RESOLUTION NO. 2022-058


BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RAPID CITY, SOUTH DAKOTA, AS FOLLOWS:

SECTION 1. AUTHORIZATION AND FINDINGS.

1.01. The City of Rapid City, South Dakota (the Issuer) currently operates a wastewater collection system and wastewater treatment facilities (collectively, the System), for municipal, industrial and domestic purposes.

1.02. The Issuer desires and hereby determines it is necessary to construct improvements to the System consisting of the decommissioning of the North Plant and buildout of the South Plant, as described in the 2016 Facility Plan, including the construction of additional secondary clarifiers and hydraulic improvements at the South Plant (the Improvements). Because of the functional interdependence of the various portions of the System, the fact that the System may not lawfully operate unless it complies with State and federal laws, and the nature of the Improvements, the Issuer hereby determines that the Improvements will substantially benefit the entire System and all of its users within the meaning of SDCL 9-40-15 and SDCL 9-40-17. Therefore, the Issuer hereby determines that for the purposes of South Dakota Codified Laws, Chapters 9-40 (the Act), including, in particular, SDCL 9-40-17, the net income or revenues of the entire System, as extended, added to, or improved by the Improvements shall be deemed to be the net income or revenues available to be pledged to the payment of the bonds issued hereunder.

1.03. The Issuer is authorized to borrow money and issue its revenue bonds under the Act and South Dakota Codified Laws, Chapter 6-8B, in order to finance a portion of the cost of the Improvements. The Issuer is authorized to issue its obligations in order to defray the cost thereof, and to make all pledges, covenants and agreements authorized by law for the protection of the holders of the obligations, including, without limitation, those covenants set forth in SDCL, Sections 9-40-16 and 9-40-17. The obligations are payable from the Net Revenues of the System, as defined in Section 2.03 hereof.

1.04. The execution and delivery of the Revenue Obligation Loan Agreement between South Dakota Conservancy District (the District) and the Issuer (the Loan Agreement), the form of which has been submitted to this Council, and the pledging of the loan payments thereunder for the security of the State Revolving Fund revenue bond of the Issuer and the interest thereon.
shall be, and they are, in all respects, hereby authorized, approved and confirmed, and the Mayor and Finance Director are hereby authorized and directed to execute and deliver the Loan Agreement in the form and content submitted to this Council, with such changes that are not substantive as the Attorney for the Issuer deems appropriate and approves, for and on behalf of the Issuer. The Mayor and Finance Director are hereby further authorized and directed to implement and perform the covenants and obligations of the Issuer as set forth in or required by the Loan Agreement. The Loan Agreement herein referred to and made a part of this Resolution is on file in the office of the Finance Director and is available for inspection by any interested party.

1.05. The issuance of a revenue bond of the Issuer, of not more than $101,500,000 principal amount (the Bond) is hereby authorized, approved and confirmed, and the Mayor, Finance Director and other appropriate officials of the Issuer shall be authorized to execute and deliver the Bond to the District, for and on behalf of the Issuer, upon receipt of the purchase price and to deposit the proceeds thereof in the manner provided for in the Loan Agreement. The Mayor and Finance Director are hereby authorized to approve the final terms of the Bond, and their execution and delivery of the Bond shall evidence such approval. The terms of the Bond, as so executed and delivered, shall be deemed to be incorporated herein by reference. The provisions of the Act are hereby expressly incorporated herein.

1.06. The Issuer hereby determines that because the Bond is issued in connection with a financing agreement described in SDCL 46A-1-49, pursuant to SDCL 9-40-15, no election is required to issue the Bond. It is hereby found and determined that the principal amount of the Bond, when added to all other indebtedness of the Issuer subject to the utility debt limit pursuant to Article XIII, Section 4 of the South Dakota Constitution, will not exceed 10% of the assessed value of the taxable property in the Issuer.

SECTION 2. FUNDS AND ACCOUNTS.

2.01. Bond Proceeds and Revenues Pledged and Appropriated. A fund designated as the Wastewater Fund (the “Fund”) is and shall be maintained as a separate and special bookkeeping account on the official books of the Issuer until all Bonds payable from the Net Revenues of the System, as provided in Section 2.04, have been fully paid, or the Issuer’s obligation with reference to the Bond has been discharged as provided in this Resolution. All proceeds of the Bond are appropriated to the Fund. All gross revenues derived from the operation of the System are irrevocably pledged and appropriated and shall be credited to the Fund as received. As described in Section 3.04 hereof, the Issuer shall impose rates and charges for the availability, benefit and use of the System and shall aggregate the gross revenues derived from such rates and charges and the System, together with the expenses of operation and maintenance of the System and shall account for them as provided in this Resolution. 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 System 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 System 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 Fund shall be subdivided into separate accounts as designated and described in Sections 2.02 to 2.07, to segregate income and expenses received,
2.02. **Construction Account.** The Construction Account shall be used only to pay as incurred and allowed costs which under financial and reporting standards as promulgated by the Governmental Accounting Standards Board, the Financial Accounting Standards Board, or an Other Comprehensive Basis of Accounting, as applicable (referred to herein as Financial and Reporting Standards), are capital costs of the Improvements, and of such future reconstructions, improvements, betterments or extensions of the System 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 the Bond during the first year following the date of its delivery, if and to the extent that the Debt Service Account is not sufficient for payment of such interest, reimbursement of any advances made from other Issuer funds, and all other expenses incurred in connection with the construction and financing of any such undertaking. To the Construction Account shall be credited as received all proceeds of the Bond, all other funds appropriated by the Issuer for the System, and all income received from the investment of the Construction Account.

2.03. **Operating Account.** The Operating Account is hereby established as a separate Account within the Fund. On each monthly apportionment there shall first be set aside and credited to the Operating Account, as a first charge on the gross revenues of the System, such amount as may be required over and above the balance then held in the Operating Account to pay the reasonable and necessary operating expenses of the System 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 System, calculated in accordance with generally accepted accounting principles, and shall include, without limitation, administrative expenses of the Issuer relating solely to the System, 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 System and shall not include any portion of the salaries or wages paid to any officer or employee of the Issuer, except such portion as shall represent reasonable compensation for the performance of duties necessary to the operation of the System, nor any amount properly payable from any other account of the Fund. Moneys in the Operating Account shall be used solely for the payment of current operation expenses of the System. The Net Revenues of the System, 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 Account the amount required hereby, including sums required to maintain the Operating Reserve.

2.04. **Debt Service Account.** Upon each monthly apportionment, there shall be transferred to the Debt Service Account, out of the Net Revenues of the System, 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 Bonds and any obligations issued on a parity
therewith and outstanding.

If on the 25th day of the month preceding any Interest Payment Date there are not sufficient
amounts on deposit in the Debt Service Account to pay the total amount of interest coming due on
such Interest Payment Date, the Issuer shall transfer any moneys then on deposit to the credit of
the Surplus Account, in an amount equal to such deficiency, to the Debt Service Account.

If on the 25th date of the month preceding any Principal Payment Date there are not
sufficient amounts on deposit in the Debt Service Account to pay the total amount of principal
coming due on such Principal Payment Date, the Issuer shall transfer any moneys then on deposit
in the Surplus Account, in an amount equal to such deficiency, to the Debt Service Account.

2.05. **Reserved.**

2.06. **Replacement and Depreciation Account.** The Replacement and Depreciation
Account is hereby established as a separate account within the Fund. There shall next be set
aside and credited, upon each monthly apportionment, to the Replacement and Depreciation
Account such portion of the Net Revenues, in excess of the current requirements of the Debt
Service Account (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
System. Moneys in this account 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, or to pay the cost of improvements to the System;
provided, that in the event that the Issuer shall hereafter issue bonds for the purpose of financing
the construction and installation of additional improvements or additions to the System, but
which additional bonds cannot, upon the terms and conditions provided in Section 3.02, be
payable from the Debt Service Account, Surplus Net Revenues from time to time received may
be segregated and paid into one or more separate and additional accounts from the payment of
such bonds and interest thereon, in advance of payments required to be made into the
Replacement and Depreciation Account.

2.07. **Surplus Account.** The Surplus Account is hereby established as a separate account
within the Fund. Any amount of the Surplus Net Revenues from time to time remaining after the
above required applications thereof shall be credited to the Surplus Account, and the moneys
from time to time in that account, when not required to restore a current deficiency in the Debt
Service Account as provided in Section 2.04 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 balances in the Debt Service Account and the Replacement and Depreciation Account
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 System; and, if the balances in the Debt Service Account and the Replacement and Depreciation Account 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 Account or any other account of the Fund to any other fund of the Issuer, 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.

2.08. Deposit and Investment of Funds. The Finance Director shall cause all moneys pertaining to those accounts in the Fund which are maintained by the Issuer to be deposited as received with one or more banks which are duly qualified public depositaries 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 Issuer, 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 Fund as authorized in this Resolution; except that moneys from time to time on hand in the Fund 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 Account and the Surplus Account 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 Account may, in the discretion of this Council, be invested in any securities which are direct, general obligations of the Issuer. Income received from the deposit or investment of moneys shall be credited to the account 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 account.

2.09. Additional Revenues or Collateral. The Issuer reserves the right at any time to pledge additional moneys, revenues or collateral as security for the Bond and any additional bonds. Such pledge shall not be effective unless and until the Issuer receives, and provides to the bond registrar an opinion of, nationally recognized bond counsel stating that such pledge will not adversely affect the validity or tax exemption of the Bond and any additional bonds then outstanding.

2.10. Appropriation of Other Moneys. The Issuer reserves the right in any year while the Bond is outstanding to appropriate from moneys on hand and legally available for such purpose
in its cash reserve accounts such amounts as this Council may specify and direct that such amounts be used to pay principal and interest on the Bond. Any such appropriation shall reduce the obligation of the Issuer to impose rates and charges under Section 3.04 hereof.

2.11. **Statutory Mortgage.** The Issuer covenants and agrees that pursuant to SDCL 9-40-28 and SDCL 9-40-29, the lawful holders of the Bond shall have a statutory mortgage lien upon the System and the extensions, additions and improvements thereto acquired pursuant to the Act, until the payment in full of the principal, interest, and Administrative Expense Surcharge on the Bond, and the Issuer agrees not sell or otherwise dispose of the System, the Improvements, or any substantial part thereof, except as provided in the Loan Agreement and shall not establish, authorize or grant a franchise for the operation of any other utility supplying like products or services in competition therewith, or permit any person, firm or corporation to compete with it in the collection and treatment of wastewater for municipal, industrial, and domestic purposes within the Issuer.
SECTION 3. PRIORITIES AND ADDITIONAL BONDS.

3.01. Priority of Bond Payments. If at any time the Net Revenues of the System are insufficient to pay principal and interest then due on the Bond, any and all moneys then on hand shall be first used to pay the interest accrued on the Bond, and the balance shall be applied toward payment of the maturing principal of the Bond in order of their maturities, the earliest maturing principal to be paid first, and pro rata in payment of principal maturing on the same date.

3.02. Additional Bonds. The Issuer reserves the right to issue additional bonds, payable from the Debt Service Account of the Fund, on a parity as to both principal and interest with the Bond in the manner and upon satisfaction of the conditions and subject to the limitations set forth in the Loan Agreement, and if any previously issued bonds payable therefrom (“Prior Bonds”) are then outstanding, subject to the limitations contained in the resolutions under which such Prior Bonds were issued.

3.03. Compliance with Loan Agreement. The Issuer will comply, so long as the Bond is outstanding, and unpaid, with all of the provisions of the Loan Agreement, to the same extent as though such provisions were set forth in this Resolution.

3.04. Rates and Charges. The Issuer will maintain, revise, charge and collect rates and other charges for all service furnished and made available by the System, 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 System, and all principal of and interest on the Bond, to provide for the establishment and maintenance of adequate reserves, to provide an allowance adequate for recurring renewals and replacements of the System, to satisfy the rate covenant provided in Section 6.4 of the Loan Agreement and to fulfill the terms of all other agreements with holders of the Issuer’s bonds. The Issuer hereby reserves the right to determine on a periodic basis the appropriate allocation of operation and maintenance expenses, depreciation, repair and reserves associated with the facilities financed with the Bond, provided that such determination of allocable operation and maintenance expenses shall in no event abrogate, abridge or otherwise contravene the covenant of the Issuer set forth in this Section 3.04 or any other covenant or agreement in the Loan Agreement.

SECTION 4. AMENDMENTS.

4.01. Amendments Without Bondholder Consent. The Issuer reserves the right to amend this Resolution from time to time and at any time, for the purpose of curing any ambiguity or of curing, correcting or supplementing any defective provision contained herein, or of making such provisions with regard to matters or questions arising hereunder as this City Council may deem necessary or desirable and not inconsistent with this Resolution, and which shall not adversely affect the interest of the holder of the Bond, or for the purpose of 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 Fund, for the purpose of surrendering any right or power herein reserved to or conferred upon the Issuer, or for the purpose of authorizing the issuance of additional bonds in the manner and
subject to the terms and conditions prescribed in Section 3. Any such amendment may be adopted by resolution, without the consent of the holder of the Bond.

4.02. Amendments With Bondholder Consent. With the consent of the holder of the Bond as provided in Section 4.03, the Issuer 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, except that no amendment shall be adopted at any time without the consent of the holder of the Bond which are then outstanding, if it would extend the maturities of any Bond, 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 any privileges over any other Bond, would reduce the sources of gross revenues appropriated to the Fund, would authorize the creation of a pledge of gross revenues prior to or on a parity with the Bond (except as is authorized by Section 3), or would reduce the percentage in principal amount of Bonds required to authorize or consent to any such amendment.

4.03. Notice and Consent. Any amendment adopted pursuant to Section 4.02 shall be made by resolution, mailed to each holder of a Bond affected thereby, and shall become effective only upon the filing of written consents with the Finance Director, signed by the holders 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 holders of not less than two-thirds in principal amount of the Bond 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 bondholders in person or by agent duly appointed in writing, and shall become effective when delivered to the Finance Director. Any consent by the holder of any Bond shall bind the holder and every future holder of the same Bond with respect to any amendment adopted by the Issuer pursuant to such consent, provided that any bondholder may revoke such bondholder’s consent with reference to any Bond by written notice received by the Finance Director before the amendment has become effective. In the event that unrevoked consents of the holders of the required amount of Bonds have not been received by the Finance Director within one year after the mailing of any amendment, the amendment and all consents theretofore received shall be of no further force and effect.

4.04. 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 a Bond, shall be sufficient for any purpose of this Resolution and shall be conclusive in favor of the Issuer 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 certificate of any notary public or other officer authorized by law to take acknowledgements that the person signing such writing 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 Bond, and the date of 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 this Council may deem sufficient; but this City Council may nevertheless, in its discretion, require further proof in cases where it deems further proof desirable.

SECTION 5. PAYMENT OF BOND.
5.01. **General.** When the liability of the Issuer on the Bond has been discharged as provided in this Section, all pledges, covenants and other rights granted by this Resolution to the holder of the Bond shall cease.

5.02. **Payment.** The Issuer may discharge its liability with reference to any Bond which is due on any date by depositing with the holder or holders thereof, or the paying agent or agents, if any, for such Bond on or before that date a sum sufficient for the payment thereof in full; or if any Bond shall not be paid when due, the Issuer may nevertheless discharge its liability with reference thereto by depositing with the holder or holders thereof, or the paying agent or agents, if any, a sum sufficient for the payment thereof in full with interest accrued to the date of such deposit.

5.03. **Prepayable Bond.** The Issuer may also discharge its liability with reference to any prepayable Bond which is called for redemption on any date in accordance with its terms, by depositing with the holder or holders thereof, or the paying agent or agents, if any, on or before that date an amount equal to the principal, interest and redemption premium, if any, which are then due thereon, provided that notice of such redemption has been duly given as provided in the resolution authorizing the Bond.

SECTION 6. **TAX MATTERS AND EFFECTIVE DATE.**

6.01. **Tax Matters.**

   (a) **Covenant.** The Issuer covenants and agrees with the holders from time to time of the Bond that it 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 Bond to become subject to taxation under the Internal Revenue Code of 1986, as amended (the Code), and applicable Treasury Regulations (the Regulations).

   (b) **Use of System.** The Issuer covenants and agrees that it will not, nor will it permit any of its officers, employees or agents, to enter into any lease, use or other agreement with any person other than a state or political subdivision or agency or instrumentality of a state, relating to the use of the System or the security for the Bond which might cause the Bond to be considered a “private activity bond” within the meaning of Section 141 of the Code.

   (c) **Investment of Moneys on Deposit in Debt Service Account.** The Finance Director shall ascertain monthly the amount on deposit in the Debt Service Account. If the amount on deposit therein ever exceeds by more than $100,000 the aggregate amount of principal and interest due and payable from the Debt Service Account within 13 months thereafter, such excess shall either (1) not be invested except at a yield equal to or less than the yield borne by the Bond, or (2) be used to prepay and redeem principal installments of the Bond.

   (d) **Certification.** The Mayor and Finance Director, being the officers of the Issuer charged with the responsibility for issuing the obligations pursuant to this Resolution, are authorized and directed to execute and deliver to the purchaser a certification in order to satisfy the provisions of Section 1.148-2(b) of the Regulations. Such certification shall state that on the basis of the facts, estimates and circumstances in existence on the date of issue and delivery of
the Bond as therein set forth, it is not expected that the proceeds of the Bond will be used in such a manner that would cause the Bond to be an arbitrage bond, and the certification shall further state that to the best of the knowledge and belief of the officers there are no other facts, estimates or circumstances that would materially change such expectation.

6.02. **Tax-Exempt Status of the Bond and Rebate.** The Issuer shall comply with requirements necessary under the Code to establish and maintain the exclusion from gross income under Section 103 of the Code of the interest on the Bond, including without limitation (1) requirements relating to temporary periods for investments, (2) limitations on amounts invested at a yield greater than the yield on the Bond, and (3) the rebate of excess investment earnings to the United States.

6.03. **Repeal.** All provisions of all other ordinances, resolutions and other actions and proceedings of the Issuer and of this City Council which are in any way inconsistent with the terms and provisions of this Resolution are repealed, amended and rescinded to the full extent necessary to give full force and effect to the provisions of this Resolution.

CITY OF RAPID CITY, SOUTH DAKOTA

(SEAL)

By________________________
Mayor

Attest: ______________________________
Finance Director

Adopted: _____________, 2022
Published: _____________, 2022
Effective: _____________, 2022