

AGREEMENT BY AND BETWEEN THE CITY OF RAPID CITY AND C & J SANDERS, INC. FOR A WATER SUPPLY FOR MUNICIPAL AND INDUSTRIAL WATER SERVICE

Date: April 7, 2008

THIS CONTRACT is between the CITY OF RAPID CITY, SOUTH DAKOTA, hereinafter called Rapid City, acting through the Public Works Director, hereinafter called the Contracting Officer, and the CONTRACTOR identified herein.

CONTRACTOR: C & J Sanders, Inc.
10285 Big Piney Road
Rapid City, SD 57702

PURPOSE: Provide a water supply for municipal and industrial (M&I) water service.

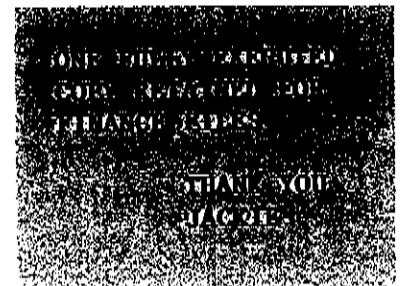
TERM: This contract becomes effective on the date first above written and shall continue in force for ten (10) years.

WATER ENTITLEMENT: Upon payment in advance of the water service payment described herein, the Contractor is entitled to 40 acre-feet of water to be used for beneficial M&I purposes.

PAYMENTS: The Contractor is required to pay in advance for the water furnished hereunder. The Contractor shall provide payment in the amount of \$740 to Rapid City upon execution of this contract. The payment shall consist of an administrative cost component of \$100 and a water service component of \$640, equivalent to \$16 per acre-foot.

CHANGE OF RATES: Upon a written request of either party to the other, and with reasonable cause, the rates set out herein shall be re-negotiated and the new rates shall become effective as mutually agreed.

SPECIAL CONDITIONS AND STANDARD PROVISIONS: Special conditions are specified in Exhibit A. 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.



C & J SANDERS, INC.

By *Paul Sanders*

Title *President*

Attest: _____

Title _____

THE CITY OF RAPID CITY, SOUTH DAKOTA
By *Alan Hanks*

Alan Hanks, Mayor

ATTEST:

Jim Preston

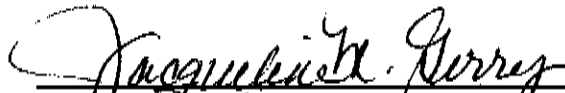
Jim Preston
Finance Officer

(SEAL)

STATE OF SOUTH DAKOTA)
)ss.
COUNTY OF PENNINGTON)

On this 11 day of April, 2008, before me, the undersigned officer, personally appeared Alan Hanks and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City 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 as such Mayor and Finance Officer of the City of Rapid City.

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




Notary Public, State of South Dakota
My Commission Expires: 7-15-2012

[SEAL]

STATE OF SOUTH DAKOTA)
)ss.
COUNTY OF PENNINGTON)

On this 17TH day of MARCH, 2008, before me, the undersigned officer, personally appeared JACK SANDERS, who acknowledged them self to be the OWNER of C & J Sanders Inc., and that as such, being duly authorized so to do, executed the foregoing instrument.

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



Notary Public, State of South Dakota
My Commission Expires: May 18, 2010

[SEAL]

Exhibit A – 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. As part of this contract, Rapid City 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 Watermaster designated by the State of South Dakota. The Contracting Officer in so far as they determine same to be feasible, shall furnish the water supply in accordance with mutual agreement among the Contractor, Watermaster, the Contracting Officer, and other appropriate service contractors. In the interest of conservation of the water supply in Pactola Reservoir, the Contracting Officer, Watermaster, 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. 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 shall terminate.
5. The Contractor shall provide the Contracting Officer with monthly reports of water use in a form and manner agreed to by both parties.
6. 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 Public Works Director, City of Rapid City, 300 Sixth Street, Rapid City, South Dakota, 57701. Such termination will not relieve the Contractor of any obligation incurred prior to the termination.

7. 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 City of Rapid City 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.

8. 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 of 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.

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

10. 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.

11. No 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.

12. 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.

13. 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. Such determinations shall be made in consultation with the Contractor.

14. 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 City of Rapid City 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.

15. 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.

16. The provision of this Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Agreement or any right or interest therein shall be valid until approved in writing by the City.

17. 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 City 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.

18. 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.