

## **POTABLE WATER AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the CITY OF DICKINSON, a municipal corporation whose post office address is 38 1st Street West, Dickinson, ND 58601 (hereinafter "Dickinson") and Ryan Kilwein and Nicole Kilwein whose post office address is 483 6th Avenue Southeast, Dickinson, ND 58601 (hereinafter "Kilwein").

WHEREAS, Dickinson currently maintains water distribution system for the municipality;  
and

WHEREAS, Kilwein's infrastructure is approximately 300 feet outside the city limits of Dickinson, and Kilwein desires to connect to Dickinson's water distribution system; and

WHEREAS, the Dickinson's water distribution system has sufficient capacity to handle the increased water usage anticipated from Kilwein, and can allow Kilwein to connect to the system with no detrimental effect upon said system or the residents of Dickinson; and

NOW THEREFORE, IT IS HEREBY AGREED between the above parties as follows:

1. **INTENT:** It is the intent of this agreement to outline the rights and responsibilities of the parties concerning the connection by Kilwein to the Dickinson municipal water distribution system.
2. **PRIVATE SYSTEM:** The Kilwein water system, including all pipelines, and piping, shall be considered a private system for residential use only, and shall in no way be construed to be a public system or a part of the Dickinson water distribution system.
3. **CONNECTION:** Dickinson agrees to allow Kilwein to connect to its water distribution system at a point to be determined by Dickinson. Dickinson shall have authority to determine the location of the connection, and the manner and specifications for the connection. Kilwein shall receive a permit, as required by §38.08.050 of the Dickinson Municipal Code, and shall pay a water connection and water access charge as contained within Dickinson's annual fee schedule, which may be adjusted from time to time. Kilwein also agrees to comply with all responsibilities and restriction enumerated in articles 38.08 and 38.24 of the Dickinson Municipal Code.
4. **KILWEIN SYSTEM:** Kilwein shall be solely responsible for all costs associated with construction of its system, including but not limited to all pipes, and materials, up to and including the point of connection to the Dickinson water distribution system.

All construction and facilities must comply with the state plumbing code and any requirements of the Dickinson water distribution system for private water systems within the city. Kilwein shall be solely responsible for obtaining all easements and right of ways for the construction, both within and outside of the Dickinson city limits.

5. **METERING:** The water shall be metered at a point acceptable to Dickinson.

Dickinson shall be entitled to enter upon Kilwein's property at any time to read the meter or inspect the metering equipment. Kilwein shall provide or modify any plumbing necessary for the installation of the water meter. A City employee shall install and seal the meter.

The meter may be read periodically by Dickinson employees, and the charges to Kilwein shall be based upon said meter readings as well a base rate, the rates for such charges are contained within Dickinson's annual fee schedule, which may be adjusted from time to time.

Kilwein agrees that, if said meter becomes inoperable for any portion of a particular month, that it will pay water charged for said month equal to an average of the last three months, unless the water can be estimated.

6. **WATER CHARGES:** Kilwein agrees to pay water charges at the rates specified in Dickinson's annual fee schedule, which may be adjusted from time to time. Dickinson shall submit a monthly bill to Kilwein for water charges for the previous month. Thereafter, Kilwein shall pay the invoiced amount by the invoice due date.

7. **ADDITIONAL CONNECTIONS:** Ryan Kilwein shall not allow any other person or entity to connect to Kilwein's water system, except with the express written authority of Dickinson.

8. **TERMINATION:** Kilwein may terminate this agreement upon 60 days written notice to Dickinson. Dickinson may terminate this agreement if:

- a. Kilwein fails to pay the water charges when due, and the delinquency continues for a period of 60 days;
- b. Failure of Kilwein to comply with any term or condition of this agreement;
- c. Determination by any Court of the North Dakota Attorney General that any provision of this agreement violates any federal, state, or local law or regulation.
- d. Annexation of the Kilwein property to the City of Dickinson.
- e. If Dickinson terminates this agreement, it shall give Kilwein 60 days written notice of its intent to terminate.
- f. If either party elects to terminate, Kilwein shall be solely responsible for all costs

associated with disconnecting from the Dickinson system and placing Dickinson's water system in the same condition as it was prior to the connection. Kilwein shall also pay all water charges incurred up to the date the disconnection is made.

9. **NON-TRANSFERABLE:** It is agreed that this agreement is solely for the benefit of the parties hereto. Kilwein may not transfer his interest, or any portion thereof, to any other person or entity. No other person, organization, or entity shall have any rights hereunder, unless specifically agreed by Dickinson.

10. **ANNEXATION:** In consideration of the terms and conditions of this agreement, Kilwein hereby agrees that it will not file a written protest to annexation of the above- identified property, or any portion thereof, and further waives and releases any right that it may have to file a written protest to the annexation. This waiver and release of protest rights and agreement not to protest relates to the annexation of the property, or any portion thereof, based on petitions filed by persons in the vicinity, annexation by resolution of the City Commission, or any other method that may be provided for under the law.

11. **INDEMNIFICATION:** Kilwein expressly stipulates and agrees to indemnify and hold harmless Dickinson, its officers, agents, and employees, against loss and liability, costs, expense, and reasonable attorney fees from any and all claims, demands, or actions which may be hereafter, and at any time made against Dickinson, or any of its officers, agents, or employees, by any person or entity, arising in whole or in part from:

a. Injury to person or property, from whatever cause, or in any way connected with this Agreement, including any liability or any injury to the person or personal property of City, its agents, officers, or employees;

b. Any work negligently performed pursuant to this Agreement; Kilwein's negligent failure to perform any provision of this Agreement or to comply with any requirement imposed upon by Dickinson, or any other party by any duly authorized governmental agency or political subdivision.

c. Any other claim arising out of the subject matter of this contract.

12. **CITY SERVICES:** Kilwein specifically agrees that this agreement only covers water services, and Dickinson, by this agreement, undertakes no duty or obligation to provide any other municipal services to Kilwein now or at any time in the future.

13. **COMPLIANCE WITH LAWS:** Kilwein shall comply with all federal, state, and local

laws, rules, and regulations pertaining to the matters contained in this agreement.

14. **CITY AUTHORITY:** Dickinson is entering into this agreement by virtue of its right to operate and maintain its municipal water system and under its home rule authority.

15. **SEVERABILITY:** In the event that any provision of this Agreement shall be held invalid, illegal, or unenforceable by any court of competent jurisdiction, such holding shall pertain only to such section and shall not invalidate or render unenforceable any other section or provision of this Agreement.

16. **NON-WAIVER:** Each right, power or remedy conferred upon Dickinson or Kilwein by this Agreement is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, or available to Dickinson or Kilwein at law or in equity, or under any other agreement. Each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Dickinson or Kilwein and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy. If either party waives in writing any default or nonperformance by the other party, such waiver shall be deemed to apply only to such event and shall not waive any other prior or subsequent default.

17. **GOVERNING LAW - VENUE:** This Agreement shall be governed by and construed according to the laws of the State of North Dakota. The parties hereby stipulate and agree that the District Court, Southwest Judicial District, State of North Dakota, shall have personal jurisdiction over the parties hereto, and that such District Court, Southwest Judicial District, State of North Dakota, is the appropriate and proper venue for resolving any dispute under this Agreement.

18. **ENTIRE AGREEMENT:** This Agreement contains the entire agreement between and among the parties hereto, and supersedes all prior and contemporaneous discussions, negotiations, understandings, and agreements, whether oral or written, express or implied, between or among them relating to the subject matter of this Agreement. This Agreement may not be amended orally, nor shall any purported oral amendment (even if accompanied by partial or complete performance in accordance therewith) be of any legal force or effect or constitute an amendment of this Agreement, but rather this Agreement may be amended only by an agreement in writing signed by the parties.

*(Signatures begin on following page)*





IN WITNESS WHEREOF, the Landlord and Tenant have respectively executed this Lease as of the day and year first above written.

CITY OF DICKINSON,

By: \_\_\_\_\_  
Scott Decker, President  
Board of City Commissioners

ATTEST:

By: \_\_\_\_\_  
Dustin Dassinger  
City Administrator

STATE OF NORTH DAKOTA     )  
  )ss  
COUNTY OF STARK            )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared **Scott Decker** and **Dustin Dassinger**, known to me to be, respectively, the President of the Board of City Commissioners and the City Administrator for the City of Dickinson, the persons who are described herein and who executed the within and foregoing instrument and acknowledged to me that the City of Dickinson executed the same.

\_\_\_\_\_  
Notary Public  
Stark County, North Dakota

