement"). The District will prepare the easement document regarding the City Easement, including the survey necessary for purposes of preparing the metes and bounds legal descriptions necessary for preparation of the easement document.

7. **County Easement.** The County will grant the District an easement in the north road ditch along Highway 10/12th Avenue, on the east side of 26th Street; and in the south road ditch along Highway 10/12th Avenue, on the west side of 26th Street, as depicted in the attached **Exhibit C** (collectively, the "County Easement"). The County Easement will be for purposes of granting the District the authority, but not the obligation, to clean the County road ditch and remove obstructions. Further, under the County Easement, the District and the County will share jurisdiction and authority regarding culvert sizing through Highway 10, and culvert sizing through any approaches in the ditch; the parties will also share jurisdiction and authority regarding installation and sizing of any approaches in the County road ditch. Under the County Easement, the District will also have the authority, but not the obligation, to set and construct a legal grade line, at the District's discretion if the District ever concludes inclusion of the ditch as a component or lateral to the Drain 76 Project would benefit the watershed, the Drain 76 assessment district, and the Drain 76 Project; otherwise, the County Easement will not be for purposes of constructing, operating, or maintaining any portion of the Drain 76 Project and the County Easement will not create any obligation for the District to operate, maintain, or clean the County road ditch, or to operate or maintain the ditch as a legal assessment drain or as a component of the Drain 76 Project. The District will prepare the easement document regarding

*Joint Powers Agreement
Southeast Cass Water Resource District
Cass County
City of West Fargo
Drain 76 Project*

Page 7

the County Easement, including the survey necessary for purposes of preparing the metes and bounds legal descriptions necessary for preparation of the easement document.

8. **Cost Obligations.** The parties will be responsible for their own costs associated with their obligations identified in this Agreement, less any cost-share obtained from outside parties or sources. The parties will be responsible for their own liabilities arising out of or regarding their own actions or omissions regarding their obligations. With regard to the District's acquisition, construction, and installation of culvert and road crossing improvements through the north-south intersection of 26th Street and Highway 10/12th Avenue, on the east side of 26th Street, the City will reimburse the District for half of all costs, expenses, and liabilities. The parties will be responsible for paying their own consultants and contractors regarding their various obligations under this Agreement. With regard to any other costs, expenses, or liabilities arising out of or regarding the Drain 76 Project or this Agreement, the District, the County, and the City will be evenly responsible, unless otherwise agreed; the District will circulate invoices or notices to the County and the City regarding their respective one-third shares, and the parties will reimburse the District within 45 days of the date of each invoice or notice, and each will pay the District interest at a rate of 5 percent per month of all outstanding principal until fully reimbursing the District.

9. **Contingencies.** The District will not proceed with final design of the Drain 76 Project, and the District and the County will not proceed with construction of the Drain 76 Project, until completion of a successful special assessment district vote regarding the Drain 76 Project. The District's establishment and creation of an assessment district for the Drain 76 Project will include a vote of the proposed assessment district in accordance with Chapter 61-16.1 of the North Dakota Century Code. If more than 50 percent of the total votes filed are in favor of the Drain 76 Project, the vote is successful, and the parties will proceed with the Drain 76 Project under this Agreement. However, if 50 percent or more of the total votes filed are against the Drain 76 Project and the vote fails, or if the District is otherwise unable to successfully create an assessment district regarding the Drain 76 Project, this Agreement will terminate, without prejudice to the parties' various obligations or liabilities already accrued under this Agreement prior to termination.

10. **Severability.** If any Court of competent jurisdiction declares any provision or part of this Agreement invalid or unenforceable, all remaining terms and provisions of this Agreement will remain binding and enforceable; however, the parties will reconvene negotiations and will reform or replace any invalid, illegal, or unenforceable provision or portion of this Agreement with an alternative provision that is enforceable and bears as close resemblance as possible to any provision determined invalid, illegal, or unenforceable.

*Joint Powers Agreement
Southeast Cass Water Resource District
Cass County
City of West Fargo
Drain 76 Project*

Page 8

11. **Successors.** The covenants, terms, conditions, provisions, and undertakings in this Agreement, or in any amendment, will be binding upon the parties' successors and assigns.

12. **Applicable Law.** This Agreement will be construed in accordance with and governed by North Dakota law.

13. **Assignment.** Neither party may transfer or assign this Agreement or any rights or obligations under this Agreement without the express written consent of the other party.

14. **Amendments.** Any modifications or amendments of this Agreement must be in writing and signed by all parties to this Agreement.

15. **Interpretation.** This Agreement will be construed as if prepared by all three parties.

16. **Headings.** Headings in this Agreement are for convenience only and will not be used to interpret or construe its provisions.

17. **Cooperation.** The parties agree to cooperate fully, to execute any and all additional documents, and to take any and all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement and to accomplish the purposes of this Agreement.

18. **Effective Date.** This Agreement will become effective on the date of execution by the last party to sign.

(Signatures appear on the following pages.)

*Joint Powers Agreement
Southeast Cass Water Resource District
Cass County
City of West Fargo
Drain 76 Project*

Page 9

IN WITNESS WHEREOF, the parties executed this Agreement on the date written above.

SOUTHEAST CASS WATER
RESOURCE DISTRICT

By: _____
Mark Brodshaug, Chair

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer

Date: November 18, 2015

*Joint Powers Agreement
Southeast Cass Water Resource District
Cass County
City of West Fargo
Drain 76 Project*

Page 10

CASS COUNTY COMMISSION

By: _____
Mary Scherling, Chair

ATTEST:

Michael Montplaisir
Cass County Auditor

Date: _____, 2015

*Joint Powers Agreement
Southeast Cass Water Resource District
Cass County
City of West Fargo
Drain 76 Project*

Page 11

CITY OF WEST FARGO

By: _____
Rich Mattern, Mayor

ATTEST:

Tina Fisk, City Administrator

Date: _____, 2015

*Joint Powers Agreement
Southeast Cass Water Resource District
Cass County
City of West Fargo
Drain 76 Project*

Page 12

EXHIBIT A

MAP OF THE DRAIN 76 PROJECT

(1 page attached)

*Joint Powers Agreement
Southeast Cass Water Resource District
Cass County
City of West Fargo
Drain 76 Project*

Page 13

EXHIBIT B

MAP OF THE CITY EASEMENT

(1 page attached)

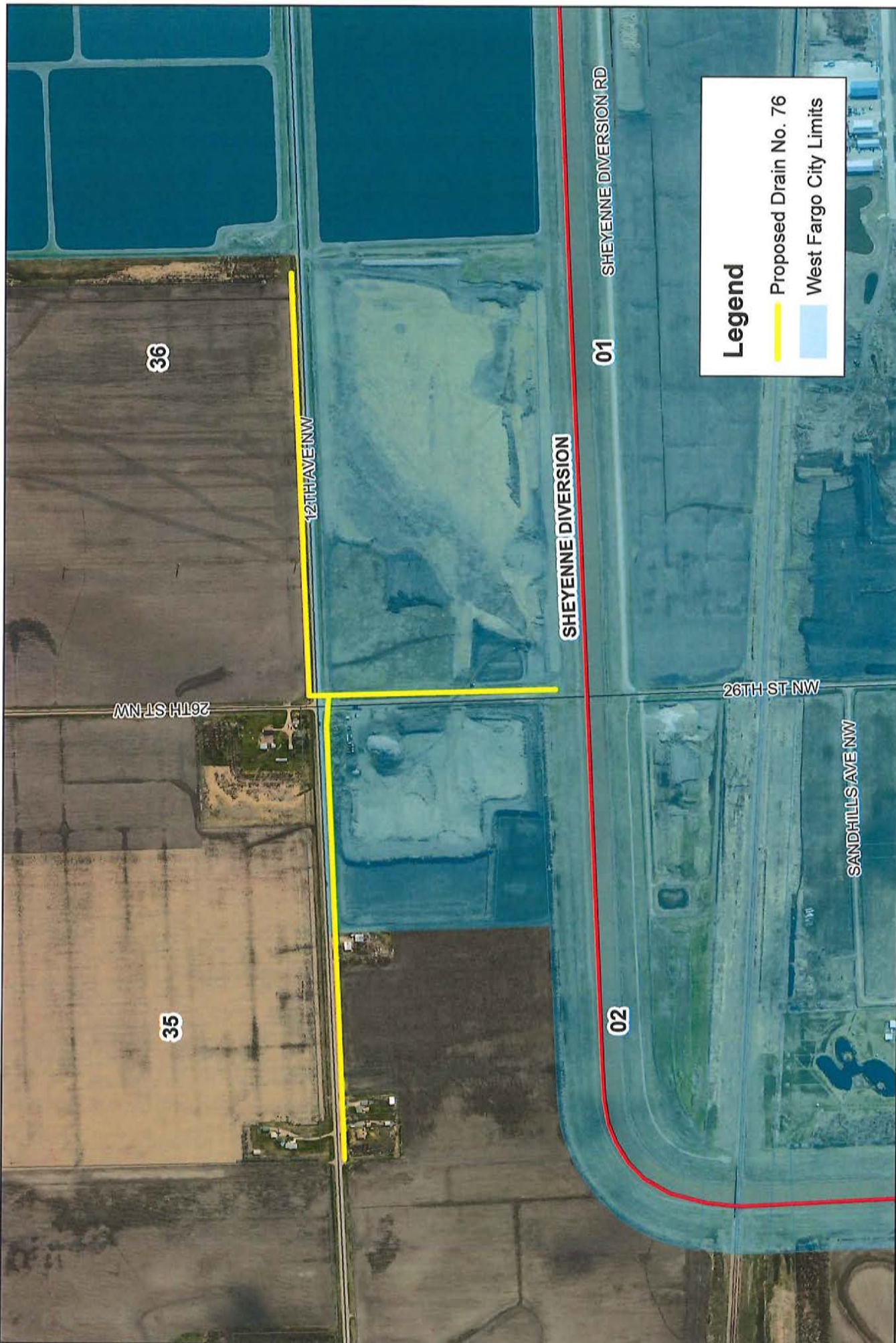
*Joint Powers Agreement
Southeast Cass Water Resource District
Cass County
City of West Fargo
Drain 76 Project*

Page 14

EXHIBIT C

MAP OF THE COUNTY EASEMENT

(1 page attached)



Legend

- Proposed Drain No. 76
- West Fargo City Limits

0 375 750 1,500 Feet

1 in = 750 feet






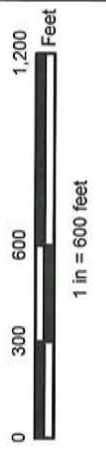
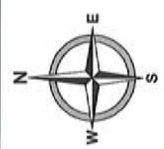
**PROPOSED CASS COUNTY DRAIN NO. 76
SOUTHEAST CASS WRD
CASS COUNTY, NORTH DAKOTA**

Created By: KRL Date Created: 11/16/15 Date Saved: 11/17/15 Date Plotted: 04/23/15 Date Exported: 11/17/15
 Plotted By: Aurllyanne Parcel Date: 10/07/15 Aerial Image: 2014 PM Metro Aerial Elevation Data: IM Lidar
 Horizontal Datum: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet Vertical Datum: NAVD1988
 T:\Projects\1810018158\AKD18158_Drain76_ProjMap.mxd



Legend

-  Proposed Easement from West Fargo
-  Proposed Drain No. 76
-  West Fargo City Limits






**PROPOSED CASS COUNTY DRAIN NO. 76 - CITY EASEMENT
SOUTHEAST CASS WRD
CASS COUNTY, NORTH DAKOTA**

Created By: KRL Date Created: 11/16/15 Date Saved: 11/17/15 Date Plotted: 04/29/15 Date Exported: 11/17/15
 Plotted By: Jurliyana Parcel Date: 10/07/15 Aerial Image: 2014 FM Metro Aerial Elevation Data: IMI Lidar
 Horizontal Datum: NAD 1983 StatePlane North Dakota South FIP S 3302 Feet Vertical Datum: NAVD83
 T:\Projects\1810018\159M\XDR\18155_Drain76_CityEasement.mxd



Legend

-  Proposed Easement from County
-  Proposed Drain No. 76
-  West Fargo City Limits

PROPOSED CASS COUNTY DRAIN NO. 76 - COUNTY EASEMENT
SOUTHEAST CASS WRD
CASS COUNTY, NORTH DAKOTA

Created By: KRL Date Created: 11/16/15 Date Saved: 11/17/15 Date Plotted: 04/23/15 Date Exported: 11/17/15
 Plotted By: Kurt Lyne Parcel Date: 10/07/15 Aerial Image: 2014 FM Metro Aerial Elevation Data: JMI Lidar
 Horizontal Datum: NAD 1983 StatePlane North Dakota South FIPS 5002 Feet Vertical Datum: NAVD83
 T:\Projects\18100\18150\MAX\18150_Drain76_CountyEasement.mxd

