

# PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

## OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, November 14, 2011, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Absent: Councilor Fedora -- 1

---

The minutes of the council meetings held on September 12, 26 and October 10, 2011, were approved upon a unanimous vote.

---

## PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

11-1114-33 Anne Seppo, by Steve Stulz, agent for AT&T, communication regarding the proposed AT&T cell tower on 2120 Jean Duluth Road (11-0530R and 11-0531R). -- Received

11-1114-41 Tom Boman communication regarding parking around East High School (11-0528R). -- Received

---

## REPORTS FROM OTHER OFFICERS

11-1114-01 Clerk application for exempt permit to the Minnesota gambling control board from Ridgeview Country Club for raffle on April 14, 2012. -- Received

11-1114-02 Engineer acceptance of construction of street, water, natural gas, sanitary sewer and storm sewer system improvements, pursuant to Section 45-89 of the Duluth City Code, in:

(a) Coffee Creek Park Development (City Project No. 0573TR);

(b) Hawk Ridge Estates (City Project No. 0395TR). -- Received

11-1114-03 Purchasing agent emergency repair notice awarded to Terrazzo and Concrete Restoration, Inc., for library/depot ramp repair in the amount not to exceed \$100,000, pursuant to Section 41-27 of the Duluth City Code. -- Received

---

## REPORTS OF BOARDS AND COMMISSIONS

11-1114-04 Duluth airport authority minutes of September 26, 2011, meeting. -- Received

11-1114-05 Duluth human rights commission minutes of September 14, 2011, meeting. -- Received

11-1114-06 Duluth transit authority: (a) Minutes of August 24, 2011, meeting; (b) July 2011 income statement. -- Received

11-1114-07 Housing and redevelopment authority of Duluth minutes of: (a) August 23; (b) September 27, 2011, meetings. -- Received

11-1114-08 Library board minutes of September 27, 2011, meeting. -- Received

11-1114-09 Seaway Port authority financial statement of September 2011. -- Received

11-1114-10 Spirit Mountain recreation area authority minutes of April 21, 2011, meeting. -- Received

---

**OPPORTUNITY FOR CITIZENS TO BE HEARD**

Jonathan Manchester spoke of his perspective of the Occupy Duluth movement of which he is a participant, noting that they will restore the Civic Center grounds to their original state.

- - -

**RESOLUTIONS TABLED**

Councilor Stauber moved to remove resolutions 11-0530 and 11-0531, affirming and reversing, respectively, the decision of the planning commission to grant the application for a special use permit by AT&T/New Cingular Wireless for a wireless telecommunications facility, from the table, which motion was seconded and unanimously carried.

Councilor Stauber moved to suspend the rules to hear speakers on the resolutions, which motion was seconded and unanimously carried.

Anne Seppo spoke of her support for Resolution 11-0530 for reasons of: this is needed for cell phone service in this area; financially it will assist in caring for her mother; a petition with 100 signatures wanting this location over any other location (see Public Document No 11-1114-33); AT&T has done everything that has been required; a contract with AT&T has been signed and with putting a large cell tower in the Morningside pit area, it is thought that the city would expand the area by going back to that late 1980 plan to build a sand/salt and equipment storage building, which is opposed by residents in that area.

Ken Butler, representing Anne Seppo, reviewed that: the cell tower proposed will resemble a 70 foot flag pole; Ms. Seppo and AT&T have been working on this proposal for over three years; the planning commission has approved this location; as required by law, there has to be substantial evidence by the council to deny the recommendation of the planning commission; the permitting process has been followed and the general land value loss argument is not sufficient to deny the permit.

Brad Rauzi supported Resolution 11-0531 for reasons of: nine immediate and surrounding neighbors of this proposed location oppose it (see Public Document No. 11-1010-24(c)); the standards of the United Development Chapter (UDC) have not been upheld; land management personnel have been disingenuous to the citizens; the city land location is the best location available and would bring revenue to the city.

Chief Administrative Officer David Montgomery answered various councilor questions, noting that the city of Duluth did not have a preferred site location.

After some council discussion, Councilor Cuneo moved to retable the resolutions so that Councilor Fedora, that district's councilor, could be present for the discussion and vote, which motion was seconded and carried upon the following vote:

Yeas: Councilors Boyle, Cuneo, Halberg, Hartman, Stauber and President Gardner -- 6

Nays: Councilors Anderson and Fosle -- 2

Absent: Councilor Fedora -- 1

- - -

At this time, 7:28 p.m., President Gardner declared the public hearing on the Northstar Aerospace loan agreement and note amendments would begin.

Kevin Snyder, executive vice president of Northstar Aerospace, thanked the council for their prior support and reviewed the scope of this current request.

At this time, 7:30 p.m., President Gardner declared the public hearing closed and the regular order of business resumed.

- - -

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

President Gardner moved to remove resolution 11-0556, adopting guidelines for council member internet usage and use of electronic communications during council meetings, from the table, which motion was seconded and unanimously carried.

President Gardner reported that councilors Halberg and Hartman and herself would prefer to recommend that the guidelines be incorporated into the standing rules and at this time moved to remove this resolution from agenda, which motion was seconded and unanimously carried.

- - -

### MOTIONS AND RESOLUTIONS CONSENT AGENDA

*(All matters listed under the consent agenda were considered routine and/or noncontroversial and were enacted by one unanimous motion.)*

President Gardner moved passage of the consent agenda, which motion was seconded and unanimously carried.

RESOLVED, that city officials are hereby authorized to enter into a contract with Terrazzo and Concrete Restoration, Inc., for the renovation of the library parking ramp at 600 Block West Michigan Street in accordance with specifications prepared by the city's consultant, Northland Consulting Engineers, LLP, and the contractor's low bid of \$384,920.20, consisting of Phase I emergency repairs of \$100,000, and Phase II construction of \$284,920.20, payable from the from the Parking Fund 505, Department/Agency 015 (administrative services), Division 1480 (parking ramps), Cost Center 2513 (library and Coney Island ramps), Object 5405 (parking lot maintenance).

Resolution 11-0577 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota gambling control board issuing a lawful gambling exemption to the Lincoln Park Business Group and does hereby waive the 60 day waiting period which it has to object to the issuance of said exemption.

RESOLVED FURTHER, that the city clerk is hereby authorized and directed to send a copy of this resolution to the Minnesota gambling control board immediately after its passage.

Resolution 11-0592 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of master plumber, which were approved by the civil service board on October 4, 2011, and which are filed with the city clerk as Public Document No. 11-1114-11, are approved. This classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 31.

Resolution 11-0576 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a sixth amendment to the MIF loan agreement and a sixth promissory note modification agreement

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

substantially in the form of those on file in the office of the city clerk as Public Document No. 11-1114-12 with Northstar Machine and Tool, Inc., d.b.a. Northstar Aerospace (Northstar), allowing Northstar to make payments of interest plus an amount equal to 1/2 of the principal payment provided for under the note for a five month period, from December 1, 2011, through April 30, 2012.

FURTHER RESOLVED, that the proper city officials are hereby authorized to execute a sixth amendment to the grant agreement with the state of Minnesota, such amendment to reflect the sixth amendment to the MIF loan agreement and sixth promissory modification agreement with Northstar.

Resolution 11-0596 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to enter into a lease agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 11-1114-13 with A&L Partnership, LLP, for the leasing of approximately 23,000 square feet of space in the Duluth Athletic Club building at 402 West First Street in Duluth, Minnesota, for an amount estimated not to exceed \$357,650 per year, payable from the Fund 268-031-6251-5412 (workforce development fund, grants division, office support, building rental).

Resolution 11-0605 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to enter into sublease agreements substantially in the form of that on file in the office of the city clerk as Public Document No. 11-1114-14 with the state of Minnesota, department of administration, acting on behalf of the Minnesota department of employment and economic development, northeast Minnesota office of job training, and Arrowhead Economic Opportunity Agency for the subleasing of space in the Duluth Athletic Club building at 402 West First Street in Duluth, Minnesota, for the joint workforce center, sublease payment to be deposited in Fund 268-031-6251-4622 (workforce development fund, grants division, office support, rent of building).

Resolution 11-0606 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

WHEREAS, on November 8, 2011, there was held in the city of Duluth, pursuant to the provisions of Laws of Minnesota, 1973, Chapter 281, a general municipal election for the purpose of electing certain city officers; and

WHEREAS, the judges of the election precincts in the city have made their returns of said election, and the city council, acting as a canvassing board, has duly canvassed said returns (Public Document No. 11-1114-15) at 7:00 p.m., November 14, 2011, and ascertained the number of ballots cast at said election and thereby declared that at said election there were cast 20,731 votes, said votes having been cast in the following manner:

(a) That for the office of mayor, Don Ness received 17,689 votes and 976 candidates received write-in votes;

(b) That for the offices of councilor at large, Linda Krug received 12,186 votes, Emily Larson received 13,216 votes, Tim Riley received 4,459 votes, Chad Smith received 3,920 votes and 142 candidates received write-in votes;

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

(c) That for the office of councilor, first district, Todd Fedora received 3,006 votes, Jennifer Julsrud received 3,024 votes and 10 candidates received write-in votes;

(d) That for the office of councilor, third district, Sharla Gardner received 2,212 votes and 126 candidates received write-in votes;

(d) That for the office of councilor, fourth district, Jacqueline Halberg received 2,043 votes, Garry Krause received 2,220 votes and 10 candidates received write-in votes;

(e) That for the office of councilor, fifth district, Jay Fosle received 2,702 votes and 68 candidates received write-in votes;

(f) That for the city ballot question - *Should Chapter 2 of the Duluth City Code, 1959, as amended, be amended to create a fund denominated as the "Parks Fund" and should the city levy a special levy in the amount of \$2,600,000 on the referendum market value of all real property in the city, said levy being 0.0472654% of said referendum market value, for the purpose of providing a dedicated funding source for parks and recreation facilities, recreation activities, and for implementation of the concepts addressed in the Duluth Parks and Recreation Master Plan dated December 2010, in accordance with the authority contained in Laws of Minnesota, 1953, Chapter 560, Section 1?* - there were 11,691 "yes" votes and 8,812 "no" votes.

NOW, THEREFORE, BE IT RESOLVED, that Don Ness, having received the majority of all votes cast at said election for the office of mayor is hereby declared duly elected for terms of four years.

FURTHER RESOLVED, that Linda Krug and Emily Larson, having received the highest numbers of the votes cast at said election for the offices of councilor at large, are hereby duly elected for a term of four years.

FURTHER RESOLVED, that Jennifer Julsrud, having received the majority of all votes cast at said election for the office of councilor, first district, is hereby duly elected for a term of four years.

FURTHER RESOLVED, that Sharla Gardner, having received the majority of all votes cast at said election for the office of councilor, third district, is hereby duly elected for a term of four years.

FURTHER RESOLVED, that Garry Krause, having received the majority of all votes cast at said election for the office of councilor, fourth district, is hereby duly elected for a term of four years.

FURTHER RESOLVED, that Jay Fosle, having received the majority of all votes cast at said election for the office of councilor, fifth district, is hereby duly elected for a term of four years.

RESOLVED FURTHER, that the city ballot question received a majority of positive responses and is hereby declared to be approved by the electors voting upon such question and is hereby declared to be operative and in full force, pursuant to the provisions of Section 51 of the Duluth City Charter.

Resolution 11-0600 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

The city council finds as follows:

(a) The municipality of Duluth implemented municipal state aid LBRP in 2011; and

(b) Said municipality is proceeding with the construction of said project with bridge bonding funds and proposes to complete said project through the use of an advance from the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

state aid regular/municipal construction account to supplement the available funds in its permanent improvement fund; and

(c) The city of Duluth MSAS account balance as of August 2, 2011, is \$0; and

(d) The advance is based upon the estimated expenditure of \$547,081.92; and

(e) Repayment of the funds so advanced with be made in accordance with the provisions of Minnesota Statutes 162.08, subd. 7, and Minnesota Rules, Chapter 8820.1500, subp. 8; and

(f) The municipality acknowledges that advance funds are released on a first-come, first-serve basis, and that this resolution does not guarantee the availability of funds.

RESOLVED, that the commissioner of transportation be and hereby is requested to approve this advance for financing approved municipal state aid projects of the municipality of Duluth in an amount up to \$547,081.92. The city of Duluth hereby authorizes payments from subsequent accruals. Repayment from entire future year allocation until fully repaid will be \$547,081.92, paid from year 2012.

Resolution 11-0561 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that plans for Project 069-603-011 showing proposed alignments, profiles, grades and cross sections for the construction, reconstruction or improvement of County State Aid Highway No. 3 (Becks Road) within the limits of the city as a state aid project have been prepared and presented to the city, and that said plans be in all things approved.

Resolution 11-0566 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into the below-listed pipeline license agreements, copies of which are on file in the office of the city clerk with the public document numbers listed appurtenant thereto, with BNSF Railway Company for water, sanitary sewer and natural gas lines under BNSF railroad trackage as part of the Riverside utility and street improvement project at a total cost for the licenses of \$4,500, \$1,500 of which is payable from the Water Fund 510, Department 500, Division 1905, Object 5536, Project No. 0699SN/TR (water, public works and utilities, capital-incl deprec/debtsvc), \$1,500 payable from the Sanitary Sewer Fund 530, Department 500, Division 1905, Object 5536, Project No. 0699SN/TR (sewer, public works and utilities, capital-incl deprec/debtsvc), and \$1,500 payable from the Gas Fund 520, Department 500, Division 1905, Object 5533, Project No. 0699SN/TR (gas, public works and utilities, capital-incl deprec/debt svc):

<u>BNSF Tracking No.</u>	<u>Utility</u>	<u>Public Document No.</u>
11-42413	water	11-1114-16(a)
11-42200	sanitary sewer	11-1114-16(b)
11-42690	natural gas	11-1114-16(c)

Resolution 11-0567 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

### THE CITY COUNCIL FINDS:

- (a) The city of Duluth is under consent decree to eliminate sanitary sewer overflows;  
and
- (b) Sanitary Sewer Basin No. 24 contributes to one of the overflow points that the city is mandated to eliminate; and
- (c) The estimated cost to rehabilitate sanitary sewers in Basin No. 24 by CIPP lining is estimated to be \$3,500,000, and the public facilities authority may have loan and grant monies available to finance the project costs; and
- (d) To receive this money, the city must submit required information to enter into a loan/grant agreement with the Minnesota public facilities authority.

RESOLVED, that the proper city officials are hereby authorized to submit an application to enter into a loan/grant agreement with the Minnesota public facilities authority for funding to rehabilitate sanitary sewers in Basin No. 24 as described in the application.

FURTHER RESOLVED, that the city of Duluth has the legal authority to apply for the money, and the financial, technical and managerial capacity to ensure proper construction, operation and maintenance of the project for its design life.

FURTHER RESOLVED, that the city of Duluth estimates the loan/grant amount to be \$3,500,000 or the as-bid costs of the project, payable from Fund 532, Department 500, Object 5532 (clean water fund, public works and utilities, capital improvements - bond), City Project No. 0983SN.

FURTHER RESOLVED, that the city hereby expresses its official intent to use proceeds of this loan to reimburse engineering and construction expenditures made prior to the issuance of its general obligation bond to the public facilities authority.

Resolution 11-0572 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the city of Duluth requests from Mn/DOT an access to Trunk Highway 61 at Chase Avenue, the approximate location of which is shown on Public Document No. 11-1114-17.

Resolution 11-0580 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a grant from Minnesota's Lake Superior coastal program through the department of natural resources in the amount of \$3,100 for the project entitled *Stormwater Pond Sediment Evaluation* and to execute a grant agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-1114-18, funds to be deposited in Fund 535-500-1900-4210-02 (stormwater, public works and utilities, public works director's office, state of Minnesota operating).

Resolution 11-0589 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

The city council finds:

- (a) That the city of Duluth desires to hire professional consulting firms for field and laboratory testing services in fiscal year 2011;

**PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011**

---

(b) That EPC Engineering and Testing has submitted a fee schedule for field and laboratory testing services in connection with this work;

(c) That the purchasing agent and city administration authorized a one year extension on June 15, 2011, for Contract 20595, not to exceed \$15,000;

(d) That the engineering division is now requesting an estimated increase of \$25,000 and total contract amount of \$40,000 for fiscal year 2011.

RESOLVED, that the requested increase of \$25,000 to C20595 with EPC Engineering and Testing is hereby approved and that the cost of such field and laboratory services for fiscal year 2011, will be paid from various appropriate project funds, departments, agencies and objects.

Resolution 11-0590 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

The city council finds:

(a) That the city of Duluth desires to hire professional consulting firms for field and laboratory testing services in fiscal year 2011;

(b) That American Engineering & Testing, Inc., has submitted a fee schedule for field and laboratory testing services in connection with this work;

(c) That the purchasing agent and city administration authorized a one year extension on June 15, 2011, for Contract 20716, not to exceed \$15,000;

(d) That the engineering division is now requesting an estimated increase of \$25,000 and total contract amount of \$40,000 for fiscal year 2011.

RESOLVED, that the requested increase of \$25,000 to C20716 with American Engineering & Testing, Inc., is hereby approved and that the cost of such field and laboratory services for fiscal year 2011 will be paid from various appropriate project funds, departments, agencies and objects.

Resolution 11-0591 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a 50-year license agreement, a copy of which is on file in the office of the city clerk as Public Document No. 11-1114-19, with the Minnesota department of natural resources for construction, maintenance and operation of high pressure gas mains under Amity Creek for a consideration of \$826, payable out of Gas Fund 520, Department/Agency 500 (public works and utilities), Division 1905 (capital), Object 5533 (capital improvements - revenue), City Project No. 0904GS.

Resolution 11-0597 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that Resolution 09-0269 to LHB, Inc., for professional engineering services for the Aerial Lift Bridge painting and structural rehabilitation, Phase 3, be amended by an

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

amount of \$80,021 for a new total of \$384,193. The increase will be payable from Permanent Improvement Fund 411.

Resolution 11-0598 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that pursuant to Minnesota Statute Section 161.36, the commissioner of transportation be appointed as agent of the city of Duluth to accept, as its agent, federal aid funds which may be made available for eligible transportation related projects.

FURTHER RESOLVED, that the proper city officials are hereby authorized to execute an agreement with the commissioner of transportation, a copy of which is on file in the office of the city clerk as Public Document No. 11-1114-20, prescribing the terms and conditions of said federal aid participation as set forth and contained in Minnesota Department of Transportation Agency Agreement No. 99887.

Resolution 11-0599 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to enter into an agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 11-1114-21 with the St. Louis and Lake counties regional railroad authority for the construction, operation and maintenance of a replacement sanitary sewer force main crossing St. Louis and Lake counties regional railroad authority's lakefront line right-of-way at a location in the vicinity of McCullough Street in Lakeside at a cost of \$500, payable from Sanitary Fund 530, Department 500, Division 1905, Object 5536 (sanitary sewer fund, public works and utilities, capital, utility infrastructure replacement), Project No. 0892SN.

Resolution 11-0604 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with JMF Construction, Inc., for the CDBG-ARRA sidewalk replacement project for the low bid of \$87,492.25, with \$81,788.25 payable out of CDBG Fund 262, Agency 025 (workforce development - ARRA), Object 5434 (grants and awards), and \$5,704 payable out of Permanent Improvement Fund 411, Agency 035 (capital projects accounts), Object 5530 (improvements other than buildings), City Project No. 0936TR.

Resolution 11-0607 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-1114-22, with Domestic Abuse Intervention Programs, a private nonprofit corporation under the laws of the state of Minnesota, for services related to the project entitled, "Community Response to Co-occurrence of Sexual & Domestic Violence" funded by a grant from the U.S. department of justice, office of violence against women, with the city of Duluth as fiscal agent, in an amount not to exceed \$62,953.65, inclusive of a five percent hold back,

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

payable from Fund 215-200-2280-5310 (Duluth police grant programs, police, Violence Against Women Act 07-09).

Resolution 11-0570 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-1114-23, with Program for Aid to Victims of Sexual Assault, a private nonprofit corporation under the laws of the state of Minnesota, for services related to the project entitled, "Community Response to Co-occurrence of Sexual & Domestic Violence" funded by a grant from the U.S. department of justice, office of violence against women, with the city of Duluth as fiscal agent, in an amount not to exceed \$137,642.65, inclusive of a five percent hold back, payable from Fund 215-200-2280-5310 (Duluth police grant programs, police, Violence Against Women Act 07-09).

Resolution 11-0571 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-1114-24, with Mending the Sacred Hoop, Inc., a private nonprofit corporation under the laws of the state of Minnesota, for services related to the project entitled, "Community Response to Co-occurrence of Sexual & Domestic Violence" funded by a grant from the U.S. department of justice, office of violence against women, with the city of Duluth as fiscal agent, in an amount not to exceed \$3,312.65, inclusive of a five percent hold back, payable from Fund 215-200-2280-5310 (Duluth police grant programs, police, Violence Against Women Act 07-09).

Resolution 11-0573 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-1114-25, with the St. Louis County attorney's office, for services related to the project entitled, "Community Response to Co-occurrence of Sexual & Domestic Violence" funded by a grant from the U.S. department of justice, office of violence against women, with the city of Duluth as fiscal agent, in an amount not to exceed \$9,500, inclusive of a five percent hold back, payable from Fund 215-200-2280-5447 (Duluth police grant programs, police, Violence Against Women Act 07-09).

Resolution 11-0574 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, the city council hereby approves waiving parking fees for the medical district parking ramp facility and the tech village parking ramp facility from 5:00 p.m. until 12:00 a.m. on November 18, 2011, during the Christmas City of the North parade, and from 5:00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

p.m. until 12:00 a.m. on November 19, 2011, through December 26, 2011, during Bentleyville Tour of Lights 2011.

FURTHER RESOLVED, that the city council hereby approves waiving parking meter fees at all Downtown parking meters from 5:30 p.m. until 12:00 a.m. on November 18, 2011, during the Christmas City of the North parade, and from 5:30 p.m. until 12:00 a.m. on November 19, 2011, through December 26, 2011, during Bentleyville Tour of Lights 2011.

Resolution 11-0575 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials re hereby authorized to contract with MAVO Systems, Inc., for the abatement/disposal of asbestos, lead and miscellaneous hazardous waste on demolition properties in accordance with specifications prepared by the city's consultant, Carlson McCain, Inc., and the vendor's low bid of \$53,460, payable as follows:

Amount	Fund	Department/Agency	Division	Object
\$31,460	110 general	132 (planning and construction services)	1304 (construction services/inspection)	5453 (building demolition)
\$22,000	110 general	150 (fire)	1503 (Life safety)	5441 (other services/charges)

Resolution 11-0578 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Viele Contracting, Inc., for the demolition of six structures at various city locations for the building safety office in accordance with approved specifications and the vendor's low bid of \$51,681, payable from General Fund 110, Department/Agency 132 (planning and construction services), Organization 1304 (construction services and inspection), Object 5453 (building demolition).

Resolution 11-0579 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into Amendment No. 1 to Grant Agreement No. 2008-PSGP-00802 from the Minnesota department of public safety, homeland security and emergency management division, a copy of which grant agreement amendment is on file in the office of the city clerk as Public Document No. 11-1114-26, extending the term of said grant through July 31, 2012.

Resolution 11-0581 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute an agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-1114-27, with St. Louis County pursuant to a FY 2010 operation stone garden grant from the United States department of homeland security, bureau of customs and

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

border protection, under which grant agreement the city shall perform services to protect and secure the international border and port of entry between St. Louis County and Canada from March 7, 2011, through July 31, 2013.

FURTHER RESOLVED, that the proper city officials are hereby authorized to accept reimbursement from St. Louis County for stated services in an amount not to exceed \$30,810.25, funds to be deposited in Fund Number 215-200-2297-4210-02 (Duluth police grant programs, police, 2009 Operation Stone Garden).

Resolution 11-0582 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a grant from the state of Minnesota, department of commerce, in the amount of \$97,456, such funds to be used to employ an auto theft investigator within the Duluth police department, and to execute a grant agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-1114-28, funds to be deposited in Fund No. 215-200-2266-4220-02 (Duluth police grant programs, police, Minnesota auto theft grant).

Resolution 11-0583 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a grant from the state of Minnesota, department of public safety, in the amount of \$91,000, such funds to be used to reimburse the Duluth police department and other Lake Superior traffic enforcement team participants for overtime reimbursement for traffic enforcement of speed, distracted and impaired driving and passenger safety, and to execute a grant agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-1114-29, funds to be deposited in Fund 215-200-2292-4210-02 (Duluth police grant programs, police, 2010 pilot enforcement project), all reimbursement payments shall be paid from Fund 215-200-2292-5447 (Duluth police grant programs, police, 2010 pilot enforcement project).

Resolution 11-0588 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that in accordance with Section 33-125 of the Duluth City Code, 1959, as amended, the city council hereby indicates that on Monday, November 28, 2011 at 7:00 PM in the council chamber on the third floor of City Hall, the council will conduct a public hearing regarding whether to add various streets in the vicinity of the new Duluth East High School to the existing residential permit parking zone, as manifested by the map on Public Document No. 11-1114-30.

FURTHER RESOLVED, that the city clerk is hereby directed to mail notice of such hearing by addressing such notice to the occupant at each address within or abutting the parking areas of the street proposed to be so designated.

Resolution 11-0609 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

RESOLVED, that pursuant to Section 33-84 of the Duluth City Code, 1959, as amended, the parking area on the north side of Superior Street between 42nd and 43rd avenues East be posted no parking 2 AM to 6 AM.

Resolution 11-0610 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute a three year agreement with the John Beargrease Sled Dog Marathon, Inc., substantially in the form of that on file in the office of the city clerk as Public Document No. 11-1114-31, for the use of the Riley Road location for the start of the John Beargrease Sled Dog Marathon.

Resolution 11-0569 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 11-0584, providing for the issuance, sale and delivery of \$1,870,000 general obligation capital improvement bonds, Series 2011A; establishing the terms and form thereof; creating a debt service fund therefor; and awarding the sale thereof, was introduced.

Councilor Stauber stated that he would be opposing all the bonding resolutions because he did not feel the city should be borrowing money.

Resolution 11-0584 was adopted as follows:

BE IT RESOLVED, by the city council (the "City Council") of the city of Duluth, St. Louis County, Minnesota (the "City"), as follows:

Section 1. Purpose and Authorization.

1.01 Under and pursuant to the provisions of Minnesota Statutes, Section 475.521 (the "Act") and Chapter 475, the City is authorized to issue its general obligation bonds to fund capital improvements pursuant to an approved capital improvement plan.

1.02 (a) Pursuant to the Act, the City Council has authorized preparation of a capital improvement plan for the years 2011 through 2015 (the "Plan").

(b) The City Council held a public hearing on the proposed Plan and approved the Plan on December 6, 2010.

1.03 (a) On January 10, 2011, the City Council held a public hearing on the issuance of bonds in an amount not to exceed \$2,275,000 to provide funds for the following projects: for improvements to eligible facilities under the Act, to buildings citywide including furnace and boilers, a storage building, security and entry systems and facility needs priorities related to energy improvements; improvements to city hall including remodeling projects and window replacements; improvements to fire department facilities including remodeling and window replacements; a new public safety communications system; an upgrade of the library's mechanical systems (collectively, the "Project"). Each element of the Project is a capital improvement within the meaning of the Act.

(b) Pursuant to resolution of the City Council adopted on January 10, 2011, the City Council has determined that it is necessary and expedient to issue general obligation capital improvement bonds in an amount not to exceed \$2,275,000 of the City to provide funds to finance the Project and for payment of the costs of issuing such bonds.

(c) A notice of intent to issue such bonds was published in accordance with the Act on January 13, 2011.

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

(d) No petition calling for a vote on the proposed issuance of such bonds, as permitted by the Act, has been filed with the city clerk.

(e) The City Council has determined that it is necessary and expedient to issue \$1,870,000 General Obligation Capital Improvement Bonds, Series 2011A, of the City (the "Bonds") pursuant to the above-described authority, to provide funds to finance the Project and for payment of the costs of issuing the Bonds.

(f) The maximum amount of principal and interest to become due in any year on the Bonds and all the outstanding bonds issued by the City pursuant to Section 475.521, subd. 4 of the Act will not exceed \$8,851,502, which is an amount equal to 0.16% of taxable market value of property in the City for taxes payable in 2011.

(g) Public Financial Management, Inc., financial consultant to the City, has given notification by mail, facsimile, electronic data transmission or other form of communication common to the municipal bond trade to at least five firms determined by Public Financial Management, Inc. to be prospective bidders on the Bonds at least two days (omitting Saturdays, Sundays and legal holidays) before the date set for receipt of bids on the Bonds.

1.04 Pursuant to such solicitation for bids for the sale of the Bonds, the City Council has received and considered all bids presented pursuant to the official terms of offering and has determined that the most favorable bid is that of Robert W. Baird & Co., Inc. of Milwaukee, Wisconsin (the "Purchaser"), to purchase the Bonds at a cash price of \$1,924,566.85, and upon condition that the Bonds mature and bear interest at the times and annual rates set forth in Section 2. The City, after due consideration, finds such offer reasonable and proper and the offer of the Purchaser is hereby accepted. Upon receipt of the good faith deposit, the mayor and the city clerk are authorized and directed to execute on the part of the City a contract for the sale of the Bonds in accordance with the Purchaser's bid. The city treasurer is directed to deposit the good faith check of the successful bidder. In the event the Purchaser fails to provide the good faith deposit in accordance with the Official Terms of Offering, the mayor shall reject the Purchaser's bid and may award the sale of the Bonds to the bidder with the next best bid, or if such next best bidder fails to enter into a contract for sale of the Bonds and fails to satisfy such deposit requirements, the mayor is authorized to schedule a sale of the Bonds in substantial conformance with the Official Terms of Offering. All actions of the mayor and the clerk and Public Financial Management, Inc., independent financial advisor to the City, taken with regard to the sale of the Bonds are hereby ratified and approved.

### Section 2. Terms of Bonds.

2.01 The Bonds to be issued hereunder shall be dated the date of delivery, as the date of original issue, shall be issued in the denomination of \$5,000 each, or any integral multiple thereof, in fully registered form and lettered and numbered R-1 and upward. The Bonds shall mature on February 1 in the respective years and amounts and shall bear interest at the annual rates stated as follows:

<b>Year</b>	<b>Amount</b>	<b>Interest Rate</b>
2013	\$155,000	3.00%
2014	170,000	3.00%
2015	175,000	3.00%
2016	180,000	3.00%
2017	185,000	3.00%
2018	190,000	3.00%
2019	195,000	3.00%
2020	200,000	3.00%

**PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011**

---

2021	205,000	3.00%
2022	215,000	3.00%

2.02 The Bonds are not subject to optional redemption and prepayment before maturity.

2.03 Interest on the Bonds shall be payable semiannually on February 1 and August 1 in each year (each referred to herein as an "Interest Payment Date"), commencing August 1, 2012. Interest will be computed on the basis of a 360-day year of twelve 30-day months and will be rounded pursuant to the rules of the municipal securities rulemaking board. The Bond Registrar designated below shall make all interest payments with respect to the Bonds by check or draft mailed to the registered owners of the Bonds shown on the bond registration records maintained by the Bond Registrar at the close of business on the 15<sup>th</sup> day (whether or not a business day) of the month next preceding the Interest Payment Date at such owners' addresses shown on such bond registration records.

2.04 (a) The Bonds shall be prepared for execution in accordance with the approved form and shall be signed by the manual or facsimile signature of the mayor and attested by the manual or facsimile signature of the city clerk. In case any officer whose signature or a facsimile of whose signature shall appear on the Bonds shall cease to be an officer before delivery of the Bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, as if he or she had remained in office until delivery.

(b) The city clerk is authorized and directed to obtain a copy of the approving legal opinion of Fryberger, Buchanan, Smith & Frederick, P.A. of Duluth, Minnesota, and cause the opinion to be attached to each Bond.

2.05 The City hereby appoints Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as registrar, authenticating agent, paying agent and transfer agent for the Bonds (such bank or its successor is herein referred to as the "Bond Registrar"). To provide for the Bond Registrar services, the mayor and the clerk are authorized and directed to execute a bond registrar/paying agent agreement substantially in the form of the agreement currently on file in the office of the city clerk as Public Document No. 04-0219-02. No Bond shall be valid or obligatory for any purpose until the Bond Registrar's authentication certificate on such Bond, substantially set forth in Section 2.11 hereof, shall have been duly executed by an authorized representative of the Bond Registrar. Authentication certificates on different Bonds need not be signed by the same representative. The manual signature of one officer of the City or the executed authentication certificate on each Bond shall be conclusive evidence that it has been authenticated and delivered under this resolution.

2.06 (a) In order to make the Bonds eligible for the services provided by DTC, the City has previously agreed to the applicable provisions set forth in the blanket issuer letter of representations which has been executed by the City and DTC (the "Representation Letter").

(b) Notwithstanding any provision herein to the contrary, so long as the Bonds shall be in Book-Entry Form, the provisions of this Section 2.06 shall govern.

(c) All of the Bonds shall be registered in the name of Cede & Co., as nominee for DTC. Payment of interest on and principal of any Bond registered in the name of Cede & Co. shall be made by wire transfer or New York Clearing House or equivalent same day funds by 10:00 a.m. CT or as soon as possible thereafter following the Bond Registrar's receipt of funds from the City on each Interest Payment Date to the account of Cede & Co. on each Interest Payment Date at the address indicated in or pursuant to the Representation Letter.

(d) DTC (or its nominees) shall be and remain recorded on the Bond Register as the holder of all Bonds which are in Book-Entry Form. No transfer of any Bond in Book-Entry

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

Form shall be made, except from DTC to another depository (or its nominee) or except to terminate the Book-Entry Form. All Bonds of such stated maturity of any Bonds in Book-Entry Form shall be issued and remain in a single bond certificate registered in the name of DTC (or its nominee); provided, however, that upon termination of the Book-Entry Form pursuant to the Representation Letter, the City shall, upon delivery of all Bonds of such series from DTC, promptly execute, and the Bond Registrar shall thereupon authenticate and deliver, Bonds of such series to all persons who were beneficial owners thereof immediately prior to such termination; and the Bond Registrar shall register such beneficial owners as holders of the applicable Bonds.

The Bond Registrar shall maintain accurate books and records of the principal balance, if any, of each such outstanding Bond in Book-Entry Form, which shall be conclusive for all purposes whatsoever. Upon the authentication of any new bond in Book-Entry Form in exchange for a previous bond, the Bond Registrar shall designate thereon the principal balance remaining on such bond according to the Bond Registrar's books and records.

No beneficial owner (other than DTC) shall be registered as the holder on the Bond Register for any Bond in Book-Entry Form or entitled to receive any bond certificate. The beneficial ownership interest in any Bond in Book-Entry Form shall be recorded, evidenced and transferred solely in accordance with the Book-Entry System.

Except as expressly provided to the contrary herein, the City and the Bond Registrar may treat and deem DTC to be the absolute owner of all Bonds of each series which are in Book-Entry Form (i) for the purpose of payment of the principal of and interest on such Bond, (ii) for the purpose of giving notices hereunder, and (iii) for all other purposes whatsoever.

(e) The City and the Bond Registrar shall each give notices to DTC of such matters and at such times as are required by the Representation Letter, including the following:

(i) with respect to notices of redemption; and

(ii) with respect to any other notice required or permitted under this Bond

Resolution to be given to any holder of a Bond.

All notices of any nature required or permitted hereunder to be delivered to a holder of a Bond in Book-Entry Form shall be transmitted to beneficial owners of such Bonds at such times and in such manners as shall be determined by DTC, the participants and indirect participants in accordance with the Book-Entry System and the Representation Letter.

(f) All payments of principal, redemption price of and interest on any Bonds in Book-Entry Form shall be paid to DTC (or Cede & Co.) in accordance with the Book-Entry System and the Representation Letter in same day funds by wire transfer.

2.07 The City shall cause to be kept by the Bond Registrar a bond register in which, subject to such reasonable regulations as the Bond Registrar may prescribe, the City shall provide for the registration of the Bonds and the registration of transfers of the Bonds entitled to be registered or transferred as herein provided. In the event of the resignation or removal of the Bond Registrar or its incapability of acting as such, the bond registration records shall be maintained at the office of the successor Bond Registrar as may be appointed by the city council. Upon surrender for transfer of any Bond at the principal corporate office of the Bond Registrar, the City shall execute and the Bond Registrar shall authenticate, if required by law or this Resolution, and deliver, in the name(s) of the designated transferee or transferees, one or more new Bonds of the like aggregate principal amount, as requested by the transferor.

2.08 Each Bond delivered upon transfer of or in exchange for or in lieu of any other Bond shall carry all of the rights to interest, accrued and unpaid and to accrue, which are carried by such other Bond. Each Bond shall be dated by the Bond Registrar as of the date of its authentication. The City and the Bond Registrar shall not be required to make any transfer

**PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011**

---

or exchange of any Bonds called for redemption or to make any such exchange or transfer of the Bonds during the 15 days next preceding the date of the mailing of the notice of redemption in the case of a proposed redemption of the Bonds.

2.09 The City and the 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 interest on such Bond and for all other purposes whatsoever, whether or not such Bond be overdue, and neither the City nor the Bond Registrar shall be affected by notice to the contrary.

2.10 The principal of and interest on the Bonds shall be payable by the Bond Registrar, as paying agent, in such funds as are legal tender for the payment of debts due the United States of America. The City shall pay the reasonable and customary charges of the Bond Registrar for the disbursement of principal and interest.

2.11 The Bonds shall be printed or typewritten in substantially the following form:

UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
COUNTY OF ST. LOUIS  
CITY OF DULUTH

GENERAL OBLIGATION CAPITAL IMPROVEMENT BOND, SERIES 2011A

R-\_\_\_\_\_ \$\_\_\_\_\_

Rate	Maturity	Date of Original Issue	CUSIP
%	February 1, _____	November __, 2011	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

The City of Duluth, in St. Louis County, Minnesota (the "City"), for value received, promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above on the maturity date specified above, and to pay interest on said principal amount to the registered owner hereof from the Date of Original Issue, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, until the principal amount is paid or discharged, said interest being at the rate per annum specified above. Interest is payable semiannually on February 1 and August 1 of each year (each referred to herein as an "Interest Payment Date") commencing on August 1, 2012. Both principal and interest are payable in lawful money of the United States of America by check or draft at the office of Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as the registrar, paying agent, transfer agent and authenticating agent (the "Bond Registrar"), or at the office of such successor bond registrar as may be designated by the City Council. The Bond Registrar shall make the interest payment with respect to this Bond directly to the registered owner hereof shown on the bond registration records maintained on behalf of the City by the Bond Registrar at the close of business on the 15<sup>th</sup> day of the month next preceding the Interest Payment Date (whether or not a business day), at such owner's address shown on said bond registration records, without, except for payment of principal on the Bond, the presentation or surrender of this Bond, and all such payments shall discharge the obligations of the City to the extent of the payments so made. Payment of principal shall be made upon presentation and surrender of this Bond to the Bond Registrar when

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

due. For the prompt and full payment of such principal and interest as they become due, the full faith and credit of the City are irrevocably pledged.

This Bond is one of a series issued by the City in the aggregate amount of \$1,870,000, all of like date and tenor, except as to number, amount, maturity date, redemption privilege and interest rate, pursuant to the authority contained in Minnesota Statutes, Section 475.521 and Chapter 475, the City's approved Capital Improvement Plan for the years 2011 through 2015 (the "Plan") and all other laws thereunto enabling, and pursuant to an authorizing resolution adopted by the governing body of the City on November 14, 2011 (the "Resolution"). This Bond is issued for the purpose of providing funds for capital improvement projects designated by the City Council and pursuant to the Plan and the costs of issuing the Bonds, as more fully set forth in the Plan and the Resolution and for the payment of part of the interest cost of the Bonds. The City has levied a direct, annual ad valorem tax upon all taxable property within the City which shall be extended upon the tax rolls for the years and in the amounts sufficient to produce sums not less than five percent in excess of the amounts of principal and interest on the Bonds, as such principal and interest respectively come due.

The Bonds are not subject to optional redemption and prepayment before maturity.

The Bonds of this series are issued as fully registered bonds without coupons, in the denomination of \$5,000 or any integral multiple thereof. Subject to limitations set forth in the Resolution, this Bond is transferable by the registered owner hereof upon surrender of this Bond for transfer at the principal corporate office of the Bond Registrar, duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Bond Registrar and executed by the registered owner hereof or the owner's attorney duly authorized in writing. Thereupon the City shall execute and the Bond Registrar shall authenticate, if required by law and the Resolution, and deliver, in exchange for this Bond, one or more new fully registered bonds in the name of the transferee, of an authorized denomination, in an aggregate principal amount equal to the unpaid principal amount of this Bond, of the same maturity and bearing interest at the same rate.

IT IS CERTIFIED AND RECITED that all acts and conditions required by the Charter of the City and by the laws and the Constitution of the State of Minnesota to be done, and to exist precedent to and in the issuance of this Bond in order to make it a valid and binding general obligation of the City in accordance with its terms, have been done and do exist in form, time, and manner as so required; that all taxable property within the corporate limits of the City is subject to the levy of ad valorem taxes to the extent needed to pay the principal hereof and the interest hereon when due, without limitation as to rate or amount; and that the issuance of this Bond does not cause the indebtedness of the City to exceed any constitutional, statutory or charter limitation.

**PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011**

---

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Bond Registrar's Authentication Certificate hereon shall have been executed by the Bond Registrar by one of its authorized representatives.

IN WITNESS WHEREOF, the City of Duluth, by its City Council, has caused this Bond to be executed in its name by the manual or facsimile signatures of the Mayor and the City Clerk.

Attest:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

Date of Authentication: \_\_\_\_\_

**BOND REGISTRAR'S AUTHENTICATION CERTIFICATE**

The Bond Registrar confirms that the books reflect the ownership of the Bond registered in the name of the owner named above in the principal amount and maturing on the date stated above and this Bond is one of the Bonds of the series issued pursuant to the Resolution hereinabove described.

WELLS FARGO BANK, NATIONAL ASSOCIATION  
Minneapolis, Minnesota

By \_\_\_\_\_  
Authorized Representative

**REGISTRATION CERTIFICATE**

This Bond must be registered as to both principal and interest in the name of the owner on the books to be kept by Wells Fargo Bank, National Association of Minneapolis, Minnesota, as Bond Registrar. No transfer of this Bond shall be valid unless made on said books by the registered owner or the owner's attorney thereunto duly authorized and similarly noted on the registration books. The ownership of the unpaid principal balance of this Bond and the interest accruing thereon is registered on the books of Wells Fargo Bank, National Association, as Bond Registrar, in the name of the registered owner last noted below.

Date  
11/\_\_\_/2011

Registered Owner  
Cede & Co.  
c/o The Depository Trust Company  
55 Water Street  
New York, NY 10041  
Federal Taxpayer I.D. No.:  
13-2555119

Signature of  
Bond Registrar  
\_\_\_\_\_

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns, and transfers unto \_\_\_\_\_

\_\_\_\_\_  
(Name and Address of Assignee)

\_\_\_\_\_  
Social Security or other  
Identifying Number of  
\_\_\_\_\_  
Assignee

the within Bond and all rights thereunder and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_.

\_\_\_\_\_  
NOTICE: The signature of this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

\_\_\_\_\_  
(Bank, Trust Company, member of  
National Securities Exchange)

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

Section 3. Revenues, Accounts and Covenants.

3.01 The City has created a separate account designated the 2011 Capital Improvement Bonds Construction Account (the "Construction Account") within its Capital

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

Improvement Project Fund 450, Agency 030, to which there shall be credited the proceeds of the Bonds, less discount, together with any additional funds, which may be available and are appropriated for the Project. This account shall be used to pay, or reimburse, expenses duly approved and allowed, which, under generally accepted accounting principles, constitute capital expenditures for the Project and to pay the costs of issuance for the Bonds.

3.02 A separate debt service account is hereby created and designated as the "2011 Capital Improvement Bonds Debt Service Account" (the "Debt Service Fund") within the City's Debt Service Fund. The money in the Debt Service Fund shall be used for no purpose other than the payment of principal and interest on the Bonds; provided, however, that if any payment of principal or interest shall become due when there is not sufficient money in the Debt Service Fund, the treasurer shall pay the same from any other funds of the City and said funds shall be reimbursed for such advance out of the proceeds of the taxes hereinafter levied when collected. Into the Debt Service Fund shall be credited the rounding amount of \$4,166.85, the amount of accrued interest paid by the Purchaser upon closing and delivery of the Bonds, if any, and the ad valorem taxes levied pursuant to Section 3.03 hereof.

3.03 (a) The full faith and credit and taxing power of the City are hereby irrevocably pledged for the prompt and full payment of the principal of and interest on the Bonds, as such principal and interest respectively become due. To provide monies for the payment of the principal and interest on the Bonds, there is hereby levied a direct, annual ad valorem tax upon all taxable property within the City which shall be extended upon the tax rolls and collected with and part of the other general property taxes of the City for the years and in the amounts as follows:

<b>Levy Year</b>	<b>Collection Year</b>	<b>Tax Levy</b>
2011	2012	\$231,800
2012	2013	232,523
2013	2014	232,418
2014	2015	232,155
2015	2016	231,735
2016	2017	231,158
2017	2018	230,423
2018	2019	229,530
2019	2020	228,480
2020	2021	232,523

Said levies are such that if collected in full they will produce at least five percent in excess of the amount needed to meet when due the principal and interest on the Bonds.

Such tax levies shall be irrevocable as long as any of the Bonds issued hereunder are outstanding and unpaid; provided, however, that prior to approval of its budget each year (approximately December 1) while any Bonds issued hereunder remain outstanding, the city council shall reduce or cancel the above levies to the extent of an irrevocable appropriation to the Debt Service Fund of monies actually on hand for payment of the principal and interest payable in the ensuing year and shall direct the county auditor to reduce the levy for such calendar year by that amount.

(b) If the balance in the Debt Service Fund is ever insufficient to pay all principal and interest then due on the Bonds, the treasurer shall nevertheless provide sufficient money from any other funds of the City which are available for that purpose, and such other funds shall be reimbursed from the Debt Service Fund when the balance therein is sufficient.

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

3.04 Proceeds of the Bonds on deposit in the Construction Account and in the Debt Service Fund may, in the discretion of the city treasurer, be invested in securities permitted by Minnesota Statutes, Chapter 118A; provided, that any such investment shall mature at such time and in such amounts as will permit the payment of costs for the improvement program and/or payment of the principal and interest on the Bonds when due.

### Section 4. Tax Covenants; Miscellaneous.

4.01 The city council covenants and agrees with the holders of the Bonds that the City will (i) take all action on its part necessary to cause the interest on the Bonds to be excluded from gross income for federal income taxes including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the Bonds and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the Bonds to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the Bonds and investment earnings thereon on certain specified purposes.

4.02 (a) 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 for a reasonable temporary period until such proceeds are needed for the purpose for which the Bonds were issued. To this effect, any proceeds of the Bonds and any sums from time to time held in the Debt Service Fund (or any other City account which will be used to pay principal and interest to become due on the Bonds) in excess of amounts which under the applicable federal arbitrage regulations may be invested without regard as 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 of minor portion made available under the federal arbitrage regulations.

(b) In addition, the proceeds of the Bonds and money in the Debt Service 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").

(c) The City hereby covenants not to use the proceeds of the Bonds, or to cause or permit them to be used, 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.

4.03 (a) Pursuant to Section 1.148-7(d) of the Treasury Regulations, relating to exception from rebate, the City hereby represents that with respect to the gross proceeds of the Bonds, the following schedule is expected to be met: (i) at least 15% of the gross proceeds of the Bonds will be allocated to expenditures for the governmental purpose of the Bonds within six months of the date of issue of the Bonds; (ii) at least 60% of such proceeds will be allocated for such purposes within the one year period of such date; and (iii) 100% of such proceeds will be allocated for such purposes within the 18-month period beginning on such date; subject to an exception for reasonable retainage of 5% of the available proceeds of the Bonds, and that 100% of the available proceeds of the Bonds will be allocated within 30 months from the date of issue of the Bonds.

(b) 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 section.

4.04 In addition to the Bonds, the City is selling, pursuant to a single offering document and on the same date, the following tax-exempt obligations: General Obligation

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

Capital Equipment Notes, Series 2011B (the "Notes"), General Obligation Gas Utility Revenue Refunding Bonds, Series 2011C (the "Series 2010C Bonds"), and General Obligation Sewer Utility Revenue Refunding Bonds, Series 2011D (the "Series 2011D Bonds"). The Bonds will not be paid out of substantially the same source of funds as the Series 2011C Bonds and the Series 2011D Bonds; consequently, the Bonds will not be combined with them for a single issue. However, the Bonds and the Notes are expected to be paid from substantially the same source of funds and are an issue under Treasury Regulations Section 1.150-1(c).

Section 5. Continuing Disclosure. The City acknowledges that the Bonds are subject to the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (17 C.F.R. §240.15c2-12) (the "Rule"). The Rule governs the obligations of certain underwriters to require that issuers of municipal bonds enter into agreements for the benefit of the bondholders to provide continuing disclosure with respect to the Bonds. To provide for the public availability of certain information relating to the Bonds and the security therefor and to permit underwriters of the Bonds to comply with the Rule, which will enhance the marketability of the Bonds, the mayor and the clerk are hereby authorized and directed to execute a continuing disclosure certificate substantially in the form of the certificate currently on file in the office of the city clerk as Public Document No. 11-1114-32.

Section 6. Certificate of Proceedings.

6.01 The city clerk is directed to file with the county auditor a certified copy of this resolution and such other information as the county auditor may require, and to obtain from the county auditor a certificate stating that the Bonds herein authorized have been duly entered on his register.

6.02 The officers of the City are authorized and directed to prepare and furnish to the Purchaser and to bond counsel certified copies of all proceedings and records of the City relating to the authorization and issuance of the Bonds and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the Bonds as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the City as to the correctness of facts recited therein and the actions stated therein to have been taken.

6.03 The officers of the City are hereby authorized and directed to certify that they have examined the official statement prepared and circulated in connection with the sale of the Bonds and that to the best of their knowledge and belief the official statement is a complete and accurate representation of the facts and representations made therein as of the date of the official statement.

Resolution 11-0584 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Nays: Councilors Fosle and Stauber -- 2

Absent: Councilor Fedora -- 1

Approved November 14, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, by the city council of the city of Duluth, Minnesota (the "City"), as follows:

Section 1. Notes Purpose and Authorization.

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

1.01 Under and pursuant to the provisions of Minnesota Statutes, Sections 410.32 and 412.301 and Minnesota Statutes, Chapter 475 (collectively, the "Act"), and the City Charter, the City is authorized to issue its general obligation capital equipment notes to provide funds to purchase capital equipment having an expected useful life at least as long as the term of the capital equipment notes.

1.02 The city council adopted Resolution No. 10-0599 on December 6, 2010 (the "Intent Resolution"), declaring the intention of the City to issue such capital equipment notes in the amount of approximately \$4,390,000 to finance the purchase of capital equipment authorized by the Act and to pay for costs of issuance of such capital equipment notes. It is hereby certified that the amount of the capital equipment notes to be issued by the City pursuant to this resolution is less than 0.25% of the market value of the taxable property of the City.

1.03 The city council hereby determines that it is necessary and expedient to issue \$3,095,000 General Obligation Capital Equipment Notes, Series 2011B, of the City (the "Notes") to provide funds to purchase capital equipment authorized by the Act, to pay certain expenses incurred in the issuance of the Notes and to pay a portion of the interest cost of the issue, as allowed by Minnesota Statutes, Section 475.56. The capital equipment to be purchased with the proceeds of the Notes will have a useful life of more than the term of the Notes.

1.04 Public Financial Management, Inc., financial consultant to the City, has given notification by mail, facsimile or electronic data transmission to at least five firms determined by Public Financial Management, Inc. to be prospective bidders on the Notes at least two days (omitting Saturdays, Sundays and legal holidays) before the date set for receipt of bids on the Notes.

1.05 Pursuant to such solicitation for bids for the sale of the Notes, the city council has received and considered all bids presented pursuant to the official terms of offering and has determined that the most favorable bid is that of Hutchinson, Shockey, Erley & Co. of Chicago, Illinois (the "Purchaser"), to purchase the Notes at a cash price of \$3,134,542.72, upon condition that the Notes mature and bear interest at the times and annual rates set forth in Section 2. The City, after due consideration, finds such bid reasonable and proper and the bid of the Purchaser is hereby accepted. Upon receipt of the good faith deposit, the mayor and the city clerk are authorized and directed to execute on the part of the City a contract for the sale of the Notes in accordance with the Purchaser's bid. The city treasurer is directed to deposit the good faith check of the successful bidder. In the event the Purchaser fails to provide the good faith deposit in accordance with the Official Terms of Offering, the mayor shall reject the Purchaser's bid and may award the sale of the Notes to the bidder with the next best bid, or if such next best bidder fails to enter into a contract for sale of the Notes and fails to satisfy such deposit requirements, the mayor is authorized to schedule a sale of the Notes in substantial conformance with the Official Terms of Offering. All actions of the mayor and the clerk and Public Financial Management, Inc., independent financial advisor to the City, taken with regard to the sale of the Notes are hereby ratified and approved.

### Section 2. Terms, Execution and Delivery of the Notes.

2.01 The Notes to be issued hereunder shall be dated the date of delivery, as the date of original issue, shall be issued in the denomination of \$5,000 each, or any integral multiple thereof, in fully registered form and lettered and numbered R-1 and upward. The Notes shall mature on February 1 in the respective years and amounts stated and shall bear interest as follows:

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

<b>Year</b>	<b>Amount</b>	<b>Interest Rate</b>
2013	\$585,000	2.00%
2014	610,000	2.00%
2015	620,000	2.00%
2016	635,000	2.00%
2017	645,000	2.00%

2.02 The Notes are not subject to redemption and prepayment before maturity.

2.03 The interest shall be payable semiannually on February 1 and August 1 and in each year (each referred to herein as an "Interest Payment Date"), commencing August 1, 2012. Interest will be computed on the basis of a 360-day year of twelve 30-day months and will be rounded pursuant to the rules of the Municipal Securities Rulemaking Board. The Bond Registrar designated below shall make all interest payments with respect to the Notes by check or draft mailed to the registered owners of the Notes shown on the bond registration records maintained by the Bond Registrar at the close of business on the 15<sup>th</sup> day (whether or not a business day) of the month next preceding the Interest Payment Date at such owners' addresses shown on such bond registration records.

2.04 The Notes shall be prepared for execution in accordance with the approved form and shall be signed by the manual or facsimile signature of the mayor and attested by the manual or facsimile signature of the city clerk. In case any officer whose signature or a facsimile of whose signature shall appear on the Notes shall cease to be an officer before delivery of the Notes, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, as if he or she had remained in office until delivery. The city clerk is authorized and directed to obtain a copy of the proposed approving legal opinion of Fryberger, Buchanan, Smith & Frederick, P.A., Duluth, Minnesota, which is to be complete and cause the opinion to be attached to each Note.

2.05 The city council hereby appoints Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as registrar, authenticating agent, paying agent and transfer agent for the Notes (such bank or its successor is herein referred to as the "Bond Registrar"). To provide for the Bond Registrar services, the mayor and the clerk are authorized and directed to execute a bond registrar/paying agent agreement substantially in the form of the agreement currently on file in the office of the city clerk as Public Document No. 04-0219-02. No Note shall be valid or obligatory for any purpose until the Bond Registrar's authentication certificate on such Note, substantially set forth in Section 2.11 hereof, shall have been duly executed by an authorized representative of the Bond Registrar. Authentication certificates on different Notes need not be signed by the same representative. The manual signature of one officer of the City or the executed authentication certificate on each Note shall be conclusive evidence that it has been authenticated and delivered under this resolution.

2.06 (a) In order to make the Notes eligible for the services provided by The Depository Trust Company, New York, New York ("DTC"), the City has previously agreed to the applicable provisions set forth in the blanket issuer letter of representations which has been executed by the City and DTC (the "Representation Letter").

(b) Notwithstanding any provision herein to the contrary, so long as the Notes shall be in Book-Entry Form, the provisions of this Section 2.06 shall govern.

(c) All of the Notes shall be registered in the name of Cede & Co., as nominee for DTC. Payment of interest on and principal of any Bond registered in the name of Cede & Co. shall be made by wire transfer or New York Clearing House or equivalent same day funds by 10:00 a.m. CT or as soon as possible thereafter following the Bond Registrar's receipt of funds

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

from the City on each Interest Payment Date to the account of Cede & Co. on each Interest Payment Date at the address indicated in or pursuant to the Representation Letter.

(d) DTC (or its nominees) shall be and remain recorded on the Bond Register as the holder of all Notes which are in Book-Entry Form. No transfer of any Bond in Book-Entry Form shall be made, except from DTC to another depository (or its nominee) or except to terminate the Book-Entry Form. All Notes of such stated maturity of any Notes in Book-Entry Form shall be issued and remain in a single note certificate registered in the name of DTC (or its nominee); provided, however, that upon termination of the Book-Entry Form pursuant to the Representation Letter, the City shall, upon delivery of all Notes of such series from DTC, promptly execute, and the Bond Registrar shall thereupon authenticate and deliver, Notes of such series to all persons who were beneficial owners thereof immediately prior to such termination; and the Bond Registrar shall register such beneficial owners as holders of the applicable Notes.

The Bond Registrar shall maintain accurate books and records of the principal balance, if any, of each such outstanding Note in Book-Entry Form, which shall be conclusive for all purposes whatsoever. Upon the authentication of any new note in Book-Entry Form in exchange for a previous note, the Bond Registrar shall designate thereon the principal balance remaining on such note according to the Bond Registrar's books and records.

No beneficial owner (other than DTC) shall be registered as the holder on the Bond Register for any Note in Book-Entry Form or entitled to receive any note certificate. The beneficial ownership interest in any Note in Book-Entry Form shall be recorded, evidenced and transferred solely in accordance with the Book-Entry System.

Except as expressly provided to the contrary herein, the City and the Bond Registrar may treat and deem DTC to be the absolute owner of all Notes of each series which are in Book-Entry Form (i) for the purpose of payment of the principal of and interest on such Note, (ii) for the purpose of giving notices hereunder, and (iii) for all other purposes whatsoever.

(e) The City and the Bond Registrar shall each give notices to DTC of such matters and at such times as are required by the Representation Letter, including the following:

(i) with respect to notices of redemption; and

(ii) with respect to any other notice required or permitted under this Bond Resolution to be given to any holder of a Note.

All notices of any nature required or permitted hereunder to be delivered to a holder of a Note in Book-Entry Form shall be transmitted to beneficial owners of such Notes at such times and in such manners as shall be determined by DTC, the participants and indirect participants in accordance with the Book-Entry System and the Representation Letter.

(f) All payments of principal, redemption price of and interest on any Notes in Book-Entry Form shall be paid to DTC (or Cede & Co.) in accordance with the Book-Entry System and the Representation Letter in same day funds by wire transfer.

2.07 The City shall cause to be kept by the Bond Registrar a bond register in which, subject to such reasonable regulations as the Bond Registrar may prescribe, the City shall provide for the registration of the Notes and the registration of transfers of the Notes entitled to be registered or transferred as herein provided. In the event of the resignation or removal of the Bond Registrar or its incapability of acting as such, the bond registration records shall be maintained at the office of the successor Bond Registrar as may be appointed by the city council. Upon surrender for transfer of any Note at the principal corporate office of the Bond Registrar, the City shall execute and the Bond Registrar shall authenticate, if required by law or this resolution, and deliver, in the name(s) of the designated transferee or transferees, one or more new Notes of the like aggregate principal amount, as requested by the transferor.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

2.08 Each Note delivered upon transfer of or in exchange for or in lieu of any other Note shall carry all of the rights to interest, accrued and unpaid and to accrue, which are carried by such other Note. Each Note shall be dated by the Bond Registrar as of the date of its authentication. The City and the Bond Registrar shall not be required to make any transfer or exchange of any Notes called for redemption or to make any such exchange or transfer of the Notes during the 15 days next preceding the date of the first publication of the notice of redemption in the case of a proposed redemption of the Notes.

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

2.10 The principal of and interest on the Notes shall be payable by the Bond Registrar, as paying agent, in such funds as are legal tender for the payment of debts due the United States of America. The City shall pay the reasonable and customary charges of the Bond Registrar for the disbursement of principal and interest.

2.11 The Notes shall be printed or typewritten in substantially the following form:

UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
COUNTY OF ST. LOUIS  
CITY OF DULUTH  
GENERAL OBLIGATION CAPITAL EQUIPMENT NOTE, SERIES 2011B

R-\_\_\_ \$\_\_\_\_\_

Interest			
Rate	Maturity Date	Date of Original Issue	CUSIP
	February 1,	November __,	
	_____	2011	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

The City of Duluth, in St. Louis County, Minnesota (the "City"), for value received, promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above on the maturity date specified above, and to pay interest on said principal amount to the registered owner hereof from the Date of Original Issue, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, until the principal amount is paid or discharged, said interest being at the rate per annum specified above. Interest is payable semiannually on February 1 and August 1 of each year (each referred to herein as an "Interest Payment Date") commencing on August 1, 2012. Both principal and interest are payable in lawful money of the United States of America by check or draft at the office of Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as the registrar, paying

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

agent, transfer agent and authenticating agent (the "Bond Registrar"), or at the office of such successor bond registrar as may be designated by the city council. The Bond Registrar shall make the interest payment with respect to this Note on the Interest Payment Date directly to the registered owner hereof shown on the bond registration records maintained on behalf of the City by the Bond Registrar at the close of business on the 15<sup>th</sup> day of the month next preceding the Interest Payment Date (whether or not a business day), at such owner's address shown on said bond registration records, without, except for payment of principal on the Note, the presentation or surrender of this Note, and all such payments shall discharge the obligations of the City to the extent of the payments so made. Payment of principal shall be made upon presentation and surrender of this Note to the Bond Registrar when due. For the prompt and full payment of such principal and interest as they become due, the full faith and credit of the City are irrevocably pledged.

This Note is one of a series issued by the City in the aggregate amount of \$3,095,000, all of like date and tenor, except as to number, amount, maturity date and interest rate, pursuant to the authority contained in Minnesota Statutes, Sections 410.32 and 412.301 and Chapter 475, the City Charter and all other laws thereunto enabling, and pursuant to an authorizing resolution adopted by the governing body of the City on November 14, 2011 (the "Resolution"), and is issued for the purpose of providing money, together with other available funds, for the purchase of capital equipment. The City has levied a direct, annual ad valorem tax upon all taxable property within the City which shall be extended upon the tax rolls for the years and in the amounts sufficient to produce sums not less than five percent in excess of the amounts of principal and interest on the Notes, as such principal and interest respectively come due. The Notes are not subject to redemption and prepayment before maturity.

The Notes of this series are issued as fully registered obligations without coupons, in the denomination of \$5,000 or any integral multiple thereof. Subject to limitations set forth in the Resolution, this Note is transferable by the registered owner hereof upon surrender of this Note for transfer at the principal corporate office of the Bond Registrar, duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Bond Registrar and executed by the registered owner hereof or the owner's attorney duly authorized in writing. Thereupon the City shall execute and the Bond Registrar shall authenticate, if required by law and this Resolution, and deliver, in exchange for this Note, one or more new fully registered Notes in the name of the transferee, of an authorized denomination, in an aggregate principal amount equal to the unpaid principal amount of this Note, of the same maturity and bearing interest at the same rate.

**PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011**

---

IT IS CERTIFIED AND RECITED that all acts and conditions required by the Constitution and laws of the State of Minnesota to be done, and to exist precedent to and in the issuance of this Note in order to make it a valid and binding general obligation of the City in accordance with its terms, have been done and do exist in form, time, and manner as so required; that all taxable property within the corporate limits of the City is subject to the levy of ad valorem taxes to the extent needed to pay the principal hereof and the interest thereon when due, without limitation as to rate or amount; and that the issuance of this Note does not cause the indebtedness of the City to exceed any constitutional or statutory limitation.

This Note shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Bond Registrar's Authentication Certificate hereon shall have been executed by the Bond Registrar by one of its authorized representatives.

IN WITNESS WHEREOF, the city of Duluth, by its city council, has caused this Note to be executed in its name by the facsimile signatures of the mayor and the city clerk.

Attest:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

Date of Authentication: \_\_\_\_\_

**BOND REGISTRAR'S AUTHENTICATION CERTIFICATE**

The Bond Registrar confirms that the books reflect the ownership of a Note registered in the name of the owner named above, in the principal amount stated above, and this Note is one of the Notes of the series issued pursuant to the Resolution hereinabove described.

WELLS FARGO BANK, NATIONAL ASSOCIATION  
Bond Registrar

By \_\_\_\_\_  
Authorized Representative

**REGISTRATION CERTIFICATE**

This Note must be registered as to both principal and interest in the name of the owner on the books to be kept by Wells Fargo Bank, National Association, as Bond Registrar. No transfer of this Note shall be valid unless made on said books by the registered owner or the owner's attorney thereunto duly authorized and similarly noted on the registration books. The ownership of the unpaid principal balance of this Note and the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

interest accruing thereon is registered on the books of Wells Fargo Bank, National Association, as Bond Registrar, in the name of the registered owner last noted below.

Date	Registered Owner	Signature of Bond Registrar
11/__/2011	Cede & Co. c/o The Depository Trust Company 55 Water Street New York, NY 10041 Federal Taxpayer I.D. No.: 13-2555119	_____

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns, and transfers unto \_\_\_\_\_

(Name and Address of Assignee)

\_\_\_\_\_ Social Security or Other  
\_\_\_\_\_ Identifying Number of Assignee

the within Note and all rights thereunder and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney to transfer the said Note on the books kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_.

\_\_\_\_\_

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Note in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

\_\_\_\_\_  
(Bank, Trust Company, member of National Securities Exchange)

Unless this Note is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any Note issued is

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

### Section 3. Covenants, Accounts and Representations.

3.01 The City has created a separate acquisition account within the Capital Equipment Fund 250 to which there shall be credited \$3,133,000 from the proceeds for the Notes, together with any additional funds which may be available and are appropriated for the capital equipment purchase program. This account shall be used only to pay or reimburse other City funds or accounts for "capital equipment," as described in Minnesota Statutes, Section 412.301, with an expected useful life of at least the term of the Notes, and costs of issuance of the Notes, as such payments become due. The City's intent is to acquire and finance the capital equipment listed in the Intent Resolution with the proceeds of the Notes.

3.02 (a) There shall be and is hereby levied a direct, annual, ad valorem tax upon all taxable property within the City, which shall be extended upon the tax rolls for the years and in amounts sufficient to produce sums not less than five percent in excess of the amounts of principal and interest on the Notes as such principal and interest respectively become due as follows:

<b>Levy Year</b>	<b>Collection Year</b>	<b>Tax Levy</b>
2011	2012	\$690,439
2012	2013	693,210
2013	2014	690,900
2014	2015	693,630
2015	2016	690,795

(b) A separate debt service account is hereby created and designated as the "2011 G.O. Capital Equipment Notes Debt Service Account" (the "Debt Service Fund") within the City's debt service fund. The money in the Debt Service Fund shall be used for no purpose other than the payment of principal and interest on the Notes; provided, however, that if any payment of principal or interest shall become due when there is not sufficient money in the Debt Service Fund, the treasurer shall pay the same from any other funds of the City and said funds shall be reimbursed for such advance out of the proceeds of the taxes hereinafter levied when collected. Into the Debt Service Fund shall be credited the amount of accrued interest, if any, and the rounding amount (\$1,542.72) paid by the Purchaser upon closing and delivery of the Notes.

3.03 If the balance in the Debt Service Fund is ever insufficient to pay all principal and interest then due on the Notes, the treasurer shall nevertheless provide sufficient money from any other funds of the City which are available for that purpose, and such other funds shall be reimbursed from the Debt Service Fund when the balance therein is sufficient. All proceeds of said taxes will be appropriated and paid when collected into the Debt Service Fund. Said taxes shall be irrevocable until the Notes and interest are fully paid, except that if the City in any year shall make an irrevocable appropriation to said accounts of monies actually on hand, the city clerk shall certify to the county auditor of St. Louis County the fact and the amount

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

thereof, and the county auditor shall reduce by the amount so certified the amount otherwise to be included in the rolls next thereafter prepared.

3.04 The full faith and credit and taxing power of the City are irrevocably pledged for the prompt and full payment of the Notes and the interest thereon, in accordance with the terms set forth in this resolution.

3.05 Proceeds of the Notes on deposit in the acquisition account created in Section 3.01 and in the Debt Service Fund may, in the discretion of the city treasurer, be invested in securities permitted by Minnesota Statutes, Section 118A; provided, that any such investment shall mature at such time and in such amounts as will permit the payment of costs for the equipment purchases and/or payment of the principal and interest on the Notes when due.

### Section 4. Tax Covenants.

4.01 The City covenants and agrees with the holders of the Notes that the City will (i) take all action on its part necessary to assure that the interest on the Notes will be excluded from gross income for federal income taxes including, without limitations, restricting, to the extent necessary, the yield on investments made with the proceeds of the Notes and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the Notes to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the Notes and investment earnings thereon on certain specified purposes.

4.02 (a) No portion of the proceeds of the Notes 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 (i) for a reasonable temporary period until such proceeds are needed for the purpose for which the Notes were issued, and (ii) in addition to the above, in an amount not greater than the lesser of five percent of the proceeds of the Notes or \$100,000. To this effect, any proceeds of the Notes and any sums from time to time held in the Debt Service Fund (or any other City account which will be used to pay principal and interest to become due on the Notes) in excess of amounts which under the applicable federal arbitrage regulations may be invested without regard as 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 of minor portion made available under the federal arbitrage regulations.

(b) In addition, the proceeds of the Notes and money in the Debt Service 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 Notes to be federally guaranteed within the meaning of Section 149(b) of the Internal Revenue Code of 1986, as amended (the "Code").

(c) The City hereby covenants not to use the proceeds of the Notes, or to cause or permit them to be used, in such a manner as to cause the Notes to be "private activity bonds" within the meaning of Sections 103 and 141 through 150 of the Code.

4.03 (a) Pursuant to Section 1.148-7(d) of the Treasury Regulations, relating to exception from rebate, the City hereby represents that with respect to the gross proceeds of the Notes, the following schedule is expected to be met: (i) at least 15% of the gross proceeds of the Notes will be allocated to expenditures for the governmental purpose of the Notes within six months of the date of issue of the Notes; (ii) at least 60% of such proceeds will be allocated for such purposes within the one year period of such date; and (iii) 100% of such proceeds will be allocated for such purposes within the 18 month period beginning on such date; subject to an exception for reasonable retainage of 5% of the available proceeds of the Notes, and that

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

100% of the available proceeds of the Notes will be allocated within 30 months from the date of issue of the Notes.

(b) 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 section.

4.04 In addition to the Notes, the City is selling, pursuant to a single offering document and on the same date, the following tax-exempt obligations: General Obligation Capital Improvement Bonds, Series 2011A (the "Series 2011A Bonds"), General Obligation Gas Utility Revenue Refunding Bonds, Series 2011C (the "Series 2010C Bonds"), and General Obligation Sewer Utility Revenue Refunding Bonds, Series 2010D (the "Series 2011D Bonds"). The Notes will not be paid out of substantially the same source of funds as the Series 2011C Bonds and the Series 2011D Bonds; consequently, the Notes will not be combined with them for a single issue. However, the Notes and the Series 2011A Bonds are expected to be paid from substantially the same source of funds and are an issue under Treasury Regulations Section 1.150-1(c).

Section 5. Continuing Disclosure. The City acknowledges that the Notes are subject to the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (17 C.F.R. §240.15c2-12) (the "Rule"). The Rule governs the obligations of certain underwriters to require that issuers of municipal bonds enter into agreements for the benefit of the bondholders to provide continuing disclosure with respect to the Notes. To provide for the public availability of certain information relating to the Notes and the security therefor and to permit underwriters of the Notes to comply with the Rule, which will enhance the marketability of the Notes, the mayor and the clerk are hereby authorized and directed to execute a continuing disclosure certificate substantially in the form of the certificate on file in the office of the city clerk as Public Document No. 11-1114-33.

Section 6. Certificate of Proceedings.

6.01 The city clerk is directed to file in the office of the county auditor of St. Louis County a certified copy of this resolution, and such other information as the county auditor may require, and to obtain from the county auditor and provide to bond counsel a certificate stating that the Notes herein authorized have been duly entered on the county auditor's register.

6.02 The officers of the City are authorized and directed to prepare and furnish to the Purchaser and to bond counsel certified copies of all proceedings and records of the City pertaining to the authorization, issuance, and sale of the Notes and such other affidavits and certificates as may reasonably be required to show the facts relating to the legality and marketability of the Notes, as such facts appear from the official books and records of the officers' custody or are otherwise known. All such certified copies, certificates, and affidavits, including any heretofore furnished, constitute representations of the City as to the correctness of facts recited therein and the actions stated therein to have been taken.

6.03 The mayor and the city clerk are hereby authorized and directed to certify that they have examined the official statement prepared and circulated in connection with the issuance and sale of the Notes and that to the best of their knowledge and belief the official statement is a complete and accurate representation of the facts and representations made therein as for the date of the official statement.

6.04 In the event of the absence or disability of the mayor or the city clerk, such officers as in the opinion of the City attorney, may act in their behalf, shall without further act or authorization, execute and deliver the Notes, and do all things and execute all instruments and documents required to be done or executed by such absent or disabled officers.

Resolution 11-0585 was adopted upon the following vote:

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Nays: Councilors Fosle and Stauber -- 2

Absent: Councilor Fedora -- 1

Approved November 14, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, by the city council (the "City Council") of the city of Duluth, St. Louis County, Minnesota (the "City"), as follows:

Section 1. Bond Purpose and Authorization.

1.01 The City has previously issued its \$6,090,000 General Obligation Gas Utility Revenue Bonds, Series 2003G, dated December 1, 2003 (the "2003 Bonds"). The 2003 Bonds were authorized and issued pursuant to the City Charter, Minnesota Statutes, Chapter 475 and other pertinent provisions of Minnesota Statutes.

1.02 Under and pursuant to the provisions of Minnesota Statutes, Chapter 475 (the "Act") and Section 475.67, Subdivisions 1 through 4 of the Act, the City is authorized to issue and sell its general obligation bonds to refund obligations and the interest thereon six months or less before the due date or the redemption date of the obligations, if consistent with covenants made with the holders thereof, when determined by the City to be necessary or desirable for the reduction of debt service cost to the City or for the extension or adjustment of maturities in relation to the resources available for their payment.

1.03 It is necessary and desirable that the City issue \$3,125,000 General Obligation Gas Utility Revenue Refunding Bonds, Series 2011C (the "Bonds"), in order to (i) reduce debt service costs, to refund the outstanding 2003 Bonds maturing on and after February 1, 2013 (the "Refunded Bonds"), of which \$3,305,000 in principal amount is outstanding, and (ii) pay the costs of issuance of the Bonds. The 2003 Bonds maturing on and after February 1, 2013, are subject to prepayment and redemption on February 1, 2012 (February 1, 2012 is herein referred to as the "Redemption Date").

1.04 The City has heretofore issued and sold the following gas utility bonds: general obligation gas utility revenue bonds dated December 1, 2003, now outstanding in the amount of \$3,700,000; general obligation utilities revenue bonds dated December 19, 2006, the gas utility portion of such bonds now outstanding in the amount of \$945,000; and general obligation utilities revenue bonds dated December 17, 2009, the gas utility portion of such bonds now outstanding in the amount of \$2,470,814. Under the provisions of the ordinance authorizing said bonds, the city reserved the privilege of issuing additional bonds payable from said net revenues on a parity with the bonds dated December 1, 2003, December 19, 2006, and December 17, 2009.

The City reserves the right and privilege of issuing additional bonds and of pledging and appropriating the net revenues of the municipal gas utility for the payment thereof, when authorized in accordance with law and the City Charter and determined by the City Council to be necessary for the improvement of the municipal gas utility or for the refunding of indebtedness payable from said net revenues, provided that no such pledge shall constitute a lien upon the net revenues superior to the pledge thereof for the payment of the bonds issued hereunder.

1.05 Public Financial Management, Inc., financial consultant to the City, has given notification by mail, facsimile, electronic data transmission or other form of communication common to the municipal bond trade to at least five firms determined by Public Financial Management, Inc. to be prospective bidders on the Bonds at least two days (omitting

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

Saturdays, Sundays and legal holidays) before the date set for receipt of bids on the Bonds. All actions of the mayor, the clerk and Public Financial Management, Inc. taken with regard to the sale of the Bonds are hereby ratified and approved.

1.06 Pursuant to such solicitation for bids for the sale of the Bonds, the City Council has received and considered all bids presented pursuant to the official terms of offering and has determined that the most favorable bid is that of Hutchinson, Shockey, Erley & Co. of Chicago, Illinois (the "Purchaser"), to purchase the Bonds at a cash price of \$3,339,514.04, upon condition that the Bonds mature and bear interest at the times and annual rates set forth in Section 2. The City, after due consideration, finds such offer reasonable and proper and the offer of the Purchaser is hereby accepted. The mayor and the city clerk are authorized and directed to execute on the part of the City a contract for the sale of the Bonds in accordance with the Purchaser's bid. The city treasurer is directed to deposit the good faith check of the successful bidder.

### Section 2. Terms of Bonds.

2.01 The Bonds to be issued hereunder shall be dated the date of delivery, as the date of original issue, shall be issued in the denomination of \$5,000 each, or any integral multiple thereof, in fully registered form, and lettered and numbered R-1 and upward. The Bonds shall mature on February 1 in the respective years and amounts and shall bear interest at the annual rates stated as follows:

<b>Year</b>	<b>Total</b>	<b>Interest Rate</b>
2013	\$380,000	3.00%
2014	415,000	3.00%
2015	430,000	3.00%
2016	445,000	3.00%
2017	470,000	4.00%
2018	480,000	4.00%
2019	505,000	4.00%

2.02 The Bonds are not subject to optional redemption and prepayment before maturity.

2.03 Interest on the Bonds shall be payable semiannually on February 1 and August 1 in each year (each referred to herein as an "Interest Payment Date"), commencing August 1, 2012. Interest will be computed on the basis of a 360-day year of twelve 30-day months and will be rounded pursuant to the rules of the municipal securities rulemaking board. The Bond Registrar designated below shall make all interest payments with respect to the Bonds by check or draft mailed to the registered owners of the Bonds shown on the bond registration records maintained by the Bond Registrar at the close of business on the 15<sup>th</sup> day (whether or not a business day) of the month next preceding the Interest Payment Date at such owners' addresses shown on such bond registration records.

2.04 (a) The Bonds shall be prepared for execution in accordance with the approved form and shall be signed by the manual or facsimile signature of the mayor and attested by the manual or facsimile signature of the city clerk. In case any officer whose signature or a facsimile of whose signature shall appear on the Bonds shall cease to be an officer before delivery of the Bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, as if he or she had remained in office until delivery.

(b) The city clerk is authorized and directed to obtain a copy of the approving legal opinion of Fryberger, Buchanan, Smith & Frederick, P.A. of Duluth, Minnesota, and cause the

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

opinion to be attached to each Bond.

2.05 The City hereby appoints Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as registrar, authenticating agent, paying agent and transfer agent for the Bonds (such bank or its successor is herein referred to as the "Bond Registrar"). To provide for the Bond Registrar services, the mayor and the clerk are authorized and directed to execute a bond registrar/paying agent agreement substantially in the form of the agreement currently on file in the office of the city clerk as Public Document No. 04-0219-02. No Bond shall be valid or obligatory for any purpose until the Bond Registrar's authentication certificate on such Bond, substantially set forth in Section 2.12 hereof, shall have been duly executed by an authorized representative of the Bond Registrar. Authentication certificates on different Bonds need not be signed by the same representative. The manual signature of one officer of the City or the executed authentication certificate on each Bond shall be conclusive evidence that it has been authenticated and delivered under this resolution.

2.06 (a) In order to make the Bonds eligible for the services provided by DTC, the City has previously agreed to the applicable provisions set forth in the blanket issuer letter of representations which has been executed by the City and DTC (the "Representation Letter").

(b) Notwithstanding any provision herein to the contrary, so long as the Bonds shall be in Book-Entry Form, the provisions of this Section 2.06 shall govern.

(c) All of the Bonds shall be registered in the name of Cede & Co., as nominee for DTC. Payment of interest on and principal of any Bond registered in the name of Cede & Co. shall be made by wire transfer or New York Clearing House or equivalent same day funds by 10:00 a.m. CT or as soon as possible thereafter following the Bond Registrar's receipt of funds from the City on each Interest Payment Date to the account of Cede & Co. on each Interest Payment Date at the address indicated in or pursuant to the Representation Letter.

(d) DTC (or its nominees) shall be and remain recorded on the Bond Register as the holder of all Bonds which are in Book-Entry Form. No transfer of any Bond in Book-Entry Form shall be made, except from DTC to another depository (or its nominee) or except to terminate the Book-Entry Form. All Bonds of such stated maturity of any Bonds in Book-Entry Form shall be issued and remain in a single Bond certificate registered in the name of DTC (or its nominee); provided, however, that upon termination of the Book-Entry Form pursuant to the Representation Letter, the City shall, upon delivery of all Bonds of such series from DTC, promptly execute, and the Bond Registrar shall thereupon authenticate and delivery, Bonds of such series to all persons who were beneficial owners thereof immediately prior to such termination; and the Bond Registrar shall register such beneficial owners as holders of the applicable Bonds.

The Bond Registrar shall maintain accurate books and records of the principal balance, if any, of each such outstanding Bond in Book-Entry Form, which shall be conclusive for all purposes whatsoever. Upon the authentication of any new Bond in Book-Entry Form in exchange for a previous Bond, the Bond Registrar shall designate thereon the principal balance remaining on such bond according to the Bond Registrar's books and records.

No beneficial owner (other than DTC) shall be registered as the holder on the Bond Register for any Bond in Book-Entry Form or entitled to receive any bond certificate. The beneficial ownership interest in any Bond in Book-Entry Form shall be recorded, evidenced and transferred solely in accordance with the Book-Entry System.

Except as expressly provided to the contrary herein, the City and the Bond Registrar may treat and deem DTC to be the absolute owner of all Bonds of each series which are in Book-Entry Form (i) for the purpose of payment of the principal of and interest on such Bond, (ii) for the purpose of giving notices hereunder, and (iii) for all other purposes whatsoever.

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

(e) The City and the Bond Registrar shall each give notices to DTC of such matters and at such times as are required by the Representation Letter, including the following:

(i) with respect to notices of redemption; and

(ii) with respect to any other notice required or permitted under this Bond Resolution to be given to any holder of a Bond.

All notices of any nature required or permitted hereunder to be delivered to a holder of a Bond in Book-Entry Form shall be transmitted to beneficial owners of such Bonds at such times and in such manners as shall be determined by DTC, the participants and indirect participants in accordance with the Book-Entry System and the Representation Letter.

(f) All payments of principal, redemption price of and interest on any Bonds in Book-Entry Form shall be paid to DTC (or Cede & Co.) in accordance with the Book-Entry System and the Representation Letter in same day funds by wire transfer.

2.07 The City shall cause to be kept by the Bond Registrar a bond register in which, subject to such reasonable regulations as the Bond Registrar may prescribe, the City shall provide for the registration of the Bonds and the registration of transfers of the Bonds entitled to be registered or transferred as herein provided. In the event of the resignation or removal of the Bond Registrar or its incapability of acting as such, the bond registration records shall be maintained at the office of the successor Bond Registrar as may be appointed by the City Council. Upon surrender for transfer of any Bond at the principal corporate office of the Bond Registrar, the City shall execute and the Bond Registrar shall authenticate, if required by law or this resolution, and deliver, in the name(s) of the designated transferee or transferees, one or more new Bonds of the like aggregate principal amount, as requested by the transferor.

2.08 Each Bond delivered upon transfer of or in exchange for or in lieu of any other Bond shall carry all of the rights to interest, accrued and unpaid and to accrue, which are carried by such other Bond. Each Bond shall be dated by the Bond Registrar as of the date of its authentication. The City and the Bond Registrar shall not be required to make any transfer or exchange of any Bonds called for redemption or to make any such exchange or transfer of the Bonds during the 15 days next preceding the date of the mailing of the notice of redemption in the case of a proposed redemption of the Bonds.

2.09 The City and the 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 interest on such Bond and for all other purposes whatsoever, whether or not such Bond be overdue, and neither the City nor the Bond Registrar shall be affected by notice to the contrary.

2.10 The principal of and interest on the Bonds shall be payable by the Bond Registrar, as paying agent, in such funds as are legal tender for the payment of debts due the United States of America. The City shall pay the reasonable and customary charges of the Bond Registrar for the disbursement of principal and interest.

2.11 Delivery of the Bonds and payment of the purchase price shall be made at a place mutually satisfactory to the City and the Purchaser. Printed or typewritten and executed Bonds shall be furnished by the City without cost to the Purchaser. The Bonds, when prepared in accordance with this Resolution and executed, shall be delivered by or under the direction of the treasurer to the Purchaser upon receipt of the purchase price plus accrued interest.

2.12 The Bonds shall be printed or typewritten in substantially the following form:

UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
COUNTY OF ST. LOUIS

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

CITY OF DULUTH  
GENERAL OBLIGATION GAS UTILITY REVENUE BOND, SERIES 2011C  
R-\_\_ \$\_\_\_\_\_

Interest Rate	Maturity Date	Date of Original Issue	CUSIP
	February 1, ____	November __, 2011	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

The City of Duluth, in St. Louis County, Minnesota (the "City"), for value received, promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above on the maturity date specified above, and to pay interest on said principal amount to the registered owner hereof from the Date of Original Issue, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, until the principal amount is paid or discharged, said interest being at the rate per annum specified above. Interest is payable semiannually on February 1 and August 1 of each year (each referred to herein as an "Interest Payment Date") commencing on August 1, 2012. Both principal and interest are payable in lawful money of the United States of America by check or draft at the office of Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as the registrar, paying agent, transfer agent and authenticating agent (the "Bond Registrar"), or at the office of such successor bond registrar as may be designated by the City Council. The Bond Registrar shall make the interest payment with respect to this Bond directly to the registered owner hereof shown on the bond registration records maintained on behalf of the City by the Bond Registrar at the close of business on the 15<sup>th</sup> day of the month next preceding the Interest Payment Date (whether or not a business day), at such owner's address shown on said bond registration records, without, except for payment of principal on the Bond, the presentation or surrender of this Bond, and all such payments shall discharge the obligations of the City to the extent of the payments so made. Payment of principal shall be made upon presentation and surrender of this Bond to the Bond Registrar when due. For the prompt and full payment of such principal and interest as they become due, the full faith and credit of the City are irrevocably pledged.

This Bond is one of a series issued by the City in the aggregate amount of \$3,125,000, all of like date and tenor, except for number, denomination, maturity date and interest rate, pursuant to the authority contained in Minnesota Statutes, Chapter 475, and Section 475.67, Subdivisions 1 through 4, and Section 55 of the Home Rule Charter of the City, and all other laws and charter provisions thereto enabling and pursuant to a resolution adopted on November 14, 2011, by the governing body of the City (the "Resolution"), and is issued to refund on a current refunding basis the outstanding principal amount of the City's \$6,090,000 General Obligation Gas Utility Revenue Bonds, Series 2003G, dated December 1, 2003.

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

The Bonds are payable from the net revenues to be derived from the operation of the municipal gas utility of the City, as set forth in the Resolution to which reference is made for a full statement of rights and powers thereby conferred. In the Resolution, the City has pledged and appropriated the net revenues to be derived from the operation of the municipal gas utility in excess of normal, reasonable and current costs of the operation and maintenance of the utility, for the payment of the principal and interest when due on the Bonds, and has covenanted and agreed that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal gas utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the Bonds.

The Bonds are not subject to optional redemption and prepayment before maturity.

The Bonds of this series are issued as fully registered bonds without coupons, in the denomination of \$5,000 or any integral multiple thereof. Subject to limitations set forth in the Resolution, this Bond is transferable by the registered owner hereof upon surrender of this Bond for transfer at the principal corporate office of the Bond Registrar, duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Bond Registrar and executed by the registered owner hereof or the owner's attorney duly authorized in writing. Thereupon the City shall execute and the Bond Registrar shall authenticate, if required by law and the Resolution, and deliver, in exchange for this Bond, one or more new fully registered bonds in the name of the transferee, of an authorized denomination, in an aggregate principal amount equal to the unpaid principal amount of this Bond, of the same maturity and bearing interest at the same rate.

IT IS CERTIFIED AND RECITED that all acts and conditions required by the Charter of the City and by the laws and the Constitution of the State of Minnesota to be done and to exist precedent to and in the issuance of this Bond, in order to make it a valid and binding general obligation of the City in accordance with its terms, have been done and do exist in form, time and manner as so required; that all taxable property within the corporate limits of the City is subject to the levy of ad valorem taxes to the extent needed to pay the principal hereof and the interest hereon when due, without limitation as to rate or amount; and that the issuance of this Bond does not cause the indebtedness of the City to exceed any constitutional, statutory or charter limitation.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Bond Registrar's Authentication Certificate hereon shall have been executed by the Bond Registrar by one of its authorized representatives.

IN WITNESS WHEREOF, the City of Duluth, by its City Council, has caused this Bond to be executed in its name by the facsimile signatures of the Mayor and the City Clerk.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

Attest:

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Mayor

Date of Authentication: \_\_\_\_\_

BOND REGISTRAR'S AUTHENTICATION CERTIFICATE

The Bond Registrar confirms that the books reflect the ownership of a Bond registered in the name of the owner named above, in the principal amount stated above, and this Bond is one of the Bonds of the series issued pursuant to the Resolution hereinabove described.

WELLS FARGO BANK, NATIONAL ASSOCIATION  
Bond Registrar

By \_\_\_\_\_  
Authorized Representative

REGISTRATION CERTIFICATE

This Bond must be registered as to both principal and interest in the name of the owner on the books to be kept by Wells Fargo Bank, National Association, as Bond Registrar. No transfer of this Bond shall be valid unless made on said books by the registered owner or the owner's attorney thereunto duly authorized and similarly noted on the registration books. The ownership of the unpaid principal balance of this Bond and the interest accruing thereon is registered on the books of Wells Fargo Bank, National Association as Bond Registrar, in the name of the registered owner last noted below.

Date	Registered Owner	Signature of Bond Registrar
11/__/2011	Cede & Co. c/o The Depository Trust Company 55 Water Street New York, NY 10041 Federal Taxpayer I.D. No.: 13-2555119	_____

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns, and transfers unto \_\_\_\_\_

\_\_\_\_\_  
(Name and Address of Assignee)

\_\_\_\_\_  
Social Security or Other

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

\_\_\_\_\_ Identifying Number of Assignee

the within Bond and all rights thereunder and does hereby irrevocably constitute and \_\_\_\_\_ appoint \_\_\_\_\_ attorney to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

\_\_\_\_\_  
(Bank, Trust Company, member of National Securities Exchange)

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

Section 3. Escrow Agreement; Escrow Agent.

3.01 Wells Fargo Bank, National Association of Minneapolis, Minnesota, which is a suitable financial institution within the State of Minnesota whose deposits are insured by the Federal Deposit Insurance Corporation whose combined capital and surplus is not less than \$500,000, is hereby designated escrow agent (the "Escrow Agent") with respect to the outstanding 2003 Bonds.

3.02 On or prior to the delivery of the Bonds, the mayor and the clerk are hereby authorized and directed to execute on behalf of the City an escrow agreement (the "Escrow Agreement") with the Escrow Agent in substantially the form now on file with the clerk as Public Document No. 11-1114-34. The execution and delivery of the Escrow Agreement by the mayor and the clerk, in the form presented to the City Council with such changes, omissions, insertions and revisions as the mayor and the clerk deem advisable is hereby

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

approved, and the execution by such officers shall be conclusive evidence of such approval. All essential terms and conditions of the Escrow Agreement, including payment by the City of reasonable charges for the services of the Escrow Agent, are hereby approved and adopted and made a part of this Resolution, and the City covenants that it will promptly enforce all provisions thereof in the event of default thereunder by the Escrow Agent.

Section 4. Revenues, Accounts and Covenants.

4.01 (a) The City Council covenants and agrees with the holders of the Bonds and with its taxpayers that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal gas utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the Bonds and on all other bonds heretofore or hereafter issued and made payable from said net revenues, and will operate the municipal gas utility and segregate and account for the revenues thereof as provided in this section.

The City will place all such charges, when collected, and all money received from the sale of any facilities or equipment of the municipal gas utility in a separate Gas Utility Operating Account within the Public Utility Gas Fund maintained under Section 54 of the City Charter. Except as provided in this section, this account shall be used only to pay claims duly approved and allowed for payment of expenses which, under generally accepted accounting principles, constitute normal, reasonable and current expenses of operating and maintaining the municipal gas utility, and to maintain such reasonable reserves for such expenses as the director of finance shall determine to be necessary from time to time in accordance with policies established by the City Council. Sums from time to time on hand in this account, in excess of sums required to make such payments and maintain such reserves, constitute the net revenues which are herein pledged and appropriated first to pay the principal of and interest on all gas utility bonds when due.

(b) Until the Bonds issued hereunder are fully paid or duly called for redemption, or otherwise discharged, the City will also maintain a separate debt service account (the "Debt Service Fund") in the Public Utility Gas Fund to be used solely for the payment of the principal and interest, as such principal and interest become due and payable, on the Bonds and on any other bonds which have been or may be issued and made payable from said net revenues of the gas utility. Unless deposited in the Escrow Account, the treasurer shall credit to the Debt Service Fund unused discount (\$2,514.04) and the amount of accrued interest on the Bonds. The treasurer shall transfer from the Gas Utility Operating Account to the Debt Service Fund amounts of the net revenues sufficient for the payment of all interest and principal then due on the Bonds, and all charges due to the Bond Registrar. Such transfers shall be made at the times and in the amounts determined by the treasurer, in accordance with policies established by resolutions of the City Council.

(c) Surplus utility revenues from time to time received in the Gas Utility Operating Account, in excess of payments due from and reserves required to be maintained in the Gas Utility Operating Account and in the Debt Service Fund, may be used for necessary capital expenditures for the improvement of the municipal gas utility, for the prepayment and redemption of bonds constituting a lien on the municipal gas utility, and for any other proper municipal purpose consistent with policies established by resolutions of the City Council.

4.02 Escrow account.

(a) The City hereby creates an Escrow Account for payment of the 2003 Bonds. To the Escrow Account there is hereby pledged and irrevocably appropriated and there shall be credited: (a) the proceeds of the Bonds received from the Purchaser which are not

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

appropriated to the Debt Service Fund or are not to be used for payment of costs of issuance of the Bonds; (b) Accrued Interest, if any; (c) Additional Interest [amounts referenced in clauses (a), (b) and (c) are herein referred to as the "Proceeds"]; (d) funds of the City in an amount sufficient to pay the principal due on the 2003 Bonds on February 1, 2012, to pay the interest due on the 2003 Bonds on February 1, 2012, and to meet the other requirements of the Escrow Account (the "Funds"); and (e) investment earnings on such monies referenced in clauses (a), (b), (c) and (d), for the payment of principal and interest due on the 2003 Bonds on the Redemption Date and the principal of the Refunded Bonds called for prepayment and redemption on the Redemption Date.

(b) The Escrow Account shall be maintained with the Escrow Agent pursuant to the Escrow Agreement and this Resolution. The Escrow Account shall be invested in accordance with the Act, the Escrow Agreement and this Section, in securities specified in Section 475.67, Subdivision 8(a) of the Act.

(c) From the Escrow Account there shall be paid: (a) all principal of and interest to be paid on the 2003 Bonds on the Redemption Date; and (b) the principal of the Refunded Bonds due by reason of prepayment and redemption on the Redemption Date.

(d) The Escrow Account for the 2003 Bonds is irrevocably appropriated to the payment of the principal of and interest due on the 2003 Bonds on the Redemption Date and to the prepayment and redemption of the Refunded Bonds due by reason of redemption on the Redemption Date. The monies to be deposited in the Escrow Account for the 2003 Bonds and the Refunded Bonds shall be used solely for the purposes herein set forth and for no other purpose, except that any surplus in the Escrow Account may be remitted to the City all in accordance with the Escrow Agreement. Any monies remitted to the City upon termination of the Escrow Agreement for the 2003 Bonds shall be deposited in the Debt Service Fund.

(e) Securities purchased for the Escrow Account shall be purchased simultaneously with the delivery of and payment for the Bonds. The mayor and clerk or their designee are authorized and directed to purchase such securities.

(f) The construction fund created for the 2003 Bonds have previously been terminated and all bond proceeds therein have been expended.

4.03 It is hereby determined that upon the receipt of proceeds of the Bonds (the "Proceeds") for payment of the 2003 Bonds that an irrevocable appropriation to the Escrow Account shall have been made within the meaning of Section 475.61, Subdivision 3(g) of the Act and the clerk is hereby authorized and directed to certify such fact to and request the county auditor to cancel any and all tax levies made by the Council resolution authorizing the 2003 Bonds for collection in the year 2012 and thereafter.

4.04 If the balances in either Debt Service Fund are ever insufficient to pay all principal and interest then due on the Bonds, the treasurer shall nevertheless provide sufficient money from any other funds of the City which are available for that purpose, and such other funds shall be reimbursed from such Debt Service Fund when the balances therein are sufficient. It is estimated that the net revenues herein pledged and appropriated to said Debt Service Fund will be received at the times and in amounts not less than five percent in excess of the amounts needed to meet when due the principal and interest payments thereon and, accordingly, no tax is presently levied for this purpose. It is recognized, however, that the City's liability on the Bonds is not limited to the revenues so pledged, and the City Council covenants and agrees that it will levy upon all taxable property within the City, and cause to be extended, levied and collected, any taxes found necessary for full payment of the principal of and interest on the Bonds, without limitation as to rate or amount.

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

### Section 5. Refunding, Findings, Prepayment of Refunded Bonds.

5.01 It is hereby found and determined that based upon information presently available from the City's financial advisers, the issuance of the Bonds is consistent with covenants in the Council's resolution authorizing the 2003 Bonds (the "Prior Resolution") and is necessary and desirable for the reduction of debt service cost to the City.

5.02 It is hereby found and determined that the Proceeds and other available funds appropriated to the Escrow Account will be sufficient to pay all of the principal of and interest on the 2003 Bonds due on February 1, 2012, and the principal of the Refunded Bonds called for redemption and prepayment on the Redemption Date.

5.03 The Refunded Bonds shall be redeemed and prepaid in accordance with their terms and in accordance with the terms and conditions set forth in the form of notice of call for redemption attached to the Escrow Agreement, which terms and conditions are hereby approved and incorporated herein by reference. The Escrow Agent is hereby authorized and directed to forthwith, no later than 30 days prior to the Redemption Date, to send written notice of call to the registered owners and paying agent and to the bond insurance company, if any, of the Refunded Bonds.

5.04 When the principal of the 2003 Bonds and all interest thereon have been discharged as provided in this section, all pledges, covenants and other rights granted by the Prior Resolution to the holders of the 2003 Bonds shall cease, except that the pledge of the full faith and credit of the City for the prompt and full payment of the principal and interest on the 2003 Bonds shall remain in full force and effect.

### Section 6. Tax Covenants; Miscellaneous.

6.01 The City covenants and agrees with the holders of the Bonds that the City will (i) take all action on its part necessary to assure that the interest on the Bonds will be excluded from gross income for federal income taxes including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the Bonds and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the Bonds to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the Bonds and investment earnings thereon on certain specified purposes.

6.02 (a) 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 (i) for a reasonable temporary period until such proceeds are needed for the purpose for which the Bonds were issued, and (ii) in addition to the above, in an amount not greater than the lesser of 5% 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 Fund (or any other City account which will be used to pay principal and interest to become due on the Bonds) in excess of amounts which under the applicable federal arbitrage regulations may be invested without regard as 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 of minor portion made available under the federal arbitrage regulations.

(b) In addition, the proceeds of the Bonds and money in the Debt Service 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").

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

(c) The City hereby covenants not to use the proceeds of the Bonds, or to cause or permit them to be used, 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.

6.03 The proceeds of the 2003 Bonds have been totally expended for the governmental purpose for which they were issued; the gross proceeds of the Bonds will be totally expended for the purpose of refunding the outstanding principal amount of the Refunded Bonds and paying the costs of issuance of the Bonds within six months of the date of issuance of the Bonds. Therefore, no rebate of arbitrage profit is required for the refunding portion of the Bonds under the Code pursuant to Section 148(f)(4)(B) of the Code under Regulation Section 1.148-9(h).

6.04 In addition to the Bonds, the City is selling, pursuant to a single offering document and on the same date, the following tax-exempt obligations: General Obligation Capital Improvement Bonds, Series 2011A (the "Series 2011A Bonds"), General Obligation Capital Equipment Notes, Series 2011B (the "Notes"), and General Obligation Sewer Utility Revenue Refunding Bonds, Series 2011D (the "Series 2011D Bonds"). The Bonds will not be paid out of substantially the same source of funds as the Series 2011A Bonds, the Notes and the Series 2011D Bonds; consequently, the Bonds will not be combined with them for a single issue.

Section 7. Continuing Disclosure. The City acknowledges that the Bonds are subject to the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (17 C.F.R. §240.15c2-12) (the "Rule"). The Rule governs the obligations of certain underwriters to require that issuers of municipal bonds enter into agreements for the benefit of the bondholders to provide continuing disclosure with respect to the Bonds. To provide for the public availability of certain information relating to the Bonds and the security therefor and to permit underwriters of the Bonds to comply with the Rule, which will enhance the marketability of the Bonds, the mayor and the clerk are hereby authorized and directed to execute a continuing disclosure certificate substantially in the form of the certificate currently on file in the office of the city clerk as Public Document No. 11-1114-34.

Section 8. Certificate of Proceedings.

8.01 The city clerk is directed to file with the county auditor a certified copy of this resolution and such other information as the county auditor may require, and to obtain from the county auditor a certificate stating that the Bonds herein authorized have been duly entered on his register.

8.02 The officers of the City are authorized and directed to prepare and furnish to the Purchaser and to bond counsel certified copies of all proceedings and records of the City relating to the authorization and issuance of the Bonds and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the Bonds as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the City as to the correctness of facts recited therein and the actions stated therein to have been taken.

8.03 The officers of the City are hereby authorized and directed to certify that they have examined the official statement prepared and circulated in connection with the sale of the Bonds and that to the best of their knowledge and belief the official statement is a complete and accurate representation of the facts and representations made therein as of the date of the official statement.

Resolution 11-0586 was adopted upon the following vote:

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Nays: Councilors Fosle and Stauber -- 2

Absent: Councilor Fedora --1

Approved November 14, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, by the city council (the "City Council") of the city of Duluth, St. Louis County, Minnesota (the "City"), as follows:

Section 1. Bond purpose and authorization.

1.01 The City previously issued \$4,045,000 General Obligation Sewer Utility Revenue Bonds, Series 2004D, dated December 1, 2004 (the "2004 Bonds"). The 2004 Bonds were authorized and issued pursuant to Section 55 of the City Charter, Minnesota Statutes, Section 115.46 and 444.075 and Chapter 475 and other pertinent provisions of Minnesota Statutes.

1.02 Under and pursuant to the provisions of Minnesota Statutes, Chapter 475 (the "Act") and, specifically, Section 475.67, Subdivisions 1 through 12 of the Act, the City is authorized to issue and sell its general obligation bonds to refund certain maturities of the 2004 Bonds in advance of their scheduled maturities, if consistent with covenants made with the holders thereof, when determined by the City to be necessary or desirable for the reduction of debt service cost to the City or for the extension or adjustment of maturities in relation to the resources available for their payment.

1.03 The City Council hereby determines that it is necessary, expedient and in the best interest of the City's residents that the City issue, sell and deliver its \$2,265,000 General Obligation Sewer Utility Revenue Refunding Bonds, Series 2011D (the "Bonds"), to refund the outstanding 2004 Bonds maturing on and after February 1, 2014, of which \$2,170,000 in principal amount is outstanding (the "Refunded Bonds"), in order to reduce debt service cost to the City. The 2004 Bonds maturing on and after February 1, 2014, are subject to prepayment and redemption on February 1, 2013. (February 1, 2013 is herein referred to as the "Redemption Date.") The 2004 Bonds maturing on February 1, 2012 and February 1, 2013, are not being prepaid or defeased (the "Unrefunded Portion of the 2004 Bonds").

1.04 The City's plan of finance for the payment and prepayment of the 2004 Bonds is as follows:

(a) The February 1, 2012 and the February 1, 2013 maturities of the 2004 Bonds shall remain outstanding and interest thereon on February 1, 2012, on August 1, 2012, and on February 1, 2013, shall not be defeased pursuant to this Resolution and the Escrow Agreement. The City will pay from the debt service account for the 2004 Bonds the principal of and interest due on the Unrefunded Portion of the 2004 Bonds when due. Proceeds of the Bonds shall be deposited in the Escrow Account held under the Escrow Agreement described in Section 4 and Section 5.04, which together with investment earnings thereon, will be sufficient to pay (i) interest on the Refunded Bonds due on February 1, 2012, on August 1, 2012, and on February 1, 2013; and (ii) the redemption and prepayment of the Refunded Bonds on the Redemption Date.

(b) Proceeds of the Bonds will provide the funds to pay the interest on the Refunded Bonds on February 1, 2012, on August 1, 2012, and on February 1, 2013, and to prepay and redeem the principal of the Refunded Bonds on the Redemption Date.

1.05 The city has heretofore issued and sold the following: general obligation sewer utility revenue note dated December 12, 2003, now outstanding in the amount of \$626,000; general obligation sewer utility revenue bonds dated December 1, 2004, now outstanding in

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

the amount of \$2,690,000; general obligation sewer utility revenue bonds dated December 19, 2005, now outstanding in the amount of \$2,580,000; general obligation utilities revenue bonds dated December 19, 2006, the sewer utility portion of such bonds now outstanding in the amount of \$745,000; general obligation sewer utility revenue note dated July 12, 2007, now outstanding in the amount of \$1,629,000; general obligation sewer utility revenue bonds dated December 13, 2007, now outstanding in the amount of \$1,795,000; general obligation water and sewer utility revenue refunding bonds dated December 13, 2007, the sewer utility portion of such bonds now outstanding in the amount of \$825,000; general obligation utilities revenue bonds dated February 19, 2009, the sewer utility portion of such bonds now outstanding in the amount of \$1,290,000; general obligation sewer utility revenue note dated August 3, 2009, now outstanding in the amount of \$516,073; general obligation sewer utility revenue note dated December 16, 2009, now outstanding in the amount of \$2,239,000; general obligation utilities revenue bonds dated December 17, 2009, the sewer utility portion of such bonds now outstanding in the amount of \$1,479,186; general obligation sewer utility revenue notes dated September 14, 2010, now outstanding in the amounts of \$5,090,781 and \$20,758; and general obligation utilities revenue bonds dated November 23, 2010, the sewer utility portion of such bonds now outstanding in the amount of \$2,025,000.

Under the provisions of the ordinances authorizing said bonds and notes, the city reserved the privilege of issuing additional bonds and notes payable from said net revenues on a parity with the bonds and notes dated December 12, 2003, December 1, 2004, December 19, 2005, December 19, 2006, July 12, 2007, December 13, 2007, February 19, 2009, August 3, 2009, December 16, 2009, December 17, 2009, September 14, 2010, and November 23, 2010.

1.06 Public Financial Management, Inc., financial consultant to the City, has given notification by mail, facsimile or electronic data transmission to at least five firms determined by Public Financial Management, Inc. to be prospective bidders on the Bonds at least two days (omitting Saturdays, Sundays and legal holidays) before the date set for receipt of bids on the Bonds. All actions of the mayor, the clerk and Public Financial Management, Inc. taken with regard to the sale of the Bonds are hereby ratified and approved.

1.07 Pursuant to such solicitation for bids for the sale of the Bonds, the City Council has received and considered all bids presented pursuant to the official terms of offering and has determined that the most favorable bid is that of Hutchinson, Shockey, Erley & Co. of Chicago, Illinois (the "Purchaser"), to purchase the Bonds at a cash price of \$2,289,436.30, upon condition that the Bonds mature and bear interest at the times and annual rates set forth in Section 2. The City, after due consideration, finds such offer reasonable and proper and the offer of the Purchaser is hereby accepted. The mayor and the city clerk are authorized and directed to execute on the part of the City a contract for the sale of the Bonds in accordance with the Purchaser's bid. The city treasurer is directed to deposit the good faith check of the successful bidder.

### Section 2. Terms of the Bonds.

2.01 The Bonds shall be dated as of the date of delivery, as the date of original issue, shall be issued in the denomination of \$5,000, or any integral multiple thereof, in fully registered form and lettered and numbered R-1 and upward. The Bonds shall mature on February 1 in the respective years and amounts and shall bear interest at the annual rates stated as follows:

Year	Amount	Interest Rate
2013	\$ 20,000	1.00%

**PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011**

---

<b>Year</b>	<b>Amount</b>	<b>Interest Rate</b>
2014	305,000	1.00%
2015	305,000	2.00%
2016	310,000	2.00%
2017	320,000	2.00%
2018	325,000	2.00%
2019	335,000	3.00%
2020	345,000	3.00%

2.02 The Bonds are not subject to optional redemption and prepayment prior to maturity.

2.03 The interest shall be payable semiannually on February 1 and August 1 in each year (each herein referred to as an "Interest Payment Date") commencing on August 1, 2012. Interest will be computed upon the basis of a 360-day year of twelve 30-day months and will be rounded pursuant to the rules of the Municipal Securities Rulemaking Board. The Bond Registrar appointed below shall make all interest payments with respect to the Bonds by check or draft mailed to the registered owners of the Bonds shown on the bond registration records maintained by the Bond Registrar at the close of business on the 15<sup>th</sup> day (whether or not on a business day) of the month next preceding the Interest Payment Date at such owners' addresses shown on such bond registration records.

2.04 (a) The Bonds shall be prepared for execution in accordance with the approved form and shall be signed by the manual or facsimile signature of the mayor and attested by the manual or facsimile signature of the clerk. The corporate seal of the City may be omitted as permitted by law. In case any officer whose signature shall appear on the Bonds shall cease to be an officer before delivery of the Bonds, such signature shall nevertheless be valid and sufficient for all purposes, as if he or she had remained in office until delivery.

(b) The clerk is authorized to obtain a copy of the proposed approving legal opinion of Fryberger, Buchanan, Smith & Frederick, P.A. of Duluth, Minnesota, and cause the opinion to be attached to each Bond.

2.05 The City hereby appoints Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as registrar, authenticating agent, paying agent and transfer agent for the Bonds (such bank or its successor is herein referred to as the "Bond Registrar"). To provide for the Bond Registrar services, the mayor and the clerk are authorized and directed to execute a bond registrar/paying agent agreement substantially in the form of the agreement currently on file in the office of the city clerk as Public Document No. 04-0219-02. No Bond shall be valid or obligatory for any purpose until the Bond Registrar's authentication certificate on such Bond, substantially set forth in Section 3.01 hereof, shall have been duly executed by an authorized representative of the Bond Registrar. Authentication certificates on different Bonds need not be signed by the same representative. The manual signature of one officer of the City or the executed authentication certificate on each Bond shall be conclusive evidence that it has been authenticated and delivered under this resolution.

2.06 (a) In order to make the Bonds eligible for the services provided by DTC, the City has previously agreed to the applicable provisions set forth in the blanket issuer letter of representations which has been executed by the City and DTC (the "Representation Letter").

(b) Notwithstanding any provision herein to the contrary, so long as the Bonds shall be in Book-Entry Form, the provisions of this Section 2.06 shall govern.

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

(c) All of the Bonds shall be registered in the name of Cede & Co., as nominee for DTC. Payment of interest on and principal of any Bond registered in the name of Cede & Co. shall be made by wire transfer or New York Clearing House or equivalent same day funds by 10:00 a.m. CT or as soon as possible thereafter following the Bond Registrar's receipt of funds from the City on each Interest Payment Date to the account of Cede & Co. on each Interest Payment Date at the address indicated in or pursuant to the Representation Letter.

(d) DTC (or its nominees) shall be and remain recorded on the Bond Register as the holder of all Bonds which are in Book-Entry Form. No transfer of any Bond in Book-Entry Form shall be made, except from DTC to another depository (or its nominee) or except to terminate the Book-Entry Form. All Bonds of such stated maturity of any Bonds in Book-Entry Form shall be issued and remain in a single Bond certificate registered in the name of DTC (or its nominee); provided, however, that upon termination of the Book-Entry Form pursuant to the Representation Letter, the City shall, upon delivery of all Bonds of such series from DTC, promptly execute, and the Bond Registrar shall thereupon authenticate and delivery, Bonds of such series to all persons who were beneficial owners thereof immediately prior to such termination; and the Bond Registrar shall register such beneficial owners as holders of the applicable Bonds.

The Bond Registrar shall maintain accurate books and records of the principal balance, if any, of each such outstanding Bond in Book-Entry Form, which shall be conclusive for all purposes whatsoever. Upon the authentication of any new Bond in Book-Entry Form in exchange for a previous Bond, the Bond Registrar shall designate thereon the principal balance remaining on such bond according to the Bond Registrar's books and records.

No beneficial owner (other than DTC) shall be registered as the holder on the Bond Register for any Bond in Book-Entry Form or entitled to receive any bond certificate. The beneficial ownership interest in any Bond in Book-Entry Form shall be recorded, evidenced and transferred solely in accordance with the Book-Entry System.

Except as expressly provided to the contrary herein, the City and the Bond Registrar may treat and deem DTC to be the absolute owner of all Bonds of each series which are in Book-Entry Form (i) for the purpose of payment of the principal of and interest on such Bond, (ii) for the purpose of giving notices hereunder, and (iii) for all other purposes whatsoever.

(e) The City and the Bond Registrar shall each give notices to DTC of such matters and at such times as are required by the Representation Letter, including the following:

- (i) with respect to notices of redemption; and
- (ii) with respect to any other notice required or permitted under this Bond Resolution to be given to any holder of a Bond.

All notices of any nature required or permitted hereunder to be delivered to a holder of a Bond in Book-Entry Form shall be transmitted to beneficial owners of such Bonds at such times and in such manners as shall be determined by DTC, the participants and indirect participants in accordance with the Book-Entry System and the Representation Letter.

(f) All payments of principal, redemption price of and interest on any Bonds in Book-Entry Form shall be paid to DTC (or Cede & Co.) in accordance with the Book-Entry System and the Representation Letter in same day funds by wire transfer.

2.07 The City shall cause to be kept by the Bond Registrar a bond register in which, subject to such reasonable regulations as the Bond Registrar may prescribe, the City shall provide for the registration of the Bonds and the registration of transfers of the Bonds entitled to be registered or transferred as herein provided. In the event of the resignation or removal of the Bond Registrar or its incapability of acting as such, the bond registration records shall be maintained at the office of the successor Bond Registrar as may be appointed by the city

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

council. Upon surrender for transfer of any Bond at the principal corporate office of the Bond Registrar, the City shall execute and the Bond Registrar shall authenticate, if required by law or this Resolution, and deliver, in the name(s) of the designated transferee or transferees, one or more new Bonds of the like aggregate principal amount, as requested by the transferor.

2.08 Each Bond delivered upon transfer of or in exchange for or in lieu of any other Bond shall carry all of the rights to interest, accrued and unpaid and to accrue, which are carried by such other Bond. Each Bond shall be dated by the Bond Registrar as of the date of its authentication. The City and the Bond Registrar shall not be required to make any transfer or exchange of any Bonds called for redemption or to make any such exchange or transfer of the Bonds during the 15 days next preceding the date of the mailing of the notice of redemption in the case of a proposed redemption of the Bonds.

2.09 The City and the 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 interest on such Bond and for all other purposes whatsoever, whether or not such Bond be overdue, and neither the City nor the Bond Registrar shall be affected by notice to the contrary.

2.10 The principal of and interest on the Bonds shall be payable by the Bond Registrar, as paying agent, in such funds as are legal tender for the payment of debts due the United States of America. The City shall pay the reasonable and customary charges of the Bond Registrar for the disbursement of principal and interest.

2.11 Delivery of the Bonds and payment of the purchase price shall be made at a place mutually satisfactory to the City and the Purchaser. Printed or typewritten and executed Bonds shall be furnished by the City without cost to the Purchaser. The Bonds, when prepared in accordance with this Resolution and executed, shall be delivered by or under the direction of the treasurer to the Purchaser upon receipt of the purchase price plus accrued interest.

Section 3. Form of the Bonds.

3.01 The Bonds shall be printed or typewritten in substantially the following form:

UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
COUNTY OF ST. LOUIS  
CITY OF DULUTH  
GENERAL OBLIGATION SEWER UTILITY REVENUE REFUNDING BOND  
SERIES 2011D

R-\_\_ \$\_\_\_\_\_

Interest

Rate                      Maturity Date                      Date of Original Issue                      CUSIP  
                                    February 1, \_\_\_\_\_                      November \_\_, 2011

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: DOLLARS

The City of Duluth, in St. Louis County, Minnesota (the "City"), for value received, promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above, on the maturity date specified

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

above, and to pay interest on said principal amount to the registered owner hereof from the Date of Original Issue, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, until the principal amount is paid or discharged, said interest being at the interest rate per annum specified above. Interest is payable semiannually on February 1 and August 1 of each year (each referred to herein as an "Interest Payment Date") commencing on August 1, 2012. Both principal hereof and interest hereon are payable in lawful money of the United States of America by check or draft at the main office of Wells Fargo Bank, National Association of Minneapolis, Minnesota, as registrar, paying agent, authenticating agent and transfer agent (the "Bond Registrar"), or at the office of such successor bond registrar as may be designated by the City. The Bond Registrar shall make all interest payments with respect to this Bond directly to the registered owner hereof shown on the bond registration records maintained on behalf of the City by the Bond Registrar at the close of business on the 15<sup>th</sup> day of the month next preceding the Interest Payment Date (whether or not a business day) at such owner's address shown on said bond registration records, without, except for payment of principal on the Bond, the presentation or surrender of this Bond, and all such payments shall discharge the obligations of the City to the extent of the payments so made. Payment of principal shall be made upon presentation and surrender of this Bond to the Bond Registrar when due. For the prompt and full payment of such principal and interest as they become due, the full faith and credit of the City are irrevocably pledged.

This Bond is one of a series issued by the City in the aggregate amount of \$2,265,000, all of like original issue date and tenor, except as to number, maturity date, denomination and interest rate, pursuant to: (i) the authority contained in Minnesota Statutes, Chapter 475, Section 475.67, Subdivisions 1 through 12 and all other laws thereunto enabling; and (ii) an authorizing resolution adopted by the governing body of the City on November 14, 2011 (the "Resolution"), for the purpose of providing money to refund in advance of maturity the outstanding principal amount of the City's General Obligation Sewer Utility Revenue Bonds, Series 2004D, dated December 1, 2004, maturing on and after February 1, 2014.

The Bonds are payable from the net revenues to be derived from the operation of the municipal sewer utility of the City, as set forth in the Resolution to which reference is made for a full statement of rights and powers thereby conferred. In the Resolution, the City has pledged and appropriated the net revenues to be derived from the operation of the municipal sewer utility in excess of normal, reasonable and current costs of the operation and maintenance of the utility, for the payment of the principal and interest when due on the Bonds, and has covenanted and agreed that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal sewer utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the Bonds.

**PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011**

---

The Bonds are not subject to optional redemption and prepayment prior to maturity.

The Bonds of this series are issued as fully registered bonds without coupons, in the denomination of \$5,000 or any integral multiple thereof. Subject to limitations set forth in the Resolution, this Bond is transferable by the registered owner hereof upon surrender of this Bond for transfer at the principal corporate office of the Bond Registrar, duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Bond Registrar and executed by the registered owner hereof or the owner's attorney duly authorized in writing. Thereupon the City 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, of an authorized denomination, in an aggregate principal amount equal to the principal amount of this Bond, of the same maturity, and bearing interest at the same rate.

IT IS CERTIFIED AND RECITED that all acts and conditions required by the Charter of the City and by the laws and the Constitution of the State of Minnesota to be done, and to exist precedent to and in the issuance of this Bond in order to make it a valid and binding general obligation of the City in accordance with its terms, have been done and do exist in form, time, and manner as so required; that all taxable property within the corporate limits of the City is subject to the levy of ad valorem taxes to the extent needed to pay the principal hereof and the interest hereon when due, without limitation as to rate or amount; and that the issuance of this Bond does not cause the indebtedness of the City to exceed any constitutional, statutory or charter limitation.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Bond Registrar's Authentication Certificate hereon shall have been executed by the Bond Registrar by one of its authorized representatives.

IN WITNESS WHEREOF, the City of Duluth, in St. Louis County, Minnesota, by its City Council, has caused this Bond to be executed in its name by the facsimile signatures of the mayor and the clerk.

ATTEST:

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Mayor

Date of Authentication: \_\_\_\_\_

**BOND REGISTRAR'S AUTHENTICATION CERTIFICATE**

The Bond Registrar confirms that the books reflect the ownership of the Bond registered in the name of the owner named above in the principal amount

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

and maturity date stated above and this Bond is one of the Bonds of the series issued pursuant to the Resolution hereinabove described.

WELLS FARGO BANK, NATIONAL ASSOCIATION  
Bond Registrar

By \_\_\_\_\_  
Authorized Representative

REGISTRATION CERTIFICATE

This Bond must be registered as to both principal and interest in the name of the owner on the books to be kept by Wells Fargo Bank, National Association, of Minneapolis, Minnesota, as Bond Registrar. No transfer of this Bond shall be valid unless made on said books by the registered owner or the owner's attorney thereunto duly authorized and similarly noted on the registration books. The ownership of the unpaid principal balance of this Bond and the interest accruing thereon is registered on the books of Wells Fargo Bank, National Association as Bond Registrar, in the name of the registered owner last noted below.

Date	Registered Owner	Signature of Bond Registrar
11/___/2011	Cede & Co. c/o The Depository Trust Company 55 Water Street New York, NY 10041 Federal Taxpayer I.D. No.: 13-2555119	_____

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto \_\_\_\_\_

(Name and Address of Assignee)

\_\_\_\_\_ Social Security or Other  
\_\_\_\_\_ Identifying Number of Assignee

the within Bond and all rights thereunder and does hereby irrevocably constitute and appoint \_\_\_\_\_

\_\_\_\_\_ attorney to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

# PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

---

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

---

(Bank, Trust Company, member of  
National Securities Exchange)

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

Section 4. Escrow Agreement; Escrow Agent.

4.01 Wells Fargo Bank, National Association of Minneapolis, Minnesota, which is a suitable financial institution within the State of Minnesota whose deposits are insured by the Federal Deposit Insurance Corporation whose combined capital and surplus is not less than \$500,000, is hereby designated escrow agent (the "Escrow Agent") with respect to the Refunded Bonds.

4.02 On or prior to the delivery of the Bonds, the mayor and the clerk are hereby authorized and directed to execute on behalf of the City an escrow agreement (the "Escrow Agreement") with the Escrow Agent in substantially the form now on file with the clerk as Public Document No. 11-1114-35. The execution and delivery of the Escrow Agreement by the mayor and the clerk, in the form presented to the City Council with such changes, omissions, insertions and revisions as the mayor and the clerk deem advisable is hereby approved, and the execution by such officers shall be conclusive evidence of such approval. All essential terms and conditions of the Escrow Agreement, including payment by the City of reasonable charges for the services of the Escrow Agent, are hereby approved and adopted and made a part of this Resolution, and the City covenants that it will promptly enforce all provisions thereof in the event of default thereunder by the Escrow Agent.

Section 5. Covenants, revenues, accounts and tax levies.

5.01 (a) The City Council covenants and agrees with the holders of the Bonds and with its taxpayers that it will impose and collect just and equitable charges for all use and for

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

the availability of all facilities of the municipal sewer utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the Bonds and on all other bonds heretofore or hereafter issued and made payable from said net revenues, and will operate the municipal sewer utility and segregate and account for the revenues thereof as provided in this section.

The City will place all such charges, when collected, and all money received from the sale of any facilities or equipment of the municipal sewer utility in a separate Sewer Utility Operating Account within the Public Utility Sewer Fund maintained under Section 54 of the City Charter. Except as provided in this section, this account shall be used only to pay claims duly approved and allowed for payment of expenses which, under generally accepted accounting principles, constitute normal, reasonable and current expenses of operating and maintaining the municipal sewer utility, and to maintain such reasonable reserves for such expenses as the director of finance shall determine to be necessary from time to time in accordance with policies established by the City Council. Sums from time to time on hand in this account, in excess of sums required to make such payments and maintain such reserves, constitute the net revenues which are herein pledged and appropriated first to pay the principal of and interest on all sewer utility bonds when due.

(b) Until the Bonds issued hereunder are fully paid or duly called for redemption, or otherwise discharged, the City will also maintain a separate debt service account (the "Debt Service Fund") in the Public Utility Sewer Fund to be used solely for the payment of the principal and interest, as such principal and interest become due and payable, on the Bonds and on any other bonds which have been or may be issued and made payable from said net revenues of the sewer utility. Unless deposited in the Escrow Account, the treasurer shall credit to the Debt Service Fund unused discount (\$466.43) and the amount of accrued interest on the Bonds. The treasurer shall transfer from the Sewer Utility Operating Account to the Debt Service Fund amounts of the net revenues sufficient for the payment of all interest and principal then due on the Bonds, and all charges due to the Bond Registrar. Such transfers shall be made at the times and in the amounts determined by the treasurer, in accordance with policies established by resolutions of the City Council.

(c) Surplus utility revenues from time to time received in the Sewer Utility Operating Account, in excess of payments due from and reserves required to be maintained in the Sewer Utility Operating Account and in the Debt Service Fund, may be used for necessary capital expenditures for the improvement of the municipal sewer utility, for the prepayment and redemption of bonds constituting a lien on the municipal sewer utility, and for any other proper municipal purpose consistent with policies established by resolutions of the City Council.

5.02 It is hereby determined that upon the receipt of proceeds of the Bonds (the "Proceeds") for payment of the principal and interest on the Refunded Bonds that an irrevocable appropriation to the Escrow Account shall have been made within the meaning of Section 475.61, Subdivision 3(g) of the Act and the clerk is hereby authorized and directed to certify such fact to and request the county auditor to cancel any and all tax levies made by the Council resolution authorizing the Refunded Bonds for collection in the year 2012 and thereafter.

5.03 If the balances in either Debt Service Fund are ever insufficient to pay all principal and interest then due on the Bonds, the treasurer shall nevertheless provide sufficient money from any other funds of the City which are available for that purpose, and such other funds shall be reimbursed from such Debt Service Fund when the balances therein are sufficient. It is estimated that the net revenues herein pledged and appropriated to said Debt

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

Service Fund will be received at the times and in amounts not less than five percent in excess of the amounts needed to meet when due the principal and interest payments thereon and, accordingly, no tax is presently levied for this purpose. It is recognized, however, that the City's liability on the Bonds is not limited to the revenues so pledged, and the City Council covenants and agrees that it will levy upon all taxable property within the City, and cause to be extended, levied and collected, any taxes found necessary for full payment of the principal of and interest on the Bonds, without limitation as to rate or amount.

### 5.04 Escrow account.

(a) The City hereby creates an Escrow Account for the Refunded Bonds. To the Escrow Account there is hereby pledged and irrevocably appropriated and there shall be credited: (i) the proceeds of the Bonds received from the Purchaser which are not appropriated to the Debt Service Fund or are not to be used for payment of costs of issuance of the Bonds; (ii) Accrued Interest; (iii) Additional Interest [amounts referenced in clauses (i), (ii) and (iii) are herein referred to as the "Proceeds"] (the "Funds"); and (iv) investment earnings on such monies referenced in clauses (i), (ii) and (iii), for the payment of (A) interest on the Refunded Bonds on February 1, 2012, on August 1, 2012, and on February 1, 2013; and (B) the principal of the Refunded Bonds called for redemption and prepayment on the Redemption Date.

(b) The Escrow Account shall be maintained with the Escrow Agent pursuant to the Escrow Agreement and this Resolution. The Escrow Account shall be invested in accordance with the Act, the Escrow Agreement and this Section, in securities specified in Section 475.67, Subdivision 8(a) of the Act, which investments will provide sufficient funds together with any cash or other funds retained in the Escrow Account for the Refunded Bonds for the payment of the interest on the Refunded Bonds on February 1, 2012, on August 1, 2012, and on February 1, 2013, and the principal of the Refunded Bonds called for redemption and prepayment on the Redemption Date.

(c) From the Escrow Account there shall be paid: (i) interest on the Refunded Bonds on February 1, 2012, on August 1, 2012, and on February 1, 2013; and (ii) the principal of the Refunded Bonds called for redemption and prepayment on the Redemption Date.

(d) The Escrow Account for the Refunded Bonds as set forth above for the payment of the interest on the Refunded Bonds on February 1, 2012, on August 1, 2012, and on February 1, 2013, and to prepayment and redemption of the Refunded Bonds due by reason of redemption and prepayment on the Redemption Date. The monies in the Escrow Account for the Bonds shall be used solely for the purposes herein set forth and for no other purpose, except that any surplus in the Escrow Account may be remitted to the City all in accordance with the Escrow Agreement. Any monies remitted to the City upon termination of the Escrow Agreement shall be deposited in the Debt Service Fund.

(e) Securities purchased for the Escrow Account shall be purchased simultaneously with the delivery of and payment for the Bonds. The mayor and clerk or their designee are authorized and directed to purchase such securities.

5.05 The construction funds created for the 2004 Bonds have previously been terminated and all bond proceeds therein have been expended.

### Section 6. Refunding; findings; redemption of Refunded Bonds.

6.01 (a) It is hereby found and determined, based upon information presently available from the City's financial advisers, that as of the date of issuance of the Bonds, the issuance of the Bonds will result in a reduction of debt service cost to the City. In accordance with Section 475.67, Subdivision 12 of the Act, as of the date of issuance of the Bonds, the present value of the dollar amount of the debt service on the Bonds, computed to their stated maturity dates, after deducting any premium, is lower by at least three percent than the present

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

value of the dollar amount of debt service on the Refunded Bonds, exclusive of any premium, computed to their stated maturity dates.

(b) It is hereby found and determined that the Proceeds available and appropriated to the Escrow Account for the Refunded Bonds, together with investment funds thereon is sufficient for the payment of the interest on the Refunded Bonds on February 1, 2012, on August 1, 2012, and on February 1, 2013, and the principal of the Refunded Bonds called for redemption and prepayment on the Redemption Date.

6.02 The Refunded Bonds shall be redeemed and prepaid in accordance with their terms and in accordance with the terms and conditions set forth in the forms of notices of call for redemption attached to the Escrow Agreement, which terms and conditions are hereby approved and incorporated herein by reference. The Escrow Agent is hereby authorized and directed to send written notice of the call for redemption to the paying agent or bond registrar, as the case may be, and bond insurance company (if any), for the Refunded Bonds in accordance with their terms and the Escrow Agreement.

6.03 The Escrow Agent is authorized and directed to cause to be provided a material event notice regarding the defeasance of the Refunded Bonds in accordance with the continuing disclosure certificates of the City dated December 1, 2004, and delivered in connection with the 2004 Bonds.

Section 7. Certificate of proceedings.

7.01 The clerk is directed to file with the county auditor a certified copy of this Resolution and such other information as the county auditor may require, and to obtain from the county auditor a certificate stating that the Bonds have been duly entered on his register.

7.02 The officers of the City are authorized and directed to prepare and furnish to the Purchaser and to bond counsel certified copies of all proceedings and records of the City relating to the authorization and issuance of the Bonds and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the Bonds as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the City as to the correctness of facts recited therein and the actions stated therein to have been taken.

7.03 The mayor and clerk are hereby authorized and directed to certify that they have examined the official statement prepared and circulated in connection with the issuance and sale of the Bonds and that to the best of their knowledge and belief the official statement is a complete and accurate representation of the facts and representations made therein as of the date of the official statement.

Section 8. Tax covenants.

8.01 The City covenants and agrees with the holders of the Bonds that the City will (i) take all action on its part necessary to cause the interest on the Bonds to be exempt from federal income taxes including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the Bonds and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the Bonds to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the Bonds and investment earnings thereon on certain specified purposes.

8.02 (a) 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 (i) for a reasonable temporary period until such

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

proceeds are needed for the purpose for which the Bonds were issued, and (ii) 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 Fund (or any other City account which will be used to pay principal and interest to become due on the Bonds) in excess of amounts which under the applicable federal arbitrage regulations may be invested without regard as 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.

(b) The proceeds of the Bonds and money in the Debt Service 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").

(c) The City hereby covenants not to use the proceeds of the Bonds, or to cause or permit them to be used, 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.

8.03 In addition to the Bonds, the City is selling, pursuant to a single offering document and on the same date, the following tax-exempt obligations: General Obligation Capital Improvement Bonds, Series 2011A (the "Series 2011A Bonds"), General Obligation Capital Equipment Notes, Series 2011B (the "Notes"), and General Obligation Gas Utility Revenue Refunding Bonds, Series 2011C (the "Series 2011C Bonds"). The Bonds will not be paid out of substantially the same source of funds as the Series 2011A Bonds, the Notes and the 2011C Bonds; consequently, the Bonds will not be combined with any of them for a single issue under Treasury Regulations Section 1.150-1(c).

8.04 (a) The City covenants and certifies to and for the benefit of the owners of the Bonds that no use will be made of the proceeds of the Bonds, which will cause the Bonds to be arbitrage bonds within the meaning of Section 148(a) of the Code and the Treasury Regulations promulgated thereunder. Pursuant to such covenant, the City hereby agrees to comply throughout the term of the issue of the Bonds with the requirements of Section 148 of the Code and any Treasury Regulations promulgated thereunder; to this end, the City shall:

(i) maintain records identifying all "gross proceeds" (as defined in Section 148(f)(6)(B) of the Code) attributable to the Bonds, the yield at which such gross proceeds are invested, any arbitrage profit derived therefrom (earnings in excess of the yield on the Bonds) and any earnings derived from the investment of such arbitrage profit;

(ii) make, or cause to be made as of the end of each Bond Year, the annual determinations of the amount, if any, of excess arbitrage required to be paid to the United States by the City (hereinafter, the "Rebate Amount");

(iii) pay, or cause to be paid, to the United States at least once every five Bond Years the amount, if any, which is required to be paid to the United States, including the last installment which shall be made no later than 60 days after the day on which the Bonds are paid in full;

(iv) not invest, or permit to be invested, "gross proceeds" in any acquired non-purpose obligations so as to deflect arbitrage otherwise payable to the United States as a "prohibited payment" to a third party;

(v) retain all records of the annual determinations of the foregoing amounts until six years after the Bonds have been fully paid; and

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

(vi) in order to comply with the foregoing paragraph, the City shall determine the Rebate Amount within 30 days after the close of each Bond Year and upon payment in full of the Bonds; upon each such determination, the City shall deposit in the Rebate Fund the Rebate Amount so determined; the City shall separately account for the earnings from the investment of the Rebate Amount and such earnings shall become part of the Rebate Amount.

(b) For purposes of this section, "Bond Year" shall mean the 12-month period beginning on the date of issuance of the Bonds or such other 12-month period designated by the Board which is permitted by the Code or any Treasury Regulation promulgated thereunder.

Section 9. Continuing disclosure. The City acknowledges that the Bonds are subject to the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12) (the "Rule"). The Rule governs the obligations of certain underwriters to require that issuers of municipal bonds enter into agreements for the benefit of the bondholders to provide continuing disclosure with respect to the bonds. To provide for the public availability of certain information relating to the Bonds and the security therefor and to permit underwriters of the Bonds to comply with the Rule, which will enhance the marketability of the Bonds, the mayor and the clerk are hereby authorized and directed to execute a continuing disclosure certificate substantially in the form of the certificate currently on file in the office of the city clerk as Public Document No. 11-1114-35.

Resolution 11-0587 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Nays: Councilors Fosle and Stauber -- 2

Absent: Councilor Fedora -- 1

Approved November 14, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, by the city council of the city of Duluth, Minnesota (the "City"), as follows:

Section 1. Note Purpose and Authorization.

1.01 Under and pursuant to the provisions of Section 55 of the City Charter, Minnesota Statutes, Section 444.075 and Chapter 475, and other pertinent provisions of said Charter and statutes, the City is authorized to issue its general obligation bonds or notes to provide funds for the payment of costs of improvements to the municipal sewer utility, which bonds or notes shall be a specific lien upon the sewer utility and are payable primarily from net revenues to be derived from the operation of the municipal sewer utility and pledged for their payment. The City has applied for and received a commitment from the Minnesota Public Facilities Authority (the "PFA") for a loan for the Project, as hereinafter defined.

1.02 The city council has, by Ordinance No. 10110 adopted September 26, 2011 (the "Ordinance"), ordered the issuance, sale and delivery of a general obligation sewer utility revenue note in the maximum amount of \$1,505,000 of the City for three projects, one of which is the following project: CIPP lining rehabilitation of sanitary sewers for Sewer Basin No. 2 in an estimated amount of \$630,000 (the "Project") as identified in the City's application to the PFA, and for the payment of part of the interest cost of the bond or note.

1.03 The City has applied for and received a grant from the State of Minnesota's Wastewater Infrastructure Fund in the amount of \$61,914 and principal forgiveness in the amount of \$1,050,680 granted under Minnesota's Clean Water Fund Project to pay a portion of the costs of the Project. The general obligation sewer utility revenue note to be issued under

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

the Ordinance for the Project shall be issued in the principal amount of \$278,149 (the "Note") to pay the portion of the costs of the Project, not paid by such grant funds.

1.04 The council hereby determines that the Project is a project for the purpose of designing, constructing, repairing or replacing structures or facilities, including sanitary sewage overflow storage and for the purpose of attaining compliance with federal or state inflow and infiltration standards, within the meaning of City Code Section 43-11.1(7), and thus the costs of the Project and debt service of the Note which paid costs of the Project are eligible costs to be paid from the Clean Water Fund created under City Code Section 43-11.1 (the "Clean Water Fund").

1.05 The City hereby authorizes the issuance and sale of the Note, in substantially the form on file in the office of the clerk as Public Document No. 11-1114-36 for the Project to the PFA pursuant to a Minnesota Public Facilities Authority Bond Purchase and Project Loan Agreement dated September 14, 2011, between the PFA and the City, in substantially the form presented to the Council and on file in the office of the clerk (the "Loan Agreement"), as Public Document No. 11-1114-36 which is hereby authorized, ratified and approved.

### Section 2. Execution and Delivery of Note and Loan Agreement.

2.01 The Note to be issued hereunder shall be dated as of the date of delivery to PFA, shall be issued in the principal amount of \$278,149, in fully registered form and lettered and numbered R-1. Interest on the Note shall be at the rate of 1.00% per annum. Principal and interest payments shall be made in the respective years and amounts set forth on Exhibit A to the Note, subject to adjustment as provided in the Loan Agreement. If the principal and interest payments are paid by check and mailed to the registered holder of the Note, such payment shall be mailed by the City at least five business days prior to the payment date.

2.02 The Note shall be prepared for execution in accordance with the approved form and shall be signed by the manual signature of the Mayor and attested by the manual signature of the Clerk. In case any officer whose signature shall appear on the Note shall cease to be an officer before delivery of the Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. All actions of the officers of the City regarding the Loan Agreement, including but not limited to, the officers of the City executing the Loan Agreement, are ratified, confirmed and approved as of the date of the Loan Agreement.

2.03. The City will cause to be kept at its offices a register in which, subject to such reasonable regulations as the City may prescribe, the City shall provide for the registration of transfers of ownership of the Note. The Note shall be initially registered in the name of the PFA and shall be transferable upon the register by the PFA in person or by its agent duly authorized in writing, upon surrender of the Note, together with a written instrument of transfer satisfactory to the Clerk, duly executed by the PFA or its duly authorized agent.

2.04. Delivery of the Note shall be made at a place mutually satisfactory to the City and the PFA. The Note shall be furnished by the City without cost to the PFA. The Note, when prepared in accordance with this Resolution and executed, shall be delivered to the PFA by and under the direction of the Treasurer. Disbursement of the proceeds of the Note shall be made pursuant to the Loan Agreement.

2.05. In the event of an inconsistency between a provision of this Resolution and a provision of the Loan Agreement, the provision of the Loan Agreement shall govern.

### Section 3. Revenues, Accounts and Covenants.

3.01 The city council covenants and agrees with the PFA and with its taxpayers that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal sewer utility at the times and in the amounts required to pay the

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the Note and on all other bonds and notes heretofore or hereafter issued and made payable from said net revenues, and will operate the utility and segregate and account for the revenues thereof as provided in this section.

The City will place all such charges, when collected, and all money received from the sale of any facilities or equipment of the municipal sewer utility in a separate Sewer Utility Operating Account within the Public Utility Sewer Fund maintained under Section 54 of the City Charter. Except as provided in this section, this account shall be used only to pay claims duly approved and allowed for payment of expenses which, under generally accepted accounting principles, constitute normal, reasonable and current expenses of operating and maintaining the municipal sewer utility, and to maintain such reasonable reserves for such expenses as the proper City official shall determine to be necessary from time to time in accordance with policies established by the city council. Sums from time to time on hand in this account, in excess of sums required to make such payments and maintain such reserves, constitute the net revenues which are herein pledged and appropriated first to pay the principal of and interest on all sewer utility bonds or notes when due.

3.02 The City hereby creates a separate construction account (the "2011A Construction Account") within the Public Utility Sewer Fund to which there shall be credited the proceeds of the Note as received, together with investment income thereon, all grant funds for the Project and any additional funds which may be available and are appropriated for improvements to the Project. This account shall be used only to pay expenses duly approved and allowed which, under generally accepted accounting principles, constitute capital expenditures for the completion of the Project and costs of the issuance of the Note.

3.03 Until the Note issued hereunder is fully paid or duly called for redemption, or otherwise discharged, the City will also maintain a separate debt service account (the "Sewer Debt Service Fund") in the Public Utility Sewer Fund to be used solely for the payment of the principal and interest, as such principal and interest become due and payable, on the Note and on any other bonds or notes which have been or may be issued and made payable from said net revenues of the sewer utility. The council further authorizes the use of monies on deposit in the Clean Water Fund to pay the principal of and interest on the Note. All investment income on funds in the Sewer Debt Service Fund are pledged to payment of the Note and other bonds and notes payable from the Sewer Debt Service Fund. The treasurer shall transfer from the Sewer Utility Operating Account and the Clean Water Fund to the Sewer Debt Service Fund amounts of the net revenues and monies from the Clean Water Fund sufficient for the payment of all interest and principal then due on the Note. Such transfers shall be made at the times and in the amounts determined by the treasurer, in accordance with policies established by resolutions of the city council.

3.04 Surplus utility revenues from time to time received in the Sewer Utility Operating Account, in excess of payments due from and reserves required to be maintained in the Sewer Utility Operating Account and in the Sewer Debt Service Fund, may be used for necessary capital expenditures for the improvement of the municipal sewer utility, for the prepayment and redemption of bonds or notes constituting a lien on the municipal sewer utility, and for any other proper municipal purpose consistent with policies established by resolutions of the city council.

3.05 A. In the event the monies and payments appropriated to the Sewer Debt Service Fund are insufficient to pay principal of and interest on the Note and the other bonds and notes payable from such fund as the same become due, the City is required by law and by

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

contract with the holders of the Note and such bonds and notes and hereby obligates itself to levy and cause to be extended, assessed and collected any additional taxes found necessary for full payment of the principal of and interest on the Note.

B. The full faith and credit and taxing powers of the City are irrevocably pledged for the prompt and full payment of the principal of and interest on the Note, as such principal and interest respectively become due. However, the net revenues of the sewer utility appropriated to the Sewer Debt Service Fund are estimated to be not less than five percent in excess of the principal of and interest on the Note and the other bonds and notes payable from such fund, and accordingly, no tax is levied at this time.

3.06 Monies on deposit in the 2011A Construction Account and the Sewer Debt Service Fund may, at the discretion of the City, be invested in securities permitted by Minnesota Statutes, Chapter 118A; provided, that any such investments shall mature at such times and in such amounts as will permit payment of the Project costs and/or the principal and interest on the Note and bonds or notes payable from the Sewer Debt Service Fund when due, as applicable.

### Section 4. Tax Covenants; Miscellaneous.

4.01 The city council covenants and agrees with the holders of the Note that the City will (i) take all action on its part necessary to cause the interest on the Note to be exempt from federal income taxes including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the Note and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the Note to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the Note and investment earnings thereon on certain specified purposes.

4.02 A. 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 (i) for a reasonable temporary period until such proceeds are needed for the purpose for which the Note was issued, and (ii) 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 and any sums from time to time held in the Sewer Debt Service Fund (or any other City account which will be used to pay principal and interest to become due on the Note) in excess of amounts which under the applicable federal arbitrage regulations may be invested without regard as 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.

B. In addition, the proceeds of the Note and money in the Sewer Debt Service 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 Internal Revenue Code of 1996, as amended (the "Code").

C. The City hereby covenants not to use the proceeds of the Note, or to cause or permit them to be used, 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.

4.03 If the City determines that the Note does not qualify for exemption from the federal arbitrage rebate requirements under Section 148(f) of the Code, the City agrees to

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

cause the calculations and payments to the United States to be made pursuant to Section 148 of the Code and Treasury Regulations relating thereto.

### Section 5. Certificate of Proceedings.

5.01 The clerk is directed to file with the county auditor a certified copy of this resolution and such other information as the county auditor may require, and to obtain from the county auditor a certificate stating that the Note herein authorized has been duly entered on his register.

5.02 The officers of the City are authorized and directed to prepare and furnish to the Purchaser and to bond counsel certified copies of all proceedings and records of the City relating to the authorization and issuance of the Note and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the Note as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the City as to the correctness of facts recited therein and the actions stated therein to have been taken.

Resolution 11-0593 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, and President Gardner -- 7

Nays: Councilor Stauber -- 1

Absent: Councilor Fedora -- 1

Approved November 14, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, by the city council of the city of Duluth, Minnesota (the "City"), as follows:

### Section 1. Note Purpose and Authorization.

1.01 Under and pursuant to the provisions of Section 55 of the City Charter, Minnesota Statutes, Section 444.075 and Chapter 475, and other pertinent provisions of said Charter and statutes, the City is authorized to issue its general obligation bonds or notes to provide funds for the payment of costs of improvements to the municipal sewer utility, which bonds or notes shall be a specific lien upon the sewer utility and are payable primarily from net revenues to be derived from the operation of the municipal sewer utility and pledged for their payment. The City has applied for and received a commitment from the Minnesota Public Facilities Authority (the "PFA") for a loan for the Project, as hereinafter defined.

1.02 The city council has, by Ordinance No. 10110 adopted September 26, 2011 (the "Ordinance"), ordered the issuance, sale and delivery of a general obligation sewer utility revenue note in the maximum amount of \$1,505,000 of the City for three projects, one of which is the following project: improvements to the sanitary sewer system (the "Project") as part of the Riverside community utility and street improvement project in an estimated amount of \$420,732, as identified in the City's application to the PFA, and for the payment of part of the interest cost of the bond or note.

1.03 The City has applied for and received a grant from the State of Minnesota's Wastewater Infrastructure Fund in the amount of \$1,418,205 to pay a portion of the costs of the Project. The general obligation sewer utility revenue note to be issued under the Ordinance for the Project shall be issued in the principal amount of \$354,551 (the "Note") to pay the portion of the costs of the Project, not paid by such grant funds.

1.04 The City hereby authorizes the issuance and sale of the Note, in substantially the form on file in the office of the clerk as Public Document No. 11-1114-37, for the Project to the

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

PFA pursuant to a Minnesota Public Facilities Authority Bond Purchase and Project Loan Agreement dated October 21, 2011, between the PFA and the City, in substantially the form presented to the Council and on file in the office of the clerk (the "Loan Agreement"), as Public Document No. 11-1114-37 which is hereby authorized, ratified and approved.

### Section 2. Execution and Delivery of Note and Loan Agreement.

2.01 The Note to be issued hereunder shall be dated as of the date of delivery to PFA, shall be issued in the principal amount of \$354,551, in fully registered form and lettered and numbered R-1. Interest on the Note shall be at the rate of 1.00% per annum. Principal and interest payments shall be made in the respective years and amounts set forth on Exhibit A to the Note, subject to adjustment as provided in the Loan Agreement. If the principal and interest payments are paid by check and mailed to the registered holder of the Note, such payment shall be mailed by the City at least five business days prior to the payment date.

2.02 The Note shall be prepared for execution in accordance with the approved form and shall be signed by the manual signature of the Mayor and attested by the manual signature of the Clerk. In case any officer whose signature shall appear on the Note shall cease to be an officer before delivery of the Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. All actions of the officers of the City regarding the Loan Agreement, including but not limited to, the officers of the City executing the Loan Agreement, are ratified, confirmed and approved as of the date of the Loan Agreement.

2.03. The City will cause to be kept at its offices a register in which, subject to such reasonable regulations as the City may prescribe, the City shall provide for the registration of transfers of ownership of the Note. The Note shall be initially registered in the name of the PFA and shall be transferable upon the register by the PFA in person or by its agent duly authorized in writing, upon surrender of the Note, together with a written instrument of transfer satisfactory to the Clerk, duly executed by the PFA or its duly authorized agent.

2.04. Delivery of the Note shall be made at a place mutually satisfactory to the City and the PFA. The Note shall be furnished by the City without cost to the PFA. The Note, when prepared in accordance with this Resolution and executed, shall be delivered to the PFA by and under the direction of the Treasurer. Disbursement of the proceeds of the Note shall be made pursuant to the Loan Agreement.

2.05. In the event of an inconsistency between a provision of this Resolution and a provision of the Loan Agreement, the provision of the Loan Agreement shall govern.

### Section 3. Revenues, Accounts and Covenants.

3.01 The city council covenants and agrees with the PFA and with its taxpayers that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal sewer utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the Note and on all other bonds and notes heretofore or hereafter issued and made payable from said net revenues, and will operate the utility and segregate and account for the revenues thereof as provided in this section.

The City will place all such charges, when collected, and all money received from the sale of any facilities or equipment of the municipal sewer utility in a separate Sewer Utility Operating Account within the Public Utility Sewer Fund maintained under Section 54 of the City Charter. Except as provided in this section, this account shall be used only to pay claims duly approved and allowed for payment of expenses which, under generally accepted accounting principles, constitute normal, reasonable and current expenses of operating and maintaining

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

the municipal sewer utility, and to maintain such reasonable reserves for such expenses as the proper City official shall determine to be necessary from time to time in accordance with policies established by the city council. Sums from time to time on hand in this account, in excess of sums required to make such payments and maintain such reserves, constitute the net revenues which are herein pledged and appropriated first to pay the principal of and interest on all sewer utility bonds or notes when due.

3.02 The City hereby creates a separate construction account (the "2011B Construction Account") within the Public Utility Sewer Fund to which there shall be credited the proceeds of the Note as received, together with investment income thereon, all grant funds for the Project and any additional funds which may be available and are appropriated for improvements to the Project. This account shall be used only to pay expenses duly approved and allowed which, under generally accepted accounting principles, constitute capital expenditures for the completion of the Project and costs of the issuance of the Note.

3.03 Until the Note issued hereunder is fully paid or duly called for redemption, or otherwise discharged, the City will also maintain a separate debt service account (the "Sewer Debt Service Fund") in the Public Utility Sewer Fund to be used solely for the payment of the principal and interest, as such principal and interest become due and payable, on the Note and on any other bonds or notes which have been or may be issued and made payable from said net revenues of the sewer utility. All investment income on funds in the Sewer Debt Service Fund are pledged to payment of the Note and other bonds and notes payable from the Sewer Debt Service Fund. The treasurer shall transfer from the Sewer Utility Operating Account to the Sewer Debt Service Fund amounts of the net revenues sufficient for the payment of all interest and principal then due on the Note. Such transfers shall be made at the times and in the amounts determined by the treasurer, in accordance with policies established by resolutions of the city council.

3.04 Surplus utility revenues from time to time received in the Sewer Utility Operating Account, in excess of payments due from and reserves required to be maintained in the Sewer Utility Operating Account and in the Sewer Debt Service Fund, may be used for necessary capital expenditures for the improvement of the municipal sewer utility, for the prepayment and redemption of bonds or notes constituting a lien on the municipal sewer utility, and for any other proper municipal purpose consistent with policies established by resolutions of the city council.

3.05 A. In the event the monies and payments appropriated to the Sewer Debt Service Fund are insufficient to pay principal of and interest on the Note and the other bonds and notes payable from such fund as the same become due, the City is required by law and by contract with the holders of the Note and such bonds and notes and hereby obligates itself to levy and cause to be extended, assessed and collected any additional taxes found necessary for full payment of the principal of and interest on the Note.

B. The full faith and credit and taxing powers of the City are irrevocably pledged for the prompt and full payment of the principal of and interest on the Note, as such principal and interest respectively become due. However, the net revenues of the sewer utility appropriated to the Sewer Debt Service Fund are estimated to be not less than five percent in excess of the principal of and interest on the Note and the other bonds and notes payable from such fund, and accordingly, no tax is levied at this time.

3.06 Monies on deposit in the 2011B Construction Account and the Sewer Debt Service Fund may, at the discretion of the City, be invested in securities permitted by Minnesota Statutes, Chapter 118A; provided, that any such investments shall mature at such times and in such amounts as will permit payment of the Project costs and/or the principal and

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

interest on the Note and bonds or notes payable from the Sewer Debt Service Fund when due, as applicable.

### Section 4. Tax Covenants; Miscellaneous.

4.01 The city council covenants and agrees with the holders of the Note that the City will (i) take all action on its part necessary to cause the interest on the Note to be exempt from federal income taxes including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the Note and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the Note to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the Note and investment earnings thereon on certain specified purposes.

4.02 A. 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 (i) for a reasonable temporary period until such proceeds are needed for the purpose for which the Note was issued, and (ii) 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 and any sums from time to time held in the Sewer Debt Service Fund (or any other City account which will be used to pay principal and interest to become due on the Note) in excess of amounts which under the applicable federal arbitrage regulations may be invested without regard as 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.

B. In addition, the proceeds of the Note and money in the Sewer Debt Service 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 Internal Revenue Code of 1996, as amended (the "Code").

C. The City hereby covenants not to use the proceeds of the Note, or to cause or permit them to be used, 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.

4.03 If the City determines that the Note does not qualify for exemption from the federal arbitrage rebate requirements under Section 148(f) of the Code, the City agrees to cause the calculations and payments to the United States to be made pursuant to Section 148 of the Code and Treasury Regulations relating thereto.

### Section 5. Certificate of Proceedings.

5.01 The clerk is directed to file with the county auditor a certified copy of this resolution and such other information as the county auditor may require, and to obtain from the county auditor a certificate stating that the Note herein authorized has been duly entered on his register.

5.02 The officers of the City are authorized and directed to prepare and furnish to the Purchaser and to bond counsel certified copies of all proceedings and records of the City relating to the authorization and issuance of the Note and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the Note as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

heretofore furnished, constitute representations of the City as to the correctness of facts recited therein and the actions stated therein to have been taken.

Resolution 11-0594 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman and President Gardner -- 7

Nays: Councilor Stauber -- 1

Absent: Councilor Fedora -- 1

Approved November 14, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, by the city council of the city of Duluth, Minnesota (the "City"), as follows:

Section 1. Note Purpose and Authorization.

1.01 Under and pursuant to the provisions of Section 55 of the City Charter, Minnesota Statutes, Section 444.075 and Chapter 475, and other pertinent provisions of said Charter and statutes, the City is authorized to issue its general obligation bonds or notes to provide funds for the payment of costs of improvements to the municipal water utility, which bonds or notes shall be a specific lien upon the water utility and are payable primarily from net revenues to be derived from the operation of the municipal water utility and pledged for their payment. The City has applied for and received a commitment from the Minnesota Public Facilities Authority (the "PFA") for a loan for the Project, as hereinafter defined.

1.02 The city council has, by Ordinance No. 10111 adopted September 26, 2011 (the "Ordinance"), ordered the issuance, sale and delivery of a general obligation water utility revenue note, in one or more series, in the amount of \$1,650,000 of the City, for the payment of improvements to the water utility system (the "Project") as part of the Riverside Community Utility and Street Improvement project.

1.03 The general obligation water utility revenue note to be issued under the Ordinance shall be issued in the principal amount of \$1,605,655 (the "Note") to pay the costs of the Project.

1.04 The City hereby authorizes the issuance and sale of the Note, in substantially the form on file in the office of the clerk as Public Document No. 11-1114-38, for the Project to the PFA pursuant to a Minnesota Public Facilities Authority Bond Purchase and Project Loan Agreement dated October 21, 2011, between the PFA and the City, in substantially the form presented to the Council and on file in the office of the clerk (the "Loan Agreement"), as Public Document No. 11-1114-38 which is hereby authorized, ratified and approved.

Section 2. Execution and Delivery of Note and Loan Agreement.

2.01 The Note to be issued hereunder shall be dated as of the date of delivery to PFA, shall be issued in the principal amount of \$1,605,655, in fully registered form and lettered and numbered R-1. Interest on the Note shall be at the rate of 1.221% per annum. Principal and interest payments shall be made in the respective years and amounts set forth on Exhibit A to the Note, subject to adjustment as provided in the Loan Agreement. If the principal and interest payments are paid by check and mailed to the registered holder of the Note, such payment shall be mailed by the City at least five business days prior to the payment date.

2.02 The Note shall be prepared for execution in accordance with the approved form and shall be signed by the manual signature of the Mayor and attested by the manual signature of the Clerk. In case any officer whose signature shall appear on the Note shall cease to be an officer before delivery of the Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery.

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

All actions of the officers of the City regarding the Loan Agreement, including but not limited to, the officers of the City executing the Loan Agreement, are ratified, confirmed and approved as of the date of the Loan Agreement.

2.03. The City will cause to be kept at its offices a register in which, subject to such reasonable regulations as the City may prescribe, the City shall provide for the registration of transfers of ownership of the Note. The Note shall be initially registered in the name of the PFA and shall be transferable upon the register by the PFA in person or by its agent duly authorized in writing, upon surrender of the Note, together with a written instrument of transfer satisfactory to the Clerk, duly executed by the PFA or its duly authorized agent.

2.04. Delivery of the Note shall be made at a place mutually satisfactory to the City and the PFA. The Note shall be furnished by the City without cost to the PFA. The Note, when prepared in accordance with this Resolution and executed, shall be delivered to the PFA by and under the direction of the Treasurer. Disbursement of the proceeds of the Note shall be made pursuant to the Loan Agreement.

2.05. In the event of an inconsistency between a provision of this Resolution and a provision of the Loan Agreement, the provision of the Loan Agreement shall govern.

### Section 3. Revenues, Accounts and Covenants.

3.01 The city council covenants and agrees with the PFA and with its taxpayers that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal water utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the Note and on all other bonds and notes heretofore or hereafter issued and made payable from said net revenues, and will operate the utility and segregate and account for the revenues thereof as provided in this section.

The City will place all such charges, when collected, and all money received from the sale of any facilities or equipment of the municipal water utility in a separate Water Utility Operating Account within the Public Utility Water Fund maintained under Section 54 of the City Charter. Except as provided in this section, this account shall be used only to pay claims duly approved and allowed for payment of expenses which, under generally accepted accounting principles, constitute normal, reasonable and current expenses of operating and maintaining the municipal water utility, and to maintain such reasonable reserves for such expenses as the proper City official shall determine to be necessary from time to time in accordance with policies established by the city council. Sums from time to time on hand in this account, in excess of sums required to make such payments and maintain such reserves, constitute the net revenues which are herein pledged and appropriated first to pay the principal of and interest on all water utility bonds or notes when due.

3.02 The City hereby creates a separate construction account (the "Construction Account") within the Public Utility Water Fund to which there shall be credited the proceeds of the Note as received, together with investment income thereon and any additional funds which may be available and are appropriated for improvements to the Project. This account shall be used only to pay expenses duly approved and allowed which, under generally accepted accounting principles, constitute capital expenditures for the completion of the Project and costs of the issuance of the Note.

3.03 Until the Note issued hereunder is fully paid or duly called for redemption, or otherwise discharged, the City will also maintain a separate debt service account (the "Water Debt Service Fund") in the Public Utility Water Fund to be used solely for the payment of the principal and interest, as such principal and interest become due and payable, on the Note and

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

on any other bonds or notes which have been or may be issued and made payable from said net revenues of the water utility. All investment income on funds in the Water Debt Service Fund are pledged to payment of the Note and other bonds and notes payable from the Water Debt Service Fund. The treasurer shall transfer from the Water Utility Operating Account to the Water Debt Service Fund amounts of the net revenues sufficient for the payment of all interest and principal then due on the Note and other bonds and notes payable from the Water Debt Service Fund. Such transfers shall be made at the times and in the amounts determined by the treasurer, in accordance with policies established by resolutions of the city council.

3.04 Surplus utility revenues from time to time received in the Water Utility Operating Account, in excess of payments due from and reserves required to be maintained in the Water Utility Operating Account and in the Water Debt Service Fund, may be used for necessary capital expenditures for the improvement of the municipal water utility, for the prepayment and redemption of bonds or notes constituting a lien on the municipal water utility, and for any other proper municipal purpose consistent with policies established by resolutions of the city council.

3.05 A. In the event the monies and payments appropriated to the Water Debt Service Fund are insufficient to pay principal of and interest on the Note and the bonds and notes payable from such fund as the same become due, the City is required by law and by contract with the holders of the Note and such bonds and notes and hereby obligates itself to levy and cause to be extended, assessed and collected any additional taxes found necessary for full payment of the principal of and interest on the Note.

B. The full faith and credit and taxing powers of the City are irrevocably pledged for the prompt and full payment of the principal of and interest on the Note, as such principal and interest respectively become due. However, the net revenues of the water utility appropriated to the Water Debt Service Fund are estimated to be not less than five percent in excess of the principal of and interest on the Note and the other bonds and notes payable from such fund, and accordingly, no tax is levied at this time.

3.06 Monies on deposit in the Construction Account and the Water Debt Service Fund may, at the discretion of the City, be invested in securities permitted by Minnesota Statutes, Chapter 118A; provided, that any such investments shall mature at such times and in such amounts as will permit payment of the Project costs and/or the principal and interest on the Note and bonds or notes payable from the Water Debt Service Fund when due, as applicable.

### Section 4. Tax Covenants; Miscellaneous.

4.01 The city council covenants and agrees with the holders of the Note that the City will (i) take all action on its part necessary to cause the interest on the Note to be exempt from federal income taxes including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the Note and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the Note to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the Note and investment earnings thereon on certain specified purposes.

4.02 A. 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 (i) for a reasonable temporary period until such proceeds are needed for the purpose for which the Note was issued, and (ii) 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 and any sums from time to time held in the Water Debt Service Fund (or any other City account which will be used to pay principal and

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

interest to become due on the Note) in excess of amounts which under the applicable federal arbitrage regulations may be invested without regard as 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.

B. In addition, the proceeds of the Note and money in the Water Debt Service 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 Internal Revenue Code of 1996, as amended (the "Code").

C. The City hereby covenants not to use the proceeds of the Note, or to cause or permit them to be used, 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.

4.03 A. Pursuant to Section 1.148-7(d) of the Treasury Regulations, relating to exception from rebate, the City hereby reasonably expects that with respect to the gross proceeds of the Note, the following schedule will be met: (i) at least 15% of the gross proceeds of the Note will be allocated to expenditures for the governmental purpose of the Note within six months of the date of issue of the Note; (ii) at least 60% of such proceeds will be allocated for such purposes within the one-year period of such date; and (iii) 100% of such proceeds will be allocated for such purposes within the 18-month period beginning on such date; subject to an exception for reasonable retainage of 5% of the available proceeds of the Note, and that 100% of the available proceeds of the Note will be allocated within 30 months from the date of issue of the Note.

B. 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 section.

### Section 5. Certificate of Proceedings.

5.01 The clerk is directed to file with the county auditor a certified copy of this resolution and such other information as the county auditor may require, and to obtain from the county auditor a certificate stating that the Note herein authorized has been duly entered on his register.

5.02 The officers of the City are authorized and directed to prepare and furnish to the Purchaser and to bond counsel certified copies of all proceedings and records of the City relating to the authorization and issuance of the Note and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the Note as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the City as to the correctness of facts recited therein and the actions stated therein to have been taken.

Resolution 11-0595 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman and President Gardner -- 7

Nays: Councilor Stauber -- 1

Absent: Councilor Fedora -- 1

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute a license agreement, substantially in the form of that on file in the office of the city clerk as Public

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

Document No. 11-1114-39, with the Duluth economic development authority (DEDA), to allow the city to dispose of snow from street plowing operations on certain DEDA-owned property known as DEDA Lot D located west of Bayfront Park.

Resolution 11-0568 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman and President Gardner -- 7

Nays: Councilor Stauber -- 1

Absent: Councilor Fedora -- 1

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to contract with Enventis Telecom, Inc., a subsidiary of HickoryTech, for the purchase and installation of CISCO phones and network equipment necessary to operate the city's voice and data network at the new Duluth police headquarters facility in accordance with city-approved specifications and the vendor's low bid of \$413,683.34 plus \$1,755.18 net adjustment for equipment plus \$26,871.03 sales tax (on taxable portion) for a combined total of \$442,309.55, payable from the Capital Improvements Fund 450, Department/Agency 030 (finance), Object 5520 (buildings and structures).

Resolution 11-0601 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Software House International (SHI), Inc., for the purchase and delivery of 119 Citon Q series desktop computer workstations to the new Duluth police headquarters in fiscal year 2011 in accordance with Minnesota State Contract 436392, Release C816-(5), specifications and pricing, terms net 30, FOB destination, in the amount of \$106,386 plus \$7,314.04 sales tax for a combined total of \$113,700.04, payable from the Capital Improvements Fund 450, Department/Agency 030 (finance), Object 5520 (buildings and structures).

Resolution 11-0602 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the original Purchase Order 11-0494 issued to Fluid Interiors, LLC, for the purchase and installation of private office and systems furniture for the new public safety building is hereby increased by a total of \$226,551.77, payable from payable from Capital Improvements Fund 450, Department/Agency 030 (finance), Object 5520 (buildings and structures), Project No. CP2009-0928B.

Resolution 11-0603 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

**PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011**

---

**INTRODUCTION AND CONSIDERATION OF ORDINANCES**

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR CUNEO

11-055 - AN ORDINANCE AMENDING SECTION 8-40 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE ALCOHOLIC BEVERAGE CODE.

- - -

INTRODUCED BY COUNCILOR STAUBER

11-056 - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE WEST DULUTH/ SPIRIT VALLEY AREA TO DEDA FOR \$1,126.00

- - -

INTRODUCED BY COUNCILOR FOSLE

11-054-O - AN ORDINANCE REPEALING AND REPLACING CHAPTER 33, ARTICLE VI, AND AMENDING SECTIONS 33-101, 33-108, 33-110, 33-111.1 AND 33-221 OF THE DULUTH CITY CODE, 1959, AS AMENDED, CREATING A NEW DULUTH PARKING COMMISSION.

- - -

INTRODUCED BY COUNCILOR FOSLE

11-057 - AN ORDINANCE AMENDING SECTION 10-5 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE BUILDING APPEAL BOARD.

- - -

INTRODUCED BY COUNCILOR FOSLE

11-058 - AN ORDINANCE AMENDING SECTIONS 40-4 AND 40-10 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO ABANDONED PROPERTY.

- - -

The following entitled ordinances are to be read for the second time:

INTRODUCED BY COUNICLOR CUNEO

11-050 (10118) - AN ORDINANCE AMENDING SECTION 47-17.5 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO IDENTIFICATION MEDALLIONS AND NUMBERS REGARDING TAXICAB LICENSES.

Councilor Cuneo moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNICLOR CUNEO

11-052 (10119) - AN ORDINANCE AMENDING SECTION 8-41 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE ALCOHOLIC BEVERAGE CODE.

Councilor Cuneo moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNICLOR STAUBER

11-051 (10120) - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE LINCOLN PARK AREA TO LINDA J. ZIMM FOR \$350.

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

INTRODUCED BY COUNICLOR STAUBER

11-053 (10121) - AN ORDINANCE AMENDING ORDINANCE 10117 AMENDING ORDINANCE 10087 AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH TO CORRECT THE LEGAL DESCRIPTION OF THE PLAZA AND LONDON ROAD FORM DISTRICTS.

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNICLOR FOSLE

11-049 (10122) - AN ORDINANCE AMENDING ARTICLE IX, SECTION 6-97, AND ADDING A NEW SECTION 6-98, OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO DANGEROUS DOGS.

Councilor Fosle moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

The meeting was adjourned at 8:12 p.m.

JEFFREY J. COX, City Clerk

- - -

**ORDINANCE NO. 10118**

AN ORDINANCE AMENDING SECTION 47-17.5 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO IDENTIFICATION MEDALLIONS AND NUMBERS REGARDING TAXICAB LICENSES.

The city of Duluth does ordain:

Section 1. That Section 47-17.5 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 47-17.5. Same—Identification medallions and numbers.

The city clerk shall assign an identification number to each taxicab vehicle license, and the licensee shall display such number on each side and the rear of the licensed taxicab at all times while in operation by figures at least four inches high which contrast with the color of the taxicab.

The city clerk shall also assign one identification medallion to each taxicab license, and each such medallion shall bear the identification number assigned to such license by the city clerk. Such medallion shall be made of durable material, and shall be of such size and design so as to be readily recognizable. No person shall operate a taxicab within the city unless such medallion is affixed to the rear exterior of such vehicle, at a location approved by the chief of police, so as to be readily observable. Any such medallion assigned to and possessed by any licensee in accordance with the provisions of this Article may be used by such licensee on any vehicle for which he possesses a taxicab vehicle license. Any such medallion shall remain the property of the city and shall be returned to the city clerk upon the expiration, suspension, revocation or transfer of the taxicab license to which it was assigned. Any such medallion which is damaged, destroyed or lost shall be replaced by the city clerk upon payment by the taxicab licensee of a fee. The medallion replacement fee shall be set in accordance with Section 31-6(a) of this Code.

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

Any identification number or medallion required to be displayed by this Section shall be kept free of dirt and shall be maintained so as to be legible at all times.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: December 17, 2011)

Councilor Cuneo moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Absent: Councilor Fedora -- 1

Passed November 14, 2011  
Approved November 14, 2011  
DON NESS, Mayor

ATTEST:  
JEFFREY J. COX, City Clerk

- - -

### ORDINANCE NO. 10119

AN ORDINANCE AMENDING SECTION 8-41 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE ALCOHOLIC BEVERAGE CODE.

The city of Duluth does ordain:

Section 1. That Section 8-41 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 8-41. Types generally.

(a) With respect to intoxicating liquor, there shall be the following types of licenses: on sale, on sale club, on sale wine, on sale culinary class, on sale theater, on sale brewer taproom, temporary on sale, off sale and a brewery malt liquor off sale;

(b) On sale licenses shall permit the licensee to sell intoxicating liquor at retail for consumption on the licensed premises only;

(c) On sale culinary class licenses shall permit the licensee to sell intoxicating liquor subject to the restrictions of Section 8-44(d) of this Chapter and Minnesota Statutes Section 340A.4041, or its successor;

(d) The on sale theater license authorizes sales on all days of the week to persons attending events at the theater;

(e) The on sale brewer taproom license authorizes on sale of malt liquor produced by the brewer for consumption on the premises of or adjacent to one brewery location owned by the brewer, subject to the restrictions of this Chapter and Minnesota Statutes Section 340A.301, subd. 6(b), or its successor;

(f) Temporary on sale licenses shall permit the licensee to sell intoxicating liquor on sale temporarily in connection with a social event sponsored by the licensee;

(g) Except as provided herein, off sale licenses shall permit the licensee to sell intoxicating liquor at retail in original packages for consumption off the licensed premises only;

(h) Brewery malt liquor off sale licenses shall permit breweries holding on sale licenses or a brewer who manufactures fewer than 3,500 barrels of malt

**PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011**

---

liquor in a year to sell malt liquor off sale in 64-ounce containers commonly known as growlers, subject to the restrictions in Minnesota Statutes, Section 340A.301, subd. 7(b), or its successor, and this Chapter;

(i) Notwithstanding the provisions of sections 8-21 and 8-22 of this Chapter, it shall be lawful for the holder of an off sale intoxicating liquor license or a brewery malt liquor off sale license to provide samples as provided in Minnesota Statutes, Section 340A.510, or its successor;

(j) With respect to 3.2 percent malt liquor, there shall be three types of licenses: on sale, off sale and temporary on sale;

(1) On sale licenses shall permit the licensee to sell 3.2 percent malt liquor at retail for consumption on the licensed premises only;

(2) Off sale licenses shall permit the licensee to sell 3.2 percent malt liquor at retail in original packages for consumption off the licensed premises only;

(3) A temporary on sale license shall permit the licensee to sell 3.2 percent malt liquor at retail for a limited period of time at a designated licensed premise only;

(k) No alcoholic beverage license of any type shall be granted to any elective, executive or administrative officer of the city, nor to any employee holding a position in the classified service of the city and working as a licensed peace officer in the police department or as a fire marshal or assistant fire marshal, nor shall any such officer or employee engage in the business, except that employees in the classified service not working as a licensed peace officer in the police department or as a fire marshal or assistant fire marshal may work in any licensed establishment if they do not participate in the management of the business.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: December 17, 2011)

Councilor Cuneo moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Absent: Councilor Fedora -- 1

Passed November 14, 2011  
Approved November 14, 2011  
DON NESS, Mayor

ATTEST:  
JEFFREY J. COX, City Clerk

- - -

**ORDINANCE NO. 10120**

AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE LINCOLN PARK AREA TO LINDA J. ZIMM FOR \$350.

The city of Duluth does ordain:

Section 1.

(a) As per Section 2-176(a), of the Duluth City Code, 1959, as amended (the Code), the manager of the city's physical planning division has reviewed this proposed conveyance

**PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011**

---

and found conveyance thereof to be in conformity with the city's comprehensive land use plan;

(b) As per Section 2-176(b) of the Code, the city assessor has provided an estimate of the market value to be \$350;

(c) The property described in Section 2 below is hereby determined to be surplus to the city's future needs and is therefore appropriate for sale pursuant to Article XXXIII of Chapter 2 of the Code;

(d) As per Section 2-178 of the Code, the property described in Section 2 below, because of its size, no building can legally be constructed on said property, and therefore can be sold to the adjacent owner and without competitive bidding.

Section 2. That the proper city officials are hereby authorized to sell and convey the following described property, by quit claim deed, to Linda J. Zimm, a single person, for the amount of \$350 to be deposited into Fund 110 (general), Agency 700 (transfers and other functions), Organization 1420 (capital programs), Object 4640 (sale of land), and further to execute all documents necessary with regard to said conveyance:

All that part of the following described tract:

The southerly 25 feet of Lot 318, Block 92, DULUTH PROPER SECOND DIVISION, according to the plat thereof on file and of record in the office of the county recorder in and for St. Louis County, Minnesota;

which lies northeasterly of the following described line:

Beginning at a point on the northeasterly line of Lot 318, distant 105 feet southeasterly of the most northerly corner thereof; thence run southerly to a point on the southeasterly line of said Lot 318, distant 20 feet southwesterly of the most easterly corner thereof and there terminating.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: December 17, 2011)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Absent: Councilor Fedora -- 1

Passed November 14, 2011  
Approved November 14, 2011  
DON NESS, Mayor

ATTEST:  
JEFFREY J. COX, City Clerk

- - -

**ORDINANCE NO. 10121**

AN ORDINANCE AMENDING ORDINANCE 10117 AMENDING ORDINANCE 10087 AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH TO CORRECT THE LEGAL DESCRIPTION OF THE PLAZA AND LONDON ROAD FORM DISTRICTS.

The city of Duluth does ordain:

Section 1. That Public Document No. 11-1010-21 of Ordinance No. 10117 is replaced by Public Document No. 11-1114-40.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: December 17, 2011)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Absent: Councilor Fedora -- 1

Passed November 14, 2011  
Approved November 14, 2011  
DON NESS, Mayor

ATTEST:  
JEFFREY J. COX, City Clerk

- - -

**ORDINANCE NO. 10122**

AN ORDINANCE AMENDING ARTICLE IX, SECTION 6-97, AND ADDING A NEW SECTION 6-98, OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO DANGEROUS DOGS.

The city of Duluth does ordain:

Section 1. That Article IX, Section 6-97, of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 6-97. Authority to order euthanasia; procedure.

(a) A dog may be euthanized by the animal control authority if:

(1) The dog is dangerous as demonstrated by a vicious attack, an unprovoked attack, an attack without warning or multiple attacks; or

(2) The owner, if known, of the dangerous dog has demonstrated an inability or unwillingness to control the dog in order to prevent injury to persons or other animals;

(b) The animal control authority may not euthanize the dog until the dog owner has had the opportunity for a hearing before an administrative hearing officer as set forth in Section 6-98;

(c) If no appeal is filed, the orders issued will stand and the animal control authority may euthanize the dangerous dog;

(d) Nothing in this Section shall prevent the animal control authority from ordering the immediate euthanizing of a rabies-suspected animal pursuant to Chapter 6, Article III, of the Duluth City Code.

Section 2. That Section 6-98 of the Duluth City Code is hereby created to read as follows:

Sec. 6-98. Appeal of potentially dangerous or dangerous dog designations; euthanasia.

The owner of any dog declared potentially dangerous or dangerous or seized for euthanasia, other than a rabies-suspected dog subject to immediate euthanizing pursuant to Article III of this Code, has the right to a hearing by the administrative hearing officer as follows:

(a) The animal control authority shall give notice of this Section by delivering or mailing the notice to one owner of the dog, if known, or by posting a copy of the notice at the place where the dog is kept, or by delivering it to a person of suitable age and discretion residing on the property or by delivering the notice by electronic means. The notice must include:

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

---

(1) A description of the dog, the authority for and purpose of the potentially dangerous or dangerous dog designation or seizure; the time, place and circumstances under which the dog was declared or seized; and the telephone number and contact person for the entity having custody and control of the dog;

(2) A statement that the owner of the dog may request a hearing concerning the declaration or seizure and that the request for a hearing must be in writing and must specify the grounds relied upon for the appeal. The written request for a hearing must be received by the office identified in the notice within 14 days of the date of the notice. Failure to comply with these requirements and to pay the required appeal fee within the 14-day time period will terminate the owner's right to a hearing;

(3) A statement that if the hearing officer affirms the potentially dangerous or dangerous dog designation, the owner will have 14 days from receipt of that decision to comply with all requirements of this Article, Chapter 347 of the Minnesota Statutes and other requirements as ordered, if any;

(4) A form to request a hearing; and

(5) A statement that all actual costs of the care, keeping, and disposition of the dog are the responsibility of the owner, except to the extent that a court or hearing officer finds that the seizure or impoundment was not substantially justified by law;

(b) The owner must pay a fee, as established by the city council, in order to file the request for an appeal hearing;

(c) The appeal hearing will be held within 14 days of the filing of the appeal. The hearing officer must be an impartial person retained by the city to conduct the hearing. If the hearing officer upholds the declaration or seizure of the dog, actual expenses of the hearing will be the responsibility of the dog's owner. The hearing officer will issue a decision on the matter within ten days after the hearing. The decision shall be provided to the dog's owner by U.S. mail at the address listed on the appeal notice. A copy of the decision shall also be provided to the animal control authority. The decision of the hearing officer is final, subject only to appeal to the appellate courts, pursuant to Minnesota Statutes Section 606.01;

(d) An owner's right to appeal or otherwise contest a declaration or seizure by the animal control authority shall be deemed waived if the owner fails to timely file an appeal, as set forth herein, or fails to appear at any scheduled hearing date.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: December 17, 2011)

Councilor Fosle moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Absent: Councilor Fedora -- 1

ATTEST:  
JEFFREY J. COX, City Clerk

Passed November 14, 2011  
Approved November 14, 2011  
DON NESS, Mayor