FINANCE COMMITTEE

14-0083R

RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF A $5,108,910 GENERAL OBLIGATION WATER UTILITY REVENUE NOTE, SERIES 2014A, AND PROVIDING FOR ITS PAYMENT.

CITY PROPOSAL:

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

Section 1. Note Purpose and Authorization.

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

1.02 The city council has, by Ordinance No. 10274 adopted January 27, 2014 (the "Ordinance"), ordered the issuance, sale and delivery of a general obligation water utility revenue note, in one or more series, in the amount of $5,745,000 of the City, for the payment of improvements to the water utility system, consisting of the West Duluth Reservoir Reconstruction Project (the "Project").

1.03 The general obligation water utility revenue note to be issued under the Ordinance shall be issued in the principal amount of $5,108,910 (the "Note") to pay the costs of the Project.

1.04 The City hereby authorizes the issuance and sale of the Note, in substantially the form on file in the office of the clerk as Public Document No. _____, for the Project to the PFA pursuant to a Minnesota Public Facilities Authority Bond Purchase and Project Loan Agreement dated January 27,

2014, between the PFA and the City, in substantially the form presented to the Council and on file in the office of the clerk (the "Loan Agreement"), as Public Document No. _____ which is hereby authorized, ratified and approved.

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

2.01 The Note to be issued hereunder shall be dated as of the date of delivery to PFA, shall be issued in the principal amount of $5,108,910, in fully registered form and lettered and numbered R-1. Interest on the Note shall be at the rate of 1.0% per annum. Principal and interest payments shall be made in the respective years and amounts set forth on Exhibit A to the Note, subject to adjustment as provided in the Loan Agreement. If the principal and interest payments are paid by check and mailed to the registered holder of the Note, such payment shall be mailed by the City at least five business days prior to the payment date.

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

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

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

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

Section 3. Revenues, Accounts and Covenants.

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

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

make such payments and maintain such reserves, constitute the net revenues which are herein pledged and appropriated first to pay the principal of and interest on all water utility bonds or notes when due.

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

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

3.04 Surplus utility revenues from time to time received in the Water Utility Operating Account, in excess of payments due from and reserves required to be maintained in the Water Utility Operating Account and in the Water Debt Service Fund, may be used for necessary capital expenditures for the improvement of the municipal water utility, for the prepayment and redemption of bonds or

notes constituting a lien on the municipal water utility, and for any other proper municipal purpose consistent with policies established by resolutions of the city council.

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

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

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

Section 4. Tax Covenants; Miscellaneous.

4.01 The city council covenants and agrees with the holders of the Note that the City will (i) take all action on its part necessary to cause the interest on the Note to be exempt from federal income taxes including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the Note and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in

a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the Note to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the Note and investment earnings thereon on certain specified purposes.

4.02 A. No portion of the proceeds of the Note shall be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except (i) for a reasonable temporary period until such proceeds are needed for the purpose for which the Note was issued, and (ii) in addition to the above, in an amount not greater than the lesser of five percent of the proceeds of the Note or $100,000. To this effect, any proceeds of the Note and any sums from time to time held in the Water Debt Service Fund (or any other City account which will be used to pay principal and interest to become due on the Note) in excess of amounts which under the applicable federal arbitrage regulations may be invested without regard as to yield shall not be invested at a yield in excess of the applicable yield restrictions imposed by the arbitrage regulations on such investments after taking into account any applicable temporary periods or minor portion made available under the federal arbitrage regulations.

B. In addition, the proceeds of the Note and money in the Water Debt Service Fund shall not be invested in obligations or deposits issued by, guaranteed by or insured by the United States or any agency or instrumentality thereof if and to the extent that such investment would cause the Note to be federally guaranteed within the meaning of Section 149(b) of the Internal Revenue Code of 1996, as amended (the "Code").

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

4.03 A. Pursuant to Section 1.148-7(d) of the Treasury Regulations, relating to exception from rebate, the City hereby reasonably expects that with

respect to the gross proceeds of the Note, the following schedule will be met: (i) at least 15% of the gross proceeds of the Note will be allocated to expenditures for the governmental purpose of the Note within six months of the date of issue of the Note; (ii) at least 60% of such proceeds will be allocated for such purposes within the one-year period of such date; and (iii) 100% of such proceeds will be allocated for such purposes within the 18-month period beginning on such date; subject to an exception for reasonable retainage of 5% of the available proceeds of the Note, and that 100% of the available proceeds of the Note will be allocated within 30 months from the date of issue of the Note.

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

Section 5. Certificate of Proceedings.

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

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

correctness of facts recited therein and the actions stated therein to have been taken.

Approved:

Department Director

Approved for presentation to council:

Chief Administrative Officer

Approved as to form:

Attorney

Approved:

Auditor

FIN WP:le 02/03/2014

STATEMENT OF PURPOSE: This resolution establishes the terms and form of the $5,108,910 General Obligation Water Utility Revenue Note, Series 2014A, to be issued to the Minnesota Public Facilities Authority (the "Authority"). The interest rate on the Note is 1.0%. The proceeds of the Note will be used for improvements to the water utility system, consisting of the West Duluth Reservoir Reconstruction Project.

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

CITY OF DULUTH, MINNESOTA

GENERAL OBLIGATION WATER UTILITY REVENUE NOTE, SERIES 2014A

R-1 **Rate: 1.0%** **$5,108,910**
Date of Note: March ___, 2014
Final Maturity Date: August 20, 2029

FOR VALUE RECEIVED, the CITY OF DULUTH, St. Louis County, Minnesota, a duly organized and existing municipal corporation and political subdivision of the State of Minnesota (the "City"), and whose office address is 411 West First Street, Duluth, Minnesota 55802-1102, for value received, promises to pay to the MINNESOTA PUBLIC FACILITIES AUTHORITY, its successors or registered assigns (the "Lender") at its offices in St. Paul, Minnesota, or such other place as the Lender may designate in writing, the principal sum of Five Million One Hundred Eight Thousand Nine Hundred Ten Dollars ($5,108,910) or such portion thereof as is disbursed to the City (the "Loan"), pursuant to the Minnesota Public Facilities Authority Bond Purchase and Project Loan Agreement between the City and the Lender dated January 27, 2014 (the "Loan Agreement"), together with interest thereon (but only on amounts as shall have been drawn hereunder, as provided above) at the rate per annum set forth above.

Interest on this Note shall be payable each February 20 and August 20, commencing on August 20, 2014. Principal on this Note shall be payable each August 20, commencing on August 20, 2014. Principal and interest on this Note shall be payable in the amounts and on the dates specified in Exhibit A hereto, subject to adjustment as provided for in the Loan Agreement. Both principal hereof and interest hereon are payable in lawful money of the United States of America by check or draft directly to the registered owner hereof shown on this Note registration records maintained by the City, without, except for the final payment of principal on this Note, the presentation or surrender of this Note, and all such payments shall discharge the obligations of the City to the extent of the payments so made. The final principal payment shall be made upon presentation and surrender of this Note when due. If the principal and interest payments are paid by check and mailed to the Lender, such payment shall be mailed by the City at least five business days prior to the payment date. For the prompt and full payment of such principal and interest as they become due, the full faith and credit and taxing power of the City are irrevocably pledged.

This Note is issued pursuant to the authority contained in Minnesota Statutes, Chapter 475, and Section 444.075 and Section 55 of the Home Rule Charter of the City, and all other laws and charter provisions thereto enabling and pursuant to Ordinance No. 10274 adopted January 27, 2014, for the purpose of providing funds for improvements to the water utility system consisting of the West Duluth Reservoir Reconstruction Project. The Note and interest thereon are payable from the net revenues to be derived from the operation of the municipal

water utility of the City, as set forth in the Resolution dated February 10, 2014, to which reference is made for a full statement of rights and powers thereby conferred. In the Resolution, the City has pledged and appropriated the net revenues to be derived from the operation of the municipal water utility in excess of normal, reasonable and current costs of the operation and maintenance of the utility, for the payment of the principal and interest when due on the Note and all other bonds and notes heretofore or hereafter issued and made payable from said net revenues, and has covenanted and agreed that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal water utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the Note and all other water utility bonds and notes.

This Note is subject to redemption at the option of the City, in whole or in part on such dates and at such prices and upon such other terms as are specified in the Loan Agreement.

This Note is transferable by the registered owner hereof upon surrender of this Note for transfer at the office of the City duly endorsed and accompanied by a written instrument of transfer in form satisfactory to the City and executed by the registered owner hereof or the owner's attorney duly authorized in writing. The City may deem and treat the person in whose name this Note is last registered upon the books of the City, with such registration noted on this Note, as the absolute owner hereof for the purpose of receiving payment of or on account of the principal balance, redemption price or interest and for all other purposes; all such payments so made to the registered holder or upon the order thereof shall be valid and effectual to satisfy and discharge the liability upon this Note to the extent of the sum or sums so paid, and the City shall not be affected by any notice to the contrary.

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

Additional provisions of this Note are contained in the Loan Agreement and such provisions shall for all purposes have the same effect as though fully set forth at this place.

IN WITNESS WHEREOF, the City has caused this Note to be executed in its name by the manual signatures of its Mayor and Clerk as of the date of Note set forth above.

_____
Mayor

Attest:

_____
Clerk

PROVISIONS AS TO REGISTRATION

The ownership of the unpaid principal balance of this Note and the interest accruing thereon is registered on the books of the City of Duluth, Minnesota, in the names of the holders last noted below.

Date of Registration	Name and Address of Registered Owner	Signature of Clerk
March ___, 2014	State of Minnesota Public Facilities Authority First National Bank Building 332 Minnesota Street, Suite E200 St. Paul, MN 55101-1351 Federal Tax I.D. No.: 41-6007162	_____

ASSIGNMENT

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

Dated: _____

_____

NOTICE: The 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 enlargement or any change whatever.

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

Name and Address: _____

_____

_____

Taxpayer Identification No.: _____

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MN Public Facilities Authority

Exhibit A

Loan Amortization Schedule

Drinking Water State Revolving Fund

Duluth - dw07

MPFA-14-0030-R-FY14

funding dates: 5,108,910.00

Rate: 1.000%

West Reservoir Roof Replacement

Date:

Maturity: 08/20/29

private activity:

final loan amount: 5,108,910.00

Date	Effective	Source	Disbursement	Repayment	Interest	Principal	Loan Balance	Anni Debt Srv
projected	04/23/14	Op Res	5,108,910.00				5,108,910.00	
	08/20/14			177,513.96	16,603.96	160,910.00	4,948,000.00	177,513.96
	02/20/15			24,740.00	24,740.00		4,948,000.00	
	08/20/15			331,740.00	24,740.00	307,000.00	4,641,000.00	356,480.00
	02/20/16			23,205.00	23,205.00		4,641,000.00	
	08/20/16			333,205.00	23,205.00	310,000.00	4,331,000.00	356,410.00
	02/20/17			21,655.00	21,655.00		4,331,000.00	
	08/20/17			335,655.00	21,655.00	314,000.00	4,017,000.00	357,310.00
	02/20/18			20,085.00	20,085.00		4,017,000.00	
	08/20/18			337,085.00	20,085.00	317,000.00	3,700,000.00	357,170.00
	02/20/19			18,500.00	18,500.00		3,700,000.00	
	08/20/19			338,500.00	18,500.00	320,000.00	3,380,000.00	357,000.00
	02/20/20			16,900.00	16,900.00		3,380,000.00	
	08/20/20			339,900.00	16,900.00	323,000.00	3,057,000.00	356,800.00
	02/20/21			15,285.00	15,285.00		3,057,000.00	
	08/20/21			341,285.00	15,285.00	326,000.00	2,731,000.00	356,570.00
	02/20/22			13,655.00	13,655.00		2,731,000.00	
	08/20/22			343,655.00	13,655.00	330,000.00	2,401,000.00	357,310.00
	02/20/23			12,005.00	12,005.00		2,401,000.00	
	08/20/23			345,005.00	12,005.00	333,000.00	2,068,000.00	357,010.00
	02/20/24			10,340.00	10,340.00		2,068,000.00	
	08/20/24			346,340.00	10,340.00	336,000.00	1,732,000.00	356,680.00
	02/20/25			8,660.00	8,660.00		1,732,000.00	
	08/20/25			348,660.00	8,660.00	340,000.00	1,392,000.00	357,320.00
	02/20/26			6,960.00	6,960.00		1,392,000.00	
	08/20/26			349,960.00	6,960.00	343,000.00	1,049,000.00	356,920.00
	02/20/27			5,245.00	5,245.00		1,049,000.00	
	08/20/27			351,245.00	5,245.00	346,000.00	703,000.00	356,490.00
	02/20/28			3,515.00	3,515.00		703,000.00	
	08/20/28			353,515.00	3,515.00	350,000.00	353,000.00	357,030.00
	02/20/29			1,765.00	1,765.00		353,000.00	
	08/20/29			354,765.00	1,765.00	353,000.00	-	356,530.00
totals			5,108,910.00	5,530,543.96	421,633.96	5,108,910.00		5,530,543.96