

RESOLUTION NO. ____

RESOLUTION RELATING TO THE LEASE AND LEASEBACK OF PART OR ALL OF THE MUNICIPAL WASTEWATER SYSTEM; AUTHORIZING THE EXECUTION AND DELIVERY OF VARIOUS AGREEMENTS TO EFFECT SUCH TRANSACTION; FIXING CERTAIN TERMS AND DETAILS THEREOF AND RATIFYING AND AUTHORIZING THE ACTIONS OF CERTAIN OFFICERS OF THE CITY; AUTHORIZING THE REFUNDING OF CERTAIN STATE REVOLVING FUND LOANS AND THE ISSUANCE OF TAXABLE REFUNDING BONDS IN EVIDENCE THEREOF.

WHEREAS, the City is authorized by South Dakota Codified Laws, Chapter 5-28 (the “Act”) to enter into lease/leaseback agreements with respect to municipal facilities; and

WHEREAS, the South Dakota Municipal Facilities Authority (the “*Municipal Facilities Authority*”) was specifically created by the Act for the purpose of facilitating such lease/leaseback transactions; and

WHEREAS, the City has been cooperating with Allco Finance Corporation (“*Allco*”) to advise and assist the City in the development of a lease/leaseback program involving part or all of the City’s wastewater assets and to determine which assets owned by the City provide the best opportunity to create a net present value (“*NPV*”) benefit to the City; and

WHEREAS, after reviewing the list of the City’s wastewater assets which could be utilized in a potential lease/leaseback transaction, Allco concluded that a lease/leaseback transaction involving the assets described in *Exhibit A* hereto (the “*Assets*”) represented the best opportunity to create maximum NPV benefit to the City; and

WHEREAS, Allco solicited proposals from financial institutions interested in serving as equity investors for one or more lease/leaseback transactions with respect to the Assets, resulting in proposals being received from interested investors; and

WHEREAS, the proposals from interested investors were reviewed and thereafter clarified, resulting in final proposals being submitted by each institution; and

WHEREAS, the proposals of KBC Bank N.V., Bank of America Leasing, and Fifth Third Bank, N.A. (“*Investors*”) were determined to be most advantageous to the City with respect to the Assets; it is currently contemplated that Fifth Third Bank, N.A., will be the Investor for the City’s lease/leaseback transaction; and

WHEREAS, it is proposed that the City enter into lease/leaseback contracts with the Municipal Facilities Authority, the State of South Dakota, one of the Investors (or an affiliate of one of the Investors) and other parties to the transaction; and

WHEREAS, the lease/leaseback contracts would provide for an up-front NPV payment to the City in an amount dependent upon various factors, including but not limited to prevailing interest rates at the time of closing, appraised value of the Assets, final terms of the agreements and expenses incurred in connection therewith; and

WHEREAS, based upon current interest rates, Allco has projected that the NPV benefit to the City with respect to the Assets would be approximately three and sixty-two hundredths percent (3.62%) of the appraised value thereof; and

WHEREAS, it is contemplated that closing on the lease/leaseback for the Assets will occur on or before September 30, 2003; and

WHEREAS, in connection with the contemplated transaction, the City has engaged special counsel and various counsel have been engaged by the Municipal Facilities Authority, Allco and the other parties to the transaction; and

WHEREAS, in connection with the contemplated lease/leaseback transaction, it will be necessary for the City to enter into a set of various agreements relating to such lease/leaseback transaction, including but not limited to the documents listed on Exhibit D hereto, which will be prepared and placed on file with the City Finance Officer (collectively the "*Transaction Documents*") and to approve various other documents and instruments to be entered into by the other parties to the lease/leaseback transaction, including but not limited to a form of the Trust Agreement and Loan and Security Agreement for the transaction; and

WHEREAS, in connection with the contemplated lease/leaseback transaction, it may be necessary to modify various existing documents (the "*Bond Documents*") which pertain to the Bonds outstanding with respect to the Wastewater System, as identified in *Exhibit B* attached hereto.

WHEREAS, in connection with the contemplated lease/leaseback transaction, it is necessary for the City to refund a portion of each of the City's outstanding state revolving fund loans (the "*SRF Loans*") identified in *Exhibit B* attached hereto, to amend the loan agreements between the City and the South Dakota Conservancy District relating to the SRF Loans to reflect the partial refunding of the SRF Loans and to issue taxable refunding bonds to the South Dakota Conservancy District.

WHEREAS, the Finance Officer of the City recommends that the City enter into the Transaction Documents with the Municipal Facilities Authority, the State of South Dakota, one of the Investors (or an affiliate of the Investor) and other parties to the transaction, as heretofore recited and as more fully described in the summary heretofore provided.

NOW, THEREFORE, Be It Resolved by the Common Council of the City of Rapid City, South Dakota, as follows:

1. Subject to the provisions of this Resolution and the receipt of any required concurrence of State or federal agencies to the lease/leaseback transaction, the City

hereby approves a lease/leaseback contract providing for a head lease for a term not exceeding 99 years and a lease back for a term not exceeding 30 years with the Municipal Facilities Authority and the State of South Dakota, providing for the receipt by the City of NPV payments in such amounts as shall be approved by the Mayor of the City, currently estimated to be approximately \$9,229,102 (exclusive of any fees and expenses to be paid to the Municipal Facilities Authority), and containing such other terms and conditions as are negotiated by City staff in the best interests of the City.

2. It is hereby determined to be reasonably necessary, in order to induce the other participants to enter into the transaction, that the City enter into the Transaction Documents. The Mayor and Finance Officer of the City (the "*Designated Officers*") are hereby authorized, in consultation with the City Attorney and special counsel to approve, execute and deliver the Transaction Documents and any documents or agreements related thereto, including, but not limited to, an application to the United States Environmental Protection Agency with respect to a disposition agreement pertaining to the Assets and a request from the City to the South Dakota Conservancy District for a consent to the lease/leaseback transaction with respect to outstanding SRF Loans, in such forms as are approved by the City Attorney and containing such terms as shall be approved by the Designated Officers, their execution of the Transaction Documents to be conclusive evidence of such authorization and approval.

3. The Designated Officers are hereby severally authorized to approve, execute and deliver, in consultation with the City Attorney and special counsel, any appropriate agreement, representation letter or modification to the Transaction Documents, in such forms and containing such terms as shall be approved by the Designated Officers, their execution thereof to be conclusive evidence of such authorization and approval.

4. All Transaction Documents and other documents executed and delivered by the City in connection with the transactions contemplated by this Resolution shall be in compliance with the provisions of applicable South Dakota law and the Bond Documents.

5. In connection with the transactions contemplated by this Resolution, the City shall obtain an opinion of bond counsel, in form and substance satisfactory to the Designated Officers, the City Attorney and special counsel to the City, to the effect that the Transaction Documents and the transactions contemplated thereby do not adversely affect the tax-exempt status of the Bonds.

6. Attached hereto as *Exhibit C* is a form of the notice, which is hereby approved, to be given to all rate payers of the wastewater system of the City indicating how the City intends to spend the NPV payment to the City with respect to the Assets and the impact that the lease/leaseback transaction will have on wastewater rates. The Designated Officers are authorized and directed to cause the notice to be completed, in substantially the form attached hereto, and mailed to all ratepayers of the Wastewater System in the next billing cycle.

7. The City hereby covenants that, to the extent that the amounts payable under the Transaction Documents are not available from other sources, such deficiency will be a general obligation of the City payable from any legally available funds of the City.

8. The execution and delivery of amendments to each of the Loan Agreements between South Dakota Conservancy District (the "*District*") and the City identified in *Exhibit B* (the "*SRF Loan Agreement Amendments*"), the form of which will be prepared and filed with the Finance Officer, and the pledging of the loan payments thereunder for the security of the bonds authorized in paragraph 9 hereof (the "*SRF Refunding Bonds*") and the interest thereon shall be, and they are, in all respects, hereby authorized, approved and confirmed, and the Designated Officers are hereby authorized and directed to execute and deliver the SRF Loan Agreement Amendments in the form and content submitted to this Council, with such changes that are not substantive as the City Attorney deems appropriate and approves, for and on behalf of the City. The Designated Officers are hereby further authorized and directed to implement and perform the covenants and obligations of the City as set forth in or required by the SRF Loan Agreement Amendments.

9. The issuance of the SRF Refunding Bonds of the City, in the approximate principal amounts (aggregating not more than \$_____ principal amount), and in the form and content set forth in Appendix A to the SRF Loan Agreement Amendments is hereby authorized, approved and confirmed, and the Mayor, Finance Officer and other appropriate officials of the City shall be authorized to execute and deliver the SRF Refunding Bonds to the District, for and on behalf of the City. The Designated Officers are hereby authorized to approve the final terms of the SRF Refunding Bonds, and their execution and delivery of the SRF Refunding Bonds shall evidence such approval. The terms of the SRF Refunding Bonds, as so executed and delivered, shall be deemed to be incorporated herein by reference. The SRF Refunding Bonds are issued pursuant to South Dakota Codified Laws Chapter 6-8B.

The Common Council does hereby find that all limitations imposed upon the issuance of SRF Refunding Bonds have been met. Each SRF Refunding Bond shall recite that it is issued pursuant to South Dakota Codified Laws Chapter 6-8B and in full compliance with Sections 6-8B-30 through 6-8B-52, inclusive. All refunding bonds issued containing said recital shall be incontestable for any cause whatsoever after their delivery for value.

10. The Designated Officers are hereby authorized, in consultation with the City Attorney and special counsel to approve, execute and deliver such documents and agreements, including but not limited to a tax indemnity agreement, in such forms and containing such terms as shall be determined by the Designated Officers and to effect the transactions contemplated by this Resolution, their execution thereof to be conclusive evidence of such authorization or approval.

11. The Designated Officers are hereby authorized to execute and deliver any and all further documents in forms approved by the City Attorney and to do any and other things as shall be necessary or appropriate, in forms approved by the City Attorney, with the advice of special counsel and bond counsel, in order to effectuate the purposes of this Resolution. If, in the exercise of the authority delegated to the Designated Officers in this Resolution, the Designated Officers determine that it is necessary or appropriate for the Common Council to review any term or provision of any document or any action to be taken in connection with the transactions authorized hereby, the Designated Officers shall bring such matter to the attention of the Common Council for review or approval by the Common Council, as appropriate.

12. As permitted by the Act, the City shall exercise all of the powers conferred upon (a) the South Dakota Building Authority and the Governor pursuant to South Dakota Codified Laws, Sections 5-12-15, 5-12-19, and 5-12-42 through 5-12-45, inclusive, and (b) the Municipal Facilities Authority or any corporation created by the Municipal Finance Authority under the Act, with respect to the transaction contemplated by this Resolution.

13. The City shall publish this Resolution, except for the Exhibits hereto, after its passage. *Exhibits A, B, C and D* hereto are on file and available for inspection in the offices of the City Finance Officer.

14. All prior ordinances or resolutions inconsistent herewith are hereby repealed.

Date Adopted: _____, 2003.

Mayor

ATTEST

City Finance Officer