

COMMUNITY DEVELOPMENT BLOCK GRANT LOAN AGREEMENT
NORTH DAKOTA DIVISION OF COMMUNITY SERVICES
SFN 51604 (10/00)

Date _____

The City/County of _____ (LENDER) and _____ (BORROWER) agree to a loan pursuant to the Community Development Block Grant program (CDBG) authorized by the federal Department of Housing and Urban Development (HUD) and as administered and approved by the Division of Community Services (DCS), subject to the following terms and conditions, including attachments _____:

ARTICLE 1.0 - GENERAL

1.1 Definitions

1.2 The Loan

LENDER agrees to lend BORROWER an amount up to _____ dollars (\$ _____) to assist in the financing of the project(s) described in Article 2.3 of this Agreement. BORROWER shall execute a Promissory Note to LENDER in an amount equal to the maximum amount of this loan, _____ dollars (\$ _____) with interest on the unpaid balance at ____% annually. The Promissory Note is Attachment "A" to this agreement. In the event BORROWER does not require the maximum amount of this loan, any funds undisbursed by LENDER shall reduce the loan accordingly.

1.3 Time of Performance

The project described in Article 2.3 shall be completed on or before _____.

1.4 Report and Products

BORROWER shall submit the following reports:

1. Employment Report/Loan Status - Submitted on a semi-annual basis throughout the term of the loan. The first report shall be submitted no later than sixty (60) days after the disbursement of the loan.
2. _____
3. _____

1.5 Intended Third Party Beneficiary

The DCS is an "Intended Third Party Beneficiary" of this contract and as such, is legally entitled to enforce this agreement. In particular, it is expressly contemplated by the contracting parties that the DCS will have the authority to enforce the "Events of Default" (6.4) and "Actions Upon a Declaration of Default" (6.5) provisions of this Agreement if the LENDER does not exercise the rights of Articles 6.4 and 6.5. This provision in no way restricts any legal rights or remedies that the DCS may assert against the (city/county) for its failure to enforce the conditions and requirements of this agreement.

ARTICLE 2.0 - BORROWER'S PROJECT(S)

2.1 Location of Project(s).

The location of the project(s) is (are):

2.2 Statement of Work and Services

BORROWER shall perform the work activities and services described in the approved CDBG Economic Development Grant Application, Attachment "B", in a satisfactory and proper manner, as determined by LENDER. BORROWER's work activities and services shall conform to the approved Program Budget form of the Financial Assistance Award, Attachment "C".

2.3 Project(s) Description

The project(s) shall be described in the approved CDBG Economic Development Application:

(DESCRIBE THE SCOPE OF THE PROJECT)

2.4 Conveyance or Disposition of Project(s)

BORROWER shall not sell, transfer, convey, lease or otherwise dispose of the project(s) in whole or in part without the express written consent of the LENDER and the DCS until the loan has been repaid in full.

2.5 Project Budget

Uses

Sources

CDBG/CDLF

Equity

Other

Total

2.6 Cost Variations

In the event that the total cost of the project(s) is less than the amount specified in Article 2.5, loan funds shall be returned to the DCS in the ratio that loan funds are to the total project, excluding equity.

2.7 Cost Sufficiency

LENDER is under no obligation to advance funds in addition to the amount specified in Article 1.2.

ARTICLE 3.0 - BORROWER'S CONTRIBUTION TO THE PROJECT(S)

3.1 BORROWER's Contribution

The BORROWER agrees to contribute _____ dollars (\$_____) toward the completion of the project, as shown in Article 2.5 of this Agreement.

3.2 Source of BORROWER's Contribution

The source(s) of BORROWER's contribution is:

Verification of the above source(s) is attached.

ARTICLE 4.0 - CONDITIONS

4.1 BORROWER's Representations

BORROWER represents the following:

- 4.1.1 Duly Authorized. The making and performance by BORROWER of this Agreement, and the execution and delivery of the Note, Attachment A, and any Security Agreements and instruments have been duly authorized by all necessary corporate action, if any, and will not violate any law, rule, regulation, order, writ, judgment, decree, determination or award presently in effect having applicability to the BORROWER or any provision of the BORROWER's charter or bylaws or result in a breach of or constitute a default under any indenture or bank loan or credit agreement or any other agreement or instrument to which BORROWER is a party or by which it is or its property may be bound or affected.
- 4.1.2 Legally Binding Instruments. When this Agreement is executed by BORROWER and LENDER, and when the Note, Attachment A, is executed and delivered by BORROWER for value, each instrument shall constitute the legal, valid, and binding obligation of BORROWER in accordance with its terms.
- 4.1.3 Suits Pending. There are no legal actions, suits, or proceedings pending or, to the knowledge of BORROWER, threatened against BORROWER before any court or administrative agency, which, if determined adversely to the BORROWER, would have a material adverse effect on the financial condition or business of BORROWER.

4.1.4 No Legal Authorization Needed. No authorization, consent or approval, any formal exemption of any governmental body, regulatory authorities (federal, state or local) or mortgage creditor or third party is or was necessary to the valid execution and delivery by BORROWER of this Agreement, the Note, or any Security Agreement, Financing Statement or Mortgage.

4.1.5 Not in Default. BORROWER is not in default of any obligation, covenant or condition contained in any bond, debenture, note, or other indebtedness or any mortgage of collateral instrument securing the same.

4.1.6 Taxes are Paid. BORROWER has filed all tax returns which are required and has paid or made provision for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessments levied against BORROWER or its personal or real property by any taxing agency, federal, state or local for taxes materially in excess of those already provided for and BORROWER knows of no basis for any such deficiency assessment.

4.2 Obligations of the LENDER Conditional

LENDER is under no obligation to make this loan until the following conditions are met:

4.2.1 Execution and Delivery of Note and Loan Agreement. BORROWER shall execute and deliver this Loan Agreement and the Promissory Note to LENDER in a form satisfactory to LENDER.

4.2.2 Execution and Delivery of Collateral Documents. BORROWER shall execute and deliver all appropriate Security Agreements, Financing Statements and/or Mortgage Deed required by LENDER. These Security Agreements, Financing Statements and/or Mortgage Deeds must not be subject to prior liens and encumbrances, with the following exceptions:

Documentation of these agreements is attached.

4.2.5 Governmental Approval. LENDER shall have secured all necessary approval from Governmental bodies having jurisdiction over the project, specifically the DCS, the Environmental Protection Agency, the State Historical Society and:

4.3 Affirmative Covenants of the BORROWER

BORROWER agrees to comply with the following until the terms of this agreement are completed or otherwise terminated.

4.3.1 Payment of the Loan. BORROWER agrees to make all payments required under the note and this agreement.

- 4.3.2 Maintain and Insure Property. BORROWER agrees at all times to maintain the property provided as security for this loan and in such condition and repair that LENDER's security will be adequately protected. BORROWER also agrees to maintain during the term of the loan adequate hazard insurance policies covering fire and extended coverage and such other hazards as may be deemed appropriate in amounts and form sufficient to prevent LENDER from becoming a co-insurer and was issued by companies satisfactory to LENDER with acceptable loss payee clauses in favor of LENDER.
- 4.3.3 Pay All Taxes. BORROWER agrees to duly pay and discharge all taxes, assessments and governmental charges upon it or against those properties related to this Agreement prior to the date on which the penalties attached thereto.
- 4.3.4 Maintain Existence. BORROWER agrees to maintain its corporate existence, rights, privileges, and franchises within the State of North Dakota and qualify and remain qualified as a foreign corporation in each jurisdiction in which its present or future operations or its ownership or property require such qualification.
- 4.3.5 Provide Financial Information. BORROWER agrees to maintain adequate records and books of account, in which complete entries will be made reflecting all of its business and financial transactions in accordance with generally accepted accounting principles consistently applied.

BORROWER agrees to submit true and accurate copies of its annual financial statements to the _____ and LENDER on the following dates: _____. The financial statements shall be treated in a confidential manner by entities receiving them.

4.4 RESERVED

4.5 Negative Covenants of BORROWER

BORROWER agrees to not enter into any agreement or other commitment which would violate or otherwise encumber this agreement without the express written consent of the LENDER, LENDER'S assigns, and the DCS. Prohibited agreements include, but are not limited to:

- 4.5.1 Encumber the Acquisition Assets. BORROWER will neither create nor allow to exist any mortgage, pledge, lien charge, or encumbrance, including liens arising from judgments on the acquisition assets, with the following exception(s):

- 4.5.2 Sell the Acquisition Assets. BORROWER will not sell, convey, lease, assign, transfer or otherwise dispose of the acquisition assets without the express written consent of the LENDER and the DCS, with the following exceptions: Inventory, supplies and _____
_____.

- 4.5.3. Change Ownership. Except with the express written consent of LENDER, BORROWER will not merge into or consolidate with any other firm or corporation, nor will the BORROWER substantially distribute, liquidate or otherwise dispose of BORROWER'S assets.

ARTICLE 5.0 - LOAN REPAYMENT

5.1 Repayment of Loan

BORROWER agrees to repay loan on a(n) (semi-annual, quarterly, monthly) basis prior to the due date set forth in the grant agreement, attached. BORROWER agrees to abide by the repayment schedule to be attached to this agreement after the first drawdown of CDBG funds.

5.1.1 Time and Place of Payments. BORROWER shall make each payment U.S. funds, on or before the date due at _____. If the due date falls on a Saturday, Sunday or bank holiday, payment will not be due until the following business day.

5.2 Default

The following circumstances are "Events of Default."

5.2.1 If representations, conditions or warranties made by BORROWER prove to be incorrect in any material respect when made or change so that the statement becomes incorrect, whether voluntarily or involuntarily.

5.2.2 BORROWER fails to repay any installment of principal within ten (10) business days after it is due.

5.2.3 BORROWER fails to perform or observe any other term or condition contained in this agreement and any such failure remains unremedied for thirty (30) calendar days after receipt of written notice from LENDER or the DCS.

5.2.4 Execution is levied against the project or any suit is brought by lien creditors to enforce a judgment against the project or such other property and shall continue unstayed for more than thirty (30) consecutive calendar days.

5.2.5 BORROWER sells, transfers, leases or conveys the project, or any part thereof, without the express, written consent of LENDER and the DCS, whether voluntarily or involuntarily.

5.2.6 BORROWER fails to create or retain at least 80% of the jobs listed in Article 6.5.

5.2.7 BORROWER fails to meet the minimum of 51% of jobs for low and moderate income persons.

5.2.8 BORROWER defaults upon any other debt or loan whatsoever, whether on this project or for any other purpose.

5.2.9 If any guarantee provided to accommodate the making of this loan becomes impaired in any way, or if any guarantor has a loss of net worth of 10 percent or more from the time the guarantee is made.

5.2.10 If LENDER or DCS believes itself-insecure.

5.3 Actions Upon a Declaration of Default

Upon declaration of default by LENDER, LENDER may:

ARTICLE 6.0 - ADMINISTRATIVE AND COMPLIANCE REQUIREMENTS

6.1 Accounts and Records

- 6.1.1. Accounts. BORROWER will maintain books, records, documents, and other evidence pertaining to all costs and expenses incurred and revenues acquired under this Agreement to the extent and in such detail as will properly reflect all costs, direct and indirect, of labor, materials, equipment, supplies, services and other costs and expenses.
- 6.1.2. Audit and Inspection. At any time during normal business hours and as frequently as is deemed necessary, BORROWER shall make available to LENDER, the DCS, the General Accounting Office and the Department of Housing and Urban Development, or their agents for their examination, all of its records pertaining to all matters covered by this Agreement and permit these agencies to audit, examine, make excerpts, or transcripts from such records, contract, invoices, payrolls, personnel records, conditions of employment, and all other matters covered by this Agreement.
- 6.1.3. Retention of Records. All records in the possession of the BORROWER pertaining to this Agreement shall be retained by BORROWER for a period of three (3) years beginning with the date upon which the final payment under this Agreement is issued. All records shall be retained beyond the three year period if audit findings have not been resolved within that period or if other disputes have not been resolved. Records for nonexpendable property acquired under this Agreement shall be retained for a three (3) year period after the final disposition of property.

6.2 Civil Rights Provisions

- 6.2.1. Discrimination in Employment. BORROWER shall not discriminate against any qualified employee or applicant for employment because of race, color, religion, sex, national origin, age, or physical or mental disability. BORROWER should take affirmative action to ensure that applicants are employed and that employees are treated without regard to national origin, age, or disability. Such action shall include but may not be limited to the following: employment, upgrading, demotion or transfers; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including an apprenticeship. BORROWER agrees to post notices setting forth the provisions of the nondiscrimination clause in conspicuous places so as to be available to employees.
- 6.2.2. Consideration for Employment. BORROWER shall, in all solicitations or advertisements for employees placed by or on behalf of LENDER, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age, or disability.
- 6.2.3. Civil Rights Compliance in Employment. BORROWER shall comply with all relevant provisions of the Fair Labor Standards Act (29 USC Section 201 et. seq.), Section 504 of the Vocational Rehabilitation Act of 1973 (29 USC Section 794), the Age Discrimination in Employment Act of 1967 (42 USC Section 6101 et. seq.). BORROWER will furnish all information and reports requested by the State of North Dakota or required by or pursuant to the rules and regulations thereof and will permit access to payroll and employment records by the State of North Dakota to investigate compliance with these rules and regulations. For the following provisions, BORROWER is synonymous with contractor and BORROWER agrees to be bound by these provisions. Federal Executive Orders 11246 and 11375 require that all contracts in excess of \$10,000 include the following language:

"During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965 and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any the any such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

- 6.2.4 Program Nondiscrimination BORROWER shall confirm with requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et. seq.*) and HUD regulations issued pursuant thereto contained in 24 CFR Part 1. No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available through this contract. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1965 (42 USC 6101 *et. seq.*) or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Vocational Rehabilitation Act of 1963 (29 USC Section 794) shall also apply to any such program or activity. The BORROWER shall also comply with Section 109, Title I of the Housing and Community Development Act of 1974, as amended.
- 6.2.5 Fair Housing. BORROWER shall comply with Title VIII of the Civil Rights Act of 1968 (42 USC 3601 *et. seq.*), generally known as the Fair Housing Act, and with HUD regulations found at 24 CFR Part 107, issued in compliance with Federal Executive Order 11063, as amended by Federal Executive Order 12259.
- 6.2.6 BORROWER shall comply with provisions for training, employment, and contracting in accordance with Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u).
- 6.2.7 Noncompliance with the Civil Rights Laws. In the event of the BORROWER's noncompliance with the nondiscrimination clauses of this Agreement or with any of the aforesaid rules, regulations, or requests, this Agreement may be canceled, terminated, or suspended either wholly or in part.
- 6.2.8 BORROWER will include the provisions of Article 6.0 in every subcontract for construction carried out with funds provided under this Agreement unless exempted by the State of North Dakota, and said provisions will be binding on each subcontractor. BORROWER will take such action with respect to any subcontract as the State of North Dakota may direct as a means of enforcing such provisions including sanctions for noncompliance.

6.3 Environmental Requirements

BORROWER shall comply with the policies of the National Environmental Policy Act of 1969 and other provisions of law which further the purposes of such Act as specified in the regulations issued by HUD contained in 24 CFR Part 58.

6.4 Wage and Labor Requirements

- 6.4.1 Anti-Kickback. All contractors and subcontractors involved in construction or repair carried out with funds provided under this Agreement shall comply with the Copeland Anti-Kickback Act (18 U.S.C. 874) and Department of Labor regulations at 29 CFR, Part 3. This Act provides that each contractor or subcontractor shall be prohibited from requiring, by any means, any person employed in the construction, completion or repair of public works, to give up any part of the compensation to which he is otherwise entitled.
- 6.4.2 Wage Rates and Safety Standards. For construction contracts of \$2,000 and above, all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed by or with funds provided under this Agreement shall be paid wages at rates no less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a - 276a-5); implemented at 29 CFR Part 5, by reason of this requirement, the Agreement Work Hours and Safety Standards Act (40 U.S.C. 327 *et. seq.*) also applies and is also implemented at 29 CFR Part 5; provided that this section shall apply to the rehabilitation of residential property only if such property is designed for residential use of eight or more units.

6.5 Benefit to the Community

The underlying purpose of this loan is to provide specific benefits to the City/County of _____ . To that end, BORROWER further agrees to the following:

6.5.1 Employment of Low and Moderate Income Persons. BORROWER shall employ _____ (number of full-time equivalent positions) persons whose income prior to such employment meets Section 8 income guidelines for LMI persons in _____ county. These persons shall be employed on or before _____.

6.5.2 Employment of Low and Moderate Income Persons. BORROWER shall employ _____ additional persons on or before _____.

ARTICLE 7.0 - OTHER CONDITIONS

7.1 This Agreement is, and the attached Promissory Note, other documents and agreements required by this Agreement, when delivered, will be, legal, valid and binding obligations of BORROWER enforceable against BORROWER in accordance with their respective terms.

7.2 The performance of this Agreement, and any related transactions, shall not encumber, burden or violate BORROWER'S assets, property or business relationships, except as provided in this Agreement.

7.3 BORROWER is aware of no litigation or other legal action pending or threatened, which would burden or otherwise adversely affect the ability of BORROWER to perform this agreement.

7.4 BORROWER will comply in all applicable laws, rules, ordinances, regulations and orders. BORROWER will pay all applicable taxes, assessments and governmental charges imposed upon BORROWER or BORROWER'S property when due, unless they can be contested in good faith.

7.5 LENDER and the DCS shall have no responsibility to incur any expense for maintenance or preservation of the Project, or for the payment of any taxes, assessments or other governmental charges assessed or levied with respect to the Project.

7.6 Agreement Coverage

7.6.1 This agreement, including attachments and reference documents, is the final written expression of all the terms of this agreement and is a complete and exclusive statement of those terms. This agreement binds upon the successors in office of the respective parties.

7.6.2 The invalidity, in whole or in part, of any term of this agreement does not affect the remainder of the agreement.

7.7 Term of the Agreement. This Agreement shall be in full force and effect from its date and shall continue in effect so long as the loan is outstanding and unpaid.

7.8 Indemnity; Fees and Expenses.

- 7.8.1 BORROWER will indemnify and save harmless LENDER and its officers and employees and the DCS from and against any and all losses, by it or them while it or they are acting in good faith to carry out the transactions contemplated by this Agreement or to safeguard its or their interest or ascertain, determine or carry out its or their obligations under this Agreement or any law or contract applicable to said transaction.
- 7.8.2 BORROWER will, upon demand, pay to LENDER or the DCS the amount of any and all reasonable expenses, including the reasonable fees and expenses of their council and of any experts and agents, which LENDER may incur in connection with the exercise or enforcement of any of the rights of LENDER hereunder, the failure by BORROWER to perform or observe any of the provisions hereof, the collection of payments due under this Agreement, and other reasonable expenses of LENDER or the DCS related to the Project or this financing (including reasonable attorneys' fees except where and to the extent prohibited by law) which are not otherwise expressly required to be paid by BORROWER under the terms of this Agreement.
- 7.8.3 BORROWER agrees to pay all appraisal fees, survey fees, recording fees, license and permit fees and insurance premiums, and agrees to reimburse LENDER upon demand for all reasonable out-of-pocket expenses actually incurred by LENDER in connection with this Agreement or in connection with the transactions contemplated by this Agreement, including, but not limited to, any and all reasonable closing costs.

It is the intention of the parties that LENDER shall not incur pecuniary liability by reason of the terms of this Agreement, or the undertakings required of LENDER hereunder, the performance of any act required of it by this Agreement or of it by BORROWER, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing; accordingly, if LENDER (including any person at any time serving as an officer or employee of LENDER) shall incur any such pecuniary liability, then in such even BORROWER shall indemnify and hold harmless LENDER (including any person at any time serving as an officer or employee of LENDER) against all claims by or on behalf of any person, firm or corporation arising out of the same, and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon.

BORROWER releases LENDER and the DCS (including any person at any time serving as an officer or employee of LENDER or DCS) from, agrees that LENDER (including any person at any time serving as an officer or employee of LENDER) shall not be liable for, and agrees to indemnify and hold LENDER (including any person at any time serving as an officer or employee of LENDER) harmless from, (i) any liability for any loss or damage to property or any injury to, or death of, any person that may be occasioned by any cause whatsoever pertaining to the Project, or (ii) any liabilities, losses or damages, or claims thereof, arising out of the failure, or claimed failure of BORROWER to comply with its covenants contained in this Agreement, including in each such case, any attorneys' fees.

BORROWER agrees to indemnify and hold LENDER (including any person at any time serving as an officer or employee of LENDER) harmless to the fullest extent permitted by law from any losses, costs, charges, expenses (including attorneys' fees except where and to the extent prohibited by law), judgments and liabilities incurred by it or them, as the case may be, in connection with any action, suit or proceeding instituted or threatened in connection with the

transaction contemplated by this Agreement. If any such claim is asserted, LENDER or any individual indemnified herein, as the case may be, will give prompt notice to BORROWER and BORROWER will assume the defense thereof, with full power to litigate, compromise or settle the same in BORROWER's sole discretion provided, however, LENDER retains the right to employ separate counsel whose fees and expenses shall be borne by BORROWER, it being understood that neither LENDER or its agent nor any indemnified individual will settle or consent to the settlement of the same without the written consent of BORROWER. The obligation of the parties under this Section shall survive the termination of this Agreement.

- 7.9 Binding Effect; Governing Law. This Agreement shall be binding upon and inure to the benefit of BORROWER and LENDER and their respective successors and assigns, except that BORROWER shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of LENDER and the DCS. This Agreement shall also inure to the benefit of LENDER.
- 7.10 Obligations of BORROWER Unconditional. BORROWER'S obligations under of this agreement are unconditional, and not subject to any defense or any right of set-off, counter-claim or recoupment arising out of any breach by LENDER of any obligation to BORROWER, pursuant to this agreement or any other, or out of any indebtedness or liability at any time owing to BORROWER by LENDER. BORROWER will not diminish, suspend or discontinue any payments provided in Article 7.14, or any other provision of this agreement. BORROWER will pay required payments in full when due, without any diminution whatsoever.
- 7.11 Assignments. LENDER'S, or the DCS's waiver of a breach by BORROWER of any provision of this agreement is not a waiver of future compliance, and any provision waived, as well as other provisions of this contract remain in full force and effect. LENDER or the DCS is not precluded from future exercise of a right or remedy or the exercise of any other right or remedy by a single or partial exercise of a right or remedy.
- 7.12 Amendment of this Agreement. BORROWER or LENDER may, during the duration of this Agreement, deem it necessary to make an alteration to the provisions of this Agreement. Any changes to this Agreement, which are approved by the _____ and the DCS, shall be incorporated into this Agreement. The provisions of the amendment shall be in effect as of the date of the amendment unless otherwise specified within the amendment. A waiver of any condition of this Agreement must be in writing from the duly authorized official of the city/county of _____ and the DCS.
- 7.13 Suspension and Termination of this Agreement
- 7.13.1 Suspension. If BORROWER fails to comply with the conditions of this Agreement, LENDER may, after notice to BORROWER, suspend the Agreement and withhold further payments or prohibit BORROWER from incurring additional obligations of funds, pending corrective action by BORROWER or a decision to terminate in accordance with provisions of this Agreement. LENDER may determine to allow such necessary and proper costs which BORROWER cannot reasonably avoid during the period of suspension.
- 7.13.2 Termination for Cause. LENDER may terminate this Agreement in whole, or in part, at any time before the date of completion, whenever it is determined that BORROWER has failed to comply with the conditions of the Agreement. LENDER shall promptly notify BORROWER in writing of the determination and the reasons for the termination, together with the effective date. Payments made to BORROWER or recoveries by LENDER under Agreements

terminated for cause shall be in accord with legal rights and liabilities of the parties. Payments and recoveries may include, but are not limited to the following: Payments may be allowed for costs determined to be in compliance with this Agreement up to the date of termination, based on accepted audits. BORROWER shall return to LENDER all unspent funds within one week of notice of termination. In addition, all unpaid principal plus interest due must be repaid by BORROWER within 30 days.

- 7.14 Litigation. BORROWER agrees to pay the cost of any litigation arising from failure of BORROWER to comply with the rules and regulations in this Agreement or resulting from the negligence or incompetence of BORROWER. There shall be no liability, personal or otherwise, upon LENDER or the State of North Dakota, or their employees in carrying out the provisions of this Agreement by BORROWER, or in the exercise of any power or authority by BORROWER pursuant to this Agreement. BORROWER shall indemnify and save harmless the State of North Dakota and City/County of _____ from suits, actions or claims of any character arising from any injuries or damages received by any person or property resulting from operations of BORROWER or any persons working under BORROWER, in performance of the terms of this Agreement.
- 7.15 Resolution of Disagreement. In the event of any disagreement between the BORROWER and the LENDER relating to the technical competence of the work and services being performed and its conformity to the requirements of this Agreement, the decisions of LENDER and/or the DCS shall prevail.

<p>Borrower</p> <p>_____ XYZ Inc., A North Dakota Corporation _____</p> <p>By _____</p> <p>(In his/her capacity as President of XYZ, Inc., and Individually)</p> <p>Date _____</p>	<p>Lender</p> <p>_____ City/County _____</p> <p>By _____</p> <p>(Chief Elected Official)</p> <p>Date _____</p>
<p>By _____</p> <p>(In his/her capacity as President of XYZ, Inc., and Individually)</p> <p>Date _____</p>	<p>By _____</p> <p>(Auditor)</p> <p>Date _____</p>
<p>The special endorsement of this Note does not constitute an indebtedness or a change against the credit of the general funds of the _____.</p>	
<p>By _____</p> <p>Signature</p>	<p>_____</p> <p>Title</p>