

CITY OF

DICKINSON

North Dakota

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 Energy Park, LLC
555 Highway 1804 ND
Bismarck, ND 58503-6228

For the following described property:

A TRACT OF LAND IN LOT ONE (1), BLOCK ONE (1), ENERGY CENTER 3RD ADDITION LOCATED IN THE SOUTHEAST QUARTER (SE1/4) OF SECTION ONE (1), TOWNSHIP ONE HUNDRED THIRTY-NINE NORTH (T139N), RANGE NINETY-SIX WEST (R96W) OF THE FIFTH PRINCIPAL MERIDIAN (5TH.P.M.), CITY OF DICKINSON, STARK COUNTY, NORTH DAKOTA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER (SE1/4) OF SAID SECTION ONE (1), THENCE S 89°34'27" E ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER (SE1/4) OF SAID SECTION ONE (1), A DISTANCE OF 216.91 FEET; THENCE N 0°08'27" W, A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE N 0°08'27" W, A DISTANCE OF 100.02 FEET; THENCE N 89°35'04" W, A DISTANCE OF 99.94 FEET; THENCE N 0°07'24" W, A DISTANCE OF 526.79 FEET; THENCE S 89°34'23" E, A DISTANCE OF 489.95 FEET; THENCE N 0°07'23" W, A DISTANCE OF 122.37 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 366.00 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°34'37" AND AN ARC DISTANCE OF 578.60 FEET; THENCE S 89°34'37" E, A DISTANCE OF 1097.59 FEET TO THE WESTERLY RIGHT-OF-WAY OF ENERGY CENTER DRIVE; THENCE S 0°06'55" E ALONG THE WESTERLY RIGHT-OF-WAY OF SAID ENERGY CENTER DRIVE, A DISTANCE OF 562.36 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 803.93 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE AND ALONG THE WESTERLY RIGHT-OF-WAY OF SAID ENERGY CENTER DRIVE THROUGH A CENTRAL ANGLE OF 40°54'06" AND AN ARC DISTANCE OF 573.90 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF EAST VILLARD STREET; THENCE S 81°42'06" W ALONG THE NORTHERLY RIGHT-OF-WAY OF SAID EAST VILLARD STREET, A DISTANCE OF 210.32 FEET; THENCE CONTINUE N 89°34'27" W ALONG THE NORTHERLY RIGHT-OF-WAY OF SAID EAST VILLARD STREET A DISTANCE OF 1845.06 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 44.64 ACRES, MORE OR LESS, AND IS SUBJECT TO ANY PREVIOUS EASEMENTS, AGREEMENTS, CONVEYANCES AND SURVEYS.

Also referred to herein as “**Energy Center 6th Addition**”;

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

RECITALS

WHEREAS, the 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, the OWNER intends on platting the Subject Property; and

WHEREAS, the OWNER and CITY agree that the Subject Property will be improved and developed pursuant to the terms of this Agreement, the approved subdivision plat of the Subject Property, 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 Article 34 of the City of Dickinson Municipal Code effective as of the date of this agreement and shall satisfy the requirements contained therein for a Subdivision Agreement to be completed prior to the filing and recordation of any **issuance of a Certificate of Occupancy 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.

2. Infrastructure Improvements – Special Conditions. Public infrastructure improvements will be required to serve and provide public access to the proposed Lots within the Subject Property. The OWNER and CITY hereby agree that the following are the only public infrastructure improvements required to be constructed as indicated herein and accepted by the CITY prior to a Certificate of Occupancy being issued in the Subject Property as indicated in Section 1 of this Agreement. Phasing of public improvements may be allowed so that Lots may be granted a Certificate of Occupancy before all public infrastructure improvements for the Subject Property are complete as indicated by this section.

- a) OWNER shall prepare or have prepared plans and specifications for the construction of a public roadway, street lighting system (if applicable), storm sewer system, stormwater management facility within Tract 1, Block 2 to detain the increase in runoff from the public roadway, and water system within public right-of-way being dedicated by the plat of the Subject Property. The cost of designing these improvements and preparing these plans shall be paid by the OWNER. The roadway shall be an urban road with a width of 40-feet measured between the face of the proposed curb and gutter and shall be surfaced with either asphalt or concrete pavement. This roadway shall meet the requirements of City Standard Detail C2.29 with a revision date of 11/2017, except that sidewalk will not be provided due to the industrial nature of this development. The CITY will perform the geotechnical investigation and analysis as necessary to determine the required pavement and base section for this proposed roadway. The street lighting (if applicable), storm sewer system, stormwater management facility, and water system shall be designed to meet current CITY standards and policies.
- b) Within two (2) years of the final plat approval for the Subject Property, CITY shall construct or have constructed and shall pay all expenses for the contract preparation, advertising, bidding, awarding, construction, and construction administration of the roadway, street lighting system (if applicable), storm sewer system, stormwater management facility, and water system improvements as depicted by the plans and specifications approved by the CITY as noted by

Section 2. a) of this Agreement. The OWNER shall have no responsibility in the warranty or assurance of completion of these improvements completed by the CITY.

- c) CITY plans to submit an application in 2024 for federal grant funding from the Office of Local Defense Community Cooperation under the Defense Community Infrastructure Pilot Program for the design engineering and construction indicated by Sections 2. a) and 2. b) of this Agreement. Should the CITY be awarded this grant, CITY will reimburse OWNER for the following project costs incurred by the requirements of Sections 2. a) of this Agreement:
- i. Site Survey: \$3,250
 - ii. Roadway and Storm Sewer Design: \$25,000
 - iii. Street Lighting Design (if applicable): \$5,000
 - iv. Water System Design: \$7,000
 - v. Subdivision Platting, Application Fees, and Monumentation: \$9,500
 - vi. Tract 1, Block 2 Stormwater Management Plan and Design: \$6,000
- d) Should the CITY fail to apply for or be unsuccessful in obtaining the grant funding indicated by Section 2. c) of this Agreement, CITY will reimburse OWNER for 50% of the project costs outlined in Section 2. c) of this Agreement within sixty (60) days of the CITY's receipt of a notification of grant denial or, if the grant is not applied for, within sixty (60) days of the grant deadline passing.
- e) The OWNER shall prepare or have prepared design and plans and specifications for the stormwater management facility within Tract 1, Block 1, as well as for the proposed sanitary sewer system improvements to provide sewer service to Block 1 of the Subject Property. The cost of preparing these plans shall be paid by the OWNER. The stormwater management facility shall be designed in accordance with CITY standards and policies, and the sanitary sewer system shall meet all local and State requirements for a public sewer system.
- f) The OWNER shall construct or have constructed and shall pay all expenses for construction of the stormwater management facilities and sanitary sewer improvements as depicted by the plans and specifications approved by the CITY as noted by Section 2. e) of this Agreement. A Certificate of Occupancy shall not be issued for a Lot within Block 1 until acceptable sanitary sewer service is provided, and the stormwater management facility is constructed and approved by the City.
- g) OWNER shall allow CITY to perform inspection of the public infrastructure improvements to be constructed by OWNER as needed to ensure proper construction in accordance with the approved plans and specifications noted by this Agreement. OWNER shall pay CITY for said inspection services in accordance with the rates defined by the current CITY fee schedule.
- h) Title to Public Improvements after construction and acceptance shall be as defined by Section 8 of this Agreement.

3. Assurance of Infrastructure Completion. In the event that construction of the required public infrastructure that is to be paid for directly by the OWNER as indicated in Section 2, herein, is not complete at the time of final plat recording for a particular phase of the project, the OWNER hereby agrees that no private improvements 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. Such approval will be memorialized by a public infrastructure permit which will be valid for one year from the date of issuance at a fee listed in the current CITY fee schedule. Prior to the CITY recording the Final Plat of the Subject Property, the OWNER shall post with the CITY security in the amount of 130% of the lesser of the estimated construction cost as approved by the City Engineer or actual bid amounts, if available, for said improvements to assure the completion of the required public infrastructure that is to be paid for directly by the OWNER for the Subject Property, as required under Dickinson City Code §34-60. The security posted by the 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 remaining upon the completion of construction shall be made upon completion of the work, inspection, and final acceptance of the same. The Security remaining upon completion of construction shall remain in effect through warranty examination and final inspection by the CITY as indicated by Section 9, herein.

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.

5. Subdivision of Land. The OWNER shall otherwise conform to all requirements regarding the subdivision of land enacted by the City of Dickinson, as set forth in Chapter 34 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. Permits. The CITY's approval of this Agreement does not include approval of permits for construction within the Subject Property. The 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. The 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.

7. Repairs and Replacements. The 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 the OWNER or OWNER's agents. The 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 their designee.

8. Title to Public Improvements. Title to, and ownership of, any and all public municipal improvements including roadways, street lighting systems, water systems, sanitary sewer systems, storm sewer systems, and stormwater management facilities within the public rights-of-way, tracts, water easements, sanitary sewer easements, and/or drainage easements dedicated and granted by the subdivision plat of the Subject Property, shall vest in the CITY upon completion, acceptance, and satisfaction of any warranty issues for such improvements with the following additional requirements:

- a) 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. The 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. The OWNER shall not change the existing grade within the easements without prior approval from the CITY. This shall not restrict the 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 the OWNER and one by CITY, and these two shall select a third person. The award determined by these three persons shall be final and conclusive.

- b) Tracts for stormwater management in the Subject Property (i.e. Tract 1, Block 1 and Tract 2, Block 2) shall be deeded to the CITY upon completion and acceptance of the improvements required for stormwater management within these tracts. After conveyance, the CITY shall own and maintain these tracts and the stormwater management facilities within the tracts.

9. Maintenance Warranty. For all public municipal improvements within the Subject Property constructed privately by the OWNER, and in accordance with Dickinson City Code §34-60 and Section 3, herein, assurance shall be provided by the OWNER. The amount of this assurance remaining at the completion of construction is to remain in full effect for a warranty period of no less than one (1) year following substantial completion of said improvements. Until the end of this one-year warranty period, the OWNER shall remedy at the OWNER's expense any damage to real or personal property, when that damage is the result of: (1) the OWNER's failure to conform to the requirements of the CITY; or (2) any defect of equipment, material, workmanship, or design furnished. The OWNER shall restore any work damaged in fulfilling the terms and conditions of this Section. The 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 the 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. The OWNER shall have no liability for the improvements made upon expiration of the one-year warranty period.

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. As the OWNER sells individual lots within the Subject Property, the OWNER shall specifically notify the purchaser thereof of this Agreement. All obligations, promises and covenants of the 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 the 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 the 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 the 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.

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

CITY OF DICKINSON

By: _____

Title: President of the Board of City Commissioners

Signature: _____

ATTEST:

By: _____

Title: City Administrator

Signature: _____

STATE OF NORTH DAKOTA)
) ss
COUNTY OF STARK)

On this _____ day of _____, 20____, before me personally appeared _____ and _____

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

OWNER – Dickinson Energy Park, LLC

By: _____

Title: _____

Signature: _____

STATE OF _____)
) ss
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared _____, 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.

DRAFT