

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 MICHAEL HAYES AND STACIE HAYES
ALLOWING CONNECTION TO CITY WATER SYSTEM**

This Agreement is entered into this 16 day of March, 2021, by and between **MICHAEL HAYES AND STACIE HAYES**, of 3700 143RD Avenue, 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:

**Lot One (1) of Prairie Home Subdivision, as shown by the plat recorded in
Book 15 of Plats on Page 67 in the Office of the Register of Deeds,
Pennington County, South Dakota.**

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

WHEREAS, on August 7, 2017, the City Council authorized that the Property could connect to City water in accordance with Resolution 2014-192 upon execution of a covenant agreement discussing future annexation as well as payment of construction fees; and

WHEREAS, Landowners now wish to connect to the City's water utility within 143rd Avenue adjacent to their 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 143rd Avenue. Landowners shall abide by all municipal ordinances, 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. 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. At the time of execution of this Agreement, the parties agree that the Property is not contiguous to City limits. Landowners agree that they will sign and submit a petition to annex the Property to the City within 30 days of Landowners' receipt of written notice from the City that the Property has become contiguous to City limits and is therefore eligible for annexation. 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 or six hundred percent (600%) for commercial and industrial 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 parties agree that each party shall have the mutual right to seek specific performance from the other party of the obligations and undertakings in 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 16 day of March, 2021.



MICHAEL HAYES

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

On this the 16th day of March, 2021, before me the undersigned officer, personally appeared Michael Hayes, 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 Langenbau
Notary Public
My Commission Expires: 10/05/2022

Dated this 16 day of March, 2021.

Stacie Hayes
STACIE HAYES

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

On this the 16th day of March, 2021, before me the undersigned officer, personally appeared Stacie Hayes, 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 Langenbau
Notary Public
My Commission Expires: 10-05-2022

Dated this _____ day of _____, 2021.

CITY OF RAPID CITY

Mayor Steve Allender

ATTEST:

Finance Director

(seal)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2021, 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 Director, 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 Director.

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

(seal)

Notary Public - South Dakota
My Commission Expires _____