

WATER SERVICE CONTRACT

This Contract, effective the _____ day of _____, 2001, by and between the City of Rapid City, a municipal corporation, organized under the laws of the State of South Dakota, hereinafter called the "City", and Rapid Valley Water Conservancy District, hereinafter called the "RV Conservancy District" and is entered into under the authority of SDCL Chapter 1-24.

WITNESSETH:

WHEREAS, the RV Conservancy District is desirous of receiving an adequate supply of water for irrigation purposes; and

WHEREAS, the City has now available an adequate water supply, through its agreements with the Bureau of Reclamation, to meet the RV Conservancy District's requirements for irrigating; and

WHEREAS, the City is willing to deliver to the RV Conservancy District an adequate supply of such water for irrigation purposes;

NOW, THEREFORE, This Agreement WITNESSETH:

For and in consideration of the faithful performance of the stipulations of this contract, the City shall be paid by the RV Conservancy District for the delivery of water at the rates and under the terms and conditions herein set forth:

1. QUANTITY OF WATER FOR SALE.

On or about May 1, during each year of this Agreement, the parties will determine the quantity of water that the City is willing to deliver to the RV Conservancy District and based on the following schedule:

(A) If the Pactola Conservation pool is at 40,000 acre feet or higher, the City will annually make available to the RV Conservancy District up to 8,000 acre feet per annum. The RV Conservancy District will pay the City Five Dollars (\$5.00) per acre foot for this water released for use by the District.

(B) If the Pactola Conservation pool is at 30,000 acre feet or higher but less than 40,000 acre feet, the City will annually make available 4,000 acre feet per annum. The RV Conservancy District will pay the City Five Dollars (\$5.00) per acre feet for this water.

(C) If the Pactola Conservation pool is below 30,000 acre feet, the City will not make any water available to the RV Conservancy District.

(D) The City will make available all its effluent from the City waste water treatment plant at the current discharge point.

2. DELIVERY OF WATER.

Deliveries of Pactola water under this contract will be made at the outlet works of Pactola Reservoir. The City will not be responsible for delivery, carriage, or handling of the water beyond the point of delivery.

3. CHANGE OF RATES.

At the request of either party to this contract, and with reasonable cause, the rates set forth herein shall be re-negotiated and the new rates shall become effective as mutually agreed.

4. MEASUREMENT OF SERVICE.

The volume of irrigation water released for use by the RV Conservancy District will be measured by the Pactola Reservoir Tender at the USGS Stream Gauge directly below Pactola Reservoir.

5. RESALE OF WATER AND WATER SERVICE PROHIBITED.

It is agreed that the RV Conservancy District will only sell water to members of that District. Neither the RV Conservancy District nor any of its members shall resell water purchased under this contract to any individual, group, partnership, corporation, concern, business, or commercial establishment or establishment operated for profit without written approval by the City Public Works Director.

6. CONTINUITY OF SERVICE AND CONSUMPTION.

The City shall use reasonable diligence to provide a regular and uninterrupted supply of water service at the service location(s) but shall not be liable to the RV Conservancy District for damages, breach of contract, or otherwise, for failure, suspension, diminution, or other variations of service occasioned by any cause beyond the control and without the fault or negligence of the City. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the government or of the public enemy, acts of the government in either its sovereign or contractual capacity, fires, flood, epidemics, quarantine restrictions, strikes, or failure or breakdown of transmission or other facilities.

7. QUALITY OF WATER.

The City does not warrant the quality of water delivered under this Agreement and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

8. SUCCESSORS AND ASSIGNS.

This Agreement will not be assigned without the written consent of the parties. The provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns hereto.

9. TERM.

It is hereby mutually understood and agreed that this Agreement shall be in force and effect for a period of twenty-five (25) years from and after its date of execution; provided, however, that it shall be subject to re-negotiation when the Pactola Reservoir Agreement between the City of Rapid City and the United States Bureau of Reclamation becomes effective and the charges thereunder against the City become effective.

10. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS.

The performance of the obligations of the City under this agreement shall be contingent upon appropriation or allotment of funds by Congress and/or the Rapid City Council. No liability shall accrue to the City in case funds are not appropriated or allotted.

Dated this _____ day of _____, 2001.

CITY OF RAPID CITY

**RAPID VALLEY WATER
CONSERVANCY DISTRICT**

By: _____
Jerry Munson, Mayor

By: _____
Jerry Hammerquist, President

ATTEST:

Finance Officer

(SEAL)

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

ON THIS DAY, _____, 2001, before me, the undersigned officer, personally appeared Jim Shaw and James F. Preston, who acknowledged themselves to be 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 to do so, 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 Officer.

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

(SEAL)

Notary Public
My Comm. Expires: _____

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

ON THIS DAY, _____, 2001, before me, the undersigned officer, personally appeared Jerry Hammerquist, who acknowledged himself to be the President of **RAPID VALLEY WATER CONSERVANCY DISTRICT**, and that he, as such

President, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of **RAPID VALLEY WATER CONSERVANCY DISTRICT**, by himself as President.

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

(SEAL)

Notary Public

My Comm. Expires:_____