

RESOLUTION NO. R-29-12

RESOLUTION AUTHORIZING THE ISSUANCE AND
SALE OF UP TO \$1,276,480 WATER SYSTEM REVENUE BONDS, SERIES 2012B,
AND PROVIDING FOR OTHER DETAILS AND
COVENANTS WITH RESPECT THERETO

Introduced by Mayor Merkes:

WHEREAS, the City of Menasha, Calumet and Winnebago Counties, Wisconsin (the "Municipality") owns and operates a water utility (the "System") which is operated for a public purpose as a public utility by the Municipality; and

WHEREAS, pursuant to Resolution No. R-20-06 adopted on April 18, 2006 (the "2006 Resolution"), the Municipality has heretofore issued its Combined Utility Revenue Bonds, Series 2006, dated April 26, 2006 (the "2006 Bonds"); and

WHEREAS, pursuant to Resolution No. R-8-07 adopted on April 2, 2007 (the "2007 Resolution"), the Municipality has heretofore issued its Combined Utility Revenue Bonds, Series 2007, dated April 11, 2007 (the "2007 Bonds"); and

WHEREAS, pursuant to Resolution No. R-9-09 adopted on April 6, 2009 (the "2009 Resolution"), the Municipality has heretofore issued its Combined Utility Revenue Bonds, Series 2009, dated April 22, 2009 (the "2009 Bonds"); and

WHEREAS, on March 24, 2011, with the consent of the State of Wisconsin Safe Drinking Water Loan Program, as sole registered owner of the 2006 Bonds, 2007 Bonds and 2009 Bonds, the Common Council of the Municipality amended the 2006 Resolution, 2007 Resolution and 2009 Resolution so that the 2006 Resolution, 2007 Resolution and 2009 Resolution no longer pledge any revenues of the electric utility to the 2006 Bonds, 2007 Bonds and 2009 Bonds, and that the 2006 Bonds, 2007 Bonds and 2009 Bonds are payable from and secured by the income and revenues of only the System; and

WHEREAS, pursuant to Resolution No. R-38-11 adopted on October 17, 2011 (the "2011 Resolution"), the Municipality has heretofore issued its Water System Revenue Bonds, Series 2011, dated November 9, 2011 (the "2011 Bonds"); and

WHEREAS, pursuant to Resolution No. R-13-12 adopted on May 21, 2012 (the "2012 Resolution"), the Municipality has heretofore issued its Water System Revenue Bonds, Series 2012, dated June 13, 2012 (the "2012 Bonds"); and

WHEREAS, the 2006 Bonds, the 2007 Bonds, the 2009 Bonds, the 2011 Bonds and the 2012 Bonds shall collectively be referred to as the "Prior Bonds"; and

WHEREAS, the 2006 Resolution, the 2007 Resolution, the 2009 Resolution, the 2011 Resolution and the 2012 Resolution shall collectively be referred to as the "Prior Resolutions"; and

WHEREAS, certain additional improvements to the System are necessary to meet the needs of the Municipality and the residents thereof, consisting of the construction of a project (the "Project") assigned Safe Drinking Water Loan Program Project No. 4845-09 by the Department of Natural Resources, and as described in the Department of Natural Resources approval letter for the plans and specifications of the Project, or portions thereof, issued under Section 281.41, Wisconsin Statutes, assigned No. W-2011-0339 and dated July 25, 2011 by the DNR; and

WHEREAS, under the provisions of Chapter 66, Wisconsin Statutes any municipality may, by action of its governing body, provide for purchasing, acquiring, constructing, extending, adding to, improving, operating and managing a public utility from the proceeds of bonds, which bonds are to be payable only from the revenues received from any source by such utility, including all rentals and fees; and

WHEREAS, the Municipality deems it to be necessary, desirable and in its best interest to authorize and sell water system revenue bonds of the Municipality payable solely from the revenues of the System, pursuant to the provisions of Section 66.0621, Wisconsin Statutes, to pay the cost of the Project; and

WHEREAS, the Prior Resolutions permit the issuance of additional bonds on a parity with the Prior Bonds upon certain conditions, and those conditions have been met; and

WHEREAS, other than the Prior Bonds, no bonds or obligations payable from the revenues of the System are now outstanding.

NOW, THEREFORE, be it resolved by the Governing Body of the Municipality that:

Section 1. Definitions. The following terms shall have the following meanings in this Resolution unless the text expressly or by implication requires otherwise:

- (a) "Act" means Section 66.0621, Wisconsin Statutes;
- (b) "Bond Registrar" means the Municipal Treasurer which shall act as Paying Agent for the Bonds;
- (c) "Bonds" means the \$1,276,480 Water System Revenue Bonds, Series 2012B, of the Municipality dated their date of issuance, authorized to be issued by this Resolution;
- (d) "Bond Year" means the twelve-month period ending on each May 1;
- (e) "Current 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 shall exclude depreciation, debt service, tax equivalents and capital expenditures;
- (f) "Debt Service Fund" means the Water Utility Special Redemption Fund of the Municipality, which shall be the "special redemption fund" as such term is defined in the Act;

(g) "Financial Assistance Agreement" means the Financial Assistance Agreement by and between the State of Wisconsin by the Department of Natural Resources and the Department of Administration and the Municipality pursuant to which the Bonds are to be issued and sold to the State, substantially in the form attached hereto and incorporated herein by this reference;

(h) "Fiscal Year" means the twelve-month period ending on each December 31;

(i) "Governing Body" means the Common Council, or such other body as may hereafter be the chief legislative body of the Municipality;

(j) "Gross Earnings" means the gross earnings of the System, including earnings of the System derived from water charges imposed by the Municipality, all payments to the Municipality under any agreements between the Municipality and any contract users of the System, and any other monies received from any source including all rentals and fees and any special assessments levied and collected in connection with the Project;

(k) "Municipal Treasurer" means the Treasurer of the Municipality who shall act as Bond Registrar and Paying Agent;

(l) "Municipality" means the City of Menasha, Calumet and Winnebago Counties, Wisconsin;

(m) "Net Revenues" means the Gross Earnings of the System after deduction of Current Expenses;

(n) "Parity Bonds" means bonds payable from the revenues of the System other than the Bonds but issued on a parity and equality with the Bonds pursuant to the restrictive provisions of Section 11 of this Resolution;

(o) "Prior Bonds" means the 2006 Bonds, the 2007 Bonds, the 2009 Bonds, the 2011 Bonds and the 2012 Bonds, collectively;

(p) "Prior Resolutions" means the 2006 Resolution, the 2007 Resolution, the 2009 Resolution, the 2011 Resolution, and the 2012 Resolution, as amended, collectively;

(q) "Project" means the Project described in the preamble to this Resolution. All elements of the Project are to be owned and operated by the Municipality as part of the System as described in the preamble hereto;

(r) "Record Date" means the close of business on the fifteenth day of the calendar month next preceding any principal or interest payment date;

(s) "System" means the entire water utility of the Municipality specifically including that portion of the Project owned by the Municipality and including all property of every nature now or hereafter owned by the Municipality for the collection, treatment, storage and distribution of water, including all improvements and extensions thereto made by the Municipality 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 water utility and including all appurtenances, contracts, leases, franchises, and other intangibles;

(t) "2006 Bonds" means the Municipality's Combined Utility Revenue Bonds, Series 2006, dated April 26, 2006;

(u) "2006 Resolution" means Resolution No. R-20-06 adopted by the Governing Body on April 18, 2006 authorizing the issuance of the 2006 Bonds;

(v) "2007 Bonds" means the Municipality's Combined Utility Revenue Bonds, Series 2007, dated April 11, 2007;

(w) "2007 Resolution" means Resolution No. R-8-07 adopted by the Governing Body on April 2, 2007 authorizing the issuance of the 2007 Bonds;

(x) "2009 Bonds" means the Municipality's Combined Utility Revenue Bonds, Series 2009, dated April 22, 2009;

(y) "2009 Resolution" means Resolution No. R-9-09 adopted by the Governing Body on April 6, 2009 authorizing the issuance of the 2009 Bonds;

(z) "2011 Bonds" means the Municipality's Water System Revenue Bonds, Series 2011, dated November 9, 2011;

(aa) "2011 Resolution" means Resolution No. R-38-11 adopted by the Governing Body on October 17, 2011 authorizing the issuance of the 2011 Bonds;

(bb) "2012 Bonds" means the Municipality's Water System Revenue Bonds, Series 2012, dated June 13, 2012; and

(cc) "2012 Resolution" means Resolution No. R-13-12 adopted by the Governing Body on May 21, 2012 authorizing the issuance of the 2012 Bonds.

Section 2. Authorization of the Bonds and the Financial Assistance Agreement. For the purpose of paying the cost of the Project (including legal, fiscal, engineering and other expenses), there shall be borrowed on the credit of the income and revenue of the System up to the sum of \$1,276,480; and fully registered revenue bonds of the Municipality are authorized to be issued in evidence thereof and sold to the State of Wisconsin Safe Drinking Water Loan Program in accordance with the terms and conditions of the Financial Assistance Agreement, which is incorporated herein by this reference and the Mayor and City Clerk of the Municipality are hereby authorized, by and on behalf of the Municipality, to execute the Financial Assistance Agreement.

Section 3. Terms of the Bonds. The Bonds shall be designated "Water System Revenue Bonds, Series 2012B" (the "Bonds"); shall be dated their date of issuance; shall be numbered one and upward; shall bear interest at the rate of 2.200% per annum; shall be issued in denominations of \$0.01 or any integral multiple thereof; and shall mature on the dates and in the amounts as set forth in Exhibit B of the Financial Assistance Agreement and in the Bond form attached hereto

as Exhibit A as it is from time to time adjusted by the State of Wisconsin based upon the actual draws made by the Municipality. Interest on the Bonds shall be payable commencing on November 1, 2012 and semiannually thereafter on May 1 and November 1 of each year. The Bonds shall not be subject to redemption prior to maturity except as provided in the Financial Assistance Agreement.

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

Section 4. Form, Execution, Registration and Payment of the Bonds. The Bonds shall be issued as registered obligations in substantially the form attached hereto as Exhibit A and incorporated herein by this reference.

The Bonds shall be executed in the name of the Municipality by the manual signatures of the Mayor and City Clerk, and shall be sealed with its official or corporate seal, if any.

The principal of, premium, if any, and interest on the Bonds shall be paid by the Municipal Treasurer, who is hereby appointed as the Municipality's Bond Registrar.

Both the principal of and interest on the Bonds shall be payable in lawful money of the United States of America by the Bond Registrar. Payment of principal of the final maturity on the Bond will be payable upon presentation and surrender of the Bond to the Bond Registrar. Payment of principal on the Bond (except the final maturity) and each installment of interest shall be made to the registered owner of each Bond who shall appear on the registration books of the Municipality, maintained by the Bond Registrar, on the Record Date and shall be paid by check or draft of the Municipality and mailed to such registered owner at his or its address as it appears on such registration books or at such other address may be furnished in writing by such registered owner to the Bond Registrar.

Section 5. Security for the Bonds. The Bonds, together with interest thereon, shall not constitute an indebtedness of the Municipality nor a charge against its general credit or taxing power. The Bonds, together with interest thereon, shall be payable only out of the Debt Service Fund hereinafter created and established, and shall be a valid claim of the registered owner or owners thereof only against such Debt Service Fund and the revenues of the System pledged to such fund, on a parity with the pledge granted to the holders of the Prior Bonds. Sufficient revenues are hereby pledged to said Debt Service Fund, and shall be used for no other purpose than to pay the principal of, premium, if any, and interest on the Prior Bonds, the Bonds and any Parity Bonds as the same becomes due.

Section 6. Funds and Accounts. In accordance with the Act, for the purpose of the application and proper allocation of the revenues of the System, and to secure the payment of the principal of and interest on the Prior Bonds, the Bonds and Parity Bonds, certain funds of the System which were provided by the Prior Resolutions, as amended, are hereby continued and shall be used solely for the following respective purposes:

- (a) Water Utility Revenue Fund (the "Revenue Fund"), into which shall be deposited as received the Gross Earnings of the System, which money shall then be divided among the Operation and Maintenance Fund, the Debt Service Fund, the

Depreciation Fund and the Surplus Fund in the amounts and in the manner set forth in Section 7 hereof and used for the purposes described below.

- (b) Water Utility Operation and Maintenance Fund (the "Operation and Maintenance Fund"), which shall be used for the payment of Current Expenses.
- (c) Water Utility Special Redemption Fund (the "Debt Service Fund"), which shall be divided into two separate accounts known as the "Interest and Principal Account" and the "Reserve Account." The Interest and Principal Account shall be used for the payment of the principal of, premium, if any, and interest on, the Prior Bonds, the Bonds and Parity Bonds as the same becomes due. The Reserve Account is not pledged to the payment of the principal of or interest on the Prior Bonds or the Bonds and moneys on deposit in the Reserve Account shall under no circumstances be used to pay principal of or interest on the Prior Bonds, or the Bonds.
- (d) Water Utility Depreciation Fund (the "Depreciation Fund"), which shall be used to provide a proper and adequate depreciation account for the System.
- (e) Water Utility Surplus Fund (the "Surplus Fund"), which shall first be used whenever necessary to pay principal of, premium, if any, or interest on the Prior Bonds, the Bonds and Parity Bonds when the Debt Service Fund shall be insufficient for such purpose, and thereafter shall be disbursed as follows: (i) at any time, to remedy any deficiency in any of the Funds provided in this Section 6 hereof; and (ii) money thereafter remaining in the Surplus Fund at the end of any Fiscal Year may be transferred to any of the funds or accounts created herein or to reimburse the general fund of the Municipality for advances made by the Municipality to the System.

Section 7. Application of Revenues. After the delivery of the Bonds, the Gross Earnings of the System shall be deposited as collected in the Revenue Fund and shall be transferred monthly to the funds listed below in the following order of priority and in the manner set forth below:

- (a) to the Operation and Maintenance Fund, in an amount equal to the estimated Current Expenses for such month and for the following month (after giving effect to available amounts in said Fund from prior deposits);
- (b) to the Debt Service Fund, for monthly transfer to the Interest and Principal Account thereof, an amount equal to one-sixth (1/6) of the next installment of interest coming due on the Prior Bonds, the Bonds and any Parity Bonds then outstanding and an amount equal to one-twelfth (1/12) of the installment of principal of the Prior Bonds, the Bonds and any Parity Bonds coming due during such Bond Year (after giving effect to available amounts in said Fund from accrued interest, any premium or any other source); and

- (c) to the Debt Service Fund, for monthly transfer to the Reserve Account thereof, the amount provided by any resolution authorizing Parity Bonds secured by the Reserve Account; and
- (d) to the Depreciation Fund, an amount determined by the Governing Body to be sufficient to provide a proper and adequate depreciation account for the System; and
- (e) to the Surplus Fund, any amount remaining in the Revenue Fund after the monthly transfers required above have been completed.

Transfers from the Revenue Fund to the Operation and Maintenance Fund, the Debt Service Fund, the Depreciation Fund and the Surplus Fund shall be made monthly not later than the tenth day of each month, and such transfer shall be applicable to monies on deposit in the Revenue Fund as of the last day of the month preceding. Any other transfers and deposits to any fund required or permitted by subsection (a) through (e) of this Section, except transfers or deposits which are required to be made immediately or annually, shall be made on or before the tenth day of the month. Any transfer or deposit required to be made at the end of any Fiscal Year shall be made within sixty (60) days after the close of such Fiscal Year. If the tenth day of any month shall fall on a day other than a business day, such transfer or deposit shall be made on the next succeeding business day.

It is the express intent and determination of the Governing Body that the amounts transferred from the Revenue Fund and deposited in the Debt Service Fund shall be sufficient in any event to pay the interest on the Prior Bonds, the Bonds and any Parity Bonds as the same accrues and the principal thereof as the same matures, and to provide any amounts required to be paid monthly into the Reserve Account.

Section 8. Deposits and Investments. The Interest and Principal Account of the Debt Service Fund shall be kept apart from monies in the other funds and accounts of the Municipality and the same shall be used for no purpose other than the prompt payment of principal of and interest on the Prior Bonds, the Bonds and any Parity Bonds as the same becomes due and payable. All monies therein shall be deposited in special and segregated accounts in a public depository selected under Chapter 34, Wisconsin Statutes and may be temporarily invested until needed in legal investments subject to the provisions of Section 66.0603(1m), Wisconsin Statutes. The other funds herein created (except the Water Utility SDWLP Project Fund) may be combined in a single account in a public depository selected in the manner set forth above and may be temporarily invested until needed in legal investments subject to the provisions of Section 66.0603(1m), Wisconsin Statutes.

Section 9. Service to the Municipality. The reasonable cost and value of services rendered to the Municipality by the System by furnishing water services for public purposes shall be charged against the Municipality and shall be paid in monthly installments as the service accrues, out of the current revenues of the Municipality collected or in the process of collection, exclusive of the revenues derived from the System; that is to say, out of the tax levy of the Municipality made by it to raise money to meet its necessary current expenses. The reasonable cost and value of such service to the Municipality in each year shall be equal to an amount

which, together with other revenues of the System, will produce in each Fiscal Year Net Revenues equivalent to not less than the annual principal and interest requirements on the Prior Bonds, the Bonds, any Parity Bonds and any other obligations payable from the revenues of the System then outstanding, times the greater of (i) 110% or (ii) the highest debt service coverage ratio required with respect to any obligations payable from revenues of the System then outstanding. However, such payment out of the tax levy shall be subject to (a) approval of the Public Service Commission, or successors to its function, if applicable, (b) yearly appropriations therefor, and (c) applicable levy limitations, if any; and neither this Resolution nor such payment shall be construed as constituting an obligation of the Municipality to make any such appropriation over and above the reasonable cost and value of the services rendered to the Municipality and its inhabitants or to make any subsequent payment over and above such reasonable cost and value.

Section 10. Operation of System; Municipality Covenants. It is covenanted and agreed by the Municipality with the owner or owners of the Bonds, and each of them, that the Municipality will perform all of the obligations of the Municipality as set forth in the Financial Assistance Agreement.

Section 11. Additional Bonds. The Bonds are issued on a parity with the Prior Bonds as to the pledge of revenues of the System. 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 the lien and pledge is junior and subordinate to that of the Bonds. Parity Bonds may be issued only under the following circumstances:

(a) Additional Parity Bonds may be issued for the purpose of completing the Project and for the purpose of financing costs of the Project which are ineligible for payment under the State of Wisconsin Safe Drinking Water Loan Program. However, such additional Parity Bonds shall be in an aggregate amount not to exceed 20% of the face amount of the Bonds; or

(b) Additional Parity Bonds may also be issued if all of the following conditions are met:

(1) The Net Revenues of the System for the Fiscal Year immediately preceding the issuance of such additional bonds must have been in an amount at least equal to the maximum annual interest and principal requirements on all bonds outstanding payable from the revenues of the System, and on the bonds then to be issued, times the greater of (i) 1.10 or (ii) the highest debt service coverage ratio to be required with respect to the Additional Parity Bonds to be issued or any other obligations payable from the revenues of the System then outstanding. Should an increase in permanent rates and charges, including those made to the Municipality, be properly ordered and made effective during the Fiscal Year immediately prior to the issuance of such additional bonds or during that part of the Fiscal Year of issuance prior to such issuance, then Net 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.

(2) The payments required to be made into the funds enumerated in Section 6 of this Resolution must have been made in full.

(3) The additional bonds must have principal maturing on May 1 of each year and interest falling due on May 1 and November 1 of each year.

(4) The proceeds of the additional bonds must be used only for the purpose of providing extensions or improvements to the System, or to refund obligations issued for such purpose.

Section 12. Sale of Bonds. The sale of the Bonds to the State of Wisconsin Safe Drinking Water Loan Program for the purchase price of up to \$1,276,480 and at par, is ratified and confirmed; and the officers of the Municipality are authorized and directed to do any and all acts, including executing the Financial Assistance Agreement and the Bonds as hereinabove provided, necessary to conclude delivery of the Bonds to said purchaser, as soon after adoption of this Resolution as is convenient. The purchase price for the Bonds shall be paid upon requisition therefor as provided in the Financial Assistance Agreement, and the officers of the Municipality are authorized to prepare and submit to the State requisitions and disbursement requests in anticipation of the execution of the Financial Assistance Agreement and the issuance of the Bonds.

Section 13. Application of Bond Proceeds. The proceeds of the sale of the Bonds shall be deposited by the Municipality into a special fund designated as "Water Utility SDWLP Project Fund." The Water Utility SDWLP Project Fund shall be used solely for the purpose of paying the costs of the Project as more fully described in the preamble hereof and in the Financial Assistance Agreement. Moneys in the Water Utility SDWLP Project Fund shall be disbursed within three (3) business days of their receipt from the State of Wisconsin and shall not be invested in any interest-bearing account.

Section 14. 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 Municipality 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 a written consent of the owners of not less than two-thirds (2/3) of the principal amount of the Bonds then outstanding, exclusive of Bonds held by the Municipality; provided, however, that no amendment shall permit any change in the pledge of revenues derived from the System or 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 15. Defeasance. When all Bonds have been discharged, all pledges, covenants and other rights granted to the owners thereof by this Resolution shall cease. The Municipality may discharge all Bonds due on any date 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 Municipality'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 Municipality'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.

Section 16. Rebate Fund. Unless the Bonds are exempt from the rebate requirements of the Internal Revenue Code of 1986, as amended (the "Code"), the Municipality shall establish and maintain, so long as the Bonds and any Parity Bonds are outstanding, a separate account to be known as the "Rebate Fund." The sole purpose of the Rebate Fund is to provide for the payment of any rebate liability with respect to the Bonds under the relevant provisions of the Code and the Treasury Regulations promulgated thereunder (the "Regulations"). The Rebate Fund shall be maintained by the Municipality until all required rebate payments with respect to the Bonds have been made in accordance with the relevant provisions of the Code and the Regulations.

The Municipality hereby covenants and agrees that it shall pay to the United States from the Rebate Fund, at the times and in the amounts and manner required by the Code and the Regulations, the portion of the "rebate amount" (as defined in Section 1.148-3(b) of the Regulations) that is due as of each "computation date" (within the meaning of Section 1.148-3(e) of the Regulations). As of the date of this Resolution, the provisions of the Regulations specifying the required amounts of rebate installment payments and the time and manner of such payments are contained in Sections 1.148-3(f) and (g) of the Regulations, respectively. Amounts held in the Rebate Fund and the investment income therefrom are not pledged as security for the Bonds or any Parity Bonds and may only be used for the payment of any rebate liability with respect to the Bonds.

The Municipality may engage the services of accountants, attorneys or other consultants necessary to assist it in determining the rebate payments, if any, owed to the United States with respect to the Bonds. The Municipality shall maintain or cause to be maintained records of determinations of rebate liability with respect to the Bonds for each computation date until six (6) years after the retirement of the last of the Bonds. The Municipality shall make such records available to the State of Wisconsin upon reasonable request therefor.

Section 17. Resolution a Contract. The provisions of this Resolution shall constitute a contract between the Municipality 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 14, 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 Municipality, the Governing Body thereof, and any and all officers and agents thereof including, but without limitation, the right to require the Municipality, 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 18. Continuing Disclosure. The officers of the Municipality are hereby authorized and directed, if requested by the State of Wisconsin, to provide to the State of Wisconsin Safe Drinking Water Loan Program and to such other persons or entities as directed by the State of Wisconsin such ongoing disclosure regarding the Municipality's financial condition and other matters, at such times and in such manner as the Safe Drinking Water Loan Program may require, in order that securities issued by the Municipality and the State of Wisconsin satisfy rules and regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended and as it may be amended from time to time, imposed on brokers and dealers of municipal securities before the brokers and dealers may buy, sell, or recommend the purchase of such securities.

Section 19. Conflicting Resolutions. All ordinances, resolutions (other than the Prior Resolutions, as amended), 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 Prior Resolutions, as amended, the Prior Resolutions, as amended, shall control as long as any of the respective Prior Bonds are outstanding.

Passed: July 16, 2012

Approved: July 16, 2012

Donald Merkes
Mayor

Attest:

Deborah A. Galeazzi
City Clerk

EXHIBIT A

(Form of Municipal Obligation)

REGISTERED
NO. _____

UNITED STATES OF AMERICA
STATE OF WISCONSIN
CALUMET AND WINNEBAGO COUNTIES
CITY OF MENASHA

REGISTERED
\$ _____

WATER SYSTEM REVENUE BOND, SERIES 2012B

Final
Maturity Date

Date of
Original Issue

May 1, 2032

_____, 20__

REGISTERED OWNER: STATE OF WISCONSIN SAFE DRINKING WATER LOAN PROGRAM

FOR VALUE RECEIVED the City of Menasha, Calumet and Winnebago Counties, Wisconsin (the "Municipality") hereby acknowledges itself to owe and promises to pay to the registered owner shown above, or registered assigns, solely from the fund hereinafter specified, the principal sum of an amount not to exceed _____ DOLLARS (\$ _____) (but only so much as shall have been drawn hereunder, as provided below) on May 1 of each year commencing May 1, 2013 until the final maturity date written above, together with interest thereon (but only on amounts as shall have been drawn hereunder, as provided below) from the dates the amounts are drawn hereunder or the most recent payment date to which interest has been paid, at the rate of 2.200% per annum, calculated on the basis of a 360-day year made up of twelve 30-day months, such interest being payable on the first days of May and November of each year, with the first interest being payable on November 1, 2012.

The principal amount evidenced by this Bond may be drawn upon by the Municipality in accordance with the Financial Assistance Agreement entered by and between the Municipality and the State of Wisconsin by the Department of Natural Resources and the Department of Administration including capitalized interest transferred (if any). The principal amounts so drawn shall be repaid in installments on May 1 of each year commencing on May 1, 2013 in an amount equal to an amount which when amortized over the remaining term of this Bond plus current payments of interest (but only on amounts drawn hereunder) at Two and 200/1000ths percent (2.200%) per annum shall result in equal annual payments of the total of principal and the semiannual payments of interest. The State of Wisconsin Department of Administration shall record such draws and corresponding principal repayment schedule on a cumulative basis in the format shown on the attached Schedule A.

Both principal and interest hereon are hereby made payable to the registered owner in lawful money of the United States of America. On the final maturity date, principal of this Bond shall be payable only upon presentation and surrender of this Bond at the office of the Municipal Treasurer. Principal hereof (except the final maturity) and interest hereon shall be payable by electronic transfer or by check or draft dated on or before the applicable payment date and mailed from the office of the Municipal Treasurer to the person in whose name this Bond is registered at the close of business on the fifteenth day of the calendar month next preceding such interest payment date.

The Bonds shall not be redeemable prior to their maturity, except with the consent of the registered owner.

This Bond is transferable only upon the books of the Municipality kept for that purpose at the office of the Municipal Treasurer, by the registered owner in person or its duly authorized attorney, upon surrender of this Bond, together with a written instrument of transfer (which may be endorsed hereon) satisfactory to the Municipal Treasurer, duly executed by the registered owner or its duly authorized attorney. Thereupon a replacement Bond shall be issued to the transferee in exchange therefor. The Municipality may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of or on account of the principal or interest hereof and for all other purposes. This Bond is issuable solely as a negotiable, fully-registered bond, without coupons, and in denominations of \$0.01 or any integral multiple thereof.

This Bond is issued for the purpose of providing for the payment of the cost of constructing improvements to the Water Utility of the Municipality, pursuant to Article XI, Section 3, of the Wisconsin Constitution, Section 66.0621, Wisconsin Statutes, and a resolution adopted July 16, 2012, and entitled: "Resolution Authorizing the Issuance and Sale of Up to \$1,276,480 Water System Revenue Bonds, Series 2012B, and Providing for Other Details and Covenants With Respect Thereto" and is payable only from the income and revenues derived from the operation of the Water Utility of the Municipality (the "Utility"). The Bonds are issued on a parity with the Municipality's Combined Utility Revenue Bonds, Series 2006, dated April 26, 2006, Combined Utility Revenue Bonds, Series 2007, dated April 11, 2007, Combined Utility Revenue Bonds, Series 2009, dated April 22, 2009, Water System Revenue Bonds, Series 2011, dated November 9, 2011 and Water System Revenue Bonds, Series 2012, dated June 13, 2012, as to the pledge of income and revenues of the Utility. This Bond does not constitute an indebtedness of said Municipality within the meaning of any constitutional or statutory debt limitation or provision.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen, and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law; and that sufficient of the income and revenue to be received by said Municipality from the operation of its Utility has been pledged to and will be set aside into a special fund for the payment of the principal of and interest on this Bond.

IN WITNESS WHEREOF, the Municipality has caused this Bond to be signed by the signatures of its Mayor and City Clerk, and its corporate seal to be impressed hereon, all as of the date of original issue specified above.

CITY OF MENASHA,
WISCONSIN

(SEAL)

By: _____
Donald Merkes
Mayor

By: _____
Deborah A. Galeazzi
City Clerk

COPY

(Form of Assignment)

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

(Please print or typewrite name and address, including zip code, of Assignee)

Please insert Social Security or other identifying number of Assignee

the within Bond and all rights thereunder, hereby irrevocably constituting and appointing

Attorney to transfer said Bond on the books kept for the registration thereof with full power of substitution in the premises.

COPY

Dated: _____

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

Signature(s) guaranteed by

SCHEDULE A

\$1,276,480

CITY OF MENASHA, WISCONSIN
WATER SYSTEM REVENUE BONDS, SERIES 2012B

<u>Amount of Disbursement</u>	<u>Date of Disbursement</u>	<u>Series of Bonds</u>	<u>Principal Repaid</u>	<u>Principal Balance</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

COPY

SCHEDULE A (continued)

PRINCIPAL REPAYMENT SCHEDULE

<u>Date</u>	<u>Principal Amount</u>
May 1, 2013	\$51,497.57
May 1, 2014	52,630.51
May 1, 2015	53,788.39
May 1, 2016	54,971.73
May 1, 2017	56,181.11
May 1, 2018	57,417.09
May 1, 2019	58,680.27
May 1, 2020	59,971.23
May 1, 2021	61,290.60
May 1, 2022	62,638.99
May 1, 2023	64,017.05
May 1, 2024	65,425.43
May 1, 2025	66,864.79
May 1, 2026	68,335.81
May 1, 2027	69,839.20
May 1, 2028	71,375.66
May 1, 2029	72,945.93
May 1, 2030	74,550.74
May 1, 2031	76,190.85
May 1, 2032	77,867.05

COPY

State of Wisconsin
Department of Natural Resources
Bureau of Community Financial Assistance
101 South Webster Street
PO Box 7921
Madison, Wisconsin 53707-7921
(608) 266-7555

Financial Assistance Agreement
Safe Drinking Water Loan Program
Form 8700-214 rev 8/10

STATE OF WISCONSIN SAFE DRINKING WATER LOAN PROGRAM
FINANCIAL ASSISTANCE AGREEMENT WITH PRINCIPAL FORGIVENESS

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES
DEPARTMENT OF ADMINISTRATION

and

CITY OF MENASHA

\$1,418,312 With \$141,832 PRINCIPAL FORGIVENESS

FINANCIAL ASSISTANCE AGREEMENT

Dated as of July 25, 2012

This constitutes a **Financial Assistance Agreement** under the State of Wisconsin's Safe Drinking Water Loan Program. This agreement is awarded pursuant to ss. 281.59 and 281.61, Wis. Stats. The purpose of this agreement is to award financial assistance from the Safe Drinking Water Loan Program. This agreement also discloses the terms and conditions of this award.

This agreement is only effective when signed by authorized officers of the municipality and an authorized officer of the State of Wisconsin Department of Natural Resources and State of Wisconsin Department of Administration.

The Department of Natural Resources and the Department of Administration may rescind or terminate this agreement if the municipality fails to comply with the terms and conditions contained within. Any determination or certification made in this agreement by the Department of Natural Resources or the Department of Administration is made solely for the purpose of providing financial assistance under the Safe Drinking Water Loan Program.

Municipal Identification No. 70251
Safe Drinking Water Loan Program Project No. 4845-09

"Municipal Obligation Counsel Opinion" means the opinion of counsel satisfactory to DOA, issued in conjunction with the Municipal Obligations, stating that:

(a) the FAA and the performance by the Municipality of its obligations thereunder have been duly authorized by all necessary action by the governing body of the Municipality, and the FAA has been duly executed and delivered by the Municipality;

(b) the Municipal Obligations have been duly authorized, executed and delivered by the Municipality and sold to the SDWLP;

(c) each of the FAA and the Municipal Obligations constitutes a legal, valid and binding obligation of the Municipality, enforceable against the Municipality in accordance with its respective terms (provided that enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that its enforcement may also be subject to the exercise of judicial discretion in appropriate cases);

(d) the Municipal Obligations constitute special obligations of the Municipality secured as to payment of principal, interest and redemption price by the pledged revenues as set forth therein;

(e) interest on the Municipal Obligations is not included in gross income of the owners thereof for federal income taxation purposes under existing laws, regulations, rulings and judicial decisions;

(f) the Municipal Obligations are not "arbitrage bonds" within the meaning of Section 148 of the Code and the arbitrage regulations; and

(g) the Municipal Obligations are not "private activity bonds" as defined in Section 141(a) of the Code.

"Municipal Obligation Resolution" means that action taken by the governing body of the Municipality authorizing the issuance of the Municipal Obligations.

"Municipal Obligations" means the bonds or notes issued and delivered by the Municipality to the SDWLP, a specimen copy of which is included in the Municipal Obligations transcript in exchange for the portion of the Loan which is not subject to Principal Forgiveness.

"Municipality" means City of Menasha, a "local governmental unit" within the meaning of the Act, duly organized and existing under the laws of the State, and any successor entity.

"Parity Obligations" means the Municipality's \$12,061,890 Combined Utility Revenue Bonds, Series 2006, dated April 26, 2006, its \$779,363 Combined Utility Revenue Bonds, Series 2007, dated April 11, 2007, its \$678,908 Combined Utility Revenue Bonds, Series 2009, dated April 22, 2009, its \$233,307 Water System Revenue Bonds, Series 2011, dated November 9, 2011, its \$639,000 Water System Revenue Bonds, Series 2012, dated June 13, 2012, and any other obligations issued on a parity with the Municipal Obligations pursuant to the restrictive provisions of Section 11 of the Municipal Obligation Resolution.

"Plans and Specifications" means the Project design plans and specifications assigned No. W-2011-0339, approved by DNR on July 25, 2011, as the same may be amended or modified from time to time in accordance with this FAA.

"Principal Forgiveness" means Financial Assistance received in the form of forgiveness of Loan principal amount pursuant to the Act, Regulations, and this FAA of which no repayment thereof shall be required except as may be required per the Act, Regulations, or this FAA. The amount of principal forgiveness available for this Project as of the date of this FAA is \$141,832.

"Progress payments" means payments for work in place and materials or equipment that have been delivered or are stockpiled in the vicinity of the construction site. This includes payments for undelivered specifically manufactured equipment if: (1) designated in the specifications, (2) could not be readily utilized or diverted to another job and (3) a fabrication period of more than 6 months is anticipated.

"Project" means the project assigned SDWLP Project No. 4845-09 by DNR, described in the Project Manager Summary Page (Exhibit F), and further described in the DNR approval letter(s) for the Plans and Specifications, or portions thereof, issued under s. 281.41, Wis. Stats.

"Project Costs" means the costs of the Project that are eligible for financial assistance from the SDWLP under the Act, which are allowable costs under the Regulations, which have been incurred by the Municipality, an estimate of which is set forth in Exhibit A hereto and made a part hereof.

"Regulations" means chs. NR 166, NR 809 and NR 811, Wis. Adm. Code, the regulations of DNR, and ch. Adm. 35, Wis. Adm. Code, the regulations of DOA, adopted pursuant to and in furtherance of the Act, as such may be adopted or amended from time to time.

"Safe Drinking Water Act" means the federal Safe Drinking Water Act, 42 U.S.C. 300f to 300j-26.

"SDWLP" means State of Wisconsin Safe Drinking Water Loan Program, established pursuant to ss. 281.59 and 281.61, Wis. Stats., and managed and administered by DNR and DOA.

"Series Resolution" or "Supplemental Resolution" shall have the meaning set forth in the General Resolution.

"State" means the State of Wisconsin.

"Substantial Completion" means the point in time when the Project is operational or capable of being operated.

"Trustee" means the trustee appointed by the State pursuant to the General Resolution and any successor trustee.

"User Fees" means fees charged or to be charged to users of the Project or the Water System of which the Project is a part pursuant to the Water Rates or otherwise.

"Water Diversion Permit" means a DNR permit issued to the Municipality under s. 30.18(2), Wis. Stats., to divert water from a stream or lake in Wisconsin.

"Water Rates" means a charge or system of charges levied on users of a water system for the user's proportional share of the revenue requirement of a water system which consists of operation and maintenance expenses, depreciation, taxes and return on investment.

"Water System" means all structures, conduits and appurtenances by means of which water is delivered to consumers except piping and fixtures inside buildings served and service pipes from buildings to street mains.

Section 1.02. Rules of Interpretation Unless the context clearly indicates to the contrary, the following rules shall apply to the context of this FAA:

(a) Words importing the singular number shall include the plural number and vice versa, and one gender shall include all genders.

(b) All references herein to particular articles or sections are references to articles or sections of this FAA.

IN WITNESS WHEREOF, the SDWLP and the Municipality have caused this FAA to be executed and delivered, as of the date and year first above written.

CITY OF MENASHA

By: FORM
Donald Merkes
Mayor

Attest: FORM
Deborah A. Galeazzi
Clerk

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION

By: _____
Authorized Officer

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By: _____
Authorized Officer

EXHIBIT A

PROJECT BUDGET SHEET SUMMARY

CITY OF MENASHA
SDWLP Project No. 4845-09

	Total Project Costs	Ineligible SDWLP Costs (A)	SDWLP Eligible Costs	Eligible SDWLP Costs Paid With Municipal or Non-SDWLP Loan Funds (B)	Eligible Costs Paid by Other Grant(s)	SDWLP Fundable Amount for this Project (C)	Principal Forgiveness Amount	Net SDWLP Loan Amount
Force Account	\$5,000	\$0	\$5,000	\$0	\$0	\$5,000	\$0	\$5,000
Interim Financing Costs	0	0	0	0	0	0	0	0
Engineering Report Preparation	10,350	0	10,350	0	0	10,350	0	10,350
Plans/Specifications Preparation	58,573	0	58,573	0	0	58,573	0	58,573
Land or Easement Acquisition	0	0	0	0	0	0	0	0
Engineering/Construction Mgmt.	61,600	0	61,600	0	0	61,600	0	61,600
Construction/Equipment	1,152,863	0	1,152,863	0	0	1,152,863	141,832	1,011,031
Contingency	84,291	0	84,291	0	0	84,291	0	84,291
Miscellaneous Costs	35,635	0	35,635	0	0	35,635	0	35,635
SDWLP Closing Costs	10,000	0	10,000	0	0	10,000	0	10,000
TOTAL	\$1,418,312	\$0	\$1,418,312	\$0	\$0	\$1,418,312	\$141,832	\$1,276,480

A = Municipal internal funds or other grant funding will cover ineligible SDWLP costs.
 B = Eligible SDWLP costs paid with municipal internal funds or other non-SDWLP loan funds.
 C = This amount is calculated before deducting funding provided from non-SDWLP sources.

EXHIBIT F

PROJECT MANAGER SUMMARY PAGE

CITY OF MENASHA
SDWLP Project No. 4845-09

1. Project Description: Elevated water tank demolition, high lift pump modifications, emergency generator, and water main extension. The Project details are provided in the plans and specifications the Department approved on July 25, 2011 and assigned approval number W-2011-0339.
2. Ineligible Costs: There were no ineligible costs identified in the review of this project. If the Department identifies ineligible Project Costs as the Project progresses, we will notify the Municipality.
3. DBE Good Faith Effort: The Municipality complied with the DBE requirements.
4. Miscellaneous Costs: As shown in the Project Budget Sheet Summary (Exhibit A), SDWLP funding in the amount of \$35,635 is included in the Miscellaneous category for:
 - ◆ Utility Relocation/Removal - \$10,000
 - ◆ Bid Advertising/Administrative - \$4,000
 - ◆ Soil Borings - \$3,985
 - ◆ Materials for Connecting the Existing Watermain* - \$17,650

Each construction-related item, denoted by an asterisk (*), will require review and approval by the regional Construction Management Engineer (CME) **prior** to reimbursement from the SDWLP. The municipality must provide the CME with a copy of the vendor's invoice, procurement method used and applicable state documentation. When the CME has determined eligibility and given approval, the municipality may request reimbursement from the SDWLP.

5. Contingency Allowance: The Contingency allowance of \$84,291 was calculated as five percent of the amount of uncompleted construction work for contracts M0002-910283-A and M0002-910283-B, plus ten percent of the amount of uncompleted construction work for contract M0002-910333.
6. Federal Single Audit: This project is expected to be funded, at least in part, with federal funds and is subject to the Federal Single Audit requirements referenced in Section 5.21 of the FAA. If the municipality receives more than \$500,000 of money that originates from any federal source in a calendar year, then it must commission a Federal Single Audit as a part of its regular financial audit. The Federal Catalogue of Domestic Assistance number is 66.468 for water project disbursements funded with federal money.
7. Green Project Reserve:

Green Infrastructure	\$0
Water Efficiency	\$0
Energy Efficiency	\$0
Environmentally Innovative	\$0
Total Green Project Reserve Funding	\$0

ATTACHMENT #1

Safe Drinking Water Loan Program Project No. 4845-09
City of Menasha
Abandon Manitowoc St. Tank, Modify High Lift Pump Station/Construct River Xing Watermain
Financial Assistance Agreement
Closing Schedule

By July 5, 2012:

- Department of Natural Resources (DNR) project manager distributes Financial Assistance Agreement (FAA) to Quarles & Brady and municipality for review.

By July 12, 2012:

- Quarles & Brady distributes draft Municipal Obligation Resolution and other bond documents to the City of Menasha and Department of Administration (DOA) for review.

On July 16, 2012:

- Municipality holds properly noticed meeting at which time:
 1. Municipal Obligation Resolution is adopted
 2. Bond/Note related documents are signed by municipal officials
 3. DNR FAA is signed by municipal officials

NOTE: Most documents must be signed by Highest Elected Official & Clerk/Secretary and some documents must have municipal seal applied.

On July 17, 2012:

- 1. Municipality immediately returns FAA to DNR for countersigning by DNR.
 2. Municipality delivers signed & sealed Resolution & other bond/note documents to Quarles & Brady.

By July 23, 2012:

- Quarles & Brady sends final signed and sealed bond/note documents and legal opinion to DOA.

July 25, 2012:

- Loan Closing Day. Quarles & Brady contacts DOA to confirm closing and DOA wire transfers the first disbursement to municipal bank account.

Safe Drinking Water Loan Program Project No. 4845-09
 City of Menasha
 Abandon Manitowoc St. Tank, Modify High Lift Pump Station/Construct River Xing Watermain
 Financial Assistance Agreement Summary/Distribution Sheet

FINANCIAL ASSISTANCE INFO

Total Project Amount: \$1,416,312

Principal Forgiveness Amount: \$141,832 Net SDWLP Loan Amount: \$1,276,480

Pledge: Water Revenue Lien Priority: Senior-Parity

Composite Interest Rate: 2.200%

DOCUMENT INFO

Anticipated Date of Municipal Obligation Resolution – July 16, 2012

CLOSING INFO

Estimated Reimbursement: \$91,400

DISTRIBUTION**Department of Natural Resources**

Meja Maka
 Bureau of Community Financial Assistance
 101 South Webster Street, 2nd Floor
 PO Box 7921
 Madison WI 53707-7921
 608-266-9193
 FAX – 608-267-0496

Municipality

Ms Melanie Krause, Business Operations Manager
 City of Menasha
 140 Main Street
 Menasha WI 54952-0340
 920-967-3611
 FAX – 920-967-5272

Municipal Bond Counsel

Ms. Rebecca A. Speckhard, Attorney
 Quarles & Brady
 411 East Wisconsin Avenue
 Milwaukee WI 53202-4497
 414-277-5000
 FAX – 414-271-3552

Department of Administration

Aaron Heintz
 DOA – Environmental Improvement Fund
 101 East Wilson Street, 10th Floor
 PO Box 7864
 Madison WI 53707-7864
 608-266-0739
 FAX – 608-266-7645

Engineering Firm

Ms. Jennifer Schaff
 McMahon Associates
 1445 McMahon Drive
 Neenah WI 54957-1025
 920-751-4200
 FAX – 920-751-4284

Financial Advisor

Mr. Tom Karman
 Schenck Business Solutions
 2200 Riverside Drive
 Green Bay WI 54305-3819
 920-436-7800
 FAX – 920-436-7808