

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
GREAT PLAINS REGION
DAKOTAS AREA OFFICE

CONTRACT NO, 049E620006

DATE, October 1, 2003

PROJECT: Rapid Valley Unit, Pick-Sloan Missouri Basin Program, South Dakota

THIS CONTRACT, authorized pursuant to the Federal Reclamation Laws, the Act of June 17, 1902(32 Stat., 388), and Acts amendatory thereof and supplements thereto, particularly Section 9 of the Act of August 4, 1939 (53 Stat. 1187), is between the UNITED STATES OF AMERICA, hereinafter called the United States, acting through the Area Manager, Dakotas Area Office, Great Plains Region, Bureau of Reclamation, hereinafter called the Contracting Officer, and the CONTRACTOR identified herein.

CONTRACTOR: City of Rapid City, South Dakota
Public Works Department
Director, Water/Wastewater Division
300, Sixth Street
Rapid City, South Dakota 57701

PURPOSE: Provide a water supply for municipal and industrial (M&I) water service during the interim period between the expiration of Contract 14-06-W-51 and the execution of a new long-term repayment contract between the city of Rapid City and the United States of America,

TERM: This contract becomes effective on the date first above written and shall continue in force through September 30, 2004.

WATER ENTITLEMENT: Upon payment in advance of the construction, operation, maintenance, and replacement (OM&R) costs described herein, the Contractor is entitled to 10,000 acre-feet of water to be used for beneficial M&I purposes.

PAYMENTS: Pursuant to Reclamation Law, the Contractor is required to pay in advance for the water furnished hereunder. To this end the Contractor shall provide payment in the amount of \$107,000 to the United States prior to November 1, 2003.

SPECIAL CONDITIONS AND STANDARD PROVISIONS: Special conditions are specified in Exhibit A. Standard contract provisions are specified in Exhibit B. The Parties have executed this contract the day and year written above and agree to the terms, provisions, special conditions, and standard provisions expressed or referenced herein.

CITY OF RAPID CITY, SOUTH DAKOTA

THE UNITED STATES OF AMERICA

BY _____

By

Title _____

Area Manager, Dakotas Area Office
Great Plains Region, Bureau of Reclamation

Attest: By _____

Title

Exhibit A - Contract No. 049E620006
Special Conditions

1. The Contractor accepts the responsibility for administering and distributing water deliveries among its respective water users. All water deliveries under this contract will be measured at the outlet works of Pactola Dam. The United States has no responsibility for carriage, handling, or distribution of the water.
2. Water deliveries under this contract may be made in conjunction and concurrently with deliveries for other water service contractors.
3. The Contractor shall submit requests for water deliveries under this contract with the Water master designated by the State of South Dakota. The Contracting Officer in so far as he/she determines same to be feasible, shall furnish the water supply in accordance with such water orders and in the quantities and at the times requested by the Contractor in accordance with mutual agreement among the Contractor, Water master, the Contracting Officer, and other appropriate water service contractors. In the interest of conservation of the water supply in Pactola Reservoir, the Contracting Officer, Water master and water service contractors may revise such agreements as necessary and practicable to increase the efficiency of water deliveries during periods of drought.
4. The Contractor, during the term of this contract and subject to the fulfillment of all its obligations hereunder, shall have a right to its water supply from Pactola Reservoir for beneficial M&I uses as described herein. However, the contractor may, at any time during the term of this contract, enter into a long-term repayment contract for water and storage space in Pactola Reservoir. Such long-term contract shall be subject to the terms and conditions approved by the Contractor and the United States. The Contractor shall be provided credit, equivalent to its total construction payment made pursuant to the terms of this contract, toward the construction repayment obligation agreed pursuant to such new long-term repayment contract. The Contractor shall also be provided credit equivalent to water paid for but undelivered as of the date of execution of the new long-term repayment contract. Upon execution of a new long-term contract, this contract and all rights and obligations of the Contracting Officer and Contractor still terminate.
5. In addition to the 10,000 acre feet identified herein, the Contractor will, if requested, furnish Ellsworth Air Force Base with up to 1, 81 0 acre-feet of water per annum upon terms and conditions agreed upon between the Contractor and the United States Air Force, but the charge therefore will not be more than the reasonable cost of handling, treatment, and delivery. The Contractor may in any year furnish Ellsworth Air Force Base water in excess of 1,810 acre-feet upon terms and conditions as may be agreed upon between the Contractor and the United States Air Force.
6. The Contractor shall provide the Contracting Officer with monthly reports of water use in a form and manner agreed to by both parties.
7. Subject to the terms and conditions provided by the United States, the Contractor shall have the option to sell water from its M&I water supply for similar use. Any such agreement will be subject to the written approval of the United States.
8. The Contractor may terminate this contract by providing notice, in writing, to the Contracting Officer at least 3 months in advance of termination. Such notice will be deemed to have been given by the Contractor, when mailed, postage prepaid, or delivered to the Regional Director, Great Plains Region, Bureau of Reclamation, P.O. Box 36900, Billings, Montana 59107-6900. Such termination will not relieve the Contractor of any obligation incurred prior to the termination.
9. On account of drought, inaccuracy of distribution, or other causes, there may occur at times during any year, a shortage in the water Supply. In no event shall any liability accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising out of such shortage, or arising from any lack of purity or potable quality of the water which may be delivered to the Contractor under the terms of this contract. In

no event shall any obligation provided for herein be reduced because of any such shortage or damage.

10. Neither party shall be considered to be in default in respect to any obligation hereunder, if prevented from fulfilling such obligation by reason of uncontrollable forces, the term "uncontrollable forces" being deemed, for the purpose of this contract, to mean any cause beyond the control of the party affected, including, but not limited to, drought, war, riot, civil disturbance, labor disturbance, sabotage, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, and restraint by court or public authority, which by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligation by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

11. The Contractor shall establish and maintain rates and charges for its supplying or water to its inhabitants and industries which will produce net revenues sufficient to make the annual water service and O&M payments required herein.

12. The Contractor will be solely responsible for compliance with South Dakota water laws as may be determined by the Chief Engineer, water Rights Division, South Dakota Department of Environment and Natural Resources or his/her authorized representative.

EXHIBIT B-- Contract No. 049E620006
Standard Contract Provision for Temporary Contracts
Other Than For Irrigation Water Service

A. OFFICIALS NOT TO BENEFIT

No member of or Delegate to Congress, Resident Commissioner, or official of the Contractor shall benefit from this contract other than as a water user or landowner in the same manner as other Water users or landowners.

B. ASSIGNMENT LIMITED-- SUCCESSORS AND ASSIGNS OBLIGATED

The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this contract or any right or interest therein shall be valid until approved in writing by the Contracting Officer.

C. RULES, REGULATIONS AND DETERMINATIONS

1. The parties agree that the delivery of water or the use of Federal facilities pursuant to this contract is subject to Reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Reclamation law.

2. The Contracting Officer shall have the right to make determinations necessary to administer this contract that are consistent with the expressed and implied provisions of this contract, the laws of the United States and the State, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in Consultation with the Contractor.

D. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

The expenditure or advance of any money or the performance of any obligation of the United States under this contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

E. QUALITY OF WATER

The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable, as determined by the Contracting Officer. The United States does not warrant the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

F. WATER AND AIR POLLUTION CONTROL

The Contractor, in carrying out this contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

G. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1. The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U. S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the United States Department of the interior and/or the Bureau of Reclamation.

2. These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this contract, the Contractor, agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

3. The Contractor makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including installment payments after date on account of arrangements for Federal financial assistance which were approved before such date. The Contractor recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article, and that the United States reserves the right to seek judicial enforcement thereof.

H. EQUAL OPPORTUNITY (FEDERAL CONSTRUCTION)

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant For employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include but not be limited to, the following: Employment, Upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay, other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

3. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting officer, advising the said labor union or workers' representative of the Contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant of the Secretary Of Labor.

5. The Contractor will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and order of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in

part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise by law.

7. The Contractor will include the provisions of paragraphs 1. through 7. in every Subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontractor or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.