

**ABSTRACT/SYNOPSIS OF THE ESSENTIAL ELEMENTS OF THE OFFICIAL ACTIONS OF  
THE COMMON COUNCIL OF THE CITY OF WHITEWATER, WALWORTH AND  
JEFFERSON COUNTIES, WISCONSIN.**

May 17, 2011

The Council meeting of the Common Council was called to order at 6:30 p.m. by Council President Singer. MEMBERS PRESENT: Binnie, Singer, Kienbaum, Olsen, Stewart, Winship, Butler. MEMBERS ABSENT: None. LEGAL COUNSEL PRESENT: Wallace McDonell.

It was moved by Olsen and seconded by Winship to approve the Council minutes of April 19, 2011 and to acknowledge receipt and filing of the: Whitewater University Technology Park Board Minutes of April 13, 2011; Library Board Minutes of April 11, 2011; Plan Commission Minutes of February 14 and April 11, 2011; Report of Manually-Produced Checks for May, 2011; Park and Recreation Board Minutes of April 4, 2011 and Financial Reports for May, 2011. AYES: Butler, Winship, Binnie, Singer, Kienbaum, Stewart, Olsen. NOES: None. ABSENT: None.

**APPROVAL OF PAYMENT OF INVOICES.** It was moved by Olsen and seconded by Winship to approve payment of city invoices processed through May 12, 2011 in the total sum of \$104,986.97. AYES: Butler, Winship, Binnie, Singer, Kienbaum, Stewart, Olsen. NOES: None. ABSENT: None.

**REPORTS:** **City Manager Brunner** updated Council on the status of the State Budget. Brunner presented the Proclamation for National Police Week to Interim Police Chief Lisa Otterbacher. **CDA Coordinator Mary Nimm** gave the CDA Quarterly Report. Councilmember Singer asked that future CDA reports include information on community feedback. Councilmember Kienbaum stated the Innovation Center Open House was well organized and the building is very nice.

**HEARING OF CITIZEN COMMENTS.** Mark Wokasch, 146 W. Main St. owner of Fat Jack's stated the current on-street parking regulations are frustrating and that the parking limitations provide problems for his customers.

**RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF \$940,000 WATER WORKS SYSTEM REVENUE BONDS SERIES 2011, CITY OF WHITEWATER, WALWORTH AND JEFFERSON COUNTIES, WISCONSIN, AND PROVIDING FOR THE PAYMENT OF THE BONDS AND OTHER DETAILS WITH RESPECT TO THE BONDS.** Finance Director Doug Saubert introduced Lisa Boyson from Robert W. Baird Co. Boyson stated that although originally they went out for a \$950,000 bond revenue, the bids were so good that the amount was reduced to \$940,000. Four bids were received and the winning interest rate was 3.41%. It was noted that this bond issue is to cover the costs of the automatic meter reading program and the North Street project.

**A RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF  
\$940,000 WATERWORKS SYSTEM REVENUE BONDS, SERIES 2011  
OF THE CITY OF WHITEWATER, WALWORTH AND  
JEFFERSON COUNTIES, WISCONSIN,  
AND PROVIDING FOR THE PAYMENT OF THE BONDS AND  
OTHER DETAILS WITH RESPECT TO THE BONDS**

WHEREAS, the City of Whitewater, Walworth and Jefferson Counties, Wisconsin (the "City") owns and operates its Waterworks System (the "System") which is operated for a public purpose as a public utility; and

WHEREAS, under the provisions of Section 66.0621, Wisconsin Statutes, any municipality in the State of Wisconsin may, by action of its governing body, provide funds for extending, adding

to and improving a public utility from the proceeds of bonds, which bonds are to be payable only from the income and revenues derived from the operation of such utility and are to be secured by a pledge of the revenues of the utility; and

WHEREAS, pursuant to a resolution adopted on August 17, 2010 (the "2010 Resolution"), the City has heretofore issued its Waterworks System Revenue Refunding Bonds, Series 2010, dated September 7, 2010 (the "Prior Issue"), which bonds are payable from the income and revenues of the System; and

WHEREAS, the 2010 Resolution permits the issuance of additional bonds payable from revenues of the System on a parity with the Prior Issue upon compliance with certain conditions; and

WHEREAS, to the best of the City Council's knowledge, information and belief, the City complies with such conditions; and

WHEREAS, the City has determined that certain additions, improvements and extensions to the System consisting of additions, improvements and extensions to the System (the "Project") are necessary to adequately supply the needs of the City and the residents thereof; and

WHEREAS, it is necessary, desirable and in the best interests of the City to authorize and sell revenue bonds for such purpose payable solely from the revenues to be derived from the operation of the System, which bonds are to be authorized and issued pursuant to the provisions of Section 66.0621, Wisconsin Statutes on a parity with the Prior Issue; and

WHEREAS, other than the Prior Issue, the City has no bonds or obligations outstanding which are payable from the income and revenues of the System; and

WHEREAS, the City has directed its financial advisor, Robert W. Baird & Co. Incorporated, Milwaukee, Wisconsin ("Baird") to take the steps necessary to sell such revenue bonds; and

WHEREAS, Baird, in consultation with the officials of the City, prepared an Official Notice of Sale (a copy of which is attached hereto as Exhibit A and incorporated herein by this reference) setting forth the details of and the bid requirements for the bonds and indicating that the bonds would be offered for public sale on May 17, 2011; and

WHEREAS, the City Clerk (in consultation with Baird) caused a form of notice of the sale to be published and/or announced and caused the Official Notice of Sale to be distributed to potential bidders offering the bonds for public sale on May 17, 2011; and

WHEREAS, the City has duly received bids for the bonds as described on the Bid Tabulation attached hereto as Exhibit B and incorporated herein by this reference (the "Bid Tabulation"); and

WHEREAS, it has been determined that the bid proposal (the "Proposal") submitted by the financial institution listed first on the Bid Tabulation fully complies with the bid requirements set forth in the Official Notice of Sale and is deemed to be the most advantageous to the City. Baird has recommended that the City accept the Proposal. A copy of said Proposal submitted by such institution (the "Purchaser") is attached hereto as Exhibit C and incorporated herein by this reference.

NOW, THEREFORE, the City Council of the City of Whitewater, Walworth and Jefferson Counties, Wisconsin, do resolve that:

Section 1A. Ratification of the Official Notice of Sale and Offering Materials. The City Council of the City hereby ratifies and approves the details of the Bonds set forth in Exhibit A attached hereto as and for the details of the Bonds. The Official Notice of Sale and any other offering materials prepared and circulated by Baird are hereby ratified and approved in all respects. All actions taken by officers of the City and Baird in connection with the preparation and distribution of the Official Notice of Sale, and any other offering materials are hereby ratified and approved in all respects.

Section 1B. Authorization of Bonds. For the purpose of paying the cost of the Project, the City shall borrow on the credit of the income and revenue of the System the sum of \$940,000. Negotiable, fully-registered bonds of the City, in the denomination of \$5,000, or any whole multiple thereof, shall be issued in evidence thereof. The Bonds shall be designated "Waterworks System Revenue Bonds, Series 2011", shall be numbered from R-1 upward and shall be dated June 7, 2011. The Bonds shall bear interest at the rates per annum set forth in the Proposal and shall mature on October 1 of each year, in the years and principal amounts as set forth on the Pricing Summary attached hereto as Exhibit D-1 and incorporated herein by this reference.

Interest on the Bonds shall be payable on April 1 and October 1 of each year, commencing October 1, 2011. Interest shall be computed upon the basis of a 360-day year of twelve 30-day months and will be rounded pursuant to the rules of the Municipal Securities Rulemaking Board.

The schedule of principal and interest payments due on the Bonds is set forth on the Debt Service Schedule attached hereto as Exhibit D-2 and incorporated herein by this reference (the "Schedule").

The Bonds maturing on October 1, 2022 and thereafter shall be subject to redemption prior to maturity, at the option of the City, on October 1, 2021 or on any date thereafter. Said Bonds shall be redeemable as a whole or in part, and if in part, from maturities selected by the City and within each maturity, by lot, at the principal amount thereof, plus accrued interest to the date of redemption. If the Proposal specifies that any of the Bonds are subject to mandatory redemption, the terms of such mandatory redemption are set forth on an attachment hereto as Exhibit MRP and incorporated herein by this reference.

The schedule of maturities is found to be such that the amount of annual debt service payments is reasonable in accordance with prudent municipal utility practices.

The Bonds, together with interest thereon, shall be payable only out of the Special Redemption Fund hereinafter provided, and shall be a valid claim of the owner thereof only against the Special Redemption Fund and the revenues pledged to such Fund, and sufficient revenues are pledged to the Special Redemption Fund, and shall be used for no other purpose than to pay the principal of and interest on the Prior Issue, the Bonds and Parity Bonds as the same fall due.

Section 2. Form of the Bonds. The Bonds shall be issued in registered form and shall be executed and delivered in substantially the form attached hereto as Exhibit E and incorporated herein by this reference.

Section 3. Definitions. In addition to the words defined elsewhere in this Resolution, the following words shall have the following meanings unless the context or use indicates another or different meaning or intent:

"Annual Debt Service Requirement" means the total amount of principal and interest due in any Fiscal Year on the Prior Issue, the Bonds and Parity Bonds.

"Bond Year" means the one-year period ending on a principal payment date or mandatory redemption date for the Bonds.

"Code" means the Internal Revenue Code of 1986, as amended.

"DTC" means The Depository Trust Company, New York, New York, or any successor securities depository for the City with respect to the Bonds.

"Fiscal Year" means the fiscal year adopted by the City for the System, which is currently the calendar year.

"Net Revenues" means the Revenues minus all Operation and Maintenance Expenses of the System.

"Operation and Maintenance Expenses" means the reasonable and necessary costs of operating, maintaining, administering and repairing the System, including salaries, wages, costs of materials and supplies, insurance and audits, but excluding depreciation, debt service, tax equivalents and capital expenditures.

"Parity Bonds" means additional bonds or obligations issued on a parity as to pledge and lien with the Bonds in accordance with the provisions of Section 7 of this Resolution.

"Reserve Requirement" means an amount, determined as of the date of issuance of the Bonds, equal to the least of (a) the amount on deposit in the Reserve Account prior to the issuance of the Bonds plus 10% of the proceeds of the Bonds; (b) the maximum annual debt service on the outstanding Prior Issue and the outstanding Bonds in any Bond Year; and (c) 125% of the average annual debt service on the outstanding Prior Issue and the outstanding Bonds. If Parity Bonds which are to be secured by the Reserve Account are issued, the Reserve Requirement shall mean an amount, determined as of the date of issuance of the Parity Bonds, equal to the least of (a) the amount required to be on deposit in the Reserve Account prior to the issuance of such Parity Bonds, plus the amount permitted to be deposited therein from proceeds of the Parity Bonds pursuant to Section 148(d)(1) of the Code; (b) the maximum annual debt service on outstanding obligations secured by the Reserve Account and the Parity Bonds to be issued; and (c) 125% of average annual debt service on the outstanding obligations secured by the Reserve Account and the Parity Bonds to be issued.

"Revenues" means all income and revenue derived from operation of the System, including the revenues received from the City for services rendered to it and all moneys received from any other source, including income derived from investments.

"System" means the entire Waterworks System of the City specifically including that portion of the Project owned by the City and including all property of every nature now or hereafter owned by the City for the extraction, collection, storage, treatment, transmission, distribution, metering and discharge of industrial and potable public water, including all improvements and extensions thereto made by the City while any of the Bonds and Parity Bonds remain outstanding, including all real and personal property of every nature comprising part of or used or useful in connection with such Waterworks System and including all appurtenances, contracts, leases, franchises and other intangibles.

Section 4. Income and Revenue Funds. When the Bonds shall have been delivered in whole or in part, the Revenues shall be set aside into the following separate and special funds, which were created and established by Ordinance No. 542 adopted on May 4, 1965 continued by the 2010 Resolution and are hereby further continued and shall be used and applied as described below:

- Revenues in amounts sufficient to provide for the reasonable and proper operation and maintenance of the System through the payment of Operation and Maintenance Expenses shall be set aside into the Waterworks System Operation and Maintenance Fund (the "Operation and Maintenance Fund").

- Revenues in amounts sufficient to pay the principal of and interest on the Prior Issue, the Bonds and Parity Bonds and to meet the Reserve Requirement shall be set aside into the Waterworks Revenue Bond and Interest Special Redemption Fund (the "Special Redemption Fund"), to be applied to the payment of the principal of and interest on the Prior Issue, the Bonds and Parity Bonds and to meet the Reserve Requirement. The monies standing in the Special Redemption Fund are irrevocably pledged to the payment of principal of and interest on the Prior Issue, the Bonds and Parity Bonds.

- Revenues in amounts sufficient to provide a proper and adequate depreciation account for the System shall be set aside into the Waterworks Depreciation Fund (the "Depreciation Fund").

The Operation and Maintenance Fund and Depreciation Fund shall be deposited as received in public depositories to be selected by the City Council in the manner required by Chapter 34, Wisconsin Statutes and may be invested in legal investments subject to the provisions of Section 66.0603(1m), Wisconsin Statutes.

Money in the Operation and Maintenance Fund shall be used to pay Operation and Maintenance Expenses as the same come due; money not immediately required for Operation and Maintenance Expenses shall be used to accumulate a reserve in the Operation and Maintenance Fund equal to estimated Operation and Maintenance Expenses for one month. Any money then available and remaining in the Operation and Maintenance Fund may be transferred to the Surplus Fund, which fund is hereby continued.

Revenues shall be deposited in the Depreciation Fund each month until the sum of \$25,000 or such larger amount as the City Council may from time to time determine to constitute an adequate and reasonable depreciation account for the System (the "Depreciation Requirement") is accumulated therein. Money in the Depreciation Fund shall be available and shall be used, whenever necessary, to restore any deficiency in the Special Redemption Fund and for the maintenance of the Reserve Account therein. When the Special Redemption Fund is sufficient for its purpose, funds in the Depreciation Fund may be expended for repairs, replacements, new construction, extensions or additions to the System. Any money on deposit in the Depreciation Fund in excess of the Depreciation Requirement which is not required during the current Fiscal Year for the purposes of the Depreciation Fund, may be transferred to the Surplus Fund.

It is the express intent and determination of the City Council that the amount of Revenues to be set aside and paid into the Special Redemption Fund (including the Reserve Account) shall in any event be sufficient to pay principal of and interest on the Prior Issue, the Bonds and Parity Bonds and to meet the Reserve Requirement, and the City Treasurer shall each Fiscal Year deposit at least sufficient Revenues in the Special Redemption Fund to pay promptly all principal and interest falling due on the Prior Issue, the Bonds and Parity Bonds and to meet the Reserve Requirement.

The Revenues so set aside for payment of the principal of and interest on the Prior Issue, the Bonds and Parity Bonds shall be set apart and shall be paid into the Special Redemption Fund not later than the 10th day of each month. The amount deposited each month shall be not less than one-sixth of the interest next coming due, plus one-twelfth of the principal next maturing.

The minimum amounts to be so deposited for debt service on the Bonds, in addition to all amounts to be deposited to pay debt service on the Prior Issue, are set forth on the Schedule.

The Special Redemption Fund shall be used for no purpose other than the payment of interest upon and principal of the Prior Issue, the Bonds and Parity Bonds promptly as the same become due and payable or to pay redemption premiums. All money in the Special Redemption Fund shall be deposited in a special account and invested in legal investments subject to Section 66.0603(1m), Wisconsin Statutes, and the monthly payments required to be made to the Special Redemption Fund shall be made directly to such account.

The Reserve Account previously established shall be continued to additionally secure the payment of principal of and interest on the Prior Issue and the Bonds. The City covenants and agrees that upon the issuance of the Bonds an amount sufficient to make the amount on deposit in the Reserve Account equal to the Reserve Requirement shall be deposited into the Reserve Account and shall be maintained therein. The amount on deposit in the Reserve Account shall be reduced from time to time to an amount equal to the Reserve Requirement at that time. Any amount withdrawn from the Reserve Account shall be transferred to the Special Redemption Fund and used to pay principal and interest on the Bonds.

The City covenants and agrees that at any time that the Reserve Account is drawn on and the amount in the Reserve Account shall be less than the Reserve Requirement, an amount equal to one-twelfth of the Reserve Requirement will be paid monthly into the Reserve Account from those funds in the Special Redemption Fund, the Operation and Maintenance Fund, the Depreciation Fund and the Surplus Fund which are in excess of the minimum amounts required by the preceding paragraphs to be paid therein until the Reserve Requirement will again have accumulated in the Reserve Account. No such payments need be made into the Reserve Account at such times as the monies in the Reserve Account are equal to the highest remaining annual debt service requirement on the Prior Issue, the Bonds and Parity Bonds secured by the Reserve Account in any Bond Year. If at any time the amount on deposit in the Reserve Account exceeds the Reserve Requirement, the excess shall be transferred to the Special Redemption Fund and used to pay principal and interest on the Bonds. If for any reason there shall be insufficient funds on hand in the Special Redemption Fund to meet principal or interest becoming due on the Prior Issue, the Bonds or Parity Bonds secured by the Reserve Account, then all sums then held in the Reserve Account shall be used to pay the portion of interest or principal on such Prior Issue, Bonds or Parity Bonds becoming due as to which there would otherwise be default, and thereupon the payments required by this paragraph shall again be made into the Reserve Account until an amount equal to the Reserve Requirement is on deposit in the Reserve Account.

Funds in the Special Redemption Fund in excess of the minimum amounts required to be paid therein plus reserve requirements may be transferred to the Surplus Fund.

Money in the Surplus Fund shall first be used when necessary to meet requirements of the Operation and Maintenance Fund including the one month reserve, the Special Redemption Fund including the Reserve Account, and the Depreciation Fund. Any money then remaining in the Surplus Fund at the end of any Fiscal Year may be used only as permitted and in the order specified in Section 66.0811(2), Wisconsin Statutes. Money thereafter remaining in the Surplus Fund may be transferred to any of the funds or accounts created by this section.

Section 5. Service to the City. The reasonable cost and value of any service rendered to the City by the System shall be charged against the City and shall be paid by it in monthly installments as the service accrues, out of the current revenues of the City collected or in the process of collection, exclusive of the revenues derived from the System, to wit: out of the tax levy of the City made by it to raise money to meet its necessary current expenses. It is hereby found and determined that the amount of such reasonable cost and value shall be equal to the lesser of the maximum Annual Debt Service Requirement or such part thereof as may be

necessary from year to year to pay the balance of an amount which, together with Revenues of the System, will produce Net Revenues equivalent to not less than 1.20 times the Annual Debt Service Requirement. Such compensation for such service rendered to the City shall, in the manner provided hereinabove, be paid into the separate and special funds described in Section 4 of this Resolution. However, such payment is subject to (a) annual appropriation by the City Council, (b) approval of the Wisconsin Public Service Commission, if necessary, and (c) applicable levy limits, if any; and neither this Resolution nor such payment shall be construed as constituting an obligation of the City to make any such appropriation over and above the reasonable cost and value of services rendered to the City or to make any subsequent payment over and above such reasonable cost and value.

Section 6. Operation of System; City Covenants. It is covenanted and agreed by the City with the owner or owners of the Bonds, and each of them, that:

(a) The City will faithfully and punctually perform all duties with reference to the System required by the Constitution and Statutes of the State of Wisconsin, including the making and collecting of reasonable and sufficient rates lawfully established for services rendered by the System, and will collect and segregate the Revenues of the System and apply them to the respective funds and accounts described hereinabove;

(b) The City will not sell, lease, or in any manner dispose of the System, including any part thereof or any additions, extensions, or improvements that may be made part thereto, except that the City shall have the right to sell, lease or otherwise dispose of any property of the System found by the City Council to be neither necessary nor useful in the operation of the System, provided the proceeds received from such sale, lease or disposal shall be paid into the Special Redemption Fund or applied to the acquisition or construction of capital facilities for use in the normal operation of the System, and such payment shall not reduce the amounts otherwise required to be paid into the Special Redemption Fund;

(c) The City will cause the improvements to the System financed by the Bonds or any Parity Bonds to be made as expeditiously as reasonably possible;

(d) The City will pay or cause to be paid all lawful taxes, assessments, governmental charges, and claims for labor, materials or supplies which if unpaid could become a lien upon the System or its Revenues or could impair the security of the Bonds;

(e) The City will maintain in reasonably good condition and operate the System, and will establish, charge and collect such lawfully established rates and charges for the service rendered by the System, so that in each Fiscal Year Net Revenues shall not be less than 120% of the Annual Debt Service Requirement, and so that the Revenues of the System herein agreed to be set aside to provide for the payment of the Prior Issue, the Bonds and Parity Bonds and the interest thereon as the same becomes due and payable, and to meet the Reserve Requirement, will be sufficient for those purposes;

(f) The City will prepare a budget not less than sixty days prior to the end of each Fiscal Year and, in the event such budget indicates that the Net Revenues for each Fiscal Year will not exceed the Annual Debt Service Requirement for each corresponding Fiscal Year by the proportion stated hereunder, will take any and all steps permitted by law to increase rates so that the aforementioned proportion of Net Revenues to the Annual Debt Service Requirement shall be accomplished as promptly as possible;

(g) The City will keep proper books and accounts relative to the System separate from all other records of the City and will cause such books and accounts to be audited annually by a recognized independent firm of certified public accountants including a balance sheet and a profit and loss statement of the System as certified by such accountants. Each such audit, in addition to whatever matters may be thought proper by the accountants to be included therein shall include the following: (1) a statement in detail of the income and expenditures of the System for the Fiscal Year; (2) a balance sheet as of the end of such Fiscal Year; (3) the accountants' comment regarding the manner in which the City has carried out the requirements of this Resolution and the accountants' recommendations for any changes or improvements in the operation of the System; (4) the number of connections to the System at the end of the Fiscal Year, for each user classification (i.e., residential, commercial, public and industrial); (5) a list of the insurance policies in force at the end of the Fiscal Year setting out as to each policy the amount of the policy, the risks covered, the name of the insurer, and the expiration date of the policy; and (6) the volume of water used. The owners of any of the Bonds shall have at all reasonable times the right to inspect the System and the records, accounts and data of the City relating thereto; and

(h) So long as any of the Bonds are outstanding the City will carry for the benefit of the owners of the Bonds insurance of the kinds and in the amounts normally carried by private companies or other public bodies engaged in the operation of similar systems. All money received for loss of use and occupancy shall be considered Revenue of the System payable into the separate funds and accounts named in Section 4 of this Resolution. All money received for losses under any casualty policies shall be used in repairing the damage or in replacing the property destroyed provided that if the City Council shall find it is inadvisable to repair such damage or replace such property and that the operation of the System has not been impaired thereby, such money shall be deposited in the Special Redemption Fund, but in that event such payments shall not reduce the amounts otherwise required to be paid into the Special Redemption Fund.

Section 7. Additional Bonds. The Bonds are issued on a parity with the Prior Issue. No bonds or obligations payable out of the Revenues of the System may be issued in such manner as to enjoy priority over the Bonds. Additional obligations may be issued if their lien and pledge is junior and subordinate to that of the Bonds. Additional obligations may be issued on a parity with the Bonds as to the pledge of Revenues of the System ("Parity Bonds") only if all of the following conditions are met:

a. The Net Revenues of the System for the Fiscal Year immediately preceding the issuance of such additional obligations must have been equal to at least 1.20 times the highest combined annual principal and interest requirements on all bonds then outstanding payable from Revenues of the System (other than Bonds and Parity Bonds being refunded) and on the additional obligations then to be issued in any Fiscal Year. Should an increase in permanent rates and charges, including those made to the City, be properly ordered and made effective during the Fiscal Year immediately prior to the issuance of such additional obligations or during that part of the Fiscal Year of issuance prior to such issuance, then Revenues for purposes of such computation shall include such additional Revenues as an independent certified public accountant, consulting professional engineer or the Wisconsin Public Service Commission may certify would have accrued during the prior Fiscal Year had the new rates been in effect during that entire immediately prior Fiscal Year.

b. The payments required to be made into the funds and accounts enumerated in Section 4 of this Resolution (including the Reserve Account, but not the Surplus Fund) must have been made in full.

c. The additional obligations must have principal maturing on October 1 of each year in which principal falls due and interest falling due on April 1 and October 1 of each year.

d. If the additional obligations are to be secured by the Reserve Account, the amount on deposit in the Reserve Account must be increased to an amount equal to the Reserve Requirement applicable upon the issuance of Parity Bonds as defined in Section 3 of this Resolution.

e. The proceeds of the additional obligations must be used only for the purpose of providing additions, extensions or improvements to the System, or to refund obligations issued for such purpose.

Section 8. Sale of Bonds. The bid of the Purchaser for the purchase price set forth in the Proposal be and it hereby is accepted and the City Manager and City Clerk are authorized and directed to execute an acceptance of the offer of said successful bidder on behalf of the City. The good faith deposit of the Purchaser shall be retained by the City Treasurer until the closing of the bond issue, and any good faith deposits submitted by unsuccessful bidders shall be promptly returned. The officers of the City are authorized and directed to do any and all acts necessary to conclude delivery of the Bonds to the Purchaser, upon receipt of the purchase price, as soon after adoption of this Resolution as is convenient.

Section 9. Application of Bond Proceeds. All accrued interest received from the sale of the Bonds shall be deposited into the Special Redemption Fund. An amount of proceeds of the Bonds sufficient to make the amount currently on deposit in the Reserve Account equal to the Reserve Requirement shall be deposited in the Reserve Account. The balance of the proceeds, less the expenses incurred in authorizing, issuing and delivering the Bonds, shall be deposited in a special fund designated as "Waterworks System Improvement Fund." Said special fund shall be adequately secured and used solely for the purpose of meeting costs of extending, adding to and improving the System, as described in the preamble hereof. The balance remaining in said Improvement Fund after paying said costs shall be transferred to the Special Redemption Fund for use in payment of principal of and interest on the Bonds.

Section 10. Amendment to Resolution. After the issuance of any of the Bonds, no change or alteration of any kind in the provisions of this Resolution may be made until all of the Bonds have been paid in full as to both principal and interest, or discharged as herein provided, except:

a. The City may, from time to time, amend this Resolution without the consent of any of the owners of the Bonds, but only to cure any ambiguity, administrative conflict, formal defect, or omission or procedural inconsistency of this Resolution; and

b. This Resolution may be amended, in any respect, with the written consent of the owners of not less than two-thirds of the principal amount of the Bonds then outstanding, exclusive of Bonds held by the City; provided, however, that no amendment shall permit any change in the pledge of Revenues derived from the System, or in the maturity of any Bond issued hereunder, or a reduction in the rate of interest on any Bond, or in the amount of the principal obligation thereof, or in the amount of the redemption premium payable in the case of redemption thereof, or change the terms upon which the Bonds may be redeemed or make any

other modification in the terms of the payment of such principal or interest without the written consent of the owner of each such Bond to which the change is applicable.

Section 11. Defeasance. When all Bonds have been discharged, all pledges, liens, covenants and other rights granted to the owners thereof by this Resolution shall cease. The City may discharge all Bonds due on any date by depositing into a special account on or before that date a sum sufficient to pay the same in full; or if any Bonds should not be paid when due, it may nevertheless be discharged by depositing into a special account a sum sufficient to pay it in full with interest accrued from the due date to the date of such deposit. The City, at its option, may also discharge all Bonds called for redemption on any date when they are prepayable according to their terms, by depositing into a special account on or before that date a sum sufficient to pay them in full, with the required redemption premium, if any, provided that notice of redemption has been duly given as required by this Resolution. The City, at its option, may also discharge all Bonds of said issue at any time by irrevocably depositing in escrow with a suitable bank or trust company a sum of cash and/or bonds or securities issued or guaranteed as to principal and interest of the U.S. Government, or of a commission, board or other instrumentality of the U.S. Government, maturing on the dates and bearing interest at the rates required to provide funds sufficient to pay when due the interest to accrue on each of said Bonds to its maturity or, at the City's option, if said Bond is prepayable to any prior date upon which it may be called for redemption, and to pay and redeem the principal amount of each such Bond at maturity, or at the City's option, if said Bond is prepayable, at its earliest redemption date, with the premium required for such redemption, if any, provided that notice of the redemption of all prepayable Bonds on such date has been duly given or provided for. Upon such payment or deposit, in the amount and manner provided by this Section, all liability of the City with respect to the Bonds shall cease, terminate and be completely discharged, and the owners thereof shall be entitled only to payment out of the money so deposited.

Section 12. Investments and Arbitrage. Monies accumulated in any of the funds and accounts referred to in Sections 4 and 9 hereof which are not immediately needed for the respective purposes thereof, may be invested in legal investments subject to the provisions of Sec. 66.0603(1m), Wisconsin Statutes, until needed. All income derived from such investments shall be credited to the fund or account from which the investment was made; provided, however, that at any time that the Reserve Requirement is on deposit in the Reserve Account, any income derived from investment of the Reserve Account shall be deposited into the Special Redemption Fund and used to pay principal and interest on the Bonds. A separate banking account is not required for each of the funds and accounts established under this Resolution; however, the monies in each fund or account shall be accounted for separately by the City and used only for the respective purposes thereof. The proceeds of the Bonds shall be used solely for the purposes for which they are issued but may be temporarily invested until needed in legal investments. No such investment shall be made in such a manner as would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code or the Regulations of the Commissioner of Internal Revenue thereunder (the "Regulations").

An officer of the City, charged with the responsibility for issuing the Bonds, shall, on the basis of the facts, estimates and circumstances in existence on the date of closing, make such certifications as are necessary to permit the conclusion that the Bonds are not "arbitrage bonds" under Section 148 of the Code or the Regulations.

Section 13. Resolution a Contract. The provisions of this Resolution shall constitute a contract between the City and the owner or owners of the Bonds, and after issuance of any of the Bonds no change or alteration of any kind in the provisions of this Resolution may be made,

except as provided in Section 10, until all of the Bonds have been paid in full as to both principal and interest. The owner or owners of any of the Bonds shall have the right in addition to all other rights, by mandamus or other suit or action in any court of competent jurisdiction, to enforce such owner's or owners' rights against the City, the governing body thereof, and any and all officers and agents thereof including, but without limitation, the right to require the City, its governing body and any other authorized body, to fix and collect rates and charges fully adequate to carry out all of the provisions and agreements contained in this Resolution.

Section 14. Utilization of The Depository Trust Company Book-Entry-Only System. In order to make the Bonds eligible for the services provided by The Depository Trust Company, New York, New York ("DTC"), the City agrees to the applicable provisions set forth in the Blanket Issuer Letter of Representations previously executed on behalf of the City and on file in the City Clerk's office.

Section 15. Payment of the Bonds; Fiscal Agent. The principal of and interest on the Bonds shall be paid by Associated Trust Company, National Association, which is hereby appointed as the City's registrar and fiscal agent pursuant to the provisions of Section 67.10(2), Wisconsin Statutes (the "Fiscal Agent"). The Fiscal Agency Agreement between the City and the Fiscal Agent shall be substantially in the form attached hereto as Exhibit F.

Section 16. Persons Treated as Owners; Transfer of Bonds. The City shall cause books for the registration and for the transfer of the Bonds to be kept by the Fiscal Agent. The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of either principal or interest on any Bond shall be made only to the registered owner thereof. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

Any Bond may be transferred by the registered owner thereof by surrender of the Bond at the office of the Fiscal Agent, duly endorsed for the transfer or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing. Upon such transfer, the City Manager and City Clerk shall execute and deliver in the name of the transferee or transferees a new Bond or Bonds of a like aggregate principal amount, series and maturity and the Fiscal Agent shall record the name of each transferee in the registration book. No registration shall be made to bearer. The Fiscal Agent shall cancel any Bond surrendered for transfer.

The City shall cooperate in any such transfer, and the City Manager and City Clerk are authorized to execute any new Bond or Bonds necessary to effect any such transfer.

Section 17. Record Date. The fifteenth day of each calendar month next preceding each interest payment date shall be the record date for the Bonds (the "Record Date"). Payment of interest on the Bonds on any interest payment date shall be made to the registered owners of the Bonds as they appear on the registration book of the City at the close of business on the Record Date.

Section 18. Compliance with Federal Tax Laws. (a) The City represents and covenants that the projects financed by the Bonds and their ownership, management and use will not cause the Bonds to be "private activity bonds" within the meaning of Section 141 of the Code. The City further covenants that it shall comply with the provisions of the Code to the extent necessary to maintain the tax-exempt status of the interest on the Bonds including, if applicable, the rebate requirements of Section 148(f) of the Code. The City further covenants that it will not take any action, omit to take any action or permit the taking or omission of any action within its control (including, without limitation, making or permitting any use of the proceeds of the Bonds) if

taking, permitting or omitting to take such action would cause any of the Bonds to be an arbitrage bond or a private activity bond within the meaning of the Code or would otherwise cause interest on the Bonds to be included in the gross income of the recipients thereof for federal income tax purposes. The City Clerk or other officer of the City charged with the responsibility of issuing the Bonds shall provide an appropriate certificate of the City certifying that the City can and covenanting that it will comply with the provisions of the Code and Regulations.

(b) The City also covenants to use its best efforts to meet the requirements and restrictions of any different or additional federal legislation which may be made applicable to the Bonds provided that in meeting such requirements the City will do so only to the extent consistent with the proceedings authorizing the Bonds and the laws of the State of Wisconsin and to the extent that there is a reasonable period of time in which to comply.

The foregoing covenants shall remain in full force and effect, notwithstanding the defeasance of the Bonds, until the date on which all of the Bonds have been paid in full.

Section 19. Designation as Qualified Tax-Exempt Obligations. The Bonds are hereby designated as "qualified tax-exempt obligations" for purposes of Section 265 of the Code, relating to the ability of financial institutions to deduct from income for federal income tax purposes, interest expense that is allocable to carrying and acquiring tax-exempt obligations.

Section 20. Official Statement. The City Council hereby approves the Preliminary Official Statement with respect to the Bonds and deems the Preliminary Official Statement as "final" as of its date for purposes of SEC Rule 15c2-12 promulgated by the Securities and Exchange Commission pursuant to the Securities and Exchange Act of 1934 (the "Rule"). All actions taken by officers of the City in connection with the preparation of such Preliminary Official Statement and any addenda to it or Final Official Statement are hereby ratified and approved. In connection with the closing of the Bonds, the appropriate City official shall certify the Preliminary Official Statement and any addenda or Final Official Statement. The City Clerk shall cause copies of the Preliminary Official Statement and any addenda or Final Official Statement to be distributed to the Purchaser.

Section 21. Continuing Disclosure. The continuing disclosure requirements of the Rule are not applicable to the Bonds because the Bonds are a primary offering of less than \$1,000,000.

Section 22. Record Book. The City Clerk shall provide and keep the transcript of proceedings as a separate record book (the "Record Book") and shall record a full and correct statement of every step or proceeding had or taken in the course of authorizing and issuing the Bonds in the Record Book.

Section 23. Bond Insurance. If the Purchaser determines to obtain municipal bond insurance with respect to the Bonds, the officers of the City are authorized to take all actions necessary to obtain such municipal bond insurance. The City Manager and City Clerk are authorized to agree to such additional provisions as the bond insurer may reasonably request and which are acceptable to the City Manager and City Clerk including provisions regarding restrictions on investment of Bond proceeds, the payment procedure under the municipal bond insurance policy, the rights of the bond insurer in the event of default and payment of the Bonds by the bond insurer and notices to be given to the bond insurer. In addition, any reference required by the bond insurer to the municipal bond insurance policy shall be made in the form of Bond provided herein.

Section 24. Execution of the Bonds; Closing; Professional Services. The Bonds shall be issued in printed form, executed on behalf of the City by the manual or facsimile signatures of

the City Manager and City Clerk, authenticated, if required, by the Fiscal Agent, sealed with its official or corporate seal, if any, or a facsimile thereof, and delivered to the Purchaser upon payment to the City of the purchase price thereof, plus accrued interest to the date of delivery (the "Closing"). The facsimile signature of either of the officers executing the Bonds may be imprinted on the Bonds in lieu of the manual signature of the officer but, unless the City has contracted with a fiscal agent to authenticate the Bonds, at least one of the signatures appearing on each Bond shall be a manual signature. In the event that either of the officers whose signatures appear on the Bonds shall cease to be such officers before the Closing, such signatures shall, nevertheless, be valid and sufficient for all purposes to the same extent as if they had remained in office until the Closing. The aforesaid officers are hereby authorized and directed to do all acts and execute and deliver the Bonds and all such documents, certificates and acknowledgements as may be necessary and convenient to effectuate the Closing. The City hereby authorizes the officers and agents of the City to enter into, on its behalf, agreements and contracts in conjunction with the Bonds, including but not limited to agreements and contracts for legal, trust, fiscal agency, disclosure and continuing disclosure, and rebate calculation services. Any such contract heretofore entered into in conjunction with the issuance of the Bonds is hereby ratified and approved in all respects.

Section 25. Conflicting Ordinances or Resolutions. All prior ordinances, resolutions (other than the 2010 Resolution), rules, or orders, or parts thereof heretofore enacted, adopted or entered, in conflict with the provisions of this Resolution, are hereby repealed and this Resolution shall be in effect from and after its passage. In case of any conflict between this Resolution and the 2010 Resolution, the 2010 Resolution shall control so long as any bonds of the Prior Issue authorized by such resolution are outstanding.

Adopted, approved and recorded May 17, 2011.

Resolution introduced by Councilmember Olsen, who moved its adoption. Seconded by Councilmember Winship. AYES: Butler, Winship, Binnie, Singer, Kienbaum, Stewart, Olsen. NOES: None. ABSENT: None. DATE: May 17, 2011.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**APPROVAL OF AMENDED RIGHT-OF-WAY PLAT, RESOLUTION OF NECESSITY, AND RELOCATION ORDER.**

**RESOLUTION ESTABLISHING A DETERMINATION  
OF NECESSITY FOR  
PERMANENT LIMITED EASEMENTS;  
TEMPORARY LIMITED CONSTRUCTION EASEMENTS, AND  
AUTHORIZING NEGOTIATIONS FOR SUCH ACQUISITION  
AND AUTHORIZING CONDEMNATION, IF NECESSARY,  
FOR THE WHITON AND MAIN STREET TRAFFIC SIGNALS PROJECT**

**WHEREAS**, the City of Whitewater, Walworth and Jefferson Counties, has decided that public necessity demands the installation and construction of traffic signals at the intersection of Whiton and Main Street in the City of Whitewater, and

**WHEREAS**, on November 4, 2009, the City of Whitewater entered into an agreement with the State of Wisconsin, Department of Transportation for the funding of the installation and

construction of traffic signals at the intersection of Whiton Street and Main Street in the City of Whitewater, and

**WHEREAS**, public necessity demands that the City of Whitewater acquire permanent limited easements for traffic signal installation and operation, and

**WHEREAS**, public necessity demands that the City of Whitewater acquire temporary limited easements required for the installation and construction of said traffic signals,

Now, therefore, **BE IT RESOLVED**, by the Common Council of the City of Whitewater that the determination of necessity for 1) acquisition of permanent limited easements for placement and operation of traffic signals, and 2) acquisition of temporary limited easements for the installation and construction of traffic signals is hereby established; and

**BE IT FURTHER RESOLVED** that the attached Relocation Order is hereby approved, and the City Attorney, or agent for the City of Whitewater at the direction of the City Attorney, is hereby authorized and directed to serve the relocation order on the Clerk in and for Walworth County, Wisconsin, and

**BE IT FURTHER RESOLVED** that the City Attorney, or agent for the City of Whitewater at the direction of the City Attorney, is hereby authorized and directed to negotiate for the acquisition of those easements required for the purposes above stated, and in the event said easements cannot be obtained by negotiation, the City Attorney is hereby authorized and directed to take, by condemnation, those easements required for City purposes.

Resolution introduced by Councilmember Olsen, who moved its adoption. Seconded by Councilmember Winship. AYES: Butler, Winship, Binnie, Singer, Kienbaum, Stewart, Olsen. NOES: None. ABSENT: None. DATE: May 17, 2011.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**SECOND READING OF AMENDING CHAPTER 11.12.011, STOP SIGNS TO ADD ADDITIONAL STOP SIGN LOCATIONS.** Approved on consent agenda.

#### **AN ORDINANCE AMENDING SECTION 11.12.011 STOP SIGNS**

The Common Council of the City of Whitewater, Walworth and Jefferson Counties, Wisconsin, does hereby ordain as follows:

**SECTION 1:** Whitewater Municipal Code Section 11.12.011, entitled Stop Signs, is hereby amended as follows:

By adding the following new stop signs to the Street Index of Stop Signs:

- “Fremont Street – northbound at Starin Road.”
- “Fremont Street – southbound at Starin Road.”
- “Jefferson Street – northbound at Starin Road.”
- “Jefferson Street – southbound at Starin Road.”
- “Starin Road – eastbound at Jefferson Street.”
- “Starin Road – westbound at Jefferson Street.”
- “Starin Road – eastbound at Newcomb Street.”
- “Greenway Court – eastbound at Howard Road.”

“East Main Court – westbound at East Main Street.”

Change of existing stop signs:

“Corporate Drive – westbound at Howard Road” shall be changed to “Innovation Drive – westbound at Howard Road.”

Ordinance introduced by Councilmember Olsen, who moved its adoption. Seconded by Councilmember Winship. AYES: Butler, Winship, Binnie, Singer, Kienbaum, Stewart, Olsen. NOES: None. ABSENT: None. ADOPTED: May 17, 2011.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**JOHNSON BLOCK’S PRESENTATION OF 2010 CITY AUDIT AND MANAGEMENT LETTER.** Kevin Krysinski of Johnson Block, the City’s auditing firm, presented the annual city audit. He reported that the City’s undesignated fund balance has a little more than 20% of the city’s general operating budget. The city received a \$750,000 advance from the CDA and the auditors recommend the City and the CDA formalize the terms of the advance. Krysinski also recommended that the City establish a separate University Technology Board fund. Finance Director Saubert stated there are some savings this year due to the open Chief of Police position as well as other retirements. Councilmember Singer requested that the Finance director provide council with a report of projected and actual expenses within 30 days. It was moved by Binnie and seconded by Winship to acknowledge receipt and filing of the 2010 City Audit and Management Report and Management Letter. AYES: Olsen, Butler, Winship, Binnie, Singer, Stewart, Kienbaum. Councilmember Stewart requested a review of the Parkland Acquisition and the Parkland development Funds.

**DISCUSSION AND POSSIBLE DIRECTION REGARDING CITY BUILDING PERMIT FEES.** Councilmember Singer indicated that his request for review of the fees was a result of discussions and input with local developers, investors and community stakeholders. Methods to attract businesses and people to the community were reviewed. One area mentioned was Whitewater’s building permit fees in comparison with those charged by other communities. It was noted that most communities use a “per square footage” charge for building permit fees. City Manager Asst. Clapper stated that in comparison with surrounding communities, Whitewater is third lowest for fee charges. Clapper agreed that charging by the square foot would be the best process. Councilmember Winship questioned the small, remodeling projects and what the permit costs would be for those jobs. Winship recommended looking into surrounding communities for remodeling fees as well. It was moved by Singer and seconded by Olsen to change the building permit fee structure for new construction to a 12 cent per square foot charge. AYES: Kienbaum, Butler, Singer, Binnie, Olsen, Winship. NOES: Stewart. Building permit fee charges for electrical, heating and remodeling will be reviewed and included at a future meeting.

**AUTHORIZATION TO SELL EXCESS VEHICLES.** It was moved by Olsen and seconded by Winship to authorize the sale of excess vehicles as provided by City staff members. AYES: Kienbaum, Olsen, Singer, Stewart, Butler, Winship, Binnie. NOES: None.

**REPORT ON WARD REAPPORTIONMENT(REDISTRICTING) PROCESS.** City Clerk Michele Smith stated that once the Counties provide census mapping information to her office, the City has 60 days to prepare a redistricting plan and present it to Council for approval. Both Counties have held open hearings on their plans and have just provided information to the Clerk’s office. Smith reported that past practice has been to have city staff review the census blocks, prepare a proposal, and bring it forth to Council for their review and approval. At this point, all information is available via a secure website, and communities are not authorized to print any of the maps at this time. Smith indicated that trainings are being scheduled by each County, and further information is forthcoming. Councilmember Winship reminded everyone that the 2010 census information would not take into account the population of the newly-constructed Starin Hall, and wanted to be sure everyone took that into consideration.

**APPOINTMENT OF CITIZEN MEMBER TO POLICE COMMISSION TO REPLACE RESIGNED MEMBER ROSA VERDUZCO.** Council President Singer and City Manager Brunner have recommended that in view of the large number of applications received for the recent Police Commission position, they would prefer recommending a replacement for Rosa Verduzco's position from that pool of applicants. Singer and Brunner recommend the appointment of Kenneth Kidd to serve out Rosa Verduzco's unexpired term. It was moved by Singer and seconded by Olsen to appoint Kenneth Kidd to the open position on Police Commission. AYES: Singer, Olsen, Butler, Kienbaum, Stewart, Winship, Binnie. NOES: None.

**COUNCILMEMBER REQUEST FOR FUTURE AGENDA ITEMS.** Councilmember Binnie requested a follow up on the auditor's report on insurance with the banks. Kienbaum requested to have an update on the governor's proposals.

**ADJOURN.** It was moved by Olsen and seconded by Winship to adjourn the meeting. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart, Butler. NOES: None. ABSENT: None. The meeting adjourned at 7:30 p.m.

Respectfully submitted,

Michele R. Smith, City Clerk