

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of a resolution entitled: "RESOLUTION RELATING TO \$17,300,000 WATER SYSTEM REVENUE BOND (DNRC DRINKING WATER REVOLVING LOAN PROGRAM), SERIES 2005; AUTHORIZING THE ISSUANCE AND FIXING THE TERMS AND CONDITIONS THEREOF" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a regular meeting on September 26, 2005, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council Members voted in favor thereof: unanimous

; voted against the same: _____

; abstained from voting thereon: _____

; or were absent: _____ none _____.

WITNESS my hand officially this 12th day of September, 2005.

City Clerk

BOND RESOLUTION

relating to

**\$17,300,000 WATER SYSTEM REVENUE BOND
(DNRC DRINKING WATER REVOLVING LOAN PROGRAM), SERIES 2005**

CITY OF BILLINGS, MONTANA

Adopted: September 26, 2005

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RESOLUTION NO. 05-18329

RESOLUTION RELATING TO \$17,300,000 WATER SYSTEM REVENUE BOND
(DNRC DRINKING WATER REVOLVING LOAN PROGRAM), SERIES 2005;
AUTHORIZING THE ISSUANCE AND FIXING THE TERMS AND CONDITIONS
THEREOF

WHEREAS, pursuant to the Drinking Water State Revolving Fund Act, Montana Code Annotated, Title 75, Chapter 6, Part 2, as amended (the “Act”), the State of Montana (the “State”) has established a revolving loan program (the “Program”) to be administered by the Department of Natural Resources and Conservation of the State of Montana, an agency of the State (the “DNRC”), and by the Department of Environmental Quality of the State of Montana, an agency of the State (the “DEQ”), and has provided that a drinking water state revolving fund (the “Revolving Fund”) be created within the state treasury and all federal, state and other funds for use in the Program be deposited into the Revolving Fund, including, but not limited to, all federal grants for capitalization of a state drinking water revolving fund under the federal Safe Drinking Water Act (the “Safe Drinking Water Act”), all repayments of assistance awarded from the Revolving Fund, interest on investments made on money in the Revolving Fund and payments of principal of and interest on loans made from the Revolving Fund; and

WHEREAS, the Act provides that funds from the Program shall be disbursed and administered for the purposes set forth in the Safe Drinking Water Act and according to rules adopted by the DEQ and the DNRC; and

WHEREAS, the City of Billings, Montana (the “Borrower”) has applied to the DNRC for a loan (the “Loan”) from the Revolving Fund to enable the Borrower to finance, refinance or reimburse itself for the costs of the Project (as hereinafter defined) which will carry out the purposes of the Safe Drinking Water Act; and

WHEREAS, the Borrower is authorized under applicable laws, ordinances and regulations to adopt this Resolution and to issue the Series 2005 Bond (as hereinafter defined) to evidence the Loan for the purposes set forth herein; and

WHEREAS, the DNRC will fund the Loan in part, directly or indirectly, with proceeds of State Bonds (as hereinafter defined) and in part, directly or indirectly, with funds provided by the United States Environmental Protection Agency.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE BORROWER AS FOLLOWS:

ARTICLE I
DEFINITIONS, RULES OF CONSTRUCTION AND EXHIBITS

Section 1.1 Definitions. In this Resolution, unless a different meaning clearly appears from the context:

“Accountant” or “Accountants” means an independent certified public accountant or a firm of independent certified public accountants satisfactory to the DNRC.

“Acquisition and Construction Account” means the account within the Fund established pursuant to Sections 11.1 and 11.2.

“Act” means Montana Code Annotated, Title 75, Part 6, Chapter 2, as amended from time to time.

“Administrative Expense Surcharge” means a surcharge on the Loan charged by the DNRC to the Borrower equal to seventy-five hundredths of one percent (0.75%) per annum on the outstanding principal amount of the Loan, payable by the Borrower on the same dates that payments of interest on the Loan are due.

“Authorized DNRC Officer” means the Director of the DNRC or his or her designee.

“Bond Counsel” means any Counsel nationally recognized as experienced in matters relating to the issuance by states or political subdivisions of tax-exempt obligations selected by the Borrower and acceptable to the DNRC.

“Bond” shall mean the Series 2005 Bond, or Water Debt to be issued on a parity therewith pursuant to Article X.

“Borrower” means the City of Billings, Montana, or any permitted successor or assign.

“Business Day” means any day which is not a Saturday or Sunday, a legal holiday in the State or a day on which banks in Montana are authorized or required by law to close.

“Closing” means the date of delivery of the Series 2005 Bond to the DNRC.

“Code” means the Internal Revenue Code of 1986, as amended.

“Collateral Documents” means any security agreement, guaranty or other document or agreement delivered to the DNRC securing the obligations of the Borrower under this Resolution and the Series 2005 Bond. If no Collateral Documents secure such obligations, any reference to Collateral Documents in this Resolution shall be without effect.

“Committed Amount” means the amount of the Loan committed to be lent by the DNRC to the Borrower pursuant to Section 4.1, as such amount may be reduced pursuant to Section 3.2 and Section 3.4.

“Consultant” means a nationally recognized consultant or firm of consultants, or an independent engineer or firm of independent engineers, or an Accountant, which in any case is qualified and has skill and experience in the preparation of financial feasibility studies or projections for facilities similar to the System or the Project, selected by the Borrower and satisfactory to the DNRC.

“Counsel” means an attorney duly admitted to practice law before the highest court of any state and satisfactory to the DNRC.

“Debt” means, without duplication, (1) indebtedness of the Borrower for borrowed money or for the deferred purchase price of property or services; (2) the obligation of the Borrower as lessee under leases which should be recorded as capital leases under generally accepted accounting principles; and (3) obligations of the Borrower under direct or indirect guarantees in respect of, and obligations (contingent or otherwise) to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of others of the kinds referred to in clause (1) or (2) above.

“DEQ” means the Department of Environmental Quality of the State of Montana, an agency of the State, or any successor to its powers, duties and obligations under the Act or the EPA Agreements.

“DNRC” means the Department of Natural Resources and Conservation of the State of Montana, an agency of the State, and any successor to its powers, duties and obligations under the Act.

“Enabling Act” means Montana Code Annotated, Title 7, Chapter 7, Part 44, as amended, which authorizes the Borrower to own and operate the System, to undertake the Project and to issue the Series 2005 Bond to finance the costs of the Project.

“EPA” means the Environmental Protection Agency, an agency of the United States of America, and any successor to its functions under the Safe Drinking Water Act.

“EPA Agreements” means all capitalization grant agreements and other written agreements between the DEQ, DNRC and the EPA concerning the Program.

“EPA Capitalization Grant” means a grant of funds to the State by the EPA under Section 1452 of the Safe Drinking Water Act.

“Fund” means the Water Fund established pursuant to Section 11.1.

“Governmental Unit” means governmental unit as such term is used in Section 145(a) of the Code.

“Indenture” means the Indenture of Trust, dated as of May 1, 1998, between the Board of Examiners of the State and the Trustee, as such may be supplemented or amended from time to time in accordance with the provisions thereof, pursuant to which, among other things, the State Bonds are to be or have been issued.

“Loan” means the Loan made to the Borrower by the DNRC pursuant to the Program in the maximum amount of the Committed Amount to provide funds to pay all or a portion of the costs of the Project, and to fund a deposit to the Reserve Account.

“Loan Loss Reserve Surcharge” means a fee equal to one percent (1%) per annum on the outstanding principal amount of the Loan, payable on the same dates that payments of interest on the Loan are due.

“Net Revenues” means the entire amount of the gross revenues of the System (as described in Section 11.1) remaining upon each such monthly apportionment, after crediting to the Operating Account the amount required hereby, including sums required to maintain the Operating Reserve in the minimum amount herein stated.

“Operating Account” means the account within the Fund established pursuant to Sections 11.1 and 11.3.

“Operating Expenses” means those expenses of the System defined as such in Section 11.3.

“Operating Reserve” means the reserve to be maintained in the Operating Account as required by Section 11.3.

“Opinion of Counsel” means a written opinion of Counsel.

“Person” means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“Program” means the Drinking Water State Revolving Fund Program established by the Act.

“Project” means the facilities, improvements and activities financed, refinanced or the cost of which is being reimbursed to the Borrower with proceeds of the Loan, described in Exhibit A hereto.

“Public Entity” means a State agency, city, municipality, irrigation district, county water and sewer district, a soil conservation district or other public body created pursuant to State law or an Indian tribe that has a federally recognized governing body carrying out substantial governmental duties and powers over any area.

“Regulations” means the Treasury Regulations, whether final, temporary or proposed, promulgated under the Code or otherwise applicable to the Series 2005 Bond.

“Replacement and Depreciation Account” means the account within the fund established pursuant to Sections 11.1 and 11.6.

“Reserve Account” means the account within the Fund established pursuant to Sections 11.1 and 11.5.

“Reserve Requirement” means, as of the date of calculation, an amount equal to the maximum amount of principal and interest payable on the Bonds in any future fiscal year (giving effect to mandatory sinking fund redemption, if any).

“Reserved Amounts” means any undisbursed Committed Amount which will or may be required to pay any remaining costs of the Project upon completion thereof as provided in Section 3.4(a).

“Revenue Bond Account” means the account within the Fund established pursuant to Section 11.1 and 11.4.

“Safe Drinking Water Act” means Title XIV of the Public Health Service Act, commonly known as the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq., as amended, and all regulations, rules and interpretations issued by the EPA thereunder.

“Series 2005 Bond” means the \$17,300,000 Water System Revenue Bond (DNRC Drinking Water Revolving Loan Program), Series 2005, issued to the DNRC to evidence the Loan.

“State” means the State of Montana.

“State Bonds” means the State’s General Obligation Bonds (Drinking Water State Revolving Fund Program), issued pursuant to the Indenture.

“Surplus Account” means the account within the Fund established pursuant to Sections 11.1 and 11.7.

“Surplus Net Revenues” shall mean that portion of the Net Revenue in excess of the current requirements of the Operating Account, the Revenue Bond Account and the Reserve Account.

“System” means the existing municipal water system of the Borrower and all extensions, improvements and betterments thereof hereafter constructed and acquired, including the Project.

“Trustee” means U.S. Bank National Association, in Seattle, Washington, or any successor trustee under the Indenture.

“Water Debt” means Debt incurred to acquire, construct, extend, improve, add to or otherwise pay expenses of or related to the System, without regard to the source of payment and security for such Debt (i.e., without regard to whether it is general obligation or revenue Debt), or Debt payable from, or secured by, in whole or in part, any Water Revenues.

“Water Debt Service” means, for the period of determination, all required payments of principal and interest (including mandatory sinking fund redemptions) on all Water Revenue Debt of the Borrower.

“Water Revenue Debt” means all Debt of the Borrower which is secured solely or partly by the Water Revenues.

“Water Revenues” means revenues (gross or net) received by the Borrower from or in connection with the operation of the System.

Section 1.2 Other Rules of Construction. For all purposes of this Resolution, except where the context clearly indicates otherwise:

- (a) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted government accounting standards.
- (b) Terms in the singular include the plural and vice versa.
- (c) All references to time shall refer to Helena, Montana time, unless otherwise provided herein.
- (d) All references to mail shall refer to first-class mail postage prepaid.
- (e) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.
- (f) "Or" is not exclusive, but is intended to permit or encompass one, more or all of the alternatives conjoined.

Section 1.3 Exhibits. Attached to this Resolution and hereby made a part hereof are the following Exhibits:

Exhibit A: a description of the Project;

Exhibit B: the form of the Series 2005 Bond; and

Exhibit C: additional agreements and representations of the Borrower.

ARTICLE II REPRESENTATIONS AND COVENANTS

Section 2.1 Representations. The Borrower represents as follows:

- (a) Organization and Authority. The Borrower:
 - (i) is duly organized and validly existing as a municipal corporation and political subdivision of the State;
 - (ii) has all requisite power and authority and all necessary licenses and permits required as of the date hereof to own and operate the System and to carry on its current activities with respect to the System, to adopt this Resolution and to enter into the Collateral Documents and to issue the Series 2005 Bond and to carry out and consummate all transactions contemplated by this Resolution, the Bond and the Collateral Documents;
 - (iii) is a Governmental Unit and a Public Entity; and
 - (iv) has taken all proper action to authorize the execution, delivery and performance of its obligations under this Resolution, the Series 2005 Bond and the Collateral Documents and the incurrence of the Debt evidenced by the Series 2005 Bond in the maximum amount of the Committed Amount.

(b) Litigation. There is no litigation or proceeding pending, or to the knowledge of the Borrower threatened, against or affecting the Borrower in any court or before or by any governmental authority or arbitration board or tribunal that, if adversely determined, would materially and adversely affect the existence, corporate or otherwise, of the Borrower, or the ability of the Borrower to make all payments and otherwise perform its obligations under this Resolution, the Series 2005 Bond and the Collateral Documents, or the financial condition of the Borrower, or the transactions contemplated by this Resolution, the Bond and the Collateral Documents or the validity and enforceability of this Resolution, the Series 2005 Bond and the Collateral Documents. If any such litigation should be initiated or threatened, the Borrower will forthwith notify in writing the DNRC, and will furnish the DNRC a copy of all documents, including pleadings, in connection with such litigation. No referendum petition has been filed with respect to any resolution or other action of the Borrower relating to the Project, the Series 2005 Bond or any Collateral Documents and the period for filing any such petition will have expired before issuance of the Bond.

(c) Borrowing Legal and Authorized. The adoption of this Resolution, the execution and delivery of the Series 2005 Bond and the Collateral Documents and the consummation of the transactions provided for in this Resolution, the Series 2005 Bond and the Collateral Documents and compliance by the Borrower with the provisions of this Resolution, the Series 2005 Bond and the Collateral Documents:

- (i) are within the powers of the Borrower and have been duly authorized by all necessary action on the part of the Borrower; and
- (ii) do not and will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Borrower pursuant to any resolution, indenture, loan agreement or other agreement or instrument (other than this Resolution and any Collateral Documents) to which the Borrower is a party or by which the Borrower or its property may be bound, nor will such action result in any violation of the provisions of the charter or similar document, if applicable, of the Borrower or any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Borrower, its properties or operations are subject.

(d) No Defaults. No event has occurred and no condition exists that, upon execution and delivery of the Bond and the Collateral Documents, would constitute a default under this Resolution or the Collateral Documents. The Borrower is not in violation of any term of any agreement, bond resolution, trust indenture, charter or other instrument to which it is a party or by which it or its property may be bound which violation would materially and adversely affect the transactions contemplated hereby or the compliance by the Borrower with the terms hereof or of the Series 2005 Bond and the Collateral Documents.

(e) Governmental Consent. The Borrower has obtained or made all permits, findings and approvals required to the date of adoption of this Resolution by any governmental body or officer for the making and performance by the Borrower of its obligations under this Resolution, the Bond and the Collateral Documents or for the Project, the financing or refinancing thereof or the reimbursement of the Borrower for the costs thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental authority (other than those, if any, already obtained) is required on the part of the Borrower as a condition to adopting this Resolution, issuing the Series 2005 Bond or entering into the Collateral Documents and the performance of the Borrower's obligations hereunder and thereunder. If a utility board or commission manages or controls the System, such board or commission has agreed with the DNRC to abide by the terms of this Resolution and the Collateral Documents, including approving any necessary water rate increases.

(f) Binding Obligation. This Resolution, the Bond and any Collateral Document to which the Borrower is a party are the valid and binding special obligations and agreements of the Borrower, enforceable against the Borrower in accordance with their terms except to the extent that the enforceability thereof may be limited by laws relating to bankruptcy, moratorium, reorganization, insolvency or similar laws affecting creditors' rights and general principles of equity.

(g) The Project. The Project consists and will consist of the facilities, improvements and activities described in Exhibit A, as such Exhibit A may be amended from time to time in accordance with the provision of Article III of this Resolution. The Project comprises facilities of a type that, as determined by the EPA, will facilitate compliance with the national primary drinking water regulations applicable to the System or will otherwise significantly further the health protection objectives of the Safe Drinking Water Act.

(h) The System. The System is a "community water system" within the meaning of the Act and the Safe Drinking Water Act in that it is a public water system, comprising collection, treatment, storage and distribution facilities for the provision to the public of water for human consumption, that serves not less than 15 service connections used by year-round residents of the area served by the System or regularly serves not less than 25 year-round residents.

(i) Full Disclosure. There is no fact that the Borrower has not specifically disclosed in writing to the DNRC that materially and adversely affects or (so far as the Borrower can now foresee), except for pending or proposed legislation or regulations that are a matter of general public information, that will materially and adversely affect the properties, operations and finances of the System, the Borrower's status as a Public Entity and Governmental Unit, its ability to own and operate the System in the manner it is currently operated or the Borrower's ability to perform its obligations under this Resolution, the Series 2005 Bond and the Collateral Documents and to pledge any revenues or other property pledged to the payment of the Bond.

(j) Compliance With Law. The Borrower:

(1) is in compliance with all laws, ordinances, governmental rules and regulations and court or other governmental orders, judgments and decrees to which it is subject and which are material to the properties, operations and finances of the System or its status as a Public Entity and Governmental Unit; and

(2) has obtained all licenses, permits, franchises or other governmental authorizations necessary to the ownership of the System and the operation thereof and agrees to obtain all such licenses, permits, franchises or other governmental authorizations as may be required in the future for the System and the operation thereof, which failure to obtain might materially and adversely affect the ability of the Borrower to conduct the operation of the System as presently conducted or the condition (financial or otherwise) of the System or the Borrower's ability to perform its obligations under this Resolution, the Series 2005 Bond and the Collateral Documents.

Section 2.2 Covenants.

(a) Insurance. The Borrower at all times shall keep and maintain with respect to the System property and casualty insurance and liability insurance with financially sound and reputable insurers, or self-insurance as authorized by State law, against such risks and in such amounts, and with such deductible provisions, as are customary in the State in the case of entities of the same size and type as the Borrower and similarly situated and shall carry and maintain, or cause to be carried and maintained, and pay or cause to be paid timely the premiums for all such insurance. All such insurance policies shall name the DNRC as an additional insured. Each policy must provide that it cannot be cancelled by the insurer without giving the Borrower and the DNRC 30 days' prior written notice. The Borrower shall give the DNRC prompt notice of each insurance policy it obtains or maintains to comply with this Section 2.2(a) and of each renewal, replacement, change in coverage or deductible under or amount of or cancellation of each such insurance policy and the amount and coverage and deductibles and carrier of each new or replacement policy. Such notice shall specifically note any adverse change as being an adverse change. The Borrower shall deliver to the DNRC at Closing a certificate providing the information required by this Section 2.2(a).

(b) Right of Inspection and Notice of Change of Location. The DNRC, the DEQ and the EPA and their designated agents shall have the right at all reasonable times during normal business hours and upon reasonable notice to enter into and upon the property of the Borrower for the purpose of inspecting the System or any or all books and records of the Borrower relating to the System.

(c) Further Assurance. The Borrower shall execute and deliver to the DNRC all such documents and instruments and do all such other acts and things as may be necessary or required by the DNRC to enable the DNRC to exercise and enforce its rights under this Resolution, the Bond and the Collateral Documents and to realize thereon, and record and file and re-record and refile all such documents and instruments, at such time

or times, in such manner and at such place or places, all as may be necessary or required by the DNRC to validate, preserve and protect the position of the DNRC under this Resolution, the Series 2005 Bond and the Collateral Documents.

(d) Maintenance of Security, if Any; Recordation of Interest.

(i) The Borrower shall, at its expense, take all necessary action to maintain and preserve the lien and security interest of this Resolution and the Collateral Documents so long as any amount is owing under this Resolution or the Series 2005 Bond;

(ii) The Borrower shall forthwith, after the execution and delivery of the Series 2005 Bond and thereafter from time to time, cause this Resolution and any Collateral Documents granting a security interest in revenues or real or personal property and any financing statements or other notices or documents relating thereto to be filed, registered and recorded in such manner and in such places as may be required by law in order to perfect and protect fully the lien and security interest hereof and thereof and the security interest in them granted by the Board Resolution and, from time to time, shall perform or cause to be performed any other act required by law, including executing or causing to be executed any and all required continuation statements and shall execute or cause to be executed any further instruments that may be requested by the DNRC for such perfection and protection; and

(iii) Except to the extent it is exempt therefrom, the Borrower shall pay or cause to be paid all filing, registration and recording fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment of the documents described in subparagraph (ii), and all federal or state fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Series 2005 Bond and the Collateral Documents and the documents described in subparagraph (ii).

(e) Additional Agreements. The Borrower covenants to comply with all representations, covenants, conditions and agreements, if any, set forth in Exhibit C hereto.

(f) Financial Information. The Borrower agrees that for each fiscal year it shall furnish to the DNRC and the DEQ, promptly when available:

(1) the preliminary budget for the System, with items for the Project shown separately; and

(2) when adopted, the final budget for the System, with items for the Project shown separately.

The Borrower will cause proper and adequate books of record and account to be kept showing complete and correct entries of all receipts, disbursements and other

transactions relating to the System, the monthly gross revenues derived from its operation, and the segregation and application of the gross revenues in accordance with this Resolution, in such reasonable detail as may be determined by the Borrower in accordance with generally accepted governmental accounting practice and principles. It will cause such books to be maintained on the basis of the same fiscal year as that utilized by the Borrower. The Borrower shall, within 180 days after the close of each fiscal year, cause to be prepared and supply to the DNRC a financial report with respect to the System for such fiscal year. The report shall be prepared at the direction of the financial officer of the Borrower in accordance with applicable generally accepted governmental accounting principles and, in addition to whatever matters may be thought proper by the financial officer to be included therein, shall include the following:

- (A) A statement in detail of the income and expenditures of the System for the fiscal year, identifying capital expenditures and separating them from operating expenditures;
- (B) A balance sheet as of the end of the fiscal year;
- (C) The number of premises connected to the System at the end of the fiscal year;
- (D) The amount on hand in each account of the Fund at the end of the fiscal year;
- (E) A list of the insurance policies and fidelity bonds in force at the end of the fiscal year, setting out as to each the amount thereof, the risks covered thereby, the name of the insurer or surety and the expiration date of the policy or bond; and
- (F) A determination that the report shows full compliance by the Borrower with the provisions of this Resolution during the fiscal year covered thereby, including proper segregation of the capital expenditures from operating expenses, maintenance of the required balance in the Revenue Bond Account (as hereinafter defined), and receipt of Net Revenues during each fiscal year at least equal to 125% of the maximum amount of principal and interest payable on outstanding Bonds in any subsequent fiscal year, or, if the report should reveal that the revenues have been insufficient for compliance with this Resolution, or that the methods used in accounting for such revenues were contrary to any provision of this Resolution, the report shall include a full explanation thereof, together with recommendations for such change in rates or accounting practices or in the operation of the System as may be required.

The Borrower shall also have prepared and supplied to the DNRC and the DEQ, within 180 days of the close of every other fiscal year, an audit report prepared by an independent certified public accountant or an agency of the state in accordance with generally accepted governmental accounting principles and practice with respect to the

financial statements and records of the System. The audit report shall include an analysis of the Borrower's compliance with the provisions of this Resolution.

(g) Project Accounts. The Borrower shall maintain Project accounts in accordance with generally accepted government accounting standards.

(h) Records. After reasonable notice from the EPA or the DNRC, the Borrower shall make available to the EPA or the DNRC such records as the EPA or the DNRC reasonably requires to review and determine compliance with the Safe Drinking Water Act, as provided in Section 75-6-224(1)(d) of the Act.

(i) Compliance with Safe Drinking Water Act. The Borrower has complied and shall comply with all conditions and requirements of the Safe Drinking Water Act pertaining to the Loan and the Project, and shall maintain sufficient financial, managerial and technical capability to continue to effect such compliance.

(j) Compliance with DEQ Requirements. The Borrower shall comply with plan, specification and other requirements for public water systems established by the DEQ, as required by Section 75-6-224(1)(h).

ARTICLE III USE OF PROCEEDS; THE PROJECT

Section 3.1 Use of Proceeds. The Borrower shall apply the proceeds of the Loan from the DNRC solely as follows:

(a) The Borrower shall apply the proceeds of the Loan solely to the financing, refinancing or reimbursement of the costs of the Project as set forth in Exhibit A hereto and this Section 3.1. The Loan will be disbursed in accordance with Article IV hereof and Article VII of the Indenture. If the Project has not been completed prior to Closing, the Borrower shall, as quickly as reasonably possible, complete the Project and expend proceeds of the Series 2005 Bond to pay the costs of completing the Project.

(b) No portion of the proceeds of the Loan shall be used to reimburse the Borrower for costs paid prior to the date of adoption of this Resolution of a Project the construction or acquisition of which occurred or began earlier than June 1, 1993. In addition, if any proceeds of the Loan are to be used to reimburse the Borrower for Project costs paid prior to the date of adoption of this Resolution, the Borrower has complied in respect of such expenditures with the requirements of Section 1.150-2 of the Treasury Department, Income Tax Regulations, as amended or any successor regulation thereto.

(c) Any Debt to be refinanced with proceeds of the Loan was incurred after June 1, 1993 for a Project the construction or acquisition of which began after June 1, 1993. No proceeds of the Loan shall be used for the purpose of refinancing an obligation the interest on which is exempt from federal income tax or excludable from gross income for purposes of federal income taxation unless the DNRC has received an Opinion of Bond Counsel, satisfactory to it, to the effect that such refinancing will not adversely

affect the exclusion of interest on the State Bonds from gross income for purposes of federal income taxation.

Section 3.2 The Project. Set forth in Exhibit A to this Resolution is a description of the Project, which describes the property which has been or is to be acquired, installed, constructed or improved and the other activities, if any to be funded from the Loan (the Project may consist of more than one facility or activity). The Project may be changed and the description thereof in Exhibit A may be amended from time to time by the Borrower but only after delivery to the DNRC of the following:

- (a) A certificate of the Borrower setting forth the amendment to Exhibit A and stating the reason therefor, including statements whether the amendment would cause an increase or decrease in the cost of the Project, an increase or decrease in the amount of Loan proceeds which will be required to complete the Project and whether the change will materially accelerate or delay the construction schedule for the Project;
- (b) A written consent to such change in the Project by an Authorized DNRC Officer;
- (c) An Opinion or Opinions of Bond Counsel stating that the Project, as constituted after such amendment, is, and was at the time the State Bonds were issued, eligible for financing under the Act and is, and was at the time the Series 2005 Bond was issued, eligible for financing under the Enabling Act, such amendment will not violate the Act or the Enabling Act and such amendment will not adversely affect the exclusion of interest on the State Bonds or the Series 2005 Bond from gross income for purposes of federal income taxation. Such an Opinion of Bond Counsel shall not be required for amendments which do not affect the type of facility to be constructed or activity to be financed.

The Borrower acknowledges and agrees that an increase in the principal amount of the Loan may be made only upon an application to the DEQ, the DNRC and the Trustee, in such form as the DEQ shall specify, which is approved by the DEQ and the DNRC, in their sole and absolute discretion, and adoption by the governing body of the Borrower of a resolution amendatory of or supplementary to this resolution authorizing the additional loan and delivery of written certifications by officers of the Borrower to the DEQ, the DNRC and the Trustee to the effect that all representations and covenants contained in this resolution as it may be so amended or supplemented are true as of the date of closing of the additional loan. No assurance can be given that any additional loan funds will be available under the Program at the time of any such application or thereafter. The Borrower acknowledges and agrees that neither the DEQ, the DNRC, the Trustee nor any of their agents, employees or representatives shall have any liability to the Borrower and have made no representations to the Borrower as to the sufficiency of the Loan to pay Project Costs or as to the availability of additional funds under the Program to increase the principal amount of the Loan.

Section 3.3 Project Representations and Covenants. The Borrower hereby represents to and covenants with the DNRC that:

- (a) all construction of the Project has complied and will comply with all federal and state standards, including, without limitation, EPA regulations and standards;
- (b) all future construction of the Project will be done only pursuant to fixed price construction contracts, and the Borrower shall obtain a performance and payment bond from the contractor for each construction contract in the amount of 100% of the construction price and ensure that such bond is maintained until construction is completed to the Borrower's, the DNRC's and the DEQ's satisfaction;
- (c) all future construction will be done in accordance with plans and specifications on file with the DNRC and the DEQ, provided that changes may be made in such plans and specifications with the written consent of an Authorized DNRC Officer and the DEQ; and
- (d) the Project is a project of the type permitted to be financed under the Enabling Act, the Act and the Program and Section 1452 of the Safe Drinking Water Act.

Section 3.4 Completion or Cancellation or Reduction of Costs of the Project.

- (a) Upon completion of the Project, the Borrower shall deliver to the DNRC a certificate stating that the acquisition and construction of the Project have been completed, stating the amount, if any, of the Reserved Amounts, and releasing the remaining amount, if any, of the Committed Amount. If any Reserved Amount is not later needed, the Borrower shall so inform the DNRC and release such amount. If Exhibit A describes two or more separate projects as making up the Project, a separate completion certificate shall be delivered for each.
- (b) If all or any portion of the Project is cancelled or reduced or its costs are reduced or for any other reason the Borrower will not require the full Committed Amount, the Borrower shall promptly notify the DNRC in writing of such fact and release the portion of the Committed Amount which will not be needed.

ARTICLE IV THE LOAN

Section 4.1 The Loan; Disbursement of Loan. The DNRC has agreed to lend to the Borrower, from time to time as the requirements of this Section 4.1 are met, an amount up to \$17,300,000 (the "Committed Amount") for the purposes of financing, refinancing or reimbursing the Borrower for the costs of the Project; provided the DNRC shall not be required to loan any proceeds of the State Bonds to the Borrower after 360 days following the Estimated Completion Date. The Committed Amount may be reduced as provided in Section 3.2 and Section 3.4. The Loan shall be disbursed as provided in this Section 4.1. The DNRC intends to disburse the Loan through the Trustee.

(a) In consideration of the issuance of the Series 2005 Bond by the Borrower, the DNRC shall make, or cause the Trustee to make, a disbursement of all or a portion of the Loan but only upon receipt of the following documents:

- (1) an Opinion of Bond Counsel as to the validity and enforceability of the Series 2005 Bond and the security therefor and stating in effect that interest on the Series 2005 Bond is not includable in gross income for purposes of federal income taxation, in form and substance satisfactory to the DNRC;
- (2) the Series 2005 Bond, fully executed and authenticated;
- (3) a certified copy of this Resolution;
- (4) any other security instruments or documents required by the DNRC or DEQ as a condition to their approval of the Loan;
- (5) if all or part of a Loan is being made to refinance a Project or reimburse the Borrower for the costs of a Project paid prior to the Closing, evidence, satisfactory to the DNRC and the Bond Counsel referred to in (1) above, (A) that the acquisition or construction of the Project was begun no earlier than June 1, 1993 or the debt was incurred no earlier than June 1, 1993, (B) of the Borrower's title to the Project, (C) of the costs of such Project and that such costs have been paid by the Borrower and (D) if any proceeds of the Loan are to be used to reimburse the Borrower for Project costs paid prior to the date of adoption of this Resolution, the Borrower has complied in respect of such expenditures with the requirements of Section 1.150-2 of the Treasury Department, Income Tax Regulations, as amended or any successor regulation thereto;
- (6) the items required by the Indenture for the portion of the Loan to be disbursed at Closing;
- (7) such other certificates, documents and other information as the DNRC, the DEQ or the Bond Counsel giving the opinion referred to in subparagraph (1) may require (including any necessary arbitrage rebate instructions).

(b) In order to obtain a disbursement of a portion of the Loan to pay costs of the Project, the Borrower shall submit to the DNRC and the Trustee a signed request for disbursement on the form prescribed by the DNRC, with all attachments required by such form. The Borrower may obtain disbursements only for costs which have been legally incurred and are due and payable. All Loan disbursements will be made to the Borrower only upon proof that cost was incurred.

(c) For refinancings, a disbursement schedule complying with the requirements of the Safe Drinking Water Act shall be established by the DNRC and the Borrower at Closing. The Trustee shall disburse Loan amounts directly to the holder of the debt being refinanced according to such schedule. If the Borrower should repay all or a portion of the debt to be refinanced from other sources or should otherwise not need

any portion of the Loan which was to have been used to refinance such debt, it shall inform the DNRC and the Trustee of such fact pursuant to Section 3.4(b) and a new disbursement schedule shall be drawn up by the DNRC. The DNRC shall obtain a receipt from the holder of the debt being refinanced for each disbursement made to pay or prepay a portion of such debt.

(d) If all or a portion of a Loan is made to reimburse a Borrower for Project costs paid by it prior to Closing, the Borrower shall present at Closing the items required by Section 4.1(b) relating to such costs. The Trustee shall disburse such amounts to the Borrower pursuant to a disbursement schedule complying with the requirements of the Safe Drinking Water Act established by the DNRC and the Borrower at the Closing.

(e) Notwithstanding anything else provided herein, the Trustee shall not be obligated to disburse the Loan any faster or to any greater extent than it has available EPA Capitalization Grants, Bond proceeds and other amounts available therefor in the Revolving Fund. The DNRC shall not be required to do "overmatching" pursuant to Section 5.04(b) of the Indenture, but may do so in its discretion. The Borrower acknowledges that if Project costs are incurred faster than the Borrower projected at Closing, there may be delays in making Loan disbursements for such costs because of the schedule under which EPA makes EPA Capitalization Grant money available to the DNRC. The DNRC will use its best efforts to obtain an acceleration of such schedule if necessary.

(f) Upon making each Loan disbursement, the Trustee shall note such disbursement on Schedule A to the Series 2005 Bond.

(g) The Borrower agrees that it will deposit in the Reserve Account upon receipt any proceeds of the Loan borrowed for the purpose of causing the balance in the Reserve Account equal the Reserve Requirement, either on the Closing Date of the Loan or upon any disbursement date. The Borrower further acknowledges and agrees that any portions of the Loan representing capitalized interest shall be advanced only on Payment Dates and shall be transferred by the Trustee on the Payment Date directly to the Debt Service Account. The amount of any such transfer shall be a credit against the interest payments due on the Series 2005 Bond and interest thereon shall accrue only from the date of transfer.

(h) Compliance by the Borrower with its representations, covenants and agreements contained in this Resolution and the Collateral Documents shall be a further condition precedent to the disbursement of the Loan in whole or in part. The DNRC and the Trustee, in their sole and absolute discretion, may make one or more disbursements, in whole or in part, notwithstanding such noncompliance, and without liability to make any subsequent disbursement of the Loan.

Section 4.2 Commencement of Loan Term. The Borrower's obligations under this Resolution and the Collateral Documents shall commence on the date hereof unless otherwise provided in this Resolution. However, the obligation to make payments under Article V hereof shall commence only upon the first disbursement by the Trustee of Loan proceeds.

Section 4.3 Termination of Loan Term. The Borrower's obligations under this Resolution and the Collateral Documents shall terminate upon payment in full of all amounts due under the Series 2005 Bond and this Resolution; provided, however, that the covenants and obligations provided in Article VII, Section 12.4, and Section 11.8 shall survive repayment of the Series 2005 Bond.

Section 4.4 Loan Closing Submissions. On or prior to the Closing, the Borrower will have delivered to the DNRC and the Trustee the closing submissions required by Section 7.05 of the Indenture.

ARTICLE V REPAYMENT OF LOAN

Section 5.1 Repayment of Loan. The Borrower shall repay the amounts lent to it pursuant to Section 4.1 hereof, plus interest on the unpaid amounts lent at the rate of two percent (2.00%) per annum, in semiannual Loan Repayments. In addition, the Borrower shall pay an Administrative Expense Surcharge on the outstanding principal amount of the Loan at the rate of seventy-five hundredths of one percent (0.75%) per annum and a Loan Loss Reserve Surcharge equal to one percent (1.00%) per annum on the outstanding principal amount of the Loan. For purposes of this Resolution and the Program, the term "interest" on the Loan shall include the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge. The Borrower shall pay all Loan Repayments and Administrative Expense Surcharges and Loan Loss Reserve Surcharge in lawful money of the United States of America to the DNRC. Interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be calculated on the basis of a year of 360 days comprising 12 months of 30 days each.

The Loan Repayments required by this Section 5.1, and the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge, shall be due on each January 1 and July 1 (the "Payment Dates"), as follows:

- (1) interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the outstanding principal balance of the Loan shall be payable on each January 1 and July 1, beginning January 1, 2006 and concluding July 1, 2025; and
- (2) the principal of the Loan shall be repayable on each Payment Date, beginning on January 1, 2006 and concluding on July 1, 2025, and the amount of each principal payment shall be calculated on the basis of level debt service at an interest rate of 3.75% per annum; provided that principal of the Loan is payable only in amounts that are multiples of \$1,000.

The payments of principal of and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the Loan shall be due on the dates and in the amounts shown in Schedule B to the Series 2005 Bond, as such Schedule B shall be modified from time to time as provided below. The portion of each such Loan Repayment consisting of principal and the portion consisting of interest and the amount of each Administrative Expense Surcharge and the amount of each Loan Loss Reserve Surcharge shall be set forth in Schedule B to the Series 2005

Bond. Upon each disbursement of Loan amounts to the Borrower pursuant to Section 4.1 hereof, the Trustee shall enter or cause to be entered the amount advanced on Schedule A to the Series 2005 Bond under "Advances" and the total amount advanced under Section 4.1, including such disbursement, under "Total Amount Advanced."

If the advance was made to pay costs of the Project pursuant to Section 4.1(b), interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge on such advance shall accrue from the date the advance is made and shall be payable on each Payment Date thereafter. Once the completion certificate for a Project has been delivered to the DNRC, the Trustee shall revise Schedule B to the Series 2005 Bond in accordance with this Section 5.1 and the Trustee shall send a copy of such Schedule B to the Borrower within one month after delivery of the completion certificate.

Past-due payments of principal and interest and Administrative Expense Surcharges and Loan Loss Reserve Surcharge shall bear interest at the rate of ten percent (10.00%) per annum, until paid.

Any payment of principal, interest or Administrative Expense Surcharge and Loan Loss Reserve Surcharge under this Section 5.1 shall also be credited against the same payment obligation under the Series 2005 Bond.

Section 5.2 Additional Payments. The Borrower shall also pay, within 30 days after receipt of a bill therefor, from any legally available funds therefor, including proceeds of the Loan, if the Borrower so chooses, all reasonable expenses of the DNRC and the Trustee in connection with the Loan, the Collateral Documents and the Series 2005 Bond, including, but not limited to:

- (1) the cost of reproducing this Resolution, the Collateral Documents and the Series 2005 Bond;
- (2) the fees and disbursements of Bond Counsel and other Counsel utilized by the DNRC and the Trustee in connection with the Loan, this Resolution, the Collateral Documents and the Series 2005 Bond and the enforcement thereof; and
- (3) all taxes and other governmental charges in connection with the execution and delivery of the Collateral Documents or the Series 2005 Bond, whether or not the Series 2005 Bond is then outstanding, including all recording and filing fees relating to the Collateral Documents and the pledge of the State's right, title and interest in and to the Series 2005 Bond, the Collateral Documents and this Resolution under the Board Resolution (and with the exceptions noted therein) and all expenses, including attorneys' fees, relating to any amendments, waivers, consents or collection or enforcement proceedings pursuant to the provisions hereof or thereof.

Section 5.3 Prepayments. The Borrower may not prepay all or any part of the outstanding principal amount of the Series 2005 Bond unless (i) it obtains the prior written consent of the DNRC thereto, and (ii) no Loan Repayment or Administrative Expense Surcharge

or Loan Loss Reserve Surcharge is then delinquent. Any prepayment permitted by the DNRC must be accompanied by payment of accrued interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge to the date of prepayment on the amount of principal prepaid. If the Series 2005 Bond is prepaid in part pursuant to this Section 5.3, such prepayments shall be applied to principal payments in inverse order of maturity.

Section 5.4 Obligations of Borrower Unconditional. The obligations of the Borrower to make the payments required by this Resolution and the Series 2005 Bond and to perform its other agreements contained in this Resolution, the Series 2005 Bond and Collateral Documents shall be absolute and unconditional, except as otherwise provided herein or in such documents. The Borrower (a) shall not suspend or discontinue any payments provided for in this Resolution and the Series 2005 Bond, (b) shall perform all its other agreements in this Resolution, the Series 2005 Bond and the Collateral Documents and (c) shall not terminate this Resolution, the Series 2005 Bond or the Collateral Documents for any cause, including any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Project or the System, commercial frustration of purpose, any dispute with the DNRC or the EPA, any change in the laws of the United States or of the State or any political subdivision of either or any failure of the DNRC to perform any of its agreements, whether express or implied, or any duty, liability or obligation arising from or connected with this Resolution.

Section 5.5 Limited Liability. All payments of principal of and interest on the Loan and other payment obligations of the Borrower hereunder and under the Series 2005 Bond shall be special, limited obligations of the Borrower payable solely out of the Net Revenues and shall not be payable out of any other revenues of the Borrower. The obligations of the Borrower under this Resolution and the Series 2005 Bond shall never constitute an indebtedness of the Borrower within the meaning of any state constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Borrower or a charge against its general credit or taxing power. The taxing powers of the Borrower may not be used to pay principal of or interest on the Series 2005 Bond, and no funds or property of the Borrower other than the Net Revenues may be used to pay principal of or interest on the Series 2005 Bond.

ARTICLE VI OTHER AGREEMENTS OF BORROWER

Section 6.1 Maintenance of System; Liens. The Borrower shall maintain the System, including the Project, in good condition and make all necessary renewals, replacements, additions, betterments and improvements thereto. The Borrower shall not grant or permit to exist any lien on the Project or any other property making up part of the System, other than liens securing Debt where a parity lien secures the Series 2005 Bond; provided that this Section 6.1 shall not be deemed to be violated if a mechanic's or contractor's lien is filed against any such property so long as the Borrower uses its best efforts to obtain the discharge of such lien and promptly reports to the DNRC the filing of such lien and the steps it plans to take and does take to discharge of such lien.

Section 6.2 Maintenance of Existence; Merger, Consolidation, Etc.; Disposition of Assets. The Borrower shall maintain its corporate existence, except that it may consolidate with or merge into another Governmental Unit or permit one or more Governmental Units to

consolidate with or merge into it or may transfer all or substantially all of its assets to another Governmental Unit and then dissolve if the surviving, resulting or transferee entity (if other than the Borrower) (i) is a Public Entity and (ii) assumes in writing all of the obligations of the Borrower under this Resolution, the Series 2005 Bond and the Collateral Documents, and (a) such action does not result in any default in the performance or observance of any of the terms, covenants or agreements of the Borrower under this Resolution, the Bond and the Collateral Documents, (b) such action does not violate the Act or the Safe Drinking Water Act and does not adversely affect the exclusion of interest on the Series 2005 Bond or the State Bonds from gross income for federal income tax purposes, and (c) the Borrower delivers to the DNRC on the date of such action an Opinion of Bond Counsel that such action complies with this Section 6.2.

Other than pursuant to the preceding paragraph, the Borrower shall not transfer the System or any portion thereof to any other Person, except for property which is obsolete, outmoded, worn out, is being replaced or otherwise is not needed for the operation of the System, unless the provisions of (a) and (b) of the preceding paragraph are satisfied and the Borrower delivers to the DNRC an Opinion of Bond Counsel to that effect and, in addition, the DNRC consents to such transfer.

Section 6.3 Covenants Relating to the Tax-Exempt Status of the State Bonds.

(a) The Borrower covenants and agrees that it will not use or permit to be used any of the proceeds of the Series 2005 Bond or any other funds of the Borrower, directly or indirectly, in a manner that would cause, or take any other action that would cause, any State Bond to be an “arbitrage bond” within the meaning of Section 148 of the Code or would otherwise cause the interest on the State Bonds to be included in gross income for purposes of federal income taxation.

(b) The Borrower agrees that it will not enter into, or allow any “related person” (as defined in Section 147(a)(2) of the Code) to enter into, any arrangement, formal or informal, for the purchase of the State Bonds or any other obligations of the DNRC in an amount related to the amount of the Loan or the portion of the Loan derived directly or indirectly from proceeds of the State Bonds.

(c) The Borrower shall not use or permit the use of the Project directly or indirectly in any trade or business carried on by any Person who is not a Governmental Unit. For the purpose of this subparagraph, use as a member of the general public shall not be taken into account and any activity carried on by a Person other than a natural person shall be treated as a trade or business.

(d) Any portion of the Project being refinanced or the cost of which is being reimbursed was acquired by and is now and shall, during the term of the Loan, be owned by the Borrower and not by any other Person. Any portion of the Project being financed shall be acquired by and shall, during the term of the Loan, be owned by the Borrower and not by any other Person. Notwithstanding the previous two sentences, the Borrower may transfer the Project or a portion thereof to another Governmental Unit which is also a Public Entity if such transfer is otherwise permitted hereunder and if such organization agrees with the DNRC to comply with Sections 2.2(h), 2.2(i) and 6.3 hereof and if the

DNRC receives an Opinion of Bond Counsel to the effect that such transfer will not violate the Act or the Safe Drinking Water Act or adversely affect the exclusion of interest on the State Bonds from gross income or purposes of federal income taxation. In addition, except as otherwise provided herein or in any Collateral Documents, the Borrower may sell or otherwise dispose of any portion of the Project which has become obsolete or outmoded or is being replaced or for other reasons is not needed by the Borrower or beneficial to the general public or necessary to carry out the purposes of the Safe Drinking Water Act.

(e) At the Closing of the Loan the DNRC will, if necessary to obtain the Opinion of Bond Counsel described in Section 7.05(a) of the Indenture, deliver to the Borrower instructions concerning compliance by the Borrower with the arbitrage rebate requirements of Section 148 of the Code (the "Arbitrage Rebate Instructions"). The Borrower shall comply with the Arbitrage Rebate Instructions, if any, delivered to it by the DNRC at Closing, as such Instructions may be amended or replaced by the DNRC from time to time. The Arbitrage Rebate Instructions may be amended or replaced by new Arbitrage Rebate Instructions delivered by the DNRC and accompanied by an Opinion of Bond Counsel to the effect that the use of said amended or new Arbitrage Rebate Instructions will not adversely affect the excludability of interest on the State Bonds or any Additional State Bonds (except Additional State Bonds the interest on which the State did not intend to be excluded from gross income for federal income tax purposes) from gross income of the recipients thereof for federal income tax purposes.

(f) The Borrower agrees that during the Loan Term it will not contract with or permit any Private Person to manage the Project or any portion thereof except according to a written management contract and upon delivery to the DNRC of an opinion of Bond Counsel to the effect that the execution and delivery of such management contract will not violate the Act or the Safe Drinking Water Act or adversely affect the exclusion of interest on the State Bonds from gross income or purposes of federal income taxation.

(g) The Borrower may not lease the Project or any portion thereof to any Person other than a Nonexempt Person which agrees in writing with the Borrower and the State not to cause any Default to occur under this Resolution, provided the Borrower may lease all or any portion of the Project to a Nonexempt Person pursuant to a lease which in the Opinion of Bond Counsel delivered to the DNRC will not cause the interest on the State Bonds to be included in gross income for purposes of federal income taxation.

(h) The Borrower shall not change the use or nature of the Project if (i) such change will violate the Safe Drinking Water Act, or (ii) so long as the State Bonds are outstanding unless, in the Opinion of Bond Counsel delivered to the DNRC, such change will not result in the inclusion in gross income of interest on the State Bonds for federal income tax purposes.

Section 6.4 Competing Service. The Borrower will not establish or authorize the establishment of any other system for the public supply of service or services in competition with any or all of the services supplied by the facilities of the System.

Section 6.5 Billing. The charges for water services shall be billed at least monthly, and if the bill is not paid within 90 days of the date of billing, or if the customer fails to comply with all rules and regulations established for the System within 90 days after notice of violation thereof (which notice shall be given promptly upon discovery of any such violation), the water service to the premises involved shall be discontinued and shall not be resumed until payment of all past-due bills for water service or approval by the Council of a contractual payment agreement for water service and compliance with all such rules and regulations. The Borrower shall take appropriate legal action to collect the unpaid charges, including, to the extent now or hereafter authorized by law, making the charge a lien against the real property served by the water connection for which the charge remains unpaid and causing charges with respect to such properties to be collected in the same manner as taxes levied against property within the Borrower.

Section 6.6 Remedies. The DNRC, so long as it owns the Series 2005 Bond, or the owners of not less than 25% in principal amount of the outstanding Bonds issued and secured under the provisions of this Resolution shall have the right, either at law or in equity, through suit, action or other proceedings, to protect and enforce the rights of all owners of such Bonds and to compel the performance of any and all of the covenants required herein to be performed by the Borrower, and its officers and employees, including but not limited to the fixing and maintaining of rates, fees and charges and the collection and proper segregation of gross revenues and the application and use thereof. The owners of a majority in principal amount of such outstanding Bonds shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Bondholders or the exercise of any power conferred on them and the right to waive a default in the performance of any such covenant, and its consequences, except a default in the payment of the principal of, premium, or interest on any Bond when due. However, nothing herein shall impair the absolute and unconditional right of the owner of each such Bond to receive payment of the principal of, premium, if any, and interest on such Bond as such principal and interest respectively become payable, and to institute suit for any such payment. Any court having jurisdiction of the action may appoint a receiver to administer the System on behalf of the Borrower with power to charge and collect rates, fees and charges sufficient to provide for the payment of any Bonds or obligations outstanding against the System, and to apply the gross revenues in conformity with this Resolution and the laws of the State.

Section 6.7 Rate Covenant. While any Bonds are outstanding and unpaid, the rates, charges and rentals for all services and facilities furnished and made available by the System to the Borrower and its inhabitants, and to all customers within or without the boundaries of the Borrower, shall be reasonable and just, taking into consideration the cost and value of the System and the cost of maintaining and operating them, and the amounts necessary for the payment of all Bonds and the interest accruing thereon, and the proper and necessary allowances for the depreciation of the System, and no free service shall be provided to any person or corporation. It is covenanted and agreed that the rates, charges and rentals to be charged to all recipients of water services shall be maintained and shall be revised, whenever and as often as may be necessary, according to schedules such that the revenues for each fiscal year will be at least sufficient to pay the current expenses of operation and maintenance as herein defined, to maintain the Operating Reserve herein established, and to produce net revenues during each fiscal year commencing with the fiscal year ending June 30, 2005, not less than 125% of the

maximum annual principal and interest payable on any outstanding Bonds in the current or any future fiscal year.

If at the close of any fiscal year the net revenues actually received during such year have been less than required hereby, the Borrower will forthwith prepare a schedule of altered rates, charges and rentals which are just and equitable and sufficient to produce Net Revenues and Surplus Net Revenues in such amount, and will do all things necessary to the end that such schedule will be placed in operation at the earliest possible date.

The establishment of the above ratio of net revenues available for the Revenue Bond Account is deemed necessary for the DNRC to make the Loan to the Borrower upon terms most advantageous. The excess of the Net Revenues over the annual principal and interest and reserve requirements of the Series 2005 Bond may be used as authorized in Article XI of this Resolution. The Series 2005 Bond may be prepaid according to its terms on any date, and in the estimation of the governing body of the Borrower any excess, prior to that date, of Net Revenues over principal and interest payments actually due and the balance required to be maintained in the Reserve Account, will be needed to pay or to provide reserves for payment of replacements, renewals and improvement costs, in order to provide adequate service for the present population and the increase thereof reasonably to be expected; and after that date, any excess not required for such purposes in the judgment of the governing body of the Borrower may be used to prepay the Series 2005 Bond and thereby reduce the interest cost thereon to the Borrower and to the persons served by the System.

Section 6.8 Appointment of Superintendent. In the event of default on the part of the Borrower in the payment of principal of or interest on any Bond promptly as each falls due, or in the keeping of any covenants herein contained, and if such default shall continue for a period of 60 days, the governing body of the Borrower will appoint a special superintendent for the System, with the power and responsibility to operate the System for the Borrower, and to recommend to the governing body of the Borrower such revisions of the rates and charges and operating policies as may be necessary to comply with this Resolution, and to assure that the Net Revenues will be sufficient to pay all principal of and interest on Bonds, and he shall in all things so operate the System as to comply fully with all the requirements and provisions of this Resolution. The right of the owners of the Bonds to require employment of such a superintendent shall not be exclusive, and in the event of default as herein outlined, such owner or owners shall have the right to proceed at law or in equity, in any form of action which shall to them seem appropriate.

ARTICLE VII INDEMNIFICATION OF DNRC, DEQ AND TRUSTEE

The Borrower shall indemnify and save harmless the DNRC, the DEQ, the Trustee and their officers, employees and agents (each an "Indemnified Party" or, collectively, the "Indemnified Parties") against and from any and all claims, damages, demands, expenses, liabilities and losses of every kind asserted by or on behalf of any Person arising out of, resulting from or in any way connected with the condition, use, possession, conduct, management, planning, design, acquisition, construction, installation or financing of the Project. The Borrower shall also indemnify and save harmless the Indemnified Parties against and from all

costs, reasonable counsel fees, expenses and liabilities incurred in any action or proceeding brought by reason of any such claim or demand. If any proceeding is brought against an Indemnified Party by reason of any such claim or demand, the Borrower shall, upon notice from the Indemnified Party, defend such proceeding on behalf of the Indemnified Party.

Notwithstanding the foregoing, the Borrower shall not be obligated to indemnify an Indemnified Party or any of its officers, employees or agents or hold any of them harmless against or from or in respect of any claim, damage, demand, expense, liability or loss arising from the intentional or willful misconduct or gross negligence of the Indemnified Parties.

ARTICLE VIII ASSIGNMENT

Section 8.1 Assignment by Borrower. The Borrower may not assign its rights and obligations under this Resolution or the Series 2005 Bond, except as provided in Section 6.2.

Section 8.2 Assignment by DNRC. The DNRC will pledge its rights under and interest in this Resolution, the Series 2005 Bond and the Collateral Documents (except to the extent otherwise provided in the Indenture) as security for the payment of the State Bonds and may further assign such interests to the extent permitted by the Indenture, without the consent of the Borrower.

Section 8.3 State Refunding Bonds. In the event the State Bonds and Additional State Bonds are refunded by bonds which are not Additional State Bonds, all references in this Resolution to State Bonds and Additional State Bonds shall be deemed to refer to the refunding bonds and any bonds of the State on a parity with such refunding bonds (together, the "Refunding Bonds") or, in the case of a crossover refunding, to the State Bonds and Additional State Bonds and the Refunding Bonds. In the event the State Bonds are refunded by an issue of Additional State Bonds, all references in this Resolution to the State Bonds shall be deemed to refer to such Additional State Bonds or, in the case of a crossover refunding, both the State Bonds and such Additional State Bonds.

ARTICLE IX THE SERIES 2005 BOND

Section 9.1 Authorization. Under the provisions of the Enabling Act, the Borrower is authorized to issue and sell its revenue bonds payable during a term not exceeding forty years from their date of issue, to provide funds for the reconstruction, improvement, betterment and extension of the System or to refund its revenue bonds issued for such purpose; provided that the bonds and the interest thereon are to be payable solely out of the net income and revenues to be derived from rates, fees and charges for the services, facilities and commodities furnished by the undertaking, and are not to create any obligation for the payment of which taxes may be levied except to pay for services provided by the undertaking to the Borrower.

Section 9.2 Outstanding Water Debt. The City currently has no obligations that are payable from Water Revenues of the System.

Section 9.3 Net Revenues Available. The Borrower is authorized to charge just and equitable rates, charges and rentals for all services directly or indirectly furnished by the System,

and to pledge and appropriate to the Series 2005 Bond the net revenues to be derived from the operation of the System, including improvements, betterments or extensions thereof hereafter constructed or acquired. The net revenues to be produced by such rates, charges and rentals during the term of the Series 2005 Bond will be more than sufficient to pay the principal and interest when due on the Series 2005 Bond, and to create and maintain reasonable reserves therefor and to provide an adequate allowance for replacement and depreciation, as herein prescribed.

Section 9.4 Issuance and Sale of the Series 2005 Bond. The Council has investigated the facts necessary and hereby finds, determines and declares it to be necessary and desirable for the Borrower to issue the Series 2005 Bond to evidence the Loan. The Series 2005 Bond is issued to the DNRC without public sale pursuant to Montana Code Annotated, Section 7-7-4433(2)(a).

Section 9.5 Terms. The Series 2005 Bond shall be in the maximum principal amount of \$17,300,000, shall be issued as a single, fully registered bond numbered R-1, shall be dated as of the date of delivery to the DNRC, and shall bear interest at the rate charged by the DNRC on the Loan. The principal of and interest on the Series 2005 Bond shall be payable on the same dates and in the same amounts as principal and interest of the Loan Repayments are payable. Advances of principal of the Series 2005 Bond shall be deemed made when advances of the Loan are made under Section 4.1, and such advances shall be payable in accordance with Schedule B to the Series 2005 Bond, as it may be revised by the DNRC from time to time in accordance with Section 5.1.

The Borrower may prepay the Series 2005 Bond, in whole or in part, only upon the terms and conditions under which it can prepay the Loan under Section 5.3.

Section 9.6 Negotiability, Transfer and Registration. The Series 2005 Bond shall be fully registered as to both principal and interest, and shall be initially registered in the name of and payable to the DNRC. While so registered, principal of and interest on the Series 2005 Bond shall be payable to the DNRC at the Office of the Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, Montana 59620-2301 or such other place as may be designated by the DNRC in writing and delivered to the Borrower. The Series 2005 Bond shall be negotiable, subject to the provisions for registration and transfer contained in this section. No transfer of the Series 2005 Bond shall be valid unless and until (1) the holder, or his duly authorized attorney or legal representative, has executed the form of assignment appearing on the Bond, and (2) the City Clerk of the Borrower (the "Registrar"), as Bond Registrar, has duly noted the transfer on the Series 2005 Bond and recorded the transfer on the registration books of the Registrar. The Registrar may, prior to noting and recording the transfer, require appropriate proof of the transferor's authority and the genuineness of the transferor's signature. The Borrower shall be entitled to deem and treat the person in whose name the Series 2005 Bond is registered as the absolute owner of the Series 2005 Bond for all purposes, notwithstanding any notice to the contrary, and all payments to the registered holder shall be valid and effectual to satisfy and discharge the Borrower's liability upon such Bond to the extent of the sum or sums so paid.

Section 9.7 Execution and Delivery. The Series 2005 Bond shall be executed on behalf of the Borrower by the manual signatures of the Mayor and the City Clerk. Any or all of such signatures may be affixed at or prior to the date of delivery of the Series 2005 Bond. The Bond shall be sealed with the corporate seal of the Borrower. In the event that any of the officers who shall have signed the Series 2005 Bond shall cease to be officers of the Borrower before the Bond is issued or delivered, their signatures shall remain binding upon the Borrower. Conversely, the Series 2005 Bond may be signed by an authorized official who did not hold such office on the date of adoption of this Supplemental Resolution. The Series 2005 Bond shall be delivered to the DNRC, or its attorney or legal representative.

Section 9.8 Form. The Series 2005 Bond shall be prepared in substantially the form attached as Exhibit B.

ARTICLE X PRIORITIES AND ADDITIONAL WATER DEBT

Section 10.1 Priority of Bond Payments. Each and all of the Bonds shall be equally and ratably secured without preference or priority of any one Bond over any other by reason of serial number, date of issue, or otherwise; provided that if at any time the Net Revenues on hand in the Fund are insufficient to pay principal and interest then due on all such Bonds, any and all Net Revenues then on hand shall be first used to pay the interest accrued on all outstanding Bonds, and the balance shall be applied toward payment of the maturing principal of such Bonds to be paid first, and pro rata in payment of Bonds maturing on the same date.

Section 10.2 Refunding Revenue Bonds. The Borrower reserves the right and privilege of refunding any or all of the Bonds subject to the following terms and conditions:

(a) Any matured Bonds may be refunded if moneys available for the payment thereof at maturity, within the limitation prescribed in Section 10.1, should at any time be insufficient to make such payment in full.

(b) Any Bonds may be refunded prior to maturity as and when they become prepayable according to their terms.

(c) Provision may be made for the payment and refunding of any unmatured Bonds by the deposit with a duly qualified depository bank, as escrow agent, of cash sufficient, or of securities of the kinds authorized by law, the payments of interest on and principal of which are sufficient, to pay the principal amount of and premium, if any, on such Bonds with interest to maturity or to any prior date or dates on which they are prepayable, and have been called for redemption or provision has been irrevocably made for their redemption, on such date or dates.

(d) Any refunding revenue Bonds issued for the above purposes may be made payable from the net revenues on a parity as to interest with all then outstanding Bonds; provided that (1) if not all of the Bonds of a series are refunded, the maturity of each refunding revenue Bond shall be subsequent to the last maturity of any then outstanding Bonds of such series which are not refunded or to be refunded out of moneys on deposit

with such escrow agent, and (2) no Bondowner shall be required to accept a refunding revenue Bond in exchange for any Bond owned by him.

Section 10.3 Other Parity Bonds. The Borrower reserves the right to issue additional Bonds payable from the Revenue Bond Account of the Fund, on a parity as to both principal and interest with the Series 2005 Bond, if the Net Revenues of the System for the last complete fiscal year preceding the date of issuance of such additional Bonds have equaled at least 125% of the maximum amount of principal and interest payable from said Revenue Bond Account in any subsequent fiscal year during the term of the outstanding Bonds, on all Bonds then outstanding and on the additional Bonds proposed to be issued. For the purpose of the foregoing computation, the net revenues for the fiscal year preceding the issuance of additional Bonds shall be those shown by the financial reports caused to be prepared by the Borrower pursuant to Section 2.2(f), except that if the rates and charges for services provided by the System have been changed since the beginning of such preceding fiscal year, then the rates and charges in effect at the time of issuance of the additional Bonds or finally authorized to go into effect within 60 days thereafter shall be applied to the quantities of service actually rendered and made available during such preceding fiscal year to ascertain the gross revenues, from which there shall be deducted to determine the net revenues, the actual operation and maintenance cost plus any additional annual costs of operation and maintenance which the Consultant estimates will be incurred because of the improvement or extension of the System to be constructed from the proceeds of the additional Bonds proposed to be issued. In no event shall any additional Bonds be issued and made payable from the Revenue Bond Account if the Borrower is then in default in any payment of principal of or interest on any outstanding Bonds payable therefrom or if there then exists any deficiency in the balances required by this Resolution to be maintained in any of the accounts of the Fund, which will not be cured or restored upon the issuance of the additional Bonds. In connection with the issuance of a series of additional Bonds, the Borrower shall cause the Reserve in the Revenue Bond Account to be increased, from the proceeds of the additional Bonds or from surplus Net Revenues, to an amount equal to the Reserve Requirement during the term of the outstanding Bonds or so much thereof as will not cause the Borrower to violate the provisions of Section 11.5 hereof.

Section 10.4 Subordinate Bonds. Nothing in this Resolution shall preclude the Borrower from issuing additional Bonds which are expressly made a charge on only the Surplus Net Revenues of the System subordinate to the pledge of Net Revenues to the Revenue Bond Account.

ARTICLE XI WATER SYSTEM FUND

Section 11.1 Bond Proceeds and Revenues Pledged and Appropriated. A special Water System Fund is hereby created and shall be maintained as a separate and special bookkeeping account on the official books of the Borrower until all Bonds and interest and redemption premiums due thereon have been fully paid, or the Borrower's obligations with reference to such Bonds has been discharged as provided in this Resolution. All proceeds of Bonds issued hereunder and all other funds presently on hand derived from the operation of the System are irrevocably pledged and appropriated to the Fund. In addition, there is hereby irrevocably pledged and appropriated to the Fund all gross revenues and receipts from rates, fees, charges

and rentals imposed for connections with and for the availability, benefit and use of the System and from any sales of property acquired for the System and all income received from the investment of such gross revenues, including investment of the Reserve established in the Revenue Bond Account and the Operating Reserve established in the Operating Account, but excluding any special assessments or taxes levied for construction of any part of the System and the proceeds of any grant or loan from the State or the United States, and any investment income thereon, to the extent such exclusion is a condition to such grant or loan. The Fund shall be subdivided into separate accounts as designated and described in Sections 11.2 through 11.7, to segregate income and expenses received, paid and accrued for the respective purposes described in those sections. The gross revenues received in the Fund shall be apportioned monthly, commencing as of the first day of the calendar month immediately following the date of closing of the Loan.

Section 11.2 Acquisition and Construction Account. The Acquisition and Construction Account shall be used only to pay as incurred and allowed costs which under accepted accounting practice are capital costs of the Project and of such future reconstructions, improvements, betterments or extensions of the System as may be authorized in accordance with law, including but not limited to payments due for work and materials performed and delivered under construction contracts, architectural, engineering, inspection, supervision, fiscal and legal expenses, the cost of lands and easements, reimbursement of any advances made from other Borrower funds, and all other expenses incurred in connection with the acquisition, construction and financing of any such undertaking. To the Acquisition and Construction Account shall be credited as received all proceeds of Bonds issued hereunder (except proceeds of refunding Bonds appropriated to the payment of outstanding Bonds and amounts required to be credited to the Revenue Bond Account), all other funds appropriated by the Borrower for the System and any other funds appropriated by the Borrower to the Acquisition and Construction Account for improvements to the System, and all income received from the investment of the Acquisition and Construction Account. Upon completion of a capital improvement or program of capital improvements for the System, except the Project, the balance remaining in the Acquisition and Construction Account shall be credited to the reserve balance in the Revenue Bond Account to the extent required to establish the required balance therein and, to the extent not so required, to the Replacement and Depreciation Account.

Section 11.3 Operating Account. On each monthly apportionment there shall first be set aside and credited to the Operating Account, as a first charge on the gross revenues, such amount as may be required over and above the balance then held in the account to pay the reasonable and necessary operating expenses of the System which are then due and payable, or are to be paid prior to the next monthly apportionment. The term "operating expenses" shall mean the current expenses, paid or accrued, of operation, maintenance and current repair of the System and its facilities, as calculated in accordance with sound accounting practice, and shall include, without limitation, administrative expenses of the Borrower relating solely to the System, premiums for insurance on the properties thereof, labor and the cost of materials and supplies used for current operation and for maintenance, and charges for the accumulation of appropriate reserves for current expenses which are not recurrent monthly but may reasonably be expected to be incurred in accordance with sound accounting practices. Such expenses shall not include any allowance for interest expense or depreciation, renewals or replacements of capital assets of the System and shall not include any portion of the salaries or wages paid to any officer

or employee of the Borrower, except such portion as shall represent reasonable compensation for the performance of duties necessary to the operation of the System. There shall also be credited to this account forthwith upon the delivery of the Series 2005 Bond and from available funds other than the proceeds therefrom a sum equal to the estimated average monthly operating expenses of the System to establish an Operating Reserve, which sum shall be maintained by additional transfers upon each monthly apportionment whenever necessary, or may be augmented by transfers of additional amounts from the Surplus Account described below if determined by the governing body of the Borrower to be necessary to meet contingencies arising in the operation and maintenance of the System. Money in the Operating Account shall be used solely for the payment of current operating expenses of the System.

Section 11.4 Revenue Bond Account. Upon each monthly apportionment there shall be set aside and credited to the Revenue Bond Account out of the net revenues an amount equal to not less than the sum of one-sixth of the interest due within the next six months plus one-twelfth of the principal to become due within the next twelve months with respect to outstanding Bonds payable from the Revenue Bond Account; provided that the Borrower shall be entitled to reduce a monthly credit by the amount of any surplus previously credited and then on deposit in the Revenue Bond Account. Money from time to time held in the Revenue Bond Account shall be disbursed only to meet payments of principal of, premium, if any, and interest on the Bonds payable therefrom as such payments become due. If any payment of principal or interest becomes due when moneys in the Revenue Bond Account are temporarily insufficient therefor, such payment shall be advanced out of any net revenues theretofore segregated and then on hand in the Reserve Account, the Replacement and Depreciation Account or the Surplus Account.

Section 11.5 Reserve Account. The Borrower agrees to establish and maintain a Reserve Account in the Fund. On the Closing Date, the Borrower shall deposit in the Reserve Account, from funds that the Borrower has on hand and available therefor, \$17,300,000, which is the initial Reserve Requirement based on the Committed Amount of the Loan. On the date of the final disbursement of proceeds of the Series 2005 Bond, the Borrower shall deposit in the Reserve Account, from proceeds of the Series 2005 Bond or, to the extent necessary, from other available funds of the Borrower, an amount necessary to cause the balance in the Reserve Account to equal the Reserve Requirement, calculated as of that date and based on the actual principal amount of the Series 2005 Bond. Thereafter, upon each monthly apportionment, from the Net Revenues remaining after the apportionment to the Revenue Bond Account, the Borrower shall credit to the Reserve Account such additional Net Revenues as may be required to establish and thereafter maintain the balance in an amount equal, as of the date of calculation, to the Reserve Requirement. Money in the Reserve Account shall be used only to pay maturing principal, premium and interest when money within the Revenue Bond Account is insufficient therefor; provided that on any date when all outstanding Bonds of a series are due or prepayable by their terms, if the amount then on hand in the Reserve Account allocable to such Bonds and available for such appropriation is sufficient with money available for the purpose to pay all such Bonds and the interest accrued thereon in full, it may be used for that purpose; and provided, further, that so long as the amount on hand in the Reserve Account is not less than the Reserve Requirement, the Borrower may credit earnings on investment of the Reserve Account to the Replacement and Depreciation Account.

Section 11.6 Replacement and Depreciation Account. There shall next be set aside and credited, upon each monthly apportionment, to the Replacement and Depreciation Account Surplus Net Revenues of the System, as the governing body of the Borrower shall determine to be required for the accumulation of a reasonable allowance for depreciation of the System and for replacement or renewal of worn out, obsolete or damaged properties and equipment thereof. Money in this account shall be used only for the purposes above stated or, if so directed by the governing body of the Borrower, to redeem Bonds which are prepayable according to their terms, to pay principal or interest when due thereon as required in Section 11.4, or to pay the cost of improvements to the System; provided that in the event construction and installation of additional improvements or additions to the System are financed other than from proceeds of Bonds payable from the Revenue Bond Account, surplus net revenues from time to time received may be segregated and paid into one or more separate and additional accounts for the repayment of such indebtedness and interest thereon, in advance of payments required to be made into the Replacement and Depreciation Account.

Section 11.7 Surplus Account. Any amount of the surplus net revenues from time to time remaining after the above required applications thereof shall be credited to the Surplus Account (or such other account in the Fund as the Borrower may establish for bookkeeping purposes to account for surplus money in accordance with the purposes of this Resolution), and the money from time to time in that account, when not required to restore a current deficiency in the Revenue Bond Account as provided in Section 11.4, may be used for any of the following purposes and not otherwise:

- (a) To redeem bonds payable from the Net Revenues when and as such bonds become prepayable according to their terms; or
- (b) To purchase Bonds on the open market, whether or not the Bonds or other such Bonds may then be prepayable according to their terms; or
- (c) To be held as a reserve for redemption of bonds payable from the Net Revenues which are not then but will later be prepayable according to their terms; or
- (d) To pay for repairs of or for the construction and installation of improvements or additions to the System; or
- (e) To restore the Operating Reserve or increase the same when determined to be necessary by the governing body of the Borrower.

No money shall at any time be transferred from the Surplus Account or any other account of the Fund to any other fund of the Borrower, nor shall such moneys at any time be loaned to other municipal funds or invested in warrants, special improvement bonds or other obligations payable from other funds, except as provided in Section 11.8.

Section 11.8 Deposit and Investment of Funds. The finance officer of the Borrower shall cause all money appropriated to the Fund to be deposited as received with one or more depository banks duly qualified in accordance with the provisions of Montana Code Annotated, Section 7-6-201, in a deposit account or accounts. The balance in such accounts, except such portion thereof as shall be guaranteed by federal deposit insurance, shall at all times be secured

to its full amount by bonds or securities of the types set forth in said Section 7-6-201. Any of such moneys not necessary for immediate use may be deposited with such depository banks in savings or time deposits. No money shall at any time be withdrawn from such deposit accounts except for the purposes of the Fund as defined and authorized in this Resolution; except that money from time to time on hand in the Fund may at any time, in the discretion of the governing body of the Borrower, be invested in securities which are direct, general obligations of, or obligations the prompt payment of the principal of and the interest on which is fully and unconditionally guaranteed by, the United States of America, bank repurchase agreements with respect to such obligations, certificates of deposits of national banks having a combined capital and surplus of at least \$1,000,000 or in the Montana short-term investment program administered by the Board of Investments, which investments mature and bear interest at the times and in the amounts estimated to be required to provide cash when needed for the purposes of the respective accounts; provided that funds on hand in the Reserve Account, the Replacement and Depreciation Account and the Surplus Account may be invested in said securities maturing not later than five years from the date of the investment; and provided, further, that money on hand in the Surplus Account of the Fund may, in the discretion of the governing body of the Borrower, be invested in any securities which are direct, general obligations of the Borrower. Income received from the deposit or investment of moneys in said accounts shall be credited to the account from whose moneys the deposit was made or the investment was purchased, and handled and accounted for in the same manner as other moneys in that account.

ARTICLE XII TAX MATTERS

Section 12.1 Use of Project. The Project will be owned and operated by the Borrower and available for use by members of the general public on a substantially equal basis. The Borrower shall not enter into any lease, use or other agreement with any non-governmental person relating to the use of the Project or security for the payment of the Series 2005 Bond which might cause the Series 2005 Bond to be considered a “private activity bond” or “private loan bond” within the meaning of Section 141 of the Code.

Section 12.2 General Covenant. The Borrower covenants and agrees with the owners from time to time of the Series 2005 Bond 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 on the Series 2005 Bond to become includable in gross income for federal income tax purposes under the Code and the Regulations, and covenants to take any and all actions within its powers to ensure that the interest on the Series 2005 Bond will not become includable in gross income for federal income tax purposes under the Code and the Regulations.

Section 12.3 Arbitrage Certification. The Mayor and the City Clerk being among the officers of the Borrower charged with the responsibility for issuing the Series 2005 Bond pursuant to this Resolution, are authorized and directed to execute and deliver to the DNRC a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Regulations, stating that on the basis of facts, estimates and circumstances in existence on the date of issue and delivery of the Series 2005 Bond, it is reasonably expected that the proceeds of the Series 2005 Bond will be used in a manner that would not cause the Series 2005 Bond to be an “arbitrage bond” within the meaning of Section 148 of the Code and the Regulations.

Section 12.4 Arbitrage Rebate. The City acknowledges that the Series 2005 Bond is subject to the rebate requirements of Section 148(f) of the Code. The City covenants and agrees to retain such records, make such determinations, file such reports and documents and pay such amounts at such times as are required under said Section 148(f) and applicable Treasury Regulations to preserve the exclusion of interest on the Series 2005 Bond from gross income for federal income tax purposes, unless the Series 2005 Bond qualify for the exception from the rebate requirement under Section 148(f)(4)(B) of the Code and no “gross proceeds” of the Series 2005 Bond (other than amounts constituting a “bona fide debt service fund”) arise during or after the expenditure of the original proceeds thereof. In furtherance of the foregoing, the City Administrator is hereby authorized and directed to execute a Rebate Certificate, substantially in the form of the Rebate Certificate currently on file in the office of the City Clerk of Council, and the City hereby covenants and agrees to observe and perform the covenants and agreements contained therein, unless amended or terminated in accordance with the provisions thereof.

Section 12.5 Information Reporting. The Borrower shall file with the Secretary of the Treasury, not later than February 15, 2006, a statement concerning the Series 2005 Bond containing the information required by Section 149(e) of the Code.

Section 12.6 “Qualified Tax-Exempt Obligations.” Pursuant to Section 265(b)(3)(B)(ii) of the Code, the Borrower hereby designates the Series 2005 Bond as a “qualified tax-exempt obligation” for purposes of Section 265(b)(3) of the Code. The Borrower has not designated any obligations in 2005 other than the Series 2005 Bond under Section 265(b)(3), except its \$4,515,000 Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2005. The Borrower hereby represents that it does not anticipate that obligations bearing interest not includable in gross income for purposes of federal income taxation under Section 103 of the Code (including refunding obligations as provided in Section 265(b)(3) of the Code and including “qualified 501(c)(3) bonds” but excluding other “private activity bonds,” as defined in Sections 141(a) and 145(a) of the Code) will be issued by or on behalf of the Borrower and all “subordinate entities” of the Borrower in 2005 in an amount greater than \$10,000,000.

ARTICLE XIII CONTINUING DISCLOSURE

The Borrower understands and acknowledges that the DNRC is acquiring the Series 2005 Bond under the Program pursuant to which the State issues from time to time State Bonds to provide funds therefor. The Borrower covenants and agrees that, upon written request of the DNRC from time to time, the Borrower will promptly provide to the DNRC all information that the DNRC reasonably determines to be necessary or appropriate to offer and sell State Bonds or to provide continuing disclosure in respect of State Bonds, whether under Rule 15c2-12 (17 C.F.R. § 240.15c2-12) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, or otherwise. Such information shall include, among other things and if so requested, financial statements of the Borrower prepared in accordance with generally accepted accounting principles promulgated by the Financial Accounting Standards Board as modified in accordance with the governmental accounting standards promulgated by the Governmental Accounting Standards Board or as otherwise provided under Montana law, as in effect from time to time (such financial statements to relate to

a fiscal year or any period therein for which they are customarily prepared by the Borrower, and, if for a fiscal year and so requested by the DNRC, subject to an audit report and opinion of an accountant or government auditor, as permitted or required by the laws of the State). The Borrower will also provide, with any information so furnished to the DNRC, a certificate of the Mayor and the City Clerk of the Borrower to the effect that, to the best of their knowledge, such information does not include any untrue statement of a material fact or omit to state any material fact required to be stated therein to make the statements made, in light of the circumstances under which they are made, not misleading.

ARTICLE XIV MISCELLANEOUS

Section 14.1 Notices. All notices or other communications hereunder shall be sufficiently sent or given and shall be deemed sent or given when delivered or mailed by certified mail, postage prepaid, to the parties at the following addresses:

DNRC:	Department of Natural Resources and Conservation 1625 Eleventh Avenue Helena, Montana 59620-1601 Attention: Conservation and Resource Development Division
Trustee:	U.S. Bank National Association c/o Corporate Trust Services Two Union Square 601 Union Street, Suite 2120 Seattle, Washington 98101 Attn: Corporate Trust Department
Borrower:	City of Billings PO Box 1178 Billings, Montana 59103 Attn: City Clerk

Any of the above parties may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices or other communications shall be sent.

Section 14.2 Binding Effect. This Resolution shall inure to the benefit of and shall be binding upon the DNRC, the Borrower and their respective successors and assigns.

Section 14.3 Severability. If any provision of this Resolution shall be determined to be unenforceable at any time, it shall not affect any other provision of this Resolution or the enforceability of that provision at any other time.

Section 14.4 Amendments. This Resolution may not be effectively amended without the written consent of the DNRC.

Section 14.5 Applicable Law. This Resolution shall be governed by and construed in accordance with the laws of the State without giving effect to the conflicts-of-laws principles thereof.

Section 14.6 Captions; References to Sections. The captions in this Resolution are for convenience only and do not define or limit the scope or intent of any provisions or Sections of this Resolution. References to Articles and Sections are to the Articles and Sections of this Resolution, unless the context otherwise requires.

Section 14.7 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Resolution shall be had against any director, officer or employee, as such, past, present or future, of the DNRC, the DEQ or the Trustee, either directly or through the DNRC, the DEQ or the Trustee, or against any officer, or member of the governing body or employee of the Borrower, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer or member of the governing body or employee of the DNRC, the Trustee or the Borrower is hereby expressly waived and released by the Borrower and by the DNRC as a condition of and in consideration for the adoption of this Resolution and the making of the Loan.

Section 14.8 Payments Due on Holidays. If the date for making any payment or the last date for performance of any act or the exercise of any right, as provided in this Resolution or the Bond, shall not be Business Day, such payments may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Resolution or the Bond.

Section 14.9 Right of Others To Perform Borrower's Covenants. In the event the Borrower shall fail to make any payment or perform any act required to be performed hereunder, then and in each such case the DNRC or the provider of any Collateral Document may (but shall not be obligated to) remedy such default for the account of the Borrower and make advances for that purpose. No such performance or advance shall operate to release the Borrower from any such default and any sums so advanced by the DNRC or the provider of any Collateral Document shall be paid immediately to the party making such advance and shall bear interest at the rate of ten percent (10%) from the date of the advance until repaid. The DNRC and the provider of any Collateral Document shall have the right to enter the Project or the facility or facilities of which the Project is a part or any other facility which is a part of the System in order to effectuate the purposes of this Section.

Section 14.10 Authentication of Transcript. The officers of the Borrower are hereby authorized and directed to furnish to the DNRC and to Bond Counsel certified copies of all proceedings relating to the issuance of the Series 2005 Bond and such other certificates and affidavits as may be required to show the right, power and authority of the Borrower to issue the Series 2005 Bond, and all statements contained in and shown by such instruments, including any heretofore furnished, shall constitute representations of the Borrower as to the truth of the statements purported to be shown thereby.

Section 14.11 Repeals and Effective Date.

(a) Repeal. All provisions of other resolutions and other actions and proceedings of the Borrower and this Council that are in any way inconsistent with the terms and provisions of this Resolution are repealed, amended and rescinded to the full extent necessary to give full force and effect to the provisions of this Resolution.

(b) Effective Date. This Resolution shall take effect immediately.

PASSED AND ADOPTED by the City Council of the Borrower on this 26th day of September, 2005.

Charles F. Tooley, Mayor

Attest: _____
Marita Herold, CMC/AAE City Clerk

EXHIBIT A

Description of the Project

The Project consists of rehabilitation of the filter complex and water treatment plant.

EXHIBIT B

[Form of the Series 2005 Bond]

UNITED STATES OF AMERICA
STATE OF MONTANA
COUNTY OF YELLOWSTONE

CITY OF BILLINGS

WATER SYSTEM REVENUE BOND
(DNRC DRINKING WATER REVOLVING LOAN PROGRAM)
SERIES 2005

No. R-1	\$17,300,000
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FOR VALUE RECEIVED, the City of Billings, Montana (the "City" or "Borrower"), a duly organized municipal corporation and political subdivision of the State of Montana, acknowledges itself to be specially indebted and, for value received, hereby promises to pay to the Department of Natural Resources and Conservation of the State of Montana (the "DNRC"), or its registered assigns, solely from the Revenue Bond Account of its Water System Fund, the principal sum equal to the sum of the amounts entered on Schedule A hereto under "Total Amount Advanced," with interest on each such amount from the date such amount is advanced hereunder at the rate of two percent (2.00%) per annum on the unpaid balance until paid. In addition, the Borrower shall pay an Administrative Expense Surcharge and a Loan Loss Reserve Surcharge on the outstanding principal amount of this Bond at the rates of seventy-five hundredths of one percent (0.75%) and one percent (1.00%), respectively, per annum. Interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be payable in semiannual installments payable on each January 1 and July 1 (each a "Loan Repayment Date") commencing July 1, 2006. Principal shall be payable on the dates set forth in Schedule B hereto. Each installment shall be in the amount set forth opposite its due date in Schedule B hereto under "Total Loan Payment." The portion of each such payment consisting of principal, the portion consisting of interest, the portion consisting of Administrative Expense Surcharge, and the portion consisting of Loan Loss Reserve Surcharge shall be as set forth in Schedule B hereto. Upon each disbursement of Loan amounts to the Borrower pursuant to the Resolution described below, the DNRC shall enter (or cause to be entered) the amount advanced on Schedule A under "Advances" and the total amount advanced under the Resolution (as hereinafter defined), including such disbursement, under "Total Amount Advanced." The DNRC shall prepare Schedule B and revised Schedules B, or cause Schedule B and revised Schedules B to be prepared, as provided in Section 5.1 of the Resolution. Schedule B shall be calculated and recalculated on a level debt service basis assuming an interest rate of 3.75% per annum. Past-due payments of principal and interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall bear interest at the rate of ten percent (10.00%) per annum, until paid. Interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be calculated on the basis of a 360-day year comprising 12 months of 30 days each. All payments

under this Bond shall be made to the registered holder of this Bond, at its address as it appears on the Bond register, in lawful money of the United States of America.

This Bond constitutes a series in the maximum authorized principal amount of \$17,300,000 (the "Series 2005 Bond"), issued to finance costs of the construction of certain improvements to the water system of the Borrower (the "System") and to pay costs of issuance of the Series 2005 Bond. The City will make the deposit to the reserve fund for the Bonds from other available funds of the City. The Series 2005 Bond is issued pursuant to and in full conformity with the Constitution and laws of the State of Montana thereunto enabling, including Montana Code Annotated, Title 7, Chapter 7, Part 44, as amended, and ordinances and resolutions duly adopted by the governing body of the Borrower. The Series 2005 Bond is issuable only as a single, fully registered bond.

Reference is made to Resolution No. _____, duly adopted by the governing body of the Borrower on September 26, 2005 (the "Resolution"), for a more complete statement of the terms and conditions upon which the Series 2005 Bond has been issued, the net revenues of the System pledged and appropriated for the payment and security thereof, the conditions upon which additional bonds may be issued under the Resolution and made payable from such net revenues on a parity with the Series 2005 Bond (collectively, the "Bonds") or otherwise, the conditions upon which the Resolution may be amended, the rights, duties and obligations of the City, and the rights of the owners of the Series 2005 Bond.

The Borrower may prepay the principal of the Series 2005 Bond only if (i) it obtains the prior written consent of the DNRC thereto, and (ii) no Loan Repayment or Administrative Expense Surcharge or Loan Loss Reserve Surcharge is then delinquent. Any prepayment permitted by the DNRC must be accompanied by payment of accrued interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge to the date of prepayment on the amount of principal prepaid. If the Series 2005 Bond is prepaid in part, such prepayments shall be applied to principal payments in inverse order of maturity.

The Bonds, including interest and any premium for the redemption thereof, are payable solely from the net revenues pledged for the payment thereof and do not constitute a debt of the Borrower within the meaning of any constitutional or statutory limitation or provision.

If default be made in the payment of any installment due under this Bond or by the occurrence of an event of default under the Resolution and if such event of default is not remedied as therein provided, the DNRC then, or at any time thereafter, may give notice to the Borrower that all unpaid amounts of this Bond then outstanding together with all other unpaid amounts outstanding under the Resolution are due and payable immediately and thereupon without further notice or demand all such amounts shall become and be immediately due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise the same at any time in the event of any continuing or subsequent default. In the event of default in the payment of this Bond and if the same is collected by an attorney at law, the Borrower agrees to pay all costs of collection, including reasonable attorneys' fees.

The Borrower may deem and treat the person in whose name this Series 2005 Bond is registered as the absolute owner hereof, whether this Series 2005 Bond is overdue or not, for the

purpose of receiving payment and for all other purposes, and the Borrower shall not be affected by any notice to the contrary.

This Series 2005 Bond has been designated by the Borrower as a "qualified tax-exempt obligation" pursuant to Section 265 of the Internal Revenue Code of 1986, as amended.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that the Borrower has duly authorized and will forthwith undertake the improvements to the System hereinabove described, has fixed and established and will collect reasonable rates and charges for the services and facilities afforded by the System, and has created a special Fund into which the gross revenues of the System, including all additions thereto and replacements and improvements thereof, will be paid, and a separate and special Revenue Bond Account in that fund, into which will be paid each month, from and as a first and prior lien on the net revenues of the System then on hand, an amount equal to not less than the sum of one-sixth of the interest due within the next six months and one-twelfth of the principal due within the next twelve months with respect to all outstanding Bonds payable from that account; that the Borrower has created a Reserve Account in that fund and will deposit [\$1,300,000] from funds on hand on the date of issuance of this Bond, into which shall be paid additional net revenues sufficient to maintain a reserve therein equal to, as of the date of calculation, the lesser of (i) 10% of the original principal amount of all series of Bonds then outstanding or (ii) an amount equal to the maximum principal and interest payable on all outstanding Bonds in the current or any future fiscal year (giving effect to any mandatory sinking fund redemption); that the Reserve Account will be used only to pay the principal of, premium, if any, and interest on the Bonds issued pursuant to the authority herein recited; that the rates and charges for the System will from time to time be made and kept sufficient to provide gross income and revenues adequate to pay promptly the reasonable and current expenses of operating and maintaining the System and to produce in each fiscal year net revenues in excess of such current expenses equal to 125% of the maximum amount of principal and interest payable from the Revenue Bond Account in any subsequent fiscal year; that additional Bonds and refunding Bonds may be issued and made payable from the Revenue Bond Account on a parity with the Outstanding Bonds and the Series 2005 Bond upon certain conditions set forth in the Resolution but no obligation will be otherwise incurred and made payable from the net revenues of the System, whether or not such obligation shall also constitute a general obligation and indebtedness of the Borrower, unless the lien thereof shall be expressly made subordinate to the lien of the Series 2005 Bond and other parity Bonds on such net revenues; that all provisions for the security of this Series 2005 Bond set forth in the Resolution will be punctually and faithfully performed as therein stipulated; that all acts, conditions and things required by the Constitution and laws of the State of Montana and the ordinances and resolutions of the Borrower to be done, to exist, to happen and to be performed in order to make this Series 2005 Bond a valid and binding special obligation of the Borrower according to its terms have been done, do exist, have happened and have been performed as so required; and that this Series 2005 Bond and the premium, if any, and interest hereon are payable solely from the net revenues of the System pledged and appropriated to the Revenue Bond Account and do not constitute a debt of the Borrower within the meaning of any constitutional or statutory limitation or provision and the issuance of the Series 2005 Bond does not cause either the general or the special indebtedness of the Borrower to exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Billings, Montana, by its governing body, has caused this Bond to be executed by the signatures of its Mayor and City Clerk, and has caused the official seal of the Borrower to be affixed hereto, and has caused this Bond to be dated as of the _____ day of _____, 2005.

Mayor

(SEAL)

City Clerk

REGISTRATION AND TRANSFER

This Bond shall be fully registered as to both principal and interest. No transfer of this Bond shall be valid unless and until (1) the registered holder of the Bond, or his duly authorized attorney or legal representative, executes the form of assignment appearing on this Bond, and (2) the City Clerk, as bond registrar (the "Registrar"), has duly noted the transfer on the Bond and recorded the transfer on the Registrar's registration books. The Borrower shall be entitled to deem and treat the person in whose name this Bond is registered as absolute owner thereof for all purposes, notwithstanding any notice to the contrary. Payments on account of the Bond shall be made only to the order of the registered holder thereof, and all such payments shall be valid and effectual to satisfy and discharge the Borrower's liability upon the Bond to the extent of the sum or sums so paid.

REGISTER

The ownership of the unpaid Principal Balance of this Bond and the interest accruing thereon is registered on the books of the City of Billings, Montana in the name of the registered holder appearing on the first page hereof or as last noted below:

<u>Date of Registration</u>	<u>Name and Address of Registered Holder</u>	<u>Signature of City Clerk</u>
<u>, 2005</u>	<u>Department of Natural Resources and Conservation</u> <u>1625 Eleventh Avenue</u> <u>Helena, MT 59620</u>	<hr/>

THE FOLLOWING ENTRIES ARE TO BE MADE ONLY BY THE BOND REGISTRAR UPON REGISTRATION OF EACH TRANSFER

The City Clerk of the City of Billings, Montana, acting as Bond Registrar, has transferred, on the books of the Borrower, on the date last noted below, ownership of the principal amount of and the accrued interest on this Bond to the new registered holder noted next to such date, except for amounts of principal and interest theretofore paid.

<u>Date of Transfer</u>	<u>Name of New Registered Holder</u>	<u>Signature of Bond Registrar</u>
<hr/>	<hr/>	<hr/>

FORM OF ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto _____
_____ the within Bond and does hereby irrevocably
constitute and appoint _____ attorney to transfer the Bond 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 Bond in every particular, without alteration or any change whatsoever.

SCHEDULE A
SCHEDULE OF AMOUNTS ADVANCED

SCHEDULE B

<u>Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Administrative Expense Surcharge</u>	<u>Loan Loss Reserve Surcharge</u>	<u>Total Loan Payment</u>
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EXHIBIT C
ADDITIONAL REPRESENTATIONS AND COVENANTS

None