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TERM LOAN AGREEMENT

DATED AS OF DECEMBER 1, 2011

between

CITY OF MINNEAPOLIS, MINNESOTA

and

U.S. BANK NATIONAL ASSOCIATION

RELATED TO:

\$15,840,000

CITY OF MINNEAPOLIS  
GENERAL OBLIGATION TERM LOAN NOTE  
SERIES 2011A

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## TERM LOAN AGREEMENT

This TERM LOAN AGREEMENT ("*Agreement*") is entered into as of December 1, 2011, between the CITY OF MINNEAPOLIS, MINNESOTA, a municipal corporation and political subdivision of the State of Minnesota (the "*City*") and U.S. BANK NATIONAL ASSOCIATION (the "*Bank*").

The City is a municipal corporation and political subdivision of the State of Minnesota duly organized and validly existing under the Charter of the City and the Constitution and laws of the State of Minnesota. The City is authorized by the provisions of Minnesota Statutes, Chapter 475, as amended (the "Public Debt Act"), and the Charter of the City to enter into debt obligations, the payment of which are secured by the full faith and credit of the City.

The City has requested that the Bank provide a term loan facility for the purpose of paying a portion of the costs of redeeming and prepaying the following bond issues: (i) General Obligation Block E Bonds, Series 2000A, issued by the City on October 26, 2000 in the original principal amount of \$10,610,000 and currently outstanding in the principal amount of \$5,820,000; (ii) General Obligation Various Purpose Refunding Bonds, Series 2003, issued by the City on October 30, 2003, in the original principal amount of \$15,985,000, and currently outstanding in the principal amount of \$7,110,000; and (iii) the General Obligation Tax Increment Bonds (Mill Quarter Ramp), Series 2005, issued by the City on March 17, 2005, in the original principal amount of \$4,250,000 and currently outstanding in the principal amount of \$3,860,000, and the Bank is willing to do so on the terms and conditions set forth herein.

On November 18, 2011, the City Council of the City adopted Resolution No. 2011R-624 (the "Bond Resolution") authorizing the execution and delivery of this Agreement, pursuant to which the City will obtain a loan in the amount of \$15,840,000 to redeem and prepay the outstanding bonds described above. Pursuant to the Bond Resolution, the City is also authorized to execute and deliver the Series 2011B Term Loan Agreement, pursuant to which the City will obtain a loan in the amount of \$27,980,000 to redeem and prepay the General Obligation Guthrie Parking Ramp Bonds, Series 2003, issued by the City on December 11, 2003 in the original principal amount of \$16,100,000 and currently outstanding in the principal amount of \$15,610,000 and the General Obligation Guthrie Parking Ramp Bonds, Series 2005, issued by the City on March 17, 2005, in the original principal amount of \$16,400,000 and currently outstanding in the principal amount of \$13,300,000.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I

### DEFINITIONS AND ACCOUNTING TERMS

*Section 1.01. Defined Terms.* As used in this Agreement, the following terms shall have the meanings set forth below:

*“Affiliate”* means, with respect to any Person, any Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such first Person. A Person shall be deemed to control another Person for the purposes of this definition if such first Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, common directors, trustees or officers, by contract or otherwise.

*“Agreement”* means this Term Loan Agreement.

*“Amortization End Date”* means the earlier to occur of (i) the fifth anniversary of the Mandatory Prepayment Date and (ii) the date on which the principal amount of the Term Loan is repaid or prepaid in full.

*“Amortization Payment Date”* means (i) the first Business Day of the sixth (6th) calendar month following the Mandatory Prepayment Date and the first Business Day of every sixth (6th) calendar month thereafter prior to the Amortization End Date and (ii) the Amortization End Date.

*“Amortization Period”* has the meaning set forth in Section 2.03.

*“Amortization Requirements”* has the meaning set forth in Section 2.03.

*“Applicable Spread”* means 45 basis points (0.45%), which Applicable Spread is subject to the maintenance of the current ratings assigned by the Rating Agencies to the unenhanced long-term General Obligation Debt of the City. The Applicable Spread will be increased upon any downgrade of any General Obligation Debt below the rating of “Aaa” (or its equivalent) or “AAA” (or its equivalent), and shall then be the number of basis points associated with the applicable rating category set forth below:

<u>Moody’s Rating</u>	<u>S&amp;P Rating</u>	<u>Fitch Rating</u>	<u>Applicable Spread</u>
Aaa	AAA	AAA	0.45%
Aa1	AA+	AA+	0.45%
Aa2	AA	AA	0.45%
Aa3	AA-	AA-	0.55%
A1	A+	A+	0.65%

A2	A	A	0.80%
A3	A-	A-	1.00%
Baa1	BBB+	BBB+	1.50%

The term “*Rating*” as used above shall mean the lower of the two highest unenhanced long-term debt ratings assigned by any of Moody’s, S&P or Fitch to the General Obligation Debt of the City; *provided, however*, that if only two Rating Agencies are then rating General Obligation Debt of the City, the term “*Rating*” as used above shall mean the lower of the unenhanced long-term debt ratings assigned by such Rating Agencies to the General Obligation Debt of the City.

Any change in the Applicable Spread resulting from a change in a Rating shall apply to the Interest Period next succeeding the Interest Period during which any such change occurs.

“*Approving Opinion*” means, with respect to any action relating to the Term Loan, an opinion delivered by Bond Counsel to the effect that such action (i) is permitted by this Agreement and the other Loan Documents and (ii) will not adversely affect the exclusion of interest on the Term Loan from gross income of the Bank for purposes of federal income taxation.

“*Bank*” has the meaning specified in the introductory paragraph hereto.

“*Bank’s Office*” means the Bank’s address and, as appropriate, account as set forth on Schedule 9.02, or such other address or account as the Bank may from time to time notify to the City.

“*Bank Rate*” means a fluctuating rate per annum equal to the sum of the Base Rate plus 3%; *provided* that immediately and automatically upon the occurrence of an Event of Default, Bank Rate shall mean Default Rate.

“*Base Rate*” means, for any day, a fluctuating rate per annum equal to the highest of (i) the Prime Rate, (ii) the sum of the Federal Funds Rate plus 1.00% and (iii) 7.00%.

“*Bond Counsel*” means Kennedy & Graven, Chartered (or another nationally recognized bond counsel selected by the City).

“*Business Day*” means any day other than (i) a Saturday or Sunday or (ii) a day on which banks in Minneapolis, Minnesota, or New York, New York, are required or authorized by law to be closed, or (iii) a day on which the Bank is required or authorized by law to be closed.

“*Closing Date*” means the later of (i) the date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 9.01, (ii) January 3, 2012, or (iii) such date mutually agreed upon by the City and the Bank to fund the Term Loan.

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

*“Computation Date”* means the second London Business Day next preceding each applicable Rate Reset Date.

*“Debt”* of any Person means, at any date and without duplication, (i) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (ii) all direct or contingent obligations of such Person arising under letters of credit, bankers’ acceptances, bank guaranties, surety bonds and similar instruments, (iii) all obligations of such Person as lessee under capital leases, (iv) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business (including, without limitation, accounts payable to construction contractors and other professionals for services rendered), (v) all indebtedness of others secured by a lien on any asset of such Person, whether or not such indebtedness is assumed by such Person, (vi) all Guarantees by such Person of Debt of any other Person and (vii) net payment obligations of such Person under any Swap Contract.

*“Debtor Relief Laws”* means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

*“Default”* means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

*“Default Rate”* means, for any day, the sum of the Base Rate from time to time in effect plus 4% per annum; provided that, subject to the provisions of Section 2.08(b), in no event shall the Default Rate exceed the Maximum Rate.

*“Designated Officer”* means the City’s Finance Officer.

*“Determination of Taxability”* means and shall be deemed to have occurred on the first to occur of the following:

- (i) on the date when the City files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability shall have in fact occurred;
- (ii) on the date when the Bank has received written notification from the City, supported by a written opinion by an attorney or firm of attorneys of recognized standing on the subject of tax-exempt municipal finance, to the effect that an Event of Taxability has occurred;
- (iii) on the date when the Bank shall be advised in writing by the City or any District Director of the Internal Revenue Service (or any other government official or agent exercising the same or a substantially similar function from time to time) that a



statutory notice of deficiency, or a document of substantially similar import, based upon filings of the City, or upon any review or audit of the City or upon any other ground whatsoever, has been issued due to an Event of Taxability; or

(iv) on the date when the City shall receive notice from the Bank that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of the Bank the interest on the Loan due to the occurrence of an Event of Taxability;

*provided, however*, no Determination of Taxability shall occur under subparagraph (iii) or (iv) above unless the City has been afforded the opportunity, at its expense, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined after taking into account any permitted appeals; *provided further, however*, that upon demand from the Bank, the City shall promptly reimburse the Bank for any payments, including any taxes, interest, penalties or other charges, the Bank shall be obligated to make as a result of the Determination of Taxability.

“Dollar” and “\$” mean lawful money of the United States.

“Event of Default” has the meaning specified in Section 8.01.

“Event of Taxability” means a change in law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the City, or the failure to take any action by the City, or the making by the City of any misrepresentation herein or in any certificate required to be given in connection with this Agreement) which has the effect of causing interest paid or payable on the Term Loan to become includable, in whole or in part, in the gross income of the Bank for federal income tax purposes.

“Excluded Taxes” means, with respect to the Bank, or any other recipient of any payment to be made by or on account of any Obligation of the City hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the Laws of which such recipient is organized or in which its principal office is located or, in the case of the Bank, in which its applicable Lending Office is located, and (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the City is located.

“Federal Funds Rate” means, for any day, the rate of interest per annum as determined by the Bank at which overnight Federal Funds are offered to the Bank for such day by major banks in the interbank market, with each change in the Federal Funds Rate to be automatically and immediately effective on the date of any change in such rate. Each determination of the Federal Funds Rate by the Bank shall be deemed conclusive and binding on the City absent manifest error.

*"Fiscal Year"* means the twelve month period from January 1 of a given year and ending on December 31 of that same year.

*"Fitch"* means Fitch, Inc., and its successors and assigns.

*"General Obligation Debt"* means any Debt which is a general obligation of the City and to which the City has pledged its full faith, credit and taxing powers, including, without limitation, the Term Loan.

*"Governmental Authority"* means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

*"Guarantee"* by any Person means any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement condition or otherwise) or (b) entered into for the purpose of assuring in any other manner the obligee of such Debt or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part).

*"Index Rate"* means the sum of (i) the Applicable Spread plus (ii) the product of LIBOR multiplied by 70%.

*"Information"* has the meaning specified in Section 9.07.

*"Interest Payment Date"* means the first Business Day of each March, June, September and December, the Mandatory Prepayment Date and the Maturity Date.

*"Interest Period"* means the period from (and including) the Closing Date to (but excluding) the next succeeding Rate Reset Date, and thereafter shall mean the period from (and including) such Rate Reset Date to (but excluding) the next succeeding Rate Reset Date (or, if sooner, to but excluding the Prepayment Date).

*"Laws"* means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

*"Lending Office"* means the office or offices of the Bank or such other office or offices as the Bank may from time to time notify the City.

*"LIBOR"* means, for any Rate Reset Date, the London interbank offered rate for deposits in United States dollars for a period of one month, which rate appears on the Reuters Screen LIBOR01 Page (or such other page as may replace LIBOR01 on that service or such other service as may be nominated by the British Bankers' Association as an information vendor for the purpose of displaying British Bankers' Association Interest Settlement Rates for U.S. Dollar deposits) as of 11:00 a.m., London, England time, on the Computation Date immediately preceding such Rate Reset Date, or if such rate is not available, another comparable rate determined by the Bank in its reasonable judgment upon notice thereof provided by the Bank to the Commission.

*"Loan Documents"* means this Agreement, the Note and the Resolution.

*"London Business Day"* means any day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency) in the City of London, United Kingdom.

*"Mandatory Prepayment Date"* means July 1, 2016, or such later date as mutually agreed upon by the City and the Bank pursuant to the provisions of Section 2.13 hereof.

*"Maturity Date"* means December 1, 2032.

*"Maximum Rate"* means the lesser of (i) the maximum non-usurious rate of interest permitted by applicable law and (ii) fifteen percent (15%) per annum.

*"Moody's"* means Moody's Investors Service, Inc., and its successors and assigns.

*"Note"* means a promissory note made by the City in favor of the Bank evidencing the Term Loan made by the Bank, substantially in the form of Exhibit A.

*"Obligations"* means all advances to, and debts, liabilities, covenants and duties of, the City arising hereunder or under any other Loan Document or otherwise with respect to the Term Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against the City of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

*"Other Taxes"* means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

*"Participant"* has the meaning specified in Section 9.06(b).

*"Patriot Act"* means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Title III of Pub. L. 107-56 (signed into law October 26, 2001).

*"Person"* means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

*"Prime Rate"* means the rate of interest announced by the Bank from time to time as its prime commercial rate or equivalent, as in effect on such day for United States dollar loans, with any change in the Prime Rate resulting from a change in said prime commercial rate to be effective as of the date of the relevant change in said prime commercial rate.

*"Property"* means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

*"Rate Reset Date"* means the first Business Day of each calendar month.

*"Rating Agency"* means any of Moody's, S&P or Fitch, as applicable.

*"Resolution"* means Resolution No. 2011R-624 adopted by the City Council of the City on November 18, 2011, as may be amended and supplemented in accordance with the terms hereof and thereof.

*"Series 2011B Term Loan"* means the one-time advance made by the Bank on the Closing Date in the amount of \$27,980,000 pursuant to the 2011B Term Loan Agreement.

*"Series 2011B Term Loan Agreement"* means that certain 2011B Term Loan Agreement dated as of December 1, 2011 with respect to the 2011B Term Loan.

*"S&P"* means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., and its successors and assigns.

*"Swap Contract"* means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with

any related schedules, a “*Master Agreement*”), including any such obligations or liabilities under any Master Agreement.

“*Taxable Date*” means the date as of which interest on the Term Loan is first includable in the gross income of the Bank or any Participant as a result of an Event of Taxability as such date is established pursuant to either (i) a Determination of Taxability or (ii) an opinion of Bond Counsel.

“*Taxable Rate*” shall mean the product of (i) the Index Rate or Bank Rate, as applicable, then in effect multiplied by (ii) the Taxable Rate Factor.

“*Taxable Rate Factor*” means 1.5386.

“*Taxes*” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“*Term Commitment*” means the Bank’s obligation to make a Term Loan to the City in an aggregate principal amount at any one time outstanding not to exceed \$15,840,000, and subject to the other terms and provisions hereof.

“*Term Loan*” means the one-time advance made by the Bank on the Closing Date in the amount of the Term Commitment pursuant to this Agreement.

“*United States*” and “*U.S.*” mean the United States of America.

*Section 1.02. Other Interpretive Provisions.* With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all

statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

*Section 1.03. Accounting Terms.* Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made and all financial statements required to be delivered hereunder shall be prepared in accordance with generally accepted accounting principles as in effect from time to time, applied on a consistent basis.

*Section 1.04. Times of Day.* Unless otherwise specified, all references herein to times of day shall be references to Central time (daylight or standard, as applicable).

## ARTICLE II

### THE TERM LOAN

*Section 2.01. The Term Loan.* Subject to the terms and conditions set forth herein, the Bank agrees to make a single loan to the City on the Closing Date in an amount not to exceed the Term Commitment. Amounts borrowed under this Section 2.01 and repaid or prepaid may not be reborrowed.

*Section 2.02. Prepayments.* The City may, upon notice to the Bank, voluntarily prepay the Term Loan, in whole or in part, on any Interest Payment Date, without premium or penalty, or, subject to the provisions of Section 2.10 hereof, on any other Business Day; *provided* that (i) such notice must be received by the Bank not later than 10:00 a.m. three Business Days prior to any date of prepayment and (ii) any prepayment shall be in a principal amount of \$200,000 or a whole multiple of \$50,000 in excess thereof or, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment.

*Section 2.03. Repayment of Term Loan.* The City shall repay to the Bank the principal amount of the Term Loan in installments in the principal amounts and on the dates set forth in Exhibit B hereto, and in any event shall repay to the Bank the aggregate outstanding principal amount of the Term Loan on the Mandatory Prepayment Date; *provided* that if, as of the Mandatory Prepayment Date, (i) no Default or Event of Default shall have occurred and be

continuing, (ii) the representations and warranties of the City set forth in Article V shall be true and correct and (iii) at least two of the Rating Agencies are then maintaining a rating on the unenhanced, long-term General Obligation Debt of the City of at least "A3" (or its equivalent) or "A-" (or its equivalent) (collectively, the "*Amortization Requirements*"), then the City shall repay the outstanding principal amount of the Term Loan in principal installments on each Amortization Payment Date (each such payment, an "*Amortization Payment*"), with the final installment in an amount equal to the entire then outstanding principal amount of the Term Loan on the Amortization End Date (the period commencing on the Mandatory Prepayment Date and ending on the Amortization End Date is herein referred to as the "*Amortization Period*"). Each Amortization Payment shall be that amount of principal which will result in equal (as nearly as possible) aggregate Amortization Payments over the Amortization Period. During the Amortization Period, interest on the Term Loan shall accrue at the Bank Rate and be paid monthly in arrears on the first Business Day of each calendar month.

*Section 2.04. Interest.* (a) Except as otherwise provided in this Section 2.04, the Term Loan shall bear interest during each Interest Period it is outstanding to but not including the Mandatory Prepayment Date on the unpaid principal amount thereof at a fluctuating rate per annum equal to the Index Rate, rounded upward to the third decimal place.

(b) While the Term Loan accrues interest at the Index Rate, the Index Rate shall be reset on each Rate Reset Date and interest shall be paid on each Interest Payment Date.

(c) (i) From and after the occurrence of an Event of Default, the Term Loan shall bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any amount payable by the City hereunder or under any other Loan Document is not paid when due (subject to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(d) Interest on the Term Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(e) From and after the Taxable Date, the Term Loan shall bear interest at the Taxable Rate.

(f) At least ten calendar days prior to each Interest Payment Date, the Bank shall notify the City by first class mail or electronic mail of the amount of the interest payment required to be made by the City to the Bank on such Interest Payment Date.

*Section 2.05. Upfront Fee.* The City shall pay to the Bank on the Closing Date a non-refundable structuring fee equal to \$20,000 in conjunction with the Term Loan and the Series 2011B Term Loan.

*Section 2.06. Computation of Interest and Fees.* All computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on the Term Loan for the day on which the Term Loan is made, and shall not accrue on the Term Loan, or any portion thereof, for the day on which the Term Loan or such portion is paid. Each determination by the Bank of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

*Section 2.07. Evidence of Debt.* The Term Loan shall be evidenced by one or more accounts or records maintained by the Bank in the ordinary course of business. The accounts or records maintained by the Bank shall be conclusive absent plain error of the amount of the Term Loan made by the Bank to the City and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the City hereunder to pay any amount owing with respect to the Obligations. The City shall execute and deliver to the Bank the Note, which shall evidence the Term Loan in addition to such accounts or records.

*Section 2.08. Additional Payments. (a) Determination of Taxability.* (i) In the event a Determination of Taxability occurs, the City hereby agrees to pay to the Bank (and if applicable, each Participant) on demand therefor (1) an amount equal to the difference between (A) the amount of interest that would have been paid to the Bank (and if applicable, each Participant) on the Term Loan during the period for which interest on the Term Loan is included in the gross income of the Bank (and if applicable, each Participant) if the Term Loan had borne interest at the Taxable Rate, beginning on the Taxable Date (the "*Taxable Period*"), and (B) the amount of interest actually paid to the Bank (and if applicable, each Participant) during the Taxable Period, and (2) an amount equal to any interest, penalties or charges owed by the Bank (and if applicable, each Participant) as a result of interest on the Term Loan becoming included in the gross income of the Bank (and if applicable, each Participant), together with any and all reasonable attorneys' fees, court costs, or other out-of-pocket costs incurred by the Bank (and if applicable, each Participant) in connection therewith.

(ii) Subject to the provisions of clauses (iii) and (iv) below, the Bank (and if applicable, each Participant) shall afford the City the opportunity, at the City's sole cost and expense, to contest (1) the validity of any amendment to the Code which causes the interest on the Term Loan to be included in the gross income of the Bank (and if applicable, each Participant) or (2) any challenge to the validity of the tax exemption with respect to the interest on the Term Loan, including the right to direct the necessary litigation contesting such challenge (including administrative audit appeals);



(iii) As a condition precedent to the exercise by the City of its right to contest set forth in clause (ii) above, the City shall, on demand, immediately reimburse the Bank for any and all expenses (including reasonable attorneys' fees for services that may be required or desirable, as determined by the Bank in its sole discretion) that may be incurred by the Bank in connection with any such contest, and shall, on demand, immediately reimburse the Bank for any and all penalties or other charges payable by the Bank (and if applicable, each Participant) for failure to include such interest in its gross income; and

(iv) The Bank may assert claims for additional payments as described in this Section 2.08 during the term of this Agreement and for up to three (3) years following the termination of this Agreement. The obligations of the City under this Section 2.08(a) shall survive for up to three (3) years after the termination of this Agreement and the repayment or prepayment in full of the Term Loan.

(b) *Maximum Interest Rate.* (i) If the amount of interest payable for any period in accordance with the terms hereof exceeds the amount of interest that would be payable for such period had interest for such period been calculated at the Maximum Rate, then interest for such period shall be payable in an amount calculated at the Maximum Rate.

(ii) Any interest that would have been due and payable for any period but for the operation of the immediately preceding subclause (i) shall accrue and be payable as provided in this subclause (ii) and shall, less interest actually paid to the Bank for such period, constitute the "Excess Interest Amount." If there is any accrued and unpaid Excess Interest Amount as of any date, then the principal amount with respect to which interest is payable shall bear interest at the Maximum Rate until payment to the Bank of the entire Excess Interest Amount.

(iii) Notwithstanding the foregoing, on the date on which no principal amount with respect to the Term Loan remains unpaid, the City shall pay to the Bank a fee equal to any accrued and unpaid Excess Interest Amount.

(c) *Survival.* The obligations of the City under this Section 2.08 shall survive the termination of this Agreement and the redemption or other payment in full of the Term Loan.

*Section 2.09. Obligations Absolute.* The payment obligations of the City under this Agreement shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including without limitation the following:

(a) any lack of validity or enforceability of this Agreement, the Note or any of the other Loan Documents;

(b) any amendment or waiver of or any consent to departure from all or any of the Loan Documents;

(c) the existence of any claim, set-off, defense or other right which the City may have at any time against the Bank or any other Person, whether in connection with this Agreement, the other Loan Documents, the transactions contemplated herein or therein or any unrelated transaction; or

(d) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

Notwithstanding this Section, the Bank acknowledges the City may have the right to bring a collateral action with respect to one or more of the foregoing circumstances. The City's payment obligations shall remain in full force and effect pending the final disposition of any such action. All fees payable pursuant to this Agreement shall be deemed to be fully earned when due and non-refundable when paid.

*Section 2.10. Funding Indemnity.* In the event the Bank shall incur any loss, cost, or expense (including, without limitation, any loss, cost, or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired or contracted to be acquired by the Bank to make or maintain the Term Loan or the relending or reinvesting of such deposits or other funds or amounts paid or prepaid to the Bank) as a result of any prepayment of the Term Loan on a date other than an Interest Payment Date for any reason, whether before or after default, and whether or not such payment is required by any provision of this Agreement, then upon the demand of the Bank, the City shall pay to the Bank a prepayment premium in such amount as will reimburse the Bank for such loss, cost, or expense. If the Bank requests such prepayment premium, it shall provide to the City a certificate setting forth the computation of the loss, cost, or expense giving rise to the request for such prepayment premium in reasonable detail and the amount of such prepayment premium shall be conclusive if reasonably determined.

*Section 2.11. Prepayment Fee.* The City shall pay to the Bank a prepayment fee in connection with each prepayment of all or any portion of the Term Loan prior to January 1, 2013, in an amount equal to the product of (A) the Applicable Spread in effect on the date of any such prepayment, (B) the principal amount of the Term Loan to be prepaid, and (C) a fraction, the numerator of which is equal to the number of days from and including the date of such prepayment to and including January 1, 2013, and the denominator of which is 365, payable on the date that all or any portion of the Term Loan is prepaid.

*Section 2.12. Payments Generally.* All payments to be made by the City shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the City hereunder shall be made to the Bank, at the Lending Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. All payments received by the Bank after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the City shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

*Section 2.13. Extension of Mandatory Prepayment Date.* The City may request an extension of the Mandatory Prepayment Date in writing in the form of Exhibit C hereto not more than 180 days prior to the then current Mandatory Prepayment Date. The Bank will make reasonable efforts to respond to such request within 60 days after receipt of all information necessary, in the Bank's judgment, to permit the Bank to make an informed credit decision. If the Bank fails to definitively respond to such request within such 60-day period, the Bank shall be deemed to have refused to grant the extension requested. The Bank may, in its sole and absolute discretion, decide to accept or reject any such proposed extension and no extension shall become effective unless the Bank shall have consented thereto in writing in the form of Exhibit C hereto or otherwise. The Bank's consent, if granted, shall be conditioned upon the preparation, execution and delivery of documentation and the receipt of an Approving Opinion, in each case in form and substance satisfactory to the Bank.

### ARTICLE III

#### WITHHOLDING AND YIELD PROTECTION

*Section 3.01. Withholding.*

(a) *Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.* Any and all payments by or on account of any Obligation of the City hereunder or under any other Loan Document shall to the fullest extent permitted by applicable Laws be made free and clear of and without reduction or set-off, notwithstanding the assertion of any right of recoupment or set-off or of any counterclaim by the City, and without any withholding on account of Taxes or any deduction whatsoever. If the City is required by law to withhold or deduct any sum from payments required by this Agreement or the Note, the City shall, to the fullest extent permitted by law, increase the amount paid by it to the Bank so that, after all withholdings and deductions, the amount received by the Bank shall equal the amount the Bank would have received without any such withholding or deduction.

(b) *Payment of Other Taxes by the City.* Without limiting the provisions of subsection (a) above, the City shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Laws.

(c) *Evidence of Payments.* Upon request by the City or the Bank, as the case may be, after any payment of Taxes by the City or by the Bank to a Governmental Authority as provided in this Section 3.01, the City shall deliver to the Bank or the Bank shall deliver to the City, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the City or the Bank, as the case may be.

*Section 3.02. Increased Costs; Capital Adequacy.*

(a) If, on or after the Closing Date, the adoption of any law or any governmental or quasi-governmental rule, regulation, policy, guideline or directive (whether or not having the force of law), or any change in the interpretation, promulgation, implementation or

administration thereof by any governmental or quasi-governmental authority, central bank or comparable agency charged with the interpretation or administration thereof including, notwithstanding the foregoing, all requests, rules, guidelines or directives in connection with Dodd-Frank Act regardless of the date enacted, adopted or issued, or compliance by the Bank with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency:

(i) subjects the Bank to any Taxes, or changes the basis of taxation of payments (other than with respect to Excluded Taxes) to the Bank in respect of the Term Loan, or

(ii) imposes, modifies or increases or deems applicable any reserve, assessment, insurance charge, special deposit or similar requirement against entering into this Agreement, or assets held by deposits with or for the account of the Bank, or

(iii) imposes any other condition regarding this Agreement, the result of which is to increase the cost to the Bank of entering into and maintaining this Agreement in making, funding or maintaining the Term Loan, or reduces any amount receivable by the Bank hereunder or in connection with the Term Loan or requires the Bank to make any payment in connection therewith by an amount deemed material by the Bank,

and the result of any of the foregoing is to increase the cost to the Bank of making or maintaining the Term Loan or to reduce the return received by Bank, then, within thirty (30) days of demand by the Bank, the City shall pay the Bank such additional amount or amounts as will compensate the Bank for such increased cost or reduction in amount received.

(b) If the Bank determines the amount of capital required or expected to be maintained by the Bank, or any corporation controlling the Bank, is increased as a result of a Change (as hereinafter defined), then, within thirty (30) days of demand by the Bank, the City shall pay to the Bank the amount necessary to compensate for any shortfall in the rate of return on the portion of such increased capital which the Bank determines is attributable to this Agreement or the Term Loan (after taking into account the Bank's policies as to capital adequacy).

For purposes of this Section, "Change" means (i) any change after the Closing Date in the Risk-Based Capital Guidelines (as hereinafter defined) or (ii) any adoption of or change in any other law, governmental or quasi-governmental rule, regulation, policy, guideline, interpretation, or directive (whether or not having the force of law) or in the interpretation, promulgation, implementation or administration thereof after the Closing Date which affects the amount of capital required or expected to be maintained by the Bank or any corporation controlling the Bank. Notwithstanding the foregoing, for purposes of this Agreement, all requests, rules, guidelines or directives in connection with the Dodd-Frank Act shall be deemed to be a Change regardless of the date enacted, adopted or issued and all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) or the United States financial regulatory authorities shall be deemed to be a Change regardless of the date adopted, issued, promulgated or implemented. "*Risk-Based Capital Guidelines*" means (i) the

risk-based capital guidelines in effect in the United States on the Closing Date, including transition rules, and (ii) the corresponding capital regulations promulgated by regulatory authorities outside the United States including transition rules, and any amendments to such regulations adopted prior to the Closing Date.

(c) Notwithstanding anything contained in paragraphs (a) or (c) of this Section 3.02, the City shall have no liability to the Bank for any increased costs, increased capital or reduction in rate of return to the extent incurred or imposed by the Bank more than one hundred eighty (180) days prior to the date of demand by the Bank with respect thereto (the "*Cut-Off Date*"), except, where such increased costs, increased capital or reduction in rate of return apply to the Bank on a basis retroactive to a date prior to the Cut-Off Date.

(d) A certificate as to such increased cost incurred by the Bank as a result of any event mentioned in paragraph (a) or (b) of this Section 3.02 setting forth, in reasonable detail, the basis for calculation and the amount of such calculation shall be submitted by the Bank to the City and shall be conclusive (absent manifest error) as to the amount thereof.

(e) Upon notice from the Bank of additional costs or charges to be assessed to the City pursuant to Section 3.02(a) or 3.02(b), the City may prepay the Term Loan on any date upon ten (10) days' written notice to the Bank and without premium or penalty and without regard to the provisions of Sections 2.10 and 2.11.

*Section 3.03. Survival.* All of the City's Obligations under this Article III shall survive termination of the Term Loan and repayment of all other Obligations hereunder.

## **ARTICLE IV**

### **CONDITIONS PRECEDENT TO CREDIT EXTENSION**

*Section 4.01. Conditions of Credit Extension.* The obligation of the Bank to make the Term Loan hereunder is subject to satisfaction of the following conditions precedent:

(a) The Bank's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Designated Representative of the City, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Bank:

(i) executed counterparts of this Agreement, sufficient in number for distribution to the Bank and the City;

(ii) a copy of the Resolution of the City authorizing the execution and delivery of this Agreement, the Note and the other Loan Documents;

(iii) a Note executed by the City in favor of the Bank;

(iv) such certificates of resolutions or other action, incumbency certificates (including specimen signatures) and/or other certificates of authorized officers of the City as the Bank may require evidencing the identity, authority and capacity of each authorized officer thereof authorized to act as an authorized officer in connection with this Agreement and the other Loan Documents to which the City is a party;

(b) An opinion addressed to the Bank and dated the Closing Date of the City Attorney in form and substance reasonably satisfactory to the Bank;

(c) The following statements shall be true and correct on the Closing Date, and the Bank shall have received a certificate incorporating by reference the definitions of the capitalized terms defined in this Agreement, signed by a Designated Officer, dated the Closing Date, stating that:

(i) the representations and warranties of the City contained in each of the Loan Documents and each certificate, letter, other writing or instrument delivered by the City to the Bank pursuant hereto or thereto are true and correct on and as of the Closing Date as though made on and as of such date; and

(ii) no Default or Event of Default has occurred and is continuing or would result from the City's execution and delivery of this Agreement or the Note.

(d) The Bank shall have received an opinion addressed to the Bank and dated the Closing Date of Bond Counsel as to the due authorization, execution and delivery, validity and enforceability with respect to the City of this Agreement and the Note, and the exclusion of interest on the Term Loan from gross income for federal income tax purposes of the Bank and such other matters as the Bank may reasonably request, in form and substance satisfactory to the Bank;

(e) The Bank shall have received a copy of the audited financial statements for the City for the Fiscal Year ending December 31, 2010, and a copy of the most recent budget of the City;

(f) All other legal matters pertaining to the execution and delivery of each of the Loan Documents and the adoption and implementation of the Resolution shall be reasonably satisfactory to the Bank and its counsel;

(g) The Bank shall have received evidence that the long-term unenhanced rating on General Obligation Debt is not less than "Aaa" (or its equivalent) by Moody's and is not less than "AAA" (or its equivalent) by S&P and Fitch, respectively;

(h) The Bank shall have received an incumbency certificate of the City and a certificate from the City identifying which individuals are Designated Officers;

(i) The Bank shall have received such other documents, certificates, opinions, approvals and filings with respect to this Agreement, the Note and the other Loan Documents as the Bank may reasonably request

(j) Any fees required to be paid on or before the Closing Date shall have been paid; and

(k) Unless waived by the Bank, the City shall have paid all fees, charges and disbursements of counsel to the Bank (directly to such counsel if requested by the Bank) to the extent invoiced prior to or on the Closing Date.

## **ARTICLE V**

### **REPRESENTATIONS AND WARRANTIES**

The City represents and warrants to the Bank that:

*Section 5.01. Organization, Powers, Etc.* The City (i) is a duly organized and existing municipality under the laws of the State and (ii) has full power and authority to execute, deliver and perform its obligations under this Agreement and the other Loan Documents.

*Section 5.02. Governmental Consent or Approval.* Based on the advice of Bond Counsel, the execution, delivery and performance of this Agreement and the other Loan Documents to which the City is a party, and the validity and enforceability of this Agreement and the other Loan Documents to which the City is a party, to the extent not already obtained, do not and will not require registration with, or the consent or approval of, or any other action by, any Federal, state or other governmental authority or regulatory body; provided, however, that the City has taken no action with respect to any filings or registration required by any state securities or “blue sky” laws.

*Section 5.03. Authorization, Absence of Conflicts, Etc.* Based on the advice of Bond Counsel, the execution, delivery and performance of this Agreement and the Note (i) have been duly authorized by the City, (ii) do not and will not conflict with, or result in violation of, any material provision of law (Federal or state), or any material order, rule or regulation of any court or other Governmental Authority and (iii) do not and will not conflict with, result in a violation of or constitute a default under any material provision of a resolution or other agreement or instrument to which the City is a party or by which the City or any of its assets is bound and will not result in the creation or the imposition of any security interest, lien, charge or encumbrance of any of its assets pursuant to the provisions of any of the foregoing except as provided therein.

*Section 5.04. No Defaults.* No Default or Event of Default has occurred and is continuing under this Agreement, and no event of default or condition, event or act which with notice or lapse of time or both would become or constitute a default or event of default under, or as such term or terms is defined in, any other Loan Document or agreements related thereto, has occurred and is continuing.

*Section 5.05. Information Provided by City.* To the best knowledge of the Designated Officer after due investigation, the representations and statements made by the City contained herein or in any other Loan Document were to the knowledge of the City, when issued, correct in all material respects and did not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading. All financial statements of the City furnished to the Bank were prepared in accordance with generally accepted accounting principles for government entities and applied on a consistent basis throughout the periods involved. Since the date of the most recent financial statements referred to in the preceding sentence, to the knowledge of the City, no material adverse change has occurred in the business, operations or condition (financial or otherwise) of the City.

*Section 5.06. Litigation.* Based on the advice of the City Attorney, there is no action or investigation pending or threatened against the City before any court or administrative agency which questions the existence or powers of the City, or which, if adversely determined, might result in any material adverse change in the financial condition, operations or prospects of the City, or which questions the validity of any proceeding held or action taken by the City in connection with the execution and delivery of this Agreement or any of the Loan Documents, or wherein an unfavorable decision, ruling or finding would in any way materially adversely affect the transactions contemplated by this Agreement or any of the Loan Documents or which in any way would adversely affect the validity or enforceability of the Agreement or any of the Loan Documents (or of any other instrument required or anticipated for use in consummating the transactions contemplated hereby).

*Section 5.07. Complete and Correct Information.* No fact is known to the City which materially and adversely affects or in the future may (so far as it can reasonably foresee) materially and adversely affect the business, assets or liabilities, financial condition, results of operations, or its business prospects which has not been set forth in the financial information referred to in paragraph (f) above or in other written materials provided to the Bank.

*Section 5.08. Other Documents.* The representations and warranties made by the City in each of the Loan Documents to which it is a party are hereby incorporated herein by this reference and are hereby reaffirmed and restated by the City for the benefit of the Bank as if such representations and warranties were fully set forth herein. Except as otherwise provided herein, no amendment, modification, termination or replacement of any such representations, warranties, covenants and definitions contained in the Loan Documents to which it is a party shall be effective to amend, modify, terminate or replace the representations, warranties, covenants and definitions incorporated herein by this reference, without the prior written consent of the Bank.

*Section 5.09. Tax-Exempt Status.* The City has not taken any action or omitted to take any action, and knows of no action taken or omitted to be taken by any other Person, which action, if taken or omitted, would adversely affect the exclusion of interest on the Bonds from gross income for Federal income tax purposes or the exclusion of such interest from the net taxable income of individuals, estates and trusts for State of Minnesota income tax purposes.



*Section 5.10. Regulations U and X.* The City is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U or X issued by the Board of Governors of the Federal Reserve System); and no proceeds of Term Loan will be used to extend credit to others for the purpose of purchasing or carrying any margin stock.

*Section 5.11. General Obligation.* The obligation of the City to pay the principal of and interest on Term Loan is a general obligation of the City to which the City's full faith and credit is pledged. The Obligations of the City (other than the Obligation of the City to pay the principal of and interest on Term Loan) constitute Obligations of a general nature of the City payable from any and all legally available funds of the City.

*Section 5.12. Intentionally Left Blank.*

*Section 5.13. Intentionally Left Blank.*

*Section 5.14. Reliance by the Bank.* All representations and warranties made herein to the Bank or incorporated hereby for the benefit of the Bank are made with the understanding that the Bank is relying upon the accuracy of such representations and warranties. Notwithstanding that the Bank may conduct its own investigation as to some or all of the matters covered by the representations and warranties in the Loan Documents, and any certificates, information, opinions or documents delivered in connection therewith, the Bank is entitled to rely on all representations and warranties as a material inducement to the Bank's extension of the credit evidenced by the Loan Documents.

*Section 5.15. Usury.* None of the Loan Documents provide for any payments that would violate any applicable law regarding permissible maximum rates of interest.

*Section 5.16. Immunity.* The City is not entitled to raise the defense of immunity (sovereign or otherwise) in actions by the Bank against the City to enforce the provisions of this Agreement or any other Loan Document. The City irrevocably agrees, to the fullest extent permitted by applicable law, to waive any future right to immunity (sovereign or otherwise) in actions by the Bank against the City to enforce the provisions of this Agreement and each other Loan Document.

*Section 5.17. Anti-Terrorism Laws.* To the best knowledge of the Designated Officer after due investigation, neither the City nor any of its Affiliates is in violation of any Laws relating to terrorism or money laundering ("*Anti-Terrorism Laws*"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "*Executive Order*");

(a) Neither the City nor any of its Affiliates is any of the following:

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a Person with which the Bank is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(v) a Person that is named as a "specially designated national and blocked person" on the most current list published by the Office of Foreign Asset Control ("OFAC") or any list of Persons issued by OFAC pursuant to the Executive Order at its official website or any replacement website or other replacement official publication of such list;

(b) Neither the City nor any of its Affiliates (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in subsection (a)(ii) above, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

## **ARTICLE VI**

### **AFFIRMATIVE COVENANTS**

So long as the Term Loan or any other Obligation hereunder shall remain unpaid or unsatisfied, the City shall:

*Section 6.01. Payment Obligations.* (a) The City shall promptly pay or cause to be paid all amounts payable by it hereunder and under the other Loan Documents, as applicable, according to the terms hereof or thereof and shall duly perform each of its obligations under this Agreement and the other Loan Documents. The City agrees to pay on the Closing Date the reasonable fees and expenses payable pursuant to Sections 2.05 and 9.04 hereof.

(b) Pursuant to the Resolution, the City has pledged certain revenues to the payment of the principal of, premium, if any, and interest on the Term Loan, including tax increment revenues from various tax increment districts located in the City, special assessments, ad valorem taxes, and certain net revenues derived from the operation of the City's parking system. In addition, the full faith and credit of the City has been irrevocably pledged for the prompt and full payment of the principal of, premium, if any, and interest on the Term Loan when due. The City covenants and agrees that it shall (i) include all amounts payable as principal of and interest on the Term Loan for each Fiscal Year in which such amounts are due and payable in its budget for that Fiscal Year; (ii) appropriate such amounts from the proper funds for such payments; and

(iii) duly and punctually pay or cause to be paid such payments of principal of and interest on the Term Loan.

*Section 6.02. Loan Documents.* (i) The City agrees that it will perform and comply with each and every covenant and agreement to be performed or observed by it in each of the Loan Documents to which it is a party and each such covenant, together with the related definitions of terms contained therein, is hereby incorporated by reference herein with the same effect as if it were set forth herein in its entirety. No termination or amendment to such covenants and agreements or defined terms or release of the City with respect thereto as incorporated by reference herein are permitted without the prior written consent of the Bank. Notwithstanding any termination or expiration of any such Loan Document, the City shall continue to observe the covenants set forth therein for the benefit of the Bank until the termination of this Agreement and the payment of all obligations of the City hereunder, including without limitation the payment of the principal of and all accrued interest (including Excess Interest Amount) on the Term Loan. All such incorporated covenants shall be in addition to the express covenants contained herein and shall not be limited by the express covenants contained herein nor shall such incorporated covenants be a limitation on the express covenants contained herein.

(ii) To the extent that any provision of any of the Loan Documents relating to the City's Obligations hereunder (including, without limitation, the City's obligation to pay principal and interest on the Term Loan) incorporated by reference pursuant to paragraph (i) above permits any Person to waive compliance with such provision or requires that a document, opinion or other instrument or any event or condition be acceptable or satisfactory to any Person, for purposes of this Agreement, such provision shall be complied with only if it is waived by the Bank or such document, opinion or other instrument or event or condition, if material to the Bank, shall be acceptable or satisfactory only if it is acceptable or satisfactory to the Bank. No termination of or amendment or supplement to the covenants and agreements or definitions contained in the Loan Document relating to the City's obligations hereunder (including, without limitation, the City's obligation to pay principal and interest on the Term Loan) shall be effective to terminate or amend such covenants and agreements or definitions as incorporated by reference herein without the prior written consent of the Bank.

(iii) The City shall give prior written notice to the Bank of any action referred to in this Section 6.02.

*Section 6.03. Reporting Requirements; Inspection Rights.* The City shall keep proper books of record and account in which full, true and correct entries will be made reflecting all financial transactions of the City in accordance with generally accepted accounting principles, consistently applied, and will furnish to the Bank a copy of each of the following:

(i) As soon as available, and in any event within 270 days after the close of each fiscal year of the City, (A) the general purpose financial statements of the City for such fiscal year and (B) an audit report of the Minnesota Office of the State Auditor or an independent certified public accountant of recognized standing selected by the City, on such financial statements;

(ii) Concurrently with the furnishing of the financial statements under Section 6.03(i) hereof, a certificate signed by the Designated Officer stating that (A) the City has complied with all of the terms, provisions and conditions of this Agreement and the other Loan Documents, (B) to the best of its knowledge, the City has kept, observed, performed and fulfilled each and every covenant, provision and condition of this Agreement and the Loan Documents on the City's part to be performed and (C) no Default or Event of Default has occurred, or if such Default or Event of Default has occurred, specifying the nature of such Default or Event of Default, the period of its existence, the nature and status thereof and any remedial steps taken or proposed to correct such Default or Event of Default;

(iii) Forthwith, and in any event within ten (10) Business Days, after the City obtains knowledge thereof, a certificate of the City setting forth the occurrence of any Default or Event of Default, the details thereof and the action which the City is taking or proposes to take with respect thereto; and

(iv) Such other information respecting the affairs, condition and/or operations, financial or otherwise, of the City as the Bank may from time to time reasonably request.

The City shall at any and all times during regular business hours, upon the written request of the Bank, permit the Bank by its representatives to inspect the properties, books of account, records, reports and other papers of the City, to take copies and extracts therefrom, and to discuss the affairs, finances and accounts of the City with the Designated Officer or the independent public accountants of the City. The City will afford and procure a reasonable opportunity to make any such inspection, and the City will furnish to the Bank any and all information as the Bank may reasonably request, with respect to the performance by the City of the City's covenants in this Agreement

*Section 6.04. Compliance with Law.* The City shall comply with all laws, ordinances, orders, rules and regulations (including, without limitation, and state securities and blue sky laws in connection with the offering, sale and delivery of the Bonds) that may be applicable to it if the failure to comply could have a material adverse effect on the security for the Term Loan or the ability of the City to perform its obligations under this Agreement and the other Loan Documents.

*Section 6.05. Notices.* The Designated Officer will promptly furnish, or cause to be furnished, to the Bank (i) notice of the occurrence of any Default or Event of Default or any "event of default" hereunder, (ii) copies of any communications, reports or financial statements delivered or received by it from any taxing authority or rating agency, (iii) such further financial and other information with respect to the City and its affairs as the Bank may reasonably request from time to time, (iv) notice of the (A) existence and status of any litigation which individually or in the aggregate could, in the event of an unfavorable outcome, have a material adverse effect on or (B) passage of any state or local ordinance, law or rule not of general applicability to all Persons, either of which could reasonably be expected to have a material adverse effect on

(x) the financial condition or operations of the City or (y) the enforceability or validity of any of the Loan Documents, and (v) any change in any material fact or circumstance represented or warranted in this Agreement or in any of the Loan Documents.

*Section 6.06. Maintenance of Approvals; Filings, Etc.* The City shall at all times maintain in effect, renew and comply with all the terms and conditions of all consents, licenses, approvals and authorizations as may be necessary or appropriate under any applicable law or regulation for its execution, delivery and performance of this Agreement and the other Loan Documents.

*Section 6.07. Taxes and Liabilities.* The City will pay all its Debt and Obligations promptly and in accordance with their terms (including, without limitation, amounts payable by the City under this Agreement and the other Loan Documents).

*Section 6.08. Accuracy of Information.* All data, certificates, reports, opinions of counsel, documents and other information furnished to the Bank, whether pursuant to this Agreement, or in connection with or pursuant to an amendment or modification of, or waiver under, this Agreement shall, at the time the same are so furnished, (i) be complete and correct in all material respect to the extent necessary to give the Bank true and accurate knowledge of the subject matter thereof, and (ii) not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statement contained therein not misleading, and the furnishing of the same to the Bank shall constitute a representation and warrant by the City to that effect. Each audited financial statement furnished to the Bank, whether pursuant to this Agreement, or in connection with or pursuant to an amendment or modification of or waiver under, this Agreement, shall, as of the date of such audited financial statement, fairly present the financial condition of the City.

*Section 6.09. Additional Documents.* Upon written request from the Bank, the City shall furnish to the Bank from time to time, at the City's expense, all further instruments and documents, duly executed and delivered by the City, and take all further action that may be reasonably necessary, or that the Bank, may reasonably request, in order to (i) perfect and protect any security interest or other right or interest assigned, or purported to be assigned, to the Bank, under or in connection with this Agreement or any other Loan Documents, or (ii) enable the Bank, to exercise or enforce its rights or remedies under or in connection with this Agreement or any other Loan Document.

*Section 6.10. Intentionally Left Blank.*

*Section 6.11. Intentionally Left Blank.*

*Section 6.12. Further Assurances.* From time to time hereafter, the City will execute and deliver such additional instruments, certificates or documents, and will take all such actions as the Bank may reasonably request for the purposes of implementing or effectuating the provisions of the Loan Documents and this Agreement. Upon the exercise by the Bank of any power, right, privilege or remedy pursuant to this Agreement or the other Loan Documents which requires any consent, approval, registration, qualification or authorization of any governmental authority or

instrumentality, the City will, execute and deliver all necessary applications, certifications, instruments and other documents and papers that the Bank may be required to obtain for such governmental consent, approval, registration, qualification or authorization.

*Section 6.13. Credit Facilities.* In the event that the City shall, directly or indirectly, enter into or otherwise consent to any credit agreement, bond purchase agreement, liquidity agreement or other agreement or instrument (or any amendment, supplement or modification thereto) under which, directly or indirectly, any Person or Persons undertakes to make loans or extend credit or liquidity to the City, which such agreement (or amendment thereto) provides such Person with more restrictive covenants and/or greater rights and remedies than are provided to the Bank in this Agreement, the City shall provide the Bank with a copy of each such agreement (or amendment thereto) and such more restrictive covenants and/or greater rights and remedies shall automatically be deemed to be incorporated into this Agreement and the Bank shall have the benefits of such more restrictive covenants and/or such greater rights and remedies as if specifically set forth herein. The City shall promptly enter into an amendment to this Agreement to include such more restrictive covenants and/or greater rights or remedies (provided that the Bank shall maintain the benefit of such more restrictive covenants and/or greater rights and remedies even if the City fails to provide such amendment). This Section 6.13 shall not apply to the City's pledge of certain sources of revenues for the payment of other Debt or Obligations of the City. This Section 6.13 shall be further limited by the City's authority under its Charter and state law to comply with this provision.

## **ARTICLE VII**

### **NEGATIVE COVENANTS**

So long as the Term Loan or any other Obligation hereunder shall remain unpaid or unsatisfied, the City shall not:

(a) use, or permit the use of, any proceeds of the Term Loan in any manner which would cause the Term Loan to be an "arbitrage bond" within the meaning of Section 148(a) of the Code ; or

(b) take any action or omit to take any action which, if taken or omitted, would adversely affect (i) the exclusion of interest on the Term Loan from gross income for federal income tax purposes or (ii) the exclusion of interest on the Term Loan from taxable net income of individuals, estates, and trusts for State of Minnesota income tax purposes; or

(c) violate any law, rule, regulation, or governmental order to which it is subject, which violation involves a reasonable likelihood of adversely affecting the financial condition of the City or the City's ability to perform its obligations under this Agreement or any other Loan Document.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

*Section 8.01. Events of Default and Remedies.* If any of the following events shall occur, each such event shall be an “*Event of Default*”:

(a) any material representation or warranty made by the City in this Agreement (or incorporated herein by reference) or in any of the other Loan Documents or in any certificate, document, instrument, opinion or financial or other statement contemplated by or made or delivered pursuant to or in connection with this Agreement or with any of the other Loan Documents, shall prove to have been incorrect, incomplete or misleading in any material respect when made;

(b) any “*event of default*” shall have occurred under any of the Loan Documents (as defined respectively therein);

(c) the City shall fail to pay (i) any amount of principal of or interest on the Term Loan as and when due hereunder, or (ii) within five (5) days after the same becomes due, any other amount payable hereunder;

(d) failure in the due observance or performance by the City of any covenant set forth in Sections 6.01, 6.02, 6.10, 6.13 or Article VII hereof;

(e) failure in the due observance or performance by the City of any other term, covenant or agreement set forth in this Agreement and the continuance of such failure for 30 days after the occurrence thereof;

(f) the City shall (i) have entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) not pay, or admit in writing its inability to pay, its debts generally as they become due, (iii) make an assignment for the benefit of creditors, (iv) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its property, (v) institute any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, marshalling of assets, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) take any corporate action in furtherance of any matter described in parts (i) through (v) above, or (vii) fail to contest in good faith any appointment or proceeding described in Section 8.01(i) hereof;

(g) a custodian, receiver, trustee, examiner, liquidator or similar official shall be appointed for the City or any substantial part of its property, or a proceeding described in Section 8.01(f)(v) shall be instituted against the City and such appointment continues

undischarged or any such proceeding continues undismissed or unstayed for a period of 60 or more days;

(h) a debt moratorium, debt restructuring, debt adjustment or comparable restriction is imposed on the repayment when due and payable of the principal of or interest on any General Obligation Debt of the City by any Governmental Authority with appropriate jurisdiction;

(i) the failure of the City to perform any material obligation under any indenture, agreement or other instrument under which any General Obligation Debt of the City has been issued, and such failure shall continue for a period of time sufficient to permit the acceleration of the maturity of any such General Obligation Debt (whether or not such maturity is in fact accelerated) or the City shall fail to pay any such General Obligation Debt when and as due (whether by lapse of time, acceleration or otherwise);

(j) any judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes, which are not covered by insurance (including self-insurance), in an aggregate amount not less than \$15,000,000 shall be entered or filed against the City or against any of their property and remain unvacated, unbonded or unstayed for a period of 90 days;

(k) any material provision of this Agreement or any other Loan Document shall, for any reason, be declared to be unenforceable or null and void by any court or other Governmental Authority of competent jurisdiction, or (ii) the City or any Governmental Authority contests the validity or enforceability of any material provision of this Agreement or any other Loan Document or shall seek an adjudication that this Agreement or any other Loan Document is not valid and binding of the City; or

(l) the long-term rating assigned by at least two of the Rating Agencies (if three Rating Agencies are then rating the General Obligation Debt) to the unenhanced long-term General Obligation Debt, or the long-term rate assigned by any Rating Agency (if no more than two Rating Agencies are then rating the General Obligation Debt) to the unenhanced long-term General Obligation Debt is reduced below "Baa1" (or its equivalent), "BBB+" (or its equivalent) or "BBB+" (or its equivalent), respectively.

*Section 8.02. Remedies Upon Event of Default.* If any Event of Default occurs and is continuing, the Bank may take any or all of the following actions:

(a) declare the unpaid principal amount of the Term Loan, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the City;

(b) exercise all rights and remedies available to it under the Loan Documents;  
and



(c) pursue any other action available at law or in equity either for specific performance of any covenant or agreement contained herein or in aid of execution of any power herein granted or for the enforcement of any proper legal remedy.

*provided, however*, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the City under the Bankruptcy Code of the United States, the obligation of the Bank to extend further credit pursuant to any of the terms hereof shall automatically terminate and the unpaid principal amount of the Term Loan and all interest and other amounts as aforesaid shall automatically become due and payable in each case without further act of the Bank.

## ARTICLE IX

### MISCELLANEOUS

*Section 9.01. Amendments, Etc.* No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the City or any other City therefrom, shall be effective unless in writing signed by the Bank and the City, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

*Section 9.02. Notices; Effectiveness; Electronic Communication.*

(a) *Notices Generally.* Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), and except as otherwise expressly provided herein, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number to the address, telecopier number, electronic mail address or telephone number specified for the City and the Bank on Schedule 9.02; and

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) *Electronic Communications.* Notices and other communications to the Bank hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Bank. The Bank or the City may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided* that approval of such procedures may be limited to particular notices or communications.

Unless the Bank otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) *Change of Address, Etc.* Each of the City and the Bank may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto.

(d) *Reliance by Bank.* The Bank shall be entitled to rely and act upon any notices purportedly given by or on behalf of the City even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The City shall indemnify the Bank and its Affiliates from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the City. All telephonic notices to and other telephonic communications with the Bank may be recorded by the Bank, and each of the parties hereto hereby consents to such recording.

*Section 9.03. No Waiver; Cumulative Remedies; Enforcement.* No failure by the Bank to exercise, and no delay by the Bank in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

*Section 9.04. Expenses; Indemnity; Damage Waiver.*

(a) *Costs and Expenses.* The City shall pay (i) all reasonable out-of-pocket expenses incurred by the Bank and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Bank), in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), but in no event shall such costs exceed \$15,000; and (ii) all out-of-pocket expenses incurred by the Bank (including reasonable fees, charges and disbursements of any counsel for the Bank), and shall pay all reasonable fees and time charges for attorneys who may be employees of the Bank, in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Term Loan

made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Term Loan.

(b) To the extent permitted by law, the City agrees to indemnify and hold harmless the Bank from and against any and all claims, damages, losses, liabilities, reasonable costs or expenses whatsoever which the Bank may incur (or which may be claimed against the Bank by any Person) by reason of or in connection with the execution and delivery by the City of this Agreement and the transactions contemplated hereby; *provided, however*, that the City shall not be required to indemnify the Bank for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the willful misconduct or negligence of the Bank. Nothing in this Section 9.04 is intended to limit the obligations of the City under this Agreement or of the City to pay its obligations hereunder and under the Note.

(c) *Payments.* All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(d) *Survival.* The agreements in this Section shall survive the repayment of the Term Loan and the repayment, satisfaction or discharge of all the other obligations.

*Section 9.05. Payments Set Aside.* To the extent that any payment by or on behalf of the City is made to the Bank, or the Bank exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Bank in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

*Section 9.06. Successors and Assigns.*

(a) *Successors and Assigns Generally.* The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the City may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Bank.

(b) The Bank shall not assign or transfer this Agreement without the prior written consent of the City (which consent shall not be unreasonably withheld or delayed); *provided, however*, that such limitation on assignment and transferability of this Agreement shall not prohibit the Bank from transferring the Agreement in whole to (i) an Affiliate of the Bank; or (ii) a Person that is not an Affiliate of the Bank during a time where a Default or an Event of Default hereunder has occurred and is continuing; *provided, further, however*, that any assignment or transfer of this Agreement pursuant to this Section 9.06(b) shall only be made to a Person that is a Qualified Institutional Buyer or institutional Accredited Investor. The Bank or assignee shall pay all reasonable expenses of the City, including reasonable fees and expenses of counsel, if any, in connection with such transfer and assignment.

(c) *Participations.* Notwithstanding any other provision hereof, the Bank may at any time, without the consent of, or notice to, the City, sell participations to any Person (other than a natural person or the City or any of the City's Affiliates) (each, a "*Participant*") in all or a portion of the Bank's rights and/or obligations under this Agreement (including all or a portion of the Term Loan); *provided* that (i) the Bank's obligations under this Agreement shall remain unchanged, (ii) the Bank shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the City and the Bank shall continue to deal solely and directly with the Bank in connection with the Bank's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which the Bank sells such a participation shall provide that the Bank shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that the Bank will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the proviso to Section 9.06(b) that affects such Participant. Subject to subsection (c) of this Section, the City agrees that each Participant shall be entitled to the benefits of Section 3.02 to the same extent as if it were the Bank. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.04 as though it were the Bank.

(d) *Limitations upon Participant Rights.* A Participant shall not be entitled to receive any greater payment under Section 3.02 than the Bank would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the City's prior written consent.

(e) *Certain Pledges.* The Bank may at any time pledge or grant a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of the Bank, including any pledge or grant to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or grant shall release the Bank from any of its obligations hereunder or substitute any such pledgee or grantee for the Bank as a party hereto.

*Section 9.07. Treatment of Certain Information; Confidentiality.* The Bank agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, trustees, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction obtained by the City and relating to the City and its obligations, (g) with

the consent of the City or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Bank or any of its respective Affiliates on a nonconfidential basis from a source other than the City.

For purposes of this Section, "*Information*" means all information received from the City relating to the City or any of its respective businesses, other than any such information that is available to the Bank on a nonconfidential basis prior to disclosure by the City, *provided* that, in the case of information received from the City after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

The Bank acknowledges that (a) the Information may include material non-public information concerning the City, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

*Section 9.08. Right of Setoff.* If an Event of Default shall have occurred and be continuing, the Bank and each of its respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other Obligations (in whatever currency) at any time owing by the Bank or any such Affiliate to or for the credit or the account of the City against any and all of the Obligations of the City now or hereafter existing under this Agreement or any other Loan Document to the Bank, irrespective of whether or not the Bank shall have made any demand under this Agreement or any other Loan Document and although such Obligations of the City may be contingent or unmatured or are owed to a branch or office of the Bank different from the branch or office holding such deposit or obligated on such indebtedness. For purposes of this Section 9.08, any money, balances, credits or deposits made by the City exclusively for the payment of any federal, state or local withholding taxes shall not be subject to setoff by the Bank. The rights of the Bank and its respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that the Bank or its respective Affiliates may have. The Bank agrees to notify the City promptly after any such setoff and application, *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

*Section 9.09. Counterparts; Integration; Effectiveness.* This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the

Bank and when the Bank shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

*Section 9.10. Survival of Representations and Warranties.* All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Bank, regardless of any investigation made by the Bank or on its behalf and notwithstanding that the Bank may have had notice or knowledge of any Default at the time of making the Term Loan, and shall continue in full force and effect as long as the Term Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

*Section 9.11. Severability.* If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

*Section 9.12. Governing Law.* THE OBLIGATIONS OF THE BANK AND THE CITY PURSUANT TO THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MINNESOTA, WITHOUT REGARD TO CHOICE OF LAW RULES.

*Section 9.13. Waiver of Jury Trial.* TO THE FULLEST EXTENT PERMITTED BY LAW, THE CITY AND THE BANK HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

*Section 9.14. No Advisory or Fiduciary Responsibility.* In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the City acknowledges and agrees: (i) (A) the City has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (B) the City is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Bank has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the City or any of its Affiliates, or any other Person and (B) the Bank has no obligation to the City or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Bank and its respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the City and its Affiliates, and the

Bank has no obligation to disclose any of such interests to the City or its Affiliates. To the fullest extent permitted by law, the City hereby waives and releases any claims that it may have against the Bank with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

*Section 9.15. Electronic Execution of Assignments and Certain Other Documents.* The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

*Section 9.16. USA PATRIOT Act.* The Bank is subject to the Act (as hereinafter defined) and the Bank hereby notifies the City that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies the City, which information includes the name and address of the City and other information that will allow the Bank to identify the City in accordance with the Act. The City shall, promptly following a request by the Bank, provide all documentation and other information that the Bank requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act.

*Section 9.17. Time of the Essence.* Time is of the essence of the Loan Documents.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

CITY OF MINNEAPOLIS, MINNESOTA

By 

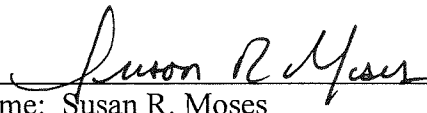
Name: Kevin D. Carpenter

Title: Finance Officer

(Signature Page to the Term Loan Agreement  
relating to General Obligation Term Loan Note, Series 2011A)



U.S. BANK NATIONAL ASSOCIATION

By   
Name: Susan R. Moses  
Title: Vice President

**SCHEDULE 9.02**  
**(TO THE TERM LOAN AGREEMENT)**

**BANK'S OFFICE;**  
**CERTAIN ADDRESSES FOR NOTICES**

Bank's Office:

U.S. Bank National Association  
101 E. 5th Street, 9th Floor  
EP-MN-S9-GB  
St. Paul, Minnesota 55101  
Attention: Susan Moses  
Telephone: (651) 466-8601  
Cell Number: (612) 210-8944  
Facsimile: (651) 466-8910  
E-mail: susan.moses@usbank.com

City of Minneapolis:  
325M City Hall  
350 South 5<sup>th</sup> Street  
Minneapolis, Minnesota 55415-1315  
Attention: Kevin D. Carpenter, Finance Officer  
Telephone: 612-673-3554  
Facsimile: 612-673-2042  
Electronic Mail: kevin.carpenter@minneapolismn.gov  
Website Address: www.minneapolismn.gov  
U.S. Taxpayer Identification Number: 41-6005375

**EXHIBIT A**

**FORM OF GENERAL OBLIGATION NOTE  
UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
COUNTY OF HENNEPIN**

**CITY OF MINNEAPOLIS, MINNESOTA  
GENERAL OBLIGATION TERM LOAN NOTE  
SERIES 2011A**

\$15,840,000

December 8, 2011

The City of Minneapolis, Minnesota, a duly organized and existing municipal corporation in Hennepin County, Minnesota (the "City"), acknowledges itself to be indebted and for value received, hereby promises to pay U.S. Bank National Association, its successors and assigns (the "Bank" or "Registered Owner"), the principal sum of Fifteen Million Eight Hundred and Forty Thousand Dollars (\$15,840,000), payable as set forth in that certain Term Loan Agreement, dated as of December 1, 2011 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement"), between the City and the Bank. All capitalized terms used herein have the meaning given such terms in the Agreement.

The City promises to pay interest on the unpaid principal amount of the Term Loan from the Closing Date until such principal amount is paid in full, at such interest rates and at such times as provided in the Agreement. All payments of principal and interest shall be made to the Bank in immediately available funds at the Bank's Lending Office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment computed at the per annum rate set forth in the Agreement.

This Term Loan Note evidences the City's obligations to pay the principal of and interest on the Term Loan, as described in the Agreement. The Term Loan was obtained by the City pursuant to a resolution adopted by the City Council of the City on November 18, 2011 (the "Resolution"), for the purpose of providing money to refund the outstanding principal amount of certain general obligation bonds of the City, pursuant to and in full conformity with the home rule charter of the City and the Constitution and laws of the State of Minnesota, including Minnesota Statutes, Section 475.67, as amended. The principal of and interest on the Term Loan are payable primarily from available tax increment revenues from various tax increment districts located in the City, revenues derived from the entertainment tax imposed and collected by the City pursuant to Laws of Minnesota 1969, Chapter 1092 with respect to sales in Block E business, holding rents paid by the redeveloper of Block E, and certain net revenues derived from the operation of the City's parking system, as set forth in the Resolution to which reference is made for a full statement of rights and powers thereby conferred. The full faith and credit of the City are irrevocably pledged for payment of the Term Loan and the City has obligated itself to levy ad valorem taxes on all taxable property in the City in the event of any deficiency, which

taxes may be levied without limitation as to rate or amount. This Term Loan Note is issued only as a fully registered note in denominations of \$5,000 or any integral multiple thereof of single maturities.

This Bond is transferable upon the books of the City at the principal office of the City Finance Officer (the "Bond Registrar"), by the Registered Owner hereof in person or by the owner's attorney duly authorized in writing, upon surrender hereof together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the Registered Owner or the owner's attorney; and may also be surrendered in exchange for a note of other authorized denominations. Upon such transfer or exchange the City will cause a new note or notes to be issued in the name of the transferee or Registered Owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange.

The City and the Bond Registrar may deem and treat the person in whose name this Term Loan Note is registered as the absolute owner hereof, whether this Term Loan Note is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City nor the Bond Registrar will be affected by any notice to the contrary.

This Term Loan Note is the Note referred to in the Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. Upon the occurrence and continuation of one or more of the Events of Default specified in the Agreement, all amounts then remaining unpaid on this Note may be declared to be immediately due and payable, all as provided in the Agreement. The Term Loan made by the Bank shall be evidenced by one or more loan accounts or records maintained by the Bank in the ordinary course of business. The Bank may also attach schedules to this Note and endorse thereon the date, amount and maturity of the Term Loan and payments with respect thereto.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that all acts, conditions and things required by the Charter of the City and the Constitution and laws of the State of Minnesota to be done, to exist, to happen and to be performed preliminary to and in the issuance of this Term Loan Note in order to make it a valid and binding general obligation of the City in accordance with its terms, have been done, do exist, have happened and have been performed as so required, and that the issuance of this Term Loan Note does not cause the indebtedness of the City to exceed any constitutional, statutory, or charter limitation of indebtedness.

This Term Loan Note is not valid or obligatory for any purpose or entitled to any security or benefit under the Resolution until the Certificate of Authentication hereon has been executed by the Registrar by manual signature of one of its authorized representatives.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the City of Minneapolis has caused this Term Loan Note to be executed in its name and on its behalf by the facsimile or manual signature of the Finance Officer and its official seal to be affixed or imprinted hereon.

**CITY OF MINNEAPOLIS, MINNESOTA**

By \_\_\_\_\_  
Finance Officer

## **Registrar's Registration and Authentication Certificate**

This is the Term Loan Note described in the within mentioned Resolution and has been registered as to principal and interest in the name of the Registered Owner identified above on the registration books of the Finance Officer of the City of Minneapolis.

---

Finance Officer, as Bond Registrar

Dated: \_\_\_\_\_

(The remainder of this page is intentionally left blank.)

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_

\_\_\_\_\_  
(Please Print or Typewrite Name and Address of Transferee)

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Term Loan Note on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Please Insert Social Security Number or  
Other Identifying Number of Assignee.

\_\_\_\_\_  
Notice: The signature to this assignment must correspond with the name as it appears on the face of this Term Loan Note in every particular, without alteration or any change whatever.

Signature Guaranteed:

\_\_\_\_\_  
Signatures must be guaranteed by a national bank or trust company, or by a brokerage firm which is a member of a major stock exchange.

(The remainder of this page is intentionally left blank.)

## **EXHIBIT B**

### **PRINCIPAL AMORTIZATION**

DATE	PRINCIPAL AMOUNT
December 1, 2012	\$350,000
December 1, 2013	\$370,000
December 1, 2014	\$390,000
December 1, 2015	\$515,000
December 1, 2016	\$1,720,000
December 1, 2017	\$1,840,000
December 1, 2018	\$1,970,000
December 1, 2019	\$2,095,000
December 1, 2020	\$2,325,000
December 1, 2021	\$750,000
December 1, 2022	\$795,000
December 1, 2023	\$195,000
December 1, 2024	\$210,000
December 1, 2025	\$225,000
December 1, 2026	\$245,000
December 1, 2027	\$260,000
December 1, 2028	\$280,000
December 1, 2029	\$295,000
December 1, 2030	\$315,000
December 1, 2031	\$335,000
December 1, 2032	\$360,000
Total	\$15,840,000



## EXHIBIT C

### [FORM OF REQUEST FOR EXTENSION]

#### REQUEST FOR EXTENSION

U.S. Bank National Association

[Address]

Attention: \_\_\_\_\_

Ladies and Gentlemen:

Reference is made to the Term Loan Agreement dated as of December 1, 2011 (together with any amendments or supplements thereto, the "*Agreement*"), by and between the undersigned, the City of Minneapolis, Minnesota (the "*City*"), and U.S. Bank National Association (the "*Bank*"). All terms defined in the Agreement as are used herein as defined therein.

The City hereby requests, pursuant to Section 2.13 of the Agreement, that the Mandatory Prepayment Date be extended to \_\_\_\_\_, \_\_\_\_\_. Pursuant to such Section 2.13, we have enclosed with this request the following instructions:

1. A reasonably detailed description of any and all Defaults or Events of Default that have occurred and are continuing;
2. Confirmation that all representations and warranties of the City as set forth in Article V of the Agreement are true and correct as though made on the date hereof and that no Default or Event of Default has occurred and is continuing on the date hereof;
3. An Approving Opinion with respect to such extension; and
4. Any other pertinent information previously requested by the Bank.

The Bank is required to make reasonable efforts to notify the City of its decision with respect to this request within 60 days of the date of receipt thereof. If the Bank fails to notify the City of the Bank's decision within such 60-day period, the Bank shall be deemed to have rejected such request.

Very truly yours,

CITY OF MINNEAPOLIS, MINNESOTA

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT D**

**[FORM OF NOTICE OF EXTENSION]**

**NOTICE OF EXTENSION**

**[Date]**

City of Minneapolis  
325M City Hall  
Minneapolis, Minnesota 55415  
Attention: Finance Officer

Ladies and Gentlemen:

We hereby notify you that pursuant to Section 2.13 of the Term Loan Agreement, dated as of December 1, 2011 (the "*Agreement*"), by and between the City of Minneapolis, Minnesota (the "*City*") and the undersigned, U.S. Bank National Association (the "*Bank*"), the Mandatory Prepayment Date shall be extended to \_\_\_\_\_, \_\_\_\_\_. Your acknowledgment hereof shall be deemed to be your representation and warranty that all your representations and warranties contained in Article V of the Agreement are true and correct and will be true and correct as of the date hereof and that no Default or Event of Default has occurred and is continuing.

Very truly yours,

U.S. BANK NATIONAL ASSOCIATION

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Acknowledged as of \_\_\_\_\_, \_\_\_\_\_ by

CITY OF MINNEAPOLIS, MINNESOTA

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_