



DEVELOPMENT AGREEMENT

THIS AGREEMENT (the Agreement), made on the ____ day of _____, 20____ (“Effective Date”) between the City of Dickinson, a political subdivision, hereinafter called the CITY, and the OWNER as identified herein;

OWNER Name and Address: Dickinson Energy Park, LLC
555 Highway 1804 ND
Bismarck, ND 58503-6228

For the following described property:

A PARCEL OF LAND BEING LOTS ONE (1) AND TWO (2), BLOCK ONE (1) OF *ENERGY CENTER THIRD ADDITION* TO THE CITY OF DICKINSON, STARK COUNTY, ND AS RECORDED BY STARK COUNTY DOCUMENT NUMBER 326775. SAID LOT ONE (1) ALSO ENCOMPASSES LOT ONE 'A' (1A) AS RECORDED BY STARK COUNTY DOCUMENT NUMBER 3180587, AND LOT ONE (1) AS RECORDED BY STARK COUNTY DOCUMENT NUMBER 3098171.

SAID PARCEL CONTAINS 70.71 ACRES, MORE OR LESS, AND IS SUBJECT TO ANY PREVIOUS EASEMENTS, AGREEMENTS, CONVEYANCES AND SURVEYS.

Also referred to herein as “**Energy Center 6th Addition**”;

Also referred to herein as the “**Subject Property**”;

RECITALS

WHEREAS, the OWNER is the fee OWNER of a portion of the Subject Property, located in the City of Dickinson, Stark County, North Dakota, legally described as provided above; and

WHEREAS, the OWNER intends on platting the Subject Property; and

WHEREAS, the OWNER and CITY agree that the Subject Property will be improved and developed pursuant to the terms of this Agreement, the approved subdivision plat of the Subject Property, and all applicable CITY ordinances and regulations;

NOW THEREFORE, in mutual consideration of the promises, covenants and agreements of the parties contained herein, the parties hereby agree as follows:

1. Regulation of Development. This Agreement is executed in conformance with Section 52 of the City of Dickinson Municipal Code effective as of the date of this agreement and shall satisfy the requirements contained therein for a Subdivision Agreement to be completed prior to the filing and recordation of the plat of the Subject Property. This Agreement shall control the development of the Property and the construction of Municipal Improvements necessary to serve the Subdivision or Subject Property with municipal services. Remedies contained in this Agreement shall be in addition to those otherwise provided by law to the CITY for other violations of the City of Dickinson Municipal Code.

2. Infrastructure Improvements – Special Conditions. Public infrastructure improvements will be required to serve portions of the Subject Property. The OWNER and CITY hereby agree that the following are the only public infrastructure improvements required to be constructed as indicated herein and accepted by the CITY:

- a) OWNER shall prepare or have prepared plans and specifications for the construction of a public sanitary sewer system within a portion of the public right-of-way to be dedicated for E Villard St, Tract 1 of Block 1, and the proposed *Drainage and Sanitary Sewer Easement* shown by the plat of the Subject Property. The sanitary sewer system shall be designed in accordance with local and state regulations and shall meet current City Standards, Specifications, and Details. The sanitary sewer main piping shall have a diameter of 8-inches and shall connect to the existing lift station in Lot 7, Block 1 of the Subject Property. This sanitary sewer system shall be designed to provide sanitary sewer service lines to Lots 3 thru 6, Block 1 of the Subject Property.
- b) OWNER shall prepare or have prepared design and plans and specifications for the stormwater management facility within Tract 1, Block 1. This facility shall detain runoff from Lots 3 thru 5, Block 1 of the Subject Property to pre-development rates in accordance with current City Policies. The cost of preparing these plans shall be paid by the OWNER.
- c) Lots 1, 2, 6, and 7 of Block 1 of the Subject Property are not to be served by the stormwater management facility to be located in Tract 1 of Block 1 of the Subject Property as noted by Section 2. b) of this Agreement. These lots will be required to meet the current City codes and policies at the time of development with respect to stormwater management. The stormwater management infrastructure for these individual lots, as required, shall be considered private infrastructure that will be designed, constructed, and maintained by the individual lots owners in accordance with City codes and policies at the time these lots are improved.
- d) The OWNER shall construct or have constructed and shall pay all expenses for construction of the stormwater management facilities and sanitary sewer improvements as depicted by the

plans and specifications approved by the CITY as noted by Section 2. a) and Section 2. b) of this Agreement. A Certificate of Occupancy shall not be issued for any Lot served by these public improvements until the required infrastructure for said Lot is constructed and approved by the CITY.

- e) OWNER shall allow CITY to perform inspection of the public infrastructure improvements to be constructed by OWNER as needed to ensure proper construction in accordance with the approved plans and specifications noted by this Agreement. OWNER shall pay CITY for said inspection services in accordance with the rates defined by the current CITY fee schedule.
- f) Title to, ownership, and maintenance of Public Improvements after construction and acceptance shall be as defined by Section 8 of this Agreement.

3. Assurance of Infrastructure Completion. In the event that construction of the required public infrastructure that is to be paid for directly by the OWNER as indicated in Section 2, herein, is not complete at the time of final plat recording for a particular phase of the project, the OWNER hereby agrees that no private improvements shall be constructed within any land located within the Subject Property unless and until a plan for developing and constructing such improvements and infrastructure is approved by the CITY. Such approval will be memorialized by a public infrastructure permit which will be valid for one year from the date of issuance at a fee listed in the current CITY fee schedule. Prior to the CITY recording the Final Plat of the Subject Property, the OWNER shall post with the CITY security in the amount of 130% of the lesser of the estimated construction cost as approved by the City Engineer or actual bid amounts, if available, for said improvements to assure the completion of the required public infrastructure that is to be paid for directly by the OWNER for the Subject Property, as required under Section 52-6. The security posted by the OWNER shall be held by the CITY until the cost of each approved phase(s) of the infrastructure for the whole of the Subject Property has been completed. A full release of the security remaining upon the completion of construction shall be made upon completion of the work, inspection, and final acceptance of the same. The Security remaining upon completion of construction shall remain in effect through warranty examination and final inspection by the CITY as indicated by Section 9, herein. If the infrastructure improvements have not been completed after two (2) years from the date of the execution of this agreement, the assurance of infrastructure completion as listed in Section 3 of this agreement shall be considered void and the CITY will utilize the security posted to complete the infrastructure independently.

4. City Engineer Approval Required. No improvements within the Subject Property shall be made unless and until necessary plans and specifications therefore have been submitted to and approved by the City Engineer in accordance with the City of Dickinson Municipal Code for the Subject property covered by such plans and specifications to include all State of North Dakota permits from the North Dakota Department of Environmental Quality.

5. Subdivision of Land. The OWNER shall otherwise conform to all requirements regarding the subdivision of land enacted by the City of Dickinson, as set forth in Chapter 52 of the City of Dickinson Municipal Code, as may be amended from time to time. The provision of remedies in this Agreement shall be in addition to those otherwise provided by law to the CITY for other violations of the City of Dickinson Municipal Code.

6. Permits. The CITY's approval of this Agreement does not include approval of permits for construction within the Subject Property. The OWNER shall separately apply to the CITY for any building permits, certificates of occupancy, right-of-way permits, or similar approvals for any and all construction within the Subject Property. The OWNER shall notify all prospective lot owners within the Subject Property that the CITY will not accept any building permit or development applications until the CITY has approved the final storm water management plan.

7. **Repairs and Replacements.** The OWNER shall replace, or have replaced, or repair, or have repaired, as the case may be, any and all pipes and monuments within the Subject Property that have been destroyed or damaged by the OWNER or OWNER's agents. The OWNER shall replace, or have replaced, or repair, or have repaired, as the case may be, the entire cost of such replacement or repair, of any and all property damaged or destroyed by reason of any work done pursuant to this Agreement, whether such property is owned by the United States, or any agency or entity thereof, or the State of North Dakota, or any agency or political subdivision thereof, or by the CITY or by any public or private corporation, or any person whomsoever, or by any combination of such owners. Any such repair or replacement shall be to the satisfaction and subject to the approval of the City Engineer or their designee.

8. **Title to, Ownership, and Maintenance of Public Improvements.** Ownership and maintenance of any and all public municipal improvements within the public rights-of-way, tracts, and drainage and sanitary sewer easements dedicated and granted by the subdivision plat of the Subject Property, shall vest in the CITY upon completion, acceptance, and satisfaction of any warranty issues for such improvements with the following additional requirements:

- a) Upon CITY acceptance of the public infrastructure improvements noted by Section 2. a) and Section 2. b) of this Agreement, CITY shall take ownership and maintenance responsibilities of said infrastructure.
- b) The real property encumbered by easements for public infrastructure within the Subject Property shall be privately owned, but the CITY shall have the rights to access, maintain, repair, improve, remove, and replace the public improvements that are to be owned by the CITY within the easements. The OWNER shall not build, create, construct, or permit to be built, created, or constructed, any obstruction, building, engineering works, or other structures upon, over, or under the strip of land herein described or that would interfere with the public improvements. The OWNER shall not change the existing grade within the easements without prior approval from the CITY. This shall not restrict the OWNER from constructing pavement, fences, landscaping, or utility crossings within the easement that do not adversely affect the public infrastructure. Upon completion of any work within the easements, the CITY shall leave the property in good repair so that there is no unreasonable damage. If the CITY is not able to have the property repaired to its existing condition, the CITY shall pay for damages to the property. The damages, if not mutually agreed upon, may be determined by three disinterested persons, one to be selected by the OWNER and one by CITY, and these two shall select a third person. The award determined by these three persons shall be final and conclusive.
- c) Tract 1, Block 1 of the Subject Property shall be deeded to the CITY upon completion and acceptance of the improvements required for stormwater management within this tract.

9. **Maintenance Warranty.** For all public municipal improvements within the Subject Property constructed privately by the OWNER, and in accordance with Section 52-6 and Section 3 of this agreement, herein, assurance shall be provided by the OWNER. The amount of this assurance remaining at the completion of construction is to remain in full effect for a warranty period of no less than one (1) year following substantial completion of said improvements. Until the end of this one-year warranty period, the OWNER shall remedy at the OWNER's expense any damage to real or personal property, when that damage is the result of: (1) the OWNER's failure to conform to the requirements of the CITY; or (2) any defect of equipment, material, workmanship, or design furnished. The OWNER shall restore any work damaged in fulfilling the terms and conditions of this Section. The OWNER shall: (1) use commercially reasonable efforts to obtain all warranties that would be given in normal commercial practice; (2) to the extent possible, require all warranties be executed, in writing, for the benefit of the CITY; and (3) enforce all warranties for the benefit of the CITY. In the event the

OWNER's warranty as provided herein has expired, the CITY may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty. The OWNER shall have no liability for the improvements made upon expiration of the one-year warranty period.

10. Agreement Runs with the Land. This Agreement shall be binding on, and shall inure to the benefit of, the parties hereto and their respective heirs, administrators, representatives, successors, and assigns. This Agreement shall run with the land and shall be recorded with the Office of the Stark County Recorder against the Subject Property. As the OWNER sells individual lots within the Subject Property, the OWNER shall specifically notify the purchaser thereof of this Agreement. All obligations, promises and covenants of the OWNER contained herein shall similarly be binding upon purchasers of lots within the Subject Property.

11. Severability. In the event that any provision of this Agreement shall be held invalid, illegal or unenforceable by any court of competent jurisdiction, such holding shall pertain only to such section and shall not invalidate or render unenforceable any other section or provision of this Agreement.

12. Non-waiver. Each right, power or remedy conferred upon the CITY or the OWNER by this Agreement is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, or available to the CITY or the OWNER at law or in equity, or under any other agreement. Each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the CITY or the OWNER and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy. If either party waives in writing any default or nonperformance by the other party, such waiver shall be deemed to apply only to such event and shall not waive any other prior or subsequent default.

13. Governing Law – Venue. This Agreement shall be governed by and construed according to the laws of the State of North Dakota. The parties hereby stipulate and agree that the District Court, Southwest Judicial District, State of North Dakota, shall have personal jurisdiction over the parties hereto, and that such District Court, Southwest Judicial District, State of North Dakota, is the appropriate and proper venue for resolving any dispute under this Agreement.

14. Entire Agreement. This Agreement contains the entire agreement between and among the parties hereto, and supersedes all prior and contemporaneous discussions, negotiations, understandings, and agreements, whether oral or written, express or implied, between or among them relating to the subject matter of this Agreement. This Agreement may not be amended orally, nor shall any purported oral amendment (even if accompanied by partial or complete performance in accordance therewith) be of any legal force or effect or constitute an amendment of this Agreement, but rather this Agreement may be amended only by an agreement in writing signed by the parties.

