

FOR BOARD ACTION

Agenda Item # 6

Meeting Date:

4/27/04

SUBJECT:

MMUA Municipal Bond Pool

PREPARED BY:

Curt Kraft, Director of Administration



ITEM DESCRIPTION:

At the last Board meeting information was provided on a municipal bond pool being proposed by the Minnesota Municipal Utilities Association (MMUA). Major points and benefits that were clarified...

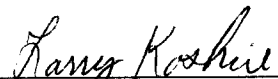
- Joining the Bond pool does not commit the utility to any financing
- It provides an additional option for financing with low cost of issuance, fast access to funds, and availability to different types of financing instruments.
- Minimum annual membership fee.
- Pool is available to both the Electric and Water utilities.
- It's an insured pool, if one borrower in the pool should default there is no cross bond liability by the other participations in the pool, the insurer would be liable to make the payments.

At that meeting the Board asked staff to get the City Finance Director's opinion of the Bond pool. Attached is a memorandum from Dale Martinson stating that the Bond pool provides a worthwhile financing option. The City Attorney has reviewed all the legal documents.

The attached Board resolution states the desire to become a member of the Midwest Consortium of Municipal Utilities (MCMU), which would be a nonprofit corporation, allowed through the formation of a joint venture authorized by Minnesota Statutes Section 452.25. The resolution further states that the Board approves the Articles of Incorporation and Bylaws of MCMU (also attached), and appoints the General Manager as a director on the MCMU Board for three years.

UTILITY BOARD ACTION REQUESTED:

The Board is requested to approve the Certificate of Resolution authorizing RPU to become a member of the Midwest Consortium of Municipal Utilities, subject to approval of a Certificate of Resolution (also attached) by the Common Council.


General Manager

4-22-04
Date

ROCHESTER PUBLIC UTILITIES



FINANCE DEPARTMENT MEMORANDUM

DATE: August 19, 2004

TO: Larry Koshire, RPU General Manager
Curt Kraft, RPU Director of Administration

FROM: Dale Martinson, City Finance Director

SUBJECT: MMUA Bond Pool Program

I have reviewed the information provided to me on the MMUA bond pool and offer the following thoughts:

- Cost to keep this available to RPU as a financing option for RPU seems quite minimal, at \$300 - \$500 per year.
- There is great flexibility in the amount drawn or borrowed from the pool.
- There is no cross liability (i.e., no requirement to cover debt service payments for another pool member should that member default) since a third party insures the bonds.

For these reasons, I believe it worthwhile to keep the pool as an available option for financing. However, I would tend to view this as just one available option and at the time the financing is actually needed, I would still suggest at least a review, if not a full competitive negotiation process in which RPU looks at other options as well. At the point RPU needs the money, there are several factors that might influence whether the MMUA pool is the best option, such as:

- RPU's own credit rating and size of financing might be sufficient on its own to warrant a better rate. Pools tend to end up with a blended interest rate, or average costs of insurance, with the higher rated credits providing some subsidy to the lower rated ones.
- Availability of pooled bond funds may not be sufficient by the time RPU is ready to borrow, or perhaps RPU would be ready to proceed before MMUA has enough committed members to warrant issuance. It is often a matter of timing for bond pools to be useful.
- Rates may move from the time bonds were issued for the pool until the time RPU needs funds such that current rates may be more (or may be less) attractive than the pool rates.

The MMUA bond pool appears to be structured in such a way as to be a safe and viable financing option for RPU. The cost to make this available to RPU is minimal relative to the potential amount of borrowed funds. I just suggest that it be kept available as one option and that other financing options also be compared at the time funds are actually needed.

**ARTICLES OF INCORPORATION
OF
MIDWEST CONSORTIUM OF MUNICIPAL UTILITIES**

THE UNDERSIGNED, being of full age, for purposes of forming a corporation under Chapter 317A of the Minnesota Statutes, known as the Minnesota Nonprofit Corporation Act, as amended from time to time, does hereby form a body corporate and adopt the following Articles of Incorporation.

**ARTICLE I
NAME**

The name of the corporation (the "Corporation") shall be "Midwest Consortium of Municipal Utilities."

**ARTICLE II
REGISTERED OFFICE**

The registered office of the Corporation shall be at:

12805 Highway 55
Suite 212
Plymouth, MN 55441-3880

**ARTICLE III
DURATION**

The duration of the Corporation shall be perpetual.

**ARTICLE IV
PURPOSES AND POWERS**

(a) The purpose of the Corporation is and shall be to operate as a joint venture by utilities pursuant to Minnesota Statutes Section 452.25, to enable the municipal utilities which are the members of the Corporation to make more efficient use of their powers as governmental agencies in the provision of utility services.

(b) The Corporation shall have and may exercise any and all of the powers, privileges, responsibilities, and duties which are or may be authorized to, conferred upon or exercised by a joint venture formed under Minnesota Statutes Section 452.25 and future laws amendatory thereof and supplementary thereto, including but not limited to the following:

- (i) any and all of the powers, privileges, responsibilities and duties of the separate utilities which are or which become members of the Corporation, which are hereby authorized to and conferred upon the Corporation, including but not limited to the following:
 - (1) the power of eminent domain;
 - (2) the power to borrow money, incur debt and issue tax-exempt and taxable bonds to finance utility property;
 - (3) the power to acquire, own, construct, and operate utilities systems and property;
 - (4) all powers of municipal power agencies under Minnesota Statutes Chapter 453 and municipal gas agencies under Minnesota Statutes Chapter 453A which may be exercised by cities;
 - (5) all powers which may be exercised by municipalities under the Municipal Industrial Development Act, Minnesota Statutes Section 469.152 *et seq.*;
 - (6) all powers under the joint powers law, Minnesota Statutes Section 471.59; and
 - (7) all powers of the separate utilities which are or which become members of the Corporation under their city charters and other official governing documents, and under Minnesota Statutes Chapter 216B, Chapter 412, Section 444.075, Chapter 453, Chapter 453A, Section 465.01, and Chapter 475, and under any and all other applicable law; and.

- (ii) all powers specifically authorized to and conferred upon a joint venture by utilities pursuant to Minnesota Statutes Section 452.25, including but not limited to the following enumerated powers:
 - (1) the power to provide utility services as authorized under Minnesota Statutes Section 452.25, Subdivision 3(a);
 - (2) all powers authorized under Minnesota Statutes Section 452.25, Subdivision 5;
 - (3) the power to expend public funds and transfer real and personal property as authorized under Minnesota Statutes Section 452.25, Subdivision 6(a).

(c) The Corporation shall have all powers afforded by the Minnesota Nonprofit Corporation Act and by future laws amendatory thereof and supplementary thereto, including the power:

(i) to acquire and receive funds and property of every kind and nature whatsoever, whether by purchase, conveyance, lease, gift, grant, bequest, legacy, devise, or otherwise, outright or in trust;

(ii) to hold, own, expend, give, grant, contribute, convey, transfer and dispose of any funds and property and the income therefrom in furtherance of the above-stated purposes, and to lease, mortgage, encumber and use the same;

(iii) to borrow money and incur indebtedness, and in connection therewith to draw, make, accept, endorse, execute, and issue notes, drafts, bills of exchange, bonds, debentures, or any other negotiable or non-negotiable instruments or evidences of indebtedness of any kind or nature whatsoever, and to secure payment thereof and any interest thereon by mortgage, pledge, deed of trust, assignment or otherwise on, of, or with respect to all or any part of the Corporation;

(iv) to invest in, acquire, hold, pledge, sell, exchange, transfer or otherwise dispose of securities of any nature and to exercise all the rights, powers and privileges of ownership thereof, including any and all voting rights;

(v) to act as trustee or co-trustee of trusts and to otherwise act in a fiduciary capacity when so designated in any inter vivos or testamentary instruments, and in such capacity, to be named as beneficiary of insurance policies or annuity contracts;

(vi) to contract with private parties and federal, state, and local governments and their agencies and instrumentalities;

(vii) to be a member of other nonprofit corporations; and

(viii) such other powers which are consistent with the foregoing purposes and which are afforded by the Minnesota Nonprofit Corporation Act.

(d) The Corporation elects to be deemed a municipal utility for purposes of Minnesota Statutes Chapter 216B and other federal and Minnesota laws regulating utility operations.

(e) The Corporation shall be deemed a political subdivision of the State of Minnesota exercising essential governmental functions, for federal and state income tax purposes.

(f) The Corporation may exercise its powers and carry out its activities anywhere within and outside of the State of Minnesota.

ARTICLE V
PROHIBITED ACTS

Other than to members that are subdivisions, units, or agencies of the United States or a state or local government, the Corporation shall in no way, directly or indirectly, incidentally or otherwise, afford pecuniary gain, dividends, or other pecuniary remuneration to any of its members, directors, or officers, as such, nor shall any part of the net earnings of the Corporation in any way inure to the private benefit of such member, director or officer of the Corporation, or to any private individual; provided, however, that the Corporation shall be authorized to make reasonable allowance and payment for actual expenditures incurred or services rendered to or for the benefit of the Corporation. The Corporation shall not lend money to, guarantee, or pledge its assets as security for an obligation of, become a surety for, or otherwise financially assist any person or organization, except as permitted by Minnesota Statutes Section 317A.501 and as permitted by Article IV above.

ARTICLE VI
INCORPORATOR

The name and post office address of the person who is the sole Incorporator of the Corporation is:

Peter L. Cooper, Esq.
McGrann Shea Anderson Carnival
Straughn & Lamb, Chartered
800 Nicollet Mall, Suite 2600
Minneapolis, MN 55402-7035

ARTICLE VII
MEMBERS

The Corporation shall have members. The initial members of the Corporation shall be the municipal utilities of the following cities in the State of Minnesota:

[TO COME]

The criteria and procedures for admission of additional members and the conditions, rights, terms, and privileges of members shall all be as specified in the By-Laws of the Corporation. The By-Laws may establish more than one class of members.

ARTICLE VIII
BOARD OF DIRECTORS

The property, affairs, and business of the Corporation shall be managed by its Board of Directors. The Board of Directors shall consist exclusively of persons directly appointed by the municipal utilities which are the members of the Corporation. The number, qualifications, terms of office, method of election, powers, authority, and duties of directors, the time and place of their meetings, and such other provisions with respect to the Board of Directors as are not inconsistent with these Articles of Incorporation, shall be as specified in the By-Laws of the Corporation.

ARTICLE IX
PERSONAL LIABILITY

Neither the members, the directors, nor the officers of the Corporation shall be personally liable to any extent whatsoever for any debts or obligations of the Corporation, nor shall their property be subject to payment of any debts or obligations of the Corporation.

ARTICLE X
DISSOLUTION

The Corporation may be dissolved in accordance with the laws of the State of Minnesota. Upon dissolution, and after payment of all liabilities and obligations of the Corporation and all costs and expenses incurred in connection with dissolution and winding up the affairs of the Corporation, any remaining assets shall be distributed to the municipal utilities which are the members of the Corporation in such proportions as shall be determined by:

- (a) the Board of Directors of the Corporation, if the dissolution of the Corporation is not required by the laws of the State of Minnesota, then in existence, to be conducted under court supervision; or
- (b) a court of competent jurisdiction, if the dissolution of the Corporation is required by the laws of the State of Minnesota, then in existence, to be conducted under court supervision.

Notwithstanding anything to the contrary hereinabove contained in this Article X, if any assets at the time of dissolution are held by the Corporation in trust or upon condition or subject to any executory or special limitation, and if the condition or limitation occurs by reason of the

dissolution of the Corporation, such assets shall revert or be returned, transferred, or conveyed in accordance with the terms and provisions of such trust, condition, or limitation.

ARTICLE XI
AMENDMENTS

These Articles of Incorporation may be amended or restated by the affirmative vote of a majority of all directors of the Corporation without further approval by the members.

ARTICLE XII
CONSENT IN WRITING

Provided that all directors are notified of the text of the proposed written action prior to the signing by any of the directors, any action may be taken by the Board of Directors or any committee thereof without a meeting, by written action of the Board of Directors or committee thereof signed by the number of directors that would be required to take the same action at a meeting of the Board or committee thereof at which all directors were present. Such action shall be effective on the date on which the last signature of the required number of directors is placed on such writing or writings, or such earlier or later date as set forth therein.

ARTICLE XIII
CITATIONS

All references in these Articles of Incorporation to particular or general provisions of Minnesota statutes or laws shall mean and include, as now enacted or as hereafter amended, such particular or general provisions of Minnesota statutes or Minnesota laws as are or may hereafter be applicable, cognate to such provision.

IN WITNESS WHEREOF, the undersigned Incorporator has executed these Articles of Incorporation this ____ day of _____, 2004.

Peter L. Cooper, Incorporator

158516.doc;1

**BYLAWS
OF
MIDWEST CONSORTIUM OF MUNICIPAL UTILITIES**

**SECTION 1
NAME, OFFICES, AND SEAL**

1.1 Name. The name of the corporation (the “Corporation”) shall be “Midwest Consortium of Municipal Utilities.”

1.2 Registered Office. The city, town, or other community in which the registered office of the Corporation is located in Minnesota shall be as set forth in the Articles of Incorporation of the Corporation, or in the most recent amendment or restatement of such Articles of Incorporation, or in a certificate of change of registered office filed with the Secretary of State of Minnesota reflecting the adoption of a resolution by the Board of Directors of the Corporation changing such registered office.

1.3 Other Offices. The Corporation may have such other offices, within or without the State of Minnesota, as the Board of Directors may designate or as the activities of the Corporation may require from time to time.

1.4 Corporate Seal. The Corporation shall not have a corporate seal.

**SECTION 2
MEMBERSHIP**

2.1 Members. The Corporation shall have two (2) classes of members, Class A Members and Class B Members. Class A Members shall be municipal utilities which are permitted to enter into a joint venture by utilities pursuant to Minnesota Statutes section 452.25 (the “Act”) and have duly taken the approval and ratification actions described in Subdivision 3(a) of the Act to become part of the joint venture by utilities between and among the Class A Members of the Corporation. Class B Members shall be municipal power agencies with which municipal utilities would be permitted to enter into a joint venture by utilities pursuant to the Act. Unless otherwise specifically stated, references in these Bylaws to “members” refer to both Class A Members and Class B Members. All applications for membership shall be submitted to the President of the Corporation or the President’s designee and approved by the Board of Directors. Subject to Sections 2.4 and 2.5, the term of membership shall be indefinite, so long as a member remains qualified to be a Class A Member or a Class B Member as defined in this Section 2.1. Membership rights may not be transferred, assigned, or devised. No member, by virtue of membership, shall have any right, title, or interest in or to any property of the Corporation.

2.2 Voting Rights. Class A Members shall have voting rights. Each Class A Member shall be entitled to one (1) vote, except as may be otherwise provided in the Articles of Incorporation. There shall be no voting by proxy. Except where a different vote is required by law, the Articles of Incorporation, or these Bylaws, the Class A Members shall take action by affirmative vote of the majority of the Class A Members entitled to vote. Class B Members shall have no voting rights for any purpose.

2.3 Membership Meetings. There shall be a regular, annual meeting of the Class A Members and there may be special meetings of the Class A Members. The Board of Directors shall establish the place and time of membership meetings. A quorum of Class A Members for any membership meeting shall be a majority of Class A Members.

2.4 Membership Dues. The Board of Directors shall have authority to levy dues upon members, in such amounts as the Board shall determine from time to time. The Board shall determine the method of collection or enforcement of dues, and shall establish policies with respect to cancellation of membership, on reasonable notice, for nonpayment of dues and for the reinstatement of members.

2.5 Termination. The Board of Directors shall have authority to establish procedures for the expulsion or suspension of members, which procedures shall be fair and reasonable and carried out in good faith. Any procedure for termination of membership rights shall take into consideration all relevant facts and circumstances and provide not less than fifteen (15) days prior written notice of expulsion or suspension and the reasons for it, and shall provide an opportunity for the member to be heard, orally or in writing, not less than five (5) days before the effective date of termination by a person authorized to decide that the termination not take place. The expulsion or suspension of a member does not relieve the member from obligations the member may have to the Corporation for dues or other charges.

2.6 Withdrawal. A member may withdraw at any time by duly taking the same actions for withdrawal as were taken by such member for approval and ratification to become a member; provided, however, that no member may withdraw so long as such member is an obligor with respect to any financing with or involving the Corporation. The withdrawal of a member does not relieve the member from any obligations the member may have to the Corporation for fees or other charges.

2.7 Membership Required for Financings. The Corporation may enter into a financing transaction with a municipal utility or a municipal power agency in connection with which such municipal utility or municipal power agency would become an obligor with respect to any financing with or involving the Corporation only if such municipal utility or municipal power agency is, or at the time the financing transaction is entered into will be, a member of the Corporation.

SECTION 3
BOARD OF DIRECTORS

3.1 Governing Power. The business and affairs of the Corporation shall be managed by or under the control of the Board of Directors. The Board of Directors shall have all the powers and duties necessary and appropriate for the administration of the affairs of the Corporation, consistent with law, the Articles of Incorporation, and the Bylaws of the Corporation.

3.2 Number; Qualifications. The number of directors of the Corporation shall be set from time to time by the Class A Members, but in any event shall be no less than three (3). Directors must consist exclusively of persons directly elected or appointed by Class A Members of the Corporation and shall be adult natural persons and need not be residents of the State of Minnesota. No Class A Member shall have more than one representative serving as a director at any one time.

3.3 Election and Term of Office. Directors shall be elected by the Class A Members at their annual meeting or at any duly held special meeting of the Class A Members by the affirmative vote of a majority of the Class A Members present and entitled to vote. Cumulative voting for directors shall not be permitted. The term of office of each director shall be three (3) years; provided, however, that the terms of office of the directors shall be staggered so that the terms of no more than one-third (1/3) of the directors shall expire in any one year, and for this purpose the initial terms of some directors may be for less than three (3) years. There shall be no restriction on directors serving successive terms. Each director shall hold office until the annual meeting of the Class A Members in the year his or her term of office expires and until his or her successor shall have been elected and shall qualify, or until his or her sooner death, disqualification, resignation, or removal as provided herein.

3.4 Vacancies. One (1) or more vacancies shall be deemed to exist on the Board if the number of directors is reduced for any reason below three (3). The remaining directors shall, in such event, act promptly to fill any vacancy on the Board by election of a new director.

3.5 Resignation. A director may resign at any time by mailing or personally delivering written notice to the Corporation. The resignation is effective without acceptance when the notice is given to the Corporation, unless a later effective time is specified in the notice. No resignation may be effective prior to the time such notice is given.

3.6 Removal. A director may be removed at any time, with cause, by the affirmative vote of a majority of the Class A Members. However, no director shall be removed prior to the expiration of his or her term of office, unless the notice of the regular or special meeting at which removal is to be considered states such purpose. If removal of a director reduces the size of the Board below three (3) persons, a new director shall be elected at the same meeting to fill the vacancy.

3.7 Compensation. Directors and any members of committees established by the Board shall serve without compensation. Directors may be reimbursed for actual expenses

incurred by them in the performance of their duties as directors. Neither this Section nor such resolution shall preclude any director from serving the Corporation in any other capacity and receiving proper compensation therefor.

3.8 Regular Meetings. Regular meetings of the Board of Directors shall be held at least one (1) time per year, as called by the President. One (1) regular meeting each year shall be designated the annual meeting of the Board, at which meeting the Board shall elect officers and shall vote to elect directors to succeed those directors whose terms are expiring or have expired. Notice of regular meetings of the Board of Directors shall be given to each director, personally or by mail, telephone or by facsimile transmission, at least five (5) days prior to the day named for such meeting. Notices of regular meetings need not state the purposes thereof.

3.9 Special Meetings. Special meetings of the Board of Directors may be called by the President or by any two (2) directors on five (5) days notice to each director, given personally or by mail, telephone, or facsimile transmission, which notice shall state the date, time, place and purpose of the meeting.

3.10 Waiver of Notice. Directors may waive notice of any meeting of the Board before, at, or after the meeting, in writing, or by attendance. Attendance at a meeting by a director shall constitute a waiver of notice of such meeting, unless such director objects at the beginning of the meeting to the transaction of business because the meeting is not validly held and does not participate thereafter in the meeting.

3.11 Quorum. At all meetings of the Board of Directors, a majority of the directors currently holding office shall constitute a quorum for the transaction of business, and the acts of the majority of the directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors, except where a larger number is required by law, the Articles of Incorporation, or these Bylaws. If, at any meeting of the Board of Directors there is less than a quorum present, the majority of the directors present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice. If a quorum is present when a duly called or held meeting is convened, the directors present may continue to transact business until adjournment, even though the withdrawal of a director or directors originally present leaves less than the number otherwise required for a quorum.

3.12 Telephone Conference or Interactive Video Meetings. A telephone conference call or interactive video conference, or other conference among directors by any means of communication through which the directors may simultaneously hear each other during the conference, shall constitute a meeting of the Board of Directors, provided that any notice requirements for a meeting are met and that the number of directors participating in the conference are sufficient to constitute a quorum at a meeting. Participation in such conference shall constitute presence in person at the meeting.

3.13 Written Action in Lieu of a Meeting. Provided that all directors are notified of the text of the proposed written action prior to the signing by any of the directors, any action may be taken by the Board of Directors or any committee thereof without a meeting, by written action of

the Board of Directors or committee thereof signed by the number of directors that would be required to take the same action at a meeting of the Board or committee thereof at which all directors were present. Such action shall be effective on the date on which the last signature of the required number of directors is placed on such writing or writings, or such earlier or later date as set forth therein. Counterpart signatures on a written action shall be valid and effective to the same extent as signatures on the same document.

3.14 Conduct of Meetings. Meetings of the Board of Directors shall be conducted in accordance with Roberts Rules of Order, Newly Revised. The Chair of the Board, if present, or if not present, the Vice Chair, and if not present, the President, shall preside at all meetings of the Board, and in the absence of such officers, the directors present at the meeting shall appoint any of them to act as presiding officer of the meeting.

3.15 Proxies. Proxies shall not be allowed or used by directors.

SECTION 4 **OFFICERS**

4.1 Designation. The principal officers of the Corporation shall be the Chair of the Board, the Vice Chair of the Board, the President, the Treasurer, and the Secretary, each of whom shall be elected by the Board of Directors. The Board of Directors may appoint assistant officers and such other officers and agents as in its judgment may be necessary. Any two (2) or more offices may be held by the same person at the same time.

4.2 Election of Officers; Nominations. The officers of the Corporation shall be elected annually by the Board of Directors at a regular or special meeting. All officers shall serve for a term of one (1) year. Each officer shall continue in office until his or her successor is duly elected and qualified, subject to such officer's earlier death, resignation, removal, or disqualification. Any vacancies occurring in offices shall be filled by the Board of Directors, from time to time. The Board of Directors shall appoint such temporary or acting officers as may be necessary during the temporary absence or disability of the regular officers.

4.3 Resignation. An officer may resign at any time by giving written notice to the Corporation. The resignation is effective without acceptance when the notice is given, unless a later effective date is specified in the notice.

4.4 Removal. An officer may be removed at any time, with or without cause, by a resolution approved by the affirmative vote of the Board of Directors.

4.5 Vacancies. A vacancy in an office because of death, resignation, removal, disqualification, or other cause, shall be filled for the unexpired portion of the term by prompt action of the Board of Directors.

4.6 Chair of the Board. The Chair of the Board, when present, shall preside at all meetings of the Board of Director; shall see that all orders and resolutions of the Board of

Directors are carried into effect; and shall have such other authority and duties as the Board may determine from time to time.

4.7 Vice Chair. The Vice Chair shall have such powers and shall perform such duties as may be specified by the Board of Directors. In the absence or disability of the Chair of the Board, the Vice Chair shall succeed to the Chair powers and duties until the Chair shall resume his or her duties or until a new Chair is elected by the Board.

4.8 President. The President shall perform the functions of the office of president within the meaning of Minnesota Statutes Section 317A.305, shall report directly to the Board of Directors, and shall be the Chief Executive Officer of the Corporation. The President may be an employee of the Corporation and may receive such salary as from time to time shall be established by the Board. The President, in the absence of both the Chair and the Vice Chair of the Board, shall preside at all meetings of the Board of Directors; shall see that all orders and resolutions of the Board are carried into effect; shall have general active management of the business of the Corporation; shall appoint members to committees of the Corporation; may execute and deliver in the name of the Corporation any deeds, mortgages, bonds, contracts or other instruments pertaining to the business of the Corporation, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the Board to some other officer or agent of the Corporation; may delegate the authority to execute and deliver documents to other officers of the Corporation; shall maintain records and, whenever necessary, certify any proceedings of the Board; shall perform such other duties as may from time to time be prescribed by the Board; and, in general, shall perform all duties usually incident to the office of president.

4.9 Vice President(s). Any Vice President(s) shall have such powers and shall perform such duties as the Board of Directors may from time to time designate.

4.10 Treasurer. The Treasurer may be an employee of the Corporation and may receive such salary as from time to time shall be established by the Board, and shall be the Chief Financial Officer of the Corporation. The Treasurer shall keep or cause to be kept accurate financial records for the Corporation; shall deposit or cause to be deposited all money, drafts, and checks in the name of and to the credit of the Corporation in the banks and depositories designated by the Board of Directors; shall endorse for deposit or cause to be endorsed all notes, checks, and drafts received by the Corporation, as ordered by the Board, making proper vouchers therefor; shall disburse or cause to be disbursed corporate funds and issue checks and drafts in the name of the Corporation, as ordered by the Board; shall render to the President and the Board, whenever requested, an account of all transactions by the Treasurer and of the financial condition of the Corporation; shall perform such other duties as may from time to time be prescribed by the President or the Board; and, in general, shall perform all duties usually incident to the office of treasurer.

4.11 Secretary. The Secretary shall serve as secretary of and shall attend and record the proceedings of all meetings of the Board of Directors; shall maintain to date and have custody of the permanent minute book and records of the Corporation; shall have custody of and affix the corporate seal, if any, where appropriate; shall attest to and certify any corporate

documents and instruments; shall give notice and provide proof of notice of meetings and other proceedings of the Board in accordance with law and these Bylaws; shall perform such other duties as may from time to time be prescribed by the Board or the President; and, in general, shall perform all duties usually incident to the office of secretary.

4.12 Assistant Officers. The Board of Directors may establish and appoint assistant secretaries, assistant treasurers, or other assistant officers, and such assistant officers shall have such powers and shall perform such duties as may be delegated to them by the Board.

SECTION 5

COMMITTEES OF THE BOARD

5.1 Executive Committee. The Board of Directors may elect an Executive Committee consisting of the Chair of the Board, Vice Chair of the Board, Secretary, Treasurer and such other directors as the Board shall elect or appoint. The Chair of the Board shall serve as the Chair of the Executive Committee. The Executive Committee shall have and exercise the authority of the Board in the management of the business of the Corporation. Any such Executive Committee shall act only in the interval between meetings of the Board, and shall be subject at all times to the control and direction of the Board.

5.2 Other Committees. The Board of Directors, by a majority vote of a quorum in attendance, may establish any other committees and may delegate thereto some or all of its power except those which by law, the Articles of Incorporation, or these Bylaws may not be delegated. Except as the Board of Directors may otherwise determine, any such committee may make rules for the conduct of its business, but unless otherwise provided by the Board of Directors or in such rules, its business shall be conducted so far as possible in the same manner as provided by these Bylaws for the Board of Directors. The Board of Directors may abolish any such committee at any time. Any committee to which the Board of Directors delegates any of its powers or duties shall keep records of its meetings and shall report its action to the Board of Directors.

SECTION 6

COMMITTEES OF THE CORPORATION

6.1 Establishment. By resolution, the Board may establish committees of the Corporation for such purposes and with such responsibilities as provided in such resolution. Committees of the Corporation shall be subject at all times to the direction and control of the Board. The Board shall appoint one of the directors to serve on each such committee established, to act as a liaison between the Board and such committee. The other members of each such committee, including the chair, shall be appointed by the President of the Corporation and need not be directors or representatives of members of the Corporation.

6.2 Procedure. Each committee of the Corporation shall meet and carry on its activities in accordance with such procedures as it may establish from time to time. The chair of

each committee of the Corporation shall report to the Board in person at least annually on the activities and status of such committee.

SECTION 7

AFFILIATIONS WITH OTHER ORGANIZATIONS

The Corporation may formally or informally affiliate itself with other national, regional, state, or local associations, trade groups, or other organizations, whose goals and objectives support and compliment those of the Corporation. Any such affiliations shall be determined or approved only by the affirmative vote of a majority of the directors present and entitled to vote at a duly held meeting of the Board of Directors of the Corporation.

SECTION 8

FISCAL MANAGEMENT

8.1 Fiscal Year. The fiscal year of the Corporation shall end on December 31.

8.2 Books and Records. The Corporation shall keep at its registered office, correct and complete books of account, minutes of proceedings and meetings of the Board of Directors, and minutes, if any, of meetings of committees of the Board.

8.3 Financial Statements. At the close of each fiscal year, the Corporation shall prepare financial statements containing a balance sheet and a full and correct statement of the financial affairs of the Corporation for the fiscal year, all in accordance with generally accepted accounting principles. The Corporation shall cause its books and records to be audited and the Board shall select a firm of certified public accountants or other independent auditors for such purpose. The audited financial statements and report of auditor thereon shall be submitted to the Board for its consideration and approval.

8.4 Execution of Corporation Documents. With the authorization of the Board of Directors, all notes and contracts shall be executed on behalf of the Corporation by the President or by any other parties designated by appropriate resolution of the Board of Directors. All checks and other drafts shall be executed on behalf of the Corporation by the President, the Treasurer, or any other parties designated by appropriate resolution of the Board of Directors.

8.5 Fidelity Bonds. The Board of Directors may require that all officers and employees of the Corporation having custody or control of the corporate funds furnish adequate fidelity bonds. The Corporation shall pay the premiums on such bonds.

8.6 Indemnification. The Corporation shall indemnify a person made or threatened to be made a party to a civil, criminal, administrative, arbitative, or investigative proceeding by reason of the former or present official capacity of the person, and shall pay or reimburse such person's expenses in advance of final disposition of a proceeding, all in accordance with the provisions and requirements of Minnesota Statutes Section 317A.521, as amended. The

Corporation may, by Board resolution, reimburse expenses, including attorneys' fees and disbursements, incurred by a person in connection with a proceeding at a time when such person is a witness but has not been made or threatened to be made a party to such proceeding.

SECTION 9
AMENDMENTS

These Bylaws may be amended or restated by the affirmative vote of a majority of all directors of the Corporation without further approval by the voting members.

The undersigned, Secretary of Midwest Consortium of Municipal Utilities, hereby certifies that the foregoing Bylaws of the Corporation were adopted at a meeting of the Board of Directors duly held on _____, 2004 and became effective immediately.

Secretary

158519

CERTIFICATE OF RESOLUTIONS
ADOPTED BY THE COMMON COUNCIL OF THE
CITY OF ROCHESTER, MINNESOTA

I, _____, in my official capacity, hereby certify that I am the _____ of the City of Rochester, a Minnesota municipal corporation, and hereby certify that the following resolutions were adopted by the Common Council of the City of Rochester, on _____, 2004.

WHEREAS, the City of Rochester acting by and through the Rochester Public Utilities Commission desires to form a joint venture in the form of a nonprofit corporation and desires to become a member of Midwest Consortium of Municipal Utilities, a Minnesota nonprofit corporation organized under Minnesota Statutes Chapter 317A, as authorized by Minnesota Statutes Section 452.25; and

WHEREAS, pursuant to Minnesota Statutes section 452.25, the Rochester Public Utilities Commission on _____, 2004 duly adopted its Resolution No. _____, whereby the City of Rochester, acting by and through the Rochester Public Utilities Commission, would become a member of Midwest Consortium of Municipal Utilities, ratifying the participation of the City of Rochester, acting by and through the Rochester Public Utilities Commission, in Midwest Consortium of Municipal Utilities, and approving the Articles of Incorporation and the Bylaws of Midwest Consortium of Municipal Utilities.

NOW, THEREFORE, BE IT RESOLVED, that the Common Council of the City of Rochester, a Minnesota municipal corporation, does hereby approve the City of Rochester, acting by and through the Rochester Public Utilities Commission becoming a member of Midwest Consortium of Municipal Utilities, a nonprofit corporation organized under Minnesota Statutes Chapter 317A, as authorized by Minnesota Statutes Section 452.25; and

BE IT FURTHER RESOLVED, that the Common Council of the City of Rochester, does hereby ratify the participation of the City of Rochester acting by and through the Rochester Public Utilities Commission in a joint venture in the form of a nonprofit corporation known as Midwest Consortium of Municipal Utilities, as authorized by Minnesota Statutes Section 452.25; and

BE IT FURTHER RESOLVED, that the Common Council of the City of Rochester, does hereby approve the Articles of Incorporation of Midwest Consortium of Municipal Utilities and does hereby approve the Bylaws of Midwest Consortium of Municipal Utilities in the form attached to these Resolutions.

IN WITNESS WHEREOF, I have executed this Certificate on _____, 2004.

Title: _____



**CERTIFICATE OF RESOLUTIONS
ADOPTED BY THE CITY OF ROCHESTER ACTING BY AND THROUGH
THE ROCHESTER PUBLIC UTILITIES BOARD**

I, Richard L. Landwehr, in my official capacity, hereby certify that I am the President of the Public Utilities Board of the City of Rochester, and hereby certify that the following resolutions were adopted by the Rochester Public Utilities Board on April 27, 2004.

WHEREAS, the City of Rochester acting by and through the Rochester Public Utilities Board desires to form a joint venture in the form of a nonprofit corporation and desires to become a member of Midwest Consortium of Municipal Utilities, a Minnesota nonprofit corporation organized under Minnesota Statutes Chapter 317A, as authorized by Minnesota Statutes Section 452.25.

NOW, THEREFORE, BE IT RESOLVED, that the City of Rochester, a Minnesota municipal corporation, acting by and through the Rochester Public Utilities Board shall become a member of Midwest Consortium of Municipal Utilities, a nonprofit corporation organized under Minnesota Statutes Chapter 317A, as authorized by Minnesota Statutes Section 452.25; and

BE IT FURTHER RESOLVED, that the City of Rochester acting by and through the Rochester Public Utilities Board ratifies the participation of the City of Rochester acting by and through the Rochester Public Utilities Board in a joint venture in the form of a nonprofit corporation known as Midwest Consortium of Municipal Utilities, as authorized by Minnesota Statutes Section 452.25; and

BE IT FURTHER RESOLVED, that the City of Rochester acting by and through the Rochester Public Utilities Board approves the Articles of Incorporation of Midwest Consortium of Municipal Utilities and approves the Bylaws of Midwest Consortium of Municipal Utilities in the form attached to these Resolutions; and

BE IT FURTHER RESOLVED, that Larry Koshire, who is currently General Manager of the Rochester Public Utilities Board, is hereby appointed as a director of Midwest Consortium of Municipal Utilities for a three year term and until his successor is duly appointed and qualified.

IN WITNESS WHEREOF, I have executed this Certificate on April 27, 2004.

President

Secretary