

Diversion Authority Land Management Committee

October 25, 2023 @3:00pm CST

This meeting will be in-person at Fargo City Hall Commission Chambers (225 4th St N, Fargo ND 58102) and online.

1. Call to Order
 - a. Roll call of Members
2. Approve minutes from September 27, 2023
[Attachment 00.01] (Pg. 2)
3. Approve Order of Agenda
4. BNSF Railway & CHS Elevator Excess Land
[Attachment 01.00] (Pg. 4)
5. City of Horace, CCJWRD, & MFDA Agreement
[Attachment 02.00] (Pg. 8)
6. Other Business
7. Next Meeting: To Be Determined
8. Adjournment

MEDIA AND PUBLIC PARTICIPATION INFORMATION

There are multiple ways to attend or watch this public meeting.

- View the Meeting on Fargo TV or at www.TVFargo.com
- View the Meeting on the City of Fargo's Facebook or Twitter feed.
- View the Meeting at FMDiversion.com/Meeting
- View the Meeting at [Twitter.com/FMDiversion](https://twitter.com/FMDiversion)



Metro Flood Diversion Authority Land Management Committee Meeting Minutes

2:30 PM – September 27, 2023
City of Fargo Commission Chambers

A meeting of the Metro Flood Diversion Authority Land Management Committee was held on September 27, 2023. The following members were present: Mary Scherling, Cass County Commissioner; Kevin Campbell, Clay County Commissioner; Rodger Olson, Cass County Joint Water Resource District; Nathan Boerboom, Fargo Division Engineer; Chuck Hendrickson, Moorhead City Council; Duane Breitling, Cass County Commissioner; Jenny Mongeau, Clay County Commissioner and Bob Zimmerman, Moorhead City Engineer.

Members absent: Mike Redlinger, Administrator, City of Fargo; Kory Peterson, Mayor, City of Horace and Arlette Preston, Fargo City Commissioner.

1. INTRODUCTION

Mrs. Scherling called the meeting to order at 2:30 PM. Roll call was taken, and a quorum was present.

2. APPROVE MEETING MINUTES FROM THE MAY 25, 2022, MEETING MOTION PASSED

Mr. Campbell moved to approve the minutes from May 25, 2022, and Mr. Boerboom seconded the motion. On a voice vote, the motion carried.

3. APPROVE ORDER OF AGENDA MOTION PASSED

Ms. Mongeau moved to approve the agenda as presented and Mr. Breitling seconded the motion. On a voice vote, the motion carried.

4. SE-1 EXCESS LAND SALE

Ms. Smith provided an overview and update on excess land parcels in SE-1. Per the Excess Land Policy and at the discretion of the executive director, these parcels are deemed excess land and Ms. Smith asked the committee to approve disposal of these remnant parcels.

MOTION PASSED

Mr. Campbell moved to approve disposal of the parcels per the Excess Land Policy and Mr. Breitling seconded the motion. On a roll call vote, the motion carried.

5. CASS COUNTY ROW EXCESS LAND SALE

Ms. Smith provided an overview and update on the Cass County ROW parcels. Per the Excess Land Policy and at the discretion of the executive director, these parcels are deemed excess land and Ms. Smith asked the committee to approve disposal of these remnant parcels.

MOTION PASSED

Mr. Breitling moved to approve disposal of the parcels per the Excess Land Policy and Mr. Olson seconded the motion. On a roll call vote, the motion carried.

6. OIN 507Y EXCESS LAND RECOMMENDATION

Ms. Smith provided an overview and update on parcels in OIN 507Y. Per the Excess Land Policy and at the discretion of the executive director, these parcels are deemed excess land and Ms. Smith asked the committee to approve disposal of these remnant parcels.

MOTION PASSED

Mr. Breitling moved to approve disposal of the parcels per the Excess Land Policy and Mr. Campbell seconded the motion. On a roll call vote, the motion carried.

7. OTHER BUSINESS

There was no additional business to discuss.

8. NEXT MEETING

To be determined.

9. ADJOURNMENT

Mr. Campbell moved to adjourn, and Mr. Breitling seconded the motion. The meeting adjourned at 2:58 PM.

Memorandum



To: Metro Flood Diversion Authority Lands Committee

From: Joel Paulsen, Executive Director

Cc: John Shockley, MFDA Legal Counsel

Date: October 25, 2023

Re: Disposal of Abandoned Rail Right of Way

In accordance with and pursuant to prior policy direction from the Diversion Authority Board, the Metro Flood Diversion Authority (MFDA) and the Cass County Joint Water Resource District (CCJWRD) recently completed the acquisition of the CHS Elevator and underlying property rights, Red River Valley & Western Railroad operating rights, and a portion of BNSF Railway right of way near Horace, ND. These purchases were part of an effort to abandon the rail line and avoid constructing a rail bridge across the future FM Area Diversion Storm Water Diversion Channel (SWDCAI). Assuming the MFDA and the CCJWRD acquire the entire abandoned rail corridor right of way from BNSF Railway, the estimated cost savings are greater than \$6 million due to eliminating the construction of a rail bridge.

BNSF Railway is currently following North Dakota Century Code Chapter 49-09, which outlines the statutory process for abandoned railroad right of way sales to priority purchasers. If the priority purchasers choose not to purchase the rail corridor, the MFDA and CCJWRD are obligated, thru an agreement with BNSF Railway, to purchase any remaining right of way. The attached map shows highlighted in green and yellow the right of way that has been purchased by the MFDA and CCJWRD. The orange highlighted corridor represents the portion of the corridor where private parties have the priority to purchase the right of way. The blue highlighted corridor represents the portion of the corridor that the City of Horace has the priority to purchase the right of way (next priority purchaser for this area would be the adjoining landowner).

The MFDA purchase price of the CHS Elevator was \$3,040,000, which was not an appraised value of the property but was agreed between the MFDA and CHS to replace the elevator's storage capacity by compensating CHS to build additional capacity at another one of CHS's existing facilities. The purchase of the CHS Elevator was a condition by CHS to abandon use of the rail line (CHS was the sole customer on the rail line) which facilitated the abandonment of the rail line by RRVWR. The purchase price of the associated rail line and associated land (excluding the elevator) was \$1,085,377 for 8.61 acres. This purchase price was based on an appraised value and per BNSF requirements, it included a 15% railroad corridor enhancement factor.

The City of Horace’s 2045 Comprehensive Plan identifies the city’s desire to construct a public trail along this rail corridor, as it plays “a critical role in connecting the most heavily programmed areas of the park system.” In 2023 the City of Horace approved moving forward with developing a conditional agreement with the MFDA and the CCJWRD that if the City of Horace purchased its priority portion of rail corridor (highlighted in blue on the attached map), then the MFDA and the CCJWRD would deed the CHS Elevator and associated rail corridor to the City of Horace for \$2.00.

The MFDA staff has reviewed the potential cost savings if the CHS elevator and associated rail corridor were deeded to the City of Horace.

Annual Expenses

Maintenance (mowing and weed spraying @ \$150/acre four times per year)	\$	5,166
CHS Elevator & rail corridor Maintenance (staff time est. at \$115/month)	\$	1,380
Utilities (utility bills average \$380/month)	\$	4,560
Estimated annual taxes and special assessments	\$	10,000

One-Time Expenses

Removal of ballast (required if it does not become a trail corridor)	\$	35,000
Elevator Structures Demolition (estimated cost)	\$	150,000 - 400,000

Acquisition Expenses

Right of Way (blue highlighted corridor in the attached map)	\$	352,000
--	----	---------

In addition to the cost savings noted above, the City of Horace would also assume responsibility for any and all environmental remediation that would be determined necessary for both the rail corridor and the elevator site. The cost associated with this was not included within the cost savings because it is unknown what level of environmental remediation will be required by the North Dakota Department of Environmental Quality or the United States EPA or other applicable regulatory agency. The City of Horace would also assume the responsibility of taking over and maintaining existing leases on the property, which includes the Horace Fire Department.

Per the Policy on the Disposition and Management of Comprehensive Project Lands (Policy), land that is no longer needed, not expected to be needed in the future for the Comprehensive Project and declared “Excess Land” by the Executive Director may be made available for sale, lease, or exchange in accordance with the Policy. Additionally, when a Member Entity proposes to the Authority to sell Excess Land, Member Entities should observe the following guiding principle stated in the Policy: 1.5.1. Refrain from selling land at less than Market Value.

MFDA staff have estimated the value of the land underlying the elevator in the range of \$1,219,680 (based on 3.5 acres at \$8 per square foot) to \$1,829,520 (based on 3.5 acres at \$12 per square foot). Demolition costs of the elevator are estimated to be between \$150,000 and \$400,000.

On October 10, 2023, the MFDA Planning Committee directed legal counsel to draft an agreement with the City of Horace that would deed the CHS Elevator and associated rail corridor to the City of Horace for public use. If the City of Horace sells the property for development, the agreement would require the City of Horace to share the net profits with the MFDA 50/50. Any reasonable costs incurred by the City in making the property marketable, including but not limited to, inspections, environmental remediation, demolition, listing the Purchase Property, title work, surveys, and any other related costs, will be deducted from the gross profit derived from the sale to a third party before calculating the net profit payment. As part of the agreement, the City of Horace (in lieu of the MFDA) would purchase the ROW corridor shown in blue in Exhibit A for a purchase price of \$352,000.

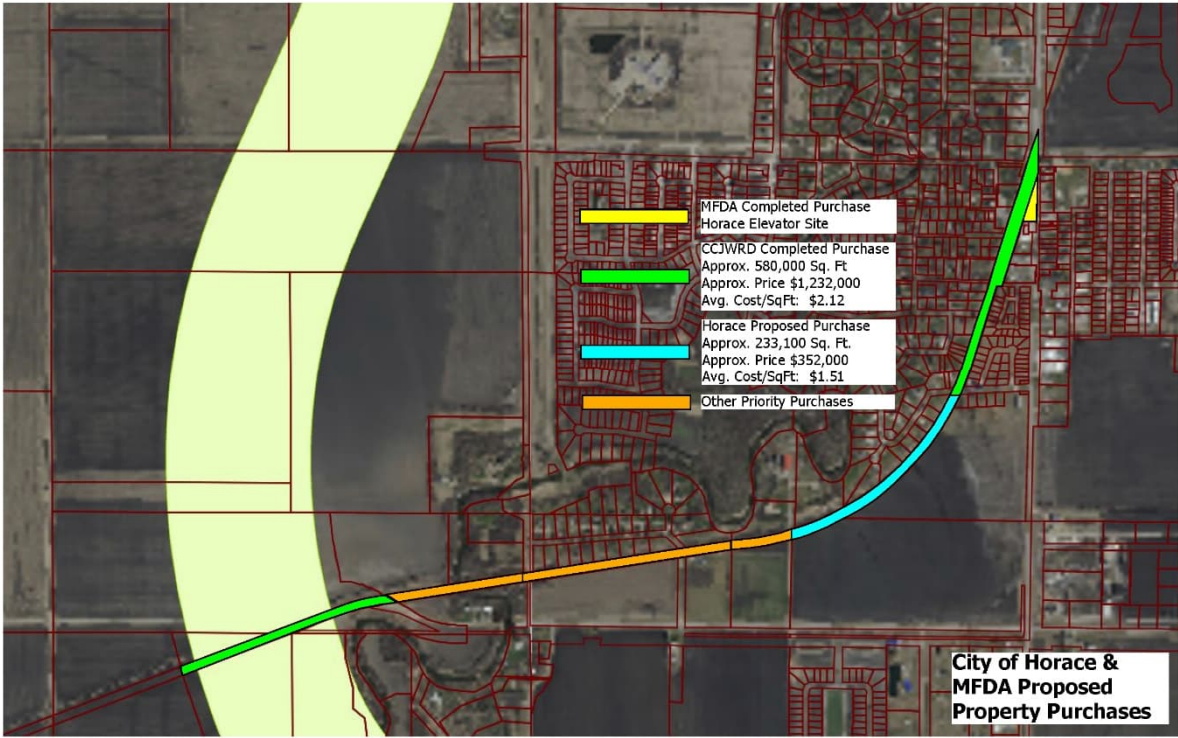
To facilitate a negotiated agreement with the City of Horace, the MFDA Board would need to either:

1. approve an exception to Section 1.5.1 and Section 5 of the Policy to allow for the City of Horace to be deeded the land without:
 - a. allowing for a sale less than market value and,
 - b. not allowing preference to member entities, the prior landowner, the adjacent landowners or conducting a public sale, or
2. make an exception to Section 4.2 of the Policy, which states:

It is the Authority's intent that the sale of Excess Lands, subject to the preferences set forth herein, shall be done via public sale or in the case of Excess Land that is located inside of the geographical boundaries and extraterritorial zoning jurisdiction of the City of Fargo and the City of Moorhead, by listing Excess Land with a licensed real estate agent or through a public RFP process such that there is transparent and abundant opportunity for all buyers to purchase the property.

The CHS elevator and rail corridor (as highlighted green and yellow on Exhibit A), are within the extraterritorial zoning jurisdiction of the City of Horace. Listing the excess land with a licensed real estate agent or through a public RFP process, as required in Section 4.2 of the Policy, would provide opportunity for all buyers to purchase the property (including the City of Horace) which would preclude a negotiated agreement with the City.

Exhibit A



PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (~~the~~ this “Agreement”) is made and entered into this _____ day of _____, 2023 (the “Effective Date”), by and between the Metro Flood Diversion Authority, a North Dakota political subdivision, whose principal address is 4784 Amber Valley Parkway S, Suite 100, Fargo, ND 58104 (the “Authority”), the Cass County Joint Water Resource District, a North Dakota political subdivision, whose principal address is 1201 Main Ave. W, West Fargo, ND 58078 (“CCJWRD”), and the City of Horace, North Dakota, a North Dakota political subdivision, whose principal address is 215 Park Dr. E, Horace, ND 58047 (the “City”).

RECITALS

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, following authorization of the Comprehensive Project, the City of Fargo, Cass County, CCJWRD, the City of Moorhead, and Clay County formed the Authority to function as the primary local sponsor of the Comprehensive Project; and

WHEREAS, one aspect of delivering the Comprehensive Project has been acquiring real property interests that are necessary for construction, operation, and maintenance; and

WHEREAS, in negotiating and acquiring real property interests, the Authority, along with CCJWRD, have acquired property interests in excess of those needed for the Comprehensive Project; and

WHEREAS, some of those excess real property interests include a railroad right-of-way extending into the City and an elevator site within the City’s limits; and

WHEREAS, the parties now desire to enter into this Agreement to transfer those real property interests from the Authority and CCJWRD to the City.

NOW THEREFORE, 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:

1. **The Purchase Property.**

A. The Authority agrees to sell, and the City agrees to purchase, upon the terms and conditions contained in this Agreement, the Authority’s interest in and to the following real property in Cass County, North Dakota, described as follows:

That part of Auditor’s Lot Number One of the Northeast Quarter of the Northeast Quarter of Section 19, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows, to-wit: Commencing at a point 502 feet South of the Northeast

***Metro Flood Diversion Authority and
Cass County Joint Water Resource District
Purchase Agreement – CITY OF HORACE***

corner of Section 19, Township 138, Range 49 West of the Fifth Principal Meridian, thence South along said East boundary line of Section 19, 131 feet, thence straight West to the Fargo and Southwestern Railroad right-of-way a distance of 149 feet, thence Easterly along said South line of said right-of-way 164 feet, thence East 108 feet to place of beginning.

AND

That part of Auditor's Lot Number One of the Northeast Quarter of the Northeast Quarter of Section 19, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows, to-wit:: Begin 235.4 feet South and 33 feet West of Northeast corner of Section 19, Township 138, Range 49, South 265 feet, West 76.4 feet, North to right-of-way, Northeast along right-of-way to beginning.

The property described above is the "Authority Purchase Property." The Authority does not warrant fee simple ownership of the Authority Purchase Property.

The above-described purchase of the Authority Purchase Property includes all of the Authority's right, title, and interest in any buildings, fixtures, structures, and improvements on the Authority Purchase Property. A map of the Authority Purchase Property is attached hereto as Exhibit A.

B. CCJWRD agrees to sell, and the City agrees to purchase, upon the terms and conditions contained in this Agreement, CCJWRD's interest in and to the following real property in Cass County, North Dakota, described as follows:

That part of the Northeast Quarter of Section 19, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at the southeast corner of said Northeast Quarter; thence South 88 degrees 23 minutes 53 seconds West along the south line of said Northeast Quarter a distance of 838.80 feet to a point on the westerly line of ARROWWOOD SECOND ADDITION, according to the recorded plat thereof, said point also being on the easterly right-of-way line of the Red River Valley & Western Railroad, the point of beginning of the tract to be described; thence South 88 degrees 23 minutes 53 seconds West along the south line of said Northeast Quarter a distance of 111.03 feet to a point on the westerly line of said railroad right-of-way; thence northerly 463.50 feet along the said westerly right-of-way line, and along a non-tangential curve concave westerly having a radius of 2,809.20 feet and a central angle of 09 degrees 27 minutes 12 seconds, the chord of said curve bears North 19 degrees 54 minutes 54 seconds East with a chord length of 462.97 feet; thence North 15 degrees 11 minutes 18 seconds East tangent to the last described curve and along said westerly right-of-way line a distance of 2,138.36 feet; thence North 74 degrees 48 minutes 42 seconds West

***Metro Flood Diversion Authority and
Cass County Joint Water Resource District
Purchase Agreement – CITY OF HORACE***

continuing along said westerly right-of-way line a distance of 50.00 feet; thence North 15 degrees 11 minutes 18 seconds East continuing along said westerly right-of-way line, and the northerly extension thereof a distance of 135.20 feet to a point on the north line of said Northeast Quarter; thence North 88 degrees 33 minutes 47 seconds East along said north line a distance of 170.78 feet to the northeast corner of said Northeast Quarter; thence South 01 degree 36 minutes 35 seconds East along the east line of said Northeast Quarter a distance of 125.80 feet to a point of intersection with said easterly right-of-way line; thence South 15 degrees 11 minutes 18 seconds West along said easterly right-of-way line a distance of 1,278.20 feet to a point on the northerly line of A REPLAT OF THE FIRST REPLAT OF BLOCK SIX AND SEVEN OF SHEYENNE COUNTRY ESTATES ADDITION, according to the recorded plat thereof; thence South 88 degrees 43 minutes 34 seconds West along the northerly line of said plat, and along said easterly right-of-way line a distance of 52.14 feet; thence South 15 degrees 11 minutes 18 seconds West along said easterly right-of-way line a distance of 909.02 feet; thence southwesterly 430.90 feet along said easterly right-of-way line, and along a tangential curve, concave northwesterly, having a radius of 2,909.20 feet and a central angle of 08 degrees 29 minutes 11 seconds to a point on the south line of said Northeast Quarter, to the point of beginning.

The above-described tract contains 8.04 acres, and is subject to all easements, restrictions, reservations, and rights-of-way recorded and unrecorded.

AND

That part of the Southeast Quarter of Section 18, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at the southeast corner of said Southeast Quarter; thence South 88 degrees 33 minutes 47 seconds West along the south line of said Southeast Quarter a distance of 14.29 feet to a point on the easterly right-of-way line of the Red River Valley & Western Railroad, the point of beginning; thence continuing South 88 degrees 33 minutes 47 seconds West along the south line of said Southeast Quarter a distance of 103.79 feet to a point on the westerly right-of-way line of said Red River Valley & Western Railroad; thence North 14 degrees 05 minutes 53 seconds East along said westerly right-of-way line a distance of 442.45 feet to a point on the east line of said Southeast Quarter; thence South 01 degree 22 minutes 49 seconds East along the east line of said Southeast Quarter a distance of 374.71 feet to a point on said easterly right-of-way line; thence South 14 degrees 05 minutes 53 seconds West along said easterly right-of-way line a distance of 53.53 feet to the point of beginning.

*Metro Flood Diversion Authority and
Cass County Joint Water Resource District
Purchase Agreement – CITY OF HORACE*

The above-described tract contains 0.57 acres, and is subject to all easements, restrictions, reservations, and rights-of-way recorded and unrecorded.

The property described above is the “CCJWRD Purchase Property.” CCJWRD does not warrant fee simple ownership of the CCJWRD Purchase Property. The CCJWRD Purchase Property and the Authority Purchase Property are, collectively, the “Purchase Property.”

The above-described purchase of the CCJWRD Purchase Property includes all of CCJWRD’s right, title, and interest in any buildings, fixtures, structures, and improvements on the CCJWRD Purchase Property. A map of the CCJWRD Purchase Property is attached hereto as Exhibit B.

2. **Purchase Contingency.** The closing of the sale and purchase of the Purchase Property between the Authority, CCJWRD, and the City is dependent upon the following contingency:

A. *City Purchase of Railroad ROW.* The City and BNSF Railway Company shall have closed upon the sale of the real property identified on Exhibit C (the “BNSF Purchase Property”), with BNSF Railway Company being the seller thereof and the City being the purchaser thereof. The map included on Exhibit C is a generalization of the limits of the BNSF Purchase Property, and the limits will be more specifically defined by survey. The parties intend that the limits of the CCJWRD Purchase Property and the BNSF Purchase Property will abut.

3. **Fixtures, Structures, and Personal Property.** The City’s purchase of the Purchase Property includes the purchase of all the Authority’s and CCJWRD’s right, title, and interest in and to all buildings, fixtures, structures, and other improvements upon the Purchase Property. Except as otherwise set forth herein, all personal property located on the Purchase ~~Prise~~ Property at Closing is included in the City’s purchase. The City acknowledges that neither the Authority nor CCJWRD will have any responsibility for costs or work associated with demolition, renovation, or remediation of the Purchase Property. **THE PURCHASE PROPERTY IS SOLD BY THE AUTHORITY AND CCJWRD ON ~~AS-AN~~ “AS IS, WHERE IS, AND WITH ALL FAULTS” BASIS AND THEY DISCLAIM ANY AND ALL WARRANTIES OF ANY KIND, BOTH EXPRESS AND IMPLIED, REGARDING THE PURCHASE PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, ENVIRONMENTAL CONDITION, EXISTENCE OR ABSENCE OF TOXIC OR HAZARDOUS SUBSTANCES OR WASTES IN, ON, UNDER, OR AFFECTING THE PURCHASE PROPERTY, PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE AUTHORITY AND CCJWRD DISCLAIM ANY AND ALL WARRANTIES OF ANY KIND THAT ANY BUILDINGS OR OTHER IMPROVEMENTS LOCATED ON THE PURCHASE PROPERTY ARE LOCATED ENTIRELY WITHIN ANY APPLICABLE BOUNDARY LINES. THE CITY EXPRESSLY AGREES THAT THIS SECTION SHALL SURVIVE CLOSING AND THE DELIVERY OF ANY CONVEYANCING DOCUMENTS.**

***Metro Flood Diversion Authority and
Cass County Joint Water Resource District
Purchase Agreement – CITY OF HORACE***

4. **Purchase Price.** The purchase price for the Authority Purchase Property is One and No/100 Dollar (\$1.00), and the purchase price for the CCJWRD Purchase Property is One and No/100 Dollar (\$1.00), for a total of Two and No/100 Dollars (\$2.00) (the “Purchase Price”). The limited amount of the Purchase Price is due to the consideration that the City will pay to BNSF for the BNSF Purchase Property, ~~and~~ the benefits resulting to the Authority and CCJWRD from that purchase, and the City’s costs in making the Purchase Property useable. The Authority and CCJWRD specifically acknowledge the Purchase Price represents full and final payment to the Authority and CCJWRD as compensation and damages regarding the Purchase Property, except as further defined under Section 10 herein; any buildings, structures, and fixtures on the Purchase Property; and personal property or other items left on the Purchase Property.

5. **Inspections and Environmental.** The City agrees and acknowledges that neither the Authority nor CCJWRD is responsible for any and all pre-existing environmental contamination or liabilities on the Purchase Property. Following execution of this Agreement by the Authority and CCJWRD, the City will be entitled to conduct inspections of the Purchase Property at its own expense. If the City determines a Phase I environmental site assessment or other assessment or investigation, which may or may not include sampling of onsite materials, is necessary, then the City may conduct such study prior to Closing, at the City’s sole expense. The City will schedule any entry onto the Purchase Property with the Authority or CCJWRD, as applicable, in advance and shall comply with the Authority’s and CCJWRD’s reasonable requirements including those relating to security and confidentiality. The City will release, hold harmless, defend, and indemnify the Authority and CCJWRD, and any of their officers or employees, against any and or all losses, claims, damages, or liability in connection with the entry by the City, its agents, or its representatives onto the Purchase Property to complete inspections, assessments, or studies. The City will not perform any invasive testing, including environmental inspections beyond a Phase I environmental site assessment, without obtaining the Authority’s or CCJWRD’s, as applicable, prior written consent. The City will restore the Purchase Property and all improvements to substantially the same condition they were in prior to inspection. The City shall be solely responsible for all costs of its inspections and feasibility analysis and has no authority to bind the Purchase Property for purposes of statutory liens prior to Closing. The City shall be solely responsible for all liens, costs, claims, and expenses, including attorneys’ and experts’ fees, arising from or relating to the City’s, or its agents’ or representatives’, entry onto or inspection of the Purchase Property, which obligations shall survive Closing. The Authority has completed Phase I and Phase II environmental site assessments on the Purchase Property and will make those assessments available to the City upon request.

THE CITY ACKNOWLEDGES THAT THE CITY HAS HAD THE OPPORTUNITY TO INSPECT THE PURCHASE PROPERTY, THAT THE CITY HAS, IN FACT, INSPECTED THE PURCHASE PROPERTY, AND THAT THE CITY IS PURCHASING THE PURCHASE PROPERTY ON AN “AS IS, WHERE IS, AND WITH ALL FAULTS” BASIS FROM THE AUTHORITY AND CCJWRD.

6. **Closing and Possession.** The closing (“Closing”) will occur on the earlier of: (i) _____, 2023, or (ii) within thirty (30) calendar days after the satisfaction of the contingency set forth in Section 2; provided, however, that the parties may agree, in writing, on any other such date for Closing. At Closing, the Authority and CCJWRD will execute and deliver

***Metro Flood Diversion Authority and
Cass County Joint Water Resource District
Purchase Agreement – CITY OF HORACE***

quit claim deeds (the “Quit Claim Deeds”) to the Purchase Property. Also at Closing, the parties will execute an Assignment and Assumption of Leases and Licenses (the “Assignment and Assumption Agreement”), wherein the Authority and CCJWRD will assign, and the City will assume, the Authority’s and CCJWRD’s right, title, and interest under the leases and licenses that encumber the Purchase Property described on Exhibit D (the “Assigned Agreements”). The Assignment and Assumption Agreement will also provide for the release of the Authority and CCJWRD under the Assigned Agreements. The Purchase Property is also further subject to any easements, rights-of-way, and restrictions of record. The parties agree to promptly execute and deliver any other instruments or documents necessary to carry out the purposes of this Agreement before, at, or following Closing. At Closing, the Authority and CCJWRD will cause the release of any mortgages or other monetary liens encumbering the Purchase Property to the extent created by the Authority or CCJWRD.

7. **Taxes and Utilities.**

A. With regard to the Purchase Property, the Authority and CCJWRD agree to pay all real estate taxes and any installments of special assessments or assessments for special improvements due, levied, or assessed for the year 2022, which are due and payable in 2023, and all prior years. The parties will prorate all real estate taxes and special assessments or assessments for special improvements for the year 2023 with respect to the Purchase Property as of the date of Closing on this transaction.

B. All utilities will have a final reading as of the date of Closing and then be transferred to the City on the date of Closing. The Authority and CCJWRD will be responsible for all charges prior to the final reading; the City will be responsible for all charges after the final reading.

8. **Risk of Loss.** Except as specifically set forth herein, the Authority and CCJWRD remain responsible for all taxes, mortgage payments, insurance premiums, if any, and bear the risk of loss up to and through the date of Closing with respect to general liability, liability for personal injury, and any damage or casualty loss with respect to the Purchase Property, resulting from the use, occupancy, and maintenance of the Purchase Property.

9. **Closing Costs.** The Authority will be responsible for the costs of preparation of the Quit Claim Deeds and preparation of this Agreement.

10. **Profit Sharing.** In the event the City sells, conveys, grants, or otherwise disposes of the Purchase Property to a third party and receives a profit from the sale, conveyance, grant, or disposal as defined herein, the City shall, within thirty (30) days of said transaction closing, will provide payment to CCJWRD and/or the Authority for one-half (1/2) of the net profits derived from the sale. Any reasonable costs incurred by the City in making the property marketable, including but not limited to, inspections, environmental remediation, demolition, listing the Purchase Property, title work, surveys, and any other related costs, will be deducted from the gross profit derived from the sale to a third party before calculating the net profit payment. For example, if the City demolishes the elevators on the Purchase Property for One Hundred Thousand Dollars (\$100,000) and sells the Purchase Property to a private developer for Five Hundred Thousand Dollars (\$500,000), the City would provide payment to the other party in the amount of Two

*Metro Flood Diversion Authority and
Cass County Joint Water Resource District
Purchase Agreement – CITY OF HORACE*

Hundred Thousand Dollars (\$200,000). Payment will be made to the entity that previously owned the real property that is subject to the sale or both entities if both properties are subsequently sold. The City will provide evidence of any costs incurred in making the property marketable to CCJWRD and the Authority. This section shall survive Closing and remain in full force and effect for a period of ninety-nine (99) years or when the Purchase Property is sold, conveyed, and transferred to a third party, which ever event occurs first.

11. **Forbearance and Waiver.** The failure or delay of any party to insist on the timely performance of any of the terms of this Agreement, or the waiver of any particular breach of any of the terms of this Agreement, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred.

12. **Survival.** The terms of this Agreement ~~shall will~~ survive the Closing on the Purchase Property.

13. **Assignment.** No party may transfer or assign this Agreement or any rights or obligations under this Agreement without the express written consent of the other parties.

14. **Governing Law.** This Agreement will be construed and enforced in accordance with North Dakota law. The parties agree 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.

15. **Severability.** If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining ~~terms and~~ provisions and parts of this Agreement will remain binding and enforceable.

16. **Entire Agreement.** This Agreement, together with the relevant closing documents, as well as the Quit Claim Deeds, and including any amendments and exhibits to those documents, constitutes the entire agreement between the parties regarding the matters described in this Agreement, and this Agreement supersedes any previous oral or written agreements between the parties.

17. **Modifications.** Any modifications, waivers, or amendments of this Agreement must be in writing and signed by all parties to this Agreement.

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

19. **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.

*Metro Flood Diversion Authority and
Cass County Joint Water Resource District
Purchase Agreement – CITY OF HORACE*

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. Each party shall pay its own counsel fees and other expenses (including, without limitation, expenses of investigation, settlement, litigation, and attorney's fees and costs incurred in connection therewith) in connection with the negotiation of this Agreement, the performance of their respective obligations under this Agreement, and the consummation of the transactions contemplated by this Agreement, whether consummated or not.

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

22. **Notices.** All notices, demands, and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given: (a) when delivered if personally delivered by hand, with written confirmation of receipt; (b) when received if sent by a nationally recognized overnight courier service, receipt requested; (c) five (5) business days after being mailed, if sent by first class mail, return receipt requested; or (d) when receipt is acknowledged by an affirmative act of the party receiving notice, if sent by electronic transmission device provided that an acknowledgment does not include an acknowledgment generated automatically by an electronic transmission device. Until a party receives written notice in the manner prescribed by this ~~Section~~section 24 to the contrary from another party, the parties can assume that the proper addresses of the Authority, CCJWRD, and the City are as stated in the opening paragraph of this Agreement.

23. **Counterparts.** This Agreement may be executed simultaneously or in three (3) or more counterparts, each of which shall be deemed an original, and all of which, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

24. **Electronic Signatures.** The parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered an original signature for all purposes and shall have the same force and effect as an original signature.

25. **Effective Date.** This Agreement becomes effective upon the date of the last signature appearing below.

(Signatures on the following pages.)

*Metro Flood Diversion Authority and
Cass County Joint Water Resource District
Purchase Agreement – CITY OF HORACE*

Signature Page for the Metro Flood Diversion Authority

The governing body of the Metro Flood Diversion Authority approved this Agreement on the ____ day of _____, 2023.

METRO FLOOD DIVERSION
AUTHORITY

By: _____
Dr. Timothy J. Mahoney, Chair

By: _____
Joel Paulsen, Executive Director

ATTEST:

Dawn Lindblom, Secretary

DRAFT

*Metro Flood Diversion Authority and
Cass County Joint Water Resource District
Purchase Agreement – CITY OF HORACE*

Signature Page for the Cass County Joint Water Resource District

The governing body of the Cass County Joint Water Resource District approved this Agreement on the ___ day of _____, 2023.

CASS COUNTY JOINT WATER
RESOURCE DISTRICT

By: _____
Rodger Olson, Chair

ATTEST:

Carol Harbeke Lewis, Secretary-Treasurer

DRAFT

*Metro Flood Diversion Authority and
Cass County Joint Water Resource District
Purchase Agreement – CITY OF HORACE*

Signature Page for the City of Horace, North Dakota

The governing body of the City of Horace approved this Agreement on the ___ day of _____, 2023.

CITY OF HORACE, NORTH DAKOTA

By: _____
Kory Peterson, Mayor

ATTEST:

Brenton Holper, City Administrator

DRAFT

Exhibit A

Map of Authority Purchase Property

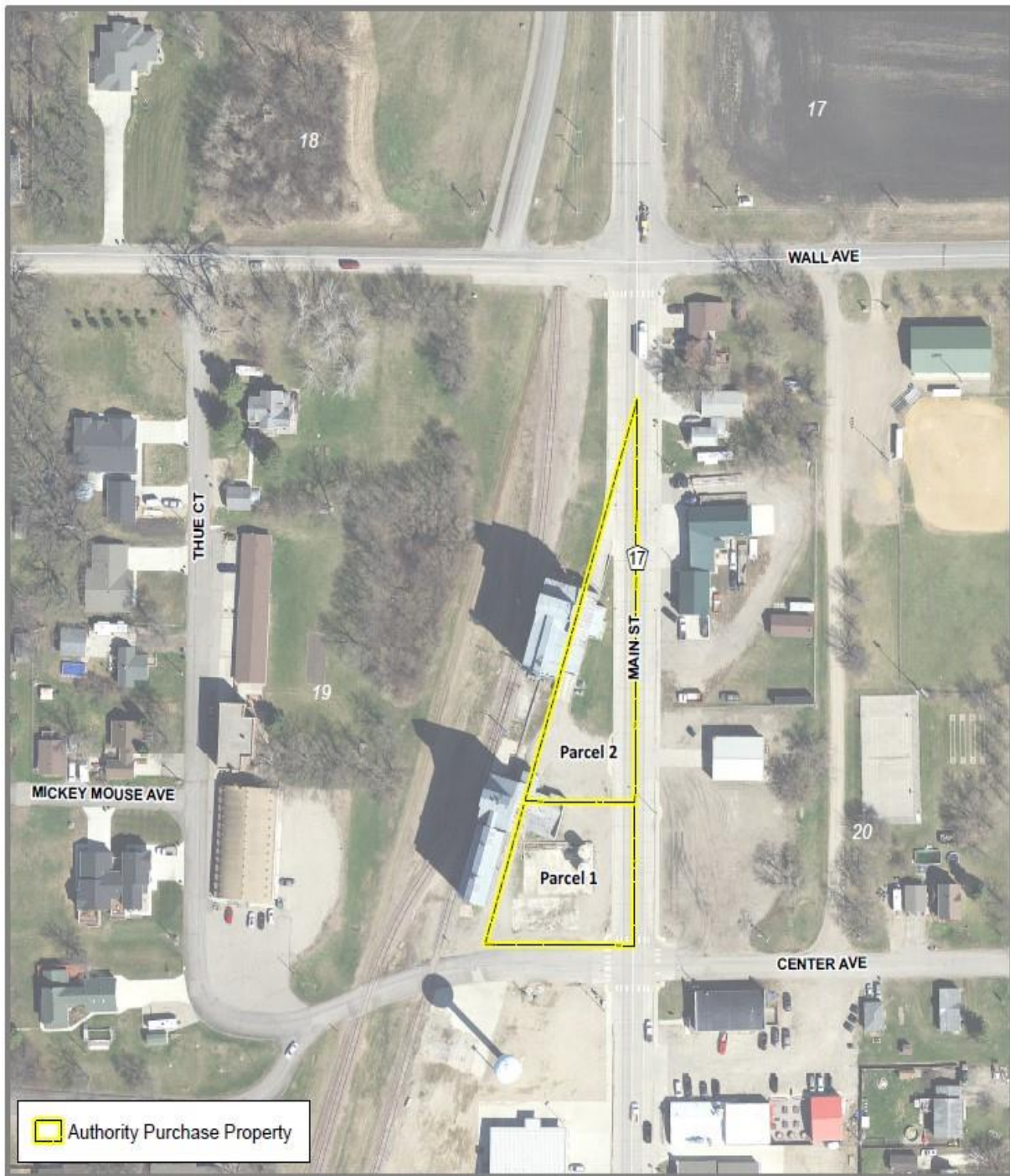
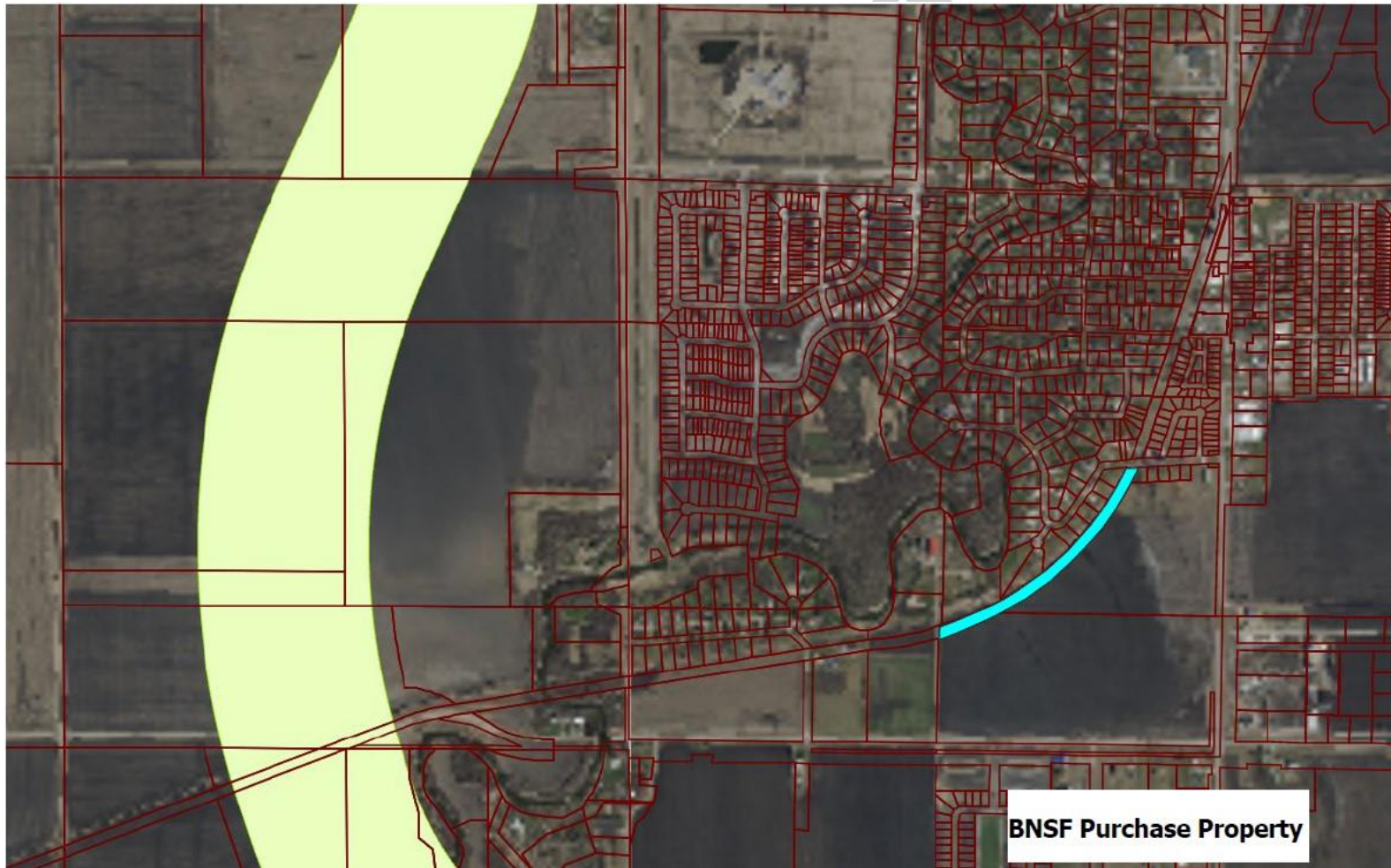


Exhibit C

BNSF Purchase Property



***Metro Flood Diversion Authority and
Cass County Joint Water Resource District
Purchase Agreement – CITY OF HORACE***

Exhibit D

Purchase Property Leases and Licenses

1. Leases

A. Indefinite Term Lease by and between Red River Valley & Western Railroad Company, as lessor, and Horace Rural Fire Protection District, a North Dakota corporation, as lessee, dated September 1, 2011; RRVW Lease #08361-4258; BNSF Lease #BF65556.

B. Lease Agreement by and between CCJWRD and Dakota Underground, dated _____.

2. Licenses

Lease No.	Lease Class	Lessee	Property	Description
1319-4157	Underground Cable Connect	Midcontinent Communications	Horace	Underground fiber optic cable - \$500 1 st year; \$50 each year following
1319-4156	Underground Cable Connect	Midcontinent Communications	Horace	Underground communication cable - \$500 1 st year; \$50 each year following
0290-4227	Underground Cable Connect	Cable One, Inc.	Horace	Underground communication line
0290-4228	Underground Cable Connect	Cable One, Inc.	Horace	Underground communication line
0290-4229	Underground Cable Connect	Cable One, Inc.	Horace	Underground communication line
0290-4230	Underground Cable Connect	Cable One, Inc.	Horace	Underground communication line
0341-4275	Underground Pipeline	City of Horace	Horace	Drinking water pipeline at MP 9.85
0341-4278	Underground Pipeline	City of Horace	Horace	Wastewater pipeline at MP 9.85
0318-4263	Electrical Line	Cass County Electric Cooperative	Horace	Underground wireline