

FINANCE COMMITTEE

10-0427R

RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF A
\$9,087,385 GENERAL OBLIGATION SEWER UTILITY REVENUE
NOTE, SERIES 2010A, AND PROVIDING FOR ITS PAYMENT.

CITY PROPOSAL:

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. 10034 adopted July 12, 2010 (the "ordinance"), ordered the issuance, sale and delivery of a general obligation sewer utility revenue note in the maximum amount of \$13,100,000 of the city (i) for the payment of the costs of improvements to the municipal sewer utility through the construction of Phase II of the East interceptor sanitary sewer overflow storage facility (construction of an 8.2 million gallon sewerage overflow prevention storage tank) (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 in the maximum loan amount of \$9,100,000; and (ii) for the payment of the costs of improvements to the municipal sewer utility through the construction of Phase III of the East interceptor sanitary sewer overflow storage facility (installation of pumps and cleaning equipment in the East interceptor sanitary sewer overflow storage tank, installation of overflow relief piping,

replacement of the existing pump station maintenance facility and public restroom and site landscaping) (the "Phase III 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 in the maximum loan amount of \$4,000,000. The Phase III project will be financed through the issuance of a separate revenue 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 \$4,000,000 to pay a portion of the costs of the project. The general obligation sewer utility revenue note to be issued under the ordinance shall be issued in the principal amount of \$9,087,385 (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. _____, for the project to the PFA pursuant to a Minnesota public facilities authority bond purchase and project loan agreement dated July 15, 2010, 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. _____ 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 \$9,087,385, in fully

registered form and lettered and numbered R-1. Interest on the note shall be at the rate of 1.258% 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 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 "2010A

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 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 2010A 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 A. Pursuant to Section 1.148(f)(C) of the treasury regulations,

relating to exception from rebate for certain proceeds to be used to finance construction expenditures, the city hereby reasonably expects that with respect to the available construction proceeds of the note, the following spending requirements will be met:

(i) 10% of the available construction proceeds of the note will be spent for the governmental purpose of the note within six months of the date of closing and delivery of the note;

(ii) 45% of such proceeds will be spent for such purposes within the one-year period beginning on such date;

(iii) 75% of such proceeds will be spent for such purposes within the 18-month period beginning on such date; and

(iv) 100% of such proceeds will be spent for such purposes within the two-year period beginning on such date;

subject to an exception for reasonable retainage of 5% of the available construction proceeds of the note, and that 100% of the available construction proceeds of the note will be spent within three years from the date of closing and delivery 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.

Approved:

Approved for presentation to council:

Department Director

Chief Administrative Officer

Approved as to form:

Approved:

Attorney

Auditor

FIN RET/CW:rb 8/5/2010

STATEMENT OF PURPOSE: This resolution establishes the terms and form of the \$9,087,385 general obligation sewer utility revenue note, Series 2010A, to be issued to the Minnesota public facilities authority (the "authority"). The interest rate on the note is 1.258%. The proceeds of the note will be used for the construction of Phase II of the East interceptor sanitary sewer overflow storage facility (construction of an 8.2 million gallon sewerage overflow prevention storage tank). The balance of the costs of such project will be paid from a \$4,000,000 grant from the state's wastewater infrastructure fund.