



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 Public School District #1
444 4th Street West
Dickinson, ND 58601

Legal Description: Block 1, Senior High School Addition
Also referred to herein as “Senior High School Addition”
Also referred to herein as the “Subject Property”

RECITALS

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

WHEREAS, the OWNER intends to improve 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, a Multi-Party Construction and Funding Agreement 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 the City of Dickinson Municipal Code and shall satisfy the requirements contained therein for a Development Agreement to be completed prior to the **start of construction for the watermain extension on Subject Property.** This Agreement shall control the development of the Property and the construction of Municipal Improvements necessary to serve the 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. Except as otherwise stated in this Agreement, the OWNER hereby agrees that it will fund the plans and specifications for the construction of the watermain extension from Fairway Street to Empire Road. Refer to Exhibit A which shows the proposed watermain extension through the Subject Property. The Owner shall fund the bidding support and North Dakota Department of Water Resources (NDDWR) Cost Share application. The City of Dickinson will assist the Owner with the submittal of the necessary documents to the NDDWR. The Owner shall also submit and acquire approval for the watermain extension from the North Dakota Department of Environmental Quality. The City of Dickinson shall construct all infrastructure improvements as required by the City of Dickinson Municipal Code.

The required infrastructure improvements shall be subject to the following Special Conditions:

- a) Owner shall submit Municipal Construction plan sheets, completed by a ND registered PE, for review and approval by the City Engineer or their designee.
- b) The registered PE shall attend the North Dakota State Water Commission (NDSWC) meetings (two, pre-commission and commission) to aid in the best efforts to obtain approval of the NDDWR cost share funding which is anticipated to be approximately 60% of the eligible costs for the watermain extension. The eligibility of the cost share from the NDDWR is determined by the NDDWR Cost-Share Project Funding Policy, Procedures, and General Requirements document dated October 10, 2024.
- c) The City of Dickinson Capital Improvement Project 202511, Dickinson High School Watermain Extension, has been created by the City of Dickinson for this project. The proposed watermain extension shown on Exhibit A is the only scope of work included in the City of Dickinson project. All other scopes of work for the Dickinson High School expansion project are the responsibility of the Dickinson School District.
- d) Assuming the NDDWR cost share funding is approved by the NDSWC, the City of Dickinson will bid the project 202511 Dickinson High School Watermain Extension as a City of Dickinson Capital Improvement Project to be executed during the construction season of 2025.
- e) Assuming the NDDWR cost share funding is approved by the NDSWC, all project related costs shall be reimbursed to the City of Dickinson by Owner. Said reimbursements shall include all non-eligible cost share scopes of work as per the NDDWR Cost Share Manual, and all of the remaining NDDWR Cost Share eligible scopes of work that have not been funded by the NDDWR.
 - a. The City of Dickinson will review and approve all construction invoices related to the watermain extension scope of work, pay the invoices as necessary based on City of Dickinson Staff review;
 - b. Submit all cost share requests to the NDDWR for all eligible scopes of work;
 - c. After the NDDWR submits payment to the City of Dickinson for the eligible scopes of work, the City of Dickinson will invoice Owner for the remainder of the costs incurred by the City of Dickinson for the project.
- f) After the installation of the watermains and appurtenances as shown in Exhibit A, a 15-foot wide utility easement shall be prepared by Owner that is centered along the installed watermain route.

3. 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.

4. Building 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.

5. Plan Review Fees. Pay, at OWNERS expense, for any and all building permit related review fees required for review of construction plans, engineering plans or construction inspection of municipal infrastructure within the Subject Property.

6. **Inspection.** The OWNER shall provide for engineering inspection of all construction of the proposed watermain extension included with the project as shown in Exhibit A. Weekly inspection reports shall be submitted to the OWNER and the CITY. Any change orders shall be approved by the CITY before the work occurs. The inspector shall certify to the CITY that all construction was performed in general conformance with the approved plans and specifications. At a minimum, engineering inspectors will be onsite when any testing is being performed, when asphalt or concrete paving is underway and when connections are being made to the city's water system. After project completion, the engineer shall provide as-built drawings to include both a pdf and shape files, change orders, and final review and acceptance forms.

7. **Repairs and Replacements.** The OWNER or OWNER'S agent shall replace, or have replaced, or repair, or have repaired, as the case may be, any and all pipes and appurtenances within the utility easement 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, and pay for 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. The City of Dickinson will own and operate the watermain and appurtenances located within the utility easement after the Certificate of Occupancy has been issued to Owner for the High School expansion project which is currently scheduled to occur in 2026.

8. **Title to Public Improvements.** Title to, and ownership of, any and all municipal improvements within the public right-of-way or easement dedicated and granted within the Subject Property, having been constructed by the OWNER or its agents or assignees, shall vest in the CITY upon completion and acceptance of such improvements with the following exception: water service and fire lines are owned and maintained by the property owner from the building structure to the water main.

9. **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. 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 the Subject Property.

10. **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.

11. **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.

12. 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.

13. 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.

(Signatures begin on following page)

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

CITY OF DICKINSON

By: _____
Scott Decker, President
Board of City Commissioners.

ATTEST:

Dustin Dassinger
Dickinson City Administrator

STATE OF NORTH DAKOTA)
COUNTY OF STARK) ss

On this _____ day of _____, 20____, before me personally appeared **SCOTT DECKER** and **DUSTIN DASSINGER** known to me to be, respectively, the President of the Board of City Commissioners and the City Administrator of the City of Dickinson, the persons who are described herein and who executed the within and foregoing instrument and acknowledged to me that the City of Dickinson executed the same.

Notary Public
Stark County, North Dakota

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

OWNER
DICKINSON PUBLIC SCHOOL DISTRICT NO. 1

By: _____
Michelle Orton, School Board President

STATE OF NORTH DAKOTA)
) ss
COUNTY OF STARK)

On this 10th day of March 2025, before me personally appeared **MICHELLE ORTON, School Board President**, the Authorized Agent of Dickinson Public Schools, the **OWNER** described herein, known to me, and who executed the within and foregoing document and acknowledged to me that such entity executed the same.

Twila Petersen, Notary Public
Stark County, North Dakota

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