

**CITY OF RAPID CITY EARLY CONNECTION WATER SERVICE AGREEMENT  
FOR PROPERTY LOCATED IN THE EAST RAPID CITY USERS REGION**

This Agreement is made and entered into by and between the City of Rapid City, a municipal corporation, with its address of 300 6th Street, Rapid City, South Dakota 57701, herein referred to as “City” and \_\_\_\_\_, whose billing address is \_\_\_\_\_, hereinafter referred to as “Owner.”

**PURPOSE OF AGREEMENT:** This agreement defines the terms and conditions upon which the City will provide water service to property currently located outside the City of Rapid City within the East Rapid City Users Region (the “District”). The address of the property to receive water service subject to this agreement is:

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WHEREAS, the City of Rapid City authorized staff to provide water service to the District; and

WHEREAS, the District was identified in Resolution No. 2016-072 by the City as the benefitting area from the construction of water mains east of Rapid City; and

WHEREAS, the City has undertaken a project (the “Project”) which will provide water service for Owner’s property; and

WHEREAS, a portion of the project costs funded by the City shall be recouped by establishing a surcharge within the benefitting area; and

WHEREAS, the Owner wishes to receive water service from the City and the City desires to provide water service to the Owner; and

WHEREAS, it is the intent of the parties to enter into this Agreement stating the conditions under which the City will provide water service.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, it is agreed by the parties as follows:

1. Recitals. The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.

2. Right to Connect. The City hereby grants to the Owner the right to connect the above-described property to the City’s water system as provided herein.

3. Early Connection Incentive. In exchange for Owner’s execution of this Early Connection Water Service Agreement, the City agrees to tap the City’s water main and install a water service line for the property as follows: the service line shall be constructed from the city’s main up to the boundary between the Owner’s property and either the public right-of-way or the City’s water utility easement, as the case may be. City also agrees to install a curbstop for the service line at the boundary line as described. Unless otherwise requested by the Owner, the City shall install a one inch (1”) service line and curbstop.

4. Level of Participation Required. Owner acknowledges that City may not construct the improvements described in this Agreement unless 70% of the properties within each proposed project service area, as shown on Exhibit A, sign an Early Connection Water Service Agreement. For purposes of calculating the 70% requirement, only those properties that contain structures currently connected to a water source shall qualify. If the required 70% of property owners do not execute an agreement, then the City is not obligated to construct the water mains, service lines, and curbstops, or provide water service to the Owner’s property. In the event the City does not construct the water mains as anticipated, this Agreement shall terminate, and neither party shall have any further obligations. City shall provide notification to Owner of the level of participation and City’s intentions regarding construction of the proposed water mains, service lines, and curbstops, and providing water service to Owner.

5. Regulations Governing Water Use. Owner understands that provision of water service shall be in accordance with all City of Rapid City Municipal Codes, policies, rules and regulations that apply to City water use and service, to the extent not expressly modified by this Agreement. Owner covenants and agrees to follow and be bound by all such ordinances, laws, rules, and regulations. The City retains the right to amend its municipal codes, rules, regulations, and policies at any time.

6. Water Rates. Owner agrees to pay the rates, fees, and usage charges established by the Municipal Code. Owner understands that if the Property becomes contiguous to the City's corporate limits, and if owner does not annex the Property, the water rate is subject to increase. Current City policy, at the time of execution of this Agreement, provides for a 300% increase if a contiguous property does not annex.

7. Surcharge. Owner agrees to pay a surcharge of \$65.00 per month. This surcharge amount will be paid in addition to City water rates and usage charges established by the Municipal Code. This monthly surcharge shall continue to be billed and collected until such time as the project costs to be recouped by the City have been collected. Once the project costs have been recouped, the surcharge will be removed from the next billing cycle. The City agrees that the surcharge will not be increased while this Agreement is in effect.

8. Quantity and Quality of Water. The City makes no representations as to the quantity, pressure, or quality of water to be supplied to Owner, nor to any right to or warranty of uninterrupted service. Furthermore, Owner hereby releases and forever waives any claim it or its successors and assigns may have against the City for quantity, pressure or quality of water provided by City pursuant to this Agreement.

9. Owner's Obligations. Owner agrees to abide to the following terms:

- a. If the billing address changes during the course of service, Owner shall provide a current address to which all invoices shall be mailed.
- b. Owner agrees to pay all amounts due as shown on the monthly billing statement provided by the City. Should Owner fail to make payment of the surcharge or any other amounts due for water service, in addition to shutting off water service, the City shall have all legal and equitable remedies provided by law to collect said payment. In the event City is forced to initiate collection, the Owner agrees to be responsible for all costs of collection including collection agency fees and charges, reasonable attorneys' fees and costs, court costs, and interest at the legal rate.
- c. Owner shall be responsible for construction of a service line from the curbstop installed by the City to the structure to be served. Construction shall be in accordance with all city standards, ordinances, and policies.
- d. Owner shall be responsible for installation of a City-furnished meter with radio read capabilities. Owner shall also be responsible for completing any and all plumbing modifications necessary to install meters. The City will furnish the meter, but it will only provide meters to plumbers licensed by the City. In order to obtain a meter, Owner must open an account with the City and the Owner's licensed plumber must sign a certification that backflow preventers, pressure relief valves, expansion tanks, etc. as required by City specifications and the Uniform Plumbing Code, as adopted and amended by the City, are installed and functioning.
- e. Temporary access on the Owner's property will be required to install the water distribution system components. By execution of this Agreement, Owner consents to such access and grants to the City a license to enter upon the Property to construct and install the necessary water main and service appurtenances.
- f. All maintenance and repair of curbstops and service lines upon completion of the City's Project shall be the responsibility of the Owner. Repair or replacement of curbstops and service lines shall be undertaken by the Owner in accordance with the City's codes, specifications, rules, regulations, and policies.

10. City Obligations. City agrees to perform the following:

- a. City shall furnish water meters with radio read capabilities for installation as described above.
- b. City will provide water service to Owner according to its ordinances and policies, except as modified by this Agreement.
- c. In all cases except emergencies, whenever the City requires access to the Owner's property, the City will attempt to coordinate the time and details of such access.
- d. As part of the Project, the City will construct a water service line from the main and install a curbstop as described in Paragraph 3.

- e. City will include, as part of the Project, restoration to original condition of Owner's property where temporary access is required for construction purposes.
- f. City will not discriminate in the provision of services on the basis of race, color, sex, creed, religion, ancestry, disability, or national origin.

11. Additional Easements or Rights-of-way. Owner agrees that if additional rights-of-way, utility easements, and/or access easements are needed for City to construct the improvements described in this Agreement or to otherwise provide water service to the Property, Owner will grant any such rights-of-way and easements and will dedicate them to the City without further cost or expense to the City.

12. Owner's Debts and Expenses. The parties agree that City will not be responsible for any of Owner's debts or obligations incurred prior or subsequent to this Agreement. The parties agree that nothing in this Agreement is meant to impose responsibility for any such debts or obligations of the Owner upon City as a result of the improvements constructed as contemplated by this Agreement.

13. Water Service Line Responsibility. The parties agree that, upon connection to the City water distribution system and assumption of responsibilities for water service to the Owner, the City will not assume responsibility for any water service lines between the water main and any residence and/or building. At such time as a water service line needs to be repaired or replaced, it shall be replaced at Owner's expense in accordance with City requirements.

14. Owner Must Follow Laws. Owner agrees to obtain all applicable permits and follow all laws, ordinances, administrative rules, and regulations, including payment of all applicable fees relating thereto, when constructing connections to the City's water system.

15. Water Account for City Service. Following execution of this Agreement, Owner agrees to contact the City's utility billing office to open an account in his/her name. Owner further acknowledges that pursuant to city ordinance, a refundable deposit based upon meter size, as well as a one-time nonrefundable service charge to set up each account will be charged. Owner agrees to provide all necessary information and assistance as may be required to set up such account. The account shall be opened only in the name of the Owner and may not be transferred to another person that is not the Owner. Owner shall be responsible for all water used up and until the service is discontinued and account closed.

16. Default. If Owner fails to perform the obligations described in this Agreement, or if the Owner fails to open a water account with the City, the parties agree that the Owner shall be liable to reimburse the City for the costs incurred to provide water service to the Property. In the event City is forced to initiate collection, the Owner agrees to be responsible for all costs of collection including collection agency fees and charges, reasonable attorneys' fees and costs, court costs, and interest on the construction fee at the rate of ten percent per annum.

17. Indemnification. Owner agrees to defend, release, indemnify and hold City harmless from any and all liability arising from the connection of Owner's water service line to the City's water main by Owner, its officers, directors, contractors, agents and/or employees.

18. Integration. This Agreement and the agreements and documents referred to herein (including any exhibits incorporated herein) contain the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, negotiations, and understandings, whether written or oral, relating to the subject matter hereof. This Agreement may only be amended by a written document duly executed by all parties.

19. Third Parties. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns. Nothing herein shall give or be construed to give any person or entity, other than the parties hereto, their respective successors, and permitted assigns, any legal or equitable rights hereunder.

20. Assignment. This Agreement and the rights, duties, and obligations hereunder may not be transferred or assigned by either of the parties, whether directly or indirectly by merger, consolidation, reorganization, dissolution, operation of law or otherwise, without the prior written consent of the other party. Any attempted transfer or assignment without consent in violation of the foregoing shall be void. Subject to the foregoing, this Agreement and the provisions hereof shall be binding on the parties and their respective permitted successors and assigns.

21. Further Action. The parties covenant and agree that each shall execute and deliver such further instruments or documents as shall be necessary or convenient to effectuate the purposes contemplated by this Agreement.

22. Severability. The invalidity of all or any part of any section of this Agreement shall not render invalid the remainder of this Agreement or the remainder of such section. If any provision of this Agreement is held to be unenforceable for any reason, it shall be modified rather than voided, if possible, in order to achieve the intent of the parties to this Agreement to the extent possible.

23. Counterparts. This Agreement may be executed in several counterparts and all so executed shall constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart. Furthermore, regardless of the actual day of execution, this Agreement shall be effective as of the date set forth above.

24. Further Action. The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purpose of the Agreement.

25. Construction. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against any party. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision. The parties agree that each party has reviewed this Agreement and has had the opportunity to have its counsel review the same. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

26. Choice of Law. This Agreement shall be governed and construed in accordance with the laws of the state of South Dakota, without regard for its choice-of-law principles, and all claims relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the state of South Dakota, without regard for its choice-of-law principles.

27. Jurisdiction and Venue. The parties hereto explicitly agree to submit to the personal jurisdiction of South Dakota state courts, and any dispute relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall be decided solely and exclusively by the Circuit Court located in Rapid City, South Dakota.

## OWNER

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(date)

## CITY OF RAPID CITY

\_\_\_\_\_  
Public Works Director