

PREPARED BY: City Attorney's Office
300 Sixth Street
Rapid City, SD 57701
(605) 394-4140

WEN
6-8-15

**COVENANT AGREEMENT AND RELEASE OF LIABILITY BETWEEN
THE CITY OF RAPID CITY AND THE CHURCH OF THE BLESSED SACRAMENT
OF RAPID CITY**

This declaration of covenant and agreement (the "Covenant Agreement") is entered into this ____ day of _____, 2015, by and between the **CITY OF RAPID CITY**, a South Dakota municipal corporation, of 300 Sixth Street, Rapid City, SD 57701 (the "City") and the **CHURCH OF THE BLESSED SACRAMENT OF RAPID CITY**, of 4500 Jackson Boulevard, Rapid City, SD 57702 (hereinafter the "Landowner").

WHEREAS, the Landowner is the owner of record of property within the city of Rapid City, as more particularly described below; and

WHEREAS, the City has constructed, operated and maintained a reservoir for its water service system on the Landowner's property; and

WHEREAS, the City no longer needs or desires to operate and maintain the reservoir; and

WHEREAS, the Landowner desires to keep the reservoir on the property in lieu of it being demolished by the City; and

WHEREAS, the City is willing to leave the reservoir structure on the property in exchange for a release of liability from Landowner; and

WHEREAS, the City and Landowner desire to reduce their agreement to writing.

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 Covenant Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.

2. This Covenant Agreement applies to the following described real property owned by Landowner:

**Lot 1 of Tract A located in the SE¼NE¼ of Section 8, T1N, R7E,
Rapid City, Pennington, County, South Dakota.**

3. The City agrees to abandon the reservoir located on the property. The City is performing the following work in lieu of demolishing the reservoir: removing the access door on the top and filling the space with concrete; opening the valve located on the pipe leading out from the floor drain inside the reservoir; removing bolts in an attempt to smooth the surface on the top of the reservoir; and adding dirt to the sides of the reservoir top. The City makes no warranties as to the work described herein. The Landowner intends to use the top of the reservoir as a patio-type area. The City has made the Landowner aware that the reservoir has not been filled with material, and also that the Landowner is responsible for its own assessment of the structure and its safety and suitability for that purpose. **THE CITY EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE ABANDONED RESERVOIR IS FIT FOR THE PURPOSE FOR WHICH LANDOWNER INTENDS TO USE IT.**

4. The Landowner covenants and agrees to accept the abandoned reservoir structure **AS IS WITH NO WARRANTIES** by the City. Landowner understands and acknowledges that the City hereby expressly disclaims any and all warranties, whether express or implied, with respect to the land, improvements, and real and personal property, including without limitation, any warranty of habitability, warranty of merchantability, or warranty of fitness for a particular use.

5. Landowner acknowledges that the structure was constructed as a reservoir to hold water, and using it for other purposes pose risks and hazards that may or may not be readily apparent. Landowner freely assumes this risk, and agrees to release and hold the City harmless as provided herein.

6. Landowner, on behalf of itself and its heirs, personal representatives and assigns, does hereby release and discharge the City of Rapid City, its employees, agents, officers and assigns (together the "Releasees"), of and from all liability for damages to itself or its successors, heirs, personal representatives and assigns, for any and all actions, claims, demands, losses or damages as a result of injury to persons or property in any way resulting either directly or indirectly from the Landowner's ownership, use, operation or maintenance of the reservoir structure.

7. Landowner further covenants and agrees for itself and its heirs, personal representatives and assigns, that it will not make a claim against, sue, attach the property of or prosecute the City of Rapid City for any injury to persons or damage to property resulting from the Landowner's ownership, use, operation or maintenance of the reservoir structure.

8. Landowner also covenants and agrees for itself and its heirs, personal representatives and assigns, to indemnify, defend and hold harmless the Releasees from all liability, actions, causes of action, claims, demands, losses, damages, expenses and attorney fees, including attorneys fees to establish the Releasees' right to indemnity or those attorneys fees incurred on appeal, resulting from claims or suits related to Landowner's ownership, use, operation or maintenance of the reservoir structure.

9. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, or successors in interest of the Landowner, and 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 Covenant Agreement

10. 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. Violation of any covenant contained in this Covenant Agreement shall give the City the right to enter upon the land where the violation has occurred and, at the expense of the Landowner, abate and/or remove the same. The Landowner agrees to pay the City for any assessments, costs or expenses incurred by the City for any maintenance work due to the Landowner's failure to abide by the covenants contained herein. The assessments shall be a lien upon the real property until paid by the Landowner. In the event the City is required to undertake any action to enforce the terms of this Covenant Agreement, the undersigned Landowner, on behalf of himself/herself and his/her heirs, assigns or successors in interest, covenants and agrees that the City may recover from the owner of said property its reasonable expenses, including attorney's fees incurred with respect to such action.

11. The covenants contained herein shall be deemed as continuing. Any failure or delay in enforcing the same, on any occasion, or repeated occasions, shall not impair or affect the covenant so far as any future or other breach is concerned. It is understood and agreed that no waiver of any breach of the covenant herein contained shall be construed to be a waiver of any other breach of the same or other covenant, nor shall failure to enforce any one of the restrictions, either by forfeiture or otherwise, be construed as a waiver of any other restriction or condition.

12. 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.

13. This Covenant Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

14. If any section(s), or provision of this Agreement are declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision of this Agreement if they can be given effect without the invalid section(s) or provisions.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(seal)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 20____, 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 Agreement Consenting to Assessed Project 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: _____

2014

Enter Filing Year

ANNUAL REPORT

Secretary of State Office
500 E Capitol Ave
Pierre, SD 57501
605)773-4845

DOMESTIC CHURCH

Please Type or Print Clearly In Ink

FILING FEE: \$10.00 Make check payable to SECRETARY OF STATE

FILE DATE 9/17/2014

RECEIPT NO 232402

1. Corporate Name and Mailing Address:

CH002158
THE CHURCH OF THE BLESSED SACRAMENT OF RAPID CITY
4500 JACKSON BLVD
RAPID CITY, SD 57702-4972

2. The jurisdiction under whose law it is formed SOUTH DAKOTA

3. The address of the principal executive office (business address).

4500 JACKSON BLVD RAPID CITY SD 57702-4972
Street Address City State ZIP+4

Mailing Address City State ZIP+4

4. The name of the South Dakota Registered Agent

Agent Name: BRIAN LANE

4500 JACKSON BLVD. RAPID CITY SD 57702-4999
Street Address or Rural Route Box Number in This State and City State ZIP+4

Mailing Address in This State, if Different from Street Address City State ZIP+4

5. The names and business addresses of its principal officers and directors. Please place a check mark next to the name if the principal officer serves as a director.

<input checked="" type="checkbox"/>	BISHOP ROBERT GRUSS	P O BOX 678	RAPID CITY	SD	57709
	President	Street Address	City	State	ZIP+4
<input checked="" type="checkbox"/>	VICAR GENERAL STEVE BIEGLER	P O BOX 678	RAPID CITY	SD	57709
	Vice President	Street Address	City	State	ZIP+4
<input checked="" type="checkbox"/>	BISHOP ROBERT GRUSS	P O BOX 678	RAPID CITY	SD	57709
	Director	Street Address	City	State	ZIP+4
<input checked="" type="checkbox"/>	REV BRIAN LANE	4500 JACKSON BLVD	RAPID CITY	SD	57702
	Secretary	Street Address	City	State	ZIP+4
<input checked="" type="checkbox"/>	VICAR GENERAL STEVE BIEGLER	P O BOX 678	RAPID CITY	SD	57709
	Director	Street Address	City	State	ZIP+4
<input checked="" type="checkbox"/>	REV GRANT GERLACH	4500 JACKSON BLVD	RAPID CITY	SD	57702
	Treasurer	Street Address	City	State	ZIP+4
<input checked="" type="checkbox"/>	REV BRIAN LANE	4500 JACKSON BLVD	RAPID CITY	SD	57709
	Director	Street Address	City	State	ZIP+4

No person may execute this report knowing it is false in any material aspect. Any violation is subject to a civil penalty. By signing this form you agree to have both the fee and the form processed electronically.

Dated 09/17/2014

Signature Accepted Electronically

(Signature of an Authorized Person)

RUTH A ZAGALA

(Printed Name)