

ORIGINAL

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION**

**Rapid Valley Project
South Dakota**

**AGREEMENT FOR THE TRANSFER OF OPERATION, MAINTENANCE, AND
REPLACEMENT OF PROJECT WORKS BETWEEN THE UNITED STATES AND
THE CITY OF RAPID CITY, SOUTH DAKOTA**

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**AGREEMENT FOR THE TRANSFER OF OPERATION, MAINTENANCE, AND
REPLACEMENT OF PROJECT WORKS BETWEEN THE UNITED STATES AND
THE CITY OF RAPID CITY, SOUTH DAKOTA**

THIS AGREEMENT made this ____ day of _____, 2008, between the UNITED STATES OF AMERICA, hereinafter called the "United States" acting through the Secretary of the Interior pursuant generally to the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto, particularly, but not limited to, Section 5 of the Reclamation Extension Act of August 13, 1914 (38 Stat. 687), and Subsection G of the Fact Finders' Act of December 5, 1924 (Section 4 of the Second Deficiency Act, Fiscal Year 1924) (43 Stat. 702), collectively referred to as the Federal Reclamation laws, and Rapid City, South Dakota, hereinafter called the "City". The United States and the City hereinafter are referred to collectively as the "Parties" or individually as "Party".

WITNESSETH, THAT:

The following statements are made in explanation:

EXPLANATORY RECITALS

- a. WHEREAS, the United States constructed the Rapid Valley Project, which includes Deerfield Dam and Reservoir, as authorized under the Act of May 10, 1939 (53 Stat. 685, 719) and reauthorized under the Act of August 11, 1939 (53 Stat. 1418) for irrigation, municipal and industrial uses, recreation, fish and wildlife; and
- b. WHEREAS, the United States and the City and the Rapid Valley Water Conservancy District (District) have entered into Contract No. I1r-1413 on July 27, 1943 (1943 Contract) for the furnishing of a municipal and industrial (M&I) and irrigation Project water supply and for repayment and Operation, Maintenance and Replacement (OM&R) of the Project; and
- c. WHEREAS, the OM&R responsibility of the Project Works has been transferred to the City; and
- d. WHEREAS, the OM&R functions for both Deerfield Dam and Reservoir and Pactola Dam and Reservoir were originally transferred to the City by Cooperative Agreement No. 5-FC-60-05570 dated March 20, 1995. This agreement expires on December 31, 2008; and

e. WHEREAS, on July 31, 2007, the portion of Cooperative Agreement No. 5-FC-60-05570 that dealt with the OM&R functions for Pactola Dam and Reservoir was superseded and replaced by Agreement No. 07XX620102 and this Agreement supersedes and replaces the remaining portion of Cooperative Agreement No. 5-FC-60-05570 which dealt with the OM&R functions for Deerfield Dam and Reservoir, thus Cooperative Agreement No. 5-FC-60-05570 will be completely superseded by the combination of the two agreements; and

f. WHEREAS, the Parties herein wish to enter into this Agreement to formally transfer the responsibility for the OM&R of the Project to the City and to clarify the specific responsibilities of the Parties; and

g. WHEREAS, the United States is responsible for complying with all applicable Federal laws and regulations and Reclamation policies and instructions existing, or hereinafter enacted or promulgated, including but not limited to, Environmental laws and cultural resource regulations concerning Federal Project lands, Project waters, or Project Works.

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

GENERAL DEFINITIONS

1. Where used in this Agreement, the terms:
 - a. "City" or "Contractor" shall mean the City of Rapid City, South Dakota.
 - b. "District" shall mean the Rapid Valley Water Conservancy District.
 - c. "Environmental laws and cultural resource regulations" include all applicable Federal and State laws, statutes, and regulations enacted for the purpose of protecting the quality of the environment, including but not limited to, the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), National Historic Preservation Act, Archaeological Resources Protection Act, Native American Graves Protection and Repatriation Act, Clean Water Act, and others.
 - d. "Federal Reclamation Laws" shall mean the Act of June 17, 1902 (32 Stat. 388), and all acts amendatory thereof and supplementary thereto.
 - e. "OM&R costs" shall mean all expenses incurred in connection with the water control, and OM&R of the Project Works, including appropriate charges for associated indirect costs and administration as determined by the Contracting Officer, and shall include such additional costs as hereinafter provided. Such expenses shall include those required to remedy conditions brought about by ordinary use of the Project Works or to restore or replace components of the existing Project water facilities, and shall not include expenses to increase or enlarge such works beyond the purposes for which they were originally authorized and constructed.

- f. "Project" shall mean the Rapid Valley Project, South Dakota.
- g. "Project Works or Transferred Works" shall mean Deerfield Dam and Reservoir.
- h. "Secretary" or "Contracting Officer" shall mean the Secretary of the United States Department of the Interior, or the Secretary's duly authorized representative.
- i. "Year" shall mean the period January 1 through the following December 31.

EFFECTIVE DATE

2. This Agreement shall become effective upon the date it is signed, and on that date shall supersede and replace Cooperative Agreement No. 5-FC-60-05570 and any other prior agreements relating to the OM&R of the Project Works; *Provided, That* this Agreement may be terminated at any time by written notification of either Party at least twelve months in advance of termination.

CITY'S RESPONSIBILITIES

3. a. The City shall be responsible for the OM&R of the Project Works which are transferred herein and any additional work items requested by the United States and within the City's capabilities including, but not limited to:

(1) The listing of normal duties and responsibilities for the Project Works as provided in Exhibit A, attached hereto and by this reference made a part hereof. Exhibit A may be periodically revised or amended upon mutual agreement of both Parties hereto.

(2) Maintenance of the Project Works shall be performed in accordance with standard practice for maintenance of irrigation and drainage systems and in such a manner that the facilities are capable of efficiently delivering water to the City and other users upon demand.

b. The City shall comply with all applicable Federal, State, and local laws and Federal regulations and Reclamation policies and instructions existing, or hereafter enacted or promulgated, including but not limited to Environmental and cultural resource regulations concerning Federal Project lands, Project waters, or Project Works.

c. The City shall annually submit, before January 31 of each Year, an OM&R work plan, which lists all planned major or extraordinary maintenance activities as well as anticipated standard or routine activities of the City on the Project Works and the anticipated or estimated start date for these planned activities for the upcoming year. Upon receipt, the United States will review the OM&R work plan within 30 days. Shortly thereafter, the United States will discuss with the City the activities that will require additional information and/or work activities to comply with Federal, State, and local laws and regulations and Reclamation policies and instructions existing, or hereafter enacted or promulgated. The United States will be the

responsible Party to see that the appropriate actions are taken to ensure compliance with Federal law.

d. The OM&R of the Project Works that is transferred herein will be accomplished in accordance with: sound engineering and OM&R practices; the "Standing Operating Procedures" (SOP), which is a living document that defines the operations of the Dam and Reservoir and may be updated periodically; the requirements contained in Exhibit A; and any other special written instructions prepared by the United States and accompanied by this Agreement or provided to the City at any time during the term of this Agreement. All OM&R shall be accomplished in full compliance with the terms of this Agreement and in such a manner that the Project Works remain in good condition suitable for the safe and efficient storage, regulation, and delivery of water.

e. The United States may require certain City personnel to successfully complete a background investigation. The United States will administer the background investigation and determine the results. The United States may also require City personnel that will have access to restricted information and documents to certify acknowledgement of responsibility and instructions for handling and safeguarding the restricted documents entrusted to them. Additionally, when deemed necessary, the United States may require that certain City personnel receive a security clearance from the United States. The City agrees to cooperate with the United States in this effort. The City further agrees that successfully completing a background investigation, certifying acknowledgement of responsibility and instructions for handling and safeguarding restricted documents, and if deemed necessary, maintaining a United States security clearance, will be a requirement of continued employment with the City for positions which the United States determines such requirements are necessary.

f. Certain documents, including but not limited to documents relating to the coordination of planning, design, construction, and OM&R processes for the Project Works, may contain information considered to be "security sensitive" and it will be necessary for the City to appropriately safeguard the information. These documents, or copies of them, will therefore be intended for the City's use only and will not be distributed to any other entities without the prior written consent and approval of the United States.

UNITED STATES RESPONSIBILITIES

4. a. The United States will retain the responsibility for such items of work as are not within the City's capabilities on the Project Works.

b. Upon receipt of the OM&R work plan, the United States will review the plan within 30 days. Shortly thereafter, the United States will discuss with the City the activities that will require additional information and/or work activities to comply with Federal, State, and local laws and regulations and Reclamation policies and instructions existing, or hereafter enacted or promulgated. The United States will be the responsible Party to see that the appropriate actions are taken to ensure compliance with Federal law and will provide the City with any special written instructions for the compliance responsibilities.

OPERATION AND MAINTENANCE COSTS

5. a. The OM&R costs covered by the provisions of this Agreement shall be defined as including all the expenses of whatsoever kind or nature in connection with, growing out of, or resulting from the OM&R of the Project Works. Such costs shall include, but not be limited to direct costs of labor and fringe benefits, materials and supplies, travel, equipment depreciation, and all other appropriate overhead and items or services purchased directly for OM&R. Indirect costs charged to the OM&R shall be those normal and necessary administrative and general expenses incurred by the United States as are chargeable to such works in the opinion of the Secretary. The City may also include those normal and necessary administrative and general expenses incurred by the City that are equitably allocable to the performance of OM&R activities pursuant to this Agreement.

b. The City, without expense to the United States, shall care for, operate, and maintain the Project Works. In accordance with Article 17 of the 1943 Contract, the District shall pay the City its proportionate share of the O&M costs of the Project Works.

c. The City shall provide the equipment necessary to perform its OM&R duties under this Agreement in whichever manner is most cost effective.

ENVIRONMENTAL AND CULTURAL RESOURCES

6. a. To ensure that compliance activities for environmental and cultural resources are completed by the United States in a timely manner, the City shall provide notification to the United States of its planned OM&R activities in the annual OM&R work plan as required pursuant to Subarticle 3c., above. If the City undertakes an unplanned and unforeseen OM&R activity in response to emergency conditions the City shall then notify the United States if time is available before taking action; but in no case later than 48 hours after taking the emergency action. Emergency conditions are defined as sudden occurrences that would not normally develop over a period of weeks and involve imminent loss of life or property. For major or extraordinary activities that are unplanned and not emergencies, the City will give the United States as much notice as possible so that any required environmental compliance can be completed by the United States prior to the action being undertaken.

b. The City shall immediately provide an oral notification to the United States of any discovery of human remains or a Native American cultural item within the Project. The City shall forward a written report of its findings to the United States within 48 hours by certified mail. The City shall cease activity, stabilize, and protect such discoveries until authorized to proceed by the United States. Protective and mitigative measures specified by the United States and provided to the City as special written instructions shall be the responsibility of the City. The City is the responsible Party to see that any subcontractors abide by these measures.

c. The City shall exercise care so as not to disturb or damage any cultural resources discovered during the performance of its duties under this Agreement, and shall provide such cooperation and assistance as may be necessary to preserve the findings for

removal or other disposition by the United States. The City shall not resume work in the area of a discovery until written notice to proceed is received from the United States.

STANDARD CONTRACT ARTICLES

CONTRACT DRAFTING CONSIDERATIONS

7. Articles 1 through 6 of this Agreement have been drafted, negotiated, and reviewed by the Parties hereto, each of whom is sophisticated in the matters to which this Agreement pertains, and no one Party shall be considered to have drafted the stated articles.

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

8. a. The OM&R functions for the Project Works and associated facilities have been transferred to the City by Cooperative Agreement No. 5-FC-60-05570 (OM&R Agreement) dated March 20, 1995. This Agreement supersedes and replaces Cooperative Agreement No. 5-FC-60-05570. 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, shall OM&R the Transferred Works in full compliance with the terms of this Agreement 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 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 Agreement, 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 Agreement 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 Agreement, 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 Project 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 City.

h. In addition to all other payments to be made by the City under this Agreement, the City shall reimburse to the United States, following the receipt of a statement from the Contracting Officer, all miscellaneous costs incurred by the United States for any work involved in the administration and supervision of this Agreement.

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

9. 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.

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.

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

NOTICES

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

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

and on behalf of the United States, when mailed, postage prepaid, or delivered to the:

City of Rapid City
300 Sixth Street
Rapid City, SD 57701

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

11. The expenditure or advance of any money or the performance of any obligation of the United States under this Agreement 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 Agreement. No liability shall accrue to the United States in case funds are not appropriated or allotted.

OFFICIALS NOT TO BENEFIT

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

ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

13. The provisions of this Agreement 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 by either Party shall be valid until approved in writing by the other Party.

BOOKS, RECORDS, AND REPORTS

14. The City shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Agreement, including: the City's financial transactions; water supply data; project operation, maintenance, and replacement logs; project land and rights-of-way use agreements; land-ownership, land-leasing, and 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 Agreement 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 Agreement.

ADMINISTRATION OF FEDERAL PROJECT LANDS

15. 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 City 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.

PROTECTION OF WATER AND AIR QUALITY

16. 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 City; 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 City facilities or project water provided by the City within the City'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

17. 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 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, Project 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 Agreement.

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 Agreement, 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.

EQUAL EMPLOYMENT OPPORTUNITY

18. During the performance of this Agreement, the City agrees as follows:

a. 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 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.

b. 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.

c. 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.

d. 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.

e. 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.

f. In the event of the City's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement 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.

g. The City will include the provisions of paragraphs (a) through (g) 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 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

19. 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 Agreement, 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.

RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION

20. When acquiring land or an interest in land and relocating persons or personal property in connection with the construction, operation, and maintenance of Project facilities, the City shall comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894) and Department of Transportation regulations (49 CFR Part 24).

PEST MANAGEMENT

21. 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 Contracting 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 City will adhere to applicable Federal and State laws and regulations, and Department of the Interior and Bureau of Reclamation policies, directives, guidelines, and manuals.

CLEAN AIR AND WATER

22. a. The City agrees as follows:

1. To comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, et seq., as amended by Public Law 91-604), and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq., as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Section 114 of the Air Act and Section 308 of the Water Act, respectively, and all regulations and guidelines issued thereunder before the execution of this Agreement.

2. That no portion of the work required by this Agreement will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this Agreement was executed unless and until the Environmental Protection Agency eliminates the name of such facility or facilities from such listing.

3. To use its best efforts to comply with clean air standards and clean water standards at the facility where the contract work is being performed.

4. To insert the substance of the provisions of this Article into any nonexempt subcontract, including this paragraph (a)(4).

b. The terms used in this article have the following meanings:

1. The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604).

2. The term "Water Act" means the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).

3. The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in Section 110(d) of the Air Act (42 U.S.C. 1857c-5(d)), an approved implementation procedure or plan under Section 111(c) or Section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or an approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).

4. The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a state under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).

5. The term "comply" means compliance with clean air or water standards. Comply shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency in accordance with the requirements of the Air Act or Water Act and regulations issued pursuant thereto.

6. The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations owned, leased, or supervised by a City or subcontractor to be utilized in the performance of a contract or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

MEDIUM FOR TRANSMITTING PAYMENTS

23. a. All payments from the City to the United States under this Agreement shall be 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 Agreement, 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.

CONTRACTS WITH THIRD PARTIES

24. a. The Contractor shall advertise each construction (as construction is defined in the Federal Acquisition Regulations), equipment, or supply contract exceeding \$25,000 (twenty-five thousand dollars) for competitive bidding. Any action proposed by the Contractor other than making the award to the lowest responsible bidder shall be subject to review by the Contracting Officer.

b. For all construction contracts exceeding \$100,000 (one hundred thousand dollars), the Contractor shall require construction contractors to furnish performance bonds equal to at least 100 percent of the contract price and payment bonds equal to (1) at least 50 percent of the contract price for contracts not exceeding \$1,000,000 (one million dollars), (2) at least 40 percent of the contract price for contracts exceeding \$1,000,000 (one million dollars) but not exceeding \$5,000,000 (five million dollars), and (3) \$2,500,000 (two million five hundred thousand dollars) for contracts exceeding \$5,000,000 (five million dollars). Supply and equipment contractors may be required to furnish performance bonds on supply or equipment contracts exceeding \$100,000 (one hundred thousand dollars) when the contract calls for substantial progress payments before delivery of end items.

c. The United States shall not be a party to or obligated in any manner by contracts entered into between the Contractor and other parties pursuant to this contract.

By signing below, the Parties agree to the terms and conditions of this Agreement.

THE UNITED STATES OF AMERICA
BUREAU OF RECLAMATION

By: _____
Regional Director

CITY OF RAPID CITY

By: _____
Mayor

ATTEST:

Secretary

EXHIBIT A

The following is a listing of the duties and responsibilities to be accomplished by the City as such duties and responsibilities relate to the Operation, Maintenance and Replacement (OM&R) Transfer Agreement No. 08XX620127 dated _____, 2008. This listing has many of the requirements of the Standing Operating Procedures (SOP) for Deerfield Dam and Reservoir and any requirements not included in this list but delineated in the SOP shall be considered part of this list by reference. The Parties shall annually, or as otherwise agreed, review this list and may amend it at any time by mutual agreement.

A. Deerfield Dam and Reservoir

The City shall:

- OM&R Deerfield Dam in accordance with the SOP. Review the SOP annually, and if needed, provide written comments to the lead engineer and/or Manager, Rapid City Field Office, Dakotas Area Office.
- Attend Reclamation's Dam Operator classroom training every three years, and onsite Dam Operator training every six years, or prior to placing a newly hired City Dam Operator on duty.
- Participate in Annual Site Inspections, Periodic Facility Reviews, and Comprehensive Facility Reviews. Prepare a schedule for timely completion of recommendations contained in inspection reports and provide this schedule in writing to the lead engineer and/or Manager, Rapid City Field Office, Dakotas Area Office. Update this schedule annually to provide information on completion of recommendations and the status of incomplete recommendations.
- Provide facility surveillance in accordance with Reclamation security guidelines and threat condition response measures and report suspicious activities to the United States in accordance with written instructions.
- Participate in Emergency Action Plan (EAP) Exercises. Review the EAP annually and if needed provide written comments to the lead engineer and/or Manager, Rapid City Field Office, Dakotas Area Office.
- Provide and pay for utilities (electricity, water, telephone and gas).
- Grade and maintain roads at the dam.
- Regulate water releases through the outlet works as directed.

- Operate and maintain or assist in the maintenance of reservoir level gauging equipment, water flow recording equipment, and associated electronic data collection and transmission equipment.
- Exercise, repair, and maintain mechanical equipment as required by the SOP for Deerfield Dam.
- Spray or otherwise control noxious weeds, trees, and other vegetation on upstream and downstream slopes of Deerfield Dam.
- Inspect reservoir shoreline for evidence of trespass or unusual erosion. Inspect for slope movement or unusual significant increase in seepage associated with Deerfield Dam.
- Read, record, and report instrumentation data as required in Reclamation Form L-23. Perform ongoing visual inspections and report results to Rapid City Field Office as required in Reclamation Form L-23.
- Repair minor erosion or slough areas.
- Perform dam operator duties as outlined in and at the frequency specified in the SOP for Deerfield Dam.
- Annually exercise the emergency and regulating gates and the 6 inch bypass pipe valves.
- As directed by Reclamation, provide monthly and annual water accounting reports on use of water from Deerfield by the City, Reclamation, and the District.

Operations Area - See Map Attached

- Repair and generally maintain existing fences in the operations area. This includes posts, gates, and other access control features areas including security fences and gates.
- Blade, replace gravel, and otherwise maintain interior roads and storage areas.
- Mow below dam and roadways as needed during summer months and remove snow from roads, walkways, and access areas during winter months.

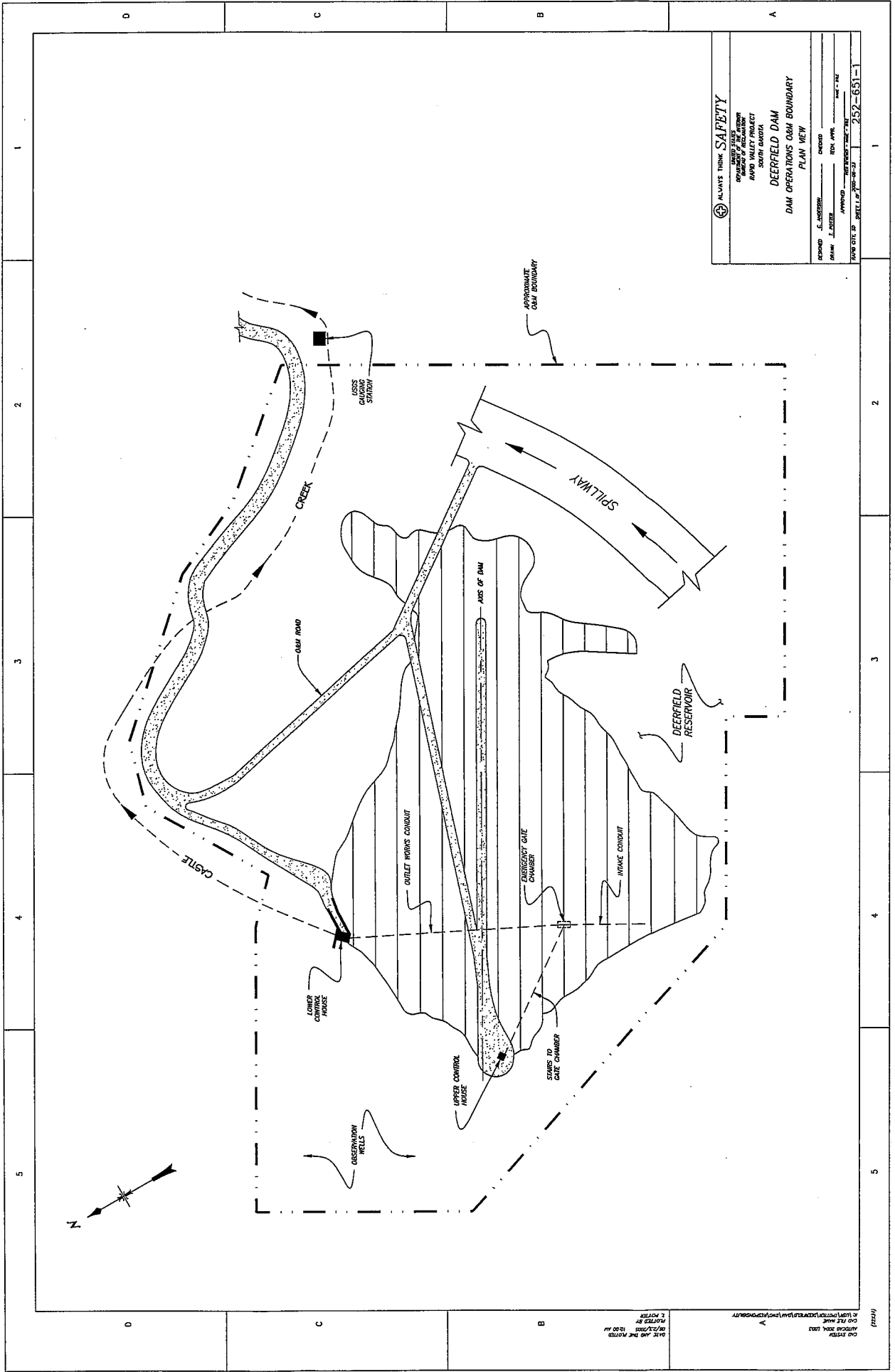
Personnel Requirements

- Report to Reclamation's Rapid City Field Office any unusual events (vandalism, accidents, security related, etc.) as indicated in the SOP.
- Ensure occupancy of Pactola Dam reservoir residence all year by City representative.

- Ensure attendance of Reclamation training and safety meetings related to reservoir operations by City representative.

Other Agreements

- The pooled storage operation of Pactola and Deerfield Reservoirs is explained in the current Memorandum of Understanding between Reclamation, the City, and the Rapid Valley Water Conservancy District (District). See the Pactola SOP for further information.
- The lands around Deerfield Reservoir are managed by the Bureau of Reclamation and the Forest Service per Deerfield Memorandum of Understanding (MOU) No. 14-06-600-8514, as amended. This MOU discusses development and administration of recreation and lands around the reservoir. See the Deerfield SOP for further information.



ALWAYS THINK SAFETY

DEPARTMENT OF WATER
RAPID VALLEY PROJECT
SMITH BARDA

DEERFIELD DAM
DAM OPERATIONS O&M BOUNDARY

PLAN VIEW

PERSONNEL: S. ANDERSON, CHANDLER, IDOL, WYLLIE
DATE: 11/20/00
APPROVED: [Signature]
SCALE: AS SHOWN
SHEET NO. 252-651-1

DATE AND TIME FOR THIS PROJECT: 11/20/00 10:30 AM
DRAWN BY: [Signature]
CHECKED BY: [Signature]