

Stark Development Corporation

Single-Year Funding Agreement

Date: 12 - 12, 2024.

This Agreement is made as of the date stated herein between the City of Dickinson, a North Dakota municipal corporation (hereinafter, the “City”), and Stark Development Corporation, a North Dakota non-profit corporation (hereinafter, the “Stark Development”).

WHEREAS, the Stark Development is non-profit organization, dedicated to the creation of business opportunities within Stark County and the City of Dickinson; and

WHEREAS, the City recognizes the value of creating business opportunities within Stark County and the City of Dickinson, and the key role that Stark Development plays in such activity; and

WHEREAS, the City desires to provide for a steady source of funding for Stark Development; and

WHEREAS, Dickinson Municipal Code Section 35.090(a) provides that a portion of the one-percent sales tax initially adopted on July 1, 1990, is dedicated, in part, to job creation; and

WHEREAS, the Board of City Commissioners recognizes its obligation as a publicly-elected body to oversee the use and distribution of all monies generated by locally-imposed sales taxes;

NOW, THEREFORE, the Parties hereby stipulate and agree as follows:

1. Term of Agreement. This Agreement shall be for a term of one year, commencing on January 1, 2025, and ending on December 31, 2025. The Parties may thereafter renegotiate the provisions of this Agreement. The term of this Agreement shall not automatically renew. This Agreement may, however, be terminated at any time by mutual agreement of the parties, or by any one party upon 90 days prior written notice to the other party. This Agreement shall further terminate if at any time any court or the North Dakota Attorney General determines that this Agreement is in violation of any federal, state or local law or regulation.

2. Funding to Stark Development. The City shall pay to Stark Development the annual capped amounts as follows:

2025 : \$750,000 operations
 \$150,000 city matching grant

The annual operation funding amount shall be paid by the City to Stark Development in twelve (12) equal monthly installments. Stark Development shall use the funds for the purposes of

job creation, as set forth in Dickinson Municipal Code 35.090(a), and shall annually provide an accounting of the use of the funds to the City and present an annual report to the City Commission prior to April 1 of each year of the contract.

3. Obligations of Stark Development. In consideration of the funds provided to Stark Development in this Agreement, Stark Development shall be responsible for providing the following services to the City:

- (a) Develop and manage job creation, job retention, and new wealth creation efforts on behalf of the City.
- (b) Develop and manage job creation and new wealth creation efforts in the City's surrounding market area.
- (c) Promote the City as a site for new and expanding businesses.
- (d) Partner with local business and the Small Business Development Center within the City to promote job creation.
- (e) Provide an annual report to the Board of City Commissioners, to include Stark Development's primary initiatives, goals, activities, and accomplishments, and the Stark Development's annual audited financial statements.
- (f) Submit its annual budget to the Board of City Commissioners for review; provided, however, that the City shall not have the right to approve or deny the Stark Development budget, but only to the right to review and make recommendations.
- (g) The City will not, during the term of this Agreement, request additional funding for municipal infrastructure improvements from Stark Development.

4. Obligations of the City. In consideration of the funds provided to Stark Development in this Agreement, City of Dickinson shall be responsible for providing the following services to Stark Development:

- (a) The City matching grant, a portion of the Sales Tax collections, to Stark Development would accumulate in a fund not to exceed \$150,000 annually. This fund will be used to support workforce recruitment and/or to be used as a competitive grant for building rehabilitation to include, but not limited to, accessibility and ADA improvements, fire suppression, hazardous materials abatement, structural issues, plumbing and HVAC updates required by code. Applications shall be reviewed and awarded by a committee made up of representatives from both the City and Stark Development. Stark Development shall be responsible for administration of the funds and establishing the necessary incentive agreements with the applicants.
- (b) The City will set up a separate fund for the matching grant. This separate fund will hold any unspent annual matching grant and will be a roll-over amount to be encumbered in the next fiscal calendar year. A disbursement request will be initiated from Stark Development by either an email or letter requesting the dollar amount and what the funds will be used for. The matching grant fund will be funded through the budget process each year by approval of the Commission but the fund balance will not exceed a reserve cap of \$300,000 in any annual year.

5. Limitation of City Liability. Any liability of the City of Dickinson under this Agreement shall be strictly limited to the funds actually proposed to be paid to Stark Development

pursuant to Paragraph 2 and 3(i) above, and may be altered pursuant to Paragraph 5, and shall be conditioned upon the ability of the City to actually collect and receive the taxes imposed under Dickinson Municipal Code 35.090(a). The City makes no guarantee or commitment of any funding amounts in the absence of its ability to actually collect and receive the taxes provide for herein. The City shall have no liability whatsoever in the event that Dickinson Municipal Code 35.090(a) or authorizing state legislation are either amended, repealed, referred, or otherwise changed to restrict the City's ability to impose the stated taxes or appropriate the funds as herein provided. Stark Development hereby specifically waives any consequential damages against the City of Dickinson arising out of or related to this Agreement. Stark Development further agrees that it will indemnify and hold the City harmless against any and all claims and demands or whatever kind and nature, arising out of or related to this Agreement. Stark Development shall not have the ability, right, or power to commit the City to any contracts, agreements, proposals, or arrangements.

6. **Alteration of Funding Level.** Notwithstanding other provisions of this Agreement, in the event that the City's actual receipts of Sales Tax funds (as provided for in Dickinson Municipal Code 35.090(a)) decrease by an annualized rate of more than 5%, the City may terminate this agreement without liability therefore, and provide for a new appropriation amount to Stark Development that, in the judgment of the Board of City Commissioners, reflects the decrease in actual tax receipts.

7. **Limitation on Public Funds.** As a recipient of public tax funds, Stark Development hereby agrees that it shall not use such public tax funds in order to take any position materially adverse to the City or to advocate against the City or its citizens with respect to any matter of public concern.

8. **Termination.** This Agreement may be terminated by either party for any reason upon ninety (90) days prior written notice to the other party. Additionally, this Agreement shall terminate upon any of the following:

- (a) Material breach of the terms of this Agreement by either Party.
- (b) Gross negligence, misfeasance, malfeasance, misuse of funds, or criminal violation of law by either Party
- (c) In the event that any court or the North Dakota Attorney General determines that this Agreement is in violation of any federal, state, or local law, ordinance, or regulation.
- (d) In the event that Stark Development shall dissolve, declare bankruptcy, become insolvent, wind-up its business affairs, make an assignment for the benefit of creditors, or otherwise become unable to carry out the duties of Stark Development under this Agreement, or become, in the judgment of the Board of City Commissioners, unable to perform the services contemplated in this Agreement or unsuitable as a recipient of public tax funds.
- (e) In the event that any change of state or local law or otherwise makes the City unable to impose the municipal taxes permitted by Dickinson Municipal Code 35.090(a).
- (f) In the event that the Parties should, at any time, mutually agree in writing to a termination of this Agreement.

(g) see Article 5 of this agreement.

9. **Notice to the Parties – Addresses.** Any notice required to be given to any Party under this Agreement shall be effective upon placing such notice into the United States mail addressed to each Party as follows:

The City of Dickinson
38 1st Street West
Dickinson, ND 58601

Stark Development Corporation
103 1st Avenue West, Suite 101
Dickinson, ND 58601

10. **Subject to Open Records and Open Meetings Laws.** The Parties stipulate and acknowledge that this Agreement is subject to open records law and open meetings laws of the State of North Dakota, and the Parties shall severally abide by such laws.

11. **Severability.** If any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions shall not be affected thereby.

12. **Binding Effect.** This Agreement shall be binding on, and shall inure to the benefit of, the Parties hereto and their respective administrators, representatives, successors, and assigns.

13. **Governing Law.** This Agreement shall be governed by North Dakota law and any question arising hereunder shall be construed or determined according to such law.

14. **Representation of Parties.** The Parties each represent and warrant that they have been fully-advised with respect to their respective rights and obligations under this Agreement, and have consulted with counsel of their own choosing with respect to this Agreement, or have had the opportunity to so consult.

15. **Further Assurances.** The Parties agree to do all acts and things and to make, execute, acknowledge and deliver such written documents, instructions and/or instruments in such form as shall from time to time be reasonably required to carry out the terms and provisions of this Agreement. The Parties further agree to give reasonable cooperation and assistance to any other Party or Parties hereto in order to enable such other Party or Parties to secure the intended benefits of this Agreement.

16. **Counterparts.** This Agreement may be executed by the Parties in any number of counterparts, including by way of facsimile, and each of which shall be deemed to be an original and all of which, collectively, shall be deemed to be one and the same instrument.

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

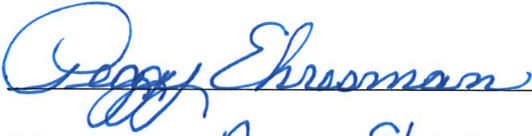
or complete performance in accordance therewith) be of any legal force or effect or constitute an amendment of this Agreement, but rather this Agreement may be amended only by an agreement in writing signed by the Parties.

18. Time Is of the Essence. Time is of the essence with respect to the performance of any and all provisions of this Agreement.

[*The remainder of this page is intentionally left blank.*]

Signature Page

STARK DEVELOPMENT CORPORATION

By: 
Printed Name: Peggy Ehresman
Its: President

CITY OF DICKINSON

By: _____
Scott Decker, President
Board of City Commissioners

ATTEST:

Dustin Dassinger, City Administrator