



DEVELOPMENT AGREEMENT

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

OWNER Name and Address: John Schneider
PO Box 1987
Dickinson, ND 58602

Legal Description: Lots 1-10 Block 1 Southview Homes 2nd Addition &
Lots 13, 15-22 Block 6 Netzer's 1st
Also referred to herein as "4th Ave SE Roadway and Utility Plans"
Also referred to herein as the "Subject Property"

RECITALS

WHEREAS, 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, CONTRACTOR will refer to the same individual listed as OWNER for the purposes of this agreement; and

WHEREAS, OWNER intends on improving and developing the Subject Property into a **Residential** development; and

WHEREAS, OWNER and CITY agree that the Subject Property will be improved and developed pursuant to the terms of this Agreement, the "4th Ave SE Roadway and Utility Plans" plans, 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 Chapter 52 of the City of Dickinson Municipal Code and shall satisfy the requirements contained therein for a Subdivision Agreement to be completed prior to the **issuance of a Building Permit on 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. This Agreement shall include the following documents which shall be collectively referred to as the "Contract Documents":

- a. Plans and Specifications
- b. Letter of Credit or Certificate of Deposit
- c. Insurance Certificate
- d. Engineer's Opinion of Probable Cost

2. Infrastructure Improvements – Special Conditions. Except as otherwise stated in this Agreement, OWNER hereby agrees that it will fund and construct, at its own cost, all infrastructure improvements as required by the City of Dickinson Municipal Code and the North Dakota Department of Environmental Quality (NDDEQ). All municipal infrastructure improvements within the Subject Property shall conform to standards as determined by the City, as set forth in the City of Dickinson Municipal Code and NDDEQ, as may be amended from time to time. The work shall be performed in a safe and workmanlike manner. No public improvement will be permitted unless performed in a safe and workmanlike manner, and unless sufficient workers are on the job to adequately perform the work in such manner. The required municipal infrastructure improvements shall include, but are not be limited to street improvements, street lighting, street signs, pavement markings, sidewalks, water improvements, storm sewer improvements, and sanitary sewer improvements, as may be required by the City Engineer, or his designee.

The required infrastructure improvements shall be subject to the following special conditions:

- a. All road design and configuration shall be approved to the satisfaction of the City Engineer, or his designee, and Fire Chief or his designee. No driveway approaches will be allowed along 5th Street Southeast and/or 6th Street Southeast.
- b. The storm water management and grading plan shall be subject to approval of the City Engineer, or his designee. In the event that the stormwater management plan includes a Conditional Letter of Map Revision, OWNER shall complete the stormwater improvements in conformance with the Conditional Letter of Map Revision.
- c. All necessary municipal improvements, including, but not limited to, potable water and sanitary sewer, shall be subject to the approval of the City Engineer, or his designee, and the NDDEQ. All costs of work incidental to the project, such as restoring grades, watermain pressure testing, taps to the watermain, tracer-wire testing, chlorination, flushing and any other usual charges as determined by the City Engineer shall be borne by OWNER. In no event shall the CITY be responsible for any costs whatsoever, including costs for additional work or costs occasioned by unforeseen or changed conditions encountered during the work.
- d. **Prior to approval of the municipal construction plans**, OWNER shall pay or post a financial security ensuring payment for all costs associated with the construction and the review of the municipal construction incurred by the CITY.
- e. Submit municipal construction plan sheets, completed by a North Dakota registered private engineer, for review and approval by the City Engineer or his designee
- f. Install mailboxes in the quantity and location approved by the United States Postal Service.
- g. Install LED city standard streetlights, as approved by the City Engineer or his designee.
- h. Install the standard City of Dickinson Local Street typical section or Street Improvements shown on said plans and approved by the City Engineer, or his designee.

- i. Install water and sewer services, including shut off valves, to all existing lots or lots to be split in the future, within the Subject Project.
- j. Sidewalks shall be built with the building permit process, per the City standard detail. The sidewalks along 5th Street Southeast and 6th Street Southeast, including the pedestrian ramps, shall be installed with the project. This includes the following lots: Lot 1 and 10, Block 1, Southview Homes 2nd Addition, and Lot 22, Block 6, Netzer's 1st Subdivision.
- k. All other private utility relocations and additions must be coordinated and funded by OWNER.
- l. All building and landscaping codes shall be adhered to during the construction project of the structures through the building permit process.

3. Assurance of Infrastructure Completion. In the event that construction of required infrastructure in Section 2 is not completed at the time of plat recordation or building permit approval, OWNER hereby agrees that no improvements or infrastructure 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. Prior to the CITY issuing any building permit, for any structure within a phase of the Subject Property, OWNER shall post with the CITY financial security, to assure the completion of the required municipal infrastructure for the Subject Property, as required under City of Dickinson Municipal Code §52-6. The security posted by 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 shall be made upon completion of the work, inspection, acceptance of the same, and a one-year warranty period. The financial security will remain in effect through warranty examination and final inspection by the CITY per paragraph eleven of this Agreement.

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 the Plans and Specifications. The City Engineer or his designee reserves the right to make any necessary changes in the alignment, grade, or design of the proposed work. The City Engineer or his designee shall also have the authority to reject all work and materials which do not conform to the Plans and Specifications and to decide all questions which arise in the execution of the work as to whether or not the work complies with the Plans and Specifications.

5. Subdivision of Land. 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. Building Permits. The CITY's approval of this Agreement does not include approval of permits for construction within the Subject Property. 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. 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 (or) the subject property will be required to follow the storm water requirements defined

under the City of Dickinson Municipal Code §16-103. This does not relieve OWNER from otherwise harming adjacent properties with redirected stormwater from this construction activity.

7. Financial Security and Fees. OWNER shall provide a financial security from a bona fide bank in the amount of the Construction Cost plus 10% contingency (110% total), which shall be based on the Engineer's Opinion of Probable Cost. The Estimated Construction Cost is \$750,000. The total for the financial security shall be \$825,000.

OWNER shall pay its contractor(s) for all work performed on OWNER'S behalf in accordance with the Plans and Specification. The CITY shall have no obligation, liability or responsibility for any payment due to any party under this Agreement or otherwise arising from the work performed under this Agreement including payments for additional work or payments for costs occasioned by unforeseen or changed conditions encountered during the work.

CONTRACTOR shall obtain and furnish general liability insurance covering itself; and naming CITY and OWNER as additional insureds with an insurer licensed to do business in North Dakota; with policy limits of not less than \$1,000,000 for property damage; and no less than \$1,000,000 for bodily injury for one person; and not less than \$1,000,000 for one accident, to indemnify and hold harmless CITY and OWNER against and from all suits, actions, or claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person or persons or property on account of any negligent act or fault of OWNER, its CONTRACTOR, CITY or its officers, agents or employees in the execution of this Agreement, or on account of CONTRACTOR'S failure to provide necessary barricades, warning lights, or signs, and as will protect CITY and OWNER from any contingent liability or any other liability under this Agreement and based on any other legal grounds.

In addition to the policies identified in the preceding paragraph, CONTRACTOR and OWNER shall procure and maintain a general liability umbrella policy with policy limits of no less than \$3,000,000 per occurrence. CONTRACTOR and OWNER shall list CITY as additional insured with respect to such general liability umbrella insurance purchased and maintained by CONTRACTOR and OWNER. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.

CONTRACTOR shall also carry an insurance policy of builder's risk of at least double the Agreement amount that shall name CITY and OWNER as additional insureds. If the work is limited to underground, sidewalk, streets or curb and gutter, CONTRACTOR may instead provide an installation floater for the Construction Cost that names CITY and OWNER as additional insureds. During the performance and up to the date of final acceptance, CONTRACTOR shall be under an absolute obligation to protect against any damage, loss, or injury and in the event of such damage, loss or injury CONTRACTOR shall promptly repair, or replace such work, whichever the City Engineer shall deem preferable. The obligation to deliver finished work in strict accordance with this Agreement prior to final acceptance shall be absolute and shall not be affected by the City Engineer's approval or failure to prohibit the methods of construction used by CONTRACTOR.

8. Construction and Inspections. The CITY shall provide for an engineering inspection and construction material testing of all construction within the platted rights-of-way. Weekly inspection reports shall be submitted to OWNER and the CITY by the engineer providing engineering inspection and construction

material testing. 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 Plans and Specifications. At a minimum, engineering inspectors will be onsite when any test is being performed, when asphalt or concrete paving is underway and when connections are being made to the CITY'S water or sewer system. After project completion, the engineer providing engineering inspection and construction material testing shall provide as-built drawings, change orders and final review & acceptance forms. The as-built drawings shall include the electronic submittal in pdf and shape file to meet the CITY'S GIS standards. The cost estimate for the engineering inspection and construction material testing of all construction within the platted rights-of-way is \$70,275 to be charged on a time and materials basis. OWNER shall pay, at OWNER'S expense, for any and all review fees required for review of the Plans and Specifications and/or site construction inspections of municipal infrastructure within the Subject Property.

OWNER shall at all times maintain proper facilities and provide safe access for inspection by CITY personnel, or its consultant(s), to all parts of the work and to any and all facilities wherein the work is in preparation. CONTRACTOR shall provide and maintain all necessary traffic control devices as defined for the project as listed below but no limited to: flaggers, barricades, lights, and warning signs and take all necessary precautions for protection of the public, and shall further maintain at all times adequate protection of the work from damage. It shall be the responsibility of CONTRACTOR to familiarize itself with the location of all existing sewer mains, watermains, sewer and water service lines, gas mains, gas service lines, telephone, cable TV, or power lines, light and telephone poles, and guys, steam lines, valve boxes, and stop boxes or any and all other utilities installations that might be affected or potentially damaged in the performance of the Work. CONTRACTOR shall notify all underground facility operators per current North Dakota One-Call regulation affecting said facilities and shall resolve with said utility operators any conflicts, changes or accommodations. OWNER shall immediately cease work if ordered to do so by CITY personnel, or its consultant(s), in order to protect the life, health or safety of the public, or to prevent deficient work within public rights-of-way.

CONTRACTOR shall supervise and direct the Work, using CONTRACTOR'S best skill and attention. CONTRACTOR shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Agreement, unless this Agreement gives specific instructions otherwise.

Extra materials, tools and temporary structures shall be removed by CONTRACTOR and all dirt, rubbish, and excess earth from excavations shall be disposed of and the construction area left clean to the satisfaction of the City Engineer. The cost for this work shall be borne by CONTRACTOR. CONTRACTOR shall maintain for a period of three months after completion of the Work the surface of unpaved trenches, adjacent curbs and gutters, sidewalks, driveways, shrubbery, fences, sod or other surfaces disturbed. CONTRACTOR shall conduct its operations in such manner as to cause minimum inconvenience to adjoining property owners and the public.

Street surfacing in unpaved areas shall be restored to as good as or better than prior to construction by CONTRACTOR. CONTRACTOR will be required to replace and/or repair paving or gravel surface removed or damaged in the construction work, to the satisfaction of and subject to the approval of CITY.

When the Work is substantially complete as determined by the inspecting engineer, all parties will perform a project walk through, during which a punch-list of remaining work items will be agreed upon. Additional items needed by City for all project closeouts are Record Drawings, Inspection Report and Testing Results. When Punch-List Work has been completed to the satisfaction of City, all parties will sign a Final Review and Acceptance form.

CONTRACTOR shall be responsible for maintenance and operation of all constructed facilities until final acceptance unless otherwise noted in the Plans and Specifications. This includes locating of CONTRACTOR constructed underground facilities.

9. Repairs and Replacements. 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 OWNER or OWNER'S agents. 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 his designee.

10. 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 or the proposed subdivision, having been constructed by OWNER or its agents or assignees, shall vest in the CITY upon completion and acceptance of such improvements with the exception of sewer service lines (as defined in Section 60-1 of the CITY Municipal Code) that will be maintained by the property owner.

11. Maintenance Warranty. For all municipal improvements within the Subject Property, at the time of construction commencement, through substantial completion and acceptance of such improvements, OWNER'S contractor shall provide to the CITY a bond acceptable to the CITY, that is to remain in full effect for one year following substantial completion. Such bond shall be in a form acceptable to the CITY.

OWNER shall remedy at OWNER'S expense any damage to real or personal property, when that damage is the result of: (1) OWNER'S failure to conform in material respect to the requirements of the CITY; or (2) any defect of equipment, material, workmanship, or design furnished. OWNER shall restore any work damaged in fulfilling the terms and conditions of this Section. 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 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.

12. 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 OWNER sells individual lots within the Subject Property, OWNER shall specifically notify the purchaser thereof of this Agreement. All obligations, promises and covenants of OWNER contained herein shall similarly be binding upon purchasers of lots within the Subject Property.

13. 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.

14. Non-waiver. Each right, power or remedy conferred upon the CITY or 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 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 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.

15. 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.

CONTRACTOR and OWNER shall indemnify and hold harmless CITY for all of CONTRACTOR'S and OWNER'S acts, including negligent acts or wrongful conduct, claims, causes of action of any sort arising out of or related to CONTRACTOR and OWNER'S work performed or not performed under this Agreement.

16. Relationship. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that any other provisions contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than expressly stated herein.

17. 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 for a total duration of 24 months from the date of the document execution.

All contracts made by OWNER and/or CONTRACTOR with any person, firm, or corporation in connection with or in carrying out this Agreement work shall provide: This contract is subject to all the terms and conditions of an Agreement dated _____, between OWNER, CONTRACTOR, and CITY.

(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 _____, 2025, 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 & CONTRACTOR

By: _____

Authorized Agent

STATE OF _____)

COUNTY OF _____)

) ss

On this _____ day of _____, 2025, before me personally appeared _____, the Authorized Agent of _____, 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.

Notary Public