

**AUTHORIZING THE ISSUANCE AND SALE OF WATER REVENUE REFUNDING BONDS, SERIES 2011D AND SERIES 2011E; AWARDING THE SALE THEREOF TO THE PURCHASERS NAMED HEREIN AND; FIXING THE FORM AND SPECIFICATIONS OF THE WATER REVENUE REFUNDING BONDS, SERIES 2011**

WHEREAS, the City of Saint Paul, Minnesota (the "City") previously issued its Water Revenue Note of 1998 (the "1998 Note") in the original aggregate principal of \$16,500,000 and currently outstanding in the principal amount of approximately \$6,435,000;

WHEREAS, the 1998 Note was issued in order to finance various improvement to the City's municipal water utility (the "Water Utility") operated by Saint Paul Regional Water Services; and

WHEREAS, it is necessary and desirable for the City to refund the 1998 Note in a "current refunding" for payment on or about February 28, 2011 in order to achieve debt service cost savings on the outstanding principal amount of the 1998 Note; and

WHEREAS, Saint Paul Regional Water Services has, since its acquisition in 1885, been under the jurisdiction of the Board of Water Commissioners of the City of Saint Paul (the "Board") and the Board and this Council deem it necessary and expedient to undertake the refunding of the 1998 Note; and

WHEREAS, the City Council gave its preliminary approval to the issuance of the Series 2011D and Series 2011E Bonds by adopting CF No. 11-60 on January 12, 2011; and

WHEREAS, on February 8, 2011 the Board of Water Commissioners passed a resolution concurring with the Council's resolution 11-309 authorizing the issuance of the Bonds; and

WHEREAS, in order to fund the refunding of the 1998 Note, the City will issue its (i) Tax-Exempt Water Revenue Refunding Bonds, Series 2011D (the "Series 2011D Bonds"), and its (ii) Taxable Water Revenue Refunding Bonds, Series 2011E (the "Series 2011E Bonds" and together with the Series 2011D Bonds, the "Series 2011 Bonds"); and

WHEREAS, the Director, Office of Financial Services, has presented proposals received for the sale of the Series 2011 Bonds; and

WHEREAS, the proposals set forth in EXHIBIT C and EXHIBIT D attached hereto were received pursuant to the Terms of Proposal at the offices of Springsted Incorporated on the date hereof; and

WHEREAS, pursuant to Minnesota Statutes, Section 475.60, Subdivision 2(9), public sale requirements do not apply to the Series 2011 Bonds, because the City has retained an independent financial advisor and this Council has determined to sell the Series 2011 Bonds by private negotiation, and the City has instead authorized a competitive sale without publication of notice thereof as a form of private negotiation; and

WHEREAS, there are currently outstanding obligations of the City payable from Net Revenues of the City's Water Utility, specifically the City's (a) Water Revenue Bonds, Series 2003C (the "2003 Bonds"), issued pursuant to a resolution adopted by this Council on February 26, 2003, (b) Water Revenue Bonds, Series 2005D (the "2005 Bonds"), issued

pursuant to a resolution adopted by this Council on March 9, 2005, (c) Water Revenue Refunding Bonds, Series 2007A (the "2007 Bonds"), issued pursuant to a resolution adopted by this Council on January 24, 2007, and (d) Water Revenue Notes of 2010 (the "2010 Notes"), issued pursuant to a resolution adopted by this Council on June 16, 2010; and

WHEREAS, there is also currently outstanding a general obligation note of the City payable on a subordinate lien basis from Net Revenues of the City's Water Utility, specifically the City's General Obligation Wastewater Treated Water Revenue Note of 1996 (the "1996 Note"), issued pursuant to a resolution adopted by this Council on May 15, 1996; and

WHEREAS, all capitalized terms used in this resolution and not defined herein shall have the meanings granted to them in the resolutions authorizing the issuance of the 2003 Bonds, the 2005 Bonds, the 2007 Bonds, 2010 Notes, or the Series 2011 Bonds, as applicable; and

WHEREAS, it is necessary and desirable to provide for the issuance of the Series 2011 Bonds on a parity of lien with the 2003 Bonds, 2005 Bonds, 2007 Bonds, and the 2010 Notes and with a priority of lien over the 1996 Note; and paragraph 16 of the resolution authorizing the issuance and sale of the 2010 Notes provides for the issuance of parity lien bonds generally as follows:

"16. Parity Bonds. The 1998 Note, 2003 Bonds, 2005 Bonds, 2007 Bonds and 2010 Notes shall be a first charge and lien upon the Net Revenues of the Water Utility. No part of such Net Revenues shall be pledged to the payment of any general obligation bonds issued by the City while the 2010 Notes, any 1998 Note, 2003 Bonds, 2005 Bonds, 2007 Bonds and 2010 Notes or bonds or notes issued on a parity therewith remain outstanding and undischarged, unless the pledge of Net Revenues to such general obligation bonds is expressly made a second and subsequent lien and the City and Board covenant to make the rates and charges of the Water Utility sufficient to timely pay such general obligation bonds. No additional revenue obligations payable from the Revenue Bond Debt Service Account shall be hereafter issued unless the same are expressly made a second and subsequent lien upon the Net Revenues of the Water Utility; provided, however, that additional obligations may be issued on a parity of lien with the 2010 Notes, provided that the annual Net Revenues of said Water Utility for each of the two (2) completed fiscal years immediately preceding the issuance of such additional obligations shall have been one and one-half (1.5) times the maximum annual principal and interest coming due thereafter on all outstanding revenue obligations payable from and having a parity of lien upon the Net Revenues of the Water Utility Fund, including the additional obligations so to be issued; provided further, however, that if the annual Net Revenues in either or both of the aforesaid two (2) completed fiscal years shall be insufficient to meet this test then any reasonably projected increase in Net Revenues for the fiscal year immediately following such second completed fiscal year may be added to the Net Revenues for such completed fiscal years or either of them (but the total of such projected increase in Net Revenues may be added only once) in applying the foregoing test....

....Such facts shall be shown by the Certificate of the General Manager of the Board of Water Commissioners and shall be a finding of and recited in the resolution of the City authorizing any such additional series."

WHEREAS, for purposes of this Resolution paragraph 18 of the resolutions authorizing the issuance and sale of the 2003 Bonds, paragraph 18 of the resolutions authorizing the issuance and sale of the 2005 Bonds, paragraph 18 of the resolutions authorizing the issuance and sale of the 2007 Bonds, and paragraph 16 of the resolutions authorizing the issuance and sale of the 2010 Notes are substantively identical to said paragraph 18 relating to the Series 2011 Bonds; and

WHEREAS, herein the City makes various findings demonstrating the propriety of the issuance of the Series 2011 Bonds on a parity with the 2003 Bonds, 2005 Bonds, 2007 Bonds, and 2010 Notes; and

WHEREAS, in accordance with advice received from the Board, this Council finds, determines and declares that it is necessary and expedient to provide money to (i) refund the outstanding principal amount plus accrued interest on the 1998 Note, (ii) continue and add, if necessary, to a Reserve Account previously established as security for the obligations outstanding on a parity with the Series 2011 Bonds, and (iii) provide for the payment of costs of the issuance of the Series 2011 Bonds from the proceeds of obligations payable solely from the Net Revenues of the Water Utility; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Saint Paul, Minnesota, as follows:

1. Acceptance of Offer; Payment.

(a) The offer of \_\_\_\_\_ (the "Series 2011D Purchaser") to purchase the Series 2011D Bonds, at the rates of interest hereinafter set forth, and to pay for the Series 2011D Bonds up to the sum of \$\_\_\_\_\_ (the principal amount of the Series 2011D Bonds of \$\_\_\_\_\_, plus an original issue premium in the amount of \$\_\_\_\_\_, less the Series 2011D Purchaser's discount of \$\_\_\_\_\_) is hereby accepted, and the sale of the Series 2011D Bonds is hereby awarded to the Series 2011D Purchaser. The proposals for purchase of the Series 2011D Bonds are attached hereto as EXHIBIT C. The City retained the right to increase or reduce the principal amount of the Series 2011D Bonds from the proposed \$\_\_\_\_\_, and the City has determined to (increase)(reduce) the principal amount of the Series 2011D Bonds to \$\_\_\_\_\_. The Director, Office of Financial Services (or designee), on behalf of the City, is directed to execute a purchase agreement with the Purchaser related to the Series 2011D Bonds.

(b) The offer of \_\_\_\_\_ (the "Series 2011E Purchaser" and together with the Series 2011D Purchaser, the "Purchasers") to purchase the Series 2011E Bonds, at the rates of interest hereinafter set forth, and to pay for the Series 2011E Bonds up to the sum of \$\_\_\_\_\_ (the principal amount of the Series 2011E Bonds of \$\_\_\_\_\_, plus an original issue premium in the amount of \$\_\_\_\_\_, less the Series 2011E Purchaser's discount of \$\_\_\_\_\_) is hereby accepted, and the sale of the Series 2011E Bonds is hereby awarded to the Series 2011E Purchaser. The proposals for purchase of the Series 2011E Bonds are attached hereto as EXHIBIT D. The City retained the right to increase or reduce the principal amount of the Series 2011E Bonds from the proposed \$\_\_\_\_\_, and the City has determined to (increase)(reduce) the principal amount of the Series 2011E Bonds to \$\_\_\_\_\_. The Director, Office of Financial Services (or designee), on behalf of the City, is directed to execute a purchase agreement with the Purchaser related to the Series 2011E Bonds.

2. Title; Original Issue Date; Denominations; Maturities.

(a) The Series 2011D Bonds. The Series 2011D Bonds shall be titled the "Water Revenue Refunding Bonds, Series 2011D" and shall be issued in the original aggregate principal amount of \$\_\_\_\_\_. The Series 2011D Bonds shall be dated their date of issuance of original issue and shall be issued forthwith on or after such date as fully registered bonds. The Series 2011D Bonds shall be numbered from R-1 upward each shall be in the denomination of \$5,000 each or in any integral multiple thereof of a single maturity.

(b) The Series 2011E Bonds. The Series 2011E Bonds shall be titled the "Taxable Water Revenue Refunding Bonds, Series 2011E" and shall be issued in the original aggregate principal amount of \$\_\_\_\_\_. The Series 2011E Bonds shall be dated their date of issuance of original issue and shall be issued forthwith on or after such date as fully registered bonds. The Series 2011E Bonds shall be numbered from R-1 upward each shall be in the denomination of \$5,000 each or in any integral multiple thereof of a single maturity.

3. Purpose. The Series 2011 Bonds shall provide funds to (i) refund and prepay the outstanding principal amount plus accrued interest to the date of redemption of the 1998 Note and (ii) fund the costs of issuance for the Series 2011 Bonds. The proceeds of the Series 2011 Bonds shall be deposited and used as provided in paragraph 17 herein. The total cost of refunding the 1998 Note, including legal and other professional charges, publication and printing costs, is estimated to be at least equal to the amount of the Series 2011 Bonds.

4. Interest. Interest on each of the Series 2011 Bonds is payable semiannually on each June 1 and December 1, commencing December 1, 2011. Principal of the Series 2011D Bonds and the Series 2011E Bonds, respectively, shall mature on December 1 of the years and in the installments as set forth in EXHIBIT E and EXHIBIT F attached hereto, respectively.

5. Book-Entry System; Limited Obligation of City.

(a) DTC. Each of the Series 2011 Bonds will be initially issued in the form of a separate single typewritten or printed fully registered Series 2011 Bond for each of the maturities set forth, respectively, on EXHIBIT E and EXHIBIT F attached hereto. Upon initial issuance, the ownership of each Series 2011 Bond will be registered in the registration books kept by the Registrar in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York, and its successors and assigns ("DTC"). Except as provided in this section, all of the outstanding Series 2011 Bonds will be registered in the registration books kept by the Registrar in the name of Cede & Co., as nominee of DTC.

(b) Participants. With respect to Series 2011 Bonds registered in the registration books kept by the Registrar in the name of Cede & Co., as nominee of DTC, the City, the Registrar and the Paying Agent will have no responsibility or obligation to any broker dealers, banks and other financial institutions from time to time for which DTC holds Series 2011 Bonds as securities depository ("Participants") or to any other person on behalf of which a Participant holds an interest in the Series 2011 Bonds, including but not limited to any responsibility or obligation with respect to (i) the accuracy of the records of Cede & Co., DTC or any Participant with respect to any ownership interest in the Series 2011 Bonds, (ii) the delivery to any Participant or any other person (other than a registered owner of Series 2011 Bonds, as shown by the registration books kept by the Registrar), of any notice with respect to the Series 2011 Bonds, including any notice of redemption, or (iii) the payment to any Participant or any other person, other than a registered owner of Series 2011 Bonds, of any amount with respect to

principal of, premium, if any, or interest on the Series 2011 Bonds. The City, the Registrar and the Paying Agent may treat and consider the person in whose name each Series 2011 Bond is registered in the registration books kept by the Registrar as the holder and absolute owner of such Series 2011 Bond for the purpose of payment of principal, premium and interest with respect to such Series 2011 Bond, for the purpose of registering transfers with respect to such Series 2011 Bonds, and for all other purposes. The Paying Agent shall pay all principal of, premium, if any, and interest on the Series 2011 Bonds only to or on the order of the respective registered owners, as shown in the registration books kept by the Registrar, and all such payments will be valid and effectual to fully satisfy and discharge the City's obligations with respect to payment of principal of, premium, if any, or interest on the Series 2011 Bonds to the extent of the sum or sums so paid. No person other than a registered owner of a Series 2011 Bond, as shown in the registration books kept by the Registrar, will receive a certificated Series 2011 Bond evidencing the obligation of this Resolution. Upon delivery by DTC to the City Clerk of a written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the words "Cede & Co." shall refer to such new nominee of DTC; and upon receipt of such a notice, the City Clerk shall promptly deliver a copy of the same to the Registrar and Paying Agent.

(c) Representation Letter. The City has heretofore executed and delivered to DTC a Blanket Issuer Letter of Representations (the "Representation Letter") which governs payment of principal of, premium, if any, and interest on the Series 2011 Bonds and notices with respect to the Series 2011 Bonds. Any Paying Agent or Registrar subsequently appointed by the City with respect to the Series 2011 Bonds shall agree to take all action necessary for all representations of the City in the Representation Letter with respect to the Registrar and Paying Agent, respectively, to be complied with at all times.

(d) Transfers Outside Book-Entry System. In the event the City, by resolution of the City Council, determines that it is in the best interests of the persons having beneficial interests in the Series 2011 Bonds that they be able to obtain Series 2011 Bond certificates, the City will notify DTC, whereupon DTC will notify the Participants, of the availability through DTC of Series 2011 Bond certificates. In such event the City will issue, transfer and exchange Series 2011 Bond certificates as requested by DTC and any other registered owners in accordance with the provisions of this Resolution. DTC may determine to discontinue providing its services with respect to the Series 2011 Bonds at any time by giving notice to the City and discharging its responsibilities with respect thereto under applicable law. In such event, if no successor securities depository is appointed, the City shall issue and the Registrar shall authenticate Series 2011 Bond certificates in accordance with this Resolution and the provisions hereof shall apply to the transfer, exchange and method of payment thereof.

(e) Payments to DTC. Notwithstanding any other provision of this Resolution to the contrary, so long as a Series 2011 Bond is registered in the name of Cede & Co., as nominee of DTC, payments with respect to principal of, premium, if any, and interest on the Series 2011 Bond and all notices with respect to the Series 2011 Bond shall be made and given, respectively, in the manner provided in DTC's Operational Arrangements, as set forth in the Representation Letter.

## 6. Redemption.

(a) No Optional Redemption. The Series 2011 Bonds are not subject to optional redemption.

[(b) Scheduled Mandatory Redemption. Term Bonds maturing on December 1, 20\_\_, are subject to redemption and prepayment at a price of par plus accrued interest, without premium, on the dates and in the amounts set forth below in EXHIBIT C or EXHIBIT D, respectively, hereto. Notice of any mandatory sinking fund redemption shall be given in conformance with Section 6(d) below]

[(b) No Scheduled Mandatory Redemption. There are no Term Bonds which are subject to mandatory redemption and prepayment on scheduled dates.]

(c) Selection of Series 2011 Bonds to be Redeemed: Redemption Procedure. In the event any of the Series 2011 Bonds are called for redemption, notice thereof identifying the Series 2011 Bonds to be redeemed shall be given by the Registrar by mailing a copy of the redemption notice by first class mail (postage prepaid) to the registered owner of each Series 2011 Bonds to be redeemed at the address shown on the registration books kept by the Registrar and by publishing the notice if required by law. Failure to give notice by publication or by mail to any registered owner, or any defect therein, shall not affect the validity of the proceedings for the redemption of Series 2011 Bonds. Series 2011 Bonds so called for redemption shall cease to bear interest after the specified redemption date, provided that the funds for the redemption are on deposit with the Registrar at that time.

(d) Notice of Redemption. The Registrar shall call Series 2011 Bonds for optional redemption and prepayment as herein provided upon receipt by the Registrar at least forty-five (45) days prior to the redemption date of a request of the City, in written form if the Registrar is other than a City officer. Such request shall specify the series and principal amount of Series 2011 Bonds to be called for redemption and the redemption date.

Mailed notice of optional redemption shall be given to the Paying Agent (if other than a City officer) and to each affected Holder. If and when the City shall call any of the Series 2011 Bonds for redemption and prepayment prior to the stated maturity thereof, the Registrar shall give written notice in the name of the City of its intention to redeem and pay such Series 2011 Bonds at the office of the Registrar. Notice of redemption shall be given by first class mail, postage prepaid, mailed not less than thirty (30) days prior to the redemption date, to each Holder of Series 2011 Bonds to be redeemed, at the address appearing in the Bond Register. All notices of optional redemption shall state: (i) the redemption date; (ii) the redemption price; (iii) if less than all outstanding Series 2011 Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Series 2011 Bonds to be redeemed; (iv) that on the optional redemption date, the redemption price will become due and payable upon each such Series 2011 Bond, and that interest thereon shall cease to accrue from and after said date; (v) the place where such Series 2011 Bonds are to be surrendered for payment of the redemption price (which shall be the office of the Registrar); and (vi) include a statement that the redemption so noticed is conditioned on sufficient funds being held by the City on or before noon on the applicable redemption date to pay the full redemption price, and if at such time the amount so held is not sufficient to pay all amounts required to effect the noticed redemption in full, the redemption shall be cancelled, with all Series 2011 Bonds tendered for such redemption being returned to the holders thereof and no liability on the part of the City shall arise as a result of such cancellation.

Notices to DTC or its nominee shall contain the CUSIP numbers of the Series 2011 Bonds. If there are any Holders of the Series 2011 Bonds other than DTC or its nominee, the Registrar shall use its best efforts to deliver any such notice to DTC on the business day next preceding the date of mailing of such notice to all other Holders.

7. Registrar. The City Treasurer is hereby appointed as the initial bond registrar and paying agent (the “Registrar” and the “Paying Agent”) for the Series 2011 Bonds. The City Treasurer shall serve as Registrar unless and until a successor Registrar is duly appointed. A successor Registrar shall be an officer of the City or a bank or trust company eligible for designation as Registrar pursuant to the Municipal Debt Act and may be appointed pursuant to any contract the City and such successor Registrar shall execute which is consistent herewith. The Registrar shall also serve as Paying Agent unless and until a successor Paying Agent is duly appointed. Principal and interest on the Series 2011 Bonds shall be paid to the registered holder or holders of the Series 2011 Bonds (the “Holder” or “Holders”) in the manner set forth in the form of the Series 2011 Bonds. The effect of registration and the rights and duties of the City and the Registrar with respect thereto are as follows:

(a) Register. The Registrar shall keep a bond register in which the Registrar provides for the registration of ownership of the Series 2011 Bonds and the registration of transfers and exchanges of the Series 2011 Bonds entitled to be registered, transferred, or exchanged.

(b) Transfer of Series 2011 Bonds. Upon surrender for transfer of a Series 2011 Bond duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Series 2011 Bonds of a like aggregate principal amount and maturity, as requested by the transferor. The Registrar may, however, close the books for registration of any transfer after the fifteenth day of the month preceding each interest payment date and until that interest payment date.

(c) Exchange of Series 2011 Bonds. When Series 2011 Bonds are surrendered by the registered owner for exchange, the Registrar shall authenticate and deliver one or more new Series 2011 Bonds of a like aggregate principal amount and maturity as requested by the registered owner or the owner’s attorney in writing.

(d) Cancellation. Series 2011 Bonds surrendered upon transfer or exchange shall be promptly cancelled by the Registrar and thereafter disposed of as directed by the City.

(e) Improper or Unauthorized Transfer. When a Series 2011 Bond is presented to the Registrar for transfer, the Registrar may refuse to transfer the Series 2011 Bond until the Registrar is satisfied that the endorsement on the Series 2011 Bond or separate instrument of transfer is valid and genuine and that the requested transfer is legally authorized. The Registrar shall incur no liability for the refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

(f) Persons Deemed Owners. The City and the Registrar may treat the person in whose name a Series 2011 Bond is registered in the bond register as the absolute owner of the Series 2011 Bond, whether the Series 2011 Bond is overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on the Series 2011 Bond and for all other purposes, and payments so made to a registered owner or upon the owner’s order shall be valid and effectual to satisfy and discharge the liability upon the Series 2011 Bond to the extent of the sum or sums so paid.

(g) Taxes, Fees, and Charges. The Registrar may impose a charge upon the owner thereof for a transfer or exchange of Series 2011 Bond sufficient to reimburse the Registrar for any tax, fee, or other governmental charge required to be paid with respect to the transfer or exchange.

(h) Mutilated, Lost, Stolen or Destroyed Series 2011 Bond. If a Series 2011 Bond becomes mutilated or is destroyed, stolen, or lost, the Registrar shall deliver a new Series 2011 Bond of like amount, number, maturity date, and tenor in exchange and substitution for and upon cancellation of the mutilated Series 2011 Bond or in lieu of and in substitution for any Series 2011 Bond destroyed, stolen, or lost, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case of a Series 2011 Bond destroyed, stolen, or lost, upon filing with the Registrar of evidence satisfactory to it that the Series 2011 Bond was destroyed, stolen, or lost, and of the ownership thereof, and upon furnishing to the Registrar an appropriate bond or indemnity in form, substance, and amount satisfactory to it and as provided by law, in which both the City and the Registrar must be named as obligees. Series 2011 Bonds so surrendered to the Registrar shall be cancelled by the Registrar and evidence of such cancellation shall be given to the City. If the mutilated, destroyed, stolen, or lost Series 2011 Bond has already matured or been called for redemption in accordance with its terms, it is not necessary to issue a new Series 2011 Bond prior to payment.

8. Registration and Payment. The Series 2011 Bonds will be issued only in fully registered form. The interest thereon and, upon surrender of each Series 2011 Bond, the principal amount thereof, is payable by check or draft issued by the Bond Registrar described herein. Each Series 2011 Bond shall be dated as of the last interest payment date preceding the date of authentication to which interest on the Series 2011 Bond has been paid or made available for payment, unless: (i) the date of authentication is an interest payment date to which interest has been paid or made available for payment, in which case the Series 2011 Bond will be dated as of the date of authentication; or (ii) the date of authentication is prior to the first interest payment date, in which case the Series 2011 Bond will be dated as of the date of original issue.

9. Forms of Series 2011 Bonds.

(a) Form of Series 2011D Bonds. All of the provisions of the 2011D Bonds, when executed as authorized herein, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The 2011D Bonds shall be issued substantially in the form attached to this Resolution as EXHIBIT A, which form is hereby approved, with such necessary and appropriate variations, omissions, and insertions as the City Treasurer and Director, Office of Financial Services, or their respective deputies, in their discretion, shall determine and delivery of the 2011D Bonds by the City shall be conclusive evidence of such determinations. Changes to the forms of the 2011D Bonds may be approved by bond counsel and the City Attorney.

The City Treasurer is authorized and directed to obtain a copy of the proposed approving legal opinion of Kennedy & Graven, Chartered, Saint Paul, Minnesota, as bond counsel to the City, which shall be complete except as to dating thereof and cause the opinion to accompany the 2011D Bonds.



(b) Form of Series 2011E Bonds. All of the provisions of the 2011E Bonds, when executed as authorized herein, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The 2011E Bonds shall be issued substantially in the form attached to this Resolution as EXHIBIT B, which form is hereby approved, with such necessary and appropriate variations, omissions, and insertions as the City Treasurer and Director, Office of Financial Services, or their respective deputies, in their discretion, shall determine and delivery of the 2011E Bonds by the City shall be conclusive evidence of such determinations. Changes to the forms of the 2011E Bonds may be approved by bond counsel and the City Attorney.

The City Treasurer is authorized and directed to obtain a copy of the proposed approving legal opinion of Kennedy & Graven, Chartered, Saint Paul, Minnesota, as bond counsel to the City, which shall be complete except as to dating thereof and cause the opinion to accompany the 2011E Bonds.

10. Execution. The Series 2011 Bonds shall be executed on behalf of the City by the signatures of its Mayor (or his designee), City Clerk (or designee), and Director, Office of Financial Services (or designee), provided that any of such signatures may be printed or photocopied facsimiles and the corporate seal of the City may be omitted on the Series 2011 Bonds as permitted by law. In the event of disability or resignation or other absence of any such officer, the Series 2011 Bonds may be signed by the manual or facsimile signature of that officer who may act on behalf of such absent or disabled officer. In case any such officer whose signature or facsimile of whose signature shall appear on the Series 2011 Bonds shall cease to be such officer before the delivery of the Series 2011 Bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he or she had remained in office until delivery.

11. Authentication; Date of Registration. The Series 2011 Bonds shall not be valid or obligatory for any purpose or be entitled to any security or benefit under this Resolution unless a Certificate of Authentication on such Series 2011 Bonds, substantially in the form hereinabove set forth, shall have been duly executed by an authorized representative of the Bond Registrar. Certificates of Authentication on different Series 2011 Bonds need not be signed by the same person. The Bond Registrar shall authenticate the signatures of officers of the City on each Series 2011 Bonds by execution of the Certificate of Authentication on the Series 2011 Bonds and by inserting as the date of registration in the space provided the date on which the Series 2011 Bonds is authenticated. For purposes of delivering the Series 2011 Bonds to the Purchasers, the Bond Registrar shall insert as the date of registration the date of original issue. The Certificate of Authentication so executed on the Series 2011 Bonds shall be conclusive evidence that it has been authenticated and delivered under this Resolution.

12. Registration; Transfer; Exchange. The City will cause to be kept at the principal office of the Bond Registrar a Bond Register in which, subject to such reasonable regulations as the Bond Registrar may prescribe, the Bond Registrar shall provide for the registration of Series 2011 Bonds and the registration of transfers of Series 2011 Bonds entitled to be registered or transferred as herein provided.

13. Rights upon Transfer or Exchange. Each Series 2011 Bonds delivered upon transfer of or in exchange for or in lieu of any other Series 2011 Bonds shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by such other Series 2011 Bonds.

14. Registration and Payment. The Series 2011 Bonds will be issued only in fully registered form. The interest thereon and, upon surrender of each Series 2011 Bond, the principal amount thereof, is payable by check or draft issued by the Registrar described herein. Each Series 2011 Bond shall be dated as of the last interest payment date preceding the date of authentication to which interest on the Series 2011 Bonds has been paid or made available for payment, unless: (i) the date of authentication is an interest payment date to which interest has been paid or made available for payment, in which case the Series 2011 Bonds will be dated as of the date of authentication; or (ii) the date of authentication is prior to the first interest payment date, in which case the Series 2011 Bonds will be dated as of the date of original issue. The Series 2011D Bonds shall bear interest at the rates per annum as set forth in EXHIBIT E attached hereto and the Series 2011E Bonds shall bear interest at the rates per annum set forth in EXHIBIT F attached hereto.

15. Holder; Treatment of Registered Owner; Consent of Holders.

(a) Beneficial Owners. For the purposes of all actions, consents, and other matters affecting Holders of the Series 2011 Bonds, other than payments, redemptions, and purchases, the City may (but shall not be obligated to) treat as the Holder of a Series 2011 Bond the beneficial owner of the Series 2011 Bond instead of the person in whose name the Series 2011 Bond is registered. For that purpose, the City may ascertain the identity of the beneficial owner of the Series 2011 Bond by such means as the Registrar, in its sole discretion, deems appropriate, including but not limited to a certificate from the person in whose name the Series 2011 Bond is registered identifying such beneficial owner.

(b) Registered Owners. The City and Registrar may treat the person in whose name any Series 2011 Bond is registered as the owner of such Series 2011 Bond for the purpose of receiving payment of principal of and premium, if any, and interest on such Series 2011 Bond and for all other purposes whatsoever whether or not such Series 2011 Bond shall be overdue, and neither the City nor the Registrar shall be affected by notice to the contrary.

(c) Actions of Holders. Any consent, request, direction, approval, objection, or other instrument to be signed and executed by the Holders may be in any number of concurrent writings of similar tenor and must be signed or executed by such Holders in person or by agent appointed in writing. Proof of the execution of any such consent, request, direction, approval, objection, or other instrument, or of the writing appointing any such agent and of the ownership of Series 2011 Bonds, if made in the following manner, shall be sufficient for any of the purposes of this resolution, and shall be conclusive in favor of the City with regard to any action taken by it under such request or other instrument, namely: (i) the fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him the execution thereof, or by an affidavit of any witness to such execution; and (ii) subject to the provisions of subparagraph (a) above, the fact of the ownership by any person of Series 2011 Bonds and the amounts and numbers of such Series 2011 Bonds, and the date of the holding of the same, may be proved by reference to the bond register.

16. Delivery; Application of Proceeds. The Series 2011 Bonds when so prepared and executed shall be delivered by the Director, Office of Financial Services (or designee), to the Purchasers upon receipt of the purchase price, and the Purchasers shall not be obliged to see to the proper application thereof.

17. Fund and Accounts. For the convenience and proper administration of the proceeds from the sale of the Series 2011 Bonds and for the payment of principal of and interest on the Series 2011 Bonds, the Board of Water Commissioners Water Utility Enterprise Fund (the "Water Utility Fund", heretofore in resolutions relating to the 2003 Bonds, 2005 Bonds, 2007 Bonds and 2010 Notes also referred to as the "Water Utility Fund") heretofore created shall continue in force and effect as a separate fund of the City and of the Board until all of the Series 2011 Bonds and interest thereon, have been fully paid, and as specified herein until the Series 2011 Bonds and interest thereon have been fully paid. The Treasurer and all municipal officials and employees concerned therewith shall establish and maintain financial records of the receipts and disbursements of the Water Utility in accordance with this Resolution. In such records there shall be maintained accounts of the Water Utility Fund for the purposes and in the amounts as follows:

(a) Refunding Account. A "Refunding Account," to which shall be credited all proceeds from the sale of the Series 2011 Bonds other than amounts representing accrued interest, if any. There shall also be deposited in the Refunding Account amounts deposited prior to the issuance of the Series 2011 Bonds in the Revenue Bond Debt Service Account for the payment of the 1998 Note. The money in the Refunding Account shall be used solely for the purpose of (i) paying the outstanding principal of and accrued interest on the 1998 Note on the date of redemption and (ii) paying the costs of issuing the Series 2011 Bonds, including all costs enumerated in Minnesota Statutes, Section 475.65. Upon completion of the refunding of the 1998 Note and the payment of the costs thereof, any surplus may be transferred by Minnesota Statutes, Section 475.65, or otherwise transferred to the Revenue Bond Debt Service Account.

From the Refunding Account there shall be paid, on February 28, 2011 or such other date as deemed beneficial by the City Treasurer, the (i) outstanding principal of the 1998 Note which mature between December 1, 2011 and December 1, 2018 by reason of early redemption, and (ii) the accrued interest to the date of redemption.

(b) Operation and Maintenance Account. An "Operation and Maintenance Account", into which shall be paid all gross revenues and earnings derived from the operation of the Water Utility system including any assessments which may from time to time be levied with respect to the Water Utility. From this account there shall be paid all, but only, current expenses of the Water Utility system. Current expenses shall include the reasonable and necessary costs of administering, operating, maintaining and insuring the Water Utility system, salaries, wages, costs of materials and supplies, costs of water production and distribution, necessary legal, engineering and auditing services, and all other items which, by sound accounting practices, constitute normal, reasonable and current costs of operation and maintenance, but excluding any allowance for depreciation, extraordinary repairs and payments into the Revenue Bond Debt Service Account and Reserve Account. There shall at all times be maintained in said account a reserve in an amount sufficient to cover the operation and maintenance costs of the Water Utility system for the ensuing fifteen (15) day period; neither said reserve nor any annual addition thereto shall constitute "Net Revenues" as defined below. The balance from time to time remaining in the Operation and Maintenance Account, including interest or other earnings received from the investment of any money in the Water Utility Fund, after paying or providing for the foregoing items, shall constitute, and are referred to in this Resolution as, "Net Revenues". Payments of fees to trustees for bonds, to

providers of liquidity facilities or credit enhancement facilities for bonds and remarketing agents for bonds are also current expenses.

(c) Revenue Bond Debt Service Account. A “Revenue Bond Debt Service Account”, into which there shall be credited and to which there is hereby irrevocably pledged from the Net Revenues of the operation of the Water Utility system monthly (i) commencing in March 2011, a sum equal to at least one-ninth (1/9<sup>th</sup>) of the principal of and interest due on the Series 2011 Bonds on December 1, 2011, and (ii) commencing, December 2011, a sum equal to at least one-twelfth (1/12<sup>th</sup>) of the total principal and interest on the Series 2011 Bonds and any other bonds or notes issued on a parity therewith during the ensuing twelve (12) months; provided, however, that no further payments need be made to said account when the money held therein is sufficient for the payment of all principal and interest due on said bonds and notes on and prior to the next maturity date that are issued on a parity with the Series 2011 Bonds. No money shall be paid out of the Revenue Bond Debt Service Account except to pay principal, premium, if any, and interest on the Series 2011 Bonds and any other bonds or notes which are issued on a parity with the Series 2011 Bonds.

(d) Reserve Account. A “Reserve Account”, which was heretofore created, and is hereby continued, to be used only when and if money in the Revenue Bond Debt Service Account or other money available therefor is insufficient to pay principal, premium, if any, and interest on the Series 2011 Bonds and other parity bonds and notes payable from the Revenue Bond Debt Service Account. Provided, however, that the money in the Reserve Account may be used to prepay said bonds and notes, when such prepayment will retire all of the bonds and notes of a series then outstanding. On the date of issuance of the Series 2011 Bonds, an amount allocable to each Series 2011 Bonds shall be transferred from amounts previously held for the 1998 Note (which amount was deposited in the Reserve Account from the retained earnings of the Water Utility and not proceeds of the 1998 Note) so that the amount therein is equal to the reserve requirement discussed below. Excesses in the Reserve Account, if any, shall be removed from the Reserve Account upon the issuance of the Series 2011 Bonds and deposited in the Revenue Bond Debt Service Account; and other amounts in the Reserve Fund pursuant to the resolutions authorizing the 2003 Bonds, 2005 Bonds, 2007 Bonds, and 2010 Notes shall be maintained therein upon the issuance of the Series 2011 Bonds and thereafter to the extent necessary to equal the amount required to be maintained in the Reserve Account as set forth below, being initially amounts required for the 2003 Bonds, 2005 Bonds, 2007 Bonds, 2010 Notes and Series 2011 Bonds. Whenever the money in the Reserve Account exceeds the amount required to be maintained in the Reserve Account as set forth below, such excess may be transferred to the Revenue Bond Debt Service Account; and whenever the money in the Reserve Account shall be less than said amount, the Reserve Account shall be restored to said amount from the next available Net Revenues. The amount required to be maintained in the Reserve Account shall be an amount equal to the lesser of: (1) ten percent (10%) of the original principal amount Series 2011 Bonds on a parity of lien therewith, or (2) the maximum principal and interest due in any year on the bonds and notes payable from the Revenue Bond Debt Service Account that are on a parity with the Series 2011 Bonds; and whenever the money in the Reserve Account exceeds such amount required to be maintained therein, such excess may be transferred to the Revenue Bond Debt Service Account. When only bonds or notes issued after the 1994 Bonds are outstanding, the “maximum principal and interest due in any year” on variable rate bonds shall be calculated at such time (for any variable rate bonds issued prior to

such time) or in connection with their issuance (for variable rate bonds issued after such time) assuming the variable rate bonds bear fixed interest for the remainder of their terms or for their terms, as appropriate, at the rates prevailing at such time (for any variable rate bonds issued prior to such time) or at the time of their issuance (for variable rate bonds issued after such time) for utility revenue bonds of comparable quality, maturity and taxable or tax-exempt status, provided that other or different assumptions may be used if necessary to obtain an investment grade credit rating for the variable rate bonds or to maintain the credit rating(s) then in effect for the bonds then outstanding.

(e) Excess Net Revenues. Net Revenues in excess of those required for the foregoing purposes may be used for any proper purpose of the City or the Water Utility.

(f) Deficiency. The money in the Water Utility Fund shall be allotted and paid to the various accounts herein established in the order in which said accounts are listed on a cumulative basis, and if in any month the money in said accounts is insufficient to place the required amount in any accounts, the deficiency shall be made up in the following month or months after payment into all other accounts having a prior claim on said Net Revenues have been made in full.

(g) Separate Accounts. All money held in the Revenue Bond Debt Service Account and the Reserve Account created by this Resolution shall be kept separate and apart from all other municipal funds and accounts.

(h) Rebate. Notwithstanding anything to the contrary herein, money in the Water Utility Fund and any account thereof may be used to pay any rebate of excess arbitrage earnings on gross proceeds of the 2003 Bonds, 2005 Bonds, 2007 Bonds, 2010 Notes, and Series 2011D Bonds to be paid to the United States in order to maintain the exclusion from gross income under Section 103 of the Code (as hereinafter defined) of the interest on the 2003 Bonds, 2005 Bonds, 2007 Bonds, 2010 Notes, and Series 2011D Bonds.

(i) Subordinate Liens. Accounts created for bonds, notes or obligations (including the 1996 Note) with a lien on Net Revenues subordinate to the lien of the Series 2011 Bonds shall be maintained and operated as required by the resolutions authorizing the same.

(j) Investments. No portion of the proceeds of the Series 2011D Bonds shall be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except (1) for a reasonable temporary period until such proceeds are needed for the purpose for which the Series 2011D Bonds were issued, (2) as part of a reasonably required reserve or replacement fund not in excess of ten percent (10%) of the proceeds of the Series 2011D Bonds (or in a higher amount which the City establishes is necessary to the satisfaction of the Secretary of the Treasury of the United States), and (3) in addition to the above in an amount not greater than the lesser of (i) five percent (5%) of the proceeds of the Series 2011D Bonds or (ii) \$100,000. To this effect, any proceeds of the Series 2011D Bonds and any sums from time to time held in the Refunding Account, Operation and Maintenance Account, Reserve Account or Revenue Bond Debt Service Account (or any other City or Board account which will be used to pay principal or interest to become due on the Series 2011D Bonds, bonds or notes payable therefrom) in excess of amounts which under the federal arbitrage regulations may be invested

without regard to yield shall not be invested at a yield in excess of the applicable yield restrictions imposed by said arbitrage regulations on such investments after taking into account any applicable “temporary periods”, minor portion or reserve made available under the federal arbitrage regulations. Money in the Water Utility Fund shall not be invested in obligations or deposits issued by, guaranteed by or insured by the United States or any agency or instrumentality thereof if and to the extent that such investment would cause the Series 2011 Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the federal Internal Revenue Code of 1986, as amended (the “Code”).

18. Parity Bonds. The 2003 Bonds, 2005 Bonds, 2007 Bonds, 2010 Notes, and Series 2011 Bonds shall be a first charge and lien upon the Net Revenues of the Water Utility. No part of such Net Revenues shall be pledged to the payment of any general obligation bonds issued by the City while the Series 2011 Bonds, any 2003 Bonds, 2005 Bonds, 2007 Bonds, 2010 Notes, and Series 2011 Bonds or bonds or notes issued on a parity therewith remain outstanding and undischarged, unless the pledge of Net Revenues to such general obligation bonds is expressly made a second and subsequent lien and the City and Board covenant to make the rates and charges of the Water Utility sufficient to timely pay such general obligation bonds. No additional revenue obligations payable from the Revenue Bond Debt Service Account shall be hereafter issued unless the same are expressly made a second and subsequent lien upon the Net Revenues of the Water Utility; provided, however, that additional obligations may be issued on a parity of lien with the Series 2011 Bonds, provided that the annual Net Revenues of said Water Utility for each of the two (2) completed fiscal years immediately preceding the issuance of such additional obligations shall have been one and one-half (1.5) times the maximum annual principal and interest coming due thereafter on all outstanding revenue obligations payable from and having a parity of lien upon the Net Revenues of the Water Utility Fund, including the additional obligations so to be issued; provided further, however, that if the annual Net Revenues in either or both of the aforesaid two (2) completed fiscal years shall be insufficient to meet this test then any reasonably projected increase in Net Revenues for the fiscal year immediately following such second completed fiscal year may be added to the Net Revenues for such completed fiscal years or either of them (but the total of such projected increase in Net Revenues may be added only once) in applying the foregoing test.

For purposes of the foregoing limitations, the “maximum annual principal and interest coming due thereafter” on variable rate bonds shall be calculated assuming the variable rate bonds bear fixed interest at the rates prevailing at the time of the calculation for utility revenue bonds of comparable quality, maturity (or remaining maturity) and taxable or tax-exempt status, provided that other or different assumptions may be used if necessary to obtain an investment grade credit rating for the variable rate bonds or to maintain the credit rating(s) then in effect for the bonds then outstanding.

Such facts shall be shown by the Certificate of the General Manager of the Board of Water Commissioners and shall be a finding of and recited in the resolution of the City authorizing any such additional series. In addition, the following conditions shall be met:

(a) Pre-Issuance Payments. The payments required to be made (at the time of the issuance of such parity lien bonds) into the various funds and accounts provided for in this Resolution have been made.

(b) Maturities. All such parity lien bonds shall have a December 1 maturity or maturities and shall have semiannual interest payments on June 1 and December 1 in

each year; provided that interest payments may be more frequent than semiannually or on dates other than June 1 and December 1 if such interest is paid in full only if at the time of payment the interest deposits into the Revenue Bond Debt Service Account for interest payments on June 1 or December 1, as appropriate, on other bonds are current, and any insufficiency of interest on all parity bonds is allocated proportionately in each six-month period ending June 1 or December 1, as appropriate.

(c) Purposes. The proceeds of such parity lien bonds shall be used only for the purpose of (1) making improvements, additions, extensions, renewals or replacements to the Water Utility, and capitalizing interest or establishing Reserves: and paying the costs of such financing, or (2) refunding parity lien bonds (provided that bonds which refund parity lien bonds may instead derive their parity lien status from paragraphs 19 or 25 as applied in paragraph 20).

The Series 2011 Bonds shall have a priority of lien over the 1996 Note, and the pledge and appropriation of Net Revenues of the Water Utility for the payment of the Series 2011 Bonds shall be superior to the pledge and appropriate to the 1996 Note.

19. Refunding Maturing Bonds. The City also reserves the right and privilege of issuing additional revenue bonds if and to the extent needed to refund maturing bonds payable from money in the Water Utility Fund in case the money in the Revenue Bond Debt Service Account are insufficient to pay the same at maturity, which refunding revenue bonds may be on a parity with this issue as to interest payments even if such interest is in excess of the interest on the refunded bonds, but shall mature subsequent to all the revenue obligations which are payable from the Net Revenues of the Water Utility Fund and which are still outstanding upon completion of such refunding.

20. Other Revenue Obligations. Except as authorized in paragraphs 18, 19 and 25 hereof, the City covenants and agrees that it will issue or incur no obligations payable from the Net Revenues of all or a part of said Water Utility or constituting in any manner a lien thereon, unless such obligations are expressly made junior and subordinate to the lien and charge of the Series 2011 Bonds on said Net Revenues. If bonds which refund the Series 2011 Bonds are parity lien bonds, they shall enjoy complete equality of lien with any portion of the Series 2011 Bonds not refunded and any other then outstanding bonds payable from the Revenue Bond Debt Service Account, if any there be, and such refunding bonds shall continue to have whatever priority of lien over subsequent issues that the refunded bonds may have had. If only a portion of the outstanding Series 2011 Bonds shall be refunded and if such Series 2011 Bonds shall be refunded in such manner that the interest rate of any refunding bond shall be greater than the interest rate of the corresponding refunded Series 2011 Bonds (or the average net interest rate of the refunding bonds shall be, or shall be reasonably estimated to be, higher than the average net interest rate of the refunded Series 2011 Bonds), or that the maturity date of any refunding bond shall be earlier than the maturity date of the corresponding refunded Series 2011 Bonds (or the average maturity of the refunding bonds shall be earlier than the average maturity of the refunded Series 2011 Bonds), then such Series 2011 Bonds may not be refunded without the consent of the holders of the unrefunded portion of the Series 2011 Bonds and any other bonds then outstanding payable from the Revenue Bond Debt Service Account unless the Net Revenues coverage test of paragraph 18 is met.

21. Insufficient Amounts. In the event that the money in the Revenue Bond Debt Service Account and Reserve Account shall be insufficient at any particular time to pay the principal then due and interest then accrued on all bonds payable from the Revenue Bond Debt

Service Account, said moneys shall first be applied to the payment pro rata of the accrued interest on all such bonds, payable over a period ending on June 1 or December 1, as appropriate, and any balance shall be applied in payment pro rata of the principal on all such bonds, provided further that if it shall ever be determined by a court of competent jurisdiction while any such bonds remain outstanding that the sums available and to become available for the payment of the principal thereof and interest thereon are insufficient whether or not then due, then the money in the Revenue Bond Debt Service Account and Reserve Account shall be applied in payment of all principal then outstanding whether or not then due and the interest accrued thereon to the date of payment ratably according to the aggregate amount thereof without any preference or priority.

22. Suit by Bondholders. The Holders of twenty percent (20%) or more in aggregate principal amount of bonds issued under this Resolution and at any time outstanding may, either at law or in equity, by suit, action, or other proceedings, protect and enforce the rights of all Holders of the Series 2011 Bonds then outstanding or enforce or compel the performance of any and all of the covenants and duties specified in this Resolution to be performed by the City or Board or their officers and agents, including the fixing and maintaining of rates and charges and the collection and proper segregation of revenues and the application and use thereof.

23. Covenants. For the protection of the Holders of the Series 2011 Bonds, the City herein covenants and agrees to and with the holders thereof from time to time as follows:

(a) Operate as a Water Utility. It will at all times through its Board adequately maintain and efficiently operate the Water Utility as a City utility. It will from time to time make all needful and proper repairs, replacements, additions and betterments to the equipment and facilities of said Water Utility so that they may at all times be operated properly and advantageously, and whenever any equipment of said system shall have been worn out, destroyed or otherwise become insufficient for proper use, it shall be promptly replaced or repaired so that the value and efficiency of the facilities shall be at all times fully maintained and its revenues unencumbered by reason thereof.

(b) Customary Rates. The rates for all water service and the charges for all water supplied by the Water Utility to the City and its residents and to all other consumers shall be reasonable and just, taking into account the cost and value of the Water Utility, the cost of maintaining and operating the Water Utility and the proper and necessary allowances for depreciation, the amounts required for the payment of principal and interest on the bonds payable from the Net Revenues of the Water Utility, and all other sums customarily paid from the revenues of the Water Utility.

(c) Maintain Rates. The City will, as required by Section 10.11.2 of the City Charter (and it will continue to do so whether or not required by said Charter), establish, maintain and collect such charges and rates as will produce revenues sufficient to pay the reasonable cost of operation, repair and maintenance of the Water Utility and to pay the interest on and principal of the Series 2011 Bonds and all bonds on a parity of lien with the Series 2011 Bonds, as and when they become due, as well as to provide sufficient money to make the required appropriations to the various funds and accounts established herein. The City will review the schedule of rates and charges for the Water Utility at least annually when the Board budget is reviewed.

(d) No Sale of Utility. It will not sell, lease, mortgage, or in any manner dispose of the Water Utility or any part thereof (including any and all extensions and



additions that may be made thereto) until all revenue bonds payable from the Net Revenues of the Water Utility or any part thereof have been paid in full; provided, however, that the City may sell the Water Utility or any part thereof if simultaneously with or prior to said sale all of the outstanding bonds are discharged in accordance with paragraph 25 of this Resolution. This covenant shall not be construed to prevent the sale by the City at fair market value of real estate, equipment or other non-revenue-producing properties which in the judgment of the City have become unnecessary, uneconomical or inexpedient to use in connection with the Water Utility provided that suitable facilities are obtained in place thereof and provided further that nothing herein is intended to prevent the City or Board from terminating or otherwise preventing the termination of contracts for the furnishing of water.

(e) Books and Records. The City shall cause to be kept proper books, records and accounts adapted to the Water Utility separate from other accounts to be audited at the end of each fiscal year. A copy of said audit shall be furnished without cost, if requested, to the Purchasers of the Series 2011 Bonds. If the City fails to provide such audit within a reasonable time after the end of said fiscal year, the Purchasers of the Series 2011 Bonds may cause such audit to be made at the expense of the City. The expense of preparing such audit shall be paid as current operating expenses of the Water Utility. The Purchasers of the Series 2011 Bonds or their duly appointed representatives, from time to time shall have the right, at all reasonable times, to inspect the Water Utility system and to inspect and copy the books, records, accounts and data relating thereto. The City agrees to furnish copies of such audit, if requested, without cost, to the Purchasers of the Series 2011 Bonds within a reasonable time after the end of each fiscal year.

(f) Duties. The City will faithfully and punctually perform all duties with reference to the Water Utility required by the City Charter, the Constitution and laws of the State of Minnesota and this Resolution.

(g) Competition. The City will grant no franchise to any competing utility.

24. Amendments. No change, amendment, modification or alteration shall be made in the covenants made with Holders of the Series 2011 Bonds without the consent of the Holders of not less than sixty percent (60%) in principal amount of such Series 2011 Bonds then outstanding except for changes, amendments, modifications and alterations (a) made to cure any ambiguity or formal defect or omission, or (b) which would not materially prejudice the Holders of such outstanding Series 2011 Bonds; provided, however, that nothing herein contained shall permit or be construed as permitting (1) an extension of the maturity of the principal of or the interest on any such Series 2011 Bonds, or (2) a reduction in the principal amount of any such Series 2011 Bonds or the rate of interest thereon, or (3) a privilege or priority of any such 2003 Bonds, 2005 Bonds, 2007 Bonds, 2010 Notes, or Series 2011 Bonds over any other bond or bonds except as otherwise provided herein, or (4) a reduction in the aggregate principal amount of such Series 2011 Bonds required for consent to any change, amendment, modification or alteration, or (5) the creation of any lien ranking prior to or on a parity with the lien of such Series 2011 Bonds, except as hereinbefore expressly permitted, or (6) a modification of any of the provisions of this paragraph without the consent of the Holders of one hundred percent (100%) of the principal amount of such Series 2011 Bonds outstanding.

25. Discharge. When all bonds of a series have been discharged as provided in this paragraph, all pledges, covenants and other rights granted by this Resolution to the Holders of

the Series 2011 Bonds of such series shall cease. The City may discharge all Series 2011 Bonds of a series which are due on any date by depositing with the paying agent (but not if a City officer is the paying agent) or an escrow agent for such Series 2011 Bonds on or before that date a sum sufficient for the payment thereof in full; or if any Series 2011 Bonds should not be paid when due, it may nevertheless be discharged by depositing with the paying agent (but not if a City officer is the paying agent) or an escrow agent a sum sufficient for the payment thereof in full. The City may also at any time discharge all or a series of the Series 2011 Bonds in whole or in part by complying with the applicable provisions of Section 475.67 of the Municipal Debt Act, and any amendments thereto, except that the funds deposited in escrow in accordance with said provisions may but need not be in whole or part proceeds of advance refunding bonds. The City may discharge Series 2011 Bonds as herein provided without the consent of any Bondholders.

26. Fiscal Year. As used in this Resolution the words “fiscal year” shall mean the twelve (12) month period beginning on January 1 of each year and ending on December 31 of the same year. Should it be deemed advisable at some later date to change the fiscal yearly basis, the same may be done by proper actions to that effect, which change shall not constitute an amendment or modification of this Resolution.

27. Records and Certificates. The officers of the City are hereby authorized and directed to prepare and furnish to the Purchasers of the Series 2011 Bonds, and to Kennedy & Graven, Chartered, bond counsel to the City, certified copies of all proceedings and records of the City relating to the Series 2011 Bonds and to the financial condition and affairs of the City, and such other affidavits, instruments, certificates, and information as are required to show the facts relating to the legality and marketability of the Series 2011 Bonds as the same appear from the books and records under their custody and control or as otherwise known to them, and all such certified copies, certificates, and affidavits, including any heretofore furnished, shall be deemed representations of the City as to the facts recited therein.

All documents, certificates, and instruments relating to the issuance of the Series 2011 Bonds, including the forms of the Series 2011 Bonds may be executed and delivered by the Mayor, the City Clerk, and Director, Office of Financial Services, or their designees or executive assistants, or, in the case of the Mayor, the Deputy Mayor, as determined by Kennedy & Graven, Chartered, as bond counsel to the City, and the Office of the City Attorney.

28. Negative Covenants as to Use of Proceeds and Improvements. The City hereby covenants not to use the proceeds of the Series 2011D Bonds, or to cause or permit them or any of them to be used, or to enter into any deferred payment arrangements for the refunding of the 1998 Note in such a manner as to cause the Series 2011D Bonds to be “private activity bonds” within the meaning of Sections 103 and 141 through 150 of the Code. The City reasonably expects that no actions will be taken over the term of the Series 2011D Bonds that would cause them to be private activity bonds, and the average term of the Series 2011D Bonds is not longer than reasonably necessary for the governmental purpose of the issue. The City hereby covenants not to use the proceeds of the Series 2011D Bonds in such a manner as to cause the Series 2011D Bonds to be “hedge bonds” within the meaning of Section 149(g) of the Code.

29. Tax-Exempt Status of the Series 2011D Bonds; Rebate; Elections. The City shall comply with requirements necessary under the Code to establish and maintain the exclusion from gross income under Section 103 of the Code of the interest on the Series 2011D Bonds, including without limitation requirements relating to temporary periods for investments,

limitations on amounts invested at a yield greater than the yield on the Series 2011D Bonds, and the rebate of excess investment earnings to the United States.

If any elections are available now or hereafter with respect to arbitrage or rebate matters relating to the Series 2011D Bonds, the Mayor, Clerk, Treasurer and Director, Office of Financial Services, or any of them, are hereby authorized and directed to make such elections as they deem necessary, appropriate or desirable in connection with the Series 2011 Bonds, and all such elections shall be, and shall be deemed and treated as, elections of the City.

The City with respect to the Series 2011D Bonds shall comply with requirements necessary under the Code to establish and maintain the exclusion from gross income under Section 103 of the code of the interests on the Series 2011D Bonds, including without limitation (1) requirements relating to temporary periods for investments, (2) limitations on amounts invested at a yield greater than the yield on the Series 2011D Bonds, and (3) the rebate of excess investment earning to the United States. The City covenants and agrees with the Series 2010D Purchaser that the investments of proceeds of the Series 2011D Bonds, including the investment of any revenues pledged to the Series 2011D Bonds which are considered gross proceeds of the Series 2011D Bonds under the applicable regulations, and accumulated sinking funds, if any, shall be limited as to amount and yield in such manner that the Series 2011D Bonds shall not be arbitrage bonds within the meaning of Section 148 of the Code and any regulations thereunder. On the basis of the existing facts, estimates and circumstances, including the foregoing findings and covenants, the City hereby certified that it is not expected that the proceeds of the Series 2011D Bonds will be issued in such manner as to cause the Series 2011D Bonds to be arbitrage bonds under Section 148 of the Code and any regulations thereunder. The Mayor (or his designee), City Clerk (or designee), and Director, Office of Financial Services (or designee), shall furnish a certificate to the Series 2010D Purchaser of the Series 2011D Bonds embracing or based on the foregoing certification at the time of delivery of the Series 2011D Bonds.

30. No Designation of Qualified Tax-Exempt Obligations. The Series 2011D Bonds, together with other obligations issued by the City in calendar year 2011, exceed in amount those which may be qualified as “qualified tax-exempt obligations” within the meaning of Section 265(b)(3) of the Code, and hence are not designated for such purpose.

31. Negotiated Sale. The City has retained Springsted Incorporated as an independent financial advisor, and this Council has heretofore determined, and does hereby determine, to sell the Series 2011 Bonds by private negotiation to the Purchasers.

32. Parity Findings. It is hereby found, determined and declared that:

(a) The City does not have any outstanding bonds, warrants, certificates, or other obligations or evidences of indebtedness, or money borrowed for or on account of the Water Utility or indebtedness for which any of the Net Revenues of all or a part of the Water Utility have been pledged which are a prior lien on such Net Revenues, except the 2003 Bonds, 2005 Bonds, 2007 Bonds, 2010 Notes, and the subordinate 1996 Note (on a subordinate basis). The lien of the 1996 Note on the Net Revenues is hereby acknowledged by the City to be junior and subordinate to the lien of the 2003 Bonds, 2005 Bonds, 2007 Bonds, 2010 Note, and the Series 2011 Bonds.

(b) All payments required to be made prior to the date hereof into the various funds and accounts of the “Water Utility Fund” established pursuant to the resolutions of

this City Council which authorized the issuance of the 2003 Bonds, 2005 Bonds, 2007 Bonds, and 2010 Notes have been made.

(c) This City Council has been furnished with the Certificate of the General Manager of Saint Paul Regional Water Services, attesting to the fact that the issuance of the Series 2011 Bonds complies with the financial requirements relating to the issuance of Additional Bonds on a parity with prior senior lien bonds.

(d) This City Council, pursuant to advice from the General Manager of Saint Paul Regional Water Services, hereby finds, determines and declares that the estimated Revenues to be derived from the operation of the Water Utility during the term of the Series 2011 Bonds will be more than sufficient to provide Net Revenues adequate to pay principal and interest when due on the Series 2011 Bonds and on those other bonds which are now outstanding and to maintain the Reserve Account required therefor.

(e) The Series 2011 Bonds have and December 1 maturities (as shown on EXHIBIT E and EXHIBIT F hereto, respectively) and have interest payments on June 1 and December 1, commencing December 1, 2011.

33. Official Statement. There have been submitted to this City Council the form of the Official Statement with respect to the Series 2011 Bonds. The use and distribution of the Official Statement, and of an Addendum to the Official Statement, by the Purchaser in connection with the offer and sale of the Series 2011 Bonds is hereby approved. The Mayor, City Clerk, City Debt Manager, and Director, Office of Financial Services (or their proper designees) are authorized and directed to certify that they have examined the Official Statement, as supplemented by the Addendum to the Official Statement, and that to the best of their knowledge and belief the Official Statement is a complete and accurate representation of the facts and representations made therein as of the date of the Official Statement and that the Official Statement does not, at the date of closing, and did not, as of its date, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

34. Continuing Disclosure. In order to satisfy the continuing disclosure requirements of Rule 15c2-12(b)(5), 17 CFR §240.15c2-12, promulgated by the Securities Exchange Commission under the Securities Exchange Act of 1934, as amended, the appropriate officials of the City are hereby authorized and directed to execute and deliver a continuing disclosure undertaking substantially in the form of the Continuing Disclosure Certificate set forth in the Official Statement (the "Continuing Disclosure Certificate"). The Continuing Disclosure Certificate is hereby approved with such changes, modifications, additions, and deletions as shall be necessary and appropriate and approved by the City Attorney and Kennedy & Graven, Chartered, as bond counsel to the City.

35. Covenant with Holders. Each and all of the terms and provisions of this Resolution shall be and constitute a covenant on the part of the City to and with each and every Holder from time to time of the Series 2011 Bonds.

36. Severability. If any section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Resolution

37. Headings. Headings in this Resolution are included for convenience of reference only and are not a part hereof, and shall not limit or define the meaning of any provision hereof.

