

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 Resolution No. 18964 entitled: "RESOLUTION RELATING TO \$3,300,000 WATER SYSTEM REVENUE BONDS (DNRC DRINKING WATER STATE REVOLVING LOAN PROGRAM), CONSISTING OF \$500,000 SUBORDINATE LIEN TAXABLE SERIES 2010A BOND AND \$2,800,000 SERIES 2010B BOND; AUTHORIZING THE ISSUANCE AND FIXING THE TERMS AND CONDITIONS THEREOF; AND SUPERSEDING AND RENDERING OF NO FURTHER FORCE OR EFFECT RESOLUTION NO. 10-18940, DATED MAY 24, 2010" (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 its regular meeting on July 12, 2010, 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notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.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: Ronquillo, Gaghen, Pitman, Cimmino, McFadden, Ruegamer, McCall, Ulledalen, Clark; voted against the same: none; abstained from voting thereon: none; or were absent: Astle.

WITNESS my hand officially this 12th day of July, 2010.

Cari Martin  
Cari Martin, City Clerk

SUPPLEMENTAL RESOLUTION

Relating to

\$3,300,000

WATER SYSTEM REVENUE BONDS  
(DNRC DRINKING WATER STATE REVOLVING LOAN PROGRAM)  
CONSISTING OF

\$500,000 SUBORDINATE LIEN TAXABLE SERIES 2010A BOND,  
AND \$2,800,000 SERIES 2010B BOND

CITY OF BILLINGS, MONTANA

Adopted: July 12, 2010

## TABLE OF CONTENTS

(For convenience only, not a part of this Supplemental Resolution)

	Page
Recitals.....	1

### ARTICLE I DEFINITIONS, RULES OF CONSTRUCTION AND APPENDICES

Section 1.1.	Definitions .....	2
Section 1.2.	Other Rules of Construction .....	9
Section 1.3.	Appendices .....	9

### ARTICLE II AUTHORIZATION, FINDINGS, REPRESENTATIONS AND COVENANTS

Section 2.1.	Authorization and Findings .....	10
Section 2.2.	Representations.....	11
Section 2.3.	Covenants .....	14
Section 2.4.	Covenants Relating to the Tax-Exempt Status of the State Bonds .....	16
Section 2.5.	Maintenance of System; Liens .....	17
Section 2.6.	Maintenance of Existence; Merger Consolidation, Etc.; Disposition of Assets .....	17

### ARTICLE III USE OF PROCEEDS; THE 2010 Project

Section 3.1.	Use of Proceeds .....	18
Section 3.2.	The 2010 Project.....	19
Section 3.3.	2010 Project Representations and Covenants.....	19
Section 3.4.	Completion or Cancellation or Reduction of Costs of the 2010 Project.....	20

### ARTICLE IV THE LOAN

Section 4.1.	The Loan; Disbursement of Loan .....	20
Section 4.2.	Commencement of Loan Term .....	23
Section 4.3.	Termination of Loan Term .....	23
Section 4.4.	Loan Closing Submissions .....	23

ARTICLE V  
REPAYMENT OF 2010 Loans

Section 5.1.	Repayment of 2010 Loans .....	23
Section 5.2.	Additional Payments.....	26
Section 5.3.	Prepayments.....	27
Section 5.4.	Obligations of Borrower Unconditional .....	27
Section 5.5.	Limited Liability.....	27

ARTICLE VI

INDEMNIFICATION OF DNRC AND DEQ .....	28
---------------------------------------	----

ARTICLE VII  
ASSIGNMENT

Section 7.1.	Assignment by Borrower.....	28
Section 7.2.	Assignment by DNRC .....	28
Section 7.3.	State Refunding Bonds .....	28

ARTICLE VIII  
THE SERIES 2010 BONDS

Section 8.1.	Net Revenues Available .....	28
Section 8.2.	Issuance and Sale of the Series 2010 Bonds.....	29
Section 8.3.	Terms .....	29
Section 8.4.	Negotiability, Transfer and Registration .....	29
Section 8.5.	Execution and Delivery .....	30
Section 8.6.	Form.....	30
Section 8.7.	2010 Acquisition and Construction Account.....	30

ARTICLE IX

SECURITY FOR THE SERIES 2010 BONDS .....	21
--	----

ARTICLE X  
TAX MATTERS

Section 10.1.	Use of 2010 Project.....	31
Section 10.2.	General Covenant.....	31
Section 10.3.	Arbitrage Certification .....	32
Section 10.4.	Arbitrage Rebate Exemption .....	32
Section 10.5.	Information Reporting .....	32

Section 10.6.	“Qualified Tax-Exempt Obligations” .....	32
---------------	--	----

## ARTICLE XI

CONTINUING DISCLOSURE .....	33
-----------------------------	----

## ARTICLE XII

IMPLEMENTATION OF SECTION 6.7 OF ORIGINAL RESOLUTION .....	33
--	----

## ARTICLE XIII MISCELLANEOUS

Section 13.1.	Notices .....	34
Section 13.2.	Binding Effect.....	35
Section 13.3.	Severability .....	35
Section 13.4.	Amendments .....	35
Section 13.5.	Applicable Law .....	35
Section 13.6.	Captions; References to Sections.....	35
Section 13.7.	No Liability of Individual Officers, Directors or Trustees .....	35
Section 13.8.	Payments Due on Holidays .....	35
Section 13.9.	Right of Others To Perform Borrower’s Covenants .....	35
Section 13.10.	Authentication of Transcript.....	36
Section 13.11.	Supersedure.....	36
Section 13.12.	Effective Date .....	36

APPENDIX A – Description of the 2010 Project.....	A-1
APPENDIX B-1 – Form of Series 2010A Bond .....	B-1-1
APPENDIX B-2 – Form of Series 2010B Bond.....	B-2-1
APPENDIX C – Additional Representations and Covenants.....	C-1
APPENDIX D – Compliance Certificate and Request.....	D-1

RESOLUTION NO. 10-18964

RESOLUTION RELATING TO \$3,300,000 WATER SYSTEM REVENUE BONDS (DNRC DRINKING WATER STATE REVOLVING LOAN PROGRAM), CONSISTING OF \$500,000 SUBORDINATE LIEN TAXABLE SERIES 2010A BOND AND \$2,800,000 SERIES 2010B BOND; AUTHORIZING THE ISSUANCE AND FIXING THE TERMS AND CONDITIONS THEREOF; AND SUPERSEDING AND RENDERING OF NO FURTHER FORCE OR EFFECT RESOLUTION NO. 10-18940, DATED MAY 24, 2010

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 2010 EPA Capitalization Grant (as hereinafter defined) requires that loans under the Program funded in whole or in part by such grant in the aggregate and not on a loan-by-loan basis be structured in such a way that a dollar amount in the aggregate equal to at least 15% of the total proceeds of such grant be subject to loan forgiveness; and

WHEREAS, the City of Billings, Yellowstone County, Montana (the "Borrower") has applied to the DNRC for the 2010 Loans (as hereinafter defined) from the Revolving Fund to enable the Borrower to finance, refinance or reimburse itself for the costs of the 2010 Project (as hereinafter defined) which will carry out the purposes of the Safe Drinking Water Act; and

WHEREAS, on May 24, 2010, the Borrower adopted Resolution No. 10-18940 authorizing the issuance of \$3,300,000 Water System Revenue Bond (DNRC Drinking Water State Revolving Fund Program), Series 2010; and

**WHEREAS, the Borrower has subsequently received notice from DNRC that a portion of the 2010 Loans is eligible for principal forgiveness; and**

**WHEREAS, the Borrower desires to take advantage of the DNRC's offer and adopt this Supplemental Resolution to reflect the changes in the terms of the 2010 Loans; and**

WHEREAS, the Borrower is authorized under the Original Resolution (as hereinafter defined), applicable laws, ordinances and regulations to adopt this Supplemental Resolution and to issue the Series 2010 Bonds (as hereinafter defined) to evidence the 2010 Loans (as hereinafter defined) for the purposes set forth herein; and

WHEREAS, the DNRC will fund: (i) the 2010A Loan (as hereinafter defined) entirely from proceeds of the 2010 EPA Capitalization Grant, and (ii) the 2010B Loan (as hereinafter defined) 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 under the Safe Drinking Water Act.

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

## ARTICLE I

### DEFINITIONS, RULES OF CONSTRUCTION AND APPENDICES

Section 1.1 Definitions. Unless a different meaning clearly appears from the context, terms used with initial capital letters but undefined in this Supplemental Resolution shall have the meanings given them in the Original Resolution, the Indenture, or as follows:

"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 Series 2010 Acquisition and Construction Account created in the Water System Fund pursuant to Section 8.7 of this Supplemental Resolution.

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

"Additional Bonds" means any Bonds issued pursuant to Section 10.3 of the Original Resolution.

"Administrative Expense Surcharge" means, (i) in respect of the 2010B Loan, in any event, and (ii) in respect of the 2010A Loan, upon the delivery of a Noncompliance Statement as provided by this Supplemental Resolution, a surcharge equal to seventy-five hundredths of one percent (0.75%) per annum on the outstanding principal amount of the 2010 Loans from the date of each advance thereof, payable by the Borrower on a Payment Date.

"Authorized DNRC Officer" means the Director or Deputy Director of the DNRC, and, when used with reference to an act or document, also means any other individual authorized by resolution of the Department of Natural Resources and Conservation to perform such act or sign

such document. If authorized by the Department of Natural Resources and Conservation, an Authorized DNRC Officer may delegate all or a portion of his authority as an Authorized DNRC Officer to another individual, and such individual shall be deemed an Authorized DNRC Officer for purposes of exercising such authority.

“Bond Counsel” means any Counsel acceptable to the DNRC which is nationally recognized as bond counsel. Counsel is nationally recognized as bond counsel if it has rendered a legal opinion as to the validity and enforceability of state or municipal bonds and as to the exclusion of interest thereon from gross income for federal income tax purposes (short-term issues excluded) during the two-year period preceding the date of determination.

“Bond Register” means, with respect to the Series 2010 Bonds, the registration books maintained by the Registrar pursuant to Section 8.4 of this Supplemental Resolution.

“Bonds” means the Series 2005 Bond, the Series 2009B Bond, the Series 2009C Bond, the Series 2009D Bond, the Series 2010B Bond, and any Additional Bonds; “Bonds” does not include the Series 2009A Bond and the Series 2010A Bond.

“Borrower” means the City.

“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.

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

“Closing” means the date of delivery of the Series 2010A Bond and the Series 2010B 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 Supplemental Resolution and the Series 2010 Bonds. If no Collateral Documents secure such obligations, any reference to Collateral Documents in this Supplemental Resolution shall be without effect.

“Committed Amount” means, collectively, the amount of the 2010A Loan and 2010B Loan committed to be lent by the DNRC to the Borrower pursuant to Section 4.1 of this Supplemental Resolution, as such amount may be reduced pursuant to Sections 3.2 and 3.4 of this Supplemental Resolution.

“Compliance Certificate and Request” means the certificate and request substantially in the form of the attached Appendix D delivered by the DNRC to the Borrower following the final advance of principal of the 2010A Loan, to be completed, executed and delivered by the Borrower to the DNRC pursuant to Section 5.1.2 of this Supplemental Resolution.

“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 2010 Project, selected by the Borrower and satisfactory to the DNRC.

“Council” means the City Council of the Borrower.

“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.

“Determination Statement” means a Forgiveness Statement or a Noncompliance Statement.

“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 2010 Project and to issue the Series 2010 Bonds to finance all or a portion of the costs of the 2010 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, the 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.

“Estimated Completion Date” means June 30, 2010, the date by which it is estimated by the Borrower that the 2010 Project will be substantially completed.

“Forgiveness Statement” means a written statement delivered to the Borrower by the DNRC in response to a Compliance Certificate and Request that the Borrower’s obligation to repay the principal of the Series 2010A Bond is forgiven.

“Fund” means the Water System Fund established pursuant to Section 11.1 of the Original Resolution.

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

[“Green Infrastructure” means the portion of the 2010 Project that addresses green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities, as described more particularly in EPA policies or guidelines.]

“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 Loss Reserve Surcharge” means, (i) in respect of the 2010B Loan, in any event, and (ii) in respect of the 2010A Loan, upon the delivery of a Noncompliance Statement as provided by this Supplemental Resolution, a surcharge equal to one percent (1.00%) per annum on the outstanding principal amount of the 2010 Loans, payable by the Borrower on a Payment Date.

“Loan Repayments” means periodic installments of principal and interest by Borrower in repayment of the Series 2010B Bond, and, if the DNRC delivers a Noncompliance Statement, of the Series 2010A Bond, at the rates and times specified in Article V of this Supplemental Resolution.

“Net Revenues” means the entire amount of the gross revenues of the System (as described in Section 11.1 of the Original Resolution) 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.

“Noncompliance Statement” means a written statement delivered to the Borrower by the DNRC that the Borrower’s obligation to repay the principal of the Series 2010A Bond is not forgiven.

“Operating Account” means the account created in the Water System Fund pursuant to Sections 11.1 and 11.3 of the Original Resolution.

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

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

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

“Original Resolution” means Resolution No. 05-18329 of the Borrower adopted on September 12, 2005, as amended and supplemented by Resolution Nos. 09-18852 and 09-

18869, adopted by the City Council of the City on July 27, 2009 and September 14, 2009, respectively.

“Person” means any Private Person or Public Entity.

“Private Person” means an individual, corporation, partnership, association, joint venture, joint stock company or unincorporated organization, except a Public Entity.

“Payment Date” means, with respect of the 2010B Loan, each January 1 and July 1 during the term of the 2010B Loan on which a payment of interest or principal and interest is due, as determined under this Supplemental Resolution, and, if a Noncompliance Statement is delivered with respect to the 2010A Loan, each January 1 and July 1 during the term of the 2010A Loan on which a payment of interest or principal and interest is due, as determined under this Supplemental Resolution.

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

“Project” means the costs of designing, engineering, acquiring, constructing, installing, improving, or enlarging the System, or any part thereof, financed, refinanced or the cost of which is being reimbursed to the Borrower in whole or in part with proceeds of the Bonds or other funds of the Borrower, including the 2010 Project.

“Public Entity” means a municipality, city, county, school district, political or administrative subdivision of State government, irrigation district, drainage district or other public body established by State law.

“Registrar” has the meaning set forth in Section 8.4 of this Supplemental Resolution.

“Regulations” means the Treasury Department, Income Tax Regulations, as amended or any successor regulation thereto, promulgated under the Code or otherwise applicable to the Series 2010 Bonds.

“Replacement and Depreciation Account” means the Account created in the Water System Fund pursuant to Sections 11.1 and 11.6 of the Original Resolution.

“Reserve Account” means the account created in the Water System Fund pursuant to Section 11.5 of the Original Resolution.

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

“Resolution” means the Original Resolution, as amended and supplemented by Resolution Nos. 09-18852, 09-18869, this Supplemental Resolution, and other supplemental resolutions.

“Revenue Bond Account” means the account created in the Water System Fund pursuant to Sections 11.1 and 11.4 of the Original Resolution.

“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 Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2005, issued by the Borrower, in the original principal amount of \$17,300,000 pursuant to the Resolution as then in effect.

“Series 2009 Bonds” means, collectively, the Series 2009A Bond, the Series 2009B Bond, the Series 2009C Bond, and the Series 2009D Bond.

“Series 2009A Bond” means the Subordinate Lien Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Taxable Series 2009A, issued by the Borrower, in the original principal amount of \$416,300 pursuant to the Resolution as then in effect.

“Series 2009B Bond” means the Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2009B, issued by the Borrower, in the original principal amount of \$333,700 pursuant to the Resolution as then in effect.

“Series 2009C Bond” means the Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2009C, issued by the Borrower, in the original principal amount of \$2,750,000 pursuant to the Resolution as then in effect.

“Series 2009D Bond” means the Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2009D, issued by the Borrower, in the original principal amount of \$7,412,000 pursuant to the Resolution as then in effect.

“Series 2010 Bonds” means, collectively, the Series 2010A Bond and the Series 2010B Bond.

“Series 2010A Bond” means the \$500,000 Subordinate Lien Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Taxable Series 2010A, issued to the DNRC to evidence the 2010A Loan.

“Series 2010B Bond” means the \$2,800,000 Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2010B, issued to the DNRC to evidence the 2010B Loan.

“State” means the State of Montana.

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

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

“Subordinate Obligations” means the Series 2009A Bond, the Series 2010A Bond, and any other subordinate obligations issued under Section 10.4 of the Original Resolution

“Supplemental Resolution” means this Resolution No. 10-18964 of the Borrower adopted on July 12, 2010.

“Surplus Account” means the account created in the Water System Fund pursuant to Sections 11.1 and 11.7 of the Original Resolution.

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

“System” means the existing water system of the Borrower and all extensions, improvements and betterments thereof hereafter constructed and acquired, including, without limitation, the 2010 Project.

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

“2010A Committed Amount” means the amount of the 2010A Loan committed to be lent by the DNRC to the Borrower pursuant to Section 4.1 of this Supplemental Resolution, as such amount may be reduced pursuant to Section 3.2 and Section 3.4 of this Supplemental Resolution.

“2010B Committed Amount” means the amount of the 2010B Loan committed to be lent by the DNRC to the Borrower pursuant to Section 4.1 of this Supplemental Resolution, as such amount may be reduced pursuant to Section 3.2 and Section 3.4 of this Supplemental Resolution.

“2010 EPA Capitalization Grant” means that EPA Capitalization Grant made available to the Program from 2010 federal appropriations.

“2010B First Advance” means the first advance of funds of the 2010B Loan by the DNRC to the Borrower in an amount of at least \$50,001.

“2010 Loans” or “Loan” means, collectively, the 2010A Loan and the 2010B 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 2010 Project, to fund a deposit to the Reserve Account and to pay costs of issuance of the Series 2010 Bonds.

“2010A Loan” means the loan made to the Borrower by the DNRC pursuant to the Program in the maximum amount of the 2010A Committed Amount to provide funds to pay a portion of the costs of the 2010 Project and to pay a portion of costs of issuance of the Series 2010 Bonds.

“2010B Loan” means the loan made to the Borrower by the DNRC pursuant to the Program in the maximum amount of the 2010B Committed Amount to provide funds to pay a portion of the costs of the 2010 Project, to fund deposits to the Reserve Account, and to pay a portion of the costs of issuance of the Series 2010 Bonds.

“2010 Project” means the designing, engineering, and construction of the facilities, improvements and activities financed, refinanced or the cost of which is being financed by or reimbursed to the Borrower in part with proceeds of the 2010 Loans, described in Appendix A hereto.

“Undisbursed Committed Amount” means any undisbursed Committed Amount which is not required to pay costs of the 2010 Project upon completion thereof as provided in Section 3.4 of this Supplemental Resolution.

“Water Debt” means all Bonds and any other 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).

“Water System Fund” means the fund created by Section 11.1 of the Original Resolution.

Section 1.2 Other Rules of Construction. For all purposes of this Supplemental 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 Appendices. Attached to this Supplemental Resolution and hereby made a part hereof are the following Appendices:

Appendix A: a description of the 2010 Project;

Appendix B-1: the form of the Series 2010A Bond;

Appendix B-2: the form of the Series 2010B Bond;

Appendix C: additional agreements and representations of the Borrower; and

Appendix D: Compliance Certificate and Request.

## ARTICLE II

### AUTHORIZATION, FINDINGS, REPRESENTATIONS AND COVENANTS

#### Section 2.1 Authorization and Findings.

(a) 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 a municipal water system or to refund 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 such water system, and are not to create any obligation for the payment of which taxes may be levied except to pay for services provided by the water system to the Borrower.

(b) The System. The Borrower, pursuant to the Enabling Act and other laws of the State, has established and presently owns and operates the System.

(c) The 2010 Project. After investigation of the facts and as authorized by the Enabling Act, this Council has determined it to be necessary and desirable and in the best interests of the Borrower to construct the 2010 Project.

(d) Outstanding Bonds. Pursuant to the Act and the Resolution, the Borrower has issued its Series 2005 Bond and its Series 2009 Bonds to finance improvements to the System. The Series 2005 Bond, the Series 2009B Bond, the Series 2009C Bond, and the Series 2009D Bond are parity bonds payable from and secured by Net Revenues of the System. The Series 2009A Bond is a Subordinate Obligation payable, if at all, from Surplus Net Revenues. No other bonds or indebtedness are currently outstanding that are payable from Revenues of the System.

(e) Series 2010 Bonds. Based on a certificate executed or to be executed by the Mayor and Financial Services Manager, or either of them, it is hereby determined that the Borrower is authorized to issue the Series 2010A Bond in the maximum principal amount of \$500,000 and the Series 2010B Bond in the maximum principal amount of \$2,800,000, with the Series 2010B Bond payable from and secured by the Net Revenues. For purposes of the foregoing certificate, principal of and interest on the 2010A Loan are disregarded. The Borrower acknowledges and agrees that if it fails to deliver timely an acceptable Compliance Certificate and Request as provided in Section 5.1 of this Supplemental Resolution as determined in the sole and complete discretion of the DNRC, then principal and interest and surcharges will become due and owing on the Series 2010A Bond as provided in Section 5.1 of this Supplemental Resolution, and the Borrower shall thereupon, and in any event no later than three (3) months after delivery of a Noncompliance Statement, to the extent required by Section 6.7 of the Original Resolution, adjust its schedule of fees, rates, and charges applicable to the System to cause Net Revenues and Surplus Net Revenues to be produced in an amount at least equal to that required by the Resolution.

(f) Additional Parity Bonds. The Borrower reserved the right under Section 10.3 of the Original Resolution to issue additional Bonds payable from the Revenue Bond Account of the

Fund on a parity as to both principal and interest with the outstanding Bonds, 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 the 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 the additional Bonds shall be those shown by the financial reports caused to be prepared by the Borrower pursuant to Section 2.2(f) of the Original Resolution, except that if the rates and charges for services provided by the System or finally authorized to go into effect within 60 days after the issuance of the additional Bonds 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 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 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 the Original 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. Based on a certificate executed or to be executed by the Mayor and the City Financial Services Manager, or either of them, it is hereby determined that the Borrower is authorized to issue \$2,800,000 in aggregate principal amount of additional Bonds pursuant to Section 10.3 of the Original Resolution payable from and secured by the Net Revenues on a parity with the outstanding Series 2005 Bond, the Series 2009B Bond, the Series 2009C Bond, and the Series 2009D Bond.

Section 2.2    Representations. The Borrower represents as follows:

(a) Organization and Authority. The Borrower:

(1)    is duly organized and validly existing as a municipal corporation and political subdivision of the State;

(2)    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 Supplemental Resolution and to enter into the Collateral Documents and to issue the Series 2010 Bonds and to carry out and consummate all transactions contemplated by the Supplemental Resolution, the Series 2010 Bonds and the Collateral Documents;

(3)    is a Governmental Unit and a Public Entity; and

(4)    has taken all proper action to authorize the execution, delivery and performance of its obligations under this Supplemental Resolution, the Series 2010 Bonds and the Collateral Documents and the incurrence of the Debt



evidenced by the Series 2010 Bonds 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 the Resolution, the Series 2010 Bonds and the Collateral Documents, or the financial condition of the Borrower, or the transactions contemplated by the Resolution, the Series 2010 Bonds and the Collateral Documents or the validity and enforceability of the Resolution, the Series 2010 Bonds 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 2010 Project, the Series 2010 Bonds or any Collateral Documents and the period for filing any such petition will have expired before issuance of the Series 2010 Bonds.

(c) Borrowing Legal and Authorized. The adoption of this Supplemental Resolution, the execution and delivery of the Series 2010 Bonds and the Collateral Documents and the consummation of the transactions provided for in this Supplemental Resolution, the Series 2010 Bonds and the Collateral Documents and compliance by the Borrower with the provisions of the Resolution, the Series 2010 Bonds and the Collateral Documents:

(1) are within the powers of the Borrower and have been duly authorized by all necessary action on the part of the Borrower; and

(2) 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 ordinance, resolution, indenture, loan agreement or other agreement or instrument (other than the 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 any charter or similar document, if applicable, 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 Series 2010 Bonds and the Collateral Documents, would constitute a default under the 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 2010 Bonds 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 Supplemental Resolution by any governmental body or officer for the making and performance by the Borrower of its obligations under this Supplemental Resolution, the Series 2010 Bonds and the Collateral Documents (including any necessary water rate increase) or for the 2010 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 Supplemental Resolution, issuing the Series 2010 Bonds 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 the Resolution and the Collateral Documents, including approving any necessary water rate increases.

(f) Binding Obligation. The Resolution, the Series 2010 Bonds and any Collateral Document to which the Borrower is a party are the valid and binding special, limited 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 2010 Project. The 2010 Project consists and will consist of the facilities, improvements and activities described in Appendix A, as such Appendix A may be amended from time to time in accordance with Article III of this Supplemental Resolution. The 2010 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 State 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 the Resolution, the Series 2010 Bonds and the Collateral Documents and to pledge any revenues or other property pledged to the payment of the Series 2010 Bonds.

(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 the Resolution, the Series 2010 Bonds and the Collateral Documents.

### Section 2.3 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. Nothing herein shall be construed to prohibit or preclude the Borrower from self-insuring or participating in a self-insurance program in compliance with the provisions of Montana law. All such insurance policies shall name the DNRC as an additional insured to the extent permitted under the policy or program of insurance of the Borrower. 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 2.3(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 2.3(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 the Resolution, the Series 2010 Bonds 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 the Resolution, the Series 2010 Bonds and the Collateral Documents.

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

(1) The Borrower shall, at its expense, take all necessary action to maintain and preserve the lien and security interest of the Resolution and the Collateral Documents so long as any amount is owing under the Resolution or the Series 2010 Bonds;

(2) The Borrower shall forthwith, after the execution and delivery of the Series 2010 Bonds and thereafter from time to time, cause the 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 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

(3) 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 (2), 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 2010 Bonds and the Collateral Documents and the documents described in subparagraph (2).

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

(f) Financial Information. This Section 2.3(f) supplements, and is not intended to limit, the requirements in Section 2.2(f) of the Original Resolution. The Borrower agrees that for each fiscal year it shall furnish to the DNRC and the DEQ, promptly when available, in addition to those matters specified in Section 2.2(f) of the Original Resolution:

(1) the preliminary budget for the System, with items for the 2010 Project shown separately; and

(2) when adopted, the final budget for the System, with items for the 2010 Project shown separately.

(g) 2010 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 2010 Loans and the 2010 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) of the Act.

#### Section 2.4 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 2010 Bonds or any other funds of the Borrower in respect of the 2010 Project or the Series 2010 Bonds, 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 2010 Loans or the portion of the 2010 Loans derived directly or indirectly from proceeds of the State Bonds or that would otherwise cause any State Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code.

(c) The Borrower shall not use or permit the use of the 2010 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 (within the meaning of the Regulations) 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 2010 Project being refinanced or the cost of which is being reimbursed was acquired by and is now and shall, during the term of the 2010 Loans, be owned by the Borrower and not by any other Person. Any portion of the 2010 Project being financed shall be acquired by and shall, during the term of the 2010 Loans, be owned by the Borrower and not by any other Person. Notwithstanding the previous two sentences, the Borrower may transfer the 2010 Project or a portion thereof to another Governmental Unit which is also a Public Entity if such transfer is otherwise permitted under the Resolution and if such organization agrees with the DNRC to comply with Section 2.3(h), Section 2.3(i) and Section 2.4 of this Supplemental

Resolution and if the DNRC receives an Opinion of Bond Counsel 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 in the Resolution or in any Collateral Documents, the Borrower may sell or otherwise dispose of any portion of the 2010 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 2010 Loans, 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 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 term of the 2010 Loans it will not contract with or permit any Private Person to manage the 2010 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 State Bonds from gross income or purposes of federal income taxation.

(g) The Borrower may not lease the 2010 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 the Resolution; provided the Borrower may lease all or any portion of the 2010 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 2010 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 2.5 Maintenance of System; Liens. The Borrower shall maintain the System, including the 2010 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 2010 Project or any other property making up part of the System, other than liens securing Debt where a parity or senior lien secures the Series 2010 Bonds; provided that this Section 2.5 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 2.6 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 the Resolution, the Series 2010 Bonds 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 the Resolution, the Series 2010 Bonds 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 2010 Bonds 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 2.6.

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.

### ARTICLE III

#### USE OF PROCEEDS; THE 2010 PROJECT

Section 3.1 Use of Proceeds. The Borrower shall apply the proceeds of the 2010 Loans from the DNRC solely as follows:

(a) The Borrower shall apply the proceeds of the 2010 Loans solely to the financing, refinancing or reimbursement of the costs of the 2010 Project as set forth in Appendix A hereto and this Section 3.1. The 2010 Loans will be disbursed in accordance with ARTICLE IV hereof and Article VII of the Indenture. If the 2010 Project has not been completed prior to Closing, the Borrower shall, as quickly as reasonably possible, complete the 2010 Project and expend proceeds of the 2010 Loans to pay the costs of completing the 2010 Project.

(b) No portion of the proceeds of the 2010 Loans shall be used to reimburse the Borrower for costs paid prior to the date of adoption of this Supplemental 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 2010 Loans are to be used to reimburse the Borrower for 2010 Project costs paid prior to the date of adoption of this Supplemental Resolution, the Borrower shall have complied with Section 1.150-2 of the Regulations in respect of such costs.

(c) Any Debt to be refinanced with proceeds of the 2010 Loans was incurred after June 1, 1993, or with respect to a Project the construction or acquisition of which began after June 1, 1993. No proceeds of the 2010 Loans 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 2010 Project. Set forth in Appendix A to this Supplemental Resolution is a description of the 2010 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 2010 Loans (the 2010 Project may consist of more than one facility or activity), and an estimated budget relating to the 2010 Project, including the amount of proceeds of the 2010A Loan and the 2010B Loan estimated to be applied to Green Infrastructure. The 2010 Project may be changed and the description thereof in Appendix 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 Appendix A and stating the reason therefor, including statements whether the amendment would cause an increase or decrease in the cost of the 2010 Project, an increase or decrease in the amount of proceeds of the 2010 Loans which will be required to complete the 2010 Project and whether the change will materially accelerate or delay the construction schedule for the 2010 Project;

(b) A written consent to such change in the 2010 Project by an Authorized DNRC Officer;

(c) An Opinion or Opinions of Bond Counsel stating that the 2010 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 2010 Bonds 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 2010 Bonds 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 2010 Loans 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 the 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 the 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



2010 Loans to pay costs of the 2010 Project or as to the availability of additional funds under the Program to increase the principal amount of the 2010 Loans.

Section 3.3 2010 Project Representations and Covenants. The Borrower hereby represents to and covenants with the DNRC that:

(a) all construction of the 2010 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 2010 Project will be done only pursuant to fixed price construction contracts. 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 of the 2010 Project 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;

(d) all laborers and mechanics employed by contractors and subcontractors on the 2010 Project have been and will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code;

(e) the 2010 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; and

(f) the Borrower will undertake the 2010 Project promptly after the Closing Date and will cause the 2010 Project to be completed as promptly as practicable with all reasonable dispatch, except only as completion may be delayed by a cause or event not reasonably within the control of the Borrower; it is estimated by the Borrower that the 2010 Project will be substantially completed by the Estimated Completion Date.

Section 3.4 Completion or Cancellation or Reduction of Costs of the 2010 Project.

(a) Upon completion of the 2010 Project, the Borrower shall deliver to the DNRC a certificate stating that the 2010 Project is complete and stating the amount, if any, of the Undisbursed Committed Amount. If Appendix A describes two or more separate projects as making up the 2010 Project, a separate completion certificate shall be delivered for each.

(b) If all or any portion of the 2010 Project is cancelled or cut back 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 the amount of the Undisbursed Committed Amount.

## ARTICLE IV

### THE LOAN

#### Section 4.1 The Loan; Disbursement of Loan.

(a) 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 (i) \$500,000 (the "2010A Committed Amount") for the purposes of financing, refinancing, or reimbursing the Borrower for a portion of the costs of the 2010 Project and paying for the costs of issuance of the Series 2010 Bonds, and (ii) \$2,800,000 (the "2010B Committed Amount") for the purposes of financing, refinancing or reimbursing the Borrower for a portion of the costs of the 2010 Project and funding a deposit to the Reserve Account and paying for the costs of issuance of the Series 2010 Bonds; provided the DNRC shall not be required to loan any proceeds of the State Bonds to the Borrower after the Estimated Completion Date. The Committed Amount may be reduced as provided in Section 3.2 and Section 3.4 of this Supplemental Resolution.

(b) The DNRC intends to disburse the 2010 Loans through the Trustee. In consideration of the issuance of the Series 2010 Bonds by the Borrower, the DNRC shall make, or cause the Trustee to make, a disbursement of all or a portion of the 2010 Loans upon receipt of the following documents:

(1) an Opinion of Bond Counsel as to the Series 2010A Bond and an Opinion of Bond Counsel as to the validity and enforceability of the Series 2010B Bond and the security therefor and stating in effect that interest on the Series 2010B Bond is not includable in gross income of the owner thereof for purposes of federal income taxation, in form and substance satisfactory to the DNRC;

(2) the Series 2010A Bond and the Series 2010B Bond, fully executed and authenticated;

(3) a certified copy of the Original Resolution and this Supplemental Resolution;

(4) any other security instruments or documents required by the DNRC or DEQ as a condition to their approval of the 2010 Loans;

(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 such costs were paid before adoption of this Supplemental Resolution that the Borrower has complied with Section 1.150-2 of the Regulations;

(6) the items required by the Indenture for the portion of the 2010 Loans to be disbursed at Closing; and

(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).

(c) In order to obtain a disbursement of a portion of the 2010 Loans to pay costs of the 2010 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.

(d) Provided that the 2010 EPA Capitalization Grant is available to the Program, from and after the 2010B First Advance, the 2010 Loans shall be disbursed, subject to the other terms and conditions of this Supplemental Resolution, in the following order:

(1) First, at the Closing, the 2010B First Advance will be advanced from the 2010B Loan.

(2) Second, after the 2010B First Advance has been disbursed to the Borrower, the entire amount of the 2010A Loan may then be disbursed to the Borrower as and when needed. For the avoidance of doubt, any amounts of the 2010 Loans to be disbursed at Closing in excess of the 2010B First Advance will be disbursed as proceeds of the 2010A Loan to the extent of the 2010A Committed Amount.

(3) Third, after the entire principal amount of the 2010A Loan has been disbursed to the Borrower, the remaining amount of the 2010B Loan will be disbursed to the Borrower as and when needed.

(e) 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.

(f) If all or a portion of the 2010 Loans 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) of this Supplemental Resolution 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.

(g) Notwithstanding anything else provided herein, the Trustee shall not be obligated to disburse the 2010 Loans 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 2010 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 reasonable best efforts to obtain an acceleration of such schedule if necessary.

(h) Upon making each 2010A Loan disbursement and 2010B Loan disbursement, the Trustee shall note such disbursement on Schedule A to the Series 2010A Bond and the Series 2010B Bond, respectively. A Schedule A reflecting the amount of the 2010B First Advance will first be attached to the Series 2010B Bond at Closing.

(i) The Borrower agrees that it will deposit in the Reserve Account upon receipt thereof, on the date of the 2010B First Advance and any subsequent disbursement dates, any proceeds of the 2010B Loan borrowed for the purpose of increasing the balance in the Reserve Account to the Reserve Requirement. The Borrower further acknowledges and agrees that any portions of the 2010 Loans representing capitalized interest shall be advanced only on Payment Dates and shall be transferred by the Trustee on the Payment Date directly to the Revenue Bond Account. The amount of any such transfer shall be a credit against the interest payments due on the Series 2010 Bonds and interest thereon shall accrue only from the date of transfer.

(j) Compliance by the Borrower with its representations, covenants and agreements contained in the Original Resolution, this Supplemental Resolution and the Collateral Documents shall be a further condition precedent to the disbursement of the 2010 Loans 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 2010 Loans.

Section 4.2 Commencement of Loan Term. The Borrower's obligations under this Supplemental Resolution and the Collateral Documents shall commence on the date hereof unless otherwise provided in this Supplemental Resolution. However, the obligation to make payments under ARTICLE V hereof shall commence only upon the first disbursement by the Trustee of the 2010B Loan proceeds.

Section 4.3 Termination of Loan Term. The Borrower's obligations under this Supplemental Resolution and the Collateral Documents in respect of the Series 2010 Bonds shall terminate upon payment in full of all amounts due under the Series 2010 Bonds and this Supplemental Resolution; provided, however, that the covenants and obligations provided in ARTICLE VI and Section 10.3 of this Supplemental Resolution shall survive the termination of this Supplemental Resolution.

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 2010 LOANS

Section 5.1 Repayment of 2010 Loans. The Borrower shall repay the amounts lent to it pursuant to Section 4.1 hereof in accordance with this Section 5.1.

5.1.1. Interest and Surcharges. Until a Determination Statement is delivered by the DNRC to the Borrower and so long as the Borrower's obligation to repay the principal of the 2010A Loan is forgiven as provided in Section 5.1.2 below, amounts disbursed by the DNRC under Section 4.1 hereof that are evidenced by the Series 2010A Bond bear interest at the rate of zero percent (0.00%) per annum from the date of each advance; provided, however, if the DNRC delivers to the Borrower a Noncompliance Statement, then all principal of the Series 2010A Bond advanced by the DNRC shall be payable and amounts disbursed by the DNRC under Section 4.1 hereof that are evidenced by the Series 2010A Bond shall bear interest at the rate of two percent (2.00%) per annum and in addition the Borrower shall pay the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge on the outstanding principal amount of the Series 2010A Bond from the date of each advance under thereunder. The Series 2010B Bond shall bear interest at the rate of two percent (2.00%) per annum and in addition the Borrower shall pay the Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the outstanding principal amount of the 2010B Loan from the date of each advance thereunder. For purposes of this Supplemental Resolution and the Program, with respect to the 2010A Loan and the 2010B Loan, the term "interest on the 2010 Loans" or "interest on the 2010A Loan" or "interest on the Series 2010B Loan" when not used in conjunction with a reference to any surcharges, shall include the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge. The Borrower shall pay all Loan Repayments and surcharges in lawful money of the United States of America to the DNRC. Interest, 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.

#### 5.1.2. Repayment of 2010A Loan; Principal Forgiveness.

(a) The Borrower is obligated to repay the principal of and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the 2010A Loan, unless the DNRC forgives the Borrower's obligation to repay the principal of the 2010A Loan as provided in Section 5.1.2(b). Subject to the provisions of Section 5.1.2(b), the Loan Repayments and the Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the 2010A Loan shall be due on each Payment Date, as follows:

- (1) interest and the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge on the outstanding principal balance of the 2010A Loan shall be payable from and after the date of each advance of principal of the 2010A Loan on each Payment Date at the rate of 3.75% per annum, beginning on the first Payment Date following the date of delivery by the DNRC of a Noncompliance Statement and concluding on July 1, 2030; and

- (2) the principal of the 2010A Loan shall be repayable on each Payment Date, beginning on the Payment Date that is the first to occur following delivery by the DNRC of a Noncompliance Statement, and concluding on July 1, 2030, and the amount of each principal payment shall be calculated on the basis of a substantially level debt service at the rate of 3.75% per annum; provided that the principal of the 2010A Loan is payable only in amounts that are multiples of \$1,000.

(b) Notwithstanding Section 5.1.2(a), so long as the Borrower is proceeding diligently to completion of the 2010 Project and the Borrower has executed and delivered the Compliance Certificate and Request to the DNRC in form and substance satisfactory to the DNRC and the DEQ, within thirty (30) days after the date that the Compliance Certificate and Request is provided to the Borrower by the DNRC, the DNRC will, following review and approval of the Compliance Certificate and Request, deliver to the Borrower a Forgiveness Statement and the Borrower will thereafter have no obligation to repay amounts advanced under the Series 2010A Bond or interest or surcharges thereon and the Series 2010A Bond will be marked "CANCELLED" and returned by the DNRC to the Borrower. However, in the event the Borrower fails to deliver timely the Compliance Certificate and Request, or the Borrower cannot submit the Compliance Certificate and Request because it cannot make the certifications required therein, or the Compliance Certificate and Request is delivered in a form that deviates materially from that attached hereto as Appendix D as determined in the sole and complete discretion of the DNRC or the DEQ, or the DNRC or the DEQ determine at any time that the 2010 Project or any portion thereof or of the work relating thereto fails to comply with Program requirements, then the DNRC will deliver to the Borrower a Noncompliance Statement. Upon delivery of a Noncompliance Statement by the DNRC to the Borrower, all principal advanced or to be advanced under the Series 2010A Bond, together with interest, Administrative Expense Surcharge, and Loan Loss Reserve Surcharge thereon from the date of each advance, shall be payable as provided in Section 5.1.2 (a).

(c) In addition, in the event the DNRC delivers a Noncompliance Statement (i) the Series 2010A Bond will continue in effect as a Subordinate Obligation, and (ii) the Borrower will forthwith comply with the rate covenant set forth in Section 6.7 of the Original Resolution, as implemented as described in Article XII of this Supplemental Resolution, and, if necessary, increase the rates and charges of the System to satisfy such rate covenant as soon as practicable and in any event no later than three (3) months after the date of delivery to the Borrower by the DNRC of a Noncompliance Statement.

5.1.3. Repayment of 2010B Loan. The Loan Repayments on the 2010B Loan required by this Section 5.1 shall be due on each Payment Date, as follows:

- (1) interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the outstanding principal balance of the 2010B Loan shall be payable from and after the date of each advance of principal of the 2010B Loan on each Payment Date at the rate of 3.75% beginning on January 1, 2011 and concluding on July 1, 2030; and

- (2) the principal of the 2010B Loan shall be repayable on each Payment Date, beginning on January 1, 2011, and concluding on July 1, 2030, and the amount of each principal payment shall be calculated on the basis of a substantially level debt service at a rate of 3.75% per annum; provided that principal of the 2010B Loan is payable only in amounts that are multiples of \$1,000.

5.1.4. Details Regarding 2010 Loan Repayments. Loan Repayments and the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge on the 2010B Loan and, if applicable, on the 2010A Loan, shall be due on the dates specified above and on the dates and in the amounts shown in Schedule B to the Series 2010B Bond and, if applicable, on the 2010A Loan, as such Schedule B shall be modified from time to time as provided in Section 5.1.2 and below. Schedule B will first be attached to the Series 2010B Bond and, if applicable, the Series 2010A Bond at Closing. 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 2010A Bond and the Series 2010B Bond on and after Closing. Upon each disbursement of 2010 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 applicable Series 2010A Bond and the Series 2010B Bond under "Advances" and the total amount advanced under Section 4.1, including such disbursement, under "Total Amount Advanced." 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 the 2010 Project has been prepared and delivered to the DNRC pursuant to Section 3.4 of this Supplemental Resolution, the Trustee shall revise Schedule B to the Series 2010B 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.

If the DNRC shall have delivered a Noncompliance Statement, then Schedule B to the Series 2010A Bond shall continue to reflect interest and surcharges on amounts advanced under the Series 2010A Bond at the rate of 3.75% per annum, as may be revised to reflect the full principal amount advanced under the Series 2010A Bond, the initial Payment Date, and the periodic total loan payment, and the Trustee shall send a copy of such schedules to the Borrower within one month after delivery by the DNRC of the Noncompliance Statement. If the DNRC delivers a Forgiveness Statement, Schedule B to the Series 2010A Bond will be disregarded and of no effect.

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

Any payment of principal and interest as to the Series 2010B Bond and, if applicable, the Series 2010A Bond, and the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge as to the Series 2010B Bond, and, if applicable, the Series 2010A Bond under this Section 5.1 shall be credited against the same payment obligation under each of the Series 2010B Bond and, as applicable, the Series 2010A 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 2010 Loans, if the Borrower so chooses, all reasonable expenses of the DNRC and the Trustee in connection with the 2010 Loans, the Collateral Documents and the Series 2010 Bonds, including, but not limited to:

(a) the cost of reproducing this Supplemental Resolution, the Collateral Documents and the Series 2010 Bonds;

(b) the fees and disbursements of Bond Counsel and other Counsel utilized by the DNRC and the Trustee in connection with the 2010 Loans, this Supplemental Resolution, the Collateral Documents and the Series 2010 Bonds and the enforcement thereof; and

(c) all taxes and other governmental charges in connection with the execution and delivery of the Collateral Documents or the Series 2010 Bonds, whether or not the Series 2010 Bonds are 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 2010 Bonds, the Collateral Documents and this Supplemental Resolution 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 2010B Bond, and, if applicable, the Series 2010A Bond, unless (i) a Determination Statement has been delivered, (ii) it obtains the prior written consent of the DNRC thereto, and (iii) 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, if applicable, Administrative Expense Surcharge and Loan Loss Reserve Surcharge to the date of prepayment on the amount of principal prepaid. If the Series 2010 Bonds are 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 Supplemental Resolution and the Series 2010 Bonds and to perform its other agreements contained in this Supplemental Resolution, the Series 2010 Bonds 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 Supplemental Resolution and the Series 2010 Bonds, (b) shall perform all its other agreements in this Supplemental Resolution, the Series 2010 Bonds and the Collateral Documents and (c) shall not terminate this Supplemental Resolution, the Series 2010 Bonds or the Collateral Documents for any cause, including any acts or circumstances that may constitute failure of consideration, destruction of or damage to the 2010 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 Supplemental Resolution. Provided, however, if the 2010 Loans are not made and no funds are disbursed to the Borrower, this Supplemental Resolution may be terminated.