

RESOLUTION NO. 279

RESOLUTION RELATING TO \$780,000 SEWER SYSTEM
REVENUE BOND, SERIES 2011, CONFIRMING THE
ISSUANCE THEREOF AND THE SECURITY THEREFOR
AND MAKING CERTAIN DESIGNATIONS AND
COVENANTS IN RESPECT OF THE BOND

BE IT RESOLVED by the Town Council (the "Council") of the Town of Stevensville, Montana (the "Town"), as follows:

Section 1. Authorization and Recitals.

1.01. Authorization. Under Montana Code Annotated, Title 7, Chapter 7, Parts 44 and 45, as amended (the "Act"), the Town is authorized to issue and sell its revenue bonds payable during a term not exceeding forty years from their date of issue, to provide funds for the reconstruction, improvement, betterment and extension of a municipal sewer system and to issue refunding bonds to refund bonds issued for such purposes, provided that the bonds and the interest thereon are to be payable solely out of the income and revenues to be derived from rates, fees and charges for the services, facilities and commodities furnished by such sewer system, and are not to create any obligation for the payment of which taxes may be levied except to pay for services provided by the sewer system to the Town.

1.02. Outstanding Bonds and Bond Anticipation Note. In accordance with the authorization described in Section 1.01 and pursuant to Resolution Nos. 255 and 167, adopted by the Town Council on July 12, 1999 and December 11, 2000, respectively (the "Original Resolution"), as amended and supplemented by Resolution No. 274, adopted by the Town Council on June 27, 2011 (as so amended and supplemented, the "Resolution"), the Town issued and sold its \$780,000 Sewer System Revenue Bond Anticipation Note, Series 2011 (the "Series 2011 Note"), issued in anticipation of the issuance of up to \$780,000 Sewer System Revenue Bond to finance the costs of additional improvements to the sewer system (the "2011 Project"). Apart from the Series 2011 Note, there are no other Bonds or indebtedness of the Town outstanding that are payable in whole or in part from or secured by revenues of the sewer system of the Town (the "System"), except for the Town's outstanding \$1,250,000 Sewer System Revenue Bond, Series 2000A (the "Series 2000A Bond"), and \$814,000 Sewer System Revenue Bond, Series 2000B (the "Series 2000B Bond"), dated, as originally issued, as of December 19, 2000 (together, the "Series 2000 Bonds"). Terms used with initial capital letters but not defined herein shall have the meanings given them in the Resolution. The Town proposes to issue its Definitive Bond in the amount of \$780,000. The Definitive Bond identified in the Resolution is the Series 2011 Bond described herein.

1.03. The 2011 Project. Work on the 2011 Project is substantially complete. The Town estimates, with the assistance of its Consulting Engineer, that the costs of the 2011 Project are as follows:

Construction	\$977,569.73
Basic Engineering	103,847.80
Preliminary Report	27,863.00
Construction Admin	45,078.80
Construction Inspection	49,867.10
Additional Services	23,182.60
Project Contingency	109,021.12
Interim Interest	4,369.85
Office Costs	2,400.00
Professional Services	4,800.00
Legal Fees	4,000.00
Audit Fees	6,000.00
Bond Counsel	20,000.00
<u>TOTAL</u>	<u>\$1,378,000.00</u>

Costs of the 2011 Project in excess of \$780,000 are expected to be paid from a grant from the USDA in the amount of \$395,000, a Department of Natural Resources and Conservation Renewable Resource grant in the amount of \$100,000, and funds that the Town has on hand in the amount of \$103,000.

Section 2. Issuance of the Series 2011 Bond. In Resolution No. 274, this Council determined, declared and found that the Town is authorized to issue the Definitive Bond in the aggregate principal amount of \$780,000 for the purpose of paying and redeeming the Series 2011 Note and paying costs associated with the issuance of the Series 2011 Bond and, if funds are available, financing a portion of the cost of the 2011 Project. The principal and interest outstanding on the Series 2011 Note as of December 15, 2011 is expected to be \$784,369.85.

The Town is authorized to charge just and equitable rates, charges and rentals for all services directly or indirectly furnished by the System, and to pledge and appropriate to its \$780,000 Sewer System Revenue Bond, Series 2011 (the "Series 2011 Bond") the Net Revenues to be derived from the operation of the System, including improvements, betterments or extensions thereof hereafter constructed or acquired. The Net Revenues to be produced by such rates, charges and rentals, during the term of the Series 2011 Bond are estimated to be more than sufficient to pay the principal and interest when due on the Series 2000 Bonds and the Series 2011 Bond, to create and maintain reasonable reserves therefor, and to provide an allowance for replacement and depreciation, as prescribed by the Resolution.

Pursuant to the authority recited in Section 1.01 of this Supplemental Resolution and for the purpose of paying and redeeming the Series 2011 Note, this Council hereby ratifies and confirms its authorization to issue the Series 2011 Bond (known then as the Definitive Bond) as provided in Resolution. The USDA has agreed, subject to the terms and conditions of the Commitment Letter, to lend the Town up to \$780,000 to finance a portion of the cost of the 2011 Project and costs of issuance of the Definitive Bond. The terms and conditions of the Loan, as set forth in the Commitment Letter, are reasonable and advantageous to the Town and are accepted. The Town has adopted a Loan Resolution, dated March 22, 2010, and executed a Letter of Intent To Meet Conditions pursuant to which the Town has agreed to issue the

Definitive Bond, in the aggregate principal amount of \$780,000, in accordance with the provisions of Resolution No. 274 and the Commitment Letter.

The Council hereby ratifies and confirms its finding and determination contained in the Original Resolution that it is necessary and expedient for the Town to issue and sell to the USDA, pursuant to Montana Code Annotated, Section 7-7-4433(1), the Series 2011 Bond, in the aggregate principal amount of \$780,000, at a price equal to its principal amount, upon satisfaction of the conditions precedent to the Loan.

The 2011 Project has been substantially completed and the conditions precedent to the purchase of the Series 2011 Bond by the United States of America acting through the United States Department of Agriculture (the "USDA") have been or shortly will be satisfied.

The Town hereby determines the Series 2011 Bond shall be issued as "Sewer System Revenue Bond, Series 2011" in the maximum authorized principal amount of \$780,000.

As stated in the Commitment Letter, the Series 2011 Bond bears interest at the rate of three and one-quarter percent (3.25%) per annum on principal amounts advanced and will be payable in monthly installments of principal and interest over 40 years, commencing on the date of issuance of the Bond. The USDA has informed the Council that the rate of interest on the Series 2011 Bond as set forth in Commitment Letter has recently decreased from 3.25% per annum to 3.00% per annum. The new monthly principal and interest payment due on the Series 2011 Bond will be \$2,793, amortized over 40 years, or such lesser amount as may be necessary to amortize fully in equal monthly installments over 40 years the total principal amount of the Series 2011 Bond advanced with interest thereon. The City will make a monthly deposit to the Reserve Account equal to 10% of the monthly principal and interest payments (or \$280) until the balance in the Reserve Account equals the Reserve Requirement for the Series 2011 Bond (\$33,516). Amortization of principal of and interest on the Loan will commence from the date of issuance of the Series 2011 Bond. This Council hereby authorizes the issuance of the Series 2011 Bond in the principal amount of \$780,000 in substantially the form of the Series 2011 Bond attached as Exhibit A, which form of the Series 2011 Bond supersedes the form of the Series 2011 Bond attached to Resolution No. 274.

Pursuant to the Resolution, the Town shall deposit from funds it has on hand and available therefor the amount of \$44,100 in the Short-Lived Asset Replacement Reserve Subaccount. Money in the Short-Lived Asset Replacement Reserve Subaccount is to be used for the replacement of Short-Lived Assets, but may be applied to pay and discharge the Series 2011 Bond, together with other available funds of the Town, if the amount therein together with other available funds is then sufficient to pay and discharge the Series 2011 Bond in full. The Town shall maintain the balance in the Short-Lived Asset Replacement Reserve Subaccount at \$44,100.

This Council hereby ratifies and confirms the issuance of the Series 2011 Bond, in the principal amount of \$780,000, and the sale thereof to the USDA, on the terms and conditions, substantially in the form and otherwise as authorized and provided in the Original Resolution, as modified as provided above. The proceeds of the principal amount of the Series 2011 Bond shall be applied, with other funds of the Town to the extent required, to pay the Series 2011

Note as further provided in Resolution No. 274. The conditions precedent to the issuance of the Series 2011 Bond are hereby found and determined to have been satisfied. On or about December 15, 2011, the proceeds of the Series 2011 Bond will be used to pay the principal of and interest on the outstanding Series 2011 Note. The Original Resolution shall be read liberally to conform to the provisions of this Supplemental Resolution. If there is a conflict between the provisions of this Supplemental Resolution and Original Resolution, the provisions of this Supplemental Resolution shall control.

Section 3. Designation as “Qualified Tax-Exempt Obligations.” Pursuant to Section 265(b)(3)(D)(ii) of the Code, the Town hereby designates the Series 2011 Bond as a “qualified tax-exempt obligation” for purposes of Section 265(b)(3) of the Code, and this Council hereby confirms such designation. The Town hereby represents that the Town and all “subordinate entities” thereof do not reasonably anticipate issuing in 2011 obligations bearing interest exempt from federal income taxation under Section 103 of the Code (including “qualified 501(c)(3) bonds” but excluding other “private activity bonds,” as defined in Sections 141(a) and 145(a) of the Code) in an amount greater than \$10,000,000.

Section 4. Tax Covenants.

4.01. Use of 2011 Project. The 2011 Project as part of the System will be owned and operated by the Town and available for use by members of the general public on a substantially equal basis. The Town shall not enter into any lease, use or other agreement with any non-governmental person relating to the use of the 2011 Project or the System or security for the payment of the Series 2011 Bond which might cause the Series 2011 Bond to be considered a “private activity bond” or a “private loan bond” within the meaning of Section 141 of the Code.

4.02. General Covenant. The Town covenants and agrees with the owners from time to time of the Series 2011 Bond that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Series 2011 Bond to become includable in gross income for federal income tax purposes under the Code and applicable Treasury Regulations thereunder (the “Regulations”), and covenants to take any and all actions within its powers to ensure that the interest on the Series 2011 Bond will not become includable in gross income for federal income tax purposes under the Code and the Regulations.

4.03. Arbitrage Certification. The Mayor and the Town Clerk-Treasurer, being among the officers of the Town charged with the responsibility for issuing the Series 2011 Bond pursuant to this 2011 Supplemental Resolution, are authorized and directed to execute and deliver to the Purchaser a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Regulations, stating that on the basis of facts, estimates and circumstances in existence on the date of issue and delivery of the Series 2011 Bond, it is reasonably expected that the proceeds of the Series 2011 Bond will be used in a manner that would not cause the Series 2011 Bond to be an “arbitrage bond” within the meaning of Section 148 of the Code and the Regulations.

4.04. Arbitrage Rebate Exemption.

(a) The Town hereby represents that the Series 2011 Bond qualifies for the exception for small governmental units to the arbitrage rebate provisions contained in Section 148(f) of the Code. Specifically, the Town represents:

- (1) Substantially all (not less than 95%) of the proceeds of the Series 2011 Bond (except for amounts to be applied to the payment of costs of issuance) will be used for local governmental activities of the Town.
- (2) The aggregate face amount of all "tax-exempt bonds" (including warrants, contracts, leases and other indebtedness, but excluding private activity bonds) issued by or on behalf of the Town and all subordinate entities thereof during 2011 is reasonably expected not to exceed \$5,000,000. To date in 2011, the Town has not issued any such tax-exempt bonds except the Series 2011 Note and its \$2,173,000 Water System Revenue Bond Anticipation Note, Series 2011, and in the calendar years 2006 through 2010, the Town did not issue any tax-exempt bonds.

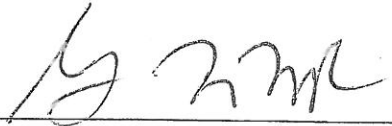
(b) If notwithstanding the provisions of paragraph (a) of this Section 4.04, the arbitrage rebate provisions of Section 148(f) of the Code apply to the Series 2011 Bond, the Town hereby covenants and agrees to make the determinations, retain records and rebate to the United States the amounts at the times and in the manner required by said Section 148(f).

Section 5. Information Reporting. The Town shall file with the Secretary of the Treasury, not later than February 15, 2012, a statement concerning the Series 2011 Bond containing the information required by Section 149(e) of the Code.


Section 6. Authentication of Transcript. The officers of the Town are hereby authorized and directed to furnish to the USDA and to bond counsel certified copies of all proceedings relating to the issuance of the Series 2011 Bond and such other certificates and affidavits as may be required to show the right, power and authority of the Town to issue the Series 2011 Bond, and all statements contained in and shown by such instruments, including any heretofore furnished, shall constitute representations of the Town as to the truth of the statements of fact purported to be shown thereby.

Section 7. Effective Date. This Supplemental Resolution shall be in full force and effect from and after its passage.

Passed and adopted by the Town Council of the Town of Stevensville, Montana, this 28th day of November, 2011.



Mayor

Attest: 

Town Clerk-Treasurer

EXHIBIT A

UNITED STATES OF AMERICA
STATE OF MONTANA
COUNTY OF RAVALLI

TOWN OF STEVENSVILLE

SEWER SYSTEM REVENUE BOND
SERIES 2011

[the series designation to be completed with the calendar year
in which the Bond is issued]

No. R-1

\$780,000.00

FOR VALUE RECEIVED, THE TOWN OF STEVENSVILLE, MONTANA (the "Town"), a duly organized municipal corporation of the State of Montana, acknowledges itself to be specially indebted and hereby promises to pay, solely from the Debt Service Account of its Sewer System Fund, to the United States of America acting through Rural Utilities Service, United States Department of Agriculture, or any successor agency under Public Law 103-354 (the "USDA"), or registered assigns (the "Holder"), the principal sum of SEVEN HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$780,000.00), in installments as set forth below, and to pay interest thereon, from and after the date of the principal amount advanced, solely from the Debt Service Account, at the rate of three percent (3.00%) per annum. Interest shall be computed on the basis of a 365-day year based on the actual number of days elapsed from and after each advance. Principal and interest are payable in equal monthly installments in the amount of \$2,793.00, commencing on January 15, 2012, and payable on the 15th day of each month thereafter until the principal and interest are fully paid, except that the final installment of the entire indebtedness evidenced hereby, if not sooner paid, shall be due and payable forty years from the date hereof, subject to the right of prepayment set forth below. The installments of principal and interest are payable at State Office of the USDA, at USDA Rural Development, 2229 Boot Hill Court, Bozeman, Montana 59715, or such other place as the Purchaser shall designate in writing, except that in the event that the USDA has assigned this Bond, the installments of principal and interest are payable to the registered Holder at his address as it appears on the Bond Register of the Town. Principal and interest are payable in any coin or currency of the United States of America which on the respective dates of payment is legal tender for public and private debts.

This Bond is one of an issue of Sewer System Revenue Bonds, heretofore and hereafter issuable in one or more series from time to time (the "Bonds"), pursuant to and in full conformity with the Constitution and laws of the State of Montana thereunto enabling, including Montana Code Annotated, Title 7, Chapter 7, Parts 44 and 45, as amended (the "Act"), and Resolution Nos. 255 and 167, adopted by this Council on July 12, 1999 and December 11, 2000, respectively, as amended and supplemented by Resolution Nos. 274 and 279, adopted by the Town Council on June 27, 2011 and November 28, 2011, respectively (as so amended and supplemented, the "Resolution"). This Bond (the "Series 2011 Bond") is issued for the purpose

of paying and redeeming the Town's Sewer System Revenue Bond Anticipation Note, Series 2011, which was issued to finance costs associated with improvements (the "Improvements") to the municipal sewer system of the Town (the "System"), which term includes all improvements, betterments, extensions and alterations of the System. The Town's outstanding \$1,250,000 Sewer System Revenue Bond, Series 2000A, and \$814,000 Sewer System Revenue Bond, Series 2000B (collectively, the "Series 2000 Bonds"), the Bond, and any Additional Bonds issued under the Resolution on a parity therewith (collectively, the "Bonds"), including the interest thereon, are payable solely from the revenues pledged to the payment thereof and do not constitute a debt of the Town within the meaning of any constitutional or statutory limitation or provision.

The Town may redeem on any installment payment date, in whole or part and if in part, in multiples of \$1,000, any unpaid principal of this Series 2011 Bond at a price equal to the principal amount to be redeemed plus interest accrued to the date of redemption, without premium; provided that while this Series 2011 Bond is registered in the name of the United States of America, the Town may redeem any unpaid principal on any date and in any amount. Notice of any such prepayment will be mailed by the Town not less than 30 days prior to the date specified for payment, to the registered holder of this Series 2011 Bond at his address as it appears on the Bond Register.

The Town has designated this Series 2011 Bond as a "qualified tax-exempt obligation" within the meaning of Section 265(b) of the Internal Revenue Code of 1986, as amended.

This Series 2011 Bond shall be registered in the name of the Holder on the bond register of the Town kept by the Town Clerk-Treasurer as Bond Registrar. This Series 2011 Bond is transferable by the registered Holder or its attorney duly authorized in writing, upon presentation hereof with a written instrument of transfer satisfactory to the Town and duly executed by the registered holder or its attorney. Such transfer shall be noted on the bond register and hereon. The Town will, upon request, issue to the registered Holder or transferee, upon surrender of this Series 2011 Bond, one or more other bonds, in an aggregate principal amount (and, if more than one bond is to be issued, in denominations that are multiples of \$1,000, to the extent practicable) equal to the principal amount of the Series 2011 Bond that then remains unpaid and maturing at the same time or times as the then unpaid principal installments hereof, subject to reimbursement for any tax, fee or governmental charge or other expense incurred by the Town with respect to such exchange. The Town may treat the person in whose name this Series 2011 Bond is registered as the absolute owner hereof, whether this Series 2011 Bond is overdue or not, for the purpose of receiving payment of principal and interest and all other purposes, and shall not be affected by any notice to the contrary.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that the Town will prescribe and collect reasonable rates and charges for all services and facilities afforded by the System, including all additions thereto and replacements and improvements thereof, and has created a special Sewer System Fund into which the Gross Revenues (as defined in the Resolution) of the System will be paid, and a separate and special Debt Service Account in that fund, into which will be paid each month, from the Net Revenues of the System then on hand an amount not less than the installment next payable on the Series 2000 Bonds and on this Bond and any Additional Bonds that are payable monthly, and, if Additional Bonds are issued that are payable semi-annually, not less than one-sixth of the interest due on such outstanding

Bonds within the next six months and one-twelfth of the principal on such outstanding Bonds due within the next twelve months; that it will transfer to the Reserve Account in the Sewer System Fund monthly out of the remaining Net Revenues a minimum of \$280 per month and such additional amounts as may be necessary to accumulate therein over a period concluding on the tenth anniversary of the date hereof, a reserve equal to 100% of the maximum Principal and Interest Requirements on the Bonds then outstanding in the current or any future Fiscal Year (the initial Reserve Requirement (as defined in the Resolution)), and such additional amounts as may be necessary thereafter to maintain therein a balance equal to the Reserve Requirement; that the Debt Service Account and the Reserve Account will be used only to pay the principal of, premium, if any, and interest on the Bonds; that the rates and charges for the System will from time to time be made and kept sufficient to provide Net Revenues (as defined in the Resolution) during each Fiscal Year at least equal to 110% of the maximum Principal and Interest Requirements in the current or any future Fiscal Year; that sufficient Net Revenues shall be available to fund the Reserve Account, and sufficient Surplus Net Revenues shall be available to fund the Short-Lived Asset Replacement Reserve Subaccount as described in the Resolution; that Additional Bonds may be issued and made payable from the Sewer System Fund on a parity with the Series 2000 Bonds and the Series 2011 Bond upon certain conditions set forth in the Resolution, but no obligation will be otherwise incurred and made payable from the Net Revenues, whether or not such obligation shall also constitute a general obligation and indebtedness of the Town, unless the lien thereof shall be expressly made subordinate to the lien of the Series 2000 Bonds, the Series 2011 Bond, and any Additional Bonds on such Net Revenues; that all provisions for the security of the holder of this Bond set forth in the Resolution will be punctually and faithfully performed as therein stipulated; that all acts, conditions and things required by the Constitution and laws of the State of Montana and the ordinances and resolutions of the Town to be done, to exist, to happen and to be performed in order to make this Series 2011 Bond a valid and binding special obligation of the Town according to its terms have been done, do exist, have happened and have been performed as so required; and that this Bond and the interest and premium, if any, hereon are payable solely from the Net Revenues of the System pledged and appropriated to the Debt Service Account and do not constitute a debt of the Town within the meaning of any constitutional or statutory limitation or provision; and the issuance of the Series 2011 Bond does not cause the indebtedness of the Town to exceed any constitutional or statutory limitation of indebtedness.

IN WITNESS WHEREOF the Town of Stevensville, Ravalli County, State of Montana, by its Town Council, has caused this Bond to be executed on its behalf by its Mayor and Town Clerk-Treasurer, sealed with the official corporate seal of the Town, and has caused this Bond to be dated as of December 15, 2011.

TOWN OF STEVENSVILLE, MONTANA

By _____
Mayor

Attest:

Town Clerk-Treasurer

(SEAL)

PROVISIONS FOR REGISTRATION OF TRANSFER AND EXCHANGE

The ownership of this Series 2011 Bond and of the interest payable hereon may be transferred to a bona fide purchaser only by delivery hereof with an assignment duly executed by the registered owner or his attorney or legal representative, and the Town may treat the registered owner as the person exclusively entitled to receive payments of principal of and interest on this Series 2011 Bond and to exercise all the rights and powers of an owner until this Series 2011 Bond is presented to the Town Clerk-Treasurer of the Town of Stevensville, Montana, as Bond Registrar, accompanied by said assignment and by assurance of the nature provided by law that the same is genuine and effective, and until such transfer is duly registered on the books of the Town and noted hereon by the Bond Registrar.

REGISTER

The ownership of the unpaid principal balance of this Series 2011 Bond and the interest accruing thereon is registered on the books of the Town of Stevensville, in the name of the registered holder as last noted below:

<u>Date of Registration</u>	<u>Name and Address of Registered Holder</u>	<u>Signature of Town Clerk-Treasurer</u>
December 15, 2011	United States of America, United States Department of Agriculture Office of the Deputy Chief Financial Officer 4300 Goodfellow Blvd. St. Louis, Missouri 63120	<hr style="border: 0; border-top: 1px solid black; margin: 0;"/>

NO WRITING HEREON EXCEPT BY TOWN CLERK-TREASURER
AS BOND REGISTRAR

The Bond Registrar has transferred on the books of the Town of Stevensville, Montana, on the date last noted below, to the registered assign noted opposite said date, ownership of the principal amount of and interest on this Bond, except the amounts of principal and interest theretofore paid:

<u>Date of Transfer</u>	<u>Registered Assign</u>	<u>Signature of Bond Registrar</u>

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the Town of Stevensville, Montana (the "Town"), hereby certify that the attached resolution is a true copy of Resolution No. 279, entitled: "RESOLUTION RELATING TO \$780,000 SEWER SYSTEM REVENUE BOND, SERIES 2011, CONFIRMING THE ISSUANCE THEREOF AND THE SECURITY THEREFOR AND MAKING CERTAIN DESIGNATIONS AND COVENANTS IN RESPECT OF THE BOND" (the "Resolution"), on file in the original records of the Town in my legal custody; that the Resolution was duly adopted by the Town Council of the Town at a meeting on November 28, 2011, and that the meeting was duly held by the Town Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council Members voted in favor thereof: Desera Towle, Dan mullan, Robin Holcomb, Pat Groninger; voted against the same: N/A; abstained from voting thereon: N/A; or were absent: N/A

WITNESS my hand officially this 3 day of December, 2011.

[Signature]
Town Clerk-Treasurer

3 originals to Tricia 12-3-11