

ORDINANCE NO. 3961

ORDINANCE RELATING TO PARKING IMPROVEMENTS; AMENDING AND SUPPLEMENTING ORDINANCE NO. 3399 FOR THE PURPOSE OF AUTHORIZING THE ISSUANCE AND SALE OF PARKING REVENUE REFUNDING BONDS AND THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS RELATING THERETO.

BE IT ORDAINED by the Common Council (the "Council") of the City of Rapid City, South Dakota (the "City"), as follows:

SECTION 1. RECITALS AND FINDINGS.

1.01. The City is a political subdivision of the State of South Dakota and a body corporate and politic and under the laws of the State of South Dakota, the City is possessed of all powers which are necessary, requisite or proper for the government and administration of its local and municipal matters, and all rights and powers that now or hereafter may be granted to municipalities by the laws of the State of South Dakota.

1.02. Pursuant to South Dakota Codified Law, Chapter 9-51, as amended (the "Act"), the City is authorized to borrow money and issue its revenue bonds in order to defray the cost of acquiring and constructing parking facilities, which bonds are payable solely from the revenue or income derived from the operation of such parking facilities and shall not constitute an indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations.

1.03. The City, which currently operates a municipal parking system (the "Parking System"), has, pursuant to the act and by Ordinance No. 3399 duly adopted by this Council on March 16, 1998, as amended by Ordinance No. 3408, adopted on April 20, 1998 (the "Original Bond Ordinance"), issued its Parking Revenue Bonds, Series 1998, dated as of May 1, 1998 (the "Series 1998 Bonds"), in the original aggregate principal amount of \$1,910,000, for purposes of financing the construction of a new parking structure (the "Parking Facility") and other improvements as part of the Parking System.

1.04. In order to provide additional security for the Series 1998 Bonds and to set forth the terms and other matters relating to the Series 1998 Bonds, the City entered into an Indenture of Trust, dated as of May 1, 1998 (the "Original Indenture"), with The First National Bank in Sioux Falls, in Sioux Falls, South Dakota, as trustee (the "Trustee").

1.05. As authorized by Sections 5.01 and 7.01 of the Original Ordinance and Article IV of the Original Indenture, the City has determined that it is necessary and desirable to amend and supplement the Original Bond Ordinance and to supplement the Original Indenture for purposes of issuing additional parking revenue bonds to be designated "City of Rapid City, South Dakota, Parking Revenue Bonds, Series 2003 (the "Series 2003 Bonds"), the proceeds of which would be used, together with any additional funds of the City which might be required, (i) to refund in a current refunding the callable maturities of the Series 1998 Bonds (the "Refunded Bonds"), (ii) to fund a deposit to the Reserve Fund established under the Original Bond Ordinance and the Original Indenture, (iii) to pay the costs of issuance of the Series 2003 Bonds,

including the premium for bond insurance, if any, and (iv) to provide an allowance for original issue discount.

1.06. It is hereby found, determined and declared to be in the best interests of the City to amend and supplement the Original Bond Ordinance (the Original Bond Ordinance, as amended and supplemented by this ordinance, is referred to herein as the “Bond Ordinance”) and to enter into a First Supplemental Indenture, dated as of October 1, 2003 (the “First Supplemental Indenture,” the Original Indenture, as supplemented by the First Supplemental Indenture, is referred to herein as the “Indenture”) for purposes of issuing the Series 2003 Bonds and refunding the Refunded Bonds.

SECTION 2. AUTHORIZATION OF SERIES 2003 BONDS AND DOCUMENTS.

2.01. The City hereby authorizes the issuance of the Series 2003 Bonds in accordance with the provisions of the Act, the Indenture and the Bond Ordinance. The Series 2003 Bonds shall be sold to Dougherty & Company LLC, of Minneapolis, Minnesota (the Purchaser) in a principal amount not to exceed the amount necessary to (i) provide for the refunding of the Refunded Bonds, (ii) pay costs of issuance (including underwriters’ discount not exceeding 2.00% of par), (iii) fund a deposit to the Reserve Fund (as defined in the Indenture) in an amount equal to the Reserve Requirement (as defined in the Indenture), (iv) pay bond insurance premium, if any, and (v) pay any allowance for original issue discount not to exceed 2.00% of par; all subject to the limitations of the laws of the State of South Dakota and of the Internal Revenue Code of 1986 (the “Code”). The Series 2003 Bonds shall bear interest at a rate or rates per annum resulting in an average interest rate not greater than 5.00% per annum and shall mature over a period not to exceed the maturity date of the Refunded Bonds (December 1, 2018). The Mayor and Finance Officer are hereby authorized and directed to agree with the Purchaser upon the exact purchase price, principal amount, maturities, redemption provisions and interest rate or rates for the Bonds, within the parameters set forth in this Section 2.01. The execution of a bond purchase agreement setting forth such final terms (the “Bond Purchase Agreement”) 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 and disclosure counsel for purposes of issuing the Series 2003 Bonds.

2.02. In connection with the authorization, issuance and delivery of the Series 2003 Bonds, the Mayor and Finance Officer shall enter into, execute and deliver the following documents:

- (a) the First Supplemental Indenture;
- (b) the Bond Purchase Agreement;

(c) a continuing disclosure agreement or undertaking satisfying the requirements of Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended; and

(d) such other documents, agreements or instruments as may be necessary to make covenants and recite facts required to demonstrate the validity and enforceability of the Series 2003 Bonds under the laws of the State of South Dakota and to assure the exclusion of the interest thereon from the gross income of the owners of the Series 2003 Bonds under the Code and to effectuate the terms and intent of the Bond Ordinance. The execution and delivery of such indentures, agreements and documents is hereby authorized and directed, the indenture, agreements and documents to be in such form and to contain such terms, consistent with this resolution, as the officers of the City designated herein shall determine to be necessary and desirable.

2.03. The Mayor, Finance Officer and City Attorney are hereby authorized and directed to execute and deliver the documents authorized by Section 2.02 hereof. Execution and delivery of such documents by the Mayor, Finance Officer and City Attorney shall constitute evidence that such items are consistent with the terms of the Bond Ordinance and have been duly authorized, executed and delivered by the City and are enforceable against the City in accordance with their terms, subject to customary exceptions relating to bankruptcy, reorganization, insolvency and other laws affecting creditors' rights. The Mayor, Finance Officer and City Attorney are further authorized to take such other actions as may be required to effectuate the terms and intent of the Bond Ordinance. In the event of the absence or disability of the Mayor, Finance Officer and City Attorney, the acting Mayor, assistant Finance Officer or acting City Attorney are hereby authorized to act in their place and stead and to take all actions and execute all documents approved hereby.

2.04. The Mayor, Finance Officer and City Attorney, are authorized, in cooperation with the Purchaser, to prepare an Official Statement to be distributed to prospective purchasers of the Series 2003 Bonds. The Mayor, Finance Officer and City Attorney are hereby authorized and directed to approve, and, if requested, to execute the final Official Statement.

2.05. The Series 2003 Bonds shall be special, limited obligations of the City, payable solely from the Net Revenues (as defined in the Bond Ordinance) to be derived by the City from the operation of the Parking System. The Series 2003 Bonds shall not be payable from any general or other fund of the City, and the Series 2003 Bonds shall not constitute general obligations of the city.

SECTION 3. QUALIFIED TAX-EXEMPT OBLIGATION. Pursuant to Section 265(b)(3)(B)(ii) of the Code, the City hereby designates the Bonds as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code. The City hereby represents that it does not anticipate that obligations bearing interest not includable in gross income for purposes of federal income taxation under Section 103 of the Code (including refunding obligations as provided in Section 265(b)(3) of the Code and including "qualified 501(c)(3) Bonds" but excluding other "private activity bonds," as defined in Sections 141(a) and 145(a) of the Code) will be issued by or on behalf of the City and all "subordinate entities" of the City in 2003 in an amount greater than \$10,000,000.

SECTION 4. MISCELLANEOUS.

4.01. The terms defined in the Original Bond Ordinance shall have the same meaning when used herein, unless the context or use thereof indicates another or different meaning or intent.

4.02. Except as specifically amended and supplemented by this ordinance, all of the provisions of the Original Bond Ordinance remain in full force and effect.

The above and foregoing Ordinance was moved for adoption by Councilmember _____ and upon roll call

voted aye, whereupon the Mayor declared the Ordinance to be duly passed and adopted.

Mayor

Attest:

Finance Officer

First Reading: August 4, 2003

Second Reading and Adoption: August __, 2003

Published: _____, 2003

Effective Date: _____, 2003