

Reuse Water Resale Contract

The parties to this contract are the City of South Heart, 103 6th St. NW, South Heart, ND 58655 hereinafter referred to as ("South Heart"), and the City of Dickinson, 38 1st St. West, Dickinson, ND, 58601, a political subdivision of the State of North Dakota and a municipal corporation under North Dakota law ("Dickinson").

1. Background

- 1.1. Approximately 10 miles west of Dickinson, South Heart owns and operates a golf course located in the City of South Heart ("the Facility").
- 1.2. Dickinson operates a Water Reclamation Facility ("WRF"), which can provide reuse water to the Facility to be resold for fracking purposes.
- 1.3. When available and upon request, South Heart may designate a portion of the flow agreed upon in the "Reuse Water Supply Contract dated _____ to be sold to a third party for fracking purposes.
- 1.4. All the terms and conditions as identified in the Reuse Water Supply Contract dated _____ are herein incorporated by reference.
- 1.5. This Contract shall apply to the conditions, restrictions and requirements that pertain to South Heart's ability to designate a portion of the flow as allocated in the Reuse Water Supply Contract dated _____.

2. Reports and Consultation

- 2.1 During construction of the Pond Pipeline and Custody Transfer Point, South Heart shall give Dickinson progress reports on a monthly basis. These reports must generally summarize work done to date, describe any significant delays encountered, and express an opinion whether the expected completion date will be met. If requested by either party, the parties shall meet to discuss construction- related issues.
- 2.2 South Heart shall provide a report each month to Dickinson by the 15th day of the month that includes the dates fracking occurred, the amount of water used, and the total flow used during the prior month.

3. Pipeline Ownership

South Heart owns the Pond Pipeline and the SH Pipeline and is responsible for its control, operation, and maintenance. South Heart shall promptly repair any leak or malfunction in the Pond Pipeline and the SH Pipeline. South Heart shall indemnify and protect Dickinson from any liability for losses or damages arising out of South Heart's failure to properly construct, maintain or repair the Pond Pipeline and the SH Pipeline. Dickinson may interrupt pipeline service for maintenance work on the any of the pipelines referenced under this Contract. Routine maintenance that is likely to disrupt Pipeline access for more than twelve hours may be undertaken only if Dickinson gives South Heart notice at least 72 hours before the disruption and states in the notice how long the disruption is expected to last. Or in the case of maintenance performed by South Heart notice shall be provided 48 hours before disruption. Notice is not required for unexpected disruptions, but Dickinson shall keep South Heart informed about its plans to address the disruption and the progress in ending it.

4. Water Delivery and Water Charges

- 4.1 South Heart enters this contract to sell a portion of its provided reuse water to a third party as fracking water. It is expressly understood between the parties that Dickinson does not and cannot guarantee that reuse water will always be available to South Heart. Dickinson may interrupt delivery for maintenance work on the treatment plant, the booster station, pipeline conveyance system, or elsewhere in its municipal water system. Dickinson in its discretion may interrupt delivery of reuse water, with notice to South Heart as listed in paragraph 5 of this Contract. Notice is not required for unexpected disruptions, but Dickinson shall keep South Heart informed about its plans to address the disruption and the progress in ending it. Any estimate of disruption time given to South Heart as a courtesy, and Dickinson is in no way obligated to return to service by such estimated time. This agreement does not obligate Dickinson to an exclusive operation with South Heart.
- 4.2 South Heart shall pay to Dickinson a total of \$6.75 per 1,000 gallons of reuse water sold by South Heart to a third party for fracking purposes. The point-of-sale meter reading provided to Dickinson by South Heart will be considered the primary meter for the purpose of invoicing this use, the full consumption reported on Dickinson's meter shall be billed at the agreed upon irrigation rate of \$1.60 per 1,000 gallons, the full consumption reported on South Heart's meter will be billed at a rate of \$5.15 per 1,000 gallons to reach the agreed upon rate of \$6.75 per 1,000 gallons. Dickinson will include this amount on the invoice sent to South Heart monthly for reuse water delivered to South Heart, which South Heart shall promptly pay no later than 30 days after receipt of invoice.

5. Water Quality

The quality of the water Dickinson delivers from the treatment plant into the Pipeline must not exceed the standard set forth in the “Reuse Water Supply Contract dated [REDACTED], 2025.

6. Pipeline Operation Access

South Heart shall cooperate with Dickinson and provide Dickinson access it requires for the inspection of the SH Pipeline and Pond Pipeline and associated facilities.

7. Pipeline Operation - Tying into the Pipeline and Signage

South Heart shall not allow additional tie-ins to the WRF Pipeline or the SH Pipeline. All sales of reuse water from South Heart’s irrigation pond must be reported to Dickinson. South Heart shall be responsible for ensuring that the Facility properly adheres to the signage requirements set forth by the Department of Environmental Quality. The permit states: Whenever possible, irrigation shall take place during hours when the public does not have access to the area being irrigated. If the public has constant access to an area, signs must be posted in visible areas during irrigation and for two hours after irrigation is completed. The signs must advise people that the water could pose a health concern and to avoid the irrigated area.

South Heart shall limit contact with any reuse water and the public whenever possible. Where frequent contact is likely, South Heart shall provide a higher level of disinfection such as achieving E Coli counts less than 14 colonies per 100 mL. South Heart agrees to avoid application within one hundred feet of areas which have unlimited access (i.e., yards) or within three hundred feet of potable water supply wells.

8. Pipeline Operation - Meters

8.1 There is an existing flow meter located in the existing manhole at the Custody Transfer Point.

8.2 Dickinson shall own, operate, maintain, and read its flow meter. Dickinson shall calibrate and replace the meter as recommended by the manufacturer, or sooner if required. The cost of calibration and replacement shall be the responsibility of Dickinson.

8.3 Dickinson shall retain meter readings for at least three years. Upon request, Dickinson shall provide South Heart with copies of meter readings.

- 8.4 If either party questions the accuracy of the meter and the parties are unable to resolve the issue, they shall discuss in good faith a means by which to allow an independent assessment of meter accuracy. The party contesting the accuracy of the meter reading shall pay the assessment costs. Notwithstanding the foregoing, this section is not intended to limit either party's available remedies under law.
- 8.5 If errors occur in the meter, and actions have been taken based on inaccurate meter readings, the parties shall cooperate to ensure that refunds, additional payments, or other adjustments are made to avoid overpayments, underpayments, and other adverse consequences. The requirements of this section are triggered only if meter errors are greater than two percent.
- 8.6 If a meter fails to register and barring unusual circumstances or other ability to calculate water use, the amount of water delivered during such period will be deemed the amount delivered in the corresponding period immediately prior to the failure.
- 8.7 South Heart shall install, or direct to be installed, a meter at the Facility to monitor and record the number of gallons being sold for fracking purposes. In addition, South Heart shall be responsible for providing monthly reports by the 15th of each month to Dickinson identifying the amount of reuse water allocated toward irrigation and for fracking purposes.
- 8.8 South Heart shall provide to Dickinson access to their meter as requested by Dickinson for purposes of inspection and verification of reading.

9. Duration

The initial term of this Contract is on (1) year, beginning upon execution of this Contract. The parties may renew this Contract for additional terms upon agreement of the parties taking into consideration Dickinson's need to supply other entities.

10. Force Majeure

- 10.1 If natural disasters, events of nature, public emergencies, acts by public enemies, orders by governmental authorities, or other events beyond the control of a party prevent contract compliance, the duty to comply is suspended. The party owing the duty, however, shall immediately notify the other party of the noncompliance, the reason for it, and what is being done to remedy it.
- 10.2 Noncompliance under the preceding section is not a contract breach, so long as the party whose duty is suspended acts diligently and good faith to

remedy the problem and resumes compliance as soon as possible.

11. Termination

- 11.1 This contract may be terminated by mutual consent of both parties executed in writing.
- 11.2 Dickinson, by written notice to South Heart, may terminate the whole or any part of this contract under any of the following conditions:
 - 11.2.1 If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for the sale and supply of the reuse water in the indicated quantities or term set forth herein.
 - 11.2.2 If federal or state laws or rules are modified or interpreted by the responsible regulating agency in a way that the sale and supply of the reuse water is no longer allowed under applicable rules or law.
 - 11.2.3 If any license, permit, or certificate required by law or rule, affecting Dickinson's ability to provide reuse water or South Heart's ability to receive reuse water, or as otherwise required by the terms of this Contract, is for any reason denied, revoked, suspended, or not renewed.
 - 11.2.4 Termination of this Contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.
- 11.3 Either party may terminate this Contract effective upon delivery of written notice to the other party, or any later date stated in the notice:
 - 11.3.1 If one party fails to provide services or payment, or otherwise perform as required by this Contract within the time specified or any extension agreed to by the other and said party has failed to cure or remedy such non-performance within ten (10) days of notice of non-performance by the other party.
 - 11.3.2 If any license, permit, or certificate required by law or rule, affecting Dickinson's ability to sell reuse water or South Heart's ability to buy reuse water, or otherwise required by the terms of this Contract, is for any reason denied, revoked, suspended, or not renewed.

11.3.3 The rights and remedies of either party provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

12. Confidentiality

South Heart shall not use or disclose any information it receives from Dickinson under this Contract that Dickinson 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 the City. Dickinson shall not disclose any information it receives from South Heart that South Heart has previously identified as confidential and Dickinson 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 Dickinson and South Heart to maintain confidentiality of information under this section continues beyond the term of this contract.

13. Compliance with Public Records Laws

South Heart understands that, in accordance with this Contract's confidentiality clause, Dickinson must disclose to the public upon request any records it receives from South Heart. South Heart further understands that any records obtained or generated by South Heart under this Contract, except for records that are confidential under this contract, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. South Heart agrees to contact Dickinson promptly upon receiving a request for information under the public records law and to comply with the City's instructions on how to respond to the request.

14. 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 District Court of Stark County, North Dakota or North Dakota Federal Court as applicable. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non conveniens.

15. Contract Construction

Neither party shall have any provision in this Contract construed against it because it drafted the provision.

16. Independent Contractor

The parties are independent contractors. Neither party may exercise control over either the performance of the other or their employees, and neither party is the agent, employee, or representative of the other.

17. Assignment

This contract and its rights and duties may be assigned or transferred. Its provisions apply to and bind the parties' successors and assigns.

18. No Third-Party Beneficiaries

This Contract is to be construed not to benefit a person or entity not a signatory to it.

19. Notices

19.1 Notices required to be given expressly or implicitly under this Contract must be in writing. They are deemed given if delivered personally or by registered or certified mail, or facsimile, or email return receipt requested.

19.2 Notices to Dickinson must be handed to or addressed to: Administrator, City of Dickinson, 38 1st St W, Dickinson, ND 58601. Notices to South Heart must be handed to or addressed to: 103 6th St NW, South Heart, ND, 58655.

19.3 The officials and addresses to which notices must be sent may be revised by giving notice as provided in the preceding two subsections.

20. Severability

If any part of this Contract is held invalid or unenforceable, the remaining parts stay in full force and effect as though the invalid or unenforceable portions were not part of the contract.

21. Amendments

Contract amendments are binding if in a writing signed by both parties.

22. Merger Clause

This Contract contains the entire agreement between the parties. All their agreements, representations, and understandings, oral or written, are in this Contract.

City of Dickinson

Dated: _____ 2025

By: _____
Scott Decker, President
Dickinson City Commission

ATTEST:

By: _____
Dustin Dassinger
Dickinson City Administrator

City of South Heart

Dated: _____, 2025

By: _____
Brock White, its Mayor
City Council of South Heart

By: _____
Renae Praus
City Auditor