



INDUSTRIAL COMMISSION OF NORTH DAKOTA

Kelly Armstrong
Governor

Drew H. Wrigley
Attorney General

Doug Goehring
Agriculture Commissioner

Thursday, June 26, 2025

Governor's Conference Room or Microsoft Teams – 9:00 am

Join on your computer or mobile app

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Or call in (audio only)

[+1 701-328-0950,,996730519#](#)

I. Roll Call and Pledge of Allegiance

(approximately 9:00 am)

II. North Dakota Public Finance Authority – DeAnn Ament

- A. **Consideration of Reappointment of John Phillips to PFA Advisory Committee for a Term Ending July 1, 2028** (Attachment 1)
- B. **Consideration of Approval of the Following State Revolving Fund Loans:**
 - i. City of Grand Forks – Clean Water - \$10,872,000 (Attachment 2)
 - ii. City of Mapleton – Clean Water - \$10,600,000 (Attachment 3)
 - iii. City of Fargo – Clean Water \$20,000,000 (Attachment 4)
 - iv. City of Fargo – Drinking Water \$20,000,000 (Attachment 5)
- C. Presentation of Memo from NDPFA Advisory Committee Regarding SRF Loans Approved Under Policy P-3B (Attachment 6)
 - i. City of Elgin – Clean Water - \$442,000 (Attachment 6A)
 - ii. City of Elgin – Drinking Water \$668,000 (Attachment 6B)
 - iii. City of Grand Forks – Drinking Water \$1,718,000 (Attachment 6C)
 - iv. City of Napoleon – Drinking Water \$975,000 (Attachment 6D)
- D. Other NDPFA Business

(approximately 9:15)

III. North Dakota Mill and Elevator – Vance Taylor and Cathy Dub

- A. **Presentation of Mill Profit Transfer Request** – (Attachment 7)
- B. Other Mill and Elevator Business

(approximately 9:20 am)

IV. North Dakota Housing Finance Agency – Brandon Dettlaff, Jennifer Henderson

- A. **Consideration of Approval of \$9,500,000 Tax-Exempt Multifamily Housing Revenue Bond Issuance, Pleasant Valley Apartments Dickinson** – Jennifer Henderson (Attachment 8)
- B. **Consideration of Approval of \$5,600,000 Tax-Exempt Multifamily Housing Revenue Bond Issuance, Wild Rose Senior Housing Development Minot** – Jennifer Henderson (Attachment 9)
- C. Other NDHFA Business

(approximately 9:30 am)

V. Bank of North Dakota – Don Morgan

- A. Presentation of Update on Entrepreneurial Operating System (EOS) Traction – Don Morgan (Attachment 10)
- B. Presentation of March 19, 20 2025 Non-Confidential Advisory Board and Committee Minutes (Attachment 11)

Meeting Closed to the Public for Executive Session Pursuant to NDCC 6-09-35 and 44-04-19.2

(approximately 9:45 am)

VI. Bank of North Dakota Confidential Business – Don Morgan, Gus Staahl

- A. Presentation of Problem Loans as of May 31, 2025 – Gus Staahl (Confidential Attachment 12)
- B. Presentation of March 19, 20 2025 Confidential Advisory Board and Committee Minutes (Confidential Attachment 13)
- C. Other BND Confidential Business

Meeting Returns to Public Session

VII. Action on Executive Session Items

(approximately 10:00 am)

VIII. North Dakota Pipeline Authority – Justin Kringstad

- A. Summary of Submissions in Response to Request for Information Regarding West to East Natural Gas Pipeline (Attachment 14)

B. Other Pipeline Authority Business

(approximately 10:10)

IX. State Energy Research Center (SERC) – Jordan Kannianen, Tyler Hamman, EERC

- A. **Consideration of Approval of SERC Contract 2025-01 Pursuant to SB 2143 enacted by the 69th Legislative Assembly** (Attachment 15)
- B. **Consideration of Approval of Proposed Project: Feasibility of Geothermal Energy in North Dakota – Evaluation of the Potential for Synergistic Opportunities to Couple Geothermal Resource Development with Oil Production and/or Geologic Storage of CO₂. \$250,000** (Attachment 15A)
- C. **Consideration of Approval to Execute Contract Pursuant to Section 27 of SB 2014 of 69th Legislative Assembly Relating to a Business Case Analysis for the Development of Caverns in North Dakota Salt Formations. \$2,000,000** (Attachment 16)

(possible 5 min recess)

(approximately 10:30 am)

X. Outdoor Heritage Fund Grant Round 26 – Brenna Jessen, David Dewald OHF Advisory Board Chair

- A. Presentation of Outdoor Heritage Fund Project Management and Financial Report – Brenna Jessen (Attachment 17)
- B. **Consideration of Approval of the Following Grant Applications:** (Attachment 18A-Q)
 - i. 26-1 (B) North Dakota Conservation District Employees Association: ND Statewide Tree Planting Initiative, **\$2,500,000**
 - ii. 26-2 (B) North Dakota Forest Service: North Dakota Statewide Windbreak Renovation Initiative 5.0, **\$900,000**
 - iii. 26-3 (D) Grand Forks Park District: Ryan Lake Prairie Trail & Outdoor Classroom, **\$251,250**
 - iv. 26-4 (D) City of Grand Forks: Rivers Edge Fishing Enhancement, **\$155,450**
 - v. 26-6 (C) McLean County Water Resource District: Lost Lake Dam Fish Passage, **\$51,599**
 - vi. 26-7 (A) Pheasants Forever: Pheasants Forever Public Access to Habitat (PATH) Program, **\$1,089,375**

- vii. 26-8 (D) Fargo Park District: Fargo Southwest Pond Regional Recreation Area, **\$521,250**
- viii. 26-9 (C) North Dakota Parks and Recreation Dept: Enhancing State Parks Through Strategic Tree and Shrub Plantings, **\$1,000,000**
- ix. 26-10 (B) Ducks Unlimited, Inc: Cover Crop and Livestock Integration Project 4, **\$936,000**
- x. 26-11 (C) North Dakota 4-H Foundation: North Dakota 4-H Camp, **\$70,978**
- xi. 26-12 (B) The Nature Conservancy: Grazing Management and Habitat Enhancement, **\$68,522**
- xii. 26-13 (B) Ducks Unlimited, Inc: Smart Livestock Advancing Terrestrial Ecosystems, **\$483,924**
- xiii. 26-14 (B) United Prairie Foundation: Grazed Wildlife Habitat – Meadowlark Initiative, **\$580,000**
- xiv. 26-15 (C) North Dakota Natural Resources Trust: Wildlife and Livestock Dams – Wetlands Creation, Restoration, and Enhancement III, **\$445,000**
- xv. 26-16 (B) North Dakota Natural Resources Trust: Grazing Resiliency in North Dakota (GRND), **\$1,950,000**
- xvi. 26-17 (A) North Dakota Game and Fish: Western North Dakota Private Land Open to Sportsmen (PLOTS), **\$1,500,000**
- xvii. 26-18 (D) City of Flasher: Flasher Historical Recreation Trail, **\$45,837**
- C. **Consideration of Approval of OHF Policies and Grant Round Deadlines** (Attachment 19)
- D. Other Outdoor Heritage Fund Business

(approximately 11:00 am)

XI. Legal Update – Phil Axt

- A. Challenges to Federal Actions:
 - i. EPA - Mercury and Air Toxics Rule
 - ii. EPA - Carbon Rule
 - iii. BLM - ND Resource Management Plan
 - iv. EPA - Methane OOOO Rule
 - v. EPA - ND Regional Haze Disapproval
 - vi. EPA - WOTUS Rule
 - vii. EPA - Legacy CCR
 - viii. EPA - PM2.5 Rule
 - ix. EPA/DOT – Vehicle Emission Rules
 - x. BLM - Conservation Rule
 - xi. BLM - Venting & Flaring Rule

- (approximately 11:10 am)

A. **Order 34323 in Case 31591-** Application of Neptune Operating LLC for an order amending the applicable orders for the Arnegard-Bakken Pool to allow a well to be drilled and completed in such a manner so as to allow the horizontal wellbore to be located not less than 300 feet from the eastern boundary of the spacing unit as and exception to applicable setback requirements and such further relief as indicated (Attachment 20)

B. **Resolution Regarding Demonstration Incentive Well Policies** (Attachment 21A)

C. Other DMR Business

- A. **Consideration of Approval of May 22, 2025, and June 2, 2025, Industrial Commission Meeting Minutes** (Attachment 22A, B)
- B. **Consideration of Approval of Compensation Changes for Agency Directors** (Attachment 23)
- C. **Consideration of Approval of Grant Program Professional Services Contracts** (Attachment 24A, B)
- D. **Consideration of Appointment of Transmission Authority Executive Director to Nuclear Energy Study Committee** (Attachment 25)
- E. Other Office of Industrial Commission Business

Governor's Conference Room

Industrial Commission of North Dakota



Kelly Armstrong
Governor

Drew H. Wrigley
Attorney General

Doug Goehring
Agriculture Commissioner

TO: Industrial Commission Members
FR: Executive Director Karen Tyler
DT: June 26, 2025
RE: Re-appointment of Public Finance Authority Advisory Committee Member

North Dakota Public Finance Authority Policy P-2A establishes:

The Public Finance Authority Advisory Committee consists of three members to be named by resolution of the Industrial Commission of North Dakota (the "Commission"). The Committee members must be appointed to three-year terms but shall serve at the pleasure of the Commission.

The current term for PFA Advisory Committee member John Phillips will expire on July 1, 2025. Mr. Phillips has served on the Committee since 2019 and has provided valuable input to the Committee and the PFA Executive Director. During his career he served as Real Estate and Development Director for Lutheran Social Services Housing. He also served as development director for Beulah Jobs Development Authority and many other committees in the community and region. He is now retired. John has been an active participant in the work of the Committee. DeAnn has stated that his knowledge of the needs of rural communities and the challenges they face in funding infrastructure and his understanding of the role of the PFA contribute significantly to the work of the Authority.

I recommend the Industrial Commission accept the recommendation of the PFA Executive Director and reappoint Mr. John Phillips to the PFA Advisory Committee for a term ending July 1, 2028.

RESOLUTION APPROVING
LOAN FROM CLEAN WATER STATE REVOLVING FUND

WHEREAS, the Industrial Commission has heretofore authorized the creation of a Clean Water State Revolving Fund Program (the "Program") pursuant to N.D.C.C. chs. 6-09.4 and 61-28.2; and

WHEREAS, the Clean Water State Revolving Fund is governed in part by the Master Trust Indenture dated as of July 1, 2011 (the "Indenture"), between the North Dakota Public Finance Authority (NDPFA) and the Bank of North Dakota (the Trustee); and

WHEREAS, the City of Grand Forks (the "Political Subdivision") has requested a loan in the amount of \$10,872,000 from the Program to construct public utilities, including storm sewer system, stormwater pond, pumpstation, forcemain and sanitary sewer, to serve properties in the Korynta-Lemm 6th Resubdivision; and

WHEREAS, the NDPFA's Advisory Committee is recommending approval of the Loan; and

WHEREAS, there has been presented to this Commission a form of Loan Agreement proposed to be adopted by the Political Subdivision and entered into with the NDPFA;

NOW, THEREFORE, BE IT RESOLVED by the Industrial Commission of North Dakota as follows:

1. The Loan is hereby approved, as recommended by the Advisory Committee.
2. The form of Loan Agreement to be entered into with the Political Subdivision is hereby approved in substantially the form on file and the Executive Director is hereby authorized to execute the same with all such changes and revisions therein as the Executive Director shall approve.
3. The Executive Director is authorized to fund the Loan from funds on hand in the Clean Water Loan Fund established under the Indenture upon receipt of the Municipal Securities described in the Political Subdivisions bond resolution, to submit to the Trustee a NDPFA Request pursuant to the Indenture, and to make such other determinations as are required under the Indenture.
4. The Commission declares its intent pursuant to Treasury Regulations '1.150-2 that any Loan funds advanced from the Federally Capitalized Loan Account shall be reimbursed from the proceeds of bonds issued by the NDPFA under the Indenture.

Adopted: June 26, 2025

Governor Kelly Armstrong, Chairman

Attest:

Karen Tyler, Executive Director
Industrial Commission of North Dakota

June 17, 2025

PUBLIC FINANCE AUTHORITY ADVISORY COMMITTEE

RECOMMENDATION TO THE INDUSTRIAL COMMISSION

The Advisory Committee, at its June 17, 2025 meeting, reviewed, discussed, and recommends approval of a \$10,872,000 Clean Water State Revolving Fund Program loan to the City of Grand Forks.

North Dakota Public Finance Authority
Advisory Committee

Keith Lund, Chairman
Linda Svihovec
John Phillips

Industrial Commission
of North Dakota

Doug Burgum
GOVERNOR

Drew H. Wrigley
ATTORNEY GENERAL

Doug Goehring
AGRICULTURE COMMISSIONER



Public Finance Authority

Memorandum

To: Public Finance Authority Advisory Committee
Miles Silbert, Public Financial Management, LLC
Kylee Merkel, Bank of North Dakota

From: DeAnn Ament, Executive Director

Date: June 3, 2025

Re: City of Grand Forks
Clean Water State Revolving Fund

Purpose of the Project: Construct public utilities, including storm sewer system, stormwater pond, pumpstation, forcemain and sanitary sewer, to serve properties in the Korynta-Lemm 6th Resubdivision.

Project Amount:

CWSRF Request	\$ 10,872,000
DWSRF Request	1,718,000
Local Funds	4,686,000
Project Total	\$ 17,276,000

Population to Benefit from the Project: 1,000

Population Served by the System: 58,692

The requested term for the Clean Water State Revolving Fund (CWSRF) loan is 25 years. The average annual payment for the improvement bonds will be \$533,286. The City will issue improvement bonds payable with special assessments. The improvement bonds will be a contingent general obligation of the City, backed by the statutory requirement that the City will levy a general deficiency tax in the event that the revenues from the collection of special assessments are not sufficient to pay the debt service on the improvement bonds.

The City residential users pay a monthly sewer base rate of \$16.27 with a \$3.67/1,000-gallon charge and commercial users pay a monthly sewer base rate of \$17.61 with a \$3.96/1,000-gallon charge. The City annually reviews and adjusts the base and volume rate.

Wastewater Fund:

	2021	2022	2023
Interest Revenue	\$12,380	-\$86,788	\$476,239
Operating Revenue	11,150,301	11,579,177	11,894,346
Operating Expenses	7,326,374	7,049,512	7,944,167
Net Operating Revenue	3,836,307	4,442,877	4,426,418
Sales Tax Transfer In	649,429	278,033	247,000
Noncash: Pension Adjustment	-	160,770	-
Adjusted Net Operating Revenue	\$4,485,736	4,881,680	4,673,418
Revenue Bond Payments	\$3,122,902	1,653,969	1,698,482
Net Operating Coverage	144%	295%	275%

The City outstanding indebtedness as of December 31, 2024:

	Original Amount	Outstanding Amount
General Obligation Bonds	\$ 2,735,000	\$ 565,000
Special Assessment Bonds	155,438,989	115,001,141
Water/Sewer Revenue Bonds ¹	175,848,141	136,223,442
Sales Tax Revenue Bonds	40,380,000	17,715,000
	<u>\$ 374,402,130</u>	<u>\$269,504,583</u>

¹ All payments have been made as agreed. The City has eight CWSRF and one DWSRF loans with outstanding balances of \$117,797,365 as of December 31, 2024.

The debt outstanding per resident, including these new requests, is \$4,806.

The City of Grand Forks is located in Grand Forks County 82 miles north of Fargo on Interstate 29. Based on the 2020 census, the total population is 59,166; this is an increase of 6,328 from the 2010 census. The largest employers in the City are University of North Dakota which has 5,562 employees, Altru Health Services with 3,400 employees, and Grand Forks Air Force Base employs 2,897.

K-12 School Enrollment:

			Current	Estimated
2021-2022	2022-2023	2023-2024	2024-2025	2025-2026
7,407	7,440	7,428	7,676	7,700

The City's 2024 taxable valuation was \$285,657,667. This is an increase of \$51,148,346 over the 2020 taxable valuation.

Property Tax Collections 5/31/2025:

Levy Year	Dollar Amount of Levy	Amount Collected to Date of Application	Percentage Collected
2024	25,195,471	22,805,709	91%
2023	25,847,192	24,561,187	95%
2022	24,347,205	23,250,265	95%

Special Assessment Collections 5/31/2025:

Year	Dollar Amount	Amount Collected to Date of Application	Percentage Collected
2024	10,161,885	9,423,991	93%
2023	9,286,257	8,857,595	95%
2022	9,270,607	9,265,636	100%

Mill Levy History:

Year	City	School	Park District	State and County	Total for Each Year
2024	92.25	130.50	36.79	87.00	346.54
2023	96.37	131.69	37.31	87.16	352.53
2022	96.84	110.79	37.80	82.63	328.06
2021	97.02	111.00	37.88	79.29	325.19
2020	97.87	100.94	38.19	80.82	317.82



Memorandum

TO: DeAnn Ament, Executive Director
North Dakota Public Finance Authority

FROM: PFM Financial Advisors LLC

DATE: June 18, 2025

RE: Marketplace Analysis - Clean Water State Revolving Fund Program
City of Grand Forks

The City of Grand Forks ("City") has presented a request to the Authority and the North Dakota Department of Environmental Quality ("Department") for a \$10,872,000 loan under the Clean Water State Revolving Fund Program ("CWSRF Program"). The CWSRF Program is used to make subsidized interest rate loans to political subdivisions for the purpose of constructing various wastewater treatment projects and landfill projects as approved by the Department in accordance with federal and state regulations and an updated Intended Use Plan prepared by the Department.

The City intends to use the proceeds to serve properties in the Korynta-Lemm 6th Subdivision with the construction of storm sewer system, stormwater pond, pumpstation, foremain and sanitary sewer.

The municipal securities to be acquired by the Authority will be improvement bonds of the City payable from special assessments levied against the benefited property. The proposed term of the loan is 25 years with a subsidized interest rate of 1.50%. The City's average annual payment under the proposed loan will be approximately \$533,286. The improvement bonds will be a contingent general obligation of the City, which will be required by law to levy a general deficiency tax if the revenues collected from the levy of special assessments are insufficient to make the debt service payments.

As of December 31, 2024, the City has \$565,000 of General Obligation Bonds, \$115,001,141 of Special Assessment Bonds, \$17,715,000 of Sales Tax Revenue Bonds and \$136,223,442 of Water/Sewer Revenue Bonds outstanding. The City currently has eight Clean Water and one Drinking Water loans outstanding totaling \$117,797,365. The City is current in its payments for its outstanding Authority loans.

Funding for the construction of the City's projects has been included in a list of approved projects as prepared and updated by the Department. As an authorized participant in the CWSRF Program, the City will benefit substantially from the subsidized fixed rate loans made under the Program. Consequently, no other financing mechanism can provide a greater cost advantage than that offered by the CWSRF Program.

Attachment 2E

Memorandum

To: Industrial Commission

From: Kylee Merkel, Business Banker
Bank of North Dakota

Date: June 10, 2025

RE: City of Grand Forks
Clean Water State Revolving Fund Program

ND Public Finance Authority has delivered to BND their memo which recommends approval of a \$10,872,000 loan to the City of Grand Forks under the Clean Water State Revolving Fund (CWSRF). The entire cost of the project is \$17,276,000, with Drinking Water State Revolving Fund providing a \$1,718,000 loan and the City contributing \$4,686,000 of local funds.

The project is for construction of public utilities to serve the properties in the Korynta-Lemm 6th Resbudivision. The requested loan term is 25 years. The City will issue an improvement bond payable with special assessment collections. The annual payment will average \$533,586.

Wastewater Fund:

Wastewater Fund	2021	2022	2023
Operating Revenue	11,150,301	11,579,177	11,894,346
Interest Revenue	12,380	-86,788	476,239
Operating Expenses	-7,326,374	-7,049,512	-7,944,167
Net Operating Revenue	3,836,307	4,442,877	4,426,418
Sales Tax Transfer In	649,429	278,033	247,000
Noncash Pension Adjustment	0	160,770	0
Adjusted Net Operating Income	4,485,736	4,881,680	4,673,418
Current Debt Service	3,122,902	1,653,969	1,698,482
Debt Service Coverage	144%	295%	275%

Residential connections pay a monthly sewer base rate of \$16.27 and a volume charge of \$3.76 per 1,000 gallons. Commercial connections pay a monthly base rate of \$17.61 and a volume charge of \$3.96 per 1,000 gallons. The City annually reviews and adjust rates as needed.

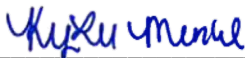
Outstanding Debt (as of December 31, 2024):

	Original Amount	Current Balance
General Obligation Bonds	2,735,000	565,000
Special Assessment Bonds	155,438,989	115,001,141
Sales Tax Revenue Bonds	40,380,000	17,715,000
Water & Sewer Revenue Bonds	175,848,141	136,223,442
	374,402,130	269,504,583

Average annual debt service requirements are estimated at \$20,827,514, which is an average of \$352.02 per resident.

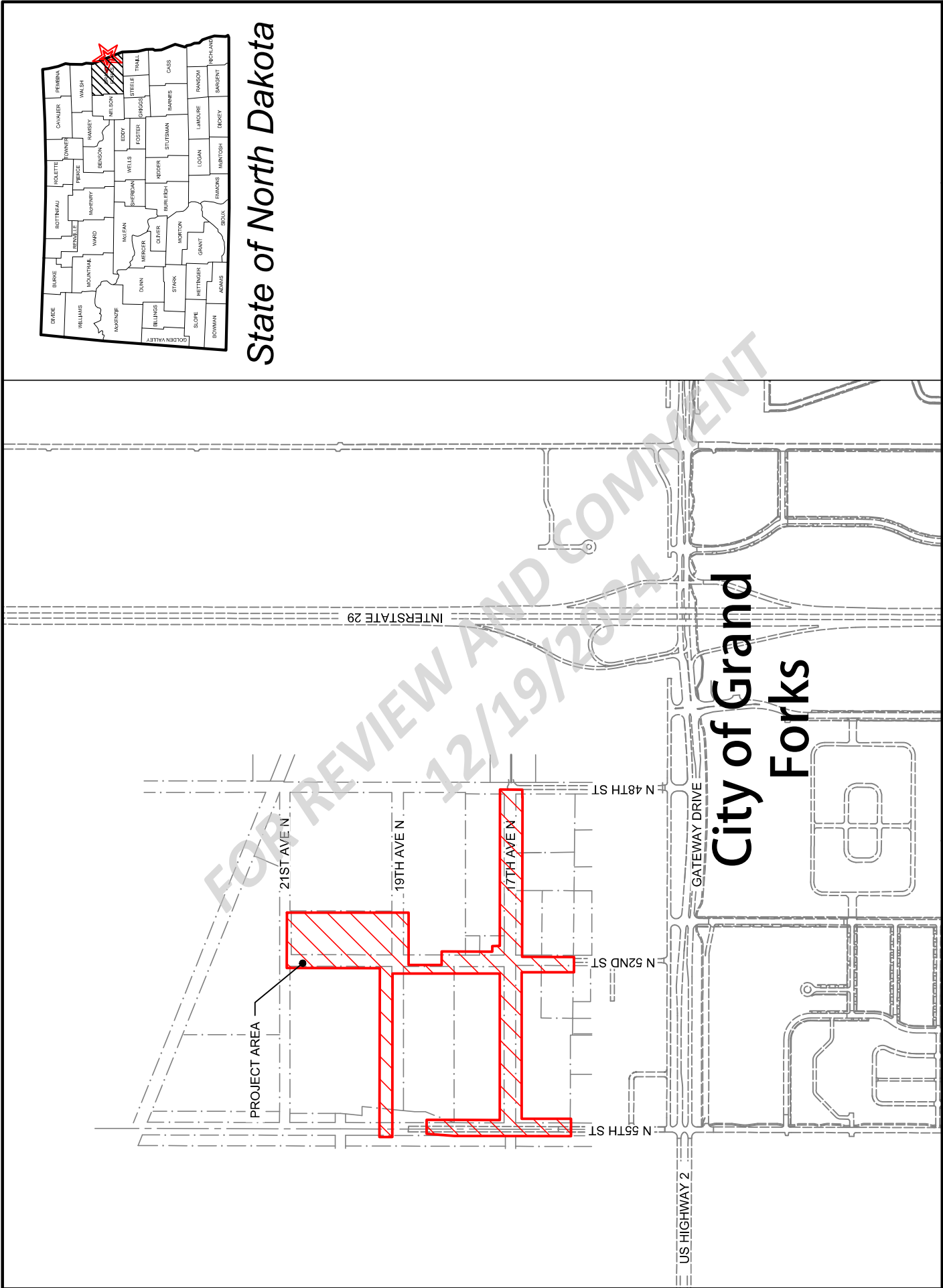
Historical census populations for the City of Grand Forks were 59,166 in 2020, 52,838 in 2010 and 49,342 in 2000. The largest employers in the City are University of North Dakota, Altru Health System and Grand Forks Air Force Base.

Based upon the PFA recommendation and the benefits obtained with this project, BND concurs with their evaluation and support of the request.



Kylee Merkel
Business Banker






City of Grand Forks



State of North Dakota

 CPS CIVIL ENGINEERING / PLANNING / SURVEYING	CPS Ltd. 308 2nd Avenue North Grand Forks, ND 58203 Phone 701.746.7459	EXHIBIT 18.1	 Scale in Feet
		VICINITY MAP	

RESOLUTION APPROVING
LOAN FROM CLEAN WATER STATE REVOLVING FUND

WHEREAS, the Industrial Commission has heretofore authorized the creation of a Clean Water State Revolving Fund Program (the "Program") pursuant to N.D.C.C. chs. 6-09.4 and 61-28.2; and

WHEREAS, the Clean Water State Revolving Fund is governed in part by the Master Trust Indenture dated as of July 1, 2011 (the "Indenture"), between the North Dakota Public Finance Authority (NDPFA) and the Bank of North Dakota (the Trustee); and

WHEREAS, the City of Mapleton (the "Political Subdivision") has requested a loan in the amount of \$10,600,000 from the Program to install a new main lift station and approximately five miles of 14" force main to connect to West Fargo's wastewater system, which ultimately receives treatment at the Fargo water reclamation facility; and

WHEREAS, the NDPFA's Advisory Committee is recommending approval of the Loan; and

WHEREAS, there has been presented to this Commission a form of Loan Agreement proposed to be adopted by the Political Subdivision and entered into with the NDPFA;

NOW, THEREFORE, BE IT RESOLVED by the Industrial Commission of North Dakota as follows:

1. The Loan is hereby approved, as recommended by the Advisory Committee.
2. The form of Loan Agreement to be entered into with the Political Subdivision is hereby approved in substantially the form on file and the Executive Director is hereby authorized to execute the same with all such changes and revisions therein as the Executive Director shall approve.
3. The Executive Director is authorized to fund the Loan from funds on hand in the Clean Water Loan Fund established under the Indenture upon receipt of the Municipal Securities described in the Political Subdivisions bond resolution, to submit to the Trustee a NDPFA Request pursuant to the Indenture, and to make such other determinations as are required under the Indenture.
4. The Commission declares its intent pursuant to Treasury Regulations '1.150-2 that any Loan funds advanced from the Federally Capitalized Loan Account shall be reimbursed from the proceeds of bonds issued by the NDPFA under the Indenture.

Adopted: June 26, 2025

Governor Kelly Armstrong, Chairman

Attest:

Karen Tyler, Executive Director
Industrial Commission of North Dakota

June 17, 2025

PUBLIC FINANCE AUTHORITY ADVISORY COMMITTEE

RECOMMENDATION TO THE INDUSTRIAL COMMISSION

The Advisory Committee, at its June 17, 2025 meeting, reviewed, discussed, and recommends approval of a \$10,600,000 Clean Water State Revolving Fund Program loan to the City of Mapleton.

North Dakota Public Finance Authority
Advisory Committee

Keith Lund, Chairman
Linda Svihovec
John Phillips

Industrial Commission
of North Dakota

Kelly Armstrong
GOVERNOR

Drew H. Wrigley
ATTORNEY GENERAL

Doug Goehring
AGRICULTURE COMMISSIONER



Memorandum

To: Public Finance Authority Advisory Committee
Miles Silbert, Public Financial Management
Kylee Merkel, Bank of North Dakota

From: DeAnn Ament, Executive Director

Date: May 19, 2025

Re: City of Mapleton
Clean Water State Revolving Fund Program Loan

Purpose of the Project: Due to undersized lagoons, the City will install a new main lift station and approximately five miles of 14" force main to connect to West Fargo's wastewater system which ultimately receives treatment at the Fargo water reclamation facility.

Project Amount:

CWSRF Request	\$10,600,000
Project Total	\$10,600,000

Population to Benefit from the Project: 1,320

Population Served by the System: 1,320

The requested term for the Clean Water State Revolving Fund (CWSRF) loan is 30 years. The City will issue revenue bonds payable with sewer user fees. The average annual payment for the revenue bonds will be \$448,958. The 110% coverage requirement will be \$493,854 and the required debt service reserve will be \$493,854.

The City has 568 sewer connections which pay a base rate of \$32.37 per connection which includes the first 1,000 gallons with each additional 1,000 gallons being charged \$.77/1,000 gallons. The City intends to increase its user rates by \$60 over the next two years, which would generate approximately \$400,000 annually.

Water & Sewer Fund:

	Unaudited			
	2021	2022	2023	2024
Operating Revenue	\$633,942	\$521,919	\$552,771	\$572,034
Operating Expenses	395,134	525,517 ¹	459,691	423,992
Net Operating Revenue	238,808	-3,598	93,080	148,042
Depreciation	47,713	91,453	91,453	0
Adjusted Net Operating Revenue	\$286,521	\$87,855	\$184,533	\$148,042
Revenue Bond Payments	\$52,912	\$53,948	\$44,435	\$44,100
Net Operating Coverage	542%	163%	415%	336%
Proforma Revenue Increase	\$400,000	\$400,000	\$400,000	\$400,000
Proforma CWSRF Payment	\$448,958	\$448,958	\$448,958	\$448,958
Proforma Net Operating Coverage	137%	97%	118%	111%

¹ Includes \$70,152 sewer line repair expenses.

Outstanding Debt December 31, 2024:

	Original Amount	Outstanding Amount
Improvement Bonds ¹	\$22,100,474	\$15,406,023
Revenue Bonds ¹	3,518,000	2,334,094
	<u>\$25,618,474</u>	<u>\$17,740,117</u>

¹ Payments have been made as agreed. The City has two CWSRF and two DWSRF loans with total outstanding balances of \$2,426,314.

The average annual payment of all bond debt is \$1,798,924 or \$1,363 per person.

The City of Mapleton is located in Cass County 10 miles west of Fargo. Based on the 2020 census, the total population was 1,320; this is an increase of 558 from the 2010 census. The largest employers in the City are Great Plains Transportation (transportation) with 300 employees, Holland Enterprises (transportation) with 250 employees and Horsch, LLC (manufacturing) which employs 200.

Mapleton School K-6 Enrollment:

2021-2022	2022-2023	2023-2024	2024-2025
180	195	196	217

The City's 2024 taxable valuation was \$11,023,006. This is an increase of \$3,997,014 from the 2020 taxable valuation.

Property Taxes Levied & Collected 12/31/2024:

Levy Year	Dollar Amount of Levy	Amount Collected to Date of Application	Percentage Collected
2024	\$ 1,274,595	\$ 273,152	21%
2023	1,165,585	1,113,717	96%
2022	915,929	867,480	95%

Special Assessments Levied & Collected 12/31/2024:

Year	Dollar Amount	Amount Collected to Date of Application	Percentage Collected
2024	\$1,222,604	\$ 277,087	23%
2023	1,093,372	1,067,652	98%
2022	1,060,668	1,052,878	99%

City of Mapleton Mill Levy History:

Year	City	School	Park District	State and County	Other	Total for Each Year
2024	95.40	132.10	5.42	46.00	7.67	286.59
2023	89.41	132.35	5.80	46.00	7.29	280.85
2022	77.54	118.38	5.80	48.00	8.04	257.76
2021	83.03	123.13	1.80	48.75	8.04	264.75
2020	78.66	119.44	1.99	48.92	8.09	257.10



45 South 7th Street
Suite 2950
Minneapolis, MN 55402

612.338.3535
612.338.7264 Fax
www.pfm.com

Memorandum

TO: DeAnn Ament, Executive Director
North Dakota Public Finance Authority

FROM: PFM Financial Advisors LLC

DATE: June 18, 2025

RE: Marketplace Analysis - Clean Water State Revolving Fund Program
City of Mapleton

The City of Mapleton (“City”) has presented a request to the Authority and the North Dakota Department of Environmental Quality (“Department”) for a \$10,600,000 loan under the Clean Water State Revolving Fund Program (“CWSRF Program”). The CWSRF Program is used to make subsidized interest rate loans to political subdivisions for the purpose of constructing various wastewater treatment projects and landfill projects as approved by the Department in accordance with federal and state regulations and an updated Intended Use Plan prepared by the Department.

The City intends to use the proceeds to install a new main lift station and approximately five miles of 14” force main to connect to West Fargo’s wastewater system.

The municipal securities to be acquired by the Authority will be revenue bonds payable with sewer user fee revenues. The City’s average annual payment under the proposed loan will be approximately \$448,958 indicating a 110% net revenue coverage requirement of approximately \$493,854. The City will be required to deposit \$477,050 into a reserve fund with payments of \$95,410 per year for the first five years of the loan. The City intends to raise base rates \$60 over the next two years, which will generate annual revenues of \$400,000. Pro forma net operating coverage of sewer fund was 1.37x, 0.97x, 1.18x and 1.11x for 2021-2024 (2024 is unaudited), respectively. The increase in rates in addition to the existing sewer revenues will provide sufficient net revenues to meet the 110% coverage requirement.

As of December 31, 2024, the City has \$15,406,023 of Improvement Bonds and \$2,334,094 of Revenue Bonds outstanding. The City currently has two CWSRF loans and two DWSRF loans with an outstanding combined total balance of \$2,426,314. The City is current in its payments for its outstanding Authority loan.

Funding for the construction of the City's projects has been included in a list of approved projects as prepared and updated by the Department. As an authorized participant in the CWSRF Program, the City will benefit substantially from the subsidized fixed rate loans made under the Program. Consequently, no other financing mechanism can provide a greater cost advantage than that offered by the CWSRF Program.

Memorandum

Attachment 3E

To: Industrial Commission

From: Kylee Merkel, Business Banker
Bank of North Dakota

Date: May 21, 2025

RE: City of Mapleton
Clean Water State Revolving Fund Program

ND Public Finance Authority has delivered to BND their memo which recommends approval of a \$10,600,000 loan to the City of Mapleton under the Clean Water State Revolving Fund (CWSRF). The entire cost of the project is \$10,600,000, with CWSRF financing the full cost of the project.

The project will install a new lift station and sewer mains to allow the City to connect to the City of West Fargo's wastewater system. The requested loan term is 30 years. The City will issue a revenue bond payable with sewer user fees. The annual payment will average \$448,958.

Debt Service Coverage:

Water & Sewer Fund	2021	2022	2023	Projected
Operating Revenue	633,942	521,919	552,771	552,771
Projected Rate Increase				408,960
Operating Expenses	-395,134	-525,517	-459,691	-459,691
Net Operating Revenue	238,808	-3,598	93,080	502,040
Plus: Depreciation	47,713	91,453	91,453	91,453
Adjusted Net Operating Income	286,521	87,855	184,533	593,493
Current Debt Service	52,912	53,948	44,435	44,435
Proposed Debt Service				448,958
Total Debt Service				493,393
Debt Service Coverage	542%	163%	415%	120%

The City currently provides service to 568 connections which pay a monthly base rate of \$32.37 per connection. In addition, all connections pay a usage rate of \$0.77 per 1,000 gallons in excess of 1,000 gallons. The City intends to raise the monthly base rate by \$60 per connection over the next two years. The increase will generate an approximate \$408,960 of additional annual revenues. The existing revenues, combined with the rate increase, will generate sufficient net operating revenues to service the proposed debt.

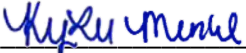
Outstanding Debt (as of December 31, 2024):

	Original Amount	Current Balance
Revenue Bonds	3,518,000	2,334,094
Improvement Bonds	22,100,474	15,406,023
	25,618,474	17,740,117

Average annual debt service requirements are estimated at \$1,798,924, which is an average of \$1,362.82 per resident.

Historical census populations for the City of Mapleton were 1,320 in 2020, 767 in 2010 and 605 in 2000. The largest employers in the City are Great Plains Transport, Holland Enterprises and Horsch, LLC.

Based upon the PFA recommendation and the benefits obtained with this project, BND concurs with their evaluation and support of the request.



Kylee Merkel
Business Banker

Legend

Proposed Sanitary Sewer

●

Manhole

⊗

Check Valve Manhole

●

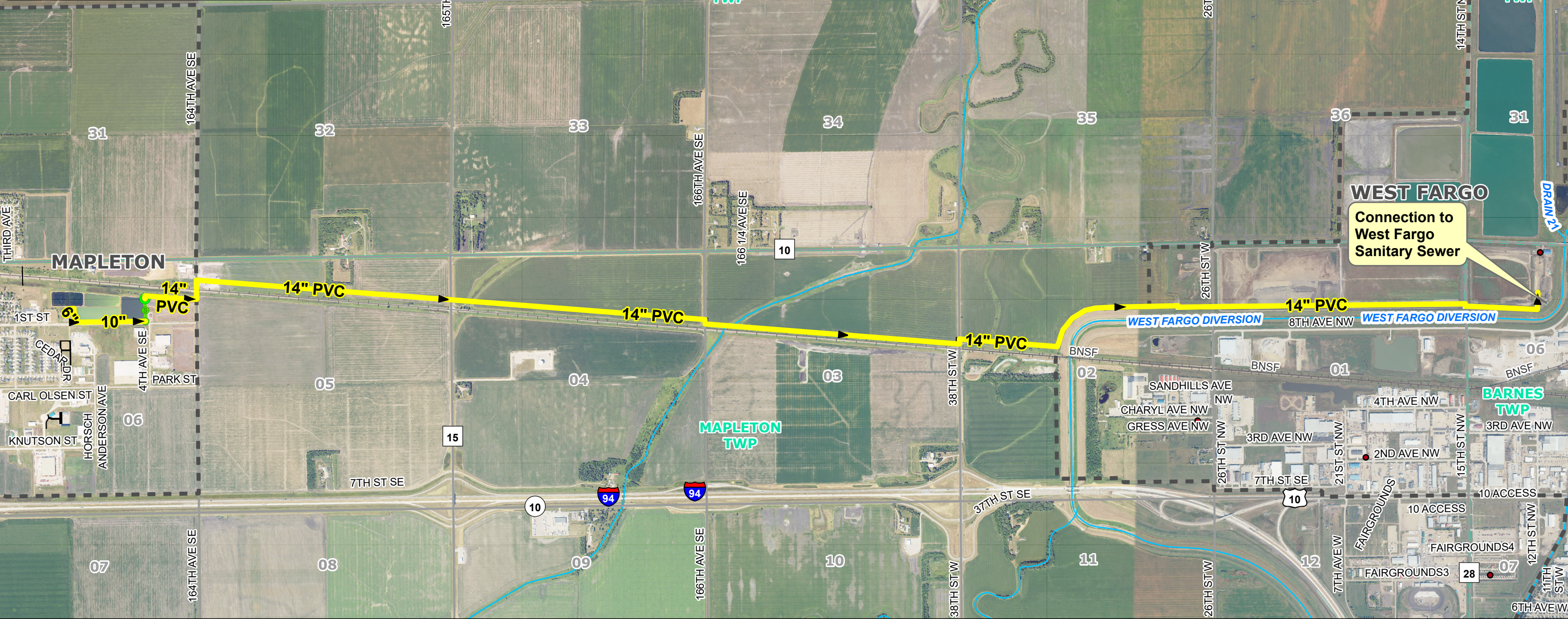
Lift Station

→

Force Main

→

Gravity Main



SOUTHERN FORCE MAIN ROUTE - ALTERNATIVE 4B

14" FORCE MAIN

MAPLETON, NORTH DAKOTA

N

W

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Feet

1:24,000

moore

engineering, inc.

Created By: GIS Date Created: XX/XX/20 Date Saved: 08/28/24 Date Plotted: N/A Date Exported: 08/29/24

Plotted By: Parcel Date: XX/XX/20 Aerial Image: 2019 County NAIP SIDS Elevation Data: Lidar

Horizontal Datum: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet Vertical Datum: NAVD1988

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RESOLUTION APPROVING
LOAN FROM CLEAN WATER STATE REVOLVING FUND

WHEREAS, the Industrial Commission has heretofore authorized the creation of a Clean Water State Revolving Fund Program (the "Program") pursuant to N.D.C.C. chs. 6-09.4 and 61-28.2; and

WHEREAS, the Clean Water State Revolving Fund is governed in part by the Master Trust Indenture dated as of July 1, 2011 (the "Indenture"), between the North Dakota Public Finance Authority (NDPFA) and the Bank of North Dakota (the Trustee); and

WHEREAS, the City of Fargo (the "Political Subdivision") has requested a loan in the amount of \$20,000,000 from the Program for Federal Aid Projects for 2025-2028 in conjunction with ND Department of Transportation reconstruction of portions of 32nd Avenue S, 17th Avenue S, Main Avenue S, and 1st Avenue N roadways to replace the aging water, sanitary, and storm sewer; and

WHEREAS, the NDPFA's Advisory Committee is recommending approval of the Loan; and

WHEREAS, there has been presented to this Commission a form of Loan Agreement proposed to be adopted by the Political Subdivision and entered into with the NDPFA;

NOW, THEREFORE, BE IT RESOLVED by the Industrial Commission of North Dakota as follows:

1. The Loan is hereby approved, as recommended by the Advisory Committee.
2. The form of Loan Agreement to be entered into with the Political Subdivision is hereby approved in substantially the form on file and the Executive Director is hereby authorized to execute the same with all such changes and revisions therein as the Executive Director shall approve.
3. The Executive Director is authorized to fund the Loan from funds on hand in the Clean Water Loan Fund established under the Indenture upon receipt of the Municipal Securities described in the Political Subdivisions bond resolution, to submit to the Trustee a NDPFA Request pursuant to the Indenture, and to make such other determinations as are required under the Indenture.
4. The Commission declares its intent pursuant to Treasury Regulations '1.150-2 that any Loan funds advanced from the Federally Capitalized Loan Account shall be reimbursed from the proceeds of bonds issued by the NDPFA under the Indenture.

Adopted: June 26, 2025

Governor Kelly Armstrong, Chairman

Attest:

Karen Tyler, Executive Director
Industrial Commission of North Dakota

June 17, 2025

PUBLIC FINANCE AUTHORITY ADVISORY COMMITTEE

RECOMMENDATION TO THE INDUSTRIAL COMMISSION

The Advisory Committee, at its June 17, 2025 meeting, reviewed, discussed, and recommends approval of a \$20,000,000 Clean Water State Revolving Fund Program loan to the City of Fargo.

North Dakota Public Finance Authority
Advisory Committee

Keith Lund, Chairman
Linda Svihovec
John Phillips

Industrial Commission
of North Dakota

Kelly Armstrong
GOVERNOR

Drew H. Wrigley
ATTORNEY GENERAL

Doug Goehring
AGRICULTURE COMMISSIONER



Memorandum

To: Public Finance Authority Advisory Committee
Miles Silbert, PFM Financial Advisors LLC
Kylee Merkel, Bank of North Dakota

From: DeAnn Ament, Executive Director

Date: June 9, 2025

Re: City of Fargo
Clean Water State Revolving Fund

Purpose of the Project: Federal Aid Projects for 2025-2028 in conjunction with NDDoT reconstruction of portions of 32nd Avenue S, 17th Avenue S, Main Avenue S and 1st Avenue N roadways that intend to encompass replacement of the aging water, sanitary and storm sewer.

Project Amount:

CWSRF Request	\$ 20,000,000
DWSRF Request	20,000,000
NDDoT Grant	10,000,000
Project Total	\$ 50,000,000

Population to Benefit from the Project: 184,525

Population Served by the System: 184,525

The requested term for the Clean Water State Revolving Fund (CWSRF) loan is 30 years. The City of Fargo will issue revenue bonds payable with sales tax and water reclamation fund revenues. The average annual payment for the revenue bonds will be \$864,518. The 110% coverage requirement will be \$950,969 and the required debt service reserve will be \$885,575.

City Sales Tax:

The City collects a 2% sales tax and ½ of 1% is dedicated to CWSRF and DWSRF financed infrastructure.

	2020	2021	2022	2023	2024
2% City Sales Tax	\$51,720,983	\$60,456,732	\$65,918,347	\$69,144,866	\$69,524,792
1/2 of 1%	\$12,930,246	\$15,114,183	\$16,479,587	\$17,286,217	\$17,381,198
Debt Service	\$5,636,083	\$5,930,876	\$5,957,230	\$5,935,800	\$14,033,478
Excess Sales Tax	\$7,294,163	\$9,183,307	\$10,522,357	\$11,350,417	\$3,347,720

The City has 28,551 residential water reclamation accounts which pay a monthly base charge of \$25. This was a \$3.50 per month increase effective January 1st. There are 4,883 commercial accounts that pay \$2.55 per 1,000 gallons of water each month, with a minimum charge of \$25.

Water Reclamation Fund:

Unaudited			
2021	2022	2023	2024
\$63,902	\$27,241	\$24,035	\$22,404
14,491,086	15,530,744	18,234,249	17,625,205
14,834,215	16,294,767	15,554,949	12,630,444
-279,227	-736,782	2,703,335	5,017,165
5,929,463	6,056,208	6,307,057	6,644,206
\$5,650,236	\$5,319,426	\$9,010,392	\$11,661,371
\$1,228,935	\$2,017,537	\$2,826,225	\$3,810,435
460%	264%	319%	306%

Projected Water Reclamation Fund Net Operating Coverage:

	2025	2026	2027	2028
Proforma Net Operating Revenue ¹	\$23,743,024	\$24,565,677	\$26,897,836	\$27,206,096
Proforma Debt Service	\$8,457,350	\$9,204,818	\$9,535,561	\$11,339,201
Proforma Net Operating Coverage	281%	267%	282%	240%

¹ Includes water reclamation rate revenues and city sales tax which is ½ of the ½ of 1% since this is only a water reclamation projection.

The existing excess sales tax will be sufficient to meet the 110% net operating coverage. The City annually reviews the rates and adjusts as needed every two years. The net operating revenues of the water reclamation fund provide satisfactory backing should sales tax be inadequate.

The City's outstanding indebtedness as of December 31, 2024:

	<u>Original Amount</u>	<u>Amount Outstanding</u>
Governmental Activities		
Improvement Bonds	\$ 682,410,000	\$ 537,805,000
GO Bonds	38,745,000	25,395,000
Sales Tax Revenue Bonds *	83,887,000	45,733,000
Taxable Appropriation Bonds	38,385,000	36,160,000
Appropriation Bonds	31,058,000	30,177,000
SRF Notes Payable *	113,505,936	38,078,979
TIF Revenue Notes	12,517,590	10,188,419
Direct Bank Loan	3,760,000	1,946,475
Mercantile Parking Garage	2,000,000	2,000,000
NP Parking Garage	9,000,000	1,232,622
BND Infrastructure Loan	15,000,000	10,842,640
	<u>\$ 1,030,268,526</u>	<u>\$ 739,559,135</u>
Business-Type Activities		
Revenue Bonds	\$ 2,875,000	\$ 1,264,343
SRF Notes Payable *	317,047,000	265,456,421
Appropriation Bonds	7,810,000	2,570,000
	<u>\$ 327,732,000</u>	<u>\$ 269,290,764</u>

*All payments have been made as agreed. The City has thirteen CWSRF and six DWSRF loans with outstanding balances of \$303,535,400 and two CFP loans with outstanding balances of \$45,733,000.

With \$1,008,849,899 total debt outstanding, the debt per person is \$7,311.

The City of Fargo is located in Cass County at the intersection of Interstate Highways 94 and 29. The estimated current population is 137,989. Based on the 2020 census, the total population was 125,990; this is an increase of 20,441 from the 2010 census. The largest employers in the City are Sanford Health Facilities with 9,181 employees, North Dakota State University has 2,324 employees and Fargo Public Schools employs 2,273.

K-12 School Enrollment:

2021-2022	2022-2023	2023-2024	2024-2025
11,195	11,288	11,319	11,281

The City's 2024 taxable valuation was \$854,051,563. This is an increase of \$219,860,109 over the 2020 taxable valuation.

Property Tax Collections 3/31/2025:

Levy Year	Dollar Amount of Levy	Amount Collected to Date of Application	Percentage Collected
2024	\$48,443,095	\$43,212,214	89%
2023	\$47,682,349	\$44,768,200	94%
2022	\$40,652,011	\$38,807,981	96%

Special Assessment Collections 3/31/2025:

Year	Dollar Amount	Amount Collected to Date of Application	Percentage Collected
2024	\$45,618,947	\$43,023,381	94%
2023	\$42,562,481	\$41,679,034	98%
2022	\$39,463,391	\$39,175,732	99%

Mill Levy History:

Year	City	School	Park District	State and County	Other	Total for Each Year
2023	57.00	154.13	35.58	46.00	5.47	298.18
2023	57.00	154.13	34.08	46.00	5.39	296.60
2022	55.00	154.38	38.09	48.00	6.03	301.50
2021	53.00	154.38	33.85	48.75	6.03	296.01
2020	53.00	154.38	29.60	48.92	6.22	292.12



45 South 7th Street
Suite 2950
Minneapolis, MN 55402

612.338.3535
612.338.7264 Fax
www.pfm.com

Memorandum

TO: DeAnn Ament, Executive Director
North Dakota Public Finance Authority

FROM: PFM Financial Advisors LLC

DATE: June 18, 2025

RE: Marketplace Analysis - Clean Water State Revolving Fund Program
City of Fargo

The City of Fargo (“City”) has presented a request to the Authority and the North Dakota Department of Environmental Quality (“Department”) for a \$20,000,000 loan under the Clean Water State Revolving Fund Program (“CWSRF Program”). The CWSRF Program is used to make subsidized interest rate loans to political subdivisions for the purpose of constructing various wastewater treatment projects and landfill projects as approved by the Department in accordance with federal and state regulations and an updated Intended Use Plan prepared by the Department.

The City intends to use the proceeds to replace aging water, sanitary and storm sewer.

The municipal securities to be acquired by the Authority will be revenue bonds payable from sales tax and water reclamation fund revenues. The City’s average annual payment under the proposed loan will be approximately \$864,518 indicating a 110% net revenue coverage requirement of approximately \$950,696. The City will be required to deposit \$885,575 into a reserve fund with payments of \$177,115 per year for the first five years of the loan. Net operating coverage of the water reclamation fund was 4.60x, 2.64x, 3.19x, and 3.06x for 2021-2024, respectively. In addition, the City collects a 2% sales tax and ½ of 1% is dedicated to Clean Water and Drinking Water SRF financed infrastructure. The projected pro forma net operating coverage, which includes the sales tax and water reclamation revenues, is 2.81x, 2.67x, 2.82x and 2.40x respectively, for years 2025-2028. The City reviews their sales tax and water rates annually and adjusts the rates as needed. The excess sales tax, water reclamation fund, and as needed rate increases will provide sufficient net revenues to meet the 110% coverage requirement.

As of December 31, 2024, the City has the following outstanding debt:

	Amount Outstanding
Governmental Activities	
Improvement Bonds	\$ 537,805,000
GO Bonds	25,395,000
Sales Tax Revenue Bonds *	45,733,000
Taxable Appropriation Bonds	36,160,000
Appropriation Bonds	30,177,000
SRF Notes Payable *	38,078,979
TIF Revenue Notes	10,188,419
Direct Bank Loan	1,946,475
Mercantile Parking Garage	2,000,000
NP Parking Garage	1,232,622
BND Infrastructure Loan	10,842,640
	<u>\$ 739,559,135</u>
Business-Type Activities	
Revenue Bonds	\$ 1,264,343
SRF Notes Payable *	265,456,421
Appropriation Bonds	2,570,000
	<u>\$ 269,290,764</u>

The City currently has two CFP loans with an outstanding amount of \$45,733,000, and thirteen CWSRF and six DWSRF loans with a total outstanding amount of \$303,535,400. The City is current in its payments for its outstanding Authority loans.

Funding for the construction of the City's projects has been included in a list of approved projects as prepared and updated by the Department. As an authorized participant in the CWSRF Program, the City will benefit substantially from the subsidized fixed rate loans made under the Program. Consequently, no other financing mechanism can provide a greater cost advantage than that offered by the CWSRF Program.

Memorandum

Attachment 4E

To: Industrial Commission

From: Kylee Merkel, Business Banker
Bank of North Dakota

Date: June 11, 2025

RE: City of Fargo
Clean Water State Revolving Fund Program

ND Public Finance Authority has delivered to BND their memo which recommends approval of a \$20,000,000 loan to the City of Fargo under the Clean Water State Revolving Fund (CWSRF). The entire cost of the project is \$50,000,000, with Drinking Water State Revolving Fund providing a \$20,000,000 loan and ND Department of Transportation providing a \$10,000,000 grant.

Proceeds of the loan will be used to complete roadway improvements that include replacement of the aging water, sanitary sewer and storm sewer. The requested loan term is 30 years. The City will issue a revenue bond payable from sales tax and water reclamation fund revenues. The annual payment will average \$864,518.

The City collects a 2% sales tax, of which ½ of 1% is dedicated to clean water and drinking water state revolving fund financed infrastructure. The sales tax sunsets in 2028. If the city sales tax collections would be insufficient to meet the required 110% net operating coverage, or the city sales tax is not extended, the City would utilize water reclamation fund revenues and implement any necessary rate increases.

½ of 1% City Sales Tax Debt Service Coverage:

	2021	2022	2023	2024
2% City Sales Tax Collections	60,456,732	65,918,347	69,144,866	69,524,792
1/2 of 1%	15,114,183	16,479,587	17,286,217	17,381,198
SRF Debt Service	5,930,876	5,957,230	5,935,800	14,033,478
Debt Service Coverage	254.84%	276.63%	291.22%	123.86%

The existing sales tax collections will be sufficient to service both the existing and proposed State Revolving Fund loans. Should sales tax collections be insufficient to service the debt, the water reclamation fund also has capacity to service the debt.

Water Fund Debt Service Coverage:

Water Reclamation Fund	2021	2022	2023
Operating Revenue	14,491,086	15,530,744	18,234,249
Interest Revenue	63,902	27,241	24,035
Operating Expenses	-14,834,215	-16,294,616	-15,554,949
Net Operating Revenue	-279,227	-736,631	2,703,335
Plus: Depreciation	5,929,463	6,056,208	6,307,057
Adjusted Net Operating Revenue	5,650,236	5,319,577	9,010,392
Current Annual Debt Service	1,228,935	2,017,537	2,826,225
Debt Service Coverage	459.77%	263.67%	318.81%

The City currently serves 28,551 residential water reclamation accounts that pay a monthly base rate of \$25.00. There are also 4,883 commercial water reclamation accounts that pay \$2.55 per 1,000 gallons of water usage per month, with a minimum charge of \$25.00.

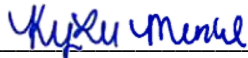
Outstanding Debt (as of December 31, 2024):

Governmental Activities		
Improvement Bonds	\$682,410,000	\$537,805,000
GO Bonds	38,745,000	25,395,000
Sales Tax Revenue Bonds	83,887,000	45,733,000
Taxable Appropriation Bonds	38,385,000	36,160,000
Appropriation Bonds	31,058,000	30,177,000
SRF Notes Payable	113,505,936	38,078,979
TIF Revenue Notes	12,517,590	10,188,419
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Mercantile Parking Garage	2,000,000	2,000,000
NP Parking Garage	9,000,000	1,232,622
BND Infrastructure Loan	15,000,000	10,842,640
	1,030,268,526	739,559,135
Business-Type Activities		
Revenue Bonds	2,875,000	1,264,343
SRF Notes Payable	317,047,000	265,456,421
Appropriation Bonds	7,810,000	2,570,000
	327,732,000	269,290,764
Total Debt	\$1,358,000,526	\$1,008,849,899

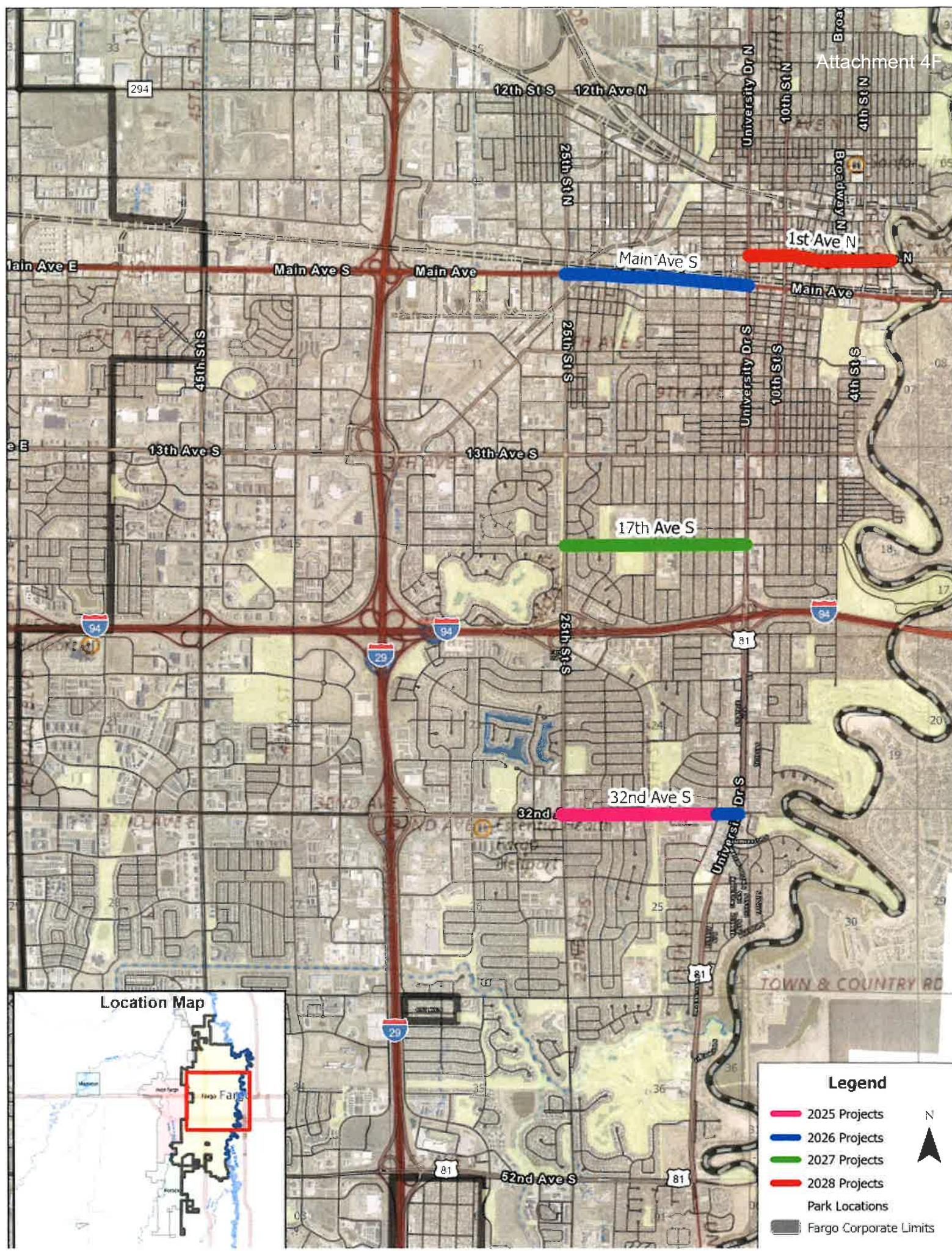
Average annual debt service requirements are estimated at \$28,634,434, which is an average of \$207.51 per resident.

Current population estimate for the City is 137,989. Historical census populations for the City of Fargo were 125,990 in 2020, 106,024 in 2010 and 91,324 in 2000. The largest employers in the City are Sanford Health Facilities, North Dakota State University and Fargo Public Schools.

Based upon the PFA recommendation and the benefits obtained with this project, BND concurs with their evaluation and support of the request.



Kylee Merkel
Business Banker



RESOLUTION APPROVING
LOAN FROM DRINKING WATER STATE REVOLVING FUND

WHEREAS, the Industrial Commission has heretofore authorized the creation of a Drinking Water State Revolving Fund Program (the “Program”) pursuant to N.D.C.C. chs. 6-09.4, 61-28.1, and 61-28.2; and

WHEREAS, the State Revolving Fund is governed in part by the Master Trust Indenture dated as of July 1, 2011 (the “Indenture”), between the North Dakota Public Finance Authority (the “NDPFA”) and the Bank of North Dakota (the “Trustee”); and

WHEREAS, the City of Fargo (the “Political Subdivision”) has requested a loan in the amount of \$20,000,000 from the Program for Federal Aid Projects for 2025-2028 in conjunction with ND Department of Transportation reconstruction of portions of 32nd Avenue S, 17th Avenue S, Main Avenue S, and 1st Avenue N roadways to replace the aging water, sanitary, and storm sewer; and

WHEREAS, NDPFA’s Advisory Committee is recommending approval of the Loan; and

WHEREAS, there has been presented to this Commission a form of Loan Agreement proposed to be adopted by the Political Subdivision and entered into with the NDPFA;

NOW, THEREFORE, BE IT RESOLVED by the Industrial Commission of North Dakota as follows:

1. The Loan is hereby approved, as recommended by the Advisory Committee.
2. The form of Loan Agreement to be entered into with the Political Subdivision is hereby approved in substantially the form on file and the Executive Director is hereby authorized to execute the same with all such changes and revisions therein as the Executive Director shall approve.
3. The Executive Director is authorized to fund the Loan from funds on hand in the Drinking Water Loan Fund established under the Indenture upon receipt of the Municipal Securities described in the Political Subdivisions bond resolution, to submit to the Trustee a NDPFA Request pursuant to the Indenture, and to make such other determinations as are required under the Indenture.
4. The Commission declares its intent pursuant to Treasury Regulations '1.150-2 that any Loan funds advanced from the Federally Capitalized Loan Account shall be reimbursed from the proceeds of bonds issued by the NDPFA under the Indenture.

Adopted: June 26, 2025

Governor Kelly Armstrong, Chairman

Attest:

Karen Tyler, Executive Director
Industrial Commission of North Dakota

June 17, 2025

PUBLIC FINANCE AUTHORITY ADVISORY COMMITTEE

RECOMMENDATION TO THE INDUSTRIAL COMMISSION

The Advisory Committee, at its June 17, 2025 meeting, reviewed, discussed, and recommends approval of a \$20,000,000 Drinking Water State Revolving Fund Program loan to the City of Fargo.

North Dakota Public Finance Authority
Advisory Committee

Keith Lund, Chairman
Linda Svihovec
John Phillips

Industrial Commission
of North Dakota

Kelly Armstrong
GOVERNOR

Drew H. Wrigley
ATTORNEY GENERAL

Doug Goehring
AGRICULTURE COMMISSIONER



Memorandum

To: Public Finance Authority Advisory Committee
Miles Silbert, PFM Financial Advisors LLC
Kylee Merkel, Bank of North Dakota

From: DeAnn Ament, Executive Director

Date: June 9, 2025

Re: City of Fargo
Drinking Water State Revolving Fund

Purpose of the Project: Federal Aid Projects for 2025-2028 in conjunction with NDDoT reconstruction of portions of 32nd Avenue S, 17th Avenue S, Main Avenue S and 1st Avenue N roadways that intend to encompass replacement of the aging water, sanitary and storm sewer.

Project Amount:

DWSRF Request	\$ 20,000,000
CWSRF Request	20,000,000
NDDoT Grant	10,000,000
Project Total	\$ 50,000,000

Population to Benefit from the Project: 184,525

Population Served by the System: 184,525

The requested term for the Drinking Water State Revolving Fund (DWSRF) loan is 30 years. The City of Fargo will issue revenue bonds payable with sales tax and water fund revenues. The average annual payment for the revenue bonds will be \$864,518. The 110% coverage requirement will be \$950,969 and the required debt service reserve will be \$885,575.

City Sales Tax:

The City collects a 2% sales tax and ½ of 1% is dedicated to DWSRF and CWSRF financed infrastructure.

	2020	2021	2022	2023	2024
2% City Sales Tax	\$51,720,983	\$60,456,732	\$65,918,347	\$69,144,866	\$69,524,792
1/2 of 1%	\$12,930,246	\$15,114,183	\$16,479,587	\$17,286,217	\$17,381,198
Debt Service	\$5,636,083	\$5,930,876	\$5,957,230	\$5,935,800	\$14,033,478
Excess Sales Tax	\$7,294,163	\$9,183,307	\$10,522,357	\$11,350,417	\$3,347,720

The City has 28,551 residential water accounts that pay a monthly base charge of \$20.20 which includes 2,000 gallons; the base rate increased \$2.65 per month effective January 1st. There are 5,750 commercial accounts that pay a monthly base charge which ranges from \$64.35 to \$857.85 depending on the meter size. January 1st, these rates increased \$8.40 to \$111.90 per month and the volume charge for all increased \$.80 to \$5.70/1,000 above the first 2,000 gallons.

Water Fund:

	Unaudited			
	2021	2022	2023	2024
Interest Revenue	\$57,825	\$24,729	\$22,661	\$20,538
Operating Revenue	26,123,374	25,679,019	29,109,021	27,976,392
Operating Expenses	23,128,967	25,557,494	27,424,202	28,863,736
Net Operating Expenditures	3,052,232	146,254	1,707,480	-866,806
Depreciation	7,746,117	7,847,571	8,110,737	8,550,333
Adjusted Net Operating Income	\$10,798,349	\$7,993,825	\$9,818,217	\$7,683,527
Revenue Bond Payments	\$4,889,982	\$4,975,904	\$5,789,292	\$5,969,777
Net Operating Coverage	221%	161%	170%	129%

Projected Water Fund Net Operating Coverage:

	2025	2026	2027	2028
Proforma Net Operating Revenue ¹	\$23,483,410	\$23,355,625	\$27,837,207	\$27,696,939
Proforma Debt Service	\$6,751,460	\$7,223,631	\$8,047,966	\$8,617,903
Proforma Net Operating Coverage	348%	323%	346%	321%

¹ Includes water rate revenues and city sales tax which is ½ of the ½ of 1% since this is only a water projection.

The existing excess sales tax will be sufficient to meet the 110% net operating coverage. The City annually reviews the rates and adjusts as needed every two years. The net operating revenues of the water fund provide satisfactory backing should sales tax be inadequate.

The City's outstanding indebtedness as of December 31, 2024:

	<u>Original Amount</u>	<u>Amount Outstanding</u>
Governmental Activities		
Improvement Bonds	\$ 682,410,000	\$ 537,805,000
GO Bonds	38,745,000	25,395,000
Sales Tax Revenue Bonds *	83,887,000	45,733,000
Taxable Appropriation Bonds	38,385,000	36,160,000
Appropriation Bonds	31,058,000	30,177,000
SRF Notes Payable *	113,505,936	38,078,979
TIF Revenue Notes	12,517,590	10,188,419
Direct Bank Loan	3,760,000	1,946,475
Mercantile Parking Garage	2,000,000	2,000,000
NP Parking Garage	9,000,000	1,232,622
BND Infrastructure Loan	15,000,000	10,842,640
	<u>\$ 1,030,268,526</u>	<u>\$ 739,559,135</u>
Business-Type Activities		
Revenue Bonds	\$ 2,875,000	\$ 1,264,343
SRF Notes Payable *	317,047,000	265,456,421
Appropriation Bonds	7,810,000	2,570,000
	<u>\$ 327,732,000</u>	<u>\$ 269,290,764</u>

*All payments have been made as agreed. The City has thirteen CWSRF and six DWSRF loans with outstanding balances of \$303,535,400 and two CFP loans with outstanding balances of \$45,733,000.

With \$1,008,849,899 total debt outstanding, the debt per person is \$7,311.

The City of Fargo is located in Cass County at the intersection of Interstate Highways 94 and 29. The estimated current population is 137,989. Based on the 2020 census, the total population was 125,990; this is an increase of 20,441 from the 2010 census. The largest employers in the City are Sanford Health Facilities with 9,181 employees, North Dakota State University has 2,324 employees and Fargo Public Schools employs 2,273.

K-12 School Enrollment:

2021-2022	2022-2023	2023-2024	2024-2025
11,195	11,288	11,319	11,281

The City's 2024 taxable valuation was \$854,051,563. This is an increase of \$219,860,109 over the 2020 taxable valuation.

Property Tax Collections 3/31/2025:

Levy Year	Dollar Amount of Levy	Amount Collected to Date of Application	Percentage Collected
2024	\$48,443,095	\$43,212,214	89%
2023	\$47,682,349	\$44,768,200	94%
2022	\$40,652,011	\$38,807,981	96%

Special Assessment Collections 3/31/2025:

Year	Dollar Amount	Amount Collected to Date of Application	Percentage Collected
2024	\$45,618,947	\$43,023,381	94%
2023	\$42,562,481	\$41,679,034	98%
2022	\$39,463,391	\$39,175,732	99%

Mill Levy History:

Year	City	School	Park District	State and County	Other	Total for Each Year
2023	57.00	154.13	35.58	46.00	5.47	298.18
2023	57.00	154.13	34.08	46.00	5.39	296.60
2022	55.00	154.38	38.09	48.00	6.03	301.50
2021	53.00	154.38	33.85	48.75	6.03	296.01
2020	53.00	154.38	29.60	48.92	6.22	292.12



45 South 7th Street
Suite 2950
Minneapolis, MN 55402

612.338.3535
612.338.7264 Fax
www.pfm.com

Memorandum

TO: DeAnn Ament, Executive Director
North Dakota Public Finance Authority

FROM: PFM Financial Advisors LLC

DATE: June 18, 2025

RE: Marketplace Analysis - Drinking Water State Revolving Fund Program
City of Fargo

The City of Fargo (“City”) has presented a request to the Authority and the North Dakota Department of Environmental Quality (“Department”) for a \$20,000,000 loan under Drinking Water State Revolving Fund Program (“DWSRF Program”). The DWSRF Program is used to make subsidized interest rate loans to political subdivisions for the purpose of constructing various water treatment, distribution, and storage facilities as approved by the Department in accordance with federal and state regulations and an updated Intended Use Plan prepared by the Department.

The City intends to use the proceeds to replace aging water, sanitary and storm sewer.

The municipal securities to be acquired by the Authority will be revenue bonds payable from water fund and sales tax fund revenues. The City’s average annual payment under the proposed loan will be approximately \$864,518 indicating a 110% net revenue coverage requirement of approximately \$950,696. The City will be required to deposit \$885,575 into a reserve fund with payments of \$177,115 per year for the first five years of the loan. Net operating coverage of the water fund was 2.21x, 1.61x, 1.70x, and 1.29x for 2021-2024, respectively. In addition to the water fund, one half of one percent of the City’s two percent sales tax is dedicated to the CWSRF and DWSRF. The projected pro forma net operating coverage, which includes the sales tax and water revenues, is 3.48x, 3.23x, 3.46x and 3.21x respectively, for years 2025-2028. The City reviews their sales tax and water rates annually and adjusts the rates as needed. The excess sales tax, water fund, and as needed rate increases will provide sufficient net revenues to meet the 110% coverage requirement.

As of December 31, 2024, the City has the following outstanding debt:

	Amount Outstanding
Governmental Activities	
Improvement Bonds	\$ 537,805,000
GO Bonds	25,395,000
Sales Tax Revenue Bonds *	45,733,000
Taxable Appropriation Bonds	36,160,000
Appropriation Bonds	30,177,000
SRF Notes Payable *	38,078,979
TIF Revenue Notes	10,188,419
Direct Bank Loan	1,946,475
Mercantile Parking Garage	2,000,000
NP Parking Garage	1,232,622
BND Infrastructure Loan	10,842,640
	<u>\$ 739,559,135</u>
Business-Type Activities	
Revenue Bonds	\$ 1,264,343
SRF Notes Payable *	265,456,421
Appropriation Bonds	2,570,000
	<u>\$ 269,290,764</u>

The City currently has two CFP loans with an outstanding amount of \$45,733,000, and thirteen CWSRF and six DWSRF loans with a total outstanding amount of \$303,535,400. The City is current in its payments for its outstanding Authority loans.

Funding for the construction of the City's projects has been included in a list of approved projects as prepared and updated by the Department. As an authorized participant in the DWSRF Program, the City will benefit substantially from the subsidized fixed rate loans made under the Program. Consequently, no other financing mechanism can provide a greater cost advantage than that offered by the DWSRF Program.

Memorandum

Attachment 5E

To: Industrial Commission

From: Kylee Merkel, Business Banker
Bank of North Dakota

Date: June 11, 2025

RE: City of Fargo
Drinking Water State Revolving Fund Program

ND Public Finance Authority has delivered to BND their memo which recommends approval of a \$20,000,000 loan to the City of Fargo under the Drinking Water State Revolving Fund (DWSRF). The entire cost of the project is \$50,000,000, with Clean Water State Revolving Fund providing a \$20,000,000 loan and ND Department of Transportation providing a \$10,000,000 grant.

Proceeds of the loan will be used to complete roadway improvements that include replacement of the aging water, sanitary sewer and storm sewer. The requested loan term is 30 years. The City will issue a revenue bond payable from sales tax and water fund revenues. The annual payment will average \$864,518.

The City collects a 2% sales tax, of which ½ of 1% is dedicated to clean water and drinking water state revolving fund financed infrastructure. The sales tax sunsets in 2028. If the city sales tax collections would be insufficient to meet the required 110% net operating coverage, or the city sales tax is not extended, the City would utilize water user fees and implement any necessary rate increases.

½ of 1% City Sales Tax Debt Service Coverage:

	2021	2022	2023	2024
2% City Sales Tax Collections	60,456,732	65,918,347	69,144,866	69,524,792
1/2 of 1%	15,114,183	16,479,587	17,286,217	17,381,198
SRF Debt Service	5,930,876	5,957,230	5,935,800	14,033,478
Debt Service Coverage	254.84%	276.63%	291.22%	123.86%

The existing sales tax collections will be sufficient to service both the existing and proposed State Revolving Fund loans. Should sales tax collections be insufficient to service the debt, the water fund also has capacity to service the debt.

Water Fund Debt Service Coverage:

Water Fund	2021	2022	2023
Operating Revenue	26,123,374	25,679,019	29,109,021
Interest Revenue	57,825	24,729	22,661
Operating Expenses	-23,128,967	-25,557,494	-27,424,202
Net Operating Revenue	3,052,232	146,254	1,707,480
Plus: Depreciation	7,746,117	7,847,571	8,110,737
Adjusted Net Operating Revenue	10,798,349	7,993,825	9,818,217
Current Annual Debt Service	4,889,982	4,975,904	5,789,292
Debt Service Coverage	220.83%	160.65%	169.59%

The City currently serves 28,551 residential water accounts that pay a monthly base rate of \$20.20. There are also 5,750 commercial water accounts that pay a monthly base rate ranging from \$64.35 to \$857.85, depending on meter size. All accounts pay a volume charge of \$5.70 per 1,000 gallons, above the first 2,000 gallons. The City annually reviews and adjusts rates as needed.

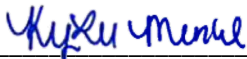
Outstanding Debt (as of December 31, 2024):

Governmental Activities		
Improvement Bonds	\$682,410,000	\$537,805,000
GO Bonds	38,745,000	25,395,000
Sales Tax Revenue Bonds	83,887,000	45,733,000
Taxable Appropriation Bonds	38,385,000	36,160,000
Appropriation Bonds	31,058,000	30,177,000
SRF Notes Payable	113,505,936	38,078,979
TIF Revenue Notes	12,517,590	10,188,419
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NP Parking Garage	9,000,000	1,232,622
BND Infrastructure Loan	15,000,000	10,842,640
	1,030,268,526	739,559,135
Business-Type Activities		
Revenue Bonds	2,875,000	1,264,343
SRF Notes Payable	317,047,000	265,456,421
Appropriation Bonds	7,810,000	2,570,000
	327,732,000	269,290,764
Total Debt	\$1,358,000,526	\$1,008,849,899

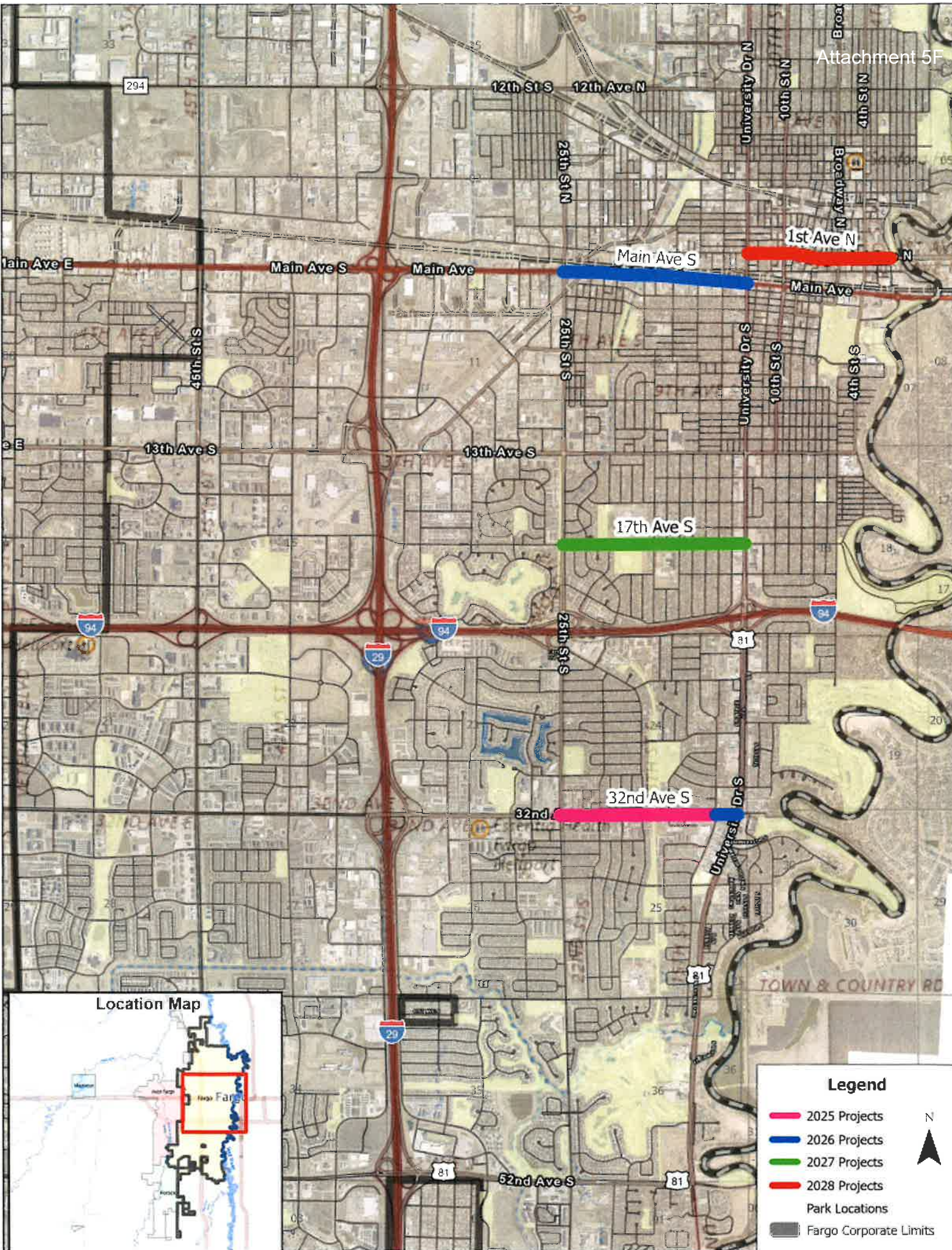
Average annual debt service requirements are estimated at \$28,634,434, which is an average of \$207.51 per resident.

Current population estimate for the City is 137,989. Historical census populations for the City of Fargo were 125,990 in 2020, 106,024 in 2010 and 91,324 in 2000. The largest employers in the City are Sanford Health Facilities, North Dakota State University and Fargo Public Schools.

Based upon the PFA recommendation and the benefits obtained with this project, BND concurs with their evaluation and support of the request.



Kylee Merkel
Business Banker



Industrial Commission
of North Dakota

Kelly Armstrong
GOVERNOR

Drew H. Wrigley
ATTORNEY GENERAL

Doug Goehring
AGRICULTURE COMMISSIONER



Memorandum

To: Industrial Commission: Governor Kelly Armstrong, Attorney General Drew H. Wrigley, Agriculture Commissioner Doug Goehring

From: DeAnn Ament, Executive Director

Date: June 17, 2025

Re: Elgin, Clean Water State Revolving Fund
Elgin, Drinking Water State Revolving Fund
Grand Forks, Drinking Water State Revolving Fund
Napoleon, Drinking Water State Revolving Fund

Under current policy, the Public Finance Authority can make loans under the State Revolving Fund Program in an amount not to exceed \$2,000,000 and under the Capital Financing Program in an amount not to exceed \$500,000 without seeking the final approval of the Industrial Commission. Within this policy, once the loan has been approved, the Public Finance Authority is required to provide the details of the loan to the Industrial Commission. Accordingly, the Public Finance Authority and its Advisory Committee used this policy to approve the following loans.

The committee reviewed the City of Elgin's Clean Water State Revolving Fund (CWSRF) application for a \$442,000 loan towards a \$4,770,585 project. Drinking Water State Revolving Fund (DWSRF) will lend \$668,000, DWR Cost Share will fund \$77,520 and a CDBG grant will provide \$3,583,065. The requested term for the loan is 30 years. The project will rehabilitate 9 blocks of sanitary sewer main with cured-in-place liner. The City will issue revenue bonds payable with sewer user fees.

The committee reviewed the City of Elgin's DWSRF application for a \$668,000 loan towards a \$4,770,585 project. CWSRF will lend \$442,000, DWR Cost Share will fund \$77,520 and a CDBG grant will provide \$3,583,065. The requested term for the loan is 30 years. The project will Replace nine blocks of asbestos cement pipe water main. The City will issue revenue bonds payable with water user fees.

The committee reviewed the City of Grand Fork's DWSRF application for a \$1,718,000 loan towards a \$17,276,000 project. CWSRF will lend \$10,872,000 and \$4,686,000 of local funds will be used. This project will construct public utilities, including storm sewer system, stormwater pond, pumpstation, forcemain and sanitary sewer, to serve properties in the Korynta-Lemm 6th Resubdivision. The requested term for the loan is 25 years. The City will issue

improvement bonds payable with special assessments. The improvement bonds will be a contingent general obligation of the City, backed by the statutory requirement that the City levy a general deficiency tax in the event that the revenues from the collection of special assessments are not sufficient to pay the debt service on the improvement bonds.

The committee reviewed the City of Napoleon's DWSRF application for a \$975,000 loan towards a \$1,555,253 project. Department of Water Resources Cost Share will provide \$580,253. The project is eligible for \$282,912 of Bipartisan Infrastructure Law Emerging Contaminants loan forgiveness when NDDEQ is awarded their 2025 grant; the net DWSRF loan will be \$692,088. This project will connect 41 properties currently served by wells in which the surrounding ground water has a high concentration of manganese, to the City water distribution system. The requested term for the loan is 30 years. The City will issue improvement bonds payable with special assessments. The improvement bonds will be a contingent general obligation of the City, backed by the statutory requirement that the City levy a general deficiency tax in the event that the revenues from the collection of special assessments are not sufficient to pay the debt service on the improvement bonds.

The Public Finance Authority's Advisory Committee approved these loans at their June 17, 2025, meeting.

Industrial Commission
of North Dakota

Kelly Armstrong
GOVERNOR

Drew H. Wrigley
ATTORNEY GENERAL

Doug Goehring
AGRICULTURE COMMISSIONER



Be Legendary.

Public Finance Authority

Memorandum

To: Public Finance Authority Advisory Committee

From: DeAnn Ament, Executive Director

Date: June 11, 2025

Re: City of Elgin
Clean Water State Revolving Fund

Purpose of the Project: Replace nine blocks of asbestos cement pipe water main and rehabilitate existing sanitary sewer main using cured-in-place liner.

Project Amount:

CWSRF Request	\$ 442,000
DWSRF Request	668,000
DWR Cost Share	77,520
CDBG Grant	3,583,065
Project Total	\$ 4,770,585

Population to Benefit from the Project: 543

Population Served by the System: 543

The requested term for the Clean Water State Revolving Fund (CWSRF) loan is 30 years. The City will issue revenue bonds payable with sewer user fees. The average annual payment for the revenue bonds will be \$18,501. The 110% coverage requirement will be \$20,351 and the required debt service reserve will be \$21,800.

The City has 348 sanitary sewer connections which pay a monthly base rate of \$20.25. Effective February 1, 2025, the City raised the monthly base rate \$8.75 per user. This should generate approximately \$36,540 of revenue annually.

Sewer Fund:

	Unaudited			
	2021	2022	2023	2024
Interest Revenue	\$1	\$4	\$48	\$-
Operating Revenue	91,206	94,574	92,127	98,184
Operating Expenses	70,856	79,189	165,841 ¹	29,105
Net Operating Revenue	20,352	15,389	-73,666	69,079
Depreciation	37,625	40,842	40,842	-
Adjusted Net Operating Revenue (Expense)	\$57,977	\$56,231	-\$32,824	\$69,079
Revenue Debt Payments	\$38,864	\$38,864	\$38,885	\$77,316
Net Operating Coverage	149%	145%	-84%	89%
Proforma Net Operating Revenue	\$36,540	\$36,540	\$36,540	\$36,540
Proforma CWSRF Payment	\$18,501	\$18,501	\$18,501	\$18,501
Proforma Net Operating Coverage	165%	162%	11%	110%

¹ Increased due to \$70,316 of USDA-RD construction project expenses.

With the recent rate increases, the net operating revenues should be sufficient to meet the 110% net operating coverage.

The City's outstanding indebtedness as of December 31, 2024:

	Original Amount	Outstanding Amount
Revenue Bonds	<u>\$2,606,990</u>	<u>\$2,023,621</u>

The estimated annual debt service requirements including this new debt are \$183,570, which is an average of \$338 per resident.

The City of Elgin is located in Grant County 77 miles southwest of Bismarck. Based on the 2020 census, the total population is 543; this is a decrease of 99 from the 2010 census. The largest employers in the City are Jacobson Memorial Hospital (health services) which has 109 employees, Grant County High School employs 55 and Gooseneck Implement (agriculture) with 22 employees.

Elgin-New Leipzig Public School K-12 School Enrollment:

				Projected
2021-2022	2022-2023	2023-2024	2024-2025	2025-2026
152	152	157	159	159

The City's 2024 taxable valuation was \$1,280,342. This is an increase of \$467,699 over the 2020 taxable valuation.

Property Tax Collections 3/26/2025:

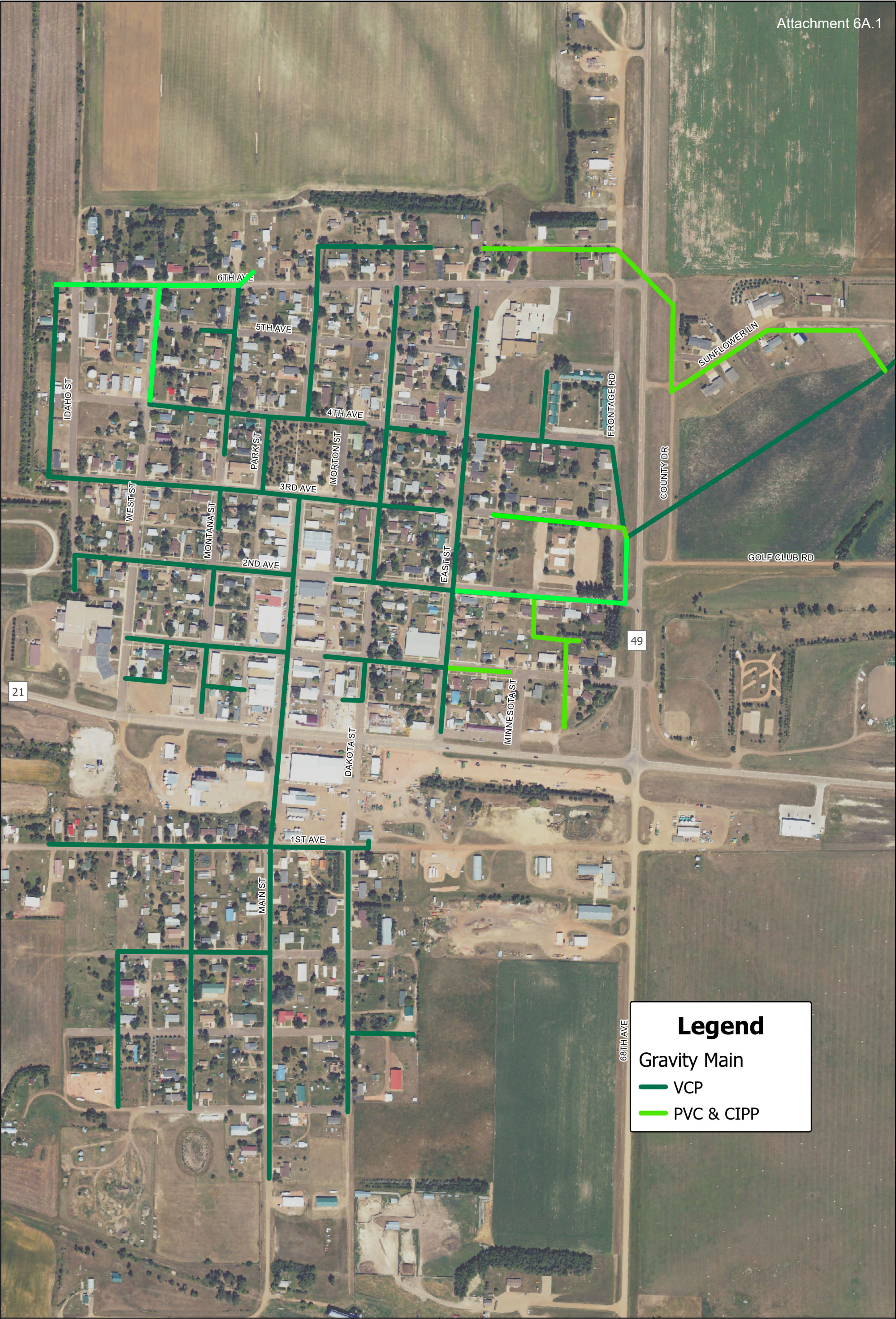
Levy Year	Dollar Amount of Levy	Amount Collected to Date of Application	Percentage Collected
2024	\$129,660	\$102,098	79%
2023	\$136,059	\$128,866	95%
2022	\$102,574	\$100,896	98%

Special Assessment Collections 3/26/2025:

Year	Dollar Amount	Amount Collected to Date of Application	Percentage Collected
2024	\$5,766	\$ 923	16%
2023	\$5,727	\$3,489	61%
2022	\$5,088	\$3,941	77%

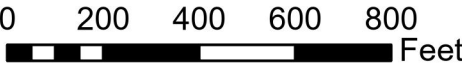
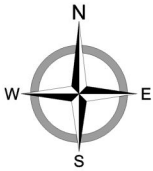
Mill Levy History:

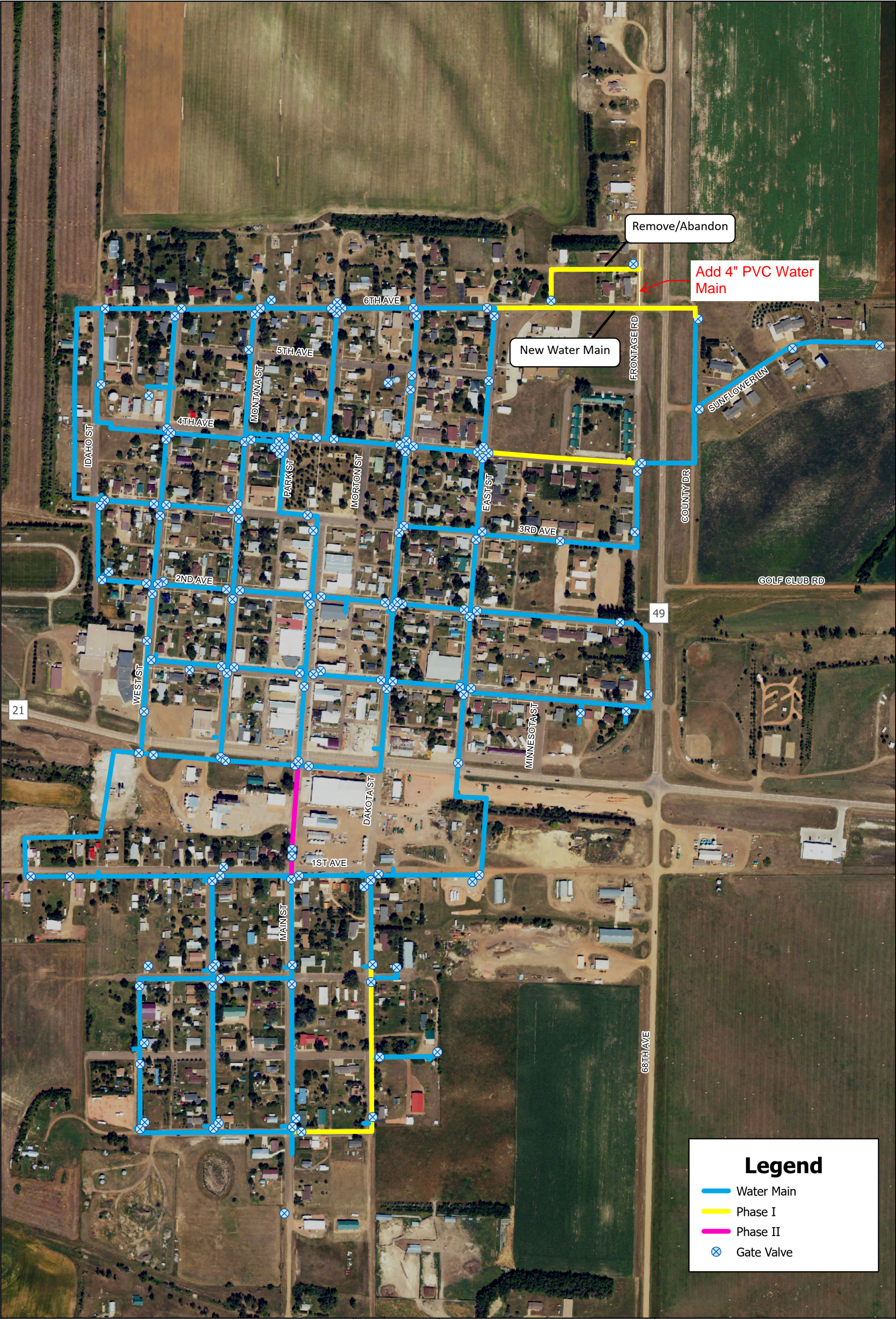
Year	City	School	Park District	State and County	Other	Total for Each Year
2024	101.27	100.50	20.93	80.97	7.00	310.67
2023	101.86	97.00	21.06	79.80	6.43	306.15
2022	109.05	97.00	30.54	84.36	7.00	327.95
2021	101.68	96.86	31.09	86.83	7.00	323.46
2020	99.94	97.00	36.87	85.56	7.00	326.37



**SANITARY SEWER SYSTEM
ELGIN, NORTH DAKOTA**

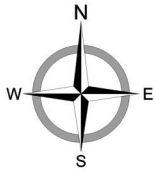
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WATER SYSTEM LAYOUT ELGIN, NORTH DAKOTA

Created By: BAS Date Created: 11/29/2023 Date Saved: 11/29/23 Date Plotted: N/A Date Exported: 11/29/23
Plotted By: brook.smith Parcel Date: n/a Aerial Image: 2022 County NAIP SIDS
Elevation Data: N/A Horizontal Datum: N/A Vertical Datum: NAVD1988
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Industrial Commission
of North Dakota

Kelly Armstrong
GOVERNOR

Drew H. Wrigley
ATTORNEY GENERAL

Doug Goehring
AGRICULTURE COMMISSIONER



Public Finance Authority

Memorandum

To: Public Finance Authority Advisory Committee

From: DeAnn Ament, Executive Director

Date: June 11, 2025

Re: City of Elgin
Drinking Water State Revolving Fund

Purpose of the Project: Replace nine blocks of asbestos cement pipe water main and rehabilitate existing sanitary sewer man using cured-in-place liner.

Project Amount:

DWSRF Request	\$ 668,000
CWSRF Request	442,000
DWR Cost Share	77,520
CDBG Grant	3,583,065
Project Total	\$ 4,770,585

Population to Benefit from the Project: 543

Population Served by the System: 543

The requested term for the Drinking Water State Revolving Fund (DWSRF) loan is 30 years. The City will issue revenue bonds payable with water user fees. The average annual payment for the revenue bonds will be \$27,898. The 110% coverage requirement will be \$30,688 and the required debt service reserve will be \$31,800.

The City has 310 residential and 53 commercial water connections which pay a monthly base rate of \$26 and \$31, respectively. Effective February 1, 2025, the City raised the monthly base rate \$1 and another \$11 rate increase is anticipated in the future. Together the two increases should generate annually approximately \$52,272 of revenue.

Water Fund:

	Unaudited			
	2021	2022	2023 ¹	2024
Interest Revenue	\$65	\$51	\$920	\$402
Operating Revenue	243,365	271,695	280,536	220,696
Operating Expenses	236,914	252,194	283,170	174,705
Net Operating Revenue	6,516	19,552	-1,714	46,393
Depreciation	53,443	53,443	53,443	0
Adjusted Net Operating Revenue	\$59,959	\$72,995	\$51,729	\$46,393
Revenue Debt Payments	\$71,223	\$61,194	\$60,769	58,216
Net Operating Coverage	84%	119%	85%	80%
Proforma Net Operating Revenue	\$52,272	\$52,272	\$52,272	\$52,272
Proforma DWSRF Payment	\$27,898	\$27,898	\$27,898	\$27,898
Proforma Net Operating Coverage	113%	141%	117%	115%

¹ Error in journal voucher and additional USDA-RD reimbursement included in revenue. Expenses increased due to engineering expenses for USDA-RD project.

With the rate increases, the net operating revenues should be sufficient to meet the 110% net operating coverage.

The City's outstanding indebtedness as of December 31, 2024:

	Original Amount	Outstanding Amount
Revenue Bonds	<u>\$2,606,990</u>	<u>\$2,023,621</u>

The estimated annual debt service requirements including this new debt are \$183,570, which is an average of \$338 per resident.

The City of Elgin is located in Grant County 77 miles southwest of Bismarck. Based on the 2020 census, the total population is 543; this is a decrease of 99 from the 2010 census. The largest employers in the City are Jacobson Memorial Hospital (health services) which has 109 employees, Grant County High School employs 55 and Gooseneck Implement (agriculture) with 22 employees.

Elgin-New Leipzig Public School K-12 School Enrollment:

				Projected
2021-2022	2022-2023	2023-2024	2024-2025	2025-2026
152	152	157	159	159

The City's 2024 taxable valuation was \$1,280,342. This is an increase of \$467,699 over the 2020 taxable valuation.

Property Tax Collections 3/26/2025:

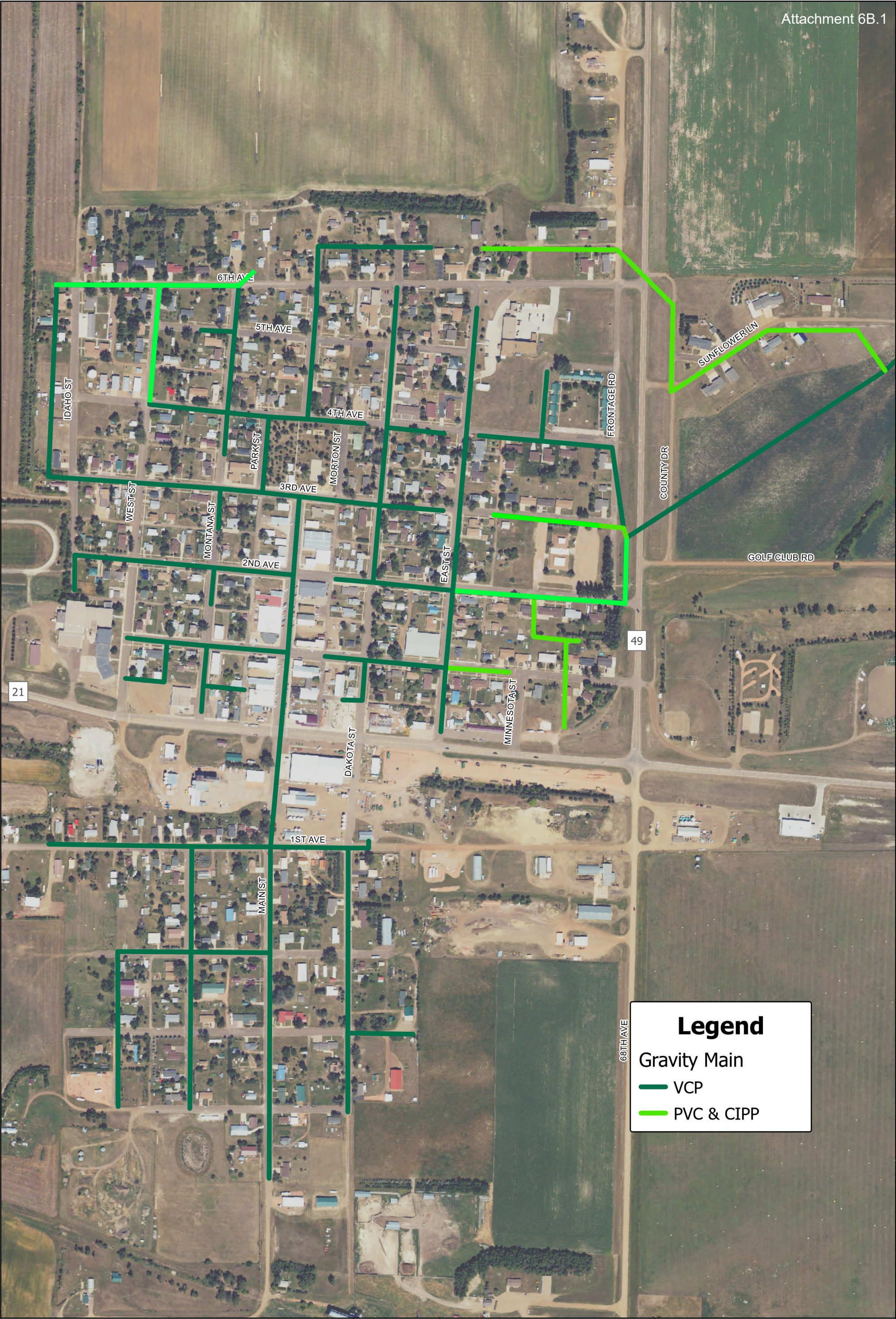
Levy Year	Dollar Amount of Levy	Amount Collected to Date of Application	Percentage Collected
2024	\$129,660	\$102,098	79%
2023	\$136,059	\$128,866	95%
2022	\$102,574	\$100,896	98%

Special Assessment Collections 3/26/2025:

Year	Dollar Amount	Amount Collected to Date of Application	Percentage Collected
2024	\$5,766	\$ 923	16%
2023	\$5,727	\$3,489	61%
2022	\$5,088	\$3,941	77%

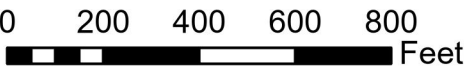
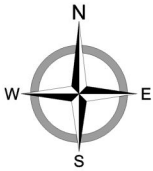
Mill Levy History:

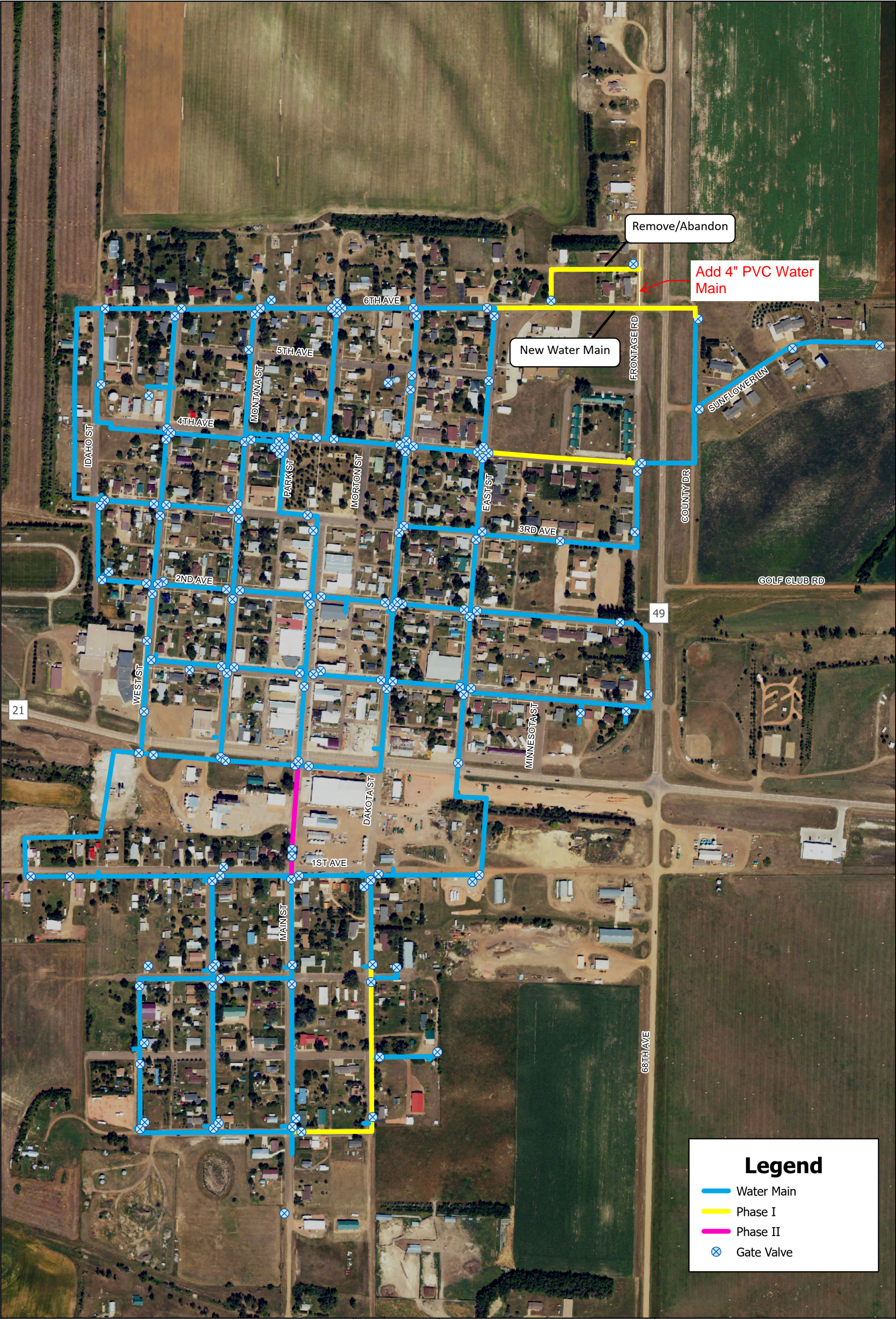
Year	City	School	Park District	State and County	Other	Total for Each Year
2024	101.27	100.50	20.93	80.97	7.00	310.67
2023	101.86	97.00	21.06	79.80	6.43	306.15
2022	109.05	97.00	30.54	84.36	7.00	327.95
2021	101.68	96.86	31.09	86.83	7.00	323.46
2020	99.94	97.00	36.87	85.56	7.00	326.37



**SANITARY SEWER SYSTEM
ELGIN, NORTH DAKOTA**

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Elevation Data: N/A Horizontal Datum: N/A Vertical Datum: NAVD1988
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Legend

Water Main

Phase I

Phase II

Gate Valve

WATER SYSTEM LAYOUT

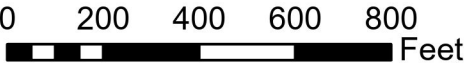
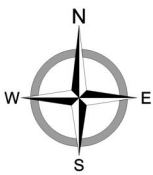
ELGIN, NORTH DAKOTA

Created By: BAS Date Created: 11/29/2023 Date Saved: 11/29/23 Date Plotted: N/A Date Exported: 11/29/23

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Elevation Data: N/A Horizontal Datum: N/A Vertical Datum: NAVD1988

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Industrial Commission
of North Dakota

Doug Burgum
GOVERNOR

Drew H. Wrigley
ATTORNEY GENERAL

Doug Goehring
AGRICULTURE COMMISSIONER



Public Finance Authority

Memorandum

To: Public Finance Authority Advisory Committee
Miles Silbert, Public Financial Management, LLC
Kylee Merkel, Bank of North Dakota

From: DeAnn Ament, Executive Director

Date: June 3, 2025

Re: City of Grand Forks
Drinking Water State Revolving Fund

Purpose of the Project: Construct public utilities, including storm sewer system, stormwater pond, pumpstation, forcemain and sanitary sewer, to serve properties in the Korynta-Lemm 6th Resubdivision.

Project Amount:

DWSRF Request	\$ 1,718,000
CWSRF Request	10,872,000
Local Funds	4,686,000
Project Total	\$ 17,276,000

Population to Benefit from the Project: 1,000

Population Served by the System: 58,692

The requested term for the Drinking Water State Revolving Fund (DWSRF) loan is 25 years. The average annual payment for the improvement bonds will be \$84,256. The City will issue improvement bonds payable with special assessments. The improvement bonds will be a contingent general obligation of the City, backed by the statutory requirement that the City will levy a general deficiency tax in the event that the revenues from the collection of special assessments are not sufficient to pay the debt service on the improvement bonds.

The City residential users pay a monthly water base rate of \$9.58 with a \$4.95/1,000-gallon charge and commercial users pay a monthly water base rate of \$10.52 with a \$4.83/1,000-gallon charge. The City annually reviews and adjusts the base and volume rate.

Water Fund:

	2021	2022	2023
Interest Revenue	\$48,996	\$69,846	\$587,637
Operating Revenue	13,212,174	12,915,729	13,684,826
Operating Expenses	9,319,609	11,356,989	11,694,756
Net Operating Revenue	3,941,561	1,628,586	2,577,707
Infrastructure Sales Tax Transfer	1,810,836	2,138,360	2,030,000
Noncash: Pension Adjustment	-	193,078	-
Adjusted Net Operating Revenue	\$5,752,397	\$3,960,024	\$4,607,707
Revenue Bond Payments	\$3,150,298	\$3,277,856	\$3,091,806
Net Operating Coverage	183%	121%	149%

The City outstanding indebtedness as of December 31, 2024:

	Original Amount	Outstanding Amount
General Obligation Bonds	\$ 2,735,000	\$ 565,000
Special Assessment Bonds	155,438,989	115,001,141
Water/Sewer Revenue Bonds ¹	175,848,141	136,223,442
Sales Tax Revenue Bonds	40,380,000	17,715,000
	<u>\$ 374,402,130</u>	<u>\$269,504,583</u>

¹ All payments have been made as agreed. The City has eight CWSRF and one DWSRF loans with outstanding balances of \$117,797,365 as of December 31, 2024.

The debt outstanding per resident, including these new requests, is \$4,806.

The City of Grand Forks is located in Grand Forks County 82 miles north of Fargo on Interstate 29. Based on the 2020 census, the total population is 59,166; this is an increase of 6,328 from the 2010 census. The largest employers in the City are University of North Dakota which has 5,562 employees, Altru Health Services with 3,400 employees, and Grand Forks Air Force Base employs 2,897.

K-12 School Enrollment:

			Current	Estimated
2021-2022	2022-2023	2023-2024	2024-2025	2025-2026
7,407	7,440	7,428	7,676	7,700

The City's 2024 taxable valuation was \$285,657,667. This is an increase of \$51,148,346 over the 2020 taxable valuation.

Property Tax Collections 5/31/2025:

Levy Year	Dollar Amount of Levy	Amount Collected to Date of Application	Percentage Collected
2024	25,195,471	22,805,709	91%
2023	25,847,192	24,561,187	95%
2022	24,347,205	23,250,265	95%

Special Assessment Collections 5/31/2025:

Year	Dollar Amount	Amount Collected to Date of Application	Percentage Collected
2024	10,161,885	9,423,991	93%
2023	9,286,257	8,857,595	95%
2022	9,270,607	9,265,636	100%

Mill Levy History:

Year	City	School	Park District	State and County	Total for Each Year
2024	92.25	130.50	36.79	87.00	346.54
2023	96.37	131.69	37.31	87.16	352.53
2022	96.84	110.79	37.80	82.63	328.06
2021	97.02	111.00	37.88	79.29	325.19
2020	97.87	100.94	38.19	80.82	317.82



Memorandum

TO: DeAnn Ament, Executive Director
North Dakota Public Finance Authority

FROM: PFM Financial Advisors LLC

DATE: June 18, 2025

RE: Marketplace Analysis - Drinking Water State Revolving Fund Program
City of Grand Forks

The City of Grand Forks (the “City”) has presented a request to the Authority and the North Dakota Department of Environmental Quality (“Department”) for a \$1,718,000 loan under the Drinking Water State Revolving Fund Program (“DWSRF Program”). The DWSRF Program is used to make subsidized interest rate loans to political subdivisions for the purpose of constructing various water treatment, distribution and storage facilities as approved by the Department in accordance with federal and state regulations and an updated Intended Use Plan prepared by the Department.

The City intends to use the proceeds to serve properties in the Korynta-Lemm 6th Subdivision with the construction of storm sewer system, stormwater pond, pumpstation, foremain and sanitary sewer.

The municipal securities to be acquired by the Authority will be improvement bonds of the City payable from special assessments levied against the benefited property. The proposed term of the loan is 25 years with a subsidized interest rate of 1.50%. The City’s average annual payment under the proposed loan will be approximately \$84,256. The improvement bonds will be a contingent general obligation of the City, which will be required by law to levy a general deficiency tax if the revenues collected from the levy of special assessments are insufficient to make the debt service payments.

As of December 31, 2024, the City has \$565,000 of General Obligation Bonds, \$115,001,141 of Special Assessment Bonds, \$17,715,000 of Sales Tax Revenue Bonds and \$136,223,442 of Water/Sewer Revenue Bonds outstanding. The City currently has eight Clean Water and one Drinking Water loans outstanding totaling \$117,797,365. The City is current in its payments for its outstanding Authority loans.

Funding the construction of the City’s improvements has been included in a list of approved uses as prepared and updated by the Department. As an authorized participant in the DWSRF Program, the City will benefit substantially from the subsidized fixed rate loans made under the Program. Consequently, no other financing mechanism can provide a greater cost advantage than that offered by the DWSRF Program.

Attachment 6C.2

Memorandum

To: Industrial Commission

From: Kylee Merkel, Business Banker
Bank of North Dakota

Date: June 10, 2025

RE: City of Grand Forks
Drinking Water State Revolving Fund Program

ND Public Finance Authority has delivered to BND their memo which recommends approval of a \$1,718,000 loan to the City of Grand Forks under the Drinking Water State Revolving Fund (DWSRF). The entire cost of the project is \$17,276,000, with Clean Water State Revolving Fund providing a \$10,872,000 loan and the City contributing \$4,686,000 of local funds.

The project is for construction of public utilities to serve the properties in the Korynta-Lemm 6th Resbudivision. The requested loan term is 25 years. The City will issue an improvement bond payable with special assessment collections. The annual payment will average \$84,256.

Water Fund:

Water Fund	2021	2022	2023
Operating Revenue	13,212,174	12,915,729	13,684,826
Interest Revenue	48,996	69,846	587,637
Operating Expenses	-9,319,609	-11,356,989	-11,694,756
Net Operating Revenue	3,941,561	1,628,586	2,577,707
Infrastructure Sales Tax Transfer	1,810,836	2,138,360	2,030,000
Plus: Pension Adjustment	0	193,078	0
Adjusted Net Operating Income	5,752,397	3,960,024	4,607,707
Current Debt Service	3,150,298	3,277,856	3,091,806
Debt Service Coverage	183%	121%	149%

Residential connections pay a monthly water base rate of \$9.58 and a volume charge of \$4.95 per 1,000 gallons. Commercial connections pay a monthly base rate of \$10.52 and a volume charge of \$4.83 per 1,000 gallons. The City annually reviews and adjust rates as needed.

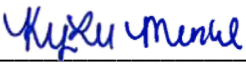
Outstanding Debt (as of December 31, 2024):

	Original Amount	Current Balance
General Obligation Bonds	2,735,000	565,000
Special Assessment Bonds	155,438,989	115,001,141
Sales Tax Revenue Bonds	40,380,000	17,715,000
Water & Sewer Revenue Bonds	175,848,141	136,223,442
	374,402,130	269,504,583

Average annual debt service requirements are estimated at \$20,827,514, which is an average of \$352.02 per resident.

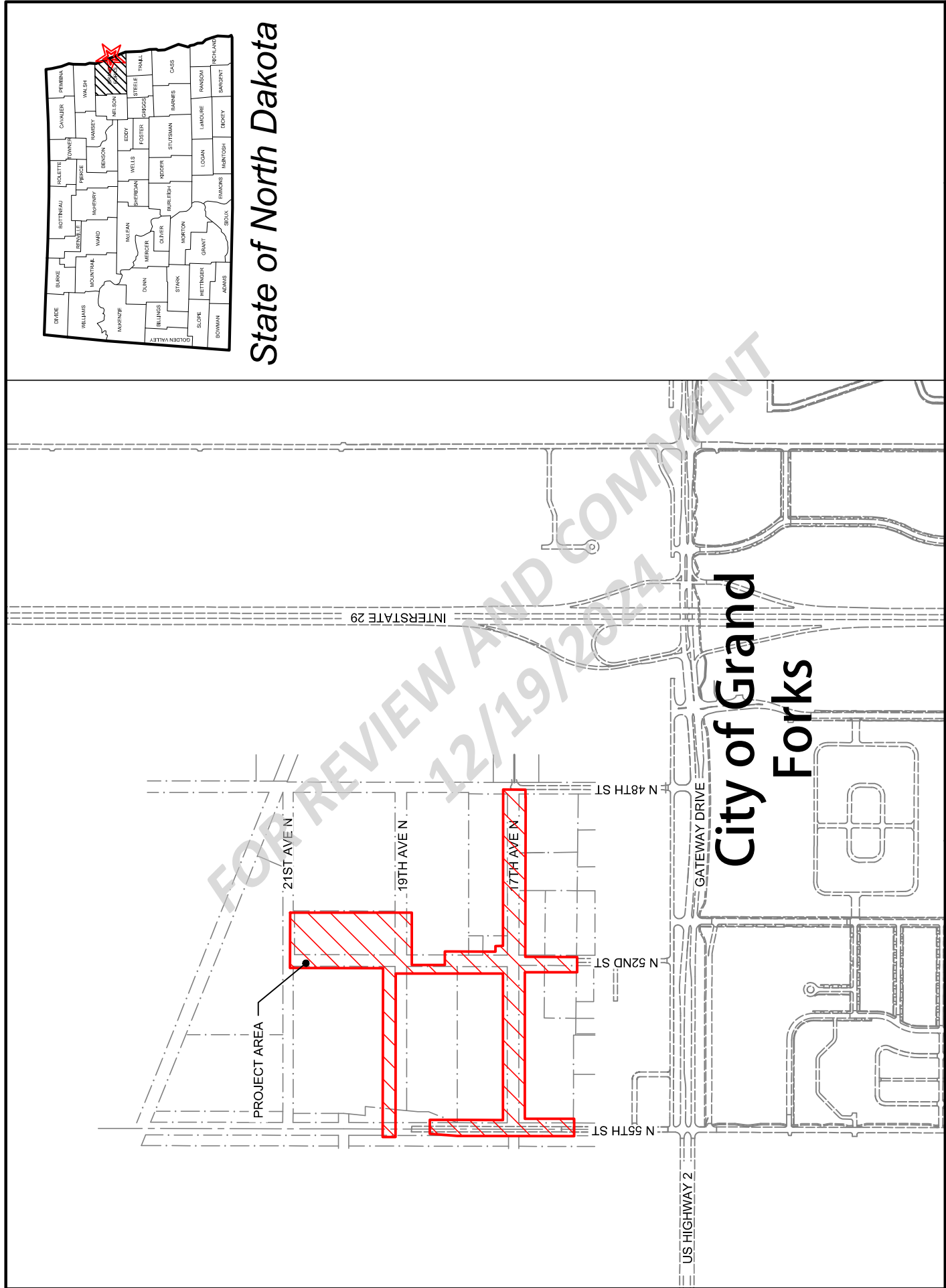
Historical census populations for the City of Grand Forks were 59,166 in 2020, 52,838 in 2010 and 49,342 in 2000. The largest employers in the City are University of North Dakota, Altru Health System and Grand Forks Air Force Base.

Based upon the PFA recommendation and the benefits obtained with this project, BND concurs with their evaluation and support of the request.




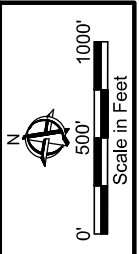
Kylee Merkel
Business Banker





State of North Dakota

 CPS CIVIL ENGINEERING / PLANNING / SURVEYING	CPS Ltd. 308 2nd Avenue North Grand Forks, ND 58203 Phone 701.746.7459
	EXHIBIT 18.1 VICINITY MAP





Memorandum

To: Public Finance Authority Advisory Committee

From: DeAnn Ament, Executive Director

Date: May 20, 2025

Re: City of Napoleon
Drinking Water State Revolving Fund Program Loan

Purpose of the Project: Connect 41 properties currently served by wells, and the surrounding ground water has a high concentration of manganese, to the City water distribution system.

Project Amount:

DWSRF Request	\$ 975,000
DWR Cost Share	580,253
Project Total	\$1,555,253

DWSRF Request	\$ 975,000
DWSRF Loan Forgiveness	(282,912)
Net DWSRF Loan	\$ 692,088

Population to Benefit from the Project: 90
Population Served by the System: 749

The requested term for the Drinking Water State Revolving Fund (DWSRF) loan is 30 years. Accordingly, the average annual payment will be approximately \$29,094. The City will issue improvement bonds payable with special assessments. The improvement bonds will be a contingent general obligation of the City, backed by the statutory requirement that the City levy a general deficiency tax in the event that the revenues from the collection of special assessments are not sufficient to pay the debt service on the improvement bonds.

The City water users pay a monthly base rate of \$78 per connection (includes 3,000 gallons) and \$5/1,000 gallons.

Water Fund:

	2021	2022	2023
Operating Revenue	\$363,200	\$313,828	\$362,736
Operating Expenses	117,280	102,149	186,968
Net Operating Revenue	245,920	211,679	175,768
Depreciation	6,630	6,630	29,689
Adjusted Net Operating Revenue	\$252,550	\$218,309	\$205,457
Revenue Bond Payments	-	15,327	15,327
Net Operating Coverage	-	1,424%	1,340%

Outstanding Debt December 31, 2024:

	Original Amount	Outstanding Amount
Improvement Bonds	\$6,487,000	\$ 5,178,351
Total Bonds	\$6,487,000	\$ 5,178,351

The average annual bond payment including this new issue is \$372,387 or \$497 per resident.

The City of Napoleon is located in Logan County approximately 71 miles southeast of Bismarck on ND Highway 3. The total population according to the 2020 census is 749; this is a decrease of 43 from the 2010 census. The largest employers in the area are Wentz Living Center (care center) which employs 30, Napoleon School with 25 employees, and Central Dakota Frontier (agriculture) with 15 employees.

K-12 School Enrollment:

				Projected
2021-2022	2022-2023	2023-2024	2024-2025	2025-2026
221	239	245	241	250

The City's 2024 taxable valuation was \$2,484,113. This is an increase of \$713,342 over the 2020 taxable valuation.

Property Tax Collections as of April 16, 2025:

Levy Year	Dollar Amount of Levy	Amount Collected to Date of Application	Percentage Collected
2024	\$266,529	\$216,259	81%
2023	\$263,613	\$246,317	93%
2022	\$243,714	\$231,034	95%



Special Assessment Collections as of April 16, 2025:

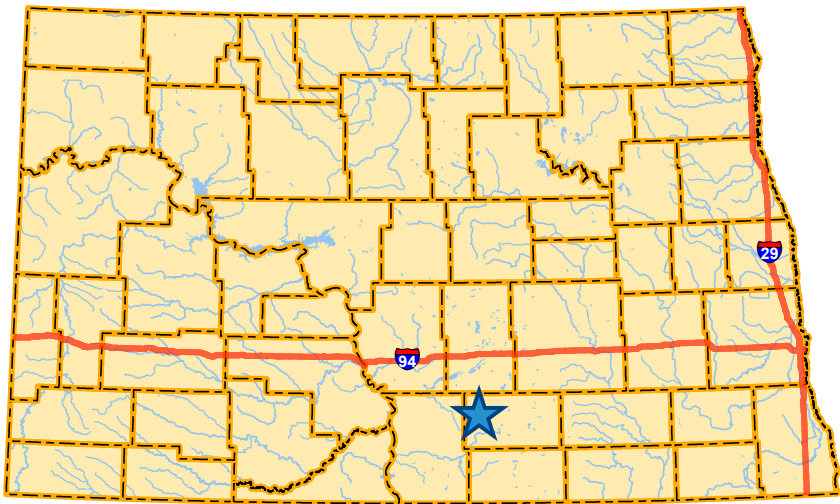
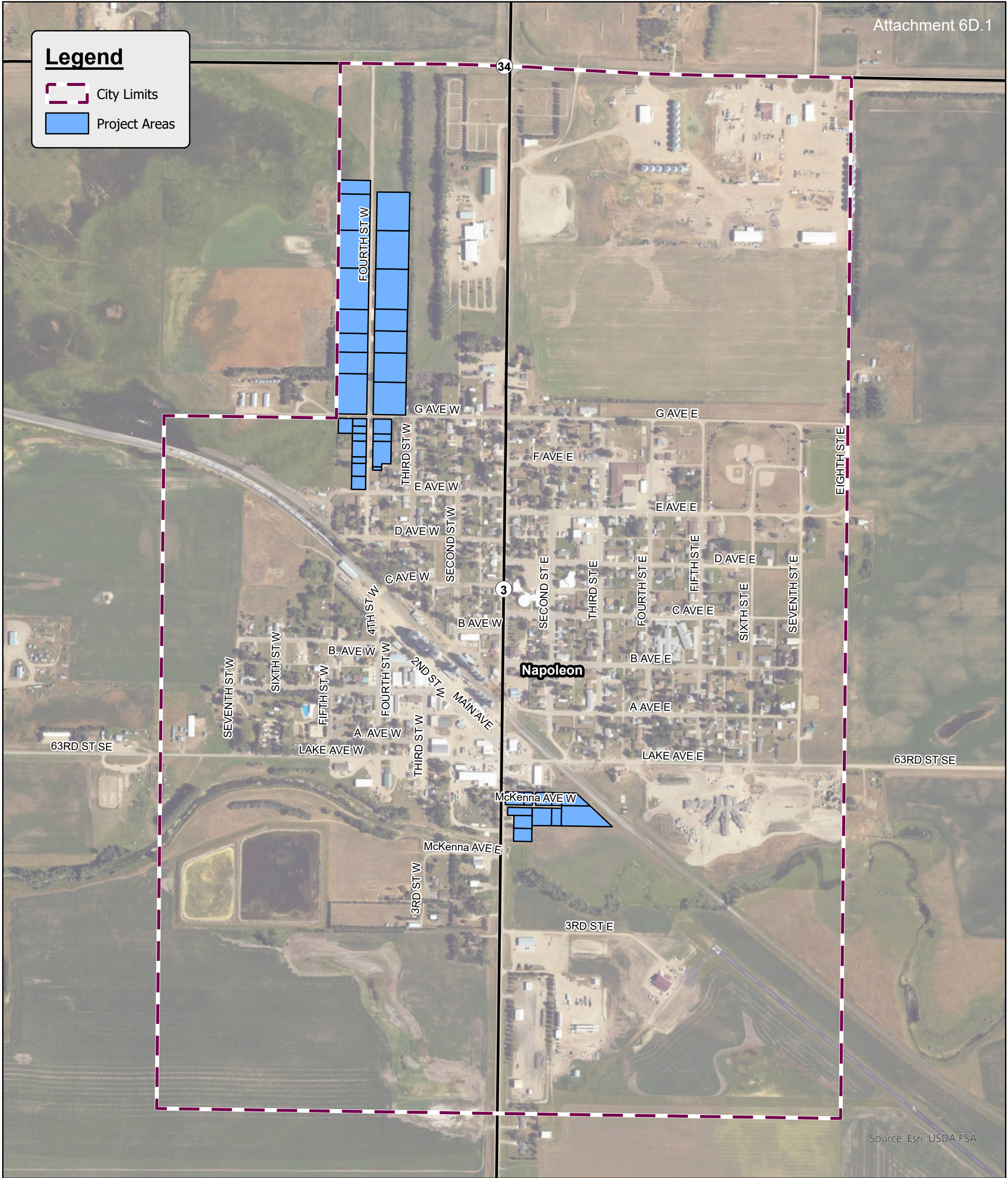
Year	Dollar Amount	Amount Collected to Date of Application	Percentage Collected
2024	\$136,236	\$114,135	84%
2023	\$103,650	\$98,690	95%
2022	\$104,926	\$101,567	97%

Mill Levy History:

Year	City	School	Park District	State and County	Other	Total for Each Year
2024	52.53	106.50	4.56	95.15	13.00	271.74
2023	40.92	106.50	4.56	95.35	8.07	255.40
2022	27.15	109.00	4.56	95.44	8.74	244.89
2021	35.12	110.00	4.56	98.44	9.29	257.41
2020	43.68	113.50	4.56	99.19	9.66	270.59

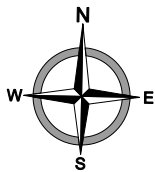
Legend

-  City Limits
-  Project Areas



**WATER SYSTEM IMPROVEMENTS 2025
NAPOLEON, NORTH DAKOTA**

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Industrial Commission of North Dakota



Kelly Armstrong
Governor

Drew H. Wrigley
Attorney General

Doug Goehring
Agriculture Commissioner

TO: North Dakota Industrial Commission Members

FR: Mill President Vance Taylor
Executive Director Karen Tyler

DT: June 26, 2025

RE: State Mill Profit Transfers

North Dakota Century Code § 54-18-19 and 54-18-21 state the following:

54-18-19. Transfer of North Dakota mill and elevator profits to general fund. The industrial commission shall transfer to the state general fund fifty percent of the annual earnings and undivided profits of the North Dakota mill and elevator association after any transfers to other state agricultural-related programs. The moneys must be transferred on an annual basis in the amounts and at the times requested by the director of the office of management and budget.

54-18-21. Annual transfer. Within thirty days after the conclusion of each fiscal year, the industrial commission shall transfer five percent of the net income earned by the state mill and elevator association during that fiscal year to the agricultural products utilization fund.

Mill management is planning to close their books on July 21, 2025, and is proposing to make the transfers no later than July 24, 2025. Therefore, we are requesting that the Industrial Commission authorize the transfer of 50% of the Mill FY 2025 profits to the General Fund and the 5% of net income to the Agricultural Products Utilization Fund utilizing unaudited numbers by no later than July 24, 2025, with Mill management reporting the amount of the transfers to the Commission at their July 30, 2025, meeting.

We would propose the following action by the Commission:

It was moved by __ and seconded by __ that the North Dakota Mill is authorized to transfer 5% of the net income earned by the Mill for fiscal year 2025 to the Agricultural Products Utilization Fund (APUF) and transfer to the General Fund 50% of the annual earnings and undivided profits of the Mill after any transfers to other state agricultural-related programs as per the request of the Office of Management and Budget Director noting that the transfers

will be based on unaudited year-end results and reserving the right to adjust the transfer numbers once the year-end results have been audited. Further that Mill management reports the amount of the transfers to the Commission at the July 30, 2025, meeting.



June 26, 2025

TO: Industrial Commission

FR: Brandon Dettlaff, Executive Director

RE: **Issuance of Multifamily Revenue Bonds- Pleasant Valley Apartments**

The North Dakota Housing Finance Agency requests **that the Industrial Commission approve the issuance of multifamily revenue bonds Pleasant Valley Apartments Series 2025, in an aggregate amount not to exceed \$9,500,000.**

Pleasant Valley Apartments is an existing 60-unit general occupancy Section 8 project. Originally constructed between 1978 and 1981, the project has not undergone any significant renovations since it was built. Renovations include full kitchen, appliances, and flooring replacement, exterior upgrades, replacement of all building systems, and improvements to grounds and parking. The total development costs are estimated at \$15.5 million.

The transaction involves the sale of bonds which will be secured by a construction loan through Bridgewater Bank. Once construction is complete and the project is stabilized, the bonds will be converted into a physical Governmental Note and purchased by Lument Real Estate Capital. Freddie Mac will commit to purchase the note from Lument shortly after conversion.

The operative documents for the tax-exempt bond transaction are:

- (a) A resolution authorizing the issuance of tax-exempt multifamily housing revenue bonds, Series 2025, amount not to exceed \$9,500,000.
- (b) Trust Indenture
- (c) Loan Agreement
- (d) Regulatory Agreement
- (e) Bond Purchase Agreement

The Commission, by executing the authorizing resolution, is approving the operative documents in their respective current forms and authorizing the Executive Director and Chief Financial Officer (Authorized Officers) to execute the documents in their respective current forms with such changes as are consistent with the parameters set forth in the authorizing resolution and approved by the Authorized Officers, such approval being evidenced by an Authorized Officer's execution of the documents.

STATE OF NORTH DAKOTA
NORTH DAKOTA HOUSING FINANCE AGENCY
MULTIFAMILY HOUSING REVENUE BONDS
(PLEASANT VALLEY APARTMENTS)
SERIES 2025

**A RESOLUTION AUTHORIZING THE ABOVE CAPTIONED INDEBTEDNESS IN AN
AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$9,500,000; APPROVING
THE FORM OF CERTAIN FINANCING DOCUMENTS AND OTHER RELATED
DOCUMENTS; AUTHORIZING THE EXECUTION OF SUCH DOCUMENTS; AND
PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.**

WHEREAS, the Industrial Commission of North Dakota (the “Commission”) acting in its capacity as the North Dakota Housing Finance Agency (the “Agency”), is empowered by the provisions of the North Dakota Century Code Chapter 54-17 (the “Act”) to provide financing, directly or indirectly, of construction, permanent and combined construction and permanent loans for the acquisition, construction, refurbishing, reconstruction, construction or improvement of multifamily residential housing in which at least twenty percent of the units are held for occupancy by persons or families of low and moderate income; and

WHEREAS, the Agency intends to issue its Multifamily Housing Revenue Bonds (Pleasant Valley Apartments), Series 2025, which Bonds, upon the satisfaction of certain conditions of conversion, will be converted into a physical Governmental Note (together, the “Bonds”), in an aggregate principal amount not to exceed \$9,500,000, the proceeds of which will be used to finance a loan for the acquisition, construction and equipping of Pleasant Valley Apartments, an 60-unit multifamily residential rental project (the “Project”); and

WHEREAS, the Bonds will be issued pursuant to an Trust Indenture (the “Indenture”), between the Agency and Wilmington Trust, National Association, in its capacity as trustee (the “Trustee”), which will be in substantially the form attached hereto as Attachment A, whereby the Agency would be authorized to issue the Bonds subject to the terms, conditions and limitations established herein and in the Indenture; and

WHEREAS, the Bonds will be purchased by Lument Securities, LLC (the “Underwriter”) in the manner, at the purchase price, and on the terms and conditions set forth in the Indenture and a Bond Purchase Agreement among the Issuer, Borrower (as defined below), and Underwriter (the “Bond Purchase Agreement”) in substantially the form attached hereto as Attachment B; and

WHEREAS, the proceeds of the Bonds will be used to finance a loan (the “Bond Loan”) to Pleasant Valley TC Apartments, LP, a North Dakota limited partnership, or another affiliate thereof (the “Borrower”), pursuant to a Loan Agreement, by and among the Agency, the Trustee, and the Borrower (the “Loan Agreement”), which will be in substantially the form attached hereto as Attachment C; and

WHEREAS, the interest on the Bonds is intended to qualify for a federal tax exemption under Section 142 of the Internal Revenue Code of 1986 (the “Code”), and to ensure that the Bonds maintain their tax exempt status, the Borrower will enter into a Regulatory Agreement and

Declaration of Restrictive Covenants (the “Regulatory Agreement”), which will be in substantially the form attached hereto as Attachment D; and

NOW, THEREFORE, BE IT RESOLVED:

Section 1. Findings. The Commission hereby finds and determines that:

- (a) the Project financed through the issuance of the Bonds constitutes a “multifamily housing facility” within the meaning of Sections 54-17-07.2 and 54-17-07.3(3) of the Act; and
- (b) the Bond Loan will provide the Borrower with financing for the acquisition, construction, refurbishing, reconstruction, construction or improvement of the Project; and
- (c) that the Project will be of public use and will provide a public benefit.

Section 2. Approval of Indenture. The Indenture is hereby approved in the form hereinabove described, and the Executive Director, the Director of Planning and Housing Development or the Chief Financial Officer of the Agency (each, including any individual authorized to act on his or her behalf, an “Authorized Officer”) is hereby authorized and directed to execute and deliver the Indenture, with such changes, insertions or omissions therein as may be approved by such person, such approval to be evidenced conclusively by such execution of the Indenture, and any other Authorized Officer is hereby authorized and directed to attest thereto.

Section 3. Authorization and Sale of Bonds. The issuance, sale, and public offering of the Bonds are hereby authorized and approved. The final principal amount and terms of the Bonds shall be determined by any Authorized Officer, subject to the following conditions:

- (a) The Bonds shall not be general obligations of the Commission or the Agency but shall be limited obligations payable solely and only from moneys pledged under the Indenture as required by the Loan Agreement.
- (b) The Bonds shall mature no later than August 1, 2045, bear interest at a fixed rate or rates not to exceed 12% per annum, be in an aggregate principal amount not to exceed \$9,500,000, be sold to the Underwriter at not less than 100% of the principal amount thereof and have the other terms and provisions (including provisions with respect to the redemption of the Bonds prior to maturity, if any) as described to the Commission and definitively set forth in the Indenture upon execution and delivery as aforesaid in Section 2 hereof.
- (c) The Bonds shall be executed and delivered substantially in the forms set forth in the Indenture, with such additions, omissions and changes as are required or permitted by the Indenture.
- (d) The Bonds shall be executed in the name of the Commission by the manual or facsimile signature of each of the members of the Commission, with the official seal of the Commission (or a facsimile thereof) impressed, imprinted or otherwise reproduced thereon, and attested by the manual or facsimile signature of any Authorized Officer, and

their execution shall evidence their approval of the final terms thereof. Such Bonds shall not be valid or obligatory for any purpose until authenticated by the manual signature of an authorized officer of the Trustee.

Section 4. Approval of Bond Purchase Agreement. The Bond Purchase Agreement is hereby approved in the form hereinabove described, and any Authorized Officer is hereby authorized to execute and deliver the Bond Purchase Agreement, with such changes, insertions or omissions therein as may be approved by such person, such approval to be evidenced conclusively by such execution of the Bond Purchase Agreement.

Section 5. Approval of Loan Agreement. The Loan Agreement is hereby approved in the form hereinabove described, and any Authorized Officer is hereby authorized to execute and deliver the Loan Agreement, with such changes, insertions or omissions therein as may be approved by such person, such approval to be evidenced conclusively by such execution of the Loan Agreement.

Section 6. Approval of Regulatory Agreement. The Regulatory Agreement is hereby approved in the form hereinabove described, and any Authorized Officer is hereby authorized to execute and deliver the Regulatory Agreement, with such changes, insertions or omissions therein as may be approved by such person, such approval to be evidenced conclusively by such execution of the Regulatory Agreement.

Section 7. Ratification of Prior Actions. All action previously taken by the officers, members or staff of the Agency within the authority granted herein, with respect to the Indenture, the Loan Agreement, the Bonds, and the Regulatory Agreement is approved, and a public hearing with respect to the issuance of the Bonds is hereby approved, confirmed and ratified.

Section 8. Execution of Tax Documents. Any Authorized Officer is hereby authorized to execute certifications as to the Agency's reasonable expectations regarding the amount and use of the proceeds of the Bonds, to file related forms with the Internal Revenue Service and to execute appropriate land use restriction agreements to comply with the Internal Revenue Code of 1986, as amended, particularly Sections 142 and 148 thereof.

Section 9. Additional Actions Authorized. Any Authorized Officer and any other officer, employee, agent, members or staff of the Agency, acting alone or acting with others, are each hereby authorized and directed to execute and deliver any or all other documents which may be required under the terms of the Indenture, the Loan Agreement, or the Regulatory Agreement, and to take such other action as may be required or appropriate for the performance of the duties imposed thereby or to carry out the purposes thereof.

Section 10. Authorization of Authorized Officers. Any Authorized Officer is hereby authorized to deliver an Agency Certificate, or such other document as may be necessary or appropriate, at the time of issuance of the Bonds which cures ambiguities, defects or omissions herein, corrects or supplements any provision herein, lessens the obligations of the Agency hereunder, or adds to the rights or options of the Agency, all in furtherance of the purposes and programs of the Agency.

Section 11. Effective Date. This Resolution shall become effective immediately.

IN WITNESS WHEREOF, this Resolution has been signed on June 26, 2025.

INDUSTRIAL COMMISSION OF NORTH DAKOTA ACTING AS THE
NORTH DAKOTA HOUSING FINANCE AGENCY

Kelly Armstrong, Governor

Drew Wrigley, Attorney General

Doug Goehring, Agriculture Commissioner

Attest:

Karen Tyler
Executive Director and Secretary

ATTACHMENT A
FORM OF TRUST INDENTURE

ATTACHMENT B

FORM OF BOND PURCHASE AGREEMENT

ATTACHMENT C
FORM OF LOAN AGREEMENT

ATTACHMENT D

FORM OF REGULATORY AGREEMENT

BOND PURCHASE AGREEMENT

Dated July __, 2025

by and among

LUMENT SECURITIES, LLC,

NORTH DAKOTA HOUSING FINANCE AGENCY

and

PLEASANT VALLEY TC APARTMENTS, LP

Relating to:

\$9,500,000

**North Dakota Housing Finance Agency
Multifamily Housing Revenue Bonds
(Pleasant Valley Apartments)
Series 2025**

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BOND PURCHASE AGREEMENT

Lument Securities, LLC (the “*Underwriter*”), on its own behalf and not as your fiduciary, hereby offers to enter into this Bond Purchase Agreement dated July __, 2025 (this “*Purchase Contract*”) with the Industrial Commission of North Dakota, acting in its capacity as the North Dakota Housing Finance Agency (together with its successors and assigns, the “*Issuer*”) and Pleasant Valley TC Apartments, LP, a North Dakota limited partnership (the “*Borrower*”), for the sale by the Issuer and the purchase by the Underwriter of the Bonds defined below which are being issued by the Issuer for the benefit of the Borrower. The Underwriter is an “underwriter” as defined in Section 2(a)(11) of the Securities Act of 1933, as amended (the “*1933 Act*”). This offer is made subject to the written acceptance hereof by the Issuer and the Borrower and delivery of such acceptance (in the form of one or more counterparts hereof) at or prior to 5:00 p.m., Local Time, on the date hereof, and will expire if not so accepted at or prior to such time (or such later time as the Underwriter may agree in writing). Upon such acceptance, this Purchase Contract will be binding upon each of the Issuer, the Borrower and the Underwriter.

Section 1. Definitions and Background.

1.1 Capitalized terms used in this Purchase Contract but not defined herein have the meanings assigned to them in the Trust Indenture by and between the Issuer and Wilmington Trust, National Association, a national banking association (the “*Trustee*”) dated as of July 1, 2025 (the “*Indenture*”).

1.2 This Purchase Contract is for the sale and delivery of the Issuer’s \$9,500,000 North Dakota Housing Finance Agency Multifamily Housing Revenue Bonds (Pleasant Valley Apartments), Series 2025 (the “*Bonds*”) which are being issued by the Issuer to provide financing for the Project. The Bonds will be issued pursuant to (i) that certain resolution of the Issuer adopted June 26, 2025 (the “*Bond Resolution*”), (ii) Chapter 54-17 of the North Dakota Century Code, as amended and supplemented from time to time (the “*Act*”), and (iii) the terms of the Indenture. The Bonds will be payable from sources pledged under the Indenture, including the moneys and securities from time to time held by the Trustee in the funds and accounts established under the terms of the Indenture (collectively, the “*Trust Estate*”). In connection with the issuance of the Bonds, the Issuer will execute and deliver this Purchase Contract; the Indenture; the Loan Agreement by and between the Issuer and the Borrower (the “*Loan Agreement*”) dated as of July 1, 2025; the Tax Compliance Agreement and No-Arbitrage Certificate, each dated July __, 2025 (collectively, the “*Tax Certificate*”); and the Regulatory Agreement and Declaration of Restrictive Covenants among the Issuer, the Borrower and the Trustee (the “*Regulatory Agreement*”) dated as of July 1, 2025 (collectively, the “*Issuer Documents*”); and the Borrower will execute and deliver this Purchase Contract, the Loan Agreement, the Continuing Disclosure Agreement, the Remarketing Agreement, the Tax Certificate, and the Regulatory Agreement (collectively, the “*Borrower Documents*”). The Issuer Documents and the Borrower Documents are referred to herein as the “*Financing Documents*.”

Section 2. Purchase and Sale.

2.1 Subject to the terms and conditions set forth in this Purchase Contract, the Underwriter hereby agrees to purchase from the Issuer and the Issuer hereby agrees to sell to the Underwriter, at the Closing (as hereafter defined), \$ _____ aggregate principal amount of its Bonds at a price set forth in Exhibit A attached hereto.

2.2 The Bonds will (i) be issued pursuant to the Indenture and (ii) have the payment-related terms (that is, the dated date, maturity date, interest rate and price) set forth in Exhibit A attached hereto, and will otherwise correspond to the description thereof contained in the hereinafter-defined Official Statement.

2.3 The Issuer, the Borrower and the Underwriter each acknowledges and agrees that (i) the purchase and sale of the Bonds pursuant to this Purchase Contract is an arm's-length commercial transaction among the Issuer, the Borrower and the Underwriter, (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriter is and has been acting solely as a principal and is not acting as the agent, municipal advisor, financial advisor, or fiduciary of the Issuer or the Borrower, (iii) the Underwriter has not assumed individually or collectively any advisory or fiduciary responsibility in favor of the Issuer or the Borrower with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriter has advised or provided other services or is currently advising or providing other services to the Issuer or the Borrower on other matters) and the Underwriter has no contractual obligation to the Issuer or the Borrower with respect to the offering contemplated hereby except the obligations expressly set forth in this Purchase Contract, and (iv) the Issuer and the Borrower have consulted their own legal, financial, accounting, tax and other advisors to the extent they deem appropriate in connection with the offering of the Bonds. The primary role of the Underwriter is to purchase the Bonds in an arm's-length commercial transaction among the Issuer, the Borrower and the Underwriter, for resale to investors. The Underwriter has financial and other interests that differ from those of the Issuer. Nothing in the foregoing paragraph is intended to limit the Underwriter's obligations of fair dealing under MSRB Rule G-17.

Section 3. Issue Price.

The Underwriter will provide to the Issuer an executed Issue Price Certificate dated the Closing Date (as defined herein) in the form attached as Exhibit E hereto or other form reasonably required by Bond Counsel in order to establish the issue price of the Bonds.

The Underwriter reserves the right to change such prices as it deems necessary in connection with the offering of the Bonds. Concessions from the public offering price may be allowed to selected dealers and special purchasers. The Borrower authorizes the Underwriter to complete the supplement to the Official Statement to insert the reoffering price for the Bonds selected by the Underwriter in its complete discretion.

Section 4. Closing.

Subject to the terms and conditions hereof, the delivery of the Bonds and the payment of the purchase price of the Bonds as set forth in Exhibit A hereof (the "*Closing*") will take place at 10:00 a.m. Eastern Time on July __, 2025, or at such other time or on such other date mutually agreed upon by the Issuer, the Borrower and the Underwriter, which date shall be referred to herein as the "*Closing Date*."

Section 5. Official Statement; Disclosure Matters.

5.1 The Issuer and the Borrower each hereby (a) confirms its consent to the use by the Underwriter of the Preliminary Official Statement dated July __, 2025, relating to the Bonds (the "*Preliminary Official Statement*") in the marketing of the Bonds and (b) authorizes the Underwriter to prepare, use and distribute (at the expense of the Borrower) the Official Statement dated July __, 2025, relating to the Bonds (the "*Official Statement*") in final form in connection with the offering and sale of the Bonds.

5.2 The Issuer and the Borrower each agrees to the extent required and permitted by applicable law to cooperate (at the sole cost and expense of the Borrower) with the Underwriter so as to enable the Underwriter to comply with the requirements of Rule 15c2-12 ("*Rule 15c2-12*") under the Securities Exchange Act of 1934, as amended (the "*1934 Act*"), and any other rules of the Securities and Exchange

Commission (the “SEC”) and the Municipal Securities Rulemaking Board (the “MSRB”), in connection with the offer and sale of the Bonds.

5.3 The Issuer and the Borrower hereby make the following representations in subsection (a) and (b) respectively:

(a) The Issuer hereby certifies and agrees that the information in the Preliminary Official Statement under the captions “THE ISSUER” and “ABSENCE OF LITIGATION – The Issuer” has been “deemed final” by the Issuer as of the date of the Preliminary Official Statement, except for final information as to the offering prices, interest rates, selling compensation, amount of proceeds, delivery dates, other terms depending on such factors, and other information permitted to be omitted under part (b)(1) of Rule 15c2-12.

(b) The Borrower hereby certifies and agrees that the Preliminary Official Statement has been “deemed final” by the Borrower as of its date, except for final information as to the offering prices, interest rates, selling compensation, amount of proceeds, delivery dates, other terms depending on such factors, and other information permitted to be omitted under part (b)(1) of Rule 15c2-12.

5.4 The Issuer and the Borrower hereby make the following representations in subsection (a) and (b), respectively:

(a) The Issuer hereby represents that the information in the Preliminary Official Statement and the Official Statement under the captions “THE ISSUER” and “ABSENCE OF LITIGATION – The Issuer” is true and correct and does not contain any untrue statement of a material fact and does not omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

(b) The Borrower hereby represents that the information in the Preliminary Official Statement and the Official Statement is true and correct and does not contain any untrue statement of a material fact and does not omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

5.5 The Issuer and the Borrower will, at the expense of the Borrower, supply to the Underwriter the Official Statement, in such quantity as may be requested by the Underwriter no later than the earlier of (i) seven (7) business days after the date of this Purchase Contract or (ii) one (1) business day prior to the Closing Date, in order to permit the Underwriter to comply with Rule 15c2-12, and the applicable rules of the MSRB, with respect to distribution of the Official Statement. The Borrower shall provide to the Underwriter the Official Statement, including any amendments thereto, in word-searchable PDF format as described in the MSRB’s Rule G-32 no later than one (1) business day prior to the Closing Date to enable the Underwriter to comply with MSRB Rule G-32.

5.6 During the period commencing on the date of this Purchase Contract and ending on the earlier of (a) 90 days from the End of the Underwriting Period or (b) the time when the Official Statement is available to any person from the MSRB, but in no case less than 25 days following the End of the Underwriting Period (the “*Update Period*”), if any event shall occur which would cause the Official Statement to contain any untrue statement of a material fact or to omit to state any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading, and in the judgment of the Underwriter, such event requires the preparation and publication of a supplement or amendment to the Official Statement, the Issuer (to the extent of the provisions referred to in Section 5.4(a) hereof) and the Borrower will, at the expense of the Borrower, prepare or cooperate in the

preparation of such supplement or amendment to the Official Statement in a form approved by the Underwriter and furnish or cooperate in the furnishing to the Underwriter (at the sole expense of the Borrower) a reasonable number of copies of an amendment of, or a supplement to the Official Statement so that, as supplemented or amended, it will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading. If the Official Statement is so supplemented or amended prior to the Closing, the approval by the Underwriter of a supplement or amendment to the Official Statement shall not preclude the Underwriter from thereafter terminating this Purchase Contract in accordance with the provisions of Section 12(c) hereof. The “*End of the Underwriting Period*” means the later of the delivery of the Bonds by the Issuer to the Underwriter or when the Underwriter no longer retains (directly or as a syndicate member) an unsold balance of the Bonds for sale to the public; provided, that the “*End of the Underwriting Period*” shall be deemed to be the Closing Date, unless the Underwriter otherwise notifies the Issuer and the Borrower in writing prior to such date that there is an unsold balance of the Bonds, in which case the End of the Underwriting Period shall be deemed to be extended for 30 days. The deemed End of the Underwriting Period may be extended for two additional periods of 30 days each upon receipt of an additional written notification from the Underwriter containing the same information as required in the initial written notice.

5.7 If, during the Update Period, the Issuer becomes aware of any event relating to the information concerning the Issuer under the captions “THE ISSUER” and “ABSENCE OF LITIGATION – The Issuer” of the Official Statement which would cause such portions of the Official Statement to contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading, the Issuer will promptly notify the Underwriter of such event.

5.8 The Issuer shall promptly advise the Underwriter, during the Update Period, of any action, suit, proceeding, inquiry or investigation against the Issuer, of which the Issuer has actual knowledge, seeking to prohibit, restrain or otherwise affect the use of the Preliminary Official Statement or the Official Statement in connection with the offering, sale or distribution of the Bonds.

5.9 If, during the Update Period, the Borrower becomes aware of any event which would cause the Preliminary Official Statement or the Official Statement to contain any untrue statement of a material fact or to omit to state any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading, the Borrower will promptly notify the Underwriter and the Issuer of such event.

5.10 The Borrower shall promptly advise the Underwriter, during the Update Period, of any action, suit, proceeding, inquiry or investigation against the Borrower, of which they receive written or actual notice, seeking to prohibit, restrain or otherwise affect the use of the Preliminary Official Statement or the Official Statement in connection with the offering, sale or distribution of the Bonds.

5.11 The Borrower represents and warrants to the Underwriter and the Issuer that neither the Borrower nor any affiliates thereof are in default under any undertakings with respect to continuing disclosure requirements designed to comply with Rule 15c2-12 in connection with any issue of municipal securities.

Section 6. Representations of the Issuer.

6.1 In addition to the representations contained in Section 5 herein, the Issuer hereby makes the following representations to the Underwriter:

(a) The Issuer is a public instrumentality and agency organized and existing under the laws of the State of North Dakota (the “State”), and has full power and authority under the Act to adopt the Bond Resolution and to enter into and to perform its obligations under the Issuer Documents; and when executed and delivered by the respective parties thereto, the Issuer Documents will constitute the legal, valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their respective terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors’ rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitation on legal remedies against units of government of the State;

(b) By official action of the Issuer prior to or concurrently with the acceptance hereof, the Issuer has approved and authorized the distribution of the Preliminary Official Statement and the Official Statement and authorized and approved the execution and delivery of the Issuer Documents and the consummation by the Issuer of the transactions contemplated thereby;

(c) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending, or threatened against the Issuer seeking to restrain or enjoin the sale or issuance of the Bonds, or in any way contesting or affecting any proceedings of the Issuer taken concerning the sale thereof, the pledge or application of any moneys or security provided for the payment of the Bonds, in any way contesting the validity or enforceability of the Issuer Documents or contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement or the existence or powers of the Issuer relating to the sale of the Bonds;

(d) The execution and delivery by the Issuer of the Issuer Documents and compliance with the provisions on the Issuer’s part contained therein will neither (i) conflict with or constitute a material breach of or default under any law, administrative regulation, judgment or decree to which the Issuer is subject, (ii) conflict with any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Issuer is a party or is otherwise subject, nor (iii) result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the Issuer under the terms of any such law, administrative regulation, judgment, decree, loan agreement, financing agreement, indenture, bond, security, note, resolution, agreement or other instrument, except as provided by the Issuer Documents;

(e) Except as may be required under Blue Sky or other securities laws of any state and for filings to be made with the Internal Revenue Service on Form 8038, to the Issuer’s knowledge, there is no consent, approval, authorization or other order of, or filing with, or certification by, any state court, or state or federal governmental agency, or public body of any state required for the execution and delivery of the Issuer Documents or the consummation by the Issuer of the transactions on its part contemplated herein or therein, which has not been duly obtained or made on or prior to the date hereof;

(f) Upon delivery of the Bonds, the Issuer will have good right, full power and lawful authority to pledge and assign the Trust Estate described in the Indenture to the Trustee as provided in the Indenture and the Bond Resolution;

(g) The Issuer has complied in all material respects with the Bond Resolution and the Issuer Documents; and

(h) The Bonds, when delivered in accordance with the Indenture and paid for by the Underwriter on the Closing Date as provided herein, will be validly issued and outstanding special, limited obligations of the Issuer entitled to all the benefits and security of the Indenture.

6.2 The execution and delivery of this Purchase Contract by the Issuer shall constitute a representation by the Issuer to the Underwriter that the representations and agreements contained in this Section are true as of the date hereof; provided, however, that as to information furnished by the Borrower pursuant to this Purchase Contract, the Issuer is relying solely on such information in making the Issuer's representations and agreements, and as to all matters of law the Issuer is relying on the advice of Bond Counsel; and provided further, that no member, officer, agent or employee of the Issuer shall be individually liable for the breach of any representation, or agreement contained herein.

6.3 It is understood that the representations and covenants of the Issuer contained in this Section 6 and elsewhere in this Purchase Contract shall not create any general obligation or liability of the Issuer, and that any obligation or liability of the Issuer hereunder or under the Issuer Documents is payable solely out of the Trust Estate established under the Indenture. It is further understood and agreed that the Issuer makes no representations, except as set forth in paragraph 5.4(a) above, as to the Official Statement, or as to (i) the financial condition, results of operation, business or prospects of the Borrower or the Project, (ii) any statements (financial or otherwise), representations, documents or certification provided or to be provided by the Borrower in connection with the offer or sale of the Bonds, or (iii) the correctness, completeness or accuracy of such statements, representations, documents or certifications.

Section 7. Representations and Warranties of the Borrower.

7.1 In addition to the representations and warranties made in Section 5 herein, the Borrower hereby makes the following representations and warranties to the Underwriter and the Issuer, all of which will continue in effect subsequent to the purchase of the Bonds:

(a) The Borrower is a limited partnership duly organized and existing under and pursuant to the laws of the State and is qualified to own the Project and conduct its business in the State.

(b) The Borrower has, and as of the Closing Date will have, full legal right, power and authority to (i) execute and deliver the Borrower Documents, (ii) assist in the preparation, distribution and use of the Preliminary Official Statement and the Official Statement, and (iii) otherwise consummate the transactions contemplated by the Borrower Documents.

(c) The Borrower has duly authorized the (i) execution and delivery of the Borrower Documents, (ii) performance by the Borrower of the obligations contained in the Borrower Documents, (iii) preparation of the Preliminary Official Statement and the Official Statement, and (iv) consummation by the Borrower of all of the transactions contemplated by the Borrower Documents.

(d) The Borrower Documents are, and, when executed and delivered by the Borrower and the other parties thereto, will be, the legal, valid and binding obligations of the Borrower, enforceable in accordance with their respective terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(e) All consents, approvals, orders or authorizations of, notices to, or filings, registrations or declarations with any governmental authority, board, agency, commission or body

having jurisdiction which are required on behalf of the Borrower for the execution and delivery by the Borrower of the Borrower Documents or the consummation by the Borrower of the transactions contemplated hereby or thereby, have been obtained or will be obtained prior to Closing.

(f) The execution and delivery by the Borrower of the Borrower Documents and the consummation by the Borrower of the transactions contemplated hereby and thereby are not prohibited by, do not violate any provision of, and will not result in the breach of or default under (i) the organizational documents of the Borrower, (ii) any applicable law, rule, regulation, judgment, decree, order or other requirement to which the Borrower is subject, or (iii) any contract, indenture, agreement, mortgage, lease, note, commitment or other obligation or instrument to which the Borrower is a party or by which the Borrower or its properties are bound.

(g) There is no legal action, suit, proceeding, investigation or inquiry at law or in equity, before or by any court, agency, arbitrator, public board or body or other entity or person, pending or, to the best knowledge of the Borrower, threatened against or affecting the Borrower or any partner or member of the Borrower, in their respective capacities as such, nor, to the knowledge of the Borrower, any basis therefor, (i) which would restrain or enjoin the issuance or delivery of the Bonds, the use of the Preliminary Official Statement or the Official Statement in the marketing of the Bonds or the collection of revenues pledged under or pursuant to the Borrower Documents or (ii) which would in any way contest or affect the organization or existence of the Borrower or the entitlement of any officer of the Borrower to its position or (iii) which would contest or have a material and adverse effect upon (A) the due performance by the Borrower of the transactions contemplated by the Preliminary Official Statement, the Official Statement or the Borrower Documents, (B) the validity or enforceability of the Bonds, the Borrower Documents or any other agreement or instrument to which the Borrower is a party and that is used or contemplated for use in the consummation of the transactions contemplated hereby and thereby, (C) the exclusion from gross income for federal income tax purposes of the interest on the Bonds or (D) the financial condition or operations of the Borrower, (iv) which contests in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement or (v) which questions the power or authority of the Borrower to carry out the transactions on its part contemplated by the Preliminary Official Statement, the Official Statement and the Borrower Documents, or the power of the Borrower to own or operate the Project. The Borrower is not subject to any judgment, decree or order entered in any lawsuit or proceeding brought against it that would have such an effect.

(h) On the Closing Date, the Borrower shall not have granted any interests in or rights or options to sell the Bonds to any other party.

(i) All permits (including building permits), licenses and authorizations necessary for the ownership and operation of its Project in the manner contemplated by the Preliminary Official Statement, the Official Statement and each of the Borrower Documents have been obtained or will be obtained, and said ownership and operation are not in conflict with any zoning or similar ordinance applicable to the Project. The Project conforms to all material environmental regulations.

(j) None of the Borrower, any guarantor of the Borrower or any “related person” to the Borrower within the meaning of Section 147 of the Code has acquired or shall acquire, pursuant to any arrangement, formal or informal, any Bonds.

(k) The Borrower has not taken or omitted to take on or prior to the date hereof any action that would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

(l) On the Closing Date, each of the representations and warranties of the Borrower contained in the Borrower Documents and all other documents executed by the Borrower in connection with the Bonds shall be true, correct and complete in all material respects.

(m) As of the Closing Date, the Borrower will not be in material default under any document, instrument or commitment to which the Borrower is a party or to which any of its property is subject which default would or could reasonably be expected to adversely affect the ability of the Borrower to carry out its obligations under the Borrower Documents. As of the Closing Date, the Borrower will be in compliance with all of its obligations under the Regulatory Agreement.

(n) The Borrower is in compliance with all of its prior continuing disclosure undertakings entered into pursuant to Rule 15c2-12, if any.

7.2 Each of the representations and warranties set forth in this Section 7 will survive the Closing.

7.3 Any certificate signed by any officer of the Borrower and delivered to the Underwriter in connection with the delivery of the Bonds will be deemed to be a representation and warranty by the Borrower to the Underwriter as to the statements made therein.

Section 8. Covenants of the Issuer.

The Issuer hereby makes the following covenants with the Underwriter:

(a) Prior to the Closing, the Issuer will not supplement or amend the Official Statement or cause the Official Statement to be supplemented or amended without providing reasonable notice of such proposed supplement or amendment to the Underwriter. Neither the receipt by the Underwriter of notice of a proposed supplement or amendment nor the consent by the Underwriter to such supplement or amendment shall abrogate the Underwriter's rights under Section 12(c) hereof.

(b) Prior to the Closing, the Issuer will not amend, terminate or rescind, and will not agree to any amendment, termination or rescission of the Issuer Documents without the prior written consent of the Underwriter.

(c) Prior to the Closing, except as provided in the Issuer Documents, the Issuer will not create, assume or guarantee any indebtedness payable from, or pledge or otherwise encumber, the revenues, assets, properties, funds or interests which will be pledged pursuant to the Indenture, including, without limitation, the Bonds or the Issuer Documents.

(d) The Issuer will not take any action which will in any way cause the proceeds of the Bonds to be applied in a manner other than as provided in the Indenture and described in the Official Statement or which would cause the interest on the Bonds to be includable in the gross income of the holders thereof for federal income tax purposes.

(e) Prior to the Closing, the Issuer will obtain all governmental consents, approvals, orders or authorizations of any governmental authority or agency that would constitute a condition precedent to the performance by it of its obligations under the Issuer Documents and the Bonds.

(f) The Issuer will reasonably cooperate with the Underwriter upon request, without cost to the Issuer, in the qualification of the Bonds for offering and sale and the determination of their eligibility for investment under the laws of such jurisdictions as the Underwriter may designate; provided that the foregoing shall not require the Issuer to expend its own funds, execute a general or special consent to service of process or to qualify as a foreign corporation in connection with such qualification in any foreign jurisdiction.

(g) The Issuer will not adopt any amendment of or supplement to the Official Statement to which, after having been furnished a copy, the Underwriter shall reasonably object in writing and if any event relating to or affecting the Issuer or the Borrower shall occur as a result of which it is necessary, in the opinion of the Underwriter, to amend or supplement the Official Statement in order to make the Official Statement so that it does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, the Issuer shall cause to be forthwith prepared and furnished (at the sole expense of the Borrower) to the Underwriter a reasonable number of copies of an amendment of or supplement to the Official Statement (in form and substance satisfactory to the Underwriter) that will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

Section 9. Covenants of the Borrower.

The Borrower hereby makes the following covenants with the Underwriter and the Issuer:

(a) The Borrower will not supplement or amend the Official Statement or cause the Official Statement to be supplemented or amended without providing reasonable notice of such proposed supplement or amendment to the Underwriter and the Issuer. It is understood pursuant to Section 12(c) that, in the event there arises an event or condition which, in the reasonable judgment of the Underwriter, requires the Official Statement to be amended or supplemented or has a material and adverse effect upon the marketability of the Bonds or the ability of the Underwriter to enforce contracts for the sale of the Bonds, the Underwriter shall have the right, pursuant to Section 12(c) hereof, to terminate this Purchase Contract without liability. Neither the receipt by the Underwriter of notice of a proposed supplement or amendment nor the consent by the Underwriter to such supplement or amendment shall abrogate the Underwriter's rights under Section 12(c) hereof.

(b) The Borrower will not adopt any amendment of or supplement to the Official Statement to which, after having been furnished a copy, the Underwriter shall reasonably object in writing and if any event relating to or affecting the Issuer or the Borrower shall occur as a result of which it is necessary, in the opinion of the Underwriter, to amend or supplement the Official Statement in order to make the Official Statement not misleading in light of the circumstances existing at the time it is delivered to the Underwriter, the Borrower shall cause to be forthwith prepared and furnished (at the sole expense of the Borrower) to the Underwriter a reasonable number of copies of an amendment of or supplement to the Official Statement (in form and substance satisfactory to the Issuer and the Underwriter) that will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(c) Prior to the Closing, the Borrower will not amend, terminate or rescind, and will not agree to any amendment, termination or rescission of the Borrower Documents without the prior written consent of the Underwriter.

(d) Prior to the Closing, the Borrower will not create, assume or guarantee any indebtedness payable from, or pledge or otherwise encumber, the revenues, assets, properties, funds or interests which will be pledged pursuant to the Indenture, including, without limitation, the Bonds, the Financing Documents or any indebtedness allowed under the loan from the Mortgage Lender.

(e) The Borrower will cooperate with the Issuer to cause the Bonds to be delivered to the address and at the time specified by the Underwriter in conjunction with the Closing.

(f) The Borrower will not take or omit to take any action which will in any way cause the proceeds of the Bonds, or other moneys on deposit in any fund or account in connection with the Bonds, to be applied in a manner other than as provided in the Indenture and described in the Preliminary Official Statement or the Official Statement and will not take or omit to take any action which would cause the interest on the Bonds to be includable in the gross income of the holders thereof for federal income tax purposes.

(g) The Borrower will cooperate with the Underwriter in the qualification of the Bonds for offering and sale and the determination of their eligibility for investment under the laws of such jurisdictions as the Underwriter may designate.

(h) The Borrower agrees to cause the necessary amount to be paid to the Trustee and/or the escrow agent on the Closing Date to pay costs of issuance.

(i) The Borrower agrees to provide the Underwriter, at the Borrower's expense, a reasonable number of additional copies of the Financing Documents as the Underwriter shall request.

Section 10. Conditions of Closing.

10.1 The obligations of the Underwriter to consummate at the Closing the transactions contemplated hereby are subject to receipt by the Underwriter of the items described in Section 10.2 hereof and to the satisfaction of the following conditions:

(a) The Underwriter will not have discovered any material error, misstatement or omission in the representations and warranties made in this Purchase Contract, which representations and warranties will be deemed to have been made again at and as of the time of the Closing and will then be true in all material respects.

(b) The Issuer and the Borrower will have performed and complied with all agreements and conditions required by this Purchase Contract to be performed or complied with by such respective parties at or prior to Closing.

(c) The Bonds, the Financing Documents and the Official Statement shall each have been executed and delivered by each of the parties thereto, shall be in full force and effect on and as of the Closing Date and shall not have been amended, modified or supplemented prior to the Closing except as may have been agreed to in writing by the Underwriter and no event of default shall exist under any such documents.

(d) The Underwriter will have received orders for all of the Bonds (or such amount of the Bonds as is acceptable to the Underwriter) and (a) such orders have not been withdrawn at the time of the Closing and (b) the market price or marketability, at the initial offering price set forth in the Official Statement, of the Bonds shall not have been adversely affected, in the reasonable judgment of the Underwriter.

(e) The Borrower shall have entered into the Continuing Disclosure Agreement containing covenants meeting the requirements of Rule 15c2-12 under the 1934 Act.

(f) The Issuer shall have received the executed Issue Price Certificate of the Underwriter, substantially in the form attached to this Purchase Contract as Exhibit E.

10.2 In addition to the conditions set forth in Section 10.1, the obligations of the Underwriter to consummate at the Closing the transactions contemplated hereby are subject to receipt by the Underwriter of the following items:

(a) An approving opinion of Bond Counsel, dated the Closing Date, relating to the validity of the Bonds and the tax-exempt status of the Bonds, substantially in the form attached to the Official Statement as Appendix F, and a letter of such counsel, addressed to the Underwriter and the Issuer, to the effect that such opinion may be relied upon, together with a supplemental opinion of Bond Counsel, satisfactory in form and substance to the Underwriter and the Issuer, dated the Closing Date, substantially in the form attached hereto as Exhibit B.

(b) An opinion of counsel to the Borrower, dated the Closing Date, satisfactory in form and substance to the Underwriter, the Trustee, Bond Counsel and the Issuer and in substantially the form attached hereto as Exhibit C.

(c) An opinion of Tiber Hudson LLC, counsel to the Underwriter, dated the Closing Date, satisfactory in form and substance to the Underwriter.

(d) A certificate of the Issuer, dated the Closing Date and signed by an authorized official or officer of the Issuer, to the effect that (i) each of the Issuer's representations contained herein and in all other Issuer Documents, which representations will be deemed to have been made again at and as of the time of Closing, are true and correct in all material respects; (ii) the Issuer has performed and complied with all agreements and conditions required by this Purchase Contract to be performed or complied with by it at or prior to the Closing; and (iii) the information contained in the Preliminary Official Statement and the Official Statement under the captions "THE ISSUER" and "ABSENCE OF LITIGATION – The Issuer" is true and correct in all material respects and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

(e) Evidence that a public hearing has been duly held and the issuance of the Bonds has been duly approved as required by the Code.

(f) A certificate of the Issuer, dated the Closing Date and signed by an authorized officer of the Issuer, in form and substance satisfactory to the Issuer, the Underwriter and Bond Counsel, respecting certain tax matters as may be reasonably required by Bond Counsel to enable it to give its opinion.

(g) A certificate of the Borrower, dated the Closing Date and signed by its authorized representative, to the effect that:

(i) each of the Borrower's representations and warranties contained herein and in all Borrower Documents, which representations and warranties will be deemed to have been made again at and as of the time of Closing, are true and correct in all material respects;

(ii) the Borrower has performed and complied with all agreements and conditions required by this Purchase Contract to be performed or complied with by it at or prior to the Closing;

(iii) since the date of the Official Statement and except as set forth therein, there has not been any material adverse change in the Borrower's operations, financial or otherwise;

(iv) the information contained in the Preliminary Official Statement and the Official Statement is true and correct and does not contain any untrue statement of a material fact and does not omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading;

(v) there is no action, suit, proceeding, inquiry or investigation, at law or in equity, or before or by any court, public board or body pending or, to the best knowledge of the Borrower, threatened against or affecting the Borrower or any of its affiliates, nor, to the best knowledge of the Borrower, is there any basis therefor, wherein an unfavorable decision, ruling or finding would, in any way, adversely affect the transactions contemplated by the Loan Agreement or the operation and management of the Project, or that might result in any material adverse change in the business, operations, properties, assets, liabilities or condition (financial or other) of the Borrower or that affects the information in the Preliminary Official Statement and the Official Statement; and

(vi) such other matters as the Underwriter may reasonably request.

(h) A certificate of the Borrower dated the Closing Date and signed by its authorized representative, in form and substance satisfactory to the Underwriter and Bond Counsel, respecting certain tax matters as may be reasonably required by Bond Counsel to enable it to give its opinion.

(i) An opinion of counsel to the Trustee, dated the Closing Date and signed by an authorized officer of the Trustee, in form and substance satisfactory to the Underwriter.

(j) The Borrower's 15c2-12 Certificate, substantially in the form attached hereto as Exhibit D, duly executed by the Borrower.

(k) Certified copies of the organizational documents of the Borrower and copies of the resolutions or actions of its partners (if applicable) authorizing the execution and delivery of the Borrower Documents.

(l) The Financing Documents (or certified copies thereof) duly executed and delivered by the respective parties thereto, with such amendments, modifications or supplements as may have been agreed to by the Issuer, Bond Counsel and the Underwriter.

(m) Written evidence satisfactory to the Underwriter that Moody's Investors Service, Inc. (the "Rating Agency") has issued a rating of "[Aa1/VMIG 1]" for the Bonds and such rating shall be in effect on the Closing Date.

(n) Such additional legal opinions, certificates, instruments and other documents as the Underwriter, the Issuer or Bond Counsel may reasonably deem necessary to evidence the truth and accuracy as of the Closing Date of the respective representations and warranties of the Issuer and the Borrower herein contained and of the Official Statement, and to evidence compliance by the Issuer and the Borrower with this Purchase Contract and all applicable legal requirements, and the due performance and satisfaction by the Issuer and the Borrower at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the Issuer and the Borrower.

10.3 If any of the conditions set forth in Section 10.1 or 10.2 hereof have not been met on the Closing Date, the Underwriter may, at its sole option, terminate this Purchase Contract or proceed to Closing upon waiving any rights under this Purchase Contract with respect to any such condition. If this Purchase Contract is terminated pursuant to this Section 10, no party hereto will have any rights or obligations to any other party hereto under this Purchase Contract, except as provided in Section 13 hereof.

Section 11. Actions and Events at the Closing.

The following events will take place at the Closing:

(a) The Issuer will cause the Trustee to deliver the Bonds to the Underwriter. The Bonds so delivered will be in the form required by the Indenture, duly authenticated by the Trustee, and will be fully registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York.

(b) The Issuer and the Borrower, as applicable, will deliver or cause to be delivered to the Underwriter at the offices of Bond Counsel, or at such other place or places as the Issuer, the Borrower and the Underwriter may mutually agree upon, the materials described in Section 10.1 and Section 10.2 hereof.

(c) The Underwriter will deliver to the Trustee, for the account of the Issuer, a wire, payable in immediately available funds, in an amount equal to the purchase price of the Bonds as set forth in Exhibit A hereto.

Section 12. Termination of Agreement.

The Underwriter may terminate this Purchase Contract, without liability therefor, by notifying the Issuer and the Borrower at any time prior to the Closing, if:

(a) Legislation is enacted or introduced in the Congress or recommended to the Congress for passage by the President of the United States, or favorably reported for passage to either house of the Congress of the United States by a committee of such house to which such legislation has been referred for consideration, or a decision is rendered by a court established under Article III of the Constitution of the United States or by the Tax Court of the United States, or an order, ruling, regulation (final, temporary or proposed), press release, statement or other form of notice or official statement is issued or made: (i) by or on behalf of the President, the Treasury Department of the United States or the Internal Revenue Service with the purpose or effect, directly or indirectly, of imposing federal income taxation upon such interest as would be received by the

owners of the Bonds, or (ii) by or on behalf of the SEC, or any other governmental entity having jurisdiction of the subject matter, to the effect that obligations of the general character of the Bonds or any arrangements underlying the Bonds, are not exempt from registration under the 1933 Act, or that the Indenture is not exempt from qualification under the Trust Indenture Act of 1939, as amended;

(b) The declaration of a general banking moratorium by federal, New York or State authorities, or general suspension of trading in securities on the New York Stock Exchange any other national securities exchange, or the establishment by the New York Stock Exchange, by the SEC, by any federal or state agency or by the decision of any court, of any limitation on prices for such trading, or any outbreak or escalation of hostilities or occurrence of any other national or international calamity or crisis, or escalation of such calamity or crisis, the effect of which on the financial markets of the United States shall be such as to make it impracticable for the Underwriter to proceed with the purchase and offering of the Bonds;

(c) Any event or condition which, in the reasonable judgment of the Underwriter, (i) renders untrue any statement of a material fact in the Official Statement, and the Issuer and the Borrower do not agree to supplement or amend the Official Statement to correct the deficiency, or (ii) causes the Official Statement to omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, and the Issuer and the Borrower do not agree to supplement or amend the Official Statement to correct the deficiency, or (iii) has a material adverse effect upon the marketability of the Bonds, or (iv) would materially and adversely affect the ability of the Underwriter to enforce contracts for the sale of the Bonds;

(d) The imposition by the New York Stock Exchange or other national securities exchange, or any governmental entity, of any restrictions not now in force with respect to any of the Bonds or obligations of the general character of the Bonds or securities generally, or the increase of any such restrictions now in force, including those relating to the extension of credit by, or the charge to the net capital requirements of the Underwriter;

(e) An order, decree or injunction of any court of competent jurisdiction, or order, filing, regulation or official statement by the SEC, or any other governmental entity having jurisdiction of the subject matter, issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Bonds or the issuance, offering or sale of the Bonds or any arrangements underlying the Bonds, as contemplated hereby or by the Preliminary Official Statement or the Official Statement, is or would be in violation of the federal securities laws as then in effect;

(f) The rating on the Bonds shall have been downgraded or withdrawn by the Rating Agency; or

(g) A material disruption in commercial banking, securities settlement, payment, or clearance services shall have occurred.

Section 13. Fees and Expenses.

13.1 The Borrower shall pay to the Underwriter a fee in the amount of \$ _____ plus \$ _____ for certain fees and expenses (the "Underwriter's Fee"), payable in immediately available funds on the Closing Date from which the Underwriter will pay certain expenses. The Underwriter's Fee shall not include the fee of the Underwriter's counsel. The Borrower acknowledges that it has had an opportunity,

in consultation with such advisors as it may deem appropriate, if any, to evaluate and consider the fees and expenses being incurred in connection with the issuance of the Bonds. The Borrower has agreed to pay the Underwriter's Fee set forth in this Section 13.1, and inclusive in the expense component of the Underwriter's Fee are actual expenses incurred or paid for by the Underwriter on behalf of the Borrower in connection with the marketing, issuance, and delivery of the Bonds, including, but not limited to, advertising expenses, the costs of any preliminary and final blue sky memoranda, CUSIP fees, and transportation, lodging, and meals for the Borrower's employees and representatives, if any.

13.2 The Borrower shall pay the costs of issuance of the Bonds, including all expenses incident to the performance of the Underwriter's and the Issuer's obligations hereunder, including, but not limited to, (i) the cost of the preparation, printing or other reproduction of this Purchase Contract, the Preliminary Official Statement and the Official Statement, as either may be supplemented or amended, the Indenture and the other Financing Documents in reasonable quantities for distribution; (ii) the cost of engraving, reproducing and signing the definitive Bonds; (iii) the reasonable fees and disbursements of all applicable legal counsel, including Bond Counsel, counsel to the Issuer, counsel to the Trustee (if any), and counsel to the Underwriter; (iv) the initial fees and costs of paying the Trustee and all paying agents, transfer agents and registrars; (v) the fees and expenses of the Issuer; (vi) CUSIP fees; (vii) the cost of qualifying the Bonds for sale in various states chosen by the Underwriter and the cost of preparing or printing any Preliminary Blue Sky Survey to be used in connection with such sale; (viii) the fees and expenses of the experts retained by the Borrower with respect to the acquisition, construction, equipping and financing of the Project; (ix) the fees of the Rating Agency in connection with the rating of the Bonds; (x) normal travel costs, including reasonable transportation and lodging; (xi) ordinary and reasonable meals hosted by the Underwriter that are directly related to the offering contemplated by this Purchase Contract; and (xii) all other applicable fees of professionals hired in conjunction with the issuance of the Bonds. Notwithstanding anything to the contrary, in the event the transaction contemplated hereby does not close, the Borrower shall pay all fees and expenses incurred in connection with the transaction.

13.3 In the event that the Issuer, the Borrower or the Underwriter shall have paid obligations of the other as set forth in this Section, appropriate adjustments will promptly be made.

13.4 In addition to the provisions set forth in Section 14 hereto, the Borrower shall indemnify the Issuer and the Underwriter with respect to the foregoing costs and expenses in the event that the purchase provided for herein is not consummated.

Section 14. Indemnification.

14.1 The Borrower will indemnify and hold harmless the Issuer and the Underwriter, and each of their officers, directors, employees, agents, officials, members, commissioners, board members and each person who "controls" (as such term is used in Section 15 of the 1933 Act and Section 20 of the 1934 Act) the Issuer and the Underwriter (each referred to individually as an "*Indemnified Party*" and collectively as the "*Indemnified Parties*") against any losses, claims, expenses (including, without limitation, to the extent permitted by law, reasonable attorneys' fees and expenses actually incurred), damages or liabilities, causes of action (whether in contract, tort or otherwise), suits, claims, demands and judgments of any kind, character and nature (collectively referred to herein as the "*Liabilities*"), joint or several, to which the Indemnified Parties may be threatened or become subject, caused by or directly or indirectly arising from or in any way relating to (i) the Bonds, the Project, the loan of the proceeds of the Bonds, this Purchase Contract or any document related to the Bonds, the Project or the loan of the proceeds of the Bonds or any transaction or agreement, written or oral, pertaining to the foregoing, (ii) any untrue statement or alleged untrue statement of any material fact contained in the Preliminary Official Statement or the Official Statement, or any supplement or amendment thereto, or (iii) any omission or alleged omission to state in the Preliminary Official Statement or the Official Statement a material fact necessary to be stated therein

in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading. This indemnification provision shall not be construed as a limitation on any other liability which the Borrower may otherwise have to any indemnified person, provided that in no event shall the Borrower be obligated for double indemnification, in that the Borrower shall not be required to indemnify an Indemnified Party more than once with respect to a specific indemnification obligation arising as the result of a specific event. Notwithstanding the foregoing, the Borrower shall not be required to indemnify any Indemnified Party for the gross negligence or willful misconduct of such Indemnified Party.

14.2 The indemnity agreements in paragraph 14.1 of this Section 14 shall be in addition to any liability which the Borrower may otherwise have hereunder or under the other Borrower Documents, and shall extend on the same terms and conditions to each member, principal, official, officer, commissioner, board member, attorney or employee of the Borrower and to each person, if any, who “controls” (as such term is used in Section 15 of the 1933 Act and Section 20 of the 1934 Act) the Borrower.

14.3 Promptly after receipt by an Indemnified Party under paragraph 14.1 of this Section of notice of the commencement of any action against such Indemnified Party in respect of which indemnity or reimbursement may be sought against the Borrower under any such paragraph, such Indemnified Party will notify the Borrower in writing of the commencement thereof; provided that any delay or failure to give such notification shall be of no effect except to the extent that the Borrower is prejudiced thereby.

14.4 In case any action, claim or proceeding, as to which the Borrower is to provide indemnification hereunder, shall be brought against the Indemnified Party and the Indemnified Party notifies the Borrower of the commencement thereof, the Borrower may, or if so requested by the Indemnified Party shall, participate therein or assume the defense thereof, with counsel reasonably satisfactory to the Indemnified Party; provided that, except as provided below, the Borrower shall not be liable for the expenses of more than one separate counsel representing the Indemnified Parties in the action, claim or proceeding.

14.5 If the Borrower shall not have employed counsel to have charge of the defense of the action, claim or proceeding, or if any Indemnified Party shall have concluded reasonably that there may be a defense available to it or to any other Indemnified Party which is different from or in addition to those available to the Borrower or to any other Indemnified Party (hereinafter referred to as a “separate defense”), (i) the Borrower shall not have the right to direct the defense of the action, claim or proceeding on behalf of the Indemnified Party, and (ii) reasonable legal and other expenses incurred by the Indemnified Party (including without limitation, to the extent permitted by law, reasonable attorney’s fees and expenses actually incurred) shall be borne by the Borrower; provided, that the Borrower shall not be liable for the expenses of more than one additional separate counsel for each Indemnified Party with respect to such separate defenses. For the purpose of this paragraph, an Indemnified Party shall be deemed to have concluded reasonably that a separate defense is available to it or any other Indemnified Party if (a) such Indemnified Party shall have requested an unqualified written opinion from Independent Counsel to the effect that a separate defense exists, and such Independent Counsel shall have delivered such opinion to the Indemnified Party within ten (10) days after such request or (b) the Borrower agrees that a separate defense is so available. For purposes of this paragraph, Independent Counsel shall mean any attorney, or firm or association of attorneys, duly admitted to practice law before the supreme court of any state and not a full-time employee of any Indemnified Party. Nothing contained in this paragraph 14.5 will preclude any Indemnified Party, at its own expense, from retaining additional counsel to represent such party in any action with respect to which indemnity may be sought from the Borrower hereunder.

14.6 The Borrower agrees to reimburse any Indemnified Party for any reasonable expense (including reasonable fees and expenses of counsel) incurred as a result of producing documents, presenting testimony or evidence, or preparing to present testimony or evidence (based upon time expended by an

Indemnified Party at its then current time charges), in connection with any court or administrative proceeding (including any investigation which may be preliminary thereto) arising out of or relating to any public distribution of the Bonds. The Borrower will not be required to reimburse any Indemnified Party if such court or administrative hearing arises out of the gross negligence of, willful misconduct or breach of, this Purchase Contract by an Indemnified Party.

14.7 In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in paragraph 14.1 or 14.2 of this Section 14 is for any reason held to be unavailable, the Borrower and the Indemnified Party shall contribute proportionately to the aggregate Liabilities to which the Borrower and the Indemnified Party may be subject, so that the Indemnified Party is responsible for that portion represented by the percentage that the fees paid by the Borrower to the Indemnified Party in connection with the issuance and administration of the Bonds bears to the aggregate offering price of the Bonds, with the Borrower responsible for the balance; provided, however, that in no case shall the Indemnified Party be responsible for any amount in excess of the fees paid by the Borrower to the Indemnified Party in connection with the issuance and administration of the Bonds; and provided, further, that the foregoing limitation on an Indemnified Party's liability or responsibility shall not be applicable if the indemnity provided for in paragraph 14.1 or 14.2 is unavailable or inapplicable due to the gross negligence or willful misconduct of any Indemnified Party. No person guilty of fraudulent misrepresentation (within Section 10(b) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such misrepresentation.

14.8 The Indemnified Parties, other than the Underwriter and the Issuer, shall be considered to be third-party beneficiaries of this Purchase Contract for purposes of this Section 14. The provisions of this Section 14 will be in addition to all liability which the Borrower may otherwise have and shall survive any termination and cancellation of this Purchase Contract, the offering and sale of the Bonds and the payment or provisions for payment of the Bonds.

14.9 Notwithstanding anything to the contrary in this Purchase Contract, the Issuer may employ its own counsel (whether one or more separate counsel) in any manner it deems appropriate and the Borrower shall indemnify the Issuer for fees and expenses of such counsel.

Section 15. Limitation of Liability.

Notwithstanding any provision herein to the contrary, any member, officer, director, partner, agent, commissioner, board members or employee of the Issuer, the Underwriter or the Borrower, including any person executing this Purchase Contract, shall not bear any liability as a result of any failure of the Issuer, the Underwriter or the Borrower to perform the obligations of each, respectively, set forth in this Purchase Contract.

Section 16. Miscellaneous.

16.1 All notices, demands and formal actions hereunder will be in writing and mailed, telecopied or delivered to the following address or such other address as either of the parties shall specify:

If to the Underwriter:	Lument Securities, LLC
	10 West Broad Street, 8 th Floor
	Columbus, OH 43215
	Attention: Tracy Peters

If to the Issuer: North Dakota Housing Finance Agency
2624 Vermont Avenue
Bismarck, ND 58504
Attention: Executive Director
Facsimile: (701) 328-8090

With copies to: Jaden Grossman
Office of Attorney General
600 East Boulevard Avenue, Dept. 125
Bismarck, ND 58505-0040
Facsimile: (701) 328-2226
E-mail: jbgrossman@nd.gov

If to the Borrower: Pleasant Valley TC Apartments, LP
4530 E Thousand Oaks Blvd, Suite 100
Westlake Village, CA 91362
Attention: Danielle Hastie

16.2 This Purchase Contract will inure to the benefit of and be binding upon the parties hereto and their successors and assigns and, except as provided in Section 14 hereof will not confer any rights upon any other person. The terms “successor” and “assigns” will not include any purchaser of any of the Bonds from the Underwriter merely because of such purchase.

16.3 This Purchase Contract may not be assigned by any of the parties hereto prior to the Closing.

16.4 If any provision of this Purchase Contract is held or deemed to be or is, in fact, inoperative, invalid or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provision of any constitution, statute, rule of public policy, or any other reason, such circumstances will not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance or of rendering any other provision or provisions of this Purchase Contract invalid, inoperative or unenforceable to any extent whatever.

16.5 This Purchase Contract will be construed in accordance with and governed by the internal laws of the State, without regard to conflict of law principles of the State.

16.6 This Purchase Contract may be executed in several counterparts (including counterparts exchanged by email in PDF format), each of which will be regarded as an original and all of which will constitute one and the same document.

Section 17. Survival of Certain Representations and Obligations.

The respective agreements, covenants, representations, warranties and other statements of the Issuer and the Borrower and each of their respective officers set forth in or made pursuant to this Purchase Contract shall survive delivery of and payment for the Bonds and shall remain in full force and effect,

regardless of any investigation, or statements as to the results thereof, made by or on behalf of the Underwriter.

Section 18. Prohibition on Boycotts.

By entering into this Purchase Contract, the Underwriter certifies that it and its parent company, wholly or majority-owned subsidiaries, and other affiliates, if any, are not currently engaged in, or for the duration of this Purchase Contract will not engage in, a boycott of goods or services from the State of Israel; companies doing business in or with the State of Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel. The Underwriter understands that “boycott” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations, but does not include an action made for ordinary business purposes.

If the foregoing is in accordance with your understanding, please sign and return to us two counterparts hereof and, upon the acceptance hereof by the Issuer and the Borrower, this Purchase Contract and such acceptance shall constitute the binding agreement among us as to the matters set forth above.

Very truly yours,

LUMENT SECURITIES, LLC

By:

Tracy Peters
Senior Managing Director

[Signatures continue on following page]

[Issuer's signature page to Purchase Contract]

**NORTH DAKOTA HOUSING FINANCE
AGENCY, as Issuer**

By: _____
Brandon Dettlaff
Executive Director

[Signatures continue on following page]

[Borrower's signature page to Purchase Contract]

PLEASANT VALLEY TC APARTMENTS, LP,
a North Dakota limited partnership

By: Pleasant Valley TC GP, LLC,
a North Dakota limited liability company,
its General Partner

By: GLTC Partners, LLC,
a North Dakota limited liability company,
its Managing Member

By: California Commercial Investment Brokerage, Inc.,
a California corporation,
its Managing Member

By: _____
Danielle Hastie
Vice President

EXHIBIT A

TERMS OF BONDS

**Multifamily Housing Revenue Bonds
(Pleasant Valley Apartments)
Series 2025**

<u>Dated Date</u>	<u>Initial Mandatory Tender Date</u>	<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Price</u>
July __, 2025	February 1, 2028	February 1, 2044	\$9,500,000	___%	100%

EXHIBIT B

PROPOSED FORM OF SUPPLEMENTAL OPINION OF BOND COUNSEL

July __, 2025

North Dakota Housing Finance Agency
Bismarck, North Dakota

Lument Securities, LLC
Columbus, OH

Wilmington Trust, National Association
Minneapolis, Minnesota

\$9,500,000
North Dakota Housing Finance Agency
Multifamily Revenue Bonds
(Pleasant Valley Apartments)
Series 2025

Ladies and Gentlemen:

We have acted as bond counsel in connection with the issuance on the date hereof by the Industrial Commission of North Dakota, acting in its capacity as the North Dakota Housing Finance Agency (the “Issuer”) of the above captioned bonds (the “Bonds”). The Bonds are being issued to finance the costs of the acquisition, rehabilitation and equipping of a 60-unit multifamily housing development located in Dickinson, North Dakota (the “Project”). The Bonds are being issued pursuant to a resolution adopted by the Issuer on June 26, 2025 (the “Resolution”) and an Indenture of Trust (the “Indenture”) dated as of July 1, 2025, between the Issuer and Wilmington Trust, National Association, as trustee (the “Trustee”).

In connection therewith, we have delivered to the Issuer under even date herewith our approving opinion (the “Approving Opinion”) with respect to the Bonds. The Approving Opinion is incorporated herein by reference as though set forth herein in full. We hereby advise you that you may rely upon the Approving Opinion to the same extent as if it were addressed to you.

We have reviewed such records relating to the issuance and sale of the Bonds, including records of the proceedings and resolutions of the Issuer related to the foregoing, and have relied upon such certificates of officials of the Issuer as we have deemed necessary or advisable for purposes of this opinion. We have also examined the originals or copies, certified or otherwise identified to our satisfaction, of such other documents, records and other instruments as we have deemed necessary or advisable for purposes of this opinion.

Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Indenture.

Based upon the foregoing, we are of the opinion that:

1. The Bond Purchase Agreement has been duly authorized, executed and delivered by the Issuer and, assuming the due authorization, execution and delivery thereof by the other parties thereto, constitutes a valid and legally binding obligation of the Issuer, and is enforceable against the Issuer in accordance with its terms, except as enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally, by principles of equity, whether considered at law or in equity, and by public policy as expressed in applicable securities laws or otherwise.

2. The offering, sale and delivery of the Bonds do not require the registration thereof under the Securities Act of 1933, as amended, and do not require qualification under the Trust Indenture Act of 1939, as amended, of any “indenture,” as defined therein.

3. The statements contained in the Official Statement (except as to any statistical and financial data included in such Official Statement and except for the information relating to The Depository Trust Company, its participants and its book-entry only system, as to which we do not express an opinion) under the captions “DESCRIPTION OF THE BONDS,” “TAX MATTERS,” “APPENDIX C – SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE,” “APPENDIX D – SUMMARY OF CERTAIN PROVISIONS OF THE FINANCING AGREEMENT,” and “APPENDIX E – SUMMARY OF CERTAIN PROVISIONS OF THE REGULATORY AGREEMENT,” insofar as such statements contained under such captions purport to summarize certain provisions of the Bonds, the Indenture, the Loan Agreement, and the Regulatory Agreement, and certain aspects of our firm’s opinion relating to the federal and the State of North Dakota tax implications of certain aspects of the Bonds, present an accurate summary of such matters.

This letter is delivered to you solely for your benefit and may not be used, circulated, quoted or otherwise referred to or relied upon for any other purpose of by any other person. This letter is not intended to, and may not, be relied upon by holders of the Bonds.

Very truly yours,

EXHIBIT C

FORM OF OPINION OF COUNSEL TO THE BORROWER

July __, 2025

Lument Securities, LLC
10 West Broad Street, 8th Floor
Columbus, OH 43215

North Dakota Housing Finance Agency
2624 Vermont Ave
Bismarck, ND 58504

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, MN 55402

\$9,500,000
North Dakota Housing Finance Agency
Multifamily Revenue Bonds
(Pleasant Valley Apartments)
Series 2025

Ladies and Gentlemen:

We have acted as counsel to Pleasant Valley TC Apartments, LP (the “Borrower”), in connection with the issuance of the above-captioned bonds (the “Bonds”) by the Industrial Commission of North Dakota, acting in its capacity as the North Dakota Housing Finance Agency (the “Issuer”).

Capitalized terms used but not defined herein have the meanings assigned to them in the Trust Indenture dated as of July 1, 2025, between the Issuer and Wilmington Trust, National Association, a national banking association (the “Trustee”), or the hereinafter-defined Bond Purchase Agreement.

In our capacity as such counsel, in rendering the opinions set forth below, we have examined, among other things, originals or copies, certified or otherwise identified to our satisfaction, of the following documents: (i) the Preliminary Official Statement, dated July __ 2025, of the Issuer relating to the Bonds (the “Preliminary Official Statement”); (ii) the Official Statement, dated July __, 2025, of the Issuer relating to the Bonds (the “Official Statement”); (iii) the Regulatory Agreement and Declaration of Restrictive Covenants, among the Issuer, the Trustee and the Borrower, dated as of July 1, 2025; (iv) the Loan Agreement, dated as of July 1, 2025, by and among the Issuer, the Trustee and the Borrower; (v) the Bond Purchase Agreement, dated July __, 2025, among the Issuer, the Underwriter named therein and the Borrower (the “Bond Purchase Agreement”); (vi) the Continuing Disclosure Agreement, dated as of July 1, 2025, between the Borrower and the Dissemination Agent named therein; (vii) the Remarketing Agreement, dated as of July 1, 2025, between the Borrower and the Remarketing Agent named therein; (viii) the promissory note, dated the Closing Date, executed by the Borrower; (ix) the Tax Certificate of the Borrower, dated the Closing Date, executed by the Borrower; and (x) such other documents, certificates and instruments as we have deemed necessary for the purposes of reaching the opinion expressed herein.

We have also relied as to matters of fact upon a certificate of the Borrower and examined certain other certificates and documents.

In such examination, we have assumed the genuineness of all signatures (other than those relating to the Borrower), the authenticity of all documents submitted to us as originals, and the conformity to the original document of all documents submitted to us as photostatic or certified copies. We have assumed due authorization, execution and delivery of all documents referenced herein by the parties thereto other than the Borrower and that each of such parties has full power, authority and legal right to execute and deliver each such instrument.

Based upon and subject to the foregoing, we are of the opinion that, as of the date hereof:

(i) The Borrower (a) is a limited partnership validly existing under the laws of the State of North Dakota (the "State"), (b) is in good standing and duly qualified to transact business in the State, and (c) has full power and authority to execute and deliver the documents listed above numbered (iii) through (x) (the "Financing Documents") and the Official Statement and to perform its obligations under each respective agreement.

(ii) The Financing Documents and the Official Statement have each been duly authorized, executed and delivered by the Borrower and the Financing Documents constitute legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms, except as the enforcement thereof may be limited by (a) applicable bankruptcy, insolvency, moratorium, reorganization and similar laws (including fraudulent conveyance laws) affecting the enforcement of creditors' rights and remedies generally in effect from time to time, and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(iii) The execution and delivery of the Financing Documents and the performance by the Borrower of the terms of the respective agreements do not conflict with or violate any other document, instrument, decree, indenture or agreement by which the Borrower is bound.

(iv) No approval, authorization or other action by, or filing with, the State or any agency thereof, is required in connection with the execution and delivery by the Borrower of the Bond Purchase Agreement.

(v) There is no action, suit, proceeding, inquiry or investigation at law or in equity or before any court or public body pending or, to the best of our knowledge, threatened, to challenge the right, power or authority of the Borrower to acquire, own and operate the Project or to perform its obligations under the Bond Purchase Agreement or the other Financing Documents.

(vi) The information in the Preliminary Official Statement and the Official Statement does not contain an untrue statement of fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading as of the date hereof.

We express no opinion as to any matter whatsoever, relating to the accuracy or completeness of any financial accounting or projection information furnished to any party, the accuracy or completeness of any representation made by our clients, the financial status of our clients, the ability of our clients to meet their obligations under any of the above-referenced agreements or any other related document.

Very truly yours,

EXHIBIT D

FORM OF BORROWER'S RULE 15c2-12 CERTIFICATE

\$9,500,000

**North Dakota Housing Finance Agency
Multifamily Housing Revenue Bonds
(Pleasant Valley Apartments)
Series 2025**

The undersigned hereby certifies and represents to Lument Securities, LLC (the "Underwriter") that the undersigned is authorized to execute and deliver this certificate on behalf of Pleasant Valley TC Apartments, LP, a North Dakota limited partnership (the "Borrower"), and hereby further certifies to the Underwriter as follows:

(a) This certificate is delivered to enable the Underwriter to comply with Securities and Exchange Commission Rule 15c2-12 under the Securities Exchange Act of 1934 (the "Rule") in connection with the issuance and sale of the above-captioned securities (the "Bonds").

(b) In connection with the issuance and sale of the Bonds, there has been prepared a Preliminary Official Statement, dated July __, 2025, relating to the Bonds (the "Preliminary Official Statement") setting forth information concerning the Bonds and the Borrower.

(c) As used herein, "Permitted Omissions" shall mean the offering price(s), interest rate(s), accreted values, yield to maturity, selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings and other terms of the Bonds depending on such matters and the identity of the Underwriter(s), all with respect to the issuance and sale of the Bonds.

(d) The Preliminary Official Statement is, as of the date thereof, deemed final within the meaning of the Rule, except for Permitted Omissions.

(e) The section of the Preliminary Official Statement entitled "UNDERTAKING TO PROVIDE CONTINUING DISCLOSURE" describes the agreement the Borrower expects to make for the benefit of the Bondholders in the Continuing Disclosure Agreement dated as of July 1, 2025, executed by the Borrower and Wilmington Trust, National Association, as dissemination agent, by which the Borrower will undertake to provide continuing disclosure in accordance with the Rule.

Dated: July __, 2025

[Remainder of page intentionally left blank]

[Signature page to Rule 15c2-12 Certificate]

IN WITNESS WHEREOF, I have hereunto set my hand as of the date set forth above.

PLEASANT VALLEY TC APARTMENTS, LP,
a North Dakota limited partnership

By: Pleasant Valley TC GP, LLC,
a North Dakota limited liability company,
its General Partner

By: GLTC Partners, LLC,
a North Dakota limited liability company,
its Managing Member

By: California Commercial Investment Brokerage, Inc.,
a California corporation,
its Managing Member

By: _____
Danielle Hastie
Vice President

EXHIBIT E

FORM OF ISSUE PRICE CERTIFICATE

\$9,500,000

**North Dakota Housing Finance Agency
Multifamily Housing Revenue Bonds
(Pleasant Valley Apartments)
Series 2025**

The undersigned, on behalf of Lument Securities, LLC (the “Underwriter”), on behalf of itself, hereby certifies as set forth below with respect to the sale and issuance of the above-captioned obligations (the “Bonds”).

1. Sale of the Bonds. As of the date of this certificate, for each Maturity of the Bonds, the first price at which at least 10% of such Maturity of the Bonds was sold to the Public is the respective price listed in Exhibit A attached to the Bond Purchase Agreement dated July __, 2025 among the Underwriter, Pleasant Valley TC Apartments, LP, a North Dakota limited partnership (the “Borrower”), and the Industrial Commission of North Dakota, acting in its capacity as the North Dakota Housing Finance Agency (the “Issuer”).

2. Defined Terms.

(a) “*Issuer*” means the Industrial Commission of North Dakota, acting in its capacity as the North Dakota Housing Finance Agency, a public instrumentality and agency organized and existing under the laws of the State of North Dakota.

(b) “*Maturity*” means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate Maturities.

(c) “*Public*” means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than the Underwriter or a related party to the Underwriter. The term “related party” for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(d) “*Underwriter*” means (i) Lument Securities, LLC, (ii) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (iii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (ii) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the Underwriter’s interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer and the Borrower with respect to certain of the representations set forth in the Tax Certificate and with respect to compliance with the federal income tax rules affecting the Bonds, and by Kutak Rock LLP, Omaha, Nebraska, Bond Counsel, in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038, and

other federal income tax advice that it may give to the Issuer and the Borrower from time to time relating to the Bonds.

Except as expressly set forth above, the certifications set forth herein may not be relied upon or used by any third party or for any other purpose.

Dated: July __, 2025

[Underwriter's signature page to Issue Price Certificate]

Dated as of the date hereof.

LUMENT SECURITIES, LLC

By:

Tracy Peters
Senior Managing Director



June 26, 2025

TO: Industrial Commission

FR: Brandon Dettlaff, Executive Director

RE: **Issuance of Multifamily Revenue Bonds- Wild Rose Senior Apartments**

The North Dakota Housing Finance Agency requests **that the Industrial Commission approve the issuance of multifamily revenue bonds Wild Rose Senior Apartments Series 2025, in an aggregate amount not to exceed \$5,600,000.**

Wild Rose Senior Housing is a acquisition/rehabilitation of an existing 48-unit general occupancy project currently known as Southside Living, formally Guardian Manor. Southside living is a LIHTC project built in 1993 and will finish its original period of affordability on 12/31/2026. The project is in need of significant rehabilitation updates including full interior unit updates, HVAC systems replacement, and exterior upgrades such as roofing, siding, windows, concrete repair.

The developer, American Covenant Senior Housing Foundation from Kalispell, MT, has experience owning and operating senior living communities that offer supportive services as needed. Total development costs of \$8.1 million of which \$3.9 million will be in hard rehabilitation costs. Completion of this project will preserve existing affordable housing for an additional 30 years.

The transaction involves Churchill Stateside Group out of Clearwater, FL providing a private tax-exempt loan to NDHFA, the proceeds of which NDHFA will loan to the developer. The loan has two distinct phases, construction and permanent.

The operative documents for the tax-exempt loan are:

- (a) A resolution authorizing the issuance of tax-exempt multifamily mortgage revenue note, Series 2025, amount not to exceed \$5,600,000
- (b) Project Loan Agreement
- (c) Funding Loan Agreement
- (d) Regulatory Agreement

The Commission, by executing the authorizing resolution, is approving the operative documents in their respective current forms and authorizing the Executive Director and Chief Financial Officer (Authorized Officers) to execute the documents in their respective current forms with such changes as are consistent with the parameters set forth in the authorizing resolution and approved by the Authorized Officers, such approval being evidenced by an Authorized Officer's execution of the documents.

STATE OF NORTH DAKOTA
NORTH DAKOTA HOUSING FINANCE AGENCY
MULTIFAMILY MORTGAGE REVENUE NOTE
(WILD ROSE SENIOR HOUSING PROJECT)
SERIES 2025

A RESOLUTION AUTHORIZING A BORROWING, AND REPAYMENT THEREOF, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$5,600,000; APPROVING A FUNDING LOAN AGREEMENT, A PROJECT LOAN AGREEMENT; AND OTHER RELATED DOCUMENTS; AUTHORIZING THE EXECUTION OF SUCH DOCUMENTS; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

WHEREAS, the Industrial Commission of North Dakota (the “Commission”) acting in its capacity as the North Dakota Housing Finance Agency (the “Agency”), is empowered by the provisions of the North Dakota Century Code Chapter 54-17 (the “Act”) to provide financing, directly or indirectly, of construction, permanent and combined construction and permanent mortgage loans for the acquisition, construction, refurbishing, reconstruction, rehabilitation or improvement of multifamily residential housing in which at least twenty percent of the units are held for occupancy by persons or families of low and moderate income; and

WHEREAS, the Agency intends to borrow on a non-recourse limited obligation basis from Churchill Mortgage Construction, LLC a Florida limited liability company (or such other financial institution as is approved by the Executive Director, the Director of Planning and Housing Development or the Chief Financial Officer of the Agency) (the “Lender”) an aggregate principal amount not to exceed \$5,600,000, the proceeds of which will be used to finance a mortgage loan for the acquisition, rehabilitation and equipping of the Wild Rose Senior Housing, a 48-unit affordable housing development located in Minot, North Dakota (the “Project”); and

WHEREAS, the borrowing by the Agency will be pursuant to a Funding Loan Agreement among the Agency, the Lender and Wilmington Trust, National Association, as fiscal agent (the “Fiscal Agent”) (the “Funding Loan Agreement”), and the agreement to repay such borrowings shall be reflected in non-recourse revenue debt obligations (collectively, the “Obligations”) to be issued to the Lender pursuant thereto, which Funding Loan Agreement and Obligations will be in substantially the forms attached hereto as Attachment A, subject to the terms, conditions and limitations established herein and in the Funding Loan Agreement; and

WHEREAS, the proceeds of the borrowing will be used to finance a loan (the “Loan”) to Wild Rose Senior Housing, LLC, a North Dakota limited liability company, or a similar affiliate of American Covenant Senior Housing Foundation, Inc. (“ACSHF”), a North Dakota Housing Authority, (the “Borrower”), pursuant to a Project Loan Agreement, by and among the Agency, the Borrower and the Lender (the “Project Loan Agreement”) in substantially the form attached hereto as Attachment B; and

WHEREAS, the interest on the Obligations is intended to qualify for a federal tax exemption under Section 142 of the Internal Revenue Code of 1986 (the “Code”), and to ensure that the Obligations maintain their tax exempt status, the Borrower will enter into a Regulatory

Agreement and Declaration of Restrictive Covenants (the “Regulatory Agreement”), which will be in substantially the form attached hereto as Attachment C.

NOW, THEREFORE, BE IT RESOLVED:

Section 1. Findings. The Commission hereby finds and determines that:

(a) the Project financed through the issuance of the Obligations constitutes a “multifamily housing facility” within the meaning of Sections 54-17-07.2 and 54-17-07.3(3) of the Act; and

(b) the Loan will provide the Borrower with financing for the acquisition, construction, refurbishing, reconstruction, rehabilitation or improvement of the Project; and

(c) that the Project will be of public use and will provide a public benefit.

Section 2. Approval of Funding Loan Agreement. The Funding Loan Agreement is hereby approved in the form hereinabove described, and the Executive Director, the Director of Planning and Housing Development or the Chief Financial Officer of the Agency (each, including any individual authorized to act on his or her behalf, an “Authorized Officer”) is hereby authorized and directed to execute and deliver the Funding Loan Agreement, with such changes, insertions or omissions therein as may be approved by such person, such approval to be evidenced conclusively by such execution of the Funding Loan Agreement, and any other Authorized Officer is hereby authorized and directed to attest thereto.

Section 3. Authorization of Obligations. The issuance, execution and delivery of the Obligations to the Lender is hereby authorized and approved. The final principal amount and terms of the Obligations shall be determined by any Authorized Officer, subject to the following conditions:

(a) The Obligations shall not be general obligations of the Commission or the Agency but shall be limited obligations payable solely and only from Loan payments and any other moneys pledged under the Funding Loan Agreement as required by the Project Loan Agreement.

(b) The Obligations shall: mature no later than 50 years from their date of issuance, each bear interest at a fixed rate no greater than 12% per annum, be in an aggregate principal amount not to exceed \$5,600,000 and have the other terms and provisions (including provisions with respect to prepayment prior to maturity, if any) as described to the Commission and definitively set forth in the Funding Loan Agreement upon execution and delivery as aforesaid in Section 2 hereof.

(c) The Obligations shall be executed and delivered substantially in the respective forms set forth in the Funding Loan Agreement, with such additions, omissions and changes as are required or permitted by the Funding Loan Agreement.

(d) The Obligations shall be executed in the name of the Commission by the manual or facsimile signature of each of the members of the Commission, with the official seal of the Commission (or a facsimile thereof) impressed, imprinted or otherwise reproduced thereon, and attested by the manual or facsimile signature of any Authorized Officer, and their execution shall evidence their approval of the final terms thereof. Such Obligations shall not be valid or obligatory for any purpose until authenticated by the manual signature of an authorized officer of the Fiscal Agent.

Section 4. Approval of Project Loan Agreement. The Project Loan Agreement is hereby approved in the form hereinabove described, and any Authorized Officer is hereby authorized to execute and deliver the Project Loan Agreement, with such changes, insertions or omissions therein as may be approved by such person, such approval to be evidenced conclusively by such execution of the Project Loan Agreement, and any other Authorized Officer is hereby authorized and directed to attest thereto.

Section 5. Approval of Regulatory Agreement. The Regulatory Agreement is hereby approved in the form hereinabove described, and any Authorized Officer is hereby authorized to execute and deliver the Regulatory Agreement, with such changes, insertions or omissions therein as may be approved by such person, such approval to be evidenced conclusively by such execution of the Regulatory Agreement, and any other Authorized Officer is hereby authorized and directed to attest thereto.

Section 6. Ratification of Prior Actions. All action previously taken by the officers, members or staff of the Agency within the authority granted herein, with respect to the Funding Loan Agreement, the Project Loan Agreement, the Regulatory Agreement, and the Obligations is approved, and a public hearing with respect to the issuance of the Obligations is hereby approved, confirmed and ratified.

Section 7. Execution of Tax Documents. Any Authorized Officer is hereby authorized to execute certifications as to the Agency's reasonable expectations regarding the amount and use of the proceeds of the Obligations, to file related forms with the Internal Revenue Service and to execute appropriate land use restriction agreements to comply with the Internal Revenue Code of 1986, as amended, particularly Sections 142 and 148 thereof.

Section 8. Additional Actions Authorized. Any Authorized Officer and any other officer, employee, agent, members or staff of the Agency, acting alone or acting with others, are each hereby authorized and directed to execute and deliver any or all other documents which may be required under the terms of the Funding Loan Agreement, the Project Loan Agreement, or the Regulatory Agreement and to take such other action as may be required or appropriate for the performance of the duties imposed thereby or to carry out the purposes thereof.

Section 9. Authorization of Authorized Officers. Any Authorized Officer is hereby authorized to deliver an Agency Certificate, or such other document as may be necessary or appropriate, at the time of issuance of the Obligations which cures ambiguities, defects or omissions herein, corrects or supplements any provision herein, lessens the obligations of the Agency hereunder, or adds to the rights or options of the Agency, all in furtherance of the purposes and programs of the Agency.

Section 10. Effective Date. This Resolution shall become effective immediately.

IN WITNESS WHEREOF, this Resolution has been signed on _____, 2025.

INDUSTRIAL COMMISSION OF NORTH DAKOTA ACTING AS THE
NORTH DAKOTA HOUSING FINANCE AGENCY

Kelly Armstrong, Governor

Drew H. Wrigley, Attorney General

Doug Goehring, Agriculture Commissioner

Attest:

Karen Tyler
Executive Director and Secretary

ATTACHMENT A

FORM OF FUNDING LOAN AGREEMENT

ATTACHMENT B

FORM OF PROJECT LOAN AGREEMENT

ATTACHMENT C

FORM OF REGULATORY AGREEMENT

FUNDING LOAN AGREEMENT

FLOATING RATE TO CONVERSION

FIXED RATE AFTER CONVERSION

among

**CHURCHILL MORTGAGE CONSTRUCTION LLC,
as Initial Funding Lender**

**STATE OF NORTH DAKOTA
NORTH DAKOTA HOUSING FINANCE AGENCY,
as Governmental Lender**

and

**WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Fiscal Agent**

Relating to

**North Dakota Housing Finance Agency
Multifamily Mortgage Revenue Note
(Wild Rose Senior Housing Project)
Series 2025**

Maximum Funding Loan Principal Amount: \$[PRINCIPAL AMOUNT]

Dated as of July 1, 2025

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FUNDING LOAN AGREEMENT

THIS FUNDING LOAN AGREEMENT (this “**Funding Loan Agreement**”), is made and entered into as of July 1, 2025, by and among **CHURCHILL MORTGAGE CONSTRUCTION LLC**, in its capacity as Initial Funding Lender (the “**Initial Funding Lender**”), the **INDUSTRIAL COMMISSION OF NORTH DAKOTA** (the “**Commission**”), acting in its capacity as the **NORTH DAKOTA HOUSING FINANCE AGENCY** (the “**Governmental Lender**”), a public body corporate and politic and an instrumentality duly organized and existing under the laws of the State of North Dakota (the “**State**”), and **WILMINGTON TRUST, NATIONAL ASSOCIATION**, a national banking association, organized and operating under the laws of the United States of America, having a corporate trust office in the State of Minnesota, as Fiscal Agent (the “**Fiscal Agent**”). Capitalized terms are defined in Section 1.01 of this Funding Loan Agreement.

RECITALS

A. The Governmental Lender has been duly created and organized pursuant to and in accordance with the provisions of Chapter 54-17 of the North Dakota Century Code, as amended (the “**Act**”), to provide financing for rental residential developments located within the jurisdiction of the Governmental Lender and intended to be occupied in part by persons of low and moderate income.

B. The Governmental Lender is authorized: (a) to incur indebtedness for the purpose of obtaining moneys to make such loans and provide such financing, to establish any required reserve funds and to pay administrative costs and other costs incurred in connection with the incurrence of such indebtedness of the Governmental Lender; and (b) to pledge all or any part of the revenues, receipts or resources of the Governmental Lender, including the revenues and receipts to be received by the Governmental Lender from or in connection with such loans, and to mortgage, pledge or grant security interests in such loans or other property of the Governmental Lender in order to secure the payment of the principal of, prepayment premium, if any, on and interest on such indebtedness of the Governmental Lender; and

C. Wild Rose Senior Housing, LLC, a North Dakota limited liability company (the “**Borrower**”), has requested the Governmental Lender to enter into this Funding Loan Agreement under which the Funding Lender (i) will advance funds (the “**Funding Loan**”) to or for the account of the Governmental Lender, and (ii) apply the proceeds of the Funding Loan to finance a loan (the “**Project Loan**”) to the Borrower to finance the acquisition, rehabilitation, and equipping of a multifamily rental housing development located in Minot, North Dakota, known as Wild Rose Senior Housing (the “**Project**”); and

D. Simultaneously with the delivery of this Funding Loan Agreement, the Governmental Lender and the Borrower will enter into a Project Loan Agreement of even date herewith (as it may be supplemented or amended, the “**Project Loan Agreement**”), whereby the Borrower agrees to make loan payments to the Governmental Lender in an amount which, when added to other funds available under this Funding Loan Agreement, will be sufficient to enable the

Governmental Lender to repay the Funding Loan and to pay all costs and expenses related thereto when due; and

E. To evidence its payment obligations under the Project Loan Agreement, the Borrower will execute and deliver its Multifamily Mortgage Revenue Note dated the Closing Date (the “**Project Note**”) and the obligations of the Borrower under the Project Note will be secured by a lien on and security interest in the Project pursuant to a Multifamily [Mortgage, Pledge of Rents and Leases, and Security Agreement] of even date herewith (the “**Security Instrument**”), made by the Borrower [in favor of the Fiscal Agent, for the benefit of the Funding Lender] to secure performance by the Governmental Lender of its obligation under the Funding Loan; and

G. The Governmental Lender has executed and delivered to the Funding Lender its Multifamily Mortgage Revenue Note dated as of the Closing Date (the “**Governmental Lender Note**”) evidencing its obligation to make the payments due to the Funding Lender under the Funding Loan as provided in this Funding Loan Agreement, all things necessary to make this Funding Loan Agreement the valid, binding and legal limited obligation of the Governmental Lender, have been done and performed and the execution and delivery of this Funding Loan Agreement and the execution and delivery of the Governmental Lender Note, subject to the terms hereof, have in all respects been duly authorized;

H. The Initial Funding Lender, pursuant to the terms and subject to the conditions of this Funding Loan Agreement and the Construction Funding Agreement has agreed to originate and fund the Funding Loan to the Governmental Lender on a draw-down basis, which proceeds of the Funding Loan will be used by the Governmental Lender to fund the Project Loan to the Borrower in corresponding installments pursuant to the Project Loan Agreement. The Initial Funding Lender will administer the Loans during the Construction Phase in accordance with the Construction Funding Agreement and the other Financing Documents.

I. The Borrower has agreed to use the proceeds of the Project Loan to finance a portion of the costs of acquisition and construction of the Project and to pay certain closing costs with respect to the Loans.

J. Churchill Mortgage Investment LLC, a Florida limited liability company (“**Permanent Lender**”) has committed to purchase the Funding Loan, subject to the satisfaction of the Conditions to Conversion set forth in the Construction Funding Agreement on or before the Forward Commitment Maturity Date, to facilitate the financing of the Project in the Permanent Phase by purchasing the Funding Loan from the Initial Funding Lender on the Conversion Date.

K. If the Conditions to Conversion are satisfied on or before the Forward Commitment Maturity Date as provided for in the Construction Funding Agreement, the Project Loan will convert from the Construction Phase to the Permanent Phase on the Conversion Date and, on such Conversion Date, the Initial Funding Lender shall deliver, and the Permanent Lender shall purchase, the Funding Loan, as evidenced by the Governmental Note. If the Conditions to Conversion are not satisfied on or before the Forward Commitment Maturity Date, the Project Loan will not convert from the Construction Phase to the Permanent Phase and the Permanent Lender will not have any obligation with respect to the purchase of the Funding Loan and the

Initial Funding Lender will remain the owner of the Funding Loan as the holder of the Governmental Note.

L. As a Condition to Conversion, the Project Note and the Security Instrument are required to be amended and restated and the Borrower is required to enter into a Permanent Loan Agreement with the Permanent Lender (the “**Permanent Loan Agreement**”), in each case pursuant to the forms attached to the Construction Funding Agreement.

M. If the Conditions to Conversion are satisfied and the Funding Loan is purchased by the Permanent Lender on the Conversion Date as set forth above, the Initial Funding Lender shall deliver the Funding Loan to the Permanent Lender for purchase pursuant to the terms of the Construction Funding Agreement (such date of purchase by Permanent Lender being referred to as the “**Permanent Lender Purchase Date**”).

N. Upon the occurrence of the Permanent Lender Purchase Date, the Initial Funding Lender will assign to Permanent Lender all of its rights and interest in the Funding Loan, the Governmental Note, this Funding Loan Agreement and the other Financing Documents. Churchill Mortgage Investment LLC will act as Servicer for the Loans on behalf of Permanent Lender, as Funding Lender, on and after the Permanent Lender Purchase Date until such time as the Permanent Lender replaces it.

O. The Governmental Lender has determined that all things necessary to finance the Funding Loan and to execute and deliver the Governmental Note, when executed by the Governmental Lender and authenticated by the Fiscal Agent and issued in accordance with this Funding Loan Agreement, the valid, binding and legal obligation of the Governmental Lender and to constitute this Funding Loan Agreement a valid lien on the properties, interests, revenues and payments herein pledged to the payment of the principal of, premium, if any, and interest on, the Governmental Note, have been duly taken, and the creation, execution and delivery of this Funding Loan Agreement and the execution and delivery of the Governmental Note, subject to the terms of this Funding Loan Agreement, have been duly authorized by the Governmental Lender.

P. The Fiscal Agent has the power and authority to enter into this Funding Loan Agreement, including corporate trust powers to accept the trusts hereunder and to accept and assume its other responsibilities hereunder as Fiscal Agent as evidenced by its execution of this Funding Loan Agreement.

NOW, THEREFORE, in consideration of the premises and of the origination and funding of the Funding Loan by the Funding Lender, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definitions. The terms used in this Funding Loan Agreement (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Funding Loan Agreement and of any amendment or supplement hereto shall have the

respective meanings specified below. Terms used herein not otherwise defined shall have the respective meanings set forth in the Project Loan Agreement.

“Act” means Chapter 54-17 of the North Dakota Century Code, as amended.

“Actual Loan Amount” means the amount of the permanent loan calculated pursuant to the terms of the Construction Funding Agreement.

“Administration Fund” means the Administration Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“Advance Request” shall mean a request by the Borrower to the Initial Funding Lender that the Initial Funding Lender disburse proceeds of the Funding Loan to the Fiscal Agent as provided hereunder, which request shall be in the form prescribed by the Construction Funding Agreement.

“Advance Termination Date” means the earliest to occur of (i) the date when the sum of the aggregate advances of the Funding Loan made by the Initial Funding Lender equals the Authorized Amount, (ii) the date that is three years after the Delivery Date, (iii) the Conversion Date, (iii) the date of a Determination of Taxability or (iv) the occurrence of an Event of Default hereunder.

“Authorized Amount” shall mean \$[PRINCIPAL AMOUNT], the maximum principal amount of the Funding Loan authorized under this Funding Loan Agreement.

“Authorized Officer” means (a) when used with respect to the Governmental Lender, the Chairman, Vice Chairman, or Executive Director of the Governmental Lender and such additional Person or Persons, if any, duly designated by the Governmental Lender in writing to act on its behalf, (b) when used with respect to the Borrower, any manager of the Managing Member of the Borrower and such additional Person or Persons, if any, duly designated by the Borrower in writing to act on its behalf, (c) when used with respect to the Fiscal Agent, any authorized signatory of the Fiscal Agent, or any Person who is authorized in writing to take the action in question on behalf of the Fiscal Agent, (d) when used with respect to the Servicer, any Person or Persons duly designated by the Servicer in writing to act on its behalf, and (e) when used with respect to the Funding Lender Representative, any Person who is authorized in writing to take the action in question on behalf of the Funding Lender Representative.

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor federal statute.

“Bond Counsel” means (a) on the Delivery Date, the law firm or law firms delivering the approving opinion(s) with respect to the Governmental Note, or (b) any other firm of attorneys selected by the Governmental Lender that is experienced in matters relating to the issuance of obligations by states and their political subdivisions that is listed as municipal bond attorneys in The Bond Buyer’s Municipal Marketplace and is acceptable to the Funding Lender Representative.

“Borrower” means Wild Rose Senior Housing, LLC, a North Dakota limited liability company, duly organized and existing under the laws of the State of North Dakota, or any of its permitted successors or assigns, as owner of the Project.

“Borrower Equity Account” means the Borrower Equity Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.11 hereof.

“Borrower Equity Deposit” means \$[0], which shall be comprised of sources other than the proceeds of the Project Loan.

“Business Day” means any day other than (a) a Saturday or a Sunday, or (b) a day on which (i) banking institutions or trust companies in Wilmington, Delaware, Minneapolis, Minnesota, the City of New York or in the city in which the Principal Office of the Fiscal Agent is located are authorized or obligated by law, regulation or executive order to be closed or (ii) the New York Stock Exchange is closed.

“Certificate of the Governmental Lender” and *“Request of the Governmental Lender”* mean, respectively, a written certificate or request signed in the name of the Governmental Lender by an Authorized Officer of the Governmental Lender or such other Person as may be designated and authorized to sign for the Governmental Lender. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

“Code” means the Internal Revenue Code of 1986 and the regulations promulgated thereunder.

“Conditions to Conversion” has the meaning given to that term in the Construction Funding Agreement.

“Construction Funding Agreement” means the Construction Funding Agreement dated as of the date hereof by and between the Borrower and the Initial Funding Lender, as the same may be amended, modified or supplemented from time to time.

“Construction Loan Documents” means the Construction Funding Agreement, and all other documents to be executed and delivered by Borrower to the Initial Funding Lender in connection with the Project.

“Construction Phase” means the construction phase of the Project Loan, which time period shall commence on the Closing Date and remain in effect to, but not including, the Conversion Date.

“Construction Phase Guaranty” means Completion and Repayment Guaranty made by American Covenant Senior Housing Foundation, Inc. to the Initial Funding Lender, the Governmental Lender and any Servicer, as beneficiary parties, to guaranty repayment of the Project Loan and completion of the Project through the Construction Phase.

“Construction Phase Interest Rate” has the meaning set forth on Exhibit F.
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“Continuing Covenant Agreement” means (i) prior to the Conversion Date, the Construction Funding Agreement, and (ii) from and after the Conversion Date, the Permanent Loan Agreement.

“Conversion” means conversion of the Project Loan from the Construction Phase to the Permanent Phase on the Conversion Date.

“Conversion Date” means the date the Permanent Lender purchases the Funding Loan from the Initial Funding Lender upon the satisfaction of the Conditions to Conversion, as such Conversion Date is specified by the Permanent Lender in the Notice of Conversion, which date shall be at least ten (10) days following the date on which the Notice of Conversion is delivered. On the Conversion Date, the Project Note and the Security Agreement will be amended and restated to the forms attached to the Construction Funding Agreement and the Permanent Loan Agreement will be executed and delivered to replace the Construction Funding Agreement.

“Cost,” “Costs” or “Costs of the Project” means costs paid with respect to the Project that (i) are properly chargeable to capital account (or would be so chargeable with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs) in accordance with general federal income tax principles and in accordance with United States Treasury Regulations Section 1.103-8(a)(1), (ii) are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code, (iii) are paid after the earlier of (A) 60 days prior to the date of a resolution of the Governmental Lender to reimburse costs of the Project with proceeds of the Loans or (B) the Delivery Date, and (iv) if the Costs of the Project were previously paid and are to be reimbursed with proceeds of the Loans such costs were (A) Costs of Issuance of the Governmental Note, (B) preliminary capital expenditures (within the meaning of United States Treasury Regulations Section 1.150-2(f)(2)) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition or construction of the Project that do not exceed twenty percent (20%) of the issue price of the Governmental Note (as defined in United States Treasury Regulations Section 1.148-1), or (C) were capital expenditures with respect to the Project that are reimbursed no later than eighteen (18) months after the later of the date the expenditure was paid or the date the Project is placed in service (but no later than three (3) years after the expenditure is paid); provided however, that if any portion of the Project is being constructed or developed by the Borrower or an affiliate (whether as a developer, a general contractor or a subcontractor), *“Cost,” “Costs” or “Costs of the Project”* shall include only (a) the actual out-of-pocket costs incurred by the Borrower or such affiliate in developing or constructing the Project (or any portion thereof), (b) any reasonable fees for supervisory services actually rendered by the Borrower or such affiliate (but excluding any profit component) and (c) any overhead expenses incurred by the Borrower or such affiliate which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the acquisition, construction or development of the Project or payments received by such affiliate due to early completion of the Project (or any portion thereof).

“Costs of Issuance” means, as applicable, (i) the fees (excluding ongoing fees), costs and expenses of (a) the Governmental Lender, the Governmental Lender’s counsel and the Governmental Lender’s financial advisor, (b) Bond Counsel, (c) the Fiscal Agent and the Fiscal Agent’s counsel, (d) the Initial Funding Lender and the Initial Funding Lender’s counsel (e) **Funding Loan Agreement**

Wild Rose Senior Housing

Permanent Lender and Permanent Lender's counsel, and (f) the Borrower's counsel attributable to the funding of the Loans and the Borrower's financial advisor, if any, and (ii) all other fees, costs and expenses directly associated with the Funding Loan and the Project Loan, including, without limitation, printing costs, costs of reproducing documents, filing and recording fees.

"Costs of Issuance Deposit" means the deposit to be made by the Borrower with the Fiscal Agent on the Delivery Date, which deposit shall equal \$[0] and shall be comprised of sources other than the proceeds of the Project Loan.

"Cost of Issuance Fund" means the Cost of Issuance Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

"Default Rate" means the lower of (i) the Construction Phase Interest Rate or Permanent Phase Interest Rate, as applicable, otherwise in effect notwithstanding the default plus four percent (4%) per annum or (ii) the Maximum Interest Rate.

"Delivery Date" means [CLOSING DATE], the date of funding of the initial advance of the Funding Loan and the delivery of the Governmental Note by the Governmental Lender to the Initial Funding Lender.

"Determination of Taxability" shall mean, (a) a determination by the Commissioner or any District Director of the Internal Revenue Service, (b) a private ruling or Technical Advice Memorandum issued by the National Office of the Internal Revenue Service in which Governmental Lender and Borrower were afforded the opportunity to participate, (c) a determination by any court of competent jurisdiction, (d) the enactment of legislation or (e) receipt by Fiscal Agent or Funding Lender Representative, at the request of Governmental Lender, Borrower, Fiscal Agent or Funding Lender Representative, of an opinion of Bond Counsel, in each case to the effect that the interest on the Governmental Note is includable in gross income for federal income tax purposes of the Funding Lender or any former Funding Lender other than a Funding Lender who is a "substantial user" of the Project or a "related person" (as such terms are defined in Section 147(a) of the Code); provided, however, that no such Determination of Taxability under clause (a) or (c) shall be deemed to have occurred if the Governmental Lender (at the sole expense of the Borrower) or the Borrower is contesting such determination, has elected to contest such determination in good faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (i) a final determination from which no appeal may be taken with respect to such determination, (ii) abandonment of such appeal by the Governmental Lender or the Borrower, as the case may be, or (iii) one year from the date of initial determination.

"Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Fiscal Agent, or another method or system specified by the Fiscal Agent as available for use in connection with its services hereunder.

"Electronic Notice" means delivery of notice in a Word format or a Portable Document Format (PDF) by electronic mail to the electronic mail addresses listed in Section 11.04 hereof; provided, that if a sender receives notice that the electronic mail is undeliverable, notice must be sent as otherwise required by Section 11.04 hereof.

“Event of Default” or *“event of default”* means any of those events specified in and defined by the applicable provisions of Article VI hereof to constitute an event of default.

“Extraordinary Fiscal Agent’s Fees and Expenses” means all those fees, expenses and reimbursements earned or incurred by the Fiscal Agent for Extraordinary Services, as set forth in an invoice to the Borrower.

“Extraordinary Services” means and includes, without limitation, services, actions and things carried out and all expenses incurred by the Fiscal Agent, in respect of, or to prevent default under, this Funding Loan Agreement or the Project Loan Documents, including any reasonable attorneys’ or agents’ fees and expenses, and litigation costs that are entitled to payment or reimbursement under the terms of this Funding Loan Agreement or the Project Loan Agreement, and other actions taken and carried out by the Fiscal Agent which are not expressly set forth in this Funding Loan Agreement or the Project Loan Documents.

“Fair Market Value” means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Code) and, otherwise, the term *“Fair Market Value”* means the acquisition price in a bona fide arm’s length transaction (as referenced above) if (a) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (b) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (c) the investment is a United States Treasury Security--State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (d) any commingled investment fund in which the Governmental Lender and related parties do not own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of investment.

“Fee Component” has the meaning set forth in the Project Loan Agreement.

“Financing Documents” means, collectively, this Funding Loan Agreement, the Governmental Note, the Tax Agreement, the Project Loan Documents, the Construction Loan Documents (during the Construction Phase), the Permanent Loan Documents (during the Permanent Phase) and all other documents or instruments evidencing, securing or relating to the Loans.

“Fiscal Agent” means Wilmington Trust, National Association, a national banking association, and its successors hereunder.

“Forward Commitment Maturity Date” means [FORWARD COMMITMENT MATURITY DATE], subject to extension by Permanent Lender as provided in the Construction Funding Agreement.

“Funding Lender” means any Person who is the holder of the Governmental Note.

“Funding Lender Representative” means (i) during the Construction Phase, the Initial Funding Lender and (ii) during the Permanent Phase the Majority Holder or any Person designated by the Majority Holder to act on behalf of the Majority Holder as provided in Section 11.05, or an assignee of such Person as provided in Section 11.05.

“Funding Loan” means the loan in the maximum aggregate principal amount of \$[PRINCIPAL AMOUNT] made to the Governmental Lender pursuant to this Funding Loan Agreement by the Initial Funding Lender.

“Funding Loan Amortization Schedule” means the Funding Loan Amortization Schedule attached as Schedule 1 to the Governmental Note.

“Governmental Lender” means the North Dakota Housing Finance Agency, a public body corporate and politic and an instrumentality duly organized and existing under the laws of the State.

“Governmental Lender Issuance Fee” means the commitment and issuance fee payable to the Governmental Lender on the Delivery Date in an amount equal to 1.25% of the maximum principal amount of the Governmental Note.

“Governmental Note” means the Governmental Lender’s Multifamily Mortgage Revenue Note (Wild Rose Senior Housing Project), Series 2025, dated the Delivery Date, executed by the Governmental Lender and authenticated by the Fiscal Agent in favor of the Initial Funding Lender, in the form attached hereto as Exhibit A, as the same may be amended, restated, supplemented or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time.

“Government Obligations” means investments meeting the requirements of clause (a) or (b) of the definition of “Qualified Investments” herein.

“Initial Debt Service Deposit” means an amount equal to the sum of (i) the interest payable on the Funding Loan, and (ii) the ongoing fees payable with respect to the Project Loan (as provided in Section 4.02 of the Project Loan Agreement), in each case for the period commencing on the Delivery Date to but not including the first day of the calendar month immediately succeeding the Delivery Date.

“Initial Funding Lender” means Churchill Mortgage Construction LLC, as initial holder of the Governmental Note.

“Interest Payment Date” means (i) the first day of each calendar month, commencing [September 1, 2025], (ii) the date of any prepayment of the Funding Loan, but only with respect to the portion of the Funding Loan subject to prepayment, and (iii) the Maturity Date.

“Investment Income” means the earnings and profits derived from the investment of money pursuant to Section 4.08 hereof.

“Investor Member” means Richman Capital Group, as the investor member of Borrower, and its successors and assigns.

“Loans” means, together, the Project Loan and the Funding Loan.

“Loan Payment Fund” means the Loan Payment Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“Loan Prepayment Fund” means the Loan Prepayment Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“Majority Holder” means the Funding Lender that is the holder of at least 51% of the aggregate outstanding principal amount of the Funding Loan.

“Maturity Date” means the maturity date of the Funding Loan set forth in Section 2.01(e) hereof.

“Maximum Interest Rate” means the rate of interest which results in the maximum amount of interest allowed by applicable law.

“Moody’s” means Moody’s Ratings, its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

“Net Proceeds” when used with respect to any insurance or condemnation award, means the proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all reasonable expenses incurred in the collection of such insurance proceeds or condemnation award, including reasonable attorneys’ fees.

“Notes” means, together, the Project Note and the Governmental Note.

“Notice of Conversion” means a written notice to be delivered not less than ten (10) days prior to the Conversion Date by the Permanent Lender to the Governmental Lender, the Fiscal Agent, the Borrower, and the Initial Funding Lender: (i) stating that the Conditions to Conversion have been satisfied on or before the Forward Commitment Maturity Date or, if any Condition to Conversion has not been satisfied on or before the Forward Commitment Maturity Date, stating that such Condition to Conversion has been waived in writing by Permanent Lender (if a waiver is permitted and is granted by Permanent Lender, in its sole and absolute discretion) on or before the Forward Commitment Maturity Date; (ii) confirming the Conversion Date; and (iii) providing for updated amortization schedules for the Project Note and the Governmental Note in the event the Borrower makes a Pre-Conversion Loan Equalization Payment at Conversion.

“Ordinary Fiscal Agent’s Fees and Expenses” means the acceptance fee of \$2,500 due on the Delivery Date and the annual administration fee for the Fiscal Agent’s ordinary fees and expenses in rendering its services under this Funding Loan Agreement during each twelve month period, which fee is equal to (and shall not exceed) \$2,500 and shall be payable annually in advance on the Delivery Date and each anniversary thereof thereafter.

“Permanent Lender” means Churchill Mortgage Investment LLC, a Florida limited liability company, its successors and assigns.

“Permanent Lender Purchase Date” means the date on which Permanent Lender purchases the Funding Loan from the Initial Funding Lender upon satisfaction of the conditions set forth in the Construction Funding Agreement.

“Permanent Loan Documents” means the Project Note, the Security Instrument and the Permanent Loan Agreement.

“Permanent Loan Security Documents” means, collectively, the Security Instrument, the title policy, UCC Fixture Filings and Financing Statements, and any related documents evidencing the obligations of the Borrower under the Security Instrument or securing payment or performance of such obligations or otherwise pertaining to performance of such obligations, as each such document, agreement or instrument may be amended, supplemented, otherwise modified or amended and restated from time to time in accordance with its respective terms.

“Permanent Phase” means the permanent phase of the Project Loan, which time period shall commence on the Conversion Date and remain in effect through the remaining term of the Project Loan.

“Permanent Phase Interest Rate” means, during the Permanent Phase, the fixed interest rate of [_____] % per annum; provided during the continuance of any Event of Default hereunder, the Permanent Phase Interest Rate shall be the Default Rate, in each case computed on the basis of a 360-day year and the actual number of days elapsed.

“Person” means an individual, a corporation, a partnership, an association, a joint stock company, a joint venture, a trust, an unincorporated association, a limited liability company or a government or any agency or political subdivision thereof, or any other organization or entity (whether governmental or private).

“Pledged Security” shall have the meaning given to that term in Section 2.02 hereof.

“Pre-Conversion Loan Equalization Payment” means a prepayment of the Project Loan by the Borrower (and corresponding prepayment of the Funding Loan hereunder) prior to the Forward Commitment Maturity Date in order to equalize the principal amount of the Project Loan and the Funding Loan to the Actual Loan Amount.

“Prepayment Premium” shall mean any premium payable hereunder in connection with a prepayment of the Funding Loan, which premium shall be in an amount equal to (i) during the Construction Phase, the amount of premium payable by the Borrower under Section 10 of the Project Note, and (ii) during the Permanent Phase, the amount of premium payable by the Borrower under Section 2.03 and related provisions of the Permanent Loan Agreement, in each case in connection with a prepayment of the Project Loan.

“Principal Office of the Fiscal Agent” means the office of the Fiscal Agent referenced in Section 11.04(a) hereof, or such other office or offices as the Fiscal Agent may designate in writing

from time to time, or the office of any successor Fiscal Agent where it principally conducts its business of serving as Fiscal Agent under indentures pursuant to which municipal or governmental obligations are issued.

“Project” means, collectively, the land and residential rental apartment units, and related fixtures, equipment, furnishings and site improvements known as Wild Rose Senior Housing located near the intersection of 32nd Avenue SW and 4th Street SW, currently known as 3205 4th Street SW, in Minot, North Dakota, including the real estate described in the Security Instrument.

“Project Account” means the Project Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.11 hereof.

“Project Loan” means the loan made by the Governmental Lender to the Borrower pursuant to the Project Loan Agreement in the maximum aggregate principal amount of \$[PRINCIPAL AMOUNT], as evidenced by the Project Note.

“Project Loan Agreement” means the Project Loan Agreement dated as of the date hereof among the Borrower, the Governmental Lender and the Fiscal Agent, as amended, supplemented or restated from time to time.

“Project Loan Documents” means the Security Instrument, the Project Note, the Project Loan Agreement, the Tax Regulatory Agreement, the Continuing Covenant Agreement, any Subordination Agreement(s) and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Project Loan or any portion thereof. The parties agree acknowledge and agree that the Tax Credit Regulatory Agreement is not a Project Loan Document.

“Project Loan Fund” means the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.11 hereof.

“Project Note” means the Multifamily Note dated the Delivery Date from the Borrower, including all riders and addenda thereto, evidencing the Borrower’s obligation to repay the Project Loan, which Project Note will be delivered to the Governmental Lender, as the same will be amended and restated into the form attached to the Construction Funding Agreement upon the occurrence of the Conversion Date, as the same may be further amended, restated, supplemented or otherwise modified from time to time, or any note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time.

“Qualified Investments” means any of the following if and to the extent permitted by law: (a) direct and general obligations of the United States of America; (b) obligations of any agency or instrumentality of the United States of America the payment of the principal of and interest on which are unconditionally guaranteed by the full faith and credit of the United States of America; (c) senior debt obligations of Freddie Mac; (d) senior debt obligations of Fannie Mae; (e) demand deposits, including interest bearing money market accounts, time deposits, trust funds, trust accounts, overnight bank deposits, interest-bearing deposits, other deposit products, certificates of deposit, including those placed by a third party pursuant to an agreement between the Fiscal Agent and the Corporation, or bankers acceptances of depository institutions, including the Fiscal Agent or any of its affiliates; (f) investment agreements with a bank (including the Fiscal

Agent or any of its affiliates) or any insurance company or other financial institution which has a rating assigned by Moody's or S&P to its outstanding long-term unsecured debt which is the highest rating (as defined below) for long-term unsecured debt obligations assigned by Moody's or S&P, and which are approved by the Funding Lender Representative; (g) shares or units in any money market mutual fund rated "Aaa"/"AAA" by Moody's or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security) (including mutual funds of the Fiscal Agent or its affiliates or for which the Fiscal Agent or an affiliate thereof serves as investment advisor or provides other services to such mutual fund and receives reasonable compensation therefor) registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of (A) direct obligations of the government of the United States of America, or (B) tax exempt obligations; (h)(i) tax-exempt obligations rated in the highest short term rating category by Moody's or S&P, or (ii) shares of a tax-exempt municipal money market mutual fund or other collective investment fund registered under the federal Investment Company Act of 1940, whose shares are registered under the federal Securities Act of 1933, having assets of at least \$100,000,000, and having a rating of "Aaa"/"AAA" by Moody's or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security), for which at least 95% of the income paid to the holders on interest in such money market fund will be excludable from gross income under Section 103 of the Code, including money market funds for which the Fiscal Agent or its affiliates receive a fee for investment advisory or other services to the fund; or (i) any other investments approved in writing by the Funding Lender Representative. For purposes of this definition, the "highest rating" shall mean a rating of at least "VMIG-1"/"A-1+" for obligations with less than one year maturity; at least "Aaa"/"VMIG-1"/"AAA"/"A-1+" for obligations with a maturity of one year or greater but less than three years; and at least "Aaa"/"AAA" for obligations with a maturity of three years or greater. Qualified Investments must be limited to instruments that have a predetermined fixed-dollar amount of principal due at maturity that cannot vary or change and interest, if tied to an index, shall be tied to a single interest rate index plus a single fixed spread, if any, and move proportionately with such index. Ratings of Qualified Investments referred to herein shall be determined at the time of purchase of such Qualified Investments.

"Qualified Transferee" has the meaning set forth in Section 2.08 hereof.

"Rating Agency" means Moody's or S&P, as applicable, or any successor rating service thereof.

"Rebate Analyst" means a certified public accountant, financial analyst or bond counsel, or any firm of the foregoing, or financial institution (which may include the Fiscal Agent) experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code, selected and retained by the Borrower at the expense of the Borrower, with the prior written consent of the Governmental Lender, to make the rebate computations required under this Funding Loan Agreement and the Project Loan Agreement.

"Rebate Fund" means the Rebate Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

"Rebate Year" means each one-year period that ends at the close of business on the day in the calendar year that is selected by Borrower as indicated in the Tax Agreement. The first and last

Rebate Years may be short periods. If no day is selected by Borrower before the earlier of the Maturity Date or the date that is five years after the Delivery Date, each Rebate Year ends on each anniversary of the Delivery Date and on the Maturity Date or date of earlier payment in full of the Governmental Note.

“Requisition” means, with respect to the Project Loan Fund, the requisition in the form of **Exhibit E** to this Funding Loan Agreement required to be submitted in connection with disbursements from the Project Account and/or the Borrower Equity Account of the Project Loan Fund, and with respect to the Cost of Issuance Fund, the requisition in the form of **Exhibit D** to this Funding Loan Agreement required to be submitted in connection with disbursements from the Cost of Issuance Fund.

“Resolution” means the resolution adopted by the Governmental Lender on June 26, 2025 authorizing the Funding Loan, the Project Loan and the execution and delivery of the Financing Documents to which it is a party.

“Responsible Officer” means any officer of the Fiscal Agent employed within or otherwise having regular responsibility in connection with the corporate trust department of the Fiscal Agent and the trusts created hereunder and having direct responsibility for the administration of this Funding Loan Agreement.

“Revenues” means (a) all payments made with respect to the Project Loan pursuant to the Project Loan Agreement, the Project Note or the Security Instrument, including but not limited to all casualty or other insurance benefits and condemnation awards paid in connection therewith and all payments obtained through the exercise of remedies under the Financing Documents, and (b) all money and securities held by the Fiscal Agent in the funds and accounts established pursuant to this Funding Loan Agreement (excluding money or securities designated for deposit into and held in the Cost of Issuance Fund, the Administration Fund and the Rebate Fund), together with all investment earnings thereon.

“Revenue Fund” means the Revenue Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“Security Instrument” means the Multifamily [Mortgage Pledge of Rents and Leases, and Security Agreement] dated as of the date hereof, by the Borrower, granting a first priority mortgage and security interest in the Project [to the Governmental Lender] to secure the repayment of the Project Loan and related obligations, as the same will be amended and restated into the form attached to the Construction Funding Agreement upon the occurrence of the Conversion Date, as the same may be further amended, supplemented or restated.

“Servicer” means any entity appointed by the Funding Lender Representative to service the Loans and any successor in such capacity as appointed by the Funding Lender Representative pursuant to Section 3.02 of the Project Loan Agreement. During the Construction Phase and at Conversion, subject to replacement by the Permanent Lender, the Servicer shall be Churchill Mortgage Investment LLC.

“S&P” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, and its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

“State” means the State of North Dakota.

“Subordination Agreement” means any subordination or intercreditor agreement(s) entered into with respect to any subordinate financing related to the Project, as the same may be amended, supplemented or restated.

“Tax Agreement” means the Tax Compliance Certificate executed by the Governmental Lender and the Borrower on the Delivery Date.

“Tax Credit Regulatory Agreement” means the Regulatory Agreement and Declaration of Restrictive Covenants, between the Governmental Lender and the Borrower relating to certain low-income housing tax credits allocated to the Project expected to be dated and recorded upon construction completion of the Project.

“Tax Regulatory Agreement” means the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of the date hereof, between the Governmental Lender and the Borrower, relating to the Funding Loan.

“Transferee Representations Letter” has the meaning set forth in Section 2.08 hereof.

“Unassigned Rights” means all of the rights of the Governmental Lender and its directors, officers, commissioners, elected officials, attorneys, accountants, employees, agents and consultants: (a) to receive the payment of expenses and attorneys’ fees under any other any other documents and instruments executed and delivered in connection with this Funding Loan Agreement or the Project Loan Agreement, (b) to indemnification under Article 6 of the Project Loan Agreement and to receive amounts payable to Governmental Lender thereunder, (c) to exemption from liability under Section 2.03 under this Funding Loan Agreement; (d) to receive notices and other documents under the Funding Loan Agreement and the Project Loan Agreement and any other documents and instruments executed and delivered in connection with the Loans, (e) to inspect the Project as provided in the Project Loan Agreement and any other documents and instruments executed and delivered in connection with the Loans, and (f) to independently enforce the rights described in subsections (a) through (e) and exercise any remedies in connection therewith.

“Window Period” means the three (3) consecutive month period prior to the Maturity Date.

Section 1.02 Interpretation.

The words “hereof,” “herein,” “hereunder,” and other words of similar import refer to this Funding Loan Agreement as a whole and not to any particular Article, Section or other subdivision. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. All accounting terms not

otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as in effect from time to time. References to Articles, Sections, and other subdivisions of this Funding Loan Agreement are to the designated Articles, Sections and other subdivisions of this Funding Loan Agreement as originally executed. The headings of this Funding Loan Agreement are for convenience only and shall not define or limit the provisions hereof.

ARTICLE II

THE FUNDING LOAN

Section 2.01 *Terms.*

(a) The total principal amount of the Funding Loan is hereby expressly limited to the Authorized Amount. The Funding Loan shall be originated and funded by the Initial Funding Lender to the Governmental Lender in accordance with Section 2.01(b) below. The proceeds of the Funding Loan shall be deposited with Fiscal Agent and disbursed in accordance with this Funding Loan Agreement. The Funding Loan shall be evidenced by the Governmental Note and shall bear interest and be paid in accordance with the payment terms set forth in the Governmental Note and this Funding Loan Agreement.

(b) The Funding Loan shall be originated by the Initial Funding Lender on a draw-down basis. The proceeds of the Funding Loan shall be advanced by the Initial Funding Lender in installments directly to the Fiscal Agent for deposit to the Project Account upon receipt of an Advance Request and the satisfaction of the conditions to such advance set forth in the Construction Funding Agreement and the form of requisition attached as Exhibit E hereto. Upon the advancement of the proceeds of the Funding Loan in accordance with the terms hereof, the principal amount of the Governmental Note in a principal amount equal to the amount so advanced shall be deemed to be increased automatically and without further acts on the part of the Governmental Lender or the Fiscal Agent. The initial installment of the Funding Loan shall be in the amount of \$[INITIAL INSTALLMENT], which amount shall be advanced by the Initial Funding Lender and deposited in the Project Loan Fund on the Delivery Date for application as provided in Section 2.11. Notwithstanding anything in this Funding Loan Agreement to the contrary, no additional amounts of the Funding Loan may be drawn down and funded hereunder after the Advance Termination Date. Any extension of the Advance Termination Date shall be subject to the receipt by the Fiscal Agent of (i) the prior written consent of the Initial Funding Lender and Permanent Lender and (ii) an opinion of Bond Counsel (which shall also be addressed to the Funding Lender Representative) to the effect that such extension will not adversely affect the tax exempt status of the Governmental Note.

(c) The Fiscal Agent shall maintain in its books a log which shall reflect the principal amount of the Funding Loan advanced by the Initial Funding Lender from time to time in accordance with the provisions of Section 2.01(b) above (the “**Record of Advances**”). The principal amount due on the Governmental Note shall be only such amount as has been advanced by the Initial Funding Lender as reflected in the Record of Advances and not otherwise prepaid pursuant to the terms of this Funding Loan Agreement. The records maintained by the Fiscal Agent in such regard will be conclusive evidence of the principal amount of the Funding Loan

(absent manifest error). The Fiscal Agent shall notify the Governmental Lender and the Borrower if any advance of the proceeds of the Funding Loan is not made by the Initial Funding Lender when due hereunder.

(d) The Funding Loan shall bear interest payable on each Interest Payment Date at (i) the Construction Phase Interest Rate during the Construction Phase and (ii) the Permanent Phase Interest Rate during the Permanent Phase. Interest shall accrue on the principal amount of the Funding Loan which has been advanced hereunder and is outstanding as reflected on the Record of Advances.

(e) The Funding Loan shall mature on [MATURITY DATE], subject to scheduled monthly principal payments, and to optional and mandatory prepayment prior to maturity as provided in Article III hereof. The unpaid principal balance of the Funding Loan shall be paid on the dates and in the amounts set forth on the initial Funding Loan Amortization Schedule provided on the Delivery Date and attached as Schedule 1 to the Governmental Note if the Conversion Date occurs on or prior to the initial Forward Commitment Maturity Date. If the Forward Commitment Maturity Date is extended by Permanent Lender in accordance with the Construction Funding Agreement, the first principal payment date under the Funding Loan Amortization Schedule shall automatically be extended to the first day of the month immediately succeeding the Conversion Date (with the succeeding principal installments remaining consistent with the original schedule but for them occurring on later dates). Additionally, in the event the outstanding amount of the Funding Loan on the Conversion Date is less than the starting principal amount set forth in the initial Funding Loan Amortization Schedule, a new Funding Loan Amortization Schedule will be generated on the Conversion Date at such lesser outstanding principal amount based on the parameters set forth in the Construction Funding Agreement. In the event the initial Funding Loan Amortization Schedule is modified in accordance with this Section 2.01(e), a replacement Funding Loan Amortization Schedule will be provided by the Permanent Lender, which will be attached to the Governmental Note on the Conversion Date. In the event the Conversion Date occurs prior to the Forward Commitment Maturity Date, a new Funding Loan Amortization Schedule will be generated by the Permanent Lender with the succeeding principal installments consistent with the initial Funding Loan Amortization Schedule and the new Funding Loan Amortization Schedule reflecting the revised principal installments will be attached to the Governmental Lender Note on the Conversion Date. All unpaid principal and all accrued and unpaid interest outstanding under the Funding Loan shall be due and payable on the Maturity Date or such earlier date as set forth in the modified Funding Loan Amortization Schedule.

(f) Payment of principal of, premium, if any, and interest on the Funding Loan shall be paid by wire transfer in immediately available funds to an account within the United States of America designated by the Funding Lender (unless otherwise directed by the Funding Lender).

(g) On or before the date fixed for payment, money shall be deposited with the Fiscal Agent to pay, and the Fiscal Agent is hereby authorized and directed to apply such money to the payment of, the Funding Loan, together with accrued interest thereon to the date of payment.

(h) In no contingency or event whatsoever shall the aggregate of all amounts deemed interest hereunder and charged or collected pursuant to the terms of this Funding Loan Agreement exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in

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a final determination, deem applicable hereto. In the event that such court determines the Funding Lender has charged or received interest hereunder in excess of the highest applicable rate, the Funding Lender shall apply, in its sole discretion, and set off such excess interest received by the Funding Lender against other obligations due or to become due under the Financing Documents and such rate shall automatically be reduced to the maximum rate permitted by such law.

Section 2.02 Pledged Security. To secure the payment of the principal of, premium, if any, and interest on the Funding Loan according to its tenor and effect, and the performance and observance by the Governmental Lender of all the covenants expressed or implied herein and in the Governmental Note, and the payment and performance of all amounts and obligations under the Continuing Covenant Agreement in each case for the equal and proportionate benefit, security and protection of all present and future holders of the Governmental Note secured by this Funding Loan Agreement, the Governmental Lender does hereby grant, bargain, sell, convey, pledge and assign a security interest, unto the Fiscal Agent, and its successors in such capacity and its and their assigns in and to the following (said property being herein referred to as the “**Pledged Security**”), subject only to the provisions of this Funding Loan Agreement permitting the use and application thereof for or to the purposes and on the terms and conditions set forth herein:

(a) All right, title and interest of the Governmental Lender in and to all Revenues;

(b) All right, title and interest of the Governmental Lender in and to the Project Loan Agreement, the Project Note, the Security Instrument and the other Project Loan Documents (other than the Tax Regulatory Agreement and Unassigned Rights), including all extensions and renewals of the terms thereof, if any, including, but without limiting the generality of the foregoing, the present and continuing right to receive, receipt for, collect or make claim for any of the money, income, revenues, issues, profits and other amounts payable or receivable thereunder (including all casualty insurance benefits or condemnation awards), whether payable under the above referenced documents or otherwise, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Governmental Lender or any other Person is or may become entitled to do under said documents; and

(c) Except for funds, money or securities in the Cost of Issuance Fund, the Administration Fund and the Rebate Fund, all funds, money and securities and any and all other rights and interests in property whether tangible or intangible from time to time hereafter by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder for the Funding Loan by the Governmental Lender or by anyone on its behalf or with its written consent to the Fiscal Agent, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

The foregoing notwithstanding, if the Governmental Lender or its successors or assigns shall pay or cause to be paid to the Funding Lender in full the principal, interest and premium, if any, to become due with respect to the Funding Loan at the times and in the manner provided in Article IX hereof, and if the Governmental Lender shall keep, perform and observe, or cause to be kept, performed and observed, all of its covenants, warranties and agreements contained herein,

then these presents and the estate and rights hereby granted shall, at the option of the Governmental Lender, cease, terminate and be void, and thereupon the Fiscal Agent shall cancel and discharge the lien of this Funding Loan Agreement and execute and deliver to the Governmental Lender such instruments in writing as shall be requisite to satisfy the lien hereof, and, subject to the provisions of Sections 4.11 and 4.12 hereof and Article IX hereof, reconvey to the Governmental Lender the estate hereby conveyed, and assign and deliver to the Governmental Lender any property at the time subject to the lien of this Funding Loan Agreement which may then be in its possession, except for the Rebate Fund and cash held by the Fiscal Agent for the payment of interest on and principal of the Governmental Note; otherwise this Funding Loan Agreement to be and shall remain in full force and effect

Section 2.03 *Limited Obligations.* The Governmental Note, together with interest thereon and redemption premium with respect thereto, is a limited obligation of the Governmental Lender secured by the Pledged Security, is and shall always be payable solely from the Revenues, is and shall always be a valid claim of the holder thereof only against the Revenues and income derived from the Project Loan Agreement, the Project Note and the Security Instrument, which Revenues and income shall be used for no other purpose than to pay the principal installments of, redemption premium, if any, and interest on the Governmental Note, except as may be expressly authorized otherwise in this Agreement. The Governmental Note and the obligation to pay interest thereon and redemption premiums with respect thereto do not now and shall never constitute an indebtedness or an obligation of the Governmental Lender, the State of North Dakota or any political subdivision thereof, within the purview of any constitutional limitation or provision, or a charge against the general credit or taxing powers, if any, of any of them, but shall be secured by the Pledged Security, and shall be payable solely from the Revenues and income derived from the Project Loan Agreement, the Project Note and the Security Instrument. No owner of the Governmental Note shall have the right to compel the exercise of the taxing power, if any, of the State of North Dakota or any political subdivision thereof to pay any principal installment of, premium, if any, or interest on the Governmental Note. The Governmental Lender has no taxing power.

Section 2.04 *Funding Loan Agreement Constitutes Contract.* In consideration of the origination and funding of the Funding Loan by the Initial Funding Lender, the provisions of this Funding Loan Agreement shall be part of the contract of the Governmental Lender with the Initial Funding Lender and any successors or assigns thereof in such capacity from time to time.

Section 2.05 *Form and Execution.* The Governmental Note shall be in substantially the form attached as **Exhibit A**. The Governmental Note shall be executed on behalf of the Governmental Lender by the manual or facsimile signature of an Authorized Officer of the Governmental Lender, and sealed with an impression or a facsimile of the seal of the Governmental Lender. Any facsimile signatures shall have the same force and effect as if said officers had manually signed the Governmental Note. Any reproduction of the official seal of the Governmental Lender on the Governmental Note shall have the same force and effect as if the official seal of the Governmental Lender had been impressed on the Governmental Note.

Section 2.06 *Authentication.* The Governmental Note shall not be valid or obligatory for any purpose or entitled to any security or benefit under this Funding Loan Agreement unless a certificate of authentication on the Governmental Note, substantially in the form set forth in **Funding Loan Agreement**
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Exhibit A, shall have been duly executed by an Authorized Officer of the Fiscal Agent; and such executed certificate of authentication upon the Governmental Note shall be conclusive evidence that the Governmental Note has been duly executed, registered, authenticated and delivered under this Funding Loan Agreement.

Section 2.07 Mutilated, Lost, Stolen or Destroyed Governmental Note. In the event the Governmental Note is mutilated, lost, stolen or destroyed, the Governmental Lender shall execute and the Fiscal Agent shall authenticate a new Governmental Note substantially in the form set forth in **Exhibit A** in exchange and substitution for and upon cancellation of the mutilated Governmental Note or in lieu of and in substitution for such lost, stolen or destroyed Governmental Note, upon payment by the Funding Lender of any applicable tax or governmental charge and the reasonable expenses and charges of the Governmental Lender and the Fiscal Agent in connection therewith, and in the case where the Governmental Note is lost, stolen or destroyed, the filing with the Fiscal Agent of evidence satisfactory to it that the Governmental Note was lost, stolen or destroyed, and of the ownership thereof, and furnishing the Governmental Lender and the Fiscal Agent with indemnity satisfactory to each of them. In the event where the Governmental Note shall have matured, instead of delivering a new Governmental Note the Governmental Lender may pay the same without surrender thereof.

Section 2.08 Registration; Transfer of Funding Loan; Transferee Representations Letter.

(a) The Funding Loan shall be fully registered as to principal and interest in the manner and with any additional designation as the Fiscal Agent deems necessary for the purpose of identifying the registered owner thereof. The Funding Loan shall be transferable only on the registration books of the Fiscal Agent. The Fiscal Agent shall maintain books or other records showing the name and date of registration, address and employer identification number of the registered owner of the Funding Loan and any transfers of the Funding Loan as provided herein. The Funding Loan shall initially be registered to the Initial Funding Lender, upon the Conversion Date shall be registered to the Permanent Lender.

(b) The Funding Lender shall have the right to sell, assign or otherwise transfer in whole its interest in the Funding Loan or to grant a participation interest in the Funding Loan in a percentage of not less than twenty-five percent (25%) of the outstanding principal amount of the Funding Loan; provided that the Funding Loan may be transferred, or any participation interest therein granted, only to an “accredited investor” as that term is defined in Rule 501 of Regulation D under the Securities Act or a “qualified institutional buyer” as that term is defined under Rule 144A of the Securities Act (such “accredited investor” or “qualified institutional buyer” a “Qualified Transferee”) that delivers a letter to the Fiscal Agent substantially in the form attached hereto as **Exhibit C-1** (for any transfer of the Funding Loan) or **Exhibit C-2** (for any sale of a participation interest in the Funding Loan during the Construction Phase) setting forth certain representations with respect to such Qualified Transferee (the “Transferee Representations Letter”). Notwithstanding the preceding sentence, no Transferee Representations Letter shall be required for the Funding Lender Representative to (i) transfer the Funding Loan to any affiliate or other party related to the Funding Lender that is a Qualified Transferee or (ii) sell or transfer the Funding Loan to a special purpose entity, a trust or a custodial or similar pooling arrangement from which the Funding Loan or securitized interests therein are not expected to be sold or

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transferred except to (x) owners or beneficial owners thereof that are Qualified Transferees or (y) in circumstances where secondary market credit enhancement is provided for such securitized interests resulting in a rating thereof of at least “A” or better. In connection with any sale, assignment or transfer of the Funding Loan, the Funding Lender shall give notice of such sale, assignment or transfer to the Fiscal Agent and the Fiscal Agent shall record such sale, assignment or transfer on its books or other records maintained for the registration of transfer of the Funding Loan.

The transferor shall also provide or cause to be provided to the Fiscal Agent all information necessary to allow the Fiscal Agent to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 6045. The Fiscal Agent may rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information. The transferor shall also provide or cause to be provided to the Fiscal Agent all information necessary to allow the Fiscal Agent to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 6045. The Fiscal Agent may rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

Section 2.09 *Reserved.*

Section 2.10 *Funding Loan Closing Conditions; Delivery of Governmental Note.* Closing of the Funding Loan on the Delivery Date shall be conditioned upon, and the Governmental Lender shall only execute and deliver to the Fiscal Agent, and the Fiscal Agent shall only authenticate the Governmental Note and deliver the Governmental Note to the Initial Funding Lender upon, receipt by the Fiscal Agent of the following:

- (a) executed counterparts of this Funding Loan Agreement, the Project Loan Agreement, the Tax Regulatory Agreement and the Tax Agreement;
- (b) an opinion of Bond Counsel or counsel to the Governmental Lender to the effect that the Governmental Lender is duly organized and existing under the laws of the State and has duly authorized, executed and delivered this Funding Loan Agreement, the Governmental Note and the other Financing Documents to which it is a party, and such documents are valid and binding special, limited obligations of the Governmental Lender enforceable in accordance with their terms subject to customary exceptions;
- (c) the initial advance of the proceeds of the Funding Loan by the Initial Funding Lender in the amount set forth in Section 2.01(b) hereof;
- (d) the executed Project Note in favor of the Fiscal Agent;
- (e) a copy of the executed Security Instrument, and the Construction Funding Agreement;
- (f) an opinion of counsel to the Borrower to the effect that the Borrower is duly organized and validly existing and in good standing under the laws of the state in which it

has been organized and in good standing under the laws of each other state in which the Borrower transacts business and has full power and authority to enter into the Financing Documents to which it is a party, that its execution and delivery of and performance of its covenants in such documents do not contravene law or any provision of any other documents to which it is a party or by which it or such property is bound or affected, and that all such agreements have been duly authorized, executed and delivered by the Borrower, and are legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms;

(g) a customary approving opinion of Bond Counsel, including but not limited to an opinion to the effect that the interest on the Governmental Note, under laws in effect on the date of such opinion, is excluded from gross income for federal income tax purposes and, where applicable, for State income tax purposes;

(h) a certified copy of the Resolution;

(i) the written request and authorization to the Fiscal Agent by the Governmental Lender to authenticate and deliver the Governmental Note to the Initial Funding Lender upon funding to the Fiscal Agent of the initial advance of proceeds of the Funding Loan; and

(j) receipt by the Fiscal Agent of the amounts specified in Section 2.11 of this Funding Loan Agreement and Section 3.03 of the Project Loan Agreement.

(k) receipt by the Fiscal Agent of a Transferee Representations Letter from the Initial Funding Lender substantially in the form attached hereto as Exhibit C-1, and if a participation interest in the Funding Loan will be sold on the Delivery Date, a Transferee Representations Letter from any participant purchasing a participation interest in the Funding Loan from the Initial Funding Lender in substantially in the form attached hereto as Exhibit C-2.

Section 2.11 *Establishment of Project Loan Fund; Application of Funding Loan Proceeds and Other Money.*

(a) The Fiscal Agent shall establish, maintain and hold in trust and there is hereby established with the Fiscal Agent a Project Loan Fund and therein a Project Account and a Borrower Equity Account. No amount shall be charged against the Project Loan Fund except as expressly provided in this Section 2.11 and Section 4.02 hereof.

(b) The proceeds of the Funding Loan shall be delivered by the Initial Funding Lender to the Fiscal Agent on behalf of the Governmental Lender in the initial installment on the Delivery Date and thereafter on a drawdown basis as provided for in Section 2.01(b) hereof. Upon receipt, the Fiscal Agent shall deposit such proceeds to the credit of the Project Account of the Project Loan Fund. Amounts in the Project Loan Fund shall be disbursed as provided in subparagraph (d) below, subject to the conditions set forth in Section 3.01 of the Project Loan Agreement. Upon the disbursement of all amounts in the Project Loan Fund, the Fiscal Agent shall close the Project Loan Fund.

(c) The Borrower shall deliver from sources other than the Loans, (i) to the Fiscal Agent, on or prior to the Delivery Date, the Costs of Issuance Deposit for deposit to the credit of the Cost of Issuance Fund and the Borrower Equity Deposit for deposit to the credit of the Borrower Equity Account, and (ii) to the Servicer the Initial Debt Service Deposit. The Fiscal Agent shall also deposit in the Borrower Equity Account any additional amounts delivered from time to time to the Fiscal Agent and directed in writing by the Borrower or Servicer to be deposited therein, excluding any proceeds of the Loans.

(d) Upon the making of the initial deposits described above in this Section 2.11, the Governmental Lender shall finance the Project Loan pursuant to the Project Loan Agreement, and the Fiscal Agent shall make the initial disbursements of amounts in the Project Loan Fund to the Borrower or otherwise as provided in Section 4.02 hereof.

Section 2.12 Direct Loan Payments to Funding Lender; Servicer Disbursement of Fees.

(a) Notwithstanding any provision in this Funding Loan Agreement to the contrary, during any period that a Servicer is engaged by the Funding Lender with respect to the Loans, the Governmental Lender and the Fiscal Agent agree that all payments of principal of, Prepayment Premium, if any, and interest on the Funding Loan and all fees due hereunder and under the Project Loan Agreement shall be paid by the Borrower to the Servicer. The Servicer shall remit all payments collected from the Borrower of principal of, Prepayment Premium, if any, and interest on the Funding Loan, together with other amounts due to the Funding Lender, directly to the Funding Lender (without payment through the Fiscal Agent) per the instructions of the Funding Lender Representative. The Servicer shall remit the Ordinary Fiscal Agent's Fees and Expenses to the Fiscal Agent, together with any other amounts due to the Governmental Lender and the Fiscal Agent collected by the Servicer from the Borrower, in each case in accordance with their respective instructions. Any payment made in accordance with the provisions of this Section shall be accompanied by sufficient information to identify the source and proper application of such payment. The Servicer shall promptly notify the Fiscal Agent, the Funding Lender Representative and the Governmental Lender in writing of any failure of the Borrower to make any payment of principal of, Prepayment Premium, if any, and interest on the Funding Loan when due or to pay any fees due hereunder or under the Project Loan Agreement, and the Fiscal Agent and the Governmental Lender shall not be deemed to have any notice of such failure unless it has received such notice in writing.

(b) If the Governmental Note is sold or transferred as provided in Section 2.08, the Funding Lender Representative shall notify the Fiscal Agent and the Borrower in writing of the name and address of the transferee.

(c) So long as payments of principal of, Prepayment Premium, if any, and interest on the Governmental Note and all fees due hereunder and under the Project Loan Agreement are being made to the Servicer in accordance with this Section 2.12 and no Event of Default has occurred of which the Fiscal Agent has been given, or been deemed to have, notice thereof pursuant to this Funding Loan Agreement, the Fiscal Agent shall have no obligations to collect loan payments with respect to the Funding Loan, nor shall it be obligated to collect loan payments or fee payments pursuant to the Project Loan Agreement, except at the express written direction of the Funding

Lender Representative. Notwithstanding the foregoing, the Funding Lender Representative may elect to have the Fiscal Agent collect and remit loan payments and fee payments hereunder and under the Project Loan Agreement upon written notice of such election to the Fiscal Agent, the Borrower and the Governmental Lender.

Section 2.13 *Conversion.* If the Conversion Notice is issued in the timeframe required under the Construction Funding Agreement, Conversion will occur on the Conversion Date indicated in such Conversion Notice. If the Conversion Notice is not so issued, Conversion will not occur, and the Permanent Lender will have no obligations with respect to the purchase of the Funding Loan, or otherwise with respect to the Loans or the Project.

ARTICLE III

PREPAYMENT OF THE FUNDING LOAN

Section 3.01 *Prepayment of the Funding Loan Prior to Maturity.*

(a) **Optional Prepayment.** The Funding Loan, together with accrued interest thereon, is subject to optional prepayment in whole or part upon optional prepayment of the Project Loan in accordance with the notice and other prepayment provisions set forth in the Project Note.

(b) **Mandatory Prepayment.** The Funding Loan, together with accrued interest thereon, and together with Prepayment Premium (to the extent payable under the Project Note), is subject to mandatory prepayment on any Business Day, in whole or in part as indicated below, at the earliest practicable date upon the occurrence of any of the following:

- (i) in whole or in part, upon the occurrence of a mandatory prepayment of the Project Loan pursuant to the Project Note and receipt by the Fiscal Agent of a written direction by the Funding Lender Representative that the Funding Loan shall be subject to mandatory payment as a result thereof;
- (ii) in part, on the Interest Payment Date next following the completion of the construction of the Project, to the extent amounts remaining in the Project Account of the Project Loan Fund are transferred to the Loan Prepayment Fund pursuant to Section 4.02(e) hereof;
- (iii) in part, in the event the Borrower elects to make a Pre-Conversion Loan Equalization Payment; or
- (iv) in whole, on or after the Forward Commitment Maturity Date, at the written direction of the Initial Funding Lender, if the Conversion Notice is not issued by the Permanent Lender prior to the Forward Commitment Maturity Date.

Section 3.02 *Notice of Prepayment.* Notice of the intended prepayment of the Funding Loan shall be given by the Fiscal Agent (in the case of an optional prepayment under Section 3.01(a) and 3.01(b)(iii), at the written direction of the Borrower given not fewer than forty-five (45) days prior to the date fixed for prepayment) by first class mail, postage prepaid, or by

overnight delivery service, to the Funding Lender. All such prepayment notices shall be given not less than ten (10) days (not less than thirty (30) days in the case of optional prepayment) nor more than sixty (60) days prior to the date fixed for prepayment. Notices of prepayment shall state (i) the prepayment date, (ii) the prepayment amount, and (iii) the place or places where amounts due upon such prepayment will be payable.

Notice of such prepayment shall also be sent by first class mail, postage prepaid, or by overnight delivery service, to the Servicer, not later than the time of mailing of notices required by the first paragraph above, and in any event no later than simultaneously with the mailing of notices required by the first paragraph above; provided, that neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the prepayment of the Funding Loan.

ARTICLE IV

REVENUES AND FUNDS

Section 4.01 *Pledge of Revenues and Assets; Establishment of Funds.* The pledge and assignment of and the security interest granted in the Pledged Security pursuant to Section 2.02 hereof shall attach, be perfected and be valid and binding from and after the time of the closing of the Funding Loan and delivery of the Governmental Note by the Fiscal Agent or by any Person authorized by the Fiscal Agent to deliver the Governmental Note. The Pledged Security so pledged and then or thereafter received by the Fiscal Agent shall immediately be subject to the lien of such pledge and security interest without any physical delivery thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Governmental Lender irrespective of whether such parties have notice thereof.

In addition to the Project Loan Fund established pursuant to Section 2.11 hereof, the Fiscal Agent shall establish, maintain and hold in trust the following funds and accounts, each of which is hereby established and each of which shall be disbursed and applied only as herein authorized:

- (a) Revenue Fund;
- (b) Loan Payment Fund;
- (c) Loan Prepayment Fund;
- (d) Administration Fund;
- (e) Cost of Issuance Fund; and
- (f) Rebate Fund.

The funds and accounts established pursuant to Section 2.11 and this Section 4.01 shall be maintained in the corporate trust department of the Fiscal Agent as segregated trust accounts, separate and identifiable from all other funds held by the Fiscal Agent. The Fiscal Agent shall, at the written direction of an Authorized Officer of the Governmental Lender, and may, in its

discretion, establish such additional accounts within any Fund, and subaccounts within any of the accounts, as the Governmental Lender or the Fiscal Agent may deem necessary or useful for the purpose of identifying more precisely the sources of payments into and disbursements from that Fund and its accounts, or for the purpose of complying with the requirements of the Code relating to arbitrage, but the establishment of any such account or subaccount shall not alter or modify any of the requirements of this Funding Loan Agreement with respect to a deposit or use of money in the funds established hereunder, or result in commingling of funds not permitted hereunder.

Section 4.02 *Project Loan Fund.*

(a) Deposit. The Fiscal Agent shall deposit the proceeds of the Funding Loan into the Project Account of the Project Loan Fund upon receipt of each advance thereof as provided in Section 2.11(b) hereof. The Fiscal Agent shall deposit the Borrower Equity Deposit into the Borrower Equity Account of the Project Loan Fund, as well as any additional amounts delivered from time to time to the Fiscal Agent and directed by the Borrower or Servicer to be deposited therein (excluding any proceeds of the Governmental Note), as provided in Section 2.11(c) hereof.

(b) Disbursements. Amounts on deposit in the Project Loan Fund shall be disbursed from time to time by the Fiscal Agent for the purpose of (i) paying interest on the Funding Loan and the Fee Component in each case when due during the Construction Phase and (ii) paying Costs of the Project. In addition, amounts in the Project Loan Fund shall be transferred to the Loan Prepayment Fund, the Rebate Fund and the Borrower at the times and in the manner provided in subsection (e) of this Section 4.02.

(c) Transfers and Requisitions. The Fiscal Agent shall make disbursements from the respective accounts of the Project Loan Fund for purposes described in subsection (b)(ii) of this Section 4.02 only upon the receipt of Requisitions signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer (signifying the consent to the Requisition by the Servicer). The Fiscal Agent shall be fully protected in making the disbursements requested in such Requisitions provided to it and shall have no right or duty to determine whether any requested disbursement from the Project Loan Fund complies with the terms, conditions and provisions of the Construction Funding Agreement. The countersignature of the Authorized Officer of the Servicer on a Requisition shall be deemed a certification and, insofar as the Fiscal Agent and the Governmental Lender are concerned, constitute conclusive evidence, that all of the terms, conditions and requirements of the Construction Funding Agreement applicable to such disbursement have been fully satisfied or waived. The Fiscal Agent shall, promptly upon each receipt of a completed Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer, initiate procedures with the provider of a Qualified Investment to make withdrawals as necessary to fund the Requisition.

Notwithstanding anything to the contrary contained herein, no signature of an Authorized Officer of the Borrower shall be required during any period in which a default has occurred and is then continuing under the Loans or any Financing Document (notice of which default has been given in writing by the Funding Lender Representative or the Servicer to the Fiscal Agent and the Governmental Lender, and the Fiscal Agent shall be entitled to conclusively rely on any such written notice as to the occurrence and continuation of such a default).

(d) If a Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer or (as permitted hereunder) solely by an Authorized Officer of the Servicer, is received by the Fiscal Agent, the requested disbursement shall be paid by the Fiscal Agent as soon as practicable, but in no event later than three (3) Business Days following receipt thereof by the Fiscal Agent. Upon final disbursement of all amounts on deposit in the Project Loan Fund, including all interest accrued therein, the Fiscal Agent shall close the Project Loan Fund.

(e) Immediately prior to any mandatory prepayment of the Funding Loan pursuant to Section 3.01(b)(i) hereof, any amount then remaining in the Project Loan Fund shall, at the written direction of the Funding Lender Representative, be transferred to the Loan Prepayment Fund to pay amounts due on the Funding Loan, if any. In addition, any amount remaining in the Project Account of the Project Loan Fund following completion of the construction of the Project in accordance with the Construction Funding Agreement, evidenced by an instrument signed by the Funding Lender Representative or the Servicer, shall be transferred to the Loan Prepayment Fund and used to prepay the Funding Loan in accordance with Section 3.01(b)(ii) hereof, unless the Fiscal Agent receives an opinion of Bond Counsel (which shall also be addressed to the Funding Lender Representative) to the effect that a use of such money for other than prepayment of the Funding Loan will not adversely affect the tax exempt status of the Governmental Note; provided, that any amounts in the Project Account of the Project Loan Fund in excess of the amount needed to fund the related prepayment of the Funding Loan shall be transferred to the Rebate Fund. In the event there are funds remaining in the Borrower Equity Account following completion of the construction of the Project in accordance with the Construction Funding Agreement and the Conversion Date has occurred, and provided no default by the Borrower exists under this Funding Loan Agreement or any Project Loan Document, such funds shall be paid by the Fiscal Agent to the Borrower at the written direction of the Funding Lender Representative or the Servicer.

(f) Amounts on deposit in the Project Loan Fund shall be invested as provided in Section 4.08 hereof. All Investment Income on amounts on deposit in the Project Loan Fund shall be retained in and credited to and become a part of the amounts on deposit in the Project Loan Fund, and shall constitute part of any transfers required by subsection (b) or (e) of this Section 4.02.

Section 4.03 *Application of Revenues.*

(a) All Revenues received by the Fiscal Agent shall be deposited by the Fiscal Agent, promptly upon receipt thereof, to the Revenue Fund, except (i) the proceeds of the Funding Loan received by the Fiscal Agent pursuant to Section 2.01(b), which shall be applied in accordance with the provisions of Section 2.11 hereof; (ii) as otherwise specifically provided in subsection (c) of this Section 4.03 with respect to certain deposits into the Loan Prepayment Fund; (iii) with respect to Investment Income to the extent required under the terms hereof to be retained in the funds and accounts to which they are attributable; and (iv) with respect to amounts required to be transferred between funds and accounts as provided in this Article IV.

(b) On the Business Day immediately preceding each Interest Payment Date or any other date on which payment of principal of or interest on the Funding Loan becomes due and payable (such immediately preceding Business Day being the “**Revenues Transfer Date**”), the
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Fiscal Agent, out of money in the Revenue Fund, shall credit the following amounts to the following funds, but in the order and within the limitations hereinafter indicated with respect thereto, as follows:

FIRST: to the Loan Payment Fund, an amount equal to the principal of and interest due on the Funding Loan on the Interest Payment Date or other payment date immediately succeeding such Revenues Transfer Date (including scheduled principal pursuant to the Funding Loan Amortization Schedule); and

SECOND: to the Loan Prepayment Fund, an amount equal to the principal and interest due on the Funding Loan on the Interest Payment Date or other payment date immediately succeeding such Revenues Transfer Date with respect to a mandatory prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(b) hereof (other than any extraordinary mandatory prepayment as described in Section 4.03(c)(i) or (iii) below).

(c) Promptly upon receipt, the Fiscal Agent shall deposit directly to the Loan Prepayment Fund (i) Net Proceeds representing casualty insurance proceeds or condemnation awards paid as a prepayment of the Project Loan, such amount to be applied to provide for the extraordinary mandatory prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(b)(i) hereof; (ii) funds paid to the Fiscal Agent to be applied to the optional prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(a); and (iii) amounts transferred to the Loan Prepayment Fund from the Project Loan Fund pursuant to Section 4.02(e) hereof.

(d) Should the amount in the Loan Payment Fund be insufficient to pay the amount due on the Funding Loan on any given Interest Payment Date, the Fiscal Agent shall credit to the Loan Payment Fund the amount of such deficiency by charging the following funds and accounts in the following order of priority: (1) the Revenue Fund; and (2) the Loan Prepayment Fund, except no such charge to the Loan Prepayment Fund shall be made from money to be used to effect a prepayment for which notice of prepayment has been provided for hereunder.

Section 4.04 *Application of Loan Payment Fund.* The Fiscal Agent shall charge the Loan Payment Fund, on each Interest Payment Date, an amount equal to the unpaid interest and principal due on the Funding Loan on such Interest Payment Date as provided in Section 4.03(a) and (b), and shall cause the same to be applied to the payment of such interest and principal when due. Any money remaining in the Loan Payment Fund on any Interest Payment Date after application as provided in the preceding sentence may, to the extent there shall exist any deficiency in the Loan Prepayment Fund to prepay the Funding Loan if called for prepayment on such Interest Payment Date, be transferred to the Loan Prepayment Fund to be applied for such purpose.

Any Investment Income on amounts on deposit in the Loan Payment Fund shall be deposited by the Fiscal Agent upon receipt thereof in the Revenue Fund.

No amount shall be charged against the Loan Payment Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

Section 4.05 *Application of Loan Prepayment Fund.* Any money credited to the Loan Prepayment Fund shall be applied as set forth in Sections 4.03(b) and 4.03(c) hereof; provided, however, that to the extent any money credited to the Loan Prepayment Fund is in excess of the amount necessary to effect the prepayments described in Sections 4.03(b) and 4.03(c) hereof it shall be applied to make up any deficiency in the Loan Payment Fund on any Interest Payment Date, to the extent money then available in accordance with Section 4.03(d) hereof in the Revenue Fund is insufficient to make up such deficiency; provided that no money to be used to effect a prepayment for which a notice of prepayment has been provided shall be so transferred to the Loan Payment Fund.

On or before each Interest Payment Date, any Investment Income on amounts on deposit in the Loan Prepayment Fund shall be credited by the Fiscal Agent to the Revenue Fund.

No amount shall be charged against the Loan Prepayment Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

Section 4.06 *Administration Fund.* Subject to Section 2.12 hereof, the Fiscal Agent shall deposit into the Administration Fund, promptly upon receipt thereof, all amounts received from the Servicer (or the Borrower if no Servicer exists for the Loans) designated for deposit into such fund, together with amounts transferred by the Fiscal Agent from the Project Loan Fund for deposit to the Administration Fund pursuant to Section 4.02. Amounts in the Administration Fund shall be withdrawn or maintained, as appropriate, by the Fiscal Agent and used **FIRST**, to pay to the Fiscal Agent when due the Ordinary Fiscal Agent's Fees and Expenses; **SECOND**, to pay when due the reasonable fees and expenses of a Rebate Analyst in connection with the computations relating to arbitrage rebate required under this Funding Loan Agreement and the Project Loan Agreement, upon receipt of an invoice from the Rebate Analyst; **THIRD**, to pay to the Fiscal Agent any Extraordinary Fiscal Agent's Fees and Expenses due and payable from time to time, as set forth in an invoice submitted to the Borrower and the Servicer; **FOURTH**, to pay to the Governmental Lender any extraordinary expenses it may incur in connection with the Loans or this Funding Loan Agreement from time to time, as set forth in an invoice submitted to the Fiscal Agent and the Servicer; **FIFTH**, to pay to the Funding lender any unpaid amounts due to the Funding Lender under the Continuing Covenant Agreement, as certified in writing by the Funding Lender to the Fiscal Agent; **SIXTH**, to make up any deficiency in the Loan Prepayment Fund on any prepayment date of the Funding Loan, to the extent money then available in accordance with Section 4.03(d) hereof in the Loan Prepayment Fund is insufficient to prepay the Funding Loan scheduled for prepayment on such prepayment date; and **SEVENTH**, to transfer any remaining balance after application as aforesaid to the Revenue Fund.

In the event that the amounts on deposit in the Administration Fund are not equal to the amounts payable from the Administration Fund as provided in the preceding paragraph on any date on which such amounts are due and payable, the Fiscal Agent shall give notice to the Borrower and the Servicer of such deficiency and of the amount of such deficiency and request payment within two (2) Business Days to the Fiscal Agent of the amount of such deficiency. Upon payment by the Borrower or the Servicer of such deficiency, the amounts for which such deficiency was requested shall be paid by the Fiscal Agent.

On or before each Interest Payment Date, any Investment Income on amounts on deposit in the Administration Fund not needed to pay the foregoing amounts shall be credited by the Fiscal Agent to the Revenue Fund.

No amount shall be charged against the Administration Fund except as expressly provided in this Article IV and Section 6.05 hereof.

Section 4.07 *Reserved.*

Section 4.08 *Investment of Funds.* The money held by the Fiscal Agent shall constitute trust funds for the purposes hereof. Any money attributable to each of the funds and accounts hereunder shall be, except as otherwise expressly provided herein, invested by the Fiscal Agent, at the written direction of the Borrower (or, in the case of the Rebate Fund, as provided in Section 5.07(b)), in Qualified Investments which mature or shall be subject to prepayment or withdrawal at par without penalty on or prior to the earlier of (i) six months from the date of investment and (ii) the date such money is needed; provided, that if the Fiscal Agent shall have entered into any investment agreement requiring investment of money in any fund or account hereunder in accordance with such investment agreement and if such investment agreement constitutes a Qualified Investment, such money shall be invested in accordance with such requirements. Such investments may be made through the investment or securities department of the Fiscal Agent. The Fiscal Agent may purchase from or sell to itself or an affiliate, as principal or agent, securities herein authorized. The Fiscal Agent shall be entitled to assume, absent receipt by the Fiscal Agent of written notice to the contrary, that any investment which at the time of purchase is a Qualified Investment remains a Qualified Investment thereafter. In the absence of written direction from the Borrower, the Fiscal Agent shall hold all amounts on deposit in the funds and accounts established under this Funding Loan Agreement uninvested in cash.

Qualified Investments representing an investment of money attributable to any fund or account shall be deemed at all times to be a part of said fund or account, and, except as otherwise may be provided expressly in other Sections hereof, the interest thereon and any profit arising on the sale thereof shall be credited to the Revenue Fund, and any loss resulting on the sale thereof shall be charged against the Revenue Fund. Such investments shall be sold at the best price obtainable (at least par) whenever it shall be necessary so to do in order to provide money to make any transfer, withdrawal, payment or disbursement from said fund or account. In the case of any required transfer of money to another such fund or account, such investments may be transferred to that fund or account in lieu of the required money if permitted hereby as an investment of money in that fund or account. The Fiscal Agent shall not be liable or responsible for any loss resulting from any investment made in accordance herewith. The parties acknowledge that the Fiscal Agent is not providing investment supervision, recommendations, or advice.

The Governmental Lender acknowledges that to the extent that regulations of the Comptroller of the Currency or other applicable regulatory agency grant the Governmental Lender the right to receive brokerage confirmations of the security transactions as they occur, to the extent permitted by law, the Governmental Lender specifically waives compliance with 12 C.F.R. 12 and hereby notifies the Fiscal Agent hereunder, that no brokerage confirmations need be sent relating to the security transactions as they occur.

In computing for any purpose hereunder the amount in any fund or account on any date, obligations so purchased shall be valued at Fair Market Value.

Section 4.09 *Reserved.*

Section 4.10 *Accounting Records.* The Fiscal Agent shall maintain accurate books and records for all funds and accounts established hereunder.

Section 4.11 *Amounts Remaining in Funds.* After full payment of the Funding Loan (or provision for payment thereof having been made in accordance with Section 9.01 hereof) and full payment of the fees, charges and expenses of the Governmental Lender, the Fiscal Agent, the Rebate Analyst, the Funding Lender and the Servicer and other amounts required to be paid hereunder or under any Project Loan Document, including, but not limited to, the Continuing Covenant Agreement (as certified in writing to the Fiscal Agent by the Governmental Lender with respect to amounts due to the Governmental Lender, by the Funding Lender or the Servicer on its behalf with respect to amounts owed under the Continuing Covenant Agreement, and by the Rebate Analyst with respect to amounts due to the Rebate Analyst), any amounts remaining in any fund or account hereunder other than the Rebate Fund shall be paid to the Borrower.

Section 4.12 *Rebate Fund; Compliance with Tax Agreement.* The Rebate Fund shall be established by the Fiscal Agent and held and applied as provided in this Section 4.12. On any date on which any amounts are required by applicable federal tax law to be rebated to the federal government, amounts shall be deposited into the Rebate Fund by the Borrower for such purpose. All money at any time deposited in the Rebate Fund shall be held by the Fiscal Agent in trust, to the extent required to satisfy the rebate requirement (as set forth in the Tax Agreement) and as calculated by the Rebate Analyst, for payment to the government of the United States of America, and neither the Governmental Lender nor the Borrower, the Funding Lender, shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section 4.12 and by the Tax Agreement. The Fiscal Agent shall conclusively be deemed to have complied with such provisions if it follows the written instructions of the Governmental Lender, Bond Counsel or the Rebate Analyst, including supplying all necessary information in the manner set forth in the Tax Agreement, and shall not be required to take any actions under the Tax Agreement in the absence of written instructions from the Governmental Lender, Bond Counsel or the Rebate Analyst.

Within 55 days of the end of each fifth Rebate Year, the Borrower shall cause the Rebate Analyst to calculate the amount of rebatable arbitrage, in accordance with Section 148(f)(2) of the Code and Section 1.148-3 of the Treasury Regulations (taking into account any exceptions with respect to the computation of the rebatable arbitrage, described, if applicable, in the Tax Agreement (e.g., the temporary investments exceptions of Section 148(f)(4)(B) and (C) of the Code)), for this purpose treating the last day of the applicable Rebate Year as a (computation) date, within the meaning of Section 1.148-1(b) of the Treasury Regulations (the “**Rebatable Arbitrage**”). Pursuant to Section 2.04 of the Project Loan Agreement, the Borrower shall cause the Rebate Analyst to provide such calculations to the Fiscal Agent and the Governmental Lender. In the event that the Borrower fails to provide such information to the Fiscal Agent and the Governmental Lender within 55 days of the end of each fifth Rebate Year, the Fiscal Agent, at the expense and written direction of the Borrower, shall select the Rebate Analyst, with the prior

written approval of the Governmental Lender, and shall cause the Rebate Analyst to calculate the amount of rebatable arbitrage as required herein.

Within 55 days of the end of each fifth Rebate Year, upon the written direction of the Governmental Lender, Bond Counsel or the Rebate Analyst, an amount shall be deposited to the Rebate Fund by the Fiscal Agent from amounts provided by the Borrower, if and to the extent required so that the balance in the Rebate Fund shall equal the amount of Rebatable Arbitrage so calculated in accordance with the preceding paragraph.

The Fiscal Agent shall pay, as directed in writing by the Governmental Lender, Bond Counsel or the Rebate Analyst, to the United States Department of the Treasury, out of amounts in the Rebate Fund:

- (i) Not later than 60 days after the end of (A) the fifth Rebate Year, and (B) each applicable fifth Rebate Year thereafter, an amount equal to at least 90% of the Rebatable Arbitrage calculated as of the end of such Rebate Year; and
- (ii) Not later than 60 days after the payment in whole of the Funding Loan, an amount equal to 100% of the Rebatable Arbitrage calculated as of the end of such applicable Rebate Year, and any income attributable to the Rebatable Arbitrage, computed in accordance with Section 148(f) of the Code.

Each payment required to be made under this Section shall be made to the Internal Revenue Service Center, Ogden, Utah 84201 (or such other address provided in such written direction), on or before the date on which such payment is due, and shall be accompanied by Internal Revenue Service Form 8038-T, which shall be prepared by the Rebate Analyst and provided to the Fiscal Agent.

Notwithstanding any provision of this Funding Loan Agreement to the contrary, the obligation to remit payment of the Rebatable Arbitrage to the United States of America and to comply with all other requirements of Sections 2.04 and 4.03 of the Project Loan Agreement and this Section 4.12, and the requirements of the Tax Agreement shall survive the defeasance or payment in full of the Funding Loan.

Any funds remaining in the Rebate Fund after payment in full of the Funding Loan and payment and satisfaction of any Rebate Requirement, or provision made therefor satisfactory to the Fiscal Agent, shall be withdrawn and remitted to the Borrower.

The Fiscal Agent shall keep such records of the computations made pursuant to this Section 4.12 as are required under Section 148(f) of the Code to the extent furnished to the Fiscal Agent. The Borrower shall or shall cause the Rebate Analyst to provide to the Governmental Lender and the Fiscal Agent copies of all rebate computations made pursuant to this Section 4.12. The Fiscal Agent shall keep and make available to the Borrower such records concerning the investments of the gross proceeds of the Funding Loan and the investments of earnings from those investments made by the Fiscal Agent as may be requested by the Borrower in order to enable the Borrower to cause the Rebate Analyst to make the aforesaid computations as are required under Section 148(f) of the Code. The Fiscal Agent shall be entitled conclusively to rely on the

calculations made pursuant to this Section and provided to it and it shall not be responsible for any loss, claim, fine, penalty, expense or damage resulting from any action taken or omitted to be taken in reliance upon those calculations.

Notwithstanding the foregoing, the computations and payments of Rebatable Arbitrage need not be made to the extent that neither the Governmental Lender nor the Borrower will thereby fail to comply with any requirements of Section 148(f) of the Code based on an opinion of Bond Counsel, to the effect that such failure will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Governmental Note, a copy of which shall be provided to the Fiscal Agent and the Funding Lender Representative, at the expense of the Borrower.

Section 4.13 *Cost of Issuance Fund.* The Fiscal Agent shall use money on deposit to the credit of the Cost of Issuance Fund to pay the costs of issuance on the Delivery Date or as soon as practicable thereafter in accordance with a Requisition in the form of Exhibit D to be given to the Fiscal Agent by the Borrower on the Delivery Date, along with appropriate invoices for such expenses. Amounts in the Cost of Issuance Fund funded with proceeds of the Funding Loan, if any, shall be expended prior to the application of the Costs of Issuance Deposit. Investment Income on amounts on deposit in the Cost of Issuance Fund shall be retained in such fund. Amounts remaining on deposit in the Cost of Issuance Fund six (6) months after the Delivery Date shall be transferred to the Borrower. Upon such final disbursement, the Fiscal Agent shall close the Cost of Issuance Fund.

Section 4.14 *Reports From the Fiscal Agent.* The Fiscal Agent shall, on or before the fifteenth (15th) day of each month, file with the Funding Lender, the Servicer, the Governmental Lender (at its written request) and the Borrower a statement setting forth in respect of the preceding calendar month:

- (i) the amount withdrawn or transferred by it, and the amount deposited within or on account of each fund and account held by it under the provisions of this Funding Loan Agreement, including the amount of investment income on each fund and account;
- (ii) the amount on deposit with it at the end of such month to the credit of each fund and account;
- (iii) a brief description of all obligations held by it as an investment of money in each such fund and account; and
- (iv) any other information which the Funding Lender Representative or the Governmental Lender may reasonably request and to which the Fiscal Agent has access in the ordinary course of its operations.

Upon the written request of the Funding Lender, the Fiscal Agent, at the cost of the Borrower, shall provide a copy of such statement to Funding Lender. All records and files pertaining to the Pledged Security shall be open at all reasonable times to the inspection of the Governmental Lender and the Funding Lender Representative or the Servicer and their agents and representatives upon reasonable prior notice during normal business hours.

ARTICLE V

GENERAL COVENANTS AND REPRESENTATIONS

Section 5.01 *Payment of Principal and Interest.* The Governmental Lender covenants that it will promptly pay or cause to be paid, but only from the sources identified herein, sufficient amounts to provide for the payment of the principal of, premium, if any, and interest on the Funding Loan at the place, on the dates and in the manner provided herein and in the Governmental Note, according to the true intent and meaning thereof.

Section 5.02 *Performance of Covenants.* The Governmental Lender covenants that it will faithfully perform at all times any and all of its covenants, undertakings, stipulations and provisions contained in this Funding Loan Agreement, in the Governmental Note and in all proceedings pertaining thereto.

Section 5.03 *Instruments of Further Assurance.* The Governmental Lender covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such supplements hereto, and such further acts, instruments and transfers as may be reasonably required for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Fiscal Agent all and singular its interest in the property herein described and the revenues, receipts and other amounts pledged hereby to the payment of the principal of, premium, if any, and interest on the Funding Loan. Any and all interest in property hereafter acquired which is of any kind or nature herein provided to be and become subject to the lien hereof shall and without any further conveyance, assignment or act on the part of the Governmental Lender or the Fiscal Agent, become and be subject to the lien of this Funding Loan Agreement as fully and completely as though specifically described herein, but nothing in this sentence contained shall be deemed to modify or change the obligations of the Governmental Lender under this Section 5.03. The Governmental Lender covenants and agrees that, except as herein otherwise expressly provided, it has not and will not sell, convey, mortgage, encumber or otherwise dispose of any part of its interest in the Pledged Security or the revenues or receipts therefrom.

The Governmental Lender will promptly notify the Borrower, Fiscal Agent, the Funding Lender Representative, the Funding Lender, and the Servicer in writing of the occurrence of any of the following:

- (i) the submission of any claim or the initiation of any legal process, litigation or administrative or judicial investigation against the Governmental Lender with respect to the Loans;
- (ii) any change in the location of the Governmental Lender's principal office or any change in the location of the Governmental Lender's books and records relating to the transactions contemplated hereby;
- (iii) the occurrence of any default or Event of Default of which the Governmental Lender has actual knowledge;

(iv) the commencement of any proceedings or any proceedings instituted by or against the Governmental Lender in any federal, state or local court or before any governmental body or agency, or before any arbitration board, relating to the Notes; or

(v) the commencement of any proceedings by or against the Governmental Lender under any applicable bankruptcy, reorganization, liquidation, rehabilitation, insolvency or other similar law now or hereafter in effect or of any proceeding in which a receiver, liquidator, conservator, Fiscal Agent or similar official shall have been, or may be, appointed or requested for the Governmental Lender or any of its assets relating to the Loans.

Section 5.04 *Inspection of Project Books.* The Governmental Lender covenants and agrees that all books and documents in its possession relating to the Project shall, upon reasonable prior notice, during normal business hours, be open to inspection and copying by such accountants or other agents as the Fiscal Agent or the Funding Lender Representative may from time to time reasonably designate.

Section 5.05 *No Modification of Security; Additional Indebtedness.* The Governmental Lender covenants to and for the benefit of the Funding Lender that it will not, without the prior written consent of the Funding Lender Representative, take any of the following actions:

(i) alter, modify or cancel, or agree to consent to alter, modify or cancel any agreement to which the Governmental Lender is a party, or which has been assigned to the Governmental Lender, and which relates to or affects the security for the Loans or the payment of any amount owed under the Financing Documents; or

(ii) create or suffer to be created any lien upon the Pledged Security or any part thereof other than the lien created hereby and by the Security Instrument.

Section 5.06 *Damage, Destruction or Condemnation.* Net Proceeds resulting from casualty to or condemnation of the Project shall be applied as provided in the Continuing Covenant Agreement and, to the extent consistent therewith, Section 3.01(b)(i) hereof.

Section 5.07 *Tax Covenants.*

(a) *Governmental Lender's Covenants.* The Governmental Lender covenants to and for the benefit of the Funding Lender that it will:

(i) neither make or use nor cause to be made or used any investment or other use of the proceeds of the Funding Loan or the money and investments held in the funds and accounts in any manner which would cause the Governmental Note to be an “arbitrage bond” under Section 148 of the Code and the Regulations issued under Section 148 of the Code (the “**Regulations**”) or which would otherwise cause the interest payable on the Governmental Note to be includable in gross income for federal income tax purposes;

(ii) enforce or cause to be enforced all obligations of the Borrower under the Tax Regulatory Agreement in accordance with its terms and seek to cause the Borrower to

correct any violation of the Tax Regulatory Agreement within a reasonable period after it first discovers or becomes aware of any such violation;

(iii) not take or cause to be taken any other action or actions, or fail to take any action or actions, if the same would cause the interest payable on the Governmental Note to be includable in gross income for federal income tax purposes;

(iv) at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the Governmental Lender on the Funding Loan will be excluded from the gross income for federal income tax purposes, of the Funding Lender pursuant to the Code, except in the event where the Funding Lender is a “substantial user” of the facilities financed with the Loans or a “related person” within the meaning of the Code; and

(v) not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Governmental Note to be “federally guaranteed” within the meaning of Section 149(b) of the Code and the Regulations.

In furtherance of the covenants in this Section 5.07, the Governmental Lender and the Borrower shall execute, deliver and comply with the provisions of the Tax Agreement, which is by this reference incorporated into this Funding Loan Agreement and made a part of this Funding Loan Agreement as if set forth in this Funding Loan Agreement in full, and by its acceptance of this Funding Loan Agreement the Fiscal Agent acknowledges receipt of the Tax Agreement and acknowledges its incorporation into this Funding Loan Agreement by this reference and agrees to comply with the terms specifically applicable to it.

(b) *Fiscal Agent’s Covenants.* The Fiscal Agent agrees that it will invest funds held under this Funding Loan Agreement at the written direction of the Borrower, provided such written direction is in accordance with the covenants and terms of this Funding Loan Agreement and Section 5.5 of the Tax Agreement (this covenant shall extend through the term of the Funding Loan, to all funds and accounts created under this Funding Loan Agreement and all money on deposit to the credit of any such fund or account). The Fiscal Agent covenants to and for the benefit of the Funding Lender that, notwithstanding any other provisions of this Funding Loan Agreement or of any other Financing Document to which the Fiscal Agent is a party, it will not knowingly make or knowingly cause to be made any investment or other use of the money in the funds or accounts created hereunder which would cause the Governmental Note to be classified as an “arbitrage bond” within the meaning of Sections 103(b) and 148 of the Code or would cause the interest on the Governmental Note to be includable in gross income for federal income tax purposes; provided that the Fiscal Agent shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower, the Governmental Lender, the Funding Lender Representative, Bond Counsel or the Rebate Analyst. This covenant shall extend, throughout the term of the Funding Loan, to all funds created under this Funding Loan Agreement and all money on deposit to the credit of any such fund. Pursuant to this covenant, with respect to the investments of the funds and accounts under this Funding Loan Agreement, the Fiscal Agent obligates itself to comply throughout the term of the Funding Loan with the requirements of Sections 103(b) and 148 of the Code; provided that the

Fiscal Agent shall be deemed to have complied with such requirements and shall have no liability to the extent it follows the written directions of the Borrower, the Governmental Lender, Bond Counsel or the Rebate Analyst. The Fiscal Agent further covenants that should the Governmental Lender or the Borrower file with the Fiscal Agent (it being understood that neither the Governmental Lender nor the Borrower has an obligation to so file), or should the Fiscal Agent receive, an opinion of Bond Counsel to the effect that any proposed investment or other use of proceeds of the Funding Loan would cause the Governmental Note to become an “arbitrage bond,” then the Fiscal Agent will comply with any written instructions of the Governmental Lender, the Borrower, the Funding Lender Representative or Bond Counsel regarding such investment (which shall, in any event, be a Qualified Investment) or use so as to prevent the Governmental Note from becoming an “arbitrage bond,” and the Fiscal Agent will bear no liability to the Governmental Lender, the Borrower, the Funding Lender or the Funding Lender Representative for investments or sale of investments made in accordance with such instructions.

Section 5.08 *Representations and Warranties of the Governmental Lender.* The Governmental Lender hereby represents and warrants as follows:

(a) The Governmental Lender is a public body corporate and politic and an instrumentality established and acting pursuant to the Act.

(b) The Governmental Lender has all necessary power and authority to issue the Governmental Note and to execute and deliver this Funding Loan Agreement, the Project Loan Agreement and the other Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) The revenues and assets pledged for the repayment of the Funding Loan are and will be free and clear of any pledge, lien or encumbrance prior to, or equal with, the pledge created by this Funding Loan Agreement, and all action on the part of the Governmental Lender to that end has been duly and validly taken.

(d) The Financing Documents to which the Governmental Lender is a party have been validly authorized, executed and delivered by the Governmental Lender, and assuming due authorization, execution and delivery by the other parties thereto, constitute valid and binding obligations of the Governmental Lender, enforceable against the Governmental Lender in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally and the application of equitable principles.

Section 5.09 *OFAC Certification and Covenants.*

A. The Governmental Lender covenants and represents that neither it nor any of its affiliates, subsidiaries, directors or officers are the target or subject of any sanctions enforced by the US Government, (including, the Office of Foreign Assets Control of the US Department of the Treasury (“OFAC”)), the United Nations Security Council, the European Union, HM Treasury, or other relevant sanctions authority (collectively “Sanctions”).

B. The Governmental Lender covenants and represents that neither it nor any of its

affiliates, subsidiaries, directors or officers will use any payments made pursuant to this Funding Loan Agreement, (i) to fund or facilitate any activities of or business with any person who, at the time of such funding or facilitation, is the subject or target of Sanctions, (ii) to fund or facilitate any activities of or business with any country or territory that is the target or subject of Sanctions, or (iii) in any other manner that will result in a violation of Sanctions by any person.

ARTICLE VI

DEFAULT PROVISIONS AND REMEDIES OF FISCAL AGENT AND FUNDING LENDER

Section 6.01 *Events of Default.* Each of the following shall be an event of default with respect to the Funding Loan (an “Event of Default”) under this Funding Loan Agreement:

- (a) failure to pay the principal of, premium, if any, or interest on the Funding Loan when due, whether on an Interest Payment Date, at the stated maturity thereof, by proceedings for prepayment thereof, by acceleration or otherwise; or
- (b) failure to observe the covenants set forth in Section 5.05 hereof; or
- (c) failure to observe or perform any of the covenants, agreements or conditions on the part of the Governmental Lender (other than those set forth in Sections 5.01 and 5.05 hereof) set forth in this Funding Loan Agreement or in the Governmental Note and the continuance thereof for a period of thirty (30) days (or such longer period, if any, as is specified herein for particular defaults) after written notice thereof to the Governmental Lender and the Borrower from the Fiscal Agent or the Funding Lender Representative specifying such default and requiring the same to be remedied; provided that if such default cannot be cured within such thirty (30) day period through the exercise of diligence and the Governmental Lender or the Borrower (to the extent curable by the Borrower) commences the required cure within such thirty (30) day period and continues the cure with diligence and the Governmental Lender reasonably anticipates that the default could be cured within sixty (60) days, the Governmental Lender or the Borrower (to the extent curable by the Borrower) shall have sixty (60) days following receipt of such notice to effect the cure; or
- (d) receipt by the Fiscal Agent of written notice from the Funding Lender Representative of the occurrence of an “Event of Default” under the Project Loan Agreement, the Continuing Covenant Agreement.

The Fiscal Agent will promptly notify the Borrower, the Governmental Lender, the Servicer, the Funding Lender, and the Funding Lender Representative after a Responsible Officer (i) obtains actual knowledge of the occurrence of an Event of Default or (ii) obtains actual knowledge of the occurrence of an event which would become an Event of Default with the passage of time or the giving of notice or both.

Section 6.02 *Acceleration; Other Remedies Upon Event of Default.*

Upon the occurrence of an Event of Default, the Fiscal Agent shall, upon the written request of the Funding Lender Representative, by notice in writing delivered to the Governmental Lender, declare the principal of the Funding Loan and the interest accrued thereon immediately due and payable, and interest shall continue to accrue thereon until such amounts are paid.

At any time after the Funding Loan shall have been so declared due and payable, and before any judgment or decree for the payment of the money due shall have been obtained or entered, the Fiscal Agent may, but only if directed in writing by the Funding Lender Representative, by written notice to the Governmental Lender, the Borrower, and the Fiscal Agent, rescind and annul such declaration and its consequences if the Borrower shall pay to or deposit with the Fiscal Agent a sum sufficient to pay all principal on the Funding Loan then due (other than solely by reason of such declaration) and all unpaid installments of interest (if any) on the Funding Loan then due, with interest at the rate borne by the Funding Loan on such overdue principal and (to the extent legally enforceable) on such overdue installments of interest, and the reasonable fees and expenses of the Fiscal Agent (including its counsel) shall have been made good or cured or adequate provision shall have been made therefor, and all outstanding amounts then due and unpaid under the Financing Documents (collectively, the “**Cure Amount**”) shall have been paid in full, and all other defaults hereunder shall have been made good or cured or waived in writing by the Funding Lender Representative; but no such rescission and annulment shall extend to or shall affect any subsequent default, nor shall it impair or exhaust any right or power consequent thereon.

Upon the occurrence and during the continuance of an Event of Default, the Fiscal Agent in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the Funding Lender, may also proceed to protect and enforce any rights of the Fiscal Agent and, to the full extent that the Funding Lender itself might do, the rights of the Funding Lender under the laws of the State or under this Funding Loan Agreement by such of the following remedies as the Fiscal Agent shall deem most effectual to protect and enforce such rights; provided that, the Fiscal Agent may undertake any such remedy upon the receipt of the prior written consent of the Funding Lender Representative (which consent may be given in the sole discretion of the Funding Lender Representative):

- (i) by mandamus or other suit, action or proceeding at law or in equity, to enforce the payment of the principal of, premium, if any, or interest on the Funding Loan and to require the Governmental Lender to carry out any covenants or agreements with or for the benefit of the Funding Lender and to perform its duties under the Act, this Funding Loan Agreement, the Project Loan Agreement or the Tax Regulatory Agreement (as applicable) to the extent permitted under the applicable provisions thereof;
- (ii) by pursuing any available remedies under the Project Loan Agreement or any other Financing Document;
- (iii) by realizing or causing to be realized through sale or otherwise upon the security pledged hereunder; and

(iv) by action or suit in equity enjoin any acts or things that may be unlawful or in violation of the rights of the Funding Lender and execute any other papers and documents and do and perform any and all such acts and things as may be necessary or advisable in the opinion of the Fiscal Agent in order to have the claim of the Funding Lender against the Governmental Lender allowed in any bankruptcy or other proceeding.

No remedy by the terms of this Funding Loan Agreement conferred upon or reserved to the Fiscal Agent or to the Funding Lender is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Fiscal Agent or the Funding Lender hereunder or under the Project Loan Agreement, the Continuing Covenant Agreement or any other Financing Document, as applicable, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder, whether by the Fiscal Agent or the Funding Lender Representative, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereto.

Notwithstanding anything to the contrary contained herein, the Funding Lender and the Governmental Lender agree that any cure made or tendered by the Investor Member shall be deemed a cure by the Borrower and shall be accepted or rejected on the same basis if made or tendered by the Borrower. Borrower's Investor Member shall have the right but not the obligation to cure any default or Event of Default hereunder on behalf of the Borrower. The Borrower represents and warrants that the Borrower's Investor Member is authorized to act on behalf of the Borrower.

Section 6.03 *Funding Lender Representative Control of Proceedings.* If an Event of Default has occurred and is continuing, notwithstanding anything to the contrary herein, the Funding Lender Representative shall have the sole and exclusive right at any time to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Funding Loan Agreement, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Funding Loan Agreement. In addition, the Funding Lender Representative shall have the sole and exclusive right at any time to directly enforce all rights and remedies hereunder and under the other Financing Documents with or without the involvement of the Fiscal Agent or the Governmental Lender (and in connection therewith the Fiscal Agent shall transfer or assign to the Funding Lender Representative all of its interest in the Pledged Security at the request of the Funding Lender Representative). In no event shall the exercise of any of the foregoing rights result in an acceleration of the Funding Loan without the express direction of the Funding Lender Representative.

Section 6.04 *Waiver by Governmental Lender.* Upon the occurrence of an Event of Default, to the extent that such right may then lawfully be waived, neither the Governmental Lender nor anyone claiming through or under it shall set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or prepayment laws now or hereinafter in force, in order to prevent or hinder the enforcement of this Funding Loan Agreement; and the Governmental

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Lender, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all right of appraisal and prepayment to which it may be entitled under the laws of the State and the United States of America.

Section 6.05 *Application of Money After Default.* All money collected by the Fiscal Agent at any time pursuant to this Article shall, except to the extent, if any, otherwise directed by a court of competent jurisdiction, be credited by the Fiscal Agent to the Revenue Fund. Such money so credited to the Revenue Fund and all other money from time to time credited to the Revenue Fund shall at all times be held, transferred, withdrawn and applied as prescribed by the provisions of Article IV hereof and this Section 6.05.

In the event that at any time the money credited to the Revenue Fund, the Loan Payment Fund and the Loan Prepayment Fund available for the payment of interest or principal then due with respect to the Governmental Note shall be insufficient for such payment, such money shall be applied as follows and in the following order of priority:

(a) For payment of all amounts due to the Fiscal Agent incurred in performance of its duties under this Funding Loan Agreement, including, without limitation, the payment of all reasonable fees and expenses of the Fiscal Agent incurred in exercising any remedies under this Funding Loan Agreement.

(b) To the extent directed in writing by the Funding Lender Representative, to the reimbursement of any unreimbursed advances made by or on behalf of the Funding Lender Representative pursuant to the Continuing Covenant Agreement or the Security Instrument.

(c) Unless the full principal amount of the Funding Loan shall have become or have been declared due and payable:

FIRST: to the Funding Lender, all installments of interest then due on the Funding Loan in the order of the maturity of such installments; and

SECOND: to the Funding Lender, unpaid principal of and premium, if any, on the Funding Loan which shall have become due, whether at maturity or by call for prepayment, in the order in which they became due and payable.

(d) If the full principal amount of the Governmental Note shall have become or have been declared due and payable, to the Funding Lender for the payment of the principal of, premium, if any, and interest then due and unpaid on the Funding Loan without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest.

Section 6.06 *Remedies Not Exclusive.* No right or remedy conferred upon or reserved to the Fiscal Agent, the Funding Lender or the Funding Lender Representative by the terms of this Funding Loan Agreement is intended to be exclusive of any other right or remedy, but each and every such remedy shall be cumulative and shall be in addition to every other right or remedy

given to the Fiscal Agent, the Funding Lender or the Funding Lender Representative under this Funding Loan Agreement or existing at law or in equity or by statute (including the Act).

Section 6.07 *Fiscal Agent May Enforce Rights Without Governmental Note.* All rights of action and claims, including the right to file proof of claims, under this Funding Loan Agreement may be prosecuted and enforced by the Fiscal Agent at the written direction of the Funding Lender Representative without the possession of the Governmental Note or the production thereof in any trial or other proceedings relating thereto. Subject to the rights of the Funding Lender Representative to direct proceedings hereunder, any such suit or proceeding instituted by the Fiscal Agent shall be brought in its name as Fiscal Agent without the necessity of joining as plaintiffs or defendants any Funding Lender, and any recovery or judgment shall be for the benefit as provided herein of the Funding Lender.

Section 6.08 *Reserved.*

Section 6.09 *Termination of Proceedings.* In case the Fiscal Agent (at the written direction of the Funding Lender Representative) or the Funding Lender Representative shall have proceeded to enforce any right under this Funding Loan Agreement by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower and the Funding Lender shall be restored to their former positions and rights hereunder with respect to the Pledged Security herein conveyed, and all rights, remedies and powers of the Fiscal Agent and the Funding Lender Representative shall continue as if no such proceedings had been taken.

Section 6.10 *Waivers of Events of Default.* The Fiscal Agent shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on the Funding Loan upon the written direction of the Funding Lender Representative. In case of any such waiver or rescission, or in case any proceeding taken by the Fiscal Agent on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case the Governmental Lender, the Fiscal Agent, the Borrower, the Servicer, the Funding Lender Representative and the Funding Lender shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereto.

Section 6.11 *Interest on Unpaid Amounts and Default Rate for Nonpayment.* In the event that principal of or interest payable on the Funding Loan is not paid when due, there shall be payable on the amount not timely paid, on each Interest Payment Date, interest at the Default Rate, to the extent permitted by law. Interest on the Funding Loan shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

Section 6.12 *Assignment of Project Loan; Remedies Under the Project Loan.*

(a) The Funding Lender Representative shall have the right, with respect to the Project Loan, in its sole and absolute discretion, without directing the Fiscal Agent to effect an acceleration of the Funding Loan, to instruct the Fiscal Agent in writing to assign the Project Note, the Security Instrument and the other documents evidencing and securing the Project Loan to the Funding

Lender Representative, in which event the Fiscal Agent shall (a) endorse and deliver the Project Note to the Funding Lender Representative and assign (in recordable form) the Security Instrument, (b) execute and deliver to the Funding Lender Representative all documents prepared by the Funding Lender Representative necessary to assign (in recordable form) all other Project Loan Documents (other than the Tax Regulatory Agreement) to the Funding Lender Representative and (c) execute all such documents prepared by the Funding Lender Representative as are necessary to legally and validly effectuate the assignments provided for in the preceding clauses (a) and (b). The Fiscal Agent's assignments to the Funding Lender Representative pursuant to this Section 6.12 shall be without recourse or warranty except that the Fiscal Agent shall represent and warrant in connection therewith (A) that the Fiscal Agent has not previously endorsed or assigned any such documents or instruments and (B) that the Fiscal Agent has the corporate authority to endorse and assign such documents and instruments and such endorsements and assignments have been duly authorized.

(b) The Funding Lender Representative shall have the right, in its own name or on behalf of the Governmental Lender or the Fiscal Agent, to declare any default and exercise any remedies under the Project Loan Agreement, the Project Note or the Security Instrument, whether or not the Governmental Note has been accelerated or declared due and payable by reason of an Event of Default or the occurrence of a mandatory prepayment.

Section 6.13 *Substitution.* Upon receipt of written notice from the Funding Lender Representative and the approval of the Governmental Lender as and to the extent permitted under the Tax Regulatory Agreement, the Fiscal Agent shall exchange the Project Note and the Security Instrument for a new Project Note and Security Instrument, evidencing and securing a new loan (the "**New Project Loan**"), which may be executed by a person other than the Borrower (the "**New Borrower**"), provided that if the Fiscal Agent, the Funding Lender Representative or a nominee of the Fiscal Agent or the Funding Lender Representative has acquired the Project through foreclosure, by accepting a deed in lieu of foreclosure or by comparable conversion of the Project, no approval from the Governmental Lender of such exchange shall be required. Prior to accepting a New Project Loan, the Fiscal Agent shall have received (i) written evidence that the New Borrower shall have executed and recorded a document substantially in the form of the Tax Regulatory Agreement (or executed and recorded an assumption of all of the Borrower's obligations under the Tax Regulatory Agreement) and that the Project Loan Documents have been modified as necessary to be applicable to the New Project Loan, and (ii) an opinion of Bond Counsel, to the effect that such exchange and modification, in and of itself, shall not affect the exclusion, from gross income, for federal income tax purposes of the interest payable on the Governmental Note.

Section 6.14 *Rights of Fiscal Agent in Foreclosure Proceedings.* Notwithstanding anything contained herein or in the Security Agreement to the contrary, upon the occurrence and continuance of an Event of Default, before taking any foreclosure action or any action which may subject the Fiscal Agent to liability under any Environmental Law, the Fiscal Agent may require that a satisfactory indemnity bond, indemnity or environmental impairment insurance be furnished for the payment or reimbursement of all expenses to which it may be put and to protect it against all liability resulting from any claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability) and expenses which may result from such foreclosure or other action. The term "Environmental Law" shall mean all federal, state and local environmental, land

use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the environment or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto. The term “Hazardous Substances” shall mean any chemical, substance or material classified or designated as hazardous, toxic or radioactive, or other similar term, and now or hereafter regulated under any Environmental Law, including without limitation, asbestos, petroleum and hydrocarbon products. The Fiscal Agent shall not be required to take any foreclosure action if the approval of a government regulator shall be a condition precedent to taking such action, and such approval cannot be obtained.

ARTICLE VII

CONCERNING THE FISCAL AGENT

Section 7.01 *Standard of Care.* The Fiscal Agent, prior to an Event of Default as defined in Section 6.01 hereof and after the curing or waiver of all such events which may have occurred, shall perform such duties and only such duties as are specifically and expressly set forth in this Funding Loan Agreement. The Fiscal Agent, during the existence of any such Event of Default (which shall not have been cured or waived), shall exercise such rights and powers vested in it by this Funding Loan Agreement and use the same degree of care and skill in its exercise as a prudent Person would exercise or use under similar circumstances in the conduct of such Person’s own affairs.

Except as expressly provided otherwise herein, any discretionary rights conferred upon the Fiscal Agent shall not be construed as imposing upon the Fiscal Agent an affirmative duty or obligation to act or refrain from acting.

No provision of this Funding Loan Agreement shall be construed to relieve the Fiscal Agent from liability for its own negligence or willful misconduct, except that:

(a) prior to an Event of Default hereunder, and after the curing or waiver of all such Events of Default which may have occurred:

(i) the duties and obligations of the Fiscal Agent shall be determined solely by the specific and express provisions of this Funding Loan Agreement, and the Fiscal Agent shall not be liable except with regard to the performance of such duties and obligations as are specifically and expressly set forth in this Funding Loan Agreement; and

(ii) the Fiscal Agent may at the expense of the other Person or Persons as applicable, request, conclusively rely on (as to the truth of the statements and the correctness of the opinions expressed therein), and act in accordance with, officer’s certificates and/or opinions of counsel furnished to the Fiscal Agent by the Person or Persons authorized to furnish the same, and shall incur no liability and

shall be fully protected in acting or refraining from acting in accordance with such officer's certificates and opinions of counsel;

(b) at all times, regardless of whether or not any such Event of Default shall exist:

(i) the Fiscal Agent shall not be liable for any action taken, or errors of judgment made, in good faith by it or any of its officers, employees or agents, unless it shall have been negligent in ascertaining the pertinent facts;

(ii) the Fiscal Agent shall not be liable with respect to any action taken or omitted to be taken by it in accordance with the direction of the Funding Lender Representative relating to the time, method and place of conducting any proceeding for any remedy available to the Fiscal Agent, or exercising any trust or power conferred upon the Fiscal Agent under this Funding Loan Agreement; and

(iii) the Fiscal Agent undertakes to perform such duties and only such duties as are specifically and expressly set forth in this Funding Loan Agreement. These duties shall be deemed purely ministerial in nature, and the Fiscal Agent shall not be liable except for the performance of such duties, and no implied covenants or obligations shall be read into this Funding Loan Agreement against the Fiscal Agent.

When the Fiscal Agent incurs expenses or renders services after the occurrence of an Event of Default, such expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

Section 7.02 *Reliance Upon Documents.* Except as otherwise provided in Section 7.01 hereof:

(a) the Fiscal Agent may conclusively rely upon the authenticity or truth of the statements and the correctness of the opinions expressed in, and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, notarial seal, stamp, acknowledgment, verification, request, consent, order, judgment, decree, bond, or other paper or document of the proper party or parties (including any Electronic Notice as permitted hereunder or under the Project Loan Agreement), not only as to due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein;

(b) any notice, request, direction, election, order or demand of the Governmental Lender mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Governmental Lender by an Authorized Officer of the Governmental Lender (unless other evidence in respect thereof be herein specifically prescribed), and any resolution of the Governmental Lender may be evidenced to the Fiscal Agent by a copy of such resolution duly certified by an Authorized Officer of the Governmental Lender;

(c) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Borrower mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Borrower by any Authorized Officer of the Borrower (unless other evidence in respect thereof be herein specifically prescribed), and any resolution or certification of the Borrower may be evidenced to the Fiscal Agent by a copy of such resolution duly certified by a secretary or other authorized representative of the Borrower;

(d) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Servicer mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Servicer by an Authorized Officer of the Servicer (unless other evidence in respect thereof be herein specifically prescribed);

(e) any notice, request, direction, election, order or demand of the Funding Lender Representative mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Funding Lender Representative by any Authorized Officer of the Funding Lender Representative (unless other evidence in respect thereof be herein specifically prescribed);

(f) Reserved;

(g) Reserved;

(h) in the administration of the trusts of this Funding Loan Agreement, the Fiscal Agent may execute any of the trusts or powers hereby granted directly or through its agents, custodians, nominees, delegates, receivers or attorneys, and the Fiscal Agent may consult with counsel (who may be counsel for the Governmental Lender, the Servicer or the Funding Lender Representative) or other professionals and the opinion or advice of such counsel and other professionals shall be full and complete authorization and protection in respect of any action taken or permitted by it hereunder in good faith and in accordance with the opinion or advice of such counsel or other professionals;

(i) whenever in the administration of the trusts of this Funding Loan Agreement, the Fiscal Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or permitting any action hereunder, such matters (unless other evidence in respect thereof be herein specifically prescribed), may be deemed to be conclusively proved and established by a certificate of an officer or authorized agent of the Governmental Lender or the Borrower and such certificate shall be full warrant to the Fiscal Agent for any action taken or permitted by it under the provisions of this Funding Loan Agreement, but in its discretion the Fiscal Agent may in lieu thereof accept other evidence of such matter or may require such further or additional evidence as it may deem reasonable;

(j) the recitals herein and in the Governmental Note (except the Fiscal Agent's certificate of authentication thereon) shall not be considered as made by or imposing any obligation or liability upon the Fiscal Agent. The Fiscal Agent makes no representations as to the value or condition of the Pledged Security or any part thereof, or as to the title of

the Governmental Lender or the Borrower to the Pledged Security, or as to the security of this Funding Loan Agreement, or of the Governmental Note issued hereunder, and the Fiscal Agent shall incur no liability or responsibility in respect of any of such matters;

(k) the Fiscal Agent shall not be individually or personally liable for debts contracted or liability for damages incurred in the management or operation of the Pledged Security except for damages directly caused by its own willful misconduct or negligence (as finally determined by a court of competent jurisdiction); and every provision of this Funding Loan Agreement relating to the conduct or affecting the liability of or affording protection to the Fiscal Agent shall be subject to the provisions of this Section 7.02(k);

(l) neither the Fiscal Agent nor any of its directors, officers, employees, agents or affiliates shall be responsible for nor have any duty to monitor the performance or any action by any party hereto or the other Financing Documents as to the performance or observance of any of the covenants or agreements (except to the extent they obligate the Fiscal Agent) herein or in any contracts or securities assigned or conveyed to or pledged with the Fiscal Agent hereunder, except Events of Default that are evident under Section 6.01(a) hereof. The Fiscal Agent may assume performance by all such Persons of their respective obligations. The Fiscal Agent shall have no enforcement or notification obligations relating to breaches of representations or warranties of any other Person. The Fiscal Agent shall not be required to take notice or be deemed to have notice or actual knowledge of any default or Event of Default specified in Section 6.01 hereof (except defaults under Section 6.01(a) hereof to the extent they are collecting loan payments hereunder) unless a Responsible Officer of the Fiscal Agent shall receive from the Governmental Lender or the Funding Lender Representative written notice stating that a default or Event of Default has occurred and specifying the same, and in the absence of such notice the Fiscal Agent may conclusively assume that there is no such default. Every provision contained in this Funding Loan Agreement or related instruments or in any such contract or security wherein the duty of the Fiscal Agent depends on the occurrence and continuance of such default shall be subject to the provisions of this Section 7.02(l);

(m) the Fiscal Agent shall be under no duty to confirm or verify any financial or other statements or reports or certificates furnished pursuant to any provisions hereof, except to the extent such statement or reports are furnished by or under the direction of the Fiscal Agent, the Fiscal Agent shall have no duty to review, verify or analyze any financial statements submitted to it by the Borrower and shall hold such financial statements solely as a repository for the benefit of the Governmental Lender or the Funding Lender; the Fiscal Agent shall not be deemed to have notice of any information contained therein, default or event of default which may be disclosed therein in any manner, and shall be under no other duty in respect of the same except to retain the same in its files and permit the inspection of the same at reasonable times by the Funding Lender Representative; and

(n) the Fiscal Agent shall be under no obligation to exercise those rights or powers vested in it by this Funding Loan Agreement, other than such rights and powers which it shall be obliged to exercise in the ordinary course of acting as Fiscal Agent under the terms and provisions of this Funding Loan Agreement and as required by law, at the request or direction of the Funding Lender Representative pursuant to Section 6.03 hereof,

unless the Funding Lender Representative shall have furnished to the Fiscal Agent reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in the compliance with such request or direction.

None of the provisions contained in this Funding Loan Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

The Fiscal Agent is authorized and directed to execute in its capacity as Fiscal Agent, the Project Loan Agreement and shall have no responsibility or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the delivery of the Governmental Note.

The Fiscal Agent or any of its affiliates may act as advisor or sponsor with respect to any Qualified Investments.

The Fiscal Agent agrees to accept and act upon Electronic Notice by Electronic Means of written instructions and/or directions pursuant to this Funding Loan Agreement.

Any resolution, certification, notice, request, direction, election, order or demand delivered to the Fiscal Agent pursuant to this Section 7.02 shall remain in effect until the Fiscal Agent receives written notice to the contrary from the party that delivered such instrument accompanied by revised information for such party.

The Fiscal Agent shall have no responsibility for the value of any collateral or with respect to the perfection or priority of any security interest in any collateral except as otherwise provided in Section 7.17 hereof.

The permissive rights of the Fiscal Agent to do certain things enumerated in this Funding Loan Agreement shall not be construed as duties.

Notwithstanding anything contained herein or in the Security Instrument to the contrary, upon the occurrence and continuance of an Event of Default, before taking any foreclosure action or any action which may subject the Fiscal Agent to liability under any law, statute, regulation or similar requirement, Fiscal Agent may require that reasonable security or indemnity be furnished for the payment or reimbursement of all expenses to which it may be put and to protect it against all liability resulting from any claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability) and expenses which may result from such foreclosure or other action including in all cases, counsel fees and expenses. Fiscal Agent shall not be required to take any action to foreclose or otherwise enforce the Security Instrument unless indemnified to its sole and absolute satisfaction and will not be required to foreclose if doing so will subject it to environmental liability or will require the approval of a governmental regulator that cannot be obtained.

In no event shall the Fiscal Agent be responsible or liable for special, indirect, punitive, incidental or consequential loss or damage of any kind whatsoever (including, but not limited to,

loss of profit) irrespective of whether the Fiscal Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

Fiscal Agent shall not be responsible or liable for any failure or delay in the performance of its obligations under this Funding Loan Agreement arising out of or caused, directly or indirectly, by circumstances beyond its control, including, without limitation, any act or provision of any present or future law or regulation or governmental authority; acts of God; earthquakes; fires; floods; wars; terrorism; civil or military disturbances; sabotage; epidemics; quarantine restrictions; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

Section 7.03 *Use of Proceeds.* The Fiscal Agent shall not be accountable for the use or application of the Governmental Note authenticated or delivered hereunder or of the proceeds of the Funding Loan except as provided herein.

Section 7.04 *Reserved.*

Section 7.05 *Trust Imposed.* All money received by the Fiscal Agent shall, until used or applied as herein provided, be held in trust for the purposes for which it was received.

Section 7.06 *Compensation of Fiscal Agent.* The Fiscal Agent shall be entitled to its Ordinary Fiscal Agent's Fees and Expenses in connection with the services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties of the Fiscal Agent hereunder or under any Financing Document, in accordance with Section 4.06 hereof, exclusive of Extraordinary Services. The Fiscal Agent shall be entitled to Extraordinary Fiscal Agent's Fees and Expenses in connection with any Extraordinary Services performed consistent with the duties hereunder or under any of the Financing Documents; provided the Fiscal Agent shall not incur any Extraordinary Fiscal Agent's Fees and Expenses without the consent of the Funding Lender Representative. If any property, other than cash, shall at any time be held by the Fiscal Agent subject to this Funding Loan Agreement, or any supplement hereto, as security for the Funding Loan, the Fiscal Agent, if and to the extent authorized by a receivership, bankruptcy, or other court of competent jurisdiction or by the instrument subjecting such property to the provisions of this Funding Loan Agreement as such security for the Funding Loan, shall be entitled to make advances for the purpose of preserving such property or of discharging tax liens or other liens or encumbrances thereon. Payment to the Fiscal Agent for its services and reimbursement to the Fiscal Agent for its expenses, disbursements, liabilities and advances, shall be limited to the sources described in the Project Loan Agreement and in Sections 4.06, 4.11 and 6.05 hereof. The Governmental Lender shall have no liability for Fiscal Agent's fees, costs or expenses. Subject to the provisions of Section 7.09 hereof, the Fiscal Agent agrees that it shall continue to perform its duties hereunder and under the Financing Documents even in the event that money designated for payment of its fees shall be insufficient for such purposes or in the event

that the Borrower fails to pay the Ordinary Fiscal Agent's Fees and Expenses or, if applicable, the Extraordinary Fiscal Agent's Fees and Expenses as required by the Project Loan Agreement.

The Borrower shall indemnify and hold harmless the Fiscal Agent and its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants and servants, past, present or future, from and against (a) any and all claims by or on behalf of any person arising from any cause whatsoever in connection with this Funding Loan Agreement or transactions contemplated hereby, the Project, or the delivery of the Governmental Note or the Loans; (b) any and all claims arising from any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Project, or the delivery of the Governmental Note or the Loans; and (c) all costs, counsel fees, expenses, fines, penalties or liabilities incurred in connection with any such claim or proceeding brought thereon; except that the Borrower shall not be required to indemnify any person for damages finally determined by a court of competent jurisdiction to have been directly caused by the negligence or willful misconduct of such person or which arise from events occurring after the Borrower ceases to own the Project. In the event that any action or proceeding is brought or claim made against the Fiscal Agent, or any of its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants or servants, with respect to which indemnity may be sought hereunder, the Borrower, upon written notice thereof from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses. The indemnified party shall have the right to approve a settlement to which it is a party and to employ separate counsel in any such action or proceedings and to participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel. The provisions of this Section 7.06 shall survive the termination of this Funding Loan Agreement and the repayment of the Loans.

Section 7.07 *Qualifications of Fiscal Agent.* There shall at all times be a Fiscal Agent hereunder which shall be an association or a corporation organized and doing business under the laws of the United States of America or any state thereof, authorized under such laws to exercise corporate trust powers. Any successor Fiscal Agent shall have a combined capital and surplus of at least \$50,000,000 (or shall be a wholly-owned subsidiary of an association or corporation that has such combined capital and surplus), and be subject to supervision or examination by federal or state authority, or shall have been appointed by a court of competent jurisdiction pursuant to Section 7.11 hereof. If such association or corporation publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority referred to above, then for the purposes of this Section 7.07, the combined capital and surplus of such association or corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Fiscal Agent shall cease to be eligible in accordance with the provisions of this Section 7.07 and another association or corporation is eligible, the Fiscal Agent shall resign immediately in the manner and with the effect specified in Section 7.09 hereof.

Section 7.08 *Merger of Fiscal Agent.* Any association or corporation into which the Fiscal Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any association or corporation resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party shall, ipso facto, be and become successor Fiscal Agent hereunder

and vested with all the title to the whole property or Pledged Security and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding, and shall also be and become successor Fiscal Agent in respect of the legal interest of the Fiscal Agent in the Loans.

Section 7.09 *Resignation by the Fiscal Agent.* The Fiscal Agent may at any time resign from the trusts hereby created and be discharged from its duties and obligations hereunder by giving written notice to the Governmental Lender, the Borrower, the Servicer and the Funding Lender Representative. Such notice to the Governmental Lender, the Borrower, the Servicer and the Funding Lender Representative may be served personally or sent by certified mail or overnight delivery service. The resignation of the Fiscal Agent shall not be effective until a successor Fiscal Agent has been appointed as provided herein and such successor Fiscal Agent shall have agreed in writing to be bound by the duties and obligations of the Fiscal Agent hereunder; provided, however, that after giving notice of resignation, the Fiscal Agent may, at the sole expense of the Borrower, petition any court of competent jurisdiction for appointment of a temporary Fiscal Agent until a successor Fiscal Agent is appointed. The rights of the Fiscal Agent to indemnity, compensation and reimbursement of fees and expenses shall survive Fiscal Agent's resignation as set forth herein and in Section 6.01(d) of the Project Loan Agreement.

Section 7.10 *Removal of the Fiscal Agent.* The Fiscal Agent may be removed at any time, either with or without cause, with the consent of the Funding Lender Representative (which consent of the Funding Lender Representative shall not be unreasonably withheld), by a written instrument signed by the Governmental Lender and delivered to the Fiscal Agent, the Servicer and the Borrower. The Fiscal Agent may also be removed by a written instrument signed by the Funding Lender Representative and delivered to the Fiscal Agent, the Servicer, the Governmental Lender and the Borrower. In each case written notice of such removal shall be given to the Servicer, the Borrower and to the Funding Lender. Any such removal shall take effect on the day specified in such written instrument(s), which date shall be at least thirty (30) calendar days after the giving of notice to the Fiscal Agent but the Fiscal Agent shall not be discharged from the trusts hereby created until a successor Fiscal Agent has been appointed and has accepted such appointment and has agreed in writing to be bound by the duties and obligations of the Fiscal Agent hereunder.

Section 7.11 *Appointment of Successor Fiscal Agent.*

(a) In case at any time the Fiscal Agent shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or shall be adjudged a bankrupt or insolvent, or if a receiver of the Fiscal Agent or of its property shall be appointed, or if a public supervisory office shall take charge or control of the Fiscal Agent or of its property or affairs, a vacancy shall forthwith and ipso facto be created in the office of such Fiscal Agent hereunder, and the Governmental Lender, with the written consent of the Funding Lender Representative, shall promptly appoint a successor Fiscal Agent. Any such appointment shall be made by a written instrument executed by an Authorized Officer of the Governmental Lender. If the Governmental Lender fails to appoint a successor Fiscal Agent within ten (10) calendar days following the resignation or removal of the Fiscal Agent pursuant to Section 7.09 or

Section 7.10 hereunder, as applicable, the Funding Lender Representative may appoint a successor Fiscal Agent.

(b) If no appointment of a successor Fiscal Agent shall be made pursuant to subsection (a) of this Section 7.11 within forty-five (45) calendar days following delivery of all required notices of resignation given pursuant to Section 7.09 hereof or of removal of the Fiscal Agent pursuant to Section 7.10 hereof, the retiring Fiscal Agent may, at the sole expense of the Borrower, petition any court of competent jurisdiction to appoint a successor Fiscal Agent and for other appropriate relief. The court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Fiscal Agent and grant such other relief.

Section 7.12 *Concerning Any Successor Fiscal Agent.* Every successor Fiscal Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Governmental Lender a written instrument accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the Pledged Security and the rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Governmental Lender, the Borrower or the Funding Lender Representative, or of its successor, and upon payment of all amounts due such predecessor, including but not limited to fees and expenses of counsel, execute and deliver such instruments as may be appropriate to transfer to such successor Fiscal Agent all the Pledged Security and the rights, powers and trusts of such predecessor hereunder; and every predecessor Fiscal Agent shall deliver all securities and money held by it as Fiscal Agent hereunder to its successor. Should any instrument in writing from the Governmental Lender be required by a successor Fiscal Agent for more fully and certainly vesting in such successor the Pledged Security and all rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Governmental Lender. The resignation of any Fiscal Agent and the instrument or instruments removing any Fiscal Agent and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed and/or recorded by the successor Fiscal Agent in each recording office where this Funding Loan Agreement shall have been filed and/or recorded. Each successor Fiscal Agent shall mail notice by first class mail, postage prepaid, at least once within 30 days of such appointment, to the Funding Lender.

Section 7.13 *Successor Fiscal Agent.* In the event of a change in the office of Fiscal Agent, the predecessor Fiscal Agent which shall have resigned or shall have been removed shall cease to be Fiscal Agent with respect to the Governmental Note, and the successor Fiscal Agent shall become such Fiscal Agent.

Section 7.14 *Appointment of Co-Fiscal Agent or Separate Fiscal Agent.* It is the intent of the Governmental Lender and the Fiscal Agent that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State) denying or restricting the right of banking corporations or associations to transact business as Fiscal Agent in such jurisdiction. It is recognized that in case of litigation under or connected with this Funding Loan Agreement, the Project Loan Agreement or any of the other Financing Documents, and, in particular, in case of the enforcement of any remedies on default, or in case the Fiscal Agent deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein or therein granted to the Fiscal Agent or hold title to the properties in trust, as

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herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Fiscal Agent, with the consent of the Governmental Lender and the Funding Lender Representative, appoint an additional individual or institution as a co-fiscal agent or separate fiscal agent.

In the event that the Fiscal Agent appoints an additional individual or institution as a co-fiscal agent or separate fiscal agent, in the event of the incapacity or lack of authority of the Fiscal Agent, by reason of any present or future law of any jurisdiction, to exercise any of the rights, powers, trusts and remedies granted to the Fiscal Agent herein or to hold title to the Pledged Security or to take any other action that may be necessary or desirable in connection therewith, each and every remedy, power, right, obligation, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Funding Loan Agreement to be imposed upon, exercised by or vested in or conveyed to the Fiscal Agent with respect thereto shall be imposed upon, exercisable by and vest in such separate fiscal agent or co-fiscal agent, but only to the extent necessary to enable such co-fiscal agent or separate fiscal agent to exercise such powers, rights, trusts and remedies, and every covenant and obligation necessary to the exercise thereof by such co-fiscal agent or separate fiscal agent shall run to and be enforceable by either of them, subject to the remaining provisions of this Section 7.14. Such co-fiscal agent or separate fiscal agent shall deliver an instrument in writing acknowledging and accepting its appointment hereunder to the Governmental Lender, the Fiscal Agent, the Servicer, and the Funding Lender Representative.

Should any instrument in writing from the Governmental Lender be required by the co-fiscal agent or separate fiscal agent so appointed by the Fiscal Agent for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Governmental Lender, the Fiscal Agent and the Borrower. If the Governmental Lender shall fail to deliver the same within thirty (30) days of such request, the Fiscal Agent is hereby appointed attorney-in-fact for the Governmental Lender to execute, acknowledge and deliver such instruments in the Governmental Lender's name and stead. In case any co-fiscal agent or separate fiscal agent, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such co-fiscal agent or separate fiscal agent, so far as permitted by law, shall vest in and be exercised by the Fiscal Agent until the appointment of a new Fiscal Agent or successor to such co-fiscal agent or separate fiscal agent.

Every co- fiscal agent or separate fiscal agent shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:

- (a) the Governmental Note shall be authenticated and delivered, and all rights, powers, trusts, duties and obligations by this Funding Loan Agreement conferred upon the Fiscal Agent in respect of the custody, control or management of money, papers, securities and other personal property shall be exercised solely by the Fiscal Agent;
- (b) all rights, powers, trusts, duties and obligations conferred or imposed upon the Fiscal Agent shall be conferred or imposed upon or exercised or performed by the Fiscal Agent, or by the Fiscal Agent and such co- fiscal agent, or separate fiscal agent jointly, as shall be provided in the instrument appointing such co- fiscal agent or separate fiscal agent,

except to the extent that under the law of any jurisdiction in which any particular act or acts are to be performed the Fiscal Agent shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co- fiscal agent or separate fiscal agent;

(c) any request in writing by the Fiscal Agent to any co- fiscal agent or separate fiscal agent to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking or the refraining from taking of such action by such co- fiscal agent or separate fiscal agent;

(d) any co- fiscal agent or separate fiscal agent to the extent permitted by law shall delegate to the Fiscal Agent the exercise of any right, power, trust, duty or obligation, discretionary or otherwise;

(e) the Fiscal Agent at any time by an instrument in writing with the concurrence of the Governmental Lender evidenced by a certified resolution may accept the resignation of or remove any co- fiscal agent or separate fiscal agent appointed under this Section 7.14 and in case an Event of Default shall have occurred and be continuing, the Fiscal Agent shall have power to accept the resignation of or remove any such co- fiscal agent or separate fiscal agent without the concurrence of the Governmental Lender, and upon the request of the Fiscal Agent, the Governmental Lender shall join with the Fiscal Agent in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co- fiscal agent or separate fiscal agent so resigned or removed may be appointed in the manner provided in this Section 7.14;

(f) no Fiscal Agent or co- fiscal agent hereunder shall be personally liable by reason of any act or omission of any other Fiscal Agent hereunder;

(g) any demand, request, direction, appointment, removal, notice, consent, waiver or other action in writing executed by the Funding Lender Representative and delivered to the Fiscal Agent shall be deemed to have been delivered to each such co- fiscal agent or separate fiscal agent; and

(h) any money, papers, securities or other items of personal property received by any such co- fiscal agent or separate fiscal agent hereunder shall forthwith, so far as may be permitted by law, be turned over to the Fiscal Agent.

The total compensation of the Fiscal Agent and any co fiscal agent or separate fiscal agent shall be as, and may not exceed the amount, provided in Section 7.06 hereof.

Section 7.15 *Notice of Certain Events.* The Fiscal Agent shall give written notice to the Governmental Lender, the Servicer and the Funding Lender Representative of any failure by the

Borrower to comply with the terms of the Tax Regulatory Agreement or any Determination of Taxability of which a Responsible Officer has actual knowledge.

Section 7.16 *Reserved.*

Section 7.17 *Filing of Financing Statements.* The Fiscal Agent shall, solely upon the written instruction of the Borrower, cause to be filed a continuation statement with respect to each Uniform Commercial Code financing statement relating to the Governmental Note on which it is listed as a secured party, and which was filed at the time of the issuance thereof, in such manner and in such places as the initial filings (copies of which shall be provided to the Fiscal Agent by the Borrower) were made. The Borrower shall be responsible for the reasonable costs incurred by the Fiscal Agent in the preparation and filing of all such continuation statements hereunder. Notwithstanding anything to the contrary contained herein, the Fiscal Agent shall not be responsible for any initial filings of any financing statements or the information contained therein (including the exhibits thereto), the perfection of any such security interests, or the accuracy or sufficiency of any description of collateral in such initial filings or for filing any modifications or amendments to the initial filings required by any amendments to Article 9 of the Uniform Commercial Code, and unless the Fiscal Agent shall have been notified in writing by the Borrower that any such initial filing or description of collateral was or has become defective, the Fiscal Agent shall be fully protected in relying on such initial filing and descriptions in filing any continuation statements or modifications thereto pursuant to this Section 7.17 and in filing any continuation statements in the same filing offices as the initial filings were made. Upon the filing of any such continuation statement the Fiscal Agent shall immediately notify the Governmental Lender, the Borrower, the Funding Lender Representative and the Servicer that the same has been done. If written direction is given by the Servicer or the Funding Lender Representative, the Fiscal Agent shall file all continuation statements in accordance with such directions. The Fiscal Agent shall have no responsibilities with respect to filing any initial financing statements.

Section 7.18 *USA Patriot Act Requirements of the Fiscal Agent.* To help the government of the United States of America fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual Person such as a business entity, a charity, a trust, or other legal entity, the Fiscal Agent may request documentation to verify such Person's formation and existence as a legal entity. The Fiscal Agent may also request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent such Person or other relevant documentation.

ARTICLE VIII

AMENDMENTS OF CERTAIN DOCUMENTS

Section 8.01 *Amendments to this Funding Loan Agreement.* Any of the terms of this Funding Loan Agreement and the Governmental Note may be amended or waived only by an instrument signed by the Fiscal Agent and the Governmental Lender, and with the prior written

consent of the Funding Lender Representative and if the Borrower's rights or obligations are affected, the Borrower.

Section 8.02 *Amendments to Financing Documents Require Consent of Funding Lender Representative.* Neither the Governmental Lender nor the Fiscal Agent shall consent to any amendment, change or modification of any Financing Document without the prior written consent of the Funding Lender Representative. The Fiscal Agent shall enter into such amendments to the Financing Documents as shall be directed in writing by the Funding Lender Representative, including entering into the amendments attached as exhibits to the Construction Funding Agreement on the Conversion Date.

Section 8.03 *Opinion of Bond Counsel Required.* No amendment to this Funding Loan Agreement, the Governmental Note, the Project Loan Agreement, the Project Note or the Security Instrument shall become effective unless and until (i) the Funding Lender Representative shall have consented to the same in writing in its sole discretion and (ii) the Funding Lender Representative, the Funding Lender, the Governmental Lender and the Fiscal Agent shall have received, at the expense of the Borrower, (A) an opinion of Bond Counsel to the effect that such amendment, change or modification will not, in and of itself, cause interest on the Governmental Note to be includable in gross income of the holders thereof for federal income tax purposes, and (B) an opinion of counsel acceptable to the Funding Lender Representative to the effect that any such proposed such amendment, change or modification is authorized and complies with the provisions of this Funding Loan Agreement and is a legal, valid and binding obligation of the parties thereto, subject to normal exceptions relating to bankruptcy, insolvency and equitable principles limitations.

ARTICLE IX

SATISFACTION AND DISCHARGE OF FUNDING LOAN AGREEMENT

Section 9.01 *Discharge of Lien.* If the Governmental Lender shall pay or cause to be paid to the Funding Lender the principal, interest and premium, if any, to become due with respect to the Funding Loan at the times and in the manner stipulated herein and in the Governmental Note, in any one or more of the following ways:

- (a) by the payment of all unpaid principal of (including Prepayment Premium, if any) and interest on the Funding Loan; or
- (b) after the Conversion Date (or, if the Conversion Date does not occur, the latest date on which Conversion was permitted to occur under the Construction Funding Agreement) and prior to the Window Period, by the deposit to the account of the Fiscal Agent, in trust, of money or securities in the necessary amount to pay the principal, Prepayment Premium and interest to the Maturity Date; or
- (c) by the delivery of the Governmental Note by the Funding Lender to the Fiscal Agent for cancellation;

and shall have paid all amounts due and owing under the other Financing Documents, and shall have paid all fees and expenses of and any other amounts due to the Fiscal Agent, the Servicer and the Rebate Analyst, including any fees and expenses of their respective counsel, and if the Governmental Lender shall keep, perform and observe all and singular the covenants and promises in the Governmental Note and in this Funding Loan Agreement expressed as to be kept, performed and observed by it or on its part, then these presents and the estates and rights hereby granted shall cease, determine and be void, and thereupon the Fiscal Agent shall upon written direction, cancel and discharge the lien of this Funding Loan Agreement and execute and deliver to the Governmental Lender such instruments in writing as shall be requisite to satisfy the lien hereof, and reconvey to the Governmental Lender the estate hereby conveyed, and assign and deliver to the Governmental Lender any interest in property at the time subject to the lien of this Funding Loan Agreement which may then be in its possession, except amounts held by the Fiscal Agent for the payment of principal of, interest and premium, if any, on the Governmental Note, the payment of any amounts owed to the United States of America pursuant to Section 4.12 hereof.

After the Conversion Date (or, if the Conversion Date does not occur, the latest date on which Conversion was permitted to occur under the Construction Funding Agreement) and prior to the Window Period and subject to the satisfaction of the conditions set forth in Section 4.04(c) of the Project Loan Agreement, the Funding Loan shall, prior to the Maturity Date, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section 9.01 based on a deposit of moneys or securities with the Fiscal Agent pursuant to Section 9.01(b) if, under circumstances which do not cause interest on the Governmental Note to become includable in the holders' gross income for purposes of federal income taxation, the following conditions shall have been fulfilled: (a) there shall be on deposit with the Fiscal Agent either money or noncallable and nonprepayable direct obligations of the United States of America (or other defeasance securities constituting Qualified Investments approved in writing by the Funding Lender Representative) in an amount, together with anticipated earnings thereon (but not including any reinvestment of such earnings), which will be sufficient to pay, when due, the principal and interest due and to become due on the Funding Loan up to and on the Maturity Date; (b) the Fiscal Agent shall have received a verification report of a firm of certified public accountants or financial analyst reasonably acceptable to the Fiscal Agent and the Funding Lender Representative as to the adequacy of the amounts or securities so deposited to fully pay the Funding Loan; (c) the Fiscal Agent and the Funding Lender Representative shall have received a written opinion of nationally recognized counsel experienced in bankruptcy matters to the effect that if the Borrower, any general partner, member or guarantor of the Borrower, or the Governmental Lender were to become a debtor in a proceeding under the Bankruptcy Code (x) payment of such money to the Funding Lender would not constitute a voidable preference under Section 547 of the Bankruptcy Code and (y) the automatic stay provisions of Section 362(a) of the Bankruptcy Code would not prevent application of such money to the payment of the Funding Loan; (d) the Fiscal Agent, the Funding Lender, and the Funding Lender Representative shall have received an opinion of Bond Counsel to the effect that the defeasance of the Funding Loan is in accordance with the provisions of the Funding Loan Agreement and that such defeasance will not adversely affect the exclusion of interest on the Governmental Note from gross income for federal income tax purposes; and (e) the Fiscal Agent shall have received written confirmation that all fees, expenses or reimbursement of any advances due to the Fiscal Agent, the Funding Lender and the Servicer under the Financing Documents have been fully paid.

Section 9.02 *Discharge of Liability on Funding Loan.* Upon the deposit with the Fiscal Agent, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 9.01 above) to pay or prepay the Funding Loan (whether upon or prior to their maturity or the prepayment date of the Funding Loan) provided that, if the Funding Loan is to be prepaid prior to the maturity thereof, notice of such prepayment shall have been given as in Article III provided or provision satisfactory to the Fiscal Agent shall have been made for the giving of such notice, all liability of the Governmental Lender in respect of the Funding Loan shall cease, terminate and be completely discharged, except only that thereafter the Funding Lender shall be entitled to payment by the Governmental Lender, and the Governmental Lender shall remain liable for such payment, but only out of the money or securities deposited with the Fiscal Agent as aforesaid for their payment, subject, however, to the provisions of Section 9.03 hereof.

Section 9.03 *Payment of Funding Loan After Discharge of Funding Loan Agreement.* Notwithstanding any provisions of this Funding Loan Agreement, and subject to applicable unclaimed property laws of the State, any money deposited with the Fiscal Agent or any paying agent in trust for the payment of the principal of, interest or premium on the Governmental Note remaining unclaimed for three (3) years after the maturity or earlier payment date shall be reported and disposed of by the Fiscal Agent in accordance with applicable unclaimed property laws, whereupon all liability of the Governmental Lender and the Fiscal Agent with respect to such money shall cease, and the Funding Lender shall thereafter look solely to the Borrower for payment of any amounts then due. All money held by the Fiscal Agent and subject to this Section 9.03 shall be held uninvested and without liability for interest thereon.

ARTICLE X

INTENTIONALLY OMITTED

ARTICLE XI

MISCELLANEOUS

Section 11.01 *Servicing of the Loans.* The Funding Lender Representative may appoint a Servicer (which may be the Funding Lender Representative if the Funding Lender Representative elects to service the Loans) to service the Loans as provided in Section 3.02 of the Project Loan Agreement.

Section 11.02 *Limitation of Rights.* With the exception of rights herein expressly conferred, nothing expressed or to be implied from this Funding Loan Agreement or the Governmental Note is intended or shall be construed to give to any Person other than the Parties hereto, the Funding Lender, the Funding Lender Representative, the Servicer and the Borrower, any legal or equitable right, remedy or claim under or in respect to this Funding Loan Agreement or any covenants, conditions and provisions hereof.

Section 11.03 *Construction of Conflicts; Severability.* Notwithstanding anything provided herein, or in any of the documents referred to herein, in the event that any contracts or other documents executed by the Borrower or any other arrangements agreed to by the Borrower

in order to finance or refinance the Project with the proceeds of the Funding Loan, the interest on which is excluded from gross income for federal income tax purposes under Section 103(a) of the Code are inconsistent with the Project Loan Documents, then the Project Loan Documents shall be controlling in all respects. If any provision of this Funding Loan Agreement shall be held or deemed to be, or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or sections in this Funding Loan Agreement contained, shall not affect the remaining portions of this Funding Loan Agreement, or any part thereof. This Funding Loan Agreement and the exhibits hereto set forth the entire agreement and understanding of the parties related to this transaction and supersedes all prior agreements and understandings, oral or written.

Section 11.04 Notices.

(a) Whenever in this Funding Loan Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the Person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth below or as may be required or permitted by this Funding Loan Agreement by Electronic Notice. The Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower the Investor Member, or the Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

The Governmental Lender: North Dakota Housing Finance Agency
PO Box 1535
2624 Vermont Avenue
Bismark, ND 58502-1535
Attention: Jennifer Henderson
Email: jhenderson@nd.gov
Phone: (701) 328-8085

With a copy to: Kutak Rock LLP
1650 Farnam Street

The Omaha Building
Omaha, NE 68102-2186
Attention: Jay Jackson, Esq.
Email: jay.jackson@kutakrock.com
Phone: (402) 930-8014

The Fiscal Agent: Wilmington Trust, National Association
50 South Sixth Street
Minneapolis, MN 55402
Attention: Lisa Lewis
Email: LLEWIS6@WilmingtonTrust.com
Phone: (612) 217-5672

The Borrower: Wild Rose Senior Housing, LLC
c/o American Senior Covenant Housing Foundation
431 First Avenue West
Kalispell, MT 59901
Attention: Gerald Fritts
Email: gmf@acshf.com
Phone: (406) 270-0128

With a copy to: Affiliated Developers, Inc.
3758 Royal Avenue
Berkley, MI 48072
Attention: Kirk Bruce
Email: kirk@a-developers.com
Phone: (248) 525-2516

With a copy to: Longwell Riess
650 Poydras Street, Suite 2600
New Orleans, LA 70130
Attention: Kelly Longwell, Esq.
Email: klongwell@longwellriess.com
Phone: (504) 5113-4061

Funding Lender
Representative
(during the
Construction Phase): Churchill Mortgage Construction LLC
c/o Churchill Stateside Group
911 Chestnut Street
Clearwater, FL 33756
Attention: Rex N. Tilley
Email: rtilley@csgfirst.com

Telephone: (727) 233-0568

With a copy to:

Norris George & Ostrow PLLC
The Army Navy Office Building
1627 Eye St., N.W., Suite 1220
Washington, DC 20006
Attention: Catherine Woltering, Esq.
Email: cwoltering@ngomunis.com
Phone: (740) 504-7723

With a copy to:

Butler Snow LLP
1819 Fifth Avenue North, Suite 1000
Birmingham, AL 35203
Attention: Austin Averitt, Esq.
Email: Austin.averitt@butlersnow.com
Phone: (205) 297-2210

Funding Lender
Representative
(during the
Permanent Phase):

Churchill Mortgage Investment LLC
c/o Churchill Stateside Group
911 Chestnut Street
Clearwater, FL 33756
Attention: Rex N. Tilley
Email: rtilley@csgfirst.com
Telephone: (727) 233-0568

With a copy to:

Norris George & Ostrow PLLC
The Army Navy Office Building
1627 Eye St., N.W., Suite 1220
Washington, DC 20006
Attention: Catherine Woltering, Esq.
Email: cwoltering@ngomunis.com
Phone: (740) 504-7723

With a copy to:

Miles & Stockbridge
[]

A duplicate copy of each notice or other communication given hereunder by any party to the Servicer shall also be given to the Funding Lender Representative and by any party to the Funding Lender Representative to the Servicer.

The Fiscal Agent shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Funding Loan Agreement and delivered using Electronic Means; provided, however, that the Governmental Lender and/or the Borrower, as applicable, shall provide to the Fiscal Agent an incumbency certificate listing officers with the Funding Loan Agreement

Wild Rose Senior Housing

authority to provide such Instructions (“Authorized Officers”) and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the Governmental Lender and/or the Borrower, as applicable, whenever a person is to be added or deleted from the listing. If the Governmental Lender and/or the Borrower, as applicable, elects to give the Fiscal Agent Instructions using Electronic Means and the Fiscal Agent in its discretion elects to act upon such Instructions, the Fiscal Agent’s understanding of such Instructions shall be deemed controlling. The Governmental Lender and the Borrower understand and agree that the Fiscal Agent cannot determine the identity of the actual sender of such Instructions and that the Fiscal Agent shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Fiscal Agent have been sent by such Authorized Officer. The Governmental Lender and the Borrower shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Fiscal Agent and that the Governmental Lender, the Borrower and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Governmental Lender and/or the Borrower, as applicable. The Fiscal Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Fiscal Agent’s reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The Governmental Lender and the Borrower agree: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Fiscal Agent, including without limitation the risk of the Fiscal Agent acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Fiscal Agent and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Governmental Lender and/or the Borrower, as applicable; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Fiscal Agent immediately upon learning of any compromise or unauthorized use of the security procedures. The Fiscal Agent shall provide to the Funding Lender Representative and the Servicer (i) prompt notice of the occurrence of any Event of Default pursuant to Section 6.01 hereof and (ii) any written information or other written communication received by the Fiscal Agent hereunder within ten (10) Business Days of receiving a written request from the Funding Lender Representative and the Servicer for any such information or other communication.

Section 11.05 Funding Lender Representative.

(a) The Initial Funding Lender is the initial Funding Lender Representative with respect to the Governmental Note. Upon the Conversion Date, the Permanent Lender shall become the Funding Lender Representative. The Funding Lender Representative shall be entitled to all the rights and privileges of the Funding Lender hereunder and under the other Financing Documents.

(b) The Funding Lender Representative may provide written notice to the Fiscal Agent designating particular individuals or Persons authorized to execute any consent, waiver, approval, direction or other instrument on behalf of the Funding Lender Representative, and such notice may be amended or rescinded by the Funding Lender Representative at any time by subsequent written

notice. Any such designation or rescission pursuant to this Section 11.05(b) shall be effective immediately upon receipt of such notice by the Fiscal Agent.

(c) Whenever pursuant to this Funding Loan Agreement or any other Financing Document, the Funding Lender Representative exercises any right given to it to approve or disapprove, any arrangement or term hereof, the decision of the Funding Lender Representative to approve or disapprove or to decide whether arrangements or terms are acceptable or not acceptable shall be in the sole discretion of the Funding Lender Representative, except as otherwise specifically indicated.

(d) Each Funding Lender, by their purchase or other acquisition of the Funding Loan, shall be deemed to have acknowledged and agreed to the provisions of this Funding Loan Agreement and the other Financing Documents with respect to the Funding Lender Representative and the rights and privileges thereof, including but not limited to the right to control all remedies in respect of the Governmental Note and the Loans.

Section 11.06 *Payments Due on Non-Business Days.* In any case where a date of payment with respect to the Funding Loan shall be a day other than a Business Day, then such payment need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on such date, and no interest shall accrue for the period after such date provided that payment is made on such next succeeding Business Day.

Section 11.07 *Counterparts.* This Funding Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.08 *Laws Governing Funding Loan Agreement .* The effect and meanings of this Funding Loan Agreement and the rights of all parties hereunder shall be governed by, and construed according to, the internal laws of the State without regard to conflicts of laws principles. The parties hereby (i) irrevocably submit to the non-exclusive jurisdiction of any federal or state court sitting in North Dakota, (ii) waive any objection to laying of venue in any such action or proceeding in such courts, and (iii) waive any objection that such courts are an inconvenient forum or do not have jurisdiction over any party.

Section 11.09 *No Recourse.* No recourse under or upon any obligation, covenant or agreement contained in this Funding Loan Agreement or in the Governmental Note shall be had against any member, officer, commissioner, director or employee (past, present or future) of the Governmental Lender, either directly or through the Governmental Lender or its governing body or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, or otherwise, of any sum that may be due and unpaid by the Governmental Lender or its governing body upon the Governmental Note. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of any such member, officer, commissioner, director or employee, as such, to respond by reason of any act of omission on his/her part or otherwise, for the payment for or to the Funding Lender or otherwise of any sum that may remain due and unpaid with respect to the Funding Loan hereby secured is, by the acceptance hereof, expressly waived and released as a condition of and in

consideration for the execution of this Funding Loan Agreement and the delivery of the Governmental Note.

Section 11.10 *Successors and Assigns.* All the covenants and representations contained in this Funding Loan Agreement by or on behalf of the parties hereto shall bind and inure to the benefit of their successors and assigns, whether so expressed or not.

Section 11.11 *Electronic Signatures.* This Funding Loan Agreement may be executed and delivered by facsimile signature or other electronic or digital means (including, without limitation, Adobe's Portable Document Format ("PDF")). Any such signature shall be of the same force and effect as an original signature, it being the express intent of the parties to create a valid and legally enforceable contract between them. The exchange and delivery of this Funding Loan Agreement and the related signature pages via facsimile or as an attachment to electronic mail (including in PDF) shall constitute effective execution and delivery by the parties and may be used by the parties for all purposes. Notwithstanding the foregoing, at the request of either party, the parties hereto agree to exchange inked original replacement signature pages as soon thereafter as reasonably practicable.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Governmental Lender, the Initial Funding Lender and the Fiscal Agent have caused this Funding Loan Agreement to be executed and delivered by duly authorized officers thereof as of the day and year first written above.

**NORTH DAKOTA HOUSING FINANCE
AGENCY**, as Governmental Lender

By _____
David A. Flohr, Executive Director

[GOVERNMENTAL LENDER'S SIGNATURE PAGE TO
WILD ROSE SENIOR HOUSING FUNDING LOAN AGREEMENT]

**CHURCHILL MORTGAGE CONSTRUCTION
LLC**

By: _____

Name: Christina Thornton

Title: Vice President

[INITIAL FUNDING LENDER'S SIGNATURE PAGE TO
WILD ROSE SENIOR HOUSING FUNDING LOAN AGREEMENT]

**WILMINGTON TRUST, NATIONAL
ASSOCIATION, as Fiscal Agent**

By: _____
Name: Lisa M. Lewis
Its: Vice President

[FISCAL AGENT'S SIGNATURE PAGE TO WILD ROSE SENIOR HOUSING FUNDING LOAN AGREEMENT]

EXHIBIT A

FORM OF GOVERNMENTAL NOTE

**NORTH DAKOTA HOUSING FINANCE AGENCY
MULTIFAMILY MORTGAGE REVENUE NOTE
(WILD ROSE SENIOR HOUSING PROJECT)
SERIES 2025**

US \$[PRINCIPAL AMOUNT]

[CLOSING DATE]

FOR VALUE RECEIVED, the undersigned, Industrial Commission of North Dakota (the “**Commission**”), acting in its capacity as the North Dakota Housing Finance Agency (the “**Obligor**”), promises to pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement referenced below) to the order of Churchill Mortgage Construction LLC (the “**Funding Lender**”), and its assigns, the maximum principal sum of [_____] and 0/100 Dollars (US \$[PRINCIPAL AMOUNT]), plus premium, if any, and interest thereon and to pay the other amounts owing from time to time hereunder, all as set forth below.

This Governmental Lender’s Multifamily Mortgage Revenue Note (Wild Rose Senior Housing Project), Series 2025 (this “**Note**”) is being delivered pursuant to that certain Funding Loan Agreement dated as of July 1, 2025 (together with any and all amendments, modifications, supplements and restatements, the “**Funding Loan Agreement**”), among the Funding Lender, the Obligor and Wilmington Trust, National Association (the “**Fiscal Agent**”), pursuant to which the Obligor has financed a loan in the maximum aggregate principal amount of \$[PRINCIPAL AMOUNT] (the “**Funding Loan**”), and this Note is entitled to the benefits of the Funding Loan Agreement and is subject to the terms, conditions and provisions thereof. The Obligor is using the proceeds of the Funding Loan to finance a loan to Wild Rose Senior Housing, LLC (the “**Borrower**”) pursuant to the Project Loan Agreement dated as of July 1, 2025 (the “**Project Loan Agreement**”), among the Obligor, the Borrower and the Fiscal Agent. The outstanding principal balance of this Note at any time shall be an amount equal to the proceeds of the Funding Loan advanced by the Funding Lender under the Funding Loan Agreement and not otherwise prepaid.

1. **Defined Terms.** As used in this Note, (i) the term “Funding Lender” means the holder of this Note, and (ii) the term “Indebtedness” means the principal of, premium, if any, and interest on or any other amounts due at any time under this Note or the Funding Loan Agreement. “Event of Default” and other capitalized terms used but not defined in this Note shall have the meanings given to such term in the Funding Loan Agreement.

2. **Payments of Principal and Interest.** The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) on the first calendar day of each month commencing [September 1, 2025], interest on this Note at (i) the Construction Phase Interest Rate during the Construction Phase and (ii) the Permanent Phase Interest Rate during the Permanent Phase, and shall also pay interest on this Note at the foregoing rates on the date of any optional or mandatory prepayment or acceleration of all or part of the Funding Loan

pursuant to the Funding Loan Agreement, in an amount equal to the accrued and unpaid interest to the date of prepayment on the portion of this Note subject to prepayment (each such date for payment an “**Interest Payment Date**”). Interest shall accrue on the principal amount of the Funding Loan which has been advanced under the Funding Loan Agreement and is outstanding as reflected on the Record of Advances.

The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) the outstanding principal of this Note in full on [MATURITY DATE] the “**Maturity Date**”) and in monthly installments on each date set forth on the Funding Loan Amortization Schedule attached as Schedule 1 hereto in an amount equal to the corresponding amounts set forth thereon (as such Schedule 1 may be replaced by a new Funding Loan Amortization Schedule provided by the Permanent Lender on the Conversion Date as provided in Section 2.01(e) of the Funding Loan Agreement) or at such earlier times and in such amounts as may be required, in the event of an optional or mandatory prepayment or acceleration of the Funding Loan pursuant to the Funding Loan Agreement. The outstanding principal hereof is subject to acceleration at the time or times and under the terms and conditions, and with notice, if any, as provided under the Funding Loan Agreement.

3. **Manner of Payment.** All payments under this Note shall be made in lawful currency of the United States and in immediately available funds as provided for herein and in the Funding Loan Agreement.

4. **Application of Payments.** If at any time the Funding Lender receives any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, the Funding Lender may apply that payment to amounts then due and payable in any manner and in any order determined by the Funding Lender, in the Funding Lender’s discretion. Neither the Funding Lender’s acceptance of a payment in an amount that is less than all amounts then due and payable nor the Funding Lender’s application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. **Security.** The Indebtedness is secured by, among other things, the Pledged Security pledged pursuant to the Funding Loan Agreement.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, and all other amounts payable under this Note shall at once become due and payable, at the option of the Funding Lender, as governed by the Funding Loan Agreement, without any prior notice to the Obligor (unless required by applicable law). The Funding Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Prepayment; Prepayment Premium.** This Note is subject to prepayment as specified in the Funding Loan Agreement. Prepayment Premium shall be payable as specified in the Funding Loan Agreement.

8. **Forbearance.** Any forbearance by the Funding Lender in exercising any right or remedy under this Note or any other document evidencing or securing the Funding Loan or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or

any other right or remedy. The acceptance by the Funding Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of the Funding Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by the Funding Lender of any security for the obligations under this Note shall not constitute an election by the Funding Lender of remedies so as to preclude the exercise of any other right or remedy available to the Funding Lender.

9. **Waivers.** Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace and diligence in collecting the Indebtedness are waived by the Obligor and all endorsers and guarantors of this Note and all other third-party obligors.

10. **Loan Charges.** Neither this Note nor any of the other Financing Documents will be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate greater than the rate of interest which results in the maximum amount of interest allowed by applicable law (the "**Maximum Interest Rate**"). If any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor in connection with the Funding Loan is interpreted so that any interest or other charge provided for in any Financing Document, whether considered separately or together with other charges provided for in any other Financing Document, violates that law, and Obligor is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Funding Lender in excess of the permitted amounts will be applied by Funding Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor has been violated, all indebtedness that constitutes interest, as well as all other charges made in connection with the indebtedness that constitute interest, will be deemed to be allocated and spread ratably over the stated term of this Note. Unless otherwise required by applicable law, such allocation and spreading will be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Note.

11. **Governing Law.** This Note shall be governed by the internal law of the State of North Dakota (the "**Property Jurisdiction**").

12. **Captions.** The captions of the paragraphs of this Note are for convenience only and shall be disregarded in construing this Note.

13. **Address for Payment.** All payments due under this Note shall be payable at the principal office of the Funding Lender as designated by the Funding Lender in writing to the Fiscal Agent and the Servicer.

14. **Default Rate.** So long as (a) any monthly installment under this Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at a rate (the "**Default Rate**") equal to the lesser of (i) the Construction Phase Interest Rate or Permanent Phase Interest

Rate, as applicable, otherwise in effect notwithstanding the default plus four percent (4%) per annum or (ii) the Maximum Interest Rate. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date at the Default Rate.

15. **Limited Obligation.** This Note, together with interest thereon and redemption premium with respect thereto, is a limited obligation of the Obligor secured by the Pledged Security, is and shall always be payable solely from the Revenues, is and shall always be a valid claim of the holder thereof only against the Revenues and income derived from the Project Loan Agreement, the Project Note, the Security Instrument, which Revenues and income shall be used for no other purpose than to pay the principal installments of, redemption premium, if any, and interest on this Note, except as may be expressly authorized otherwise in this Agreement. This Note and the obligation to pay interest hereon and redemption premiums with respect thereto do not now and shall never constitute an indebtedness or an obligation of the Obligor, the State of North Dakota or any political subdivision thereof, within the purview of any constitutional limitation or provision, or a charge against the general credit or taxing powers, if any, of any of them, but shall be secured by the Pledged Security, and shall be payable solely from the Revenues and income derived from the Project Loan Agreement, the Project Note and the Security Instrument. No owner of this Note shall have the right to compel the exercise of the taxing power, if any, of the State of North Dakota or any political subdivision thereof to pay any principal installment of, premium, if any, or interest on this Note. The Obligor has no taxing power.

[Signature page follows]

IN WITNESS WHEREOF, the Commission has caused this Obligation to be executed in the name of the State and on its behalf by the manual or facsimile signature of the members of the Commission and the official seal of the Commission (or a facsimile thereof) to be hereunto affixed, imprinted, engraved or otherwise reproduced and attested to by the manual or facsimile signature of an Authorized Officer of the Commission.

**INDUSTRIAL COMMISSION OF NORTH
DAKOTA**

Attest:

(SEAL)

CERTIFICATE OF AUTHENTICATION

This Multifamily Mortgage Revenue Note is issued under the provisions of and described in the within-mentioned Funding Loan Agreement.

Date of Authentication: [CLOSING DATE]

**WILMINGTON TRUST, NATIONAL
ASSOCIATION**, as Fiscal Agent

By: _____

Name: Lisa M. Lewis

Its: Vice President

SCHEDULE 1
FUNDING LOAN AMORTIZATION SCHEDULE

EXHIBIT B
RESERVED

EXHIBIT C-1

FORM OF TRANSFeree REPRESENTATIONS LETTER

[To be prepared on letterhead of transferee]

[CLOSING DATE]

North Dakota Housing Finance Agency
Bismark, North Dakota

Wilmington Trust, National Association
Minneapolis, Minnesota

Re: North Dakota Housing Finance Agency Multifamily Mortgage Revenue Note (Wild Rose Senior Housing Project), Series 2025

Ladies and Gentlemen:

The undersigned (the “Funding Lender”) hereby acknowledges receipt of the Governmental Lender’s Multifamily Mortgage Revenue Note (Wild Rose Senior Housing Project), Series 2025, dated [CLOSING DATE] (the “Governmental Note”) delivered pursuant to the Funding Loan Agreement dated as of July 1, 2025 (the “Funding Loan Agreement”), among Churchill Mortgage Construction LLC, in its capacity as Initial Funding Lender (the “Initial Funding Lender”), the Industrial Commission of North Dakota (the “Commission”), acting in its capacity as the North Dakota Housing Finance Agency (the “Governmental Lender”) and Wilmington Trust, National Association (the “Fiscal Agent”). Capitalized terms used herein and not otherwise defined have the meanings given to such terms in the Funding Loan Agreement.

In connection with the purchase of the Funding Loan by the Funding Lender, the Funding Lender hereby makes the following representations upon which you may rely:

1. The Funding Lender has authority to purchase the Funding Loan and to execute this letter, and any other instruments and documents required to be executed by the Funding Lender in connection with the purchase of the Funding Loan.

2. The Funding Lender is an “accredited investor” within the meaning of subparagraphs (a)(1), (2), (3), (4), (7), or (8) of Rule 501 under Regulation D of the Securities Act of 1933 (the “Act”) or a “qualified institutional buyer” under Rule 144(a) of said Act (such “accredited investor” or “qualified institutional buyer”, a “Qualified Transferee”), and therefore, has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the Funding Loan.

3. The Funding Lender acknowledges that it is purchasing the Funding Loan for investment for its own account and not with a present view toward resale or the distribution thereof

Funding Loan Agreement
Wild Rose Senior Housing

Exhibit C-1 - 1

(except as set forth below), in that it does not now intend to resell or otherwise dispose of all or any part of its interests in the Funding Loan (except as set forth below); provided, however, that the Funding Lender may, notwithstanding the foregoing and subject to the terms of Paragraph 4 below, (i) transfer the Funding Loan to any affiliate or other party related to the Funding Lender that is a Qualified Transferee or (ii) sell or transfer the Funding Loan to a special purpose entity, a trust or a custodial or similar pooling arrangement from which the Funding Loan or securitized interests therein are not expected to be sold except (x) to owners or beneficial owners thereof that are Qualified Transferees or (y) in circumstances where secondary market credit enhancement is provided for such securitized interests resulting in a rating thereof of at least “A” or better; provided, further, however that the Funding Lender anticipates that prior to the Conversion Date it will sell a participation interest in greater than twenty-five percent (25%) of the outstanding principal amount of the Funding Loan to a bank which is an “accredited investor” as that term is defined in Regulation D under the Securities Act of 1933, as amended, as permitted in Section [2.08(b)] of the Funding Loan Agreement; and provided, further, however, the Funding Lender has originated and funded the Funding Loan with the expectation that the Funding Loan will be sold to Churchill Mortgage Investment LLC (“Permanent Lender”) on the Conversion pursuant to the Construction Funding Agreement dated as of [_____] 1, 2025 between the Borrower and the Initial Funding Lender.

4. In addition to the right to sell or transfer the Funding Loan as set forth in Paragraph 3 above, the Funding Lender further acknowledges that its right to sell or transfer the Funding Loan is subject, as required under the Funding Loan Agreement, to the delivery to the Fiscal Agent of a transferee representations letter from a Qualified Transferee in substantially the same form as this Transferee Representations Letter or in such other form authorized by the Funding Loan Agreement with no revisions except as may be approved in writing by the Governmental Lender.

5. The Funding Lender understands that the Governmental Note is not registered under the Act and that such registration is not legally required as of the date hereof; and further understands that the Governmental Note (a) is not being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating service and (d) will be delivered in a form which may not be readily marketable. The Funding Lender acknowledges that the Governmental Lender has not prepared and is not obligated to prepare an official statement with respect to the Governmental Note and the Governmental Note will be exempt from the continuing disclosure requirements of Rule 15c2-12 of the United States Securities and Exchange Commission.

6. The Funding Lender understands that (a) the Funding Loan is not secured by any pledge of any moneys received or to be received from taxation by the State of North Dakota or any political subdivision thereof and that the Governmental Lender has no taxing power, (b) the Funding Loan does not and will not represent or constitute a general obligation or a pledge of the faith and credit of the Governmental Lender, the State of North Dakota or any political subdivision thereof; and (c) the liability of the Governmental Lender with respect to the Funding Loan is limited to the Pledged Security as set forth in the Funding Loan Agreement.

7. The Funding Lender has either been supplied with or been given access to information, including financial statements and other financial information, which it considers necessary to make an informed decision in connection with the purchase of the Funding Loan. The Funding Lender has not relied upon the Governmental Lender for any information in connection with its purchase of the Funding Loan.

8. The Funding Lender has made its own inquiry and analysis with respect to the Funding Loan and the security therefor, and other material factors affecting the security and payment of the Funding Loan. The Funding Lender is aware that the business of the Borrower involves certain economic variables and risks that could adversely affect the security for the Funding Loan.

All agreements, representations and warranties made herein shall survive the execution and delivery of this letter agreement and, notwithstanding any investigation heretofore or hereafter, shall continue in full force and effect.

**CHURCHILL MORTGAGE CONSTRUCTION
LLC**

By: _____

Name: Christina Thornton

Title: Vice President

EXHIBIT C-2

FORM OF TRANSFeree REPRESENTATIONS LETTER OF FUNDING LOAN PARTICIPANT DURING CONSTRUCTION PHASE

[To be prepared on letterhead of transferee]

[CLOSING DATE]

North Dakota Housing Finance Agency
Bismark, North Dakota

Wilmington Trust, National Association
Minneapolis, Minnesota

Re: North Dakota Housing Finance Agency Multifamily Mortgage Revenue Note (Wild Rose Senior Housing Project), Series 2025

Ladies and Gentlemen:

The undersigned (the “Participant”) hereby acknowledges that it is acquiring a participation interest (the “Participation”) in the Governmental Lender’s Multifamily Mortgage Revenue Note (Wild Rose Senior Housing Project), Series 2025, dated [CLOSING DATE] (the “Governmental Note”) delivered pursuant to the Funding Loan Agreement dated as of [] 1, 2025 (the “Funding Loan Agreement”), among Churchill Mortgage Construction LLC, in its capacity as Initial Funding Lender (the “Initial Funding Lender”), the Industrial Commission of North Dakota (the “Commission”), acting in its capacity as the North Dakota Housing Finance Agency (the “Governmental Lender”) and Wilmington Trust, National Association (the “Fiscal Agent”). Capitalized terms used herein and not otherwise defined have the meanings given to such terms in the Funding Loan Agreement.

In connection with its purchase of the Participation by the Participant, the Participant hereby makes the following representations upon which you may rely:

1. The Participant has authority to purchase the Participation and to execute this letter, and any other instruments and documents required to be executed by the Participant in connection with its purchase of the Participation.

2. The Participant is a bank and an “accredited investor” within the meaning of subparagraph (a)(1) or (8) of Rule 501 under Regulation D of the Securities Act of 1933 (the “Act”) and a “Qualified Transferee” and therefore, has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the Funding Loan.

3. The Participant acknowledges that it is purchasing the Participation for investment for its own account and not with a present view toward resale or the distribution thereof (except as set

Funding Loan Agreement
Wild Rose Senior Housing

Exhibit C-2 - 1

forth below), in that it does not now intend to resell or otherwise dispose of all or any part of its interests in the Participation (except as set forth below); provided, however, that the Participant may, notwithstanding the foregoing and subject to the terms of Paragraph 4 below, transfer the Participation to any affiliate or other party related to the Participant that is a Qualified Transferee as permitted in Section 2.08(b) of the Funding Loan Agreement.

4. In addition to the right to sell or transfer the Participation as set forth in Paragraph 3 above, the Participant further acknowledges that its right to sell or transfer the Participation is subject, as required under the Funding Loan Agreement, to the delivery to the Fiscal Agent of a transferee representations letter from a Qualified Transferee in substantially the same form as this Transferee Representations Letter or in such other form authorized by the Funding Loan Agreement with no revisions except as may be approved in writing by the Governmental Lender.

5. The Participant understands that the Governmental Note is not registered under the Act and that such registration is not legally required as of the date hereof; and further understands that the Governmental Note (a) is not being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating service and (d) will be delivered in a form which may not be readily marketable. The Participant acknowledges that the Governmental Lender has not prepared and is not obligated to prepare an official statement with respect to the Governmental Note and the Governmental Note will be exempt from the continuing disclosure requirements of Rule 15c2-12 of the United States Securities and Exchange Commission.

6. The Participant understands that (a) the Funding Loan is not secured by any pledge of any moneys received or to be received from taxation by the State of North Dakota or any political subdivision thereof and that the Governmental Lender has no taxing power, (b) the Funding Loan does not and will not represent or constitute a general obligation or a pledge of the faith and credit of the Governmental Lender, the State of North Dakota or any political subdivision thereof; and (c) the liability of the Governmental Lender with respect to the Funding Loan is limited to the Pledged Security as set forth in the Funding Loan Agreement.

7. The Participant has either been supplied with or been given access to information, including financial statements and other financial information, which it considers necessary to make an informed decision in connection with the purchase of the Participation. The Participant has not relied upon the Governmental Lender for any information in connection with its purchase of the Participation.

8. The Participant has made its own inquiry and analysis with respect to the Funding Loan and the security therefor, and other material factors affecting the security and payment of the Funding Loan. The Participant is aware that the business of the Borrower involves certain economic variables and risks that could adversely affect the security for the Funding Loan.

All agreements, representations and warranties made herein shall survive the execution and delivery of this letter agreement and, notwithstanding any investigation heretofore or hereafter, shall continue in full force and effect.

[SIGNATURE BLOCK OF PARTICIPANT]

EXHIBIT D

COSTS OF ISSUANCE REQUISITION (Cost of Issuance Fund)

Wilmington Trust, National Association, as Fiscal Agent

Re: North Dakota Housing Finance Agency Multifamily Mortgage Revenue Note (Wild Rose Senior Housing Project), Series 2025

Fiscal Agent:

You are requested to disburse funds from the Cost of Issuance Fund pursuant to Section 4.13 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth in this requisition (the “**Requisition**”). The terms used in this requisition shall have the meaning given to those terms in the Funding Loan Agreement (the “**Funding Loan Agreement**”), dated as of July 1, 2025 by and among Churchill Mortgage Construction LLC, in its capacity as Initial Funding Lender (the “Initial Funding Lender”), Wilmington Trust, National Association, as Fiscal Agent, securing the Governmental Lender’s Multifamily Mortgage Revenue Note (Wild Rose Senior Housing Project), Series 2025, dated [CLOSING DATE] (the “**Governmental Note**”).

REQUISITION NO.:

PAYMENT DUE TO:

AMOUNT TO BE DISBURSED: \$

The undersigned, on behalf of Wild Rose Senior Housing, LLC, a North Dakota limited liability company, duly organized and existing under the laws of the State of North Dakota (the “**Borrower**”), certifies that:

(a) the expenditures for which money is requisitioned by this Requisition represent proper charges against the Cost of Issuance Fund, have not been included in any previous requisition and are set forth in the Schedule attached to this Requisition, with invoices attached for any sums for which reimbursement is requested; and

(b) the money requisitioned is not greater than those necessary to meet obligations due and payable or to reimburse the applicable party for funds actually advanced for Costs of Issuance.

Attached to this Requisition is a Schedule, together with copies of invoices or bills of sale covering all items for which payment is being requested.

Date of Requisition: _____

[Signature Page Follows]

[BORROWER SIGNATURE BLOCK]

EXHIBIT E

PROJECT LOAN FUND REQUISITION (Project Loan Fund)

Wilmington Trust, National Association, as Fiscal Agent

Re: North Dakota Housing Finance Agency Multifamily Mortgage Revenue Note
(Wild Rose Senior Housing Project), Series 2025

You are requested to disburse funds from the Project Loan Fund pursuant to Section 4.02 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth in this requisition (the “**Requisition**”). The terms used in this requisition shall have the meaning given to those terms in the Funding Loan Agreement (the “**Funding Loan Agreement**”), dated as of July 1, 2025 by and among Churchill Mortgage Construction LLC, in its capacity as Initial Funding Lender (the “**Initial Funding Lender**”), the Industrial Commission of North Dakota (the “**Commission**”), acting in its capacity as the North Dakota Housing Finance Agency (the “**Governmental Lender**”) and Wilmington Trust, National Association, as Fiscal Agent (the “**Fiscal Agent**”), securing the Governmental Lender’s Multifamily Mortgage Revenue Note (Wild Rose Senior Housing Project), Series 2025, dated [CLOSING DATE] (the “**Governmental Note**”).

REQUISITION NO.:

PAYMENT DUE TO:

AMOUNT(S) TO BE DISBURSED: \$ _____ from the Project Account
\$ _____ from the Borrower Equity Account

The undersigned Borrower hereby represents and warrants that the following information and certifications provided in connection with this Requisition are true and correct as of the date hereof and authorizes Servicer to submit this Requisition to the Fiscal Agent on behalf of Borrower:

1. Purposes for which disbursement is requested are specified in the **attached Schedule**.
2. Party or parties to whom the disbursements shall be made are specified in the **attached Schedule** (may be the undersigned in the case of reimbursement for advances and payments made or cost incurred for work done by the undersigned); provided, that no reimbursement shall be made for advances and payments made prior to [_____, 20____]).
3. The undersigned certifies that:

- a. the conditions precedent to disbursement set forth in the Construction Funding Agreement have been satisfied;
- b. the disbursement requested pursuant to this Requisition will be used solely to pay a cost or costs allowable under the Funding Loan Agreement and the Construction Funding Agreement;
- c. none of the items for which disbursement is requested pursuant to this Requisition has formed the basis for any disbursement previously made from the Project Loan Fund and all such items have been properly recorded in Borrower's books and are set forth on the Schedule attached hereto, along with paid invoices attached for any sum for which reimbursement is requested and invoices or bills of sales for all other items;
- d. all labor and materials for which disbursements have been requested have been incorporated into the Project in accordance with reasonable and standard building practices, the Construction Funding Agreement and all applicable laws, ordinances, rules and regulations of any governmental authority having jurisdiction over the Project;
- e. the materials, supplies and equipment furnished or installed for the Improvements are not subject to any lien or security interest or that the funds to be disbursed pursuant to this Requisition are to be used to satisfy any such lien or security interest;
- f. all of the funds being requisitioned are being used in compliance with all tax covenants set forth in the Funding Loan Agreement, the Project Loan Agreement, the Tax Regulatory Agreement and the Tax Agreement, including that none of the proceeds of the Funding Loan (including investment earnings thereon) will be used to provide an airplane, a skybox or any other private luxury box, any facility primarily used for gambling, health club facility or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;
- g. with respect to amounts from the Project Account of the Project Loan Fund, not less than 95% of the sum of:
 - (A) the amounts requisitioned by this Requisition; plus
 - (B) all amounts previously requisitioned and disbursed from the Project Account of the Project Loan Fund;
 have been or will be applied by Borrower to pay the Costs of the Project;
- h. Borrower is not in default under the Project Loan Agreement, the Construction Funding Agreement or any other Project Loan Document to which it is a party and

nothing has occurred to the knowledge of Borrower that would prevent the performance of its obligations under such documents;

- i. no amounts being requisitioned hereby will be used to pay, or reimburse, any Costs of Issuance incurred in connection with the delivery of the Governmental Note or pay debt service with respect to the Loans; and
- j. Funds deposited with Borrower for further disbursement to third parties shall be paid to such third parties by check dated the date of such deposit and Borrower reasonably expects such funds will be disbursed from its account within five Business Days of such deposit.

[Following items may not be required for Initial Disbursement]

- 4. Estimated costs of completing the uncompleted construction as of the date of this Requisition: _____.
- 5. Percent of construction completed as of the date this request: _____%

IN WITNESS WHEREOF, the undersigned has executed this Requisition as of the day and date first above written.

Date: _____

[BORROWER SIGNATURE BLOCK]

APPROVED:

CHURCHILL MORTGAGE CONSTRUCTION LLC

By: _____
Name: _____
Its: _____

EXHIBIT F
CONSTRUCTION PHASE INTEREST RATE

[LENDER TO PROVIDE]



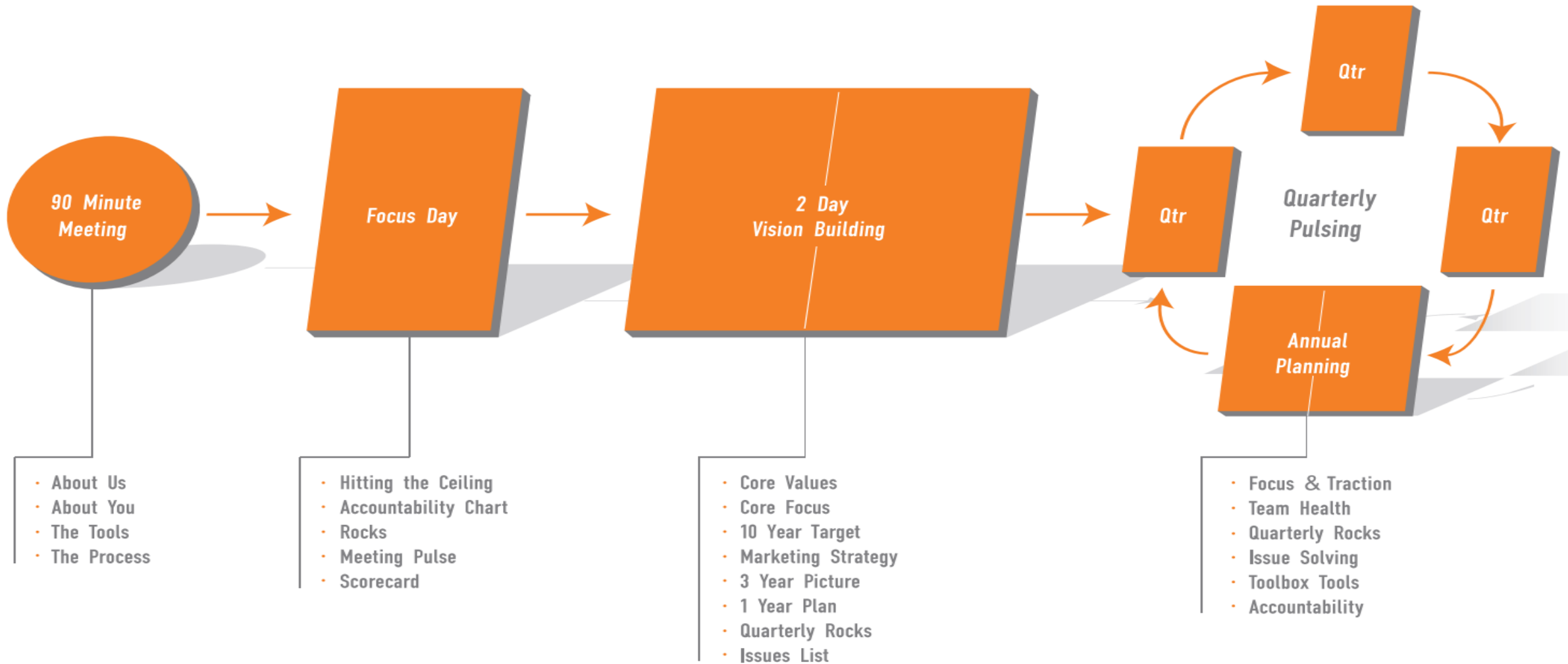
BND – Traction EOS Bank

Don Morgan, CEO/President BND | June 2025





THE EOS PROCESS™



Questions?



Industrial Commission of North Dakota



Kelly Armstrong
Governor

Drew H. Wrigley
Attorney General

Doug Goehring
Agriculture Commissioner

TO: Industrial Commission Members
FR: Deputy Director Jordan Kannianen
RE: New NDIC SERC Contract 2025-01
DT: June 26, 2025

In 2019, North Dakota's 66th Legislative Assembly established the Energy & Environmental Research Center (EERC) as the State Energy Research Center (SERC) through Senate Bill No. 2249. The legislation included \$5 million of funding per biennium to fulfill three objectives: 1) conduct exploratory, transformational, and innovative research of technologies and methodologies that facilitate the prudent development and clean and efficient use of the state's energy resources; 2) provide greater access to energy experts for timely scientific and engineering studies to support the state's interests; and 3) educate stakeholders on issues related to the state's energy resources through public outreach.

In 2023, North Dakota's 68th Legislative Assembly passed SB 2161 to amend the law related to SERC in the following ways:

- Changed the sunset date of SERC activities and funding from its current end date of June 30, 2027, to June 30, 2029.
- Raised the SERC fund limit from \$5 million per biennium to \$7.5 million per biennium.

Accordingly, an amendment to the contract was then executed to address the increased funding amount.

In 2025, the legislature passed two bills related to SERC.

- SB 2143, which further extended the sunset to June 30, 2033.
- SB 2159, which removed the restriction on conducting research on high-level radioactive waste for above ground projects.

I recommend the Industrial Commission approve the execution of a new contract to incorporate the changes in law related to high-level radioactive waste research and the extended sunset, while keeping the contract term on a biennial basis.

Contract No. SERC-2025-01

This Agreement is between the State of North Dakota acting by and through its Industrial Commission, hereafter called Commission and the University of North Dakota Energy & Environmental Research Center (EERC) hereafter called Contractor. The effective date of this contract is July 1st, 2025 (the "Effective Date").

1. Retirement System Status

Contractor will be responsible for any federal or state taxes applicable to this grant made under this contract. Contractor will not be eligible for any benefits from these contract payments of federal Social Security, unemployment insurance, worker's compensation, or the Public Employees Retirement System. Contractor is an independent contractor, and neither *it* nor its employees, agents, and representatives are employees of the Industrial Commission.

2. Statement of Work

a. Contractor agrees to accomplish the work contained in Exhibit A entitled "State Energy Research Center (ND Century Code 15-11-40) (SERC)" (the "Work") which is attached to this contract and is made a part of it. If approved by the Commission and conducted in consultation with the high-level radioactive waste advisory council, the Contractor may conduct research or pursue projects that will result in the exploration, storage, treatment, or disposal of high-level radioactive waste above ground in North Dakota.

b. Contractor agrees to provide a reports for the Work as follows:

- Quarterly Status Reports 30 days after the end of each calendar quarter following the Effective Date
- Presentation of the Annual Report to the Industrial Commission at the first meeting opportunity after the end of the year as determined by the Commission during each year of the Contract
- Presentation of the Annual Report to the Interim Legislative Energy Development and Transmission Committee during each year of the Contract.
- Legislative Appropriations Committees as requested
- Final Report

June 30, 2027

As outlined in Exhibit A, the project deliverables will include the following:

- Performance of Exploratory Research for the North Dakota Energy (e.g. coal, oil & gas, wind, solar, biofuels, etc.)
- Provide Prompt Expertise for North Dakota- provide timely scientific and engineering studies to support the State's interests. All projects conducted through this task will be approved by the Commission prior to initiating.
- Advocate and Educate through Outreach

The Reports will include project results exclusive of details that may generate valuable new intellectual property (IP) until such time as the IP has been adequately protected.

The Annual and Final Reports must include a single-page Project Summary describing the purpose of the project, the work accomplished and the project's results. The Status and Final Reports must be submitted in hard copy and either current Word compatible electronic format or Adobe portable document format.

3. Consideration

- a. a. Commission agrees to grant to Contractor an amount not to exceed the sum of \$7,500,000 per biennium. Payments shall be made according to the following schedule:

1. If Task 2 described on Exhibit A is required during any biennium under this Contract:

Upon receipt and consideration of each status report and verification of expenditures (7 reports at approximately \$830,357.14 each per biennium)	\$5,812,500
Upon completion of Task 2	\$750,000
Upon receipt of Final Report and presentations to Industrial Commission and legislative committees	\$937,500

2. If Task 2 as described in Exhibit A is not required during any biennium under this Contract:

Upon receipt and cons Upon receipt and consideration of each status report and verification of expenditures (7 reports at approximately \$830,357.14 each per biennium)	\$6,562,500
Upon receipt of Final Report and presentations to Industrial Commission and legislative committees	\$937,500

- b. Should the Commission, upon consideration of a report, believe that the report is inadequate or that the Contractor is not complying with the statement of work or satisfactorily carrying out the work, the Commission may withhold all or part of a scheduled payment in its sole discretion until the Contractor, in the opinion of the Commission, has remedied the problem causing the withholding.
- c. The Contractual Amount is firm for the duration of this Contract and constitutes the entire compensation due CONTRACTOR for performance of its obligations under this Contract regardless of the difficulty, materials or equipment required, including fees, licenses, overhead, profit and all other direct and indirect costs incurred by CONTRACTOR, except as provided by an amendment to this Contract

4. Authority to Contract and Subcontract

The Contractor shall not have the authority to contract for or on behalf of or incur obligations on behalf of the Commission.

The Contractor shall not enter into any subcontracts for any of the work scheduled under this contract without obtaining prior written approval from the Commission.

Should, upon approval of the Commission, the Contractor obtain prior written approval to enter into a subcontract with a qualified provider of services, the Subcontractor shall acknowledge the binding nature of this agreement and incorporate this agreement together with its attachments as appropriate. The Contractor must agree to be solely responsible for the performance of any Subcontractor. However, nothing in this clause constitutes a promise by the Contractor to accept responsibility for the tort liability of any subcontractor.

5. Funds Available and Authorized

The Commission certifies that at the time the contract is written that sufficient funds are available and authorized for expenditure to finance costs of this contract within the Commission's current and future appropriation or limitation to July 1, 2027. It is agreed that in the event the appropriation or funding to the Commission is not obtained and continued at a level sufficient to allow for payments to the Contractor for the services identified in Paragraph 2, the obligations of each party hereunder terminate upon delivery of written notice to the Contractor. It is noted that Senate Bill No. 2143 passed by the Sixty-ninth Legislative Assembly appropriates seven and one-half million dollars per biennium with the law being in effect through June 30, 2033.

6. Termination

This Agreement may be terminated by mutual consent of both parties in writing and delivered by certified mail or in person.

Upon delivery of written notice to the Contractor, the Commission may immediately terminate the whole or any part of this contract if:

- a. The Contractor fails to provide services called for by this contract and in Exhibit A within the time specified herein or any extension thereof; or
- b. The Contractor fails to perform any of the other provisions of this contract or so fails to pursue the work as to endanger performance of this contract in accordance with its terms, and after receipt of written notice from the Commission, fails to correct such failures within ten days or such longer period as the Commission may authorize.

The rights and remedies of the Commission provided in the above clause related to defaults (including breach of contract) by the Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract. Any such termination of this contract, other than from breach of contract, shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

Should the Commission terminate this contract because the Contractor has breached it, it is understood that no further funding will be provided to the Contractor.

7. Agreement Management

Notwithstanding the Contractor's responsibility for total management responsibility during the performance of the contract, the administration of the contract will require maximum coordination between the Commission and the Contractor.

Commission's Authorized Officer

The Commission's Authorized Officer will monitor all technical aspects and carry out all contractual administration of this Agreement. Communications pertaining to this Agreement will be addressed to:

The Industrial Commission of North Dakota
Attention: Executive Director
State Capitol 14th Floor
600 E Boulevard Ave Dept 405
Bismarck, North Dakota 58505-0840
ndicgrants@nd.gov

The Commission's Authorized Officer is the only person, other than the Commission, authorized to approve changes to any of the requirements under this Agreement.

8. Access to Records

The Commission, the State Auditor of the State of North Dakota, and the Office of the Attorney General of the State of North Dakota, and their duly authorized representatives, shall have access to the books, documents, papers and records of the Contractor which are directly pertinent to this Agreement as determined by the Commission in its sole discretion for the purpose of making audit, examination, excerpts and transcripts.

It is noted that if the documentation for the expenditures related to this Agreement including the in-kind contributions and match funding are not delivered to the Commission for the Commission's files, the Contractor hereby agrees that the documentation will be maintained in the Contractor's

offices for four (4) years from the completion date of the Work and the Contractor will provide access to the documentation if so requested.

9. Nondiscrimination- Compliance with Law

The Contractor shall comply with all federal, state, and local laws and ordinances applicable to the Work to be done under this Agreement. Further, the Contractor agrees to comply with all laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights. The Contractor agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation, and Workers' compensation premiums. The Contractor shall have and keep current at all times during the term of this Agreement all licenses and permits required by law. The Contractor's failure to comply with this section may be deemed a material breach by the Contractor entitling the Commission to terminate in accordance with the Termination section of this Agreement.

10. Indemnity and Insurance

The Contractor is a state agency. The liability of the Contractor is as provided by Chapter 32-12.2 of the North Dakota Century Code and is subject to the limitations contained therein. The Contractor shall require that all subcontractors obtain adequate liability insurance coverage, including, at a minimum, the maximum limits on damages established pursuant to N.D.C.C. § 32-12.2-02.

11. Applicable Law and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Agreement must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim for lack of jurisdiction or *forum non conveniens*.

12. Ownership of Work Product

All work products of the Contractor resulting from this Agreement shall be governed by North Dakota Administrative Code Chapter 43-03-06. The Commission is aware that the Contractor is also receiving federal funding for the project that is the subject of this Agreement and that the Contractor's obligations to the Commission regarding intellectual property such as patents, data, and copyrights, may be secondary to Contractor's obligations to the federal government. Nothing in this Agreement prevents the Commission from asserting its rights in such property against the federal government.

13. Captions

The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Agreement.

14. Execution and Counterparts

This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

15. Amendments

The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by the parties.

16. Notices

All notices, certificates or other communications shall be sufficiently given when delivered or mailed, postage prepaid, to the parties at their respective places of business as set forth below or at a place designated hereafter in writing by the parties.

State Capitol, Fourteenth Floor
600 E Boulevard Ave Dept 405
Bismarck, ND 58505-0840

University of North Dakota
15 North 23rd Street, Stop 9018
Grand Forks, ND 58202-9018

16. Assignment; Successors in Interest

The Contractor may not assign or otherwise transfer or delegate any right or duty without Commission's express written consent, provided, however, that the Contractor may assign its rights and obligations hereunder in the event of a change of control or sale of all or substantially all of its assets related to this Agreement, whether by merger, reorganization, operation of law, or otherwise. Should assignee be a business or entity with whom the Commission is prohibited from conducting business, the Commission shall have the right to terminate without cause.

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

17. Severability

The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or unenforceable, the validity of the remaining terms and provisions is unaffected, and, if possible, the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

18. Waiver

The failure of the Commission to enforce any provisions of this Agreement shall not constitute a waiver by the Commission of that or any other provision.

19. Merger Clause

This Agreement, including any incorporated attachments, constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The Contractor, by the signature below of its authorized representative, hereby acknowledges that the Contractor has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

20. Legal Notice/Disclaimer

The following notice shall be contained in all reports intended to be released to the public:

This report was prepared by the State Energy Research Center of the Energy & Environmental Research Center pursuant to an agreement partially funded by the Industrial Commission of North Dakota and neither the Energy & Environmental Research Center, nor any of its subcontractors nor the Industrial Commission of North Dakota nor any person acting on behalf of either:

(A) Make any warranty or representation, express or implied, with respect to the accuracy, completeness, or usefulness of the information contained in this report, or that the use of any information, apparatus, method, or process disclosed in this report may not infringe privately-owned rights; or

(B) Assume any liabilities with respect to the use of, or for damages resulting from the use of, any information, apparatus, method or process disclosed in this report.

Reference herein to any specific commercial product, process, or service by trade name, trademark,

manufacturer, or otherwise, does not necessarily constitute or imply its endorsement, recommendation, or favoring by the Industrial Commission of North Dakota. The views and opinions of authors expressed herein do not necessarily state or reflect those of the Industrial Commission of North Dakota.

21. Independent Contractor

The Contractor shall perform as an independent entity under this Agreement. The Contractor, its employees, agents and representatives are not employees of the Commission. No part of this Agreement shall be construed to represent the creation of an employer/employee relationship.

22. Works for Hire

CONTRACTOR acknowledges that all work(s) under this Contract is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to STATE all rights and interests CONTRACTOR may have in the work(s) it prepares under this Contract, including any right to derivative use of the work(s). All software and related materials developed by CONTRACTOR in performance of this Contract for STATE shall be the sole property of STATE, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein to STATE. CONTRACTOR shall execute all necessary documents to enable STATE to protect STATE's intellectual property rights under this section.

23. Work Product

All work product, equipment or materials created for STATE or purchased by STATE under this Contract belong to STATE and must be immediately delivered to STATE at STATE's request upon termination of this Contract.

24. Compliance With Public Record Laws

Under the North Dakota public records law and subject to the Confidentiality clause of this Contract, certain records may be open to the public upon request.

Public records may include: (a) records STATE receives from CONTRACTOR under this Contract, (b) records obtained by either Party under this Contract, and (c) records generated by either Party under this Contract.

CONTRACTOR agrees to contact STATE immediately upon receiving a request for information under the public records law and to comply with State's Instructions on how to respond to such requests.

25. Spoliation (Notice of Potential Claims)

CONTRACTOR shall promptly notify STATE of all potential claims that arise or result from this Contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to STATE the opportunity to review and inspect such evidence, including the scene of the accident.

26. Alternative Dispute Resolution- Jury Trial

By entering this Contract, STATE does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The Parties may enforce the rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.

27. State Audit

Pursuant to N.D.C.C. § 54-10-19, all records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this Contract are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. CONTRACTOR shall maintain these records for at least three (3) years following completion of this

Contract and be able to provide them upon reasonable notice. STATE, State Auditor, or Auditor's designee shall provide reasonable notice to CONTRACTOR prior to conducting examination.

28. Effectiveness of Contract

This Contract is not effective until fully executed by both Parties. If no start date is specified in the Term of Contract, the most recent date of the signatures of the Parties shall be deemed the Effective Date.

29. Confidentiality

CONTRACTOR shall not use or disclose any information it receives from COMMISSION under this Agreement that COMMISSION has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by COMMISSION. COMMISSION shall not disclose any information it receives from CONTRACTOR that the COMMISSION has previously identified as confidential pursuant to N.D.C.C. ch. 54-17.6-06 and that COMMISSION determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, N.D.C.C. ch. 44-04. The duty of COMMISSION and CONTRACTOR to maintain confidentiality of information under this section continues beyond the completion of this Agreement.

UNIVERSITY OF NORTH DAKOTA
ENERGY & ENVIRONMENTAL RESEARCH
CENTER

NORTH DAKOTA INDUSTRIAL COMMISSION

By: _____
Name

By: _____
Jordan Kannianen

Signature

Deputy Executive Director

Title

Date: _____

Date: _____

EXHIBIT A
STATE ENERGY RESEARCH CENTER (ND CENTURY CODE 15-11-40) (SERC)
PROJECT DESCRIPTION

Introduction: In 2019, North Dakota's 66th Legislative Assembly established the Energy & Environmental Research Center (EERC) as the State Energy Research Center (SERC) through Senate Bill No. 2249. The legislation included funding to fulfill three objectives: 1) conduct exploratory, transformational, and innovative research of technologies and methodologies that

facilitate the prudent development and clean and efficient use of the state's energy resources; 2) provide greater access to energy experts for timely scientific and engineering studies to support the state's interests; and 3) educate stakeholders on issues related to the state's energy resources through public outreach. The SERC directive and funding appropriation are presented in Sections 15-11-40 and 57-51.1-07.9 of the North Dakota Century Code.

Method: To best fulfill the directive of the State Energy Research Center, the EERC has the authority to:

- Select the research topics and projects to be pursued.
- Enter into contracts with other North Dakota institutions of higher education to support specific State Energy Research Center topics and projects.
- Enter into contracts or agreements with federal, state, private sector, and other institutions to support specific State Energy Research Center topics and projects.
- Accept donations, grants, contributions, and gifts from any public or private source to carry out the selected research topics and projects.

Scope of Work: State Energy Research Center objectives will be accomplished by three work tasks. A description of each task is detailed below.

Task 1 – Perform Exploratory Research for North Dakota Energy

The State Energy Research Center will conduct multiple projects through this task, each focused on early-stage, exploratory energy research topics applicable to North Dakota, e.g., coal, oil and gas, wind, solar, biofuels. Projects will be selected by the EERC based on their potential to positively impact North Dakota, its industries, and its citizens. Research will focus on technology and strategy development that will ultimately lead to commercial application with public and private sector partners. Specific activities may involve other institutions of higher education in North Dakota as needed to achieve success. It is understood that exploratory research, by its very nature, is high-risk; projects that do not demonstrate successful outcomes will be discontinued in favor of new topics.

Task 2 – Provide Prompt Expertise for North Dakota

The State Energy Research Center will provide North Dakota with quick and efficient access to energy experts from the EERC for timely scientific and engineering studies to support the state's interests. This task will allow the State Energy Research Center to both react to and proactively address issues that have the potential to impact the state's energy (and other, if appropriate) industries. All projects conducted through this task will be approved by the North Dakota Industrial Commission (NDIC) prior to initiating.

Task 3 – Advocate and Educate Through Outreach

In today's society, research projects must go beyond science, technology, and economics to make progress; projects need a social license to be successful. This social license is obtained in part through education: the better informed the public is, the better the probability for success. Task 3 will consist of outreach activities to advocate for and educate about North Dakota's energy industries. The EERC has experienced success with a variety of outreach tools and activities, including fact sheets; training workshops; websites; on-site tours and presentations to school and community groups; and participation in international, national, and regional trade press, television, radio, peer-reviewed literature, interviews, and conference presentations. The EERC may partner with private and/or public institutions as needed to carry out Task 3 activities.

One specific activity that will be conducted under this task is the Energy Hawks Program. The

Energy Hawks Program immerses students from North Dakota's institutions of higher education from a variety of disciplines in North Dakota's energy industry to gain their insights in identifying new opportunities to support the state.

**PROPOSAL FOR NORTH DAKOTA INDUSTRIAL COMMISSION
STATE ENERGY RESEARCH CENTER PROJECT**

FEASIBILITY OF GEOTHERMAL ENERGY IN NORTH DAKOTA

The Energy & Environmental Research Center (EERC) at the University of North Dakota proposes to conduct a scope of work to evaluate the potential for synergistic opportunities to couple geothermal resource development with oil production and/or geologic storage of CO₂. The study would examine the feasibility of generating up to 600 megawatts of power from geothermal resources in North Dakota and connecting that power to the Midcontinent Independent System Operator and Southwest Power Pool electric grids.

This effort will also support the geothermal study requested by the North Dakota legislature through the enactment of Senate Bill 2360. The act states: “During the 2025–26 interim, the legislative management shall consider studying the feasibility of developing geothermal energy in the state. The study must include an evaluation of: a) the state’s geology and the feasibility of resource exploration and production of geothermal energy in the state. b) Support opportunities for startup [*sic*] geothermal companies, including fostering innovation and promoting economic growth within the state’s energy sector. c) The application of geothermal energy to nonproductive oil and gas wells to extend the life of the well through the use of a complementary energy extraction method. d) Other opportunities to advance geothermal energy opportunities in the state.”

This study would seek to explore the feasibility of geothermal as a new energy resource for North Dakota and the region, particularly its potential contributions to oil and gas production, as well as address the four items enumerated in Senate Bill 2360 to achieve the goals of the legislative management study. The proposed scope of work will require a budget of \$250,000, which, if approved, will come from the North Dakota Industrial Commission-directed portion of state energy research center funding. The proposed work will be conducted over 9 months, and the principal investigator will be James Sorensen, EERC Director of Subsurface Research and Development.



Energy & Environmental Research Center

15 North 23rd Street, Stop 9018 • Grand Forks, ND 58202-9018 • P. 701.777.5000 • F. 701.777.5181
www.undeerc.org

June 3, 2025

Mr. Jordan Kannianen
Deputy Executive Director
North Dakota Industrial Commission
600 East Boulevard Avenue, Department 405
Bismarck, ND 58505-0840

Dear Mr. Kannianen:

Subject: Scope and Budget for Directed Funds (EERC Proposal 2025-0167)

In 2025, North Dakota's 69th Legislative Assembly passed Senate Bill No. 2014. This bill contained an amendment (SECTION 27) to Section 15 of chapter 14 of the 2023 Session Laws, which previously allocated funding to the State Energy Research Center for a salt cavern underground energy storage research project. The amendment allocates \$2 million for the Energy & Environmental Research Center (EERC) to conduct a business case analysis for the development of caverns in North Dakota's underground salt formation for subsurface storage of energy resources, including natural gas, liquified natural gas, natural gas liquids (NGLs), and hydrogen. The following is the proposed scope of work and budget for the salt cavern energy storage project.

The EERC has been in discussion with several commercial entities about partnering on this effort; however, these commercial entities have expressed a need to build upon prior work to better understand specific business case scenarios for underground product storage to derisk the development of salt caverns in North Dakota. The EERC proposes to work closely with two commercial partners, ONEOK, Inc., and Basin Electric Power Cooperative, to evaluate the techno-economic feasibility of various hydrocarbon product storage scenarios in engineered salt caverns such that these findings sufficiently inform commercial investment in salt cavern development. The EERC is also the project manager for the Heartland Hydrogen Hub, under the U.S. Department of Energy's Regional Clean Hydrogen Hubs program, tasked with developing hydrogen production and end-use deployment, which could lead to additional opportunities for salt cavern storage. The EERC and its partners believe this evaluation will provide key information needed to derisk investment in developing commercial salt caverns and related infrastructure in North Dakota.

The EERC proposes to perform the following activities as the first step toward commercial development of engineered salt caverns in North Dakota's bedded salts: 1) partner discussions to guide the EERC's understanding of storage product types and volumes, desired storage locations, and operational considerations; 2) in-depth petrophysical analysis of existing well logs to better estimate the quality and extent of the salt zones at particular sites of interest to our partners;

Mr. Kannianen/2
June 3, 2025

3) engineering assessment, modeling, and simulation to estimate potential cavern dimensions, product storage volumes, and operational lifespans at potential storage sites; 4) business case scenario development and assessment informed by our partners' product storage and deliverability needs; and 5) development of guidance documents outlining the success criteria and associated risks for cavern development and hydrocarbon storage in North Dakota. Better understanding the techno-economic feasibility of salt cavern development in North Dakota's bedded salts will help to inform and derisk potential commercial ventures focused on using salt cavern storage to manage anticipated future NGL export capacity constraints and hydrocarbon product storage needs. The results will also provide critical information for commercial entities interested in petrochemical development and novel energy storage, including hydrogen or compressed air storage.

Please feel free to contact me if you have any questions.

Sincerely,

DocuSigned by:

C7560BF2E06C43B...
Brian P. Kalk
Chief Research Officer

BPK/rlo

Attachment



BUSINESS CASE DEVELOPMENT FOR HYDROCARBON PRODUCT STORAGE IN ENGINEERED SUBSURFACE SALT CAVERNS

Scope and Budget for Directed Funds (EERC Proposal 2025-0167)

Submitted to:

Jordan Kannianen

**North Dakota Industrial Commission
600 East Boulevard Avenue, Department 405
Bismarck, ND 58505-0840**

Submitted by:

Brian P. Kalk

**Energy & Environmental Research Center
University of North Dakota
15 North 23rd Street, Stop 9018
Grand Forks, ND 58202-9018**

DocuSigned by:

E7468BBB3DE440E...

Charles D. Gorecki, CEO

for

June 3, 2025

BUSINESS CASE DEVELOPMENT FOR HYDROCARBON PRODUCT STORAGE IN ENGINEERED SUBSURFACE SALT CAVERNS

Period of performance: 7/1/25 – 12/31/26

Principal investigator: Bethany Kurz

OBJECTIVES

The objective of this project is to fulfill the legislatively directed funding associated with Senate Bill No. 2014, to evaluate the feasibility of cavern development in North Dakota's bedded salts for energy storage. Through this study, the Energy & Environmental Research Center (EERC) seeks to develop the techno-economic feasibility of hydrocarbon products storage in engineered salt caverns to derisk the commercial investment in salt cavern development in North Dakota.

The EERC will work closely with at least two commercial partners who have agreed to provide information, insights, and market intelligence to help the EERC use the legislatively appropriated funds to ensure a robust and thorough analysis of various business case scenarios. This proposed work is the first step toward the development of engineered salt caverns in North Dakota's bedded salts.

SCOPE OF WORK

The project objectives will be accomplished through five tasks over an 18-month budget period. The EERC and project partners will assess existing information, identify information gaps, and perform a techno-economic evaluation of various business case scenarios to derisk the commercial creation and use of salt caverns in North Dakota. A broad group of stakeholders representing the entire value chain will be engaged, including the commercial partners who are committed to this effort, the Department of Mineral Resources, the North Dakota Geological Survey, the North Dakota Pipeline Authority, and members of the oil and gas industry.

TASKS TO BE PERFORMED

Task 1.0 – Project Management and Planning

The EERC will manage the project to meet all technical, schedule, and budget objectives and requirements by coordinating activities to accomplish the work. The EERC will ensure that project plans, results, and decisions are appropriately documented and project reporting and briefing requirements are satisfied.

Task 2.0 – Site Characterization

The goal of this task is to assess the potential for cavern development at locations of interest specific to our project partners as well as at other locations in western North Dakota. The EERC will work closely with our partners to identify potential storage locations to perform a more detailed geologic assessment. Publicly available data will be collected from the North Dakota Industrial Commission's (NDIC's) Department of Mineral Resources and North Dakota Geologic Survey to assess salt thickness, quality, and extent in the areas of interest. Data obtained from drilling the HALITE 1 during the EERC's Phase II study will supplement the other data sources.

Sites will be characterized to understand both the surface and subsurface potential for cavern development. Several factors regarding surface needs will be considered including topography, water resources, proximity to gas plants, pipeline infrastructure and federal, state, and tribal lands. The subsurface data will be used to perform detailed geologic characterization at potential sites of interest, the results of which will inform the engineering assessment and business case scenario evaluation.

Task 3.0 – Engineering Assessment

Surface operation of engineered salt caverns is site-specific and dependent on many factors. In this task the EERC will work with project partners to determine their product storage needs, including storage product types and volumes, operational considerations (i.e., timing of product storage and retrieval), and preferred locations. Various cavern development scenarios will be assessed, and optimal cavern geometries and volumes needed for specific product types will be determined. Surface operational options, including facility designs, building and equipment needs, and water resource use and disposal considerations, will be evaluated for site- and product-specific storage needs.

Geomechanical modeling will use data obtained in Task 2 and core measurements taken from the HALITE 1 well to predict engineered cavern volumes and dimensions, cavern development time frames, the anticipated stability of caverns when exposed to the cyclicity of different operational scenarios, cavern stability impacts resulting from impurities within the salt members, and multicavern stress/strain relationships. The results of this task will guide long-term operational planning and security of engineered caverns in bedded salts.

Task 4.0 – Business Case Scenario Development

To derisk development of engineered salt caverns in North Dakota, the EERC and the project partners will perform a techno-economic assessment of the various product storage scenarios defined through the engineering assessment. This task will be closely guided by the commercial project partners, who are prepared to offer information and insight regarding market-driver and company-specific business factors that could affect anticipated storage needs, product types, and locations. The results of this task will generate the critical data and information necessary to inform commercial investment in salt cavern development in North Dakota.

Task 5.0 – Compilation of Project Results

Based on the results of this study, this task will entail the development of a final report and guidance document for North Dakota that includes a high-level analysis of the opportunities provided by salt cavern development in the state. The ability of engineered caverns to alleviate anticipated export capacity constraints associated with increasing production of natural gas and natural gas liquids, as well as other product storage options to support energy development, will be assessed and summarized. The final report will also summarize data and information gaps identified through this effort, including any areas that need regulatory clarity.

DELIVERABLES

A final report documenting all key findings and a guidance document for energy storage, including business case analysis to enable a final investment decision for private sector salt cavern development in North Dakota, will be prepared and submitted to NDIC at the end of the project.

In addition, during the project period of performance (July 1, 2025 – December 31, 2026), quarterly reports will be provided to NDIC and at least one report/presentation will be provided during the 2025–2026 interim to legislative management regarding the status and results of the research project.

BRIEFINGS/TECHNICAL PRESENTATIONS

Additional briefings will be delivered as needed/requested throughout the project, provided that such briefings/presentations are consistent with the budget, schedule, and scope of the project.

BUDGET

The budget for this project will be \$2,000,000.

Project Associated Expense	NDIC Share (Cash)	Total Project
Labor	\$1,255,584	\$1,255,584
Travel	\$14,133	\$14,133
Supplies	\$2,500	\$2,500
Communications	\$25	\$25
Printing & Duplicating	\$60	\$60
Laboratory Fees & Services		
Natural Materials Analytical Research Lab	\$19,528	\$19,528
Document Production Service	\$15,699	\$15,699
Technical Software Fee	\$6,450	\$6,450
Engineering Services Fee	\$4,654	\$4,654
Geoscience Services Fee	\$5,871	\$5,871
Total Direct Costs	\$1,324,504	\$1,324,504
Facilities & Administration	\$675,496	\$675,496
Total Project Costs	\$2,000,000	\$2,000,000



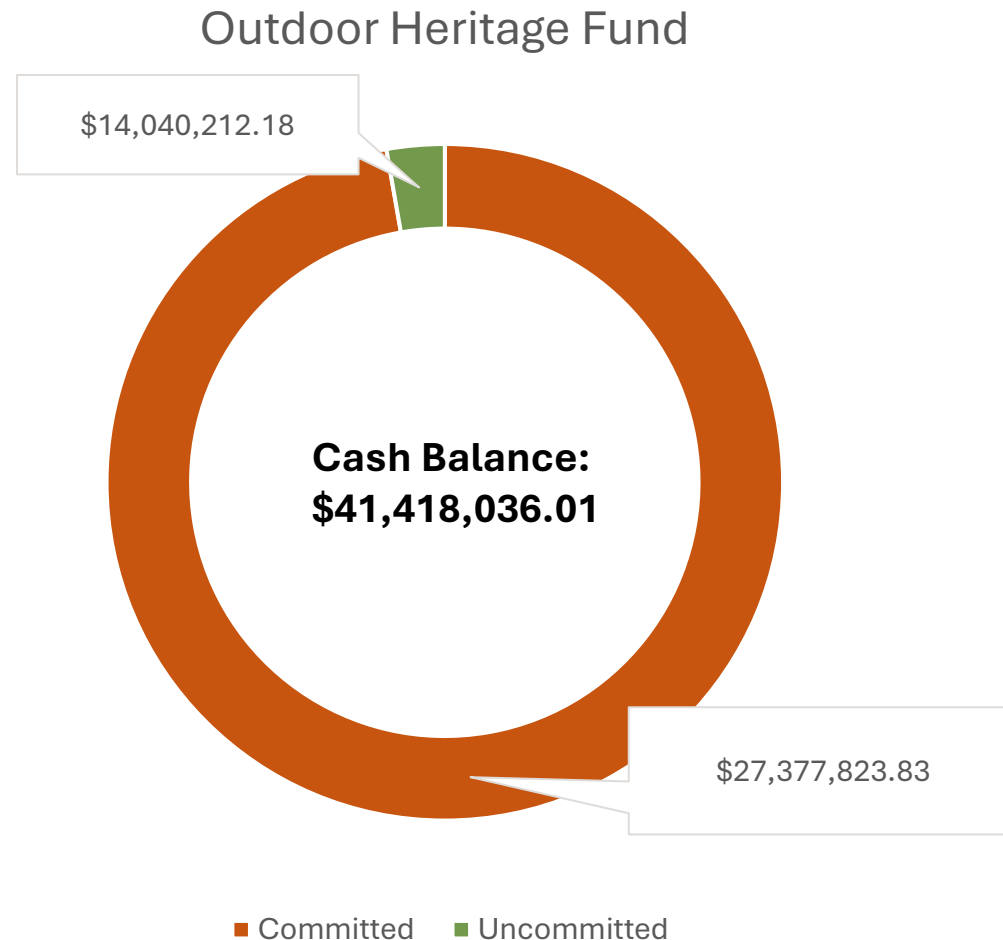
Outdoor Heritage Fund Budget Update

Brenna Jessen, Grants Officer & Fiscal Manager, NDIC

June 26th, 2025

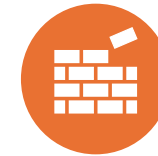


Outdoor Heritage Fund Balance Beginning of 2023-2025 Biennium



Funding Source:

- \$15 million oil production taxes



243 Cumulative Projects



67 Active Projects



Cumulative Value:

- \$83.9 million granted
- \$214.2 million project value

App. #	Project	Applicant	Total Project Cost	OHF Funds Requested
26-1	ND Statewide Tree Planting Initiative	North Dakota Conservation District Employees Association	\$ 3,510,000	\$ 2,500,000
26-2	ND Statewide Windbreak Renovation Initiative 5.0	North Dakota Forest Service	\$ 1,200,000	\$ 900,000
26-3	Ryan Lake Prairie Trail and Outdoor Classroom	Grand Forks Park District	\$ 335,000	\$ 251,250
26-4	Rivers Edge Fishing Enhancement	City of Grand Forks	\$ 494,195	\$ 155,450
26-6	Lost Lake Dam Fish Passage	McLean County Water Resource District	\$ 74,802	\$ 51,599
26-7	Public Access to Habitat (PATH) Program	Pheasants Forever	\$ 1,452,500	\$ 1,089,375
26-8	Fargo Southwest Pond Regional Recreation Area	Fargo Park District	\$ 915,813	\$ 521,250
26-9	State Parks Strategic Tree and Shrub Plantings	North Dakota Parks and Recreation Department	\$ 1,742,715	\$ 1,000,000
26-10	Cover Crop and Livestock Integration Project 4	Ducks Unlimited	\$ 1,440,000	\$ 936,000
26-11	ND 4-H Camp Project	North Dakota 4-H Foundation	\$ 101,978	\$ 70,978
26-12	Grazing Management and Habitat Enhancement	The Nature Conservancy	\$ 119,099	\$ 68,522
26-13	Smart Livestock Advancing Terrestrial Ecosystems	Ducks Unlimited	\$ 720,585	\$ 483,924
26-14	Grazed Wildlife Habitat – Meadowlark Initiative	United Prairie Foundation	\$ 806,750	\$ 580,000
26-15	Wildlife and Livestock Dams III	North Dakota Natural Resources Trust	\$ 890,000	\$ 445,000
26-16	Grazing Resiliency in North Dakota (GRND)	North Dakota Natural Resources Trust	\$ 2,845,000	\$ 1,950,000
26-17	Western ND Private Land Open to Sportsmen (PLOTS)	North Dakota Game and Fish	\$ 2,100,000	\$ 1,500,000
26-18	Historical Recreation Trail	City of Flasher	\$ 273,837	\$ 45,837
			\$ 19,022,274	\$ 12,549,185

Outdoor Heritage Fund
Grant Round 26
Application Summary Page
GR 26-1

Project Title: ND Statewide Tree Planting Initiative
Applicant: ND Conservation District Employees Association
Primary Contact: Sarah Tunge
Total Project Costs: \$3,510,000
OHF Request: \$2,500,000

Match Amount	Funding Source	Match Type
610,000	Landowner Obligation	Cash
400,000	Soil Conservation Districts	In-Kind
1,010,000	Total	

Percentage of Matching Funds: 29%

Project Duration: 2026 - 2028

Major Directive: B

Additional Directive: A, C

Summary of Project: To encourage and provide financial assistance to implement agroforestry practices including farmstead, feedlot and field windbreaks, wildlife and riparian plantings, buffers, and living snow fences.

Technical Committee Comments:

- No Natural Resource Concerns
- Significant number of landowners will benefit
- 3,010 applicants since the program began – statewide reach/impact

Comments from the OHF Advisory Board members:

- Concerns have been taken of from last ground to this one
-

Unsuccessful Applications				
Round	Request	Total Project Cost	Title	Vote
25	5,317,000	7,429,500	ND Statewide Tree Planting Initiative	6-5
Total	5,317,000	7,429,500		

OHF Advisory Board Recommendation

Contingencies: None

Conflicts of Interest: None

Funding Vote: 11-0

Funding Amount Vote: \$2,500,000

Outdoor Heritage Fund
Grant Round 26
Application Summary Page
GR 26-2

Project Title: ND Statewide Windbreak Renovation Initiative 5.0
Applicant: ND Forest Service
Primary Contact: Loretta Forsberg
Total Project Costs: \$1,200,000
OHF Request: \$900,000

Match Amount	Funding Source	Match Type
150,000	Landowner	Cash
150,000	Landowner	In-Kind
300,000	Total	

Percentage of Matching Funds: 25%

Project Duration: 2025 - 2030

Major Directive: B

Additional Directive: C

Summary of Project: Continue to offer a financial assistance program for landowners to renovate their windbreaks thereby protecting, enhancing, and preserving essential forest resources.

Technical Committee Comments:

- Windbreak 2.0 and 3.0 funding is committed to landowners
- Funding for 4.0 has \$240,000 left unallocated
- Program continually receives a lot of interest and is successful

Comments from the OHF Advisory Board members:

- Questioned cost share – got clarification
-

Funded Projects					
Contract	Total Project Cost	Title	Award Amount	Amount Expended	Project Timeframe
5-74	3,600,000	North Dakota Statewide Windbreak Renovation Initiative	1,800,000	¹ 1,618,268.04	Completed
18-185	600,000	North Dakota Statewide Windbreak Renovation Initiative 2.0	300,000	48,366.44	2021-2024
20-200	62,000	Sheyenne River State Forest Access Improvement Project	45,000	² 41,779.46	Completed
21-210	1,200,000	North Dakota Statewide Windbreak Renovation Initiative 3.0	900,000	78,416.50	2023-2028
24-233	1,200,000	North Dakota Statewide Windbreak Renovation Initiative 4.0	900,000	0.00	2024-2028
Total	6,662,000		3,945,000	1,708,413.94	

Unsuccessful Applications				
Round	Request	Total Project Cost	Title	Vote
1	633,468	1,305,193	Forest Stewardship Initiative	2-10
Total	633,468	1,305,193		

OHF Advisory Board Recommendation

Contingencies: None
 Conflicts of Interest: None
 Funding Vote: 11-0
 Funding Amount Vote: \$900,000

¹ Returned commitment of 181,731.96
² Returned commitment of \$3,220.54

Outdoor Heritage Fund
Grant Round 26
Application Summary Page
GR 26-3

Project Title: Ryan Lake Prairie Trail & Outdoor Classroom
Applicant: Grand Forks Park District
Primary Contact: Leif Larsen
Total Project Costs: \$335,000
OHF Request: \$251,250

Match Amount	Funding Source	Match Type
20,000	Grand Forks Park District	Cash
63,750	Other Grants	Cash
83,750	Total	

Percentage of Matching Funds: 25%

Project Duration: 2026

Major Directive: D

Additional Directive: A, C

Summary of Project: Convert the other half of Ryan Park into native prairie with a 0.5 mile ADA accessible concrete trail with benches and connect the outdoor classroom with existing city greenway trails and two existing fishing docks on the lakeshore.

Technical Committee Comments:

- It is a concrete trail instead of gravel to be ADA Accessible
- \$750 City Permit – OHF may not fund this
- Great outdoor components with the fishery
- Strong educational aspect to the project
- No natural resource concerns

Comments from the OHF Advisory Board members:

- Typically do not fund permits
 - Could potentially tie up fund dollars if permitting takes too long
-

Funded Projects					
Contract	Total Project Cost	Title	Award Amount	Amount Expended	Project Timeframe
3-37	290,005	Ryan Lake Fishing and Recreation Development Project	100,000	100,000	Completed
Total	290,005		100,000	100,000	

Unsuccessful Applications				
Round	Request	Total Project Cost	Title	Vote
23	149,859	199,813	Japanese Gardens Revitalization at Sertoma Park	0-12
Total	149,859	199,813		

OHF Advisory Board Recommendation

Contingencies: None
Conflicts of Interest: None
Funding Vote: 9-2
Funding Amount Vote: \$251,250

Outdoor Heritage Fund
Grant Round 26
Application Summary Page
GR 26-4

Project Title: Rivers Edge Fishing Enhancement Project (aka Greenway Fishing Enhancement Project)
Applicant: City of Grand Forks
Primary Contact: Kim Greendahl
Total Project Costs: \$494,195
OHF Request: \$155,450

Match Amount	Funding Source	Match Type
288,745	City of Grand Forks Flood Protection and Greenway Capital Fund	Cash
50,000	Garrison Diversion Conservancy District	Cash
338,745	Total	

Percentage of Matching Funds: 69%

Project Duration: 2025 - 2026

Major Directive: D

Additional Directive: A, C

Summary of Project: To extend the existing paved trail .4 miles with a 10' wide paved trail, safety railing at the fishing site, benches, trash cans, and an informational kiosk for trail users and anglers.

Technical Committee Comments:

- Great project to provide access to sovereign lands
- Will likely need a sovereign lands permit so reach out to DWR as soon as possible at 701-328-4988 to ensure timely permit issuance and to prevent project delays
- Is the paved trail asphalt or concrete?
- There was not an option to receive sovereign land project grants with the 69th legislative session like there was with the 68th legislative session.
- No natural resources concerns

Comments from the OHF Advisory Board members:

- The last time this came around it didn't get funded but believe circumstances have changed and it is a timely project with the expansion of Grand Forks and a safer area
-

Funded Projects					
Contract	Total Project Cost	Title	Award Amount	Amount Expended	Project Timeframe
2-31	100,000	Downtown River Access for Grand Forks Greenway	75,000	75,000	Completed
6-84	169,073	Downtown River Access for Grand Forks Greenway	100,000	100,000	Completed
Total	269,073		175,000	175,000	
Unsuccessful Applications					
Round	Request	Total Project Cost	Title		Vote
24	239,389.45	478,778.90	Greenway Fishing Enhancement Project		6-4
Total	239,389.45	478,778.9			

OHF Advisory Board Recommendation

Contingencies: None
Conflicts of Interest: None
Funding Vote: 10-1
Funding Amount Vote: \$155,450

Outdoor Heritage Fund
Grant Round 26
Application Summary Page
GR 26-6

Project Title: Lost Lake Dam Fish Passage
Applicant: McLean County Water Resource District
Primary Contact: Lynn Oberg
Total Project Costs: \$74,802
OHF Request: \$51,599

Match Amount	Funding Source	Match Type
13,203	McLean County Water Resource District	In-Kind
10,000	Ducks Unlimited	Cash
23,203	Total	

Percentage of Matching Funds: 31%

Project Duration: June, 2025 – 2026

Major Directive: C

Additional Directive: A

Summary of Project: Lost Lake Dam is upstream of the Missouri River and is a complete barrier to fish passage. There is a former meander bend at the Lost Lake Dam that provides a natural location for fish passage and a relatively cost-effective means of constructing the required improvements.

Technical Committee Comments:

- Good project series
- No natural resources concerns
- If the design changes, DWR requests the applicant to contact the Regulatory division at 701-328-4965 as soon as possible to avoid regulatory delays

Comments from the OHF Advisory Board members:

- McLean County is the poster child for conservation in the state. Rare to have a county-led watershed project
- Same project that they already received funds for and adding more costs when it hasn't been completed
- Once they got their bids back in place the costs were higher, so they need both grants to complete the project
- Game and Fish – supportive of the fish passage structure. Just want them to consult with their fisheries (due to the bandit kill fish)

- Don't want people to make a habit of coming back to request more funds if what they initially received wasn't enough.
 - They deserve the benefit of the doubt
 - It is a good project and meets so many directives that it's a tough one to pull back from – there's a lot of variables with each project
-

Funded Projects					
Contract	Total Project Cost	Title	Award Amount	Amount Expended	Project Timeframe
12-133	636,500	Painted Woods Lake Flood Damage Reduction Project	211,732	211,732	Completed
22-214	150,097	Katz Dam Fish Passage	112,572.75	¹ 137,607.69	Completed
23-228	88,980.70	Lost Lake Dam Fish Passage	66,735.53	0.00	2024
23-229	4,900,000	Painted Woods Lake Flood Protection & Recreation Project	50,250	² 49,687.50	Completed
Total	5,775,577.7		441,290.28	441,290.28	

Unsuccessful Applications				
Round	Request	Total Project Cost	Title	Vote
8	508,227.87	1,263,926.20	McLean County Water Resource District	3-8
16	211,504.67	578,761.68	McLean County Water Resource District	2-10
Total	719,732.54	1,842,687.88		

OHF Advisory Board Recommendation

Contingencies: None

Conflicts of Interest: None

Funding Vote: 9-2

Funding Amount Vote: \$51,599

¹ Returned cash of 25,034.94

² Returned commitment of 562.50

Outdoor Heritage Fund
Grant Round 26
Application Summary Page
GR 26-7

Project Title: Pheasants Forever Public Access to Habitat (PATH) Program
Applicant: Pheasants Forever (PF)
Primary Contact: Emily Spolyar
Total Project Costs: \$1,452,500
OHF Request: \$1,089,375

Match Amount	Funding Source	Match Type
145,250	PF&QF PATH Program Funding	Cash
217,875	PF&QF Indirect Rate 15%	Indirect
363,125	Total	

Percentage of Matching Funds: 25%

Project Duration: 2025 - 2029

Major Directive: A

Additional Directive: B, C

Summary of Project: Increase new wildlife habitat development and expand public hunting access in 38 counties, by adding 10,000 acres of new habitat to the PLOTS program. Landowners establishing new grassland habitat through the programs will be eligible for an additional one-time incentive payment with a 40-acre minimum enrollment.

Technical Committee Comments:

- No natural resource concerns
- If landowners adjacent to the State's sovereign lands elect to join the program, this project would benefit in enhancing access to both desirable habitat and to sovereign lands
- This is an expansion to what they've previously done before
- Good habitat initiative and access project

Comments from the OHF Advisory Board members:

- Been waiting for more access projects and this is a fantastic access project so it should be supported
-

Other Funded Projects: Pheasants Forever

Contract	Total Project Cost	Title	Award Amount	Amount Expended	Project Timeframe
2-33	292,879	North Dakota Pollinator Partnership	173,750	¹ 24,258.82	Completed
3-46	100,000	Bismarck PF Habitat Enhancement	60,000	60,000	Completed
5-79	36,225	North Dakota Youth Pollinator Habitat Program	20,000	² 6,938.58	Completed
9-104	376,683	Southwest Grazing Lands Improvement Project	216,899.89	³ 216,889.89	Completed
⁴ 10-115	1,773,750	Working Grassland Partnership (Phase II)	903,750	753,826.13	2018-2028
13-144	288,625	North Central Soil Health & Habitat	52,500	⁵ 3,610.74	Completed
14-150	447,801	Precision Agriculture: Technology, Conservation, and Habitat	301,875	⁶ 261,905.39	Completed
17-175	46,978.45	Community Pollinator Project	12,000	⁷ 6,530.93	Completed
17-176	397,184	Southwest Grazing Lands Improvement Project - Phase II	223,900	114,365.61	2021-2025
23-231	400,000	MonDak Pheasants Forever 619 NWND 2024-2026 Habitat Project	250,000	0.00	2024-2026
Total	4,160,125.45		2,214,674.89	114,365.61	

Unsuccessful Applications				
Round	Request	Total Project Cost	Title	Vote
1	24,500	50,000	Pheasants Forever Bismarck Chapter Tree Equipment	0-12
⁸ 1	165,000	173,000	Pheasants Forever-Sakakawea Wildlife Project	N/A
1	316,000	947,916	Kitchen Table Conversations for Private Land Conservation	0-12
1	808,000	1,031,961	Public Land Enhancement Program	0-12
6	1,715,700	2,367,490	Honey Bee & Monarch Butterfly Partnership (HBMBP)	0-11

¹ Returned commitment of 149,491.18

² Returned commitment of 13,061.42

³ Returned commitment of 10.00

⁴ The ND Association of Soil Conservation Districts, Ducks Unlimited, and Pheasants Forever are all co-applicants

⁵ Returned commitment of 48,889.26

⁶ Returned commitment of 38,027.05 and returned cash of 1,942.56

⁷ Returned commitment of 5,469.07

⁸ 1-CCC was withdrawn

7	312,873	466,221	Precision Ag Business Planning Pilot - Soil, Access and Habitat	0-11
Total	3,342,073	5,036,588		

OHF Advisory Board Recommendation

Contingencies: None

Conflicts of Interest: None

Funding Vote: 11-0

Funding Amount Vote: \$1,089,375

Outdoor Heritage Fund
Grant Round 26
Application Summary Page
GR 26-8

Project Title: Fargo Southwest Pond Regional Recreation Area
Applicant: Fargo Park District
Primary Contact: Tony Schmitt
Total Project Costs: \$915,813
OHF Request: \$521,250

Match Amount	Funding Source	Match Type
50,000	Garrison Diversion Conservancy District	Grant
344,562.50	Fargo Park District General Fund	Cash
394,562.5	Total	

Percentage of Matching Funds: 43%

Project Duration: 2026 - 2027

Major Directive: D

Additional Directive: C

Summary of Project: Create a native wetland and upland prairie for establishment of 80 acres of recreation and wildlife habitat through a .6 mile gravel trail network that would tie into an existing trail with benches, interpretive panels, trail crossings, and dry creek beds.

Technical Committee Comments:

- No natural resource concerns
- Gravel trail is being utilized instead of concrete
- Found the match necessary for this project and substantially lowered project costs from last grant round

Comments from the OHF Advisory Board members:

- Appreciate them coming back again with a condensed project after last grant round
-

Unsuccessful Applications				
Round	Request	Total Project Cost	Title	Vote
7-11	1,107,145.00	1,536,860	Watershed Basin and Nature Wetland Trail at Urban Plains Park	0-11
¹ 8-13	524,600	717,180	Fargo Urban Woods and Prairies Initiative - Phase 2	7-4
25-3	3,231,810.94	4,684,081.25	Fargo Southwest Pond Regional Recreation Area	4-7
Total	4,863,555.94	6,938,121.25		

OHF Advisory Board Recommendation

Contingencies: None

Conflicts of Interest: None

Funding Vote: 11-0

Funding Amount Vote: \$521,250

¹ Audubon Dakota was the primary sponsor and Fargo Park District was a co-sponsor

Outdoor Heritage Fund
Grant Round 26
Application Summary Page
GR 26-9

Project Title: Enhancing State Parks Through Strategic Tree and Shrub Plantings
Applicant: ND Parks and Recreation Department
Primary Contact: Cole Garman
Total Project Costs: \$1,742,715
OHF Request: \$1,292,715

Match Amount	Funding Source	Match Type
177,190	State Special Funds	Cash
247,810	State Special Funds	In-Kind
25,000	Federal or Other Sponsor	Cash
450,000	Total	

Percentage of Matching Funds: 26%

Project Duration: 2025 - 2028

Major Directive: C

Additional Directive: A, D

Summary of Project: Due to the aging out of trees, victims of pests or disease, or simply not at optimal locations, the focus is to obtain and plant larger containerized trees in high-priority (Tier I) areas where they can quickly establish and have a positive impact on the visitor experience by providing shade, delineation of spaces, habitat, erosion control and an aural and visual aesthetic.

Technical Committee Comments:

- This project is a benefit to the people's parks
- Good installation plan, post planting assessment and post installation management
- Biggest causes of failures are: not selecting the right tree for the right areas, trees planted too deep, lack of follow-up maintenance, and in areas like parks, wildlife damage/destruction
- ND Parks and Rec dept. has the knowledge and staff to address issues that arise

Comments from the OHF Advisory Board members:

- \$631/tree is really expensive – would like to see some smaller trees be added and some funding reduced
- Prefer big trees as they are more enduring, hardy, will be in high-use areas that little kids will be running by. The \$600 cost includes more than just the cost of the tree
- The tree stock you select with a reputable dealer is very important and how they are planted with the follow-up maintenance they should have good survival rates
- They could do more shopping and better deals could likely be found

- They went to legislature and didn't get funded
- They had the discussions on bringing it legislature but did not – only had some conversations about possibly doing it.

Funded Projects					
Contract	Total Project Cost	Title	Award Amount	Amount Expended	Project Timeframe
1-15	242,629	Trail Restoration & Improvement Program	112,000	¹ 105,103.37	Completed
1-16	645,987	Natural Resource Stewardship in North Dakota's Parks, Preserves and Natural Areas	129,000	129,000	Completed
3-38	53,842	Public Use Fishing Docks at Lake Metigoshe and Beaver Lake State Parks	40,382	40,382	Completed
8-96	441,870	Trail Restoration and Improvement Program Part 2	82,054	² 54,686.36	Completed
11-118	16,300	Sheyenne River Water Trail Development	8,700	8,700	Completed
14-156	146,780	Natural Resources Stewardship in ND's Parks, Preserves and Natural Areas II	108,680	108,680	Completed
Total	1,547,408		480,816	117,380	

Unsuccessful Applications				
Round	Request	Total Project Cost	Title	Vote
1	77,006	154,012	Recreational Trail Reconstruction in Response to Mineral Development at Little Missouri State Park	12-0
24	1,410,335	1,762,900	Enhancing State Parks through Strategic Tree & Shrub Plantings	0-10
Total	1,487,341	1,916,912		

OHF Advisory Board Recommendation

Contingencies: None

Conflicts of Interest: None

Funding Vote: 9-2

Funding Amount Vote: \$1,000,000

¹ Returned commitment of 6,896.63

² Returned commitment of 27,367.64

Outdoor Heritage Fund
Grant Round 26
Application Summary Page
GR 26-10

Project Title: Cover Crop & Livestock Integration Project 4
Applicant: Ducks Unlimited, Inc.
Primary Contact: Tanner Gue
Total Project Costs: \$1,440,000
OHF Request: \$936,000

Match Amount	Funding Source	Match Type
419,000	Private Landowners	Cash
45,000	Ducks Unlimited, Inc.	In-Kind
20,000	Millborn Seeds	Cash
10,000	Pulse USA	In-Kind
10,000	ND Natural Resources Trust	Cash
504,000	Total	

Percentage of Matching Funds: 35%

Project Duration: 2025 - 2030

Major Directive: B

Additional Directive: A, C

Summary of Project: CCLIP 4 is the fourth phase of previously successful grants that will help producers initiate cover crop and grazing practices on more than 4,000 additional cropland acres, enhancing 5,000 additional grassland acres over the next five years.

Technical Committee Comments:

- No natural resource concerns
- Continues to be a successful project with a lot of demand

Comments from the OHF Advisory Board members:

- No comments or questions
-

Funded Projects					
Contract	Total Project Cost	Title	Award Amount	Amount Expended	Project Timeframe
1-3	934,218	Aquatic Habitat Infrastructure Enhancement	322,000	322,000	Completed
1-4	3,665,820	Enhancing Grazing Lands & Wildlife Habitat (Phase 1)	828,000	828,000	Completed
¹ 8-97	438,681.40	Grasslands Enhancement Pilot Project	230,000	² 181,133.71	Completed
9-110	1,073,653.80	Cover Crop & Livestock Integration Project	625,395	³ 509,023.59	Completed
⁴ 10-115	1,773,750	Working Grassland Partnership (Phase II)	903,750	753,826.13	2018-2028
13-142	2,128,173	Cover Crop & Livestock Integration	1,250,790	818,042.19	2019-2024
20-203	542,000	Grasslands Enhancement Project Phase II	315,750	67,072.11	2022-2027
20-204	2,758,333	Cover Crop & Livestock Integration Project III	1,609,000	346,710.17	2021-2026
Total	13,314,629.2		6,084,685	1,985,650.6	

Unsuccessful Applications				
Round	Request	Total Project Cost	Title	Vote
1	3,000,000	7,500,000	Winter Cereals Sustainability in Action	4-8
2	710,400	992,361	Partnering with ND Producers to Promote Profitable Agriculture with Wildlife Benefits	2-9
3	472,320	1,005,930	Partnering with ND Producers to Promote Profitable Agriculture with Wildlife Benefits	5-6
3	580,000	825,766	Private Land Aquatic Habitat Creation and Infrastructure Enhancement	5-6
4	495,000	839,714	Private Land Aquatic Habitat Creation and Infrastructure Enhancement	5-6

¹ ND Natural Resources Trust is a co-applicant.

² Returned commitment of 48,866.30

³ Returned commitment of 116,371.31

⁴ ND Natural Resources Trust, ND Association of Soil Conservation Districts, and Pheasants Forever are co-applicants.

15	619,000	1,057,500	Grasslands Enhancement Project Phase II	6-6
Total	5,876,720	12,221,271		

OHF Advisory Board Recommendation

Contingencies: None
Conflicts of Interest: None
Funding Vote: 10-1
Funding Amount Vote: \$936,000

Outdoor Heritage Fund
Grant Round 26
Application Summary Page
GR 26-11

Project Title: ND 4-H Camp
Applicant: ND 4-H Foundation
Primary Contact: Karla Meikle
Total Project Costs: \$101,978
OHF Request: \$70,978

Match Amount	Funding Source	Match Type
12,000	ND 4-H Foundation	Cash
5,500	Local Electrical Contractor	In-Kind
3,500	NDSU Extension Staff	In-Kind
4,500	Berk and Kay Strothman Family Trust	Cash
500	ND Association of 4-H Youth Workers	Cash
26,000	Total	

Percentage of Matching Funds: 25%

Project Duration: August 1, 2025

Major Directive: C

Additional Directive: D

Summary of Project: Install a 1,440 foot pump from the Missouri River to the ND 4-H Camp Pond to maintain water levels during dry periods.

Technical Committee Comments:

- No natural resource concerns
- Depending on the design, a sovereign lands permit and water appropriations permit would likely be required. DWR encourages the applicant to reach out to the Regulatory Division at 701-328-4956 and the Water Appropriations Division at 701-328-2754 to ensure timely reviews and to avoid permitting delays
- Does "equipment" refer to the pump? What is the "shelter" over the pump?
- What is the scale/size of the pump and can it be moved?
- No comments about remediation to the trees being removed
- Would like to see a map of the area provided

Comments from the OHF Advisory Board members:

- Well-used and open to the public
-

Funded Projects					
Contract	Total Project Cost	Title	Award Amount	Amount Expended	Project Timeframe
2-29	23,673	North Dakota 4-H Camp	18,768	18,768	Completed
Total	23,673		18,768	18,768	

Unsuccessful Applications				
Round	Request	Total Project Cost	Title	Vote
1	143,596	164,453	ND 4-H Camp	2-10
Total	143,596	164,453		

OHF Advisory Board Recommendation

Contingencies: None

Conflicts of Interest: None

Funding Vote: 10-1

Funding Amount Vote: \$70,978

Outdoor Heritage Fund
Grant Round 26
Application Summary Page
GR 26-12

Project Title: Grazing Management and Habitat Enhancement
Applicant: The Nature Conservancy
Primary Contact: Rachel Bush
Total Project Costs: \$119,099
OHF Request: \$72,680

Match Amount	Funding Source	Match Type
25,353.50	TNC	In-Kind
15,290.78	TNC	Indirect
5,775	TNC	Cash
46,419.28	Total	

Percentage of Matching Funds: 39%

Project Duration: 2025 - 2028

Major Directive: B

Additional Directive: A, C

Summary of Project: Install additional grazing infrastructure at the Brown Ranch (Ransom County) and John E. Williams Preserves (McLean County) which will create fresh water sources for livestock, improve habitat for wildlife species, protect sensitive areas, create flexibility in the grazing intensity and rest periods, and provide critical habitat on 3,600 acres of grassland.

Technical Committee Comments:

- If the applicant is decommissioning wells, DWR requests the contractor to submit a well log to the Department. Livestock use of new wells is registered using SFN 61330
- No natural resource concerns
- Brown Ranch is open to hunting
- Would like an explanation of the indirect funding being utilized as match

Comments from the OHF Advisory Board members:

- They are an eligible applicant, not a landowner
 - A previous project that was similar was more than just their own project on their land, there were other properties included (Grazing management toolbox)
 - Fencing isn't exactly 60/40
-

Funded Projects					
Contract	Total Project Cost	Title	Award Amount	Amount Expended	Project Timeframe
3-45	24,255	Brown Ranch Habitat Enhancement through Prescribed Grazing	16,000	¹ 15,845.69	Completed
Total	24,255		16,000	15,845.69	

Unsuccessful Applications				
Round	Request	Total Project Cost	Title	Vote
6	9,450	14,931	Davis Ranch field restoration	5-6
Total	9,450	14,931		

OHF Advisory Board Recommendation
 Contingencies: Fencing cost share should be 60/40
 Conflicts of Interest: None
 Funding Vote: 9-2
 Funding Amount Vote: \$68,522

¹ Returned commitment of 154.31

Outdoor Heritage Fund
Grant Round 26
Application Summary Page
GR 26-13

Project Title: Smart Livestock Advancing Terrestrial Ecosystems
Applicant: Ducks Unlimited, Inc.
Primary Contact: Dane Buysse
Total Project Costs: \$720,585
OHF Request: \$505,327

Match Amount	Funding Source	Match Type
30,000	Ducks Unlimited, Inc.	In-Kind
2,500	Ducks Unlimited, Inc.	Cash
182,757.58	Landowners	Cash
215,257.58	Total	

Percentage of Matching Funds: 30%

Project Duration: 2025 - 2030

Major Directive: B

Additional Directive: A, C

Summary of Project: Provide cost share for virtual fencing that provides GPS tracking and animal behavior to manage cattle movement via smart collars for enhanced grazing management to improve wildlife habitat and reduce impacts to ecologically sensitive areas. Over the period of 5 years, SLATE will partner with at least 12 private landowners to enhance grazing management on 5,760 acres.

Technical Committee Comments:

- No natural resource concerns
- Excited about the possibility of virtual fencing for livestock
- Could get expensive if OHF funds are continually requested – 12 landowners for \$500,000
- Is infrastructure the collars?
- Could there be additional liability factors?
- Good pilot project for new technology
- Less fencing to achieve the same goals is a win
- Would like more data on the longevity of the collars

Comments from the OHF Advisory Board members:

- Is OHF the right group for this to come to? Love the project in general

- We fund a lot of conventional fences and believe it's better for wildlife – a great opportunity to try something new
- Would like to see follow-up on whether it works
- It's 100% applicable for what OHF does. It could be evolutionary
- The 60/40 fencing was more of a “consistency measure” but it's at the board's discretion

Funded Projects					
Contract	Total Project Cost	Title	Award Amount	Amount Expended	Project Timeframe
1-3	934,218	Aquatic Habitat Infrastructure Enhancement	322,000	322,000	Completed
1-4	3,665,820	Enhancing Grazing Lands & Wildlife Habitat (Phase 1)	828,000	828,000	Completed
¹ 8-97	438,681.40	Grasslands Enhancement Pilot Project	230,000	² 181,133.71	Completed
9-110	1,073,653.80	Cover Crop & Livestock Integration Project	625,395	³ 509,023.59	Completed
⁴ 10-115	1,773,750	Working Grassland Partnership (Phase II)	903,750	753,826.13	2018-2028
13-142	2,128,173	Cover Crop & Livestock Integration	1,250,790	818,042.19	2019-2024
20-203	542,000	Grasslands Enhancement Project Phase II	315,750	67,072.11	2022-2027
20-204	2,758,333	Cover Crop & Livestock Integration Project III	1,609,000	346,710.17	2021-2026
Total	13,314,629.2		6,084,685	1,985,650.6	

¹ ND Natural Resources Trust is a co-applicant

² Returned commitment of 48,866.30

³ Returned commitment of 116,371.31

⁴ ND Natural Resources Trust, ND Association of Soil Conservation Districts, and Pheasants Forever are co-applicants

Unsuccessful Applications				
Round	Request	Total Project Cost	Title	Vote
1	3,000,000	7,500,000	Winter Cereals Sustainability in Action	4-8
2	710,400	992,361	Partnering with ND Producers to Promote Profitable Agriculture with Wildlife Benefits	2-9
3	472,320	1,005,930	Partnering with ND Producers to Promote Profitable Agriculture with Wildlife Benefits	5-6
3	580,000	825,766	Private Land Aquatic Habitat Creation and Infrastructure Enhancement	5-6
4	495,000	839,714	Private Land Aquatic Habitat Creation and Infrastructure Enhancement	5-6
15	619,000	1,057,500	Grasslands Enhancement Project Phase II	6-6
Total	5,876,720	12,221,271		

OHF Advisory Board Recommendation

Contingencies: Fencing cost share should be 60/40

Conflicts of Interest: David Dewald

Funding Vote: 9-2

Funding Amount Vote: \$483,924

Outdoor Heritage Fund
Grant Round 26
Application Summary Page
GR 26-14

Project Title: Grazed Wildlife Habitat - Meadowlark Initiative
Applicant: United Prairie Foundation
Primary Contact: John DeVries
Total Project Costs: \$806,750
OHF Request: \$580,000

Match Amount	Funding Source	Match Type
66,750	United Prairie Foundation	In-Kind
160,000	ND Game and Fish Department	Cash (non-state general fund)
226,750	Total	

Percentage of Matching Funds: 28%

Project Duration: 2025 – 2032

Major Directive: B

Additional Directive: A, C

Summary of Project: Implement patch-burn-grazing and expand landowner experience using controlled burning on 1,500 acres to manage grasslands, enhance grazing, remove invasive trees, and improve cattle forage while enhancing wildlife habitat in southeast ND. Also, implement patch-burn-grazing on 245 acres of demonstration plots for community education purposes.

Technical Committee Comments:

- The invasive trees being removed are Russian Olive, Siberian Elm and Cedar?
- Practice includes tree removal and herbicide treatment if necessary
- Potentially a management issue
- Liability – UPF has prescribed fire insurance
- UPF has great working relations with rural fire departments

Comments from the OHF Advisory Board members:

- Like this project – get some information back on whether its working or not. Specifically in the prairie pothole region
 - Appreciate the firefighter/public safety – the insurance and training is fantastic
-

Funded Projects

Contract	Total Project Cost	Title	Award Amount	Amount Expended	Project Timeframe
2-24	842,300	Prairie Project	300,000	¹ 298,941.48	Completed
Total	842,300		300,000	298,941.48	

Unsuccessful Applications				
Round	Request	Total Project Cost	Title	Vote
7	11,490	43,540	United Prairie Prescribed Management Fire Team	N/A
7	78,500	133,420	Small Acreage Private Land Prairie Plots	3-8
12	38,978	56,120	Prairie to the People	5-6
13	51,628	75,330	Prairie to the People	3-7
Total	180,596	308,410		

OHF Advisory Board Recommendation

Contingencies: None

Conflicts of Interest: None

Funding Vote: 11-0

Funding Amount Vote: \$580,000

¹ Returned commitment of 1,058.52

Outdoor Heritage Fund
Grant Round 26
Application Summary Page
GR 26-15

Project Title: Wildlife and Livestock Dams – Wetlands Creation, Restoration, and Enhancement III
Applicant: ND Natural Resources Trust
Primary Contact: Rick Warhurst
Total Project Costs: \$890,000
OHF Request: \$445,000

Match Amount	Funding Source	Match Type
200,000	ND Natural Resources Trust	Cash
20,000	ND Natural Resources Trust	Cash
20,000	ND Natural Resources Trust	In-Kind
200,000	Landowners/Conservation Partners	Cash
5,000	Landowners	In-Kind
445,000	Total	

Percentage of Matching Funds: 50%

Project Duration: 2025 - 2029

Major Directive: C

Additional Directive: A, B

Summary of Project: Create, restore or enhance 25 wetlands for wildlife and livestock benefits covering 100 surface acres, primarily situated on private lands with 1:1 match funding.

Technical Committee Comments:

- No natural resource concerns
- Due to their size, this likely would not require a construction permit from DWR, however, Water Appropriation permits would be required at some sites. DWR encourages the applicant to reach out to the Water Appropriations Division at 701-328-2754 to ensure timely reviews and to avoid permitting delays
- Clearly a demand for these series of projects
- NDNRT has great relationships with landowners
- The project provides an important habitat component

Comments from the OHF Advisory Board members:

- Not sure anyone else is even doing this anymore in the state besides the NDNRT so we should continue to support it
 - They do a fantastic job – landowners speak highly about partnering with them
-

Funded Projects					
Contract	Total Project Cost	Title	Award Amount	Amount Expended	Project Timeframe
2-20	400,000	Water Storage Piggyback	300,000	300,000	Completed
5-77	257,441	Beginning Farmer Enhancement	132,884	¹ 132,844	Completed
6-90	1,467,250	Working Grassland Partnership	1,097,250	² 1,094,637.30	Completed
³ 8-97	438,681	Grasslands Enhancement Pilot Project	230,000	⁴ 181,133.71	Completed
9-109	500,000	Water Storage and Grass Seeding	67,500	⁵ 64,131.50	Completed
⁶ 9-112	250,420	Grand Forks County Prairie Management Toolbox	121,200	97,352.73	Completed
⁷ 10-115	1,773,750	Working Grassland Partnership (Phase II)	903,750	753,826.13	2017-2027
11-124	743,250	Working Grassland Partnership Phase III	396,850	396,850	Completed
11-128	3,855,000	Bakken Development & Working Lands Program	2,170,000	⁸ 2,092,935.33	Completed
12-131	277,700	Livestock & Wildlife Dams - Creation & Enhancement	138,850	138,850	Completed

¹ Returned commitment of 40.00

² Returned commitment of 2,612.70

³ Ducks Unlimited is co-applicant

⁴ Returned commitment of 48,886.30

⁵ Returned cash of 3,368.50

⁶ Audubon Dakota is co-applicant and returned commitment of \$23,867.27

⁷ Co-applicants are ND Association of Soil Conservation Districts, Ducks Unlimited, and Pheasants Forever

⁸ Returned commitment of 77,064.67

13-140	255,000	ND Grassland Restoration Project	104,500	⁹ 104,396.81	Completed
14-154	2,235,000	Working Grassland Partnership IV	1,225,000	1,224,999.39	2019-2023
15-160	255,000	North Dakota Grassland Restoration Project 2	100,000	¹⁰ 94,972.34	Completed
17-173	6,390,383	Bakken Development and Working Lands Program II	3,308,100	2,515,491.15	2020-2025
17-174	1,303,000	North Dakota Partners For Wildlife Project	716,500	716,500	Completed
18-178	495,000	Wildlife and Livestock Dams - Wetlands Creation, Restoration and Enhancement	240,000	240,000	Completed
18-179	2,150,000	Grazing Resiliency in the Bakken (GRB)	1,270,000	1,074,971.12	2021-2026
19-194	1,857,500	Working Grassland Partnership 5	985,000	851,386.70	2021-2026
20-197	1,734,800	North Dakota Partners For Wildlife Project 2	1,016,500	683,662.67	2022-2026
20-198	3,280,000	Grazing Resiliency in the Bakken (GRB) II	1,970,000	1,106,466.36	2022-2025
21-211	1,410,000	Working Grasslands Partnership 6	740,000	693,797.74	2022-2027
22-221	3,387,000	North Dakota Partners for Wildlife Project 3	1,957,500	587,519.41	2023-2028
23-230	520,500	Wildlife and Livestock Dams – Wetlands Creation, Restoration, and Enhancement II	267,750	83,077.48	2023-2027
24-235	5,462,400	Bakken Dev. & Working Lands Program III	3,125,000	424,174.75	2024-2029
24-236	615,470	Badlands Restoration Project	77,000	8,637.02	2024-2027
25-243	1,267,500	Working Grasslands Partnership 7	762,500	0.00	2024-2027
Total	42,582,045		23,423,634	8,985,684.4	

Unsuccessful Applications				
Round	Request	Total Project Cost	Title	Vote
1	3,750,000	4,405,000	Working Lands Partnership	5-7
3	3,525,000	4,700,000	Conservation Cover Program (Pilot)	1-10
11	897,250	1,847,250	Dakota Skipper Habitat Enhancement Project	4-8
13	897,250	1,847,250	Dakota Skipper Habitat Restoration/Enhancement Partnership	5-5

⁹ Returned commitment of 103.19

¹⁰ Returned commitment of 5,027.66

Total	9,069,500	12,799,500		
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OHF Advisory Board Recommendation

Contingencies: None
Conflicts of Interest: None
Funding Vote: 11-0
Funding Amount Vote: \$445,000

Outdoor Heritage Fund
Grant Round 26
Application Summary Page
GR 26-16

Project Title: Grazing Resiliency in North Dakota
Applicant: ND Natural Resources Trust
Primary Contact: Eric Rosenquist
Total Project Costs: \$2,845,000
OHF Request: \$2,110,000

Match Amount	Funding Source	Match Type
30,000	ND Natural Resources Trust	Cash
20,000	ND Natural Resources Trust	Cash
10,000	Ducks Unlimited	In-Kind
25,000	ND Natural Resources Trust	In-Kind
650,000	Landowners	Cash
735,000	Total	

Percentage of Matching Funds: 26%

Project Duration: 2025 - 2030

Major Directive: B

Additional Directive: C

Summary of Project: Implement rotational grazing during times of drought to retain remaining grasslands by assisting landowners with grazing management plans, cost-share on practices, and technical assistance. Over the five-year duration of this project, at least 50 landowners will be serviced, encompassing over 40,000 acres.

Technical Committee Comments:

- No natural resource concerns
- Clearly a demand for these projects
- Funds from other projects have been allocated
- NDNRT has good relationships with landowners

Technical questions from the OHF Advisory Board members:

Contract	Total Project Cost	Title	Award Amount	Amount Expended	Project Timeframe
2-20	400,000	Water Storage Piggyback	300,000	300,000	Completed
5-77	257,441	Beginning Farmer Enhancement	132,884	¹ 132,844	Completed
6-90	1,467,250	Working Grassland Partnership	1,097,250	² 1,094,637.30	Completed
³ 8-97	438,681	Grasslands Enhancement Pilot Project	230,000	⁴ 181,133.71	Completed
9-109	500,000	Water Storage and Grass Seeding	67,500	⁵ 64,131.50	Completed
⁶ 9-112	250,420	Grand Forks County Prairie Management Toolbox	121,200	97,352.73	Completed
⁷ 10-115	1,773,750	Working Grassland Partnership (Phase II)	903,750	753,826.13	2017-2027
11-124	743,250	Working Grassland Partnership Phase III	396,850	396,850	Completed
11-128	3,855,000	Bakken Development & Working Lands Program	2,170,000	⁸ 2,092,935.33	Completed
12-131	277,700	Livestock & Wildlife Dams - Creation & Enhancement	138,850	138,850	Completed
13-140	255,000	ND Grassland Restoration Project	104,500	⁹ 104,396.81	Completed
14-154	2,235,000	Working Grassland Partnership IV	1,225,000	1,224,999.39	2019-2023
15-160	255,000	North Dakota Grassland Restoration Project 2	100,000	¹⁰ 94,972.34	Completed
17-173	6,390,383	Bakken Development and Working Lands Program II	3,308,100	2,515,491.15	2020-2025

¹ Returned commitment of 40.00

² Returned commitment of 2,612.70

³ Ducks Unlimited is co-applicant

⁴ Returned commitment of 48,886.30

⁵ Returned cash of 3,368.50

⁶ Audubon Dakota is co-applicant and returned commitment of \$23,867.27

⁷ Co-applicants are ND Association of Soil Conservation Districts, Ducks Unlimited, and Pheasants Forever

⁸ Returned commitment of 77,064.67

⁹ Returned commitment of 103.19

¹⁰ Returned commitment of 5,027.66

17-174	1,303,000	North Dakota Partners For Wildlife Project	716,500	716,500	Completed
18-178	495,000	Wildlife and Livestock Dams - Wetlands Creation, Restoration and Enhancement	240,000	240,000	Completed
18-179	2,150,000	Grazing Resiliency in the Bakken (GRB)	1,270,000	1,074,971.12	2021-2026
19-194	1,857,500	Working Grassland Partnership 5	985,000	851,386.70	2021-2026
20-197	1,734,800	North Dakota Partners For Wildlife Project 2	1,016,500	683,662.67	2022-2026
20-198	3,280,000	Grazing Resiliency in the Bakken (GRB) II	1,970,000	1,106,466.36	2022-2025
21-211	1,410,000	Working Grasslands Partnership 6	740,000	693,797.74	2022-2027
22-221	3,387,000	North Dakota Partners for Wildlife Project 3	1,957,500	587,519.41	2023-2028
23-230	520,500	Wildlife and Livestock Dams – Wetlands Creation, Restoration, and Enhancement II	267,750	83,077.48	2023-2027
24-235	5,462,400	Bakken Dev. & Working Lands Program III	3,125,000	424,174.75	2024-2029
24-236	615,470	Badlands Restoration Project	77,000	8,637.02	2024-2027
25-243	1,267,500	Working Grasslands Partnership 7	762,500	0.00	2024-2027
Total	42,582,045		23,423,634	8,985,684.4	

Unsuccessful Applications				
Round	Request	Total Project Cost	Title	Vote
1	3,750,000	4,405,000	Working Lands Partnership	5-7
3	3,525,000	4,700,000	Conservation Cover Program (Pilot)	1-10
11	897,250	1,847,250	Dakota Skipper Habitat Enhancement Project	4-8
13	897,250	1,847,250	Dakota Skipper Habitat Restoration/Enhancement Partnership	5-5
Total	9,069,500	12,799,500		

OHF Advisory Board Recommendation

Contingencies: Fencing cost share should be 60/40

Conflicts of Interest: None

Funding Vote: 11-0

Funding Amount Vote: \$1,950,000

Outdoor Heritage Fund
Grant Round 26
Application Summary Page
GR 26-17

Project Title: Western North Dakota Private Land Open To Sportsmen (PLOTS)
Applicant: ND Game & Fish Department
Primary Contact: Nate Harling
Total Project Costs: \$2,100,000
OHF Request: \$1,500,000

Match Amount	Funding Source	Match Type
500,000	ND Game & Fish Department	Cash
100,000	ND Wildlife Federation	Cash
600,000	Total	

Percentage of Matching Funds: 29%

Project Duration: 2025 - 2029

Major Directive: A

Additional Directive: D

Summary of Project: To provide additional funding to the Private Land Open To Sportsmen (PLOTS) program which offers habitat development and hunting access agreements to landowners willing to provide public walk-in hunting access. The focus area is all counties south and west of the Missouri River. The department anticipates enrolling between 20,000 to 40,000 acres in agreements (paid upfront for 10 or 20 years) and enrolling a combination of 10 and 20 year agreements, totaling approximately 32,000 acres.

Technical Committee Comments:

- No natural resource concerns
- Great access to open acres
- Good partnership program
- Good opportunities for other partnership incentives

Comments from the OHF Advisory Board members:

- Nice to see the maps showing all the locations of projects across the state of ND
-

Funded Projects					
Contract	Total Project Cost	Title	Award Amount	Amount Expended	Project Timeframe
1-17	2,733,000	ND Game & Fish Department Outdoor Heritage Habitat Initiative	1,900,000	1,900,000	Completed
3-40	38,000,000	North Dakota Pheasant Habitat Initiative	3,000,000	105,119	2015-2021
17-172	1,313,400	Red River Basin Wildlife and Water Quality Enhancement Pilot Program	270,000	10,094.63	2021-2026
Total	42,046,400		5,170,000	2,015,213.63	

OHF Advisory Board Recommendation

Contingencies: None
Conflicts of Interest: David Dewald
Funding Vote: 11-0
Funding Amount Vote: \$1,500,000

Outdoor Heritage Fund
Grant Round 26
Application Summary Page
GR 26-18

Project Title: Flasher Historical and Recreational Trail
Applicant: City of Flasher
Primary Contact: Sherry Schmidt
Total Project Costs: \$273,837
OHF Request: \$60,837

Match Amount	Funding Source	Match Type
213,000	Recreational Trail Program – Fed Funding	Cash
213,000	Total	

Percentage of Matching Funds: 78%

Project Duration: May – August 2026

Major Directive: D

Additional Directive: A

Summary of Project: To construct a new gravel, multi-use recreational trail on the south side of the City of Flasher on city owned property which will provide direct connections to the golf course and baseball fields and accessible from the city park and Centennial campground. The trail will feature eight commemorative historical signs and eight benches throughout the trail.

Technical Committee Comments:

- No natural resource concerns
- Appreciated the map of the area that was provided
- Utilizing a gravel trail
- Question on whether connecting baseball fields and golf courses should be spent with OHF funds

Comments from the OHF Advisory Board members:

- It's a good project to fund but maybe should ask the City to put 25% of their own money towards the project

City of Flasher has not previously received funds.

***Total OHF funds awarded to date: \$0.00. Total OHF funds spent to date: \$0.00.**

City of Flasher has not submitted any unsuccessful applications.

OHF Advisory Board Recommendation

Contingencies: None

Conflicts of Interest: None

Funding Vote: 11-0

Funding Amount Vote: \$45,837

North Dakota Industrial Commission Outdoor Heritage Fund Grant Program Policies

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OHF – 4 Application Requirements
OHF – 5 Review and Award Contracts and Contract Terms

OHF – 01 GENERAL PROVISIONS

OHF – 1.01 History – Administration
OHF – 1.02 Definitions
OHF – 1.03 Costs of Application Preparation
OHF – 1.04 Acceptance and Rejection of Applications
OHF – 1.05 Reservation of Funds

OHF – 1.01 History – Administration. Since 2013, the North Dakota Industrial Commission has been authorized to make funds from the Outdoor Heritage Fund available to provide financial assistance for contracts to state agencies, tribal governments, political subdivision, and nonprofit organizations for the purpose of enhancing conservation practices in the state by: Directive A – Providing access to private and public lands for sportsmen, including projects that create fish and wildlife habitat; Directive B – Improving, maintaining and restoring water quality, soil conditions, plant diversity, animal systems, and by supporting other practices of stewardship to enhance farming and ranching; Directive C – Developing, enhancing, conserving, and restoring wildlife and fish habitat on private and public lands; and Directive D – Conserving natural areas and creating other areas for recreation through the establishment and development of parks and other recreation areas. The Outdoor Heritage Fund Advisory Board, established by NDCC 54-17.8-06 (House Bill 1278, 2013 Legislative Session), will review and make recommendations to the Commission on all applications for financial assistance under this Program.

OHF – 1.02 Definitions. As used in these policies:

1. “Advisory Board” – means the Outdoor Heritage Fund Advisory Board as appointed by the Governor.
2. “Applicant” – means any person or entity applying to the Commission for a grant from the Outdoor Heritage Fund.

3. "Application" – means the written document that is submitted to the Commission by an applicant seeking a grant from the Fund.
4. "Building" – means a structure with a roof either with walls or without walls and is attached to the ground in a permanent nature.
5. "Commission" – means the North Dakota Industrial Commission or its representative.
6. "Comprehensive Conservation Plan" – means a detailed plan that has been formally adopted by the governing board which includes goals and objectives – both short and long term, and if the plan includes a building, must show how the building will enhance the overall conservation goals of the project and the protection or preservation of natural areas and outdoor recreation. This does not need to be a complex multi-page document. It could be included as part of the application or be an attachment.
7. "Contract" – means the signed agreement between the Commission and Grantee which describes the rights and duties of the Commission and Grantee with regard to the Program.
8. "Extenuating/Exceptional Circumstances" – the Board will determine on a case-by-case basis whether they believe a project falls under the category of an extenuating circumstance. The applicant will have to describe during the application process why their project should be considered an exceptional circumstance. The Board will vote on whether they agree the project to be an extenuating circumstance, and if the project gets a favorable vote, the Commission will have the final vote.
9. "Fund" – means the Outdoor Heritage Funds available to the Commission to provide funding for the Program and as authorized in NDCC 54-17.8-02.
10. "Grant" – means the monetary award made by the Commission under the Program.
11. "Grantee" – means a successful applicant for a grant from the Fund.
12. "Indirect Costs" – means administrative and facilities costs not directly related to the cost of the project.
13. "In-Kind Services" – means contributed equipment, materials, personnel or services directly provided for the project. If In-Kind services are provided as match funding, documentation must be provided verifying the value of the In-Kind services.
14. "Maintenance" – means activities that preserve or keep infrastructure in a given existing condition, including repairs.
15. "Material Changes" – If a grantee requests an amendment for a budget adjustment, the Office of the Industrial Commission has the authority to move funds from one deliverable to another, not to exceed 10% of the total project cost or add any additional deliverables outside of the contracted project scope. Any requests larger than 10% of the total project costs, or additional project scopes, must be brought to the Board for approval.
16. "New and Expanded Recreational Project" – means that the proposed building cannot be a replacement of a current building. The proposed building must also be related to either a new or expanded recreational project – either an expansion in land or an expansion of an existing building or in the opportunities for recreation at the project site.

17. “Playground Equipment Calculation” – Only the actual costs of the playground equipment (a bid or invoice showing the amount of the equipment costs must be provided) – cannot include freight, installation, surface materials, or removal of old equipment.
18. “Program” – the Program administered by the Commission to carry out the statutory directives listed above in (**OHF – 1.01 History – Administration**) demonstrate the impact of funding the awarded projects.
19. “Repair” – means to restore to sound condition after damage, to renew or refresh; except repairs due to damage caused by Acts of God.
20. “Staffing Costs” – for funding requests for staffing or outside consultant costs, applicant must include information in application on the need for OHF funding to cover these costs. For example, if an applicant has an engineering staff, the applicant must explain why internal staff is not sufficient for completing the work, if specific expertise is needed, or any other reason the entity must retain an outside consultant. If it is a request for reimbursement for staff time, a written explanation is required in the application of why OHF funding is needed to pay for the cost of that staff member(s)’ time. The budget form must reflect on a separate line item the specific amount that is being requested for staffing and/or the hiring of an outside consultant. This separate line item will be used to make the calculation of 5% or 10% as outlined in statute. *Note that the calculation will be made on the grant less the costs for the consultant or staff.
21. “Technical Committee” – means the Board non-voting members that review the merits of the applications and advise the full Advisory Board and the Commission.

OHF – 1.03 Costs of application preparation. The Commission is not liable for any cost, including costs of preparation of applications, incurred by applicants prior to issuance of a contract. The Commission will be liable only for those costs and expenses expressly identified by contract.

OHF – 1.04 Acceptance and rejection of applications. These policies do not commit the Commission to award funds. The Commission reserves the right to accept or reject any or all applications received as a result of the Program and to negotiate with any and all qualified applicants. If an applicant has previously received funding from the Commission and is delinquent in reporting, the new application will not be eligible for consideration until such time as the reporting on the prior project has been brought current. An application must have received a favorable Outdoor Heritage Fund Advisory Board recommendation prior to consideration by the Commission.

OHF – 1.05 Reservation of funds. The Commission is not obligated to award the total amount of funds made available under this Program. Funds not awarded will be reserved for future grants under the Program.

OHF – 02 ELIGIBILITY

OHF – 2.01 Eligible Applicants

OHF – 2.02 Eligible Projects

OHF – 2.03 Ineligible Projects

OHF – 2.04 Extenuating/Exceptional Circumstances

OHF – 2.01 Eligible applicants. Any State Agency, Political Subdivision, Tribal Entity, or Tax-exempt Nonprofit Organization whose project aligns with the purpose of the Outdoor Heritage Fund.

OHF – 2.02 Eligible projects. Any project proposing at least one of the four Outdoor Heritage Fund directives being: Directive A – Providing access to private and public lands for sportsmen, including projects that create fish and wildlife habitat; Directive B – Improving, maintaining and restoring water quality, soil conditions, plant diversity, animal systems, and by supporting other practices of stewardship to enhance farming and ranching; Directive C – Developing, enhancing, conserving, and restoring wildlife and fish habitat on private and public lands; and Directive D – Conserving natural areas and creating other areas for recreation through the establishment and development of parks and other recreation areas.

OHF – 2.03 Ineligible projects.

The following activities or uses are ineligible for funding under this Program:

- Litigation;
- Lobbying activities;
- Any activity that would interfere with, disrupt, or prevent activities associated with surface coal mining operations; sand, gravel, or scoria extraction activities; oil and gas operations; or other energy facility or infrastructure development;
- The acquisition of land or to encumber any land for a term longer than twenty years; or
- Projects outside the state or projects that are beyond the scope of defined activities that fulfill the purposes of Chapter 54-17.8-03 of the North Dakota Century Code.

OHF – 2.04 Extenuating/Exceptional circumstances.

OHF funds may not be used, except after a finding of exceptional circumstances by both the Outdoor Heritage Fund Advisory Board and the Industrial Commission, to finance the following:

- A completed project or project commenced before the grant application is submitted;
- A feasibility or research study;
- Maintenance costs;
- A paving project for a road or parking lot;
- A swimming pool or aquatic park;
- Property not affixed to the land;
- Playground Equipment, except that grant funds may be provided for up to 25% of the cost of the equipment not exceeding \$10,000 per project and all playground equipment grants may not exceed 5% of the total grants per year (See Definitions/Clarifications for how this will be calculated);
- A building except for a building that is included as part of a comprehensive conservation plan for a new or expanded recreational project (See Definitions/Clarifications for definition of comprehensive conservation plan and new or expanded recreational project); or

- A project in which the applicant is not directly involved in the execution and completion of the project.
- Construction or refurbishment of indoor/outdoor ice rinks;
- Construction or refurbishment of indoor/outdoor athletic courts and sports fields;
- Other substantially similar facilities;
- Infrastructure that is not part of a comprehensive conservation plan;
- Projects not meeting a minimum funding request of \$2,500.

The applicant must explain during the application process why their project should be considered an exceptional circumstance. The Outdoor Heritage Fund Advisory Board will vote on whether the project falls under exceptional circumstances, and, if passed, the project will be presented to the Commission for final consideration.

OHF – 03 MAXIMUM GRANT AMOUNT AND MATCHING FUND REQUIREMENT

OHF – 3.01 Maximum/Minimum Grant Amount

OHF – 3.02 Matching Funds

OHF – 3.01 Maximum/Minimum grant amount. Grants may be of any amount within the limits of legislation appropriation, but no less than \$2,500.

OHF – 3.02 Matching funds. A minimum twenty-five percent match funding of the total project cost is required. This twenty-five percent match can be any combination of Cash, In-Kind, and Indirect funding. The value of In-Kind services and Indirect Costs match funding must be verified with appropriate documentation. Documentation demonstrating the matching funds, including letters of commitment from other funding sources, must be submitted to the Commission within sixty days of the approval of an application by the Commission, or within any additional time granted by the Commission. The Commission's approval is contingent upon receiving this documentation. If it is not received, the approval lapses and no grant may be made. In-Kind services and Indirect Costs may be used by an applicant to supply the required funding match or contribution. A higher priority will be given to those applications having a match greater than twenty-five percent of the total project cost.

For projects that include fencing, a minimum cost share of 40% by the recipient is preferred. Applicants must include detailed information on the type of fencing to be installed, whether funding is requested for boundary fencing, new or replacement of existing fencing, and/or cross fencing.

Costs for seeding, fencing, pipelines, wells, and cover crops cannot exceed NRCS Field Office Tech Guidelines without justification. Projects involving perimeter fencing must follow NRCS eligibility standards.

In-kind services used to match the request for Outdoor Heritage Fund dollars shall be valued as follows:

- Categories may be added, removed, or modified by the Board at any time. If a project includes work that has an established rate under another State Program, the rates and sources should be noted in the application.

OHF – 4.03 Application Contribution

The application must contain the following as outlined in the application form:

- Page 6

7. Purpose. A description of the proposed project identifying how the project will meet the specific directive(s) of the program and the purpose of the grant.
8. Management of Project. A description of how the project will be managed to ensure it is carried out on schedule and in a manner that meets the stated objectives.
9. Evaluation. A description of the plan to document progress and results of the project.
10. Financial Information. A detailed project budget using the table that is provided in the application for an itemized list of project expenses, keeping in mind that a minimum of twenty-five percent match funding is required. Provide a budget narrative for additional detail regarding project expenses.
11. Sustainability. Describe how the project will be funded or sustained in future years.
12. Partnership Recognition. If successful, describe how you would recognize the Outdoor Heritage Fund partnership. There must be signage at the location of the project acknowledging Outdoor Heritage Fund funding when appropriate.
13. Awarding of Grants. Acknowledgement that the applicant can meet all the conditions of the sample contract that is provided on the website.

OHF – 4.02 Application deadline and grant round dates. Applications in a calendar year must be delivered to the Commission on or before May 1 and November 1. Barring conflicts, the OHF Advisory Board will meet on the last Tuesday in June and the second Tuesday in December. In addition to the two grant rounds, the Commission may establish additional grant rounds and set application deadlines for those rounds. After the application deadline, the applicant may amend its application only upon the approval of the Commission. The Board will have an annual Orientation and Policy Review meeting to be held on the second Tuesday in September unless otherwise noted. All application deadlines and meeting dates are subject to change by the Commission.

OHF – 4.03 Application contribution. All applications must be accompanied by a one-hundred-dollar nonrefundable application contribution. This application contribution will be paid at the time of application submittal through the grant software portal.

OHF – 05 REVIEW AND AWARD PROCESS

OHF – 5.01 Application Evaluation – Criteria

OHF – 5.02 Application Review – Initial Review

OHF – 5.03 Application Review – Technical Committee

OHF – 5.04 Application Review – Board Recommendation and Commission Decision

OHF – 5.05 Contracts

OHF – 5.06 Disbursement of Funds

OHF – 5.07 Project Duration

OHF – 5.08 Allocations

OHF – 5.09 Partially Funded or Delayed Projects

OHF – 5.10 Contract Modifications

OHF – 5.11 Reporting Requirements

OHF – 5.01 Application evaluation – Criteria. All applications will be evaluated according to the criteria set forth in North Dakota Century Code Chapter 54-17.8-03 and the criteria established by the Commission as stated in these policies.

General Criteria. Priority areas of the Program that promote the mission and directives of the Outdoor Heritage Fund: Prioritize enhancing conservation practices in the state by (A) providing access to private and public lands for sportsmen, including projects that create fish and wildlife habitat; (B) improving, maintaining and restoring water quality, soil conditions, plant diversity, animal systems, and by supporting other practices of stewardship to enhance farming and ranching; (C) developing, enhancing, conserving, and restoring wildlife and fish habitat on private and public lands; and/or (D) conserving natural areas and creating other areas for recreation through the establishment and development of parks and other recreation areas.

The project's compatibility with the objectives of the Program will be considered. In particular, the following will be evaluated:

- The need for the project;
- The sustainability of the project;
- The timeline of the project;
- The level of funding being requested;
- The level of matching funds, with higher priority given to those projects with higher private match;
- The management of the project;
- The presence of an "improved access" component to the project;
- The likelihood that the project will achieve its goals.

The scoring forms utilized by the OHF Advisory Board Members are intended to be used as a tool in the review process but may not impact the ultimate decision on whether a project is recommended to the Commission for approval.

OHF – 5.02 Application review – Initial review. Upon receipt of an application, the Commission will determine if the application meets eligibility requirements and is complete. During this initial review, the Commission may seek additional information from the applicant regarding the application including, but not limited to, clarification of budget and matching funds, clarification on directives being met, feasibility of the project meeting timelines, and more information if a project falls into the category of an extenuating/exceptional circumstance. Any additional information provided during the initial review shall be included as part of the application. The Commission shall complete this review within thirty days of the application deadline date, though the Commission may extend this time if needed to properly review an application. If the Commission determines that the application meets eligibility requirements and is complete, the application will be referred to the Outdoor Heritage Fund Technical Committee. The Commission may also refer any question it has about completeness and eligibility to the Technical Committee and such questions may then be considered throughout the review process.

OHF – 5.03 Application review – Technical committee.

- (1) The Outdoor Heritage Fund Technical Committee is made up of five non-voting, ex-officio members. These members are made up of the following:
 - (1 member) ND Game and Fish Department
 - (1 member) ND Parks and Recreation Department
 - (1 member) ND Department of Water Resources
 - (1 member) ND State Forester
 - (1 member) ND Association of Soil Conservation Districts
- (2) The Technical Committee shall assess the technical and fiscal merits of the application. Upon completion of review, The Technical Committee will meet at least two weeks prior to the Advisory Board meeting and make their recommendations to the Advisory Board. The Technical Committee may choose not to move an application forward to the full Advisory Board.
- (3) Notification to applicant. The Commission shall promptly notify the applicant of the recommendations, comments, and questions made by the Technical Committee prior to the full Advisory Board meeting.

OHF – 5.04 Application review – Advisory Board recommendation and Commission decision.

The Advisory Board shall consider, but is not bound by, a recommendation of the Technical Committee. The Advisory Board shall make a recommendation on each application to the Commission. The Advisory Board shall make a recommendation to the Commission within sixty days of the Advisory Board's action on an application, though the Commission may extend this time if necessary. An application must have received a favorable OHF Advisory Board recommendation prior to consideration by the Commission. The Commission shall consider, but is not bound by, the favorable recommendation of the Advisory Board.

OHF – 5.05 Contracts. A grantee must enter into a contract with the Commission and submit any supporting documentation required by the Commission. The application will form an integral part of the contract. The Commission shall provide a proposed contract to grantees within sixty days of Commission approval of the project. **The grantee will then have sixty days to execute a contract. If a contract is not executed by the grantee within the sixty days, the award will be canceled unless an extension of time is granted by the Commission.** The Commission may include contract provisions that require payback of a portion of the award. Work carried out under a contract is the work of the grantee and not the Commission. If a contract has exceeded the contract expiration date by 90 days and no extension request has been received (as outlined in **OHF – 5.07 Project Duration**) the Commission may de-commit the remaining funds from the project and turn those funds back to the Outdoor Heritage Fund.

OHF – 5.06 Disbursement of funds. Funds will be disbursed only after a contract has been executed and a status report and invoices are received for work that has been done. All disbursements will be made according to the schedule in the contract. Disbursements may be

withheld if the Commission deems the grantee has not complied with these policies or the contract.

OHF – 5.07 Project duration. The project must be completed within the time specified in the contract. If the project cannot be completed within the time specified in the contract, the grantee may make a written request to the Commission for an extension of up to one year. The request must set forth the specific additional time requested and the reasons why an extension is needed. Upon receipt of the request, the Commission shall decide whether or not to grant the request. Additional extensions may be sought under the same procedure described above, but may only be granted if the grantee proves that factors beyond the grantee's control are the cause of its inability to complete the project on time and that since receiving the first extension the grantee has been diligent in all respects in trying to complete the project on time.

OHF – 5.08 Allocations. If the work under a contract extends beyond the State's fiscal biennium in which the contract is made, any further disbursements of the grant by the Commission to the grantee cannot be guaranteed and will be made only if sufficient funds are appropriated in the new biennium to satisfy the contract.

OHF – 5.09 Partially funded or delayed projects. If the Commission grant is less than the amount requested, the applicant may decline the award or proceed with the project as proposed, notwithstanding the reduced award. Failure of a grantee to proceed with the project in a timely manner or comply with contract terms or the program policies entitles the Commission to cancel the grant and contract and to receive from the grantee full reimbursement of all funds the Commission disbursed under the contract.

OHF – 5.10 Contract modifications. If at any time after entering a contract the grantee desires to change any term of the contract, the grantee shall make a written request to the Commission. The request must set forth the specific change desired and the reasons the change is needed. Upon receipt of the request, the Commission shall determine if the requested change is substantive. If the change is substantive, the grantee will work with the Commission to bring an amendment request to the next Outdoor Heritage Fund Advisory Board meeting. If the amendment request receives a favorable vote, the amendment recommendation will go to the Commission where a final decision will be made on the amendment request.

OHF – 5.11 Reporting requirements. A grantee has the following reporting obligations:

- (1) Interim reports. A grantee shall submit to the Commission reports summarizing the project's accomplishments and expenditures to date. The timing of the reports will be specified in the contract. If the Commission is providing funding for a specific aspect of a larger project, the Commission may request that reporting be made on just that aspect of the project. If a variation or major change is made in a project, it must be clearly identified in an interim report and the Commission may require that the applicant submit a request as outlined in 5.10.

- (2) Final report. A comprehensive final report and executive summary must be submitted to the Commission by all grantees within the time specified in the contract. This report must include a single page project summary describing the purpose of the project, the work accomplished, the project's results, and photos of the completed project. The final 10% of grant funds will be retained until the final executive summary is received along with photos as outlined in the contract. Failure to complete the executive project summary can result in losing 10% of project funds.

Approval dates:

Industrial Commission of North Dakota – June 26, 2025

Docket for Hearing
Thursday, May 29, 2025
N.D. Oil & Gas Division N.D. Oil & Gas Division 1000 East Calgary Avenue

Case No. 31591, Order No. 34323: (Continued) Application of Neptune Operating LLC for an order amending the applicable orders for the Arnegard-Bakken Pool to allow a well to be drilled and completed in such a manner so as to allow the horizontal wellbore to be located not less than 300 feet from the eastern boundary of the spacing unit comprised of Sections 25 and 36, T.150N., R.101W., McKenzie County, ND, as an exception to the applicable setback requirements and such further relief.

**RESOLUTION DIRECTING DEVELOPMENT OF POLICIES RELATED TO
CERTIFICATION OF QUALIFIED DEVELOPMENT INCENTIVE WELLS**

WHEREAS, The Sixty-ninth Legislative Assembly of North Dakota passed Senate Bill No. 2397 that amended North Dakota Century Code (NDCC) 57-51.1-01 and under SECTION 3 of the bill sets forth in part as follows:

57-51.1-01- Definitions for oil extraction tax.

2. "Development incentive well" means, as determined and certified by the industrial commission, a well spud after June 30, 2025, which:

- a. Utilizes a new or innovative drilling or completion technique that constitutes a technical advancement that has not been previously utilized with demonstrated success by the operator within the specific formation targeted for development by that operator;
- b. Demonstrates the capability to develop reserves within the target formation that would otherwise remain underdeveloped or undeveloped under existing drilling or completion techniques; and
- c. Is designed and anticipated to, more likely than not, increase the number of new wells, additional production, or the ultimate recovery of oil or gas within the target formation: and

WHEREAS, SECTION 4 of SB 2397 sets forth as follows:

A new subsection to section 57-51.1-03 of the North Dakota Century Code is created and enacted as follows:

a. The first two hundred fifty thousand barrels of oil produced during the first thirty-six months after completion from a development incentive well drilled and completed before July 1, 2028, and certified as a qualified well by the industrial commission, are exempt from the tax under section 57-51.1-02.

b. For purposes of the exemption under this subsection:

(1) An operator seeking certification of a well as a development incentive well shall meet the burden of demonstrating to the industrial commission that the well meets the criteria under subsection 2 of section 57-51.1- 01.

(2) An operator seeking certification of a well as a development incentive well must be classified as one of the following:

- (a) An operator with between forty and ninety-nine wells within the Bakken or Three Forks formations which have been:

[1] Drilled by the operator during the period beginning July 1, 2023, and ending June 30, 2025; or

[2] Drilled during the period beginning July 1, 2023, and ending June 30, 2025, and acquired by the operator.

(b) An operator with between one hundred and one hundred forty-nine wells within the Bakken or Three Forks formations which have been:

[1] Drilled by the operator during the period beginning July 1, 2023, and ending June 30, 2025; or

[2] Drilled during the period beginning July 1, 2023, and ending June 30, 2025, and acquired by the operator.

(c) An operator with one hundred fifty or more wells within the Bakken or Three Forks formations which have been:

[1] Drilled by the operator during the period beginning July 1, 2023, and ending June 30, 2025; or

[2] Drilled during the period beginning July 1, 2023, and ending June 30, 2025, and acquired by the operator.

(3) The industrial commission may not certify more than:

(a) Four development incentive wells for an operator classified under subparagraph a of paragraph 2 of subdivision b;

(b) Eight development incentive wells for an operator classified under subparagraph b of paragraph 2 of subdivision b; and

(c) Twelve development incentive wells for an operator classified under subparagraph c of paragraph 2 of subdivision b: and

c. The tax exemption under this subsection does not apply to a well located within the exterior boundaries of a reservation, a well located on trust properties outside reservation boundaries as defined in section 57-51.2-02, or a straddle well as defined in section 57-51.1-07.10 located on reservation trust land, unless a tribe makes an irrevocable election to opt-in to the tax exemption by providing written notice to the tax commissioner. If a tribe provides notice of its election to opt-in to the tax exemption, the tax commissioner shall apply the tax exemption beginning in the month of production after the notice is received by the tax commissioner.

NOW, THEREFORE, BE IT RESOLVED by the Industrial Commission of North Dakota as follows:

The Commission does hereby direct the Department Of Mineral Resources to adopt a policy for operators to apply for wells to be certified as a qualified development incentive well by the Industrial Commission and does hereby grant to the Director of the Department of Mineral Resources the authority to certify such wells on behalf of the Commission.

Adopted: June 26, 2025

Governor Kelly Armstrong, Chair

Attest:

Karen Tyler, Executive Director

Minutes of a Meeting of the Industrial Commission of North Dakota

Held on May 22nd, 2025, beginning at 10:00 a.m.

Governor's Conference Room – State Capitol

Present: Governor Kelly Armstrong, Chairman

Attorney General Drew H. Wrigley

Agriculture Commissioner Doug Goehring

Also Present: This meeting was open through Microsoft Teams so not all attendees are known.

Agency representatives joined various portions of the meeting.

Governor Armstrong called the meeting of the Industrial Commission to order at 10 a.m.

Ms. Karen Tyler took roll call, and Governor Armstrong, Commissioner Goehring, and Attorney General Wrigley were present.

Governor Armstrong invited the room to stand and join the Commission in saying the Pledge of Allegiance.

NORTH DAKOTA HOUSING FINANCE AUTHORITY

EXECUTIVE DIRECTOR FINALIST INTERVIEWS

The first interview with candidate finalist Brandon Dettlaff started at approximately 10:00 a.m.

The first interview concluded at approximately 10:45 a.m. and the Commission recessed until 11:00 a.m.

The meeting reconvened at 11:00 a.m.

The second interview with candidate finalist Jennifer Henderson started at approximately 11:00 a.m.

The second interview concluded at approximately 11:38 p.m.

The Commission determined to hold a special Industrial Commission meeting on June 2nd, 2025 to further discuss the HFA Executive Director position.

The Commission recessed until 1:00 p.m.

NORTH DAKOTA HOUSING FINANCE AUTHORITY

Mr. Brandon Dettlaff presented for consideration of approval the recommended FirstHome Program Income Limits.

The Department of Housing and Urban Development (HUD) published new median income numbers on April 1, 2025. These numbers are used to establish the Annual Income limits for the FirstHome, FirstHome Start, FirstHome DCA, and HomeAccess programs.

The new statewide median income for North Dakota increased \$8,300 (7.99%) to \$112,200 for 2025. This compares to the national median income increase of \$6,400 (6.54%) to \$104,200.

Mortgage Revenue Bond (MRB) regulations allow the use of the greater of county or state median income and those regulations and NDHFA policy limit household incomes as follows:

- FirstHome - 100% of median income - one and two member households by county (MRB regulation)
- FirstHome - 115% of median income - three or more member households by county (MRB regulation)
- DCA limits - 80% of median income by family size and county (NDHFA policy)

The allowed limits for 2025 range from \$112,200 to \$135,930, varying by family size and county. However, due to the need to manage program volume and preserve resources, HFA proposed revised limits ranging from \$93,500 to \$110,000, based on family size.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the new annual income limits as outlined in Program Directive No 124, and as recommended by the NDHFA Advisory Board, to take effect for loan reservations made on or after June 1, 2025 under the FirstHome programs (Standard, Start, and HomeAccess), and additionally approve updating the Downpayment Closing Cost Assistance (DCA) program limits as presented, effective for loan reservations made on or after June 1, 2025.

Maximum Annual Income		
FirstHome/Start/HomeAccess		
County	Family Size Less than 3	Family Size 3 or more
All Counties	\$93,500	\$110,000

Effective date of this Program Directive No. 124: **June 1, 2025**

DCA INCOME LIMITS
06/01/2025

COUNTY	FAMILY SIZE*							
	1	2	3	4	5	6	7	8
Burleigh/Cass/McKenzie/Morton/Oliver/Ward/Williams	62,900	71,900	80,900	89,850	97,050	104,250	110,000	110,000
All Other Counties	56,850	65,000	73,100	81,200	87,700	94,200	100,700	107,200

**Larger families, check with NDHFA for limits.*

On a roll call vote, Governor Armstrong, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Dettlaff gave a report on the recommendation of FirstHome Program Acquisition Limits.

The NDHFA Advisory Board recommends maintaining the current Acquisition Cost Limits for the FirstHome Standard, Start, HomeAccess, and DCA programs, as outlined in the attached Program Directive 120, effective July 1, 2023.

The IRS issues a Revenue Procedure each year that provides the average area purchase price for counties in each state and a nationwide minimum. This is done by adjusting the FHA loan limits to consider the differences between average and median purchase prices. The IRS tax code then requires HFA to set Acquisition Cost limits at no more than 90% of the applicable average area purchase price as provided in the Revenue Procedure.

The **current** FirstHome acquisition limits are as follows:

Previously Occupied and Unoccupied (1 unit only)

All Counties	1 Unit	2 Units	3 Units	4 Units
	\$481,176	\$616,111	\$744,679	\$925,491

The **new allowable** FirstHome acquisition limits are as follows:

All Counties	1 Unit	2 Units	3 Units	4 Units
	\$544,323	\$696,816	\$842,238	\$1,046,782

The following Program Directive will serve as written notice of the Area Limits (as defined in the 1994 Mortgage Purchase Agreement dated as of August 3, 1994) for the Acquisition Cost of a Single- Family Residence. These Area Limits are effective for Mortgage Loans in which the Reservation is dated on or after the herein effective date.

Previously Occupied

All Counties	1 Unit	2 Unit	3 Unit	4 Unit
	\$481,176	\$616,111	\$744,679	\$925,491

Previously Unoccupied

All Counties	1 Unit Only
	\$481,176

The Agency reserves the right to modify the Area Limits at any time.

Rehabilitated structures are considered to be previously occupied even though they were not originally designed for residential use.

Effective date of this Program Directive No. 120: July 1, 2023

Mr. Dave Flohr presented for consideration of approval a Resolution Regarding FirstHome Program Purchase Price and Income Limits, Authorizing Officers.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve a resolution authorizing certain officers of the North Dakota Housing Finance Agency to establish from time to time, with the prior approval of the NDHFA Advisory Board, and in compliance with the Internal Revenue Code, Purchase Price Limits

and Income Limits with respect to the Agency's FirstHome program, and shall report such limits to the Industrial Commission.

On a roll call vote, Governor Armstrong, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

A RESOLUTION WAS MADE

A RESOLUTION AUTHORIZING CERTAIN OFFICERS OF THE NORTH DAKOTA HOUSING FINANCE AGENCY TO ESTABLISH FROM TIME TO TIME AND WITH THE PRIOR APPROVAL OF THE NORTH DAKOTA HOUSING FINANCE AGENCY ADVISORY BOARD purchase price LIMITS and Income Limits WITH RESPECT TO THE AGENCY'S FIRSTHOME PROGRAM.

WHEREAS, the Industrial Commission of North Dakota (the "**Commission**") acting in its capacity as a state housing finance agency, i.e., the North Dakota Housing Finance Agency (the "**Agency**"), is empowered by the provisions of the North Dakota Century Code Chapter 54-17 (the "**Act**") to establish, and has established, the above captioned Home Mortgage Finance Program (the "**Program**") to contract to purchase from lenders mortgage loans made to persons or families of low or moderate income to finance the purchase or substantial rehabilitation of owneroccupied, single-family residential dwelling units; and

WHEREAS, from time to time the Agency has issued its Home Mortgage Finance Program Bonds, pursuant to the Act, to finance the purchase of mortgage loans under the Program to provide decent, safe, and sanitary housing for persons and families of low or moderate income in the State of North Dakota; and

WHEREAS, in order for the interest on certain of such Home Mortgage Finance Program Bonds to be excluded from federal income tax, the mortgage loans financed with the proceeds of such bonds must comply with various requirement of the Internal Revenue Code of 1986, as amended (the "**Code**") including requirements that the purchase price of the single-family residential dwelling unit being financed by the mortgage loan not be greater than certain limits established pursuant to the Code from time to time and that the annualized income of the borrower making the mortgage loan not exceed certain limits established pursuant to the Code from time to time; and

WHEREAS the Agency has established its FirstHome program, as part of the Program, to finance mortgage loans that comply with these requirements of the Code; and

WHEREAS, the Commission acting as the Agency has determined to appoint as its agents the Executive Director, the Director of Homeownership Programs and the Chief Financial Officer (the "**Authorized Officers**") to manage the Program and establish certain limits for the First Home program to ensure mortgage loans purchased pursuant to the FirstHome program are compliant with the Code's requirements.

NOW BE IT HEREWITH RESOLVED:

The Authorized Officers are appointed as agents of the Commission acting as the Agency for the purposes set forth in the preambles to this Resolution and each of the Authorized Officers is authorized to establish, from time to time and with the prior approval of the North Dakota Housing

Finance Agency Advisory Board, the purchase limits and income limits for the FirstHome program, in such manner as determined by such Authorized Officer, to be in the best interest of the Agency, provided that such purchase price limits and income limits for the FirstHome program shall not exceed the limits established by the Code from time to time. Any such Authorized Officer shall report the establishment of any such new limits at the next meeting of the Industrial Commission where it is practicable to make such a report following any such change.

IN WITNESS WHEREOF, this Resolution has been adopted and signed on May 22, 2025.

INDUSTRIAL COMMISSION OF NORTH DAKOTA
ACTING AS THE NORTH DAKOTA HOUSING FINANCE AGENCY

Ms. Kayla Axtman presented a Pricing Report for Housing Finance Agency Home Mortgage Program Series 2025AB Bond Issuance – Series A \$200 Million Tax-Exempt Bonds, and Series B \$60 Million Taxable Bonds.

The Federal Reserve kept the funds rate at 4.25%-4.50% for a third consecutive meeting in May 2025, in line with expectations, as officials adopt a wait and see approach amid concerns that tariffs could drive up inflation and slow economic growth. The Agency has moved the tax-exempt 30-year mortgage rate eighteen times in the last year and continues to be below the current market rate for 30-year conventional loans. The average 30-year FHA mortgage right now is 6.95%. For the past two months, the Agency averaged just over \$2 million a day in First Home (tax-exempt) reservations and approximately \$175,000 in daily Roots (taxable) reservations. Currently, the average total payment (principal, interest, taxes and insurance) for a First Home borrower is \$1,191 and for a Roots borrower is \$1,932.

Mr. Flohr gave a brief legislative recap regarding the ND Housing Finance Agency.

Ms. Karen Tyler presented for consideration of approval a Reappointment of Kevin Hanson and Joe Sheehan to the NDHFA Advisory Board.

The memo reads as follows:

“North Dakota Century Code 54-17-07.1 states:

The Industrial Commission shall appoint a six-member advisory board consisting of representatives of lenders, the residential real estate industry, the mobile home and manufactured housing industry, and homeowners and buyers, and in consultation with such board may adopt rules and regulations for the conduct of its housing finance program which may, among other matters, establish requirements for the type and purchase price of dwelling units and multifamily facilities eligible to be financed, the income limits for eligible low or moderate income persons or families, the interest rates and other terms of mortgage loans to be financed, requirements relating to federal or private mortgage insurance or guarantees, and the general terms and conditions for the issuance and security of housing revenue bonds to be issued.

The current terms for HFA Advisory Board members Joe Sheehan, Branch Manager at Benchmark Mortgage (lender category) and Kevin Hanson, Gate City Bank CEO (lender category) will expire on

July 1, 2025. Mr. Sheehan was first appointed to the advisory board on August 1, 2019 and Mr. Hanson was first appointed to the board on December 14, 2017. Both members are interested in continuing their service on the Advisory Board.

I recommend the Industrial Commission reappoint Joe Sheehan and Kevin Hanson, each for another three-year term to expire July 1, 2028.

Respectfully submitted,

Karen Tyler”

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission reappoint Housing Finance Agency Advisory Board members Joe Sheehan, Branch Manager at Benchmark Mortgage (lender category) and Kevin Hanson, Gate City Bank CEO (lender category) to serve new three-year terms, each expiring on July 1, 2028.

On a roll call vote, Governor Armstrong, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

Under other business, Governor Armstrong presented Mr. Dave Flohr with a Resolution of Appreciation.

A RESOLUTION WAS MADE

Resolution of Appreciation

Whereas, Dave Flohr began his career at North Dakota Housing Finance Agency in 1984, serving as director of homeownership for 14 years and on May 1, 2020, was promoted to Executive Director; and

Whereas, Dave’s commitment, compassion and leadership have fostered collaborations that have helped thousands of individuals and families across North Dakota achieve the dream of homeownership; and

Whereas, Through Dave’s guidance, NDHFA works to increase housing opportunities and remove affordability barriers for North Dakota’s vulnerable residents; and

Whereas, Dave’s integrity, humility and dedication have earned the respect and admiration of colleagues, housing partners and community leaders; and

Whereas, Dave continually leads by example and through an unmatched sense of humor that will be greatly missed by NDHFA team members; and

Whereas, The Minnesota Vikings have provided Dave a lifetime of character-building, patience testing and hope-sprinkled Sundays and every day going forward be filled with joy, relaxation, laughter and just the right amount of yelling at the TV during football season.

Now, therefore, the Industrial Commission hereby expresses its deepest gratitude to Dave Flohr for his over 41 years of dedicated service to the North Dakota Housing Finance Agency and the citizens of North Dakota and wishes him the very best in his retirement.

Adopted this 22nd day of May 2025.

NORTH DAKOTA PUBLIC FINANCE AUTHORITY

Ms. Angela Guptill with Brady Martz presented the FY 2024 NDPFA Audit. In the auditor's opinion, the financial statements present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, and each major fund of the North Dakota Public Finance Authority, as of December 31, 2024 and 2023, and the respective changes in financial position, and, where applicable, cash flows thereof, and the statement of appropriations, for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Ms. DeAnn Ament presented the FY 2024 NDPFA Annual Report to the Commission members for their review. The report includes the mission, vision statement, capital financing program, capital financing disaster loan program, state revolving fund program, industrial development bond program, and the legacy fund infrastructure bond program. The full report is available on the PFA website.

Ms. Ament presented for consideration of approval the following State Revolving Fund Loan:

- i. **City of West Fargo – Clean Water - \$6,100,000.** The purpose of this project is for a full replacement of the water mains, storm and sanitary sewer, streets, sidewalks, and streetlights in Westwood Addition. The requested term is for 30 years, and the City will issue improvement bonds payable with special assessments. The average annual payment will be approximately \$258,347.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the Clean Water State Revolving Fund Loan request of \$6,100,000 for the City of West Fargo.

On a roll call vote, Governor Armstrong, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Ament presented a Memo from the NDPFA Advisory Committee regarding SRF Loans approved under Policy P-3B:

- i. City of Flasher – Clean Water - \$162,000. The purpose of this project is to replace antiquated water meters with advanced metering infrastructure that will provide real-time information and readings. The requested loan term is for 20 years, and the City will issue revenue bonds payable with water fund revenues. The average annual payment for the revenue bonds will be \$9,474.
- ii. City of Hazelton – Clean Water - \$492,000. The purpose of this project is to rehabilitate the sanitary sewer system by doing spot repairs and lining the entire system. The requested loan term is for 30 years, and the City will issue revenue bonds payable with sewer user fees. The average annual payment for the revenue bonds will be \$20,607.
- iii. City of Surrey – Clean Water - \$1,935,000. The purpose of this project is to reline the existing sewer main with cured-in-place-pipe which as leaking joints, cracked pipe, root

- intrusion, and offset joints and sags. Manholes will be rehabilitated as well. The requested loan term is for 30 years, and the City will issue revenue bonds payable with sewer user fees. The average annual payment for the revenue bonds will be \$81,032.
- iv. Missouri West Water System – Drinking Water - \$375,000 to the previously approved \$507,000. The purpose of this project is for a system expansion to users along Lyons Road who currently use private wells. The requested loan term is for 30 years, and the Missouri West Water System will issue revenue bonds payable with user fees. The average annual payment will be \$36,124.
 - v. City of Surrey – Drinking Water - \$242,000. The purpose of this project is to replace the water main that runs under the railroad tracks. The requested loan term is for 30 years, and the City will issue revenue bonds payable with water user fees. The average annual payment for the revenue bonds will be \$10,141.
 - vi. City of West Fargo - Drinking Water - \$750,000. The purpose of this project is to fully replace the water mains, storm and sanitary sewer, streets, sidewalks, and streetlights in the Westwood Addition. The requested loan term is for 30 years, and the City will issue improvement bonds payable with special assessments. The average annual payment will be approximately \$31,786.

Ms. Ament gave a brief legislative recap regarding the Public Finance Authority.

NORTH DAKOTA MILL AND ELEVATOR

Mr. Vance Taylor presented the Q3 FY 2025 Financial Results.

Profits for the 3rd Quarter of the year were \$6,771,507 compared to \$5,187,825 last year. Operating activity for the nine months ending March resulted in a profit of \$17,530,044 compared to \$15,027,952 last year, an increase of 16.6%.

Sales for the 3rd Quarter were \$115,131,418 compared to \$123,236,967 last year.

Operating costs for the 3rd Quarter were \$14,071,252 compared to \$12,657,095 last year, an increase 11.2%. Operating costs per cwt. of production were \$3.08 compared to \$2.98 last year, an increase of 3.4%.

Gross margins as a percentage of gross sales for the quarter were 18.9% compared to 15.4% last year.

Mr. Taylor and Ms. Cathy Dub provided a report on the Policy and Procedure Review RFP that was issued on May 9, 2025. The deadline for receipt of proposals (solicitation closing) is June 9th, 2025 by 2:00 p.m. CT. The full RFP can be found on the website.

Under other business, Mr. Taylor gave a brief legislative recap regarding the Mill and Elevator.

It was moved by Attorney General Wrigley and seconded by Commissioner Goehring that under the authority of North Dakota Century Code Sections 6-09-35, 44-04-19.1, and 44-04-19.2, the Industrial Commission enter executive session for the purpose of North Dakota Mill and Elevator confidential business, and Bank of North Dakota confidential business.

On a roll call vote, Governor Armstrong, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

The Commission met in executive session pursuant to N.D.C.C. 44-04-19.1 and 44-04-19.2 to consider those items listed on the agenda under North Dakota Mill and Elevator Confidential Business. Only Commission members, their staff, Commission staff, and Mill staff participated in this executive session.

Following the Mill and Elevator executive session, the Commission met in executive session to pursuant to 6-09-35 and 44-04-19.2 to consider those items listed on the agenda under Bank of North Dakota Confidential Business. Only Commission members, their staff, Commission staff, and Bank of North Dakota staff participated in this executive session.

Governor Armstrong reminded the Commission members and those present in the executive sessions that the discussion must be limited to the announced purposes. The executive session was anticipated to last approximately one hour and began at 1:50 p.m.

Meeting Closed to the Public for Executive Session Pursuant to NDCC 6-09-35, 44-04-19.1, and 44-04-19.2.

ND MILL AND ELEVATOR EXECUTIVE SESSION

Industrial Commission Members Present

Governor Kelly Armstrong
Attorney General Drew H. Wrigley
Agriculture Commissioner Doug Goehring

BND Members Present

Vance Taylor
Cathy Dub

Others in attendance

Jacy Schafer	Governor's Office
Matt Sagsveen	Attorney General's Office
Dutch Bialke	Agriculture Commissioner's Office
Karen Tyler	Industrial Commission Office
Jordan Kannianen	Industrial Commission Office
Brenna Jessen	Industrial Commission Office

BANK OF NORTH DAKOTA EXECUTIVE SESSION

Industrial Commission Members Present

Governor Kelly Armstrong
Attorney General Drew H. Wrigley
Agriculture Commissioner Doug Goehring

BND Members Present

Don Morgan
Kirby Evanger
Annie Bergrud

Others in attendance

Jacy Schafer	Governor's Office
Chris Joseph	Governor's Office
Dutch Bialke	Agriculture Commissioner's Office
Karen Tyler	Industrial Commission Office
Jordan Kannianen	Industrial Commission Office
Brenna Jessen	Industrial Commission Office

The executive session ended at approximately 2:40 p.m. and the Commission reconvened in open session.

During the Mill and Elevator executive session, the Commission discussed those items listed on the agenda. No formal action was taken.

During the Bank of North Dakota executive session, the Commission discussed those items listed on the agenda. No formal actions were taken.

BANK OF NORTH DAKOTA

Mr. Jared Mack with Eide Bailly presented the North Dakota Guaranteed Student Loan Program Audit, December 31, 2024. In the auditor's opinion, the accompanying financial statements present fairly, in all material respects, the respective financial position of the business-type activities of the Program, as of December 31, 2024 and 2023, and the respective changes in its financial position and cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Mr. Mack presented the Independent Auditor's Report and Financial Statements, December 31, 2024 (FASB). In their opinion, the accompanying financial statements present fairly, in all material respects, the financial position of Bank of North Dakota as of December 31, 2024 and 2023, and the results of its operations and its cash flows for years then ended, in accordance with financial reporting provisions as promulgated by FASB.

Mr. Don Morgan presented the Q1 2025 Performance Highlights. BND's primary financial objective is to maintain the strength and integrity of the Bank while generating a consistent financial return to the State. First quarter's assets for BND were at \$10.6 billion. The \$4.1 billion securities portfolio is primarily a source of liquidity. As the Bank identifies excess funds and the portfolio runs off, maturities can be reinvested, utilized to fund new loans, or reduce short and long-term borrowings.

The loan portfolio as of March 31 was \$6.1 billion. Commercial loan balances were less than budget due to paydowns and lower participation program volumes. Farm disaster program activity drove the agricultural portfolio above budget expectations. The balance of the residential loan portfolio continues to decline due to normal loan runoff. The student loan portfolio focus is on state-sponsored DEAL loans.

Changes in the Bank's Equity position are a result of net income, changes in unrealized gain/loss positions, allocations of capital to various legislative programs, and distributions to the State's General Fund. For the three months ended March 2025, the Bank transferred \$7.0 million to buydown programs and \$700 thousand to other state programs. During 2024, the Bank transferred \$20.0 million to the Statewide Interoperable Radio Network, \$26.5 million to buydown programs and \$4.8 million to other state programs.

BND reported earnings of \$43.1 million for the first quarter of 2025. Interest income exceeded budget by \$3.7 million primarily due to higher rates in the securities portfolio. Interest expense surpassed budget by \$1.1 million. Higher average deposit balances were partially offset by lower than budgeted borrowing for the quarter.

Non-Interest Income for the quarter was a negative \$11.0 million. This included a \$13.0 million loss on the sale of short duration, low yielding securities. The Bank utilized the proceeds from the sales to purchase longer duration, higher yielding securities for its portfolio. Non-Interest Expense is \$1.1 million under budget. This consisted of several operating components largely due to timing of incurrences, specifically with IT projects, loan servicing expenses, training and travel and legal.

The full report is available on the BND website.

Mr. Morgan handed out the 2024 BND Annual Report for the Commission's review.

Mr. Morgan presented for consideration of approval a Resolution Authorizing Certain BND Employees to Execute Loan Instruments.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that pursuant to N.D.C.C. 06-09-26, the Industrial Commission authorizes the following officers and employees of the Bank of North Dakota to execute all documents and instruments necessary to finalize loans, and execute all instruments affecting interests in or liens upon real or personal property on behalf of the bank:

**President and Chief Executive Officer
SVP, Chief Business Development Officer
SVP, Chief Credit Officer
SVP, Chief Lending Officer
Special Assets Manager
Business Bankers
Collection and Recoveries Manager**

Financial Institutions Market Manager

On a roll call vote, Governor Armstrong, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

A RESOLUTION WAS MADE

RESOLUTION OF THE INDUSTRIAL COMMISSION AUTHORIZING BANK OF NORTH DAKOTA EMPLOYEES TO EXECUTE LOAN INSTRUMENTS

North Dakota Century Code §6-09-26 states that within the scope of authority granted by the industrial commission, the president may execute instruments on behalf of the Bank, including any instrument granting, conveying, or otherwise affecting any interest in or lien upon real or personal property. Other officers or employees of, and legal counsel to, the Bank may execute instruments on behalf of the Bank when authorized by the industrial commission.

THEREFORE, BE IT RESOLVED by the Industrial Commission that the following named officers and employees of the Bank are hereby authorized to execute all documents and instruments necessary to finalize and close any applicable loan; and to execute and acknowledge conveyances, transfers, assignments, releases, satisfactions, and other instruments affecting liens on, title to, and interests in real or personal property on behalf of the Bank;

President and Chief Executive Officer
Senior Vice President, Chief Business Development Officer
Senior Vice President, Chief Credit Officer
Senior Vice President, Chief Lending Officer
Special Assets Manager
Business Bankers
Collection and Recoveries Manager
Financial Institutions Market Manager

Adopted: May 22, 2025

Mr. Morgan presented for consideration of approval an Amendment to the Employee Bonus Policy. This amendment changed the approval of bonuses paid under the Bonus Policy in Section 1 to be approved by the SVP of Human Resources and Communications/Marketing rather than the Bank President and Human Resource Manager.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accept the recommendation of the Bank of North Dakota Advisory Board and approve the proposed changes to the bank's recruitment and retention bonus policy.

On a roll call vote, Governor Armstrong, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Morgan gave a brief legislative recap regarding the Bank of North Dakota.

Mr. Morgan presented the Non-Confidential Committee and Advisory Board Minutes for March 19th and 20th, 2025 meetings for the Commission member's review.

NORTH DAKOTA PIPELINE AUTHORITY

Mr. Justin Kringstad gave a brief legislative recap regarding the Pipeline Authority.

Mr. Kringstad presented for consideration of approval a Request for Information for the West to East Natural Gas Pipeline. The purpose of the RFI reads as follows:

“The North Dakota Pipeline Authority (NDPA) is seeking detailed information from entities developing new natural gas pipelines capable of transporting natural gas from western to eastern North Dakota. The North Dakota Industrial Commission (NDIC), acting as the NDPA, has the option to subscribe to pipeline capacity to support ultimate project success. All capacity held by the State of North Dakota will be made available for release to third-party shippers and the NDIC/NDPA will evaluate competing opportunities based on economic, regulatory, and market criteria.” The response deadline is June 24, 2025. The full RFI is available on the NDPA website.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the publishing of a Request for Information to seek detailed information from entities developing new natural gas pipelines capable of transporting natural gas from western to eastern North Dakota as presented by the North Dakota Pipeline Authority Executive Director, to include all information categories set forth in the RFI as presented, and provide a deadline for responses to the RFI of June 24, 2025.

On a roll call vote, Governor Armstrong, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Kringstad led discussion of the proposed RFI Timeline and Decision Memorandum.

The memorandum reads as follows:

Purpose

This memorandum outlines the North Dakota Pipeline Authority's evaluation methodology for evaluating two or more competing pipeline proposals offering natural gas transportation capacity from western to eastern North Dakota.

The Authority's primary goal is to support the timely construction of infrastructure that enables long-term petroleum development and improves natural gas utilization opportunities within North Dakota. A key objective is to ensure that any capacity acquired by the Authority can be released to third-party shippers as early as possible.

Decision Framework

The North Dakota Pipeline Authority is committed to supporting infrastructure that maximizes the long-term value of the state's natural gas resources. In evaluating these pipeline proposals, the Authority will prioritize consideration for the option that best enables timely, flexible, and transparent access for third-party shippers and supports long-term energy development goals for the state.

Key Evaluation Criteria

The following factors will be used to compare the competing proposals:

- 1. Timeline to Service**
 - Estimated in-service date and permitting risk
 - Readiness to accommodate capacity release to third-party shippers
- 2. Market Connectivity**
 - Quality of access to downstream pipelines, storage, and regional/national gas markets (e.g., WBI, Viking, Alliance, Great Lakes, Chicago/Emerson hubs)
 - Quality of access to upstream gas supply sources (e.g., processing plants, pipelines, storage)
 - Ability to support robust pricing and marketing options for North Dakota gas
- 3. Delivered Cost to Market**
 - Transportation rate structure and rate stacking impacts (both upstream and downstream)
 - All-in cost from receipt to likely market destinations
- 4. Capacity Flexibility and Transparency**
 - Terms for releasing and/or reassigning capacity
 - Regulatory oversight (e.g., FERC tariff protections vs. negotiated contract terms)
 - Availability of public capacity release platforms or EBB systems
- 5. Regulatory Certainty**
 - Jurisdictional framework (FERC vs. non-FERC) and long-term rate stability
 - Dispute resolution, rate change processes, and transparency of future operations
- 6. Alignment with State Goals**
 - Support for robust petroleum development activity, gas capture, in-state economic development, and energy reliability
 - Construction and operation impact on ND communities and workforce

Next Steps

Following due diligence, stakeholder input, financial analysis, and review of any other relevant information, the Authority will apply this evaluation framework to determine which project best aligns with state objectives and should be considered for a firm transportation commitment.

As a result of the meeting running ahead of schedule, there was a change in the order of agenda.

INDUSTRIAL COMMISSION ADMINISTRATIVE OFFICE

Ms. Karen Tyler presented for consideration of approval the April 24, 2025, Industrial Commission meeting minutes.

It was moved by Attorney General Wrigley and seconded by Commissioner Goehring that the Industrial Commission approve the April 24, 2025, Industrial Commission meeting minutes.

On a roll call vote, Governor Armstrong, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Tyler presented for consideration of approval Professional Services Contract renewals for the North Dakota Pipeline Authority Executive Director and the North Dakota Transmission Authority Executive Director. Both contract terms run concurrent with the biennium and have an expiration date of June 30, 2027.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the renewal of the professional services contracts for the Pipeline Authority Executive Director and the Transmission Authority Executive Director for the term July 1, 2025, through June 30, 2027, and directs the Industrial Commission Executive Director to execute the renewed contracts.

On a roll call vote, Governor Armstrong, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Claire Vigesaa presented for consideration of approval the Participation in a Concept Paper related to DOE Grant Funding for Collaborations Advancing Rapid Load Additions to Electric Grid.

The memo reads as follows:

The North Dakota Industrial Commission, acting as the North Dakota Transmission Authority (NDTA), has been asked to participate in a concept paper that would designate the NDTA as the primary applicant in the DOE Grid Deployment's grant funding opportunity for "Collaborations Advancing Rapid Load Additions."

Project Description: The Grid Deployment Office has announced that it will award up to five state grant awards for the "Collaboration Advancing Rapid Load Additions", for a total of \$28 million. This grant program is under the Bipartisan Infrastructure Law Section 40103(b). The objective of the grant funding shared on their website is below.

The Prairie Research Institute, University of Illinois is willing administer the project. This approach results in limited workload for the NDTA and is similar to the application we agreed to participate in with the ND Association of Rural Electric Cooperatives GRIP grant.

The grant requires no state match. Mr. Leslie Groja from the Institute has had conversations with the ND PSC, MDU, and Basin Electric and will be reaching out to other state utilities. He has also spoken to SPP and is reaching out to MISO. He has also been engaged with Applied Digital. As you can see from the Objective section below, a state agency must be the primary applicant, and the application requires collaboration with the Regional Transmission Planners (SPP & MISO) and a large-load customer. He is going beyond the collaborative requirements by including utilities too.

Mr. Victor Schock, Director of Public Utilities for the ND PSC visited with Mr. Groja and liked the concept but thought the NDTA would be a more appropriate primary applicant than the ND PSC.

This first step is a concept paper only, due June 30, 2025. The Grid Deployment Office will review the applicants giving a “thumbs up or thumbs down” on the grant concept papers. Those receiving a “thumbs up” will be given the opportunity to complete a full application. The ND Industrial Commission would have another opportunity to decide whether or not to move forward with an application at that time.

There is solid interest in pursuing this grant from among those mentioned as collaborators above. As NDTA Executive Director, I believe this proposed project would support North Dakota’s mission to be an energy leader, developing our resources to produce dispatchable electric generation for a more reliable electric grid and a robust economy. As such, I recommend that we participate in the collaborative effort, serving as a primary applicant for the grant.

Claire Vigesaa

NDTA Executive Director”

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the participation of the Transmission Authority in a concept paper as the primary applicant in the DOE Grid Deployment grant funding opportunity for “Collaborations Advancing Rapid Load Additions”, and directs the Transmission Authority to seek final approval from the Commission to apply for the grant should the concept paper be selected by the DOE.

On a roll call vote, Governor Armstrong, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Jordan Kannianen gave a brief legislative recap regarding the Office of the Industrial Commission.

LIGNITE RESEARCH, DEVELOPMENT AND MARKETING PROGRAM, GRANT ROUND 107

Mr. Kannianen presented the Lignite Research Program Project Management and Financial Report. The Lignite Research Fund has a cash balance of \$28.9 million with a cumulative number of funded projects at 261, with 20 projects currently active. The LRF has a committed balance of \$22.4 million and the amount that is still available in uncommitted dollars is \$6.5 million.

Mr. Mike Holmes presented for consideration of approval Grant Application LRP-107A: EERC – Development of Next-Generation Carbon Capture Technologies for Efficiency Improvement and Cost Reduction, \$1,462,000.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accept the recommendation of the Lignite Research Council, approve the funding of the following projects in the amounts recommended, and authorize the Office of the Industrial Commission to enter into contracts for the project:

FY25-107-A: EERC: “Development of Next-Generation Carbon Capture Technologies for Efficiency Improvement and Cost Reduction”, \$1,462,500.00

On a roll call vote, Governor Armstrong, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Holmes presented for consideration of approval Grant Application LRP-107B: AmeriCarbon – Commercial Plant Design Optimization: Lignite to Critical Carbon Materials, \$1,499,653.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accept the recommendation of the Lignite Research Council, approve the funding of the following projects in the amounts recommended, and authorize the Office of the Industrial Commission to enter into contracts for the project:

FY25-107-B: AmeriCarbon Products, LLC: “Commercial Plant Design Optimization: Lignite To Critical Carbon Materials”, \$1,499,653.00

On a roll call vote, Governor Armstrong, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

DEPARTMENT OF MINERAL RESOURCES

Mr. Nathan Anderson presented for consideration of approval the Temporary Waiver of Well Completion Requirements. The North Dakota Industrial Commission is charged with “fostering, ... encouraging, and ... promoting the development, production, and utilization of the state’s natural resources of oil and gas in the state in such a manner as will prevent waste.” The Commission is promulgating this Policy to prevent waste.

Due to the potential of uncertain commodity prices resulting in financial hardship, some operators may desire to postpone completion operations until oil prices improve. The Director’s guidelines contained herein outline the procedure necessary to protect the environment and correlative rights and were endorsed by the Commission on May 22, 2025. The relief granted shall expire on the date the North Dakota Department of Transportation lifts the State Highway load limit restrictions in 2027.

Not Completed – Waiver (NCW) Status may only be given to wells that have been drilled but whose casing has not yet been perforated (i.e. the well is incapable of producing oil or gas because completion operations have not yet been performed).

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the updated Temporary Waiver of Well Completion Requirement as presented.

On a roll call vote, Governor Armstrong, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Anderson gave a brief legislative recap regarding the Department of Mineral Resources.

Mr. Ed Murphy presented the Geological Survey Quarterly Report.

Wilson M. Laird Core and Sample Library

During the first quarter of 2025, geologists from three companies, the Geological Survey, the Energy and Environmental Research Center, as well as students and/or professors from the University of North Dakota, North Dakota State University, Minnesota State University Moorhead, and George Mason University studied 8,658 feet of core. A total of 2,023 feet of core was photographed generating 2,423 standard photographs and 6,718 feet of core was photographed with a tripod generating 504 photographs for the subscription site.

Core and Thin Section Photography Project

The Geological Survey began a core and thin section photography project back in 2004. The purpose was threefold: 1) to promote North Dakota's subsurface geology, 2) enable company geologists and students studying core to focus their core requests, and 3) increase visitation to the core library in Grand Forks. The first two have been very successful with core photographs and thin section photomicrographs showing up in internal company project reports, presentations, and journal articles. Now that they can view core photographs before visiting the core library, company geologists no longer request long sections of core only to discover that they only need to study a few tens of feet. It has been more difficult to ascertain how many geologists were drawn to the core library by the core or thin section photographs.

The core library currently contains 486,000 feet of core. For the first 15 years of the project, we photographed an average of 10,000 feet of core per year, in roughly 8-inch-long segments. In the last five years, we have averaged 19,000 feet per year, nearly double the previous output for a project total of 268,000 feet. The core library houses 19,655 thin sections from our own projects, company studies, and student theses. Each thin section is photographed by quadrants under plain and polarized light generating eight photomicrographs per thin section. So far, we have generated 19,655 photomicrographs for the website.

Studies of the Red River Formation

Between 1969-2000, 26 Red River wells were drilled using 2-D seismic across a ~100 square mile area in northern Golden Valley County which yielded 7 producing wells (1.2 million barrels of cumulative oil production) and 19 dry holes. Using a 3-D seismic exploration approach, 32 vertical Red River wells were drilled in the same area from 2010-2017 which yielded 25 producers (2.5 million barrels of oil production to date) and 7 dry holes. A study published by the Geological Survey in 2017 indicated that the Red River exploration fairway (using the new 3-D seismic method) extends southwards, spanning approximately 2,400 square miles. Based upon the ~100 square mile case study area in Golden Valley County, this Red River fairway holds the potential for roughly 1,000 vertical productive wells that could yield on the order of 100 million barrels of oil. Wolverine Gas and Oil Company (WGO) drilled two successful discovery wells in central Golden Valley County (Sentinel Butte Field) in 2024 using Geological Survey maps and geologic information

published on the Red River Formation in 2017 (GI-186, GI-191, GI-196, GN 17-1, RI-118, AAPG Bulletin 101-9).

Public Fossil Dig Program

Registration for the 2025 Public Fossil Dig Program opened on Saturday, February 1st at 10:00 am Central Time. A total of 557 spots were offered to the public this year at three locations across the state: Medora, Bismarck, and the Pembina Gorge. Signups were brisk, as usual, with the Bismarck area dinosaur dig filling up in 10 minutes and all of the available spots sold out by 10:34 am. Currently, we have over 100 groups registered on our waiting list hoping to fill any cancellations we receive before the dig season begins in June.

A total of 5,097 individuals from 45 states and several foreign countries have attended the Public Fossil Digs since 2008. During that same time, over 1,250 field jackets were collected and the fossils they contained were prepared and added to the North Dakota State Fossil Collection. The public dig program continues to be one of the most popular and successful summer paleontology events in the country, bringing tourists to North Dakota and helping to preserve our prehistoric past for future generations to enjoy.

The full report is available on the DMR website.

NDIC GRANT PROGRAM MATTERS

Mr. Brent Brannan presented for consideration of approval Policies, Grant Round Deadlines and a Request for Proposal (RFP) for the Enhanced Oil Recovery Grant Program approved by the 69th legislative assembly as a component part of the Oil and Gas Research Program.

Section 12 of Senate Bill 2014 directs the North Dakota Industrial Commission to use appropriated funding available to the oil and gas research fund to create an enhanced oil recovery grant program, to include the development of guidelines, eligibility criteria, requirements for matching funds, and reporting requirements.

As set forth in the RFP, to be eligible for funding under the new grant program, projects must demonstrate how the project will lead to commercially viable improved oil recovery approaches that can be deployed throughout the Bakken play, as well as the state's wide variety of conventional reservoirs.

Funding Available:

- Senate Bill 2014 appropriated \$25,000,000 for the new grant program
- Additional funding for projects that improve oil recovery may be available under regular oil and gas research program funding
- For the 25-27 biennium, the program has a Phase I target of funding 6-8 projects

Timeline:

1. Planned Grant Round Deadlines for 2025-2027 biennium:

- Grant Round 1 Deadline: August 15, 2025
- Grant Round 2 Deadline: January 15, 2026
- Grant Round 3 Deadline: June 15, 2026

2. Qualifying projects must be completed by June 30, 2027

The full RFP can be found on the OGRP website.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the proposed policies for the enhanced oil recovery grant program created under section 12 of SB 2014 of the 69th legislative assembly, and approve the related Request for Proposal and grant round deadlines for project submissions under the program.

On a roll call vote, Governor Armstrong, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Brenna Jessen presented for consideration of approval a De-Commitment of Grant Project Funding for the Outdoor Heritage Fund.

The memo reads as follows:

“Since the inception of the Outdoor Heritage Fund in 2013, there have been a number of grant applicants that received funding approval from the Industrial Commission but either did not execute their grant contracts, executed their grant contracts but did not start their projects, or started their projects but did not follow through to completion per the terms of their contracts. At the May 13, 2025, OHF advisory board meeting, the board was advised that a recommendation to de-commit funding for the below listed projects would be brought to the Industrial Commission at the May 22, 2025, meeting.

1. Contract # 004-060 – Mule Deer Foundation: Habitat Enhancement; Amount to Decomit: \$101,471.83
2. Contract # 005-082 – Emmons County Soil Conservation District: Grassland and Cropland; Amount to Decomit: \$567,000
3. Contract # 008-100 – Logan County Soil Conservation District: Logan County Natural Resource; Amount to Decomit: \$165,330.52
4. Contract # 009-108 – Red River Regional Council: Red River Riparian Program; Amount to Decomit: \$579,606.10
5. Contract # 010-117 – Mayville Park Board: Mayville Nature Trail; Amount to Decomit: \$48,445.95
6. Contract # 015-157 – Turtle Mountain Band of Chippewa: Belcourt Lake Park; Amount to Decomit: \$48,567.00

7. Contract # 015-159 – City of Cavalier: Cavlandic Trail; Amount to Decommit: \$34,738.18
8. Contract # 015-163 – Hettinger County Water Resource District: Cannonball River Fish Passage; Amount to Decommit: \$43,193.05
9. Contract # 018-189 – Dunn County Park Board: Lake Ilo Natural Playscape; Amount to Decommit: \$6,471.00
10. Contract # 018-190 – Center Park Board: Lehmkuhl Park; Amount to Decommit: \$10,000.00

The Administrative Office has either contacted or attempted to contact each of the grantees listed above to inform them of the recommended decommitment of funds to their projects.

I recommend the approval of the decommitment of funds to those projects in those dollar amounts as listed. The total amount of the de-commitment request is \$1,604,823.63. “

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the de-commitment of Outdoor Heritage Fund project funding for those projects and in those amounts as presented by the OHF program administrator, in a total amount of \$1,604,823.63.

On a roll call vote, Governor Armstrong, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

With no further business, Governor Armstrong adjourned the meeting of the Industrial Commission at 4:00 p.m.

North Dakota Industrial Commission

Brenna Jessen, Recording Secretary

Karen Tyler, Executive Director

Jordan Kannianen, Deputy Director

Minutes of a Meeting of the Industrial Commission of North Dakota

Held on June 2nd, 2025, beginning at 1:00 p.m.

Governor's Conference Room – State Capitol

Present: Governor Kelly Armstrong, Chairman
Attorney General Drew H. Wrigley
Agriculture Commissioner Doug Goehring

Also Present: Executive Director Karen Tyler, Deputy Director Jordan Kannianen, Brenna Jessen, and Erin Stieg.

Governor Armstrong called the special meeting of the Industrial Commission to order at 1:02 p.m.

Ms. Karen Tyler took roll call, and Governor Armstrong, Commissioner Goehring, and Attorney General Wrigley were present.

Governor Armstrong invited the room to stand and join the Commission in saying the Pledge of Allegiance.

The Commission members held a discussion regarding the two final candidates for the North Dakota Housing Finance Authority Executive Director position.

It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission appoint Mr. Brandon Dettlaff to the position of Executive Director of the North Dakota Housing finance Agency, and direct the Industrial Commission Executive Director to finalize the terms of the appointment.

On a roll call vote, Governor Armstrong, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

The Commission members shared their gratitude to both of the final candidates for their hard work and dedication to the North Dakota Housing Finance Authority over the years, and requested the Industrial Commission Executive Director continue discussions with HFA leadership regarding the need for adjustments to current Housing Finance Authority salaries to remain competitive and attract and retain talent in highly specialized positions.

With no further business, Governor Armstrong adjourned the meeting at 1:16 p.m.

North Dakota Industrial Commission

Brenna Jessen, Recording Secretary

Karen Tyler, Executive Director

Jordan Kannianen, Deputy Director

DRAFT

CONSULTING SERVICES AGREEMENT
OIL AND GAS RESEARCH PROGRAM

THIS AGREEMENT is made and entered into as of July 1, 2025, between the North Dakota Industrial Commission in its role as having oversight of the Oil and Gas Research Program (“Commission”), and Aurora Energy Solutions, LLC. (“Contractor”) whose mailing address is P. O. Box 7217, Bismarck, ND 58507-7217.

WHEREAS, the State of North Dakota through legislation adopted in 2003 has established the Oil and Gas Research Program (“OGRP”) to promote the growth of the oil and gas industry in North Dakota through research and education;

WHEREAS, the Commission is interested in contracting with Contractor to serve as Oil and Gas Research Program Director, provide the professional services required by the Commission to help manage and promote the OGRP and assist in the reviewing, processing and preparation of recommendations on applications and project oversight and Contractor agrees to provide the requested professional services.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and conditions contained herein, and subject to the approval of the Commission as required below, the parties hereby agree as follows:

1.0 INDEPENDENT CONTRACTOR

Consultant shall perform the services specified in this Agreement as an independent contractor and not as an employee of the Commission. No part of this Agreement shall be construed as creating an employer/employee relationship between the Commission and the Contractor. As an independent contractor, Contractor shall be responsible for his own payroll related taxes and insurances and covenants that he will pay the same when due.

2.0 TERM

The term of this contract is through June 30, 2027. Upon review it shall be eligible for renewal for a total of up to twenty-four months coinciding with the biennium period, or upon completion of the work required by the OGRP, whichever first occurs.

3.0 SCOPE OF WORK

Contractor shall provide promotional and managerial professional services required by the Commission for the successful operation of the OGRP. The services shall include, but are not limited to, the following:

- 1) As outlined in the Oil and Gas Research Program policies, oversee the processing of applications and preparing recommendations for the Oil and Gas Research Council and the Commission including the selection of the independent technical reviewers;

- 2) Maintain knowledge of laws, regulations, policies and guidelines related to the program.
- 3) Supply prospective applicants with necessary program and application information related to the application and review process.
- 4) Recommend selection of and communicate with qualified independent technical reviewers and coordinate the recommendations and comments of technical reviewers of projects for use by OGRC and Commission.
- 5) Assist NDIC staff with negotiation of contracts with successful project applicants as needed.
- 6) Monitor all approved projects and prepare a recommendation for the Commission regarding payment for work completed;
- 7) Prepare summaries of work completed by grant recipients and make summaries available through the Industrial Commission/Oil and Gas Research Program website and other distribution channels/reports as requested by the Commission
- 8) Meet with and provide necessary reports to the Oil and Gas Research Council and the Commission as required;
- 9) Promote the mission of the OGRP. The Contractor shall serve as a spokesperson for the Program, engaging with stakeholders key to the success of the program including Commission members, OGRC members, industry regulators, legislators, and industry representatives.
- 10) Assist with transition of current website to NDIC website and utilization of new grant management system.

4.0 COMPENSATION

For all services rendered by the Contractor pursuant to this Agreement, the Contractor shall be paid \$100.00 an hour for satisfactory completion of work on an average of up to 25 hours per week. The contracted hours include actual travel time for Oil and Gas Research Program work. The Commission shall make payment on a monthly basis upon receipt of the Contractor's invoice and report of work completed the prior month.

In addition to the above-specified compensation, Contractor shall be separately reimbursed for extraordinary expenses that are reasonably necessary for the performance of this Agreement and as directed by the Commission. The Contractor shall invoice the Commission for the extraordinary expenses incurred during the preceding month. Extraordinary expenses shall include both in and out of state travel either by car or commercial transportation. Copies of receipts must be provided for any expense items in excess of \$25. The Contractor shall be reimbursed at the same rate for meals and lodging as is paid to State employees.

5.0 REPORTING

Contractor shall provide a written report prior to a payment for professional services being made that outlines what work activities were completed. The Contractor shall also provide such other oral and written reports as the Commission from time-to-time may require. The Executive Director or Deputy Executive Director of the Industrial Commission shall serve as the primary contact for the Contractor. The Executive Director or Deputy Executive Director also may require the Contractor to work directly with Nathan Anderson, Director of the Department of Mineral Resources, or others. Further, the Contractor shall regularly meet with the Executive Director or Deputy Executive Director, either in person or by phone, as they determine is necessary to discuss the program objectives, goals, and milestones.

6.0 LIMITED AUTHORITY

Contractor shall have no authority to bind the Commission to any contractual arrangements and is not an agent of the Commission for any purpose.

7.0 DATA AND WORK PRODUCT

All data, notes, memoranda, reports, and other work product, of any kind or nature, developed by Contractor pursuant to this Agreement shall be the exclusive property of the Commission. Contractor may not use the data, notes, memoranda, reports, or other work product developed by the Contractor for any purpose other than completion of the scope of work contemplated by this Agreement. Upon termination of this Agreement, all data, notes, memoranda, reports, and other work product remaining in the possession of the Contractor shall be turned over to the Commission.

From time-to-time, Contractor may be provided with confidential reports, data, and work product developed by others for the Commission and/or the State of North Dakota. Contractor may not disclose this confidential work product to third parties without the written permission of the Commission and this work product shall at all times remain the exclusive work product of the Commission. At the termination of this Agreement, all such work product shall be returned to the Commission.

8.0 ASSIGNMENT AND SUBCONTRACTING

Contractor may not assign or delegate any portion of this Agreement, nor may Contractor subcontract for the performance of any portion of this Agreement without the prior written consent of the Commission.

9.0 CANCELLATION FOR CONVENIENCE

The Commission shall have the right to terminate this Agreement at any time and for any reason upon 30 days written notice to the Contractor, which notice shall set forth the effective date for the termination. On the termination date specified in the notice, Contractor shall discontinue all work pertaining to this Agreement. Upon termination,

Contractor shall be entitled to payment for all earned services up to the termination date, and payment for all un-reimbursed expenses properly incurred in accordance with this Agreement.

NDIC ETHICS POLICY AND CONFLICTS OF INTEREST

For the duration of this agreement the Contractor is subject to the Commission Ethics Policy. Contractor may not engage in other work in North Dakota during the term of this Agreement that creates a conflict of interest with the accomplishment of the goals and objectives of the North Dakota Oil and Gas Research Program. The Industrial Commission Executive Director may grant written approval of other work by the Contractor in North Dakota upon the written request of the Contractor.

The Commission is aware that the Contractor currently has interests in the following entities:

O'Brannan Energy Corp. (100%)	Inyan Kara, LLC (25%)
Aurora Energy Solutions, LLC (100%)	Sitka Oil and Gas, LLC (20%)
Heartland Minerals, LLC (50%)	Spotted Hawk Development (20%)
Heartland Management, LLC (50%)	Swift Water, LLC (50%)
Heartland Fund I (50%)	White Butte Resources, LLC (25%)
Heartland Fund II (50%)	

and is an Ombudsman through the ND Department of Agriculture's Royalty Oversight Program, a member of ND's Empower Commission, and the Vice President of the Northern Plains Heritage Foundation.

Based on discussions with the Contractor on his relationship with each of these entities the Commission believes these interests do not create a conflict of interest for the Oil and Gas Research Program or the Commission. The Contractor agrees that should any of these entities become involved in a project or be seeking funding for an Oil and Gas Research Program project, the Contractor will immediately notify the Commission and recuse himself from performing any work under this contract regarding the project.

10.0 FORCE MAJEURE

Neither Party shall be held responsible for delay or default caused by fire, riot, terrorism, pandemic (excluding COVID-19), acts of God, or war if the event was not foreseeable through the exercise of reasonable diligence by the affected Party, the event is beyond the Party's reasonable control, and the affected Party gives notice to the other Party promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default. If Contractor is the affected Party and does not resume performance within fifteen (15) days or another period agreed between the Parties, then State may seek all available remedies, up to and including termination of this Contract pursuant to its Termination Section, and State shall be entitled to a pro-

rata refund of any amounts paid for which the full value has not been realized.

11.0 INDEMNIFICATION

Contractor agrees to defend, indemnify, and hold harmless the State of North Dakota, its agencies, officers and employees (State of ND), from and against claims based on the vicarious liability of State of ND or its agents, but not against claims based on the State of ND's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The legal defense provided by Contractor to State of ND under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for State of ND is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. 54-12-08. Contractor also agrees to defend, indemnify, and hold State harmless for all costs, expenses and attorneys' fees incurred if State of ND prevails in an action against Contractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this Contract.

12.0 CONFIDENTIALITY

Contractor shall not use or disclose any information it receives from State under this Contract that State has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Contract or as authorized in advance by State. State shall not disclose any information it receives from Contractor that Contractor has previously identified as confidential and that State determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, N.D.C.C. ch. 44-04. The duty of State and Contractor to maintain confidentiality of information under this section continues beyond the Term of this Contract.

13.0 COMPLIANCE WITH PUBLIC RECORDS LAWS

Under the North Dakota public records law and subject to the Confidentiality clause of this Contract, certain records may be open to the public upon request.

Public records may include: (a) records State receives from Contractor under this Contract, (b) records obtained by either Party under this Contract, and (c) records generated by either Party under this Contract.

Contractor agrees to contact State immediately upon receiving a request for information under the public records law and to comply with State's instructions on how to respond to such request.

14.0 INDEPENDENT ENTITY

Contractor is an independent entity under this Contract and is not a State employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workforce Safety and Insurance Act. Contractor retains sole and absolute discretion in the manner and means of carrying out Contractor's activities and responsibilities under this Contract, except to the extent specified in this Contract.

15.0 SPOILIATION – PRESERVATION OF EVIDENCE

Contractor shall promptly notify State of all potential claims that arise or result from this Contract. Contractor shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to State the opportunity to review and inspect such evidence, including the scene of an accident.

16.0 MERGER AND MODIFICATION, CONFLICT IN DOCUMENTS

This Contract, including the following documents, constitutes the entire agreement between the Parties. There are no understandings, agreements, or representations, oral or written, not specified within this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by both Parties.

17.0 SEVERABILITY

If any term of this Contract is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the Parties are to be construed and enforced as if this Contract did not contain that term.

18.0 APPLICABLE LAW AND VENUE

This Contract is governed by and construed in accordance with the laws of the State of

North Dakota. Any action to enforce this Contract must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each Party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

19.0 ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

By entering this Contract, State does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The Parties may enforce the rights and remedies in judicial proceedings. State does not waive any right to a jury trial.

20.0 ATTORNEY FEES

In the event a lawsuit is instituted by State to obtain performance due under this Contract, and State is the prevailing Party, Contractor shall, except when prohibited by N.D.C.C. § 28-26-04, pay State's reasonable attorney fees and costs in connection with the lawsuit.

21.0 NONDISCRIMINATION AND COMPLIANCE WITH LAWS

Contractor agrees to comply with all applicable federal and state laws, rules, and policies, including those relating to nondiscrimination, accessibility, and civil rights. (See N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women.)

Contractor agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation and workers' compensation premiums.

Contractor shall have and keep current all licenses and permits required by law during the Term of this Contract.

Contractor is prohibited from boycotting Israel for the duration of this Contract. (See N.D.C.C. § 54-44.4-15.) Contractor represents that it does not and will not engage in a boycotting Israel during the term of this Contract. If State receives evidence that Contractor boycotts Israel, State shall determine whether the company boycotts Israel. The foregoing does not apply to contracts with a total value of less than \$100,000 or if Contractor has fewer than ten (10) full-time employees.

Contractor's failure to comply with this section may be deemed a material breach by Contractor entitling State to terminate in accordance with the Termination for Cause section of this Contract.

22.0 STATE AUDIT

Pursuant to N.D.C.C. § 54-10-19, all records, regardless of physical form, and the accounting practices and procedures of Contractor relevant to this Contract are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. Contractor shall maintain these records for at least three (3) years following completion of this Contract and be able to provide them upon reasonable notice. State, State Auditor, or Auditor's designee shall provide reasonable notice to Contractor prior to conducting examination.

23.0 COUNTERPARTS

This Contract may be executed in multiple, identical counterparts, each of which is be deemed an original, and all of which taken together shall constitute one and the same contract.

24.0 EFFECTIVENESS OF CONTRACT

This Contract is not effective until fully executed by both Parties. If no start date is specified in the Term of Contract, the most recent date of the signatures of the Parties shall be deemed the Effective Date.

IN WITNESS WHEREOF, the parties have caused this Agreement to be entered into as of the date first above written.

**INDUSTRIAL COMMISSION OF NORTH
DAKOTA**

By _____
Karen Tyler, Executive Director

CONTRACTOR

Independent Contractor



Industrial Commission of North Dakota

Kelly Armstrong
Governor

Drew H. Wrigley
Attorney General

Doug Goehring
Agriculture Commissioner

TO: North Dakota Industrial Commission Members
FR: Jordan Kannianen, Deputy Executive Director
RE: Appointment of Claire Vigesaa, NDTA Executive Director to Advanced Nuclear Energy Study Committee
DT: June 26, 2025

HB 1025 enacted by the 69th Legislative Assembly mandates a legislative management study relating to advanced nuclear energy. The bill requires a study committee to be formed and sets forth in part:

The committee must consist of:

- a. Two members representing the energy industry, appointed by the legislative management;
- b. One member appointed by the public service commission;
- c. One member appointed by the industrial commission;**
- d. One member appointed by the director of the department of water resources;
- e. Three members of the house of representatives selected by the majority leader of the house of representatives, two of whom must represent the majority faction of the house of representatives and one of whom must represent the minority faction of the house of representatives; and
- f. Three members of the senate selected by the majority leader of the senate, two of whom must represent the majority faction of the senate and one of whom must represent the minority faction of the senate

NDIC Staff recommend that Claire Vigesaa, Executive Director of the North Dakota Transmission Authority, be appointed as the Industrial Commission representative. Mr. Vigesaa has extensive knowledge and expertise in matters related to grid reliability and the critical need for dispatchable generation for North Dakota and the nation.

Mr. Vigesaa attended a conference at the Oak Ridge National Laboratory in 2024, a laboratory focused on nuclear energy. He toured Xcel's Prairie Island Nuclear facility last summer and continues to follow related industry and regulatory activity across the nation.

We feel Mr. Vigesaa's industry experience and NDTA executive director role position him well to provide valuable input and participation as a member of the study committee.

Sincerely,

Jordan Kannianen

Deputy Executive Director, NDIC