

AN AGREEMENT BETWEEN THE CITY OF RAPID CITY AND THE SOUTH DAKOTA DEPARTMENT OF GAME FISH AND PARKS FOR CONSTRUCTION, MAINTENANCE AND OPERATION OF A BYPASS STRUCTURE AT CANYON LAKE WITHIN THE CITY OF RAPID CITY.

This Agreement is made and entered into between the CITY OF RAPID CITY, a municipal corporation of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota 57701, herein after referred to as the "City," and the South Dakota DEPARTMENT OF GAME, FISH & PARKS, located at 523 E. Capitol Ave., Pierre, South Dakota 57501, herein after referred to as "GF&P."

RECITALS

WHEREAS, the City currently maintains a dam and spillway on Rapid Creek which has created Canyon Lake; and

WHEREAS, the City has need to periodically lower the level of Canyon Lake; and

WHEREAS, lowering or draining Canyon Lake can cause sediment to be discharged downstream of Canyon Lake; and

WHEREAS, if too much sediment is discharged it potentially violates federal law and could result in the City receiving a significant fine; and

WHEREAS, the City receives a large portion of the water for its municipal water system from Rapid Creek downstream from Canyon Lake; and

WHEREAS, the discharge of sediment caused by the lowering of Canyon Lake may also damage downstream fisheries in Rapid Creek; and

WHEREAS, the City and GF&P both have an interest in protecting Rapid Creek downstream from Canyon Lake by preventing the discharge of sediment; and

WHEREAS, the City and GF&P have determined that constructing a bypass structure is the best way to allow Canyon Lake to be lowered while preventing harmful discharge of sediment downstream; and

WHEREAS, the purpose of this Agreement is to identify the roles and responsibilities of the parties with respect to the design, construction, operation and maintenance of the proposed bypass structure.

NOW THEREFORE, the parties hereby agree as follows:

1. The GF&P agrees to construct a bypass structure which will allow GF&P and the City to route water around Canyon Lake. The City agrees to provide GF&P with a permanent easement in which to locate the bypass structure.
2. The GF&P will select and hire a consultant to design the bypass structure. The GF&P will be responsible for paying the consultant for the design. The GF&P will allow the City to review and comment on the final design.
3. The GF&P will bid the project and award to the lowest responsible bidder. The GF&P will enter into the contract for construction of the bypass structure. The City shall concur in the award of the contract in order to ensure it has sufficient funds budgeted for its half of the project.
4. The parties agree to split the cost of constructing the bypass structure fifty-fifty, including any change orders. The maximum amount the City has budgeted to spend on this project is \$390,250. The City shall pay 50% of the total cost of construction up to that amount. If the bids for construction of the project exceed \$780,500, the parties will need to identify additional funds before awarding the contract. If for any reason funds otherwise become unavailable by operation of law or federal funds reductions, or if the parties are otherwise unable to identify additional funds to cover the cost of constructing the bypass structure, this Agreement may be terminated by either party. Termination of the Agreement under this provision is not a default and does not give rise to any claims against the terminating party.
5. The City and GF&P will provide joint construction observation services for the project. The City will provide construction inspection as needed. The City shall have input into any punch lists for the project. Both parties will need to concur in final acceptance of the project from the contractor once completed.
6. The GF&P shall retain ownership of the bypass structure and be responsible for maintenance or repairs. The GF&P and City will cooperate in operation of the bypass.
7. If any section(s), or provision of this Agreement is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision of this application if they can be given effect without the invalid section(s) or provisions.
8. The Parties declare that no specific entity as contemplated in SDCL 1-24-4(2) is being created to implement this Agreement, and that the cooperative undertaking herein described shall be administered by the Director of the Division of Wildlife for GF&P and the Public Works Director for City or their authorized designees.

9. All notices or other communications hereunder shall be in writing and shall be deemed given when delivered, and if delivered by mail, shall be sent by first class, postage prepaid, to the parties at the following addresses:

CITY:

City of Rapid City
300 Sixth Street
Rapid City, South Dakota 57701
Attention: Public Works Director

GF&P

S.D. Department of Game, Fish and Parks
523 E. Capitol
Pierre, SD 57501
Attention: Director, Division of Wildlife

The parties, by notice given hereunder, may designate any further or different methods of notification and addresses to which notices and communications shall be provided.

10. This Agreement is intended to only govern the rights and interest of the parties named herein. It is not intended to, does not and may not be relied upon to create any rights, substantial or procedural, enforceable at law by any third party in any matters, civil or criminal.

11. The parties acknowledge that a true copy of this Agreement will be filed with the Office of Attorney General and the Legislative Research Council within fourteen (14) days of the execution hereof, as required by law.

12. By the signature of their representative below, GF&P and City certify that approval of this Agreement by ordinance, resolution or other appropriate means has been obtained by that governmental body's governing body or officer pursuant to SDCL 1-24-3 and 1-24-6 and that the representatives are authorized to sign on the party's behalf. A copy of any authorizing resolution or ordinance is attached to this Agreement and incorporated herein by reference

13. This Agreement is the entire agreement of the parties no other writings or negotiations are part of this document. This Agreement may only be modified by mutual agreement of both parties. Any modifications or addendums to this Agreement must be in writing.

14. This Agreement shall be construed according to the laws of the State of South Dakota. Any action concerning this agreement shall be venued in Rapid City, South Dakota in the Circuit Court for the Seventh Judicial Circuit.

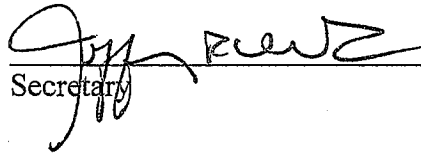
CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

STATE OF SOUTH DAKOTA DEPT.
OF GAME, FISH & PARKS



Secretary

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2009, before me, the undersigned officer, personally appeared Allan Hanks and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing Agreement Consenting to Assessed Project for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

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

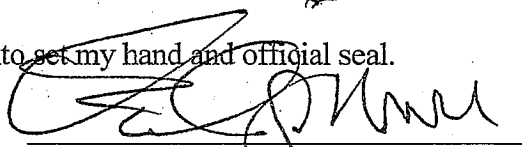
Notary Public, South Dakota
My Commission Expires:

SEAL

State of South Dakota)
County of Hughes)ss.

On this 24th day of March, 2009, before me, the undersigned officer, personally appeared Jeffrey B. Vonk, who acknowledged himself to be the Secretary of the South Dakota Dept. of Game, Fish and Parks and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

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



Notary Public, South Dakota
My Commission Expires:

SEAL