

Meeting of the City Council

June 16, 2003

WHEREAS the City Council of the City of Rapid City deems it for the best interest of the City that the within described territory be included within the corporate limits of the City and annexed thereto;

NOW, THEREFORE BE IT RESOLVED by the City of Rapid City that the following territory, containing 347.86 acres, more or less, is hereby included within the corporate limits of the City and annexed thereto:

SW1/4 NW1/4 less Lots H1 and H2 & ROW; and, SE1/4 NW1/4; and, N1/2 SW1/4 less Lots H1 and H2 and ROW; and, N1/2 SE1/4; all located in Section 34, T2N, R8E, BHM, Pennington County, South Dakota; and, S1/2 SW1/4 less Lots H1 and H3 and ROW and less Lot 1 of Neff's Subdivision #3, Section 34, T2N, R8E, BHM, Pennington County, South Dakota; and Lot 1 of Neff's Subdivision #3, Section 34, T2N, R8E, BHM, Pennington County, South Dakota; and, the N1/2 GL3 and N1/2 GL4 less Lots H1 and H2, all located in Section 3, T1N, R8E, BHM, Pennington County, South Dakota, containing 347.86 acres, more or less.

Dated this 16th day of June 2003.

CITY OF RAPID CITY
s/ Jim Shaw, Mayor

ATTEST:
s/ James F. Preston
Finance Officer
(SEAL)

The motion for adoption of the foregoing Resolution was seconded by Kroeger. The following voted AYE: Hanks, French, Murphy, Kooiker, Waugh, Rodriguez, Kroeger, Hadley, Kriebel and Partridge; NO: None, whereupon said Resolution was declared duly passed and adopted.

Public Hearing

✓ Mayor Shaw announced that the meeting was open for consideration of No. CC061603-03, a **proposed lease** with Hubbard Feeds, Inc. No oral or written objections were received. Public Works Director Dan Bjerke explained that the discussion on the proposal to lease additional property to Hubbard Mill is part of the right-of-way process that Hubbard Mill and Con Agra are currently in with the SD DOT. In order to do that, they need an indication from the city that, if a right-of-way agreement is approved, the city will allow them to use additional land in order to provide a safe access for vehicles that enter and leave the mill at Third Street. The proposed lease will be submitted in the future, once the right-of-way agreement is approved. Bjerke added that the use of this property will be permanent, not just during the Omaha Street widening project. Motion was made by Hanks and seconded by Rodriguez to close the public hearing and direct staff to prepare a lease for consideration by the City Council. Upon vote being taken, the motion carried with Kriebel voting no.

Public Comment on Items 187-192

Mike Larson requested that the city approve the requested Variance to the subdivision regulations which would allow him to access property from Hidden Valley Road (Agenda Item No. 191). He added that neither he nor his engineer can find a way to access the proposed lot from any other alternative route. He also requested a variance to the paving requirements for Hidden Valley Lane which is a dead-end road.

LEASE AGREEMENT

Lease made as of the _____ day of _____, 2003, by and between the City of Rapid City ("Lessor"), and Hubbard Feeds, Inc., of 426 Omaha Street, Rapid City, South Dakota ("Lessee").

For and in consideration of the mutual covenants herein contained, the City hereby leases to Lessee and Lessee hires and takes from the City the property hereinafter described as the demised premises subject to the terms, conditions, and stipulations herein provided:

Lot 24A, less Lot H1 of Rapid City Greenway Tract, SE¼, SW¼, Section 36, Township 2 North, Range 7 East, Black Hills Meridian, Rapid City, Pennington County, South Dakota, as shown on Exhibit "A", attached hereto and incorporated herein by reference.

This Lease is subject to the following terms and conditions:

(1) Lessee agrees to pay to Lessor as rent for the premises the sum of _____ (\$ _____) on the first day of each and every month until the termination of this Lease without delay, deduction, or default.

(2) The leasehold interest hereby granted to Lessee is specifically subject to any existing arrangements for drive-up telephone and access to the utility substation and subject to the right of the City to renew such arrangements upon the expiration thereof. Lessor does not warrant title to the leased site and Lessee specifically agrees that, in any event, its damages arising from any lack of good title shall be limited to the refund of one year's prepaid rent.

(3) Use of the premises by Hubbard Feeds, Inc. shall be limited to a truck staging area for its operation conducted on abutting property owned by Lessee, its successors and assigns, and to the construction, maintenance, use, and operation of structures and improvements customarily associated with such a truck staging area. Lessor represents and agrees that the property is zoned

to permit such truck staging, subject only to City approval of structures to be erected on the property.

(4) All areas on the leased site used by Lessee for vehicle traffic shall be paved in accordance with general standards established by the City, and shall be maintained in a responsible, prudent, and safe condition during its occupancy by Lessee.

(5) Lessee shall pay all real estate taxes allocable to the leased premises levied according to law and payable for periods during the term of this Lease arising out of its use and occupancy of the subject property before such taxes shall become delinquent. Lessor shall pay any special assessments against the property now or hereafter levied.

(6) This Lease shall not be assignable without the consent of the city, which consent shall not be unreasonably withheld or delayed, and which, in any event, shall be granted if the assignment is made as part of the sale of the adjacent property owned by Lessee (provided that such assignee shall assume the obligation of Lessee thereafter accruing under the Lease, including the restrictions on use set forth in paragraph (3)). Any transfer shall be made only in conjunction with assignment or transfer of rights to use and occupancy of the then existing Lessee operation on appurtenant real property occupied by Lessee.

(7) No structures intended for human occupancy shall be constructed, placed, or maintained on the leased site without the specific prior written approval by the Lessor.

(8) Lessee shall have no obligation to maintain landscaping on the leased site and shall not be expected or required to participate in the Omaha Street Beautification Program as the result of its occupancy of the leased site. In lieu thereof Lessee has agreed to donate the sum of Five Thousand Dollars (\$5,000.00) to Lessor for use in funding the Omaha Street Beautification Program.

(9) Access to the property from Omaha Street shall be limited to two (2) curb cuts currently in existence.

(10) This Lease shall be effective for a term of twenty (20) years from and after _____, 2003, and shall be automatically renewed thereafter for successive one year terms unless either party shall give sixty (60) days notice of intent not to renew; provided, however, that (a) Lessor may terminate this Lease at any time on or after the tenth (10th) anniversary of the commencement of the term, provided that (i) at least six (6) months prior written notice thereof is given by Lessor to Lessee and (ii) Lessor pays to Lessee the "Termination Amount" as defined below at the time such notice is given and (b) Lessee may terminate this Lease at any time upon six (6) months prior written notice to Lessor, provided that if so terminated prior to the tenth (10th) anniversary of the commencement of the term, Lessee shall remain liable to pay the rent under paragraph (1) through the day prior to such tenth (10th) anniversary. The "Termination Payment" is an amount equal to the aggregate unamortized cost of improvements, including landscaping, made to the leased premises by Lessee during the term of this Lease, calculated as of the date this Lease terminates pursuant to notice from Lessor under this paragraph 10, and with such costs deemed amortized, without interest, in equal annual amounts over the period from the date such improvements are substantially completed to the end of the initial term of this Lease.

(11) Upon the expiration of the Lease term, or any renewal term, or upon the termination of this Lease by Lessee or Lessor, Lessee shall leave all landscaping, paving and other surface improvements constructed by it upon the leased site, which improvements shall thereupon become the property of the Lessor. Lessee may remove any other improvements and

trade fixtures. Lessee shall not be obligated to remove any improvements or to return the leased site to its current condition.

(12) Lessee, its agents and assigns, shall hold Lessor harmless from any liability arising out of its use and occupancy of the leased site.

(13) In case of any default by either party, hereto, notice and a reasonable opportunity to cure such default shall be given before any other remedial action shall be commenced.

CITY OF RAPID CITY

By: _____
 Mayor

ATTEST:

 Finance Officer

(SEAL)

HUBBARD FEEDS, INC.

By: _____
 Its: _____

State of South Dakota)
 SS.
 County of Pennington)

On this the _____ day of _____, 2003, before me, the undersigned officer, personally appeared Jerry Munson 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 instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)

State of South Dakota)
 SS.
County of Pennington)

On this the ____ day of _____, 2003, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the _____ of Hubbard Feeds, Inc., a corporation, and that he, as such _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as _____.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)

Prepared By: CITY ATTORNEY'S OFFICE