

**MINUTES - BENSON CITY COUNCIL - REGULAR MEETING
APRIL 2, 2012**

The meeting was called to order at 5:30 p.m. by Mayor Kittelson. Members present: Paul Kittelson, Gary Landmark , Mike Fugleberg, and Sue Fitz. Members Absent: Ben Hess. Also present: City Manager Rob Wolfington, Director of Public Works Elliot Nelson, Ehler's and Associates's Mark Ruff, Benson HRA Director Michelle Bouta and Police Chief Mike Jambor.

It was moved by Landmark, seconded by Fitz and carried unanimously to approve the following minutes on the consent agenda:

- March 19, 2012 City Council Meeting
- March 15, 2012 EDA Minutes
- March 15, 2012 Safety Committee Meeting
- February 27, 2012 Swift County-Benson Hospital Meeting

Wolfington introduced Mark Ruff from Ehler's & Associates. Ruff talked about the Electric Utility and Pool Bonds sales. He said our project attracted several bidders. He stated we obtained a credit rating from Standard & Poors of A+ which is very good. The bid winners were United Bankers Bank and the State Bank of Danvers. Ruff stated he was able to reduce the bond size by \$5,700, so the sale will be \$1,1130.00 at an interest rate of 1.66%. This should lower the tax levy on the pool bonds by \$65,231.99. Ruff stated the closing date will be 4/26/12.

Councilmember Fitz offered the following Resolution and moved its adoption:

RESOLUTION PROVIDING FOR THE ISSUANCE AND SALE OF \$1,130,000 GENERAL OBLIGATION BONDS, SERIES 2012A AND PLEDGING FOR THE SECURITY THEREOF AND LEVYING A TAX FOR THE PAYMENT THEREOF

(RESOLUTION NO. 2012-08)

A. WHEREAS, the City Council of the City of Benson, Minnesota (the "City") has heretofore determined and declared that it is necessary and expedient to issue \$1,130,000 General Obligation Bonds, Series 2012A (the "Bonds" or individually a "Bond"), pursuant to Minnesota Statutes, Chapter 475, and 412; and

B. WHEREAS, the City Council has heretofore determined and declared that it is necessary and expedient to finance the purchase of various items of capital equipment for the City (the "Equipment"), in the amount of \$495,000 (the "Equipment Portion of the Bonds"). Each item of Equipment to be financed by the Equipment Portion of the Bonds has an expected useful life at least as long as the term of the Equipment Portion of the Bonds. The principal amount of the Equipment Portion of the Bonds exceeds one-quarter of one percent (0.25%) of the market value of the taxable property in the City (\$157,820,900 times 0.25% is \$394,552); and

C. WHEREAS, on March 14, 2012, there was published in the official newspaper a resolution duly adopted by the City Council on March 5, 2012, determining to issue the Equipment Portion of the Bonds and no petition asking for an election on the proposition signed by voters equal to ten percent of the number of voters at the last regular municipal election was filed with the Clerk by March 24, 2012, said date being ten days after the date the resolution was published; and

D. WHEREAS, the City Council has heretofore determined and declared that it is necessary and expedient to provide moneys for a current refunding on May 15, 2012 (the "Call Date") of the City's \$965,000 original principal amount of General Obligation Swimming Pool Bonds, Series 2003A, dated July 1, 2003 (the "Prior Bonds"), which mature or are subject to mandatory redemption on and after January 1, 2013; and

E. WHEREAS, \$625,000 principal amount of the Prior Bonds which matures or are subject to mandatory redemption on and after January 1, 2013 (the "Refunded Bonds"), in the amount of \$635,000 (the "Refunding Portion of the Bonds"), is callable on the Call Date, at a price of par plus accrued interest, as provided in the Resolution of the City Council, adopted on June 23, 2003 (the "Prior Resolution"); and

F. WHEREAS, the refunding of the Refunded Bonds on the Call Date is consistent with covenants made with the holders thereof, and is necessary and desirable for the reduction of debt service cost to the City; and

G. WHEREAS, the City has retained Ehlers & Associates, Inc., in Roseville, Minnesota ("Ehlers"), as its independent financial advisor for the sale of the Bonds and was therefore authorized to sell the Bonds by private negotiation in accordance with Minnesota Statutes, Section 475.60, Subdivision 2(9) and proposals to purchase the Bonds have been solicited by Ehlers; and

H. WHEREAS, the proposals set forth on Exhibit A attached hereto were received by the City Clerk/Finance Director, or designee, at the offices of Ehlers, at 12:00 noon this same day pursuant to the Terms of Proposal for the Bonds; and

I. WHEREAS, it is in the best interests of the City that the Bonds be issued in book-entry form as hereinafter provided; and

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

1. Acceptance of Proposal. The proposal of United Bankers' Bank (the "Purchaser"), to purchase the Bonds, in accordance with the Preliminary Official Statement established for the Bonds, at the rates of interest hereinafter set forth, and to pay therefor the sum of \$1,124,350.00, plus interest accrued to settlement, is hereby found, determined and declared to be the most favorable proposal received, is hereby accepted and the Bonds are hereby awarded to the Purchaser.

2. Terms of Bonds.

(a) Original Issue Date; Denominations; Maturities. The Bonds shall be dated April 26, 2012, as the date of original issue and shall be issued forthwith on or after such date in fully registered form. The Bonds shall be numbered from R-1 upward in the denomination of \$5,000 each or in any integral multiple thereof of a single maturity (the "Authorized Denominations"). The Bonds shall mature on February 1 in the years and amounts as follows:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2013	\$ 60,000	2018	\$120,000
2014	110,000	2019	120,000
2015	115,000	2020	120,000
2016	120,000	2021	120,000
2017	115,000	2022	130,000

(b) Allocation. The aggregate principal amount of \$495,000 maturing in each of the years and amounts hereinafter set forth are issued to finance the Equipment (the "Equipment Portion"); and the aggregate principal amount of \$635,000 maturing in each of the years and amounts hereinafter set forth are issued to finance the refunding of the Refunded Bonds (the "Refunding Portion"):

<u>Year</u>	<u>Equipment Portion</u>	<u>Refunding Portion</u>	<u>Total Amount</u>
2013	\$ 0	\$60,000	\$ 60,000
2014	50,000	60,000	110,000
2015	55,000	60,000	115,000
2016	55,000	65,000	120,000
2017	55,000	60,000	115,000
2018	55,000	65,000	120,000
2019	55,000	65,000	120,000
2020	55,000	65,000	120,000
2021	55,000	65,000	120,000
2022	60,000	70,000	130,000

If Bonds are prepaid, the prepayments shall be allocated to the portions of debt service (and hence allocated to the payment of Bonds treated as relating to a particular portion of debt service) as provided in this paragraph. If the source of prepayment moneys is the general fund of the City, or other generally available source, the prepayment may be allocated to either or both of the portions of debt service in such amounts as the City shall determine. If the source of the prepayment are taxes levied for the Refunding, the prepayment shall be allocated to the Refunding Portion of debt service.

(c) Book Entry Only System. The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York or any of its successors or its successors to its functions hereunder (the "Depository") will act as securities depository for the Bonds, and to this end:

- (i) The Bonds shall be initially issued and, so long as they remain in book entry form only (the "Book Entry Only Period"), shall at all times be in the form of a separate single fully registered Bond for each maturity of the Bonds; and for purposes of complying with this requirement under paragraphs 5 and 10 Authorized Denominations for any Bond shall be deemed to be limited during the Book Entry Only Period to the outstanding principal amount of that Bond.
- (ii) Upon initial issuance, ownership of the Bonds shall be registered in a bond register maintained by the Bond Registrar (as hereinafter defined) in the name of CEDE & CO, as the nominee (it or any nominee of the existing or a successor Depository, the "Nominee").
- (iii) With respect to the Bonds neither the City nor the Bond Registrar shall have any responsibility or obligation to any broker, dealer, bank, or any other financial institution for which the Depository holds Bonds as securities depository (the "Participant") or the person for which a Participant holds an interest in the Bonds shown on the books and records of the Participant (the "Beneficial Owner"). Without limiting the immediately

preceding sentence, neither the City, nor the Bond Registrar, shall have any such responsibility or obligation with respect to (A) the accuracy of the records of the Depository, the Nominee or any Participant with respect to any ownership interest in the Bonds, or (B) the delivery to any Participant, any Owner or any other person, other than the Depository, of any notice with respect to the Bonds, including any notice of redemption, or (C) the payment to any Participant, any Beneficial Owner or any other person, other than the Depository, of any amount with respect to the principal of or premium, if any, or interest on the Bonds, or (D) the consent given or other action taken by the Depository as the Registered Holder of any Bonds (the "Holder"). For purposes of securing the vote or consent of any Holder under this Resolution, the City may, however, rely upon an omnibus proxy under which the Depository assigns its consenting or voting rights to certain Participants to whose accounts the Bonds are credited on the record date identified in a listing attached to the omnibus proxy.

- (iv) The City and the Bond Registrar may treat as and deem the Depository to be the absolute owner of the Bonds for the purpose of payment of the principal of and premium, if any, and interest on the Bonds, for the purpose of giving notices of redemption and other matters with respect to the Bonds, for the purpose of obtaining any consent or other action to be taken by Holders for the purpose of registering transfers with respect to such Bonds, and for all purpose whatsoever. The Bond Registrar, as paying agent hereunder, shall pay all principal of and premium, if any, and interest on the Bonds only to the Holder or the Holders of the Bonds as shown on the bond register, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to the principal of and premium, if any, and interest on the Bonds to the extent of the sum or sums so paid.
- (v) Upon delivery by the Depository to the Bond Registrar of written notice to the effect that the Depository has determined to substitute a new Nominee in place of the existing Nominee, and subject to the transfer provisions in paragraph 10, references to the Nominee hereunder shall refer to such new Nominee.
- (vi) So long as any Bond is registered in the name of a Nominee, all payments with respect to the principal of and premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, by the Bond Registrar or City, as the case may be, to the Depository as provided in the Letter of Representations to the Depository required by the Depository as a condition to its acting as book-entry Depository for the Bonds (said Letter of Representations, together with any replacement thereof or amendment or substitute thereto, including any standard procedures or policies referenced therein or applicable thereto respecting the procedures and other matters relating to the Depository's role as book-entry Depository for the Bonds, collectively hereinafter referred to as the "Letter of Representations").
- (vii) All transfers of beneficial ownership interests in each Bond issued in book-entry form shall be limited in principal amount to Authorized Denominations and shall be effected by procedures by the Depository with the Participants for recording and transferring the ownership of beneficial interests in such Bonds.
- (viii) In connection with any notice or other communication to be provided to the Holders pursuant to this Resolution by the City or Bond Registrar with respect to any consent or other action to be taken by Holders, the Depository shall consider the date of receipt of notice requesting such consent or other action as the record date for such consent or other action; provided, that the City or the Bond Registrar may establish a special record date for such consent or other action. The City or the Bond Registrar shall, to the extent

possible, give the Depository notice of such special record date not less than fifteen calendar days in advance of such special record date to the extent possible.

- (ix) Any successor Bond Registrar in its written acceptance of its duties under this Resolution and any paying agency/bond registrar agreement, shall agree to take any actions necessary from time to time to comply with the requirements of the Letter of Representations.
- (x) In the case of a partial prepayment of a Bond, the Holder may, in lieu of surrendering the Bonds for a Bond of a lesser denomination as provided in paragraph 5, make a notation of the reduction in principal amount on the panel provided on the Bond stating the amount so redeemed.
- (xi) Termination of Book-Entry Only System. Discontinuance of a particular Depository's services and termination of the book-entry only system may be effected as follows:
- (xii) The Depository may determine to discontinue providing its services with respect to the Bonds at any time by giving written notice to the City and discharging its responsibilities with respect thereto under applicable law. The City may terminate the services of the Depository with respect to the Bond if it determines that the Depository is no longer able to carry out its functions as securities depository or the continuation of the system of book-entry transfers through the Depository is not in the best interests of the City or the Beneficial Owners.
- (xiii) Upon termination of the services of the Depository as provided in the preceding paragraph, and if no substitute securities depository is willing to undertake the functions of the Depository hereunder can be found which, in the opinion of the City, is willing and able to assume such functions upon reasonable or customary terms, or if the City determines that it is in the best interests of the City or the Beneficial Owners of the Bond that the Beneficial Owners be able to obtain certificates for the Bonds, the Bonds shall no longer be registered as being registered in the bond register in the name of the Nominee, but may be registered in whatever name or names the Holder of the Bonds shall designate at that time, in accordance with paragraph 10. To the extent that the Beneficial Owners are designated as the transferee by the Holders, in accordance with paragraph 10, the Bonds will be delivered to the Beneficial Owners.
- (xiv) Nothing in this subparagraph (d) shall limit or restrict the provisions of paragraph 10.

(d) Letter of Representations. The provisions in the Letter of Representations are incorporated herein by reference and made a part of the resolution, and if and to the extent any such provisions are inconsistent with the other provisions of this resolution, the provisions in the Letter of Representations shall control.

3. Purposes; Findings. The Equipment Portion of the Bonds shall provide funds to finance acquisition of the Equipment. The Refunding Portion of the Bonds shall provide funds to finance for a current refunding of the outstanding Prior Bonds on the Call Date (the "Refunding"). It is hereby found and determined that the Refunding is pursuant to Minnesota Statutes, Section 475.67 and shall result in a reduction of debt service cost to the City.

4. Interest. The Bonds shall bear interest payable semiannually on February 1 and August 1 of each year (each, an "Interest Payment Date"), commencing February 1, 2013, calculated on the basis of a 360-day year of twelve 30-day months, at the respective rates per annum set forth opposite the maturity years as follows:

<u>Maturity Year</u>	<u>Interest Rate</u>	<u>Maturity Year</u>	<u>Interest Rate</u>
2013	0.40%	2018	1.40%
2014	0.50%	2019	1.60%
2015	0.70%	2020	1.75%
2016	0.95%	2021	1.90%
2017	1.15%	2022	2.10%

5. No Optional Redemption. The Bonds are not subject to redemption or prepayment to their maturity dates.

6. Bond Registrar. U.S. Bank National Association, in St. Paul, Minnesota, is appointed to act as bond registrar and transfer agent with respect to the Bonds (the "Bond Registrar"), and shall do so unless and until a successor Bond Registrar is duly appointed, all pursuant to any contract the City and Bond Registrar shall execute which is consistent herewith. The Bond Registrar shall also serve as paying agent unless and until a successor paying agent is duly appointed. Principal and interest on the Bonds shall be paid to the registered holders (or record holders) of the Bonds in the manner set forth in the form of Bond and paragraph 12.

7. Form of Bond. The Bonds, together with the Bond Registrar's Certificate of Authentication, the form of Assignment and the registration information thereon, shall be in substantially the following form:

UNITED STATES OF AMERICA
STATE OF MINNESOTA
SWIFT COUNTY
CITY OF BENSON

R-_____

\$_____

GENERAL OBLIGATION BOND, SERIES 2012A

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
	February 1, ____	April 26, 2012	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

The City of Benson, Swift County, Minnesota (the "Issuer"), certifies that it is indebted and for value received promises to pay to the registered owner specified above, or registered assigns, in the manner hereinafter set forth, the principal amount specified above, on the maturity date specified above, without option of prior redemption, and to pay interest thereon semiannually on February 1 and August 1 of each year (each, an "Interest Payment Date"), commencing February 1, 2013, at the rate per annum specified above (calculated on the basis of a 360-day year of twelve 30-day months) until the principal sum is paid or has been provided for. This Bond will bear interest from the most recent Interest Payment Date to which interest has been paid or, if no interest has been paid, from the date of original issue hereof. The principal of and premium, if any, on this Bond are payable upon presentation and surrender hereof at the U.S. Bank National Association, in St. Paul, Minnesota (the "Bond Registrar"), acting as paying agent, or any successor paying agent duly appointed by the Issuer (the "Bond Registrar"), acting as paying agent, or any successor paying agent duly appointed by the Issuer. Interest on this Bond will be paid on each Interest Payment Date by check or draft mailed to the person in whose name this Bond is registered (the "Holder" or "Bondholder") on the registration books of the Issuer maintained by the Bond Registrar and at the address appearing thereon at the close of business on the fifteenth day of the calendar month next preceding such Interest Payment Date (the "Regular Record Date"). Any interest not so timely paid shall cease to be payable to the person who is the Holder hereof as of the Regular Record Date, and shall be payable to the person who is the Holder hereof at the close of business on a date (the "Special Record Date") fixed by the Bond Registrar whenever money becomes available for payment of the defaulted interest. Notice of the Special Record Date shall be given to Bondholders not less than ten days prior to the Special Record Date. The principal of and premium, if any, and interest on this Bond are payable in lawful money of the United States of America. So long as this Bond is registered in the name of the Depository or its Nominee as provided in the Resolution hereinafter described, and as those terms are defined therein, payment of principal of, premium, if any, and interest on this Bond and notice with respect thereto shall be made as provided in the Letter of Representations, as defined in the Resolution, and surrender of this Bond shall not be required for payment of the redemption price upon a partial redemption of this Bond. Until termination of the book-entry only system pursuant to the Resolution, Bonds may only be registered in the name of the Depository or its Nominee.

No Optional Redemption. The Bonds of this issue (the "Bonds") are not subject to redemption or prepayment prior to their stated maturity dates.

Issuance; Purpose; General Obligation. This Bond is one of an issue in the total principal amount of \$1,130,000, all of like date of original issue and tenor, except as to number, maturity, interest rate, denomination and redemption privilege, issued pursuant to and in full conformity with the Constitution and laws of the State of Minnesota and pursuant to a resolution adopted by the City Council of the Issuer on April 2, 2012 (the "Resolution"), for the purpose of providing funds to finance the acquisition of capital equipment and for a current refunding of the Issuer's General Obligation Swimming Pool Bonds, Series 2003A, dated July 1, 2003, which mature on and after January 1, 2013. This Bond is payable out

of the General Obligation Bonds, Series 2012A Fund of the Issuer. This Bond constitutes a general obligation of the Issuer, and to provide moneys for the prompt and full payment of its principal, premium, if any, and interest when the same become due, the full faith and credit and taxing powers of the Issuer have been and are hereby irrevocably pledged.

Denominations; Exchange; Resolution. The Bonds are issuable solely in fully registered form in Authorized Denominations (as defined in the Resolution) and are exchangeable for fully registered Bonds of other Authorized Denominations in equal aggregate principal amounts at the principal office of the Bond Registrar, but only in the manner and subject to the limitations provided in the Resolution. Reference is hereby made to the Resolution for a description of the rights and duties of the Bond Registrar. Copies of the Resolution are on file in the principal office of the Bond Registrar.

Transfer. This Bond is transferable by the Holder in person or the Holder's attorney duly authorized in writing at the principal office of the Bond Registrar upon presentation and surrender hereof to the Bond Registrar, all subject to the terms and conditions provided in the Resolution and to reasonable regulations of the Issuer contained in any agreement with the Bond Registrar. Thereupon the Issuer shall execute and the Bond Registrar shall authenticate and deliver, in exchange for this Bond, one or more new fully registered Bonds in the name of the transferee (but not registered in blank or to "bearer" or similar designation), of an Authorized Denomination or Denominations, in aggregate principal amount equal to the principal amount of this Bond, of the same maturity and bearing interest at the same rate.

Fees upon Transfer or Loss. The Bond Registrar may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection with the transfer or exchange of this Bond and any legal or unusual costs regarding transfers and lost Bonds.

Treatment of Registered Owners. The Issuer and Bond Registrar may treat the person in whose name this Bond is registered as the owner hereof for the purpose of receiving payment as herein provided (except as otherwise provided herein with respect to the Record Date) and for all other purposes, whether or not this Bond shall be overdue, and neither the Issuer nor the Bond Registrar shall be affected by notice to the contrary.

Authentication. This Bond shall not be valid or become obligatory for any purpose or be entitled to any security unless the Certificate of Authentication hereon shall have been executed by the Bond Registrar.

Qualified Tax-Exempt Obligations. The Bonds have been designated by the Issuer as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions and things required by the Constitution and laws of the State of Minnesota to be done, to happen and to be performed, precedent to and in the issuance of this Bond, have been done, have happened and have been performed, in regular and due form, time and manner as required by law, and that this Bond, together with all other debts of the Issuer outstanding on the date of original issue hereof and the date of its issuance and delivery to the original purchaser, does not exceed any constitutional or statutory limitation of indebtedness.

IN WITNESS WHEREOF, the City of Benson, Swift County, Minnesota, by its City Council has caused this Bond to be executed on its behalf by the facsimile signatures of its Mayor and its Clerk/Finance Director, the corporate seal of the Issuer having been intentionally omitted as permitted by law.

Date of Registration:

Registrable by: U.S. BANK NATIONAL
ASSOCIATION

Payable at: U.S. BANK NATIONAL
ASSOCIATION

BOND REGISTRAR'S
CERTIFICATE OF
AUTHENTICATION

CITY OF BENSON,
SWIFT COUNTY, MINNESOTA

This Bond is one of the Bonds described in the Resolution mentioned within.

/s/ Facsimile
Mayor

U.S. BANK NATIONAL
ASSOCIATION
St. Paul, Minnesota,
Bond Registrar

/s/ Facsimile
Clerk/Finance Director

By: _____
Authorized Signature

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common

TEN ENT - as tenants by the entireties

JT TEN - as joint tenants with right of survivorship and not as tenants in common

UTMA - _____ as custodian for _____

(Cust)

(Minor)

under the _____ Uniform

(State)

Transfers to Minors Act

Additional abbreviations may also be used though not in the above list.

ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto _____ the within Bond and does hereby irrevocably constitute and appoint _____ attorney to transfer the Bond on the books kept for the registration thereof, with full power of substitution in the premises.

Dated: _____

Notice: The assignor's signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

Signature Guaranteed:

Signature(s) must be guaranteed by a national bank or trust company or by a brokerage firm having a membership in one of the major stock exchanges or any other "Eligible Guarantor Institution" as defined in 17 CFR 240.17 Ad-15(a)(2).

The Bond Registrar will not effect transfer of this Bond unless the information concerning the transferee requested below is provided.

Name and Address: _____

(Include information for all joint owners if the Bond is held by joint account.)

8. Execution. The Bonds shall be in typewritten form, shall be executed on behalf of the City by the signatures of its Mayor and Clerk/Finance Director and be sealed with the seal of the City; provided, as permitted by law, both signatures may be photocopied facsimiles and the corporate seal has been omitted. In the event of disability or resignation or other absence of either officer, the Bonds may be signed by the manual or facsimile signature of the officer who may act on behalf of the absent or disabled officer. In case either officer whose signature or facsimile of whose signature shall appear on the Bonds shall cease to be such officer before the delivery of the Bonds, the signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if the officer had remained in office until delivery.

9. Authentication. No Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit under this resolution unless a Certificate of Authentication on the Bond, 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 Bonds need not be signed by the same person. The Bond Registrar shall authenticate the signatures of officers of the City on each Bond by execution of the Certificate of Authentication on the Bond and by inserting as the date of registration in the space provided the date on which the Bond is authenticated, except that for purposes of delivering the original Bonds to the Purchaser, the Bond Registrar shall insert as a date of registration the date of original issue of April 26, 2012. The Certificate of Authentication so executed on each Bond shall be conclusive evidence that it has been authenticated and delivered under this resolution

10. 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 Bonds and the registration of transfers of Bonds entitled to be registered or transferred as herein provided.

Upon surrender for transfer of any Bond at the principal office of the Bond Registrar, the City shall execute (if necessary), and the Bond Registrar shall authenticate, insert the date of registration (as provided in paragraph 9) of, and deliver, in the name of the designated transferee or transferees, one or more new Bonds of any Authorized Denomination or Denominations of a like aggregate principal amount, having the same stated maturity and interest rate, as requested by the transferor; provided, however, that no Bond may be registered in blank or in the name of "bearer" or similar designation.

At the option of the Holder, Bonds may be exchanged for Bonds of any Authorized Denomination or Denominations of a like aggregate principal amount and stated maturity, upon surrender of the Bonds to be exchanged at the principal office of the Bond Registrar. Whenever any Bonds are so surrendered for exchange, the City shall execute (if necessary), and the Bond Registrar shall authenticate, insert the date of registration of, and deliver the Bonds which the Holder making the exchange is entitled to receive.

All Bonds surrendered upon any exchange or transfer provided for in this resolution shall be promptly canceled by the Bond Registrar and thereafter disposed of as directed by the City.

All Bonds delivered in exchange for or upon transfer of Bonds shall be valid general obligations of the City evidencing the same debt, and entitled to the same benefits under this resolution, as the Bonds surrendered for such exchange or transfer.

Every Bond presented or surrendered for transfer or exchange shall be duly endorsed or be accompanied by a written instrument of transfer, in form satisfactory to the Bond Registrar, duly executed by the Holder thereof or his, her or its attorney duly authorized in writing

The Bond Registrar may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection with the transfer or exchange of any Bond and any legal or unusual costs regarding transfers and lost Bonds.

Transfers shall also be subject to reasonable regulations of the City contained in any agreement with the Bond Registrar, including regulations which permit the Bond Registrar to close its transfer books between record dates and payment dates. The Clerk/Finance Director is hereby authorized to negotiate and execute the terms of said agreement.

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

12. Interest Payment; Record Date. Interest on any Bond shall be paid on each Interest Payment Date by check or draft mailed to the person in whose name the Bond is registered (the "Holder") on the registration books of the City maintained by the Bond Registrar and at the address appearing thereon at the close of business on the fifteenth (15th) day of the calendar month next preceding such Interest Payment Date (the "Regular Record Date"). Any such interest not so timely paid shall cease to be payable to the person who is the Holder thereof as of the Regular Record Date, and shall be payable to the person who is the Holder thereof at the close of business on a date (the "Special Record Date") fixed by the Bond Registrar whenever money becomes available for payment of the defaulted interest. Notice of the Special Record Date shall be given by the Bond Registrar to the Holders not less than ten days prior to the Special Record Date.

13. Treatment of Registered Owner. The City and Bond Registrar may treat the person in whose name any Bond is registered as the owner of such Bond for the purpose of receiving payment of principal of and premium, if any, and interest (subject to the payment provisions in paragraph 12) on, such Bond and for all other purposes whatsoever whether or not such Bond shall be overdue, and neither the City nor the Bond Registrar shall be affected by notice to the contrary.

14. Delivery; Application of Proceeds. The Bonds when so prepared and executed shall be delivered by the Clerk/Finance Director to the Purchaser upon receipt of the purchase price, and the Purchaser shall not be obliged to see to the proper application thereof.

15. Fund and Accounts. For the convenience and proper administration of the moneys to be borrowed and repaid on the Bonds, and to make adequate and specific security to the Purchaser and holders from time to time of the Bonds, there is hereby created a special fund to be designated the "General Obligation Bonds, Series 2012A Fund" (the "Fund") to be administered and maintained by the Clerk/Finance Director as a bookkeeping account separate and apart from all other funds maintained in the official financial records of the City. The Fund shall be maintained in the manner herein specified until all of the Bonds and the interest thereon shall have been fully paid. In such records there shall be established accounts or accounts shall continue to be maintained as the case may be, of the Fund for the purposes and in the amounts as follows:

(a) Capital Account. To the Capital Account there shall be credited the proceeds of the sale of the Equipment Portion of the Bonds. From the Capital Account there shall be paid all costs and expenses of acquiring the Equipment, including all costs incurred and to be incurred of the kind authorized in Minnesota Statutes, Section 475.65, and a pro rata share of the costs of issuance of the Bonds. Moneys in the Capital Account shall be used for no other purpose except as otherwise provided by law; provided that the proceeds of the Equipment Portion of the Bonds may also be used to the extent necessary to pay interest on the Equipment Portion of the Bonds due prior to the anticipated date of commencement of the collection of taxes herein levied or covenanted to be levied.

(b) Payment Account. To the Payment Account there shall be credited the proceeds of the sale of the Refunding Portion of the Bonds. From the Payment Account, on or prior to the Call Date, the Finance Director shall transfer, from the Refunding Portion of the Bonds to the paying agent for the Prior Bonds, the amount of \$634,593.10. The proceeds are sufficient, together with other funds on deposit in debt service fund for the Refunded Bonds, to pay the principal and interest due on the Refunded Bonds due after the Call Date, including the principal and any accrued interest due on the Refunded Bonds called for redemption on the Call Date. The remainder of the monies in the Payment Account shall be used to pay a pro rata share of the costs of issuance of the Bonds. Any monies remaining in the Payment Account after payment of all costs of issuance and payment of the Refunded Bonds shall be transferred to the Debt Service Subaccount.

(c) Debt Service Account. There shall be maintained two separate subaccounts in the Debt Service Account to be designated the "Equipment Debt Service Subaccount" and the "Refunding Debt Service Subaccount." There are hereby irrevocably appropriated and pledged to, and there shall be credited to the separate subaccounts of the Debt Service Account:

- (i) Equipment Debt Service Subaccount. To the Equipment Debt Service Subaccount there is hereby pledged and irrevocable appropriated and there shall be credited: (1) all taxes herein or hereafter levied for the payment of the Equipment Portion of the Bonds and interest thereon; (2) a pro rata share of all funds paid for the Bonds in excess of the minimum bid; (3) all funds remaining in the Capital Account after payment of all costs of acquiring the Equipment and payment of the costs thereof; (4) all investment earnings on funds held in the Equipment Debt Service Subaccount; and (5) any and all other moneys which are properly available and are appropriated by the governing body of the City to the Equipment Debt Service Subaccount. The Equipment Debt Service Subaccount shall be used solely to pay the principal and interest and any premiums for redemption of the Equipment Portion of the Bonds and any other general obligation bonds of the City hereafter issued by the City and made payable from the Equipment Debt Service Subaccount as provided by law
- (ii) Refunding Debt Service Subaccount. To the Refunding Debt Service Account there is hereby pledged and irrevocable appropriated and there shall be credited: (1) any balance remaining after the Call Date in the Prior Bonds Debt Service Account created by the Prior Resolution; (2) all investment earnings on funds in the Refunding Debt Service Subaccount; (3) any taxes herein or hereafter levied for the payment of the Refunding Portion of the Bonds; (4) any and all other moneys which are properly available and are appropriated by the governing body of the City to the Refunding Debt Service Subaccount. The amount of any surplus remaining in the Refunding Debt Service Subaccount when the Refunding Portion of the Bonds and interest thereon are paid shall be used consistent with Minnesota Statutes, Section 475.61, Subdivision 4.

No portion of the proceeds of the 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 Bonds were issued and (2) in addition to the above in an amount not greater than the lesser of five percent of the proceeds of the Bonds or \$100,000. To this effect, any proceeds of the Bonds and any sums from time to time held in the Debt Service Account (or any other City account which will be used to pay principal or interest to become due on the bonds payable therefrom) in excess of amounts which under then applicable 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 the arbitrage regulations on such investments after taking into account any applicable "temporary periods" or "minor portion" made available under the federal arbitrage regulations. Money in the 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 Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Internal Revenue Code of 1986, as amended (the "Code").

16. Covenant Relating to the Equipment Portion of the Bonds. To provide moneys for payment of the principal and interest on the Equipment Portion of the Bonds there is hereby levied upon all of the taxable property in the City a direct annual ad valorem tax which shall be spread upon the tax rolls and collected with and as part of other general property taxes in the City for the years and in the amounts as follows:

<u>Year of Tax Levy</u>	<u>Year of Tax Collection</u>	<u>Amount</u>
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See attached schedule

The tax levies are such that if collected in full they, together with other revenues herein pledged for the payment of the Equipment Portion of the Bonds, will produce at least five percent in excess of the amount needed to meet when due the principal and interest payments on the Equipment Portion of the Bonds. The tax levies shall be irrevocable so long as any of the Equipment Portion of the Bonds are outstanding and unpaid, provided that the City reserves the right and power to reduce the levies in the manner and to the extent permitted by Minnesota Statutes, Section 475.61, Subdivision 3.

17. Covenants Relating to the Refunding Portion of the Bonds. To provide moneys for payment of the principal and interest on the Refunding Portion of the Bonds there is hereby levied upon all of the taxable property in the City a direct annual ad valorem tax which shall be spread upon the tax rolls and collected with and as part of other general property taxes in the City for the years and in the amounts as follows:

<u>Year of Tax Levy</u>	<u>Year of Collection</u>	<u>Amount</u>
See attached schedule		

The tax levies are such that if collected in full they, together with other revenues herein pledged for the payment of the Refunding Portion of the Bonds, will produce at least five percent in excess of the amount needed to meet when due the principal and interest payments on the Refunding Portion of the Bonds. The tax levies shall be irrevocable so long as any of the Refunding Portion of the Bonds are outstanding and unpaid, provided that the City reserves the right and power to reduce the levies in the manner and to the extent permitted by Minnesota Statutes, Section 475.61, Subdivision 3.

Upon payment of the Refunded Bonds, the taxes levied by the Prior Resolution in the years 2013 to 2021 shall be canceled.

18. General Obligation Pledge. For the prompt and full payment of the principal and interest on the Bonds, as the same respectively become due, the full faith, credit and taxing powers of the City shall be and are hereby irrevocably pledged. If the balance in the Debt Service Account is ever insufficient to pay all principal and interest then due on the Bonds and any other bonds payable therefrom, the deficiency shall be promptly paid out of any other funds of the City which are available for such purpose, and such other funds may be reimbursed with or without interest from the Debt Service Account when a sufficient balance is available therein.

19. Prior Bonds; Security and Prepayment. Until retirement of the Prior Bonds, all provisions for the security thereof shall be observed by the City and all of its officers and agents. The Refunded Bonds shall be redeemed and prepaid on the Call Date in accordance with the terms and conditions set forth in the Notice of Call for Redemption attached hereto as Exhibit B, which terms and conditions are hereby approved and incorporated herein by reference.

20. Supplemental Resolution. The Prior Resolution authorizing the issuance of the Prior Bonds is hereby supplemented to the extent necessary to give effect to the provisions hereof.

21. Certificate of Registration. The Clerk/Finance Director is hereby directed to file a certified copy of this resolution with the County Auditor of Swift County, Minnesota, together with such other information as the County Auditor shall require, and to obtain the County Auditor's certificate that the Bonds have been entered in the County Auditor's Bond Register and that the tax levy required by law has been made.

22. Continuing Disclosure. The City is the sole obligated person with respect to the Bonds. The City hereby agrees, in accordance with the provisions of Rule 15c2-12 (the "Rule"), promulgated by the Securities and Exchange Commission (the "Commission") pursuant to the Securities Exchange Act of 1934, as amended, and a Continuing Disclosure Undertaking (the "Undertaking") hereinafter described to:

(a) Provide or cause to be provided to the Municipal Securities Rulemaking Board (the "MSRB") by filing at www.emma.msrb.org in accordance with the Rule, certain annual financial information and operating data in accordance with the Undertaking. The City reserves the right to modify from time to time the terms of the Undertaking as provided therein.

(b) Provide or cause to be provided to the MSRB notice of the occurrence of certain events with respect to the Bonds in not more than ten (10) business days after the occurrence of the event, in accordance with the Undertaking.

(c) Provide or cause to be provided to the MSRB notice of a failure by the City to provide the annual financial information with respect to the City described in the Undertaking, in not more than ten (10) business days following such amendment.

(d) The City agrees that its covenants pursuant to the Rule set forth in this paragraph and in the Undertaking is intended to be for the benefit of the Holders of the Bonds and shall be enforceable on behalf of such Holders; provided that the right to enforce the provisions of these covenants shall be limited to a right to obtain specific enforcement of the City's obligations under the covenants.

The Mayor and Clerk/Finance Director of the City, or any other officer of the City authorized to act in their place (the "Officers") are hereby authorized and directed to execute on behalf of the City the Undertaking in substantially the form presented to the City Council subject to such modifications thereof or additions thereto as are (i) consistent with the requirements under the Rule, (ii) required by the Purchaser of the Bonds, and (iii) acceptable to the Officers.

23. Records and Certificates. The officers of the City are hereby authorized and directed to prepare and furnish to the Purchaser, and to the attorneys approving the legality of the issuance of the Bonds, certified copies of all proceedings and records of the City relating to the Bonds and to the financial condition and affairs of the City, and such other affidavits, certificates and information as are required to show the facts relating to the legality and marketability of the 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.

24. Negative Covenant as to Use of Bond Proceeds and Equipment. The City hereby covenants not to use the proceeds of the Bonds or the Equipment or to use the improvements refinanced by the Prior Bonds, or to cause or permit them to be used, or to enter into any deferred payment arrangements for the cost of the Equipment, in such a manner as to cause the Bonds to be "private activity bonds" within the meaning of Sections 103 and 141 through 150 of the Code.

25. Tax-Exempt Status of the Bonds; Rebate. 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 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 Bonds, and (3) the rebate of excess investment earnings to the United States, if the Bonds (together with other obligations reasonably expected to be issued and outstanding at one time in this calendar year) exceed the small issuer exception amount of \$5,000,000. For purposes of qualifying for the exception to the federal arbitrage rebate requirements for governmental units issuing \$5,000,000 or less of bonds, the City hereby finds, determines and declares that:

- (a) the Bonds are issued by a governmental unit with general taxing powers;
- (b) no Bond is a private activity bond;

(c) ninety-five percent or more of the net proceeds of the Bonds are to be used for local governmental activities of the City (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the City);

(d) the aggregate face amount of all tax exempt bonds (other than private activity bonds) issued by the City (and all subordinate entities thereof, and all entities treated as one issuer with the City) during the calendar year in which the Bonds are issued and outstanding at one time is not reasonably expected to exceed \$5,000,000, all within the meaning of Section 148(f)(4)(D) of the Code;

Furthermore, with respect to the Refunding Portion of the Bonds:

(e) there shall not be taken into account for purposes of said \$5,000,000 limit any bond issued to refund (other than to advance refund) any bond to the extent the amount of the refunding bond does not exceed the outstanding amount of the refunded bond;

(f) the aggregate face amount of the Refunding Portion of the Bonds does not exceed \$5,000,000;

(g) each of the Prior Bonds was issued as part of an issue which was treated as meeting the rebate requirements by reason of the exception for governmental units issuing \$5,000,000 or less of bonds;

(h) the average maturity of the Refunding Portion of the Bonds does not exceed the remaining average maturity of the Prior Bonds; and

(i) no part of the Refunding Portion of the Bonds has a maturity date which is later than the date which is thirty years after the date the Prior Bonds were issued.

26. Designation of Qualified Tax-Exempt Obligations. In order to qualify the Bonds as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code, the City hereby makes the following factual statements and representations:

(a) the Bonds are issued after August 7, 1986;

(b) the Bonds are not "private activity bonds" as defined in Section 141 of the Code;

(c) the City hereby designates the Bonds as "qualified tax exempt obligations" for purposes of Section 265(b)(3) of the Code;

(d) the reasonably anticipated amount of tax exempt obligations (other than private activity bonds, treating qualified 501(c)(3) bonds as not being private activity bonds) which will be issued by the City (and all entities treated as one issuer with the City, and all subordinate entities whose obligations are treated as issued by the City) during this calendar year 2012 will not exceed \$10,000,000;

(e) not more than \$10,000,000 of obligations issued by the City during this calendar year 2012 have been designated for purposes of Section 265(b)(3) of the Code; and

(f) the aggregate face amount of the Bonds does not exceed \$10,000,000.

Furthermore, with respect to the Refunding Portion of the Bonds:

(g) each of the Refunded Bonds was designated as a "qualified tax exempt obligation" for purposes of Section 265(b)(3) of the Code;

(h) the aggregate face amount of the Refunding Portion of the Bonds does not exceed \$10,000,000;

(i) the average maturity of the Refunding Portion of the Bonds does not exceed the remaining average maturity of the Refunded Bonds;

(j) no part of the Refunding Portion of the Bonds has a maturity date which is later than the date which is thirty years after the date the Refunded Bonds were issued; and

(k) the Refunding Portion of the Bonds are issued to refund, and not to "advance refund" the Prior Bonds within the meaning of Section 149(d)(5) of the Code, and shall not be taken into account under the \$10,000,000 issuance limit to the extent the Bonds do not exceed the outstanding amount of the Prior Bonds.

The City shall use its best efforts to comply with any federal procedural requirements which may apply in order to effectuate the designation made by this paragraph.

27. Defeasance. When all Bonds have been discharged as provided in this paragraph, all pledges, covenants and other rights granted by this resolution to the registered holders of the Bonds shall, to the extent permitted by law, cease. The City may discharge its obligations with respect to any Bonds which are due on any date by irrevocably depositing with the Bond Registrar on or before that date a sum sufficient for the payment thereof in full; or if any Bond should not be paid when due, it may nevertheless be discharged by depositing with the Bond Registrar a sum sufficient for the payment thereof in full with interest accrued to the date of such deposit. The City may also at any time discharge its obligations with respect to any Bonds, subject to the provisions of law now or hereafter authorizing and regulating such action, by depositing irrevocably in escrow, with a suitable banking institution qualified by law as an escrow agent for this purpose, cash or securities described in Minnesota Statutes, Section 475.67, Subdivision 8, bearing interest payable at such times and at such rates and maturing on such dates as shall be required, without regard to sale and/or reinvestment, to pay all amounts to become due thereon to maturity or, if notice of redemption as herein required has been duly provided for, to such earlier redemption date.

28. Official Statement. The Official Statement relating to the Bonds prepared and distributed by Ehlers is hereby approved and the officers of the City are authorized in connection with the delivery of the Bonds to sign such certificates as may be necessary with respect to the completeness and accuracy of the Official Statement.

29. Payment of Issuance Expenses. The City authorizes the Purchaser to forward the amount of Bond proceeds allocable to the payment of issuance expenses to KleinBank in Chaska, Minnesota, on the closing date for further distribution as directed by Ehlers.

30. 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.

31. 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.

The motion for the adoption of the foregoing resolution was duly seconded by member Fugleberg and, after a full discussion thereof and upon a vote being taken thereon, the following voted in favor thereof: Kittelson, Landmark, Fitz, Fugleberg

and the following voted against the same: None

Whereupon the resolution was declared duly passed and adopted.

Next Wolfington and Ruff discussed the Post-Issuance Debt Compliance Policy. After discussion, it was moved by Landmark, seconded by Fitz and carried unanimously to adopt the Post-Issuance Debt Compliance Policy.

The Mayor recognized Michelle Bouta, Benson Housing and Redevelopment Authority (HRA) Director. She approached the Council and gave her 2011 Annual report. Both the Mayor and Councilmember Fitz stated they were happy with her performance.

The next item on the agenda was the Western Area Power Administration (WAPA) Contract to Reserve Firm Electric Service Contract Rates of Delivery with Associated Energy for the City of Benson. The current contract we have with WAPA expires the end of 2020. The new contract will be in effect from 1/1/2021 – 12/31/50. This seems like a long time away, but the electricity generated is from federal dams, and all contracts must go through Congress for approval. By signing this contract, it reserves our place in line for electricity. Missouri River Energy Services and City of Benson staff recommend approval. It was moved by Fugleberg, seconded by Landmark and carried unanimously to approve the WAPA Contract to Reserve Firm Electric Service.

Police Chief Jambor came before the Council and presented the 2011 Annual Police Department Report.

Next was pay request #8 from KHC Construction for work on the Water Treatment Plant . It was moved by Landmark, Seconded by Fitz and carried unanimously to approve Pay Request #8 to KHC Construction in the amount of \$257,474.00.

Nelson brought two capital requests from the Street Department. First was a radio system upgrade. We will be able to re-use some hand held radios from the Fire Department they can no longer use. Cost varies depending on what frequency we are assigned from the FFC. Some frequencies cost more than others to use. After discussion, it was moved by Fitz, seconded by Landmark and carried unanimously to have staff proceed with the new radio capital request in the amount not to exceed the bid amount of \$18,800.

The next Capital request was for a 24' x 6" Channel Equipment Tilt trailer. It was moved by Landmark, seconded by Fitz and carried unanimously to purchase the channel trailer at a cost of \$6,182.72.

Fitz inquired about the street sweeping and the amount of dust it stirs up. Nelson replied with the dry conditions this year it has been hard to keep enough water on the street to keep the dirt down, and that they are almost done with sweeping the town.

Next was a request from the Benson Golf Club to the Council asking them to consider providing assistance with the cost of the 2011 diseased elms removed on the golf course. After discussion, it was moved by Landmark, seconded by Fugleberg and carried unanimously the City pay the Golf Course tree removal bill in the amount of \$2,648.45.

Next the City Council moved onto the Benson Heartland Express Bus service and toured the new Water Treatment Plant, the old lumber yard site west on highway 9 owned by Glacial Plains Cooperative, the lot to the east of the torn down Benson Market site, and received an update on the condition of the Benson Armory basement.

There being no other business, a motion was made by Landmark, seconded by Fugleberg and carried unanimously to adjourn the meeting at 6:44 p.m.

Mayor

City Clerk