



**Engineering Department**

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Fargo, ND 58102

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May 21, 2026

Board of City Commissioners  
City of Fargo  
200 North Third Street  
Fargo, ND 58102

Re: Access Easement – Southeast Cass Water Resource District  
Improvement District #BN-25-F1

Dear Commissioners:

Accompanying for City Commission review and approval is an original Access Easement from the Southeast Cass Water Resource District in association with Improvement District #BN-25-F1.

Drain 10 & 48<sup>th</sup> Avenue North

RECOMMENDED MOTION:

Approve an Access Easement from the Southeast Cass Water Resource District.

Please return the signed original.

Respectfully submitted,

Shawn G. Bullinger  
Land Acquisition Specialist

C: Matt Jennings

**ACCESS EASEMENT**  
(Storm Sewer Easement)

THIS EASEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2026, by the Southeast Cass Water Resource District, a North Dakota political subdivision, with a post office address of 1201 Main Avenue West, West Fargo, North Dakota 58078-1301 (the “District”); and the City of Fargo, a North Dakota municipal corporation, with a post office address of 225 - 4th Street North, Fargo, North Dakota 58102 (the “City”).

**RECITALS**

A. The District owns, operates, and maintains Cass County Drain No. 10 (“Drain 10”), a legal assessment drain; portions of Drain 10 are located within the City’s municipal boundaries.

B. The City plans to install storm sewer infrastructure with an outfall that will discharge into Drain 10; the storm sewer infrastructure and the outfall into Drain 10 are, collectively, the “Storm Sewer Infrastructure.”

C. The District has agreed to convey an easement to the City for purposes of the construction, operation, and maintenance of the Storm Sewer Infrastructure on the District’s Drain 10 right of way, subject to the terms and conditions contained in this Easement.

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

**AGREEMENT**

1. **The Storm Sewer Property.** The District grants and conveys to the City a non-exclusive, permanent easement, including the easement rights described in this Easement, upon, over, across, and through the following real property in Cass County, North Dakota:

See survey and legal description attached as **Exhibit A.**

The property described above is the “Storm Sewer Property.” The District does not warrant fee simple ownership of the Storm Sewer Property and only conveys those rights to the City permitted under North Dakota law that are consistent with the District’s rights in the Storm Sewer Property.

2. **Easement Rights.** Under this Easement, the District grants to the City, and the City's officers, employees, agents, representatives, consultants, and contractors, a permanent and perpetual easement upon, over, in, under, across, and through the Storm Sewer Property for the following purposes: installing, constructing, inspecting, maintaining, reconstructing, altering, repairing, replacing, operating, improving, modifying, and removing the Storm Sewer Infrastructure and all associated appurtenances; excavating, piling, storing, depositing, spoiling, spreading, and removing excavated dirt, soil, clay, silt, or other materials; moving, storing, and removing equipment, materials, and supplies; removing trees, underbrush, vegetation, and obstructions that interfere with the installation or construction of the Storm Sewer Property; and the right to perform any other work necessary and incident to the installation, construction, inspection, maintenance, reconstruction, alteration, repair, replacement, operation, improvement, modification, and removal of the Storm Sewer Infrastructure and all associated appurtenances, together with all necessary and reasonable rights of ingress and egress to and from the Storm Sewer Property. The City is solely responsible for the installation, construction, inspection, maintenance, reconstruction, alteration, repair, replacement, operation, improvement, modification, and removal of the Storm Sewer Infrastructure and all associated appurtenances at the City's sole cost. The City's use of the Storm Sewer Property will not interfere with Drain 10. The City is responsible and liable for all acts and omissions of all of the City's officers, employees, agents, representatives, contractors, consultants, subcontractors, licensees, and invitees.

3. **Drainage Priority and Use.** The parties understand and agree that Drain 10 is a public facility that provides drainage benefits and other important public benefits to Cass County and its residents, including the City and residents of the City, and further agree the District's use of Drain 10, including the Storm Sewer Property, as a drainage facility takes priority over any other use of the Storm Sewer Property, including the City's use of the Storm Sewer Property for the Storm Sewer Infrastructure.

4. **No Unreasonable Interference.** The District will not unreasonably interfere with the City's easement rights under this Easement. However, the District's priority use of Drain 10 for drainage, flood protection, or other emergency purposes may require and include temporary disruptions or interference with the City's interest in the Storm Sewer Property. The District will use reasonable care to avoid any damages to the Storm Sewer Infrastructure, associated appurtenances, and other storm sewer infrastructure; however, the District will not be liable or responsible for any damages resulting from any construction, cleaning, inspection, reconstruction, modification, operation, maintenance, repair, or improvement of Drain 10 by the District, its officers, agents, representatives, employees, consultants, or contractors. In the event any reconstruction, modification, or improvement of Drain 10 requires any modifications to the Storm Sewer Infrastructure, associated appurtenances, or other storm sewer infrastructure, the City will modify the Storm Sewer Infrastructure at the City's expense and, if necessary, the parties will amend this Easement for purposes of redefining the "Storm Sewer Property."

5. **Improvements and Repairs to the Storm Sewer Property.** Any improvements or repairs to the Storm Sewer Property are subject to the following:

a. Prior to the City's construction, reconstruction, or other improvements of the City's Storm Sewer Infrastructure, the City must provide plans and specifications to the District, and the District must first give prior written consent to the design of any construction or improvements; the District will not unreasonably withhold consent.

b. The City will install, construct, inspect, maintain, reconstruct, alter, repair, replace, operate, improve, modify, and remove the Storm Sewer Infrastructure in a manner that does not interfere with Drain 10.

c. The City will obtain the District's prior written consent prior to commencing any structural repairs, modifications, or improvements to the Storm Sewer Infrastructure on or adjacent to the Storm Sewer Property that require excavation; the District will not unreasonably withhold consent.

d. The City will design and construct any and all improvements and required maintenance on the Storm Sewer Infrastructure in a manner that ensures adequate drainage of the Storm Sewer Property, with a finished grade that drains the Storm Sewer Property, and that does not result in ponding in or on Drain 10.

e. With the exception of the Storm Sewer Infrastructure and related appurtenances, the City will not construct any improvements in, upon, under, over, or across any portion of the Storm Sewer Property; the City will not place any fixtures, equipment, or other personal property on any portion of the Storm Sewer Property; the City will not construct or install, or allow construction or installation of, any utility facilities, lines, structures, or associated appurtenances on, over, in, under, through, or across the Storm Sewer Property; the City will not encumber any portion of the Storm Sewer Property; and the City will not otherwise alter any portion of the Storm Sewer Property without prior consent from the District; the District will not unreasonably withhold consent.

f. The City will repair any portion of the Storm Sewer Property or Drain 10 damaged as a result of any construction, operation, inspection, maintenance, alteration, repair, replacement, reconstruction, and removal of the Storm Sewer Infrastructure or otherwise damaged as a result of any use, access, ingress, and egress granted under this Easement by the City or any of the City's officers, employees, agents, representatives, contractors, consultants, subcontractors, licensees, or other invitees. The City will otherwise repair and return the Storm Sewer Property and Drain 10 as nearly as practicable to its original condition following any disturbance or damages, at the City's sole cost.

g. The City will promptly cease any activity and remove any structure or obstruction that interferes with Drain 10 or the District's use of the Storm Sewer Property, at the City's sole cost.

6. **Term.** The rights granted under this Easement are permanent and the District may only terminate this Easement if necessary to protect the integrity of Drain 10; as necessary to comply with any laws, rules, regulations, requirements, or directives of any applicable federal or state agency with regulatory jurisdiction over Drain 10; or in the event of any default by the City not remedied within a reasonable time. In the event of any termination, the District will record an Affidavit of Termination with the Cass County Recorder's Office, and the City will remove any improvements from Drain 10, at the City's sole cost.

7. **Liability.** The City will be solely responsible for all claims, actions, administrative proceedings, judgments, damages, penalties, fines, costs, liabilities, interests, or losses, including costs, expenses, and attorneys' fees, arising out of or as a result of the construction, inspection, maintenance, operation, alteration, repair, replacement, reconstruction, removal, or use of the Storm Sewer Infrastructure by the City or the City's officers, consultants, contractors, agents, representatives, employees, or other invitees; any entry upon, use of, or access, ingress, and egress upon, over, or across the Storm Sewer Property by the City or the City's officers, consultants, contractors, agents, representatives, employees, or other invitees; or any act, error, or omission of the City or the City's officers, consultants, contractors, agents, representatives, employees, or other invitees, including any failure to perform under this Easement.

8. **Compliance with Laws.** The City, at its own cost, is solely responsible for promptly complying with all present and future laws, ordinances, rules, and regulations, and obtaining all necessary licenses, permits, registrations, and approvals, from all applicable federal, state, county, and municipal governments and any other applicable governmental entities or political subdivisions, and their appropriate departments, commissions, boards, and officers, regarding the Storm Sewer Infrastructure or the City's other permissible use, access, ingress, and egress rights upon, over, or across any of the Storm Sewer Property.

9. **Forbearance.** The failure or delay of either party to insist on the timely performance of any of the terms of this Easement, or the waiver of any particular breach of any of the terms of this Easement, 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.

10. **Governing Law.** This Easement will be construed and enforced in accordance with North Dakota law.

11. **Interpretation.** This Easement will be construed as if prepared by both parties.

12. **Severability.** If any court of competent jurisdiction finds any provision or part of this Easement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Easement, and all remaining terms and provisions of this Easement will remain binding and enforceable; the parties will reconvene negotiations to arrive, in good faith, at an agreement as to matters remaining undetermined as a result of any finding by a court of competent jurisdiction that any provision or part of this Easement is invalid, illegal, or unenforceable.

13. **Entire Agreement.** This Easement, together with any amendments, constitutes the entire agreement between the parties regarding the matters described in this Easement, and this Easement supersedes all other previous oral or written agreements between the parties.

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

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

16. **Modifications.** Any modifications or amendments of this Easement must be in writing and signed by the District and the City and must be recorded in the Cass County Recorder's Office.

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

*[Signatures appear on the following pages.]*

***Southeast Cass Water Resource District  
City of Fargo  
Storm Sewer Easement – Drain No. 10***

**Page 6**

SOUTHEAST CASS WATER  
RESOURCE DISTRICT

By:

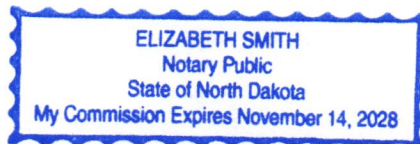
*Keith A. Weston*  
Keith Weston, Chairman

ATTEST:

*Mel Hinkemeyer*  
Melissa Hinkemeyer, Secretary

STATE OF NORTH DAKOTA     )  
                                                      ) ss.  
COUNTY OF CASS                     )

On this 12<sup>th</sup> day of May, 2026, before me, a Notary Public in and for said County and State, personally appeared Keith Weston and Melissa Hinkemeyer, to me known to be the Chair and Secretary, respectively, of the Southeast Cass Water Resource District, and who executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of the Southeast Cass Water Resource District.



*Elizabeth Smith*  
Notary Public, Cass County, ND

(SEAL)



CITY OF FARGO

By: \_\_\_\_\_  
Timothy J. Mahoney, M.D., Mayor

ATTEST:

\_\_\_\_\_  
Angie Bear, Deputy City Auditor  
on behalf of Fargo City Auditor

STATE OF NORTH DAKOTA     )  
                                                  ) ss.  
COUNTY OF CASS                    )

On this \_\_\_\_ day of \_\_\_\_\_, 2026, before me, a Notary Public in and for said County and State, personally appeared Timothy J. Mahoney, M.D., and Angie Bear, to me known to be the Mayor and Deputy City Auditor, respectively, of the City of Fargo, and who executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of the City of Fargo.

\_\_\_\_\_  
Notary Public, Cass County, ND

(SEAL)

*Southeast Cass Water Resource District  
City of Fargo  
Storm Sewer Easement -- Drain No. 10*

**Page 8**

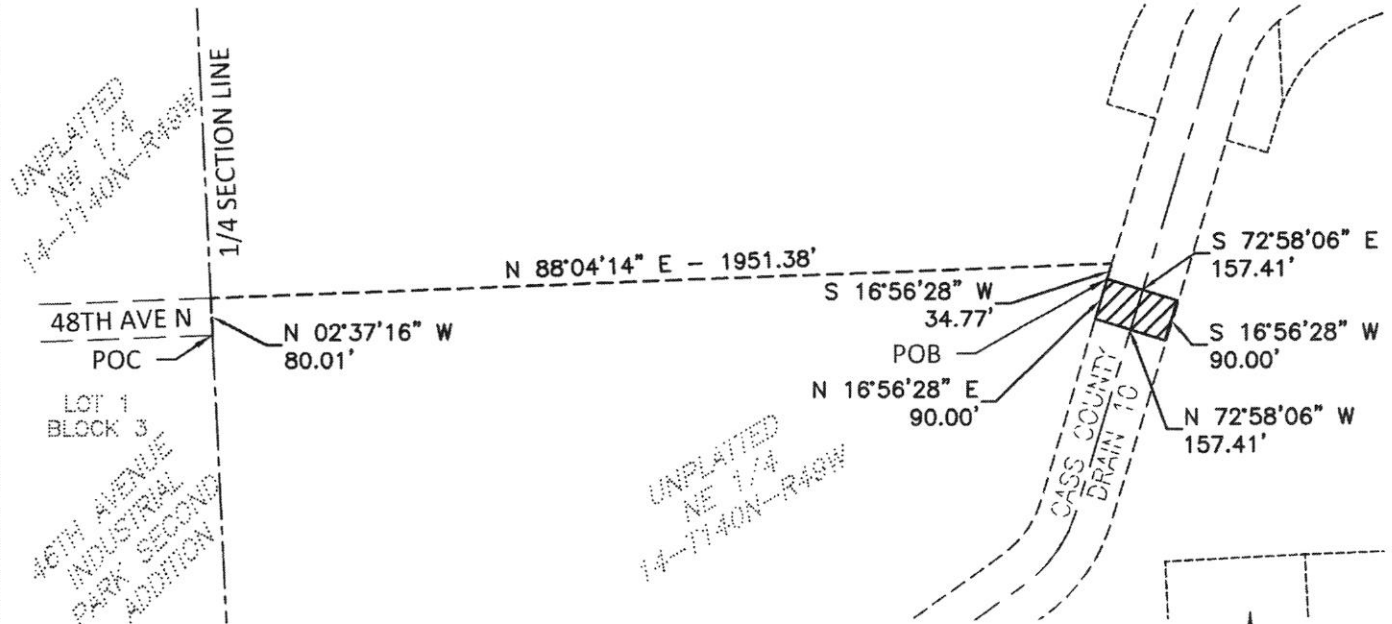
The legal descriptions contained in this document were drafted by:

Brent W. Wacha, LS-5068  
City of Fargo -- Engineering  
225 - 4th Street North  
Fargo, North Dakota 58102

**EXHIBIT A**

Legal Description and Survey of the Storm Sewer Property

# EXHIBIT A

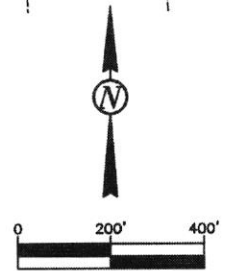


## Description:

A tract of land in the Northeast Quarter of Section 14, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota described as follows:

Commencing at the northeast corner of Lot 1, Block 3, 46TH AVENUE INDUSTRIAL PARK SECOND ADDITION to the City of Fargo, Cass County, North Dakota; thence North 02°37'16" West, on the west line of the Northeast Quarter of said Section 14, a distance of 80.01 feet; thence North 88°04'14" East a distance of 1951.38 feet, to a point on the west line of Cass County Drain 10; thence South 16°56'28" West, on said west line of Cass County Drain 10, a distance of 34.77 feet to the point of beginning; thence South 72°58'06" East a distance of 157.41 feet; thence South 16°56'28" West a distance of 90.00 feet; thence North 72°58'06" West, a distance of 157.41 feet, to a point on said west line of Cass County Drain 10; thence North 16°56'28" East, on said west line of Cass County Drain 10, a distance of 90.00 feet to the point of beginning.

Said tract contains 14,166 square feet, more or less.



BEARINGS BASED ON:  
City of Fargo Ground Coordinate System,  
December 1992

## LEGEND

NEW EASEMENT AREA



ENGINEERING DEPT.

## PERMANENT EASEMENT

NORTHEAST QUARTER OF SECTION 14, T. 140 N., R. 49 W., FIFTH P.M.,  
CASS COUNTY, NORTH DAKOTA

DRAWN BY: BWW

APPROVED BY: BWW

DATE: APRIL 27, 2026

SHEET 1 OF 1