

**ORDINANCE NO. 3742**

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF \$9,000,000 PRINCIPAL AMOUNT OF THE CITY OF RAPID CITY, SOUTH DAKOTA, HEALTH CARE FACILITIES REVENUE BOND (THE EVANGELICAL LUTHERAN GOOD SAMARITAN SOCIETY PROJECT), SERIES 2001; RATIFYING CERTAIN ACTIONS HERETOFORE TAKEN; AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF A FINANCING AGREEMENT, CLOSING DOCUMENTS AND SUCH BOND IN CONNECTION THEREWITH; APPROVING THE FORM OF CERTAIN ANCILLARY DOCUMENTS; AND REPEALING ANY ACTION HERETOFORE TAKEN IN CONFLICT HEREWITH.

WHEREAS, the City of Rapid City, South Dakota (the "City") is a municipality chartered under the constitution of the State of South Dakota (the "State"); and

WHEREAS, the City is authorized by Chapter 9-54 of the South Dakota Codified Laws, as amended (the "Act"), to finance and refinance the capital costs and other expenses of certain projects, including health care facilities and related health care and health services for nonprofit organizations; and

WHEREAS, The Evangelical Lutheran Good Samaritan Society (the "Society"), a nonprofit corporation organized under the laws of the State of North Dakota, with its headquarters in Rapid City, South Dakota, has presented to the City a proposal whereby the City will issue its Health Care Facilities Revenue Bond (The Evangelical Lutheran Good Samaritan Society Project), Series 2001, in a principal amount of \$9,000,000, (the "Bond"), for the purpose of (a) financing the acquisition, construction, improvement and equipping of Echo Ridge, a senior living complex consisting of the Lodge, a 59-unit congregate-housing facility and the Manor, a 28 assisted living unit facility, located in Rapid City, South Dakota (together, the "Project") and (b) paying the costs of issuing the Bond; and

WHEREAS, the Society desires to obtain funds for the aforesaid purpose by borrowing the proceeds from the sale of the Bond from the City and entering into a Financing Agreement, dated as of November 1, 2001 (the "Agreement"), among the City, the Society and Wells Fargo Brokerage Services, LLC ("Wells Fargo") pursuant to which the loan from the City will be repaid; and

WHEREAS, the City has held a public hearing on the Bond and the financing of the Project, after publication of reasonable public notice of such hearing; and

WHEREAS, the payments required pursuant to the Agreement are sufficient to provide for the prompt payment of the principal of and interest on the Bond when due; and

WHEREAS, it is hereby found and determined that the financing of the Project will stimulate and develop the general economic welfare and prosperity of the State and promote the general welfare of its citizens and particularly the residents of the City; and

WHEREAS, there has been presented to the City Council of the City the proposed form of the Agreement.

BE IT ORDAINED BY THE CITY OF RAPID CITY, SOUTH DAKOTA:

**Section 1.** All action not inconsistent with the provisions of this Ordinance heretofore taken by any of the City's officers and the efforts of the City directed toward the financing of the Project, the issuance and sale of the Bond therefor, and loaning the proceeds thereof to the Society therefore, be, and the same hereby are, ratified, approved and confirmed.

**Section 2.** The City shall finance the Project by depositing the proceeds of the Bond in accordance with the provisions and conditions of the Agreement. The financing of the Society's existing loan for the Project is in the public interest.

**Section 3.** To defray the cost of financing the Project, there is hereby authorized and created a revenue bond in the principal amount of \$9,000,000, designated as "City of Rapid City, South Dakota, Health Care Facilities Revenue Bond (The Evangelical Lutheran Good Samaritan Society Project), Series 2001." The Bond is to be dated as of November 1, 2001, and bear interest at 4.50% per annum on the unpaid principal balance from the date of issuance through maturity or earlier redemption; provided further, that if an Event of Taxability (as defined in the Agreement) shall have occurred, the Bond shall bear interest at an annual rate of 8.00%, beginning on the first day of the month following the date the Registered Owner gives written notice of the Event of Taxability to the Society.

The Bond will mature on November 1, 2006. Accrued interest shall be payable in arrears on the first day of each May and November, commencing May 1, 2002, and upon maturity of the Bond (the "Interest Payment Date"). Interest on the Bond shall be calculated on the basis of a 360-day year consisting of twelve 30-day months, for the actual days elapsed. The principal shall be repaid in four (4) annual installments, due each November 1 during the term of the Bond, commencing November 1, 2003, in accordance with the following schedule:

<b>Date</b>	<b>Principal</b>
November 1, 2003	\$ 215,000
November 1, 2004	225,000
November 1, 2005	235,000

with a final payment of all unpaid principal and accrued interest due November 1, 2006. The Bond will be issuable as a fully registered bond in accordance with the provisions of the Agreement.

The Bond shall be subject to redemption prior to maturity, as set forth in the Agreement, and shall be in substantially the form provided in the Agreement. The Bond shall be sold to Wells Fargo in a negotiated, private sale at a purchase price of \$\_\_\_\_\_ (being the par amount of \$9,000,000 less an underwriter's discount of \$\_\_\_\_\_).

**Section 4.** The form, terms and provisions of the Agreement be and they hereby are approved, and the City shall enter into the Agreement substantially in the form of the Agreement presented to this meeting, but with such changes therein as the officers of the City executing the Agreement shall approve, their execution thereof being deemed conclusive of their approval of any such changes, and the Mayor of the City is hereby authorized and directed to execute and deliver the Agreement and the City Clerk is hereby authorized and directed to affix the seal of the City to, and to attest the Agreement.

**Section 5.** The form, terms and provisions of the Bond, in substantially the form contained in the Agreement, be and they hereby are approved; and the Mayor of the City is hereby authorized and directed to execute the Bond, the City Clerk is hereby authorized and directed to affix the seal of the City to, and to attest the Bond, and each is authorized to deliver the Bond in the form contained in the Agreement but with such changes therein as the Mayor shall approve, his or her execution thereof being deemed conclusive of his approval of any such changes. The signature of the Mayor or the signature of the City Clerk on the Bond may be a facsimile.

**Section 6.** The officers of the City shall take all action which they deem necessary or reasonably required in conformity with the Act to finance the Project which is hereby authorized, and for carrying out, giving effect to and consummating the transactions contemplated by this Ordinance and the Agreement, including without limitation the execution and delivery of any closing documents to be delivered in connection with the sale and delivery of the Bond.

**Section 7.** The cost of financing the Project will be paid out of the proceeds of the Bond. The Bond shall never constitute an indebtedness of the City within the meaning of any provision or limitation of the South Dakota Constitution or statutes or the City Charter, and shall not constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers. The Bond is not a general obligation, but is a special, limited obligation, of the City, payable solely out of the revenues derived from the Agreement and pledged and assigned for its payment (except to the extent paid out of moneys attributable to the proceeds derived from the sale of the Bond or income from the temporary investment of those proceeds).

**Section 8.** After the Bond is issued, this Ordinance shall be and remain irrevocable until the Bond and interest thereon shall have been fully paid, cancelled and discharged.

**Section 9.** If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

**Section 10.** All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith or with the documents hereby approved are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance, or part thereof.

Dated Adopted: \_\_\_\_\_

Attest:

CITY OF RAPID CITY, SOUTH DAKOTA

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

By \_\_\_\_\_  
City Clerk