

Management Committee

Meeting date: August 12, 2009

ADVISORY INFORMATION

Date: August 4, 2009

Subject: Authorization To Execute Two Loan Agreements With The Public Facilities Authority (PFA) And Issuance Of General Obligation Sewer Notes Included in Resolutions #2009-____. and #2009-____

District(s), Member(s): All

Policy/Legal Reference: MN Stat. 473.541(3) and Council Policy 3-1-1

Staff Prepared/Presented: Jason Willett, MCES Finance Director, 651-602-1196

Division/Department: MCES c/o Bill Moore, Division Director, 651-602-1162

Proposed Action

That the Metropolitan Council approves the attached Resolutions 2009-__ and 2009-__ to authorize the Regional Administrator to execute loan agreements with the Minnesota Public Facilities Authority (PFA) in substantially the same form as the attached agreements. And further, to issue the related General Obligation Sewer Notes securing the loan agreements substantially in the form of the Notes referenced in the resolutions.

Background

MCES capital projects that will be funded by these loans are ongoing. These loans are expected to provide funds to finance the cash flows on MCES capital projects for about 12 months. Capital borrowing beyond what can be funded by PFA loans will come from bonds issued by Council or from wastewater fees ("pay-as-you-go"). This approval will not authorize any capital spending, which is done via the adoption of the capital budget, but rather provides low-cost instruments to finance capital project expenses that are already approved.

MCES has been negotiating two separate loan agreements with the Minnesota Public Facilities Authority (PFA) for a total financing of apx. \$88.2 million. These loans will differ from conventional PFA loans because these loans include additional benefits under the American Recovery and Reinvestment Act (ARRA) of February 2009.

Attachments to this item are:

[Attachment A](#): Staff summary of the key terms of the transactions

[Attachment B](#): The proposed Resolutions with Notes (drafted by Dorsey Whitney, our bond counsel)

[Attachment B-1](#): ARRA Project Loan

[Attachment B-2](#): BAB Loan

[Attachment C](#): The proposed Commitments and Loan Agreements (drafted by Briggs and Morgan, PFA bond counsel and reviewed by our bond counsel).

[Attachment C-1](#): ARRA

[Attachment C-2](#): BAB

Funding

In the first loan (hereafter, the "ARRA project loan"), MCES has included three capital projects that qualified for \$6 million of "principal forgiveness" under PFA's rules for use of ARRA capital received by the state for clean water funding as part of ARRA. Additionally, there is a "Green Infrastructure" provision for this federal funding that provides additional principal forgiveness and MCES has two different projects that have qualified for \$2.2 million of principal forgiveness. In addition, \$30.6 million of projected capital spending for the five projects will be funded by this loan with an interest rate of 2.45% (based on a tax-exempt market rate formula less 150 basis points).

In the second loan (hereafter, the "BAB loan"), \$49.4 million will be provided for 15 other MCES capital projects (and possibly others if subsequently approved). This loan will use taxable Build America Bonds (BABs) which provide significant net interest savings because the federal government will directly reimburse to the Council 35% of the interest costs. The interest rate to be paid to PFA on this loan is 2.83% (by formula in PFA rules, less the 150 basis points) with a net interest rate to the Council of 1.84% after the 35% reimbursement.

In addition to the unusual ARRA benefits (principal forgiveness and BAB interest reimbursement provision); the PFA Board has allowed a 150 basis point interest rate subsidy for the Council on the \$80 million financed over time, compared to the usual \$50 million.

Rationale

Conventional PFA loans are less expensive than Council bonding. In addition, both of the proposed loans are even more inexpensive than conventional PFA financing has been. The combination of mechanisms provided by these agreements provides savings compared to using a conventional \$88.2 million PFA loan of almost \$16 million (in net present value). Savings compared to traditional Council tax-exempt bonding is almost \$24 million (in net present value).

Terms of both of the loans provide these savings and are deemed by staff, our financial advisor (Springsted) and our bond counsel (Dorsey Whitney) to be acceptable.

Known Support / Opposition

None.

Attachment A

KEY TERMS OF THE PROPOSED LOAN AGREEMENTS

- The Council is actually financing \$80 million for 20 approved wastewater projects, and will pay this back over 20 years. Note: a total of apx. \$88.2 million is being nominally financed by this loan but apx. \$8.2 million of the principal will be forgiven.
- The Council will agree to complete all the projects phases funded in any part by these loans regardless of the availability of future PFA loans.
- PFA funds are not drawn down by the Council until after eligible expenses are incurred (that is, on a “reimbursement basis”). Interest will accrue on the debt only as money is disbursed to the Council.
- The interest rates to be paid to the PFA will be 2.45% for the ARRA project loan and 2.83% for the BAB loan.
- For the ARRA project loan, the Council must comply with certain contract requirements, including: 1) a Buy America provision, 2) the federal prevailing wage rate, and 3) significant extra reporting and a signage requirement.
- For the BAB loan, the Council must apply for the direct interest reimbursement of the federal government.
- The principal repayment schedules are not level annual debt service. Principal is structured to assist in smoothing the total debt service to be paid by MCES ratepayers in the future.
- The Council must execute General Obligation Notes pledging its full faith and credit to secure repayment of the loans. This means that should sewer revenues become inadequate, the Council must levy taxes to provide the necessary funds. However, no property taxes have ever been levied or are anticipated for the PFA Notes or any wastewater debt.
- The Council agrees that funds for the Blue Lake Improvement project phases funded by the ARRA project loan will be designated as coming from state bond funds and are thereby subject to extra restrictions for the life of the project and possibly repayment of the funds to the state if the facility were sold.
- The Council agrees, (for one or both of the loan agreements) to standard terms and conditions of PFA’s financing and state law. Among these terms are: 1) sale of project facilities are restricted; 2) funds can not be used for “private uses”; 3) insurance requirements must be met; 4) information disclosure requirements for the investment community must be met; and 5) projects funded must meet EPA diversity requirements.

2009-266 - Attachment B1 – ARRA Project Loan

**CERTIFICATION OF EXTRACT FROM MINUTES RELATING TO LOAN
AGREEMENT AND GENERAL OBLIGATION WASTE WATER REVENUE NOTE,
SERIES 2009D (PFA)**

Issuer: Metropolitan Council, Minnesota

Governing Body: Council Members

Kind, date, time and place of meeting: A regular meeting held _____, August __, 2009,
at _____ o'clock P.M., at 390 North Robert Street, St. Paul, Minnesota.

Members Present:

Members Absent:

Documents Attached:

Extract of minutes of said meeting including:

RESOLUTION NO. 2009-__

**RESOLUTION AUTHORIZING EXECUTION OF A BOND
PURCHASE AND PROJECT LOAN AGREEMENT WITH
THE PUBLIC FACILITIES AUTHORITY AND ISSUANCE
OF A GENERAL OBLIGATION WASTE WATER
REVENUE NOTE, SERIES 2009D (PFA)**

I, the undersigned, being the duly qualified and acting Recording Secretary of the Metropolitan Council, the public body executing the agreement and issuing the note referred to in the title of this certificate, certify that the documents attached hereto, as described above, have been carefully compared with the original records of said public body in my legal custody, from which they have been extracted; that said documents are correct and accurate copies of the resolution and related documents approved by the Council at its regular meeting, so far as they relate to said agreement and said note; and that said meeting was duly held by the governing body at the time and place and was attended by the members indicated above, pursuant to call and notice of such meeting given as required by law.

WITNESS my hand officially as such Recording Secretary on August __, 2009.

Pat Curtiss, Recording Secretary

After some discussion, Council Member _____ introduced the following resolution and moved its adoption:

**RESOLUTION AUTHORIZING EXECUTION OF A BOND
PURCHASE AND PROJECT LOAN AGREEMENT WITH
THE PUBLIC FACILITIES AUTHORITY AND ISSUANCE
OF A GENERAL OBLIGATION WASTE WATER
REVENUE NOTE, SERIES 2009D (PFA)**

The motion for the adoption of the foregoing resolution was seconded by Council Member _____, and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

and the following were absent for the vote:

whereupon the resolution was declared duly passed and adopted and was signed by the Chair whose signature was attested by the Recording Secretary.

METROPOLITAN COUNCIL
390 North Robert Street, St. Paul, Minnesota 55101
RESOLUTION NO. 2009-__

**RESOLUTION AUTHORIZING EXECUTION OF A BOND
PURCHASE AND PROJECT LOAN AGREEMENT WITH
THE PUBLIC FACILITIES AUTHORITY AND ISSUANCE
OF A GENERAL OBLIGATION WASTE WATER
REVENUE NOTE, SERIES 2009D (PFA)**

WHEREAS:

A. The Minnesota Public Facilities Authority (“PFA”) has the authority to make a loan (the “PFA Loan”) funded from proceeds of revenue bonds (“PFA Bonds”), federal capitalization grants pursuant to the American Recovery and Reinvestment Act of 2009 (“ARRA”), and other sources, and to make a loan, the principal amount of which is to be forgiven under the provisions of ARRA (the “Principal Forgiveness”), to the Metropolitan Council, State of Minnesota (the “Council” or “Issuer”), to provide funds to finance certain improvements to the waste water disposal system of the Council;

B. The Council may obligate itself to repay the PFA Loan through the issuance of general obligation waste water revenue bonds issued in the form of a single debt instrument (the “Note”) pursuant to Minnesota Statutes, Section 473.541, subdivision 3;

C. The Council has applied for a PFA Loan in an aggregate amount not to exceed \$30,588,750 and for Principal Forgiveness in an aggregate amount not to exceed \$8,196,250, and the PFA has agreed to make the PFA Loan and provide the Principal Forgiveness and disburse the proceeds thereof in accordance with a Bond Purchase and Project Loan Agreement (the “Waste Water Loan Agreement”) between the PFA and the Council in substantially the form on file in the offices of the Council; and

D. The PFA has represented that it is a “board, department or agency” of the State of Minnesota within the meaning of Minnesota Statutes, Section 475.60, Subd. 2(4);

NOW, THEREFORE, BE IT RESOLVED by the Metropolitan Council as follows:

1. Approval of Waste Water Loan Agreement. The Waste Water Loan Agreement is hereby approved in substantially the form on file in the office of the Council; and the Regional Administrator or Chief Financial Officer is authorized and directed to execute the Waste Water Loan Agreement, in addition to other certificates and related agreements as required thereunder, on behalf of the Council. In the event of a conflict between the terms of the Waste Water Loan Agreement and the terms of this Resolution, the terms of the Waste Water Loan Agreement shall prevail.

2. The Note. The obligation of the Council to repay, with interest, the PFA Loan as provided in the Waste Water Loan Agreement shall be evidenced by and payable in accordance with the terms and conditions of the Note attached hereto as Exhibit A and the other terms and conditions of this Resolution, and the Note shall forthwith be executed as provided in paragraph 4 hereof and be issued to the PFA.

3. Purpose. The Note shall provide funds for the acquisition or betterment of interceptors or treatment works of the metropolitan waste water disposal system which are eligible for financing under the Waste Water Loan Agreement, as amended from time to time (the "Project"). The total cost of the Project, which shall include all costs enumerated in Minnesota Statutes, Section 475.65, and permitted by law to be financed by the Note, is estimated to be at least equal to the principal amount which may be disbursed under the Note. Work on the Project has proceeded and shall continue to proceed with due diligence to completion. Although it is intended and reasonably expected that the Project will be limited to the 2009 and 2010 construction program, the Project may also include any portion of the construction program for 2011 depending upon the availability of future financing provided by the Council and other sources; provided that in any event the Project shall satisfy the requirements of Minnesota Statutes, Section 473.535, as amended. The improvements comprising the Project are included in the Council's capital improvement plan and budget for the acquisition or betterment of interceptors or treatment works and are hereby determined to be necessary or desirable for the metropolitan waste water disposal system.

4. Execution. The Note shall be executed on behalf of the Council by the signatures of its Chair and Treasurer, the Council having no seal; provided, however, that one of such signatures may be a printed or photocopied facsimile on the Note as permitted by law. In the event of disability or resignation or other absence of either such officer, the Note may be signed by the manual or facsimile signature of that officer who may act on behalf of such absent or disabled officer. In case either such officer whose signature shall appear on the Note shall cease to be such officer before the delivery of the Note, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he or she had remained in office until delivery.

5. Registration, Transfer, Exchange. The Council's Treasurer is hereby appointed the Note Registrar, provided if that officer is not available at any time to exercise the duties herein assigned to the Note Registrar, the Chief Financial Officer may act on the Treasurer's behalf. The Council will cause to be kept at the principal office of the Note Registrar a note register in which, subject to such reasonable regulations as the Note Registrar may prescribe, the Note Registrar shall provide for the registration of the Note and the registration of transfers of the Note entitled to be registered or transferred as herein provided. The Note shall be registered in the name of the payee on the books of the Note Registrar by presenting the Note for registration to the Note Registrar, who will endorse his or her name and note the date of registration opposite the name of the payee in the certificate of registration on the Note. Thereafter the Note may be transferred by delivery with an assignment duly executed by the Holder or his, her or its legal representative, and the Council and Note Registrar may treat the Holder as the person

exclusively entitled to exercise all the rights and powers of an owner until the Note is presented with such assignment for registration of transfer, accompanied by assurance of the nature provided by law that the assignment is genuine and effective, and until such transfer is registered on said books and noted thereon by the Note Registrar, all subject to the terms and conditions provided in this Resolution and to reasonable regulations of the Council contained in any agreement with, or notice to, the Note Registrar. If the Note is presented or surrendered for transfer, it shall be duly endorsed or be accompanied by a written instrument of transfer, in form satisfactory to the Note Registrar, duly executed by the Holder thereof or the Holder's attorney duly authorized in writing. The Note Registrar may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection with the transfer or exchange of any Note and any legal or unusual costs regarding transfers and lost Notes.

6. 2009D (PFA) Waste Water Revenue Note Fund, Pledges, Appropriations.

(i) Waste Water Revenue Note Fund. There is hereby established a 2009D (PFA) Waste Water Revenue Note Fund (the "Note Fund") in the Council's Debt Service Fund. The Note Fund shall be held in the custody of the Chief Financial Officer, deposited in one or more banks duly qualified as depositories of Council funds, and invested and reinvested in accordance with resolutions of the Council and Minnesota Statutes, Chapter 118A, and Section 9(a) of the Waste Water Loan Agreement, and shall be used only to pay when due principal and interest and related expenses (including paying agency, registration, swap agreement or investment service expenses and rebate of arbitrage earnings) payable with respect to the Note or PFA Bonds and any other general obligation waste water revenue obligations of the Council, as may be directed by the Council to be paid from the Note Fund, until all such principal and interest and expenses have been fully paid; provided that if any payment falls due when the balance in the Note Fund is insufficient to pay it, the deficiency shall be paid out of any other funds of the Council available for that purpose, and advances so made may be repaid from the Note Fund when a sufficient balance is available therein.

(ii) Other Appropriations. The following sums are hereby pledged and appropriated and shall be credited as received to the Note Fund:

(a) All income and gain from investment of the Note Fund (to which all loss from such investment shall be charged).

(b) All payments by local government units of debt service costs for obligations payable out of the Note Fund hereafter allocated to such units in each annual budget of the Council under the provisions of Minnesota Statutes, Sections 473.517 and 473.521, provided that such debt service allocation payments shall be transferred by the Council to the Note Fund in such amounts and at such times during the budget year as is required under subparagraph (iv) hereof.

(c) All sums collected from taxes levied, extended and assessed under the provisions of subparagraph (iv) below.

(iii) Pledge of Revenues and Note Proceeds. Pursuant to the provisions of Minnesota Statutes, Section 473.541, subdivision 3, the Council irrevocably pledges and appropriates to the Note Fund, from the revenues receivable under the provisions of Minnesota Statutes, Sections 473.517 and 473.521, all sums received from local government units for the payment of the principal of and interest on the Note and any other obligations hereafter made payable out of the Note Fund and all related expenses payable out of the Note Fund. The Note shall be secured equally and ratably with all other obligations hereafter issued and made payable from the Note Fund by the pledge of all assets appropriated to the Note Fund.

(iv) Taxes; Pledges. It is estimated that the revenues pledged for the payment of the Note, together with other available monies designated by the Council for such purposes, will produce sums in an amount not less than 5% in excess of the amounts needed to meet when due payments of principal of and interest on the Note, and accordingly no tax is levied by this Resolution for that purpose. The Council shall deposit in the Note Fund revenues pledged to the payment of the Note in such amounts and at such times as are directed by the Chief Financial Officer of the Council so that as of the interest payment dates for the Note (i.e. February 20 and August 20 of each year commencing from and after the date on which principal is first disbursed under the Waste Water Loan Agreement) (each an "Interest Payment Date") during the term of the Note, the amount held in the Note Fund is sufficient to pay principal (if any) of and interest on the Note (and any other obligations payable from the Note Fund) payable on that Interest Payment Date and so that all related expenses payable out of the Note Fund are paid when due. In the event that such pledged revenues or other sufficient funds are not so deposited by the Council, the Council covenants that it will levy for collection the following year a general ad valorem tax upon all taxable property in the "metropolitan area" within the meaning of Minnesota Statutes, Section 473.121, subdivision 2, in an amount equal to the deficiency.

(v) Note Record. The Chief Financial Officer of the Council is directed to keep on file in the Council office a tabulation of the dates and amounts of the principal and interest payments to become due on all obligations payable from the Note Fund, and of the balance required in the Note Fund on each Interest Payment Date in lieu of taxes then otherwise required to be levied for the security of such Note.

(vi) Separate Council Accounts. In its annual budget, the Council shall allocate all debt service costs, together with operations and maintenance costs of the metropolitan disposal system and any other applicable costs, to local government units pursuant to Minnesota Statutes, Section 473.517, as amended.

7. Disposition of Proceeds. All disbursements of Note proceeds and Principal Forgiveness made under the Waste Water Loan Agreement shall be made and applied as provided in the Waste Water Loan Agreement.

8. General Obligation Pledge. For the prompt and full payment of the principal balance and interest on the Note, and such other general obligation indebtedness as may hereafter be payable from the Note Fund, as the same respectively become due, the full faith, credit and

taxing powers of the Council shall be and are hereby irrevocably pledged. If the balance in the Note Fund is ever insufficient to pay principal and interest then due on the Note and any other obligations payable therefrom, the deficiency shall be promptly paid out of any other funds of the Council which are available for such purpose, and such other funds may be reimbursed with or without interest from the Note Fund when a sufficient balance is available therein.

9. General Tax Covenant. The Council covenants and agrees with the registered owners of the Note that it will not take, or permit to be taken by any of its officers, employees or agents, any action which would cause the interest payable on the Note to become subject to taxation under the Internal Revenue Code of 1986, as amended (the "Code"), and applicable Treasury Regulations (the "Regulations"), and covenants to take any and all actions within its powers to ensure that the interest on the Note will not become includable in gross income of the recipient under the Code and the Regulations. The improvements financed with the proceeds of the Note will be owned and maintained by the Council so long as the Note is outstanding and will be part of the Council's publicly available waste water disposal system. The Council will not enter into any lease, use agreement, management agreement or other agreement or contract with any non-governmental person relating to the use of the improvements which would cause the Note to be considered "private activity bonds" or "private loan bonds" pursuant to Section 141 of the Code, unless remedial action is then available under Section 141 of the Code which would allow such private use subsequent to taking the remedial action without causing any interest on the Note or any of the PFA's Bonds to be included in gross income of the owner thereof for federal income tax purposes. The Council shall notify the PFA of any such proposed private use and the proposed remedial action and shall provide the PFA a written opinion of nationally recognized bond counsel, selected by the Council and acceptable to the PFA, to the effect that upon taking of the remedial action, the subsequent deliberate action resulting in a private use of the Project will not cause the interest on any of the PFA's Bonds to be included in gross income for federal income tax purposes.

10. Certificate of Registration. The Treasurer is hereby directed to file certified copies of this Resolution with the County Auditors of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington Counties, Minnesota, together with such other information as they shall require, and to obtain from the County Auditors their certificates that the Note has been entered in the County Auditors' Bond Registers.

11. Records and Certificates. The officers of the Council are hereby authorized and directed to prepare and furnish to the PFA, and to the attorneys approving the legality of the issuance of the Note, certified copies of all proceedings and records of the Council relating to the Note and to the financial condition and affairs of the Council, and such other affidavits, certificates, agreements and information as are required to show the facts relating to the legality and marketability of the PFA Bonds as the same appear from the books and records under their custody and control or as otherwise known to them, and all such certified copies, certificates and affidavits, including any heretofore furnished, shall be deemed representations of the Council as to the facts recited therein.

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

13. Headings. Headings in this resolution are included for convenience of reference only, and are not a part hereof.

14. Conditions. The Waste Water Loan Agreement and the Note shall be executed and delivered only upon satisfaction of the following conditions:

- (a) The principal amount of the Note shall be \$30,588,750.
- (b) The per annum interest rate on the Note shall be not greater than 2.449%.
- (c) The Note shall be issued only upon execution of the Waste Water Loan Agreement.

Adopted: August __, 2009.

Pat Curtiss, Recording Secretary

Peter Bell, Chair

EXHIBIT A

UNITED STATES OF AMERICA
STATE OF MINNESOTA
ANOKA, CARVER, DAKOTA, HENNEPIN,
RAMSEY, SCOTT AND WASHINGTON COUNTIES
METROPOLITAN COUNCIL
(MINNEAPOLIS-SAINT PAUL AREA)

GENERAL OBLIGATION WASTE WATER REVENUE NOTE, SERIES 2009D (PFA)

The Metropolitan Council (Minneapolis-Saint Paul Area), Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington Counties, Minnesota (the “Issuer”), a duly organized public corporation and political subdivision of the State of Minnesota, certifies that it is indebted and for value received promises to pay to the Minnesota Public Facilities Authority (“PFA”), its successors or registered assigns, in the manner hereinafter set forth, the principal sum of Thirty Million Five Hundred Eighty-Eight Thousand Seven Hundred Fifty Dollars (\$30,588,750.00) (the “Stated Principal Amount”) to the extent disbursed to the Council as provided in the Bond Purchase and Project Loan Agreement, dated as of _____, 2009, between the PFA and the Issuer (the “Waste Water Loan Agreement”), together with interest on so much of the principal amount of the debt as (i) may be disbursed from time to time as provided in the Waste Water Loan Agreement and (ii) remains unpaid (the “Principal Balance”) at the rate of two and four hundred forty-nine thousandths percent (2.449%) per annum (calculated on the basis of a 360-day year of twelve 30-day months) until the Principal Balance is paid or has been provided for, all at the times and, as to principal, in installments as hereinafter set forth, provided that amounts payable as interest shall be reduced if the PFA issues bonds to refund bonds under which funds advanced under the Note were financed or refinanced and as a result thereof secures debt service savings, to the extent provided in the Waste Water Loan Agreement.

1. Principal and Interest Payments.

(a) Interest. Interest shall begin to accrue on each component of the Principal Balance from and after the date on which such principal sum is first disbursed under the Waste Water Loan Agreement, and shall thereafter be payable semiannually on February 20 and August 20 of each year.

(b) Principal. Principal installments due on the Note shall be payable on August 20, 2010, in the amount set forth in Exhibit A attached hereto, and on each August 20 thereafter in the years and amounts set forth in Exhibit A; provided, however, that in no event shall the Council be required to make aggregate principal payments in excess of principal amounts disbursed under the Waste Water Loan Agreement. In the event that the Council notifies the PFA that less than the entire principal amount is to be disbursed to the Council pursuant to the Waste Water Loan Agreement, the balance of the amounts undisbursed shall reduce the Stated Principal Amount.

(c) Method of Payment. Interest, principal and any premium due under this Note will be paid on each payment date in immediately available funds to the person in whose name this Note is registered (the “Holder”) at the principal office of the Holder as set forth on the registration books of the Issuer maintained by the Treasurer of the Issuer in Saint Paul, Minnesota, or its duly designated successor (the “Note Registrar”). The principal of and premium, if any, and interest on this Note are payable in lawful money of the United States of America.

2. Date of Payment Not Business Day. A “Business Day” shall be any date except a Saturday, Sunday, legal holiday or a day on which banking institutions in Saint Paul, Minnesota, are authorized by law or executive order to close. If the date for payment of the principal of, premium, if any, or interest on this Note shall not be a Business Day, then the date for such payment shall be the next succeeding Business Day, and payment on such date shall have the same force and effect as if made on the nominal date of payment.

3. Redemption. The outstanding Principal Balance due under the Note shall be subject to redemption and prepayment in whole or in part at the option of the Council as provided in the Waste Water Loan Agreement.

4. Issuance, Purpose, General Obligation. This Note has been issued pursuant to and in full conformity with the Constitution and laws of the State of Minnesota and pursuant to a resolution adopted by the Issuer on August __, 2009 (the “Resolution”), for the purpose of providing funds to finance certain improvements to the metropolitan waste water disposal system of the Issuer in accordance with the Waste Water Loan Agreement. The terms and conditions of the Waste Water Loan Agreement are incorporated herein by reference and made a part hereof. In the event of a conflict between the terms of the Waste Water Loan Agreement and the terms of this Note, the terms of the Waste Water Loan Agreement shall prevail. This Note is payable out of the 2009D (PFA) Waste Water Revenue Note Fund in the Debt Service Fund of the Issuer. This Note constitutes a general obligation of the Issuer, and to provide moneys for the prompt and full payment of its principal, premium if any, and interest when the same become due, the full faith and credit and taxing powers of the Issuer have been and are hereby irrevocably pledged.

5. Transfer. This Note shall be registered in the name of the payee on the books of the Issuer by presenting this Note for registration to the Note Registrar, who will endorse and note the date of registration opposite the name of the payee in the certificate of registration attached hereto. Thereafter this Note may be transferred by delivery with an assignment duly executed by the Holder or the Holder’s legal representatives, and the Issuer and Note Registrar may treat the Holder as the person exclusively entitled to exercise all the rights and powers of an owner until this Note is presented with such assignment for registration of transfer, accompanied by assurance of the nature provided by law that the assignment is genuine and effective, and until such transfer is registered on said books and noted hereon by the Note Registrar, all subject to the terms and conditions provided in the Resolution and to reasonable regulations of the Issuer contained in any agreement with, or notice to, the Note Registrar.

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

7. Treatment of Registered Owner. The Issuer and the Note Registrar may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Note shall be overdue, and neither the Issuer nor the Note Registrar shall be affected by notice to the contrary.

8. Tax Covenant. The Issuer covenants and agrees with the registered owners of the Note that it will not take, or permit to be taken by any of its officers, employees or agents, any action which would cause the interest payable on the Note to become subject to taxation under the Internal Revenue Code of 1986, as amended (the "Code") and applicable Treasury Regulations (the "Regulations"), and covenants to take any and all actions within its powers to ensure that the interest on the Note will not become includable in gross income of the recipient under the Code and the Regulations.

9. Loan. The Loan under the Waste Water Loan Agreement shall be deemed fully made upon delivery of this Note, and the proceeds of the Loan shall be disbursed from time to time to the Issuer by the PFA as provided in the Waste Water Loan Agreement.

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

[The remainder of this page left blank intentionally.]

IN WITNESS WHEREOF, the Metropolitan Council (Minneapolis-Saint Paul Area), Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington Counties, Minnesota, has caused this Note to be executed on its behalf by the signatures of its Chair and of its Treasurer (one of such signatures being a manual signature), the Issuer having no seal.

METROPOLITAN COUNCIL
ANOKA, CARVER, DAKOTA, HENNEPIN,
RAMSEY, SCOTT AND WASHINGTON
COUNTIES, MINNESOTA

Chair

Treasurer

[Signature Page to \$30,588,750 General Obligation Waste Water Revenue Note,
Series 2009D (PFA).]

ASSIGNMENT

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

Dated: _____

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

Signature Guaranteed:

Signature must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in STAMP or such other "signature guaranty program" as may be determined by the Registrar in addition to or in substitution for STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

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

Name and Address: _____
(Include information for all joint owners if the Note is held by joint account.)

EXHIBIT A

Schedule of Principal Installments
For \$30,588,750

| <u>Date</u> | <u>Principal Installment</u> |
|-------------|------------------------------|
| 08/20/10 | \$ 383,750 |
| 08/20/11 | 1,910,000 |
| 08/20/12 | 1,815,000 |
| 08/20/13 | 1,340,000 |
| 08/20/14 | 1,530,000 |
| 08/20/15 | 95,000 |
| 08/20/16 | 95,000 |
| 08/20/17 | 765,000 |
| 08/20/18 | 2,100,000 |
| 08/20/19 | 2,675,000 |
| 08/20/20 | 2,485,000 |
| 08/20/21 | 955,000 |
| 08/20/22 | 1,340,000 |
| 08/20/23 | 2,295,000 |
| 08/20/24 | 3,540,000 |
| 08/20/25 | 1,815,000 |
| 08/20/26 | 2,200,000 |
| 08/20/27 | 955,000 |
| 08/20/28 | 860,000 |
| 08/20/29 | <u>1,435,000</u> |
| Total | <u>\$30,588,750</u> |

2009-266 - Attachment B2 – BAB Loan

**CERTIFICATION OF EXTRACT FROM MINUTES RELATING TO
TAXABLE GENERAL OBLIGATION WASTE WATER REVENUE NOTE,
SERIES 2009C (PFA) (BUILD AMERICA BOND – DIRECT PAY)**

Issuer: Metropolitan Council, Minnesota

Governing Body: Council Members

Kind, date, time and place of meeting: A regular meeting held _____, August __, 2009,
at _____ o'clock P.M., at 390 North Robert Street, St. Paul, Minnesota.

Members Present:

Members Absent:

Documents Attached:

Extract of minutes of said meeting including:

RESOLUTION NO. 2009-__

**RESOLUTION AUTHORIZING EXECUTION OF A BOND
PURCHASE AND PROJECT LOAN AGREEMENT WITH
THE PUBLIC FACILITIES AUTHORITY AND ISSUANCE
OF A TAXABLE GENERAL OBLIGATION WASTE
WATER REVENUE NOTE, SERIES 2009C (PFA) (BUILD
AMERICA BOND – DIRECT PAY)**

I, the undersigned, being the duly qualified and acting Recording Secretary of the Metropolitan Council, the public body executing the agreement and issuing the note referred to in the title of this certificate, certify that the documents attached hereto, as described above, have been carefully compared with the original records of said public body in my legal custody, from which they have been extracted; that said documents are correct and accurate copies of the resolution and related documents approved by the Council at its regular meeting, so far as they relate to said agreement and said note; and that said meeting was duly held by the governing body at the time and place and was attended by the members indicated above, pursuant to call and notice of such meeting given as required by law.

WITNESS my hand officially as such Recording Secretary on August __, 2009.

Pat Curtiss, Recording Secretary

After some discussion, Council Member _____ introduced the following resolution and moved its adoption:

RESOLUTION AUTHORIZING EXECUTION OF A BOND PURCHASE AND PROJECT LOAN AGREEMENT WITH THE PUBLIC FACILITIES AUTHORITY AND ISSUANCE OF A TAXABLE GENERAL OBLIGATION WASTE WATER REVENUE NOTE, SERIES 2009C (PFA) (BUILD AMERICA BOND – DIRECT PAY)

The motion for the adoption of the foregoing resolution was seconded by Council Member _____, and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

and the following were absent for the vote:

whereupon the resolution was declared duly passed and adopted and was signed by the Chair whose signature was attested by the Recording Secretary.

METROPOLITAN COUNCIL
390 North Robert Street, St. Paul, Minnesota 55101
RESOLUTION NO. 2009-__

**RESOLUTION AUTHORIZING EXECUTION OF A BOND
PURCHASE AND PROJECT LOAN AGREEMENT WITH
THE PUBLIC FACILITIES AUTHORITY AND ISSUANCE
OF A TAXABLE GENERAL OBLIGATION WASTE
WATER REVENUE NOTE, SERIES 2009C (PFA) (BUILD
AMERICA BOND – DIRECT PAY)**

WHEREAS:

A. The Minnesota Public Facilities Authority (“PFA”) has the authority to make a loan (the “PFA Loan”) funded from proceeds of revenue bonds (“PFA Bonds”) and other sources to the Metropolitan Council, State of Minnesota (the “Council” or “Issuer”), to provide funds to finance certain improvements to the waste water disposal system of the Council;

B. The Council may obligate itself to repay the PFA Loan through the issuance of taxable general obligation waste water revenue bonds issued in the form of a single debt instrument (the “Note”) pursuant to Minnesota Statutes, Section 473.541, subdivision 3;

C. The Council has applied for a PFA Loan in an aggregate amount not to exceed \$49,411,250, and the PFA has agreed to make the PFA Loan and disburse the proceeds thereof in accordance with a Bond Purchase and Project Loan Agreement (the “Waste Water Loan Agreement”) between the PFA and the Council in substantially the form on file in the offices of the Council; and

D. The PFA has represented that it is a “board, department or agency” of the State of Minnesota within the meaning of Minnesota Statutes, Section 475.60, Subd. 2(4);

NOW, THEREFORE, BE IT RESOLVED by the Metropolitan Council as follows:

1. Approval of Waste Water Loan Agreement. The Waste Water Loan Agreement is hereby approved in substantially the form on file in the office of the Council; and the Regional Administrator or Chief Financial Officer is authorized and directed to execute the Waste Water Loan Agreement, in addition to other certificates and related agreements as required thereunder, on behalf of the Council. In the event of a conflict between the terms of the Waste Water Loan Agreement and the terms of this Resolution, the terms of the Waste Water Loan Agreement shall prevail.

2. The Note. The obligation of the Council to repay, with interest, the PFA Loan as provided in the Waste Water Loan Agreement shall be evidenced by and payable in accordance with the terms and conditions of the Note attached hereto as Exhibit A and the other terms and

conditions of this Resolution, and the Note shall forthwith be executed as provided in paragraph 4 hereof and be issued to the PFA.

3. Build America Bond Designation. The Council irrevocably designates the Note as a “Build America Bond,” elects to have Section 54AA of the Internal Revenue Code of 1986, as amended (the “Code”), apply to the Note, and irrevocably elects to have Section 54AA(g) of the Code apply to the Note, with the result that the Council shall be entitled to the credit provided in Section 6431 of the Code.

4. Purpose. The Note shall provide funds for the acquisition or betterment of interceptors or treatment works of the metropolitan waste water disposal system which are eligible for financing under the Waste Water Loan Agreement, as amended from time to time (the “Project”). The total cost of the Project, which shall include all costs enumerated in Minnesota Statutes, Section 475.65, and permitted by law to be financed by the Note, is estimated to be at least equal to the principal amount which may be disbursed under the Note. Work on the Project has proceeded and shall continue to proceed with due diligence to completion. Although it is intended and reasonably expected that the Project will be limited to the 2009 and 2010 construction program, the Project may also include any portion of the construction program for 2011 depending upon the availability of future financing provided by the Council and other sources; provided that in any event the Project shall satisfy the requirements of Minnesota Statutes, Section 473.535, as amended. The improvements comprising the Project are included in the Council’s capital improvement plan and budget for the acquisition or betterment of interceptors or treatment works and are hereby determined to be necessary or desirable for the metropolitan waste water disposal system.

5. Execution. The Note shall be executed on behalf of the Council by the signatures of its Chair and Treasurer, the Council having no seal; provided, however, that one of such signatures may be a printed or photocopied facsimile on the Note as permitted by law. In the event of disability or resignation or other absence of either such officer, the Note may be signed by the manual or facsimile signature of that officer who may act on behalf of such absent or disabled officer. In case either such officer whose signature shall appear on the Note shall cease to be such officer before the delivery of the Note, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he or she had remained in office until delivery.

6. Registration, Transfer, Exchange. The Council’s Treasurer is hereby appointed the Note Registrar, provided if that officer is not available at any time to exercise the duties herein assigned to the Note Registrar, the Chief Financial Officer may act on the Treasurer’s behalf. The Council will cause to be kept at the principal office of the Note Registrar a note register in which, subject to such reasonable regulations as the Note Registrar may prescribe, the Note Registrar shall provide for the registration of the Note and the registration of transfers of the Note entitled to be registered or transferred as herein provided. The Note shall be registered in the name of the payee on the books of the Note Registrar by presenting the Note for registration to the Note Registrar, who will endorse his or her name and note the date of registration opposite

the name of the payee in the certificate of registration on the Note. Thereafter the Note may be transferred by delivery with an assignment duly executed by the Holder or his, her or its legal representative, and the Council and Note Registrar may treat the Holder as the person exclusively entitled to exercise all the rights and powers of an owner until the Note is presented with such assignment for registration of transfer, accompanied by assurance of the nature provided by law that the assignment is genuine and effective, and until such transfer is registered on said books and noted thereon by the Note Registrar, all subject to the terms and conditions provided in this Resolution and to reasonable regulations of the Council contained in any agreement with, or notice to, the Note Registrar. If the Note is presented or surrendered for transfer, it shall be duly endorsed or be accompanied by a written instrument of transfer, in form satisfactory to the Note Registrar, duly executed by the Holder thereof or the Holder's attorney duly authorized in writing. The Note Registrar may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection with the transfer or exchange of any Note and any legal or unusual costs regarding transfers and lost Notes.

7. 2009C (PFA) Waste Water Revenue Note Fund, Pledges, Appropriations.

(i) Waste Water Revenue Note Fund. There is hereby established a 2009C (PFA) Waste Water Revenue Note Fund (the "Note Fund") in the Council's Debt Service Fund. The Note Fund shall be held in the custody of the Chief Financial Officer, deposited in one or more banks duly qualified as depositories of Council funds, and invested and reinvested in accordance with resolutions of the Council and Minnesota Statutes, Chapter 118A, and shall be used only to pay when due principal and interest and related expenses (including paying agency, registration, swap agreement or investment service expenses and rebate of arbitrage earnings) payable with respect to the Note or PFA Bonds and any other general obligation waste water revenue obligations of the Council, as may be directed by the Council to be paid from the Note Fund, until all such principal and interest and expenses have been fully paid; provided that if any payment falls due when the balance in the Note Fund is insufficient to pay it, the deficiency shall be paid out of any other funds of the Council available for that purpose, and advances so made may be repaid from the Note Fund when a sufficient balance is available therein.

(ii) Other Appropriations. The following sums are hereby pledged and appropriated and shall be credited as received to the Note Fund:

(a) All income and gain from investment of the Note Fund (to which all loss from such investment shall be charged).

(b) All payments by local government units of debt service costs for obligations payable out of the Note Fund hereafter allocated to such units in each annual budget of the Council under the provisions of Minnesota Statutes, Sections 473.517 and 473.521, provided that such debt service allocation payments shall be transferred by the Council to the Note Fund in such amounts and at such times during the budget year as is required under subparagraph (iv) hereof.

(c) All sums collected from taxes levied, extended and assessed under the provisions of subparagraph (iv) below.

(iii) Pledge of Revenues and Note Proceeds. Pursuant to the provisions of Minnesota Statutes, Section 473.541, subdivision 3, the Council irrevocably pledges and appropriates to the Note Fund, from the revenues receivable under the provisions of Minnesota Statutes, Sections 473.517 and 473.521, all sums received from local government units for the payment of the principal of and interest on the Note and any other obligations hereafter made payable out of the Note Fund and all related expenses payable out of the Note Fund. The Note shall be secured equally and ratably with all other obligations hereafter issued and made payable from the Note Fund by the pledge of all assets appropriated to the Note Fund.

(iv) Taxes; Pledges. It is estimated that the revenues pledged for the payment of the Note, together with other available monies designated by the Council for such purposes, will produce sums in an amount not less than 5% in excess of the amounts needed to meet when due payments of principal of and interest on the Note, and accordingly no tax is levied by this Resolution for that purpose. The Council shall deposit in the Note Fund revenues pledged to the payment of the Note in such amounts and at such times as are directed by the Chief Financial Officer of the Council so that as of the interest payment dates for the Note (i.e. February 20 and August 20 of each year commencing from and after the date on which principal is first disbursed under the Waste Water Loan Agreement) (each an "Interest Payment Date") during the term of the Note, the amount held in the Note Fund is sufficient to pay principal (if any) of and interest on the Note (and any other obligations payable from the Note Fund) payable on that Interest Payment Date and so that all related expenses payable out of the Note Fund are paid when due. In the event that such pledged revenues or other sufficient funds are not so deposited by the Council, the Council covenants that it will levy for collection the following year a general ad valorem tax upon all taxable property in the "metropolitan area" within the meaning of Minnesota Statutes, Section 473.121, subdivision 2, in an amount equal to the deficiency.

(v) Note Record. The Chief Financial Officer of the Council is directed to keep on file in the Council office a tabulation of the dates and amounts of the principal and interest payments to become due on all obligations payable from the Note Fund, and of the balance required in the Note Fund on each Interest Payment Date in lieu of taxes then otherwise required to be levied for the security of such Note.

(vi) Separate Council Accounts. In its annual budget, the Council shall allocate all debt service costs, together with operations and maintenance costs of the metropolitan disposal system and any other applicable costs, to local government units pursuant to Minnesota Statutes, Section 473.517, as amended.

8. Disposition of Note Proceeds. All disbursements of Note proceeds made under the Waste Water Loan Agreement shall be made and applied as provided in the Waste Water Loan Agreement.

9. General Obligation Pledge. For the prompt and full payment of the principal balance and interest on the Note, and such other general obligation indebtedness as may hereafter be payable from the Note Fund, as the same respectively become due, the full faith, credit and taxing powers of the Council shall be and are hereby irrevocably pledged. If the balance in the Note Fund is ever insufficient to pay principal and interest then due on the Note and any other obligations payable therefrom, the deficiency shall be promptly paid out of any other funds of the Council which are available for such purpose, and such other funds may be reimbursed with or without interest from the Note Fund when a sufficient balance is available therein.

10. Covenant Related to Build America Bond Status. The Council covenants and agrees with the registered owners of the Note that it will not take, or permit to be taken by any of its officers, employees or agents, any action which would cause the Note to lose its status as a Build America Bond (Direct Pay) under the Code and applicable Treasury Regulations (the "Regulations"), and covenants to take any and all actions within its powers to ensure that the Note will remain a Build America Bond (Direct Pay) under the Code and the Regulations. The improvements financed with the proceeds of the Note will be owned and maintained by the Council so long as the Note is outstanding and will be part of the Council's publicly available waste water disposal system. The Council will not enter into any lease, use agreement, management agreement or other agreement or contract with any non-governmental person relating to the use of the improvements which would cause the Note to be considered a "private activity bond" or "private loan bond" pursuant to Section 141 of the Code.

11. Certificate of Registration. The Treasurer is hereby directed to file certified copies of this Resolution with the County Auditors of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington Counties, Minnesota, together with such other information as they shall require, and to obtain from the County Auditors their certificates that the Note has been entered in the County Auditors' Bond Registers.

12. Records and Certificates. The officers of the Council are hereby authorized and directed to prepare and furnish to the PFA, and to the attorneys approving the legality of the issuance of the Note, certified copies of all proceedings and records of the Council relating to the Note and to the financial condition and affairs of the Council, and such other affidavits, certificates, agreements and information as are required to show the facts relating to the legality and marketability of the PFA Bonds as the same appear from the books and records under their custody and control or as otherwise known to them, and all such certified copies, certificates and affidavits, including any heretofore furnished, shall be deemed representations of the Council as to the facts recited therein.

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

14. Headings. Headings in this resolution are included for convenience of reference only, and are not a part hereof.

15. Conditions. The Waste Water Loan Agreement and the Note shall be executed and delivered only upon satisfaction of the following conditions:

- (a) The principal amount of the Note shall be \$49,411,250.
- (b) The per annum interest rate on the Note shall be not greater than 2.83%.
- (c) The Note shall be issued only upon execution of the Waste Water Loan Agreement.

Adopted: August __, 2009.

Pat Curtiss, Recording Secretary

Peter Bell, Chair

EXHIBIT A

UNITED STATES OF AMERICA
STATE OF MINNESOTA
ANOKA, CARVER, DAKOTA, HENNEPIN,
RAMSEY, SCOTT AND WASHINGTON COUNTIES
METROPOLITAN COUNCIL
(MINNEAPOLIS-SAINT PAUL AREA)

TAXABLE GENERAL OBLIGATION WASTE WATER REVENUE NOTE,
SERIES 2009C (PFA) (BUILD AMERICA BOND – DIRECT PAY)

The Metropolitan Council (Minneapolis-Saint Paul Area), Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington Counties, Minnesota (the “Issuer”), a duly organized public corporation and political subdivision of the State of Minnesota, certifies that it is indebted and for value received promises to pay to the Minnesota Public Facilities Authority (“PFA”), its successors or registered assigns, in the manner hereinafter set forth, the principal sum of Forty-Nine Million Four Hundred Eleven Thousand Two Hundred Fifty Dollars (\$49,411,250.00) (the “Stated Principal Amount”) to the extent disbursed to the Council as provided in the Bond Purchase and Project Loan Agreement, dated as of _____, 2009, between the PFA and the Issuer (the “Waste Water Loan Agreement”), together with interest on so much of the principal amount of the debt as (i) may be disbursed from time to time as provided in the Waste Water Loan Agreement and (ii) remains unpaid (the “Principal Balance”) at the rate of two and eighty-three hundredths percent (2.83%) per annum (calculated on the basis of a 360-day year of twelve 30-day months) until the Principal Balance is paid or has been provided for, all at the times and, as to principal, in installments as hereinafter set forth, provided that amounts payable as interest shall be reduced if the PFA issues bonds to refund bonds under which funds advanced under the Note were financed or refinanced and as a result thereof secures debt service savings, to the extent provided in the Waste Water Loan Agreement.

1. Principal and Interest Payments.

(a) Interest. Interest shall begin to accrue on each component of the Principal Balance from and after the date on which such principal sum is first disbursed under the Waste Water Loan Agreement, and shall thereafter be payable semiannually on February 20 and August 20 of each year.

(b) Principal. Principal installments due on the Note shall be payable on August 20, 2010, in the amount set forth in Exhibit A attached hereto, and on each August 20 thereafter in the years and amounts set forth in Exhibit A; provided, however, that in no event shall the Council be required to make aggregate principal payments in excess of principal amounts disbursed under the Waste Water Loan Agreement. In the event that the Council notifies the PFA that less than the entire principal amount is to be disbursed to the Council pursuant to the Waste Water Loan Agreement, the balance of the amounts undisbursed shall reduce the Stated Principal Amount.

(c) Method of Payment. Interest, principal and any premium due under this Note will be paid on each payment date in immediately available funds to the person in whose name this Note is registered (the “Holder”) at the principal office of the Holder as set forth on the registration books of the Issuer maintained by the Treasurer of the Issuer in Saint Paul, Minnesota, or its duly designated successor (the “Note Registrar”). The principal of and premium, if any, and interest on this Note are payable in lawful money of the United States of America.

2. Date of Payment Not Business Day. A “Business Day” shall be any date except a Saturday, Sunday, legal holiday or a day on which banking institutions in Saint Paul, Minnesota, are authorized by law or executive order to close. If the date for payment of the principal of, premium, if any, or interest on this Note shall not be a Business Day, then the date for such payment shall be the next succeeding Business Day, and payment on such date shall have the same force and effect as if made on the nominal date of payment.

3. Redemption. The outstanding Principal Balance due under the Note shall be subject to redemption and prepayment in whole or in part at the option of the Council as provided in the Waste Water Loan Agreement.

4. Issuance, Purpose, General Obligation. This Note has been issued pursuant to and in full conformity with the Constitution and laws of the State of Minnesota and pursuant to a resolution adopted by the Issuer on August __, 2009 (the “Resolution”), for the purpose of providing funds to finance certain improvements to the metropolitan waste water disposal system of the Issuer in accordance with the Waste Water Loan Agreement. The terms and conditions of the Waste Water Loan Agreement are incorporated herein by reference and made a part hereof. In the event of a conflict between the terms of the Waste Water Loan Agreement and the terms of this Note, the terms of the Waste Water Loan Agreement shall prevail. This Note is payable out of the 2009C (PFA) Waste Water Revenue Note Fund in the Debt Service Fund of the Issuer. This Note constitutes a general obligation of the Issuer, and to provide moneys for the prompt and full payment of its principal, premium if any, and interest when the same become due, the full faith and credit and taxing powers of the Issuer have been and are hereby irrevocably pledged.

5. Transfer. This Note shall be registered in the name of the payee on the books of the Issuer by presenting this Note for registration to the Note Registrar, who will endorse and note the date of registration opposite the name of the payee in the certificate of registration attached hereto. Thereafter this Note may be transferred by delivery with an assignment duly executed by the Holder or the Holder’s legal representatives, and the Issuer and Note Registrar may treat the Holder as the person exclusively entitled to exercise all the rights and powers of an owner until this Note is presented with such assignment for registration of transfer, accompanied by assurance of the nature provided by law that the assignment is genuine and effective, and until such transfer is registered on said books and noted hereon by the Note Registrar, all subject to the terms and conditions provided in the Resolution and to reasonable regulations of the Issuer contained in any agreement with, or notice to, the Note Registrar.

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

7. Treatment of Registered Owner. The Issuer and the Note Registrar may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Note shall be overdue, and neither the Issuer nor the Note Registrar shall be affected by notice to the contrary.

8. Covenant Related to Build America Bond Status. The Issuer covenants and agrees with the registered owners of the Note that it will not take, or permit to be taken by any of its officers, employees or agents, any action which would cause the Note to lose its status as a Build America Bond (Direct Pay) under the Internal Revenue Code of 1986, as amended (the "Code"), and applicable Treasury Regulations (the "Regulations"), and covenants to take any and all actions within its powers to ensure that the Note will remain a Build America Bond (Direct Pay) under the Code and the Regulations.

9. Loan. The Loan under the Waste Water Loan Agreement shall be deemed fully made upon delivery of this Note, and the proceeds of the Loan shall be disbursed from time to time to the Issuer by the PFA as provided in the Waste Water Loan Agreement.

INTEREST ON THIS NOTE IS INCLUDABLE IN GROSS INCOME OF THE HOLDER HEREOF FOR FEDERAL INCOME TAX PURPOSES AND IN TAXABLE NET INCOME OF INDIVIDUALS, ESTATES OR TRUSTS FOR MINNESOTA INCOME TAX PURPOSES.

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

[The remainder of this page left blank intentionally.]

IN WITNESS WHEREOF, the Metropolitan Council (Minneapolis-Saint Paul Area), Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington Counties, Minnesota, has caused this Note to be executed on its behalf by the signatures of its Chair and of its Treasurer (one of such signatures being a manual signature), the Issuer having no seal.

METROPOLITAN COUNCIL
ANOKA, CARVER, DAKOTA, HENNEPIN,
RAMSEY, SCOTT AND WASHINGTON
COUNTIES, MINNESOTA

Chair

Treasurer

[Signature Page to \$49,411,250 Taxable General Obligation Waste Water Revenue Note,
Series 2009C (PFA) (Build America Bond – Direct Pay).]

CERTIFICATE OF REGISTRATION

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

| <u>DATE OF REGISTRATION</u> | <u>REGISTERED OWNER</u> | <u>SIGNATURE OF NOTE REGISTRAR</u> |
|---------------------------------|---|--|
| | Minnesota Public Facilities Authority Attn: Executive Director | |
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ASSIGNMENT

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

Dated: _____

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

Signature Guaranteed:

Signature must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in STAMP or such other "signature guaranty program" as may be determined by the Registrar in addition to or in substitution for STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

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

Name and Address: _____
(Include information for all joint owners if the Note is held by joint account.)

EXHIBIT A

Schedule of Principal Installments
For \$49,411,250

| <u>Date</u> | <u>Principal Installment</u> |
|-------------|------------------------------|
| 08/20/10 | \$ 616,250 |
| 08/20/11 | 3,090,000 |
| 08/20/12 | 2,935,000 |
| 08/20/13 | 2,160,000 |
| 08/20/14 | 2,470,000 |
| 08/20/15 | 155,000 |
| 08/20/16 | 155,000 |
| 08/20/17 | 1,235,000 |
| 08/20/18 | 3,400,000 |
| 08/20/19 | 4,325,000 |
| 08/20/20 | 4,015,000 |
| 08/20/21 | 1,545,000 |
| 08/20/22 | 2,160,000 |
| 08/20/23 | 3,705,000 |
| 08/20/24 | 5,710,000 |
| 08/20/25 | 2,935,000 |
| 08/20/26 | 3,550,000 |
| 08/20/27 | 1,545,000 |
| 08/20/28 | 1,390,000 |
| 08/20/29 | <u>2,315,000</u> |
| Total | <u>\$49,411,250</u> |

Attachment C-1 (ARRA)

BOND PURCHASE AND PROJECT LOAN AGREEMENT

(Metropolitan Council)

(American Recovery & Reinvestment Act of 2009)

No. 2009

MPFA-08-0098-R-FY10

ARRA-09-0098-R-FY10

THIS BOND PURCHASE AND PROJECT LOAN AGREEMENT, made as of the ____ day of _____, 2009 (this "Agreement"), between the Minnesota Public Facilities Authority (the "Authority") and the Metropolitan Council, 390 North Robert Street, St. Paul, Minnesota 55101 (the "Council"):

1. Subject to the conditions hereinafter set forth, the Authority hereby commits to total project finance of \$38,785,000 to the Council for the purpose of funding the wastewater treatment projects described on **Exhibit A** hereto. These projects are, to the extent financed by such proceeds, herein collectively called the "Project". The Council hereby agrees to accept this Project financing and, with respect to the Loan (hereinafter defined), agrees to deliver its general obligation note to the Authority in the form adopted pursuant to Council Resolution, as set forth in **Exhibit C** hereto. The Project financing consists of :

- (i) Principal Forgiveness (the "Principal Forgiveness") granted under the provisions of the federal American Recovery and Reinvestment Act of 2009 ("ARRA"), which is not required to be repaid except as otherwise provided in Section 13 of this Agreement. The total amount of the Principal Forgiveness is determined as follows:
 - a. Base amount: \$6,000,000
 - b. Green Infrastructure amount based on the components of the Project determined by the Minnesota Pollution Control Agency (the "MPCA") to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities: \$2,196,250
- (ii) A loan from the Clean Water Revolving Fund (as defined in Minnesota Statutes Chapter 446A, herein referred to as the "Act") in the amount of \$30,588,750 (the "Loan") which shall be evidenced by the note described in Section 3 of this Agreement. The final maturity date of the Loan will be August 20, 2029. The aggregate principal amount of the Loan disbursed and outstanding will bear interest and servicing fees collectively at the rate per annum and for the period described in Section 2 of this Agreement.

2. The Loan will be disbursed on a cost reimbursement basis consistent with the estimates provided to the Authority by the Council in connection with the loan application, or any amendment thereto approved by the Authority, but not in violation of any provisions of applicable federal and state regulations. Such disbursement shall be made within thirty (30) days

of a request therefor made by the Council in the form required by the Authority from time to time unless within the thirty (30) day period the Authority has determined to withhold the disbursement and has notified the Council in writing of the basis for its determination. In the event that the Council notifies the Authority that less than the entire principal amount specified in Section 1 above is to be disbursed for Project cost reimbursement, the balance of the amounts undisbursed shall be applied to the principal repayments on this Loan and the payments set forth in **Exhibit B** will be reamortized.

The terms, conditions, assurances, and timing of disbursements of the Loan shall be in accordance with Minnesota Rules, pts. 7380.0400 to 7380.0480. Payment requests shall be reviewed and approved by the Authority.

If any expenditures on the Project have been incurred and paid by the Council and the Authority withholds disbursements with respect to such expenditures for more than sixty (60) days after submission of the request therefor, the Council may elect to secure alternative financing for the balance of the costs which were otherwise to be paid from the proceeds of the Loan and direct the application of an equivalent amount of the proceeds of the Loan held by the Authority to be applied towards payment or prepayment of the Loan under the circumstances permitted under Section 4 hereof; provided that there shall have been delivered to the Authority an opinion of nationally recognized bond counsel to the effect that such actions would not of themselves adversely affect the tax exempt status of the Authority's Clean Water Revenue Bonds issued from time to time, whether or not used to fund any loan to the Council. The Authority's bonds or notes (whether taxable or tax-exempt) issued to fund loans or other financial assistance from its Clean Water Revolving Fund are herein referred to as the "Authority Bonds".

The Council acknowledges that the Authority may use different sources of funding for all, or a portion of, each disbursement of the Loan, including federal capitalization grants, federal ARRA capitalization grants, state match funds, the proceeds of taxable or tax-exempt Authority Bonds and other available funds of the Authority and that the Authority may pledge payments on the Note to the payment of Authority Bonds. The Authority reserves the right to reallocate such sources of funds from time to time. The source of funding for the Principal Forgiveness is federal ARRA capitalization grants.

The principal amount of the Loan will be repaid in the amounts and on the dates set forth in the schedule set forth in **Exhibit B** hereto (notwithstanding the rate of disbursement of the proceeds of the Loan), subject to adjustment as set forth in Section 4 below, together with interest and service fees collectively at the rate of interest equal to two and four hundred forty nine thousandths percent (2.449%) per annum for the period starting on the date of this Agreement, through the date upon which no principal remains unpaid. Interest on the Loan is payable on each February 20 and August 20, provided, however, that interest and service fees shall accrue only on the aggregate principal amount of the Loan disbursed; and provided further that the Authority shall be entitled to retain for its purposes any investment earnings on undisbursed funds and shall not be obligated to credit against any required repayment of principal or payment of interest and service fees any interest earnings on undisbursed funds.

3. The Council shall issue its general obligation promissory note (the "Note") to the Authority, evidencing its obligation to repay the Loan. The Council shall attach to this agreement

as **Exhibit C** hereto a certified copy of resolutions or other authority by the appropriate governing body or bodies, as shall legally authorize the execution of this agreement and the Note on behalf of the Council. For purposes of permitting issuance of the Note, the Authority represents that it is a "board, department or agency" of the State of Minnesota within the meaning of Minnesota Statutes, Section 475.60, subd. 2, clause (4).

4. This Loan may not be prepaid except as agreed to in writing by the Authority and the Council specifying the terms and conditions of such prepayment.

No prepayment of this Loan may be made unless the Authority shall have received an opinion of its bond counsel that the prepayment will not cause the interest on any tax-exempt Authority Bonds to become includable in gross income for federal tax purposes.

To the extent that the source of such prepayment is an issue of bonds by the Council, and to the extent that the requirements of this Section are otherwise met, the Council agrees that, if as a result of such prepayment the Council realizes debt service savings on a present value basis (using the yield on such Council refunding bonds as the discount rate) after deducting administrative, legal and other costs of issuing, carrying and repaying the refunding bonds (but not taking into account for such purpose costs which the Council would have been required to pay without regard to the refunding) and after deducting any required rebate amounts and lost investment income from a lower yield restriction on invested funds pursuant to the Internal Revenue Code of 1986, as amended, and the regulations (the "Treasury Regulations") promulgated thereunder (collectively, the "Code"), the Council shall pay to the Authority fifty percent of the net present value savings as a prepayment fee.

5. In the event and to the extent that (i) the Authority issues Authority Bonds, the proceeds of which are used to refund the Authority Bonds, if any, used to finance or refinance (and still allocated to) all or a portion of the Loan outstanding at the time of issuance of the refunding Authority Bonds, and (ii) as a result of such refunding the Authority realizes debt service savings on a present value basis (using the yield on the refunding obligations as the discount rate) after deducting administrative, legal, and other costs of issuing, carrying and repaying the refunding bonds or the refunded bonds (but not taking into account for such purpose costs which the Authority would have been required to pay without regard to the refunding) and after deducting any required rebate amounts and lost investment income resulting from a lower yield restriction on invested funds pursuant to the Code, certain payments required to be made by the Council pursuant to the terms of the Note shall be reduced such that the Council shall receive the benefit of fifty percent of that portion of such realized net present value savings which is allocable to that portion of then outstanding Authority Bonds actually used to fund a portion of the Note (but only to the extent the Note is then outstanding), or such larger percentage of such savings as the Authority may determine in its sole discretion. Lost investment income referred to above shall not include the difference between the actual investment income on any escrow established to advance refund the refunded bonds and the maximum investment income permitted for such escrow pursuant to the Code if such actual investment income is less than the maximum permitted and such difference otherwise had been taken into account in calculating debt service savings. If so requested by the Council, then within sixty (60) days of the later of the receipt of such request or the issuance of such refunding bonds, and prior to the reduction of payments on the Note as described above, the Authority shall provide the data, computations and

supporting reports, if any, used by the Authority in calculating net present value savings and allocating such savings, as applicable, to proposed payment reductions on the Note.

6. The Authority's commitment to make the Loan as set forth in this Loan Agreement is subject to the availability of funds to the Authority from the sources contemplated by the Authority to fund draws on the Loan by the Council.

7. The Council agrees to use the proceeds of the Loan exclusively for the eligible costs of construction of the Project, including to the extent permitted by law any professional costs incurred by the Council in securing the Loan, all in accordance with the disbursement procedures described in Section 1 or to retire debt previously incurred for the construction of the Project (subject to the provisions of Section 9(f) hereof).

8. The Council acknowledges that the Authority may apply up to 2% of any Loan repayment to payment of its administrative costs or administrative costs of the Minnesota Pollution Control Agency, provided that such application shall not increase the amount of any repayments or extend the period of repayment. The Authority waives any rights it may have as of the date of this agreement to assess separate fees with respect to the Project arising under existing law, including Minnesota Rules, pt. 7380.0460.

9. The Council agrees to cooperate with the Authority as necessary to maintain the tax exempt status of tax-exempt Authority Bonds or obtain and thereafter maintain tax exempt status on such Authority Bonds. The Council specifically agrees:

(a) Investments. Subject to the provisions of Subsection 9(g) below, any sums from time to time held by or under the control of the Council which would constitute "gross proceeds" of the Note or any tax-exempt Authority Bonds ("Gross Proceeds"), as defined in Treasury Regulations § 1.148-1(b), shall not be invested at a yield in excess of the applicable yield restrictions imposed by said arbitrage regulations on such investments. In addition, said Gross Proceeds 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 or any Authority Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

(b) Covenant as to Use and Payment. The Council hereby covenants that, except as described on Exhibit D hereto, the proceeds of the Note will not be used in a "private business use" (as used in the Code), that the Note will not be secured by property used in a trade or business ("private security"), and that repayments of the Note will not payable from, or derived from, payments related to property used in a trade or business ("private payment"). If and to the extent the Council desires to have any such private use, security, or payment not set forth in Exhibit D, it shall notify the Authority and request a specific amendment to Exhibit D to include such private use, security, or payment. The Authority agrees to consider such request for its consent to the amendment in good faith upon reasonable criteria. If the Council desires to take a deliberate action to have any such private use of the Project and remedial action is then available under the Code which would allow such private use subsequent to taking the remedial action without

causing any interest on the Note or any of the Authority's Bonds to be included in gross income of the owner thereof for federal income tax purposes, the Council shall notify the Authority of such proposed private use and the proposed remedial action and shall provide the Authority a written opinion of nationally recognized bond counsel, selected by the Council and acceptable to the Authority, to the effect that upon taking of the remedial action, the subsequent deliberate action resulting in a private use of the Project will not cause the interest on the Note or any of the tax-exempt Authority Bonds to be included in gross income for federal income tax purposes. Upon receipt by the Authority of evidence satisfactory to the Authority that such remedial action has been taken by the Council and that such subsequent deliberate action did not cause the interest on the Note or any of the tax-exempt Authority Bonds to be included in gross income for federal tax purposes, such private use shall not cause a default under this Section 9(b).

(c) Tax-Exempt Status of the Note and Authority Bonds: Rebate. With respect to any Gross Proceeds and subject to the provisions of Subsection 9(g) below, the Council shall comply with requirements necessary under the Code to establish and maintain the exclusion from gross income under Section 103 of the Code of the interest on the Note and the tax-exempt Authority Bonds, if any, used to finance the Note, including without limitation requirements relating to temporary periods for investments, limitations on amounts invested at a yield greater than the yield on the Note or such Authority Bonds, as the case may be, and the payment of yield reduction amounts and the rebate of excess investment earnings to the United States.

(d) Capital Expenditures. The Council shall not directly or indirectly use or permit the use of any proceeds of any Authority Bonds used to fund the Note to pay any cost of the Project which does not constitute a "capital expenditure" within the meaning of Treasury Regulations § 1.150-1 (or successor regulations), except for those expenditures described in Treasury Regulations § 1.148-6(d)(3)(ii), provided that with respect to costs set forth in Treasury Regulations § 1.148-6(d)(3)(ii)(5), the Council agrees that the 5% limit shall be based upon the sale proceeds of this Agreement.

(e) Expected Economic Life. The weighted average maturity of the Note does not exceed 120% of the average reasonably expected economic life of the Project financed or refinanced with the Note, determined in the same manner as under Section 147(b) of the Code. Accordingly, the term of the Note will not be longer than is reasonably necessary for the governmental purposes of the Note within the meaning of Treasury Regulations § 1.148-1(c)(4).

(f) Reimbursement; Refinancing. The Council shall not directly or indirectly use or permit the use of any proceeds of the Note to reimburse the Council for an expenditure with respect to a cost of the Project paid by the Council prior to the issuance of the Note and the Authority Bonds, if any, used to fund a portion of the Note unless (A) the allocation by the Council of proceeds of the Note to reimburse such expenditure complies with the requirements of Treasury Regulations Section 1.150-2 (or successor provisions) if and as necessary to enable the reimbursement allocation to be treated as an expenditure of proceeds of the Note and such Authority Bonds for purposes of applying Sections 103 and 141-150 of the Code; or (B) such proceeds of the Note will be used for

"refinancing of indebtedness" which was used to pay costs of the Project, or to reimburse the Council prior to the issuance of such indebtedness in accordance with a reimbursement allocation for such expenditures which complies with the requirements of Treasury Regulations Section 1.150-2 (or successor regulations).

(g) Funding Information; Investment Instructions. At the request of the Council, the Authority agrees to provide information with respect to the sources of funding for the Loan, from time to time, in such detail as may be reasonably required for the purpose of assisting the Council in complying with any of the provisions of this Section; and the Council may rely on said information. Notwithstanding any opinions otherwise obtained by the Council, the Council shall be entitled to rely on any opinions rendered by bond counsel to the Authority or any instructions of the Authority with respect to maintaining or establishing the tax-exempt nature of the tax-exempt Authority Bonds. The Council agrees to follow such instructions (including record keeping) and make yield reduction payments and rebate payments to the Authority at the times and in the manner set forth in such instructions.

10. (a) Within the earlier of (i) three hundred sixty-five (365) days after each December 31; or (ii) thirty (30) days after such financial statements have been prepared in final form, audited and made available to the public, the Council agrees to provide to the Authority its annual financial statements for the preceding calendar year, which financial statements shall be audited. The audits must be performed in compliance with the single audit act requirements of the federal Office of Management and Budget, Circular A-133.

(b) The Council agrees to provide to the Authority such information with respect to the Council, its duties, operations and functions as may be reasonably requested from time to time by the Authority in connection with the preparation of its official statements, secondary market continuing disclosure and/or the remarketing of variable rate or other Authority Bonds and, subject to the provisions in (c) below, hereby consents to the inclusion of such information, in whole or part, (1) in the Authority's official statement used in connection with the issuance of the Authority Bonds, if any, the proceeds of which are to be used to fund the Authority loan to the Council; (2) secondary market continuing disclosure annual reports, event notices or supplemental information relating to Authority Bonds; and (3) in the Authority's official statements or other materials used in connection with issuance and sale or the remarketing of other Authority Bonds, whether or not all or a portion of the proceeds thereof will be loaned to the Council.

(c) At the request of the Authority, the Council will certify and represent that the information furnished in writing to the Authority in response to the request by the Authority pursuant to (b) above is true, correct and complete in all material respects for the purpose of evaluating the creditworthiness of the Council (as if the Note were a publicly offered general obligation bond of the Council); provided, however, that in no event shall the Council be required to make any representation, nor shall the furnishing of any information requested by the Authority and the consent to its use in such official statements give rise to any implied representation of the Council (i) about any other

information in such official statements or as to any such official statements in their entirety; or (ii) as to what extent, if any, the information furnished by the Council should be included in such official statements in order that such official statements in their entirety not be materially misleading; and provided further that the Council may condition its consent to the use of such information about the Council on such changes being made to the official statements as the Council may reasonably require. If for any reason the Council determines that it shall not be able to make such certification and representation, it will provide such information as is necessary for it to make such certification and representation and will, subject to the foregoing, consent to the inclusion of such information, in whole or part, in such official statements.

(d) If at any time during the period ending ninety (90) days after the date of an Authority official statement (as certified by the Authority to the Council) any event occurs which the Council believes would cause the information furnished to the Authority for the limited purposes set forth in (c) above to be untrue, incorrect or incomplete in any material respect, the Council shall, subject to the provisions in (c) above, promptly notify the Authority in writing about the event and furnish a consent to the inclusion, in whole or part, of information furnished by the Council about the event in the official statement, an amendment thereof or a supplement thereto. At the request of the Authority, the Council will also provide the certification and representation required in (c) above with respect to such information.

(e) The Council will furnish such information, execute such instruments and take such other action in cooperation with the underwriters of the Authority's Bonds as such underwriters may from time to time reasonably request in order (i) to qualify, and maintain the qualification of, any Authority Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as such underwriters may designate; and (ii) to determine the eligibility of any Authority Bonds for investment under the laws of such states and other jurisdictions.

(f) The Council will provide such information as may be reasonably requested by any rating agency in connection with rating the Authority Bonds.

(g) The Council agrees to provide to the Authority such information for secondary market disclosure with respect to the Council, its duties, operations, functions and financial condition as may be required in the future by the Securities and Exchange Commission, or similar regulatory body with respect to the Authority's Bonds.

11. For all expenditures of funds made pursuant to this agreement, Council shall keep, or cause to be kept, for a minimum of six (6) years from the date of the expenditure, financial accounts and records in accordance with Generally Accepted Accounting Principles (GAAP). These accounts and records shall include invoices, contracts, receipts, vouchers, and other documents sufficient to evidence the nature and propriety of the expenditure. Such accounts and records shall be accessible and available, unless privileged and not otherwise required to be accessible under any State of Minnesota law, to the extent permitted by law, to authorized representatives of the Authority, the State of Minnesota, the Department of Employment and

Economic Development, the Legislative Auditor, and the State Auditor's Office, for purposes of examination and audit.

12. The Council shall meet all requirements in the loan application submitted by the Council to the Authority as to compliance with federal and state laws, rules and regulations and shall include in any contract or subcontract related to the Project, in addition to the provisions to define a sound and complete agreement, such provisions as to require contractor and subcontractor compliance with applicable state and federal laws. The requirements in such loan application are hereby incorporated by reference.

The Council agrees to comply with all ARRA requirements applicable to the Project, including wage, construction and reporting requirements. The Council acknowledges and agrees that the Project in its entirety is subject to ARRA requirements. If the Council determines that it has failed to comply with any applicable ARRA requirement, it shall promptly notify the Authority in writing of the failure and the status of the noncompliance, and any plans of the Council then proposed to rectify the noncompliance.

The Borrower represents that all construction contracts for the Project will be entered into by the Borrower by _____, and that the notice to proceed will be issued no later than _____. The Borrower agrees to proceed with due diligence to complete the Project, which the Borrower estimates to occur by _____, subject to events beyond the control of the Borrower.

13. (a) General. If there has been a failure to comply with the provisions of this Agreement, the Authority may exercise any remedies available at law or in equity; provided that in no event shall the Authority be entitled to accelerate or otherwise require that the Council prepay, in whole or part, the Loan or require that the Council return all or any part of the Loan funds disbursed except and to the extent, if any, the Authority shall be entitled under law or equity to recover all or a portion of any funds used for a purpose for which they were not disbursed.

(b) Repayment of Principal Forgiveness. (a) If the Council fails to enter into all construction contracts for the Project or fails to commence construction of the Project by the respective dates set forth in Section 12 of this Agreement, then the Council must repay the Principal Forgiveness from legally available funds and appropriations upon demand by the Authority. If the Council otherwise fails to comply with Sections 12 or 31 of this Agreement, and such failure continues for 90 days after written notification thereof from the Authority, then the Council must repay the Principal Forgiveness upon demand by the Authority.

14. Any amendment to this Agreement shall be in writing, and shall be executed by either the same persons who executed the original agreement, by their successors in office, or by those persons authorized to do so by the Council through a formal resolution of its governing body.

15. The Council hereby certifies that its Minnesota and federal tax identification numbers are as follows:

| | |
|---------------------|------------|
| Minnesota Tax ID | 8034628 |
| Federal Employer ID | 41-6008898 |

16. The references to Minnesota Rules in Sections 2, 8, and 24 hereof shall be to such rules in effect at the time of execution hereof, regardless of any subsequent change in citation thereto. This provision shall not be construed as affecting, and shall not affect, the applicability of amendments of such Minnesota Rules apart from their incorporation in this Agreement.

17. The obligations of the Council under this Agreement (except the obligations set forth in Sections 9 and 10 hereof) shall terminate as soon as the Loan is fully paid and retired in accordance with this Agreement.

18. The following exhibits are attached hereto and constitute a part of this agreement:

| | |
|-----------|---|
| Exhibit A | List of Projects |
| Exhibit B | Loan Repayment Schedule |
| Exhibit C | Council Resolutions |
| Exhibit D | Disclosure of Private Business Use or Security and Payment |

19. In addition to any notice required under applicable law to be given in another manner, any notices required hereunder must be in writing, and shall be sufficient if personally served or sent by prepaid, registered, or certified mail (return receipt requested), to the address of the party to whom it is directed. Such address shall be that address specified below or such different address as may hereafter be specified, by either party by written notice to the other:

In the case of the Authority:

Minnesota Public Facilities Authority
332 Minnesota Street, Suite E200
St. Paul, MN 55101-1351
Attention: Executive Director

In the case of the Borrower:

Metropolitan Council
390 North Robert Street
St. Paul, MN 55101
Attention: Chief Financial Officer

20. As bids or proposals for the Project have been received, opened and accepted, the Council shall provide copies of the contracts when executed to the Authority upon request.

21. The Council shall not enter into any sale, lease, transfer or otherwise dispose of, or any management or service contract regarding, any part of the Project if such action would (i) violate the covenants set forth in Section 9 hereof; or (ii) violate the conditions under which any capitalization grants in connection with the Project were furnished by the United States Environmental Protection Agency as set forth in Sections 601(a) and 603(c) of the Clean Water Act; or (iii) otherwise violate any terms or conditions of this Agreement.

22. The Council shall maintain adequate property insurance coverage for the Project. The Council may substitute adequate, actuarially sound self-insurance or risk retention programs for property insurance coverage, upon written notice to the Authority, if the Project would continue to be eligible for funding from Loan Proceeds under applicable laws and state, Authority and federal regulations.

23. The Council shall continue to impose and collect such rates and charges (including costs allocated by the Council to local governments) according to an approved sewer service charge system, as provided by law, so that there are sufficient gross revenues available for the payment of the operation and maintenance of the Project.

24. The Council agrees that it will complete the Project work, for which assistance has been awarded under this Agreement, in a timely manner in accordance with all applicable provisions of Minnesota Rules, pts. 7077.0100 to 7077.0292 and plans and specifications approved by PCA. For purposes of this paragraph, the Authority agrees that if the Commissioner of the PCA should ever determine that the Project does not meet the project performance standards identified in the appropriate permit, then the requirements of Minnesota Rules, pt. 7077.0288, Subpt. 3 shall be deemed satisfied by any stipulation agreement or consent decree entered into between the Council and PCA in connection therewith.

25. The Council will submit a U.S. Environmental Protection Agency Form 5700-52A to the Authority within twenty (20) days of the end of each calendar quarter, until the Project is complete, reporting any prime contracts or subcontracts awarded during the quarter and designating which were awarded to Minority or Woman Business Enterprises (MBE/WBE).

26. The Council agrees to exert all reasonable efforts to investigate claims which the Council may have against third parties with respect to the planning, design and construction of the Project and, in appropriate circumstances, take whatever action, which may include legal action, the Council reasonably determines to be appropriate.

27. The Council acknowledges that nothing in this Agreement shall be deemed to relieve the Council of any responsibility it may have to design and construct the Project regardless of the availability of additional Loan funds.

28. With respect to the Project, the Council agrees to comply with the state labor wage provisions (Minnesota Statutes, Sections 177.41 to 177.43).

29. With respect to the Project, the Council agrees to comply with the surety deposit requirements for construction contracts (Minnesota Statutes, Section 290.9705).

30. The Authority represents that it may use proceeds of state match grants from the State of Minnesota to fund all or a portion of the Loan, which grants for state law purposes may be deemed to be proceeds of general obligation bonds of the State of Minnesota. The Authority and the Council agree that such proceeds shall only fund that part of the Loan to be made to reimburse the Council for costs incurred with respect to the Council's Blue Lake Plant Improvement Projects listed in **Exhibit A** attached hereto (collectively the "Match Funded Projects"). To the extent required to comply with Minnesota Statutes, Section 16A.695 (Laws of 1994, Chapter 643, Section 36, and any amendment thereto) ("Section 16A.695") and, to the extent required by law, the order of the Commissioner (the "Commissioner") of the Department of Management and Budget of the State of Minnesota (the "Order") promulgated in connection with Section 16A.695 on July 14, 1994, as amended from time to time, the Council agrees that: (i) any lease or management contract entered into by the Council with respect to property constituting all or a part of the Match Funded Projects shall be for the express purpose of

carrying out a governmental program established or authorized by law and established by official action of the Council and the Council shall obtain the prior written consent of the Commissioner; (ii) any such lease or management contract, including any renewals that are solely at the option of the lessee or manager, must be for a term substantially less than the useful life of the property subject to such lease or management contract, but may allow renewal beyond that term upon determination by the Council that the use continues to carry out the governmental program; (iii) any such lease or management contract will be terminable by the Council if the other contracting party defaults under the contract, or if the governmental program is terminated or changed and will provide for program oversight by the Council; (iv) the Council will not sell any property constituting all or a part of the Match Funded Projects unless the Council determines by official action that such property is no longer usable or needed by the Council to carry out the governmental program for which it was acquired or constructed; (v) any such sale must be made as authorized by law for fair market value as defined in Section 16A.695 and the Council shall obtain the prior written consent of the Commissioner; and (vi) prior to the Authority disbursing funds to the Council for the Match Funded Projects, the Council shall file a Declaration and provide an executed Declaration (substantially in the form set forth in Exhibit E hereto) to the Authority that identifies the real property constituting the Match Funded Projects as State Bond Financed Property, as such term is used in the Order of the Commissioner.

31. Pursuant to Subtitle A of the ARRA, the “Transparency and Oversight Requirements”, the Council will provide requested reporting information on forms prescribed by the Authority.

Pursuant to Section 1605 of the ARRA, “Use of American Iron, Steel and Manufactured Goods”, the Council will require the use of American iron, steel, and manufactured goods in the Project unless a waiver is granted from the federal EPA.

In addition to the prevailing wage requirements under paragraph 28, pursuant to Section 1606 of the ARRA, “Wage Rate Requirements”, the Council will require that all laborers and mechanics employed by contractors and subcontractors on the Project be paid wages at rates not less than those prevailing on projects of a similar character in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

The Council will post a sign at the Project site during the construction phase that includes the ARRA logo to inform the public that the Project is an ARRA investment.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Authority and the Council acknowledge their assent to this Agreement and agree to be bound by its terms through their signatures entered below. This Agreement is effective upon execution by the parties hereto as set forth below.

Minnesota Public Facilities Authority

By: _____

Title: _____

Date: _____

ENCUMBERED

Department of Employment and Economic
Development

By: _____

Title: _____

Date Encumbered: _____

[Individual signing certifies that funds have been
encumbered as required by Minnesota Statute 16A]

Metropolitan Council

By: _____

Title: _____

Date: _____

EXHIBIT A

**List of Projects
(as of the date of this Agreement)**

| <u>MCES Project #</u> | <u>Facility</u> | <u>Project</u> | <u>IUP Project #</u> | <u>Project Phase Certified for PFA Funding</u> | <u>ARRA Principal Forgiveness Project Financing</u> | <u>Clean Water Revolving Fund Loan</u> |
|---------------------------|---|--|--------------------------|--|---|--|
| 802812 | Blue Lake Interceptor System Improvements | VSB-L22 and L23 Tunneling | 279356-08 | Construction | 2,000,000 | 8,000,000 |
| 801830 | Blue Lake Plant Improvements | Liquids Phase I (Green) | 279341-08 | Construction | 2,000,000 | 6,000,000 |
| 801840 | Blue Lake Plant Improvements | Solids improvements, energy recovery | 279341-09 | Construction | 2,000,000 | 8,000,000 |
| 805930 | MWWTP Rehab & Facilities Improvements | Tunnel Lighting Energy Reduction (Green) | 279435-03 | Construction | 196,250 | 588,750 |
| 8027 | South St. Paul Forcemain Improvements | Forcemain Improvements Phase Ia | 279386-03 | Construction | 2,000,000 | 8,000,000 |
| | | | | Total | 8,196,250 | 30,588,750 |

Total Project Financing : \$38,785,000

NOTE: The ARRA requirements apply only to the projects listed under the project column. The ARRA requirements will not apply to other projects that are implemented by the Council at these facilities.

EXHIBIT B

Loan Repayment Schedule

| <u>Date</u> | <u>Principal Repayments Due</u> |
|-----------------|-------------------------------------|
| August 20, 2010 | \$ 383,750.00 |
| August 20, 2011 | 1,910,000.00 |
| August 20, 2012 | 1,815,000.00 |
| August 20, 2013 | 1,340,000.00 |
| August 20, 2014 | 1,530,000.00 |
| August 20, 2015 | 95,000.00 |
| August 20, 2016 | 95,000.00 |
| August 20, 2017 | 765,000.00 |
| August 20, 2018 | 2,100,000.00 |
| August 20, 2019 | 2,675,000.00 |
| August 20, 2020 | 2,485,000.00 |
| August 20, 2021 | 955,000.00 |
| August 20, 2022 | 1,340,000.00 |
| August 20, 2023 | 2,295,000.00 |
| August 20, 2024 | 3,540,000.00 |
| August 20, 2025 | 1,815,000.00 |
| August 20, 2026 | 2,200,000.00 |
| August 20, 2027 | 955,000.00 |
| August 20, 2028 | 860,000.00 |
| August 20, 2029 | 1,435,000.00 |
| | <hr/> |
| Total\$ | <u>30,588,750.00</u> |

EXHIBIT C
Council Resolutions

EXHIBIT D

**Disclosure of Private Activity Use,
Security and Payment**

NONE

EXHIBIT E

FOR USE BY FILING OFFICER ONLY

**Minnesota Public Facilities Authority
REAL PROPERTY DECLARATION**

Metropolitan Council

The undersigned, as owner of fee title to the real property legally described on Exhibit A, which is attached hereto and made a part hereof ("Property"), hereby declares as follows:

- (i) The Property has been acquired or bettered, in whole or in part, with funds appropriated to the Minnesota Public Facilities Authority from State general obligation bond proceeds, the receipt of which is evidenced by the Project Agreement between the Minnesota Public Facilities Authority and the undersigned for Agreement No. (MPFA-08-0098-R-FY10 or ARRA-09-0098-R-FY10); dated «Approval Date»;
- (ii) The Property is bond financed property within the meaning of Minnesota Statutes Section 16A.695;
- (iii) The title to the Property is subject to the encumbrance created and requirements imposed by Minnesota Statutes Section 16A.695, and cannot be sold or otherwise disposed of by the public officer or agency which has jurisdiction over it or owns it without the approval of the Minnesota Commissioner of Management and Budget, which approval must be evidenced by a written statement signed by the Commissioner of Management and Budget and attached to the deed or instrument used to sell or otherwise dispose of the Property; and
- (iv) The title to the Property shall remain bond financed property within the meaning of Minnesota Statutes Section 16A.695, and subject to the restrictions imposed by such statute until (i) such restriction have been fully complied with as evidenced by a written approval from the Minnesota Commissioner of Management and Budget, or (ii) a written release, releasing the Property from such restrictions, signed by the Minnesota Commissioner of Management and Budget, is recorded in the real estate records relating to the Property.

Dated: _____, 2009 _____

By: _____

Its: _____

And: _____

Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF)

This Minnesota Public Facilities Authority Real Property Declaration was executed and acknowledged before me on the _____ day of _____, 2009, by

_____ the _____,
and _____ the _____ of «Borrower Name» a
_____ on behalf of said _____.

Notary Public

This Declaration was drafted by:

Office of Attorney General
445 Minnesota Street
Suite 1900 Bremer Tower
St. Paul, MN 55101

Exhibit A
to
Minnesota Public Facilities Authority
Real Property Declaration

LEGAL DESCRIPTION

Attachment C-2 (BAB)

BOND PURCHASE AND PROJECT LOAN AGREEMENT

(Metropolitan Council)

(Taxable Note from Borrower – Build America Bonds)

No. 2009

MPFA-08-0099-R-FY10

THIS BOND PURCHASE AND PROJECT LOAN AGREEMENT, made as of the ____ day of _____, 2009 (this "Agreement"), between the Minnesota Public Facilities Authority (the "Authority") and the Metropolitan Council, 390 North Robert Street, St. Paul, Minnesota 55101 (the "Council"):

1. Subject to the conditions hereinafter set forth, the Authority hereby commits to loan \$49,411,250.00 (the "Loan") to the Council for the purpose of funding the wastewater treatment projects described on **Exhibit A** hereto. These projects, or any other additional wastewater treatment projects selected by the Council, certified by the Minnesota Pollution Control Agency (the "PCA") and approved by the Authority in its sole discretion, are, to the extent financed by Loan proceeds, herein collectively called the "Project". The Council hereby agrees to accept this Loan by delivery of its general obligation note to the Authority in the form adopted pursuant to Council Resolution, as set forth in **Exhibit C** hereto.

2. The Loan will be disbursed on a cost reimbursement basis consistent with the estimates provided to the Authority by the Council in connection with the loan application, or any amendment thereto approved by the Authority, but not in violation of any provisions of applicable federal and state regulations. Such disbursement shall be made within thirty (30) days of a request therefor made by the Council in the form required by the Authority from time to time unless within the thirty (30) day period the Authority has determined to withhold the disbursement and has notified the Council in writing of the basis for its determination. In the event that the Council notifies the Authority that less than the entire principal amount specified in Section 1 above is to be disbursed for Project cost reimbursement, the balance of the amounts undisbursed shall be applied to the principal repayments on this Loan and the payments set forth in **Exhibit B** will be reamortized.

The terms, conditions, assurances, and timing of disbursements of the Loan shall be in accordance with Minnesota Rules, pts. 7380.0400 to 7380.0480. Payment requests shall be reviewed and approved by the Authority.

If any expenditures on the Project have been incurred and paid by the Council and the Authority withholds disbursements with respect to such expenditures for more than sixty (60) days after submission of the request therefor, the Council may elect to secure alternative financing for the balance of the costs which were otherwise to be paid from the proceeds of the Loan and direct the application of an equivalent amount of the proceeds of the Loan held by the Authority to be applied towards payment or prepayment of the Loan under the circumstances permitted under Section 4 hereof; provided that there shall have been delivered to the Authority

an opinion of the Council's nationally recognized bond counsel to the effect that such actions would not of themselves adversely affect the status of the Loan and the Note (as hereinafter defined) as a "Build America Bond" (a "BAB"), as defined in the American Recovery and Reinvestment Act of 2009 ("ARRA").

The Council acknowledges that the Authority may use different sources of funding for all, or a portion of, each disbursement of the Loan, including federal capitalization grants, state match funds, the proceeds of taxable bonds of the Authority and other available funds of the Authority which are permissible under ARRA as a source of funding and that the Authority may pledge payments on the Note to the payment of bonds of the Authority, including tax-exempt bonds of the Authority. The Authority's bonds or notes (whether taxable or tax-exempt) issued to fund loans or other financial assistance from its Clean Water Revolving Fund are herein referred to as the "Authority Bonds." The Authority reserves the right to reallocate such sources of funds from time to time. The Authority specifically, without limitation, reserves the right to use proceeds of tax-exempt bonds of the Authority to fund draws on the Loan and the Note if it receives a determination of the IRS or an opinion of its legal counsel that such sources of funds will not adversely affect the status of the Loan and the Note as a BAB.

The principal amount of the Loan will be repaid in the amounts and on the dates set forth in the schedule set forth in **Exhibit B** hereto (notwithstanding the rate of disbursement of the proceeds of the Loan), subject to adjustment as set forth in Section 4 below, together with interest and service fees collectively at the rate of interest equal to two and eighty-three hundredths percent (2.83%) per annum for the period starting on the date of this Agreement, through the date upon which no principal remains unpaid. Interest on the Loan is payable on each February 20 and August 20, provided, however, that interest and service fees shall accrue only on the aggregate principal amount of the Loan disbursed; and provided further that the Authority shall be entitled to retain for its purposes any investment earnings on undisbursed funds and shall not be obligated to credit against any required repayment of principal or payment of interest and service fees any interest earnings on undisbursed funds.

3. The Council shall issue its general obligation promissory note (the "Note") to the Authority, evidencing its obligation to repay the Loan. The Council shall attach to this agreement as **Exhibit C** hereto a certified copy of resolutions or other authority by the appropriate governing body or bodies, as shall legally authorize the execution of this agreement and the Note on behalf of the Council. For purposes of permitting issuance of the Note, the Authority represents that it is a "board, department or agency" of the State of Minnesota within the meaning of Minnesota Statutes, Section 475.60, subd. 2, clause (4).

4. This Loan may not be prepaid except as agreed to in writing by the Authority and the Council specifying the terms and conditions of such prepayment; provided, however, the Authority will allow the prepayment of the Loan and Note at any time upon the termination by the federal government of the direct pay tax credit payments to the Council with respect to interest on the Note to the extent to which such prepayment will not materially adversely affect the ability of the Authority to pay when due all principal of and interest on then outstanding Authority Bonds and all other payment obligations of the Authority, as determined in the sole judgment of the Authority, and upon agreement by the Authority and the Council as to the

payment by the Council to the Authority of all costs and reinvestment losses, if any, incurred by the Authority in connection with the prepayment.

To the extent that the source of such prepayment is an issue of bonds by the Council and to the extent that the requirements of this Section are otherwise met, the Council agrees that, if as a result of such prepayment the Council realizes debt service savings on a present value basis (using the yield on such Council refunding bonds as the discount rate) after deducting administrative, legal and other costs of issuing, carrying and repaying the refunding bonds (but not taking into account for such purpose costs which the Council would have been required to pay without regard to the refunding) and after deducting any required rebate amounts and lost investment income from a lower yield restriction on invested funds pursuant to the Internal Revenue Code of 1986, as amended, and the regulations (the "Treasury Regulations") promulgated thereunder (collectively, the "Code"), the Council shall pay to the Authority fifty percent of the net present value savings as a prepayment fee.

5. In the event and to the extent that (i) the Authority issues Authority Bonds, the proceeds of which are used to refund the Authority Bonds, if any, used to finance or refinance (and still allocated to) all or a portion of the Loan outstanding at the time of issuance of the refunding Authority Bonds, and (ii) as a result of such refunding the Authority realizes debt service savings on a present value basis (using the yield on the refunding obligations as the discount rate) after deducting administrative, legal, and other costs of issuing, carrying and repaying the refunding bonds or the refunded bonds (but not taking into account for such purpose costs which the Authority would have been required to pay without regard to the refunding) and after deducting any required rebate amounts and lost investment income resulting from a lower yield restriction on invested funds pursuant to the Code, certain payments required to be made by the Council pursuant to the terms of the Note shall be reduced such that the Council shall receive the benefit of fifty percent of that portion of such realized net present value savings which is allocable to that portion of then outstanding Authority Bonds actually used to fund a portion of the Note (but only to the extent the Note is then outstanding), or such larger percentage of such savings as the Authority may determine in its sole discretion. Lost investment income referred to above shall not include the difference between the actual investment income on any escrow established to advance refund the refunded bonds and the maximum investment income permitted for such escrow pursuant to the Code if such actual investment income is less than the maximum permitted and such difference otherwise had been taken into account in calculating debt service savings. If so requested by the Council, then within sixty (60) days of the later of the receipt of such request or the issuance of such refunding bonds, and prior to the reduction of payments on the Note as described above, the Authority shall provide the data, computations and supporting reports, if any, used by the Authority in calculating net present value savings and allocating such savings, as applicable, to proposed payment reductions on the Note.

6. The Authority's commitment to make the Loan as set forth in this Loan Agreement is subject to the availability of funds to the Authority from the sources contemplated by the Authority to fund draws on the Loan by the Council.

7. The Council agrees to use the proceeds of the Loan exclusively for the eligible costs of construction of the Project, including to the extent permitted by law any professional costs incurred by the Council in securing the Loan, all in accordance with the disbursement

procedures described in Section 1 or to retire debt previously incurred for the construction of the Project (subject to the provisions of Section 9(f) hereof).

8. The Council acknowledges that the Authority may apply up to 2% of any Loan repayment to payment of its administrative costs or administrative costs of the Minnesota Pollution Control Agency, provided that such application shall not increase the amount of any repayments or extend the period of repayment. The Authority waives any rights it may have as of the date of this agreement to assess separate fees with respect to the Project arising under existing law, including Minnesota Rules, pt. 7380.0460.

9. The Council intends to designate the Note as a direct pay tax credit BAB. In addition, the Council hereby represents and warrants as follows:

(a) The Council has complied with all requirements of ARRA to issue the Note as a BAB.

(b) The Council has irrevocably elected to have the Note constitute a BAB and to have the direct pay tax credit provision of the ARRA apply to the Note.

(c) The Note constitutes a BAB as defined in the ARRA.

(d) But for the Council 's election to have the Note treated as a BAB, the interest on the Note would be excludable from gross income under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code") and the Note would not be a private activity bond under Section 141 of the Code.

(e) For purposes of Section 149(b) of the Code, the Note shall not be treated as federally guaranteed by reason of the tax credit allowed under the ARRA.

(f) No reserve fund has been established or funded with respect to the Note.

(g) The Council has elected have the Note constitute a BAB in its sole discretion, has not been requested or directed by the Authority to have the Note constitute a BAB, and has not relied upon any information supplied by the Authority or its advisors in connection with the election to have the Note constitute, or continue to qualify as, a BAB.

(h) The issue price of the Note does not include more than a de minimus amount of premium over the stated principal amount, as required by, and defined in, the ARRA, both with respect to the issue price paid by the Authority and with respect to the issue price the Council reasonably expects would be applicable to the Note if sold to the public.

10. The Council hereby covenants and agrees as follows:

(a) None of the proceeds of the Loan may be used to pay the costs of any facility used for any private business use or to make a private loan within the meaning of Section 141 of the Code.

(b) No Loan repayments may be made from, or secured by, property used or to be used for a private business use or payments in respect of such property within the meaning of Section 141 of the Code.

(c) Except as permitted under Treasury Regulations, Section 1.150-2, the Council will not use Loan proceeds to reimburse itself for any payments of project costs which the Council made from other funds. Notwithstanding Treasury Regulations, Section 1.150-2, the Borrower will not use any Loan proceeds to reimburse itself for any payments of project costs made from other funds prior to the effective date of the ARRA unless the Council provides a written opinion of its bond counsel to the Authority that such reimbursement will not cause the Note to cease to be a BAB and the Council to cease to be entitled to receive the direct pay tax credit pursuant to ARRA.

(d) The Council will promptly notify the Executive Director of the Authority in writing of any action or event that adversely affects the status of the Note as a BAB within the meaning of Section 54AA of the Code.

(e) Capital expenditures, for which disbursements of Note proceeds are required, will be determined only in accordance with the definition in Treas. Reg. §1.150-1(b) and such capital expenditures may not include refinancing of capital expenditures in "refunding issues" as defined in Treas. Reg. §1.150-1 but may include those that were actually paid or incurred after the effective date of ARRA and that were originally financed with temporary short term financing issued of third parties after the effective date of ARRA.

(f) The Council will comply with all post issuance requirements of the Code and the ARRA including, without limitation, those relating to private use, arbitrage investment restrictions, information reporting and rebate and will establish written post issuance compliance and record keeping procedures sufficient to verify its post issuance compliance.

(g) The Council will provide to the Authority (i) all information the Authority reasonably requests with respect to the Note in connection with its qualification as BAB and (ii) any notice or communication, formal or informal, from the Internal Revenue Service or other federal authority with respect to the Note or the Loan.

(h) The Council shall take all actions required to maintain the Note as a BAB.

(i) The Council agrees to reimburse the Authority for any and all compliance costs or expenses of the Authority incurred by the Authority in connection with the Note and the Loan.

(j) The yield on the Note will be computed based on the interest rate on the Note less the tax credit payments to be received, the principal repayments required under the Note, and the issue price of the Note, all without regard to the yield on any obligations of the Authority, unless the Borrower provides a written opinion of counsel to the Authority, which is acceptable to the Authority, specifying an alternative permitted method of calculation.

11. The Council agrees that the Authority shall not be liable for the failure of the Council to receive the direct payment tax credit amounts pursuant to the ARRA and that there shall be no offset against amounts due under the Note for such failure regardless of the cause. The Council agrees that is solely responsible for taking all actions necessary to obtain such tax credit payments and otherwise to maintain the qualification of the Note as a BAB. The Authority acknowledges and agrees that it is not entitled to any of the direct pay tax credits with respect to a BAB received by the Council with respect to the Note.

12. The Authority shall not be liable for any losses or costs of compliance relating to the qualification of the Note as a BAB and any such losses or costs may not be offset against any amounts owing by the Council to the Authority.

13. (a) Within the earlier of (i) three hundred sixty-five (365) days after each December 31; or (ii) thirty (30) days after such financial statements have been prepared in final form, audited and made available to the public, the Council agrees to provide to the Authority its annual financial statements for the preceding calendar year, which financial statements shall be audited. The audits must be performed in compliance with the single audit act requirements of the federal Office of Management and Budget, Circular A-133.

(b) The Council agrees to provide to the Authority such information with respect to the Council, its duties, operations and functions as may be reasonably requested from time to time by the Authority in connection with the preparation of its official statements, secondary market continuing disclosure and/or the remarketing of variable rate or other Authority Bonds and, subject to the provisions in (c) below, hereby consents to the inclusion of such information, in whole or part, (1) in the Authority's official statement used in connection with the issuance of the Authority Bonds, if any, the proceeds of which are to be used to fund the Authority loan to the Council; (2) secondary market continuing disclosure annual reports, event notices or supplemental information relating to Authority Bonds; and (3) in the Authority's official statements or other materials used in connection with issuance and sale or the remarketing of other Authority Bonds, whether or not all or a portion of the proceeds thereof will be loaned to the Council.

(c) At the request of the Authority, the Council will certify and represent that the information furnished in writing to the Authority in response to the request by the Authority pursuant to (b) above is true, correct and complete in all material respects for the purpose of evaluating the creditworthiness of the Council (as if the Note were a publicly offered general obligation bond of the Council); provided, however, that in no event shall the Council be required to make any representation, nor shall the furnishing of any information requested by the Authority and the consent to its use in such official statements give rise to any implied representation of the Council (i) about any other information in such official statements or as to any such official statements in their entirety; or (ii) as to what extent, if any, the information furnished by the Council should be included in such official statements in order that such official statements in their entirety not be materially misleading; and provided further that the Council may condition its consent to the use of such information about the Council on such changes being made to the official statements as the Council may reasonably require. If for any

reason the Council determines that it shall not be able to make such certification and representation, it will provide such information as is necessary for it to make such certification and representation and will, subject to the foregoing, consent to the inclusion of such information, in whole or part, in such official statements.

(d) If at any time during the period ending ninety (90) days after the date of an Authority official statement (as certified by the Authority to the Council) any event occurs which the Council believes would cause the information furnished to the Authority for the limited purposes set forth in (c) above to be untrue, incorrect or incomplete in any material respect, the Council shall, subject to the provisions in (c) above, promptly notify the Authority in writing about the event and furnish a consent to the inclusion, in whole or part, of information furnished by the Council about the event in the official statement, an amendment thereof or a supplement thereto. At the request of the Authority, the Council will also provide the certification and representation required in (c) above with respect to such information.

(e) The Council will furnish such information, execute such instruments and take such other action in cooperation with the underwriters of the Authority's Bonds as such underwriters may from time to time reasonably request in order (i) to qualify, and maintain the qualification of, any Authority Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as such underwriters may designate; and (ii) to determine the eligibility of any Authority Bonds for investment under the laws of such states and other jurisdictions.

(f) The Council will provide such information as may be reasonably requested by any rating agency in connection with rating the Authority Bonds.

(g) The Council agrees to provide to the Authority such information for secondary market disclosure with respect to the Council, its duties, operations, functions and financial condition as may be required in the future by the Securities and Exchange Commission, or similar regulatory body with respect to the Authority's Bonds.

(h) The Council agrees to cooperate with the Authority as necessary to maintain the tax exempt status of Authority Bonds or obtain and thereafter maintain tax exempt status on tax exempt Authority Bonds.

14. For all expenditures of funds made pursuant to this agreement, Council shall keep, or cause to be kept, for a minimum of six (6) years from the date of the expenditure, financial accounts and records in accordance with Generally Accepted Accounting Principles (GAAP). These accounts and records shall include invoices, contracts, receipts, vouchers, and other documents sufficient to evidence the nature and propriety of the expenditure. Such accounts and records shall be accessible and available, unless privileged and not otherwise required to be accessible under any State of Minnesota law, to the extent permitted by law, to authorized representatives of the Authority, the State of Minnesota, the Department of Employment and Economic Development, the Legislative Auditor, and the State Auditor's Office, for purposes of examination and audit.

15. The Council shall meet all requirements in the loan application submitted by the Council to the Authority as to compliance with federal and state laws, rules and regulations and shall include in any contract or subcontract related to the Project, in addition to the provisions to define a sound and complete agreement, such provisions as to require contractor and subcontractor compliance with applicable state and federal laws. The requirements in such loan application are hereby incorporated by reference. The provisions of this Section shall apply only to contracts executed after the date of this Agreement.

16. If there has been a failure to comply with the provisions of this Agreement, the Authority may exercise any remedies available at law or in equity; provided that in no event shall the Authority be entitled to accelerate or otherwise require that the Council prepay, in whole or part, the Loan or require that the Council return all or any part of the Loan funds disbursed except and to the extent, if any, the Authority shall be entitled under law or equity to recover all or a portion of any funds used for a purpose for which they were not disbursed.

17. Any amendment to this Agreement shall be in writing, and shall be executed by either the same persons who executed the original agreement, by their successors in office, or by those persons authorized to do so by the Council through a formal resolution of its governing body.

18. The Council hereby certifies that its Minnesota and federal tax identification numbers are as follows:

| | |
|---------------------|------------|
| Minnesota Tax ID | 8034628 |
| Federal Employer ID | 41-6008898 |

19. The references to Minnesota Rules in Sections 2, 8, and 27 hereof shall be to such rules in effect at the time of execution hereof, regardless of any subsequent change in citation thereto. This provision shall not be construed as affecting, and shall not affect, the applicability of amendments of such Minnesota Rules apart from their incorporation in this Agreement.

20. The obligations of the Council under this Agreement (except the obligations set forth in Sections 9 and 10 hereof) shall terminate as soon as the Loan is fully paid and retired in accordance with this Agreement.

21. The following exhibits are attached hereto and constitute a part of this agreement:

| | |
|-----------|---------------------------|
| Exhibit A | List of Projects |
| Exhibit B | Loan Repayment Schedule |
| Exhibit C | Council Resolutions |
| Exhibit D | Real Property Declaration |

22. In addition to any notice required under applicable law to be given in another manner, any notices required hereunder must be in writing, and shall be sufficient if personally served or sent by prepaid, registered, or certified mail (return receipt requested), to the address of the party to whom it is directed. Such address shall be that address specified below or such different address as may hereafter be specified, by either party by written notice to the other:

In the case of the Authority:

Minnesota Public Facilities Authority
332 Minnesota Street, Suite E200
St. Paul, MN 55101-1351
Attention: Executive Director

In the case of the Borrower:

Metropolitan Council
390 North Robert Street
St. Paul, MN 55101
Attention: Chief Financial Officer

23. When bids or proposals for the Project are received and opened, the Council shall provide copies of the bids or proposals to the Authority upon request.

24. The Council shall not enter into any sale, lease, transfer or otherwise dispose of, or any management or service contract regarding, any part of the Project if such action would (i) violate the covenants set forth in Section 9 hereof; or (ii) violate the conditions under which any capitalization grants in connection with the Project were furnished by the United States Environmental Protection Agency as set forth in Sections 601(a) and 603(c) of the Clean Water Act; or (iii) otherwise violate any terms or conditions of this Agreement.

25. The Council shall maintain adequate property insurance coverage for the Project. The Council may substitute adequate, actuarially sound self-insurance or risk retention programs for property insurance coverage, upon written notice to the Authority, if the Project would continue to be eligible for funding from Loan Proceeds under applicable laws and state, Authority and federal regulations.

26. The Council shall continue to impose and collect such rates and charges (including costs allocated by the Council to local governments) according to an approved sewer service charge system, as provided by law, so that there are sufficient gross revenues available for the payment of the operation and maintenance of the Project.

27. The Council agrees that it will complete the Project work, for which assistance has been awarded under this Agreement, in a timely manner in accordance with all applicable provisions of Minnesota Rules, pts. 7077.0100 to 7077.0292 and plans and specifications approved by PCA. For purposes of this paragraph, the Authority agrees that if the Commissioner of the PCA should ever determine that the Project does not meet the project performance standards identified in the appropriate permit, then the requirements of Minnesota Rules, pt. 7077.0288, Subpt. 3 shall be deemed satisfied by any stipulation agreement or consent decree entered into between the Council and PCA in connection therewith.

28. The Council will submit a U.S. Environmental Protection Agency Form 5700-52A to the Authority within twenty (20) days of the end of each calendar quarter, until the Project is complete, reporting any prime contracts or subcontracts awarded during the quarter and designating which were awarded to Minority or Woman Business Enterprises (MBE/WBE).

29. The Council agrees to exert all reasonable efforts to investigate claims which the Council may have against third parties with respect to the planning, design and construction of the Project and, in appropriate circumstances, take whatever action, which may include legal action, the Council reasonably determines to be appropriate.

30. The Council acknowledges that nothing in this Agreement shall be deemed to relieve the Council of any responsibility it may have to design and construct the Project regardless of the availability of additional Loan funds.

31. With respect to the Project, the Council agrees to comply with the state labor wage provisions (Minnesota Statutes, Sections 177.41 to 177.43).

32. With respect to the Project, the Council agrees to comply with the surety deposit requirements for construction contracts (Minnesota Statutes, Section 290.9705).

33. The Authority represents that it may use proceeds of state match grants from the State of Minnesota to fund all or a portion of the Loan, which grants for state law purposes may be deemed to be proceeds of general obligation bonds of the State of Minnesota. The Authority and the Council agree that such grant proceeds shall only fund that part of the Loan to be made to reimburse the Council for costs incurred with respect to the Council's Blue Lake Plant Improvement Projects listed in **Exhibit A** attached hereto (collectively the "Match Funded Projects"). To the extent required to comply with Minnesota Statutes, Section 16A.695 (Laws of 1994, Chapter 643, Section 36, and any amendment thereto) ("Section 16A.695") and, to the extent required by law, the order of the Commissioner (the "Commissioner") of the Department of Management and Budget of the State of Minnesota (the "Order") promulgated in connection with Section 16A.695 on July 14, 1994, as amended from time to time, the Council agrees that: (i) any lease or management contract entered into by the Council with respect to property constituting all or a part of the Match Funded Projects shall be for the express purpose of carrying out a governmental program established or authorized by law and established by official action of the Council and the Council shall obtain the prior written consent of the Commissioner; (ii) any such lease or management contract, including any renewals that are solely at the option of the lessee or manager, must be for a term substantially less than the useful life of the property subject to such lease or management contract, but may allow renewal beyond that term upon determination by the Council that the use continues to carry out the governmental program; (iii) any such lease or management contract will be terminable by the Council if the other contracting party defaults under the contract, or if the governmental program is terminated or changed and will provide for program oversight by the Council; (iv) the Council will not sell any property constituting all or a part of the Match Funded Projects unless the Council determines by official action that such property is no longer usable or needed by the Council to carry out the governmental program for which it was acquired or constructed; (v) any such sale must be made as authorized by law for fair market value as defined in Section 16A.695 and the Council shall obtain the prior written consent of the Commissioner; and (vi) prior to the Authority disbursing funds to the Council for the Match Funded Projects, the Council shall file a Declaration and provide an executed Declaration (substantially in the form set forth in Exhibit E hereto) to the Authority that identifies the real property constituting the Match Funded Projects as State Bond Financed Property, as such term is used in the Order of the Commissioner.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Authority and the Council acknowledge their assent to this agreement and agree to be bound by its terms through their signatures entered below. This Agreement is effective upon execution by the parties hereto as set forth below.

Minnesota Public Facilities Authority

By: _____

Title: _____

Date: _____

ENCUMBERED

Department of Employment and Economic
Development

By: _____

Title: _____

Date Encumbered: _____

[Individual signing certifies that funds have been
encumbered as required by Minnesota Statute 16A]

Metropolitan Council

By: _____

Title: _____

Date: _____

EXHIBIT A

List of Projects (as of the date of this Agreement)

| MCES | | IUP | Certified for |
|-------------------------|--|-------------------------|---------------------------|
| <u>Project #</u> | <u>Project Name</u> | <u>Project #</u> | <u>PFA Funding</u> |
| 8028 | Blue Lake Interceptor System Improvements | 279356-07 | |
| 802800 | Lake Minnetonka Area Improvements | | Planning/Design |
| 802810 | Victoria & St. Bonifacius Improvements | | Planning/Design |
| 802811 | VSF- Smithtown Rd Improvements | | Construction |
| 802813 | VSF Waconia FM Expansion | | Planning/Design |
| 802814 | VSF L70 Improvements | | Planning/Design |
| 802820 | Mound Improvements | | Planning/Design |
| 802840 | Wayzata Improvements | | Planning/Design |
| 802850 | Excelsior Area Improvements | | Planning/Design |
| 803420 | Brooklyn Park Int. Rehabilitation | 279382-02 | Construction |
| 8018 | Blue Lake Plant Improvements | 279341-07 | |
| 801800 | Blue Lake Plant Improvements | | Construction |
| 801820/25/60 | Bio P Imp. & Site Preparation | | Construction |
| 801828 | Blue Lake dewatering wells | | Construction |
| 801835 | HVAC Improvements | | Construction |
| 801850 | Liquids Phase II | | Planning/Design |
| 9004 | Elm Creek Interceptor | 272146-13 | Construction |
| 8009 | Empire Plant Service Area Capacity | 272547-09 | Construction |
| 8030 | Hastings WWTP | 272630-06 | Planning/Design |
| 8041 | Hopkins Lift Station/Forcemain Improvements | 272493-05 | Planning/Design |
| 8022 | Lift Station L-12 Improvements | 272629-06 | Construction |
| 9703 | MWWTP Solids Processing | 272355-11 | Construction |
| 8059 | MWWTP Rehabilitation/Facilities Imp. | 279435-02 | |
| | Primary Settling Tank Sludge Collection | | |
| 805910 | Equipment | | Planning/Design |
| 805915 | Sludge Storage Rehabilitation | | Planning/Design |
| 805920 | Final Settling Tanks Sludge Collection Equipment | | Planning/Design |
| 805925 | Electrical Power Generation & Distribution | | Planning/Design |
| 805935 | Non Condensing Steam Turbine | | Planning/Design |
| 805940 | Liquid Process Equipment & Systems | | Planning/Design |
| 805945 | Solids Process Equipment and Systems | | Planning/Design |
| 805950 | Vactor Waste Site | | Planning/Design |
| 805955 | Process Computer System | | Planning/Design |
| 805960 | Plant Utilities and Building | | Planning/Design |
| 505965 | Interceptor and Levee/Floodwall Improvements | | Planning/Design |
| 8023 | Northeast Interceptor Improvements | 279343-06 | Planning/Design |
| 8032 | Northwest Interceptor Improvements | 272628-04 | Planning/Design |
| 8025 | Riverview Siphon | 279344-07 | Construction |

8019
8027

Seneca WWTP Disinfection & Phosphorus
South St. Paul Forcemain

279345-06
279386-02

Construction
Planning/Design

These projects are further described and listed on the Intended Use Plan (IUP). Projects in fundable range on the approved 2010 IUP may be eligible to receive disbursement from this Loan following MPCA certification and PFA approval. MCEs planning/design projects in the fundable range that move to construction may be eligible for funding for the construction phase following MPCA's certification and PFA approval.

EXHIBIT B

Loan Repayment Schedule

| <u>Date</u> | <u>Principal Repayments Due</u> |
|-----------------|-------------------------------------|
| August 20, 2010 | \$ 616,250.00 |
| August 20, 2011 | 3,090,000.00 |
| August 20, 2012 | 2,935,000.00 |
| August 20, 2013 | 2,160,000.00 |
| August 20, 2014 | 2,470,000.00 |
| August 20, 2015 | 155,000.00 |
| August 20, 2016 | 155,000.00 |
| August 20, 2017 | 1,235,000.00 |
| August 20, 2018 | 3,400,000.00 |
| August 20, 2019 | 4,325,000.00 |
| August 20, 2020 | 4,015,000.00 |
| August 20, 2021 | 1,545,000.00 |
| August 20, 2022 | 2,160,000.00 |
| August 20, 2023 | 3,705,000.00 |
| August 20, 2024 | 5,710,000.00 |
| August 20, 2025 | 2,935,000.00 |
| August 20, 2026 | 3,550,000.00 |
| August 20, 2027 | 1,545,000.00 |
| August 20, 2028 | 1,390,000.00 |
| August 20, 2029 | 2,315,000.00 |
| | <hr/> |
| Total | <u>49,411,250.00</u> |

EXHIBIT C
Council Resolutions

EXHIBIT D

FOR USE BY FILING OFFICER ONLY

**Minnesota Public Facilities Authority
REAL PROPERTY DECLARATION**

Metropolitan Council

The undersigned, as owner of fee title to the real property legally described on Exhibit A, which is attached hereto and made a part hereof ("Property"), hereby declares as follows:

A. The Property has been acquired or bettered, in whole or in part, with funds appropriated to the Minnesota Public Facilities Authority from State general obligation bond proceeds, the receipt of which is evidenced by the Project Agreement between the Minnesota Public Facilities Authority and the undersigned for Agreement No. MPFA-08-0099-R-FY10; dated «Approval Date»;

B. The Property is bond financed property within the meaning of Minnesota Statutes Section 16A.695;

C. The title to the Property is subject to the encumbrance created and requirements imposed by Minnesota Statutes Section 16A.695, and cannot be sold or otherwise disposed of by the public officer or agency which has jurisdiction over it or owns it without the approval of the Minnesota Commissioner of Management and Budget, which approval must be evidenced by a written statement signed by the Commissioner of Management and Budget and attached to the deed or instrument used to sell or otherwise dispose of the Property; and

D. The title to the Property shall remain bond financed property within the meaning of Minnesota Statutes Section 16A.695, and subject to the restrictions imposed by such statute until (i) such restriction have been fully complied with as evidenced by a written approval from the Minnesota Commissioner of Management and Budget, or (ii) a written release, releasing the Property from such restrictions, signed by the Minnesota Commissioner of Management and Budget, is recorded in the real estate records relating to the Property.

Dated: _____, 2009

By: _____

Its: _____

And: _____

Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF)

This Minnesota Public Facilities Authority Real Property Declaration was executed and acknowledged before me on the _____ day of _____, 2009, by

_____ the _____,
and _____ the _____ of «Borrower Name» a
_____ on behalf of said _____.

Notary Public

This Declaration was drafted by:

Office of Attorney General
445 Minnesota Street
Suite 1900 Bremer Tower
St. Paul, MN 55101

Exhibit A
to
Minnesota Public Facilities Authority
Real Property Declaration

LEGAL DESCRIPTION