

RESOLUTION NO. R-11-11

RESOLUTION AMENDING RESOLUTIONS NO. R-20-06, R-8-07 AND R-9-09
TO REMOVE PLEDGE OF ELECTRIC UTILITY REVENUES
FROM SAFE DRINKING WATER LOAN BONDS

Introduced by Mayor Merkes:

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

WHEREAS, pursuant to Resolution No. R-48-05 adopted on December 19, 2005, the Municipality heretofore issued its Combined Utility Revenue Refunding Bonds, Series 2005, dated December 28, 2005 (the "2005 Bonds"), which 2005 Bonds are payable from the income and revenues of the Combined System; 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"), which 2006 Bonds are payable from the income and revenues of the Combined System; 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"), which 2007 Bonds are payable from the income and revenues of the Combined System; 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"), which 2009 Bonds are payable from the income and revenues of the Combined System; and

WHEREAS, the Common Council of the Municipality has now determined, by separate resolution, that it is necessary and desirable to sell the electric utility assets to WPPI Energy (said transaction referred to herein as the "Sale Transaction"); and

WHEREAS, the Common Council of the Municipality has also, by separate resolution, determined that it is necessary and desirable to defease and discharge the 2005 Bonds simultaneously with the closing of the Sale Transaction; and

WHEREAS, Common Council of the Municipality has determined that it is necessary and desirable to amend the 2006 Resolution, 2007 Resolution and 2009 Resolution (collectively, the "SDW Resolutions") so that the SDW Resolutions, simultaneously with the closing of the Sale Transaction, no longer pledge any revenues of the electric utility to the 2006 Bonds, 2007

Bonds and 2009 Bonds (collectively, the "SDW Bonds"), and that the SDW Bonds be payable from and secured by the income and revenues of only the water utility; and

WHEREAS, the Municipality represents that the income and revenues of the water utility alone will be sufficient to pay the principal of and interest on the SDW Bonds when due; and

WHEREAS, the SDW Resolutions may be amended, in this respect, with the written consent of the owners of all of the respective SDW Bonds outstanding; and

WHEREAS, the State of Wisconsin Safe Drinking Water Loan Program, as owner of all of the outstanding SDW Bonds, has provided such consent, which is attached hereto.

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

Section 1. Amendment to the SDW Resolutions. Each SDW Resolution is hereby amended to remove the pledge of electric utility revenues so that the SDW Bonds authorized thereby are payable from and secured by the income and revenues of solely the Municipality's water utility. All references to the electric utility are hereby stricken from each SDW Resolution. In particular:

(a) Section 1(j) of each SDW Resolution is stricken in its entirety and is hereby amended to read as follows:

(j) "Gross Earnings" means the gross earnings of the System, including all revenues, income and 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;

(b) Section 1(q) of each SDW Resolution is stricken in its entirety and is hereby amended to read as follows:

(q) "System" means the 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;

(c) Each reference in each SDW Resolution to "Combined Utility Revenue Fund", "Combined Utility Operation and Maintenance Fund", "Combined Utility Special Redemption Fund", "Combined Utility Depreciation Fund" and "Combined Utility Surplus Fund" is stricken and hereby amended to read "Water Utility Revenue Fund", "Water Utility Operation and Maintenance Fund", "Water Utility Special Redemption Fund", "Water Utility Depreciation Fund" and "Water Utility Surplus Fund", respectively.

(d) The first sentence of Section 9 of each SDW Resolution is hereby stricken in its entirety and amended to read as follows:

"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 quarterly 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."

Except as expressly amended by this Resolution, the SDW Resolutions shall remain in full force and effect.

Section 2. Conflicting Resolutions. All ordinances, resolutions, or orders, or parts thereof heretofore enacted, adopted or entered, in conflict with the provisions of this Resolution, are hereby repealed.

Section 3. Effective Date. This Resolution shall take effect upon the occurrence of all of the following: (1) closing of the transfer of ownership of the electric utility assets to WPPI Energy pursuant to the Sale Transaction and (2) the defeasance and discharge of the 2005 Bonds.

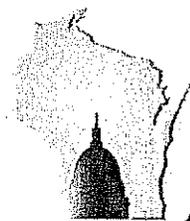
Passed: March 24, 2011

Approved: March 24, 2011

Donald Merkes
Mayor

Attest:

Deborah A. Galeazzi
City Clerk



WISCONSIN DEPARTMENT OF
ADMINISTRATION

SCOTT WALKER
GOVERNOR

MIKE HUEBSCH
SECRETARY

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Environmental Improvement Fund
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City of Menasha Combined Utility Revenue Bonds, Series 2006, 2007 and 2009
Consent to Remove Pledge of Electric Utility Revenues

WHEREAS, pursuant to Resolution No. R-20-06 adopted on April 18, 2006 (the "2006 Resolution"), the City of Menasha, Wisconsin (the "Municipality") has heretofore issued its Combined Utility Revenue Bonds, Series 2006, dated April 26, 2006 (the "2006 Bonds") to the State of Wisconsin Safe Drinking Water Loan Program (the "State"); 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") to the State; 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") to the State; and

WHEREAS, the Common Council of the Municipality has determined that it is necessary and desirable to sell the Municipality's electric utility assets to WPPI Energy (said transaction referred to herein as the "Sale Transaction") and to defease and discharge its Combined Utility Revenue Bonds, Series 2005, dated December 28, 2005 in connection therewith; and

WHEREAS, the Common Council of the Municipality has asked the State's consent to amend the 2006 Resolution, 2007 Resolution and 2009 Resolution (collectively, the "SDW Resolutions") so that the SDW Resolutions, which currently pledge revenues of the electric utility and water utility to the 2006 Bonds, 2007 Bonds and 2009 Bonds, would no longer pledge any revenues of the electric utility to the 2006 Bonds, 2007 Bonds and 2009 Bonds (collectively, the "SDW Bonds"), and so that the SDW Bonds would be payable from and secured by the income and revenues of only the water utility; and

WHEREAS, the Municipality represents to the State that the projected income and revenues of the water utility alone will be sufficient to pay the principal of and interest on the SDW Bonds when due.

NOW, THEREFORE, the State, as sole registered owner of all of the SDW Bonds, consents to the amendment of each SDW Resolution as set forth in the attached amending Resolution to provide that electric utility income and revenues will no longer be pledged to or secure the SDW Bonds, and consents to the adoption of the attached amending Resolution by the Common Council of the Municipality. This consent shall apply only in connection with the SDW Bonds and shall be effective only upon the occurrence of the events described in the amending Resolution, and shall not extend to any other bonds or prejudice any rights or remedies whatever that the State may have with respect to any other bonds.

Dated as of March 22, 2011

State of Wisconsin Safe Drinking Water
Loan Program

By: 
Michael D. Wolff
Finance Programs Administrator

ACCEPTED by:
City of Menasha, Wisconsin

By: _____
Donald Merkes
Mayor

Attest: _____
Deborah A. Galeazzi
City Clerk