



Legislation Text

File #: 18-0632R, **Version:** 1

RESOLUTION PROVIDING FOR THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION WATER UTILITY REVENUE BONDS, SERIES 2018D, IN THE APPROXIMATE AMOUNT OF \$3,825,000; ESTABLISHING THE TERMS AND FORM THEREOF; CREATING A DEBT SERVICE FUND THEREFOR; AND PROVIDING FOR AWARDED THE SALE THEREOF.

CITY PROPOSAL:

BE IT RESOLVED, by the City Council (the "City Council") of the city of Duluth, St. Louis County, Minnesota (the "City"), as follows:

Section 1. Purpose and Authorization.

1.01 Under and pursuant to the provisions of Section 55 of the City Charter, Minnesota Statutes, Section 444.075 and Chapter 475, and other pertinent provisions of said Charter and Statutes, the City is authorized to issue its general obligation bonds to provide funds for the payment of costs of improvements to the municipal water utility (including bonds representing part of the interest cost of the issue, within the limitations specified in Minnesota Statutes, Section 475.56), which bonds shall be a specific lien upon the water utility and are payable primarily from net revenues to be derived from the operation of the municipal water utility and pledged for their payment.

1.02 The City Council has, by Ordinance No. 10585 adopted August 27, 2018, ordered the issuance, sale and delivery of general obligation water utility revenue bonds in the maximum amount of \$4,200,000 of the City for the payment of the costs of improvements to the municipal water utility and for payment of part of the interest cost of the bonds. The improvement program for the municipal water utility includes replacement of water mains and water lines within the Superior Street corridor from Sixth Avenue West to Fourth Avenue East, as a part of the reconstruction of Superior Street (collectively, the "Project").

1.03 The City Council hereby determines that it is necessary and expedient to issue and sell General Obligation Water Utility Revenue Bonds, Series 2018D, of the City in the approximate principal amount of \$3,825,000 (the "Bonds") pursuant to the above-described authority, to provide funds to finance the Project and for payment of the costs of issuing the Bonds. The sale of the Bonds shall be contingent upon favorable market conditions, as determined by the chief administrative officer or by the chief financial officer, as further described below.

1.04 The City Council hereby finds and determined as follows:

(a) The Bonds shall be dated the date of issuance and shall bear interest at the rates determined by the successful bidder. Interest shall be payable on February 1 and August 1 (each an "Interest Payment Date") commencing on August 1, 2019.

(b) The Bonds shall mature on the dates and in the amounts set forth in the Official Terms and Conditions of Bond Sale attached hereto as Exhibit A (as may be adjusted) and as described in a Certificate as to Terms of Bond Sale to be executed by the chief financial officer; provided, however, the total amount of the Bonds shall not exceed \$4,200,000, subject to adjustment for a premium sale price as permitted by Section 475.60 of the Act and the final maturity of the Bonds shall not be later than February 1, 2034. The

City, through the chief administrative officer, reserves the right to issue or to not issue the Bonds based on applicable market conditions.

1.05 The Official Terms and Conditions of Bond Sale as set forth on Exhibit A hereto are approved, subject to the changes permitted below. Bids for the Bonds will be received on a date and time determined by the chief administrative officer on the terms and conditions set forth in the Official Terms and Conditions of Bond Sale, which terms and conditions may be modified by the chief administrative officer after consulting with the City's municipal advisor, based on market conditions, so long as the sale of the Bonds occurs on or before December 1, 2018, and so long as the true interest cost of the Bonds does not exceed 4.0%. As authorized by Section 475.60 of the Act, the City Council hereby delegates to the chief administrative officer and the chief financial officer, or either of them, authority to consider the bids and award the sale of the Bonds, and upon acceptance of the best bid meeting the requirements of this resolution, the chief administrative officer and the chief financial officer, or either of them, shall execute on behalf of the City an agreement to sell the Bonds to the successful bidder.

1.06 The City has retained PFM Financial Advisors LLC, Minneapolis, Minnesota ("PFM"), as an independent municipal advisor to the City, and pursuant to Section 475.60, Subd. 2, paragraph (9) of the Act, PFM is hereby authorized to solicit bids for the sale of the Bonds on behalf of the City in accordance with the directions of the chief administrative officer.

1.07 The City staff, in cooperation with PFM, is authorized and directed to prepare on behalf of the City an official statement for the sale of the Bonds and to obtain ratings of the Bonds.

Section 2. Terms of Bonds.

2.01 (a) The Bonds maturing in the years 2020 through 2029 shall not be subject to optional redemption and prepayment before maturity, but those maturing or subject to mandatory redemption pursuant to Section 2.01(b), in the year 2030 and in subsequent years shall each be subject to redemption and prepayment at the option of the City on February 1, 2029, and on any date thereafter, in whole or in part, and if in part, in such order of maturities as selected by the City and by lot as to the Bonds maturing in the same year, at a price equal to the principal amount thereof plus accrued interest to the redemption date.

(b) In the event any of the Bonds are called for redemption, notice thereof identifying the Bonds to be redeemed will be given by the Bond Registrar by mailing a copy of the redemption notice by first class mail (postage prepaid) at least 30 days but not more than 60 days prior to the date fixed for redemption to the registered owner of each Bond to be redeemed at the address shown on the registration books kept by the Bond Registrar; provided however, that so long as the Bonds are registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York ("DTC"), notice of redemption shall be given in accordance with the terms of the Representation Letter hereinafter described. Failure to give notice by mail to any registered owner, or any defect therein, will not affect the validity of any proceeding for the redemption of Bonds not affected by such defect or failure. Bonds so called for redemption will cease to bear interest after the specified redemption date, provided that the funds for the redemption are on deposit with the place of payment at that time.

(c) If less than all the Bonds of a maturity are called for redemption while the Bonds are registered in the name of Cede & Co., the City or the Bond Registrar designated below will notify DTC of the particular amount of such maturity to be prepaid. DTC will determine by lot the amount of each participant's interest in such maturity to be redeemed and each participant will then select by lot the beneficial ownership interest in such maturity to be redeemed. If less than all the Bonds of a maturity are called for redemption and the Bonds are not registered in the name of Cede & Co., the Bond Registrar will determine by lot or other manner deemed fair, the amount of each maturity to be redeemed. All prepayments shall be at a price equal to the principal amount thereof plus accrued interest.

2.02 Interest will be computed on the basis of a 360-day year of twelve 30-day months and will be rounded pursuant to the rules of the municipal securities rulemaking board. The Bond Registrar designated below shall make all interest payments with respect to the Bonds by check or draft mailed to the registered owners of the Bonds shown on the bond registration records maintained by the Bond Registrar at the close of business on the 15th day (whether or not a business day) of the month next preceding the Interest Payment Date at such owners' addresses shown on such bond registration records.

2.03 (a) The Bonds shall be prepared for execution in accordance with the approved form and shall be signed by the manual or facsimile signature of the mayor and attested by the manual or facsimile signature of the city clerk. In case any officer whose signature or a facsimile of whose signature shall appear on the Bonds shall cease to be an officer before delivery of the Bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, as if he or she had remained in office until delivery.

(b) The city clerk is authorized and directed to obtain a copy of the approving legal opinion of Fryberger, Buchanan, Smith & Frederick, P.A. of Duluth, Minnesota, and cause the opinion to be attached to each Bond.

2.04 The City hereby appoints U.S. Bank National Association, in St. Paul, Minnesota, as registrar, authenticating agent, paying agent and transfer agent for the Bonds (such bank or its successor is herein referred to as the "Bond Registrar"). To provide for the Bond Registrar services, the mayor and the clerk are authorized and directed to execute an agreement relating to paying agent, registrar and transfer agency substantially in the form of Exhibit B attached hereto. No Bond shall be valid or obligatory for any purpose until the Bond Registrar's authentication certificate on such Bond, substantially set forth in Section 2.11 hereof, shall have been duly executed by an authorized representative of the Bond Registrar. Authentication certificates on different Bonds need not be signed by the same representative. The manual signature of one officer of the City or the executed authentication certificate on each Bond shall be conclusive evidence that it has been authenticated and delivered under this resolution.

2.05 (a) In order to make the Bonds eligible for the services provided by DTC, the City has previously agreed to the applicable provisions set forth in the blanket issuer letter of representations which has been executed by the City (the "Representation Letter").

(b) Notwithstanding any provision herein to the contrary, so long as the Bonds shall be in Book-Entry Form, the provisions of this Section 2.05 shall govern.

(c) All of the Bonds shall be registered in the name of Cede & Co., as nominee for DTC. Payment of interest on and principal of any Bond registered in the name of Cede & Co. shall be made by wire transfer or New York Clearing House or equivalent same day funds by 10:00 a.m. CT or as soon as possible thereafter following the Bond Registrar's receipt of funds from the City on each Interest Payment Date to the account of Cede & Co. on each Interest Payment Date at the address indicated in or pursuant to the Representation Letter.

(d) DTC (or its nominees) shall be and remain recorded on the Bond Register as the holder of all Bonds which are in Book-Entry Form. No transfer of any Bond in Book-Entry Form shall be made, except from DTC to another depository (or its nominee) or except to terminate the Book-Entry Form. All Bonds of such stated maturity of any Bonds in Book-Entry Form shall be issued and remain in a single bond certificate registered in the name of DTC (or its nominee); provided, however, that upon termination of the Book-Entry Form pursuant to the Representation Letter, the City shall, upon delivery of all Bonds of such series from DTC, promptly execute, and the Bond Registrar shall thereupon authenticate and deliver, Bonds of such series to all persons who were beneficial owners thereof immediately prior to such termination; and the Bond Registrar shall register such beneficial owners as holders of the applicable Bonds.

The Bond Registrar shall maintain accurate books and records of the principal balance, if any, of each such outstanding Bond in Book-Entry Form, which shall be conclusive for all purposes whatsoever. Upon the authentication of any new bond in Book-Entry Form in exchange for a previous bond, the Bond Registrar shall designate thereon the principal balance remaining on such bond according to the Bond Registrar's books and records.

No beneficial owner (other than DTC) shall be registered as the holder on the Bond Register for any Bond in Book-Entry Form or entitled to receive any bond certificate. The beneficial ownership interest in any Bond in Book-Entry Form shall be recorded, evidenced and transferred solely in accordance with the Book-Entry System.

Except as expressly provided to the contrary herein, the City and the Bond Registrar may treat and deem DTC to be the absolute owner of all Bonds of each series which are in Book-Entry Form (i) for the purpose of payment of the principal of and interest on such Bond, (ii) for the purpose of giving notices hereunder, and (iii) for all other purposes whatsoever.

(e) The City and the Bond Registrar shall each give notices to DTC of such matters and at such times as are required by the Representation Letter, including the following:

(i) with respect to notices of redemption; and

(ii) with respect to any other notice required or permitted under this Bond Resolution to be given to any holder of a Bond.

All notices of any nature required or permitted hereunder to be delivered to a holder of a Bond in Book-Entry Form shall be transmitted to beneficial owners of such Bonds at such times and in such manners as shall be determined by DTC, the participants and indirect participants in accordance with the Book-Entry System and the Representation Letter.

(f) All payments of principal, redemption price of and interest on any Bonds in Book-Entry Form shall be paid to DTC (or Cede & Co.) in accordance with the Book-Entry System and the Representation Letter in same day funds by wire transfer.

2.06 The City shall cause to be kept by the Bond Registrar a bond register in which, subject to such reasonable regulations as the Bond Registrar may prescribe, the City shall provide for the registration of the Bonds and the registration of transfers of the Bonds entitled to be registered or transferred as herein provided. In the event of the resignation or removal of the Bond Registrar or its incapability of acting as such, the bond registration records shall be maintained at the office of the successor Bond Registrar as may be appointed by the City Council. Upon surrender for transfer of any Bond at the principal corporate office of the Bond Registrar, the City shall execute and the Bond Registrar shall authenticate, if required by law or this Resolution, and deliver, in the name(s) of the designated transferee or transferees, one or more new Bonds of the like aggregate principal amount, as requested by the transferor.

2.07 Each Bond delivered upon transfer of or in exchange for or in lieu of any other Bond shall carry all of the rights to interest, accrued and unpaid and to accrue, which are carried by such other Bond. Each Bond shall be dated by the Bond Registrar as of the date of its authentication. The City and the Bond Registrar shall not be required to make any transfer or exchange of any Bonds called for redemption or to make any such exchange or transfer of the Bonds during the 15 days next preceding the date of the mailing of the notice of redemption in the case of a proposed redemption of the Bonds.

2.08 The City and the Bond Registrar may treat the person in whose name any Bond is registered as

the owner of such Bond for the purpose of receiving payment of principal of and interest on such Bond and for all other purposes whatsoever, whether or not such Bond be overdue, and neither the City nor the Bond Registrar shall be affected by notice to the contrary.

2.09 The principal of and interest on the Bonds shall be payable by the Bond Registrar, as paying agent, in such funds as are legal tender for the payment of debts due the United States of America. The City shall pay the reasonable and customary charges of the Bond Registrar for the disbursement of principal and interest.

2.10 Delivery of the Bonds and payment of the purchase price shall be made at a place mutually satisfactory to the City and the purchaser. Printed or typewritten and executed Bonds shall be furnished by the City without cost to the purchaser. The Bonds, when prepared in accordance with this Resolution and executed, shall be delivered by or under the direction of the chief financial officer to the purchaser upon receipt of the purchase price plus accrued interest.

2.11 The Bonds shall be printed or typewritten in substantially the following form:

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

GENERAL OBLIGATION WATER UTILITY REVENUE BOND, SERIES 2018D

R-_____ \$_____

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
	February 1, _____	_____, 2018	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

The City of Duluth, in St. Louis County, Minnesota (the "City"), for value received, promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above on the maturity date specified above, and to pay interest on said principal amount to the registered owner hereof from the Date of Original Issue, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, until the principal amount is paid or discharged, said interest being at the rate per annum specified above. Interest is payable semiannually on February 1 and August 1 of each year (each referred to herein as an "Interest Payment Date") commencing on August 1, 2019. Both principal and interest are payable in lawful money of the United States of America by check or draft at the office of U.S. Bank National Association, in St. Paul, Minnesota, as the registrar, paying agent, transfer agent and authenticating agent (the "Bond Registrar"), or at the office of such successor bond registrar as may be designated by the City Council. The Bond Registrar shall make the interest payment with respect to this Bond directly to the registered owner hereof shown on the bond registration records maintained on behalf of the City by the Bond Registrar at the close of business on the 15th day of the month next preceding the Interest Payment Date (whether or not a business day), at such owner's address shown on said bond registration records, without, except for payment of principal on the Bond, the presentation or surrender of this Bond, and all such payments shall discharge the obligations of the City to the extent of the payments so made. Payment of principal shall be made upon presentation and surrender of this Bond to the Bond Registrar when due. For the prompt and full payment of

such principal and interest as they become due, the full faith and credit of the City are irrevocably pledged.

This Bond is one of a series issued by the City in the aggregate amount of \$_____, all of like date and tenor, except as to number, amount, maturity date, redemption privilege and interest rate, pursuant to the authority contained in Minnesota Statutes, Section 444.075 and Chapter 475 and Section 55 of the Home Rule Charter of the City, and all other laws and charter provisions thereto enabling and pursuant to Ordinance No. 10585 adopted August 27, 2018, and an authorizing resolution adopted by the governing body of the City on September 10, 2018, and the award of the sale of the Bonds by the Chief Administrative Officer and the Chief Financial Officer of the City, as evidenced by the Certificate as to Terms of Bond Sale dated _____, 2018 (collectively, the "Resolution"). This Bond is issued for the purpose of providing funds for improvements to the municipal water utility and for payment of the costs of issuing the Bonds, as more fully set forth in the Resolution and for the payment of part of the interest cost of the Bonds. The Bonds are payable from the net revenues to be derived from the operation of the municipal water utility of the City, as set forth in the Resolution to which reference is made for a full statement of rights and powers thereby conferred. In the Resolution, the City has pledged and appropriated the net revenues to be derived from the operation of the municipal water utility in excess or normal, reasonable and current costs of the operation and maintenance of the utility, for the payment of the principal and interest when due on the Bonds, and has covenanted and agreed that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal water utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such utility, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the Bonds.

The Bonds maturing in the years ____ and ____ (the "Term Bonds") shall be subject to mandatory redemption and redeemed in installments as provided in the Resolution, at par plus accrued interest to the date of redemption.

The Bonds of this series maturing in the years 2020 through 2029 are not subject to redemption before maturity, but those maturing in the year 2030 and in subsequent years are each subject to redemption and prepayment at the option of the City on February 1, 2029, and on any date thereafter, in whole or in part, in such order of maturities as selected by the City and by lot as to Bonds maturing in the same year, at a price equal to the principal amount plus accrued interest to the redemption date.

Not less than 30 nor more than 60 days prior to the date fixed for redemption and prepayment of any Term Bonds, notice of redemption shall be mailed to each registered owner of a Bond to be redeemed; provided, however, that so long as the Bonds are registered in the name of Cede & Co., as nominee for The Depository Trust Company, Jersey City, New Jersey ("DTC"), notice of redemption shall be given in accordance with the terms of the Blanket Issuer Letter of Representations executed by the City and DTC.

If less than all the Bonds of a maturity are called for redemption while the Bonds are registered in the name of Cede & Co., the City or the Bond Registrar designated below will notify DTC of the particular amount of such maturity to be prepaid. DTC will determine by lot the amount of each participant's interest in such maturity to be redeemed and each participant will then select by lot the beneficial ownership interest in such maturity to be redeemed. If less than all the Bonds of a maturity are called for redemption and the Bonds are not registered in the name of Cede & Co., the Bond Registrar will determine by lot or other manner deemed fair, the amount of each maturity to be redeemed. All prepayments shall be at a price equal to the principal amount thereof plus accrued interest. If any Bond is redeemed in part, upon surrender of the Bond being redeemed, the City shall deliver or cause to be delivered to the registered owner of such Bond, a Bond in like form in the principal amount equal to that portion of the Bond so surrendered not being redeemed.

The Bonds of this series are issued as fully registered bonds without coupons, in the denomination of \$5,000 or any integral multiple thereof. Subject to limitations set forth in the Resolution, this Bond is transferable by the registered owner hereof upon surrender of this Bond for transfer at the principal corporate

office of the Bond Registrar, duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Bond Registrar and executed by the registered owner hereof or the owner's attorney duly authorized in writing. Thereupon the City shall execute and the Bond Registrar shall authenticate, if required by law and the Resolution, and deliver, in exchange for this Bond, one or more new fully registered bonds in the name of the transferee, of an authorized denomination, in an aggregate principal amount equal to the unpaid principal amount of this Bond, of the same maturity and bearing interest at the same rate.

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

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Bond Registrar's Authentication Certificate hereon shall have been executed by the Bond Registrar by one of its authorized representatives.

IN WITNESS WHEREOF, the City of Duluth, by its City Council, has caused this Bond to be executed in its name by the manual or facsimile signatures of the mayor and the city clerk.

Attest:

City Clerk

Mayor

Date of Authentication: _____

BOND REGISTRAR'S AUTHENTICATION CERTIFICATE

The Bond Registrar confirms that the books reflect the ownership of the Bond registered in the name of the owner named above, in the principal amount and maturing on the date stated above, and this Bond is one of the Bonds of the series issued pursuant to the Resolution hereinabove described.

U.S. BANK NATIONAL ASSOCIATION
St. Paul, Minnesota

By _____
Authorized Representative

REGISTRATION CERTIFICATE

This Bond must be registered as to both principal and interest in the name of the owner on the books to be kept by U.S. Bank National Association of St. Paul, Minnesota, as Bond Registrar. No transfer of this Bond shall be valid unless made on said books by the registered owner or the owner's attorney thereunto duly authorized and similarly noted on the registration books. The ownership of the unpaid principal balance of this Bond and the interest accruing thereon is registered on the books of U.S. Bank National Association, as Bond Registrar, in the name of the registered owner last noted below.

Date

Registered Owner

Signature of Bond Registrar

___/___/2018 Cede & Co.
c/o The Depository Trust Company
570 Washington Blvd.
Jersey City, NJ 07310
Federal Taxpayer I.D. No.: 13-2555119

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns, and transfers unto

(Name and Address of Assignee)

Social Security or Other
Identifying Number of
Assignee

the within Bond and all rights thereunder and does hereby irrevocably constitute and appoint
_____ attorney to transfer the said Bond on the books kept for
registration thereof with full power of substitution in the premises.

Dated:

NOTICE: The signature of this assignment must
correspond with the name of the registered owner
as it appears upon the face of the within Bond in
every particular, without alteration or enlargement
or any change whatsoever.

Signature Guaranteed:

(Bank, Trust Company, member of
National Securities Exchange)

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

Section 3. Revenues, Accounts and Covenants.

3.01 (a) The City Council covenants and agrees with the holders of the Bonds and with its taxpayers that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal water utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the Bonds and on all other bonds heretofore or

hereafter issued and made payable from said net revenues, and will operate the utility and segregate and account for the revenues thereof as provided in this section.

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

(b) The City has created a separate construction account within the Public Utility Water Fund to which there shall be credited an amount set forth in the Certificate as to Terms of Bond Sale, together with any additional funds which may be available and are appropriated for improvements to the utility. This account shall be used only to pay expenses duly approved and allowed which, under generally accepted accounting principles, constitute capital expenditures for the completion of improvements to the water utility and costs of the issuance of the Bonds.

(c) Until the Bonds issued hereunder are fully paid or duly called for redemption, or otherwise discharged, the City will also maintain a separate debt service account (the "Debt Service Fund") in the Public Utility Water Fund to be used solely for the payment of the principal and interest, as such principal and interest become due and payable on the Bonds and on any other bonds which have been or may be issued and made payable from said net revenues of the water utility. The chief financial officer shall credit to the Debt Service Fund the unused discount and the amount of accrued interest on the Bonds. The chief financial officer shall transfer from the Water Utility Operating Account to the Debt Service Fund amounts of the net revenues sufficient for the payment of all interest and principal then due on the Bonds and all charges due to the Bond Registrar. Such transfers shall be made at the times and in the amounts determined by the chief financial officer, in accordance with policies established by resolutions of the City Council.

(d) Surplus utility revenues from time to time received in the Water Utility Operating Account, in excess of payments due from and reserves required to be maintained in the Water Utility Operating Account and in the Debt Service Fund, may be used for necessary capital expenditures for the improvement of the municipal water utility, for the prepayment and redemption of bonds constituting a lien on the municipal water utility, and for any other proper municipal purpose consistent with policies established by resolutions of the City Council.

3.02 If the balances in the Debt Service Fund are ever insufficient to pay all principal and interest then due on the Bonds, the chief financial officer shall nevertheless provide sufficient money from any other funds of the City which are available for that purpose, and such other funds shall be reimbursed from the Debt Service Fund when the balances therein are sufficient. It is estimated that the net revenues herein pledged and appropriated to the Debt Service Fund will be received at the times and in amounts not less than five percent in excess of the amounts needed to meet when due the principal and interest payments thereon and, accordingly, no tax is presently levied for this purpose. It is recognized, however, that the City's liability on the Bonds is not limited to the revenues so pledged, and the City Council covenants and agrees that it will levy upon all taxable property within the City, and cause to be extended, levied and collected, any taxes found necessary for full payment of the principal of and interest on the Bonds, without limitation as to rate or amount.

3.03 Proceeds of the Bonds on deposit in the Water Utility Operating Account and in the Debt Service Fund may, in the discretion of the chief financial officer, be invested in securities permitted by

Minnesota Statutes, Chapter 118A; provided, that any such investment shall mature at such time and in such amounts as will permit the payment of costs for the improvement program and/or payment of the principal and interest on the Bonds when due.

Section 4. Tax Covenants; Miscellaneous.

4.01 The City Council covenants and agrees with the holders of the Bonds that the City will (i) take all action on its part necessary to cause the interest on the Bonds to be excluded from gross income for federal income taxes including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the Bonds and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the Bonds to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the Bonds and investment earnings thereon on certain specified purposes.

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

(b) In addition, the proceeds of the Bonds and money in the Debt Service Fund shall not be invested in obligations or deposits issued by, guaranteed by or insured by the United States or any agency or instrumentality thereof if and to the extent that such investment would cause the Bonds to be federally guaranteed within the meaning of Section 149(b) of the Internal Revenue Code of 1986, as amended (the "Code").

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

4.03 (a) Pursuant to Section 148(f)(C) of the Code, relating to exception from rebate for certain proceeds to be used to finance construction expenditures, the City hereby covenants that with respect to the available construction proceeds of the Bonds, the following spending requirements are expected to be met: (i) 10% of the available construction proceeds of the Bonds will be spent for the governmental purpose of the Bonds within six months of the date of closing and delivery of the Bonds; (ii) 45% of such proceeds will be spent for such purposes within the one-year period beginning on such date; (iii) 75% of such proceeds will be spent for such purposes within the 18-month period beginning on such date; and (iv) 100% of such proceeds will be spent for such purposes within the two-year period beginning on such date; subject to an exception for reasonable retainage of 5% of the available construction proceeds of the Bonds, and that 100% of the available construction proceeds of the Bonds will be spent within three years from the date of closing and delivery of the Bonds.

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

4.04 In addition to the Bonds, the City is selling, pursuant to a single offering document and on the same date, the following tax-exempt obligations: and General Obligation Capital Improvement Bonds, Series

2018B (the "Series 2018B Bonds") and General Obligation Capital Equipment Notes, Series 2018C (the "Notes"). The Bonds will not be paid out of substantially the same source of funds as the Series 2018B Bonds or the Notes; consequently, the Bonds will not be combined with them for a single issue.

Section 5. Continuing Disclosure. The City acknowledges that the Bonds are subject to the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (17 C.F.R. §240.15c2-12) (the "Rule"). The Rule governs the obligations of certain underwriters to require that issuers of municipal bonds enter into agreements for the benefit of the bondholders to provide continuing disclosure with respect to the Bonds. To provide for the public availability of certain information relating to the Bonds and the security therefor and to permit underwriters of the Bonds to comply with the Rule, which will enhance the marketability of the Bonds, the mayor and the clerk are hereby authorized and directed to execute a continuing disclosure certificate substantially in the form of Exhibit C attached hereto.

Section 6. Certificate of Proceedings.

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

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

6.03 The officers of the City are hereby authorized and directed to certify that they have examined the official statement prepared and circulated in connection with the sale of the Bonds and that to the best of their knowledge and belief the official statement is a complete and accurate representation of the facts and representations made therein as of the date of the official statement.

STATEMENT OF PURPOSE: This resolution authorizes the sale of General Obligation Water Utility Revenue Bonds, Series 2018D, in the approximate amount of \$3,825,000, to provide \$4,000,000 for project costs plus additional amounts for underwriter discount and costs of issuance. The City's municipal advisor anticipates bids with substantial premium, which results in the par amount of the bonds being less than the cash needed for project costs. The resolution allows the chief administrative officer to select the date to offer the bonds for sale, authorizes the City's municipal advisor, Public Financial Management, to solicit bids and authorizes the chief administrative officer and the chief financial officer, or either of them, to award the sale so long as the true interest cost of the bonds does not exceed 4.0%. The proceeds of the Bonds will be used for improvements to the municipal water utility and includes replacement of water mains and water lines within the Superior Street corridor from Sixth Avenue West to Fourth Avenue East, as a part of the reconstruction of Superior Street. The Bonds are payable primarily from net revenues of the municipal water utility.