

**LAND LEASE AGREEMENT**

THIS LAND LEASE AGREEMENT (the "Lease") is made effective as of this 5<sup>th</sup> day of November, 2024 (the "Effective Date"), by and between City of Dickinson, hereinafter referred to as "Landlord" and State of North Dakota, by and through the North Dakota State Water Commission, hereinafter referred to as "Tenant".

WITNESSETH:

WHEREAS, Landlord is the owner of the real estate located in Dickinson, North Dakota, as shown on the attached Exhibit A;

WHEREAS, Landlord desires to let to Tenant and Tenant desires to rent from Landlord said real estate;

NOW THEREFORE, the parties to this Lease agree as follows:

1. THE LEASED PROPERTY. In consideration of the obligation of Tenant to pay rent as herein provided, and in consideration of the other terms, provisions, and covenants hereof, Landlord demises and leases to Tenant, and Tenant hereby takes from Landlord, the real estate as shown on Exhibit A (the "Leased Property").

2. THE TERM OF THE LEASE. Landlord leases to Tenant and Tenant takes from Landlord the Leased Property for a term commencing on January 1, 2025 (the "Commencement Date") and terminating on December 31, 2027. There are two properties covered under this lease with different allowable time of use limitations.

- a) The parcel described as Lot 2, Block 1, Broadway Addition is restricted to only be available from May 1<sup>st</sup> through September 30<sup>th</sup> during any particular year. Between October 1<sup>st</sup> and April 30<sup>th</sup>, there shall be no equipment or materials on the property.
- b) The area to the east of the project site, within the parcel described as Parcel A, Lot 3, Auditor's Plat #7 has no time of use limitations and may be used year-round during the term of this agreement.

3. TAXES AND ASSESSMENTS.

(a) Payment of Real Estate Taxes. Landlord is responsible for payment of all real estate taxes lawfully levied against the Leased Property during the term of this Lease.

(b) Assessments. Landlord is responsible for the payment of any installments of special assessments against the Leased Property which become due and payable during the term of this Lease.

4. RENT. Tenant covenants and agrees to pay Landlord as rental for said Leased Property the sum of \$15,000 per year. The first rental payment is due and payable on January 1, 2025, and thereafter on the first day of January of each year during the Term.

If the Lease is terminated prior to the end of the Term, Landlord will refund to Tenant any unused rental payment for each full month remaining in the Term for which rent has been paid.

5. USE OF THE LEASED PROPERTY. The Leased Property shall be used for staging equipment

related to the upgrade of the Southwest Water Treatment plant. Tenant shall, at its own cost and expense, obtain any and all licenses and permits necessary for such use. Tenant's operations and use at the Leased Property will be in compliance with all applicable federal, state and local statutes, laws, ordinances, rules and regulations.

6. REPAIRS AND MAINTENANCE. Tenant will provide and pay for all repairs and maintenance to the Leased Property. Landlord has no obligation for any repairs or maintenance.

7. COVENANT AGAINST WASTE. Throughout the term of this Lease, Tenant shall take good care of the Leased Property and keep it free from waste. Tenant shall keep the Leased Property in good condition. Upon termination of the Lease, Tenant will restore the Leased Property to the same or better condition as it was immediately preceding the Commencement Date.

8. ALTERATIONS AND IMPROVEMENTS. Tenant shall not make alterations, additions, or improvements to the Leased Property without the written consent of the Landlord, except for the following agreed to improvements:

- (a) Tenant shall furnish and install a gate at the property access point connecting the property to Broadway Street. The gate is to remain in place after the project is complete and becomes property of the City of Dickinson.
- (b) Tenant shall furnish, install and maintain in good operating condition, items to protect the storm drain from activity on the property. Landlord to approve the items installed to protect.

9. SIGNS. Tenant shall have the right, during the existence of this Lease, to attach fixtures and structures or signs in or upon the Leased Property. Said fixtures and structures or signs so placed in or upon or attached to said Leased Property shall be and shall remain the property of the Tenant and shall be removed or otherwise disposed of by Tenant upon termination of this Lease. Tenant shall be responsible for promptly repairing any damage caused by the removal.

10. UTILITIES. Tenant agrees that the Leased Property is unimproved, and Tenant will not have access to utilities.

11. CASUALTY. In the event that a substantial portion of the Leased Property should be damaged or destroyed by fire or other casualty so that it is no longer fit for the permitted use, the Lease shall terminate.

12. INSURANCE AND INDEMNIFICATION.

(a) The Landlord recognizes and understands that Tenant is self-insured through the North Dakota Risk Management Fund and its liability is limited as a matter of law under N.D.C.C. ch. 32-12.2. Notwithstanding the foregoing, Tenant agrees to require any contractor using the property to obtain the following insurance coverage:

(b) Liability Insurance. During the term of this Lease, Tenant shall carry and maintain the following insurance and any other insurance required by applicable law:

- 1. Commercial General Liability insurance against claims for any personal injury, bodily injury and property damage, including death, in, on or about the Leased Property, which insurance shall afford protection to limits of not less than \$2,000,000 per occurrence and \$2,000,000 aggregate, and a per location aggregate shall apply.

2. Automobile Liability Insurance covering all owned, non-owned and hired automobiles with a limit of not be less than \$1,000,000 per occurrence.

3. Worker's Compensation Insurance as required by law and Employers Liability insurance with not less than \$1,000,000 in per occurrence limits.

4. Limits can be satisfied with a combination of primary and excess limits. Landlord shall be named as an additional insured on the Commercial General Liability Insurance. All such insurance shall contain a waiver of subrogation in favor of Landlord and Tenant's insurance shall be primary and non-contributory to Landlord's insurance policies. All such insurance shall be procured from a reputable insurance company, or companies authorized to do business in the state where the Leased Property is located with insurance companies receiving not less than an "A-" rating in Best's insurance reports. All such insurance shall provide that the insurance coverage may not be cancelled or non-renewed except upon thirty (30) days prior written notice to Landlord. Upon execution of this Lease, Tenant shall deliver a copy of a certificate of insurance to Landlord, which certificate discloses the existence of the insurance coverage required by this Section 12(a). Renewal certificates are to be provided to the Landlord prior to the expiration of the required insurance policies.

(b) Property Insurance. Tenant shall insure Tenant's property located on the Leased Property at Tenant's discretion. Tenant acknowledges and agrees that Landlord is not insuring Tenant's property and Landlord is not responsible for Tenant's property. Tenant's contractors are responsible for insuring their own equipment.

(c) Indemnification. Tenant agrees to require any contractor it hires, to indemnify Landlord and any person or organization related to Landlord, and to hold all of them harmless from any liabilities, damages, costs, and/or expenses, including costs of litigation and reasonable attorneys' fees, including costs of litigation and reasonable attorney's fees incurred in enforcement of the obligation of the Tenant under this Paragraph 12, which they incur as a result of claims made against them by any third parties as a result of any acts or omissions of Tenant, its employees, or its agents. Landlord is responsible for claims against Landlord for contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct.

13. CONDEMNATION CLAUSE. If the Leased Property is taken or ingress and egress is prevented for any public or quasi-public use under any law, ordinance, or regulation, or by right of eminent domain or by private purchase in lieu thereof, Tenant at its option may terminate this Lease. Landlord shall then immediately refund to Tenant any rent paid in advance by Tenant which covers time periods after the date on which the Lease is terminated.

14. THE COVENANT OF QUIET ENJOYMENT. So long as Tenant duly pays the rent required by this Lease and performs all of the covenants and provisions hereof, Landlord covenants that Tenant shall and may responsibly, hold and enjoy the Leased Property for the term aforesaid, except as otherwise provided in this Lease.

15. EVENTS OF DEFAULT BY THE TENANT. The following events shall be deemed to be events of default by Tenant under this Lease:

(a) Tenant shall fail to pay any installment of rent when due and owing, and such failure shall continue for a period of ten (10) days after Tenant receives a written notice of nonpayment from Landlord.

(b) Tenant shall fail to comply with any term, provision, or covenant of this Lease, other than the payment of rent.

(c) Tenant shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors.

16. RE-ENTRY. Upon occurrence of any such events of default by Tenant, Landlord shall have the choice to re-enter, take possession, and re-let the Leased Property for the benefit of Tenant, terminate the Lease, or exercise any rights available to Landlord at law or in equity.

#### 17. HAZARDOUS SUBSTANCES.

(a) Definitions. For purposes of this Lease, "Hazardous Substance" means hazardous waste, toxic substances, polychlorinated biphenyls, or asbestos or related materials, and also includes but is not limited to substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9061, et seq., or the Hazardous Materials Transportation Act, 49 U.S.C. Sec. 5101, et seq., as well as all substances or materials defined as hazardous under the laws of the State of North Dakota. The term "Hazardous Substances" as used in this Lease also includes petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquified natural gas, synthetic gas usable for fuel, or mixtures of the foregoing, PCBs, asbestos, urea formaldehyde or related substances.

(b) Warranties Pertaining to Hazardous Substances. Tenant warrants that during the entire time Tenant has possession of the Leased Property, Tenant shall not bring any Hazardous Substances on to the Leased Property.

(c) Indemnification. Tenant hereby agrees to require any contractor it hires, to indemnify and hold Landlord harmless against and in respect of any and all losses, suits, obligations, fines, damages, judgments, injuries, administrative orders, consent agreements and orders, penalties, actions, causes of action, notices of potential responsibility or requests for response from government agencies, response costs, charges, costs, and expenses, including without limitation reasonable attorneys' fees and reasonable consultants' fees, and including costs and expenses (including reasonable attorney's fees) incurred in enforcing the Tenant's obligation under this Paragraph 17, claims, including but not limited to claims arising out of the release or threat of release of hazardous substances, loss of life, injury to persons, property, or business, environmental contamination or damages to natural resources or to water supplies, whether based on tort, contract, implied or express warranty, statute, regulations, common law, or otherwise, which:

(i) arises out of or is related to the presence on, remediation of, or the actual, alleged or threatened release to or from any of the Leased Property of any hazardous substances or which resulted from occurrences during Tenant's possession of the Leased Property; or

(ii) arises out of noncompliance by Tenant with the warranties set forth in Paragraphs 17(b)(i) and 17(b)(ii).

#### 18. RENTAL PAYMENT AND NOTICE.

(a) All rent and other payments required to be made by Tenant to Landlord hereunder shall be mailed or delivered to Landlord at the address set forth below or to such other address as Landlord may specify from time to time by written notice.

City of Dickinson  
38 1<sup>st</sup> Street West  
Dickinson, ND 58601

(b) All notices from either party must be mailed certified or registered mail, return receipt requested, to the address set forth below, or to such other address as the party shall specify from time to time by written notice:

LANDLORD: City of Dickinson  
38 1<sup>st</sup> Street West  
Dickinson, ND 58601

TENANT: State of North Dakota  
Attn: Dept. of Water Resources, SWPP  
1200 Memorial Highway  
Bismarck, ND 58504

19. TERMINATION OF LEASE.

Tenant has no obligation under this Lease for the initial or succeeding terms if the North Dakota Legislature fails to appropriate to Tenant sufficient funds to defray the full rental costs. Tenant, without any liability, may terminate this Lease by providing thirty (30) days' written notice, if its legislative appropriations are reduced or if its authority to spend its appropriations is reduced or limited by law or by reductions in federal or other grant funds to a point Tenant, in its sole discretion, deems insufficient to pay the full rental cost for the remainder of the term of this Lease. During the term of this Lease or any renewal or extension, Tenant may terminate this Lease by providing thirty (30) days' written notice to Landlord.

During the Term of this Lease or any renewal or extension, Tenant may terminate this Lease by providing thirty (30) days' written notice to Landlord if Landlord fails to comply with any of its obligations under this Lease or if Tenant determines it must relocate to comply with the Americans With Disabilities Act of 1990 or any rules adopted under the act, or with any other state or federal law or rules.

20. ASSIGNMENT, MORTGAGE OR SUBLEASE. Tenant shall not assign, mortgage, pledge, or encumber this Lease or sublet the Leased Property in whole or in part, nor shall this Lease be assigned or transferred by operation of law, without the prior consent in writing by Landlord in each instance.

21. APPLICABLE LAW AND VENUE. This Lease is governed by and construed in accordance with the laws of the state of North Dakota. Any action to enforce this Lease must be adjudicated exclusively in the state District Court of Stark, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or for an inconvenient forum.

22. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL. By entering this Lease, Tenant does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The Parties may enforce the rights and remedies in judicial proceedings. Tenant does not waive any right to a jury trial.

23. SURVIVAL OF REPRESENTATIONS, WARRANTIES, AGREEMENTS AND CLAIMS. All representations, warranties and agreements made in connection with this Lease will survive the termination of the Lease. The parties will therefore be able to pursue claims related to those representations, warranties, and agreements after the termination of this Lease, unless those claims are barred by the applicable statutes of limitation. Similarly, any claims that the parties have against each other

that arise out of actions or omissions that take place while this Lease is in effect will survive the termination of this Lease. This means that those claims may be pursued by the parties even after the termination of this Lease, unless they are barred by the applicable statutes of limitation.

24. DEFINITIONS. Words of gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural unless the context otherwise requires.

25. BINDING EFFECT. The terms, provisions, covenants, and conditions contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto, upon their assigns, and upon their respective successors in interest and legal representatives, except as otherwise herein expressly provided.

26. NO WAIVER. If either party to this Lease fails to insist upon strict performance of any obligation under this Lease, that failure will not result in a waiver of that party's right to demand strict performance in the future. This will still be the case no matter how long the failure to insist upon strict performance continues.

27. ENTIRE AGREEMENT. This Lease, the exhibits to it, and the other documents required in connection with the Lease, set out the entire agreement between the parties regarding the Leased Property, and the other matters set out in this Lease and said other documents. The parties agree that there are no other oral or written understandings or agreements between them regarding these matters.

28. INTERPRETATION. This Lease will be interpreted in a fair and neutral manner, without favoring one party over the other. No provision of this Lease will be interpreted for or against any party because the provision was drafted by that party or its legal representative.

29. AMENDMENT, MODIFICATION, OR WAIVER. No amendment, modification, or waiver of any provision of this Lease will be effective unless it is made in writing, unless it is signed by the parties to be bound by it, and unless it clearly specifies the extent and nature of the amendment, modification, or waiver.

30. SEVERABILITY. If any provision of this Lease is held to be invalid or unenforceable under any applicable law, that holding will not affect the validity or enforceability of the rest of the Lease. Also, any provisions of this Lease held to be invalid or unenforceable will not be completely invalidated but will instead be considered amended to the extent necessary to remove the cause of the invalidity and unenforceability.

31. HEADINGS AND CAPTIONS. The headings and captions of the paragraphs and sections of this Lease are inserted for convenience of reference only, and do not constitute part of the Lease.

32. CONFIDENTIALITY. Landlord shall not use or disclose any information it receives from Tenant under this Lease that Tenant has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Lease or as authorized in advance by Tenant. Tenant shall not disclose any information it receives from Landlord that Tenant has previously identified as confidential and that Tenant determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, N.D.C.C. ch. 44-04. The duty of Tenant and Landlord to maintain confidentiality of information under this section continues beyond the Term of this Lease.

33. COMPLIANCE WITH PUBLIC RECORDS LAWS.

Under the North Dakota public records law and subject to the Confidentiality clause of this Lease, certain records may be open to the public upon request.

Public records may include: (a) records Tenant receives from Landlord under this Lease, (b) records obtained by either Party under this Lease, and (c) records generated by either Party under this Lease.

Landlord agrees to contact Tenant immediately upon receiving a request for information under the public records law and to comply with Tenant's instructions on how to respond to such request.

33. STATE AUDIT. Pursuant to N.D.C.C. § 54-10-19, all records, regardless of physical form, and the accounting practices and procedures of Landlord relevant to this Lease are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. Landlord shall maintain these records for at least three (3) years following completion of this Lease and be able to provide them upon reasonable notice. Tenant, State Auditor, or Auditor's designee shall provide reasonable notice to Landlord prior to conducting examination.

34. EXECUTION. This Lease may be executed in any number of identical counterparts by email (pdf) or third-party contract execution service (such as, for example, Adobe® e-Sign or DocuSign®), each of which for all intents and purposes shall be deemed an original, and all of which together shall constitute one instrument. Delivery of executed counterparts by email or other electronic transmission shall be as effective as delivery of originally executed counterparts.

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

LANDLORD:

City of Dickinson

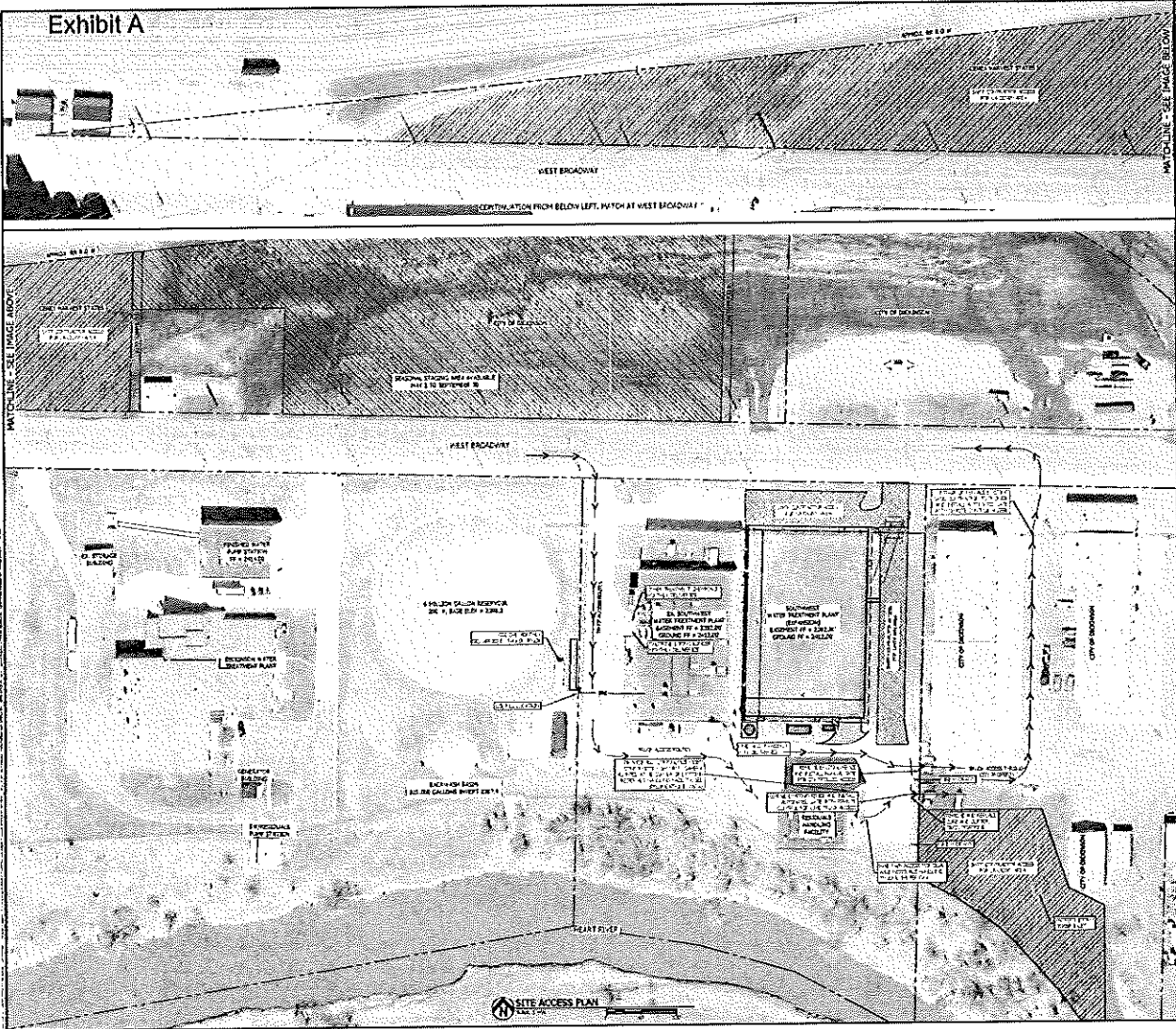
By:   
Its: President of City Commission

TENANT:

State of North Dakota

By:   
Its: SWPP Project Manager

# Exhibit A



**GENERAL NOTES**

1. THE GENERAL NOTES ARE TO BE READ IN CONJUNCTION WITH THE SPECIFICATIONS AND CONTRACT DOCUMENTS.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF SIOUX FALLS.
3. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES.
5. THE CONTRACTOR SHALL MAINTAIN ADEQUATE SAFETY BARRIERS AND LIGHTING AT ALL ACCESS POINTS.
6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING TREES AND LANDSCAPING.
7. THE CONTRACTOR SHALL MAINTAIN ADEQUATE DRAINAGE AND EROSION CONTROL MEASURES.
8. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING ASBESTOS AND LEAD CONTAMINATION.
9. THE CONTRACTOR SHALL MAINTAIN ADEQUATE RECORDS OF ALL WORK PERFORMED.
10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING HISTORICAL AND CULTURAL RESOURCES.

**PROJECT INFORMATION**

Client: City of Sioux Falls  
 Project: Southwest Water Treatment Plant Expansion  
 Location: Sioux Falls, SD  
 Date: 10/15/2023  
 Scale: As Shown  
 Drawing No: G-101

**DESIGNER INFORMATION**

City of Dakota  
 Water Commission  
 Bartlett & West  
 AECOM

**REVISIONS**

NO.	DESCRIPTION	DATE
1	ISSUED FOR PERMIT	10/15/2023