

3005
6-16-97
(Rapid Valley Sanitary District)

**WATER SERVICE AGREEMENT BETWEEN
THE CITY OF RAPID CITY
AND THE
RAPID VALLEY SANITARY DISTRICT AND WATER SERVICE**

THIS AGREEMENT is made this 16th day of June, 1997, by and between the City of Rapid City, a municipal corporation (hereinafter referred to as the "City"), and the Rapid Valley Sanitary District and Water Service (hereinafter referred to as the "District").

WHEREAS the parties recognize that the City is a municipal corporation organized under the provisions of SDCL Title 9, and that it has the full range of responsibilities to the residents, citizens, taxpayers, and others within its present and future boundaries; and

WHEREAS the parties further recognize that the District is a sanitary district organized under the provisions of SDCL Chapter 34A-5 and that it has the responsibility to provide water and sewer service, at the lowest responsible long-term cost, to the residents, taxpayers, and others within its boundaries; and

WHEREAS the parties recognize and agree that significant numbers of persons who are residents and taxpayers within the boundaries of the District are also citizens, residents, and taxpayers of the City and that the numbers of such persons may be expected to increase substantially over the next few decades; and

WHEREAS the parties recognize the boundaries of the City and the District will overlap to some extent and, further, that the functions of the two entities in providing water and sewer service will overlap to some extent; and

WHEREAS the City and the District believe it is in the best interests of both parties to cooperate in the development and use of water resources in the best interests of the citizens of Rapid City and the greater Rapid City community; and

WHEREAS the District has a present and future need to buy water to provide for the needs of its customers; and

WHEREAS the City owns, operates, and maintains a water system, including water sources, diversion facilities, treatment works, and a storage and distribution system; and

WHEREAS the District owns, operates, and maintains a water system, including a storage and distribution system, together with limited production and treatment facilities

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

I.

The City agrees to provide water from its system to the District, for use solely within the established service area of the District as of the date of this agreement. A map showing the boundaries of the District as of the date of this agreement is attached hereto as "Exhibit A", hereinafter "established service area." It is specifically agreed that the areas marked on "Exhibit A" as Area 1, Area 2, and Area 3 are not currently within the boundaries of the District but may be annexed by the District at a later date and shall be included within the meaning of the term "established service area" as used in this agreement.

The delivery of water to the District and the use thereof by the District is further subject to all of the conditions stated hereinafter. It is specifically understood that the limitation of use of water by the District to the established service area of the District as of the date of this agreement is a material condition of this agreement, that without this provision the City would not enter into this agreement, and that if the limitation is determined to be unenforceable, contrary to public policy, or unlawful, whether under existing law or policy or under some law or policy enacted or discovered or divined at some future time, then and in that case this entire agreement shall be null and void. Further, it shall be conclusively presumed that the deliveries of water by the City to the District, past, present, and future, were undertaken in full reliance upon the validity of the limitation contained herein; the fact that the City shall have delivered water shall not constitute a past practice or past course of conduct nor shall it constitute the basis of any other premise, presumption, or legal fiction upon which to base an order, directive, or judgment that the City is required to continue to provide water to the District.

II.

It is specifically understood by the parties that there is no specified minimum or maximum usage requirements by the District. However, it is further specifically understood and agreed that this contract is based upon the assumption that the District will continue to buy the bulk of its water from the City, that the customer base of the District will remain steady or expand at a modest rate within its present service area with a primarily residential user-base. If the District chooses to obtain substantial amounts of water from other sources, or if the demand increases drastically as the result of new, large-scale commercial or industrial users, this agreement shall be subject to renegotiation upon sixty (60) days written notice to the other party.

It is specifically understood and agreed that it is the contemplation of the parties that the District will provide its services to additional development within its current service area but will not seek to expand its service area without consulting with the City and obtaining the agreement of the City for use of water outside the current service area. It is further specifically understood and agreed that the City shall be under no obligation to approve use of water outside the current service area and shall not be required to establish the reasonableness of any refusal to approve the use of water outside the current service area; on the contrary, it shall be conclusively presumed that any refusal by the City is sufficiently justified. It is specifically understood that the limitation of use of water by the District to the established service area of the District as of the date of this agreement is a material condition of this agreement, that without this provision the City would not

enter into this agreement, and that if the limitation is determined to be unenforceable, contrary to public policy, or unlawful, whether under existing law or policy or under some law or policy enacted or discovered or divined at some future time, then and in that case this entire agreement shall be null and void.

III.

The water shall be delivered by the City to the District at such places as the City and District shall mutually agree. All water furnished shall be measured by meters installed at the points of delivery. The City and District currently have designated two places where water will be delivered to the District. The "Original Metering Pit," located on Lot C, Johnson School Subdivision, of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$, Section 9, Township 1 North, Range 8 East, Black Hills Meridian, Pennington County, South Dakota, is owned by the City. The "New Metering Pit," located on the North $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 3, Township 1 North, Range 8 East, of the Black Hills Meridian, Pennington County, South Dakota, is currently owned by the District.

All water supply lines leading into the "Original Metering Pit" are the property of the City and shall be controlled and maintained by the City. The water supply line extending from the City's system at Elk Vale Road to the "New Metering Pit" is presently the property of the District and shall be controlled and maintained by the District. All water lines from the metering pits are the property of the District and shall be controlled and maintained by the District.

The flow metering devices shall be connected to totalizing meters, which will record the daily flow. It is understood and agreed that both the District and the City shall maintain flow records, and each party shall have the right to inspect the other's metering devices, connections, pressure regulators, service connections, appurtenances thereto, and all records during the continuance of this contract. All meters shall be tested at least annually for accuracy, at the City's expense.

IV.

The District agrees to pay the City, as consideration for water supplied to the District in accordance herewith, an amount equal to eighty-five percent (85%) of the standard rate, including surcharges and other additional charges generally applicable to service to retail customers. It is recognized and agreed that the current standard rate, including surcharges and other standard additional charges are set forth in Section 13.04.590 of the Rapid City Municipal Code. The City shall give the District at least sixty (60) days written notice of any rate increase.

V.

The District agrees that the rates which it charges to its customers shall be equitable, non-discriminatory, and shall be based upon the actual cost of providing service. The District agrees that it will not use its rate structure to finance additions to the system which benefit only select customers and do not benefit the system generally. The provisions of this section shall not be

construed to prohibit funding capital depreciation accounts, sinking funds, or other similar funds, in commercially reasonable amounts.

VI.

The District agrees that, in the event the City determines that it is necessary or appropriate to impose water restrictions to conserve supplies of water, the District shall impose restrictions on the use of water by the customers within the District at least as restrictive as those imposed by the City on its retail customers. The District will not impose a conservation surcharge unless the City imposes a conservation surcharge, and then only in the event the District elects to do so.

VII.

The City and the District agree to guard carefully against all forms of contamination. If at any time contamination should occur, the area or areas affected shall immediately be shut off and isolated and shall remain so until such conditions have been corrected.

In the event it shall be necessary at some time to interrupt water service to the District or some portion of the District service area, the City and the District shall cooperate and take such steps as may be necessary and appropriate. The City shall not discriminate against the District and its customers. Where practical, the City shall give at least 24-hours notice to the District prior to the interruption of any service. No failure or delay in the performance of this Agreement by either party shall be deemed to be a breach thereof when such failure or delay is occasioned by an Act of God, strike, lockout, war, riot, epidemic, explosion, sabotage, or any other similar cause not within the control of the party.

VIII.

In the event that the City annexes territory within the boundaries of the District and wishes to provide water service within the annexed area, the City shall provide written notice to the District of its intent not less than one hundred twenty (120) days before beginning water service. The parties agree to discuss in good faith the most practical manner of providing water service to the annexed territory before the City shall take any affirmative action to provide water service to the area.

IX.

The parties specifically recognize and agree that it is the policy of the City that it does not provide water to customers inside the limits of any other municipality nor does it provide water to any other municipality except on an emergency basis. Therefore, the parties specifically agree that, if any portion of the District is annexed into the territorial limits of any other municipality, then and in that event, the District shall have one hundred twenty (120) days from the effective date of such annexation to make arrangements to assure that no water delivered by the City to the District is allowed to be delivered by the District to any portion of its service area within the limits of the other municipality. It is specifically understood that the limitation of use of water by the

District to the areas of the District not within the territorial limits of another municipality is a material condition of this agreement, that without this provision the City would not enter into this agreement, and that if the limitation is determined to be unenforceable, contrary to public policy, or unlawful, whether under existing law or policy or under some law or policy enacted or discovered or divined at some future time, then and in that case this entire agreement shall be null and void. Further, it shall be conclusively presumed that the deliveries of water by the City to the District, past, present, and future, were undertaken in full reliance upon the validity of the limitation contained herein; the fact that the City shall have delivered water shall not constitute a past practice or past course of conduct nor shall it constitute the basis of any other premise, presumption, or legal fiction upon which to base an order, directive, or judgment that the City is required to continue to provide water to the District.

X.

This agreement shall be effective for a term of twenty (20) years, beginning April 1, 1997, through March 31, 2017, unless sooner terminated in accordance with the terms hereof. Upon the expiration of the initial term hereof this agreement shall automatically be renewed upon the same terms and conditions, for successive one (1) year terms until either party shall have given six (6) months written notice of intent not to renew.

XI.


This Agreement shall inure to the benefit of, and be binding upon, the respective parties hereto, their successors and assigns.

XII.

The parties will save and hold each other harmless and indemnify each other from any and all damages resulting from the negligence of the other concerning matters contemplated herein.

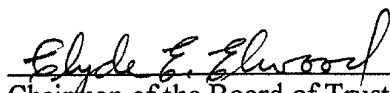
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the day and year first above written.

CITY OF RAPID CITY



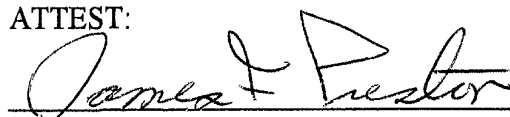
Jim Shaw, Mayor

RAPID VALLEY SANITARY
DISTRICT AND WATER SERVICE



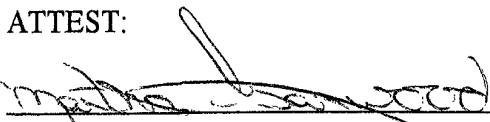
Chairman of the Board of Trustees

ATTEST:



Finance Officer

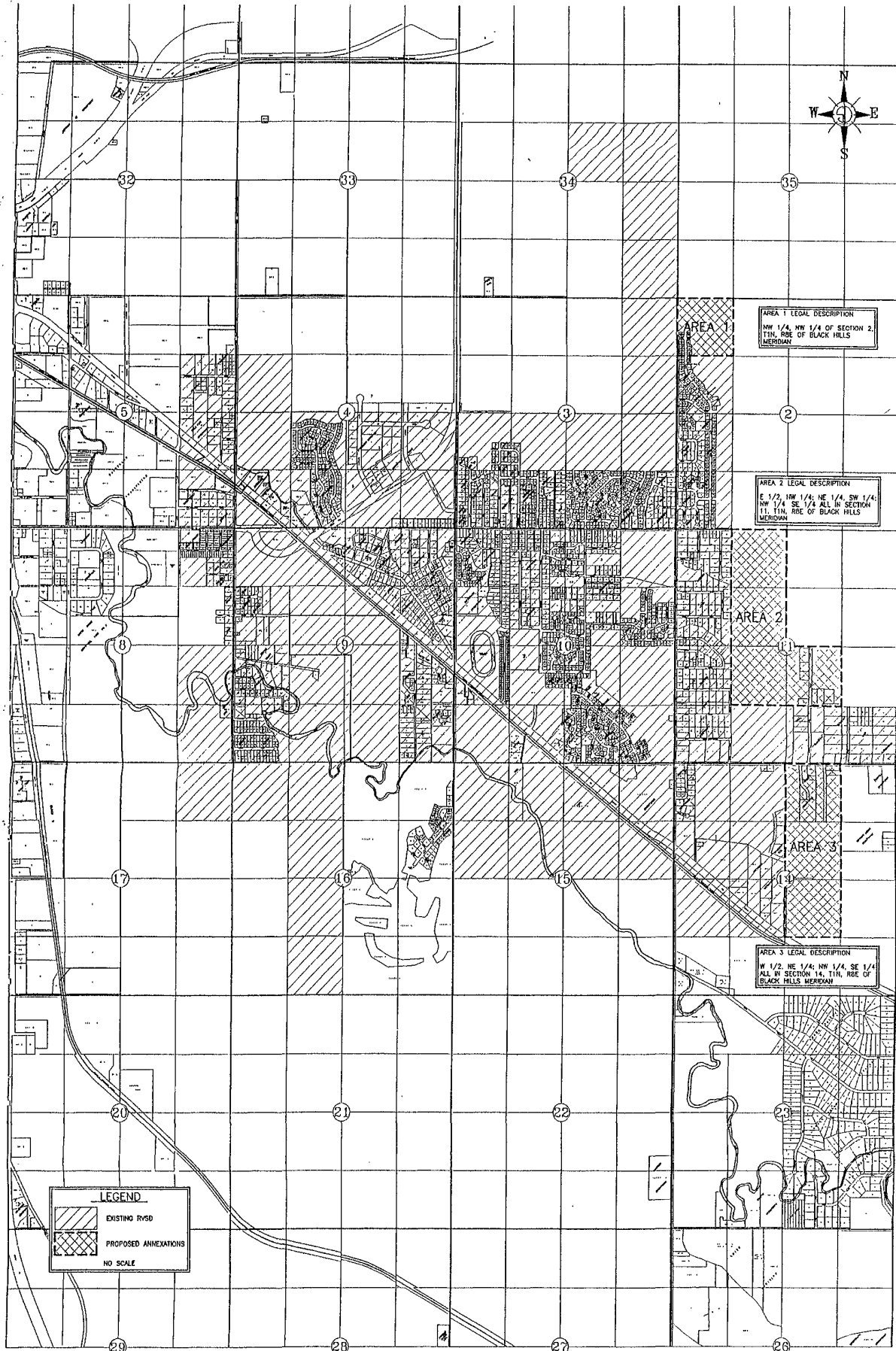
ATTEST:



Clerk

(SEAL)

(SEAL)



RAPID VALLEY DISTRICT BOUNDARY MAP

EXHIBIT "A" TO
WATER SERVICE AGREEMENT BETWEEN
THE CITY OF RAPID CITY AND THE
RAPID VALLEY SANITARY DISTRICT
AND WATER SERVICE


BANNER
 AMERICAN OPERATING
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 P.O. BOX 1118 • RAPID CITY, SD 57102-1118 • 1641 BEAUBIEN AVE. • FAX 605D 343-3477

DRAWN BY:	OS	SCALE:	NONE
CHECKED BY:	SE	SHEET NO.:	1 OF 1
DATE:	DEC. 1997		