

Prepared by City Attorney's Office  
300 Sixth Street  
Rapid City, SD 57701  
(605) 394-4140

**COVENANT AGREEMENT BETWEEN THE CITY OF RAPID CITY  
AND DEBORAH STEELE AND HAROLD STEELE  
ALLOWING CONNECTION TO CITY WATER SYSTEM**

This Agreement is entered into this 31<sup>st</sup> day of October, 2019, by and between **DEBORAH STEELE AND HAROLD STEELE**, of 2905 Bunker Drive, Rapid City, SD 57701 (the "Landowners"), and the **CITY OF RAPID CITY**, a South Dakota municipal corporation, of 300 Sixth Street, Rapid City, South Dakota, 57701 (the "City").

WHEREAS, the Landowners hereby acknowledge they are the owners of record of property legally described as:

**The North 247.5 feet of the Southeast Quarter of the Southeast Quarter  
(SE1/4SE1/4) of Section 23, Township 2 North, Range 7 East, of the Black  
Hills Meridian (T2N, R7E, BHM), Pennington County, South Dakota.**

which is referred to throughout this Covenant Agreement as the "Property"; and

WHEREAS, Landowners wish to connect to the City's water utility within Bunker Drive adjacent to their Property; and

WHEREAS, City of Rapid City Resolution No. 2014-092 discusses the City's provision of water and/or sewer utility services to properties located outside of City limits and states that properties adjacent to City limits are to be annexed prior to services being provided or they will pay fees for the utility service equivalent to 300 percent of the fees for residential customers within the City; and

WHEREAS, although the Property is adjacent to City limits, neither the City nor the Landowners wish for the Property to be annexed at the time of this Covenant Agreement; and

WHEREAS, on October 7, 2019, the City Council granted a request from Landowners to connect to City water service at the residential rates charged to users within the City without annexing the Property; and

WHEREAS, the City and Landowners wish to enter into this Covenant Agreement in order to reduce to writing their mutual understandings and agreements regarding the future annexation of the Property and Landowners' connection to the City's water system.

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

1. 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. Landowners' Water Connection. The City hereby grants Landowners the right to connect one (1) service tap to the City's water system in Bunker Drive. Landowners shall abide by all municipal codes, resolutions and policies enacted by the City related to its water service system. Landowners agree to obtain all applicable permits and follow all laws, ordinances, administrative rules, and regulations, including payment of all applicable fees relating thereto, when constructing their connection to the City's water system. The Landowners are also responsible for all costs associated with construction or reconstruction of the service line or lines from any building to the main or service stub as needed to provide facilities that comply with the City's standard specifications and ordinances.

3. Fees. Upon construction of the connection to the City's water utility, the City shall provide water service at 100% of the retail water rates charged to customers within Rapid City, except as otherwise provided in Section 4. All rates shall be those set by resolution or ordinance of the City Council.

4. Annexation. If the Public Works Director provides written notice to Landowners of the City's intention that the property be annexed, Landowners shall submit to the City a petition for voluntary annexation pursuant to SDCL 9-4-1 (as adopted or amended) within sixty (60) days after receipt of this notice. If Landowners fail to timely submit a petition for voluntary annexation, then City shall have the option to either (1) disconnect the property from service after sixty (60) days notice of intent to disconnect service, or (2) increase all fees and charges for the utility service to three hundred percent (300%) the rate for residential customers within the City in the next billing cycle and thereafter. Should the City elect to increase fees and charges, it shall retain the right to disconnect service with sixty (60) days notice.

If Landowners fail to timely submit a petition for voluntary annexation in accordance with this Section, City may undertake proceedings to involuntarily annex the Property pursuant to state law. If such involuntary annexation of the Property is referred to a public vote pursuant to state law, then City may seek reimbursement from Landowners for the City's costs for the public referendum vote.

5. Covenant to Refrain from Annexing. Landowners agree that they shall not voluntarily annex into any other municipality or annex into a rural water, sanitary, or other water or wastewater utility-providing district during the life of this Covenant Agreement.

6. Enforcement of Covenants. The City may undertake any legal or equitable action available to enforce the provisions of this Covenant Agreement in addition to any remedy provided herein. The assessments shall be a lien upon the real property until paid by the Landowners. In the event the City is required to undertake any action to enforce the terms of this Covenant Agreement, the undersigned Landowners, on behalf of themselves and their heirs, assigns or successors in interest, covenant and agree that the City may recover from the property owner its reasonable expenses, including attorney's fees incurred with respect to such action.

7. Term. This restrictive covenant is intended to last the maximum length of time as may be permitted by law, and at the end of any maximum term, as permitted by law, this restrictive covenant will automatically renew and be extended for an additional maximum term as may be permitted by law.

8. Covenant Runs with the Property. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, and successors in interest of the Landowners, and shall be considered as a covenant running with the above described property. Furthermore, it is agreed that, in accepting title to the above described property, any grantee, heir, assign, or successor in interest to the undersigned expressly agrees to be bound by the terms of this Agreement recorded with the Pennington County Register of Deeds' Office.

9. Waiver. Failure of a party to insist upon adherence to any term of this Agreement on any occasion shall not be considered a waiver, or deprive that party of the right thereafter to insist upon adherence to that term, or any other term of this Agreement.

10. Authority. Landowners warrant that they have the power to enter into this Agreement.

11. Entire Agreement. This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written. This Agreement may only be amended by a written document duly executed by all parties.

12. Jurisdiction and Venue. This Agreement shall be interpreted under the laws of the State of South Dakota. Any litigation under this Agreement shall be resolved in the circuit court of Pennington County, State of South Dakota.

13. Specific Performance. The City shall have the right to seek specific performance from Landowners of the obligations and undertakings in this Covenant Agreement upon Landowners' refusal to abide by the terms of this Covenant Agreement. In the event the City is required to undertake any action to specifically enforce the terms of this Covenant Agreement, the undersigned Landowners, on behalf of themselves and their heirs, assigns or successors in interest, covenant and agree that the City may recover from the property owner its reasonable expenses, including attorney's fees incurred with respect to such specific performance action.

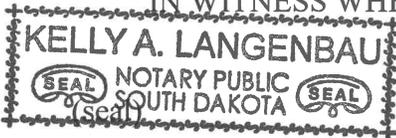
Dated this 31 day of October, 2019.

Deborah Steele  
**DEBORAH STEELE**

State of South Dakota )  
 ) ss.  
County of Pennington )

On this the 31<sup>st</sup> day of October, 2019, before me the undersigned officer, personally appeared Deborah Steele, the person whose name is subscribed to the within document and who acknowledged that the same was executed for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Kelly A. Langenbau  
Notary Public  
My Commission Expires: 10/5/2022

Dated this 31 day of October, 2019.

Harold Steele  
**HAROLD STEELE**

State of South Dakota )  
 ) ss.  
County of Pennington )

On this the 31<sup>st</sup> day of October, 2019, before me the undersigned officer, personally appeared Harold Steele, the person whose name is subscribed to the within document and who acknowledged that the same was executed for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Kelly A. Langenbau  
Notary Public  
My Commission Expires: 10/05/2022

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**CITY OF RAPID CITY**

\_\_\_\_\_  
Mayor Steve Allender

ATTEST:

\_\_\_\_\_  
Finance Officer

(seal)

State of South Dakota        )  
  ss.  
County of Pennington        )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned officer, personally appeared Steve Allender and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

(seal)

\_\_\_\_\_  
Notary Public - South Dakota  
My Commission Expires \_\_\_\_\_