

AMENDED AND RESTATED ORDINANCE NO. 3399

ORDINANCE RELATING TO PARKING IMPROVEMENTS; CREATING SPECIAL FUNDS AND ACCOUNTS FOR THE ADMINISTRATION OF THE MONEYS DERIVED THEREFROM; AUTHORIZING AND DIRECTING THE ISSUANCE AND SALE OF REVENUE BONDS TO PAY THE COST OF IMPROVEMENTS TO THE MUNICIPAL PARKING SYSTEM AND DEFINING THE TERMS AND MANNER OF PAYMENT OF THE BONDS AND THE SECURITY THEREOF.

BE IT ORDAINED by the City Council (the "Council") of the City of Rapid City, South Dakota (the "City"), that Ordinance No. 3399 is hereby amended and restated in its entirety to read as follows:

SECTION 1. DEFINITIONS, RECITALS, AUTHORIZATION AND FINDINGS.

1.01. Definitions. For purposes of this Ordinance the terms defined in Section 1.01 of the Indenture of Trust to be entered into between the City and the Trustee described in Section 3.04 hereof (the "Indenture") shall have the same meanings when used herein unless the context hereof clearly requires otherwise.

1.02. Authorization. The City is authorized to borrow money and issue its revenue bonds under South Dakota Codified Laws, Chapter 9-51 (the "Act"), 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.

1.03. Recitals.

(a) The City, which currently operates a municipal parking system (the "Parking System") has, pursuant to the Act and Ordinance No. 3399, adopted March 16, 1998, as amended by Ordinance No. 3408, adopted April 20, 1998, issued its Parking Revenue Bonds, Series 1998 (the "Series 1998 Bonds"), in the original aggregate principal amount of \$1,910,000, for the purpose of financing the construction of a two-level parking structure (the "Parking Facility") and other improvements as part of the Parking System. The City, pursuant to Ordinance No. 3961, amending and supplementing Ordinance No. 3399, adopted August 18, 2003, subsequently issued its Parking Revenue Refunding Bonds, Series 2003 (the "Series 2003 Bonds") in the original aggregate principal amount of \$1,625,000, to refund the Series 1998 Bonds. The Series 2003 Bonds are currently outstanding in the aggregate principal amount of \$1,255,000. The City will defease the outstanding Series 2003 Bonds with funds on hand in the Parking System Fund contemporaneously with or prior to the issuance of the Bonds.

(b) Due to increased parking demand in the City's downtown area, the City has determined to proceed with the construction of improvements to the Parking Facility (the "Project"), consisting of the addition of a third level to the existing structure.

1.04. Findings. The City has determined that it is necessary and desirable to issue its parking revenue bonds, to be denominated "Parking Revenue Bonds, Series 2008" (the "Bonds") in accordance with the Act and under the terms and conditions set forth in this

Amended and Restated Ordinance No. 3399 (the “Ordinance”) to finance the construction of the Improvements.

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

2.01. Sale. The Bonds authorized by this Ordinance shall be issued in an aggregate principal amount not exceeding the sum of (i) the amount necessary to pay costs of the Project not to exceed \$2,600,000, (ii) the amount necessary to fund the Reserve Fund as provided in Section 4.05, (iii) the amount necessary to pay costs of issuance of the Bonds including underwriter’s discount, (iv) the amount necessary to pay any bond insurance premium as may be required, and (v) an allowance (not exceeding 2% of the principal amount of the Bonds) for original issue discount. The Bonds shall be sold to Dougherty & Company LLC, of Minneapolis, Minnesota (the “Underwriter”) at a purchase price of not less than 98.525% of par, less any original issue discount, plus accrued interest. The Bonds will bear interest at a rate or rates per annum resulting in an average yield not greater than 5.50% per annum and will mature over a period not to exceed 20 years. The Mayor and Finance Officer are hereby authorized and directed to agree with the Underwriter upon the exact purchase price, principal amount, maturities, interest rate or rates, payment dates and redemption provisions for the Bonds, within the parameters set forth in this Section.

2.02. 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, of Minneapolis, Minnesota (“Bond Counsel”), is hereby appointed as Bond Counsel for purposes of this issue of Bonds.

2.03. 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 an Official Statement to be distributed to prospective purchasers of the Bonds. The Mayor and the Finance Officer are hereby authorized and directed to approve, and, if requested, to execute the final Official Statement. 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 Official Statement to prospective purchasers of the Bonds.

2.04. 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 the Indenture with the Trustee. The terms of the Bonds shall be set forth in the Indenture, and the City shall pledge the Net Revenues of the Parking System to secure the Bonds. The Mayor and Finance Director are authorized and directed to approve and execute the Indenture on behalf of the City.

2.05. 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.

3.01. Date, Maturities and Interest Rates. The 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 at the respective annual rates stated opposite such maturity years as shown on the Bond Purchase Agreement.

3.02. Dates and Interest Payment Dates. Each Bond shall bear a date of original issue as of the first day of the month in which the Bonds are delivered to the Purchaser. The interest on the Bonds shall be payable on the interest payment dates specified in the Bond Purchase Agreement 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.

3.03. Redemption. The 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 Exhibit A to the Bond Purchase Agreement in such order of maturities as may be designated by the City and, within any maturity, in \$5,000 principal amounts selected by the Trustee by lot, assigned in proportion to their principal amounts.

The Finance Officer shall cause notice of the call for redemption thereof to be published as required by law and, at least thirty days prior to the designated redemption date, shall cause notice of the call for redemption to be mailed, by first class mail, to the registered owners of any Bonds to be redeemed at their addresses as they appear on the bond register described in Section 3.05 hereof but no defect in or failure to give such mailed notice of redemption shall affect the validity of proceedings for the redemption of any Bond not affected by such defect or failure; provided that notice shall be given to any securities depository in accordance with its operational arrangements. Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest. Upon partial redemption of any Bond, a new Bond or Bonds will be delivered to the registered owner without charge, representing the remaining principal amount outstanding

3.04. 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 upon thirty (30) days' notice and upon the

appointment of a successor Trustee, in which event the predecessor Trustee shall deliver all cash and Bonds in its possession to the successor Trustee and shall deliver the bond register to the successor Trustee.

SECTION 4. PARKING SYSTEM FUND.

4.01. Bond Proceeds and Revenues Pledged and Appropriated. A fund to be designated as the Parking System Fund (the “Fund”) is established and shall be maintained as a separate and special bookkeeping account on the official books of the City until all Bonds have been fully paid, or the City’s obligation with reference to such Bonds has been discharged as provided in this Ordinance. All revenues appropriated for purposes of the Parking System are appropriated to the Fund. All gross revenues derived from the operation of the Parking System are irrevocably pledged and appropriated and shall be credited to the Fund as received. As described in Section 6.10 hereof, the City shall impose parking rates, fees and charges for the use of the Parking System and shall aggregate the gross revenues derived from such parking rates, fees and charges and the Parking System, together with the expenses of operation and maintenance of the Parking System and shall account for them as provided in this Ordinance and in the Indenture. Such gross revenues shall include all gross income and receipts from parking rates, fees, charges and rentals imposed for the use of the Parking 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 Parking System and all income received from the investment of such gross revenues. The Fund shall be subdivided into separate funds and accounts as designated and described in Sections 4.02 to 4.07, to segregate income and expenses received, paid and accrued for the respective purposes described in those sections. The gross revenues received in the Fund 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 Bond, which apportionment is hereinafter referred to as the “monthly apportionment.”

4.02. Construction Fund. The Construction Fund is established as a trust account under the Indenture. An initial deposit to the credit of the Construction Fund is to be made under the provisions of the Indenture. Disbursements from the Construction Fund shall be made in accordance with the provisions of the Indenture. The Construction Fund shall be used only to pay as incurred and allowed costs which under generally accepted accounting principles are capital costs of the Project, and of such future acquisitions, reconstructions, improvements, betterments or extensions of the Parking Facility 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 year following the date of their delivery, if and to the extent that the Bond Fund is not sufficient for payment of such interest, reimbursement of 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 Fund shall be credited as received all proceeds of Bonds, except amounts appropriated to the Bond Fund and the Reserve Fund under the Indenture, all other funds appropriated by the City for the improvement of the Parking Facility, and all moneys received from any claim with respect to the Parking Facility received pursuant to Section 6.02 hereof.

4.03. 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 Parking 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 Parking 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 Parking System, calculated in accordance with generally accepted accounting principles, and shall include, without limitation, administrative expenses of the City relating solely to the Parking 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 appropriate reserves 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 Parking System 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 Parking 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 Parking System. The Net Revenues of the Parking System, as referred to in this Ordinance, are hereby defined to include the entire amount of such gross revenues remaining after each such monthly apportionment, after crediting to the Operating Account the amount required hereby.

4.04. Bond Fund. The Bond Fund is established as a trust account under the Indenture. An initial deposit to the credit of the Bond Fund is to be made under the provisions of the Indenture. All Net Revenues of the Parking System shall be transmitted, as received, to the Trustee for deposit in the Bond Fund until the balance on hand in the Bond Fund equals the sum of (1) the principal and premium, if any, due on the Bonds on all Principal Payment Dates occurring in the next succeeding 12 months whether by reason of Stated Maturity or through operation of the mandatory redemption of Term Bonds under the Indenture, plus (2) the interest due on the Bonds on the next succeeding Interest Payment Date.

If on any Interest Payment Date there are not sufficient amounts on deposit in the Bond Fund 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 Account, in an amount equal to such deficiency, to the Bond Fund.

If on any Principal Payment Date there are not sufficient amounts on deposit in the Bond Fund 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 Account, in an amount equal to such deficiency, to the Bond Fund.

4.05. Reserve Fund. The Reserve Fund is established as a trust account under the Indenture. There shall be credited to the Reserve Fund from the proceeds of the Bonds, an amount equal to the Reserve Requirement calculated with respect to the Bonds. Thereafter, in the event that the amount on deposit in the Reserve Fund shall thereafter fall below the Reserve

Requirement, additional deposits shall be made from funds of the Parking System, after the requirements of the Bond Fund have been satisfied, to the Reserve Fund until the Reserve Requirement is again reached. Upon the issuance of any Additional Parity 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 Parity Bonds. Moneys on hand in the Reserve Fund shall be used only to pay maturing principal and interest on the Bonds and any Additional Parity Bonds when other moneys in the Bond Fund are insufficient therefor.

4.06. 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 Bond Fund and the Reserve Fund (which portion of the Net Revenues is referred to herein as Surplus Net Revenues), as the 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 Parking System, which reserve shall be accumulated and maintained in an amount not less than 10% of the Operating Expenses for the preceding Fiscal Year. Moneys in this account shall be used only for the purposes above stated or, if so directed by the Council, to redeem Bonds which are prepayable according to their terms, to pay principal or interest when due thereon as required in Section 4.04 hereof, or to pay the cost of improvements to the Parking System; 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 Parking System, but which additional bonds cannot, upon the terms and conditions provided in Section 5, be payable from the Bond Fund, 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.

4.07. 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 Bond Fund as provided in Section 4.04 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 Reserve Fund is then funded to the full amount required to be maintained therein, and the balances in the Bond Fund 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; or

(c) to pay for repairs of or for the construction and installation of improvements or additions to the Parking System; and, if the Reserve Fund is then funded to the full

amount required to be maintained therein, and the balances in the Bond Fund 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 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.

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 City, nor shall such moneys at any time be loaned to other municipal funds or invested in warrants, special improvements bonds or other obligations payable from other funds, except as provided in this Section 4.07.

4.08. Deposit and Investment of Funds. The City Finance Officer shall cause all moneys pertaining to the Fund 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 Fund as authorized in this Ordinance; 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 moneys on hand in the Reserve Fund may be invested only in direct, general obligations of the United States of America maturing and bearing interest at the times and in the amounts estimated to be required to provide cash when needed for the purposes of the respective accounts; 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 City. Income received from the deposit or investment of moneys shall be credited to the account from whose moneys and deposit was made or the investment was purchased, and handled and accounted for in the same manner as other moneys in that account.

SECTION 5. PRIORITIES AND ADDITIONAL BONDS.

5.01. 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 Parking System 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 Parking System 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.

5.02. 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 5.01 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 Parking System on a parity as to interest with all then outstanding Bonds, provided that (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.

(e) So long as (i) the final maturity of the refunding bonds does not exceed the final maturity of the bonds being refunded, and (ii) maximum annual debt service on the refunding bonds is not more than 125% of the maximum annual debt service on the bonds being refunded, the refunding bonds need not meet the Net Income test for Additional Bonds set forth in Section 5.03.

5.03. Other Parity Bonds. The City reserves the right to issue Additional Bonds, payable from the Bond Fund of the Fund, on a parity as to both principal and interest with the Bonds, if (i) no default has occurred and is continuing under this Ordinance or the Indenture, and (ii) the Net Income of the Parking System 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 Bond Fund 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 or (iii) a feasibility study by a recognized management consultant projecting that Net Income of the Parking System for each of the three fiscal years following completion of the facilities to be financed with proceeds of the Additional Bonds will equal at least 125% of the average annual principal and interest payable from the Bond Fund 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 Parking System is hereby defined to mean, for any fiscal year, the total operating revenues of the Parking System, 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. In no event shall any Additional Bonds be issued and made payable from the Bond Fund if the

City is then in default in any payment of principal or interest or if there is a deficiency in the balances required by this Ordinance to be maintained in any of the accounts of the Fund. 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.

5.04. Subordinate Lien Bonds. Notwithstanding the above provisions of Section 5, nothing contained in this Ordinance or in the Bonds shall be construed to preclude the City from issuing bonds when necessary for the enlargement, improvement or extension of the Parking System, provided such bonds, whether constituting a general obligation of the City or payable solely from parking revenues, are expressly made a charge on and are payable only from the Surplus Net Revenues of the Parking System as defined in Section 4.06 hereof and are not superior to or on a parity with the Bonds.

Section 6. COVENANTS.

6.01. 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 6.04 hereof, until all Bonds are fully discharged as provided in this Ordinance, it will continue to hold, maintain and operate the Parking System as a public convenience, free from all liens thereon or on the income therefrom other than the liens herein granted or provided for, will observe prudent practices, and will maintain, expend and account for the Fund and the several accounts 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 Parking System 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.

6.02. Property Insurance. The City will cause all buildings, properties, fixtures and equipment constituting a part of the Parking System 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 Parking Facility shall be deposited in the Construction Fund and applied as provided in Section 4.02 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 Parking System 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 Fund. If for any reason insurance proceeds are insufficient for the repair, replacement and reconstruction of the insured property constituting a part of the Parking System, the City shall supply the deficiency from revenues on hand in the Replacement and Depreciation Account and the Surplus Account, 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 6.02. Such insurance may provide for a deductible not exceeding \$100,000, or, if the City establishes an adequate self insurance fund, the deductible may be increased to an amount not exceeding \$1,000,000.

6.03. 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 Parking System 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 Parking System and the Fund 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 6.03 and Section 6.02 constitute part of the Operating Expenses of the Parking System, 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 Bond Fund. Such insurance may be obtained through a qualified municipal insurance pool. Such insurance may provide for a deductible not exceeding \$100,000, or, if the City establishes an adequate self insurance fund, the deductible may be increased to an amount not exceeding \$1,000,000.

6.04. Disposition of Property. The City will not mortgage, lease, sell or otherwise dispose of any real or personal properties of the Parking System, 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 Parking System, and all proceeds of the mortgage, lease, sale or other disposition of such properties are deposited into the Fund.

6.05. 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 Parking System as a part thereof, the gross revenues derived from the operation of the Parking System, and the segregation and application of the gross revenues in accordance with this Ordinance, 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 this 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 City's annual financial report and the report of each such annual audit will be made

available for inspection by the registered owner of any of the Bonds. 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 Parking System, 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 amount on hand in the Fund at the end of the fiscal year;

(d) 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

(e) a determination that the audit shows full compliance by the City with the provisions of this Ordinance during the fiscal years covered thereby, including proper segregation of the capital expenditures from Operating Expenses, maintenance of the required balance of the Bond Fund, and receipt of Net Income (as defined in Section 5.04 hereof) during each fiscal year commencing after January 1, 2008, at least equal to 100% of (a) the principal and interest payable from the Bond Fund in such year plus (b) the amount determined to be needed for the Replacement and Depreciation Account; or, if the audit should reveal that the Net Income has been insufficient for compliance with this Ordinance, or that the methods used in account for such revenues and income were contrary to any provisions of this Ordinance, 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 Parking System as may be required.

6.06. 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 parking fees, charges and rentals, with respect to the Parking System, shall be payable from the Operating Account.

6.07. Handling of Funds. The employees of the City, under the direction and control of the City 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 Parking System and for other money currently receivable on account thereof. All money collected with respect to the Parking System shall be deposited daily with the Finance Officer. In the event of default on the part of the City in the payment of principal of or interest on any Bond promptly as each falls due, or in the keeping of any covenants herein contained, and if such default shall continue for a period of ninety days, the Council will appoint a special superintendent for the Parking System, with the power and responsibility to operate the Parking System for the City, and to recommend to the Council such revisions of the rates, charges and operating policies as may be necessary to comply with this Ordinance, and to assure that the Net Revenues will be

sufficient to pay all principal of and interest on Bonds, and the superintendent shall in all things so operate the Parking System as to comply fully with all the requirements and provisions of this Ordinance. The right of the registered owners of the Bonds to require employment of such a superintendent shall not be exclusive, and in the event of a default as herein outlined, such registered owner or owners shall have the right to proceed at law or in equity to require the performance of the covenants herein contained, in any form of action which shall to them seem appropriate.

6.08. Rules and Regulations. The rules and regulations for operation and use of the Parking System 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.

6.09. Remedies. Any registered owner of any Bond shall have the right, either at law or in equity, by suit, action or other proceedings, to protect and enforce the rights of all registered owners of the Bonds and to compel the performance of any and all of the covenants required herein to be performed by the City, and its officers and employees, including but not limited to the fixing and maintaining of rates, fees and charges and the collection and proper segregation of gross revenues and the application and use thereof. The registered owners of a majority in principal amount of outstanding Bonds shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the bondholders or the exercise of any power conferred on them, and the right to waive a default in the performance of any such covenant, and its consequences, except a default in the payment of the principal of or interest on any Bond when due. However, nothing herein 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, any court having jurisdiction of the action may appoint a receiver to administer the Parking System 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 Parking System, and to apply the gross revenues in conformity with this Ordinance and the laws of the State of South Dakota.

6.10. Rates and Charges. The City through the Council will maintain, revise, charge and collect rates and charges for service furnished and made available by the Parking 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 Parking System, 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 Parking System, and to fulfill the terms of all other agreements with owners of the Bonds. Such charges shall at all times be sufficient to produce Net Revenues (as defined in Section 4.03) for each fiscal year at least equal to (i) 125% of the principal of and interest on the Bonds coming due in such fiscal year, and (ii) together with the balance in the Surplus Account carried over from the preceding fiscal year, 140% of the principal of and interest on the Bonds coming due in the fiscal year.

Section 7. AMENDMENTS.

7.01. Amendments Without Bondholder Consent. The City may, prior to the delivery of the Bonds to the Purchaser, amend this Ordinance, 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 Ordinance, 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 Ordinance, 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 Fund, 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 6. Any such amendment may be adopted by ordinance, without the consent of the registered owners of any of the Bonds.

7.02. Amendments With Bondholder Consent. With the consent of the registered owners of Bonds as provided in Section 7.03, the City may from time to time and at any time amend this Ordinance by adding any provisions hereto or changing in any manner or eliminating any of the provisions hereof or of any amending ordinance; provided, however, that no amending ordinance 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 Fund, 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.

7.03. Notice and Consent. Any amendment adopted pursuant to Section 7.02 shall be made by ordinance, mailed to each registered owner of a Bond affected thereby, and shall become effective only upon the filing of written consents with the City 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 City Finance Officer. Any consent by the registered owner of any Bond shall bind the owner and every future 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 consent with reference to any Bond by written notice received by the City 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

City 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.

7.04. 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 Bonds, shall be sufficient for any purpose of this Ordinance and shall be conclusive in favor of the City if made in the manner provided in this Section 7.04. 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 the witness 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 the owner's 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 Council may nevertheless, in its discretion, require further proof in cases where it deems further proof desirable.

Section 8. DEFEASANCE.

8.01. General. When the liability of the City on all Bonds issued under and secured by this Ordinance and all interest thereon has been discharged as provided in this section, all pledges, covenants and other rights granted by this Ordinance to the registered owners of such Bonds shall cease.

8.02. Payment. The City may discharge its liability with reference to any Bonds which are due on any date by depositing with the Registrar for such Bonds on or before the date a sum sufficient for the payment thereof in full; or if any Bond shall not be paid when due, the City may nevertheless discharge its liability with reference thereto by depositing with the Registrar a sum sufficient for the payment thereof in full with interest accrued to the date of such deposit.

8.03. Redemption. The City may also discharge its liability with reference to any Bonds which are called for redemption on any date in accordance with their terms, by depositing with the Registrar 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 this Ordinance.

8.04. Escrow. The City may also at any time discharge its liability in its entirety with reference to any Bonds, subject to the provisions of law now or hereafter authorizing and regulating such action, by calling such Bonds for redemption on the next date when they may be prepaid in accordance with their terms, by giving the notice required for such redemption or giving irrevocable instructions to the escrow agent described below to give such notice, and by depositing irrevocably in escrow, with a bank qualified by law as an escrow agent for this purpose, cash or securities which are direct non-callable obligations of the United States and are authorized by law to be so deposited, bearing interest payable at such times and at such rates and maturing on such dates as shall be required, without reinvestment, to provide funds sufficient to pay all principal, interest and redemption premiums, if any, to become due on such Bonds on or before said redemption date. No defeasance shall be made pursuant to this Section 8.04 unless

there has first been presented to the escrow agent (i) a verification report as to the adequacy of the escrow prepared by an independent nationally-recognized certified public accountant and (ii) a written opinion of nationally-recognized bond counsel that such defeasance shall not cause the interest on any outstanding Bonds to be included in the gross income of the registered owners thereof for federal income tax purposes.

Section 9. TAX MATTERS.

The following provisions shall apply to Bonds which are issued and sold as tax-exempt obligations, and to those portions of the Parking System financed with the proceeds of tax-exempt Bonds:

9.01. The Parking Facility. The Project financed in whole or in part with proceeds of the Bonds and the Parking Facility of which it is a part are and will be owned and operated by the City and used by the City to provide parking facilities to members of the general public. No user of the Parking Facility is granted any concession, license or special arrangement with respect to the Parking Facility which might cause the Bonds to be considered “private activity bonds” or “private loan bonds” within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the “Code”). The City shall not enter into any lease, use or other agreement with any non-governmental person relating to the use of the Parking Facility or security for the payment of the Bonds which might cause the Bonds to be considered “private activity bonds” or “private loan bonds” within the meaning of Section 141 of the Code.

9.02. General Covenant. The City covenants and agrees with the registered owners of the Bonds 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 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 interest on the Bonds will not become includable in gross income for federal income tax purposes under the Code and the Regulations.

9.03. Certification. The Mayor and the Finance Officer, being the officers of the City charged with the responsibility for issuing the Bonds pursuant to this Ordinance are hereby authorized and directed to execute and deliver to the Purchaser 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 Bonds, it is reasonably expected that the proceeds of the Bonds will be used in a manner that would not cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code and the Regulations.

9.04. Arbitrage Rebate. The City acknowledges that the Bonds may be 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 Bonds from gross income for federal income tax purposes, unless the 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 Bonds

(other than amounts constituting a “bona fide debt service fund”) arise during or after the expenditure of the original proceeds thereof.

9.05. Qualified Tax-Exempt Obligations. 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 2008 in an amount greater than \$10,000,000.

Section 10. CONTINUING DISCLOSURE. The City acknowledges that the 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 therefor 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.

Section 11. EFFECTIVE DATE; REPEALS. This Ordinance shall become effective upon passage and all provisions of ordinances, resolutions and other actions and proceedings of the City which are in any way inconsistent with the terms and provisions of this Ordinance are repealed, amended and rescinded to the full extent necessary to give full force and effect to the provisions of this Ordinance.

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: May 5, 2008

Second Reading and Adoption: _____, 2008

Published: _____, 2008

Effective Date: _____, 2008