

**MINUTES - BENSON CITY COUNCIL - REGULAR MEETING
JULY 5, 2011**

The meeting was called to order at 5:30 p.m. by Mayor Paul Kittelson. Members present: Paul Kittelson, Gary Landmark, Ben Hess and Bob Claussen. Members absent: Sue Fitz, Also present: City Manager Rob Wolfington, Director of Public Works Elliot Nelson, Pat Duffy and RuthAnn Reiman

It was moved by Claussen, seconded by Landmark and carried unanimously to approve the June 6, 2011 amended City Council Minutes and the June 20, 2011 City Council Minutes.

Next was a notice from Western Area Power Administration (WAPA) stating they estimate no change to the Drought Adder of the Pick-Sloan—ED Firm Power Rate for 2012 due to the record setting water runoff in to the Missouri River. A final rate determination will be sent in October concerning the Drought Adder for 2012.

Pat Duffy approached the Council to express an interest in opening a winery in the Benson City limits. Wolfington stated they will need a conditional use permit, and will need to make sure the business will meet zoning requirements. Duffy will have to first meet federal and state licensing requirements.

Council Member Landmark offered the following Resolution and moved its adoption:

**(RESOLUTION NO. 2011- 11)
RESOLUTION ACCEPTING THE OFFER OF THE MINNESOTA PUBLIC FACILITIES AUTHORITY
TO PURCHASE A \$3,341,460 GENERAL OBLIGATION WATER REVENUE NOTE OF 2011,
PROVIDING FOR ITS ISSUANCE AND AUTHORIZING EXECUTION OF A BOND PURCHASE AND
PROJECT LOAN AGREEMENT**

A. WHEREAS, the City Council of the City of Benson, Minnesota (the "City"), has heretofore applied for a loan from the Minnesota Public Facilities Authority (the "PFA") to provide financing pursuant to Minnesota Statutes, Chapter 475 and Section 444.075, for rehabilitation of water treatment plant, including the demolition and removal of existing plant equipment, including the existing filters, chemical feed equipment, and all interior process piping (the "Project"); and

B. WHEREAS, the PFA is authorized pursuant to Minnesota Statutes, Chapter 446A, as amended, to issue its bonds (the "PFA Bonds") and to use the proceeds thereof, together with certain other funds, to provide loans and other assistance to municipalities to fund eligible costs of construction of publicly owned drinking water systems in accordance with the Federal Safe Drinking Water Act and to provide supplemental assistance pursuant to Minnesota Statutes, Section 446A.081; and

C. WHEREAS, the City has applied for a loan from the PFA pursuant to such program and the PFA has committed to make a loan to the City in the principal amount of \$3,341,460, to be disbursed and repaid in accordance with the terms of a Minnesota Public Facilities Authority Bond Purchase and Project Loan Agreement dated June 17, 2011 (the "Project Loan Agreement"), a copy of which has been presented to the Council and is on file with the Clerk-Finance Director; and

D. WHEREAS, the \$3,341,460 General Obligation Water Revenue Note of 2011 (the "Note") of the City is tax-exempt, and in addition the City will need to assure the tax-exemption of the PFA Bonds; and

E. WHEREAS, in accordance with Minnesota Statutes, Section 475.60, Subdivision 2(4), the City is authorized to issue obligations to a board, department or agency of the State of Minnesota by negotiation and without advertisement for bids and the PFA is, and has represented that it is, a board, department or agency of the State of Minnesota; and

F. WHEREAS, the City owns and operates a municipal water system (the "System") as a separate revenue producing public utility and the net revenues of the System are pledged to the payment of the City's outstanding "Water System Improvement Portion" of the \$1,000,000 original principal amount of General Obligation Water and Sewer Revenue Bonds, Series 2009A, dated as of August 11, 2009, (the "Outstanding Bonds"); and

G. WHEREAS, a contract or contracts for the Project have been made by the City with the approval of the PFA and all other state and federal agencies of which approval is required:

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

1. Acceptance of Offer; Payment. The offer of the PFA to purchase a \$3,341,460 General Obligation Water Revenue Note of 2011 of the City (the "Note"), at the rate of interest hereinafter set forth, and to pay therefore the sum of \$3,341,460 as provided below, is hereby accepted, and the sale of the Note is hereby awarded to the PFA. Payment for the Note shall be disbursed in installments as eligible costs of the Project are reimbursed or paid, all as provided in the Project Loan Agreement.

2. Title; Date; Denomination; Interest Rates; Maturities. The Note shall be a fully registered negotiable obligation, shall be titled "General Obligation Water Revenue Note of 2011", shall be dated as of the date of delivery and shall be issued forthwith. The Note shall be in the principal amount of \$3,341,460, or so much thereof as shall be disbursed pursuant to the Project Loan Agreement, shall bear interest on so much of the principal amount of the Note as may be disbursed and remains unpaid until the principal amount of the Note has been paid or has been provided for, at the rate of 1.739% per annum (calculated on the basis of a 360-day year of twelve 30-day months). Interest on the Note is payable semi-annually on February 20 and August 20, commencing February 20,

July 5, 2011

2012. Interest starts accruing as of the date of the initial disbursement. Principal on the Note shall mature on August 20 of the years and in the installments as follows:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2012	\$76,460	2022	\$182,000
2013	156,000	2023	185,000
2014	159,000	2024	189,000
2015	162,000	2025	192,000
2016	164,000	2026	195,000
2017	167,000	2027	199,000
2018	170,000	2028	202,000
2019	173,000	2029	206,000
2020	176,000	2030	209,000
2021	179,000		

Interest shall accrue only on the aggregate amount of the Note which has been disbursed and is unpaid under the Project Loan Agreement. The principal installments shall be paid in the amounts scheduled above even if at the time of payment the full principal amount of the Note has not been disbursed; provided that if the full principal amount of the Note is never disbursed, the amount of the principal not disbursed shall be applied to reduce each unpaid principal installment in the proportion that such installment bears to the total of all unpaid principal installments (i.e., the remaining principal payment schedule shall be re-amortized to provide similarly level annual installments of total debt service payments). Principal, interest and any premium due under the Note will be paid on each payment date by wire payment, or by check or draft mailed at least five business days prior to the payment date to the person in whose name the Note is registered, in any coin or currency of the United States which at the time of payment is legal tender for public and private debts.

Interest on the Note includes amounts treated by the PFA as service fees.

3. Purpose; Cost. The proceeds of the Note shall provide funds to finance construction of the Project. The total cost of the construction of the Project, including legal and other professional charges, publication and printing costs, interest accruing on money borrowed for the Project before the collection of net revenues pledged and appropriated therefor, and all other costs necessarily incurred and to be incurred from the inception to the completion of the Project, is estimated to be at least equal to the amount of the Note. The City covenants that it shall do all things and perform all acts required of it to assure that work on the Project proceeds with due diligence to completion and that any and all permits and studies required under law for the Project are obtained.

4. Redemption. The Note shall be subject to redemption and prepayment in whole or in part at the option of the City or mandatorily as provided in the Project Loan Agreement. If redemption is in part, installments of principal payable last under the Note shall be prepaid first, unless the City and the holder of the Note agree to a different result.

5. Registration of Note. At the time of issuance and delivery of the Note, the officer of the City performing the functions of the Treasurer (the "Treasurer") shall register the Note in the name of the payee in a note register which the Treasurer and the officer's successors in office shall maintain for the purpose of registering the ownership of the Note. The Note shall be prepared for execution with an appropriate text and spaces for notation of registration. The force and effect of such registration shall be as stated in the form of Note hereinafter set forth. Payment of principal installments and interest, whether upon redemption or otherwise, made with respect to the Note, may be made to the registered holder thereof or to the registered holder's legal representative, without presentation or surrender of the Note.

6. Form of Note. The Note, together with the Certificate of Registration attached thereto, shall be in substantially the following form:

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

\$3,341,460 GENERAL OBLIGATION WATER REVENUE NOTE OF 2011

The City of Benson, Swift County, Minnesota (the "City"), certifies that it is indebted and for value received promises to pay to the Minnesota Public Facilities Authority or the registered assign, the principal sum of THREE MILLION THREE HUNDRED FORTY ONE THOUSAND FOUR HUNDRED SIXTY DOLLARS, or so much thereof as may have been disbursed on August 20 of the years and in the installments as follows:

July 5, 2011

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2012	\$76,460	2022	\$182,000
2013	156,000	2023	185,000
2014	159,000	2024	189,000
2015	162,000	2025	192,000
2016	164,000	2026	195,000
2017	167,000	2027	199,000
2018	170,000	2028	202,000
2019	173,000	2029	206,000
2020	176,000	2030	209,000
2021	179,000		

and to pay interest on so much of the principal amount of the debt as may be disbursed and remains unpaid until the principal amount hereof is paid or has been provided for, at the rate of 1.739% per annum (calculated on the basis of a 360-day year of twelve 30-day months). Interest on the Note is payable semi-annually on February 20 and August 20, commencing February 20, 2012. Interest starts accruing as of the date of the initial disbursement.

Principal and Interest Payments. Interest shall accrue only on the aggregate amount of this Note which has been disbursed under the Minnesota Public Facilities Authority Bond Purchase and Project Loan Agreement dated as of June 17, 2011, by and between the City and the Minnesota Public Facilities Authority (the "Project Loan Agreement"). The principal installments shall be paid in the amounts scheduled above even if at the time of payment the full principal amount of this Note has not been disbursed; provided that if the full principal amount of this Note is never disbursed, the amount of the principal not disbursed shall be applied to reduce each unpaid principal installment in the proportion that such installment bears to the total of all unpaid principal installments (i.e., the remaining principal payment schedule shall be re-amortized to provide similarly level annual installments of total debt service payments). Interest on this Note includes amounts treated by the Minnesota Public Facilities Authority as service fees. Principal, interest and any premium due under this Note will be paid on each payment date by wire payment, or by check or draft mailed at least five business days prior to the payment date to the person in whose name this Note is registered, in any coin or currency of the United States of America which at the time of payment is legal tender for public and private debts.

Redemption. This Note is subject to redemption and prepayment in whole or in part at the option of the City or mandatorily as provided in the Project Loan Agreement. If redemption is in part, installments of principal payable last under this Note shall be prepaid first, unless the City and the holder of this Note agree to a different result.

Purpose: General Obligation. This Note has been issued pursuant to and in full conformity with Charter of the City, the Constitution and laws of the State of Minnesota for the purpose of providing money to finance the construction of improvements to the municipal water system (the "System"), specifically for rehabilitation of water treatment plant, including the demolition and removal of existing plant equipment, including the existing filters, chemical feed equipment, and all interior process piping and is payable out of the PFA Debt Service Account of the Water Fund of the City, to which account have been pledged net revenues of the System. This Note constitutes a general obligation of the City, and to provide moneys for the prompt and full payment of said principal installments and interest when the same become due, the full faith, credit and taxing powers of the City have been and are hereby irrevocably pledged.

Registration: Transfer. This Note shall be registered in the name of the payee on the books of the City by presenting this Note for registration to the Treasurer, who will endorse his or her name and note the date of registration opposite the name of the payee in the certificate of registration attached hereto. Thereafter this Note may be transferred to a bona fide purchaser only by delivery with an assignment duly executed by the registered owner or the registered owner's legal representative, and the City may treat the registered owner as the person exclusively entitled to exercise all the rights and powers of an owner until this Note is presented with such assignment for registration of transfer, accompanied by assurance of the nature provided by law that the assignment is genuine and effective, and until such transfer is registered on said books and noted hereon by the Treasurer.

Fees Upon Transfer or Loss. The Treasurer may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection with the transfer of this Note and any legal or unusual costs regarding transfers and lost notes.

Project Loan Agreement. The terms and conditions of the Project Loan Agreement are incorporated herein by reference and made a part hereof. The Project Loan Agreement may be attached to this Note, and shall be attached to this Note if the holder of this Note is any person other than the Minnesota Public Facilities Authority.

Tax-Exempt Obligation. The City intends that the interest on this Note will be excluded from gross income for United States income tax purposes or from both gross income and taxable net income for State of Minnesota income tax purposes.

Qualified Tax-Exempt Obligation. This Note has been designated by the City as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the federal Internal Revenue Code of 1986, as amended.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions and things required by the Charter of the City, 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 Note, have been done, have happened and have been performed, in regular and due form, time and manner as required by law; that the City has covenanted and agreed with the holder of this Note that it will impose and collect charges for the service, use and availability of and connection to the System at the times and in amounts necessary to produce net revenues adequate to pay all principal and interest when due on this Note; that the City will levy a direct, annual, irrevocable ad valorem tax upon all of the taxable property in the City, without limitation as to rate or amount, for the years and in amounts sufficient to pay the installments of principal and interest on this Note as they respectively become due, if the net revenues from the System and any other revenues irrevocably appropriated to said PFA Debt Service Account are insufficient therefore and that this Note, together with all other debts of the City outstanding on the date hereof, being the date of its actual issuance and delivery, does not exceed any constitutional or statutory limitation of indebtedness.

July 5, 2011

IN WITNESS WHEREOF, the City of Benson, Swift County, Minnesota, by its City Council has caused this Note to be executed on its behalf by the signatures of its Mayor and of its Clerk-Finance Director, and the corporate seal of the City having been intentionally omitted as permitted by law, all as of July 5, 2011.

CITY OF BENSON, SWIFT COUNTY, MINNESOTA

/s/ Paul Kittelson
Mayor

/s/ Glen Pederson
Clerk-Finance Director

CERTIFICATE OF REGISTRATION

The transfer of ownership of the principal amount of the attached Note may be made only by the registered owner or his, her or its legal representative last noted below.

<u>DATE OF REGISTRATION</u>	<u>REGISTERED OWNER</u>	<u>SIGNATURE OF TREASURER</u>
(do not date)	Minnesota Public Facilities Authority Saint Paul, Minnesota Federal Employer Identification No. 41-6007162	(do not sign)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Execution. The Note shall be executed on behalf of the City by the signatures of its Mayor and Clerk-Finance Director; the seal of the City has been intentionally omitted as permitted by law. In the event of disability or resignation or other absence of either such officer, the Note may be signed by the manual signature of that officer who may act on behalf of such absent or disabled officer. In case either such officer whose signature shall appear on the Note shall cease to be such officer before the delivery of the Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if he or she had remained in office until delivery.

7. Delivery; Application of Proceeds. The Note when so prepared and executed shall be delivered by the Clerk-Finance Director to the purchaser thereof prior to disbursements pursuant to the Project Loan Agreement, and the purchaser shall not be obliged to see to the proper application thereof.

8. Fund and Accounts. There is hereby created a separate fund in the City treasury designated the Water Fund (the "Fund"). The Treasurer and all municipal officials and employees concerned therewith shall establish and maintain financial records of the receipts and disbursements of the System in accordance with this resolution. There shall be maintained in the Fund, in addition to any accounts heretofore created, including the Operation and Maintenance Account for the System, the following accounts:

(a) A "PFA Construction Account", to which shall be credited all proceeds received from the sale of the Note. The Note shall be the only source of moneys credited to the PFA Construction Account. It is recognized that the sale proceeds of the Note are received in reimbursement for costs expended on the Project or in direct payment of such costs, and that accordingly the moneys need not be placed in the PFA Construction Account upon receipt but may be applied immediately to reimburse the source from which the expenditure was made. The moneys in the PFA Construction Account shall be used solely for the purpose of paying for the cost of constructing the Project, including all costs enumerated in Minnesota Statutes, Section 475.65, provided that such moneys shall only be expended for costs and expenses which are permitted under the Project Loan Agreement. The PFA prohibits the use of proceeds of the Note to reimburse costs initially paid from proceeds of other obligations of the City unless otherwise specifically approved. Upon completion of the Project and the payment of the costs thereof, any surplus shall be transferred to the PFA Debt Service Account.

(b) A "PFA Debt Service Account", to which shall be irrevocably appropriated, pledged and credited: (i) net revenues of the System in an amount sufficient, with other moneys, to pay the principal of, and interest on, the Note when due; (ii) any collection of taxes which may hereafter be levied in the event the net revenues of the System herein pledged for the payment of the Note are insufficient therefor; (iii) all

investment earnings on moneys held in the PFA Debt Service Account; (iv) any amounts transferred from the PFA Construction Account; and (v) any other moneys which are properly available and are appropriated by the City Council to the PFA Debt Service Account. The moneys in the PFA Debt Service Account shall be used only to pay or prepay the principal of, and interest on, the Note and any other general obligation bonds hereafter issued and made payable from the PFA Debt Service Account, and to pay any rebate due to the United States with respect to the PFA Bonds in connection with the Note.

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

The City shall observe the covenants of paragraphs 17, 18 and 19 of this resolution and of Article III of the Project Loan Agreement with regard to the Fund.

9. Coverage Test; Pledge of Net Revenues; Excess Revenues. It is hereby found, determined and declared that the net revenues of the System are sufficient in amount to pay when due the principal of and interest on the Note and on the Outstanding Bonds and a sum at least five percent in excess thereof, and the net revenues of the System are hereby pledged on a parity lien with the Outstanding Bonds and shall be applied for that purpose, but solely to the extent required to meet, together with other pledged sums, the principal and interest requirements of the Note. Excess net revenues may be used for any proper purpose. Nothing contained herein shall be deemed to preclude the City from making further pledges and appropriations of the net revenues of the System for the payment of other or additional obligations of the City, provided that it has first been determined by the City Council that estimated net revenues of the System will be sufficient, in addition to all other sources, for the payment of the Note and such additional obligations, and any such pledge and appropriation of net revenues may be made superior or subordinate to, or on a parity with, the pledge and appropriation herein. Net revenues in excess of those required for the foregoing may be used for any proper purpose.

10. Pledge to Produce Revenues. In accordance with Minnesota Statutes, Section 444.075, the City hereby covenants and agrees with the holder of the Note that it will impose and collect charges for the service, use and availability of and connection to the System at the times and in the amounts required to produce net revenues adequate to pay all principal and interest when due on the Note.

11. General Obligation Pledge. The full faith, credit and taxing powers of the City shall be, and are hereby, irrevocably pledged for the prompt and full payment of the principal and interest on the Note as the same respectively become due. If the net revenues of the System appropriated and pledged to the payment of principal and interest on the Note, together with other funds irrevocably appropriated to the PFA Debt Service Account shall at any time be insufficient to pay such principal and interest when due, the City covenants and agrees to levy, without limitation as to rate or amount, an ad valorem tax upon all taxable property in the City sufficient to pay such principal and interest as they become due. If the balance in the PFA Debt Service Account is ever insufficient to pay all principal and interest then due on the Note and any other obligations payable there from, 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 PFA Debt Service Account when a sufficient balance is available therein.

12. 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 Note has been entered in the County Auditor's Bond Register.

13. Project Loan Agreement. The Project Loan Agreement is hereby approved in substantially the form heretofore presented to the City Council, and in the form executed is hereby incorporated by reference and made a part of this resolution. Each and all of the provisions of this resolution relating to the Note are intended to be consistent with the provisions of the Project Loan Agreement, and to the extent that any provision in the Project Loan Agreement is in conflict with this resolution as it relates to the Note, that provision shall control and this resolution shall be deemed accordingly modified except as provided in paragraph 15. The Mayor and Manager are hereby authorized and directed to execute the Project Loan Agreement. The execution of the Project Loan Agreement by the appropriate officers shall be conclusive evidence of the approval of the Project Loan Agreement in accordance with the terms hereof. The Project Loan Agreement may be attached to the Note, and shall be attached to the Note if the holder of the Note is any person other than the MPFA.

14. Principal Forgiveness. In addition to the Note, the City is obligated to repay the Principal Forgiveness (as defined in the Project Loan Agreement) in accordance with Section 2.3 of the Project Loan Agreement. Notwithstanding any provision to the contrary in the Project Loan Agreement, the Principal Forgiveness is payable solely from legally available funds and is a special, limited revenue obligation and not a

July 5, 2011

general obligation of the City. Neither the full faith and credit nor the taxing powers of the City are pledged to the payment of the Principal Forgiveness.

15. Records and Certificates. The officers of the City are hereby authorized and directed to prepare and furnish to the PFA, and to the attorneys approving the legality of the issuance of the Note, certified copies of all proceedings and records of the City relating to the Note 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 Note 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.

16. Negative Covenants as to Use of Proceeds and Project. The City hereby covenants not to use the proceeds of the Note or to use the Project, or to cause or permit them to be used, or to enter into any deferred payment arrangements for the cost of the Project, in such a manner as to cause the Note to be a "private activity bond" 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 Note that would cause it to be a private activity bond, and the average term of the Note is not longer than reasonably necessary for the governmental purpose of the issue. The City hereby covenants not to use the proceeds of the Note in such a manner as to cause the Note to be a "hedge bond" within the meaning of Section 149(g) of the Code.

The City hereby covenants not to use the proceeds of the Note or to use the Project, or to cause or permit them to be used, or to enter into any deferred payment arrangement for the cost of the Project, in such a manner as to cause the PFA Bonds to be "private activity bonds" within the meaning of Sections 103 and 141 through 150 of the Code. The City reasonably expects that it will take no actions over the term of the Note that would cause the PFA Bonds to be private activity bonds, and the average term of the Note is not longer than reasonably necessary for its governmental purpose.

17. Tax-Exempt Status of the Note; 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 Note, including without limitation (a) requirements relating to temporary periods for investments, (b) limitations on amounts invested at a yield greater than the yield on the Note, and (c) the rebate of excess investment earnings to the United States if the Note (together with other obligations reasonably expected to be issued and outstanding at one time in this calendar year) exceeds 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 Note is issued by a governmental unit with general taxing powers, (b) the Note is not a private activity bond, (c) ninety-five percent or more of the net proceeds of the Note 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), and (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 Note is 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.

18. Tax-Exempt Status of the PFA Bonds; Rebate. The City with respect to the Note 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 PFA Bonds, including without limitation (a) requirements relating to temporary periods for investments, (b) limitations on amounts invested at a yield greater than the yield on the PFA Bonds, and (c) the rebate of excess investment earnings to the United States. The City covenants and agrees with the PFA and holders of the Note that the investments of proceeds of the Note, including the investment of any revenues pledged to the Note which are considered gross proceeds of the PFA Bonds under the applicable regulations, and accumulated sinking funds, if any, shall be limited as to amount and yield in such manner that the PFA 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 certifies that it is not expected that the proceeds of the Note will be used in such manner as to cause the PFA Bonds to be arbitrage bonds under Section 148 of the Code and any regulations thereunder. The Mayor and Clerk-Finance Director shall furnish a certificate to the PFA embracing or based on the foregoing certification at the time of delivery of the Note to the PFA. The proceeds of the Note will likewise be used in such manner that the Note is not a private activity bond under Section 103(b) of the Code.

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

- (a) the Note is issued after August 7, 1986;
- (b) the Note is not a "private activity bond" as defined in Section 141 of the Code;
- (c) the City hereby designates the Note as a "qualified tax-exempt obligation" 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 2011 will not exceed \$10,000,000; and

July 5,2011

(e) not more than \$10,000,000 of obligations issued by the City during this calendar year 2011 have been designated for purposes of Section 265(b)(3) of the Code.

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.

20. Consent to Representation. The City hereby consents to the representation by Briggs and Morgan, Professional Association, which is acting as the City's bond counsel with respect to the Note, of the PFA with respect to the PFA Bonds and the Note as the PFA's bond counsel pursuant to a special attorney appointment by the Attorney General of the State of Minnesota.

21. 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.

22. 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 Claussen, and upon a vote being taken thereon, the following voted in favor thereof: Kittelson, Landmark, Hess, Claussen

and the following members voted against the same: None

Whereupon the resolution was declared duly passed and adopted.

Next on the agenda was the Minnesota Public Facilities Authority (MPFA) Bond Purchase and Project Loan Agreement for the Water Treatment Plant Improvement project. After review and discussion, it was moved by Landmark, seconded by Claussen and carried unanimously to approve signing authority for the Mayor and City Manager to sign the General Obligation Bond Purchase and Project Loan Agreement.

The County Auditor sent a letter on two properties in the City that have become forfeited to the State of Minnesota to be managed by the County. The County must offer them to the City before they can be auctioned. If the City acquires the properties, they will need to remain for public purpose. The forfeited properties are:

Parcel 23-0042-000 previously owned by Paul D. Johnson
Parcel 23-1416-000 previously owned by PUNCHCO Inc.

Consensus of the Council was that they did not wish to acquire these properties.

Next RuthAnn Reiman from Shamrock Hest Riding Club came before the Council explaining the Riding Club had been approached by Family Fun Circus wishing to hold a circus where the Riding club has their rodeos west of the Civic Center. The City Council has no issues with the circus, but the circus will need to provide a certificate of insurance listing the City as additional insured and loss payee, and they will not be allowed to advertise on public property. It was suggested by the Council to have the circus managers talk to the City Manager and Public Works Director before the event.

The Council reviewed the May 2011 Budget report.

Public Works Director Nelson reported he received an e-mail from Josh Fluck, Roadmaster with BNSF Railroad, purposing replacement of the 12th and 13th Street railroad crossings with cement surfaces at a cost to the city of \$14,000. After discussion, it was moved by Claussen, seconded by Hess and carried unanimously to proceed working with BNSF to replace the 12th and 13th street crossings at a cost of \$14,000.

Wolfington informed the Council that he had received a letter from DEED regarding the 2011 Small Cities Grant Application that was submitted. The city will receive \$172,400 which will add eight owner-occupied rehabilitations to the current 2009 program.

It was moved by Claussen, seconded by Landmark and carried unanimously to adjourn the meeting at 5:58 p.m.

Mayor

City Clerk