

PROCEEDINGS OF THE CITY COUNCIL
Rapid City, South Dakota

October 5, 2009

Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of Rapid City was held at the City/School Administration Center in Rapid City, South Dakota on Monday, October 5, 2009 at 7:00 P.M.

The following members were present: Mayor Alan Hanks and the following Alderpersons: Bill Waugh, Patti Martinson, Sam Kooiker, Lloyd LaCroix, Karen Gundersen Olson, Ron Weifenbach, Ron Kroeger and Deb Hadcock; and the following Alderpersons arrived during the course of the meeting: None; and the following were absent: Aaron Costello and Malcom Chapman.

Staff members present included Finance Officer Jim Preston, City Attorney Jason Green, City Engineer Dale Tech, Growth Management Director Marcia Elkins, Fire Chief Mark Rohlfing, Community Resource Director Kevin Thom, and Administrative Coordinator Amber Sitts.

ADOPTION OF AGENDA

The following items were added to the agenda:

- Report on Strengthening Families Task Force, Alderman LaCroix
- Clarification on budgeted salary increases for 2010, Alderman Kooiker
- Christmas Lights, Alderman Hadcock

Motion was made by LaCroix, second by Olson and carried to adopt the agenda as amended.

APPROVE MINUTES

Motion was made by LaCroix, second by Olson and carried to approve the minutes from September 21, 2009.

AWARDS AND RECOGNITIONS

Mayor Hanks presented Black Hills Area Habitat for Humanity with an Executive Proclamation to recognize October 5, 2009 as World Habitat Day in Rapid City.

NON-PUBLIC HEARING ITEMS -- Items 2 – 82

Motion was made by Weifenbach, second by Hadcock and carried to open the public comment for items 2 – 56. No comments were offered.

Motion was made by Olson, second by LaCroix and carried to close the public comment for items 2 – 56.

CONSENT ITEMS – Items 2 – 46

The following items were removed from the Consent Items:

12. Acknowledge the report on the Review of Policy on Non-Responsible Bidders.
39. No. LF093009-13 – Approve Resolution No. 2009-118 Authorizing and Directing the Issuance and Sale of Water Revenue Bonds, Series 2009, to Pay the Cost of Improvements to the

Municipal Water Utility and Defining the Terms and Manner of Payment of the Bonds and the Security Therefor.

40. No. LF093009-14 – Authorize Mayor and Finance Officer to sign Indenture of Trust for Utility Revenue Bonds.
43. No. LF093009-18 – Authorize Mayor and Finance Officer to sign Agreement between the City and Rapid City Economic Development Foundation, Inc.

Motion was made by LaCroix, second by Waugh and carried to approve the following items as they appear on Consent Items:

Alcoholic Beverage License Applications Set for Hearing (October 19, 2009)

2. Lester and Webb LLC DBA South City Tavern, 640 E St. Patrick St., for a Retail (on-off sale) Malt Beverage License NO Video Lottery
3. MG Oil Company DBA Rushmore Casino Too, 1808 Mt. Rushmore Rd., for a Retail (on-off sale) Malt Beverage License WITH Video Lottery TRANSFER from South Dakota Vending Inc. DBA Happy Jacks West, 1925 W. Main Street #1
4. MG Oil Company DBA Happy Jacks I-90, 4036 Cheyenne Blvd, for a Retail (on-off sale) Malt Beverage License WITH Video Lottery TRANSFER from High Plains Securities Inc. DBA Cheyenne Casino, 4030 Cheyenne Blvd.
5. MG Oil Company DBA Happy Jacks Valley, 747 Timmons Blvd. Ste. B, for a Retail (on-off sale) Malt Beverage License WITH Video Lottery TRANSFER from South Dakota Vending Inc. DBA Happy Jacks Valley, 747 Timmons Blvd. Ste. B
6. MG Oil Company DBA Happy Jacks Too, 909 E. St. Patrick St. #21, for a Retail (on-off sale) Malt Beverage License WITH Video Lottery TRANSFER from South Dakota Vending Inc. DBA Happy Jacks Too, 909 E. St. Patrick Street #21
7. MG Oil Company DBA Happy Jacks East, 909 E. St. Patrick St. #20, for a Retail (on-off sale) Malt Beverage License WITH Video Lottery TRANSFER from South Dakota Vending Inc. DBA Happy Jacks East, 909 E. St. Patrick Street. #20
8. MG Oil Company DBA Happy Jacks Downtown, 713 Omaha St., for a Retail (on-off sale) Malt Beverage License WITH Video Lottery TRANSFER from South Dakota Vending Inc. DBA Happy Jacks Downtown, 713 Omaha St.
9. MG Oil Company DBA Happy Jacks Cambell, 1601 Cambell St. #3, for a Retail (on-off sale) Malt Beverage License WITH Video Lottery TRANSFER from South Dakota Vending Inc. DBA Happy Jacks Cambell, 1601 Cambell St. #3
10. MG Oil Company DBA Happy Jacks Omaha, 1109 W. Omaha St., for a Retail (on-off sale) Malt Beverage License WITH Video Lottery TRANSFER from Omaha Players Company DBA Happy Jacks Omaha, 1109 W. Omaha St.

Public Works Committee Consent Items

11. No. PW091509-16 – Approve a request that the Mayor direct staff to prepare a handout to post on the website and to forward to property rental agencies as appropriate regarding child safety and screens for multi-story buildings.
13. No. PW 092909-01 – Approve Change Order No. 1F to Simon Contractors of SD, Inc. for the Landfill Scale Approach Repair, Project No. SWO09-1790 / CIP No. 50769, for an increase of \$1,968.50.
14. No. PW092909-02 – Authorize Staff to Advertise for Bids for Dyess Avenue & Beale Street Overlay, Project No. ST09-1826 / CIP No. 50775. Estimated Amount of Project: \$92,200.00 with SDDOT funding up to \$88,000.00 as per agreement.
15. No. PW092909-03 – Authorize Mayor and Finance Officer to Sign the State of South Dakota Letting and Financial Agreement between Department of Transportation and City of Rapid City.
16. No. PW092909-04 – Authorize Mayor and Finance Officer to Sign a Professional Services Agreement with Upper Deck Architects, Inc. for design and construction administration services of the CSAC Roof Replacement, Project No. GB09-1828 / CIP No. 50098, in the amount of \$24,450.00. School district will reimburse City for 40% of costs.
17. No. PW092909-05 – Authorize Mayor and Finance Officer to Sign a Professional Services Agreement with Dream Design International, Inc. for Easy Street Sanitary Sewer Extension, Project No. SS09-1829 / CIP No. 50776, in the amount of \$24,800.00.
18. No. PW092909-07 – Approve the Request for Authorization to Seek Proposals for Engineering Services for Cliff Drive Sanitary Sewer Extension, Project No. SS09-1830 / CIP No. 50778. Estimated design and construction costs: \$800,000.00.
19. No. PW092909-08 – Approve the Request for Authorization to Seek Proposals for Engineering Services for Heights Drive Sanitary Sewer Extension, Project No. SS09-1831 / CIP No. 50777. Estimated design and construction costs: \$670,000.00.
20. No. 09TP025 – Approve the Draft 2010 Unified Planning Work Program for the Rapid City Area Metropolitan Planning Organization.
21. Approve No. PW092909-09 and No. PW092909-10. No. PW092909-09 – Change Order #2, RCS Construction, Vickie Powers Park Project No. PR08-6002, mow strip around perimeter of playground, \$0.00, for a contract time extension of 4 days to September 7, 2009. No. PW092909-10 – Change Order #3, RCS Construction, Vickie Powers Park Project No. PR08-6002, install entrance sign pole bases at playground entrance, \$0.00, for a contract time extension of 14 days to September 21, 2009.

Legal & Finance Committee Consent Items

22. Acknowledge the report regarding use of Cleghorn Springs school property for an all-school reunion.
23. Acknowledge the report regarding the travel policy.
24. No. LF093009-01 – Acknowledge Capital Improvements Program Committee Monthly Update for September 2009.

- 25. No. LF093009-02 – Approve the Capital Plan for Streets, Drainage, MIP Projects for September 2009.
- 26. No. LF093009-03 – Approve the transfer of \$19,874.50 from Milo Barber to the Fire Station Water Line within CIP Government Buildings.
- 27. No. LF093009-04 – Acknowledge the report on revenue stream for CIP.
- 28. No. LF093009-26 – Approve Travel Request for Malcom Chapman to attend NLC 2009 Congress of Cities & Exposition in San Antonio, TX, November 10-14, 2009, in the Approximate Amount of \$2,836.
- 29. No. LF093009-06 – Approve Travel Request for Tim Behlings to attend the International Code Council-Code Development and Educational Hearings in Baltimore, MD, October 28-November 3, 2009, in the approximate amount of \$3,317.
- 30. No. LF093009-07 – Approve Travel Request for Kelly Gunderson, Mike Wright, and Lon Chau to attend TEEEX Advanced Structural Collapse Course in College Station, TX, November 9-13, 2009, in the approximate amount of \$8,954.
- 31. No. LF093009-08 – Approve Travel Request for Eric Hansen, Scott Jangck, Steve McCollar, and Jimmy Massey to attend Confined Space Rescue Tech II Certification in Baton Rouge, LA, December 14-18, 2009, in the approximate amount of \$8,513.
- 32. No. LF093009-09 – Approve Travel Request for Cameron Humphres, Jennifer Eckman, and one employee or board member to attend 2009 Bismarck Airports District Office Fall Seminar in Bismarck, ND, October 26-29, 2009, in the approximate amount of \$2,185.04.
- 33. No. LF093009-22 – Acknowledge report on rough opening handout.
- 34. No. LF093009-24 - Approve Travel Request for planner in-house interviews in the amount of \$1,615.40.
- 35. Set Special Council Meeting for 12:30 p.m. on Tuesday, December 29, 2009, to authorize payment of the end of year invoices.
- 36. No. LF093009-10 – Approve Resolution No. 2009-114 Acknowledging a Correction to the August 3, 2009 Council Minutes.

RESOLUTION #2009-114
RESOLUTION ACKNOWLEDGING A CORRECTION
TO THE AUGUST 3, 2009 COUNCIL MINUTES

WHEREAS, on August 3, 2009, the City Council Authorized the Mayor and Finance Officer to Sign a Maintenance Agreement Renewal with Johnson Controls, Inc., for the Milo Barber Transportation Center, in the amount of \$5,345.00; and

WHEREAS, the minutes of the August 3, 2009 Council meeting were approved on August 17, 2009; and

WHEREAS, the minutes of this meeting included approval to Authorize the Mayor and Finance Officer to Sign a Maintenance Agreement Renewal with Johnson Controls, Inc., for the Milo Barber Transportation Center, in the amount of \$5,345.0014; and

NOW, THEREFORE BE IT RESOLVED, by the City Council, that \$5,345.0014 should be changed to \$5,345.00 in the official minutes of the August 3, 2009 meeting.

Dated this 5th day of October, 2009.

ATTEST:
s/ James F. Preston
Finance Officer

CITY OF RAPID CITY
s/ Alan Hanks, Mayor

(SEAL)

- 37. No. LF093009-11 – Approve Resolution No. 2009-126 Fixing Time and Place for Hearing on November 2, 2009 for Assessment Roll for Property Cleanup.

RESOLUTION #2009-126
RESOLUTION FIXING TIME AND PLACE FOR HEARING ON ASSESSMENT ROLL FOR
CLEANUP OF MISCELLANEOUS PROPERTY

BE IT RESOLVED by the City Council of the City of Rapid City, South Dakota, as follows:

1. The Assessment Roll for Cleanup of Miscellaneous Property was filed in the Finance Office on the 5th day of October 2009. The City Council shall meet at the City / School Administration Center in Rapid City, South Dakota, on the 2nd of November 2009 at 7:00 P.M., this said date being not less than twenty (20) days from the filing of said assessment roll for hearing thereon.
2. The Finance Officer is authorized and directed to prepare a Notice stating the date of filing the assessment roll, the time, and place of hearing thereon; that the assessment roll will be open for public inspection at the Office of the Finance Officer, and referring to the assessment roll for further particulars.
3. The Finance Officer is further authorized and directed to publish notice in the official newspaper one week prior to the date set for hearing and to mail copy thereof, by first class mail, addressed to the owner or owners of any property to be assessed at his, her, or their last mailing address as shown by the records of the Director of Equalization, at least one week prior to the date set for hearing.

Dated this 5th day of October, 2009.

ATTEST:
s/ James F. Preston
Finance Officer

CITY OF RAPID CITY
s/ Alan Hanks, Mayor

(SEAL)

- 38. No. LF093009-12 – Approve Resolution No. 2009-127 Pledging Revenue from the City's Water Utility for Use in Repaying Bonds to Construct Certain Improvements to the City's Water System.

RESOLUTION #2009-127
A RESOLUTION PLEDGING REVENUE FROM THE CITY'S WATER

UTILITY FOR USE IN REPAYING BONDS TO CONSTRUCT CERTAIN IMPROVEMENTS TO THE CITY'S WATER SYSTEM.

WHEREAS, the City of Rapid City operates a water utility pursuant to SDCL Chapter 9-47; and

WHEREAS, the City has determined the need to construct certain improvements to its water system, including a new water treatment plant located at Jackson Springs; and

WHEREAS, these improvements are hereby found to be a general benefit to the City's water system; and

WHEREAS, the City adopted by ordinance new water rates on January 9, 2009; and

WHEREAS, the rates established in the ordinance contemplated construction of these improvements and are sufficient to pay the construction, maintenance and operation costs therefore; and

WHEREAS, the City intends to issue bonds pursuant to SDCL Chapter 9-40 to pay for the cost of constructing these improvements and to pledge sufficient income from the revenues generated by the utility to pay back the bonds and fund the operation and maintenance of the system improvements; and

WHEREAS, the bonds issued by the City will be solely payable through such segregated revenue.

NOW THEREFORE, BE IT RESOLVED by the City of Rapid City, that a surcharge be established to repay bonds issued to construct the Jackson Springs Water treatment plant and related improvements and the St. Martin Reservoir. After the effective date of this Resolution, the water rates established by Chapter 13.04 of the Rapid City Municipal Code will consist of two components, a base rate and a separate surcharge for repayment of bonds issued to construct the contemplated improvements to the City's water system. The City shall account for the revenues generated from the base rate and surcharge separately, but the surcharge will not be required to be shown separately on the water utility bills of the system users. The costs of the improvements shall be paid solely from the revenues produced by the surcharge, and not from the general revenues of the water utility; provided that the City may from time to time advance moneys from the general revenues of the water utility to pay costs of the improvements, but any moneys so advanced shall be repaid from surcharge collections within one year of the date of each such advance.

BE IT FURTHER RESOLVED, that a per meter and per unit surcharge be established as follows:

	5/8 meter	3/4 meter	1 meter	1.5 meter	2 meter	3 meter	4 meter	6 meter	8 meter	Additional Per Unit Surcharge
2009	6.75	7.49	9.12	12.66	17.88	38.72	55.07	95.16	144.20	
2010	6.92	7.68	9.37	13.01	18.39	39.85	56.69	97.98	148.50	0.06
2011	7.22	8.02	9.79	13.61	19.26	41.80	59.48	102.83	155.87	0.21
2012	7.22	8.02	9.79	13.61	19.26	41.80	59.48	102.83	155.87	0.30
2013	7.28	8.09	9.87	13.74	19.44	42.20	60.06	103.85	157.42	0.52

The additional per unit surcharge applies to all users of the water system without regard to classification. The surcharges are not in addition to the present water and meter charges. The present rates will remain as adopted in January 2009. The surcharges will be segregated and

accounted for per the terms of the Resolution authorizing the issuance and sale of the revenue bonds for the Jackson Springs Water Treatment Plant. At the time the Council adopts water rates for 2014 and beyond, this resolution will also be modified to extend the surcharge and establish the amount thereof. The surcharge may also be modified in the event the City forecasts the revenues collected pursuant thereto will be insufficient to pay the principal of and the interest due upon the bonds.

Dated this 5th day of October, 2009.

ATTEST:
s/ James F. Preston
Finance Officer

CITY OF RAPID CITY
s/ Alan Hanks, Mayor

(SEAL)

41. No. LF093009-16 – Authorize Mayor and Finance Officer to sign Contract for Fiscal Year 2008 Community Development Block Grant-Recovery Funds, The American Recovery and Reinvestment Act of 2009, Sub-Recipient – Behavior Management Systems.
42. No. LF093009-17 – Authorize Mayor and Finance Officer to sign an Agreement for Independent Contractor Services between Western South Dakota Community Action Agency (CAP) and the City of Rapid City.
44. No. LF093009-25 – Approve going out for an RFP to list the entire Wally Byam property for sale with MLS.

Growth Management Department Consent Items

45. No. 08PL124 – Deny without prejudice a request by CETEC Engineering Services, Inc. for OS Development, Inc. for a **Preliminary Plat** on Lot 1 of Block 1, Lot 1 of Block 2, Lots 1 thru 40 of Block 3, Lots 1 thru 7 of Block 4, Lots 1 thru 10 of Block 5, Lots 1 thru 6 of Block 6, Lots 1 thru 12 of Block 7, Lots 1 thru 8 of Block 8, Lots 1 thru 10 of Block 9, Tracts A and B and the dedicated public Right-of-way, located in the SW1/4 NE1/4, SE1/4 NE1/4, SE1/4, Section 22 and the NE1/4 NE1/4, SE1/4 NE1/4, SW1/4 NE1/4, Section 27, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, legally described as a tract of land located in the SW¼ NE¼, SE¼ NE¼, SE¼ of Section 22 and the NE¼ NE¼, of Section 27, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota. Being more particularly described as follows: Commencing at the East ¼ Corner of said Section 22, said point being monumented with a nail in the surface of the asphalt of Reservoir Rd and having two reference monuments consisting of a brass cap and iron pipe, one bears N40°53'23"W 46.84 feet, the second bears S42°28'55"W 47.86 feet; Thence S11°01'40"W 211.80 feet the True Point of Beginning, said point is on the westerly Right-of-Way line of said Reservoir Rd; Thence N88°20'56"W 42.22 feet to the beginning of a curve concave to the northeast having a radius of 454.00 feet; Thence along said curve a distance of 240.79 feet to the beginning point of a reverse curve having a radius of 666.00 feet; Thence along said curve a distance of 763.21 feet to a point; Thence N42°15'21"W 103.29 feet to the beginning of a curve concave to the northeast having a radius of 740.00 feet; Thence along said curve a distance of 109.90 feet to a point; Thence N04°01'19"W 212.28 feet to a point; Thence S55°45'42"W 75.36 feet to a point; Thence N86°53'21"W 134.46 feet to a point; Thence S10°21'24"E 98.19 feet to a point; Thence S35°06'10"W 63.00 feet to a point; Thence S46°21'05"E 109.89 feet to a the beginning of a non-tangent curve concave to the southwest having a radius of 936.00 feet and a chord bearing of S45°14'35"E; Thence along said curve a distance of 97.60 feet to a point; Thence S42°15'21"E 82.00 feet to a point; Thence S47°44'39"W 267.00 feet to a point; Thence

S42°15'21"E 318.00 feet to the beginning of a curve concave to the southwest having a radius of 669.00 feet; Thence along said curve a distance of 415.25 feet to a point; Thence S04°27'54"E 52.00 feet to the beginning of a non-tangent curve concave to the west having a radius of 669.00 feet and a chord bearing of S00°04'26"E ; Thence along said curve a distance of 50.53 feet to a point; Thence S02°05'22"W 618.45 feet to a point; Thence N87°54'38"W 157.00 feet to a point; Thence S02°05'22"W 82.00 feet to a point; Thence S47°05'22"W 14.14 feet to a point; Thence N87°54'38"W 95.00 feet to a point; Thence S02°05'22"W 89.55 feet to the beginning of a curve concave to the northwest having a radius of 407.00 feet; Thence along said curve a distance of 283.67 feet to a point; Thence S42°01'34"W 129.91 feet to a point; Thence S47°44'39"W 76.00 feet to a point; Thence S42°15'21"E 25.35 feet to the beginning of a curve concave to the northeast having a radius of 1238.00 feet; Thence along said curve a distance of 692.63' to a point; Thence S32°05'22"W 61.42 feet to the beginning of a curve concave to the northwest having a radius of 2060.00 feet; Thence along said curve a distance of 464.18 feet to a point; Thence S45°00'00"W 183.94 feet to a point; Thence S45°00'00"E 172.00 feet to a point; Thence N45°00'00"E 86.99 feet to a point; Thence S90°00'00"E 14.14 feet to a point; Thence S45°00'00"E 100.00 feet to a point; Thence N45°00'00"E 478.38 feet to a point; Thence S64°12'57"E 223.55 feet to the beginning of a non-tangent curve concave to the southwest having a radius of 254.00 feet and a chord bearing of S28°27'35"E; Thence along said curve a distance of 263.73 feet to a point; Thence S88°42'49"E 120.00 feet to the beginning of a non-tangent curve concave to the west having a radius of 374.00 feet and a chord bearing of S01°38'45"W; Thence along said curve a distance of 4.69 feet to a point; Thence S02°00'19"W 29.40 feet to a point; Thence S87°59'41"E 199.00 feet to a point along the westerly Right-of-Way line of said Reservoir Road; Thence N02°00'19"E 678.41 feet along said Right-of-Way where it intersects the South line of the Southeast quarter of said Section 22, from which the Southeast corner of said section 22 bears S88°27'49"E 33.00 feet, said point being monumented with an iron rod below the surface of the asphalt; Thence N02°03'51"E 38.00 along the Right-of-Way of said Reservoir Rd to a point; Thence N88°27'48"W 515.70 feet to the beginning of a curve concave to the northeast having a radius of 1162.00 feet; Thence along said curve a distance of 264.57 feet to a point; Thence N32°05'22"E 194.31 feet to the beginning of a curve concave to the northwest having a radius of 1066.00 feet; Thence along said curve a distance of 465.06 feet to a point; Thence S87°56'54"E 23.94 feet to the southwest corner of Tract 1 of the Bradeen Subdivision, said point being monumented with an iron rod and cap stamped "Cetec Eng LS 4725"; Thence N02°05'22"E 986.42 feet along the west line of said Tract 1 to the beginning of a non-tangent curve concave to the southwest having a radius of 1014.96 feet and a chord bearing N22°20'38"W said point is also the northwest corner of said Tract 1 and being monumented with an iron rod and cap stamped "Cetec Eng LS 4725"; Thence along said curve a distance of 695.42 feet to a point; Thence N42°03'11"W 203.20 feet to a point; Thence N41°26'28"W 12.09 feet to the beginning of a non-tangent curve concave to the south having a radius of 613.96 feet and a chord bearing of S89°59'42"E; Thence along said curve a distance of 686.58 feet to the beginning point of a reverse curve having a radius of 506.00 feet; Thence along said curve a distance of 268.36 feet to a point; Thence S88°20'56"E 41.85 feet to a point on the westerly Right-of-Way line of said Section 22; Thence N02°03'51"E 52.00 feet along said Right-of-Way line to the True Point of Beginning, Section 27, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, located west of Reservoir Road and south of the intersection of S.D. Highway 44 and Reservoir Road.

46. No. 09PL050 – Acknowledge applicant's withdrawal of a request by D.C. Scott Co. Land Surveyors for a **Preliminary Plat** on Lot 1 of Rommesmo Subdivision, located in the SW1/4 SW1/4 of Section 27, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota, legally described as the SW1/4 SW1/4 of Section 27, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota, located northwest of the intersection of Lien Street and Deadwood Avenue.

END OF CONSENT CALENDAR

Motion was made by Kooiker, second by Waugh, to acknowledge the report on the Review of Policy on Non-Responsible Bidders. Responding to Weifenbach, Kooiker explained that the report was to help understand the City’s policy on non-responsible bidders, and it was indicated that it is dealt with case-by-case. Green stated that there was one instance where a company was declared a non-responsible bidder, but there was an extensive process and hearing in front of the Council before that happened. He also clarified that a declaration that a company is non-responsible only applies to city bid projects, and the Council would only have recourse if the person is licensed by the City. Green said the consultant selection process would be the first place to address an issue with a design firm, and the second place would be when the contract comes before the Council. Motion carried.

Motion was made by Olson, second by Hadcock, to (No. LF093009-13) Approve Resolution No. 2009-118 Authorizing and Directing the Issuance and Sale of Water Revenue Bonds, Series 2009, to Pay the Cost of Improvements to the Municipal Water Utility and Defining the Terms and Manner of Payment of the Bonds and the Security Therefor. Responding to Kooiker, Preston said RBC was selected through an RFP process, and we have not used them in the past. Kooiker said he supports the selection but wished the selection for bond council and the trust firm would have been chosen through a complete bid process. Motion carried.

RESOLUTION NO. 2009-118

RESOLUTION AUTHORIZING AND DIRECTING THE ISSUANCE AND SALE OF WATER REVENUE BONDS, SERIES 2009, TO PAY THE COST OF IMPROVEMENTS TO THE MUNICIPAL WATER UTILITY AND DEFINING THE TERMS AND MANNER OF PAYMENT OF THE BONDS AND THE SECURITY THEREFOR.

BE IT RESOLVED by the City Council of the City of Rapid City, South Dakota (the “City”), as follows:

SECTION 1. RECITALS, AUTHORIZATION AND FINDINGS.

1.1. Recitals. The City currently operates a municipal water utility (the “Utility”), consisting of improvements or parts of improvements for the purpose of providing water and water supply for municipal, industrial and domestic purposes.

1.2. Authorization. Pursuant to South Dakota Codified Laws, Chapter 9-40 (the “Act”), The City is authorized to issue its Water Revenue Bonds, Series 2009 (the “Series 2009 Bonds,” and, together with any additional bonds issued pursuant to Section 5.3 hereof, the “Bonds”), the proceeds of which will be used, together with such other available funds of the Utility as may be required, to defray the costs of acquiring and constructing improvements to the Utility, consisting of the acquisition and construction of the Jackson Springs Water Treatment Plant and related improvements and the acquisition and construction of the Saint Martin’s Reservoir and related improvements (collectively, the “Improvements”). The estimated cost of the Improvements is not less than \$38,000,000. The City is authorized to acquire the Improvements, to issue its utility revenue bonds in order to defray the costs thereof, and to make all pledges, covenants and agreements authorized by law for the protections of the owners of the bonds including, without limitation, those covenants set forth in Section 9-40-16 and 9-40-17 of the Act. The utility revenue bonds are payable solely from the revenue or income derived from the operation of the Improvements and shall not constitute an indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations.

1.3. Findings. It is hereby found, determined and declared to be in the best interests of the City to issue the Series 2009 Bonds in accordance with the Act and under the terms and conditions set forth in this resolution (the “Resolution”).

SECTION 2. SALE, BOND PURCHASE AGREEMENT, OFFICIAL STATEMENT, INDENTURE OF TRUST AND APPROVAL AND EXECUTION OF DOCUMENTS.

2.1. Sale. The Series 2009 Bonds authorized hereby shall be issued in one or more series, in an aggregate principal amount not to exceed \$46,000,000, shall be sold to RBC Capital Markets Corporation, Minneapolis, Minnesota (the "Underwriter") at a purchase price (exclusive of original issue discount) of not less than 99% of par and at an original issue discount not to exceed 2% of par, shall have a bond yield for arbitrage purposes not greater than 5.80% and shall mature over a period not to exceed 30 years. The Mayor and Finance Officer are further authorized and directed to agree with the Underwriter upon the exact purchase price, principal amount, maturities, redemption provisions and interest rate or rates for the Series 2009 Bonds, within the parameters set forth in this Section 2.1.

2.2. Bond Purchase Agreement. The execution of a Bond Purchase Agreement setting forth such final terms by the Mayor and Finance Officer is hereby approved and authorized and such execution shall be conclusive evidence of such agreement and shall be binding upon the City. The provisions of the Bond Purchase Agreement as so executed, including all Exhibits and Appendices thereto, are incorporated herein by reference. The law firm of Dorsey & Whitney LLP, in Minneapolis, Minnesota, is hereby appointed as bond counsel for purposes of the Series 2009 Bonds.

2.3. Official Statement. The Bonds will be offered for sale by means of an Official Statement. The Mayor, the City Attorney, and the Finance Officer, are authorized, in cooperation with the Underwriter and Bond Counsel, to prepare a Preliminary Official Statement to be distributed to prospective purchasers of the Series 2009 Bonds. The Finance Officer is hereby authorized on behalf of the City to deem the Preliminary Official Statement a "final" official statement as of its date, in accordance with Rule 15c2-12(b)(1) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934. The Mayor and the Finance Officer are hereby authorized and directed to approve, and, if requested, to execute the final Official Statement to be prepared substantially in the form of the Preliminary Official Statement, including final pricing terms. Execution of the Official Statement by appropriate officers of the City shall be conclusive as to the approval thereof by this Council. The City hereby consents to the distribution of the Preliminary Official Statement and the Official Statement to prospective purchasers of the Series 2009 Bonds.

2.4. Indenture of Trust. To provide additional security for the Bonds and to set forth the terms of and other matters relating to the Bonds, the City shall enter into an Indenture of Trust (the "Indenture") with the Trustee (as defined in Section 3.4). The terms of the Bonds shall be set forth in the Indenture, and the City shall pledge the Net Revenues of the Improvements (as defined in Section 4.3) to secure the Bonds. The Mayor and Finance Director are authorized and directed to approve and execute the Indenture on behalf of the City.

2.5. Approval and Execution of Documents. Upon the determination of the terms of the Bonds (within the limits set forth herein), the Indenture and Bond Purchase Agreement, and such other documents and certificates as may be approved by the City Attorney, shall be executed in the name and on behalf of the City by the Mayor and the Finance Officer in substantially the form on file, but with such changes therein, not inconsistent with this Resolution, the Bond Purchase Agreement or other law, as may be approved by the officers executing the same, which approval shall be conclusively evidenced by the execution thereof.

SECTION 3. TERMS, EXECUTION AND DELIVERY.

3.1. Date, Maturities and Interest Rates. The Series 2009 Bonds shall be issued in the denomination of \$5,000 each, or any integral multiple thereof, shall mature on the dates and in the respective years and

amounts, and shall bear interest from date of original issue until paid or duly called for redemption payable on the dates and at the respective annual rates as set forth in the Indenture.

3.2. Dates and Interest Payment Dates. Each Series 2009 Bond shall bear a date of original issue as of the date on which the Series 2009 Bonds are delivered to the Underwriter. The interest on the Series 2009 Bonds shall be payable on the interest payment dates specified in the Indenture to the owner of record thereof as the close of business on the fifteenth day of the immediately preceding month, whether or not such day is a business day.

3.3. Redemption. The Series 2009 Bonds shall be subject to redemption prior to maturity, at the option of the City, in the years and at the redemption prices set forth in the Indenture. Notice of redemption shall be given in accordance with the requirements of the Indenture.

3.4. Appointment of Trustee. The City hereby appoints The First National Bank in Sioux Falls (the "Trustee") as the initial trustee under the Indenture and also as bond registrar, transfer agent and paying agent for the Bonds. Upon merger or consolidation of the Trustee with another corporation, if the resulting corporation is a bank or trust company authorized by law to conduct such business, such corporation shall be authorized to act as successor Trustee. The City reserves the right to remove the Trustee in the manner provided in the Indenture.

SECTION 4. WATER UTILITY FUND.

4.1. Parity Bonds; Bond Proceeds and Revenues Pledged and Appropriated. A fund designated as the Water Utility Fund (the "Fund") is and shall be maintained as a separate and special bookkeeping account on the official books of the City until all Bonds payable from the Net Revenues of the Improvements, as provided in Section 5 hereof, have been fully paid, or the City's obligation with reference to the Bonds has been discharged as provided in this Resolution. An account to be designated as the 2009 Improvements Revenue Account (the "Revenue Account") is established within the Fund and shall be maintained as a separate and special bookkeeping account on the official books of the City until all Bonds payable from the Net Revenues of the Improvements as provided in Section 5 hereof, have been fully paid, or the City's obligation with reference to the Bonds has been discharged as provided in this Resolution. All proceeds of the Bonds and all other funds hereafter received or appropriated for purposes of the Improvements are appropriated to the Revenue Account. All gross revenues derived from the operation of the Improvements are irrevocably pledged and appropriated and shall be credited to the Revenue Account as received. As described in Section 6.12 hereof, the City shall impose a separate surcharge for the availability, benefit and use of the Improvements as part of the Utility and shall aggregate the gross revenues derived from such surcharge and the Improvements, together with the expenses of operation and maintenance of the Improvements and shall account for them as provided in this Resolution and the Indenture; except as expressly stated in this Resolution, the pledges, appropriations, covenants and agreements of the City and the subaccounts established within the Revenue Account by the Resolution apply only to the Improvements, its operations, revenues and expenses. The City has found that acquisition and construction of the Improvements will benefit all present and future users of the Utility, therefore the surcharge described in Section 6.12 is being imposed on all current and future users of the Utility. Such gross revenues shall include all gross income and receipts from rates, fees, charges and rentals imposed for the availability, benefit and use of the Improvements as now constituted and of all replacements and improvements thereof and additions thereto, and from penalties and interest thereon, and from any sales of property acquired for the Improvements and all income received from the investment of such gross revenues; but not any taxes levied or amounts borrowed or received as grants for construction of any part of the Improvements. The Revenue Account shall be subdivided into separate subaccounts as designated and described in Sections 4.2 to 4.7, to segregate income and expenses received, paid and accrued for the respective purposes described in those sections. The gross revenues received in the Revenue Account shall be apportioned monthly or as soon as possible after the first day of each month, commencing the first

calendar month following the delivery of the Series 2009 Bonds, which apportionment is hereinafter referred to as the "monthly apportionment."

4.2. Construction Subaccount. The Construction Subaccount is established as a trust account under the Indenture. An initial deposit to the credit of the Construction Subaccount is to be made under the provisions of the Indenture. Disbursements from the Construction Subaccount shall be made in accordance with the provisions of the Indenture. The Construction Subaccount shall be used only to pay as incurred and allowed costs which under generally accepted accounting principles are capital costs of the Improvements, and of such future reconstructions, improvements, betterments or extensions of the Improvements as may be authorized in accordance with law; including but not limited to payments due for work and materials performed and delivered under construction contracts, architectural, engineering, inspection, supervision, fiscal and legal expenses, the cost of lands and easements, interest accruing on Bonds during the first three years following the date of their delivery, if and to the extent that the Debt Service Subaccount is not sufficient for payment of such interest, reimbursement of any advances made from other City funds, and all other expenses incurred in connection with the construction and financing of any such undertaking. To the Construction Subaccount shall be credited as received all proceeds of Bonds, except amounts appropriated to the Debt Service Subaccount and the Reserve Subaccount under the Indenture, all other funds appropriated by the City for the Improvements, and all income received from the investment of the Construction Subaccount. The proceeds of any property insurance claim with respect to the Improvements received pursuant to Section 6.3 hereof shall be deposited in the Construction Subaccount and applied to the repair, replace and restoration of the Improvements.

4.3. Operating Subaccount. The Operating Subaccount is hereby established as a separate subaccount within the Revenue Account. On each monthly apportionment there shall first be set aside and credited to the Operating Subaccount, as a first charge on the gross revenues of the Improvements, such amount as may be required over and above the balance then held in the Operating Subaccount to pay the reasonable and necessary operating expenses of the Improvements which are then due and payable, or are to be paid prior to the next monthly apportionment. The term "operating expenses" shall mean the current expenses, paid or accrued, of operation, maintenance and current repair of the Improvements, calculated in accordance with generally accepted accounting principles, and shall include, without limitation, administrative expenses of the City relating solely to the Improvements, premiums for insurance on the properties thereof, labor and the cost of materials and supplies used for current operation and for maintenance, and charges for the accumulation of an appropriate reserve (the "Operating Reserve") for current expenses which are not recurrent monthly but may reasonably be expected to be incurred in accordance with generally accepted accounting principles. Such operating expenses shall not include any allowance for depreciation or renewals or replacements of capital assets of the Improvements and shall not include any portion of the salaries or wages paid to any officer or employee of the City, except such portion as shall represent reasonable compensation for the performance of duties necessary to the operation of the Improvements, nor any amount properly payable from any other subaccount of the Revenue Account. Moneys in the Operating Subaccount shall be used solely for the payment of current operation expenses of the Improvements. The Net Revenues of the Improvements, as referred to in this Resolution, are hereby defined to include the entire amount of such gross revenues remaining after each such monthly apportionment, crediting to the Operating Subaccount the amount required hereby, including sums required to maintain the Operating Reserve.

4.4. Debt Service Subaccount. The Debt Service Subaccount is established as a trust account under the Indenture. An initial deposit to the credit of the Debt Service Subaccount, consisting of accrued interest, if any, and capitalized interest through December 31, 2012, is to be made under the provisions of the Indenture. Upon each monthly apportionment commencing on January 1, 2010, there shall be transferred to the Trustee, for credit to the Debt Service Subaccount, out of the Net Revenues of the Improvements, an amount equal to not less than one-twelfth of the total sum of the principal and interest to become due within the then next succeeding twelve months on all Series 2009 Bonds and any Additional Bonds issued on a parity therewith, after giving credit to proceeds of Series 2009 Bonds on

deposit therein for the payment of capitalized interest. If on the 25th day of the month preceding any Interest Payment Date there are not sufficient amounts on deposit in the Debt Service Subaccount to pay the total amount of interest coming due on such Interest Payment Date, the City shall transfer any moneys then on deposit to the credit of the Surplus Subaccount, in an amount equal to such deficiency, to the Trustee for deposit in the Debt Service Subaccount. If on the 25th date of the month preceding any Principal Payment Date there are not sufficient amounts on deposit in the Debt Service Subaccount to pay the total amount of principal coming due on such Principal Payment Date, the City shall transfer any moneys then on deposit in the Surplus Subaccount, in an amount equal to such deficiency, to the Trustee for deposit in the Debt Service Subaccount.

4.5. Reserve Subaccount. The Reserve Subaccount is established as a trust account under the Indenture. There shall be credited to the Reserve Subaccount from the proceeds of the Bonds, an amount equal to the Reserve Requirement (as defined in the Indenture) calculated with respect to the Bonds. Thereafter, in the event that the amount on deposit in the Reserve Subaccount shall thereafter fall below the Reserve Requirement, additional deposits shall be made from funds of the Improvements, after the requirements of the Debt Service Subaccount have been satisfied, to the Reserve Subaccount until the Reserve Requirement is again reached. Upon the issuance of any Additional Bonds, the Reserve Requirement shall be increased to reflect the issuance thereof. The balance required shall be funded on the delivery date of the Additional Bonds. Moneys on hand in the Reserve Subaccount shall be used only to pay maturing principal and interest on the Bonds and any Additional Bonds when other moneys in the Debt Service Subaccount are insufficient therefor.

4.6. Replacement and Depreciation Subaccount. The Replacement and Depreciation Subaccount is hereby established as a separate subaccount within the Revenue Account. There shall next be set aside and credited, upon each monthly apportionment, to the Replacement and Depreciation Subaccount such portion of the Net Revenues, in excess of the current requirements of the Debt Service Subaccount and the Reserve Subaccount (which portion of the Net Revenues is referred to herein as Surplus Net Revenues), as the City Council shall determine to be required for the accumulation of a reasonable reserve for renewal of worn out, obsolete or damaged properties and equipment of the Improvements. Moneys in this subaccount shall be used only for the purposes above stated or, if so directed by the City Council, to redeem Bonds which are prepayable according to their terms, to pay principal or interest when due thereon as required in Section 4.4 hereof, or to pay the cost of improvements to the Improvements; provided, that in the event that the City shall hereafter issue bonds for the purpose of financing the construction and installation of additional improvements or additions to the Improvements, but which additional bonds cannot, upon the terms and conditions provided in Section 5, be payable from the Debt Service Subaccount, Surplus Net Revenues from time to time received may be segregated and paid into one or more separate and additional subaccounts from the payment of such bonds and interest thereon, in advance of payments required to be made into the Replacement and Depreciation Subaccount.

4.7. Surplus Subaccount. The Surplus Subaccount is hereby established as a separate account within the Revenue Account. Any amount of the Surplus Net Revenues from time to time remaining after the above required applications thereof shall be credited to the Surplus Subaccount, and the moneys from time to time in that account, when not required to restore a current deficiency in the Debt Service Subaccount as provided in Section 4.4 hereof, may be used for any of the following purposes and not otherwise:

- (a) To redeem and prepay Bonds when and as such Bonds become prepayable according to their terms;
- (b) To purchase Bonds on the open market, whether or not the Bonds so purchased or other such Bonds may then be prepayable according to their terms; and, if the Reserve Subaccount is then funded to the full amount required to be maintained therein, and the balances in the Debt Service Subaccount and the Replacement and Depreciation Subaccount are sufficient to meet all payments required or reasonably anticipated to be made therefrom prior to the end of the current fiscal year, then;
- (c) To pay for repairs of

or for the construction and installation of improvements or additions to the Improvements; and, if the Reserve Subaccount is then funded to the full amount required to be maintained therein, and the balances in the Debt Service Subaccount and the Replacement and Depreciation Subaccount are sufficient to meet all payments required or reasonably anticipated to be made therefrom prior to the end of the then current fiscal year, then: (d) To be held as a reserve for redemption and prepayment of the Bonds which are not then but will later be prepayable according to their terms; or (e) To be used for any other authorized municipal purpose designated by the City Council. No moneys shall at any time be transferred from the Surplus Subaccount or any other subaccount of the Revenue Account to any other fund of the City, nor shall such moneys at any time be loaned to other municipal funds or invested in warrants, special assessment bonds or other obligations payable from other funds, except as provided in this section.

4.8. Deposit and Investment of Funds. The City Finance Officer shall cause all moneys pertaining to those subaccounts in the Revenue Account which are maintained by the City to be deposited as received with one or more banks which are duly qualified public depositories under the provisions of Chapter 4-6A, SDCL, in a deposit account or accounts, which shall be maintained separate and apart from all other account of the City, so long as any of the Bonds and the interest thereon shall remain unpaid. Any of such moneys not necessary for immediate use may be deposited with such depository banks in savings or time deposits. No moneys shall at any time be withdrawn from such deposit accounts except for the purposes of the Revenue Account as authorized in this Resolution; except that moneys from time to time on hand in the Revenue Account may at any time, in the discretion of this Council, be invested in securities permitted by the provisions of Section 4-5-6, SDCL; provided, that the Replacement and Depreciation Subaccount and the Surplus Subaccount may be invested in such securities maturing not later than ten years from the date of the investment; and provided further, that moneys in the Surplus Subaccount may, in the discretion of this Council, be invested in any securities which are direct, general obligations of the City. Income received from the deposit or investment of moneys shall be credited to the subaccount from whose moneys the deposit was made or the investment was purchased, and handled and accounted for in the same manner as other moneys in that subaccount.

SECTION 5. PRIORITIES AND ADDITIONAL BONDS.

5.1. Priority of Bond Payments. Each and all of the Bonds shall be equally and ratably secured by and payable out of the Net Revenues of the Improvements without preference or priority of any one Bond over any other by reason of serial number or otherwise; provided, that if at any time the Net Revenues of the Improvements are insufficient to pay principal and interest then due on all Bonds, any and all moneys then on hand shall be first used to pay the interest accrued on all outstanding Bonds, and the balance shall be applied toward payment of the maturing principal of Bonds in order of their maturities, the earliest maturing Bonds to be paid first, and pro-rata in payment of Bonds maturing on the same date.

5.2. Refunding Revenue Bonds. The City reserves the right and privilege of refunding any or all of the Bonds, but only subject to the following terms and conditions: (a) Any matured Bonds may be refunded if moneys available for the payment thereof at maturity, within the limitation prescribed in Section 5.1 hereof, should at any time be insufficient to make such payment in full. (b) Any Bonds may be refunded prior to maturity, as and when they become prepayable according to their terms. (c) Provision may be made for the payment and refunding of any unmatured Bonds by the deposit with a duly qualified depository bank, as escrow agent, of a sufficient amount of cash, or of Bonds or other general obligations of the United States, or of securities whose principal and interest payments are guaranteed by the United States, to pay the principal amount of such outstanding Bonds with interest to the earliest subsequent date, if any, upon which the same may be called for redemption and prepayment, and with interest to the maturity of any such Bonds which are not subsequently prepayable. (d) Any refunding revenue bonds issued for the above purposes may be made payable from the Net Revenues of the Improvements on a parity as to interest with all then outstanding Bonds without meeting the Net Income test for Additional Bonds set forth in Section 5.3, so long as (i) (1) the maturity of each refunding revenue

bond shall be subsequent to the last maturity of any then outstanding Bonds which are not refunded or to be refunded out of moneys on deposit with such escrow agent, and (2) no bondholder shall be required to accept a refunding revenue bond in exchange for any Bond owned by such bondholder; or (ii) (1) the final maturity of the refunding bonds does not exceed the final maturity of the bonds being refunded, and (2) maximum annual debt service on the refunding bonds is not more than 125% of the maximum annual debt service on the bonds being refunded.

5.3. Other Parity Bonds. The City reserves the right to issue additional bonds payable from the Debt Service Subaccount of the Revenue Account, on a parity as to both principal and interest with the Series 2009 Bonds (the "Additional Bonds"), for the purpose of completing the acquisition and construction of the Improvements if (i) no default has occurred and is continuing under this Resolution, and (ii) the Net Income of the Improvements, as defined herein, for the last complete fiscal year of the City preceding the issuance of such Additional Bonds has equaled at least 125% of the average annual principal and interest payable from the Debt Service Subaccount in any subsequent calendar year during the term of the outstanding Bonds, on all Bonds then outstanding and on the Additional Bonds proposed to be issued. The Net Income of the Improvements is hereby defined to mean, for any fiscal year, the total operating revenues of the Improvements, less the total operating expenses thereof, to which shall be added investment income, depreciation and interest expense, all as determined in accordance with generally accepted accounting principles. For the purpose of the foregoing computation, the Net Income for the fiscal year preceding the issuance of Additional Bonds shall be the Net Income shown by the official books and records of the City, except that if the rates and charges for services provided by the Improvements have been changed since the beginning of such preceding fiscal year, then the rates and charges in effect at the time of issuance of the Additional Bonds shall be applied to the quantities of service actually rendered and made available during such preceding fiscal year to ascertain the gross revenues, from which there shall be deducted to determine the Net Income the actual operation and maintenance cost for the last complete fiscal year as shown by the official books and records of the City plus any additional annual costs of operation and maintenance which the engineer for the City estimates will be incurred because of the improvement or extension of the Improvements to be constructed from the proceeds of the Additional Bonds proposed to be issued. In no event shall any Additional Bonds be issued and made payable from the Debt Service Subaccount if the City is then in default in any payment of principal or interest deficiency in the balances required by this Resolution to be maintained in any of the subaccounts of the Revenue Account. Notwithstanding the provisions of Section 7 hereof requiring consent of the registered owners of all outstanding Bonds, the provisions of this section may, with respect to the issuance of Additional Bonds, be waived or amended with the written consent of the registered owners of not less than three-quarters in principal amount of the outstanding Bonds.

5.4. Subordinate Lien Bonds. Notwithstanding the above provisions of this Section 5, nothing contained in this Resolution or in the Bonds shall be construed to preclude the City from issuing bonds when necessary for the enlargement, improvement or extension of the Improvements, provided such bonds, whether constituting a general obligation of the City or payable solely from water revenues, are expressly made a charge on and are payable only from the Surplus Net Revenues of the Improvements as defined in Section 4.7 hereof and are not superior to or on a parity with the Series 2009 Bonds.

SECTION 6. COVENANTS.

6.1. General. The City covenants and agrees with the registered owners from time to time of all Bonds that the recitals contained in Section 1 are correct; and that, subject to Section 6.5 hereof, until all Bonds are fully discharged as provided in this Resolution, it will continue to hold, maintain and operate the Utility and the Improvements as a part thereof, as a public utility and convenience, free from all liens thereon or on the income therefrom other than the liens herein granted or provided for, will observe prudent utility practices, and will maintain, expend and account for the Revenue Account and the several subaccounts therein as provided in Section 4, and will issue no Additional Bonds or other obligations constituting a lien or charge on the Net Revenues of the Improvements except upon the conditions and in the manner

prescribed in Section 5, and will perform and cause all officers and employees of the City to perform and enforce each and all of the additional covenants and agreements set forth in this section.

6.2. Competing Service. The City will not establish or authorize the establishment of any other system for the public supply of service or services in competition with any or all of the services supplied by the facilities of the Utility or the Improvements.

6.3. Property Insurance. The City will cause all buildings, properties, fixtures and equipment constituting a part of the Utility or the Improvements to be kept insured with a reputable insurance carrier or carriers, qualified under the laws of South Dakota, or a qualified municipal insurance pool, in such amounts as are ordinarily carried, and against loss or damage by such hazards and risks as are ordinarily insured against by public utilities owning and operating properties of a similar character and size; provided that if at any time the City is unable to obtain insurance, it will obtain insurance in such amounts and against risks as are reasonably obtainable. The proceeds of all such insurance shall be available for the repair, replacement or reconstruction of damaged or destroyed property, and any proceeds attributable to the Improvements shall be deposited in the Construction Subaccount and applied as provided in Section 4.2 hereof, and until paid out in making good such loss or damage, are pledged as security for the outstanding Bonds issued hereunder. All insurance proceeds received with respect to the Improvements in excess of the amount required for restoration of the loss or damage compensated thereby shall be and become part of the revenues appropriated to the Revenue Account. If for any reason insurance proceeds are insufficient for the repair, replacement and reconstruction of the insured property constituting a part of the Improvements, the City shall supply the deficiency from revenues on hand in the Replacement and Depreciation Subaccount and the Surplus Subaccount, and may supply it from any other City funds, but is not obligated to the registered owners so to do unless the deficiency results from breach of the covenant in this section.

6.4. Liability Insurance and Surety Bonds. The City will carry insurance against liability of the City and its employees for damage to persons and property resulting from the operation of the Utility, and the Improvements as a part thereof, in amounts the City determines from time to time to be necessary or advisable by reason of the character and extent of such operation. It will also cause all persons handling money and other assets of the Utility and the Revenue Account to be adequately bonded for the faithful performance of their duties and to account for and pay over such money to the City. All amounts received under such insurance and bonds shall be applied to the payment of the loss or damage covered thereby. The premiums for all insurance and bonds required by this section and by Section 6.3 constitute part of the Operating Expenses of the Improvements, but no insurance liabilities of the City in excess of amounts received under such insurance and bonds shall constitute a lien or charge on revenues or any other assets herein or otherwise pledged to the Debt Service Subaccount. Such insurance may be obtained through a qualified municipal insurance pool.

6.5. Disposition of Property. The City will not mortgage, lease, sell or otherwise dispose of any real or personal properties of the Improvements, unless: (a) Prior to or simultaneous with such mortgage, lease, sale or other disposition, all of the outstanding Bonds shall be discharged as provided in Section 8; or (b) The properties to be mortgaged, leased sold or otherwise disposed of are unserviceable, inadequate, obsolete or no longer required for use in connection with the Improvements, and all proceeds of the mortgage, lease, sale or other disposition of such properties are deposited into the Revenue Account.

6.6. Books and Records. The City will cause proper and adequate books of record and account to be kept showing complete and correct entries of all receipts, disbursements and other transactions relating to the Utility, and the Improvements as a part thereof, the gross revenues derived from the operation of the Improvements, and the segregation and application of the gross revenues in accordance with this Resolution, in such reasonable detail as may be determined by the City in accordance with generally accepted accounting practice and principles. It will cause such books to be maintained on the basis of a fiscal year commencing January 1 and ending December 31, or such other period as the City Council may determine, and to be audited annually. The audit will be completed within 270 days after the close of

each alternate fiscal year by the Department of Legislative Audit or by an independent certified public accountant, who shall be an accountant or firm of such accountants duly licensed, registered and entitled to practice and practicing as such under the laws of the State of South Dakota, appointed and paid by the City, who or which is in fact independent and not under the domination of the City, does not have any substantial interest, direct or indirect, within the City, and is not connected with the City as an officer or employee but may be regularly retained to make annual or other periodic reports to the City. The report of the private auditor, in addition to whatever matters may be thought proper by the accountant to be included therein, shall include the following: (a) A statement in detail of the income and expenditures of the Utility and the Improvements, which shall be separately stated, for the fiscal year then ended and the preceding fiscal year, identifying capital expenditures and separating them from operating expenditures; (b) A balance sheet as of the end of the fiscal year then ended and the preceding fiscal year; (c) The number of premises connected to the Utility and the Improvements at the end of the fiscal year; (d) The amount on hand in each account of the Utility and subaccount of the Revenue Account at the end of the fiscal year; (e) A list of the insurance policies and fidelity bonds in force at the end of the fiscal year, setting out as to each the amount thereof, the risks covered thereby, the name of the insurer or surety and the expiration date of the policy or bond; and (f) A determination that the audit shows full compliance by the City with the provisions of this Resolution during the fiscal years covered thereby, including proper segregation of the capital expenditures from Operating Expenses, maintenance of the required balance of the Debt Service Subaccount, and receipt of Net Revenues during each fiscal year commencing January 1, 2010, at least equal to 125% of (a) the principal and interest payable from the Debt Service Subaccount in such year plus (b) the amount determined to be needed for the Replacement and Depreciation Subaccount; or, if the audit should reveal that the Net Revenues have been insufficient for compliance with this Resolution, or that the methods used in accounting for such revenues and income were contrary to any provisions of this Resolution, the report of audit shall include a full explanation thereof, together with the accountant's recommendation for such change in rates or accounting practices or in the operation of the Improvements as may be required.

6.7. Cost of Insurance and Accounting. The insurance and fidelity bond premiums and the cost of the bookkeeping and audits herein provided for and of the billings and collection of the water utility rates, charges and rentals, with respect to the Utility, shall be payable from the Operating Subaccount.

6.8. Handling of Funds. The employees of the City, under the direction and control of the Finance Officer, shall keep books of accounts, issue statements and collect bills for the rates, charges and rentals for the services and facilities provided by the Utility and the Improvements and for other money currently receivable on account thereof and shall, to the extent required by Section 5.10, provide for the discontinuance of service in case of nonpayment for services or noncompliance with regulations. All money collected with respect to the Utility shall be deposited daily with the Finance Officer.

6.9. Rules and Regulations. The rules and regulations for operation of the Utility and the Improvements and the use of water utility service from the Improvements shall be as provided in the existing ordinances and resolutions of the City, and any ordinances and resolutions subsequently adopted amendatory thereof or supplemental thereto.

6.10. Billings. The charges for water utility services will be billed at least monthly, and if the bill is not paid within sixty days of the date of billing, or if the customer fails to comply with all rules and regulations established for the Utility within 60 days after notice of violation thereof (which notice shall be given promptly upon discovery of any such violation), the service to the premises involved shall be discontinued and shall not be resumed until payment of all past-due bills for water utility service and compliance with all such rules and regulations. The City shall take all appropriate legal action to collect the unpaid charges.

6.11. Remedies. The rights of the registered owners of the Bonds and the remedies for failure of the City to perform any covenants hereunder or under the Indenture are provided for in the Indenture. However,

nothing herein or in the Indenture shall impair the absolute and unconditional right of the registered owner of each Bond to receive payment of the principal of and interest on the Bond as such principal and interest respectively become due, and to institute suit for any such payment. As provided in Section 9-40-33, SDCL, any court having jurisdiction of the action may appoint a receiver to administer the improvements on behalf of the City with power to charge and collect rates, fees and charges sufficient to provide for the payment of the operating expenses and for the payment of any bonds or obligations outstanding against the Improvements, and to apply the gross revenues in conformity with this Resolution, the Indenture and the laws of the State of South Dakota.

6.12. Rates and Charges. The City through the City Council will maintain, revise, charge and collect rates and other charges for service furnished and made available by the Improvements, according to schedules such that the gross revenues derived therefrom will be sufficient, when combined with other available funds, to pay when due all expenses of the operation and maintenance of the Improvements, and all principal of and interest on Bonds, to provide for the establishment and maintenance of adequate reserves therefor, and to provide an allowance adequate for recurring renewals and replacements of the Improvements, and to fulfill the terms of all other agreements with registered owners of the City's bonds. Such rates and charges shall at all times be sufficient to produce Net Revenues (as defined in Section 4.3) for each fiscal year at least equal to 125% of the principal of and interest on the Bonds (including any parity lien Bonds hereafter issued) payable from the Debt Service Subaccount coming due in such fiscal year. The rates and charges with respect to the Improvements shall be in the form of a separately stated surcharge on the municipal utilities rate schedule; in calculating the surcharge the City and the Council shall allocate to the Improvements its share of the expenses of operation and maintenance and allowances for renewal and replacement as well as the requirements to pay principal of and interest on the Bonds, to maintain the Reserve Subaccount, and to repay the Utility or any other funds of the City for moneys advanced in accordance with Section 4.4 hereof.

SECTION 7. AMENDMENTS.

7.1. Amendments Without Bondholder Consent. The City may, by administrative resolution adopted prior to the delivery of the Bonds to the Underwriter, amend this Resolution, if such amendment is required by a bond rating agency as a condition to its release of a rating on the Bonds, or by a municipal bond policy insurer as a condition of its issuance of a bond insurance policy with respect to the Bonds. The City reserves the right to amend this Resolution, from time to time and at any time, for the purpose of (i) curing any ambiguity or of curing, correcting or supplementing any defective provision contained herein, or (ii) making such provisions with regard to matters or questions arising hereunder as the City may deem necessary or desirable and not inconsistent with this Resolution, and which shall not adversely affect the interests or security of the registered owners of outstanding Bonds, or (iii) adding to the covenants and agreements herein contained, or to the gross revenues herein pledged, other covenants and agreements thereafter to be observed and additional gross revenues thereafter appropriated to the Revenue Account, or (iv) surrendering any right or power herein reserved to or conferred upon the City, or (v) authorizing the issuance of Additional Bonds in the manner and subject to the terms and conditions prescribed in Section 5. Any such amendment may be adopted by resolution, without the consent of the registered owners of any of the Bonds.

7.2. Amendments With Bondholder Consent. With the consent of the registered owners of Bonds as provided in Section 7.3, the City may from time to time and at any time amend this Resolution by adding any provisions hereto or changing in any manner or eliminating any of the provisions hereof or of any amending resolution; provided, however, that no amending resolution shall be adopted at any time without the consent of the registered owners of all Bonds which are then outstanding, if it would extend the maturities of any Bonds, would reduce the rate or extend the time of payment of interest thereon, would reduce the amount or extend the time of payment of the principal or redemption premium thereof, would give to any Bond or Bonds any privileges over any other Bond or Bonds, would reduce the sources of gross revenues appropriated to the Revenue Account, would authorize the creation of a

pledge of said gross revenues prior to or on a parity with the Bonds (except as is authorized by Section 5), or would reduce the percentage in principal amount of such Bonds required to authorize or consent to any such amendment.

7.3. Notice and Consent. Any amendment adopted pursuant to Section 7.2 shall be made by resolution, mailed to each registered owner of a Bond affected thereby, and shall become effective only upon the filing of written consents with the Finance Officer, signed by the registered owners of not less than two-thirds in principal amount of the Bonds which are then outstanding or, in the case of an amendment not equally affecting all outstanding Bonds, by the registered owners of not less than two-thirds in principal amount of the Bonds adversely affected by such amendment. Any written consent to an amendment may be embodied in and evidenced by one or any number of concurrent written instruments of substantially similar tenor signed by registered owners in person or by agent duly appointed in writing, and shall become effective when delivered to the Finance Officer. Any consent by the registered owner of any Bond shall bind him and every future registered owner of the same Bond with respect to any amendment adopted by the City pursuant to such consent; provided that any registered owner may revoke his consent with reference to any Bond by written notice received by the Finance Officer before the amendment has become effective. In the event that unrevoked consents of the registered owners of the required amount of Bonds have not been received by the Finance Officer within one year after the mailing of notice of the amendment, the amendment and all consents theretofore received shall be of no further force and effect.

7.4. Proof. Proof of the execution of any consent, or of a writing appointing any agent to execute the same, or of the ownership by any person of Bonds, shall be sufficient for any purpose of this Resolution and shall be conclusive in favor of the City if made in the manner provided in this section. The fact and date of the execution by any person of any such consent or appointment may be proved by the affidavit of a witness of such execution or by the certification of any notary public or other officer authorized by law to take acknowledgment, certifying that the person signing it acknowledged to him the execution thereof. The amount of Bonds held by any person by or for whom a consent is given, and the distinguishing numbers of such Bonds, and the date of his holding the same, shall be proved by the bond register. The fact and date of execution of any such consent may also be proved in any other manner which the City Council may deem sufficient; but the City Council may nevertheless, in its discretion, require further proof in cases where it deems further proof desirable.

SECTION 8. DEFEASANCE.

8.1. General. When the liability of the City on all Bonds issued under and secured by this Resolution and all interest thereon has been discharged as provided in this section, all pledges, covenants and other rights granted by this Resolution to the registered owners of such Bonds shall cease. The provisions for payment and discharge of the Bonds are set forth in Article Eight of the Indenture.

SECTION 9. TAX MATTERS.

9.1. The Improvements. The Utility is and will be owned and operated by the City and used by the City to provide water services to members of the general public. No user of the Utility is granted any concession, license or special arrangement. The City shall not enter into any lease, use or other agreement with any non-governmental person relating to the use of the Utility or the Improvements or security for the payment of the Series 2009 Bonds which might cause the Series 2009 Bonds to be considered "private activity bonds" or "private loan bonds" within the meaning of Section 141 of the Code.

9.2. General Covenant. The City covenants and agrees with the registered owners from time to time of the Bonds that the City will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Series 2009 Bonds to become includable in gross income

for federal income tax purposes under the Code and applicable Treasury Regulations (the Regulations”), and covenants to take any and all actions within its powers to ensure that the basic interest on the Series 2009 Bonds will not become includable in gross income for federal income tax purposes under the Code and the Regulations.

9.3. Certification. The Mayor and the Finance Officer, being the officers of the City charged with the responsibility for issuing the Series 2009 Bonds pursuant to this Resolution are hereby authorized and directed to execute and deliver to the Underwriter thereof a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Regulations, stating that on the basis of facts, estimates and circumstances in existence on the date of issue and delivery of the Series 2009 Bonds, it is reasonably expected that the proceeds of the Series 2009 Bonds will be used in a manner that would not cause the Series 2009 Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code and the Regulations.

9.4. Arbitrage Rebate. The City acknowledges that the Series 2009 Bonds are subject to the rebate requirements of Section 148(f) of the Code. The City covenants and agrees to retain such records, make such determinations, file such reports and documents and pay such amounts at such times as are required under said Section 148(f) and applicable Regulations to preserve the exclusion of interest on the Series 2009 Bonds from gross income for federal income tax purposes unless the Series 2009 Bonds qualify for an exception from the rebate requirement pursuant to one of the spending exceptions set forth in Section 1.148-7 of the Regulations and no “gross proceeds” of the Series 2009 Bonds (other than amounts constituting a “bona fide debt service fund”) arise during or after the expenditure of the original proceeds thereof.

SECTION 10. CONTINUING DISCLOSURE.

The City acknowledges that the Series 2009 Bonds are subject to the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12) (as in effect and interpreted from time to time, the “Rule”). The Rule governs the obligations of certain underwriters to require that issuers of municipal obligations enter into agreements for the benefit of the holders of the obligations to provide continuing disclosure with respect to the obligations. To provide for the public availability of certain information relating to the Bonds and the security therefore and to permit participating underwriters in the primary offering of the Bonds to comply with the Rule, which will enhance the marketability of the Bonds, the Mayor and Finance Officer are hereby authorized and directed to execute an Undertaking of Continuing Disclosure (the “Undertaking”), by which the City agrees to provide such information, either directly or through a disclosure agent. The City hereby covenants and agrees to observe and perform the covenants and agreements contained in the Undertaking, unless amended or terminated in accordance with the provisions thereof, for the benefit of the registered owners or beneficial owners from time to time of the outstanding Bonds as provided in the Undertaking.

Dated this 5th day of October, 2009.

ATTEST:
s/ James F. Preston
Finance Officer

CITY OF RAPID CITY
s/ Alan Hanks, Mayor

(SEAL)

Motion was made by Olson, second by Hadcock, to (No. LF093009-14) Authorize Mayor and Finance Officer to sign Indenture of Trust for Utility Revenue Bonds 40. Kooiker suggested taking a closer look at using local banks if we can achieve a comparable deal. Motion carried.

Motion was made by Hadcock, second by LaCroix, to continue to the October 19, 2009 City Council meeting (No. LF093009-18) Authorize Mayor and Finance Officer to sign Agreement between the City and Rapid City Economic Development Foundation, Inc. Kooiker indicated that he would like an update on drafting a request to Cabela's regarding property tax payment at the next meeting as well. Motion carried.

CONTINUED CONSENT ITEMS – Items 47 – 56

Motion was made by Waugh, second by LaCroix and carried to approve the following items as they appear on the Continued Consent Items:

Continue the following items until October 19, 2009:

47. No. 08PL099 - A request by Dream Design International, Inc. for a **Preliminary Plat** on Lots 1 thru 28 of Block 3; Tracts A, B, C and D of Block 4 of Homestead Plaza Subdivision, located in the S1/2 NW1/4 and in the N1/2 SW1/4, Section 3, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, legally described as a portion of Tract A of F&N Subdivision, the balance of the E1/2 SW1/4 NW1/4, the balance of the SE1/4 NW1/4, located in the S1/2 NW1/4 and the N1/2 SW1/4, Section 3, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, located east of Timmons Boulevard, south of Neel Street and west of Big Sky Drive.
48. No. 08PL131 - A request by FourFront Design, Inc. for Rapid City Economic Development Foundation for a **Preliminary Plat** on Lot 1R and Lot 2 of Block 3 of Rushmore Business Park, located in the NE1/4, Section 4, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, legally described as Lot 1 of Block 3 and a portion of Government Lot 2, located in the NE1/4, Section 4, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, more particularly described as follows: Commencing at the N¼ Corner of Section 4, Township 1 North, Range 8 East of the Black Hills Meridian, Pennington County, South Dakota; Thence S00°06'56"W along the Center 1/4 line of said Section 4 a distance of 124.10 feet to a point on the South Right-of-Way of East Anamosa Street, Thence N89°56'23"E along said South Right-of-Way of East Anamosa Street a distance of 142.23 feet to a point along said Right-of-Way to the point of beginning; Thence N89°57'20"E along said South Right-of-Way of East Anamosa Street a distance of 285.56 feet to the intersection of the South Right-of-Way of East Anamosa Street and the West Right-of-Way of Concourse Drive; thence S00°11'20"W along the West Right-of-Way of Concourse Drive a distance of 129.00 feet; thence continuing along the West Right-of-Way of Concourse Drive along a curve to the left, having a radius of 562.00 feet, a delta angle of 13°19'37" and whose long chord bears S06°43'28"E a distance of 135.30 feet; thence continuing along the West Right-of-Way of Concourse Drive S13°38'17"E a distance of 668.79 feet; thence S76°22'04"W a distance of 265.23 feet; thence N13°37'01"W a distance of 439.18 feet; thence S76°22'37"W a distance of 60.35 feet; thence N13°37'23"W a distance 302.02 feet; thence N77°53'25"E a distance of 57.99 feet; thence N05°25'18"W a distance of 258.44 feet to the point of beginning, located at 333 Concourse Drive.
49. No. 08PL145 - A request by Sperlich Consulting, Inc. for Ronald Shape for a **Preliminary Plat** on Lot 13 of Block 6, Lots 2 thru 11 of Block 7, Lots 2 thru 11 of Block 8 of Homestead Subdivision, located in a portion of the SE1/4 of the NE1/4, Section 3, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, legally described as a portion of the SE1/4 of the NE1/4, Section 3, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, located at the eastern terminus of Homestead Street and north of Carl Avenue.
50. No. 09PL024 - A request by D.C. Scott Co. Land Surveyors for William M. Jobgen for a **Preliminary Plat** on Lots 1 and 2 of Lot 7 of Pleasant View Subdivision, located in the SE1/4

SE1/4 and in Lot B of the SW1/4 SW1/4 of Section 11, T1N, R8E, BHM, Pennington County, South Dakota, legally described as Lot 7 of Pleasant View Subdivision, located in the SE1/4 SE1/4 and in Lot B of the SW1/4 SW1/4 of Section 11, T1N, R8E, BHM, Pennington County, South Dakota, located between Carlin Street and Crane Drive.

51. No. 09PL046 - A request by Todd Fenster for a **Layout Plat** on Lot 1 of Block 1 of Expressway Subdivision, located in the N1/2 N1/2 SW1/4, less Big Sky Subdivision, less F&N Subdivision, less Lot H1 and less right-of-way, Section 3, T1N, R8E, BHM, Pennington County, South Dakota, legally described as the unplatted parcel located in the N1/2 N1/2 SW1/4, less Big Sky Subdivision, less F&N Subdivision, less Lot H1 and less right-of-way, Section 3, T1N, R8E, BHM, Pennington County, South Dakota, located at 1200 Elk Vale Road.
52. No. 09PL047 - A request by Centerline, Inc. for PLM Land Development, LLC for a **Preliminary Plat** on Lots 36 thru 53 of Block 1 of PLM Subdivision, located in the N1/2 NW1/4 and the unplatted SW1/4 NW1/4 of Section 24, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, legally described as the unplatted balance located in the N1/2 NW1/4 and the unplatted SW1/4 NW1/4 of Section 24, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, located at the eastern extension of Conestoga Court.
53. No. 09PL048 - A request by Dream Design International, Inc. for a **Preliminary Plat** on Lot 1 of Tract 3 of Discovery Subdivision, Section 28, T2N, R8E, BHM, Rapid City, Pennington County, South Dakota, legally described as Tract 3 of Discovery Subdivision, located in the NE1/4 of the SE1/4 and in the SE1/4 of the NE1/4, Section 28, T2N, R8E, BHM, Rapid City, Pennington County, South Dakota, located at 1851 Discovery Circle.

Continue the following items until November 2, 2009

54. No. 07PL134 - A request by Dream Design International, Inc. for a **Preliminary Plat** on Lots 1 thru 12 of Block 1, Lots 1 thru 7 of Block 2, Lots 1 thru 4 of Block 3, Lots 1 thru 15 of Block 4, and Lots 1 thru 31 of Block 5 of Hyland Crossing Subdivision and the dedicated Right-of-way, located in the W1/2 SE1/4; SE1/4 SE1/4, Section 35, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, legally described as a portion of the unplatted W1/2 SE1/4; SE1/4 SE1/4, Section 35, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, located at the southern terminus of Dreamscape Drive.
55. No. 07RD007 - A request by Dream Design International for a **Road Name Change from Sammis Trail to Moon Meadows Drive** on The S1/2 NW1/4, S1/2 NE1/4, N1/2 SW1/4, N1/2 SE1/4 of Section 35, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, located west of South Highway16 and south of Sammis Trail.
56. No. 09PL040 - A request by Centerline, Inc. for Lazy P-6 Land Co., Inc. for a **Layout Plat** on Lot 1 in Block 1 and Lots 1 thru 4 in Block 2 of _____ Subdivision, located in the W1/2 SW1/4 of Section 19, T1N, R8E and E1/2 SE1/4 of Section 24, T1N, R7E all located in BHM, Pennington County, South Dakota, legally described as a parcel of land located in the W1/2 SW1/4 of Section 19, T1N, R8E and E1/2 SE1/4 of Section 24, T1N, R7E all located in BHM, Pennington County, South Dakota, located at the southeast corner of the intersection of Fifth Street and Catron Boulevard.

END OF CONTINUED CONSENT ITEMS

NON-CONSENT ITEMS – Items 57 – 82

Motion was made by Olson, second by LaCroix and carried to open the public comment for Items 57 – 82. Janelle Fink, Fisk Land Surveying, stated that she is available for questions regarding Item 69 and requested that Council support the recommendation from the Planning Commission.

Motion was made by Olson, second by LaCroix and carried to close the public comment for Items 57 – 82.

Ordinances

Ordinance 5539 (No. LF091609-28) An Ordinance to Provide a Dual Notice Provision for Chapter 8.16 of the Rapid City Municipal Code Relating to Nuisances having passed its first reading September 21, 2009; motion was made by Olson, second by Hadcock, that the title be read the second time. Weifenbach expressed concern for landlords with several properties and asked about enforcement. Green explained that currently the landlord or tenant could be cited, and if the City abates, the landlord is charged. He said that Code Enforcement will be conservative in identifying repeat offenders and will use their best efforts for voluntary compliance. He said he thinks Code Enforcement will be judicious in using prosecution as a remedy. Mayor Hanks clarified that Code Enforcement will work to find out who is responsible. The goal is for compliance. Weifenbach said the Council's intention is for conformity, and he wants to make sure landlords are not marked as habitual offenders as there are a lot of things to be considered. Kooiker questioned the notice provision and asked how we keep track that they have received the notice. Green said in the case of hand delivery notes would be made in the file by the officer, and if needed, that person could sign an affidavit or testify that it was delivered in person. He said first class mail is recognized as an appropriate method for delivering notice, and the return receipt is not a legal requirement. Kooiker suggested using the return receipt to save administratively on specific arguments.

Amendment motion was made by Kooiker, second by Weifenbach, to insert 'return receipt' between 'first class' and 'mail' in section 8.16.035. LaCroix said adding the return receipt adds more time to the process, so he is not in support of the amendment. Olson agreed with LaCroix and mentioned that two weeks will make a significant difference when weeds are growing. Hadcock pointed out that this is for repeat offenders. She said we can try this, and if it becomes a problem, we can try something else. Kooiker said there is no time added to the process with return receipt and this would help protect staff, the City, landowner and tenant. Responding to Kroeger, Green explained that it does create additional issues and costs. Weifenbach said even if they do not sign there would be an indication that it was sent as he wants assurance the people are being notified. Responding to Hadcock, Thom said historically there have not been problems and adding a return receipt would defeat the purpose of what they are trying to do. Olson reiterated that this step is not necessary. Motion failed with one AYE from Alderman Kooiker.

LaCroix said these are good changes. He said it is important to notify both the occupant of the house as well as the landlord. Upon vote being taken, the following voted AYE: Waugh, Martinson, Kooiker, LaCroix, Olson, Weifenbach, Kroeger and Hadcock; NO: None; whereupon the Mayor declared the motion passed and Ordinance No. 5539 was declared duly passed upon its second reading.

Ordinance 5540 (No. LF091609-29) An Ordinance Amending Chapter 8.28 of the Rapid City Municipal Code Relating to Grass and Weeds as amended having passed its first reading on September 21, 2009; motion was made by Olson, second by Hadcock, that the title be read the second time as recommended by the Legal and Finance Committee. Upon vote being taken, the following voted AYE: Waugh, Martinson, Kooiker, LaCroix, Olson, Weifenbach, Kroeger and Hadcock; NO: None; whereupon the Mayor declared the motion passed and Ordinance No. 5540 was declared duly passed upon its second reading.

Ordinance 5541 (No. LF091609-30) An Ordinance to Revise the Method of Removal of Junk Motor Vehicles from Private Property by Amending Chapter 10.56 of the Rapid City Municipal Code as amended having passed its first reading on September 21, 2009; motion was made by Olson, second by Hadcock, that the title be read the second time as recommended by the Legal and Finance Committee. Responding to Weifenbach, Green explained that anything on the public right-of-way can be towed without notice to the landlord per an existing ordinance and they should not be charged if it is not on their property. Upon vote being taken, the following voted AYE: Waugh, Martinson, Kooiker, LaCroix, Olson, Weifenbach, Kroeger and Hadcock; NO: None; whereupon the Mayor declared the motion passed and Ordinance No. 5541 was declared duly passed upon its second reading.

Ordinance 5542 (No. LF091609-31) An Ordinance to Provide a Penalty for Failure to Remove Snow and Ice from Sidewalks by Amending Section 12.20.070 of the Rapid City Municipal Code as amended having passed its first reading on September 21, 2009; motion was made by Olson, second by Hadcock, that the title be read the second time as recommended by the Legal and Finance Committee. Responding to Kooiker, Thom indicated that there are several programs Code Enforcement works with to help those who cannot clean their own sidewalks. Responding to Weifenbach, Thom said that Code Enforcement will still use their discretion and common sense for compliance. Weifenbach said he would like to see more of a concrete policy. Upon vote being taken, the following voted AYE: Waugh, Martinson, Kooiker, LaCroix, Olson, Weifenbach, Kroeger and Hadcock; NO: None; whereupon the Mayor declared the motion passed and Ordinance No. 5542 was declared duly passed upon its second reading.

Ordinance 5544 (No. LF093009-23) An Ordinance to Update Alcoholic Beverage Licensing Requirements to Reflect Changes in State Law by Amending Sections 5.12.030 and 5.12.060 of the Rapid City Municipal. Motion was made by Olson, second by Waugh and carried that Ordinance 5544 be placed upon its first reading. Responding to Weifenbach, Green briefly explained the different alcohol licenses. The title was fully and distinctly read and second reading set for Monday, October 19, 2009.

Ordinance 5545 (No. 09RZ037) An Ordinance Amending Section 17.06 of Chapter 17 of the Rapid City Municipal Code, Rezoning the within Described Property as requested by Peter Neumann for Mills Drug, Inc. for a **Rezoning from Medium Density Residential District to General Commercial District** of Lots 17 thru 18 of Block 15 of Flormann Addition, Section 1, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, located at 730 St. Cloud. Motion was made by Olson, second by Waugh and carried that Ordinance 5545 be placed upon its first reading. Responding to Kooiker, Elkins confirmed that there is a related comprehensive plan amendment that will also be considered. The Future Land Use Committee has supported the comprehensive plan amendment but did not recommend a planned development. The plan is for a parking lot. Elkins also confirmed that there is no planned development overlay for Mt. Rushmore Road, and she said there needs to be further discussion on the issue. The title was fully and distinctly read and second reading set for Monday, October 19, 2009.

Ordinance 5546 (No. 09RZ038) An Ordinance Amending Section 17.06 of Chapter 17 of the Rapid City Municipal Code, Rezoning the within Described Property as requested by Ferber Engineering Co., Inc. for South Dakota Game Fish and Parks for a **Rezoning from General Commercial District to Public District** of Block 2 of Tract G of Meadowwood and the South Half of adjacent Dean Lane right-of-way located in the NE¼ SW¼ of Section 33, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota, located south and west of the intersection of Dean Lane and Sturgis Road. Motion was made by Olson, second by Waugh and carried that Ordinance 5546 be placed upon its first reading. Olson explained that this is a positive change. The title was fully and distinctly read and second reading set for Monday, October 19, 2009.

Ordinance 5547 (No. 09RZ039) An Ordinance Amending Section 17.06 of Chapter 17 of the Rapid City Municipal Code, Rezoning the within Described Property as requested by Ferber Engineering Co., Inc. for South Dakota Game Fish and Parks for a **Rezoning from Low Density Residential District to**

Public District of , Lots 1-2 of Block 1 of Tract G, Lots 3-4 Block 1 of Tract G, Lots 5-6 & 9 of Block 1 of Tract G, the North 30 feet of West 100 feet of Lot 7 and East 124 feet of Lot 7-8, all of Meadowwood, the east half of the adjacent North 40th Street right-of-way and the south half of the adjacent Dean Lane right-of-way located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota, located at the northeastern terminus of North 40th Street. Motion was made by Olson, second by Weifenbach and carried that Ordinance 5547 be placed upon its first reading, and the title was fully and distinctly read and second reading set for Monday, October 19, 2009.

Ordinance 5548 (No. 09RZ040) An Ordinance Amending Section 17.06 of Chapter 17 of the Rapid City Municipal Code, Rezoning the within Described Property as requested by Ferber Engineering Co, Inc. for South Dakota Game Fish and Parks for a **Rezoning from Mining and Earth Resources Extraction District to Public District** of Lot 2 of NWE Subdivision, the South Half of adjacent Knutson Lane right-of-way, the North Half of adjacent Dean Lane right-of-way, the West Half of adjacent North 40th Street right-of-way and the East Half of Adjacent Meadowwood Drive right-of-way, located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota, located southwest of the intersection of Knutson Lane and Sturgis Road. Motion was made by Olson, second by Waugh and carried that Ordinance 5548 be placed upon its first reading, and the title was fully and distinctly read and second reading set for Monday, October 19, 2009.

Ordinance 5549 (No. 09RZ041) An Ordinance Amending Section 17.06 of Chapter 17 of the Rapid City Municipal Code, Rezoning the within Described Property as requested by Ferber Engineering Co, Inc. for South Dakota Game Fish and Parks for a **Rezoning from Low Density Residential District to Public District** of a parcel of land located in SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 33, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota, more particularly described by metes and bounds commencing at the northwest corner of Lot 2 of GFP Subdivision, a found 5/8" rebar with cap marked "FMG Inc. LS SD 6119", the true point of beginning, with SD State Plane Coordinates, South Zone, NAD83, N-654,463.48, E-1,191,278.17; thence S87°51'26"E at a distance of 258.44 feet to the northeast corner of said Lot 2 of GFP Subdivision; thence S34°43'35"E at a distance of 50.02 feet to the center of the North 44th Street right-of-way; thence along an arc of curve to the right having a radius of 549.84 feet, a length of 354.69 feet and a chord direction of N73°44'46"E to the point of tangency; thence S87°41'57"E at a distance of 171.79 feet to the intersection of the centers of North 44th Street and Meadowwood Drive rights-of-way; thence S02°06'11"W at a distance of 224.69 feet along the center of the Meadowwood Drive right-of-way to a point of deflection; thence S02°07'57"W at a distance of 454.27 feet along the center of the Meadowwood Drive right-of-way to a point of deflection; thence S01°28'49"W at a distance of 329.04 feet along the center of the Meadowwood Drive right-of-way to a point of deflection; thence N87°43'42"W at a distance of 16.35 feet to a found bolt; thence N88°29'57"W at a distance of 9.62 feet to a found rebar and cap marked "FMG Inc. LS SD 6119"; thence N87°57'50"W at a distance of 402.44 feet to a point of deflection; thence N02°06'56"E at a distance of 129.73 feet to a found 3/8" rebar; thence N02°20'47"E at a distance of 260.27 feet to a found 1" pipe; thence N87°55'23"W at a distance of 368.75 feet to a found rebar and cap marked "FMG Inc. LS SD 6119", which is the W1/4 of Section 33; thence N02°16'28"E at a distance of 549.71 feet to the true point of beginning, located at 603 and 620 North 44th Street. Motion was made by Olson, second by Weifenbach and carried that Ordinance 5549 be placed upon its first reading, and the title was fully and distinctly read and second reading set for Monday, October 19, 2009.

Growth Management Department Items

Motion was made by Olson, second by Waugh and carried to Authorize the Mayor and Finance Officer to sign the waiver of right to protest a future assessment for the installation of sidewalks along Monte Vista Drive as they abut Lot 9 through 10 less the south 25' of Lot 3 of Block 3, Schamber Subdivision, located in the NE1/4NW1/4 of Section 9, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, located at 2019 and 2021 Monte Vista Drive. (09EX101)

Motion was made by Olson, second by LaCroix, and carried to approve (No. 09EX101) An exception request to waive the requirement to install sidewalk per City Ordinance 12.16.080 on Lot 9 of Block 3 of Lot 3 of the NE1/4 of the NW1/4, Section 9, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, located at 2021 Monte Vista Drive with the stipulation that the applicant provide a Waiver of Right to Protest future sidewalk installation and improvements in the future.

Motion was made by Olson, second by Waugh and carried to approve (No. 09PL034) A request by Fisk Land Surveying & Consulting Engineers for Walter J. Bradsky for a **Layout Plat** on Lots 5A and 5B of Aspen Estates Subdivision, located in the SW1/4 of Section 12, T1N, R6E, BHM, Pennington County, South Dakota, legally described as Lot 5 of Aspen Estates Subdivision, located in the SW1/4 of Section 12, T1N, R6E, BHM, Pennington County, South Dakota, located at 7800 Elkhart Road with the following stipulations: 1. Prior to submittal of a Preliminary Plat application, an Exception shall be obtained to allow an easement to serve more than four lots or the plat document shall be revised to show Canterbury Road, Kenosha Road and Elkhart Road as rights-of-way; 2. Prior to submittal of a Preliminary Plat application, the plat document shall be revised to include the previously recorded note as follows: "Prior to obtaining a permit or constructing any structure, petitioner, his heirs, assigns or successors in interest agree to install a total wastewater containment system for each lot. Prior to installation of such system, plans stamped by a Registered Professional Engineer shall be submitted for review and approval by the City of Rapid City and Pennington County. Notwithstanding the foregoing and in lieu thereof, plans for a conventional or alternative on-site wastewater system may be approved by the City and County subject to the review and approval of a complete report of the soils and geological investigation performed by a qualified Professional Engineer to demonstrate that the proposed conventional or alternative system meets all state, county, and local regulations." 3. Upon submittal of a Preliminary Plat application, construction plans for S.D. Highway 44 shall be submitted for review and approval. In particular, the construction plans shall show the street constructed with curb, gutter, water and sewer or Variance to the Subdivision Regulations shall be obtained. In addition, an Exception must be obtained to waive the requirement to provide street light conduit along S.D. Highway 44 as it abuts the property; 4. Upon submittal of a Preliminary Plat application, construction plans for Canterbury Road, Kenosha Road and Elkhart Road shall be submitted for review and approval. In particular, the construction plans shall show the street located in a minimum 49 foot wide right-of-way and constructed with a minimum 24 foot wide paved surface, curb, gutter, street light conduit, water and sewer or a Variance to the Subdivision Regulations shall be obtained; 5. Upon submittal of a Preliminary Plat application, water plans prepared by a Registered Professional Engineer showing the extension of water mains shall be submitted for review and approval or a Variance to the Subdivision Regulations shall be obtained. If a private water system is utilized as proposed, then an on-site water plan prepared by a Professional Engineer shall be submitted for review and approval. In addition, the water plans shall demonstrate that adequate fire and domestic flows are being provided. The plat document shall also be revised to provide utility easements as needed; 6. Upon submittal of a Preliminary Plat application, sewer plans prepared by a Registered Professional Engineer showing the extension of sanitary sewer mains and service lines shall be submitted for review and approval or a Variance to the Subdivision Regulations shall be obtained. If individual on-site wastewater systems are utilized, then a "total" wastewater containment system shall be designed by a Registered Professional Engineer and submitted for review and approval by the City and Pennington County. Alternatively, plans for a conventional or alternative on-site wastewater system may be approved by the City and Pennington County subject to the review and approval of a complete report of the soils and geological investigation performed by a qualified Professional Engineer to demonstrate that the proposed conventional or alternate system meets all state, county and local regulations. In addition, prior to Preliminary Plat approval by the City Council, a wastewater permit, which includes the design of the proposed non-conventional system(s), shall be reviewed and approved by South Dakota Department of Environment and Natural Resources, the City and Pennington County; 7. Upon submittal of a Preliminary Plat application, an Erosion and Sediment Control Plan in compliance with the adopted Stormwater Quality Manual shall be submitted for review and approval for any required subdivision improvements; 8. Upon submittal of a Preliminary Plat application, a drainage plan in compliance with Drainage Criteria Manual shall be submitted for review and approval for any subdivision improvements;

9. Upon submittal of a Preliminary Plat application, a cost estimate of the required subdivision improvements shall be submitted for review and approval if any subdivision improvements are required; 10. Prior to submittal of a Final Plat application, the covenant agreement submitted to demonstrate road maintenance for Canterbury Road, Kenosha Road and Elkhart Road shall be revised if and as determined by the City Attorney's Office; 11. Upon submittal of a Final Plat application, surety for any required subdivision improvements that have not been completed shall be posted and the subdivision inspection fees shall be paid; 12. Prior to the City's acceptance of the public improvements, a warranty surety shall be submitted for review and approval as required; and, 13. The approved Layout Plat for which no grading, construction or other improvements have been initiated within two years of the date of approval of the plat shall be deemed as expired. However, the owner or applicant of the plat may, prior to the termination of the two year period, request a one year extension subject to approval by the City Council.

Motion was made by Olson, second by Waugh and carried to approve (No. 09PL056) A request by Renner & Associates for Greg Lester for a **Layout Plat** on Lots 1 thru 3 of Block 1 Lester Subdivision, located in the SE1/4 of the SW1/4, Section 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, legally described as Lot G of Lot 2 of the SE1/4 of the SW1/4, Section 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, located at 1714 Creek Drive with the following stipulations: 1. Upon submittal of a Preliminary Plat application, a Master Utility Plan showing private and public utilities shall be submitted for review and approval. In addition, the plat document shall be revised to show utility easements as needed; 2. Upon submittal of a Preliminary Plat application, an Erosion and Sediment Control Plan in compliance with the adopted Stormwater Quality Manual and a grading permit shall be submitted for review and approval if subdivision improvements are required. In addition, a grading permit, an Erosion and Sediment Control Permit and a Floodplain Development Permit for the existing piles of dirt located in the southeast corner of the property shall be submitted for review and approval or the dirt shall be removed from the property; 4. Upon submittal of a Preliminary Plat application, a grading plan and a drainage plan in compliance with the Drainage Criteria Manual shall be submitted for review and approval. In addition, the drainage plan shall demonstrate that the design flows do not exceed pre-developed flows or on-site detention shall be provided. The plat document shall also be revised to provide drainage easements as necessary; 5. Upon submittal of a Preliminary Plat application, a geotechnical report including pavement design shall be submitted for review and approval. In addition, the geotechnical report shall include soils resistivity test results. If the results indicate severe potential towards corrosion of buried metal, then information shall be provided identifying that corrosion protection per Rapid City Standard Specifications is adequate protection or additional corrosion protections shall be provided as needed for buried water system metal fixtures; 6. Upon submittal of a Preliminary Plat application, road construction plans for Creek Drive shall be submitted for review and approval. In particular, the road construction plans shall show the street located within a minimum 100 foot wide right-of-way and constructed with a minimum 36 foot wide paved surface, curb, gutter, sidewalk, street light conduit, sewer along the northern 80 feet of Creek Drive as it abuts the property and water or a Variance to the Subdivision Regulations shall be obtained. In addition, the plat document shall be revised to show the dedication of 17 additional feet of right-of-way; 7. Prior to Preliminary Plat approval by the City Council, a Variance from the Zoning Board of Adjustment shall be obtained to reduce the minimum required front yard setback from 25 feet to 18.8 feet in the Light Industrial District as a result of dedicating the 17 additional feet of right-of-way; 8. Upon submittal of a Preliminary Plat application, sewer plans prepared by a Registered Professional Engineer showing the extension of sanitary sewer mains and service lines shall be submitted for review and approval or a Variance to the Subdivision Regulations shall be obtained. In addition, the plat document shall be revised to provide utility easements as needed; 9. Upon submittal of a Preliminary Plat application, water plans prepared by a Registered Professional Engineer showing the extension of water mains shall be submitted for review and approval or a Variance to the Subdivision Regulations shall be obtained. If a private water system is utilized, then an on-site water plan prepared by a Professional Engineer shall be submitted for review and approval. In addition, the water plans shall demonstrate that adequate fire and domestic flows are being provided. The plat document shall also be revised to provide utility easements as needed; 10. Upon submittal of the

Preliminary Plat application, a fire hydrant design plan showing the location of fire hydrants and water lines, including the size of the proposed water lines, shall be submitted for review and approval or a Variance to the Subdivision Regulations waiving the requirement to provide a central water system shall be obtained; 11. Upon submittal of a Preliminary Plat application, a cost estimate of the required subdivision improvements shall be submitted for review and approval; 12. Upon submittal of a Final Plat application, surety for any required subdivision improvements that have not been completed shall be posted and the subdivision inspection fees shall be paid; 13. Prior to the City's acceptance of the public improvements, a warranty surety shall be submitted for review and approval as required; and, 14. The approved Layout Plat for which no grading, construction or other improvements have been initiated within two years of the date of approval of the plat shall be deemed as expired. However, the owner or applicant of the plat may, prior to the termination of the two year period, request a one year extension subject to approval by the City Council.

Legal & Finance Committee Items

Motion was made by Olson, second by Waugh and carried to continue to October 19, 2009 City Council meeting (No. LF093009-19) Authorize the Mayor and Finance Officer to sign Tax Increment District Financing Developer's Agreement with Cabela's.

Public Works Committee Items

Motion was made by Kooiker, second by LaCroix to (No. 09VE013) Approve a request by CETEC Engineering for Uppercrust Landscape Co. to consider an application for a **Vacation of a portion of a Minor Drainage and Utility Easement** on Lot 1 of Shopko Addition, Section 25, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota, more generally described as being located at 1825 Haines Avenue with the following stipulations: 1. Prior to City Council approval, the Temporary Construction Easement shall be recorded at the Register of Deed's office and a copy of the recorded document shall be submitted to the Growth Management Department for review and approval. Elkins said they did not meet the deadline, but it can be approved. Motion carried.

RESOLUTION #2009-129
RESOLUTION OF VACATION OF A PORTION OF A UTILITY
AND MINOR DRAINAGE EASEMENT

WHEREAS it appears that a portion of the utility and minor drainage easement on Lot 1 of Shopko Addition, Section 25, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota, more generally described as being located at 1825 Haines Avenue, is no longer needed; and

WHEREAS the owner(s) of the above-described property desire that said portion of the utility and minor drainage easement be vacated and released.

NOW THEREFORE, BE IT RESOLVED, by the City of Rapid City, that the portion of the utility and minor drainage easement heretofore described, as shown on Exhibit "A", attached hereto and incorporated herein, is not needed and is hereby vacated.

Dated this 5th day of October, 2009.

ATTEST:
s/ James F. Preston
Finance Officer

CITY OF RAPID CITY
s/ Alan Hanks, Mayor

(SEAL)

Motion was made by Kooiker, second by LaCroix and carried to (No. 09VE014) Approve a request by Centerline for Olsen Development Company to consider an application for a **Vacation of a Major Drainage Easement** on the balance of Windemere Subdivision and Block 5 of Windemere Subdivision, Section 10, T1N, R8E, BHM, Pennington County, South Dakota, more generally described as being located west side of Meadow Lane south of Twilight Drive and north of Weathervane Lane with the following stipulations: 1. Prior to City Council approval, Exhibit A shall be revised to include the book and page of the existing Major Drainage Easement; 2. Prior to City Council approval, Exhibit A as submitted shall be revised to reflect one exhibit identifying that portion of the easement to be vacated and one exhibit to reflect that portion of the new major drainage easement to be recorded; 3. Prior to City Council approval, both exhibits shall be signed and sealed by a Registered Land Surveyor; and 4. Prior to City Council approval, the proposed Major Drainage Easement shall be recorded at the Register of Deed's Office and a copy of the recorded document shall be submitted to the Growth Management Department.

RESOLUTION #2009-130
RESOLUTION OF VACATION OF A MAJOR DRAINAGE EASEMENT

WHEREAS it appears that a major drainage easement on the balance of Windemere Subdivision and Block 5 of Windemere Subdivision, Section 10, T1N, R8E, BHM, Pennington County, South Dakota, more generally described as being located at west side of Meadow Lane south of Twilight Drive and north of Weathervane Lane, is no longer needed; and

WHEREAS the owner(s) of the above-described property desire that said portion of the major drainage easement be vacated and released.

NOW THEREFORE, BE IT RESOLVED, by the City of Rapid City, that the portion of the major drainage easement heretofore described, as shown on Exhibit "A", attached hereto and incorporated herein by this reference, is not needed and is hereby vacated.

Dated this 5th day of October, 2009.

ATTEST:
s/ James F. Preston
Finance Officer

CITY OF RAPID CITY
s/ Alan Hanks, Mayor

(SEAL)

Motion was made by Kooiker, second by LaCroix and carried to (No. 09VE015) Approve a request by FMG, Inc. for Steve Kalkman to consider an application for a **Vacation of a portion of a Drainage Easement** on Lot 5 of Block 8 of Country Club Heights Subdivision, located in the SW1/4, Section 10, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, more generally described as being located at 2926 Stockade Drive with the following stipulations: 1. Prior to City Council approval, the proposed Exhibit A shall be signed and sealed by a registered land surveyor.

RESOLUTION #2009-131
RESOLUTION OF VACATION OF A PORTION OF A DRAINAGE EASEMENT

WHEREAS it appears that a portion of a drainage easement on Lot 5 of Block 8 of Country Club Heights Subdivision, located in the SW1/4, Section 10, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, more generally described as being located at 2926 Stockade Drive, is no longer needed; and

WHEREAS the owner(s) of the above-described property desire that said portion of a drainage easement be vacated and released.

NOW THEREFORE, BE IT RESOLVED, by the City of Rapid City, that the portion of the portion of a drainage easement heretofore described, as shown on Exhibit "A", attached hereto and incorporated herein by this reference, is not needed and is hereby vacated.

Dated this 5th day of October, 2009.

CITY OF RAPID CITY
s/ Alan Hanks, Mayor

ATTEST:
s/ James F. Preston
Finance Officer

(SEAL)

Motion was made by Kooiker, second by LaCroix, to approve (No. CC092109-02.1) Main Fire Station Water Line Reconstruction Project No. IDP09-1791 / CIP No. 50772 opened September 15, 2009.

Substitute motion was made by Hadcock, second by Weifenbach and carried to award the bid to Hills Materials Company in the amount of \$82,874.50.

Motion was made by Kooiker, second by LaCroix and carried to approve (No. PW092909-06) a Request for Authorization to Seek Proposals for Engineering Services for St. Patrick Street Siphon Odor Control Facility, Project No. SS09-1825 / CIP No. 50774. Estimated design and construction costs: \$300,000.00.

Bids

The following companies submitted bids for (No. CC100509-02.1) City of Rapid City PETT Building – Phase 3 opened September 29, 2009: Ainsworth Benning Construction Inc., SECO Construction, Heavy Constructors DBA Gustafson Builders and MAC Construction Company Inc. Staff reviewed the bids and recommends bid award to Heavy Constructors DBA Gustafson Builders. Motion was made by Waugh, second by Hadcock, to approve the bid award to the lowest responsible bidder meeting specifications Heavy Constructors DBA Gustafson Builders in the amount of \$114,470.00 for the base bid, alternate 1 and 8 units of aluminum operable awning windows. It was indicated that any remaining funds from this project would go back to CIP. Motion carried.

The following companies submitted bids for (No. CC100509-02.2) Downtown Alley Reconstruction Project No. ST09-1821 / CIP No. 50379 opened September 29, 2009: Hills Material Company, J&J Asphalt Company and Simon Contractors of SD, Inc. Staff reviewed the bids and recommends bid award to J&J Asphalt Company. Motion was made by LaCroix, second by Hadcock and carried to approve the bid award to the lowest responsible bidder meeting specifications, J&J Asphalt Company, in the amount of \$57,615.75.

The following companies submitted bids for (No. CC100509-02.3) 5th Street Pedestrian Crossing at Rapid City Regional Hospital No. ST08-1764 / CIP No. 50750 opened September 29, 2009: Ainsworth Benning Construction Inc., Simon Contractors of SD Inc., Hills Material Company, Tru-Form Construction and Stanley J Johnsen Concrete Contractors. Staff reviewed the bids and recommends bid award to Simon Contractors of SD Inc. Motion was made by Olson, second by Weifenbach, to approve the bid award to the lowest responsible bidder meeting specifications, Simon Contractors of SD Inc., in the amount of \$144,944.92. Hadcock commended the fact that the engineer’s estimates are very close to the cost. Motion carried.

The following companies submitted bids for (No. CC100509-02.4) Rapid River Subdivision Sanitary Sewer Extension Project No. SS06-1587 / CIP No. 50653 opened September 29, 2009: Hills Material Company, Highmark Inc., Rapid Construction LLC, Quinn Construction Inc., RCS Construction Inc., Simon Contractors of SD Inc., and Mainline Contracting. Motion was made by Olson, second by LaCroix, to continue the bid award to the October 13, 2009 Public Works Committee meeting. Responding to Kooiker, Tech indicated that this is an assessed project, and they cannot make a recommendation until the participating funds are in hand from landowners. Motion carried.

Council Items & Liaison Reports

Kooiker addressed (No. CC100509-04) the status of publishing and distribution of the adopted anti-retaliation policy. He said that the policy on city employees talking to officials is an important change, but the memo was not published. It was emailed to City employees, but he thought it would be posted on the internet, in the new employee handbook and published. Mayor Hanks clarified that the Council did not make the statement that they were encouraging City employees to directly contact Council about employee related issues. The resolution stated that if the employee does not feel comfortable discussing the issue with the usual chain of command they can discuss the issue with Council members or other staff. Green said the action on February 17, 2009 was a resolution, but it was not formally drafted. If the Council wants a formal resolution, they need to direct preparation of such. Kooiker said the policy is easily interpreted as an encouragement for City employees to talk to Council at any time. He said this resolution should be published, and he does not think a new motion is necessary. Weifenbach said it would be appropriate for employees to know that they have this option and said it should be made available, especially to new employees. LaCroix said Weifenbach followed proper procedure in bringing a recent concern to the Mayor, and the grievance process should follow that procedure. He is concerned that something would come forward without proper investigation. Hadcock said this resolution says that we care as a Council and that the Council feels the same way as state and federal law. She said it does not need to be published and said the process works as it is. Responding to Olson, Green said copies of the harassment policy and code of conduct are given to new employees. Motion was made by Olson, second by LaCroix and carried to acknowledge the report.

Alderman LaCroix reported on Strengthening Families, including Step Up For Kids Week and an essay contest, and he briefly discussed Bank on Rapid City. Hadcock explained that the banking information is for many levels of people in the community, and she expressed her appreciation to Barb Garcia and Bonnie for their work. Motion was made by Olson, second by Hadcock and carried to acknowledge the report.

Alderman Kooiker said that cost center 0101 has pay increases allocated for elected officials for 2010. He disagrees with the way this is done as salary increases should be separated from the budget, and he said if there is going to be a resolution it should be announced tonight. Mayor Hanks clarified that the pay increase for elected officials must be done with a separate resolution. He said funding is included in the budget so that Council can approve an increase if they want. Kooiker said the basis for the increase was included in the budget, but it should be separated similar to the property tax increase. Mayor Hanks reiterated how the increases for Mayor and Council would become effective. Kooiker said the cost center for Mayor and Council is separate, so it should have been a separate discussion. Hadcock said it has always been a separate resolution, and Green said the resolution generally comes forward in late fall. Hadcock said the Council can vote to take a raise, but it is the Council member's choice to take the raise once that is done. LaCroix said knowing that this will come forward in a resolution it needs to be included in the budget. He mentioned that extra funds can be used for Detox if raises are not approved. Motion was made by Waugh, second by LaCroix and carried to acknowledge the report.

Alderman Hadcock reported that Wilson Park will be decorated October 23rd. Halley Park will be done on October 31st, and they will start other areas in November. She said volunteers can contact her. Weifenbach expressed his appreciation for the projects. LaCroix also expressed appreciation and

pointed out that the project keeps growing. Motion was made by Olson, second by LaCroix and carried to acknowledge the report.

Staff Items

Tech addressed the (No. CC100509-03) Vision 2012 Update. He outlined the recent updates including funds committed to ATTA Powwow Grounds, Founder's Park bid award, Performing Arts letter of understanding, Downtown Parking funds committed to St. Joe Development Group, and Soccer Rapid City Complex funds committed to preliminary design. Motion was made by Waugh, second by Weifenbach and carried to acknowledge the report.

PUBLIC HEARING ITEMS – Items 83 – 108

Motion was made by Weifenbach, second by Olson and carried to open the public hearing for items 83 – 108. Glen Elshire addressed Items 105 and 106 stating that the area is a poor location for general commercial, and he indicated potential buyers for the property need light industrial zoning. He said he has sent letters to the surrounding property owners and no one has objected to the zoning change.

CONTINUED PUBLIC HEARING CONSENT ITEMS – Items 83 – 86

Motion was made by Kooiker, second by LaCroix and carried to approve the following items as they appear on Continued Public Hearing Consent Items:

Continue the following items until October 19, 2009:

83. No. 08SV047 - A request by FourFront Design, Inc. for Rapid City Economic Development Foundation for a **Variance to the Subdivision Regulations to waive the requirement to install pavement, curb, gutter, sidewalk, street light conduit, water and sewer along East Anamosa Street and to waive the requirement to install sidewalk on Concourse Drive as per Chapter 16.16 of the Rapid City Municipal Code** on Lot 1R and Lot 2 of Block 3 of Rushmore Business Park, located in the NE1/4, Section 4, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, legally described as Lot 1 of Block 3 and a portion of Government Lot 2, located in the NE1/4, Section 4, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, more particularly described as follows: Commencing at the N¼ Corner of Section 4, Township 1 North, Range 8 East of the Black Hills Meridian, Pennington County, South Dakota; Thence S00°06'56"W along the Center 1/4 line of said Section 4 a distance of 124.10 feet to a point on the South Right-of-Way of East Anamosa Street, Thence N89°56'23"E along said South Right-of-Way of East Anamosa Street a distance of 142.23 feet to a point along said Right-of-Way to the point of beginning; Thence N89°57'20"E along said South Right-of-Way of East Anamosa Street a distance of 285.56 feet to the intersection of the South Right-of-Way of East Anamosa Street and the West Right-of-Way of Concourse Drive; thence S00°11'20"W along the West Right-of-Way of Concourse Drive a distance of 129.00 feet; thence continuing along the West Right-of-Way of Concourse Drive along a curve to the LEFT, having a radius of 562.00 feet, a delta angle of 13°19'37" and whose long chord bears S06°43'28"E a distance of 135.30 feet; thence continuing along the West Right-of-Way of Concourse Drive S13°38'17"E a distance of 668.79 feet; thence S76°22'04"W a distance of 265.23 feet; thence N13°37'01"W a distance of 439.18 feet; thence S76°22'37"W a distance of 60.35 feet; thence N13°37'23"W a distance 302.02 feet; thence N77°53'25"E a distance of 57.99 feet; thence N05°25'18"W a distance of 258.44 feet to the point of beginning, located at 333 Concourse Drive.
84. No. 09SV012 - A request by D.C. Scott Co. Land Surveyors for William M. Jobgen for a **Variance to the Subdivision Regulations to waive the requirement to dedicate additional right-of-way and install curb, gutter, sidewalk, street light conduit, sewer, water and additional**

pavement as per Chapter 16 of the Rapid City Municipal Code on Lots 1 and 2 of Lot 7 of Pleasant View Subdivision, located in the SE1/4 SE1/4 and in Lot B of the SW1/4 SW1/4 of Section 11, T1N, R8E, BHM, Pennington County, South Dakota, legally described as Lot 7 of Pleasant View Subdivision, located in the SE1/4 SE1/4 and in Lot B of the SW1/4 SW1/4 of Section 11, T1N, R8E, BHM, Pennington County, South Dakota, located between Carlin Street and Crane Drive.

Continue the following items until November 2, 2009

85. No. 07SV057 - A request by Dream Design International, Inc. for a **Variance to the Subdivision Regulations to waive the requirement to install curb, gutter, sidewalk, street light conduit, water, sewer and pavement as per Chapter 16.16 of the Rapid City Municipal Code** on Lots 1 thru 12 of Block 1, Lots 1 thru 7 of Block 2, Lots 1 thru 4 of Block 3, Lots 1 thru 15 of Block 4, and Lots 1 thru 31 of Block 5 of Hyland Crossing Subdivision and the Dedicated Right-of-way, located in the W1/2 SE1/4; SE1/4 SE1/4, Section 35, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, legally described as the unplatted W1/2 SE1/4; SE1/4 SE1/4, Section 35, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, located at the southern terminus of Dreamscape Drive.
86. No. 09SV015 - A request by Centerline, Inc. for Lazy P-6 Land Co., Inc. for a **Variance to the Subdivision Regulations to reduce the pavement width from 12 feet to 11 feet per lane as per Chapter 16.16 of the Rapid City Municipal Code** on Lot 1 in Block 1 and Lots 1 thru 4 in Block 2 of the _____ Subdivision, located in the W1/2 SW1/4 of Section 19, T1N, R8E and E1/2 SE1/4 of Section 24, T1N, R7E all located in BHM, Pennington County, South Dakota, legally described as a parcel of land located in the W1/2 SW1/4 of Section 19, T1N, R8E and E1/2 SE1/4 of Section 24, T1N, R7E all located in BHM, Pennington County, South Dakota, located at the southeast corner of the intersection of Fifth Street and Catron Boulevard.

END OF CONTINUED PUBLIC HEARINGS CONSENT ITEMS

Motion was made by Waugh, second by LaCroix and carried to close the public hearing for Items 83 – 108.

CONSENT PUBLIC HEARING ITEMS – Item 87 – 96

The following items were removed from the Consent Public Hearing Items:

87. No. 09SV019 - A request by D.C. Scott Co. Land Surveyors for a **Variance to the Subdivision Regulations to allow platting half of right-of-way and to reduce the pavement width from 40 feet to 28 and 32 feet, respectively, and to waive the requirement to install curb, gutter, sidewalk and sewer along Lien Street as per Chapter 16.16 of the Rapid City Municipal Code** on Lot 1 of Rommesmo Subdivision, located in the SW1/4 SW1/4 of Section 27, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota, legally described as the unplatted balance of the SW1/4 SW1/4 of Section 27, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota, located northwest of the intersection of Lien Street and Deadwood Avenue.
90. Red Carpet Events, 2200 Maple Avenue, for a Retail (on-off sale) Malt Beverage License (No Video Lottery) *(Continued from September 21, 2009 City Council)*
91. Lisa Holbrook DBA The Beanery, 201 Main Street, for a Retail (on-off sale) Malt Beverage License (No Video Lottery) *(Continued from September 21, 2009 City Council)*

- 92. Lisa Holbrook DBA The Beanery, 201 Main Street, for a Retail (on-off sale) Wine License *(Continued from September 21, 2009 City Council)*
- 93. MG Oil Company DBA Chances Casino, 1565 Haines Ave. Ste. B for a Retail (on-off sale) Malt Beverage License WITH Video Lottery TRANSFER from MG Oil Company DBA Clock Tower Lounge, 2525 W. Main Street. *(Continued from September 8 and 21, 2009 City Council)*
- 94. LaMore Restaurant Group Inc. DBA Denny's, 2206 N LaCrosse St. for a Retail (on-off sale) Malt Beverage License NO Video Lottery *(Continued from July 20, August 3, and September 8, 2009 City Council)*
- 95. LaMore Restaurant Group Inc. DBA Denny's, 2206 N LaCrosse St. for a Retail (on-off sale) Wine License *(Continued from July 20, August 3, and September 8, 2009 City Council)*

Motion was made by LaCroix, second by Waugh and carried to approve the following items as they appear on Consent Public Hearing Items:

Alcohol Licenses

- 88. Rapid City Catholic School System for a Special Beer and Wine License for an event scheduled at 300 Fairmont Blvd. on October 24, 2009
- 89. Youth and Family Services Inc. for a Special Beer and Wine License for an event scheduled at 120 E. Adams Street on February 19 and 20, 2010

Assessment Rolls

- 96. No. LF090209-17 - Resolution Levying Assessment for Cleanup of Miscellaneous Properties

RESOLUTION #2009-128
 RESOLUTION LEVYING ASSESSMENT FOR
 CLEANUP OF MISCELLANEOUS PROPERTY

BE IT RESOLVED by the City Council of the City of Rapid City, South Dakota, as follows:

- 1. The City Council has made all investigations which it deems necessary and has found and determined that the amount which each lot or tract shall be benefited by the property cleanup is the amount stated in the proposed assessment roll.
- 2. The Assessment Roll for Cleanup of Miscellaneous Property is hereby approved and assessments thereby specified are levied against each and every lot, piece, or parcel of land thereby described.
- 3. Such assessments, unless paid within thirty (30) days after the filing of the assessment roll in the Office of the Finance Officer shall be collected by the City Finance Office in accordance with the procedure in Section 9-43-43 to 9-43-53 of the South Dakota Compiled Laws of 1967, as amended, and shall be payable in one annual installment bearing interest at the rate not to exceed nine percent (9%).

Dated this 5th day of October, 2009.

ATTEST:
s/ James F. Preston
Finance Officer

CITY OF RAPID CITY
s/ Alan Hanks, Mayor

(SEAL)

END OF CONSENT PUBLIC HEARING CALENDAR

The Mayor presented (No. 09SV019) a request by D.C. Scott Co. Land Surveyors for a **Variance to the Subdivision Regulations to allow platting half of right-of-way and to reduce the pavement width from 40 feet to 28 and 32 feet, respectively, and to waive the requirement to install curb, gutter, sidewalk and sewer along Lien Street as per Chapter 16.16 of the Rapid City Municipal Code** on Lot 1 of Rommesmo Subdivision, located in the SW1/4 SW1/4 of Section 27, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota, legally described as the unplatted balance of the SW1/4 SW1/4 of Section 27, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota, located northwest of the intersection of Lien Street and Deadwood Avenue. Motion was made by Kooiker, second by Waugh and carried to acknowledge the applicant's withdrawal of the request.

Motion was made by Olson, second by Weifenbach and carried to continue Items 90, 94, and 95 to the November 2, 2009 City Council meeting and Items 91 and 92 to the October 19, 2009 City Council meeting.

The Mayor presented a request by MG Oil Company DBA Chances Casino, 1565 Haines Ave. Ste. B for a Retail (on-off sale) Malt Beverage License WITH Video Lottery TRANSFER from MG Oil Company DBA Clock Tower Lounge, 2525 W. Main Street. Motion was made by Olson, second by Waugh and carried to acknowledge the withdrawal of the request.

NON-CONSENT PUBLIC HEARING ITEMS – Items 97 – 108

Motion was made by Olson, second by Waugh and carried to acknowledge the public hearing for items 97 and 98.

- 97. No. LF091609-26 - Public Hearing for the Resolution of Intent to Enter into Lease of Land with Soccer Rapid City Pursuant to SDCL 9-12.5.2.
- 98. No. LF091609-27 - Public Hearing for Resolution of Intent to Enter into Lease of Land with The Alliance of Tribal Tourism Advocates.

Motion was made by Olson, second by LaCroix, to (No. LF093009-20) Authorize the Mayor and Finance Officer to sign Lease Agreement between City of Rapid City and Soccer Rapid City. Green indicated the attorney for Soccer Rapid City has not been available, so he is recommending continuation for two weeks.

Substitute motion was made by Kooiker, second by LaCroix and carried to continue the item to the October 19, 2009 City Council meeting.

Motion was made by Olson, second by Waugh, to (No. LF093009-21) Authorize the Mayor and Finance Officer to sign Lease Agreement between the City of Rapid City and The Alliance of Tribal Tourism Advocates. Olson confirmed her motion is to approve the version with the corrections. Responding to Kooiker, Green explained the Mayor's request of ATTA and Soccer Rapid City to reaffirm their commitment to acknowledge that the City's participation is limited to the 2012 funds. Kooiker said the requirement should be done for all 2012 projects, but it is similar to a WORP in that they still have a right to come forward and ask. He said the City should require nothing of ATTA that was not also required of all other 2012 projects. Olson said it is most important to approve the lease agreement. She said the discussion by Alderman Kooiker is not a part of the lease, and we need to let this project move forward. Weifenbach said ATTA is being told they will not receive funding without signing the letter. He wants to

move forward and asked if this should be a policy discussion. Green said if they want to discuss it later it can be added to the agenda, and he suggested approving the lease. Weifenbach wants to be sure ATTA and Soccer Rapid City will not be held up, and Green explained that the lease does not obligate city funds. Mayor Hanks explained that this will move forward. It was clear that this was the money they would get, but there is nothing that says an organization cannot come back to ask for more funds. Hadcock said there is no discrimination against anyone. She said the bottom line is that we support projects and people, and we are here to help people to get the job done. LaCroix said the Council supports both ATTA and Soccer Rapid City. He said there were requests for subsidizing, and the Mayor felt it necessary to reiterate what the policy and 2012 Committee said. Mayor Hanks clarified that those who were advocating for subsidy were not from ATTA. Olson said any decision made tonight does not hold a future Council to anything. Motion carried.

The Mayor presented (No. 09CA012) A request by City of Rapid City for a **Amendment to the Adopted Comprehensive Plan to change the land use designation from Low Density Residential to General Commercial** on that portion of Lot 15 Revised of Hillsvievw Subdivision described as follows: Commencing at the southwest corner of Lot 15 Revised; thence N00°03'23"W 283.51 feet, more or less, to the Point of Beginning; thence N00°03'23"W 198.47 feet, more or less; thence N90°00'00"E 129.91 feet, more or less; thence S00°00'00"E 198.82 feet, more or less; thence N89°50'46"W 129.72 feet, more or less, to the Point of Beginning; located in the NE¼ SE¼ of Section 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, located west of Valley Drive and north of S.D. Highway 44. Motion was made by Hadcock, second by Waugh and carried to approve the request. Elkins pointed out a slight change.

Motion was made by Olson, second by Weifenbach and carried to reconsider Item 101. Elkins pointed out that the applicant requested General Commercial instead of Light Industrial as directed previously.

Motion was made by Olson, second by Waugh, to approve Item 101 (No. 09CA012). Hadcock expressed her appreciation to Elkins and staff for work done to help people and future land use. Motion carried.

RESOLUTION #2009 - 101
RESOLUTION AMENDING THE COMPREHENSIVE PLAN
OF THE CITY OF RAPID CITY

WHEREAS, the Rapid City Planning Commission has reviewed the proposed amendment to the Comprehensive Plan and made a recommendation to the Rapid City Council; and

WHEREAS, the Rapid City Council held a public hearing on the October 5, 2009, at which they considered the recommendation of the Planning Commission and the proposed amendment to the Comprehensive Plan; and

WHEREAS, the proposed Amendment to the Adopted Comprehensive Plan would change the land use designation from Low Density Residential to General Commercial, on that portion of Lot 15 Revised of Hillsvievw Subdivision described as follows: Commencing at the southwest corner of Lot 15 Revised; thence N00°03'23"W 283.51 feet, more or less, to the Point of Beginning; thence N00°03'23"W 198.47 feet, more or less; thence N90°00'00"E 129.91 feet, more or less; thence S00°00'00"E 198.82 feet, more or less; thence N89°50'46"W 129.72 feet, more or less, to the Point of Beginning; located in the NE¼ SE¼ of Section 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota; and

WHEREAS, it appears that good cause exists to amend the Comprehensive Plan.

NOW THEREFORE, BE IT RESOLVED, by the City of Rapid City, that the Amendment to the Adopted Comprehensive Plan to change the land use designation from Low Density Residential to General Commercial, on that portion of Lot 15 Revised of Hillsvievw Subdivision described as follows:

Commencing at the southwest corner of Lot 15 Revised; thence N00°03'23"W 283.51 feet, more or less, to the Point of Beginning; thence N00°03'23"W 198.47 feet, more or less; thence N90°00'00"E 129.91 feet, more or less; thence S00°00'00"E 198.82 feet, more or less; thence N89°50'46"W 129.72 feet, more or less, to the Point of Beginning; located in the NE¼ SE¼ of Section 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota as attached to the original hereof be filed with the City Finance Office

Dated this 5th day of October, 2009.

CITY OF RAPID CITY
s/ Alan Hanks, Mayor

ATTEST:
s/ James F. Preston
Finance Officer

(SEAL)

The Mayor presented (No. 09CA013) A request by City of Rapid City for an **Amendment to the Adopted Comprehensive Plan to change the land use designation from Low Density Residential to Light Industrial with a Planned Industrial Development** on that portion of Lot 15 Revised of Hillsvie subdivision described as follows: Beginning at the northeast corner of Lot 15 Revised; thence S00°00'00"E 349.61 feet, more or less; thence N89°50'46"W 200.00 feet, more or less; thence N00°00'00"W 198.82 feet, more or less; thence N90°00'00"W 129.91 feet, more or less; thence N00°03'23"W 150.00 feet, more or less; thence N89°56'06"E 330.06 feet, more or less, to the Point of Beginning; located in the NE¼ SE¼ of Section 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota; and the south 293 feet of Lot 6 of Marshall Subdivision, located in the SE¼ NE¼ of Section 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, located west of Valley Drive and north of S.D. Highway 44. Motion was made by Olson, second by Waugh, to approve the request with the following revised legal description: That portion of Lot 15 Revised of Hillsvie subdivision described as follows: Beginning at the northeast corner of Lot 15 Revised; thence S00°00'00"E 349.61 feet, more or less; thence N89°50'46"W 200.00 feet, more or less; thence N00°00'00"W 198.82 feet, more or less; thence N90°00'00"W 129.91 feet, more or less; thence N00°03'23"W 150.00 feet, more or less; thence N89°56'06"E 330.06 feet, more or less, to the Point of Beginning; located in the NE¼ SE¼ of Section 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota. Responding to Kooiker, Elkins explained that staff has worked through changes with the applicant, so they are recommending approval with the revised legal description to conform to the direction from Council. She confirmed that the concerns of the adjacent land owners have not changed. Motion carried with one NO from Kooiker.

RESOLUTION #2009 - 102
RESOLUTION AMENDING THE COMPREHENSIVE PLAN
OF THE CITY OF RAPID CITY

WHEREAS, the Rapid City Planning Commission has reviewed the proposed amendment to the Comprehensive Plan and made a recommendation to the Rapid City Council; and

WHEREAS, the Rapid City Council held a public hearing on the 5th day of October, 2009, at which they considered the recommendation of the Planning Commission and the proposed amendment to the Comprehensive Plan; and

WHEREAS, the proposed Amendment to the Adopted Comprehensive Plan would change the land use designation from Low Density Residential to Light Industrial with a Planned Industrial Development, on that portion of Lot 15 Revised of Hillsvie subdivision described as follows: Beginning at the northeast corner of Lot 15 Revised; thence S00°00'00"E 349.61 feet, more or less; thence N89°50'46"W 200.00 feet, more or less; thence N00°00'00"W 198.82 feet, more or less; thence N90°00'00"W 129.91 feet, more or less; thence N00°03'23"W 150.00 feet, more or less; thence N89°56'06"E 330.06 feet, more or

less, to the Point of Beginning; located in the NE¼ SE¼ of Section 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota; and the south 293 feet of Lot 6 of Marshall Subdivision, located in the SE¼ NE¼ of Section 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota; and

WHEREAS, it appears that good cause exists to amend the Comprehensive Plan.

NOW THEREFORE, BE IT RESOLVED, by the City of Rapid City, that the Amendment to the Adopted Comprehensive Plan to change the land use designation from Low Density Residential to Light Industrial with a Planned Industrial Development, on that portion of Lot 15 Revised of Hillsvie subdivision described as follows: Beginning at the northeast corner of Lot 15 Revised; thence S00°00'00"E 349.61 feet, more or less; thence N89°50'46"W 200.00 feet, more or less; thence N00°00'00"W 198.82 feet, more or less; thence N90°00'00"W 129.91 feet, more or less; thence N00°03'23"W 150.00 feet, more or less; thence N89°56'06"E 330.06 feet, more or less, to the Point of Beginning; located in the NE¼ SE¼ of Section 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota as attached to the original hereof be filed with the City Finance Office

Dated this 5th day of October, 2009.

CITY OF RAPID CITY
s/ Alan Hanks, Mayor

ATTEST:
s/ James F. Preston
Finance Officer

(SEAL)

Ordinance 5527 (No. 09RZ029) An Ordinance Amending Section 17.06 of Chapter 17 of the Rapid City Municipal Code, Rezoning the within Described Property as requested by City of Rapid City for a **Rezoning from No Use District to General Commercial District** on that portion of Lot 15 Revised of Hillsvie subdivision described as follows: Beginning at the southwest corner of Lot 15 Revised; thence N00°03'23"W 481.98 feet, more or less; thence N90°00'00"E 129.91 feet, more or less; thence S00°00'00"E 482.22 feet, more or less; thence S38°37'42"W 80.71 feet, more or less; thence N51°22'18"W 101.19 feet, more or less to the Point of Beginning; located in the NE¼ SE¼ of Section 5, and the 75 foot wide right of way located adjacent and south of the above described property, all located in Section 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, located west of Valley Drive and north of S.D. Highway 44 having passed its first reading on July 20, 2009; motion was made by Olson, second by Hadcock, that the title be read the second time. Upon vote being taken, the following voted AYE: Waugh, Martinson, Kooiker, LaCroix, Olson, Weifenbach, Kroeger and Hadcock; NO: None; whereupon the Mayor declared the motion passed and Ordinance No. 5527 was declared duly passed upon its second reading.

Ordinance 5529 (No. 09RZ031) An Ordinance Amending Section 17.06 of Chapter 17 of the Rapid City Municipal Code, Rezoning the within Described Property as requested by City of Rapid City for a **Rezoning from No Use District to Light Industrial District** on that portion of Lot 15 Revised of Hillsvie subdivision described as follows: Beginning at the northeast corner of Lot 15 Revised; thence S00°00'00"E 349.61 feet, more or less; thence N89°50'46"W 200.00 feet, more or less; thence N00°00'00"W 198.82 feet, more or less; thence N90°00'00"W 129.91 feet, more or less; thence N00°03'23"W 150.00 feet, more or less; thence N89°56'06"E 330.06 feet, more or less, to the Point of Beginning; located in the NE¼ SE¼ of Section 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota; and the south 293 feet of Lot 6 of Marshall Subdivision, located in the SE¼ NE¼ of Section 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, located west of Valley Drive and north of S.D. Highway 44 having passed its first reading on July 20, 2009; motion was made by Olson, second by Hadcock, that the title be read the second time with the following revised legal description: That portion of Lot 15 Revised of Hillsvie subdivision described as follows: Beginning at

the northeast corner of Lot 15 Revised; thence S00°00'00"E 349.61 feet, more or less; thence N89°50'46"W 200.00 feet, more or less; thence N00°00'00"W 198.82 feet, more or less; thence N90°00'00"W 129.91 feet, more or less; thence N00°03'23"W 150.00 feet, more or less; thence N89°56'06"E 330.06 feet, more or less, to the Point of Beginning; located in the NE¼ SE¼ of Section 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota. Upon vote being taken, the following voted AYE: Waugh, Martinson, LaCroix, Weifenbach, Kroeger and Hadcock; NO: Olson and Kooiker; whereupon the Mayor declared the motion passed and Ordinance No. 5529 was declared duly passed upon its second reading.

Ordinance 5543 (No. 09RZ036) An Ordinance Amending Section 17.06 of Chapter 17 of the Rapid City Municipal Code, Rezoning the within Described Property as requested by Glen A. Elshire for a **Rezoning from General Commercial District to Light Industrial District** on Lot A of Blocks 3 and 4 of Rapid Valley Subdivision, Section 8, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, located at 2507 East St. Patrick Street having passed its first reading on September 21, 2009; motion was made by Olson, second by Waugh, that the title be denied. Weifenbach said the area is challenged, and he encouraged continuation for further research. He said this is an opportunity to look at a property that needs help.

Substitute motion was made by Weifenbach, second by Hadcock, to continue the items 105 and 106 to the November 2, 2009 City Council meeting. Olson stated her support for continuation. Hadcock said she would like to know the zoning of the surrounding businesses before making a decision, and she said they need an updated version on the computer. Elkins said staff will provide the information in 30 days. Martinson expressed her concern for the proximity to the playground at the Open Bible Center.

Question was called by Olson and there were no objections. Upon vote being taken on the motion to continue, motion carried.

106. No. 09CA018 - A request by Glen A. Elshire for an **Amendment to the Adopted Comprehensive Plan to change the land use designation from General Commercial with a Planned Commercial Development to Light Industrial with a Planned Industrial Development** on Lot A of Blocks 3 and 4 of Rapid Valley Subdivision, Section 8, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, located at 2507 East St. Patrick Street.

Motion was made by Olson, second by Waugh and carried to Authorize the Mayor and Finance Officer to sign the waiver of right to protest a future assessment for the installation of curb, gutter, water and sewer along S.D. Highway 44 and to install sewer along Elkhart Road, Kenosha Road and Canterbury Road as they abut Lot 5 of Aspen Estates Subdivision, located in the SW1/4 of Section 12, T1N, R6E, BHM, Pennington County, South Dakota, located at 7800 Elkhart Road. (09SV014)

The Mayor presented (No. 09SV014) A request by Fisk Land Surveying & Consulting Engineers for Walter J. Bradsky for a **Variance to the Subdivision Regulations to waive the requirement to install curb, gutter, street light conduit, water and sewer along S.D. Highway 44, to waive the requirement to install curb, gutter, street light conduit, water, sewer, to reduce the pavement width from 24 feet to 22 feet and to waive the requirement to dedicate right-of-way along Elkhart Road, Kenosha Road, and Canterbury Road as per Chapter 16.16 of the Rapid City Municipal Code** on Lots 5A and 5B of Aspen Estates Subdivision, located in the SW1/4 of Section 12, T1N, R6E, BHM, Pennington County, South Dakota, legally described as Lot 5 of Aspen Estates Subdivision, located in the SW1/4 of Section 12, T1N, R6E, BHM, Pennington County, South Dakota, located at 7800 Elkhart Road. Motion was made by Olson, second by LaCroix, to Approve the Variance to the Subdivision Regulations to waive the requirement to install curb, gutter and water along S.D. Highway 44 with the following stipulation: 1. Prior to City Council approval, the applicant shall sign a waiver of right to protest any future assessment for the improvements; and Deny without prejudice the Variance to the Subdivision Regulations to waive the requirement to install street light conduit along S. D. Highway 44;

and Approve the Variance to the Subdivision Regulations to waive the requirement to install curb, gutter, street light conduit, water, to reduce the pavement width from 24 feet to 22 feet and to waive the requirement to dedicate right-of-way along Elkhart Road, Kenosha Road, and Canterbury Road with the following stipulation: 1. Prior to Planning Commission approval, well data for the existing well shall be submitted for review and approval demonstrating the current flows and cistern reserve capacity is adequate for domestic use and fire flows; and Approve the Variance to the Subdivision Regulations to waive the requirement to install sewer along S.D. Highway 44, Elkhart Road, Kenosha Road, and Canterbury Road be approved with the following stipulation: 1. Prior to City Council approval, the applicant shall sign a waiver of right to protest any future assessment for the improvements. Hadcock asked why the variance on installing light conduit is being denied without prejudice, and Elkins said on state highway it is an exception not a variance. Motion carried.

BILLS

The following bills having been audited. Motion was made by Waugh, second by LaCroix and carried to authorize the Finance Officer to issue warrants or treasurers checks, drawn on the proper funds, in payment thereof.

Payroll Paid Ending 09-12-09, Paid 09-18-09	846,509.50
Payroll Paid Ending 09-30-09, Paid 09-30-09	1,205,384.83
Payroll Paid Ending 09-26-09, Paid 10-02-09	875,955.14
Payroll Paid Ending 09-12-09, Paid 09-18-09	3,592.80
Payroll Paid Ending 09-26-09, Paid 10-02-09	3,489.90
Pioneer Bank & Trust, Taxes Paid 09-18-09	197,726.93
Pioneer Bank & Trust, Taxes Paid 09-30-09	287,069.88
Pioneer Bank & Trust, Taxes Paid 10-02-09	202,453.19
Pioneer Bank & Trust, Taxes Paid 09-18-09	245.61
Pioneer Bank & Trust, Taxes Paid 10-02-09	244.14
SD Dept of Revenue, Sales Taxes Paid 09-22-09	38,453.19
SD Dept of Revenue, Excise Taxes Paid 09-22-09	48.97
SD Dept of Revenue, CCTR Sales Taxes Paid 09-22-09	9,380.88
First Administrators, Claims through 09-21-09	156,243.03
First Administrators, Claims through 09-28-09	146,221.42
Black Hills Power & Light, Electricity	17,124.79
Black Hills Power & Light, Electricity	80,478.14
First National Bank in Sioux Falls	65,001.26
Computer Bill List	<u>1,789,166.03</u>
Subtotal	<u>\$5,924,789.63</u>
Payroll Paid Ending 09-12-09, Paid 09-18-09	2,875.80
Payroll Paid Ending 09-26-09, Paid 10-02-09	2,922.35
Pioneer Bank & Trust, Taxes Paid 09-18-09	219.99
Pioneer Bank & Trust, Taxes Paid 10-02-09	223.55
City of Rapid City, Postage	<u>1.89</u>
Total	<u>\$5,931,033.21</u>

EXECUTIVE SESSION for the purposes permitted by SDCL 1-25-2

Motion was made by LaCroix, second by Hadcock, and carried to go into Executive Session at 9:40 P.M. for the reasons permitted by SDCL 1-25-2. The Council came out of Executive Session at 10:15 P.M. with all members present.

STAFF DIRECTION

Motion was made, seconded and carried to authorize the City Attorney to hire outside council to address the personnel matter with the funding source to be Council contingency.

ADJOURN

As there was no further business to come before the Council at this time, the meeting was adjourned at 10:17 P.M.

ATTEST:

CITY OF RAPID CITY

Finance Office

Mayor

(SEAL)