

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Miles City, Montana (the "City"), hereby certify that the attached resolution is a true copy of a resolution entitled: "RESOLUTION RELATING TO \$1,810,000 SEWER SYSTEM REVENUE BONDS (DNRC WATER POLLUTION CONTROL STATE REVOLVING LOAN PROGRAM), CONSISTING OF \$300,000 SUBORDINATE LIEN TAXABLE SERIES 2012A BOND AND \$1,510,000 SERIES 2012B BOND; AUTHORIZING THE ISSUANCE AND FIXING THE TERMS AND CONDITIONS THEREOF" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at its regular meeting on August 14, 2012, 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notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.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: Sue Galbraith, Bill Melnik, Mark Ahner, John Hollowell, Roxanna Brush and Dwayne Andrews; voted against the same: none; abstained from voting thereon: none; or were absent: John Uden and Jerry Partridge.

WITNESS my hand officially this 14<sup>th</sup> day of August, 2012.

  
City Clerk

BOND RESOLUTION

Relating to

\$1,810,000  
SEWER SYSTEM REVENUE BONDS  
(DNRC WATER POLLUTION CONTROL STATE REVOLVING LOAN PROGRAM)  
CONSISTING OF  
\$300,000 SUBORDINATE LIEN TAXABLE SERIES 2012A BOND AND  
\$1,510,000 SERIES 2012B BOND

CITY OF MILES CITY, MONTANA

Adopted: August 14, 2012

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RESOLUTION NO. 3519

RESOLUTION RELATING TO \$1,810,000 SEWER SYSTEM REVENUE BONDS (DNRC WATER POLLUTION CONTROL STATE REVOLVING LOAN PROGRAM), CONSISTING OF \$300,000 SUBORDINATE LIEN TAXABLE SERIES 2012A BOND AND \$1,510,000 SERIES 2012B BOND; AUTHORIZING THE ISSUANCE AND FIXING THE TERMS AND CONDITIONS THEREOF

RECITALS:

WHEREAS, pursuant to the Water Pollution Control State Revolving Fund Act, Montana Code Annotated, Title 75, Chapter 5, Part 11, 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 water pollution control 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 water pollution control revolving fund under the Federal Water Pollution Control Act (the "Clean 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 Clean Water Act and according to rules adopted by the DEQ and the DNRC; and

WHEREAS, the 2011 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 30% of the total proceeds of such grant be subject to loan forgiveness; and

WHEREAS, the City of Miles City, Montana (the "Borrower"), has applied to the DNRC for the 2012 Loans (as hereinafter defined) from the Revolving Fund to enable the Borrower to finance, refinance or reimburse itself for a portion of the costs of the 2012 Project (as hereinafter defined) which will carry out the purposes of the Clean Water Act, to fund a deposit to the Reserve Account (as hereinafter defined) and to pay costs of issuance of the Series 2012 Bonds (as hereinafter defined); and

WHEREAS, the DNRC offered to make loans in the total principal amount of \$1,810,000 available to the Borrower, with one loan in the amount of \$300,000 contemplated to be forgiven in the event the Borrower satisfies certain conditions; and

WHEREAS, the Borrower contemplates issuing bonds in two series, one a Series 2012A Bond in the maximum principal amount of \$300,000 (the "Series 2012A Bond"), and the other a Series 2012B Bond in the maximum principal amount of \$1,510,000 (the "Series 2012B Bond"); and

WHEREAS, provided that the Borrower complies with certain conditions for principal forgiveness, the Borrower's obligation to repay the Series 2012A Bond will be forgiven; and

WHEREAS, the Borrower is authorized under applicable laws, ordinances and regulations to adopt this Resolution and to issue the Series 2012 Bonds to evidence the 2012 Loans (as hereinafter defined) for the purposes set forth herein; and

WHEREAS, the DNRC will fund: (i) the 2012A Loan (as hereinafter defined) entirely from proceeds of the 2011 EPA Capitalization Grant, (ii) the 2012B Loan (as hereinafter defined) with proceeds of Recycled Money (as hereinafter defined).

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

## ARTICLE I

### DEFINITIONS, RULES OF CONSTRUCTION AND APPENDICES

Section 1.1. Definitions. In this Resolution, unless a different meaning clearly appears from the context, the following terms shall have the following meanings:

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

"Acquisition and Construction Account" means the account within the Sewer System Fund established pursuant to Sections 11.1 and 11.2.

"Act" means Montana Code Annotated, Title 75, Chapter 5, Part 11, as amended from time to time.

"Administrative Expense Surcharge" means (i) in respect of the 2012B Loan, in any event, and (ii) in respect of the 2012A Loan, upon the delivery of a Noncompliance Statement as provided by this Resolution, a surcharge equal to seventy-five hundredths of one percent (0.75%) per annum on the outstanding principal amount of the 2012 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 DNRC to perform such act or sign such document. If authorized by the DNRC, 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 nationally recognized as experienced in matters relating to the issuance by states or political subdivisions of tax-exempt obligations selected by the Borrower and acceptable to the DNRC.

“Bonds” means the Series 2012B Bond and any Debt to be issued on a parity therewith pursuant to Article X, excluding Section 10.4. “Bonds” does not include the Series 2012A Bond.

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

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

“Clean Water Act” means the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387, as amended, and all regulations, rules and interpretations issued by the EPA thereunder.

“Closing” means the date of delivery of the Series 2012 Bonds to the DNRC.

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

“Collateral Documents” means any security agreement, guaranty or other document or agreement delivered to the DNRC securing the obligations of the Borrower under this Resolution and the Series 2012 Bonds. If no Collateral Documents secure such obligations, any reference to Collateral Documents in this Resolution shall be without effect.

“Committed Amount” means the aggregate amount of the 2012 Loans committed to be lent by the DNRC to the Borrower pursuant to Section 4.1, as such amount may be reduced pursuant to Sections 3.2 and 3.4.

“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 2012A Loan, to be completed, executed and delivered by the Borrower to the DNRC pursuant to Section 5.1.2.

“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 2012 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, in respect of the System, (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 2012 Project and to issue the Series 2012 Bonds to finance costs of the 2012 Project.

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

“Estimated Completion Date” means December 31, 2012, the date by which it is estimated by the Borrower that the 2012 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 2012A Bond is forgiven.

“Government Obligations” means direct obligations of, or obligations the principal of and the interest on which are fully and unconditionally guaranteed as to payment by, the United States of America.

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

“Indenture” means the Indenture of Trust, dated as of June 1, 1991, 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 2012B Loan, in any event, and (ii) in respect of the 2012A Loan, upon the delivery of a Noncompliance Statement as provided by this Resolution, a surcharge equal to twenty-five hundredths of one percent (0.25%) per annum on the outstanding principal amount of the 2012 Loans from the date of each advance thereof, payable by the Borrower on a Payment Date.

“Loan Repayments” means periodic installments of principal and interest payable by Borrower in respect of the Series 2012B Bond and, if the DNRC delivers a Noncompliance Statement, of the Series 2012A Bond at the rates and times specified in Article V.

“Loan Term” means that period of time commencing and ending as set in Sections 4.2 and 4.3.

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

“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 2012A Bond is not forgiven.

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

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

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

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

“Payment Date” means, with respect the 2012B Loan, each January 1 and July 1 during the term of the Series 2012B Bond on which a payment of interest or principal and interest is due, as determined under this Resolution and, if a Noncompliance Statement is delivered with respect to the 2012A Loan, each January 1 and July 1 during the term of the Series 2012A Bond on which a payment of interest or principal and interest is due, as determined under this Resolution.

“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.

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

“Project” means an improvement, betterment, reconstruction or extension of the System, including the 2012 Project.

“Public Entity” means a municipality, city, town, county, irrigation district, drainage district, county water and sewer district, a soil conservation district, political or administrative subdivision of State government or other public body established by State law or an Indian tribe that has a federally recognized governing body carrying out substantial governmental duties and powers over any area.

“Recycled Money” means payments and prepayments of principal of loans made under the Program, and any other amounts transferred to the Principal Subaccount in the Revenue Subaccount in the State Allocation Account (as such terms are defined in the Indenture).

“Registrar” means, with respect to the Series 2012 Bonds, the City Clerk or any successor appointed pursuant to this Resolution, and, with respect to any other series of Bonds, the Person or Persons designated by or pursuant to this Resolution or a Supplemental Resolution to receive and disburse the principal of, premium, if any, and interest on the Bonds on behalf of the Borrower and to hold and maintain the Bond Register.

“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 2012 Bonds.

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

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

“Reserve Requirement” means, as of the date of calculation, an amount equal to the maximum principal 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 this Resolution as it may from time to time be amended or supplemented by Supplemental Resolutions.

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

“Revolving Fund” shall have the meaning set forth in the recitals hereof.

“Series 2012 Bonds” means, collectively, the Series 2012A Bond and the Series 2012B Bond.

“Series 2012A Bond” means the \$300,000 Subordinate Lien Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Taxable Series 2012A, issued to the DNRC to evidence the 2012A Loan.

“Series 2012B Bond” means the \$1,510,000 Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2012B, issued to the DNRC to evidence the 2012B Loan.

“State” means the State of Montana.

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

“Subordinate Obligations” mean the Series 2012A Bond and any other subordinate obligations issued under Section 10.4.

“Supplemental Resolution” means any other resolution supplemental or amendatory to this Resolution.

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

“Surplus Net Revenues” means 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 sewer system of the Borrower and all extensions, improvements and betterments thereof hereafter constructed and acquired, including the 2012 Project.

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

“2011 EPA Capitalization Grant” means that EPA Capitalization Grant made available to the Program from 2011 federal appropriations.

“2012 Loans” or “Loan” means, collectively, the 2012A Loan and the 2012B 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 costs of the 2012 Project, to fund a deposit to the Reserve Account and to pay costs of issuance of the Series 2012 Bonds.

“2012 Project” means the designing, engineering and construction of the facilities, improvements and activities the cost of which is being financed by or reimbursed to the Borrower in part with proceeds of the 2012 Loans, described in Appendix A hereto.

“2012A Committed Amount” means the amount of the 2012A Loan committed to be lent by the DNRC to the Borrower pursuant to Section 4.1, as such amount may be reduced pursuant to Section 3.2 and Section 3.4.

“2012A Loan” means the loan made to the Borrower by the DNRC pursuant to the Program in the maximum amount of the 2012A Committed Amount to provide funds to pay costs of the 2012 Project payable under the Program and to pay costs of issuance of the Series 2012A Bond.

“2012B Committed Amount” means the amount of the 2012B Loan committed to be lent by the DNRC to the Borrower pursuant to Section 4.1, as such amount may be reduced pursuant to Section 3.2 and Section 3.4.

“2012B First Advance” means the first advance of funds of the 2012B Loan by the DNRC to the Borrower.

“2012B Loan” means the loan made to the Borrower by the DNRC pursuant to the Program in the maximum amount of the 2012B Committed Amount to provide funds to pay costs of the 2012 Project payable under the Program, to fund a deposit to the Reserve Account and to pay costs of issuance of the Series 2012B Bond.

“Undisbursed Committed Amount” means any undisbursed Committed Amount which is not required to pay costs of the 2012 Project as provided in Section 3.4.

“Sewer System Fund” means the fund created by Section 11.1.

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

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

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

Appendix A: a description of the 2012 Project;

Appendix B-1: the form of the Series 2012A Bond;

Appendix B-2: the form of the Series 2012B Bond;

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

Appendix D: Compliance Certificate and Request.

Section 1.4. Authorization. Under the Enabling Act, the Borrower is authorized to issue and to 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 sewer system or to refund bonds issued for such purposes, provided that the bonds and the interest thereon are to be payable solely out of the income and revenues to be derived from rates, fees and charges for the services, facilities and commodities furnished by such sewer 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 sewer system to the Borrower. The Borrower has determined the Net Revenues of the System are sufficient to satisfy the requirements of Section 6.7, which determination shall be evidenced by a certificate of coverage executed and delivered by the Mayor and City Clerk prior to the Closing.

The Council expects that the obligation of the Borrower to repay the Series 2012A Bond will be forgiven in accordance with the 2011 EPA Capitalization Grant and this Resolution. Forgiveness of the obligation of the Borrower to repay the Series 2012A Bond is contingent on compliance with the requirements of the 2011 EPA Capitalization Grant and this Resolution, as described below.

Section 1.5. Recitals. All acts, conditions and things required by the Constitution and laws of the State to be done, to exist, to happen and to be performed prior to the issuance of the Series 2012 Bonds have been done, do exist, have happened, and have been performed in due time, form and manner, wherefore it is now necessary for the Borrower to establish the form and terms of the Series 2012 Bonds, to provide for the security thereof and to issue the Series 2012 Bonds forthwith.

## ARTICLE II

### REPRESENTATIONS AND COVENANTS

Section 2.1. Representations. The Borrower represents as follows:

(a) Organization and Authority. The Borrower:

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

(ii) has all requisite power and authority and all necessary licenses and permits required as of the date hereof to own and operate the System and to carry on its current activities with respect to the System, to adopt this Resolution and to enter into the Collateral Documents and to issue the Series 2012 Bonds and to carry out and

consummate all transactions contemplated by this Resolution, the Series 2012 Bonds and the Collateral Documents;

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

(iv) has taken all proper action to authorize the execution, delivery and performance of its obligations under this Resolution, the Series 2012 Bonds and the Collateral Documents and the incurrence of the Debt evidenced by the Series 2012 Bonds in the maximum amount of the Committed Amount.

(b) Pending Litigation. There is no litigation or proceeding pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower in any court or before or by any governmental authority or arbitration board or tribunal that, if adversely determined, would materially and adversely affect the existence, corporate or otherwise, of the Borrower, or the ability of the Borrower to make all payments and otherwise perform its obligations under this Resolution, the Series 2012 Bonds and the Collateral Documents, or the financial condition of the Borrower, or the transactions contemplated by this Resolution, the Series 2012 Bonds and the Collateral Documents or the validity and enforceability of this Resolution, the Series 2012 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 2012 Project, the Series 2012 Bonds or any Collateral Documents.

(c) Borrowing Legal and Authorized. The adoption of this Resolution, the execution and delivery of the Series 2012 Bonds and the Collateral Documents and the consummation of the transactions provided for in this Resolution, the Series 2012 Bonds and the Collateral Documents and compliance by the Borrower with the provisions of this Resolution, the Series 2012 Bonds and the Collateral Documents:

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

(ii) do not and will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Borrower pursuant to any ordinance, resolution, indenture, loan agreement or other agreement or instrument (other than this Resolution and any Collateral Documents) to which the Borrower is a party or by which the Borrower or its property may be bound, nor will such action result in any violation of the provisions of 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 2012 Bonds and the Collateral Documents, would constitute a default under this Resolution or the Collateral Documents. The Borrower is not in violation of any term of any agreement, bond resolution, trust indenture, charter or other instrument to which

it is a party or by which it or its property may be bound which violation would materially and adversely affect the transactions contemplated hereby or the compliance by the Borrower with the terms hereof or of the Series 2012 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 Resolution by any governmental body or officer for the making and performance by the Borrower of its obligations under this Resolution, the Series 2012 Bonds and the Collateral Documents (including any necessary sewer rate increase) or for the 2012 Project, the financing or refinancing thereof or the reimbursement of the Borrower for costs thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental authority (other than those, if any, already obtained) is required on the part of the Borrower as a condition to adopting this Resolution, issuing the Series 2012 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 this Resolution and the Collateral Documents, including approving any necessary sewer rate increases.

(f) Binding Obligation. This Resolution, the Series 2012 Bonds and any Collateral Documents 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 2012 Project. The 2012 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 Resolution. The 2012 Project comprises facilities of a type that, as determined by the EPA, will facilitate compliance with the national primary water pollution control regulations applicable to the System or will otherwise significantly further the health protection objectives of the Clean Water Act.

(h) The System. The System is a "public sewage system" within the meaning of the Act and the Clean Water Act in that it is a public sewage system that provides collection, transportation, treatment, or disposal of sewage for 15 or more families or 25 or more persons daily for any 60 or more days in a calendar year.

(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 currently operated or the Borrower's ability to perform its obligations under this Resolution, the Series 2012 Bonds and the Collateral Documents and to pledge any revenues or other property pledged to the payment of the Series 2012 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 this Resolution, the Series 2012 Bonds and the Collateral Documents.

Section 2.2. Covenants.

(a) 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.

(b) Further Assurance. The Borrower shall execute and deliver to the DNRC all such documents and instruments and do all such other acts and things as may be necessary or required by the DNRC to enable the DNRC to exercise and enforce its rights under this Resolution, the Series 2012 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 this Resolution, the Series 2012 Bonds and the Collateral Documents.

(c) Maintenance of Security; Recordation of Interest.

(i) The Borrower shall, at its expense, take all necessary action to maintain and preserve the lien and security interest of this Resolution and the Collateral Documents so long as any amount is owing under this Resolution or the Series 2012 Bonds;

(ii) The Borrower shall forthwith, after the execution and delivery of the Series 2012 Bonds and thereafter from time to time, cause this Resolution and any Collateral Documents granting a security interest in revenues or real or personal property and any financing statements or other notices or documents relating thereto to be filed, registered and recorded in such manner and in such places as may be required by law in order to perfect and protect fully the lien and security interest hereof and thereof and the security interest in them granted by this Resolution and, from time to time, shall perform

or cause to be performed any other act required by law, including executing or causing to be executed any and all required continuation statements and shall execute or cause to be executed any further instruments that may be requested by the DNRC for such perfection and protection; and

(iii) Except to the extent it is exempt therefrom, the Borrower shall pay or cause to be paid all filing, registration and recording fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment of the documents described in subparagraph (ii), and all federal or state fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Series 2012 Bonds and the Collateral Documents and the documents described in subparagraph (ii).

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

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

(1) the preliminary budget for the System, with items for the 2012 Project shown separately; and

(2) when adopted, the final budget for the System, with items for the 2012 Project shown separately.

The Borrower will cause proper and adequate books of record and account to be kept showing complete and correct entries of all receipts, disbursements and other transactions relating to the System, the monthly gross revenues derived from its operation, and the segregation and application of the gross revenues in accordance with this Resolution, in such reasonable detail as may be determined by the Borrower in accordance with generally accepted governmental accounting practice and principles. It will cause such books to be maintained on the basis of the same fiscal year as that utilized by the Borrower. The Borrower shall, within 270 days after the close of each fiscal year, cause to be prepared and supply to the DNRC a financial report with respect to the System for such fiscal year. The report shall be prepared at the direction of the financial officer of the Borrower in accordance with applicable generally accepted governmental accounting principles and, in addition to whatever matters may be thought proper by the financial officer to be included therein, shall include the following:

(A) a statement in detail of the income and expenditures of the System for the fiscal year, identifying capital expenditures and separating them from operating expenditures;

(B) a balance sheet as of the end of the fiscal year;

(C) the number of premises connected to the System at the end of the fiscal year;

(D) the amount on hand in each account of the Sewer System Fund at the end of the fiscal year;

(E) a list of the insurance policies and fidelity bonds in force at the end of the fiscal year, setting out as to each the amount thereof, the risks covered thereby, the name of the insurer or surety and the expiration date of the policy or bond; and

(F) a determination that the report shows full compliance by the Borrower with the provisions of this Resolution during the fiscal year covered thereby, including proper segregation of the capital expenditures from Operating Expenses, maintenance of the required balance in the Revenue Bond Account and, pursuant to Section 6.7, receipt of Net Revenues during each fiscal year at least equal to 125% of the maximum annual principal and interest payable on any outstanding Bonds in the current or any future fiscal year and receipt of Surplus Net Revenues during each fiscal year sufficient to pay principal and interest on Subordinate Obligations as and when due, including, without limitation, the Series 2012A Bond should it become payable as provided herein or, if the report should reveal that the revenues have been insufficient for purposes of compliance with this Resolution, or that the methods used in accounting for such revenues are contrary to any provision of this Resolution the report shall include a full explanation thereof together with recommendations for such change in rates or accounting practices or in the operation of the System as may be required.

The Borrower shall also have prepared and supplied to the DNRC and the DEQ, within 270 days of the close of every other fiscal year, an audit report prepared by an independent certified public accountant or an agency of the state in accordance with generally accepted governmental accounting principles and practice with respect to the financial statements and records of the System. The audit report shall include an analysis of the Borrower's compliance with the provisions of this Resolution.

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

(g) 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 Clean Water Act, as provided in Section 75-5-1113(1)(d) of the Act.

(h) Compliance with Clean Water Act. The Borrower has complied and shall comply with all conditions and requirements of the Clean Water Act pertaining to the 2012 Loans and the 2012 Project and shall maintain sufficient financial, managerial and technical capability to continue to effect such compliance.

(i) Compliance with DEQ Requirements. The Borrower shall comply with plan, specification and other requirements for public sewer systems established by the DEQ, as required by Section 75-5-1113(1)(g) of the Act.

(j) Insurance.

(1) General. The Borrower at all times shall keep and maintain with respect to the System property and liability insurance with financially sound and reputable insurers, qualified under the laws of the State, or self-insurance as authorized by State law and shall 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 State 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 paragraph (j) 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 paragraph (j).

(2) Property Insurance. The Borrower at all times shall keep and maintain with respect to the System property insurance on all buildings, properties, fixtures and equipment constituting a part of the System against loss or damage by such hazards and risks as are ordinarily insured against and in such amounts as are ordinarily carried by public bodies owning and operating properties of a similar character and size; provided that if at any time the Borrower is unable to obtain such insurance, it will obtain insurance in such amounts and against such risks as are reasonably obtainable. The proceeds of all such insurance shall be available for the repair, replacement or reconstruction of damaged or destroyed property and, until paid out in making good such loss or damage, are pledged as security for the outstanding Bonds. All insurance proceeds received in excess of the amount required for restoration of the loss or damage compensated thereby shall be and become part of the revenues appropriated to the Sewer System Fund. If for any reason insurance proceeds are insufficient for the repair, replacement and reconstruction of the insured property, the Borrower shall supply the deficiency from revenues on hand in the Replacement and Depreciation Account and the Surplus Account.

(3) Liability Insurance. The Borrower at all times shall keep and maintain insurance against liability of the Borrower and its employees for injuries to persons (including death) and damage to property resulting from the construction, operation, maintenance, improvement or extension of the System in amounts not less than \$100,000 for death of or personal injury to any one person, \$300,000 for all personal injuries and deaths resulting from any one accident and \$300,000 for property damage in any one accident. The premiums for all insurance required by this subparagraph (3) constitute part of the Operating Expenses of the System, but no insurance liabilities of the Borrower in excess of amounts received under such insurance shall constitute a lien or charge on revenues or any other assets herein or otherwise pledged to the Sewer System Fund.

(k) Handling of Funds; Surety Bonds. The employees of the Borrower, under the direction and control of the City Clerk, shall keep books of account and collect the rates, charges and rentals for the services and facilities provided by the System and for other money currently receivable on account thereof. All money collected with respect to the System shall be deposited daily with the City Clerk. Any failure on the part of the City Clerk to comply and to enforce compliance on the part of all officers and employees concerned with the provisions of this Resolution, and with the Borrower's other regulations respecting the System, shall constitute malfeasance for which the City Clerk and the surety on his or her bond shall be personally liable. The Borrower will cause all persons handling money and other assets of the Sewer System Fund to be adequately bonded for the faithful performance of their duties by a surety company authorized to do business in the State and to account for and pay over such money to the Borrower. Such bond shall be in the penal sum of \$10,000 or such greater amount as may from time to time be on hand in the Debt Service Account, the Reserve Account and the Replacement and Depreciation Account; provided that the City Clerk shall be bonded at all times in the amount of at least \$5,000. All amounts received under such bonds shall be applied to the payment of the loss or damage covered thereby. The premiums for all bonds required by this paragraph (k) constitute part of the Operating Expenses of the System, but no such liabilities of the Borrower in excess of amounts received under such bonds shall constitute a lien or charge on revenues or any other assets herein or otherwise pledged to the Sewer System Fund.

(l) Cost of Insurance and Accounting. The insurance and surety bond premiums and the cost of the bookkeeping and audits herein provided for and of the billings and collection of revenues shall be payable from the Operating Account.

### ARTICLE III

#### USE OF PROCEEDS; THE PROJECT

Section 3.1. Use of Proceeds. The Borrower shall apply the proceeds of the 2012 Loans solely as follows:

(a) The Borrower shall apply the proceeds of the 2012 Loans solely to the financing, refinancing or reimbursement of costs of the 2012 Project as set forth in Appendix A hereto and this Section 3.1, to fund a deposit to the Reserve Account and to pay costs of issuance of the Series 2012 Bonds. The 2012 Loans will be disbursed in accordance with Article IV hereof and Article VII of the Indenture. If the 2012 Project has not been completed prior to Closing, the Borrower shall, as quickly as reasonably possible, complete the 2012 Project and expend proceeds of the 2012 Loans to pay costs of completing the 2012 Project.

(b) No portion of the proceeds of the 2012 Loans shall be used to reimburse the Borrower for costs paid prior to the date of adoption of this Resolution or a Project the construction or acquisition of which occurred or began earlier than March 7, 1985. In addition, if any proceeds of the 2012 Loans are to be used to reimburse the Borrower for Project costs paid prior to the date of adoption of this 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 2012 Loans was incurred after March 7, 1985, or with respect to a Project the construction or acquisition of which began after March 7, 1985. No proceeds of the 2012 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 2012 Project. Set forth in Appendix A to this Resolution is a description of the 2012 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 2012 Loans (the 2012 Project may consist of more than one facility or activity), and an estimated budget relating to the 2012 Project. The 2012 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 as to whether the amendment would cause an increase or decrease in the cost of the 2012 Project or an increase or decrease in the amount of proceeds of the 2012 Loans which will be required to complete the 2012 Project and whether the change will materially accelerate or delay the construction schedule for the 2012 Project;

(b) a written consent to such change in the 2012 Project by an Authorized DNRC Officer; and

(c) an Opinion of Bond Counsel stating that the 2012 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 2012 Bonds were 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 2012 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 2012 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 Supplemental Resolution authorizing the additional loan and delivery of written certifications by officers of the Borrower to the DEQ, the DNRC and the Trustee to the effect that all representations and covenants contained in this Resolution as it may be so amended or supplemented are true as of the date of closing of the additional loan and compliance with applicable tests for the incurrence of such debt. No assurance can be given that any additional loan funds will be available under the Program at the time of any such application. 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 2012 Loans to pay costs of the 2012 Project or as to the availability of additional funds under the Program to increase the principal amount of the 2012 Loans.

Section 3.3. 2012 Project Representations and Covenants. The Borrower hereby represents to and covenants with the DNRC that:

(a) all construction of the 2012 Project has complied and will comply with all federal and state standards, including, without limitation, EPA regulations;

(b) all future construction of the 2012 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 2012 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 2012 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 2012 Project is a project of the type permitted to be financed under the Act, the Enabling Act and the Program and Section 1452 of the Clean Water Act; and

(f) the Borrower will undertake the 2012 Project promptly after the Closing and will cause the 2012 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 2012 Project will be substantially completed by the Estimated Completion Date.

Section 3.4. Completion or Cancellation or Reduction of Costs of the 2012 Project.

(a) Upon completion of the 2012 Project, the Borrower shall deliver to the DNRC a certificate stating that the 2012 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 2012 Project, a separate completion certificate shall be delivered for each.

(b) If all or any portion of the 2012 Project is cancelled or cut back or its costs are reduced or for any other reason the Borrower will not require the full Committed Amounts, 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) \$300,000 (the "2012A Committed Amount") and (ii) \$1,510,000 (the "2012B Committed Amount") for the purposes of financing, refinancing or reimbursing the Borrower for costs of the 2012 Project, funding a deposit to the Reserve Account and paying costs of issuance of the Series 2012 Bonds; provided the DNRC shall not be required to disburse any proceeds of the 2012 Loans after the Estimated Completion Date. The Committed Amounts may be reduced as provided in Sections 3.2 and 3.4.

(b) The DNRC intends to disburse the 2012 Loans through the Trustee. In consideration of the issuance of the Series 2012 Bonds by the Borrower, the DNRC shall make, or cause the Trustee to make, a disbursement of all or a portion of the 2012 Loans upon receipt of the following documents:

(1) an Opinion of Bond Counsel as to the Series 2012A Bond and an Opinion of Bond Counsel as to the validity and enforceability of the Series 2012B Bond and the security therefor and stating in effect that interest on the Series 2012B 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 2012A Bond and the Series 2012B Bond, fully executed and authenticated;

(3) a certified copy of this Resolution;

(4) any other security instruments or documents required by the DNRC or DEQ as a condition to their approval of the 2012 Loans;

(5) if all or part of a Loan is being made to refinance a Project or reimburse the Borrower for costs of a Project paid prior to the Closing, evidence, satisfactory to the DNRC and the Bond Counsel referred to in subparagraph (1) above, (A) that the acquisition or construction of the Project was begun no earlier than March 7, 1985 or the debt was incurred no earlier than March 7, 1985, (B) of the Borrower's title to the Project, (C) of costs of such Project and that such costs have been paid by the Borrower and (D) if such costs were paid in a previous



fiscal year of the Borrower, that the Borrower intended at the time it incurred such costs to finance such costs with tax-exempt debt or a loan under a State revolving fund program such as the Program;

(6) the items required by the Indenture for the portion of the 2012 Loans to be disbursed at Closing; and

(7) such other certificates, documents and other information as the DNRC, the DEQ or the Opinion of Bond Counsel 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 2012 Loans to pay costs of the 2012 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 2011 EPA Capitalization Grant is available to the Program, from and after the 2012B First Advance, the 2012 Loans shall be disbursed, subject to the other terms and conditions of this Resolution, in the following order:

(1) First, at the Closing, the 2012B First Advance will be advanced from the 2012B Loan.

(2) Second, after the 2012B First Advance has been disbursed to the Borrower, the entire amount of the 2012A Loan may then be disbursed to the Borrower as and when needed. For the avoidance of doubt, any amounts of the 2012 Loans to be disbursed at Closing in excess of the 2012B First Advance will be disbursed as proceeds of the 2012A Loan to the extent of the 2012A Committed Amount.

(3) Third, after the entire principal amount of the 2012A Loan has been disbursed to the Borrower, the remaining amount of the 2012B Loan will be disbursed to the Borrower as and when needed.

(4) Fourth, only after the full amount of the 2012A Loan and 2012B Loan has been disbursed to the Borrower, may the Borrower apply to the costs of the Project, if any, any other funds available to it, including grants or other funds.

(e) The Borrower shall not be entitled to, and the DNRC shall have no obligation to make, the 2012B First Advance or any subsequent advance of any amounts under the 2012B Loan until such time as the Borrower shall have funded the Reserve Account in an amount then required to satisfy the Reserve Requirement.

(f) The Borrower shall submit the request for the 2012B First Advance in the form required by the DNRC so that it is received in sufficient time for the DNRC to process the information by the date desired by the Borrower for the making of the 2012B First Advance.

(g) For refinancings, a disbursement schedule complying with the requirements of the Clean Water Act shall be established by the DNRC and the Borrower at Closing.

(h) If all or a portion of the 2012 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) relating to such costs. The Trustee shall disburse such amounts to the Borrower pursuant to a disbursement schedule complying with the requirements of the Clean Water Act established by the DNRC and the Borrower at the Closing.

(i) Notwithstanding anything herein to the contrary, the Trustee shall not be obligated to disburse the 2012 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 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.

(j) Upon making each 2012A Loan disbursement and 2012B Loan disbursement, the Trustee shall note such disbursement on Schedule A to the Series 2012A Bond and the Series 2012B Bond, respectively. At Closing, Schedule A to the Series 2012B Bond shall note the 2012B First Advance.

(k) The Borrower agrees that it will deposit in the Reserve Account upon receipt thereof, on the date of the 2012B First Advance and any subsequent disbursement dates, any proceeds of the 2012B 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 portion of the 2012 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 Debt Service Account. The amount of any such transfer shall be a credit against the interest payments due on the Series 2012 Bonds and interest thereon shall accrue only from the date of transfer.

(l) Compliance by the Borrower with its representations, covenants and agreements contained in this Resolution and the Collateral Documents shall be a further condition precedent to the disbursement of the 2012 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 2012 Loans.

Section 4.2. Commencement of Loan Term. The Borrower's obligations under this Resolution and the Collateral Documents shall commence on the date hereof unless otherwise provided in this Resolution. However, the obligation to make payments under Article V hereof shall commence only upon the first disbursement by the Trustee of the 2012B First Advance.

Section 4.3. Termination of Loan Term. The Borrower's obligations under this Resolution and the Collateral Documents in respect of the Series 2012 Bonds shall terminate upon payment in full of all amounts due under the Series 2012 Bonds and this Resolution; provided, however, that the covenants and obligations provided in Article VI and Section 12.4 shall survive the termination of this 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 2012 LOANS

Section 5.1. Repayment of 2012 Loans. The Borrower shall repay the amounts borrowed by it pursuant to Section 4.1 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 2012A 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 2012A 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 2012A 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 2012A 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 from the date of each advance under the Series 2012A Bond. The 2012B Loan shall bear interest at the rate of two percent (2.00%) per annum and the Borrower shall pay the Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the outstanding principal amounts of the 2012B Loan. For purposes of this Resolution and the Program, with respect to the 2012A Loan and the 2012B Loan, the term "interest on the 2012 Loans" or "interest on the 2012A Loan" or "interest on the 2012B Loan," when not used in conjunction with a reference to any surcharges, shall include the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge, if applicable. 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 2012A 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 2012A Loan, unless the DNRC forgives the Borrower's obligation to repay the principal of the 2012A 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 2012A Loan 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 2012A Loan shall be payable on each Payment Date following the date of delivery by the DNRC of a Noncompliance Statement and concluding on July 1, 2032; and
- (2) the principal of the 2012A Loan shall be payable 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, 2032, and the amount of each principal payment shall be calculated on the basis of a substantially level debt service at the rate of 3.00% per annum; provided that principal of the 2012A 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 2012 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 in their sole and absolute discretion 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 2012A Bond or interest or surcharges thereon and the Series 2012A 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 absolute discretion of the DNRC and the DEQ, or the DNRC or the DEQ determines at any time that the 2012 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 2012A 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 2012A 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 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 2012B Loan. The Loan Repayments and surcharges on the 2012B 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 2012B Loan shall be payable on each January 1 and July 1, beginning on the first to occur of either of such dates following the date of the 2012B First Advance, which is the first Payment Date after the 2012B First Advance, but in any event no earlier than January 1, 2013, and concluding on July 1, 2032; and
- (2) the principal of the 2012B Loan shall be repayable on each Payment Date, beginning on the January 1 or July 1 that is the first to occur following the date of the 2012B First Advance, but in any event no earlier than January 1, 2013, and concluding July 1, 2032, and the amount of each principal payment shall be calculated on the basis of a substantially level debt service at a rate of 3.00% per annum; provided that principal of the 2012B Loan is payable only in amounts that are multiples of \$1,000.

5.1.5. Details Regarding 2012 Loan Repayments. Upon each disbursement of the 2012 Loans to the Borrower pursuant to Section 4.1 hereof, the Trustee shall enter or cause to be entered the amount advanced on Schedule A to the Series 2012A Bond and the Series 2012B Bond, as applicable, under "Advances" and the total amount advanced under Section 4.1, including such disbursement, under "Total Amount Advanced." Loan Repayments and the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge on the 2012B Loan and, if applicable, on the 2012A Loan, accrue on each such advance from the date of disbursement and shall be due and payable on the dates and in the amounts shown in Schedule B to the Series 2012A Bond and the Series 2012B Bond, as such Schedule B shall be modified from time to time as provided in Sections 5.1.2, 5.1.3, 5.1.4 and below. The portion of each such Loan Repayment consisting of principal, of interest, of Administrative Expense Surcharge and of Loan Loss Reserve Surcharge shall be set forth in Schedule B to the Series 2012A Bond and the Series 2012B Bond.

If the DNRC shall have delivered a Noncompliance Statement, then Schedule B to the Series 2012A Bond shall continue to reflect interest and surcharges on amounts advanced under the Series 2012A Bond at the rate of 3.00% per annum. If the

DNRC delivers a Forgiveness Statement, Schedule B to the Series 2012A 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 2012B Bond and, if applicable, the Series 2012A Bond, and the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge as to the Series 2012B Bond and, if applicable, the Series 2012A Bond under this Section 5.1 shall be credited against the same payment obligation under the Series 2012B Bond and, as applicable, the Series 2012A 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 2012 Loans, all reasonable expenses of the DNRC and the Trustee in connection with the 2012 Loans, the Collateral Documents and the Series 2012 Bonds, including, but not limited to:

- (a) the cost of reproducing this Resolution, the Collateral Documents and the Series 2012 Bonds;
- (b) the fees and disbursements of Bond Counsel and other Counsel utilized by the DNRC and the Trustee in connection with the 2012 Loans, this Resolution, the Collateral Documents and the Series 2012 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 2012 Bonds, whether or not the Series 2012 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 2012 Bonds, the Collateral Documents and this Resolution (and with the exceptions noted therein) and all expenses, including attorneys' fees, relating to any amendments, waivers, consents or collection or enforcement proceedings pursuant to the provisions hereof or thereof.

Section 5.3. Prepayments. The Borrower may not prepay all or any part of the outstanding principal amount of the Series 2012B Bond and, if applicable, the Series 2012A 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, Administrative Expense Surcharge and Loan Loss Reserve Surcharge to the date of prepayment on the amount of principal prepaid. If the Series 2012 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 Resolution and the Series 2012 Bonds and to perform its other agreements contained in this Resolution, the Series 2012 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 Resolution and the Series 2012 Bonds, (b) shall perform all its other agreements in this Resolution, the Series 2012 Bonds and the Collateral Documents and (c) shall not terminate this Resolution, the Series 2012 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 2012 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 thereof or any failure of the DNRC to perform any of its agreements, whether express or implied, or any duty, liability or obligation arising from or connected with this Resolution.

Section 5.5. Limited Liability. All payments of principal of and interest on the 2012 Loans and other payment obligations of the Borrower hereunder and under the Series 2012 Bonds shall be special, limited obligations of the Borrower payable with respect to the Series 2012B Bond solely out of the Net Revenues or, with respect to the Series 2012A Bond, solely out of Surplus Net Revenues and shall not, except at the option of the Borrower and as permitted by law, be payable out of any other revenues of the Borrower. The obligations of the Borrower under this Resolution and the Series 2012 Bonds shall never constitute an indebtedness of the Borrower within the meaning of any State constitutional provision or statutory or charter limitation and shall never constitute or give rise to a pecuniary liability of the Borrower or a charge against its general credit or taxing power. The taxing powers of the Borrower may not be used to pay principal of or interest on the Series 2012 Bonds, no funds or property of the Borrower other than the Net Revenues may be required to be used to pay principal of or interest on the Series 2012B Bond, and no funds or property of the Borrower other than the Surplus Net Revenues may be required to be used to pay principal of or interest, if any, on the Series 2012A Bond.

## ARTICLE VI

### OTHER AGREEMENTS OF BORROWER

Section 6.1. Maintenance of System; Liens. The Borrower shall maintain the System, including the 2012 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 2012 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 2012 Bonds; provided that this Section 6.1 shall not be deemed to be violated if a mechanic's or contractor's lien is filed against any such property so long as the Borrower uses its best efforts to obtain the discharge of such lien and promptly reports to the DNRC the filing of such lien and the steps it plans to take and does take to discharge such lien.

Section 6.2. Maintenance of Existence; Merger, Consolidation, Etc.; Disposition of Assets. The Borrower shall maintain its corporate existence, except that it may consolidate with or merge into another Governmental Unit or permit one or more Governmental Units to consolidate with or merge into it or may transfer all or substantially all of its assets, including the 2012 Project, to another Governmental Unit if the surviving, resulting or transferee entity (if other than the Borrower) (i) is a Public Entity and (ii) assumes in writing all of the obligations of the Borrower under this Resolution, the Series 2012 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 this Resolution, the Series 2012 Bonds and the Collateral Documents, (b) such action does not violate the Act or the Clean Water Act and does not adversely affect the exclusion of interest on the Series 2012 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 6.2.

Notwithstanding the foregoing paragraph, the Borrower will not mortgage, lease, transfer, sell or otherwise dispose of any real or personal properties of the System, unless (a) prior to or simultaneous with such mortgage, lease, transfer, sale or other disposition, all of the Bonds then outstanding shall be discharged as provided in Article XIV; or (b) (i) the properties to be mortgaged, leased, transferred, sold or otherwise disposed of are unserviceable, inadequate, outmoded, worn out, obsolete or no longer required for use in connection with the System or beneficial to the general public or necessary to carry out the purposes of the Clean Water Act; and (ii) the mortgage, lease, transfer, sale or other disposition will not prevent the Borrower from complying with the provisions of this Resolution; and (iii) all proceeds of the mortgage, lease, transfer sale or other disposition of such properties are deposited into the Sewer System Fund.

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

(a) The Borrower covenants and agrees that it will not use or permit to be used any of the proceeds of the Series 2012 Bonds or any other funds of the Borrower, directly or indirectly, in a manner that would cause, or take any other action that would cause, any State Bond to be an “arbitrage bond” within the meaning of Section 148 of the Code or would otherwise cause the interest on the State Bonds to be included in gross income of the recipients thereof for federal income tax purposes. In addition, 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 2012 Loans or the portion of the 2012 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.

(b) The Borrower shall not use or permit the use of the 2012 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.

(c) At the Closing of the 2012 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 (except State Bonds the interest on which the State did not intend to be excluded from gross income of the recipients thereof for federal income tax purposes) from gross income of the recipients thereof for federal income tax purposes.

(d) Any portion of the 2012 Project being refinanced or the cost of which is being reimbursed was acquired by and is now and shall, during the term of the 2012 Loans, be owned by the Borrower and not by any other Person. Any portion of the 2012 Project being financed shall be acquired by and shall, during the term of the 2012 Loans, be owned by the Borrower and not by any other Person. Notwithstanding the previous two sentences, the Borrower may transfer the 2012 Project or a portion thereof to another Governmental Unit which is also a Public Entity if such transfer is otherwise permitted hereunder and if such organization agrees with the DNRC to comply with Sections 2.2(h), 2.2(i) and 6.3 hereof and if the DNRC receives an Opinion of Bond Counsel that such transfer will not violate the Act or the Clean Water Act or adversely affect the exclusion of interest on the Series 2012 Bonds from gross income for purposes of federal income taxation. In addition, except as otherwise provided herein or in any Collateral Documents, the Borrower may sell or otherwise dispose of any portion of the 2012 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 Clean Water Act.

(e) The Borrower agrees that during the Loan Term it will not contract with or permit any Private Person to manage the 2012 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 will not violate the Act or the Clean Water Act or adversely affect the exclusion of interest on the State Bonds from gross income of the recipients thereof for federal income tax purposes.

(f) The Borrower may not lease the 2012 Project or any portion thereof to any Person other than an exempt Person which agrees in writing with the Borrower and the State not to cause any default to occur under this Resolution, provided the Borrower may lease all or any portion of the 2012 Project to a non-exempt 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 of the recipient thereof for federal income tax purposes.

(g) The Borrower shall not change the use or nature of the 2012 Project if (i) such change will violate the Clean Water Act or (ii) so long as the State Bonds are outstanding unless, in the Opinion of Bond Counsel delivered to the DNRC, such change will not result in the inclusion in gross income of interest on the State Bonds for federal income tax purposes.

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

Section 6.5. Billing. The charges for sewer services shall be billed at least monthly, and if the bill is not paid within 90 days of the date of billing, or if the customer fails to comply with all rules and regulations established for the System within 90 days after notice of

violation thereof (which notice shall be given promptly upon discovery of any such violation), the sewer service to the premises involved shall be discontinued and shall not be resumed until payment of all past-due bills for sewer service or approval by the Council of a contractual payment agreement for sewer service and compliance with all such rules and regulations. The Borrower shall take appropriate legal action to collect the unpaid charges, including, to the extent now or hereafter authorized by law, making the charge a lien against the real property served by the sewer connection for which the charge remains unpaid and causing charges with respect to such properties to be collected in the same manner as taxes levied against property within the Borrower.

Section 6.6. Remedies. The DNRC, so long as it owns the Series 2012 Bonds, or the owners of not less than 25% in principal amount of the outstanding Bonds issued and secured under the provisions of this Resolution shall have the right, either at law or in equity, through suit, action or other proceedings, to protect and enforce the rights of all owners of such Bonds and to compel the performance of any and all of the covenants required herein to be performed by the Borrower, and its officers and employees, including but not limited to the fixing and maintaining of rates, fees and charges and the collection and proper segregation of gross revenues and the application and use thereof. The owners of a majority in principal amount of the outstanding Bonds shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Bond owners or the exercise of any power conferred on them and the right to waive a default in the performance of any such covenant, and its consequences, except a default in the payment of the principal of, premium, or interest on any Bond when due. However, nothing herein shall impair the absolute and unconditional right of the owner of each such Bond to receive payment of the principal of, premium, if any, and interest on such Bond as such become payable, and to institute suit for any such payment. Any court having jurisdiction of the action may appoint a receiver to administer the System on behalf of the Borrower with power to charge and collect rates, fees and charges sufficient to provide for the payment of any Bonds or obligations outstanding against the System, and to apply the gross revenues in conformity with this Resolution and the laws of the State.

Section 6.7. Rate Covenant. While any Bonds are outstanding and unpaid, the rates, charges and rentals for all services and facilities furnished and made available by the System to the Borrower and its inhabitants, and to all customers within or without the boundaries of the Borrower, shall be reasonable and just, taking into consideration the cost and value of the System and the cost of maintaining and operating it, and the amounts necessary for the payment of all Bonds and the interest accruing thereon, and the proper and necessary allowances for the depreciation of the System, and no free service shall be provided to any Person. It is covenanted and agreed that the rates, charges and rentals to be charged to all recipients of sewer services shall be maintained and shall be revised, whenever and as often as may be necessary, according to schedules such that the revenues for each fiscal year will be at least sufficient to pay the Operating Expenses, to maintain the balance in the Reserve Account at the Reserve Requirement, to provide reserves for the replacement and depreciation of the System, to maintain the Operating Reserve, to produce Net Revenues during each fiscal year commencing with the fiscal year ending June 30, 2012, not less than 125% of the maximum annual principal and interest payable on any outstanding Bonds in the current or any future fiscal year, and to produce Surplus Net Revenues during each fiscal year sufficient to pay principal and interest on

Subordinate Obligations as and when due, including, without limitation, the Series 2012A Bond should it become payable as provided herein. As of the date of this Resolution, for purposes of the calculation described in the immediately preceding sentence, principal of and interest on the Series 2012A Bond shall be disregarded. However, in the event the DNRC delivers a Noncompliance Statement, the Borrower shall forthwith (and in any event no later than three months after the delivery of such Noncompliance Statement) cause the rates, charges and rentals charged to all recipients of sewer services to be maintained and to be revised whenever and as often as may be necessary, according to schedules such that the revenues for each fiscal year will be at least sufficient to pay the Operating Expenses, to maintain the balance in the Reserve Account at the Reserve Requirement, to provide reserves for the replacement and depreciation of the System, to maintain the Operating Reserve, to produce Net Revenues during each fiscal year commencing with the fiscal year ending June 30 of that fiscal year in which the DNRC shall have delivered such Noncompliance Statement, not less than 125% of the maximum annual principal and interest payable on any outstanding Bonds in the current or any future fiscal year, and to produce Surplus Net Revenues adequate to pay Subordinate Obligations as and when due, including, without limitation, the Series 2012A Bond with interest thereon at 3.00% per annum.

If at the close of any fiscal year the Net Revenues or Surplus Net Revenues actually received during such year have been less than required hereby, the Borrower will forthwith prepare a schedule of altered rates, charges and rentals which are just and equitable and sufficient to produce Net Revenues and Surplus Net Revenues in such amounts, and place such schedule in operation at the earliest possible date.

The establishment of the above ratio of Net Revenues to principal and interest on the Bonds is deemed necessary for the DNRC to make the 2012 Loans to the Borrower. Net Revenues in excess of the requirements of this Section 6.7 may be used as authorized in Article XI of this Resolution.

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

## ARTICLE VII

### INDEMNIFICATION OF DNRC AND DEQ

The Borrower shall, to the extent permitted by law, indemnify and save harmless the DNRC and the DEQ and their officers, employees and agents (each an "Indemnified Party" or, collectively, the "Indemnified Parties") against and from any and all claims, damages, demands, expenses, liabilities and losses of every kind asserted by or on behalf of any Person arising out of the acts or omissions of the Borrower or its employees, officers, agents, contractors, subcontractors, or consultants in connection with or with regard or in any way relating to the condition, use, possession, conduct, management, planning, design, acquisition, construction, installation or financing of the 2012 Project. The Borrower shall, to the extent permitted by law, also indemnify and save harmless the Indemnified Parties against and from all costs, reasonable attorneys' fees, expenses and liabilities incurred in any action or proceeding brought by reason of any such claim or demand. If any proceeding is brought against an Indemnified Party by reason of such claim or demand, the Borrower shall, upon notice from an Indemnified Party, defend such proceeding on behalf of the Indemnified Party.

## ARTICLE VIII

### ASSIGNMENT

Section 8.1. Assignment by Borrower. The Borrower may not assign its rights and obligations under this Resolution or the Bonds, except as provided in Section 6.3.

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

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

## ARTICLE IX

### THE SERIES 2012 BONDS

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

of which taxes may be levied except to pay for services provided by the undertaking to the Borrower.

Section 9.2. Outstanding Bonds. No bonds or indebtedness are currently outstanding that are payable from revenues (gross or net) received by the Borrower from or in connection with the operation of the System.

Section 9.3. Sources of Funding. A description of the 2012 Project is set forth on Appendix A hereto. Costs of the 2012 Project will be paid from the proceeds of the Series 2012 Bonds.

Section 9.4. Net Revenues Available. The Borrower is authorized to charge just and equitable rates, charges and rentals for all services directly or indirectly furnished by the System, and to pledge and appropriate to the Series 2012B Bond the Net Revenues (and in respect of the Series 2012A Bond, if necessary, the Surplus Net Revenues) to be derived from the operation of the System, including improvements, betterments or extensions thereof hereafter constructed or acquired. The Net Revenues to be produced by such rates, charges and rentals during the term of the Series 2012B Bond are expected to be more than sufficient to pay the principal and interest when due on the Series 2012B Bond, and to create and maintain reasonable reserves therefor and to provide an adequate allowance for replacement and depreciation, as prescribed herein. For purposes of the foregoing statement, principal of and interest on the 2012A Loan are disregarded. The Borrower acknowledges and agrees that if the DNRC delivers a Noncompliance Statement to the Borrower that the obligation of the Borrower to repay the principal of the 2012A Loan is not forgiven as provided in Section 5.1.2 as determined in the sole and complete discretion of the DNRC and DEQ, then principal and interest and surcharges will become due and owing on the 2012A Loan evidenced by the Series 2012A Bond as provided in Section 5.1.2 and the Borrower shall thereupon, and no later than three months after delivery of such Noncompliance Statement, to the extent required by Section 6.7 hereof, 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 this Resolution.

Section 9.5. Issuance and Sale of the Series 2012 Bonds. The Council has investigated the facts necessary and hereby finds, determines and declares it to be necessary and desirable for the Borrower to issue the Series 2012 Bonds to evidence the 2012 Loans. The Series 2012 Bonds are issued to the DNRC without public sale pursuant to Montana Code Annotated, Section 7-7-4433.

Section 9.6. Terms. The Series 2012A Bond and the Series 2012B Bond shall be in the maximum principal amount equal to the original 2012A Committed Amount and the 2012B Committed Amount, respectively, shall each be issued as a single, fully registered bond numbered R-1, shall be dated as of the date of delivery to the DNRC, and shall bear interest at the rate charged by the DNRC on the 2012A Loan and the 2012B Loan, respectively. The principal of and interest on the Series 2012B Bond and, if applicable, the principal of and interest on the Series 2012A Bond, and any Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be payable on the same dates and in the same amounts on Loan Repayments are payable. Advances of principal of the Series 2012A Bond or the Series 2012B Bond shall be

deemed made when advances of the 2012A Loan or the 2012B Loan, respectively, are made under Section 4.1, and such advances shall be payable in accordance with Schedule B to the Series 2012B Bond and, if applicable, the Series 2012A Bond, as it may be revised by the DNRC from time to time in accordance with Section 5.1. The Series 2012A Bond is a Subordinate Obligation payable only from the Surplus Net Revenues available in the Replacement and Depreciation Account or the Surplus Account. The Borrower may prepay the Series 2012 Bonds, in whole or in part, only upon the terms and conditions under which it can prepay the 2012 Loans under Section 5.3.

Section 9.7. Negotiability, Transfer and Registration. The Series 2012 Bonds shall be fully registered as to both principal and interest, and shall be initially registered in the name of and payable to the DNRC, shall be dated the date of delivery. While so registered, principal of and interest on the Series 2012 Bonds shall be payable to the DNRC at the Office of the Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, Montana 59620 or such other place as may be designated by the DNRC in writing and delivered to the Borrower. The Series 2012 Bonds shall be negotiable, subject to the provisions for registration and transfer contained in this Section 9.7. No transfer of the Series 2012 Bonds shall be valid unless and until (1) the holder, or his duly authorized attorney or legal representative, has executed the form of assignment appearing on the Series 2012 Bonds, and (2) the City Clerk of the Borrower or successors, as bond registrar (the "Registrar"), has duly noted the transfer on the Series 2012 Bonds and recorded the transfer on the registration books of the Registrar. The Registrar may, prior to noting and recording the transfer, require appropriate proof of the transferor's authority and the genuineness of the transferor's signature. The Borrower shall be entitled to deem and treat the Person in whose name the Series 2012 Bonds is registered as the absolute owner of the Series 2012 Bonds for all purposes, notwithstanding any notice to the contrary, and all payments to the registered holder shall be valid and effectual to satisfy and discharge the Borrower's liability upon such Series 2012 Bonds to the extent of the sum or sums so paid.

Section 9.8. Execution and Delivery. The Series 2012 Bonds shall be executed on behalf of the Borrower by the manual signatures of the Mayor and the City Clerk. Any or all of such signatures may be affixed at or prior to the date of delivery of the Series 2012 Bonds. In the event that any of the officers who shall have signed the Series 2012 Bonds shall cease to be officers of the Borrower before the Series 2012 Bonds are issued or delivered, their signatures shall remain binding upon the Borrower. Conversely, the Series 2012 Bonds may be signed by an authorized official who did not hold such office on the date of adoption of this Resolution. The Series 2012 Bonds shall be delivered to the DNRC, or its attorney or legal representative.

Section 9.9. Form. The Series 2012A Bond shall be prepared in substantially the form attached as Appendix B-1. The Series 2012B Bond shall be prepared in substantially the form attached as Appendix B-2.

## ARTICLE X

### PRIORITIES AND ADDITIONAL DEBT

Section 10.1. General Limitations; Issuable in Series. The aggregate principal amount of Bonds that may be authenticated and delivered and Outstanding under this Resolution is not limited, except as provided in Article IX and this Article X and except as may be limited by law.

The Bonds may be issued in series as from time to time authorized by the Council. With respect to the Bonds of any particular series, the Borrower may incorporate in or add to the general title of such Bonds any words, letters or fixtures designed to distinguish that series.

The Bonds shall be special, limited obligations of the Borrower. Principal of, premium, if any, and interest on the Bonds shall be payable solely from Net Revenues (other than to the extent payable out of proceeds of the Bonds). The Bonds shall not be or constitute a pledge of the general credit or taxing powers of the Borrower of any kind whatsoever. Neither the Bonds nor any of the agreements or obligations of the Borrower contained herein shall be construed to constitute an indebtedness of the State or the Borrower within the meaning of any constitutional or statutory provisions whatsoever.

Each and all of the Bonds shall be equally and ratably secured without preference or priority of any one Bond over any other by reason of serial number, date of issue, or otherwise.

Each series of Bonds (except the Series 2012 Bonds, which are created by Article IX) shall be created by a Supplemental Resolution. The Bonds of each series (other than the Series 2012 Bonds, as to which specific provision is made in this Resolution) shall bear such date or dates, shall be payable at such place or places, shall have such stated maturities and redemption dates, shall bear interest at such rate or rates, from such date or dates, shall be payable in such installments and on such dates and at such place or places, and may be redeemable at such price or prices and upon such terms (in addition to the prices and terms herein specified for redemption of all Bonds) as shall be provided in the Supplemental Resolution creating that series, all upon such terms as the Borrower may determine. The Borrower may, at the time of the creation of any series of Bonds or at any time thereafter, make, and the Bonds of that series may contain provision for:

- (a) a sinking, amortization, improvement or other analogous fund;
- (b) limiting the aggregate principal amount of the Bonds of that series and of additional Bonds thereafter to be issued;
- (c) exchanging Bonds of that series, at the option of the holders thereof, for other Bonds of the same series of the same aggregate principal amount of a different authorized kind or authorized denomination or denominations; or

- (d) registration, transfer and delivery.

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

- (a) Any matured Bonds may be refunded if moneys available for the payment thereof at maturity, within the limitation prescribed in Section 10.01, should at any time be insufficient to make such payment in full.

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

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

- (d) Any refunding revenue Bonds issued for the above purposes may be made payable from the Net Revenues on a parity as to interest with all then outstanding Bonds; provided that (1) if not all of the Bonds of a series are refunded, the maturity of each refunding revenue Bond shall be subsequent to the last maturity of any then outstanding Bonds of such series which are not refunded or to be refunded out of moneys on deposit with such escrow agent, and (2) no Bond owner shall be required to accept a refunding revenue Bond in exchange for any Bond owned by him.

Section 10.3. Other Parity Bonds. The Borrower reserves the right to issue additional Bonds payable from the Revenue Bond Account, on a parity as to both principal and interest with the Series 2012B Bond, if the Net Revenues of the System for the last complete fiscal year preceding the date of issuance of such additional Bonds have equaled at least 125% of the maximum amount of principal and interest payable from said Revenue Bond Account in any subsequent fiscal year during the term of the outstanding Bonds, on all Bonds then outstanding and on the additional Bonds proposed to be issued, and so long as the DNRC is the holder of any Bonds, the written consent of the DNRC shall be obtained prior to the issuance of such additional Bonds. For the purpose of the foregoing computation, the Net Revenues for the fiscal year preceding the issuance of additional Bonds shall be those shown by the financial reports caused to be prepared by the Borrower pursuant to Section 2.2(e), except that if the rates and charges for services provided by the System have been changed since the beginning of such preceding fiscal year, then the rates and charges in effect at the time of issuance of the additional Bonds or finally authorized to go into effect within 60 days thereafter shall be applied to the quantities of service actually rendered and made available during such preceding fiscal year to ascertain the gross revenues, from which there shall be deducted to determine the Net Revenues, the actual operation and maintenance cost plus any additional annual costs of operation and maintenance which the Consultant estimates will be incurred because of the improvement or extension of the System to be constructed from the proceeds of the additional Bonds proposed to



be issued. In no event shall any additional Bonds be issued and made payable from the Revenue Bond Account if the Borrower is then in default in any payment of principal of or interest on any outstanding Bonds payable therefrom or if there then exists any deficiency in the balances required by this Resolution to be maintained in any of the accounts of the Sewer System Fund, which will not be cured or restored upon the issuance of the additional Bonds. In connection with the issuance of a series of additional Bonds, the Borrower shall cause amounts in the Reserve Account to be increased, from the proceeds of the additional Bonds or from surplus Net Revenues, to an amount equal to the Reserve Requirement during the term of the outstanding Bonds or so much thereof as will not cause the Borrower to violate the provisions of Section 12.2 hereof.

Section 10.4. Subordinate Bonds. Nothing in this Resolution shall preclude the Borrower from issuing additional bonds, notes or other obligations which are expressly made a charge on only the Surplus Net Revenues of the System subordinate to the pledge of Net Revenues to the Revenue Bond Account and the Reserve Account (such additional obligations, the "Subordinate Obligations"); provided, however, no obligations may be issued pursuant to this Section 10.4 if a deficiency exists in the Revenue Bond Account or the Reserve Account which is not to be restored by the issuance of the Subordinate Obligations. Any Surplus Net Revenues segregated to pay such Subordinate Obligations in the Sewer System Fund are subject to the prior appropriation thereof to the Operating Account, the Revenue Bond Account or the Reserve Account if necessary to meet the requirements thereof.

## ARTICLE XI

### SEWER SYSTEM FUND

Section 11.1. Bond Proceeds and Revenues Pledged and Appropriated. A special Sewer System Fund is hereby created and shall be maintained as a separate and special bookkeeping account on the official books of the Borrower until all Bonds and interest and redemption premiums due thereon have been fully paid, or the Borrower's obligations with reference to such Bonds have been discharged as provided in this Resolution. All proceeds of Bonds issued hereunder and all other funds presently on hand derived from the operation of the System are irrevocably pledged and appropriated to the Sewer System Fund. In addition, there is hereby irrevocably pledged and appropriated to the Sewer System Fund all gross revenues and receipts from rates, fees, charges and rentals imposed for connections with and for the availability, benefit and use of the System and from any sales of property acquired for the System and all income received from the investment of such gross revenues, including investment of the reserve established in the Reserve Account and the Operating Reserve established in the Operating Account, but excluding any special assessments or taxes levied for construction of any part of the System and the proceeds of any grant or loan from the State or the United States, and any investment income thereon, to the extent such exclusion is a condition to such grant or loan. The Sewer System Fund shall be subdivided into separate accounts as designated and described in Sections 11.2 through 11.7, to segregate income and expenses received, paid and accrued for the respective purposes described in those sections. The gross revenues received in the Sewer System Fund shall be apportioned monthly, commencing as of the first day of the calendar month immediately following the Closing.

Section 11.2. Acquisition and Construction Account. The Acquisition and Construction Account shall be used only to pay as incurred and allowed costs which under accepted accounting practice are capital costs of the 2012 Project and of such future reconstructions, improvements, betterments or extensions of the System as may be authorized in accordance with law, including but not limited to payments due for work and materials performed and delivered under construction contracts, architectural, engineering, inspection, supervision, fiscal and legal expenses, the cost of lands and easements, reimbursement of any advances made from other Borrower funds, and all other expenses incurred in connection with the acquisition, construction and financing of any such undertaking. To the Acquisition and Construction Account shall be credited as received all proceeds of Bonds issued hereunder (except proceeds of refunding bonds appropriated to the payment of outstanding Bonds and amounts required to be credited to the Revenue Bond Account) and all other funds appropriated by the Borrower for the System and any other funds appropriated by the Borrower for the System, and all income received from the investment of the Acquisition and Construction Account. Upon completion of a capital improvement or program of capital improvements for the System, the balance remaining in the Acquisition and Construction Account shall be credited to the Reserve Account to the extent required to establish the required balance therein and, to the extent not so required, to the Replacement and Depreciation Account.

Section 11.3. Operating Account. Upon each monthly apportionment there shall first be set aside and credited to the Operating Account, as a first charge on the gross revenues, such amount as may be required over and above the balance then held in the account to pay the reasonable and necessary Operating Expenses of the System which are then due and payable, or are to be paid prior to the next monthly apportionment. The term "Operating Expenses" shall mean the current expenses, paid or accrued, of operation, maintenance and repair of the System and its facilities, as calculated in accordance with sound accounting practices, and shall include, without limitation, administrative expenses of the Borrower relating solely to the System, premiums for insurance on the properties thereof, labor and the cost of materials and supplies used for current operation, maintenance and repair. Such expenses shall not include any allowance for interest expense or depreciation, renewals or replacements of capital assets of the System and shall not include any portion of the salaries or wages paid to any officer or employee of the Borrower, except such portion as shall represent reasonable compensation for the performance of duties necessary to the operation of the System. There shall also be credited to this account a sum equal to the estimated average monthly Operating Expenses to establish appropriate reserves for current expenses which are not recurrent monthly but may reasonably be expected to be incurred in accordance with sound accounting practices ("Operating Reserve"), which sum shall be maintained by additional transfers upon each monthly apportionment whenever necessary, or may be augmented by transfers of additional amounts from the Surplus Account described below if determined by the governing body of the Borrower to be necessary to meet contingencies arising in the operation, maintenance and repair of the System. Money in the Operating Account shall be used solely for the payment of Operating Expenses.

Section 11.4. Revenue Bond Account. Upon each monthly apportionment there shall be set aside and credited to the Revenue Bond Account out of the Net Revenues an amount equal to not less than one-sixth of the interest to become due within the next six months and one-twelfth of the principal to become due within the next twelve months with respect to outstanding

Bonds payable from the Revenue Bond Account; provided that the Borrower shall be entitled to reduce a monthly credit by the amount previously credited to and then on deposit in the Revenue Bond Account. Money from time to time held in the Revenue Bond Account shall be disbursed only to meet payments of principal of, premium, if any, and interest on the Bonds payable therefrom as such payments become due. If any payment of principal or interest becomes due when moneys in the Revenue Bond Account are temporarily insufficient therefor, such payment shall be advanced out of any Net Revenues theretofore segregated and then on hand in the Reserve Account, the Replacement and Depreciation Account or the Surplus Account.

Section 11.5. Reserve Account. The Borrower agrees to establish and maintain a Reserve Account in the Fund. On the Closing Date, the Borrower shall deposit in the Reserve Account, from proceeds of the Series 2012B Bond or, to the extent necessary, from other available funds of the Borrower, an amount equal to the product of (i) the initial Reserve Requirement based on the Committed Amount of the sum of the 2012B Loan multiplied by (ii) a fraction the numerator of which is the amount of proceeds of the Series 2012B Bond to be disbursed on said date and the denominator of which is the Committed Amount of the 2012B Loan. On the date of the final disbursement of proceeds of the Series 2012B Bond, the Borrower shall deposit in the Reserve Account, from proceeds of the Series 2012B Bond or, to the extent necessary, from other available funds of the Borrower, an amount necessary to cause the balance in the Reserve Account to equal the Reserve Requirement, calculated as of that date and based on the actual principal amount of the Series 2012B Bond. Thereafter, upon each monthly apportionment, from the Net Revenues remaining after the apportionment to the Revenue Bond Account, the Borrower shall credit to the Reserve Account such additional Net Revenues as may be required to establish and thereafter maintain the balance in an amount equal, as of the date of calculation, to the Reserve Requirement. Money in the Reserve Account shall be used only to pay maturing principal, premium and interest when money within the Revenue Bond Account is insufficient therefor; provided that on any date when all outstanding Bonds of a series are due or prepayable by their terms, if the amount then on hand in the Reserve Account allocable to such Bonds and available for such appropriation is sufficient with money available for the purpose to pay all such Bonds and the interest accrued thereon in full, it may be used for that purpose; and provided, further, that so long as the amount on hand in the Reserve Account is not less than the Reserve Requirement, the Borrower may credit earnings on investment of the Reserve Account to the Replacement and Depreciation Account. The Series 2012A Bond is a Subordinate Obligation issued under Section 10.4. In the event the principal of and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge become payable under the Series 2012A Bond, the Borrower shall cause rates and charges to be increased to produce Net Revenues at least equal to the amount required under Section 6.7.

Section 11.6. Replacement and Depreciation Account. Upon each monthly apportionment, there shall next be set aside and credited to the Replacement and Depreciation Account Surplus Net Revenues required for the accumulation of a reasonable allowance as the governing body of the Borrower shall determine for depreciation of the System and for replacement or renewal of worn out, obsolete or damaged properties and equipment. Money in this account shall be used only for the purposes above stated or, if so directed by the governing body of the Borrower, to redeem Bonds which are prepayable according to their terms, to pay maturing principal, premium and interest when money within the Reserve Bond Account is

insufficient therefor, to fund any deficiency in the Reserve Account, or to pay the cost of improvements to the System; provided that, Surplus Net Revenues in the Replacement and Depreciation Account may be used to pay Subordinate Obligations as they come due in advance of payments required to be made into the Replacement and Depreciation Account, subject to the prior lien on Surplus Net Revenues to pay any deficiency of the Revenue Bond Account and the Reserve Account, and provided that no default under this Resolution is then in effect; provided further that in the event construction and installation of additional improvements or additions to the System are financed other than from proceeds of Bonds payable from the Revenue Bond Account, Surplus Net Revenues from time to time received may be segregated and paid into one or more separate and additional accounts for the repayment of such indebtedness and interest thereon, in advance of payments required to be made into the Replacement and Depreciation Account, subject to the prior lien on Surplus Net Revenues to pay any deficiency of the Revenue Bond Account or the Reserve Account and to pay the Series 2012A Bond, should the Series 2012A Bond become payable as provided herein, and provided that no default under this Resolution is then in effect.

Section 11.7. Surplus Account. Any amount of the Surplus Net Revenues from time to time remaining after the above required applications thereof shall be credited to the Surplus Account (or such other account in the Sewer System Fund as the Borrower may establish for bookkeeping purposes to account for Surplus Net Revenues in accordance with the purposes of this Resolution), and the money from time to time in that account, when not required to restore a current deficiency in the Revenue Bond Account as provided in Section 11.4 or the Reserve Account as provided in Section 11.5, may be used for any of the following purposes and not otherwise:

- (a) To redeem bonds payable from the Net Revenues when and as such bonds become prepayable according to their terms; or
- (b) To purchase bonds on the open market, whether or not the bonds or other such bonds may then be prepayable according to their terms; or
- (c) To be held as a reserve for redemption of bonds payable from the Net Revenues which are not then but will later be prepayable according to their terms; or
- (d) To pay for repairs of or for the construction and installation of improvements or additions to the System; or
- (e) To pay Operating Expenses or to restore the Operating Reserve or increase the same when determined to be necessary by the governing body of the Borrower; or
- (f) To pay Subordinate Obligations issued under Section 10.4 above.

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

Section 11.8. Deposit and Investment of Funds. The finance officer of the Borrower shall cause all money appropriated to the Sewer System Fund to be deposited as received with one or more depository banks duly qualified in accordance with the provisions of Montana Code Annotated, Section 7-6-201, in a deposit account or accounts. The balance in such accounts, except such portion thereof as shall be guaranteed by federal deposit insurance, shall at all times be secured to its full amount by bonds or securities of the types set forth in Montana Code Annotated, Section 7-6-201. Any of such moneys not necessary for immediate use may be deposited with such depository banks in savings or time deposits. No money shall at any time be withdrawn from such deposit accounts except for the purposes of the Sewer System Fund as defined and authorized in this Resolution; except that money from time to time on hand in the Sewer System Fund may at any time, in the discretion of the governing body of the Borrower, be invested in securities which are direct, general obligations of, or obligations the prompt payment of the principal of and the interest on which is fully and unconditionally guaranteed by, the United States of America, bank repurchase agreements with respect to such obligations, certificates of deposits of national banks having a combined capital and surplus of at least \$1,000,000 or in the Montana short-term investment program administered by the Board of Investments, which investments mature and bear interest at the times and in the amounts estimated to be required to provide cash when needed for the purposes of the respective accounts; provided that funds on hand in the Reserve Account, the Replacement and Depreciation Account and the Surplus Account may be invested in said securities maturing not later than five years from the date of the investment; and provided, further, that money on hand in the Surplus Account of the Sewer System Fund may, in the discretion of the governing body of the Borrower, be invested in any securities which are direct, general obligations of the Borrower. Income received from the deposit or investment of moneys in said accounts shall be credited to the account from whose moneys the deposit was made or the investment was purchased, and handled and accounted for in the same manner as other moneys in that account.

## ARTICLE XII

### TAX MATTERS

Section 12.1. Use of Project and System. The 2012 Project and the System will be owned and operated by the Borrower and available for use by members of the general public on a substantially equal basis. The Borrower shall not enter into any lease, use or other agreement with any non-governmental person relating to the use of the 2012 Project or the System or security for the payment of the Series 2012B Bond which might cause the Series 2012B Bond to be considered a "private activity bond" or "private loan bond" within the meaning of Section 141 of the Code.

Section 12.2. General Covenant. The Borrower covenants and agrees with the owners from time to time of the Series 2012B Bond that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Series 2012B Bond to become includable in gross income for federal income tax purposes under the Code and the Regulations, and covenants to take any and all actions within its powers to ensure that the interest on the Series 2012B Bond will not become includable in gross income for federal income tax purposes under the Code and the Regulations.

Section 12.3. Arbitrage Certification. The Mayor and the City Clerk, being the officers of the Borrower charged with the responsibility for issuing the Series 2012B Bond pursuant to this Resolution, are authorized and directed to execute and deliver to the DNRC a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Regulations, stating that on the basis of facts, estimates and circumstances in existence on the date of issue and delivery of the Series 2012B Bond, it is reasonably expected that the proceeds of the Series 2012B Bond will be used in a manner that would not cause the Series 2012B Bond to be an “arbitrage bond” within the meaning of Section 148 of the Code and the Regulations.

Section 12.4. Arbitrage Rebate Exemption.

(a) The Borrower hereby represents that the Series 2012B Bond qualifies for the exception for small governmental units to the arbitrage rebate provisions contained in Section 148(f) of the Code. Specifically, the Borrower represents:

- (1) Substantially all (not less than 95%) of the proceeds of the Series 2012B Bond (except for amounts to be applied to the payment of costs of issuance) will be used for local governmental activities of the Borrower.
- (2) The aggregate face amount of all “tax-exempt bonds” (including warrants, contracts, leases and other indebtedness, but excluding private activity bonds) issued by or on behalf of the Borrower and all subordinate entities thereof during 2012 is reasonably expected not to exceed \$5,000,000. To date in 2012, the Borrower has issued no tax-exempt bonds, and in the calendar years 2007 through 2011, the Borrower issued no tax-exempt bonds except for its \$416,300 Subordinate Lien Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Taxable Series 2009A, \$333,700 Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2009B, \$500,000 Water System Revenue Bonds (DNRC Drinking Water State Revolving Loan Program) Series 2008A, \$2,200,000 Water System Revenue Bonds (DNRC Drinking Water State Revolving Loan Program) Series 2008B, \$500,000 Water System Revenue Bonds (DNRC Drinking Water State Revolving Loan Program) Series 2008C, and \$2,200,000 Water System Revenue Bonds (DNRC Drinking Water State Revolving Loan Program) Series 2008D.

(b) If notwithstanding the provisions of paragraph (a) of this Section 12.4, the arbitrage rebate provisions of Section 148(f) of the Code apply to the Series 2012 Bonds, the Borrower hereby covenants and agrees to make the determinations, retain records and rebate to the United States the amounts at the times and in the manner required by said Section 148(f).

Section 12.5. Information Reporting. The Borrower shall file with the Secretary of the Treasury, not later than November 15, 2012, a statement concerning the Series 2012B Bond containing the information required by Section 149(e) of the Code.

Section 12.6. “Qualified Tax-Exempt Obligations.” Pursuant to Section 265(b)(3)(B)(ii) of the Code, the Borrower hereby designates the Series 2012B Bond as a “qualified tax-exempt obligation” for purposes of Section 265(b)(3) of the Code. The Borrower has not designated any obligations in 2012 under Section 265(b)(3) other than the Series 2012B Bond. The Borrower hereby represents that it does not anticipate that obligations bearing interest not includable in gross income for purposes of federal income taxation under Section 103 of the Code (including refunding obligations as provided in Section 265(b)(3) of the Code and including “qualified 501(c)(3) bonds” but excluding other “private activity bonds,” as defined in Sections 141(a) and 145(a) of the Code) will be issued by or on behalf of the Borrower and all “subordinate entities” of the Borrower in 2012 in an amount greater than \$10,000,000.

## ARTICLE XIII

### CONTINUING DISCLOSURE

The Borrower understands and acknowledges that the DNRC is acquiring the Series 2012 Bonds under the Program pursuant to which the State issues from time to time State Bonds to provide funds therefor. The Borrower covenants and agrees that, upon written request of the DNRC from time to time, the Borrower will promptly provide to the DNRC all information that the DNRC reasonably determines to be necessary or appropriate to offer and sell State Bonds or to provide continuing disclosure in respect of State Bonds, whether under Rule 15c2-12 (17 C.F.R. § 240.15c2-12) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, or otherwise. Such information shall include, among other things and if so requested, financial statements of the Borrower prepared in accordance with generally accepted accounting principles promulgated by the Financial Accounting Standards Board as modified in accordance with the governmental accounting standards promulgated by the Governmental Accounting Standards Board or as otherwise provided under Montana law, as in effect from time to time (such financial statements to relate to a fiscal year or any period therein for which they are customarily prepared by the Borrower, and, if for a fiscal year and so requested by the DNRC, subject to an audit report and opinion of an accountant or government auditor, as permitted or required by the laws of the State). The Borrower will also provide, with any information so furnished to the DNRC, a certificate of the Mayor and the City Clerk of the Borrower to the effect that, to the best of their knowledge, such information does not include any untrue statement of a material fact or omit to state any material fact required to be stated therein to make the statements made, in light of the circumstances under which they are made, not misleading.

## ARTICLE XIV

### DEFEASANCE

Section 14.1. General. When the liability of the Borrower on all Bonds issued under and secured by this Resolution and all interest thereon has been discharged as provided in

this Article XIV, all pledges, covenants and other rights granted by this Resolution to the holders of such Bonds shall cease, other than to the payment of such Bonds from money segregated for such purpose. The Borrower may also discharge its liability with respect to one or more Bonds in accordance with this Article XIV.

Section 14.2. Maturity. The Borrower may discharge its liability with reference to any Bonds and interest thereon which are due on any date by depositing with the Registrar for such Bonds on or before the date a sum sufficient for the payment thereof in full; or if any Bond or interest thereon shall not be paid when due, the Borrower may nevertheless discharge its liability with reference thereto by depositing with the Registrar a sum sufficient for the payment thereof in full with interest accrued to the date of such deposit.

Section 14.3. Prepayment. The Borrower may also discharge its obligations with respect to any prepayable Bonds called for redemption on any date when they are prepayable according to their terms, by depositing with the Registrar therefor on or before the Redemption Date a sum sufficient for the payment thereof in full; provided that notice of the redemption thereof has been duly given as provided in this Resolution or any Supplemental Resolution relating thereto.

Section 14.4. Escrow. The Borrower may at any time discharge its liability with reference to any Bonds, subject to the provisions of law now or hereafter authorizing and regulating such action and the following paragraphs of this Section, by depositing irrevocably in escrow, with a bank qualified by law as an escrow agent for this purpose, cash or Government Obligations authorized by law to be so deposited, bearing interest payable at such times and at such rates and maturing on such dates as shall be required, without reinvestment, to provide funds sufficient to pay all principal, interest and redemption premiums, if any, to become due on such Bonds at their stated maturities or, if such Bonds are prepayable and notice of redemption thereof has been duly given or irrevocably provided for, to such earlier redemption date.

No defeasance shall be made pursuant to this Section 14.4 unless there has first been presented to the escrow agent a written Opinion of Bond Counsel to the effect that such defeasance shall not cause the interest on any Outstanding Bonds to be included in the gross income of the holders thereof for federal income tax purposes.”

## ARTICLE XV

### SUPPLEMENTAL RESOLUTIONS

Section 15.1. General. The Borrower reserves the right to adopt Supplemental Resolutions from time to time and at any time, for the purpose of curing any ambiguity or of curing, correcting or supplementing any defective provision contained herein, or of making such provisions with regard to matters or questions arising hereunder as the Borrower may deem necessary or desirable and not inconsistent with this Resolution, and which shall not adversely affect the interests of the holders of Outstanding Bonds, or for the purpose of adding to the covenants and agreements herein contained, or to the Net Revenues herein pledged, other covenants and agreements thereafter to be observed and additional revenues or income thereafter appropriated to the Sewer System Fund, or for the purpose of surrendering any right or power



herein reserved to or conferred upon the Borrower, or for the purpose of authorizing the creation and issuance of a series of Additional Bonds or Subordinate Obligations, as provided above and subject to the conditions and requirements of this Article XV. Any such Supplemental Resolution may be adopted without notice to or the consent of the holder of any of the Bonds issued hereunder, except for the consent of the DNRC, to the extent required under Section 16.4 hereof.

Section 15.2. Consent of Holders. With the consent of the holders of Bonds issued hereunder as provided in Section 15.4, the Borrower may from time to time and at any time adopt a Supplemental Resolution for the purpose of amending this Resolution by adding any provisions hereto or changing in any manner or eliminating any of the provisions hereof or of any Supplemental Resolution, except that no Supplemental Resolution shall be adopted at any time without the consent of the holders of all Bonds issued hereunder which are then Outstanding and affected thereby, if it would extend the time of payment of interest thereon or principal thereof, would reduce the interest rate thereon or the amount of the principal or the redemption price thereof, would give to any Bond or Bonds any privileges over any other Bond or Bonds, would reduce the sources of revenues or income appropriated to the Sewer System Fund, or would reduce the percentage in principal amount of such Bonds required to authorize or consent to any such Supplemental Resolution.

Section 15.3. Notice. Notice of the Supplemental Resolution to be adopted pursuant to Section 15.2 shall be mailed by first-class mail to the holders of all Outstanding Bonds at their addresses appearing in the Bond Register, and shall become effective only upon the filing of written consents with the City Clerk, signed by the holders of not less than a majority in principal amount of the Bonds then Outstanding and affected thereby. Any written consent to the Supplemental Resolution may be embodied in and evidenced by one or any number of concurrent written instruments of substantially similar tenor signed by holders in person or by agent duly appointed in writing, and shall become effective when delivered to the City Clerk. Any consent by the holder of any Bond shall bind him and every future holder of the same Bond with respect to any Supplemental Resolution adopted by the Borrower pursuant to such consent; provided that any holder may revoke his consent with reference to any Bond by written notice received by the City Clerk before the Supplemental Resolution has become effective. In the event that unrevoked consents of the holders of the required amount of Bonds have not been received by the City Clerk within one year after the mailing of notice of the Supplemental Resolution, the Supplemental Resolution and all consents theretofore received shall be of no further force and effect.

Section 15.4. Manner of Consent. Proof of the execution of any consent, or of a writing appointing any agent to execute the same, or of the ownership by any Person of Bonds shall be sufficient for any purpose of this Resolution and shall be conclusive in favor of the Borrower if made in the manner provided in this Section 15.4. The fact and date of the execution by any Person of any such consent or appointment may be proved by the affidavit of a witness of such execution or by the certification of any notary public or other officer authorized by law to take acknowledgment of deeds, certifying that the Person signing it acknowledged to him the execution thereof. The fact and date of execution of any such consent may also be proved in any other manner which the Borrower may deem sufficient; but the Borrower may nevertheless, in its

discretion, require further proof in cases where it deems further proof desirable. The ownership of Bonds shall be proved by the Bond Register.

## ARTICLE XVI

### MISCELLANEOUS

Section 16.1. Notices. All notices or other communications hereunder shall be sufficiently sent or given and shall be deemed sent or given when delivered or mailed by certified mail, postage prepaid, to the parties at the following addresses:

DNRC: Department of Natural Resources and Conservation  
1625 Eleventh Avenue  
P. O. Box 201601  
Helena, Montana 59620-1601  
Attn: Conservation and Resource  
Development Division

Trustee: U.S. Bank National Association  
c/o Corporate Trust Services  
1420 Fifth Avenue, 7<sup>th</sup> Floor  
Seattle, Washington 98101

Borrower: City of Miles City  
17 South 8th Street  
P. O. Box 910  
Miles City, Montana 59301  
Attn: City Clerk

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

Section 16.2. Binding Effect. This Resolution shall inure to the benefit of and shall be binding upon the DNRC, the Borrower and their respective permitted successors and assigns.

Section 16.3. Severability. If any provision of this Resolution shall be determined to be unenforceable at any time, it shall not affect any other provision of this Resolution or the enforceability of that provision at any other time.

Section 16.4. Amendments. This Resolution may not be effectively amended without the written consent of the DNRC.

Section 16.5. Applicable Law. This Resolution shall be governed by and construed in accordance with the laws of the State.

Section 16.6. Captions; References to Sections. The captions in this Resolution are for convenience only and do not define or limit the scope or intent of any provisions or Sections of this Resolution. References to Articles and Sections are to the Articles and Sections of this Resolution, unless the context otherwise requires.

Section 16.7. No Liability of Individual Officers, Directors, Trustees or Council Members. No recourse under or upon any obligation, covenant or agreement contained in this Resolution shall be had against any director, officer or employee, as such, past, present or future, of the DNRC, the DEQ or the Trustee, either directly or through the DNRC, the DEQ or the Trustee, or against any officer, or member of the governing body or employee of the Borrower, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer or member of the governing body or employee of the DNRC, the Trustee or the Borrower is hereby expressly waived and released by the Borrower and by the DNRC as a condition of and in consideration for the adoption of this Resolution and the making of the Loan.

Section 16.8. Payments Due on Holidays. If the date for making any payment or the last date for performance of any act or the exercise of any right, as provided in this Resolution or the Series 2012 Bonds, shall not be a Business Day, such payments may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Resolution or the Series 2012 Bonds.

Section 16.9. Right of Others to Perform Borrower's Covenants. In the event the Borrower shall fail to make any payment or perform any act required to be performed hereunder, then and in each such case the DNRC or the provider of any Collateral Document may (but shall not be obligated to) remedy such default for the account of the Borrower and make advances for that purpose. No such performance or advance shall operate to release the Borrower from any such default and any sums so advanced by the DNRC or the provider of any Collateral Document shall be paid immediately to the party making such advance and shall bear interest at the rate of ten percent per annum from the date of the advance until repaid. The DNRC and the provider of any Collateral Document shall have the right to enter the 2012 Project or the facility or facilities of which the 2012 Project is a part or any other facility which is a part of the System in order to effectuate the purposes of this Section.

Section 16.10. Authentication of Transcript. The officers of the Borrower are hereby authorized and directed to furnish to the DNRC and to Bond Counsel certified copies of all proceedings relating to the issuance of the Series 2012 Bonds and such other certificates and affidavits as may be required to show the right, power and authority of the Borrower to issue the Series 2012 Bonds, and all statements contained in and shown by such instruments, including any heretofore furnished, shall constitute representations of the Borrower as to the truth of the statements of fact purported to be shown thereby.

Section 16.11. Repeals and Effective Date.

(a) Repeal. All provisions of other resolutions and other actions and proceedings of the Borrower and this Council that are in any way inconsistent with the terms and

provisions of this Resolution are repealed, amended and rescinded to the full extent necessary to give full force and effect to the provisions of this Resolution.

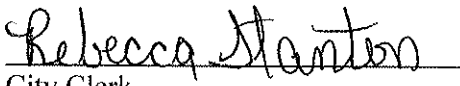
(b) Effective Date. This Resolution shall take effect immediately.

Adopted by the City Council of the City of Miles City, Montana, on this 14th day of August, 2012.



\_\_\_\_\_  
Mayor

ATTEST:



\_\_\_\_\_  
City Clerk

## APPENDIX A

### DESCRIPTION OF THE PROJECT

The 2012 Project consists of designing, engineering, constructing and installing certain improvements to the Borrower's sewer system headworks, including the lift station and screening and grit removal, and related improvements.

#### Estimated 2012 Project Budget

	Source: SRF A Loan Forgiveness \$300,000	Source: SRF B Loan 3.00% \$1,510,000	Source: Local	Total:
Personnel Costs			1,500.00	1,500.00
Office Costs			1,000.00	1,000.00
Professional Services			10,000.00	10,000.00
Legal Costs			5,000.00	5,000.00
Audit Fees			8,000.00	8,000.00
Travel & Training			1,000.00	1,000.00
Debt Service Reserve		101,735.00		101,735.00
Bond Counsel & Related costs			12,000.00	12,000.00
Engineering Bid Phase			15,000.00	15,000.00
Construction Mgmt			212,076.00	212,076.00
Post Construction Services			30,000.00	30,000.00
Construction	300,000.00	1,408,265.00	942,693.00	2,650,958.00
Contingency			271,731.00	271,731.00
<b>TOTAL PROJECT COSTS</b>	<b>300,000.00</b>	<b>1,510,000.00</b>	<b>1,510,000.00</b>	<b>3,320,000.00</b>

APPENDIX B-1

[Form of the Series 2012A Bond]

UNITED STATES OF AMERICA  
STATE OF MONTANA  
CUSTER COUNTY

**CITY OF MILES CITY**

SUBORDINATE LIEN SEWER SYSTEM REVENUE BOND  
(DNRC WATER POLLUTION CONTROL STATE REVOLVING LOAN PROGRAM),  
TAXABLE SERIES 2012A

No. R-1

\$300,000

FOR VALUE RECEIVED, the City of Miles City, Montana (the "Borrower"), a duly organized municipal corporation and political subdivision of the State of Montana, acknowledges itself to be specially indebted and, for value received, hereby promises to pay to the Department of Natural Resources and Conservation of the State of Montana (the "DNRC"), or its registered assigns, solely out of available Surplus Net Revenues in the Replacement and Depreciation Account or the Surplus Account of its Sewer System Fund (the "Sewer System Fund"), the sum of the principal amounts entered on Schedule A attached hereto under "Total Amount Advanced," with interest on each such amount from the date such amount is advanced hereunder at the rate of two percent (2.00%) per annum on the unpaid balance until paid, together with an Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the outstanding principal amount of this Bond from the date of each advance of principal at the rates of seventy-five hundredths of one percent (0.75%) per annum and twenty-five hundredths of one percent (0.25%) per annum, respectively, all subject to the effect of the immediately following paragraph. Principal, interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be payable in semiannual installments payable on each January 1 and July 1 (each a "Payment Date") commencing with the Payment Date that is the first to occur following delivery by the DNRC to the Borrower of a statement that the Borrower's obligation to repay the principal amount of the 2012A Loan is not forgiven and ending on July 1, 2032, all as described in the Resolution (as hereinafter defined), subject to earlier redemption. Each installment shall be in the amount set forth opposite its due date in Schedule B attached hereto under "Total Loan Payment." The portion of each such payment consisting of principal, of interest, of Administrative Expense Surcharge and of Loan Loss Reserve Surcharge shall be as set forth in Schedule B attached hereto. Upon each disbursement of the 2012A Loan, the DNRC shall enter (or cause to be entered) the principal amount advanced on Schedule A under "Advances" and the total amount advanced under the Resolution (as hereinafter defined), including such advance, under "Total Amount Advanced." The DNRC shall prepare Schedule B and any revised Schedule B, or cause Schedule B and any revised Schedule B to be prepared, as provided in Section 5.1 of the Resolution, and the final Schedule B will reflect repayments under Section 5.1.5 of the Resolution. Schedule B shall be calculated and recalculated on a level debt

service basis assuming an interest rate of three percent (3.00%) per annum. Past-due payments of principal and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall bear interest at the rate of ten percent (10.00%) per annum, until paid. Interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be calculated on the basis of a 360-day year comprising 12 months of 30 days each. All payments under this Bond shall be made to the registered holder of this Bond, at its address as it appears on the bond register, in lawful money of the United States of America.

NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS BOND, IN THE EVENT THAT THE BORROWER TIMELY DELIVERS A COMPLIANCE CERTIFICATE AND REQUEST (AS DEFINED IN THE RESOLUTION) IN FORM AND SUBSTANCE SATISFACTORY TO THE DNRC AND THE DNRC IN RESPONSE THERETO SUPPLIES TO THE BORROWER A FORGIVENESS STATEMENT, THEN THEREUPON INTEREST SHALL BE DEEMED TO ACCRUE ON THE PRINCIPAL OF THIS BOND FROM THE DATE OF EACH ADVANCE AT THE RATE OF ZERO PERCENT (0.00%) PER ANNUM AND THE BORROWER'S OBLIGATION TO REPAY PRINCIPAL ADVANCED HEREUNDER SHALL BE FORGIVEN, AND THE BORROWER SHALL HAVE NO OBLIGATION TO REPAY THE DNRC OR ITS REGISTERED ASSIGNS ANY AMOUNTS ADVANCED HEREUNDER OR INTEREST OR ANY SURCHARGE THEREON. THIS BOND SHALL THEREUPON BE MARKED "CANCELLED" AND RETURNED BY THE HOLDER TO THE BORROWER, AND THIS BOND SHALL NO LONGER CONSTITUTE AN OBLIGATION OF THE BORROWER OR OF THE SYSTEM (AS HEREINAFTER DEFINED). IN ADDITION, UNTIL THE DELIVERY OF A DETERMINATION STATEMENT BY THE DNRC TO THE BORROWER, THE OBLIGATION OF THE BORROWER TO REPAY THE OUTSTANDING PRINCIPAL AMOUNT HEREOF SHALL BE DEFERRED UNTIL THE PAYMENT DATE FIRST OCCURRING AFTER DELIVERY OF A NONCOMPLIANCE STATEMENT AND INTEREST SHALL BE DEEMED TO ACCRUE ON THE PRINCIPAL OF THIS BOND FROM THE DATE OF EACH ADVANCE UNTIL DELIVERY OF SUCH A NONCOMPLIANCE STATEMENT AT THE RATE OF ZERO PERCENT (0.00%) PER ANNUM.

This Bond is one of an issue of Sewer System Revenue Bonds of the Borrower authorized to be issued in one or more series from time to time, and constitutes a series in the maximum authorized principal amount of \$300,000 (the "Series 2012A Bond"). The Series 2012A Bond is issued to finance costs of the construction of certain improvements to the sewer system of the Borrower (the "System") and to pay costs of issuance of the Series 2012A Bond. The Series 2012A Bond is issued pursuant to and in full conformity with the Constitution and laws of the State of Montana thereunto enabling, including Montana Code Annotated, Title 7, Chapter 7, Part 44, as amended, and ordinances and resolutions duly adopted by the governing body of the Borrower, including Resolution No. 3519 duly enacted by the City Council of the Borrower on August 14, 2012 (the "Resolution"). Terms used with initial capital letters but not defined herein have the meanings given to them in the Resolution. The Series 2012A Bond is issuable only as a single, fully registered bond. The Series 2012A Bond is issued as a Subordinate Obligation payable out of available Surplus Net Revenues in the Replacement and Depreciation Account or the Surplus Account in the Sewer System Fund. Simultaneously

herewith, the Borrower is issuing its Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2012B (the "Series 2012B Bond") which is payable from the Revenue Bond Account in the Sewer System Fund. Following the 2012B First Advance, principal amounts of this Series 2012A Bond shall be advanced until all of the principal of this Series 2012A Bond is advanced prior to advances under the Series 2012B Bond.

Reference is made to the Resolution for a more complete statement of the terms and conditions upon which the Series 2012A Bond has been issued, the conditions upon which the Resolution may be amended, the rights, duties and obligations of the Borrower, and the rights of the owners of the Series 2012A Bond.

The Borrower may prepay the principal of the Series 2012A Bond only if (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 Administrative Expense Surcharge and Loan Loss Reserve Surcharge to the date of prepayment on the amount of principal prepaid. If the Series 2012A Bond is prepaid in part, such prepayments shall be applied to principal payments in inverse order of maturity.

This Series 2012A Bond, including interest and any premium, are payable solely from the Surplus Net Revenues available for the payment hereof and do not constitute a debt of the Borrower within the meaning of any constitutional or statutory limitation or provision.

The Borrower may deem and treat the person in whose name this Series 2012A Bond is registered as the absolute owner hereof, whether this Series 2012A Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and the Borrower shall not be affected by any notice to the contrary. The Series 2012A Bond may be transferred as hereinafter provided.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that the Borrower has duly authorized and will forthwith construct and complete the improvements to the System hereinabove described; that it will prescribe and collect reasonable rates and charges for all services and facilities afforded by the System, including all additions thereto and replacements and improvements thereof, and has created a special Sewer System Fund into which the gross revenues of the System will be paid, and a separate and special Replacement and Depreciation Account and Surplus Account in that Sewer System Fund, into which will be paid, subject to the prior lien thereon of the Operating Account, the Revenue Bond Account and the Reserve Account, Surplus Net Revenues; that the rates and charges for the System will from time to time be made and kept sufficient, to provide gross income and revenues adequate to pay promptly the reasonable and current expenses of operating and maintaining the System, to produce in each fiscal year Net Revenues in excess of such current expenses, equal to at least 125% of the maximum amount of principal and interest payable from the Revenue Bond Account in any subsequent fiscal year and to produce in each fiscal year adequate Surplus Net Revenues to pay the principal of and interest on the Series 2012A Bond as and when due; that additional bonds issued on a parity with the Series 2012B Bond (such bonds, collectively with the Series 2012B Bond, the "Bonds") and additional Bonds and refunding Bonds may be issued



and made payable from the Revenue Bond Account on a parity with the Series 2012B Bond and other parity Bonds upon certain conditions set forth in the Resolution, but no obligation will be otherwise incurred and made payable from the Net Revenues of the System, unless the lien thereof shall be expressly made subordinate to the lien of the Series 2012B Bond and additional parity Bonds on such Net Revenues and such obligations are payable only from Surplus Net Revenues (as is the case with this Series 2012A Bond); that all provisions for the security of the holder of this Series 2012A Bond set forth in the Resolution will be punctually and faithfully performed as therein stipulated; that all acts, conditions and things required by the Constitution and laws of the State of Montana and the ordinances and resolutions of the Borrower to be done, to exist, to happen and to be performed in order to make this Series 2012A Bond a valid and binding special obligation of the Borrower according to its terms have been done, do exist, have happened and have been performed as so required; and that this Series 2012A Bond and the premium, if any, and interest hereon are payable solely out of available Surplus Net Revenues in the Replacement and Depreciation Account or the Surplus Account of the Sewer System Fund and do not constitute a debt of the Borrower within the meaning of any constitutional or statutory limitation or provision and the issuance of the Series 2012A Bond does not cause either the general or the special indebtedness of the Borrower to exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Miles City, Montana, by its governing body, has caused this Bond to be executed by the signatures of the Mayor and the City Clerk, and has caused the official seal of the Borrower to be affixed hereto, and has caused this Bond to be dated as of the 14<sup>th</sup> day of August, 2012.

\_\_\_\_\_  
Mayor

(SEAL)

\_\_\_\_\_  
City Clerk

## REGISTRATION AND TRANSFER

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

## REGISTER

The ownership of the outstanding principal balance of the Bond and the interest accruing thereon is registered on the books of City of Miles City, Montana in the name of the registered holder appearing on the first page hereof or as last noted below:

<u>Date of Registration</u>	<u>Name and Address of Registered Holder</u>	<u>Signature of City Clerk</u>
<u>August 14, 2012</u>	<u>Department of Natural Resources and Conservation 1625 Eleventh Avenue Helena, MT 59620</u>	<u>Rebecca Stanton</u>

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

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

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

# FORM OF ASSIGNMENT

For value received, the Bond is hereby transferred and assigned by the undersigned holder, without recourse, to \_\_\_\_\_  
on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

By: \_\_\_\_\_  
(Authorized Signature)

For: \_\_\_\_\_  
(Holder)

## SCHEDULE A

### SCHEDULE OF AMOUNTS ADVANCED

[illegible]

SCHEDULE B

<u>Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Administrative Expense Surcharge</u>	<u>Loan Loss Reserve Surcharge</u>	<u>Total Loan Payment</u>
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APPENDIX B-2

[Form of the Series 2012B Bond]

UNITED STATES OF AMERICA  
STATE OF MONTANA  
CUSTER COUNTY

**CITY OF MILES CITY**

SEWER SYSTEM REVENUE BOND  
(DNRC WATER POLLUTION CONTROL STATE REVOLVING LOAN PROGRAM),  
SERIES 2012B

No. R-1

\$1,510,000

FOR VALUE RECEIVED, the City of Miles City, Montana (the "Borrower"), a duly organized municipal corporation and political subdivision of the State of Montana, acknowledges itself to be specially indebted and, for value received, hereby promises to pay to the Department of Natural Resources and Conservation of the State of Montana (the "DNRC"), or its registered assigns, solely from the Revenue Bond Account of its Sewer System Fund, the principal sum equal to the sum of the amounts entered on Schedule A attached hereto under "Total Amount Advanced," with interest on each such amount from the date such amount is advanced hereunder at the rate of two percent (2.00%) per annum on the unpaid balance until paid. In addition, the Borrower shall pay an Administrative Expense Surcharge and a Loan Loss Reserve Surcharge on the outstanding principal amount of this Bond at the rates of seventy-five hundredths of one percent (0.75%) per annum and twenty-five hundredths of one percent (0.25%), respectively, per annum. Interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be payable in semiannual installments payable on each January 1 and July 1 (each a "Loan Repayment Date") commencing on the date first set forth in the column headed "Date" or "Payment Date" on Schedule B attached hereto and concluding on July 1, 2032. Principal shall be payable on the dates set forth in Schedule B hereto. Each installment shall be in the amount set forth opposite its due date in Schedule B attached hereto under "Total Loan Payment." The portion of each such payment consisting of principal, the portion consisting of interest, the portion consisting of Administrative Expense Surcharge, and the portion consisting of Loan Loss Reserve Surcharge shall be as set forth in Schedule B hereto. Upon each disbursement of Loan amounts to the Borrower pursuant to the Resolution described below, the DNRC shall enter (or cause to be entered) the amount advanced on Schedule A under "Advances" and the total amount advanced under the Resolution (as hereinafter defined), including such disbursement, under "Total Amount Advanced." The DNRC shall prepare Schedule B and any revised Schedule B, or cause Schedule B and any revised Schedule B to be prepared, as provided in Section 5.1 of the Resolution, and the final Schedule B will reflect repayments under Section 5.1.5 of the Resolution. Schedule B shall be calculated and recalculated on a level debt service basis assuming an interest rate of 3.00% per annum. Past-due payments of principal and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall bear interest at the rate of ten percent (10.00%) per annum, until paid.

Interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be calculated on the basis of a 360-day year comprising 12 months of 30 days each. All payments under this Bond shall be made to the registered holder of this Bond, at its address as it appears on the Bond register, in lawful money of the United States of America.

This Bond is one of an issue of Sewer System Revenue Bonds of the Borrower authorized to be issued in one or more series from time to time, and constitutes a series in the maximum authorized principal amount of \$1,510,000 (the "Series 2012B Bond"). The Series 2012B Bond is issued to finance a portion of costs of the construction of certain improvements to the sewer system of the Borrower (the "System"), to fund a deposit to the Reserve Account and to pay costs of issuance of the Series 2012B Bond. The Series 2012B Bond is issued pursuant to and in full conformity with the Constitution and laws of the State of Montana thereunto enabling, including Montana Code Annotated, Title 7, Chapter 7, Part 44, as amended, and ordinances and resolutions duly adopted by the governing body of the Borrower, including Resolution No. 3519 duly enacted by the City Council of the Borrower on August 14, 2012 (the "Resolution"). Terms used with initial capital letters but not defined herein have the meanings given to them in the Resolution. The Series 2012B Bond is issuable only as a single, fully registered bond. Simultaneously herewith, the Borrower is issuing its Subordinate Lien Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Taxable Series 2012A (the "Series 2012A Bond"). The 2012B First Advance has been advanced at Closing. Following the 2012B First Advance, the remaining principal amount of this Series 2012B Bond shall be advanced only after the full advance of the principal amount of the Series 2012A Bond.

Reference is made to the Resolution for a more complete statement of the terms and conditions upon which the Series 2012B Bond has been issued, the Net Revenues of the System pledged and appropriated for the payment and security thereof, the conditions upon which additional bonds may be issued under the Resolution and made payable from such Net Revenues on a parity with the Series 2012B Bond (such parity bonds, together with the Series 2012B Bond, the "Bonds") or otherwise, the conditions upon which the Resolution may be amended, the rights, duties and obligations of the Borrower, and the rights of the owners of the Series 2012B Bond.

The Borrower may prepay the principal of the Series 2012B Bond only if (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 Administrative Expense Surcharge and Loan Loss Reserve Surcharge to the date of prepayment on the amount of principal prepaid. If the Series 2012B Bond is prepaid in part, such prepayments shall be applied to principal payments in inverse order of maturity.

The Series 2012B Bond, including interest and any premium, are payable solely from the Net Revenues pledged for the payment hereof and do not constitute a debt of the Borrower within the meaning of any constitutional or statutory limitation or provision.

The Borrower may deem and treat the person in whose name this Series 2012B Bond is registered as the absolute owner hereof, whether this Series 2012B Bond is overdue or

not, for the purpose of receiving payment and for all other purposes, and the Borrower shall not be affected by any notice to the contrary. The Series 2012B Bond may be transferred as hereinafter provided.

This Series 2012B Bond has been designated by the Borrower as a "qualified tax-exempt obligation" pursuant to Section 265 of the Internal Revenue Code of 1986, as amended.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that the Borrower has duly authorized and will forthwith construct and complete the improvements to the System hereinabove described, that it will prescribe and collect reasonable rates and charges for all services and facilities afforded by the System, including all additions thereto and replacements and improvements thereof, and has created a special Sewer System Fund into which the gross revenues of the System will be paid, and a separate and special Revenue Bond Account in that Sewer System Fund, into which will be paid each month, from and as a first and prior lien on the Net Revenues then on hand, an amount equal to not less than the sum of one-sixth of the interest to become due within the next six months and one-twelfth of the principal to become due within the next twelve months with respect to all Bonds payable from the Revenue Bond Account; that the Borrower has created a Reserve Account in the Sewer System Fund into which shall be paid additional Net Revenues, after required credits to the Revenue Bond Account, sufficient to establish and maintain a reserve therein equal to, as of the date of calculation, the Reserve Requirement; that the Revenue Bond Account will be used only to pay the principal of, premium, if any, and interest on the Series 2012B Bond and any other additional Bonds issued pursuant to the Resolution on a parity therewith; that the rates and charges for the System will from time to time be made and kept sufficient, to provide gross income and revenues adequate to pay promptly the reasonable and current expenses of operating and maintaining the System and to produce in each fiscal year Net Revenues in excess of such current expenses, equal to at least 125% of the maximum amount of principal and interest payable from the Revenue Bond Account in any subsequent fiscal year; that additional Bonds and additional Bonds and refunding Bonds may be issued and made payable from the Revenue Bond Account on a parity with the Series 2012B Bond and other parity Bonds upon certain conditions set forth in the Resolution, but no obligation will be otherwise incurred and made payable from the Net Revenues of the System, unless the lien thereof shall be expressly made subordinate to the lien of the Series 2012B Bond and additional parity Bonds on such Net Revenues and such obligations are payable only from Surplus Net Revenues (as is the case with the Series 2012A Bond); that all provisions for the security of the holder of this Series 2012B Bond set forth in the Resolution will be punctually and faithfully performed as therein stipulated; that all acts, conditions and things required by the Constitution and laws of the State of Montana and the ordinances and resolutions of the Borrower to be done, to exist, to happen and to be performed in order to make this Series 2012B Bond a valid and binding special obligation of the Borrower according to its terms have been done, do exist, have happened and have been performed as so required; and that this Series 2012B Bond and the premium, if any, and interest hereon are payable solely from the Net Revenues of the System pledged and appropriated to the Revenue Bond Account and do not constitute a debt of the Borrower within the meaning of any constitutional or statutory limitation or provision and the issuance of the Series 2012B Bond does not cause either the general or the special indebtedness of the Borrower to exceed any constitutional or statutory limitation.



IN WITNESS WHEREOF, the City of Miles City, Montana, by its governing body, has caused this Bond to be executed by the signatures of the Mayor and the City Clerk, and has caused the official seal of the Borrower to be affixed hereto, and has caused this Bond to be dated as of the \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Mayor

(SEAL)

\_\_\_\_\_  
City Clerk

## REGISTRATION AND TRANSFER

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

## REGISTER

The ownership of the outstanding principal balance of the Bond and the interest accruing thereon is registered on the books of City of Miles City, Montana in the name of the registered holder appearing on the first page hereof or as last noted below:

Date of  
Registration

Name and Address  
of Registered Holder

Signature of  
City Clerk

\_\_\_\_\_, 2012

Department of Natural  
Resources and Conservation  
1625 Eleventh Avenue  
Helena, MT 59620

\_\_\_\_\_

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

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

Date of TransferName of New  
Registered Holder

Signature of  
Bond Registrar

**Abstract**

\_\_\_\_\_

## FORM OF ASSIGNMENT

For value received, the Bond is hereby transferred and assigned by the undersigned holder, without recourse, to \_\_\_\_\_  
on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

By: \_\_\_\_\_  
(Authorized Signature)

For: \_\_\_\_\_  
(Holder)

## SCHEDULE A

### SCHEDULE OF AMOUNTS ADVANCED

[illegible]

SCHEDULE B

<u>Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Administrative Expense Surcharge</u>	<u>Loan Loss Reserve Surcharge</u>	<u>Total Loan Payment</u>
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APPENDIX C

ADDITIONAL AGREEMENTS, REPRESENTATIONS AND COVENANTS

NONE

## APPENDIX D

\$1,810,000  
Sewer System Revenue Bonds  
(DNRC Water Pollution Control State Revolving Loan Program),  
Consisting of \$300,000 Subordinate Lien, Taxable Series 2012A Bond, and  
\$1,510,000 Series 2012B Bond  
City of Miles City, Montana

### COMPLIANCE CERTIFICATE AND REQUEST

We, \_\_\_\_\_ and \_\_\_\_\_, hereby certify that we are on the date hereof the duly qualified and acting Mayor and the City Clerk, respectively, of the City of Miles City, Montana (the "Borrower"), and that:

1. Pursuant to Resolution No. 3519, duly adopted by the City Council of the Borrower on August 14, 2012, entitled "Resolution Relating to \$1,810,000 Sewer System Revenue Bonds (DNRC Water Pollution Control State Revolving Loan Program), Consisting of \$300,000 Subordinate Lien, Taxable Series 2012A Bond and \$1,510,000 Series 2012B Bond; Authorizing the Issuance and Fixing the Terms and Conditions Thereof" (the "Resolution"), the Borrower issued its Subordinate Lien Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Taxable Series 2012A, dated, as originally issued, as of August 24, 2012, in the maximum aggregate principal amount of \$300,000 (the "Series 2012A Bond") and its Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2012B, dated, as originally issued, as of August 24, 2012, in the maximum aggregate principal amount of \$1,510,000 (the "Series 2012B Bond"). The Borrower has reviewed the Resolution, including, without limitation, Articles II and III thereof, and the definitions relating thereto. The Borrower acknowledges and agrees that the Series 2012A Bond evidences a loan made to the Borrower from the DNRC from funds made available to the DNRC from the 2011 EPA Capitalization Grant, and that this Certificate is being relied upon by the DNRC for ensuring compliance with requirements applicable to the Borrower, the DNRC, and the 2012 Project (as hereinafter defined). Capitalized terms used herein without definition shall have the meanings given them in the Resolution.

2. The Series 2012A Bond is issued to finance costs of construction and installation of various improvements to the System, generally described as the 2012 Project (the "2012 Project") in the Resolution and to pay costs of issuing the Series 2012 Bonds. Construction of the 2012 Project has complied with all federal and state standards, including, without limitation, EPA regulations and standards. The 2012 Project is expected to be completed and placed in service on or about \_\_\_\_\_, 20\_\_.

3. Costs of the 2012 Project in the amount of \$\_\_\_\_\_ have been paid as of the date of delivery of this Certificate. The Borrower hereby waives its right to any remaining 2012A Committed Amount not advanced or to be advanced upon delivery hereof. The Borrower

specifically confirms and agrees that any remaining amounts of the 2012 Loans to be lent to the Borrower, if any, shall be evidenced by the Series 2012B Bond.

4. As of the date hereof, the Borrower has spent the following amounts in connection with the 2012 Project and costs related thereto:

Personnel Costs	
Office Costs	
Professional Services	
Legal Costs	
Audit Fees	
Travel & Training	
Debt Service Reserve	
Bond Counsel & Related costs	
Engineering Bid Phase	
Construction Mgmt	
Post Construction Services	
Construction	
Contingency	
<b>TOTAL PROJECT COSTS</b>	

Of such amounts, \$\_\_\_\_\_ were paid from advances of proceeds of the Series 2012A Bond.

5. The Trustee has delivered to the Borrower a copy of Schedule B to be attached to the Series 2012A Bond, which reflects the amortization of all advances made or to be made on the date hereof of proceeds of the Series 2012A Bond (i.e., \$\_\_\_\_\_). The Borrower hereby acknowledges and agrees that Schedule B has been calculated in accordance with the provisions of the Resolution and the Indenture, and that the Series 2012A Bond, with said Schedule B attached thereto, has been duly issued pursuant to the Resolution and is a valid and binding obligation of the Borrower in accordance with its terms and the terms of the Resolution; provided, however, if the DNRC delivers a Forgiveness Statement, the Borrower's obligation to repay the principal of the Series 2012A Bond and interest and surcharges thereon is thereupon forgiven, and if the DNRC delivers a Noncompliance Certificate, amounts advanced under the 2012A Loan evidenced by the Series 2012A Bond shall bear interest from and after the first advance of principal of the Series 2012A Bond at the rate of two percent (2.00%) per annum and the Borrower shall pay currently with interest the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge, all as described in Sections 5.1.2 of the Resolution authorizing the Series 2012A Bond.

6. Pursuant to the Resolution, the Borrower has established a Reserve Account in the Sewer System Fund (the "Reserve Account") to secure its parity sewer revenue bonds (collectively, the "Bonds"), including the Series 2012B Bond. The amount on deposit therein on the date hereof, \$\_\_\_\_\_, secures only the Series 2012B Bond. The amount in the Reserve Account is equal to the maximum amount of principal and interest payable on the Series 2012B



Bonds in the current or any future fiscal year (i.e. \$ \_\_\_\_\_), based on the amortization of the Series 2012B Bonds in accordance with Schedule B thereto.

7. The representations of the Borrower contained in Articles II and III of the Resolution are true and complete as of the date hereof as if made on this date, except to the extent that the Borrower has specifically advised the DEQ and the DNRC otherwise in writing.

8. No default in any covenant or agreement on the part of the Borrower contained in the Resolution has occurred and is continuing.

9. The Borrower is delivering this Certificate to the DNRC, in part, to ensure compliance with EPA regulations and standards. The Borrower certifies that all laborers and mechanics employed by contractors and subcontractors on the 2012 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.

10. The Borrower acknowledges and agrees that this Certificate completed by the Borrower in form satisfactory to the DNRC must be executed and delivered to the DNRC by the date that is 30 days after receipt of the form of this Certificate from the DNRC. By submitting this Certificate, the Borrower requests that the DNRC forgive the obligation of the Borrower to repay the principal of the Series 2012A Bond, together with interest and surcharges thereon. The Borrower acknowledges and agrees that (i) the forgiveness of principal of and interest and surcharges on the Series 2012A Bond by the DNRC is contingent on the timely delivery of this Certificate by the Borrower in satisfactory form as determined in the DNRC's sole and complete discretion, (ii) the DNRC has no obligation to grant such forgiveness; and (iii) if the DNRC delivers to the Borrower a Noncompliance Certificate (a) the obligation of the Borrower to repay the principal of the Series 2012A Bond plus interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge thereon shall continue in full force and effect until the principal of the Series 2012A Bond advanced and interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge thereon are paid in full, as set forth in Schedule B delivered pursuant to paragraph 5 above, and as provided in the Series 2012A Bond and the Resolution, and (b) the Borrower shall, as necessary, within the 3-month period specified in the Resolution, adjust its rates and charges to produce Net Revenues and Surplus Net Revenues required by the rate covenant in the Resolution.

WITNESS our hands on behalf of the Borrower as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF MILES CITY, MONTANA

By \_\_\_\_\_  
Mayor

By \_\_\_\_\_  
City Clerk