COVENANT AGREEMENT BETWEEN THE CITY OF RAPID CITY
AND LANDOWNER ALLOWING CONNECTION TO CITY WATER SYSTEM

This Agreement is entered into this ___ day of ____________________, 2020, by and
between DEVCOR, LLC, of PO Box 2192, Rapid City, SD 57709 (the “Landowner”), and the
CITY OF RAPID CITY, a South Dakota municipal corporation, of 300 Sixth Street, Rapid City,
South Dakota, 57701 (the “City”).

WHEREAS, the Landowner is the owner of record of property legally described as:

Lots 2 through 19, inclusive, of Block 6, Lots 8 through 15, inclusive, of Block
7, Lots 22 through 41, inclusive, of Block 5, Prairiefire Subdivision, all in
Section 26, T11N, R8E, BHM, Pennington County, South Dakota.

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

WHEREAS, Landowner wishes to connect to the City’s water utility within the Prairiefire
Subdivision and adjacent to the Property; and

WHEREAS, the City’s Common Council passed Resolution No. 2014-092, which
regulates the City’s provision of water and/or sewer utility services to properties located outside
of City limits; and

WHEREAS, Resolution No. 2014-092 requires that property owners of properties not
contiguous with city limits execute a covenant agreement running with the land that requires
annexation upon becoming contiguous or pay an increased fee for utility service; and

WHEREAS, the City’s Common Council authorized city utility service in this area, known
as the East Rapid City Water Users Region; and

WHEREAS, the City and Landowner 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 Landowner’s connection to the City’s water and sewer systems.
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. **Utility Connections.** The City hereby grants Landowner the right to connect each residential lot to be platted on the above-described Property to the City’s water and sewer systems. Landowner shall abide by all municipal codes, resolutions, and policies related to its water and sewer service system. Landowner 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 its connection to the City’s water and sewer systems. The Landowner, or its successors-in-interest, shall also be responsible for all costs associated with construction or reconstruction of service 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.** The City shall provide water and sewer 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 Landowner of the City’s intention that the property be annexed, Landowner shall submit to the City a petition for voluntary annexation pursuant to SDCL 9-4-1 (as amended, or its successor if repealed) within sixty (60) days after receipt of this notice. If Landowner fails 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%) of 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. 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.

[Signature pages follow]
Dated this 24th day of April, 2020.

DEVCOR, LLC

By

William Freytag, Member

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

On this the 24th day of April, 2020, before me the undersigned officer, personally appeared William Freytag, who acknowledged himself to be the Member of DEVCOR, LLC, and that as such Member, being authorized so to do, executed the foregoing for the purposes therein contained.

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

RENEE CATRON
NOTARY PUBLIC
State of South Dakota

(Seal)

RENEE CATRON
Notary Public
My Commission Expires: 10/11/2024
Dated this ________ day of ________________________, 2020.

CITY OF RAPID CITY

__________________________
Mayor Steve Allender

ATTEST:

__________________________
Finance Officer
(seal)

State of South Dakota  )
 ss.
County of Pennington  )

On this the ______ day of ________________________, 2020, 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 ____________________