

**NORTH DAKOTA
STATE REVOLVING FUND PROGRAM**

LOAN AGREEMENT

**NORTH DAKOTA PUBLIC FINANCE AUTHORITY
(Lender)**

and

**CITY OF DICKINSON, NORTH DAKOTA
(Municipality)**

(To be completed by NDPFA)

Dated Date of Loan Agreement:

SRF Program (circle one): Clean Water SRF
 Drinking Water SRF

State Act (circle one): N.D.C.C. ch. 61-28.2 (Clean Water)
 N.D.C.C. ch. 61-28.1 (Drinking Water)

Summary Description of Project:

Approved Loan Amount:

Construction Period:

Form of municipal Securities:

First Payment Date:

Final Payment Date:

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ARTICLE I DEFINITIONS

SECTION 1.01. Definitions. The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the following meanings:

"**Administrative Fee**" means an annual fee of one-half of one percent (.50%) of the outstanding principal amount of the Loan or such lesser amount, if any, as NDPFA may approve from time to time.

"**Code**" means the Internal Revenue Code of 1986 as the same may from time to time be amended and supplemented, including any regulations promulgated thereunder and any administrative or judicial interpretations thereof.

"**Costs**" means those costs associated with the Project and the Loan that are eligible to be funded from SRF, as determined by the Department and NDPFA.

"**Department**" means the North Dakota Department of Environmental Quality, Division of Municipal Facilities.

"**EPA**" means the United States Environmental Protection Agency.

"**Event of Default**" means any occurrence or event specified in Section 5.01 of this Loan Agreement.

"**Facilities**" means, collectively, the water, water treatment and distribution system, the storm water system, sanitary sewer system, wastewater treatment distribution facilities of the Municipality, including any improvements, betterments, additions, renewals and replacements thereto.

"**Financial Obligation**" means: (i) a debt obligation; (ii) a derivative instrument entered into in connection with or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of a debt obligation or derivative instrument. Financial Obligation shall not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board (MSRB) consistent with the Rule as defined in Section 3.01(i) of this Loan Agreement.

"**General Records**" shall have the meaning given to such term in Section 3.01(f) of this Loan Agreement.

"**Loan**" means the loan evidenced by the Municipal Securities, made by NDPFA to the Municipality pursuant to this Loan Agreement to finance or refinance all or a portion of the Costs of the Project.

"**Loan Agreement**" means this Loan Agreement, including any exhibits attached to, and hereby made a part hereof, as it may be supplemented, modified or amended from time to time in accordance with the terms hereof.

"Loan Closing" means the date upon which the Municipality shall issue and deliver the documents listed in Section 2.05 of this Loan Agreement and shall be eligible to receive the Loan.

"Loan Commitment" means the offer by the Department to provide financial assistance to the Municipality from the SRF, subject to approval by NDPFA. The Loan Commitment, when accepted by the Municipality through appropriate action of its governing body, shall be a "binding commitment" within the meaning of that term in the SRF Act.

"Municipal Bond Resolution" means the resolution(s) or ordinance(s) of the governing body of the Municipality authorizing the issuance of the Municipal Securities.

"Municipality" means the borrower under this Loan Agreement, which must be a "political subdivision," as that term is defined in section 6-09.4-03(5) of the NDPFA Act.

"Municipal Securities" means the municipal securities, as such term is defined in the NDPFA Act, executed and delivered by the Municipality to NDPFA to evidence the Loan in accordance with the Municipal Bond Resolution.

"NDPFA" means the North Dakota Public Finance Authority.

"NDPFA Act" means N.D.C.C. ch. 6-09.4.

"NDPFA Bonds" or **"Bonds"** means bonds of NDPFA authorized, authenticated, and delivered in order to finance or refinance the Project pursuant to this Loan Agreement and to enable the Department, through NDPFA, to draw EPA capitalization grant funds for deposit in the SRF.

"Pledged Sales Tax" means the revenues collected from the one-half percent (0.50%) sales and use tax levied pursuant to N.D.C.C. Chapter 40-05.1, the City of Dickinson Home Rule Charter and City Code Section 35.090.

"Project" means the undertaking or improvements to the Facilities, including but not limited to replacement of cast-iron water mains with PVC piping, increasing storm sewer capacity, and replacement of related pavement along Sims Street, and all other appurtenances, contrivances, and structures used or useful for a complete water supply and sewerage system all or a portion of the costs of which are financed or refinanced by NDPFA from the SRF through the making of the Loan under this Loan Agreement.

"SRF" means the revolving loan fund(s) created by the State Act.

"SRF Act" means, for purposes of the State Water Pollution Control Revolving Loan Fund Act, the Federal Clean Water Act, and for purposes of the State Safe Drinking Water Act, the Federal Safe Drinking Water Act, including any regulations and guidelines promulgated thereunder.

"State Act" means, for purposes of the Federal Clean Water Act, N.D.C.C. ch. 61-28.2 (the State Water Pollution Control Revolving Loan Fund Act) and, for purposes of the Federal Safe Drinking Water Act, N.D.C.C. ch. 61-28.1 (the State Safe Drinking Water Act).

"**System Records**" shall have the meaning given to such term in Section 3.01(f) of this Loan Agreement.

"**Trustee**" means the Trustee appointed by NDPFA pursuant to the State Revolving Fund Program Master Trust Indenture or Indentures and its successor or successors and any other trustee which may at any time be substituted in its place as Trustee pursuant to the Indenture.

SECTION 1.02. Additional Terms. Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, agencies and districts. Words importing one gender shall include the other gender.

ARTICLE II LOAN; OBLIGATIONS; DISCLAIMER; DELIVERY OF DOCUMENTS

SECTION 2.01. The Loan. NDPFA hereby agrees to loan and disburse to the Municipality, subject to the provisions of Section 2.02 below, and the Municipality agrees to borrow and accept from NDPFA, the Loan, in the amount not to exceed the Loan Commitment, provided that NDPFA shall be under no obligation to make the Loan if the Municipality does not deliver the documents listed in Section 2.05 of this Loan Agreement to NDPFA on the Loan Closing in forms acceptable to NDPFA and its counsel or if an Event of Default under this Loan Agreement has occurred and is continuing.

SECTION 2.02. Draws of Municipal Securities Proceeds (Loan Proceeds). The proceeds of the Municipal Securities are appropriated by the Municipality to pay expenses necessarily incurred in the construction and completion of the Project and to pay costs associated with the issuance of the Municipal Securities. NDPFA will disburse the Loan upon (a) execution and delivery by the Municipality of this Loan Agreement, (b) issuance by the Municipality of the Municipal Securities and delivery to NDPFA, (c) submission to and approval by the Department and NDPFA of Requisitions for Payment in the form approved by the Department, and (d) upon determination by the NDPFA of the availability of Bipartisan Infrastructure Law Lead Service Line Replacement capitalization grant funds or other immediately available SRF funds of the NDPFA (the NDPFA shall not be required to issue any short-term or other obligations or take any other steps to make funds available). Requests for draws on the Loan, in the form of Requisitions for Payment, shall be submitted by the Municipality to the Department from time to time in accordance with procedures established by the Department. Requisitions for Payment approved by the Department shall be forwarded to NDPFA and the Trustee for approval and funding. Requisitions for Payment approved by the Department shall be forwarded to NDPFA and the Trustee for approval and funding. After all claims and expenses with respect to the Project and the issuance of the Municipal Securities have been duly paid and satisfied, and after any applicable loan forgiveness has been applied to the Loan, the amortization schedule for the Municipal Securities shall be adjusted to reflect the total principal amount drawn under this Loan Agreement.

Interest and the Administrative Fee shall accrue on the outstanding amount of the Loan advanced by NDPFA from the date of the first advance.

SECTION 2.03. Unconditional Obligations. The Municipality shall not be obligated to make any payments required to be made by any other political subdivision with respect to the lending of funds by NDPFA from the SRF.

SECTION 2.04. Disclaimer of Warranties. The Municipality acknowledges and agrees that (i) neither NDPFA nor the Department has made or makes any warranty or representation, either express or implied as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portions thereof or any other warranty or representation with respect thereto; and (ii) in no event shall NDPFA, nor the Department or their respective officers, directors, employees, or agents be liable or responsible for any direct, incidental, indirect, special or consequential damages in connection with or arising out of this Loan Agreement or the Project or the existence, furnishing, functioning or use of the Project.

SECTION 2.05. Delivery of Documents. Concurrently with the execution and delivery of this Loan Agreement, the Municipality will cause each of the following items to be delivered to NDPFA in a form acceptable to NDPFA and its counsel:

- (a) Executed counterparts of this Loan Agreement.
- (b) An executed lobbying and litigation certificate covering certain restrictions pertaining to the use of grant or loan funds awarded in connection with the Loan.
- (c) Copies of the form of the Municipal Securities and any resolutions or ordinances of the governing body of the Municipality authorizing the execution and delivery of this Loan Agreement and the Municipal Securities, certified by an authorized officer of the Municipality.
- (d) An arbitrage certificate and a closing certificate covering such matters as may be agreed upon by the Municipality and NDPFA.
- (e) An opinion or opinions of the Municipality's counsel which may be given by one or more counsel, covering such matters concerning the validity and tax status of the Municipal Securities as may be agreed upon by the Municipality and NDPFA.
- (f) If applicable, an additional bond certificate (or parity bond certificate) in a form satisfactory to the NDPFA certifying Pledged Sales Tax received by the Municipality during the most recent fiscal year-end were more than 1.10 times the average annual amount of principal and interest to become due each year on all outstanding municipal securities, including the Municipal Securities during the remaining term of the outstanding municipal securities.
- (g) Such other certificates, documents, opinions and information as NDPFA may require.

The documents referred to above must be prepared and provided by the Municipality to NDPFA prior to the Loan Closing for review and approval.

SECTION 2.06. Coverage Requirement for Prior Obligations. The NDPFA recently revised its State Revolving Fund Program Loan Application Credit Review and Analysis and Loan

Approval and Funding Policy to reduce the net operating revenue coverage requirement for revenue supported obligations from 120% to 110% (the “Policy”).

The Municipality has outstanding parity obligations payable from Pledges Sales Tax for which the NDPFA is the registered holder. The resolutions authorizing the issuance of the parity obligations contain a covenant that the Municipality will charge fees to generate Pledged Sales Tax at least equal to 1.20 times the annual debt service on all outstanding bonds. The NDPFA agrees that the coverage requirement applicable to the outstanding parity obligations shall be as provided by the Policy.

ARTICLE III REPRESENTATIONS AND COVENANTS OF MUNICIPALITY

SECTION 3.01. Representations and Covenants of Municipality.

- (a) Performance Under Loan Agreement. The Municipality covenants and agrees (i) to maintain the Project and the Facilities in good repair and operating condition and (ii) to cooperate with NDPFA and the Department in the observance and performance of the respective duties, covenants, obligations and agreements of the Municipality and NDPFA under this Loan Agreement.
- (b) Completion of Project and Provision of Moneys Therefor. The Municipality covenants and agrees (i) to exercise its best efforts in accordance with prudent utility practice to complete the Project and to so accomplish such completion on or before the estimated Project completion date; and (ii) to provide from its own fiscal resources all moneys in excess of the total amount of the Loan required to complete the Project.
- (c) Disposition of Project. The Municipality covenants and agrees that it will not sell, lease, abandon or otherwise dispose of all or substantially all or any substantial portion of the Facilities or any other system which provides revenues for upkeep and maintenance of the Project except on ninety (90) days' prior written notice to NDPFA and, in any event, shall not so sell, lease, abandon or otherwise dispose of the same unless the following conditions are met: (i) the Municipality, with the approval of NDPFA, shall assign this Loan Agreement and its rights and interests hereunder in accordance with Section 4.02 to the purchaser or lessee of the Project which must be a political subdivision as defined in the NDPFA Act, and such purchaser or lessee shall assume all duties, covenants, obligations and agreements of the Municipality under this Loan Agreement; and (ii) NDPFA, in its sole discretion, by appropriate action determines that such sale, lease, abandonment or other disposition will not adversely affect (A) the ability of the Municipality or its assignees to meet its duties, covenants, obligations and agreements under the Municipal Bond Resolution, (B) the value of this Loan Agreement as security for the payment of NDPFA Bonds and interest thereon, (C) the eligibility of interest on NDPFA Bonds then outstanding or which could be issued in the future for exclusion from gross income for purposes of federal income taxation, or (D) any agreement entered into by NDPFA or the State through the Department with, or any condition of any grant received by NDPFA or the State through the Department from, the United States of America, which is related to any SRF capitalization grant received by NDPFA or the State through the Department;

provided, however, that the NDPFA reserves the right to waive any one or more of the above requirements, while concurrently requiring others, if in its sole opinion it has received adequate assurances from the Municipality or otherwise deems it reasonable.

- (d) Operation and Maintenance of Projects. The Municipality covenants and agrees that it will, in accordance with prudent wastewater or drinking water treatment utility practice, as the case may be, (i) at all times operate the Project, the Facilities and the properties associated with and operated in conjunction thereto and any business in connection therewith in an efficient manner, (ii) maintain the Project and the Facilities in good repair, working order and operating condition, (iii) from time to time make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements with respect to the Project and the Facilities so that at all times the enterprise or business carried on in connection therewith shall be properly and advantageously conducted; provided, that this covenant shall not be construed as requiring the Municipality to expend any funds which are derived from sources other than the operation of the Project and the Facilities or other receipts of the Facilities which are not pledged under the Municipal Bond Resolution for such purpose, and provided further that nothing herein shall be construed as preventing the Municipality from doing so.
- (e) Use of Proceeds. The Municipality covenants and agrees that the proceeds of the Loan shall be used and expended in a manner consistent with the State Act and the SRF Act, all regulations and guidelines promulgated thereunder, and this Loan Agreement.
- (f) Records.
 - (i) The Municipality shall keep accurate records and accounts for the Project (the "System Records") separate from its other records and accounts (the "General Records"). Such System Records shall be maintained in accordance with generally accepted government accounting principles and generally accepted government auditing standards and in accordance with state law, shall be audited annually, or as otherwise required by law, by an independent accountant, as required by law, which audit may be part of the annual audit of the General Records of the Municipality. Such System Records and General Records shall be made available for inspection by NDPFA and the Department at any reasonable time.
 - (ii) The Municipality agrees that its financial reports for the year or years which it receives draws under Section 2.02 of this Loan Agreement shall be prepared in accordance with the Federal Single Audit Act and the Federal Office of Management and Budget's Guidance 2 CFR Part 200, Subpart F. A copy of the Municipality's independent annual audit, including all written comments and recommendations, shall be furnished to NDPFA within 150 days of the close of the fiscal year being so audited. A copy of the annual financial statement shall be submitted to the NDPFA on or before February first each year.
 - (iii) The Municipality will keep, or cause to be kept, accurate records, if such records must be kept for compliance with the requirements of Section 148 of the Code of each investment it makes in investment property (as that term is defined in Section 148(b) of the Code) acquired, directly or indirectly, with proceeds of NDPFA

Bonds. Further, with respect to such investments made by the Municipality which are not excepted from the computation of rebate under Section 148(f)(4) of the Code, the Municipality (A) will calculate, or cause to be calculated, the amount (the "rebate amount") that is to be rebated to the United States Treasury pursuant to Section 148(f) of the Code, and (B) will for each computation date under Section 148(f) of the Code (or on any further periodic basis requested in writing by NDPFA) remit the following to NDPFA: (1) the calculations supporting the determination of the rebate amount and (2) an amount of money equal to the rebate installment then owed. To the extent any such rebate amounts (or the investment income thereon) are in excess of NDPFA's rebate requirement allocable to the Municipal Securities, such amounts will be promptly returned by NDPFA to the Municipality.

- (g) Inspections; Information. The Municipality will permit NDPFA, the Department and the Trustee, and any party designated by any of such parties, to examine, visit and inspect, at any and all reasonable times, the property constituting the Project and the Facilities, and to inspect and make copies of any accounts, books and records, including (without limitation) its Systems Records, General Records, and any other records regarding receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and will supply such reports and information as NDPFA, the Department and the Trustee may reasonably require in connection therewith.
- (h) Insurance. The Municipality shall maintain or cause to be maintained, in force, insurance policies with responsible insurers or self-insurance programs covering risk of direct physical loss, damage or destruction of the Project, at least to the extent of similar insurance usually carried by utilities constructing, operating and maintaining works of the nature of the Project, including liability coverage, but in no case less than will satisfy all applicable regulatory requirements.
- (i) Continuing Disclosure.
 - (i) So long as the Municipality shall constitute an obligated person within the meaning of S.E.C. Rule 15c2-12 (the "Rule") as in effect from time to time, the Municipality agrees to furnish to NDPFA any such information it requires in order to comply with the provisions of the Rule, including audited financial statements and operating data with respect to the Municipality at such time and in such forms as NDPFA shall reasonably request. The Municipality consents to the inclusion of such information in the NDPFA's official statement(s) used in connection with the issuance and sale or the re-marketing of its bonds or continuing disclosure with respect to its bonds (collectively, the "Disclosure Documents"), whether or not all or a portion of the proceeds of the bonds were or will be loaned to the Municipality.
 - (ii) The Municipality shall provide notice to the NDPFA of the occurrence of any of the following events with respect to the Municipal Securities in a timely manner not in excess of ten business days after the occurrence of the event:
 - (A) principal and interest payment delinquencies;
 - (B) unscheduled draws on debt service reserves reflecting financial

- difficulties;
 - (C) unscheduled draws on credit enhancements reflecting financial difficulties;
 - (D) substitution of credit or liquidity providers, if any, or their failure to perform;
 - (E) adverse tax opinions or the issuance by the IRS of proposed or final determinations of taxability or of a Notice of Proposed Issue (IRS Form 5701-TEB);
 - (F) tender offers;
 - (G) defeasances;
 - (H) rating changes;
 - (I) bankruptcy, insolvency, receivership or similar event of the Municipality; or
 - (J) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation, any of which reflect financial difficulties.
- (iii) The Municipality shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Municipal Securities, *if material*, in a timely manner not in excess of ten business days after the occurrence of the event:
- (A) non-payment related defaults;
 - (B) unless described in (ii)(E) above, other notices or determinations by the IRS with respect to the tax-exempt status of the Municipal Securities, or other events affecting the tax-exempt status of the Municipal Securities;
 - (C) modifications to rights of holders of the Municipal Securities;
 - (D) bond calls;
 - (E) release, substitution or sale of property securing repayment of the Municipal Securities;
 - (F) the consummation of a merger, consolidation or acquisition involving the Municipality or the sale of all or substantially all of the assets of the Municipality, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms;
 - (G) appointment of a successor or additional trustee or the change of name of a trustee; or
 - (H) incurrence of a Financial Obligation or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation, any of which affect security holders.
- (iv) For the purposes of the event identified in subsection (ii)(I), the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Municipality in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Municipality, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the

entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Municipality.

- (v) Whenever the Municipality obtains knowledge of the occurrence of an event under subsection (iii), the Municipality shall as soon as possible determine if such event would constitute material information for holders of Municipal Securities. The Municipality shall submit the information in the format prescribed by the NDPFA.
- (vi) The Municipality agrees that from time to time it will also provide notice to NDPFA of the occurrence of other events, in addition to those listed above, if such other events are material with respect to the Municipal Securities.
- (vii) The Municipality will provide, in a timely manner, to NDPFA notice of a failure to satisfy the requirements of this Section.
- (viii) At the request of the NDPFA, the Municipality will certify and represent that the information with respect to the Municipality in any Disclosure Document does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading; provided, however, that in no event will the NDPFA require the Municipality to make any representation about any other information in the Disclosure Documents or as to any Disclosure Document in its entirety. If for any reason the Municipality determines that it is not able to make that certification and representation, it will provide to the NDPFA the information for inclusion in the Disclosure Documents necessary for the Municipality to make the certification and representation.
- (ix) If at any time during the period ending 90 days after the date the Municipality provides information to the NDPFA for inclusion in a Disclosure Document any event occurs that the Municipality believes would cause the information with respect to the Municipality in the Disclosure Document to omit a material fact or make the statements therein misleading, the Municipality agrees to promptly notify the NDPFA in writing of that event and provide information for inclusion in the Disclosure Document or an amendment thereof or a supplement thereto. At the request of the NDPFA, the Municipality will also provide the certification and representation required in (viii) above with respect to that information.
- (j) No Free Service. The Municipality will not furnish or supply, or cause to be furnished or supplied, any use, output, capacity or service of the Facilities free of charge to any person, firm, corporation (public or private), public agency or instrumentality other than the Municipality itself.
- (k) Commencement of Construction. Unless construction has already commenced, the Municipality shall initiate construction of the Project within twelve (12) months after the Loan Closing.

- (l) Archeological Artifacts. In the event that archaeological artifacts or historical resources are unearthed during construction excavation, the Municipality shall stop, or cause to be stopped, construction activities and will notify the superintendent of the State Historical Board of North Dakota and NDPFA of such unearthing and follow all applicable state and federal laws and regulations governing such occurrence.
- (m) No Lobbying. No portion of the Loan may be used for lobbying or propaganda as prohibited by 18 U.S.C. §1913 or Section 607(a) of Public Law 96-74 or other federal restriction or regulation referenced in the form of North Dakota State Revolving Fund Program Certificate Relating to Lobbying and Litigation, including but not limited to Section 2 of such certificate, which shall be executed and delivered by the Municipality as a condition to closing pursuant to Section 2.05 of this Loan Agreement.
- (n) Compliance with Federal Laws; Buy American Requirements. The Municipality covenants and agrees that it will comply with all federal law and requirements applicable to the Loan including, among others: (i) those imposed by the 2014 Appropriations Act, Public Law No: 113-76, related SRF regulations and policy guidelines; (ii) requirements that all of the iron and steel products used in the Project are to be produced in the United States (“American Iron and Steel Requirement”) unless (a) the Municipality has requested and obtained a waiver from the Department pertaining to the Project or (b) the Department or NDPFA has otherwise advised the Municipality in writing that the American Iron and Steel Requirement is not applicable to the Project; and (iii) requirements imposed by the Infrastructure Investment and Jobs Act (“IIJA”), Public Law No. 117-58, which the Municipality understands includes, but is not limited to, the following requirements: that all of the iron and steel, manufactured products, and construction materials used in the Project are to be produced in the United States (“Build America, Buy America Requirements”) unless (a) the Municipality has requested and obtained a waiver from the Department and the cognizant agency pertaining to the Project or the Project is otherwise covered by a general applicability waiver; or (b) the Department or NDPFA and the cognizant agency pertaining to the Project have otherwise advised the Municipality in writing that the Build America, Buy America Requirements are not applicable to the Project. In addition, the Municipality shall comply with all record keeping and reporting requirements under all applicable legal authorities, including any reports required by the Department, NDPFA or any funding authority (such as the Environmental Protection Agency), such as performance indicators of program deliverables, information on costs and project progress. The Municipality understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the applicable legal requirements and this Loan Agreement is a default hereunder.
- (o) Record and Reporting Requirements. The Municipality will comply with all record keeping requirements under the Clean Water Act/Safe Drinking Water Act, including any reports required by a federal agency, the Department or the NDPFA such as performance of program deliverables, information on costs and Project progress. The Municipality understands that (a) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (b) failure to comply with the Clean Water Act/Safe Drinking Water Act and this Loan Agreement may be a default hereunder that

results in a repayment of the Loan in advance of the maturity of the Municipal Securities and/or other remedial actions.

- (p) Additional Covenants and Requirements. If necessary in connection with NDPFA's issuance of the NDPFA Bonds or the making of the Loan, additional covenants and requirements will be evidenced by certificates or other documents in the form or forms attached as an exhibit to, and hereby made a part of this Loan Agreement.
- (q) Continuing Representations. The covenants and representations of the Municipality contained herein shall be true at the time of the execution of this Loan Agreement and the Municipality agrees that such covenants and representations will be binding and enforceable at all times during the term of this Loan Agreement.
- (r) Compliance with Davis Bacon Act. The Municipality shall, to the extent applicable to the Loan and any related grant, comply with the Davis Bacon and Related Acts requirements. 40 U.S.C. 3141, et. seq.

ARTICLE IV ASSIGNMENT

SECTION 4.01. Assignment and Transfer by NDPFA.

- (a) The Municipality acknowledges that, other than the Administrative Fee payable pursuant to the Municipal Bond Resolution and this Loan Agreement, all interests of NDPFA in and under this Loan Agreement and the Municipal Securities have been pledged as security for the NDPFA Bonds, and that if any Event of Default shall occur, NDPFA or the Trustee shall be entitled to act hereunder. The Municipality hereby acknowledges and consents that NDPFA or the Trustee may compel or enforce the right to receive payments required to be made by the Municipality hereunder and may compel or otherwise enforce observance and performance by the Municipality of its other duties, covenants, obligations and agreements hereunder, and that the right and authority to enforce such requirements may be further transferred, assigned, and reassigned in whole or in part to one or more assignees or subassignees without the necessity of obtaining the consent of, but after giving prior written notice to the Municipality.
- (b) In the event of any assignment or transfer of this Loan Agreement and the Municipal Securities, NDPFA shall retain the right to compel or otherwise enforce observance and performance by the Municipality of its obligation and agreement to pay the Administrative Fee.

SECTION 4.02. Assignment by Municipality.

- (a) This Loan Agreement may not be assigned by the Municipality unless the following conditions shall be satisfied: (i) NDPFA shall have approved the assignment in writing; (ii) the assignee shall be a governmental unit within the meaning of Section 141(c) of the Code (unless waived in writing by NDPFA), shall be a political subdivision as defined in the NDPFA Act and shall have expressly assumed in writing the full and faithful observance

and performance of the Municipality's duties, covenants, agreements and obligations under this Loan Agreement; (iii) immediately after such assignment, the assignee shall not be in default in the performance or observance of any duties, covenants, obligations or agreements of the Municipality under this Loan Agreement; (iv) if the Loan is funded with proceeds of NDPFA Bonds issued on a tax-exempt basis, NDPFA shall have received an opinion of bond counsel to the effect that such assignment will not adversely affect the exclusion of interest on the NDPFA Bonds from gross income for purposes of federal income taxation under Section 103(a) of the Code; and (v) NDPFA shall have received an opinion of its counsel to the effect that such assignment will not violate the provisions of any agreement entered into by NDPFA or the State through the Department with, or any condition of any grant received by NDPFA or the State through the Department from, the United States of America, which is related to any capitalization grant received by NDPFA or the State through the Department; provided, however, that the NDPFA reserves the right to waive any one or more of the above requirements, while concurrently requiring others, if in its sole opinion it has received adequate assurances from the Municipality or otherwise deems it reasonable.

- (b) No assignment under this Section shall relieve the Municipality from primary liability for any of its obligations under this Loan Agreement and in the event of such assignment, the Municipality shall continue to remain primarily liable for the performance and observance of its obligations to be performed and observed under this Loan Agreement.

ARTICLE V DEFAULTS AND REMEDIES

SECTION 5.01. Events of Default. If any of the following events occur, it is hereby defined and declared to be and to constitute an Event of Default:

- (a) Failure by the Municipality to pay, or cause to be paid, any payment, including the payment of principal and interest on the Municipal Securities, required to be paid hereunder when due.
- (b) Failure by the Municipality to make, or cause to be made, any required payments of principal, redemption premium, if any, and interest on any bonds, notes or other obligations of the Municipality for borrowed money (other than the Loan and the Municipal Securities after giving effect to any applicable grace period), the payments of which are secured by any revenues derived or to be derived from the Facilities.
- (c) Failure by the Municipality to pay, or cause to be paid, the Administrative Fee or any portion thereof when due or to perform or observe any other covenant, agreement or condition on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraph (a) of this section, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Municipality by NDPFA, unless NDPFA shall agree in writing to an extension of the time prior to its expiration; however, if the failure stated in such notice is correctable but cannot be corrected within the applicable period, NDPFA may not unreasonably withhold its consent to an extension of time up to 120 days from the delivery

of the written notice referred to above if corrective action is instituted by the Municipality within the applicable period and diligently pursued until the Event of Default is corrected.

- (d) Default in the performance or breach of any covenant, warranty, or representation made by or on behalf of the Municipality in this Loan Agreement, the Municipal Bond Resolution, or in any instrument furnished in compliance with or with reference to this Loan Agreement or the Loan or in connection with the Municipal Securities.
- (e) A petition is filed by or against the Municipality under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Municipality such petition shall be dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal; or the Municipality shall become insolvent or bankrupt or make an assignment for the benefit of its creditors; or a custodian (including, without limitation, a receiver, liquidator or trustee of the Municipality or any of its property) shall be appointed by court order or take possession of the Municipality or its property or assets if such order remains in effect or such possession continues for more than thirty (30) days.

SECTION 5.02. Notice of Default. The Municipality shall give NDPFA prompt telephonic notice of the occurrence of any Event of Default at such time as the Municipality becomes aware of the existence thereof. Any telephone notice pursuant to this Section 5.02 shall be confirmed in writing as soon as practicable by the Municipality.

SECTION 5.03. Remedies on Default. Whenever an Event of Default referred to in Section 5.01 shall have occurred and be continuing, NDPFA shall have the right to take, or to direct the Trustee or its authorized agent to take, any action permitted or required under the Municipal Bond Resolution or this Loan Agreement or exercise whatever other remedy at law or in equity available to the NDPFA to collect the amounts then due and thereafter to become due hereunder or to enforce the performance and observance of any duty, covenant, obligation or agreement of the Municipality hereunder. The NDPFA may also exercise one or more of the following remedies: (i) withhold approval of any disbursement request, (ii) reject any pending application by the Municipality for financial assistance, and (iii) to the extent permitted by law, demand immediate payment of the Loan in full and, upon such demand, the outstanding principal amount of the Loan will be immediately due and payable, with interest accrued thereon to the date of payment.

SECTION 5.04. Application of Moneys. Any moneys collected by NDPFA pursuant to Section 5.03 shall be applied (a) first, to pay interest due and payable on the Municipal Securities, (b) second, to pay principal due and payable on the Municipal Securities, (c) third, to pay any other amounts due and payable hereunder this Loan Agreement.

SECTION 5.05. No Remedy Exclusive; Waiver; Notice. No remedy herein conferred upon or reserved to NDPFA or the Trustee, if any, is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such remedy or power may be exercised

from time to time and as often as may be deemed expedient. In order to entitle NDPFA or the Trustee, if any, to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article V.

SECTION 5.06. Retention of NDPFA's Rights. Notwithstanding any assignment or transfer of this Loan Agreement pursuant to the provisions hereof or of the Municipal Bond Resolution, or anything else to the contrary contained herein, NDPFA shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the Municipality at law or in equity, as NDPFA may, in its discretion, deem necessary to enforce the obligations of the Municipality to NDPFA pursuant to this Loan Agreement and the Municipal Bond Resolution.

SECTION 5.07. Default by NDPFA. In the event of any default by NDPFA under any covenant, agreement or obligation of this Loan Agreement, the Municipality may pursue any available remedy at law or in equity, including without limitation suit for damages or injunction, special action, action for specific performance or any other available equitable remedy designed to enforce the performance or observance of any duty, covenant, obligation or agreement of NDPFA hereunder as may be necessary or appropriate.

**ARTICLE VI
MISCELLANEOUS**

SECTION 6.01. Notices. All notices, certificates or other communications under this Loan Agreement shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the Municipality, NDPFA and the Department at the following addresses:

(a) NDPFA:	North Dakota Public Finance Authority 1200 Memorial Hwy., PO Box 5509 Bismarck, ND 58502-5509 Attention: Executive Director
(b) Department:	North Dakota Department of Environmental Quality Division of Municipal Facilities 918 East Divide Avenue, 3 rd Floor Bismarck, ND 58501-1947
(c) Municipality:	City of Dickinson 38 1 st Street West Dickinson, ND 58601 Attention: City Administrator

Any of the foregoing parties may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent, by notice in writing given to the others.

SECTION 6.02. Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Department, NDPFA and the Municipality and their respective successors and assigns.

SECTION 6.03. Severability. In the event any provision of this Loan Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision.

SECTION 6.04. Amendments, Supplements and Modifications. This Loan Agreement may not be amended, supplemented or modified without prior written consent of NDPFA and the Municipality.

SECTION 6.05. Execution in Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 6.06. Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota.

SECTION 6.07. Consents and Approvals. Whenever the written consent or approval of NDPFA is required under the provisions of this Loan Agreement, such consent or approval may only be given by NDPFA unless otherwise provided by law or by rules, regulations or resolutions of NDPFA or unless expressly delegated to NDPFA's agent.

SECTION 6.08. Captions. The captions or headings in this Loan Agreement are for convenience only and shall not in any way define, limit or describe the scope or intent of any provisions or sections of this Loan Agreement.

SECTION 6.09. Further Assurances. The Municipality shall, at the request of NDPFA, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Loan Agreement and the Municipal Securities.

SECTION 6.10. Entire Agreement. This Loan Agreement constitutes the entire and exclusive agreement between the parties relating to the specific matters covered herein. All prior or contemporaneous verbal or written agreements, understandings, representations and/or practices relative to the specific matters herein are hereby superseded, revoked and rendered ineffective for any purpose.

(Remainder of page intentionally left blank.)

Dated: _____, 2025.

NORTH DAKOTA PUBLIC FINANCE AUTHORITY

Executive Director

CITY OF DICKINSON, NORTH DAKOTA

President, Board of City Commissioners

City Administrator