

WASTEWATER AGREEMENT

THIS AGREEMENT, made and entered into this 17th day of October, 2020, by and between the CITY OF DICKINSON, a municipal corporation whose post office address is 99 2nd Street East, Dickinson, ND 58601 (hereinafter "Dickinson") and ANDREW HEINEN AND KEANNA HEINEN, husband and wife, whose post office address is 11476 Highway 10, Dickinson, ND 58601 (hereinafter "Heinen").

WHEREAS, Dickinson currently maintains a municipal sewer system for the municipality; and

WHEREAS, Heinen owns a tract of land located approximately 5 miles outside the City limits of Dickinson located in the NW¼ of Section 12, Township 139, Range 97 West, Stark County ("the Property").

WHEREAS, Heinen will operate a business on the Property and desires to connect to Dickinson's sewage system; and

WHEREAS, the Dickinson municipal sewer system has sufficient capacity to handle the increased sewage anticipated from Heinen, and can allow Heinen 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 Heinen to the Dickinson municipal sewer system.

2. PRIVATE SYSTEM: The Heinen sewage system, including all pipeline pumping stations, piping and appurtenances, shall be considered a private system, and shall in no way be construed to be a public system or a part of the Dickinson municipal sewer system.

3. CONNECTION: Dickinson agrees to allow Heinen to connect to its sewer 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. Heinen shall receive a permit, as required by § 38.12.030 of the Dickinson Municipal Code, and shall pay a sewer access charge as contained within Dickinson's annual fee schedule, which may be adjusted from time to time.

4. HEINEN SYSTEM: Heinen shall be solely responsible for all costs associated with construction of its system, including but not limited to all pipe, materials, and facilities up

to and including the point of connection to the Dickinson system. All construction and facilities must comply with the state plumbing code and any requirements of the Dickinson for private sewer systems within the city. Heinen 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: Heinen will provide the initial meter reading and/or hour meter reading to Dickinson upon execution of this agreement. Heinen will also provide monthly water consumption records his well with the sewer bill payment to Dickinson.

Heinen agrees that, if said meter becomes inoperable for any portion of a particular month, that it will pay sewage charged for said month equal to an average of the last three months, unless the sewage can be estimated. If Dickinson and Heinen agree on the estimated volume, the monthly charge shall be based upon said volume for that month.

6. SEWAGE CHARGES: Heinen agrees to pay sewage charges at the rates specified in Dickinson's annual fee schedule, which may be adjusted from time to time. Dickinson shall submit a bill to Heinen on or around the 20th day of each month for the sewage charges for the previous month. Thereafter, Heinen shall have 10 days to pay the invoiced amount. Sewer charges will be back-calculated to October 1, 2020, the approximate date that Heinen move into and occupied the building. October 1, 2020 will mark the beginning of the connection to the Dickinson collection system and initial use of the Southwest Water Pipeline meter.

7. TESTING: During the first year of this agreement, Dickinson shall have the authority to test the sewage quarterly for total suspended solids, BOD, ammonia nitrogen, and other chemical or biological components. Thereafter, the sewage shall be tested annually. The sewage shall be tested for purposes of determining any applicable surcharge under § 38.20.040 of the Dickinson Municipal Code. The results of said test shall govern for determining the surcharge until a new test is performed and the results obtained. Dickinson employees shall collect and transport all samples in conformance within the Clean Water Act and 40 CFR 136, and tests shall be performed by a North Dakota licensed laboratory. Heinen shall be solely responsible for all costs associated with said testing.

Dickinson shall have the authority, at all other times, to conduct testing at its expense. If said testing is done, it shall provide Heinen with copies of all said tests, and the surcharge shall be based upon the results until the next test is done.

8. WELL WATER READINGS: Dickinson shall have the right, upon demand, to inspect the water meter and/or hour meter records of the well to determine the water usage of Heinen. Until annexation occurs, sewer rates shall be calculated on the monthly readings of the Heinen well flow.

9. OPERATION AND MAINTENANCE: Heinen shall be solely responsible for all maintenance and operation costs for its private sewage system, including a pro rata share of any expense attributable to the manhole where the Heinen system connects to the Dickinson sewage system. Heinen will keep its private sewage system watertight, so as not to allow inflow into the system. Dickinson reserves the right to stop flow from the private sewage system if the system is not kept watertight.

10. ADDITIONAL CONNECTIONS: Heinen shall not allow any other person or entity to connect to or discharge any sewage into its system, except with the express written authority of Dickinson.

11. TERMINATION: Heinen may terminate this agreement upon 60 days written notice to Dickinson.

Dickinson may terminate this agreement if:

- a. Heinen fails to pay the sewage charges when due, and the delinquency continues for a period of 60 days;
- b. Failure for Heinen 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. Determination by Dickinson that the sewage is harmful to the Dickinson sewage system or the residents of Dickinson; or
- e. Annexation of the Heinen property to the City of Dickinson.

If Dickinson terminates this agreement, it shall give Heinen 60 days written notice of its intent to terminate.

If either party elects to terminate, Heinen shall be solely responsible for all costs associated with disconnecting from the Dickinson system and placing Dickinson's sewage system in the same condition as it was prior to the connection. Heinen shall also pay all sewage charges incurred up to the date the disconnection is made.

12. CAPITAL IMPROVEMENTS: It is understood that Dickinson may need to improve its municipal sewage system in the future, through special assessments or otherwise. It is agreed that Heinen should be responsible for a portion of the costs of said improvements, as its system will be benefitted by improvements to the Dickinson system. Heinen agrees to pay a portion of the cost of the improvements to the Dickinson municipal sewage system, as follows:

- a. If improvements to the municipal sewage system are financed by a city-wide assessment, Heinen agrees to pay a portion of the total cost of the improvement equal to the percentage of volume of its sewage compared to the total volume of the City. The volume shall be computed using the previous 12 months of volume data.
- b. If improvements are made to the sewage system which are financed by a special assessment district that is not-city wide, Heinen shall participate in the cost of the improvements if the point of connection is located within the special assessment district. Heinen agrees to pay that portion of the total improvement cost that represents the volume percentage which Heinen's volume relates to the total sewage volume in the special assessment district, using the previous 12 months of volume data.
- c. If the improvements are financed by a method other than special assessments, Heinen shall pay the percentage of cost of the entire improvement as its sewage volume relates to the entire sewage volume of the City, using the previous 12 months of data.

The costs shall be paid by Heinen within 30 days after receipt of the bill of the City.

13. NON-TRANSFERABLE: It is agreed that this agreement is solely for the benefit of the parties hereto. Heinen may not transfer its 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.

14. ANNEXATION: In consideration of the terms and conditions of this agreement, Heinen 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.

15. INDEMNIFICATION: Heinen 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 an person or entity, arising in whole or in part from:

- a. The discharge of sewage into the Dickinson municipal sewage system;
- b. All environmental liabilities arising under all federal, state, or local environmental laws, regulations, and requirements, including, but not limited to, all claims arising under the provisions of 42 USCS § 9601, et. Seq. and NDCC § 23-20.2, 23-20.3, 23-20.5, or 73-29, together with all rules and regulations promulgated thereunder;
- c. Any spill, discharge, leakage, or drainage of sewage from the Heinen private system or the connection to the Dickinson system; and
- d. Any other claim arising out of the subject matter of this contract.

16. ODOR: Heinen agrees to take such steps as are necessary to limit excessive odor from its system, including odors emanating from air vents in the system.

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

18. COMPLIANCE WITH LAWS: Heinen shall comply with all federal, state, and local laws, rules, and regulations pertaining to the matters contained in this agreement.

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

20. 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.

21. NON-WAIVER: Each right, power or remedy conferred upon Dickinson or Heinen 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 Andrew Heinen 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 Heinen 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.

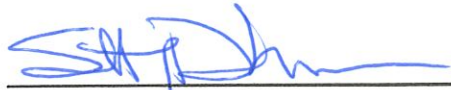
22. GOVERNING LAW – VENUE: This Agreement shall be governed by and construed according to the laws of the State of North Dakota. The parties hereby stipulate and agree that the District Court, Southwest Judicial District, State of North Dakota, shall have personal jurisdiction over the parties hereto, 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.

23. 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)

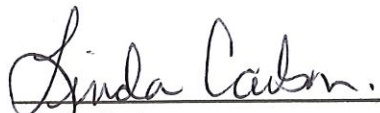
IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

CITY OF DICKINSON

By: 

Scott Decker, President
Board of City Commissioners.

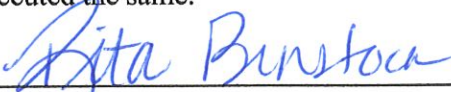
ATTEST:



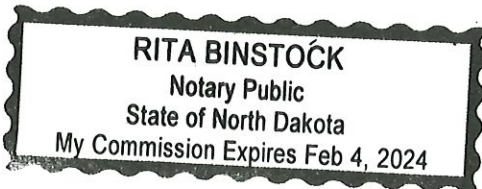
Linda Carlson
Deputy City Administrator

STATE OF NORTH DAKOTA)
) ss
COUNTY OF STARK)

On this 8th day of October, 2020, before me personally appeared **SCOTT DECKER** and **LINDA CARLSON**, known to me to be, respectively, the President of the Board of City Commissioners and the Deputy City Administrator of the City of Dickinson, the persons who are described herein and who executed the within and foregoing instrument and acknowledged to me that the City of Dickinson executed the same.



Notary Public
Stark County, North Dakota



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

ANDREW HEINEN

[Handwritten signature of Andrew Heinen]

KEANNA HEINEN

[Handwritten signature of Keanna Heinen]

STATE OF NORTH DAKOTA)
): ss
COUNTY OF STARK)

On this 30th day of September, 2020, before me personally appeared Andrew Heinen and Keanna Heinen, described herein, known to me, and who executed the within and foregoing document and acknowledged to me that they executed the same.

RITA BINSTOCK
Notary Public
State of North Dakota
My Commission Expires Feb 4, 2024

[Handwritten signature of Rita Binstock]

Notary Public
Stark County, North Dakota