

FINAL DRAFT 6/15/07

Contract No. 079D620102

**UNITED STATES**  
**DEPARTMENT OF THE INTERIOR**  
**BUREAU OF RECLAMATION**  
**Rapid Valley Unit**  
**Cheyenne Division**  
**Pick-Sloan Missouri Basin Program, South Dakota**

**REPAYMENT CONTRACT BETWEEN THE UNITED STATES AND**  
**THE CITY OF RAPID CITY, SOUTH DAKOTA**

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**REPAYMENT CONTRACT BETWEEN THE UNITED STATES AND**  
**THE CITY OF RAPID CITY, SOUTH DAKOTA**

THIS CONTRACT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2007, pursuant to the Act of June 17, 1902 (32 Stat. 388), and Acts amendatory thereof and supplementary thereto and particularly Section 9(c)(1) of the Reclamation Project Act of 1939 (53 Stat. 1187), and more specifically the Pactola Reservoir Reallocation Authorization Act of 2006, Public Law 109-371 dated November 22, 2006, (120 Stat. 2644) is between the UNITED STATES OF AMERICA, hereinafter called the United States, represented by the Regional Director, Great Plains Region, Bureau of Reclamation, hereinafter called the Contracting Officer, and the CITY OF RAPID CITY, SOUTH DAKOTA, hereinafter called the City, and collectively referred to as the Parties .

WITNESSETH, THAT:

The following statements are made in explanation:

**EXPLANATORY RECITALS**

a. WHEREAS, the United States constructed, and is responsible for the operation, maintenance, and replacement (OM&R) of Pactola Dam and Reservoir on Rapid Creek, South Dakota, for the primary purposes of flood control, irrigation, municipal and industrial (M&I) water supply, fish and wildlife, and recreation; and

b. WHEREAS, the United States and the City entered into a 40 year water service contract dated October 20, 1952 (No. 14-06-W-51), hereinafter referred to as the 1952 contract, which expired October 20, 1992, providing water in excess of 14,500 acre-feet annually, if available, from Pactola Dam and Reservoir for municipal use. Annual water service contracts

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have been executed with the City since the expiration of the 1952 contract; and

c. WHEREAS, the United States and the Rapid Valley Water Conservancy District (District) entered into a contract dated January 6, 1961 (No. 14-06-600-5312), hereinafter referred to as the 1961 contract, providing the District with water, if available, on an annual basis from Pactola Dam and Reservoir for irrigation of its lands. The 1961 contract expired on December 31, 2000, and the District has elected not to renew the contract, instead contracting directly with the City under mutually agreeable terms and conditions through which the City agrees to make available to the District all of its waste-water treatment plant effluent to be discharged into Rapid Creek for a period of 25 years; and

d. WHEREAS, the Pactola Reservoir Reallocation Authorization Act of 2006, Public Law 109-371 was enacted November 22, 2006, which allows for reallocation of costs associated with Pactola Dam and Reservoir for M&I purposes; and

e. WHEREAS, the City now desires to contract for an estimated 49,000 acre-feet of storage space in Pactola Reservoir for M&I and irrigation purposes. The Parties hereto also desire to acknowledge the reservation by the United States of 6,000 acre-feet of storage space for fish and wildlife and other beneficial uses.

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby mutually agreed as follows:

### **DEFINITIONS**

1. Where used in this Contract, the terms:

a. "Secretary" or "Contracting Officer" shall mean the Secretary of the United States Department of the Interior, or a duly authorized representative.

b. "City" or "Contractor" shall mean the City of Rapid City, South Dakota.

c. "District" shall mean the Rapid Valley Water Conservancy District.

d. "Federal Reclamation Laws" shall mean the Act of June 17, 1902 (32 Stat. 388), and all acts amendatory thereof and supplementary thereto.

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- e. "M&I" shall mean municipal and industrial.
- f. "Storable Inflow" shall mean the computed Pooled Natural Inflow into Pactola Reservoir less any portion of that inflow required for downstream releases and Prior Rights.
- g. "OM&R" shall mean the annual operation, maintenance, and replacement costs associated with Pactola Dam and Reservoir.
- h. "Deerfield and Pactola Reservoirs Operating Criteria", also stated as "Reservoirs Operating Criteria", shall mean the instrument associated with this Contract and agreed upon by the United States, the City, and the District for the purpose of defining operating criteria for Pactola Dam and Reservoir and Deerfield Dam and Reservoir.
- i. "Project" shall mean the Rapid Valley Unit, Cheyenne Division, of the Pick-Sloan Missouri Basin Program.
- j. "Year" shall mean the period January 1 through the following December 31.

### **STORAGE SPACE AND USE OF WATER**

2. a. Upon execution of this Contract, the City shall have a right to beneficially use up to 49,000 acre-feet of Project storage in Pactola Reservoir subject to the terms and conditions of this Contract; Provided, that after a period of 25 years from the execution of this Contract, and each 25 years thereafter, the Contracting Officer, in consultation with the City, may conduct a review of the uses and allocations of project storage under this Contract to verify the continued needs of the City and other beneficial uses to the contracted amount of Project storage. Based upon the results of such review, the amount of storage space allocated and contracted under this Contract may be adjusted upward or downward.

b. The Parties hereto agree that 6,000 acre-feet of Pactola Reservoir conservation storage space will be maintained and administered by Reclamation for fishery releases to supplement existing minimum winter release criteria for Rapid Creek, or other beneficial uses compatible with enhancement of fish and wildlife purposes. The Parties also agree that should the need arise to maintain minimum stream-flow requirements during such periods of time when the fish and wildlife conservation storage space has been depleted or is insufficient to maintain the required minimum stream-flow, that after consultation with the City, water stored in the

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City's storage space will be used to maintain the required minimum releases.

c. The City may use its reservoir storage space allocations only to retain its share of Storable Project Inflows and such right shall include the right to hold over such water from prior years; Provided, that the total amount of water retained at any one time shall not exceed that which can be stored within its share of the total active storage capacity of Pactola Reservoir.

d. All space in Pactola Reservoir shall be operated with like priority as to storage rights. Should additional capacity become available because of reallocation of reservoir storage space or other circumstances, the United States reserves the right to contract with others for storage space, including any holdover rights, or to exercise such rights on its own behalf. In determining the amounts of stored water to which the City and the fish and wildlife account are entitled under this Contract, losses incidental to storage will be prorated in proportion to their respective shares of Pactola Reservoir storage during the period of loss. In determining the amount of stored water delivered, the point of measurement shall be the outlet works of Pactola Dam. The City shall take delivery of their portion of said stored water at the point of measurement and shall be wholly responsible for any and all losses associated with conveying, diverting, and utilizing such water.

e. Distribution of Storable Inflows and reservoir losses shall be subject to the specific criteria governing the same, as set forth in the Reservoirs Operating Criteria.

f. Whether Pactola Dam and Reservoir are operated and maintained by the United States or the City, the Parties hereto agree that such operation will be consistent with delivery schedules and minimum stream flow requirements described by the terms of the Reservoirs Operating Criteria. The Reservoirs Operating Criteria will be subject to the capacity limits of Project works and shall take into account other existing water rights which must be supplied or bypassed through these facilities. Deliveries of stored water shall be limited at any time to the amounts which can be safely delivered through the outlet works of Pactola Dam, taking into account the bypass requirements of senior water right holders.

g. The Contracting Officer reserves the right to adjust the active conservation storage and storage space entitlements referred to in this Article at any time based on periodic sedimentation studies of Pactola Reservoir, or on the need to lower the water level in the Reservoir for safety or other compelling reasons. Except when necessitated for safety or other compelling reasons, the Contracting Officer, after consulting with the City, shall notify the City in writing at least 90 days in advance of implementing any change in the active conservation

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storage or storage entitlements under this Contract provision.

### **WATER FOR ELLSWORTH AIR FORCE BASE**

3. The City will, as requested by an authorized representative of Ellsworth Air Force Base (EAFB), deliver to EAFB a quantity of water, not to exceed 3,000 acre-feet of water annually from the City's M&I storage account pursuant to terms and conditions agreed upon between the City and the United States Air Force. The charge for such water shall not be more than the reasonable cost of handling, treatment, and delivery. At no less than five (5) year intervals, the quantity of water specified in this Article may be adjusted, after consultation among the City, EAFB and the Contracting Officer to determine the projected needs of EAFB.

### **ACCOUNTING OF WATER AVAILABLE**

4. a. The Contracting Officer shall maintain an "available water account" to determine the amount of stored water available in Pactola Reservoir storage accounts of the City, and for fish and wildlife purposes pursuant to Article 2. The Contracting Officer shall notify the City of the status of its available water on April 15 and October 15 of each year, and at any other time the City may request. The amount of water in the available water account shall be determined as follows:

(1) The City's water account may not at any time exceed its entitlement to storage space as provided in Article 2 of this Contract.

(2) At any time when Pactola Reservoir has been filled to the top of the conservation storage space by Storable Inflows, all water accounts shall be considered filled to the maximum allowed under Article 2.

(3) At any time when the City's, or the fish and wildlife's available water account(s) are not filled, any subsequent Storable Inflows stored in Pactola Reservoir shall accrue to the available water account(s) in direct proportion to the entitlement of the accounts, as determined by the Contracting Officer; *Provided*, that during the normal operations of Pactola Reservoir, the City may elect not to fill the City account, or the Contracting Officer may elect not to fill the fish and wildlife account. During the period of such election, any inflows subsequently stored which would have accrued to that portion of the account to remain unfilled, shall accrue to the account of the party not making such election as provided in sub-article "4)" of this Article, and as further described in the Reservoir Operating Criteria.

(4) At any time when either the City's, or the fish and wildlife's water account is filled, any subsequent Storable Inflows stored in Pactola Reservoir shall accrue to the unfilled account until that account is filled.

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(5) The respective water accounts for the City and the fish and wildlife shall be adjusted by the Contracting Officer for releases, evaporation, and other losses incidental to storage.

(6) Water inadvertently stored out of priority, in Pactola Reservoir which is associated with rights to the natural flows of Rapid Creek shall be released in a timely manner in accordance with applicable laws and regulations.

(7) Within 30 days of the execution of this Contract, the Contracting Officer will notify the City in writing of the amount of water stored in its water account. Such amounts will be based on the then current active storage available in Pactola Reservoir divided proportionally between the storage rights defined under Article 2 of this Contract.

### **DELIVERY OF STORED WATER**

5. a. Water deliveries requested by the City under this Contract may be made in conjunction with other water deliveries by the United States in conformance with the Reservoirs Operating Criteria.

b. The City accepts the responsibility for distributing all water released to it under the terms of this Contract and agrees that the United States, its officers, employees, and agents have no responsibility for the carriage, distribution, or delivery of water after the release is made from Pactola Dam and Reservoir.

### **PACTOLA CONSTRUCTION CHARGE**

6. The remaining reimbursable construction costs allocated to Pactola Dam and Reservoir's M&I function total \$2,672,914. Upon execution of this Contract, the City shall make one lump-sum payment to the United States in the sum of \$2,672,914. **(Note: this amount is calculated assuming execution of the contract and payment on 7/31/2007 and will be adjusted for interest between 7/31/2007 and the actual date of execution of the contract and payment being made.)**

### **PACTOLA OPERATION AND MAINTENANCE CHARGES**

7. a. During any period the United States operates and maintains Pactola Dam and Reservoir, or incurs costs for oversight, administration, and reviews appropriately charged to the reimbursable portion of the OM&R of the Project in the determination of the Contracting Officer, the City agrees to pay its full share of Pactola Dam and Reservoir's OM&R costs as



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determined by the Contracting Officer.

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b. On or about September 1 of each Year, the Contracting Officer shall communicate, in writing, to the City, the City's share of estimated OM&R costs to be incurred by the United States for the succeeding Year, and the City agrees to pay such estimated costs by December 1. After the first year's notification of the OM&R costs, the annual notices will contain a credit for any overages paid during the prior Year, or an additional charge for any shortages as appropriate to adjust the amount paid for OM&R to the actual OM&R cost. In the event the OM&R cost estimate falls short of the actual costs, or whenever it is anticipated by the Contracting Officer that a deficit will occur during the Year, supplemental notices may be issued by the Contracting Officer requesting additional funds which shall be due and payable within 30 days from the date of such notice. An itemized statement of actual costs incurred during the Year shall be furnished to the City upon request.

### **SALE OF WATER**

8. Subject to terms and conditions acceptable to the United States, the City shall have the option to market the right to use water from its storage space allocation for any authorized purpose. The charge for such water shall not be more than the amount necessary to recover the City's construction charges and reasonable cost of handling, treatment, and delivery.

### **RIGHTS OF INDIAN TRIBES**

9. Nothing in this Contract shall be construed as affecting the obligations of the United States or the Trust responsibilities of the Secretary to any Indian or Indian Tribe; or as impairing the rights of any Indian or Indian Tribe including any prior and paramount rights or Federally Reserved rights, to the waters of Rapid Creek established under existing treaties, compacts, or law.

### **STANDARD CONTRACT ARTICLES**

### **CONTRACT DRAFTING CONSIDERATIONS**

10. Articles 1 through 9 of this Contract have been drafted, negotiated, and reviewed by the Parties hereto, each of whom is sophisticated in the matters to which this Contract pertains, and no one Party shall be considered to have drafted the stated articles.

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**CHARGES FOR DELINQUENT PAYMENTS**

11. a. The City shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, the City shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes 60 days delinquent, in addition to the interest charge, the City shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more, in addition to the interest and administrative charges, the City shall pay a penalty charge for each day the payment is delinquent beyond the due date, based on the remaining balance of the payment due at the rate of 6 percent per year. The City shall also pay any fees incurred for debt collection services associated with a delinquent payment.

b. The interest charge rate shall be the greater of either the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments or the interest rate of 0.5 percent per month. The interest charge rate will be determined as of the due date and remain fixed for the duration of the delinquent period.

c. When a partial payment on a delinquent account is received, the amount received shall be applied first to the penalty charges, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

**GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT**

12. a. The obligation of the City to pay the United States as provided in this Contract is a general obligation of the City notwithstanding the manner in which the obligation may be distributed among the City's water users and notwithstanding the default of individual water users in their obligation to the City.

b. The payment of charges becoming due pursuant to this Contract is a condition precedent to receiving benefits under this Contract. The United States shall not make water available to the City through Pactola Dam and Reservoir project facilities during any period in which the Contractor is in arrears in the advance payment of any operation and maintenance charges due the United States or in arrears for more than 12 months in the payment of any construction charges due the United States. The City shall not deliver water under the terms and conditions of this Contract for lands or parties which are in arrears in the payment of water rates as levied or established by the City.

**OPERATION AND MAINTENANCE OF TRANSFERRED WORKS--**  
**PAYMENT OF MISCELLANEOUS COSTS**

13. a. The OM&R functions for Pactola Dam and Reservoir and associated facilities have been transferred to the City by Cooperative Agreement No. 5-FC-60-05570 (OM&R Agreement) dated March 20, 1995. The Parties hereto agree that the term and conditions of the OM&R Agreement, and any subsequent OM&R agreements, shall remain in full force and effect. Currently Reclamation and the City are working on a new OM&R agreement which will supersede and replace the portion of the above mentioned Cooperative Agreement that deals with the OM&R functions of Pactola Dam and Reservoir; *Provided*, that if there are any conflicts, whether actual or perceived, in conditions or responsibilities of the Parties as contained in the OM&R Agreement(s) as compared to this Contract, that this Contract shall control. The United States reserves the right to re-assume and/or re-transfer any or all OM&R functions transferred to the City after giving the City proper notice. All rights of the City, fish and wildlife or any other beneficiary under this Contract or obligations of the United States to deliver water shall be maintained consistent with the intent herein, whether the OM&R functions are performed by the City or by the United States. Irrespective of the transfer, assumption by the United States or re-transfer of OM&R to the City, the United States shall maintain oversight responsibilities for Pactola Dam and Reservoir and the City agrees to pay, in advance, any and all miscellaneous costs of the United States arising out of, or by reason of this oversight responsibility as provided in Article 7 herein. Title to the transferred works will remain in the name of the United States, unless otherwise provided by the Congress of the United States.

b. The City, without expense to the United States except as provided in the OM&R agreement, shall OM&R the transferred works in full compliance with the terms of this Contract and in a manner that the transferred works remain in good and efficient condition.

c. Necessary repairs of the transferred works shall be made promptly by the City. In case of unusual conditions or serious deficiencies in the care, operation, and maintenance of the transferred works threatening or causing interruption of water service, the Contracting Officer may issue to the City a special written notice of those necessary repairs. Except in the case of an emergency, the City will be given 60 days to either make the necessary repairs or submit a plan for accomplishing the repairs acceptable to the Contracting Officer. In the case of an emergency, or if the City fails to either make the necessary repairs or submit a plan for accomplishing the repairs acceptable to the Contracting Officer within 60 days of receipt of the

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notice, the Contracting Officer may cause the repairs to be made, and the cost of those repairs shall be paid by the City as directed by the Contracting Officer.

d. The City shall not make any substantial changes in the transferred works without first obtaining written consent of the Contracting Officer. The City shall ensure that no unauthorized encroachment occurs on project land and rights-of-way.

e. The City agrees to indemnify the United States for, and hold the United States and all of its representatives harmless from, all damages resulting from suits, actions, or claims of any character brought on account of any injury to any person or property arising out of any act, omission, neglect, or misconduct in the manner or method of performing any construction, care, operation, maintenance, supervision, examination, inspection, or other duties of the City or the United States on transferred works required under this Contract, regardless of who performs those duties. The City does not agree to indemnify the United States for any damages arising from intentional torts or malicious actions committed by employees of the United States.

f. The City shall cooperate with the Contracting Officer in implementing an effective safety of dam program. The United States agrees to provide the City and the appropriate agency of the State of South Dakota with design data, designs, and an operating plan for the dam and related facilities consistent with the current memorandum of understanding between the United States and the State of South Dakota relating to the coordination of planning, design, construction, operation, and maintenance processes for dams and related facilities.

g. In the event the City is found to be operating the transferred works or any part thereof in violation of this Contract or the City is found to be failing any financial commitments or other commitments to the United States under the terms and conditions of this Contract, then upon the election of the Contracting Officer, the United States may take over from the City the care, operation, and maintenance of the transferred works by giving written notice to the City of such election and the effective date thereof. Thereafter, during the period of operation by the United States, upon notification by the Contracting Officer the City shall pay to the United States, annually in advance, the cost of operation and maintenance of the works as determined by the Contracting Officer. Following written notification from the Contracting Officer the care, operation, and maintenance of the works may be transferred back to the Contractor.

h. In addition to all other payments to be made by the City under this Contract, the City shall reimburse to the United States, following the receipt of a statement from the

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Contracting Officer, all miscellaneous costs incurred by the United States for any work involved in the administration and supervision of this Contract.

**EXAMINATION, INSPECTION, AND AUDIT OF PROJECT WORKS,**  
**RECORDS, AND REPORTS FOR DETERMINING ADEQUACY**  
**OF OPERATION AND MAINTENANCE**

14. a. The Contracting Officer may from time to time, examine the following: the City's books, records, and reports; the project works being operated by the City; the adequacy of the operation, maintenance, and safety of dams programs; the reserve fund; and the water conservation program including the water conservation fund, if applicable. Notwithstanding title ownership, where the United States retains a financial, physical, or liability interest in facilities either constructed by the United States or with funds provided by the United States, the Contracting Officer may examine any or all of the project works providing such interest to the United States.

b. The Contracting Officer may or the City may request the Contracting Officer to, conduct special inspections of any project works being operated by the City and special audits of the City's books and records to ascertain the extent of any operation and maintenance deficiencies to determine the remedial measures required for their correction and to assist the City in solving specific problems. Except in an emergency, any special inspection or audit shall be made only after written notice thereof has been delivered to the City by the Contracting Officer.

c. The City shall provide access to the project works, operate any mechanical or electrical equipment, and be available to assist in the examination, inspection, or audit.

d. The Contracting Officer shall prepare reports based on the examinations, inspections, or audits and furnish copies of such reports and any recommendations to the City.

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e. The costs incurred by the United States in conducting operation and maintenance examinations, inspections, and audits and preparing associated reports and recommendations related to high- and significant hazard dams and associated facilities shall be nonreimbursable. Associated facilities include carriage, distribution, and drainage systems; pumping and pump-generating plants; powerplant structures; tunnels/pipelines; diversion and storage dams (low hazard); Type 2 bridges which are Reclamation-owned bridges not located on a public road; regulating reservoirs (low hazard); fish passage and protective facilities, including hatcheries; river channelization features; rural/municipal water systems; desalting and other water treatment plants; maintenance buildings and service yards; facilities constructed under Federal loan programs (until paid out); and recreation facilities (reserved works only); and any other facilities as determined by the Contracting Officer.

f. Expenses incurred by the City, as applicable, in participating in the operation and maintenance site examination will be borne by the City.

g. Requests by the City for consultations, design services, or modification reviews, and the completion of any operation and maintenance activities identified in the formal recommendations resulting from the examination (unless otherwise noted) are to be funded as project operation and maintenance and are reimbursable by the City to the extent of current project operation and maintenance allocations.

h. Site visit special inspections that are beyond the regularly scheduled operation and maintenance examinations conducted to evaluate a particular concern(s) or problem(s) and provide assistance relative to any corrective action (either as a follow up to an operation maintenance examination or when requested by the City) shall be nonreimbursable.

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i. The Contracting Officer may provide the State an opportunity to observe and participate in, at their own expense, the examinations and inspections. The State may be provided copies of reports and any recommendations relating to such examinations and inspections.

### **EMERGENCY RESERVE FUND**

15. The Contractor has provided a letter dated March 11, 2005, Exhibit A which adequately demonstrates to the Contracting Officer that other funds are available for use as an emergency reserve fund. Exhibit A herein referenced is made part of this Contract. The Contractor shall maintain those funds to meet costs incurred during periods of special stress caused by damaging droughts, storms, earthquakes, floods, or other emergencies threatening or causing interruption of water service. Funding that is to be provided from the Contractor's reserve fund shall be available within a reasonable time to meet expenses for such purposes as herein stated.

### **CONFIRMATION OF CONTRACT**

16. The City, after the execution of this Contract, shall furnish to the Contracting Officer evidence that pursuant to the laws of the State of South Dakota, the City is a legally constituted entity and the contract is lawful, valid, and binding on the City. This Contract shall not be binding on the United States until such evidence has been provided to the Contracting Officer's satisfaction.

### **NOTICES**

17. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given on behalf of the City when mailed, postage prepaid, or delivered to the:

Regional Director, Great Plains Region  
Bureau of Reclamation  
P.O. Box 36900  
Billings, Montana 59107-6900

And, on behalf of the United States when mailed, postage prepaid, to:  
Rapid City Public Works Department

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300 6th Street  
Rapid City, South Dakota 57701

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The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

#### **CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS**

18. 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 City from any obligations under this Contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

#### **OFFICIALS NOT TO BENEFIT**

19. No Member of or Delegate to the Congress, Resident Commissioner, or official of the City shall benefit from this Contract other than as a water user or landowner in the same manner as other water users or landowners.

#### **CHANGES IN CONTRACTOR'S ORGANIZATION**

20. While this Contract is in effect, no change may be made in the City's organization, which may affect the respective rights, obligations, privileges, and duties of either the United States or the City under this Contract including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting Officer's written consent.

#### **ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED**

21. 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 by either party shall be valid until approved in writing by the other party.



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**BOOKS, RECORDS, AND REPORTS**

22. The City shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract, including: the City's financial transactions; water supply data; project operation, maintenance, and replacement logs; project land and rights-of-way use agreements; water-use data; and other matters that the Contracting Officer may require. Reports shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this Contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this Contract.

**RULES, REGULATIONS, AND DETERMINATIONS**

23. a. The Parties agree that the delivery of water or the use of Federal facilities pursuant to this Contract is subject to Federal reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law.

b. 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 of South Dakota, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the City.

**ADMINISTRATION OF FEDERAL PROJECT LANDS**

24. a. The lands and interests in lands acquired, withdrawn, or reserved and needed by the United States for the purposes of care, operation, and maintenance of Federal project works may be used by the City for such purposes. The City shall ensure that no unauthorized encroachment occurs on Federal project lands and rights-of-way. The Contractor does not have the authority to issue any land-use agreement or grant that conveys an interest in Federal real property, nor to lease or dispose of any interest of the United States.

b. The City may, subject to the written approval of the Contracting Officer, issue permits, licenses, or similar land use documents only to the extent they do not grant an interest in Federal real property.

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**PROTECTION OF WATER AND AIR QUALITY**

25. a. Project facilities used to make available and deliver water to the City shall be operated and maintained in the most practical manner to maintain the quality of the water at the highest level possible as determined by the Contracting Officer: *Provided, That* the United States does not warrant the quality of the water delivered to the City and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the City.

b. The City shall comply with all applicable water and air pollution laws and regulations of the United States and the State of South Dakota; and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Contractor; and shall be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or Contractor facilities or project water provided by the City within the Contractor's Project Water Service Area.

c. This Article shall not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

**CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY**

26. a. The City shall not allow contamination or pollution of Federal project lands, project waters, or project works of the United States or administered by the United States and for which the City has the responsibility for care, operation, and maintenance by its employees or agents. The City shall also take reasonable precautions to prevent such contamination or pollution by third parties.

b. The City shall comply with all applicable Federal, State, and local laws and regulations, and Reclamation policies and instructions existing, or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored, or disposed of on or in Federal project lands, project waters, or project works.

c. "Hazardous material" means any substance, pollutant, or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*, and the regulations promulgated pursuant to that Act. In addition, hazardous material shall include thermal pollution, refuse, garbage, sewage

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effluent, industrial waste, petroleum products, mine tailings, mineral salts, misused pesticides, pesticide containers, or any other pollutants.

d. Upon discovery of any event which may or does result in contamination or pollution of Federal project lands, water, or project works, the City shall initiate emergency measures to protect health and safety and the environment if necessary, and shall report such discovery with full details of the actions taken to the Contracting Officer. Reporting shall be within a reasonable time period but shall not exceed 24 hours from the time of discovery if it is an emergency and the first working day if it is a nonemergency.

e. If violation of the provisions of this Article occurs and the City does not take immediate corrective action as determined by the Contracting Officer, the City may be subject to remedies imposed by the Contracting Officer, which may include termination of this Contract.

f. The City shall be liable for the cost of full and complete remediation and/or restoration of any Federal project lands, project waters, or project works that are adversely affected as a result of such violation, and/or termination of this Contract, unless otherwise agreed to by the Contracting Officer.

g. Reclamation agrees to provide information necessary for the City, using reasonable diligence, to comply with the provisions of this Article.

### **WATER CONSERVATION**

27. Prior to the delivery of water provided from or conveyed through federally constructed or federally financed facilities pursuant to this Contract, the City shall develop a water conservation plan, as required by Section 210(b) of the Reclamation Reform Act of 1982 (RRA) and Part 427.1 of the Water Conservation Rules and Regulations effective January 1, 1998.

### **EQUAL EMPLOYMENT OPPORTUNITY**

28. During the performance of this Contract, the City agrees as follows:

(1) The City will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, or national origin. The City will

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take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, disability, 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 or other forms of compensation; and selection for training, including apprenticeship. The City 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 City will, in all solicitations or advertisements for employees placed by or on behalf of the City, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, disability, or national origin.

(3) The City 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 labor union or workers' representative of the City'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 City will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The City will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the City's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the City may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The City will include the provisions of paragraphs 1 through 7 in every

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subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The City will take such action with respect to any subcontract 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 City becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the City may request the United States to enter into such litigation to protect the interests of the United States.

### **COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS**

29. a. The City shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*), Title II of the Americans with Disabilities Act of 1990, and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

b. These statutes require that no person in the United States shall 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 on the grounds of race, color, national origin, disability, or age. By executing this Contract, the City agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

c. The City 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 City by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The City 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.

d. Complaints of discrimination against the City shall be investigated by the Contracting Officer's Office of Civil Rights.

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**PEST MANAGEMENT**

30. The City shall take appropriate steps to prevent the introduction and spread of, and to otherwise control undesirable plants and animals, as defined by the Contractor Officer, on Federal Project lands, Project waters, and Project works for which the City has operation and maintenance responsibility. The City is responsible for inspecting its vehicles and equipment for reproductive and vegetative parts, foreign soil, mud or other debris that may cause the spread of weeds, invasive species and other pests, and for removing such materials before moving its vehicles and equipment onto any Federal land or out of any area on Federal project land where work is performed. Where decontamination is required prior to entering Federal project land, it shall be performed at the point of prior use, or at an approved offsite facility able to process generated cleaning wastes. Upon the completion of work, decontamination shall be performed within the work area before the vehicles and equipment are removed from Federal project lands.

Programs for the control of these undesirable plants and animals on Federal project lands, Project waters, and Project works for which the City has operation and maintenance responsibility will incorporate Integrated Pest Management (IPM) concepts and practices. IPM refers to a systematic and environmentally compatible program to maintain pest populations within economically and environmentally tolerable levels. In implementing an IPM program, the District will adhere to applicable Federal and State laws and regulations, and Department of the Interior and Bureau of Reclamation policies, directives, guidelines, and manuals.

**MEDIUM FOR TRANSMITTING PAYMENTS**

31. a. All payments from the City to the United States under this Contract shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.

b. Upon execution of this Contract, the City shall furnish the Contracting Officer with the City's taxpayer identification number (TIN). The purpose for requiring the City's TIN is for collecting and reporting any delinquent amounts arising out of the City's relationship with the United States.

**CONSTRAINTS ON THE AVAILABILITY OF WATER (WATER SHORTAGES)**

32. a. In the operation of the Project, the Contracting Officer will use all reasonable means to guard against a condition of shortage in the quantity of water to be made available to

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the City pursuant to this Contract. In the event the Contracting Officer determines that a condition of shortage appears probable, the Contracting Officer will notify the City of said determination as soon as practicable.

b. If there is a condition of shortage because of errors in physical operations of the Project, drought, other physical causes beyond the control of the Contracting Officer or actions taken by the Contracting Officer to meet current and future legal obligations, then no liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

### **WASTE, SEEPAGE AND RETURN FLOW**

33. The United States claims all of the waste, seepage, and return flow water derived from water delivered pursuant to this Contract, and the same is hereby reserved and retained by the United States; *Provided*, that during the initial 25-year term of the contract between the City and the District return flows from the waste-water treatment plant may be discharged into Rapid Creek to be available for the District's use.

IN WITNESS WHEREOF, the parties hereto have signed their names the day and year first above written.

### **THE UNITED STATES OF AMERICA**

By \_\_\_\_\_  
Regional Director

ATTEST:

### **CITY OF RAPID CITY, SOUTH DAKOTA**

By \_\_\_\_\_  
(Title)

By \_\_\_\_\_  
Mayor