

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 \$_____. 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 _____, 2012, is to be made under the provisions of the Indenture. Upon each monthly apportionment commencing on _____, 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 _____ day of _____, 2009.

(SEAL)

Mayor

ATTEST:

Finance Officer

Adopted: _____, 2009.

Published: _____, 2009.

Effective Date: _____, 2009.