

CITY OF DICKINSON, NORTH DAKOTA

**BOND RESOLUTION
\$3,539,000 REFUSE DISPOSAL REVENUE BOND, SERIES 2025**

WHEREAS, the City of Dickinson, North Dakota (the "City") owns, operates and maintains a refuse collection and disposal utility system for the purpose of providing refuse collection and disposal facilities to its residents; and

WHEREAS, the Board of City Commissioners of the City finds that it is financially feasible and in its best interest to finance improvements to the City's refuse collection and disposal utility from sewer utility revenues and refuse collection and disposal utility revenues; and

WHEREAS, the City receives allocations of the Oil and Gas Gross Production Tax, which is derived from a percentage of the tax imposed and levied by the State of North Dakota pursuant to Chapter 57-51 of the N.D.C.C. upon all oil produced within the State; and

WHEREAS, the North Dakota Public Finance Authority (the "NDPFA") is authorized pursuant to N.D.C.C. Chapter 6-09.4 to lend money to political subdivisions of the State of North Dakota, to acquire and hold municipal securities issued by such political subdivisions, including those issued to construct, maintain, repair, and operate or cause to be operated, public wastewater and water system utilities, and to issue its bonds to pay the costs of acquiring such municipal securities; and

WHEREAS, the NDPFA has issued its bonds and has deposited the proceeds from the sale thereof together with other available funds in the Clean Water and Safe Drinking Water Act revolving loan funds created by NDCC Chapters 61-28.1 and 61-28.2 (the "Revolving Loan Funds") from which Revolving Loan Funds loans will be made to political subdivisions of the State, including the City to finance the costs of public water and wastewater system utilities and to assist public entities in connection with the financing of such facilities; and

WHEREAS, the City has made timely application to the North Dakota Department of Environmental Quality, Division of Municipal Facilities (the "Department") pursuant to the requirements of the Revolving Loan Funds to finance all or a portion of the cost of the Project; and

WHEREAS, the Department has approved the City's application for a loan from available proceeds of the bonds or other available funds of the NDPFA deposited in the Revolving Loan Funds in an amount not to exceed the cost of the Project; and

WHEREAS, applicable Safe Drinking Water Capitalization Grants require that a portion of the grants be used for loan forgiveness and the City has been approved for partial principal forgiveness.

NOW, THEREFORE, BE IT RESOLVED by the governing body of the City as follows:

SECTION 1. DEFINITIONS. As used in this Resolution, the following words shall have the following meanings:

"Bond Fund" means the Bond Fund established pursuant to Section 10 hereof.

"Bonds" or "Bond" means the City of Dickinson, North Dakota, Refuse Disposal Revenue Bond, Series 2025 issued pursuant to this Resolution.

"Bondholders" means the person or persons in whose name such Bond shall be registered.

"City" means the City of Dickinson, North Dakota, a North Dakota political subdivision and its successors and assigns.

"Commission" means the Board of City Commissioners of the City.

"Construction Fund" means the Construction Fund established pursuant to Section 12 hereof.

"Date of Issue" means the date on which the aggregate draws under the Bond exceeds the lesser of \$50,000 or five percent (5%) of the issue price of the Bond.

"Default" means any event specified in Section 17(a) of this Resolution.

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

"Facilities" means the wastewater collection and treatment utility and the refuse collection and disposal utility established and operated by the City, including any improvements, betterments, additions, renewals and replacements thereto.

"GPT Revenues" means the allocations received by the City from the State Treasurer of the Oil and Gas Gross Production Tax pursuant to North Dakota Century Code Chapter 57-51.

"Gross Revenues" means (a) all fees and charges collected for use of the Facilities, and (b) solely with respect to the Facilities (i) revenues from other activities furnished by the City, (ii) revenues from product sales, and (iii) other revenues collected by the City; however, Gross Revenues does not include: (a) collection of ad valorem taxes; (b) payments of assessments levied against benefitted properties; (c) the proceeds of grants; (d) the proceeds of borrowing for capital improvements; (e) the proceeds of liability insurance; and (f) the proceeds of casualty insurance which the City intends to utilize for repair or replacement of the Facilities.

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

"Loan Agreement" means the State Revolving Fund Program Loan Agreement entered into between the NDPFA and the City and dated the Date of Issue.

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

"Net Revenues" means Gross Revenues less Operating Expenses.

"**N.D.C.C.**" means the North Dakota Century Code.

"**NDPFA**" means the North Dakota Public Finance Authority.

"**Operating Expenses**" means all normal, reasonable and current expenses incurred for operation, maintenance and repair of the Facilities, including but not limited to administrative expenses, financial and auditing expenses, insurance premiums, claims (to the extent moneys are not available from proceeds of insurance), taxes, legal and engineering expenses relating to operation and maintenance, payments and reserves for pension, retirement, health, hospitalization, and sick leave benefits, payments to reserve funds, and any other similar expenses to be paid to the extent properly and directly attributable to operations of the Facilities, but excluding depreciation, debt service, amortization and capital expenditures.

"**Parity Bonds**" means the outstanding obligations identified in the Parity Bonds Certificate which is set forth elsewhere in the transcript for the Bonds, and any revenue bonds or other obligations of the City issued hereafter which comply with the provisions of Section 16 of this Resolution for the issuance of Parity Bonds.

"**Pledged Revenues**" means:

- (a) the GPT Revenues;
- (b) the Net Revenues;
- (c) earnings on any funds or accounts created under this Resolution; and
- (d) any source or additional sources of revenues, fees and income which may be added from time to time to the Pledged Revenues under the provisions of this Resolution or any resolution amendatory thereof or supplemental thereto, including any revenues, fees, income or any other sources of monies which may be authorized from time to time by action of the Commission.

"**Project**" means improvements to the Facilities consisting of, but not limited to, landfill expansion, including leachate collection and treatment.

"**Registrar**" means the Bank of North Dakota, Bismarck, North Dakota, or any other entity which is under contract with the City to serve as paying agent and registrar for the Bonds and its successors and assigns.

"**Reserve Fund**" means the Reserve Fund established pursuant to Section 11 hereof.

"**Reserve Fund Requirement**" means an amount equal to the least of: (i) 10% of the stated principal amount of the Bond, (ii) the maximum annual principal and interest payment requirement on the Bond, or (iii) 125% of the average annual debt service requirements on the Bond.

“Resolution” means this Resolution, including the 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.

"State" means the State of North Dakota.

SECTION 2. AUTHORIZATION. Pursuant to the authority of Chapter 40-35 of the N.D.C.C. and the provisions of this Resolution, a bond of the City of Dickinson, North Dakota entitled to the benefits, protection and security of such provisions is hereby authorized in the aggregate principal amount of not to exceed Three Million Five Hundred Thirty Nine Thousand Dollars (\$3,539,000). The Bond shall be designated "\$3,539,000 City of Dickinson, North Dakota, Refuse Disposal Revenue Bond, Series 2025", and shall be issued for the purpose of constructing the Project and paying related costs of issuance.

Provided that following closing on the Bond and after the Loan is fully funded and all applicable requirements of the Department of Environmental Quality have been met by the City, \$1,043,000 of the maximum principal amount of the Loan shall be forgiven, leaving a maximum Loan amount of \$2,496,000.

SECTION 3. SALE OF THE BOND. The Bond is hereby sold through negotiated sale to the NDPFA on the terms and conditions set forth herein at a purchase price of not to exceed \$3,539,000, or such lesser amount as may be required for the completion of the Project. The City agrees to pay to the NDPFA the Administrative Fee as defined in the Loan Agreement. The Bond shall consist of a single term bond in the principal amount of not to exceed \$3,539,000. The Bond shall be issued only in fully registered form without coupons.

SECTION 4. TERMS. The Bond shall be dated the date of issuance. The Bond shall mature on September 1, 2044 and shall bear interest at the rate of 1.50% (plus an Administrative Fee as forth in the Loan Agreement) payable on March 1 and September 1 in each year commencing on the first such date following the first loan advance.

The Bond is subject to annual mandatory principal installments commencing September 1, 2025 (or in no event later than September 1 following the date of Project completion), with the last principal payment being made on September 1, 2044, subject however to the final amortization schedule to be attached to the Bond upon the final loan advance in accordance with Section 2.02 of the Loan Agreement. The preliminary amortization schedule has been presented to this meeting and is hereby approved. Each loan advance shall be recorded on the grid on the reverse of the Bond.

Interest on the Bond (computed upon the basis of a 360-day year consisting of twelve months of 30 days each) and, upon presentation and surrender thereof to the Bank of North Dakota, as paying agent and registrar of the Bond, the principal thereof shall be payable in lawful money of the United States of America by check, wire, or other electronic transfer. Interest shall be payable to the person in whose name the Bond is registered at the close of business on the fifteenth (whether or not a business day) of the immediately preceding month. Interest on the Bond shall cease at maturity or on a date prior thereto on which they have been duly called for redemption unless the holder thereof shall present the same for payment and payment is refused. The Bond shall be payable from the Bond Fund established herein.

SECTION 5. REDEMPTION. The Bond is subject to prepayment or refunding on any interest payment date with the written consent of the NDPFA at a price equal to the principal amount thereof plus accrued interest. Upon partial redemption of any Bond, a new Bond or Bonds will be delivered to the owner without charge, representing the remaining principal amount outstanding.

SECTION 6. PREPARATION AND EXECUTION; FORM OF BOND. The Bond shall be printed under the supervision and at the direction of the City Administrator, executed by the manual or facsimile signature of the President of the Commission, sealed with a manual or facsimile of the City's official seal, if any, and attested to by the manual or facsimile signature of the City Administrator and delivered to the NDPFA at closing upon receipt of the purchase price plus any accrued interest. The Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under this Resolution until the Certificate of Authentication thereon shall have been executed by the Registrar by manual signature of one of its authorized representatives. The Bond shall be reproduced in substantially the form on file with the City Administrator.

SECTION 7. DEDICATION OF PLEDGED REVENUES. The City hereby dedicates and pledges for annual payment of the principal and interest on the Bond, the Pledged Revenues. The levy and collection of the Net Revenues and the dedication of such shall be irrevocable so long as any principal of or interest on the Bond remains outstanding and unpaid.

To the extent needed, the City hereby dedicates and pledges for payment of the principal and interest on the Bond, an amount of the GPT Revenues, together with any other legally available funds, equal to 110% of the average annual interest and principal requirements on the Bond and Parity Bonds. The GPT Revenues may be used by the City for any lawful purpose, including as a pledge and security for additional bonds payable from the GPT Revenues. Such dedication shall be irrevocable so long as any principal or interest on the Bond remains outstanding and unpaid.

SECTION 8. SECURITY. The Bond shall be a limited obligation of the City, and shall be payable solely from the Pledged Revenues, as provided by this Resolution and do not constitute a debt of the City within the meaning of any constitutional or statutory limitation. The Bond shall not be payable from nor charged upon any funds other than the revenue pledged to the payment thereof, nor shall the City be subject to any pecuniary liability thereon. The Bond shall not constitute a charge, lien, nor encumbrance, legal or equitable, upon any property of the City and no Bondholder shall ever have the right to compel any exercise of the taxing power of the City to pay the principal or interest on the Bond, other than the Pledged Revenues herein pledged to the payment of the Bond.

SECTION 9. DISPOSITION OF BOND PROCEEDS. The estimated \$3,539,000 proceeds derived from the sale of the Bond shall be deposited to the credit of the Construction Fund as advances are made pursuant to Section 2.02 of the Loan Agreement.

SECTION 10. BOND FUND. The City shall establish and maintain so long as the Bond is outstanding a separate fund to be designated the "Bond Fund." The Commission shall make the following deposits into the Bond Fund:

- (a) Commencing on the first day of the month following the Date of Issue, and monthly thereafter the City will deposit into the Bond Fund Pledged Revenues in an amount

equal to one-sixth (1/6) of the amount necessary to pay Bond interest and the Administrative Fee which will become due on the next interest payment date after crediting the amount of accrued interest and any earnings on the Bond Fund. Prepayment of monthly deposits will fulfill this requirement. Notwithstanding the foregoing, the City shall deposit into the Bond Fund from the Pledged Revenues an amount sufficient to permit all interest due on the Bond to be paid on the date it is due.

(b) Commencing on the first day of the month following the Date of Issue, and monthly thereafter, the City will deposit into the Bond Fund Pledged Revenues in an amount equal to one-twelfth (1/12) of the amount necessary to pay any Bond principal which will become due on the next principal payment date. Prepayment of monthly deposits will fulfill this requirement. Notwithstanding the foregoing, the City will deposit into the Bond Fund from the Pledged Revenues an amount sufficient to permit all principal due on the Bonds to be paid on the date it is due.

(c) On each principal and interest payment date, from funds on deposit in the Reserve Fund, such additional amounts, if any, as may be necessary to meet principal and interest payments then due.

Deposits required to be made pursuant to Sections 10(a) and 10(b) above are cumulative, and if the Pledged Revenues are not sufficient to credit the amount required in any month, an amount equal to the deficiency shall be credited from the next Pledged Revenues thereafter received. The moneys and investments in the Bond Fund are irrevocably pledged to and shall be used to the extent required for the payment of principal of and interest on the Bond when and as the same shall become due and payable and for that purpose only.

SECTION 11. RESERVE FUND. The City shall maintain a balance in the Reserve Fund at least equal to the Reserve Fund Requirement. If at any time the balance in the Reserve Fund is less than the Reserve Fund Requirement, the City will transfer Pledged Revenues to the Reserve Fund.

The City shall fund the Reserve Fund Requirement from Pledged Revenues in the amount of \$30,305 each September 1 commencing September 1, 2025, and on each September 1 thereafter with the final deposit made on September 1, 2029 totaling \$151,525. The Reserve Fund requirement is based upon total draws of \$3,539,000. In the event that the City draws less than \$3,539,000 the Reserve Fund Requirement shall be adjusted downward. In the event that \$1,043,000 of the maximum principal amount of the Loan is not forgiven, the Reserve Requirement and the required deposits shall be adjusted accordingly.

Moneys required to be maintained in the Reserve Fund will be used only to pay principal and interest on the Bond, and only in the event that the Pledged Revenues and moneys in the Bond Fund are insufficient to pay Bond principal, premium, if any, and interest when due; provided, however, that when the balances of the Bond Fund and the Reserve Fund equal an amount sufficient to redeem or pay at maturity all outstanding Bond, together with interest thereon and premium, if any, said balances may be applied to such redemption or payment at maturity, as the case may be, whether or not other moneys are available for such payment.

Any amounts on deposit in the Reserve Fund, including interest earnings, in excess of the Reserve Fund Requirement shall be transferred to the Bond Fund. Any surplus remaining in the Reserve Fund after the Bond has been paid may be used for any lawful purpose determined by the City.

SECTION 12. CONSTRUCTION FUND. The Commission shall establish a Construction Fund and shall deposit to the credit of such Fund the proceeds of the Bond as set forth in Section 9 hereof.

As bond proceeds are needed for Project costs, the City shall submit requests in accordance with Section 2.02 of the Loan Agreement. Loan advances shall be recorded on the grid on the back of the Bond. Monies in the Construction Fund from such proceeds and earnings shall be used for payment of the cost of the Project and costs of issuance of the Bond to include reimbursement to the City for advances made for such costs or to refund amounts borrowed for the Project, and for no other purpose.

Moneys in the Construction Fund shall be deposited with a qualified depository and any deposits in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation or the National Credit Union Administration shall be collateralized in accordance with Section 21-04-09 of the North Dakota Century Code. Moneys in the Construction Fund shall be subject to withdrawal from time to time by the President and City Administrator for the purposes set forth above.

Moneys in the Construction Fund may be invested in such investments as are authorized by law for the City. Earnings from investment of the funds in the Construction Fund shall remain in the Construction Fund and shall be treated and disbursed as Bond proceeds. Any proceeds of the Bond and any interest earnings thereon remaining in the Construction Fund after payment of all outstanding interim indebtedness, costs of the project, reimbursement of prior expenditures and issuance costs shall be transferred to the Bond Fund.

SECTION 13. RATE COVENANT. The City covenants that it will charge fees in connection with the operation of the Facilities which, together with the GPT Revenues, are projected to generate at least equal to 1.10 times the annual debt service on all outstanding Bond and Parity Bonds. If the Pledged Revenues fail to meet this level, the City shall promptly increase its fees to a level, or appropriate Pledged Revenues which are projected to meet the required level.

SECTION 14. GENERAL COVENANTS. The City hereby covenants and agrees with the owners of all outstanding Bond as follows:

(a) That it will, to the extent the Pledged Revenues are sufficient, promptly cause the principal and interest on the Bond to be paid as they become due.

(b) That it will maintain complete books and records relating to the operation of the Facilities, the Construction Fund, the Bond Fund and the Reserve Fund and will cause such books and records to be audited annually at the end of each fiscal year in accordance with Generally Accepted Accounting Standards. The audit report shall be made available to the purchaser of the Bonds upon request.

(c) That it will not issue bonds or other obligations having a claim equal or superior to the claim of the Bond upon the Pledged Revenues.

(d) That it will impose, maintain and collect the rates and charges for its Facilities in an amount sufficient to pay all Operating Expenses, and to produce Net Revenues sufficient to pay the principal of and interest on the Bonds as the same becomes due, and to fund the Reserve Fund.

(e) That all users of the Facilities will be metered.

(f) That it will operate the Facilities in an efficient and economical manner and maintain, preserve and keep every part of the Facilities in good repair, working order and condition.

(g) That the City may not sell or exchange or otherwise dispose of any property constituting a part of the Facilities unless such property is either worn out or obsolete or, in the opinion of the City, is no longer useful in the operation of the Facilities. Any proceeds of such sale, exchange or other disposition not used to replace the property so sold or exchanged shall be deposited in the Bond Fund.

(h) That it will take such action as may be required, to the extent of applicable laws and regulations, to receive and continue to receive distributions from the State Treasurer of the Oil and Gas Gross Production Tax.

SECTION 15. REGISTRATION AND TRANSFER. The Bond is transferable upon the books of and at the principal office of the Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Bonds of other authorized denominations. Upon such transfer or exchange the City will cause a new Bond or Bonds to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange. No transfer of Bonds shall be required to be made during the fifteen days next preceding an interest payment date, nor during the forty-five days next preceding the date fixed for redemption of such Bonds.

The Bond shall be registered as to both principal and interest and the Registrar shall establish and maintain a register for the purposes of recording the names and addresses of the registered owners or assigns, the dates of such registration and the due dates and amounts for payment of principal and interest on the Bond; and the City and the Registrar may deem and treat the person in whose name any Bond is registered as the absolute owner thereof, whether the Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary.

SECTION 16. PARITY BONDS. The City may issue Parity Bonds to provide funds to finance the acquisition, construction and equipping of Facilities, the repair and improvement of Facilities, or the refunding of outstanding bonds, or for other authorized purposes of the Net Revenues, upon the following conditions:

(a) No Default has occurred and is continuing;

(b) At the time of the issuance of the Parity Bonds there is no deficiency in the Bond Fund or the Reserve Fund; and

(c) Net Revenues collected during the fiscal year preceding the year in which the proposed Parity Bonds are to be issued and other funds irrevocably appropriated for the purpose were not less than 1.10 times the average annual principal and interest requirements (including principal and interest on the proposed Parity Bonds) for any future fiscal year during which bonds are outstanding; or the estimated Net Revenues for each of the next three (3) fiscal years will be at least equal to 1.10 times the average annual debt service on all outstanding bonds (including the proposed Parity Bonds) for any future year during which bonds are outstanding.

All Parity Bonds issued in accordance with this Section shall have a lien on the Net Revenues which is equal to the lien of the Bond and all Parity Bonds issued in accordance with this Section. Nothing in this Resolution shall preclude the City from issuing subordinate lien bonds or from providing payments on other obligations which are expressly made a charge on only the surplus Net Revenues subordinate to the pledge of Net Revenues to the Bond authorized hereunder. Notwithstanding the foregoing, the City may issue Parity Bonds with the written consent of the owners of all of the outstanding principal of the Bond.

SECTION 17. DEFAULT AND REMEDIES.

(a) The following events shall constitute Default:

(i) failure to pay Bond principal or interest when due; or

(ii) failure to perform any other obligation of the City imposed by the Resolution or the Bond, but only if:

(A) the failure continues for a period of more than ninety (90) days after demand has been made on the City to remedy the failure, and

(B) the City fails to take reasonable steps to remedy the failure within that ninety-day period; provided, however, that if a remedy or Default in this Section contradicts any provision in the Loan Agreement the provision in the Loan Agreement shall prevail; or

(iii) imposition of a receivership upon the City; or

(iv) written admission by the City that the City is unable to pay its debts as they become due.

(b) Upon Default, any Bondholder may exercise any remedy available at law or in equity.

A right or remedy conferred by this Section upon any bondholder is not intended to be exclusive of any other right or remedy, but each such right or remedy is cumulative and in addition to every other

right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this chapter or by any other law of the State.

SECTION 18. INSURANCE AND FIDELITY BOND. The City covenants to maintain insurance appropriate to the risks associated with operation of its Facilities and pursuant to the terms of the Loan Agreement.

SECTION 19. LEASES. The City may lease as lessor or make contracts or grant licenses for the operation of, or grant easements or other rights with respect to any part of the Facilities if such lease, contract, license, easement or right does not, in the opinion of the City, impede the operation of the Facilities, or violate any term or condition of the Loan Agreement, and in the opinion of the City's bond counsel and the NDPFA's counsel, does not affect the tax-exempt status of the Bond.

SECTION 20. AMENDMENT OF RESOLUTION. This Resolution may not be amended without the consent of the Bondholders.

SECTION 21. DISCHARGE. When the Bond, and the interest thereon, have been discharged as provided in this Section, all pledges, covenants and other rights granted by this Resolution shall cease. The City may discharge the Bond due on any date by depositing with the Registrar on or before that date a sum sufficient for the payment thereof in full; or if any Bond or interest thereon should not be paid when due, the same may nevertheless be discharged by depositing with the Registrar a sum sufficient for the payment thereof in full with interest accrued from the due date to the date of such deposit. The City may also discharge all prepayable Bonds called for redemption on any date when they are prepayable according to their terms, by depositing with the Registrar on or before that date a sum sufficient for the payment thereof in full, provided that notice of the redemption thereof has been duly given as provided herein. The City may also discharge all or part of the Bonds at any time by irrevocably depositing in escrow with a suitable bank or trust company for the purpose of paying all or part of the principal and interest due on such Bonds prior to the date upon which the same will be prepayable according to their terms, and paying such Bonds on that date, a sum of cash and securities which are general obligations of the United States or securities the principal and interest payments on which are guaranteed by the United States, or deposits in the Bank of North Dakota which, as provided by N.D.C.C. Section 6-09-10, are guaranteed by the state, in such aggregate amount, bearing interest at such rates and maturing or callable at the holder's option on such dates as shall be required to provide funds sufficient for this purpose; provided that notice of the redemption of all prepayable Bonds on or before such date has been duly given as required herein.

SECTION 22. OTHER DOCUMENTS AND PROCEEDINGS. The officers of the City are hereby authorized and directed to execute and carry out or cause to be carried out the obligations which are necessary or advisable in connection with this Resolution and the issuance, sale and delivery of the Bond. The officers of the City are further authorized and directed to prepare, execute and furnish to the attorneys passing on the legality of the Bond, certified copies of all proceedings, ordinances, resolutions and records and all such certificates and affidavits and other instruments as may be required to evidence the legality and marketability of the Bond, and all certified copies, certificates, affidavits and other instruments so furnished shall constitute representations of the City as to the correctness of all facts stated or recited therein. Delivery of the Bond is subject to the approving opinion of bond counsel and customary closing certificates, including a certificate as to absence of material litigation and an arbitrage certificate.

SECTION 23. LOAN AGREEMENT. The Loan Agreement, in substantially the form presented to the City at this meeting, is hereby accepted and authorized to be executed on behalf of the City by its President of the Commission and City Administrator (the "Authorized Officers"), with such modifications as may be approved by the Authorized Officers. The Authorized Officers are authorized and directed to execute the Loan Agreement and to deliver it to the NDPFA, which execution and delivery shall be conclusive evidence of the approval of any modifications with respect to the Loan Agreement. The City shall provide audited financial statements as set out in Section 3.01(f) of the Loan Agreement.

SECTION 24. LOAN FORGIVENESS. During the pendency of the Loan, the City may be offered a certain amount of loan forgiveness by the Department and the NDPFA to reduce the principal amount loaned to the City. The City acknowledges that any such loan forgiveness would be made available by the Department and the NDPFA in connection with receiving and administering federal Capitalization Grants under the State Revolving Fund Program. The City agrees to accept any such loan forgiveness offered to it in connection with the Loan Agreement without any further action.

SECTION 25. TAX COVENANTS. The City covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Bond under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"). The City will not directly or indirectly use or permit the use of any proceeds of the Bonds or any other funds of the City or take or omit to take any action that would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code. To that end, the City will comply with all requirements of Section 148 of the Code and any applicable regulations to the extent applicable to the Bond. In the event that any time the City is of the opinion that for purposes of this Section 25 it is necessary to restrict or limit the yield on the investment of any moneys held in the Bond Fund, the Construction Fund or the Reserve Fund, the City shall take such action as may be necessary.

Without limiting the generality of the foregoing, the City agrees that there shall be paid from time to time all amounts required to be rebated to the United States pursuant to Section 148(f) of the Code and any temporary, proposed or final Treasury Regulations as may be applicable to the Bond from time to time. This covenant shall survive payment in full or defeasance of the Bond.

Notwithstanding any provision of this Section, if the City receives an opinion of nationally recognized bond counsel to the effect that any action required under this Section is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of the interest on the Bond pursuant to Section 103 of the Code, the City may rely conclusively on such opinion in complying with the provisions hereof.

The City covenants and agrees that not in excess of ten percent (10%) of the proceeds of the Bonds will be used (directly or indirectly) in a trade or business carried on by any person other than a governmental unit ("Private Business Use") if, in addition, the payment of more than ten percent (10%) of the principal or ten percent (10%) of the interest due on the Bond during the term thereof is, under the terms of the Bond or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for Private Business Use or in payments in respect of property used or to be used for Private Business Use or is to be derived from payments in respect of property or borrowed

money used or to be used for Private Business Use. Use of the Facilities by a trade or business on the same basis as the general public is not Private Business Use.

SECTION 26. QUALIFIED TAX-EXEMPT OBLIGATION. The City hereby designates the Bond as a "qualified tax-exempt obligation" under Section 265 of the Code relating to the deduction allowed financial institutions for interest expense allocable to tax-exempt interest. The City represents that: (i) the Bond is not private activity bonds under the private activity bond definition in the Code; (ii) the reasonably anticipated amount of qualified tax-exempt obligations (other than private activity bonds except for "qualified 501(c)(3) bonds" as defined in the Code) which will be issued during 2025 will not exceed \$10,000,000; and (iii) not more than \$10,000,000 of qualified tax-exempt obligations will be designated by the City (including any subordinate entities) for the calendar year 2025.

SECTION 27. [RESERVED].

SECTION 28. BUY AMERICAN REQUIREMENT. The City shall comply with all federal requirements applicable to the loan (including those imposed by the 2014 Appropriations Act, Public Law No. 113-76 and related SRF regulations and policy guidelines) which the City understands includes, among other, requirements that all of the iron and steel products used in the Project are to be produced in the United States (the "American Iron and Steel Requirement") unless (i) the City has requested and obtained a waiver from the Department pertaining to the Project or (ii) the Department or NDPFA has otherwise advised the City in writing that the American Iron and Steel Requirement is not applicable to the Project.

SECTION 29. DAVIS BACON AND RELATED ACTS. The City shall, to the extent applicable to the Loan or any related grant, comply with the Davis Bacon and Related Acts requirements (40 U.S.C. 3141, et seq.).

SECTION 30. LOBBYING AND LITIGATION. The City shall comply with Title 40 CFR Part 34, New Restrictions on Lobbying pursuant to Section 2 of the Certificate Relating to Lobbying and Litigation as executed by the Authorized Officers.

SECTION 31. RECORD AND REPORTING REQUIREMENTS. The City shall comply with all record keeping and reporting 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 indicators of program deliverables, information on costs and project progress. The City 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 Clean Water Act/Safe Drinking Water Act and the American Iron and Steel Requirement may be a default hereunder that results in a repayment of the loan in advance of the maturity of the Bond and/or other remedial actions.

SECTION 32. CERTIFICATES. The President and City Administrator, in consultation with counsel, are hereby authorized to deliver a Certificate which cures ambiguities, defects or omissions herein, corrects, amends or supplements any provision herein, all in furtherance of the financing contemplated herein, including adjustments to the amortization schedule and payment dates.

SECTION 33. ELECTRONIC SIGNATURES. The Commission authorizes the President and the City Administrator to execute documents relating to the issuance of the Bond using electronic signatures. The electronic signatures of the President and the City Administrator shall be as valid as an original signature of such official and shall be effective to bind such official to any document relating

to the issuance of the Bond. For purposes hereof, “electronic signature” means a manually signed original signature that is then transmitted by electronic means.

Dated: December 17, 2024.

CITY OF DICKINSON, NORTH DAKOTA

Attest:

President, Board of City Commissioners

City Administrator

The governing body of the City acted on the foregoing resolution at a properly noticed meeting held in Dickinson, North Dakota, on December 17, 2024, with the motion for adoption made by _____ and seconded by _____, and the roll call vote on the motion was as follows:

"Aye" _____

"Nay" _____

Absent _____