



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 Park District
2004 Fairway Street
Dickinson, ND 58601

For the following described property:

A PARCEL OF LAND BEING PART OF LOTS SIX (6) AND SEVEN (7), BLOCK ONE (1) OF AUDITOR’S PLAT NO. 9 TO THE CITY OF DICKINSON, STARK COUNTY, ND, PLUS THE SOUTHEAST CORNER OF LOT SEVEN (7), BLOCK THREE (3), DINSDALE’S 3RD ADDITION, STARK COUNTY, ND, PLUS NORTHWEST NINE (9) FEET BY NINE (9) FEET, EAST NINE (9) FEET BY 55.5 FEET, AND SOUTH NINE (9) FEET BY 307 FEET OF THE VACATED ALLEY.

SAID PARCEL CONTAINS 15.83 ACRES, MORE OR LESS, AND IS SUBJECT TO ANY PREVIOUS EASEMENTS, AGREEMENTS, CONVEYANCES AND SURVEYS.

Also referred to herein as “**Jaycee Park**”;

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

RECITALS

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

WHEREAS, OWNER and the CITY agree that the Subject Property will be improved and developed pursuant to the terms of this 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 shall control the development of the Property and the construction of Municipal Improvements necessary to remove and replace the asphalt parking lot and install a new storm sewer main on the Subject Property as referenced in Attachment A. Remedies contained in this Agreement shall be in addition to those otherwise provided by law to the CITY for other violations of the City of Dickinson Municipal Code.

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

- a) OWNER shall prepare or have prepared design and plans and specifications for the stormwater management facility within the Subject Property in accordance with current City Policies. The cost of preparing these plans shall be paid by the CITY.
- b) The CITY shall construct or have constructed the stormwater management facilities and pavement for the associated parking lot as depicted by the plans and specifications approved by the CITY as noted by Section 2. a) of this Agreement. The CITY shall pay all expenses associated with the construction of the stormwater management while OWNER shall reimburse the CITY for the cost of paving the portion of the parking lot not located directly above the stormwater management infrastructure.
- c) Title to, ownership, and maintenance of Public Improvements after construction and acceptance shall be as defined by Section 8 of this Agreement.

3. Payment After Infrastructure Completion. No security payment will be required in advance of construction. The CITY shall pay all initial costs of construction. OWNER is responsible for repaying the CITY 68.9% of the cost of the demolition of the existing pavement and 59.6% of the cost of the reconstruction of the parking lot, as outlined in Attachment A of this Development Agreement. If this amount is not repaid to the CITY within one (1) calendar year, the costs associated with the project determined to be the responsibility of OWNER shall be specially assessed to the Subject Property.

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

5. **Establishment of Easement.** The CITY shall bear the costs of working with a licensed surveyor to establish a thirty (30)-foot stormwater easement following the storm sewer main after construction. The establishment of an easement shall follow all requirements outlined in Chapter 52 of the City of Dickinson Municipal Code.

6. **Permits.** It is the responsibility of the CITY to get all permits submitted, reviewed, and approved prior to construction taking place on the Subject Property. OWNER has no permits it is obligated to acquire.

7. **Repairs and Replacements.** The CITY shall replace, or have replaced, or repair, or have repaired, as the case may be, any and all pipes and monuments within the Subject Property that have been destroyed or damaged by the CITY or CITY's agents. The CITY 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.

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

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

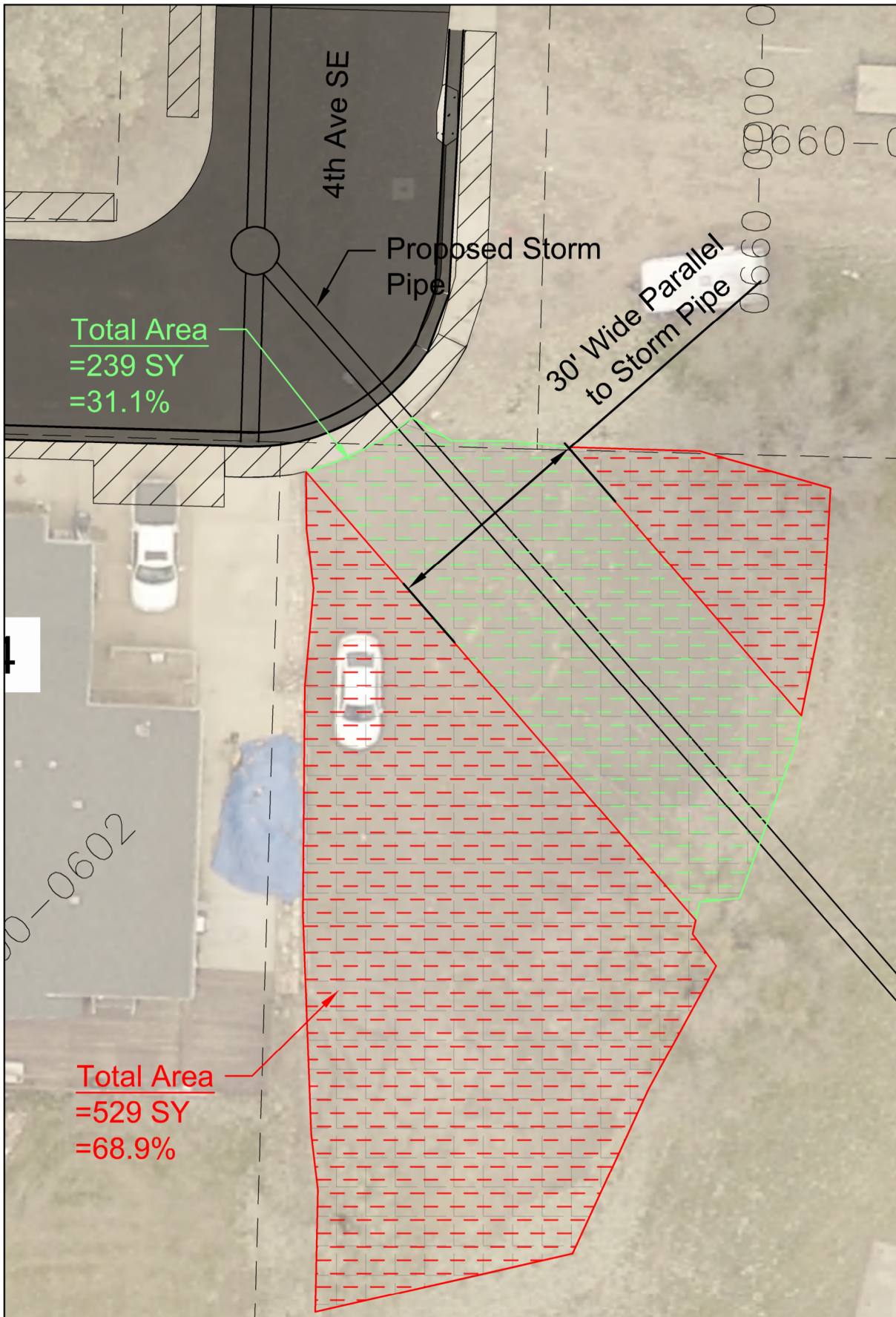
10. **Agreement Runs with the Land.** This Agreement shall be binding on, and shall inure to the benefit of, the parties hereto and their respective heirs, administrators, representatives, successors, and assigns. This Agreement shall run with the land and shall be recorded with the Office of the Stark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

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

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

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


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

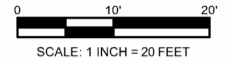


Total Area
=239 SY
=31.1%

Total Area
=529 SY
=68.9%

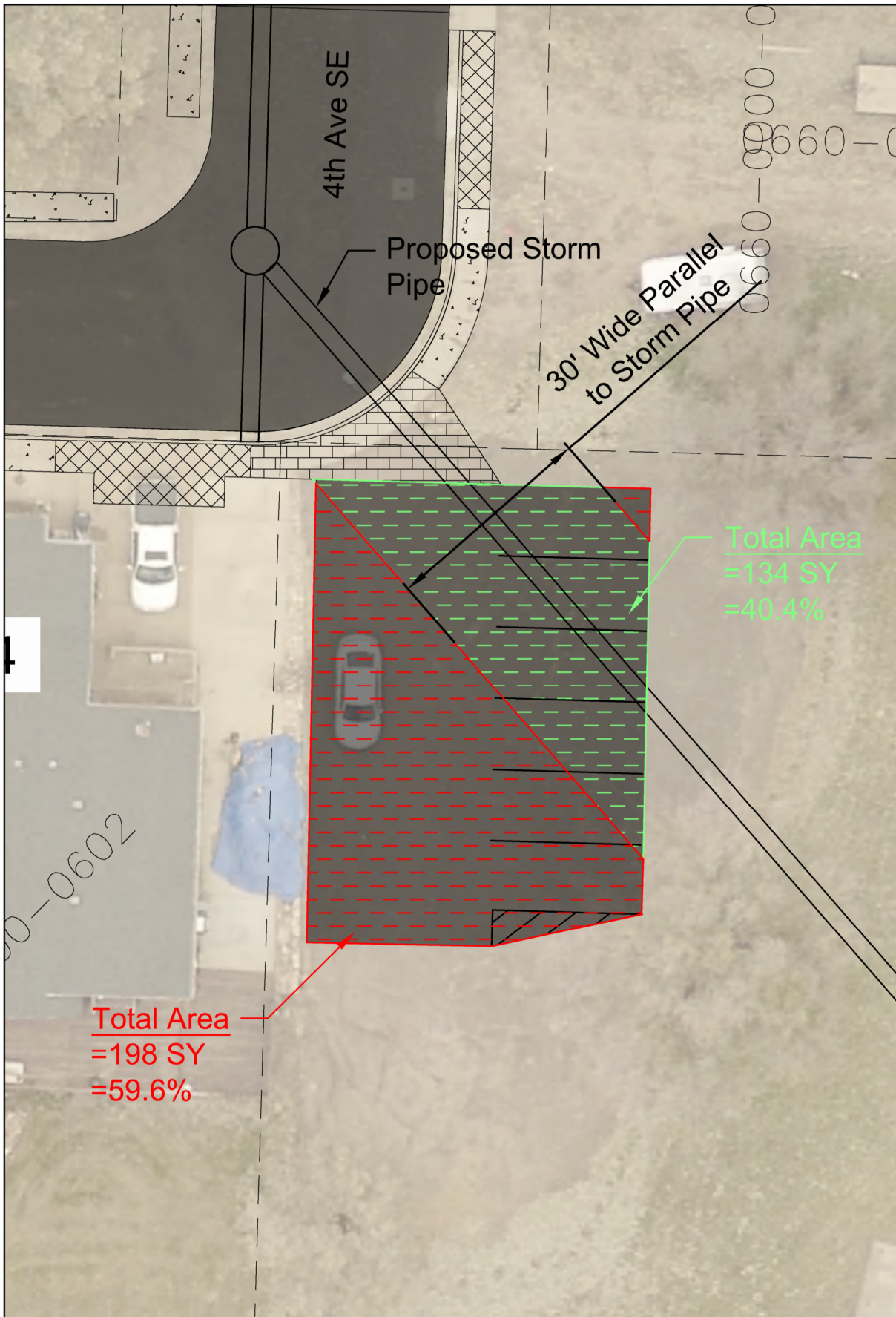
Legend

-  Dickinson Park District Area
-  City of Dickinson Area





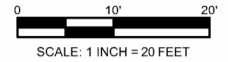
**Removal of Surface Funding
2026 Utility and Street Improvements
Project**

4th Ave SE Parking Lot



Legend

-  Dickinson Park District Area
-  City of Dickinson Area



Apex
Engineering Group

CITY OF
Dickinson
North Dakota

**Proposed Surface Funding
2026 Utility and Street Improvements
Project**

4th Ave SE Parking Lot

Removal of Parking Lot Quantity Distribution								
Bid Item	Quantity	Units	Unit Cost	Total Estimated Cost	City of City %	Dickinson Park District %	City of Dickinson Estimated Cost	Dickinson Park District Estimated Cost
DEMOLITION OF PARKING LOT	1	LSUM	\$6,400.00	\$6,400.00	31.1%	68.9%	\$1,990.40	\$4,409.60

Proposed Surface Parking Lot Quantity Distribution								
Bid Item	Quantity	Units	Unit Cost	Total Estimated Cost	City of City %	Dickinson Park District %	City of Dickinson Estimated Cost	Dickinson Park District Estimated Cost
SUBGRADE PREPARATION 12 IN	332	SY	\$8.00	\$2,656.00	40.4%	59.6%	\$1,073.02	\$1,582.98
GEOSYNTHETIC MATERIAL TYPE G	332	SY	\$4.00	\$1,328.00			\$536.51	\$791.49
AGGREGATE BASE COURSE CLASS 5	69	TON	\$79.00	\$5,451.00			\$2,202.20	\$3,248.80
SUPERPAVE FAA 43	55	TON	\$114.00	\$6,270.00			\$2,533.08	\$3,736.92
ASPHALT CEMENT (PG58H-34)	3	TON	\$800.00	\$2,400.00			\$969.60	\$1,430.40
Total Cost=							\$7,314.42	\$10,790.58

* With a typical section of 3" Asphalt on 4" of Aggregate with Geogrid