



City of Grand Forks
Staff Report

City Council – September 2, 2025

Agenda Item: Letter of No Objection for City Project No. 8975 – 2025 Drain #4 Water Resource District Improvement

Submitted by: Engineering Department, Al Grasser, PE (City Engineer)
Christian Danielson, PE (Assistant City Engineer)

Staff Recommended Action: **INFORMATION ONLY**

Council Action:

BACKGROUND:

A local group of farmers have been interested in a project to improve the drainage capacity of areas contributing to Legal Drain #4. Legal Drain 4 is the County drainage ditch along the south side of Merrifield Rd. They have noted serious financial impacts to adjacent farmland during significant precipitation events. Knowing that Legal Drain #4 is part of the City's flood protection system, the farm group, as well as the Grand Forks Water Resource District (WRD) have been in communication with City staff over the last couple of years. Inconsideration of our important rural community partners, the staff has represented that we would support to the City Council cooperation in any required United States Army Corps of Engineer reviews.

As a result of the above, the WRD brought this project forward as a special assessment project to improve Legal Drain 4. The project is proposed to deepen and widen the channel to improve the drainage. On August 1, 2025, a vote was held to determine whether the project would move forward. Those property owners within the special assessment district voted to move forward with the project.

Legal Drain 4, more specifically Merrifield Rd., is a part of the City of Grand Forks' flood protection system. Merrifield Rd. serves as the southern levee for the flood protection system. Any modifications to the system must be reviewed by the United States Army Corps of Engineer (USACE). Before the USACE can move forward with their review of this project, they require that a letter of No Objection be submitted by the non-federal sponsor of the flood protection system (The City of Grand Forks). This letter states that the City does not object to the USACE moving forward with their review of the project. The letter does not waive any of the City's rights to be involved with or contest any part of the project as it develops. City Engineering staff will continue to be involved in the review of this project as it moves forward.

As part of the original flood protection project, the City entered into an agreement with the WRD to acquire property for Legal Drain 4 for the project and then transfer various property interests back once the project was completed. The City currently owns all of the land associated with the construction of Legal Drain #4. The transfer of property rights is currently being explored by the City's outside attorney. As part of this project, an agreement or license will also need to be completed. Staff believes that settling the property interests at the time of providing the letter of no objection works best for all parties involved.

There are several complexities in settling property interests. Because Legal Drain #4 is intertwined with the flood protection system, there are some questions that need to be answered regarding maintenance requirements and expectations. There are also features along this ditch such as box culverts/road crossings that need to be addressed as far as ownership and future maintenance. All of these things are being considered within the context of the project at hand as well as future City development.

The transfer of property interests back to the WRD can occur in several ways. Per the agreement, the land would be transferred back either by deed (land goes to WRD) or by easement (City continues to own land with WRD getting rights to construct project). The City's hired attorney believes that providing a license to the WRD would be another way to meet the intent of the agreement. Staff has reviewed the agreement with the legal team hired for support on this project and determined that it would be in the City's interest to maintain ownership of enough of the land to continue to maintain the flood protection system as well as have space for future road construction on Merrifield Rd. While both easements and a license agreement can accomplish this, the license agreement is expected to be the cleanest and fastest way to do this.

City staff and legal counsel will continue to work through the property interests through the project development process. In the meantime, staff is recommending moving forward with the letter of No Objection.

ANALYSIS AND FINDINGS OF FACT:

- The Grand Forks Water Resource District is moving forward with a project to improve Legal Drain 4.
- City and USACE reviews are required for the project to move forward.
- A letter of No Objection is required from the City for the USACE to proceed with their review.
- Execution of a previous land transfer agreement is anticipated to take place as a part of this project.
- Staff is working on the legal details of the land transfer agreement with Swanson & Warcup Ltd. City Council approved working with this legal team on this project on June 2, 2025.

SUPPORT MATERIALS:

- Site Photos (2 pages)
- Letter from WRD (1 page)
- Draft letter of No Objection (1 page)
- Draft License Agreement (6 pages)



Legal Drain #4 at S Washington St looking West



Legal Drain #4 at S Columbia Rd looking West



Water Resource District • 151 S 4th St, Ste 348 • Grand Forks ND 58201

Phone Number: 701-780-8312

Email: gfcwrd@outlook.com

June 04, 2025

City of Grand Forks
Al Grasser
255 N 4th Street
Grand Forks, ND 58201

Subject: Reacquisition of land transferred to the City of Grand Forks and USACE 408 Permit Letter of No Objection Request

Dear Mr. Grasser,

On June 15th, 2005, the city of Grand Forks and the Grand Forks County Water Resource District entered into an agreement (see attached) to transfer land rights to the City of Grand Forks for a flood protection project in conjunction with the US Army Corps of Engineers (USACE). This project included relocation and reconstruction of Legal Drain 4 located in Sections 2, 3, 4, and 5, Township 150 North, Range 50 West.

Per this agreement, the land was to be transferred back to the Grand Forks County Water Resource District promptly after reconstruction. In addition, per Condition 6 of the agreement, "Except as otherwise provided herein, the parties hereto agree that each shall receive no compensation from any other party for any right, title or interest in property transferred herein."

As you are aware, the Grand Forks County Water Resource District is currently working on a petitioned project to Reconstruct and Extend Legal Drain 4 (see attached). This project includes the aforementioned land, we are requesting at a minimum, the Grand Forks County Water Resource District will have access to this property to complete the requested petitioned project upon landowner approval.

In addition, the requested petitioned project requires a USACE 408 permit as Legal Drain 4 functions as the City's south end interceptor ditch. For the USACE to begin any type of review and provide preliminary comment a 60% plan set must be submitted for review. This plan set has been prepared and has been provided to the City Engineering Department and USACE. As part of the 408 permit review process a Statement of No Objection from the USACE project sponsor (City of Grand Forks) is also required. The Grand Forks County Water Resource District is requesting a Statement of No Objection at this time so that USACE review and comment may begin. It is intended that the City of Grand Forks would be provided updates to plan sets as comments from USACE are addressed.

Please review the attached documents at your earliest convenience. We would like to discuss this more in depth in the near future. Please contact Jerry Pribula (701-741-3900) with any questions or concerns.

Tom Perdue
Board Chairman.

| Water Board Managers | | Secretary/Treasurer | Attorney | Engineer |
|----------------------|-------------|---------------------|-------------|---------------------|
| Tom Perdue | Tim Farrell | Lori Christianson | Dan Gaustad | Pribula Engineering |
| Jim Heider | Tom Durkin | | | |
| Bob Drees | | | | |



*Howard D. Swanson
John A. Warcup
Yusuf Abas

*Also licensed in Minnesota

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Telephone: (701) 772-3407
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Erin J. Kennedy, Office Manager

July 9, 2025

Via Email

United States Army Corp of Engineers
180 5th St. E., Ste. 700
St. Paul, MN 55101

**RE: Statement of No Objection
Proposed Third-Party Project: _____
Location: Sections 2, 3, 4, and 5, Township 150 N, Range 50 W, Grand Forks
County, North Dakota
Permit No.: _____
Federal Project: _____**

The City of Grand Forks, a North Dakota municipal corporation, hereby issues its Statement of No Objection, in compliance with the U.S. Army Corp of Engineers' Section 408 Permission Submittal Requirements. The City of Grand Forks has been advised as to the proposed Third-Party scope of work and has determined that such scope affects the above-mentioned Federal Project for which the City of Grand Forks was a sponsor. However, the City of Grand Forks has no objection to the proposed Third-Party Project per the preliminary plans dated _____. The City of Grand Forks reserves its rights to provide additional comment for consideration by USACE during the review process and prior to a final Section 408 decision.

In the event you should have any questions regarding this matter, please contact Allen Grasser, PE – City Engineer at 701-772-7245 or agrasser@grandforksgov.com.

Sincerely,

Brandon Bochenski, Mayor, City of Grand Forks

LICENSE AGREEMENT

This License Agreement (the “LICENSE”) is made and entered into as of the ____ day of _____, 2025, (the “EFFECTIVE DATE”) by and between the **City of Grand Forks**, a North Dakota municipal corporation, with an address of _____, Grand Forks, ND 58203, hereinafter called the “City” and the **Grand Forks County Water Resource District**, a North Dakota municipality, with an address of _____, Grand Forks, ND 58201, hereinafter called the “District”. The City and District may also be referred to as a “Party” or, collectively, as the “Parties”.

RECITALS

- A. City is the owner of certain real property (“the Property”) and desires to protect and preserve the municipal use thereof in that area which is more particularly described in Exhibit “A” attached hereto and made a part hereof.
- B. District desires to construct a Legal Drain on or along portions of the property as shown on Exhibit B (“Licensed Property”), attached hereto and made a part hereof, and desires to obtain City’s permission therefore.
- C. District desires to obtain the right to use the Licensed Property as defined herein.
- D. City is willing to allow the construction of a legal drain by the District provided that all requirements and certifications issued by state and/or federal authorities regarding the City’s flood protection system are not violated and that no damage or alteration to the City’s use of the existing flood protection system occurs as a result of the District’s construction activities and use of the property as a legal drain.

NOW, THEREFORE In consideration of the foregoing recitals, and in good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledge, the parties agree as follows:

- 1. **Incorporation by Reference.** The foregoing recitals are hereby restated and incorporated in this License Agreement.
- 2. **Grant of License.** Commencing as of the Effective Date, City grants to District, a license to construct, occupy and use the License Premises in compliance with and subject to all of the terms and conditions herein stated.

3. **Completion of Permanent Improvements.** District covenants and agrees to use its best efforts to complete the construction of Legal Drain 4 within ____ () months of the Effective Date. (Completion Date).

4. **Condition of Premises.** District acknowledges and agrees that the License Premises shall be provided to District for its use in “AS IS, WHERE IS” condition and “WITH ALL FAULTS” as of the date on which District first enters the License Premises. Except as expressly provided herein, no representations or warranties have been made or are made and no responsibility has been or is assumed by City or by any beneficiary, partner, person, firm, agent or representative acting or purporting to act on behalf of City as to the condition or repair of the License Premises.

5. **Expiration Date.** This License Agreement shall expire on the ___ day of _____, 20___, unless otherwise established by written agreement of the parties.

6. **Construction/Re-Construction Costs.** District shall pay all costs for the construction/re-construction of the License Premises for the legal drain.

7. **Use.** District may use the License Premises for purpose of a legal drain as defined by North Dakota law.

8. **Maintenance.** District shall repair and maintain the License Premises including repairs necessary as a result of construction or operation of the legal drain.

9. **Alterations.** District shall make no alterations to the License Premises except as otherwise approved by the City and as further approved and authorized by the United States Army Corp of Engineers.

10. **Surrender.** Upon the execution of the Term, District shall return the License Premises in accordance with the terms hereof, wear and tear and casualties excepted.

11. **Assignment.** District shall not transfer any of its rights hereunder without the prior written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed.

12. **Defaults.** In the event District defaults in the performance of any of the covenants or agreements of this License and such default continues for thirty (30) days after notice thereof in writing (or such longer period as shall be reasonably necessary to cure such default provided District promptly commences such cure and thereafter diligently pursues such cure to completion), City, in addition to any and all other legal remedies and rights it may have under this License Agreement, may terminate this License Agreement and repossess the License Premises, in accordance with applicable law. City covenants and agrees that, notwithstanding any provision herein to the contrary, the exercise of City’s remedies herein shall be in compliance with North Dakota law.

13. **No Liens.** District shall not permit any lien to be filed against the License Premises or any improvements thereon for any labor or materials in connection with work of any character performed or claimed to have been performed on the License Premises at the direction or sufferance of District.

14. **Compliance with Laws; Recording; Counterparts.** District shall fully comply with all applicable laws, ordinances, statutes, codes, and regulations in connection with its use of the License Premises.

15. **Notices.** All notices and other communications given pursuant to this License Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if delivered personally or by nationally-recognized overnight delivery service or by certified mail, postage prepaid, return receipt requested, in an envelope properly stamped and addressed, as follows:

If to District:

With a copy to:

If to City:

The effective date of any notice shall be the date of receipt for personal delivery and overnight courier, or three (3) days following deposit in the United States mail as herein provided.

16. **Relationship of Parties.** Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, to create the relationship of principal and agent or of partnership, or of joint venture, by the parties hereto, it being understood and agreed that no provision contained in this License Agreement nor any acts of the parties hereto shall be deemed to create any relationship other than the relationship of City and District.

17. **Captions.** The captions of this License Agreement are for convenience only and shall not be construed as defining or limiting in any way the scope or intent of the provisions hereof.

18. **Severability.** If any term or provision of this License Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this License Agreement shall not be affected thereby, but each term and provision of this License Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

19. **Law Applicable.** This License Agreement shall be construed and enforced in accordance with the laws of the State of North Dakota.

20. **Covenants Binding on Successors.** All of the covenants, agreements, conditions and undertakings contained in this License Agreement shall extend and inure to and be binding upon the permitted heirs, executors, administrators, successors and assigns of the respective parties hereto.

22. **Counterparts.** This License Agreement may be executed in any number of counterparts, each of which shall be deemed an original instrument, but all of which together shall constitute one and the same instrument. A facsimile signature shall be deemed an original signature.

23. **No Interest in Real Property Conveyed.** This License Agreement does not convey an interest in real property.

24. **Subject to Prior Actions.** This license is issued subject to any prior licenses, easements, or leases granted by the City for improvements of other parties.

25. **Hold Harmless and Indemnity.**

(a)

(i) As used in this license, the term “Claims” means losses, liabilities, and expenses of any sort, including attorneys’ fees; fines and penalties; environmental costs, including, but not limited to, investigation, removal, remedial, and restoration costs, and consultant and other fees and expenses; and any and all other costs or expenses.

(ii) As used in this license, the term “Injury” means death, personal injury, or property damage; loss of profits or other economic injury; disease or actual or threatened health effect; and any consequential or other damages.

(b) To the extent permitted by law, the District covenants and agrees to at all times protect, indemnify, hold harmless, and defend the City, its directors, officers, agents, employees, successors, assigns, parents, subsidiaries, and affiliates from and against any and all Claims arising from, alleged to arise from, or related to any Injury allegedly or actually occurring, imposed as a result of, arising from, or related to this license; the District’s or any other person’s presence at the Property and/or Licensed Property as a result of or related to this license.

(c) The District’s duty to protect, indemnify, hold harmless, and defend hereunder shall apply to any and all Claims and Injury, including, but not limited to:

(i) Claims asserted by any person or entity, including, but not limited to, employees of the District or its contractors, subcontractors, or their employees;

(ii) Claims arising from, or alleged to be arising in any way from, the existence at or near the Property of electric power generation, transmission, distribution, or related facilities; electricity or electromagnetic fields; natural gas and/or propane

gathering, storage, transmission, distribution, peakshaving or related facilities; asbestos or asbestos containing materials; any Hazardous Materials, regardless of origin; or

(iii) Claims arising from, or alleged to be arising in any way from, the acts or omissions of the District, its subdistricts, invitees, agents, or employees.

26. **Care Required.** The District shall use care not to damage the property in the construction, maintenance, operation, repair, inspection, removal, replacement, or relocation of the Legal Drain, and shall give reasonable notice to the City of any of its activities relating thereto.

27. **Restoration.** After initial construction of the Licensed Facility and thereafter, in the event of resettling, the District shall restore the surface of the Property by grading and compacting any irregularities, reseeding, and/or revegetation as required to restore original conditions.

28. **Acquisition of Approvals.** The District shall bear the sole obligation of obtaining such other authority or rights as the District may need in addition to the rights provided in this license for the construction of the Licensed Facility and use of the Licensed Property.’

29. **Sole Risk.** District agrees that all operations performed by District hereunder, or its employees, contractors or subcontractors, shall be at the sole risk and expense of District.

30. **No Partnership.** Nothing in this License shall be interpreted or construed as a partnership or joint venture between City and District concerning District's operations on the Licensed Property.

31. **Amendment.** This License may be amended only by a written Amendment signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this License on the Effective Date.

CITY:

CITY OF GRAND FORKS

By: _____

Its: _____

DISTRICT:

GRAND FORKS COUNTY WATER RESOURCE
DISTRICT

By: _____

Its: _____

DRAFT