

**MEMORANDUM**

**To:** MCWD Board of Managers

**From:** James Wisker, Administrator

**Date:** September 10, 2018

**Re:** Proposed Refinance of MCWD Note with Wells Fargo for 325 Blake Road Property

**Purpose:**

To frame the Minnehaha Creek Watershed District Board of Manager's consideration of a resolution authorizing the proposed issuance of an \$8,000,000 General Obligation Conservation Program Note of 2018, in exchange for the District's outstanding Conservation Program Note of 2013.

**Background:**

In 2011, pursuant to action of the Board of Managers and consistent with the duly adopted capital improvement program of the District's watershed management plan, the District acquired approximately 17 acres of land at 325 Blake Road, Hopkins, for purposes of regionally treating over 260 acres of urban runoff, and providing a vital connection in the Minnehaha Creek Greenway between Cottageville Park and downstream improvements in St. Louis Park.

When complete, the Minnehaha Creek Greenway will have restored 1.5 – 2.0 miles of stream channel; enhanced and connected over 50 acres of greenspace; provided public access via 2 miles of trail corridor; and treated hundreds of acres of regional urban stormwater runoff, measurably addressing surface water impairments in Minnehaha Creek and downstream Lake Hiawatha.

Throughout the planning of capital improvements at the 325 Blake Road site, a cornerstone in the Minnehaha Creek Greenway, in consultation with its financial advisors and bond counsel the District has developed strategic plans to manage the debt associated with the outstanding Note.

These plans have been informed by the timing of proposed physical improvements on site and sale of the property, and the need to retain the financial flexibility needed to implement strategic water resource objectives at this site balanced with the implementation of other District capital improvements.

*We collaborate with public and private partners to protect and improve land and water for current and future generations.*

Assumptions from this multi-year planning effort, regarding the refinance of the Note, have been incorporated into both the 2018 and 2019 budgets. Options and assumptions regarding the proposed refinance were reviewed by the Operations and Programs Committee at on August 9, 2018, and August 23, 2018.

**September 13, 2018 Meeting:**

At the September 13, 2018 Meeting of the MCWD Board of Managers, the Board will be asked to consider a resolution authorizing the proposed issuance of an \$8,000,000 General Obligation Conservation Program Note of 2018, in exchange for the District’s outstanding Conservation Program Note of 2013.

**Summary of Proposal:**

Predicated on advice from MCWD financial advisors and bond counsel, consistent with assumptions made in the 2018-2019 budget and with recent OPC discussions, and following discussions with Wells Fargo, the authorizing resolution incorporates the following assumptions:

- MCWD will make a planned payment of \$2,089,250 in October 2018,
- The replacement Conservation Program Note will be issued in an amount of \$8,000,000
- The Note will be issued with a fixed rate of approximately 3.65%, over a 5 year term, with a make-whole provision

**Attached Information:**

Attached to this memorandum is the following information:

- |                                 |                  |
|---------------------------------|------------------|
| 1. Authorizing Resolution       | – Kutak Rock     |
| 2. Bond Counsel Opinion         | – Kutak Rock     |
| 3. Financial Advisor Opinion    | – Springsted     |
| 4. General Counsel Opinion      | – Smith Partners |
| 5. 2018 Note Schedule of Events | – Springsted     |

**Next Steps:**

Pending Board consideration of the authorizing resolution, next steps are summarized in the Attachment 5 – Schedule of Events.

If there are questions in advance of the meeting, please contact James Wisker at 952.641.4509 or [Jwisker@minnehahacreek.org](mailto:Jwisker@minnehahacreek.org)

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Extract of Minutes of Meeting of the  
Board of Managers of Minnehaha Creek Watershed District

Pursuant to due call and notice thereof, a regular meeting of the Board of Managers of Minnehaha Creek Watershed District was duly held at the District's offices in Minnetonka, Minnesota, Thursday, September 13, 2018.

The following Managers were present:

and the following were absent:

\* \* \*            \* \* \*            \* \* \*

The President announced that the meeting was duly noticed for the purpose of considering a proposal for the issuance of the District's \$8,000,000 General Obligation Conservation Program Notes of 2018, in exchange for the District's outstanding Conservation Program Note of 2013.

\* \* \*            \* \* \*            \* \* \*

The District Administrator then presented the proposal of Wells Fargo Bank, National Association which had been reviewed by Springsted Incorporated, the financial consultant to the District.

Manager \_\_\_\_\_ introduced the following written resolution and moved its adoption:

Resolution No. \_\_\_\_\_

RESOLUTION PROVIDING FOR THE ISSUANCE OF  
\$8,000,000 GENERAL OBLIGATION CONSERVATION PROGRAM NOTES OF  
2018 IN EXCHANGE FOR THE DISTRICT'S OUTSTANDING  
CONSERVATION PROGRAM NOTE OF 2013,  
FIXING THE FORM AND SPECIFICATIONS  
THEREOF, PROVIDING FOR ITS EXECUTION AND  
DELIVERY, AND PLEDGING TAXES FOR ITS PAYMENT

BE IT RESOLVED by the Board of Managers of Minnehaha Creek Watershed District as follows:

1. Authority. The District has adopted a watershed management plan under Minnesota Statutes, Section 103B.231 (the "Watershed Plan") which includes a Land Conservation Program (the "Conservation Program") under which the District acquires real property for environmental and conservation purposes. As provided in Section 103B.231, Subd. 6, the District has included a capital improvement program as part of the Watershed Plan, which includes the Conservation Program. Under Minnesota Statutes, Section 103B.241, Subd. 1, the District has authority to levy property taxes without limitation to pay for projects which are part of the Watershed Plan. Pursuant to Resolution No. 11-086 adopted September 22, 2011, this Board determined it to be necessary and expedient that the District issue its Conservation Program Note of 2011 (the "Original Note") pursuant to Minnesota Statutes, Section 103D.335, Subd. 1, to provide funds to acquire property commonly referred to as the Cold Storage site as part of the District's capital improvement program under the District's approved Watershed Plan. The Original Note was refunded by the issuance of its \$15,000,000 Conservation Program Note of 2013 (the "Prior Note") pursuant to Resolution No. 13-090 adopted August 22, 2013. The Prior Note was purchased by, and is currently held by, Wells Fargo Bank, National Association (the "Bank"). The outstanding principal balance of the Prior Note is \$10,000,000. Capitalized terms not defined in the body of this Resolution are defined in Appendix A hereto.

2. Note Terms. The offer of the Bank to exchange the Prior Note for a \$2,000,000 principal payment and the \$8,000,000 General Obligation Conservation Program Notes of 2018 (the "Notes") of the District as hereinafter described is hereby found and determined to be a favorable proposal, and shall be and is hereby accepted. The Notes shall be dated the date of delivery, mature on October 1, 2023, and bear interest at a rate per annum acceptable to the District (which the District understands will be determined by the Bank two or three business days prior to the date of issuance of the Notes, which rate would have been 3.65% per annum if determined as of the close of business on July 27, 2018), but

in no event shall the initial rate exceed 5.00% per annum. Upon the occurrence and during the continuance of an Event of Default (as defined in Section 13), the Notes shall bear interest at a Default Rate, commencing on the date of the Event of Default, adjusted from time to time and continuing so long as the Event of Default has not been cured, equal to the greatest of (a) the Bank's Prime Rate plus 4.00%, (b) the Federal Funds Rate plus 5.00%, and (c) 10.00%; which Default Rate shall change as and when the Prime Rate or the Federal Funds Rate shall change if either of such rates are or become determinative of the Default Rate.

The Notes are subject to mandatory sinking fund prepayment at par plus accrued interest on the dates and in the amounts as follows: \$1,000,000 on October 1, 2019, \$1,000,000 on October 1, 2020, \$1,500,000 on October 1, 2021 and \$1,500,000 on October 1, 2022, with the remaining \$3,000,000 balance due and payable on October 1, 2023. At the option of the District, the Notes are subject to redemption and prepayment prior to its maturity in whole or in part at any time at a redemption price equal to the principal amount to be prepaid plus accrued interest and a Prepayment Premium calculated as provided in Appendix B hereto.

Notice of optional prepayment shall be mailed first-class, postage prepaid, not less than thirty (30) days prior to the redemption date, to the Registered Owner of the Notes. Notice may also be provided electronically to an address specified by the Registered Owner, provided receipt of such notice is given by the Registered Owner. Any partial prepayment shall be in an integral multiple of \$5,000 and may be directed to principal payable at maturity or any intervening mandatory sinking fund installment.

3. Interest. Interest on the Notes is payable quarterly in arrears on January 1, April 1, July 1 and October 1 of each year, commencing January 1, 2019, by check or draft mailed to each Registered Owner of the Notes to be redeemed (or by wire transfer to an account designated by the Registered Owner). Interest at the rate set forth in paragraph 2 shall be computed on the basis of a 360-day year of twelve 30-day months. Principal is payable upon presentation and surrender at the office of the Minnehaha Creek Watershed District Treasurer, in Minnetonka, Minnesota (or by wire transfer to an account designated by the Registered Owner).

Unless the context otherwise requires, the Bank and any other registered owner of the Notes is sometimes referred to herein as the Registered Owner or Registered Owners.

If the amount of interest payable for any period in accordance with the terms hereof or the Notes exceeds the amount of interest that would be payable for such period had interest for such period been calculated at the Maximum Interest Rate, then interest for such period shall be payable in an amount calculated at the Maximum Interest Rate.

Any interest that would have been due and payable for any period but for the operation of the immediately preceding paragraph shall accrue and be payable as provided in this paragraph and shall, less interest actually paid to the Registered Owners for such period,

constitute the “Excess Interest Amount.” If there is any accrued and unpaid Excess Interest Amount as of any date, then the principal amount with respect to which interest is payable shall bear interest at the Maximum Interest Rate until payment to the Registered Owners of the entire Excess Interest Amount.

Notwithstanding the foregoing, on the date on which no principal amount with respect to the Notes remains unpaid, the District shall pay to the Registered Owners a fee equal to any accrued and unpaid Excess Interest Amount.

4. Note Form. The Notes shall be in substantially the following form:

THIS NOTE MAY NOT BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH SECTION 7 OF THE RESOLUTION DESCRIBED HEREIN.

UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
MINNEHAHA CREEK WATERSHED DISTRICT

GENERAL OBLIGATION CONSERVATION PROGRAM NOTE OF 2018

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
_____ %	October 1, 2023	October 1, 2018	[_____]

Registered Owner: Wells Fargo Bank, National Association

Principal Amount: \_\_\_\_\_ Dollars

KNOW ALL BY THESE PRESENTS THAT Minnehaha Creek Watershed District acknowledges itself to be indebted and for value received promises to pay to the Registered Owner hereof, or registered assigns, the Principal Amount set forth above on the Maturity Date set forth above, and to pay interest thereon from the Date of Original Issue set forth above until the Principal Amount is paid at the rate of interest specified above, or as long as an Event of Default as defined in the Resolution described below has occurred and is continuing, at the Default Rate described in, and adjusted from time to time as required by, the Resolution. Principal is payable upon presentation and surrender hereof at the office of the Minnehaha Creek Watershed District Treasurer, in Minnetonka, Minnesota, as Paying Agent and Registrar (or by wire transfer to an account designated by the Registered Owner), in any coin or currency of the United States of America which at the time of payment is legal tender for public and private debts. Interest is payable on January 1, April 1, July 1 and October 1 of each year, commencing January 1, 2019, by check or draft mailed to the Registered Owner in whose name this Note is at the time registered, at the Registered Owner’s address as it appears on the register maintained by the Registrar (or by wire transfer to an account designated by the Registered Owner).

This Note is one of an issue of Notes in the aggregate principal amount of \$8,000,000, issued pursuant to and in full conformity with the Constitution and Laws of the State of Minnesota, including Minnesota Statutes, Section 103D.335, Subd. 1, for the purpose of refunding in full the District's outstanding Conservation Program Note of 2013 which was issued to refund obligations originally issued to provide funds for the acquisition of property for conservation purposes. This Note is a general obligation of the District to which its full faith and credit have been pledged, and to provide moneys for the prompt and full payment of said principal and interest as the same become due the District shall levy ad valorem taxes on all taxable property in the District pursuant to Minnesota Statutes, Section 103B.241, without limitation as to rate or amount.

This Note is subject to mandatory and optional redemption and prior payment in whole or in part as provided in the Resolution.

The Notes of this series are issuable only as fully registered Notes in denominations of \$250,000 and multiples of \$5,000 in excess thereof, or, if the outstanding principal amount of the Note is less than \$250,000, the outstanding principal amount of the Note. This Note is transferable, as provided by the Resolution of the Board of District Managers authorizing the issuance of the Notes adopted September 13, 2018 (the "Resolution"), only upon books of the District kept at the office of the Registrar by the Registered Owner hereof in person or by the Registered Owner's duly authorized attorney, upon surrender of this Note for transfer at the office of the Registrar, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Registrar duly executed by, the Registered Owner hereof or the Registered Owner's duly authorized attorney and the investment letter described in the Resolution executed by the transferee, and, upon payment of any tax, fee or other governmental charge required to be paid with respect to such transfer, one or more fully registered Notes of the series of the same principal amount, maturity and interest rate will be issued to the designated transferee or transferees. The Registered Owner of this Note may be treated as the absolute owner hereof for all purposes.

The obligations of the District set forth in the Resolution are incorporated herein by reference and made a part hereof.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions and things required by the Constitution and laws of the State of Minnesota to be done, to happen and to be performed precedent to and in the issuance of this Note have been done, have happened and have been performed in regular and due form, time and manner as required by law and that this Note, together with all other indebtedness of the District outstanding on the date of its issuance, does not exceed any constitutional or statutory limitation of indebtedness.

IN WITNESS WHEREOF, Minnehaha Creek Watershed District, by its Board of Managers, has caused this Note to be executed in its behalf by the manual or facsimile signature of the President of the Board of Managers and by the manual signature of the District Administrator, all as of the Date of Original Issue set forth above.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Manual or Facsimile Signature)  
President, Board of District Managers

\_\_\_\_\_  
(Manual Signature)  
District Administrator

5. Registrar and Paying Agent. The Minnehaha Creek Watershed District Treasurer, in Minnetonka, Minnesota, is hereby appointed Registrar and Paying Agent for the Notes. The Paying Agent shall apply District funds at the time and in the manner necessary to provide for the full and prompt payment of the principal of and interest on the Notes.

6. Execution and Delivery. The Notes shall be prepared under the direction of the District Administrator and when so prepared shall be executed on behalf of the District by the manual or facsimile signature of the President and manual signature of the District Administrator. When the Notes shall have been so prepared and executed, they shall be delivered by the District Administrator, together with a \$2,000,000 principal payment on the Prior Note, in exchange for the Prior Note and upon receipt of the signed legal opinion of Kutak Rock LLP. The Notes have not been and shall not be (i) assigned a specific rating by any rating agency, (ii) registered with The Depository Trust Company or any other securities depository or (iii) issued pursuant to any type of official statement, private placement memorandum or other offering document. The issuance of the Notes shall be accompanied by the execution and delivery to the Bank of the following:

(a) Assignment by the CUSIP Service Bureau of a Non-DTC registered CUSIP number for the Notes.

(b) One or more certificates in form and substance acceptable to the Bank, dated the date of delivery of the Notes, to the effect that (i) there has been no material adverse change in the business condition, operations, or performance of the District since release of the most recent audited financial statements of the District; (ii) there is no litigation pending, or to the District's knowledge threatened, involving the District which has not been disclosed to the Bank; (iii) there are no governmental or regulatory approvals required for the adoption of this Resolution, the execution and delivery of the Notes or performance of the obligations required thereby; and (iv) the representations and warranties of the District herein are true and correct as of the date thereof.



(c) An opinion of Kutak Rock LLP, bond counsel to the District, acceptable to the Bank and its counsel.

(d) An opinion of Smith Partners, counsel to the District, acceptable to the Bank and its counsel.

(e) The most recent management-prepared financial statements of the District.

The District acknowledges that acceptance of the Notes by the Bank is conditioned on (i) the absence of any change in any law, rule or regulation (or their interpretation or administration), that, may adversely affect the consummation of the transaction, as determined by the Bank in its sole discretion, and (ii) the Bank shall have reviewed to its satisfaction any additional documentation and financial information it finds relevant.

7. Transfers. As long as any of the Notes shall remain outstanding, the District shall maintain and keep at the office of the Registrar an office or agency for the payment of the principal of and interest on the Notes, as in this Resolution provided, and for the registration and transfer of the Notes, and shall also keep at the office of the Registrar books for such registration and transfer. The Notes may be transferred only to (a) an affiliate of the Registered Owner, (b) a trust or custodial arrangement established by the Registered Owner, or one of its affiliates, the owners of beneficial interests in which are limited to qualified institutional buyers, as defined in Rule 144A promulgated under the Securities Act of 1933, as amended (the "1933 Act"), or (c) to a commercial bank that is a qualified institutional buyer and has capital and surplus of \$5,000,000,000 or more that has executed and delivered to the District and the Registered Owner an investor letter in the form attached hereto as Exhibit C; provided, further, that should the outstanding principal balance of the Note be less than \$250,000, the Registered Owner may not transfer the Note without the prior written consent of the District. Notwithstanding any provision herein to the contrary, the Notes are transferable only as provided in the Notes and this Section. Upon surrender for transfer of a Note at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar, duly executed by the Registered Owner or the owner's duly authorized attorney, and upon payment of any tax, fee or other governmental charge required to be paid with respect to such transfer, the District shall execute and the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, one or more fully registered Notes of any authorized denominations of a like aggregate principal amount, maturity and interest rate. The Notes, upon surrender thereof at the office of the Registrar, may at the option of the Registered Owner thereof be exchanged for an equal aggregate principal amount of Notes of the same maturity date and interest rate of any authorized denominations. In all cases in which the privilege of exchanging Notes or transferring Notes is exercised, the District shall execute and the Registrar shall deliver Notes in accordance with the provisions of this Resolution. For every such exchange or transfer of Notes, whether temporary or definitive, the District or the Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the person requesting such exchange or transfer

as a condition precedent to the exercise of the privilege of making such exchange or transfer. Notwithstanding any other provision of this Resolution, the cost of preparing each new Note upon each exchange or transfer, and any other expenses of the District or the Registrar incurred in connection therewith (except any applicable tax, fee or other governmental charge) shall be paid by the District. The District and the Registrar shall not be required to make any transfer or exchange of any Notes during the fifteen (15) days next preceding any January 1, April 1, July 1 or October 1.

8. Record Dates. Interest on any Note which is payable, and is punctually paid or duly provided for, on any interest payment date shall be paid to the person in whose name that Note is registered at the close of business on the 15th day of the month preceding such interest payment date. Any interest on any Note which is payable, but is not punctually paid or duly provided for, on any interest payment date shall forthwith cease to be payable to the registered holder on the relevant regular record date solely by virtue of such holder having been such holder; and such defaulted interest may be paid by the District in any lawful manner.

9. Registered Owners. As to any Note, the District and the Paying Agent and their respective successors, each in its discretion, may deem and treat the person in whose name the Note for the time being shall be registered as the absolute owner thereof for all purposes and neither the District nor the Paying Agent nor their respective successors shall be affected by any notice to the contrary. All payments of principal and interest shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid.

10. Increased Costs.

(a) Increased Costs Generally . If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, liquidity ratio, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, the Bank or any Registered Owner;

(ii) subject the Bank or any Registered Owner to any taxes of any kind whatsoever with respect to this Resolution or the Notes, or change the basis of taxation of payments to the Bank or such Registered Owner in respect thereof (other than taxes imposed or measured by the overall net income (however denominated) of the Bank or Registered Owner, federal branch profits taxes or any similar taxes); or

(iii) impose on the Bank or any Registered Owner any other condition, cost or expense affecting this Resolution or the Notes;

and the result of any of the foregoing shall be to increase the cost to the Bank or such Registered Owner of owning a Note, or to reduce the amount of any sum received or receivable by the Bank or such Registered Owner hereunder or under the Note (whether of principal, interest or any other amount) then, upon written request of the Bank or such Registered Owner as set forth in subsection (c) below, the District shall promptly pay to the Bank or such Registered Owner, as the case may be, such additional amount or amounts as will compensate the Bank or such Registered Owner, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If the Bank or any Registered Owner determines that any Change in Law affecting the Bank or such Registered Owner or the Bank's or such Registered Owner's parent or holding company, if any, regarding capital requirements, has or would have the effect of reducing the rate of return on the Bank's or such Registered Owner's capital or the capital of the Bank's or such Registered Owner's parent or holding company, if any, as a consequence of this Resolution, or ownership of the Notes, to a level below that which the Bank or such Registered Owner or the Bank's or such Registered Owner's parent or holding company could have achieved but for such Change in Law (taking into consideration the Bank's or such Registered Owner's policies and the policies of the Bank's or such Registered Owner's parent or holding company with respect to capital adequacy), then from time to time upon written request of the Bank or such Registered Owner as set forth in subsection (c) below, the District shall promptly pay to the Bank or such Registered Owner, as the case may be, such additional amount or amounts as will compensate the Bank or such Registered Owner or the Bank's or such Registered Owner's parent or holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of the Bank or any Registered Owner setting forth the amount or amounts necessary to compensate the Bank or any such Registered Owner or the Bank's or any such Registered Owner's parent or holding company, as the case may be, as specified in subsection (a) or (b) above and delivered to the District, shall be conclusive absent manifest error. The District shall pay the Bank or any such Registered Owner, as the case may be, the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of the Bank or any such Registered Owner to demand compensation pursuant to this Section shall not constitute a waiver of the Bank's or any such Registered Owner's right to demand such compensation; provided that the District shall not be required to compensate the Bank or any such Registered Owner pursuant to this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that the Bank or any such Registered Owner, as the case may be, notifies the District of the Change in Law giving rise to such increased costs or reductions, and of the Bank's or any such Registered Owner's intention to claim compensation therefor (except that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Survival. Without prejudice to the survival of any other agreement of the District hereunder, the agreements and obligations of the District contained in this Section shall survive the termination of this Resolution and the payment in full of the Notes and the obligations of the District thereunder and hereunder.

11. Representations and Warranties. To induce the Bank to purchase the Notes, the District represents and warrants to the Bank and any other Registered Owner of the Notes:

(a) Organization, etc. The District is a municipal corporation and political subdivision duly organized and validly existing under the laws of Minnesota and has all requisite corporate power and authority, and requisite corporate qualifications, to carry on its business as now conducted and as currently contemplated to be conducted hereafter, to adopt this Resolution and to issue the Notes and to perform its obligations under this Resolution and the Notes.

(b) Authorization and Validity. The execution, delivery and performance by the District of the Resolution and the Notes have been duly authorized by all necessary corporate action by the District, and the Resolution and the Notes constitute the legal, valid and binding obligations of the District, enforceable against the District in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or affecting creditors' rights generally.

(c) No Conflict; No Default. The execution, delivery and performance by the District of its obligations under this Resolution and the Notes will not (a) violate any provision of any law, statute, rule or regulation or any order, writ, judgment, injunction, decree, determination or award of any court, governmental agency or arbitrator presently in effect having applicability to the District, (b) violate or contravene any provisions of the organizational documents of the District, or (c) result in a breach of or constitute a default under any indenture, loan or credit agreement or any other agreement, lease or instrument to which the District is a party or by which it or any of its properties may be bound. The District is not in violation or breach of any other agreement of any type (a) with the Bank or (b) of any third party obligation. No Default or Event of Default has occurred and is continuing.

(d) Government Consent. No further order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by, any governmental or public body or authority is required on the part of the District to authorize, or is required in connection with the execution, delivery and performance of, or the legality, validity, binding effect or enforceability of, the Notes.

(e) Statutory Authority. The District had statutory authority and all requisite approval by its Board of Managers to acquire the Cold Storage site and to issue the Original Note to fund the purchase of the Cold Storage site and to refund the

Original Notes with the Prior Note and the District has statutory authority to issue the Notes in exchange for the Prior Note.

(f) Tax Levy. The District has the power to levy ad valorem taxes without limit as to rate or amount to pay the principal of and interest on the Notes and the other obligations hereunder.

(g) Absence of Litigation. There are no actions, suits or proceedings pending nor are there any actions, suits or proceedings overtly threatened against or which seek to restrain the District or any property of the District in any court or before any arbitrator of any kind or before or by any governmental or nongovernmental body, which, in any case, may have a material adverse effect on (a) the business, assets, operations, prospects or condition, financial or otherwise, of the District, (b) the ability of the District to perform any of its obligations under this Resolution, or (c) the rights of or benefits available to the Registered Owners under the Notes or under this Resolution.

(h) Financial Statements. The financial statements of the District provided to the Bank fairly present the financial condition of the District as of the dates thereof and there has been no subsequent material adverse change in the financial condition or operations of the District.

(i) Usury. The Notes does not provide for any payments that would violate any applicable law regarding permissible maximum rates of interest.

(j) No Immunity. The District is not entitled to claim any immunity on the grounds of sovereignty or other similar grounds (including governmental immunity) from (i) any action, suit or other proceeding arising under or relating to the Notes or this Resolution or (ii) relief by way of injunction, order of specific performance or writ of mandamus.

(k) Pending Legislation. There is no pending State legislation or, to the knowledge of the District, regulatory or judicial action which will have a material adverse effect on the ability of the District to perform its obligations under this Resolution and pay the Notes.

(l) Anti-Terrorism Laws. (a) The District is not in violation of any laws relating to terrorism or money laundering ("*Anti-Terrorism Laws*"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "*Executive Order*"), and the Patriot Act;

(b) The District is not any of the following:

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a Person with which the Bank is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or

(v) a Person that is named as a “specially designated national and blocked person” on the most current list published by the Office of Foreign Asset Control (“OFAC”) or any list of persons issued by OFAC pursuant to the Executive Order at its official website or any replacement website or other replacement official publication of such list;

(c) The District does not (i) conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in subsection (b)(ii) above, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or (iii) engage in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

12. Covenants. The District covenants and agrees, until the full and final payment and satisfaction of all of the obligations hereunder and under the Notes, except in any instance in which the Bank specially agrees in writing to any performance or noncompliance, that:

(a) (i) Within 180 days after the end of each fiscal year of the District, the annual financial statements of the District prepared in conformity with generally accepted accounting principles and audited by the Office of State Auditor or independent certified public accountants of recognized standing selected by the District and acceptable to the Bank, together with any supplementary comments or reports to the District or its governing body furnished by such accountants.

(ii) Notice of Default or Event of Default. (i) Promptly upon obtaining knowledge of any Default or Event of Default, or notice thereof, and in any event within five (5) days thereafter, a certificate signed by the District specifying in reasonable detail the nature and period of existence thereof and what action the District has taken or proposes to take with respect thereto; and (ii) promptly following a written request of the Bank, a certificate the District as to the existence or absence, as the case may be, of a Default or an Event of Default under this Resolution.

(iii) Litigation. As promptly as practicable, written notice to the Bank of all actions, suits or proceedings pending or threatened against the District in

court or before any arbitrator of any kind or before any governmental authority which could reasonably be expected to result in a Material Adverse Effect.

(iv) Within 60 days after the commencement of a Fiscal Year a copy of the District's budget for the Fiscal Year as approved by the Board of Managers.

(v) Other Information. Such other information regarding the business affairs, financial condition and/or operations of the District as the Bank may from time to time reasonably request.

(b) Existence, Etc. The District shall maintain its existence pursuant to its authorizing legislation and the laws of the State.

(c) Compliance with Laws; Taxes and Assessments. The District shall comply with all Laws applicable to it and its property, except where non compliance could not reasonably be expected to result in a Material Adverse Effect.

(e) Access to Books and Records. To the extent permitted by law, the District will permit any Person designated by the Bank (at the expense of the Bank, unless and until a Default or Event of Default has occurred, at which time such expenses shall be borne by the District) to visit any of the offices of the District to examine the books and financial records (except books and financial records the examination of which by the Bank is prohibited by law or by attorney or client privilege), including minutes of meetings of any relevant governmental committees or agencies, and make copies thereof or extracts therefrom, and to discuss the affairs, finances and accounts of the District with their principal officials, all at such reasonable times and as often as the Bank may reasonably request.

(f) Related Documents. The District shall not modify, amend or consent to any modification, amendment or waiver in any material respect of this Resolution or the Notes without the prior written consent of the Bank.

(g) Immunity from Jurisdiction. To the fullest extent permitted by applicable law, with respect to its obligations arising under this Resolution or the Notes, the District irrevocably agrees that it will not assert or claim any immunity on the grounds of sovereignty or other similar grounds (including, without limitation, governmental immunity) from (i) any action, suit or other proceeding arising under or relating to this Resolution or the Notes, (ii) relief by way of injunction, order for specific performance or writ of mandamus or (iii) execution or enforcement of any judgment to which it or its revenues might otherwise be entitled in any such action, suit or other proceeding, and the District hereby irrevocably waives, to the fullest extent permitted by applicable law, all such immunity.

13. Events of Default. Each of the following events is hereby defined as and declared to be and shall constitute an “Event of Default” hereunder:

(a) if payment of the principal of the Notes shall not punctually be made when due and payable, whether at the stated maturity thereof or upon proceedings for the redemption thereof (whether by voluntary redemption or a mandatory sinking fund prepayment or otherwise);

(b) if payment of the interest on the Notes shall not punctually be made when due;

(c) if any representation or warranty by the District in this Resolution or in any certificate or statement delivered hereunder shall be incorrect or untrue in any material respect when made or delivered;

(d) the District shall default in the due performance or observance of any of the covenants set forth in Section 12(b) or 12(f) hereof;

(e) the District shall default in the due performance or observance of any other term, covenant or agreement contained in this Resolution or the Notes and such default shall remain unremedied for a period of ninety (90) days after the occurrence thereof;

(f) the District shall (i) default on the payment of the principal of or interest on any General Obligation Debt, beyond the period of grace, if any, provided in the instrument or agreement under which such General Obligation Debt was created or incurred; or (ii) default in the observance or performance of any agreement or condition relating to any General Obligation Debt or contained in any instrument or agreement evidencing, securing or relating thereto, or any other default, event of default or similar event shall occur or condition exist, the effect of which default, event of default or similar event or condition is to cause (determined without regard to whether any notice is required) any such General Obligation Debt to become immediately due and payable in full as the result of the acceleration, mandatory redemption or mandatory tender of such General Obligation Debt;

(g) the District shall (i) have entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) become insolvent or shall not pay, or be unable to pay, or admit in writing its inability to pay, its debts generally as they become due, (iii) make an assignment for the benefit of creditors, (iv) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its property, (v) institute any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, marshalling of assets, adjustment or composition of it or its debts under



any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) take any corporate action in furtherance of any matter described in parts (i) through (v) above, or (vii) fail to contest in good faith any appointment or proceeding described in Section 7.01(h) of this Resolution;

(h) a custodian, receiver, trustee, examiner, liquidator or similar official shall be appointed for the District or any substantial part of its property, or a proceeding described in Section 7.01(g)(v) shall be instituted against the District and such proceeding continues undischarged or any such proceeding continues undismissed or unstayed for a period of thirty (30) or more days;

(i) a debt moratorium, debt restructuring, debt adjustment or comparable restriction is imposed on the repayment when due and payable of the principal or interest on any debt of the District by the District or any governmental authority with appropriate jurisdiction; or

(j) any material provision of this Resolution or the Notes, shall at any time for any reason cease to be valid and binding on the District or shall be declared in a final non appealable judgment by any court with competent jurisdiction to be null and void, invalid, or unenforceable, or the validity or enforceability thereof shall be publicly contested by the District.

14. Remedies. If an Event of Default hereunder shall occur and be continuing, the Registered Owner of any of the Notes shall have the right, in addition to all other rights available at law and in equity, by mandamus or other suit or action in any court of competent jurisdiction, to enforce such owner's rights against the District including, but without limitation, the right to require the District, the Board of Managers and any other authorized body, to fully carry out all of the provisions and agreements contained in this Resolution. No remedy by the terms of this Resolution conferred upon or reserved to the owner of the Note is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given hereunder to the owner of the Note or now or hereafter existing at law or in equity or by statute.

The right to accelerate the debt evidenced by the Notes shall not be available as a remedy under this Resolution or the Notes, but if the District enters into any credit agreement, bond purchase agreement, liquidity agreement or other agreement in connection with the issuance of General Obligation Debt of the District to which the full faith, credit and taxing powers of the District are pledged, and such agreement includes the right to accelerate or demand such debt due and payable prior to maturity upon an event of default, then the Bank and the Registered Owners of a majority in principal amount of the outstanding Notes shall have the same right, to accelerate or demand such principal of and interest on the Notes due and payable prior to the maturity upon an Event of Default.

No delay or omission of Registered Owners of the Notes to exercise any right or power arising upon the occurrence of a default hereunder, including an Event of Default, shall impair any right or power or shall be construed to be a waiver of any such default or to be an acquiescence therein. Every power and remedy given by this paragraph to the owners of the Notes may be exercised from time to time and as often as may be deemed expedient by the owners of the Notes.

The District will not at any time insist upon or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force which may affect the covenants and agreements contained in this Resolution, or in the Notes, but all benefit or advantage of any such law or laws is hereby expressly waived by the District.

15. Waiver and Amendment. No failure on the part of the Registered Owners of the Notes to exercise and no delay in exercising any power or right hereunder or the Notes shall operate as a waiver hereof; nor shall any single or partial exercise of any power or right preclude any other or further exercise thereof or the exercise of any other power or right. The remedies herein and in any other instrument, document or agreement delivered or to be delivered to the Registered Owners hereunder or in connection herewith are cumulative and not exclusive of any remedies provided by law. No amendment, modification or waiver of any provision of this Resolution or consent to any departure by the District therefrom shall be effective unless the same shall be in writing and signed by the Registered Owners of at least a majority in outstanding principal amount of the Notes, and then such amendment, modifications, waiver or consent shall be effective only in the specific instances and for the specific purpose for which given.

16. Costs, Expenses and Taxes. The District agrees to pay on demand: (i) all costs and expenses of the Bank (including the reasonable fees and expenses of counsel for the Bank) incurred in connection with the preparation, execution and delivery of the Notes and the preparation, negotiation and execution of any and all amendments to each thereof, and (ii) all costs and expenses of the Bank or other Registered Owners of the Notes incurred in connection with the enforcement of the Notes. The District agrees to pay, and save the Bank harmless from all liability for, any stamp or other taxes which may be payable with respect to the execution or delivery of the Notes.

17. Bond Fund. Minnesota Statutes, Section 103D.905, Subd. 4, provides for a Bond Fund for the payment of principal and interest on bonds or notes issued by the District. There is hereby created a separate account within the Bond Fund for the Notes designated as the 2018 Debt Service Account, which shall be held by the Treasurer and used for no other purpose than to pay the principal of and interest on the Notes and any related charges payable to the Bank or Registered Owners or otherwise related to the Notes. For the prompt and full payment of the principal and interest on the Notes as the same become due the full faith, credit and taxing powers of the District are hereby irrevocably pledged. The District shall levy taxes for the Conservation Program in an amount at least sufficient to pay when due the principal of and interest on the Notes and shall deposit at least such amount in the 2018 Debt

Service Account as a first charge on the collections of such taxes. The District may also deposit in such Account any net rental income and land sale proceeds which are derived from the Cold Storage site and are not required for the operation or improvement of the site. If any payment of principal or interest on the Notes shall become due when there is not sufficient money in said Account to pay the same, the Treasurer may make such payment from the general fund of the District, and said general fund shall be reimbursed for such advances out of the proceeds of taxes levied pursuant hereto or other moneys appropriated by the Board of Managers for such purpose.

18. Indemnification. In addition to any and all rights pursuant hereto or under law or equity, the District agrees, to the extent permitted by law, to indemnify and hold harmless the Bank and its officers, directors and agents (each, an "Indemnitee") from and against any and all claims, damages, losses, liabilities, reasonable costs or expenses whatsoever (including reasonable attorneys' fees) which may be claimed against them by reason of or in connection with the Notes or the transactions contemplated hereby; provided that the District shall not be required to indemnify an Indemnitee for any claims, damages, losses, liabilities, costs or expenses to the extent caused by the willful misconduct or gross negligence of the such Indemnitee.

19. Miscellaneous. The District Administrator is authorized and directed to prepare and furnish to the Bank and to the attorneys approving the Notes certified copies of all proceedings and records relating to the issuance of the Notes and to the right, power and authority of the District and its officers to issue the same, and said certified copies and certificates shall be deemed the representations of the District as to all matters stated therein. This Resolution constitutes a contract for the benefit of the Bank and any other Registered Owners of the Notes. The Notes and this Resolution are governed by the laws of the State of Minnesota. The District Administrator is authorized to execute such documents as may be necessary to open such an account or otherwise effect necessary fund transfers.

20. Disputes. The District and the Bank agree, upon demand of the other party, to submit to binding arbitration all claims, disputes and controversies between or among them arising out of or relating to this Resolution or the Notes. To the extent permitted by law, the District and the Bank each hereby waives its right to a jury trial of any claim or cause of action based upon or arising out of this Resolution or the transactions contemplated hereby.

The motion for the adoption of the foregoing resolution was duly seconded by Manager \_\_\_\_\_, and upon vote being taken thereon the following voted in favor thereof:

and the following voted against the same:

whereupon said resolution was declared duly passed and adopted.



## APPENDIX A

### DEFINED TERMS

“*Business Day*” means a day which is not (a) a Saturday, Sunday or legal holiday on which banking institutions in Minneapolis, Minnesota or New York, New York are authorized by law to close, (b) a day on which the New York Stock Exchange or the Federal Reserve Bank is closed or (c) a day on which the principal offices of the Calculation Agent or the principal office of the Bank is closed.

“*Calculation Agent*” has the meaning assigned to such term in Appendix B.

“*Change in Law*” means the occurrence, after the Effective Date, of any of the following: (a) the adoption or taking effect of any Law, including, without limitation, Risk-Based Capital Guidelines, (b) any change in any Law or in the administration, interpretation, implementation or application thereof by any governmental authority or (c) the making or issuance of any request, rule, ruling, guideline, regulation or directive (whether or not having the force of law) by any governmental authority; *provided* that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, ruling, guidelines, regulations or directives thereunder or issued in connection therewith and (ii) all requests, rules, rulings, guidelines, regulations or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“*Default*” means any event or condition which, with notice, the passage of time or any combination of the foregoing, would constitute an Event of Default.

“*Federal Funds Rate*” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that: (a) if such day is not a Business Day, then the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day; and (b) if no such rate is so published on such next succeeding Business Day, then the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of one-hundredth of one percent) charged to the Bank on such day on such transactions as determined by the Bank. Notwithstanding anything herein to the contrary, if the Federal Funds Rate as determined as provided above would be less than zero percent (0.0%), then the Federal Funds Rate shall be deemed to be zero percent (0.0%).

“*Fiscal Year*” means the fiscal year of the District, initially the twelve-month period from January 1 through the following December 31.

“*General Obligation Debt*” means indebtedness of the District to which its full faith and credit have been pledged.

“*Governmental Authority*” means the government of the United States of America or any other nation or any political subdivision thereof or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or European Central Bank), or any arbitrator, mediator or other Person with authority to bind a party at law.

“*Material Adverse Effect*” means: (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of the District; (b) a material impairment of the ability of the District to perform its obligations under the Notes or this Resolution; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the District of the Notes or this Resolution or the rights, security, interests or remedies of the Bank or other Registered Owner under the Notes or this Resolution.

“*Maximum Interest Rate*” means the maximum rate of interest on the Notes permitted by applicable law.

“*Person*” means any individual, corporation, not for profit corporation, partnership, limited liability company, joint venture, association, professional association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other form of entity.

“*Prime Rate*” means on any day, the rate of interest per annum then most recently established by the Bank as its “prime rate.” Any such rate is a general reference rate of interest, may not be related to any other rate, and may not be the lowest or best rate actually charged by the Bank to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general, and that the Bank may make various business or other loans at rates of interest having no relationship to such rate. If the Bank ceases to establish or publish a prime rate from which the Prime Rate is then determined, the applicable variable rate from which the Prime Rate is determined thereafter shall be instead the prime rate reported in The Wall Street Journal (or the average prime rate if a high and a low prime rate are therein reported), and the Prime Rate shall change without notice with each change in such prime rate as of the date such change is reported. Notwithstanding anything herein to the contrary, if the Prime Rate determined as provided above would be less than zero percent (0.0%), then the Prime Rate shall be deemed to be zero percent (0.0%).

“*Risk-Based Capital Guidelines*” means (a) the risk-based capital guidelines in effect in the United States of America, including transition rules, and (b) the corresponding capital

regulations promulgated by regulatory authorities outside the United States of America including transition rules, and any amendment to such regulations.



## APPENDIX B

### CALCULATION OF PREPAYMENT PREMIUM

The Prepayment Premium applicable to optional prepayment of the Notes, in whole or in part, shall be calculated as set forth in this Appendix B.

1. Capitalized terms used in this Appendix B and not otherwise defined herein have the meanings assigned thereto in the Resolution.

The following defined terms are used in this Appendix B:

“*Prepayment Premium*” means the premium required to be paid by the District in connection with any optional Prepayment pursuant to paragraph 2 of the Resolution, calculated as provided in this Appendix B.

“*Calculation Agent*” means Wells Fargo Bank, National Association or its affiliates or such other entity designated by the Bank.

“*Day Count Fraction*” is the basis on which interest is to be computed on the Notes. The Day Count Fraction utilizes 30-day months and 360-day years.

“*Maturity Date*” is October 1, 2023 or the scheduled payment date of any specified mandatory sinking fund installment to be prepaid, as applicable, which mandatory sinking fund installment payments are required to be made on October 1 of the years and in the amounts as follows:

<u>Year</u>	<u>Amount</u>
2019	\$1,000,000
2020	\$1,000,000
2021	\$1,500,000
2022	\$1,500,000
2023	\$3,000,000 (Maturity)

“*Reference Rate*” [the interest rate on the Notes].

“*Scheduled Date*” means October 1 of each of the years 2019 through 2023.

“*Prepayment*” means the optional payment of principal on the Notes, in whole or in part, prior to its Maturity Date.

“*Prepayment Date*” means the date on which the Notes is to be prepaid in whole or in part.

2. In connection with any optional Prepayment under paragraph 2 of the Resolution, a premium shall be paid by the District to the Registered Owner if the Prepayment Premium is a

positive number. No Prepayment Premium shall be payable for a Prepayment if the Prepayment Premium for that Prepayment is a negative number. Prepayment Premiums will be determined by the Calculation Agent, on the Business Day next preceding the Prepayment Date, as follows:

“*Prepayment Premium*” for any Prepayment is the difference of:

(i) the sum of the present values of a series of amounts computed for each Scheduled Date after the Prepayment Date through the Maturity Date, each of which amounts is equal to the product of (A) the Affected Principal Amount for the Affected Principal Period ending on that Scheduled Date, times (B) the Reference Rate times (C) the Day Count Fraction for such Affected Principal Period,

*minus*

(ii) the sum of the present values of a series of amounts computed for each Scheduled Date after the Prepayment Date through the Maturity Date, each of which amounts is equal to the product of (A) the Affected Principal Amount for the Affected Principal Period ending on that Scheduled Date, times (B) the Prepayment Rate, times (C) the Day Count Fraction for such Affected Principal Period,

*where:*

(1) the Calculation Agent computes such present values by discounting each such series of amounts described in clauses (i) and (ii) above from their respective Scheduled Date to the Prepayment Date using a series of discount factors corresponding to those Scheduled Dates as determined by the Calculation Agent from the swap yield curve that the Calculation Agent would use as of the Prepayment Date in valuing a series of fixed rate interest rate swap payments similar to such series of amounts;

(2) the “*Affected Principal Amount*” for an Affected Principal Period is the principal amount of the Notes to be prepaid which would be outstanding during such Affected Principal Period in the absence of the prepayment;

(3) the “*Affected Principal Period*” is each period from and including a Scheduled Date to but excluding the next succeeding Scheduled Date; *provided, however,* if the Prepayment Date is not a Scheduled Date, the initial Affected Principal Period shall be the period from and including the Prepayment Date to but excluding the next succeeding Scheduled Date;

(4) the “*Prepayment Rate*” for any Prepayment Date is the fixed rate the Calculation Agent determines is representative of what swap dealers would be willing to pay to the Calculation Agent (or, if required to be cleared under the Commodity Exchange Act or a Commodity Futures Trading Commission rule or regulation promulgated thereunder, to a swap clearinghouse) as fixed rate payors quarterly in return for receiving one month LIBOR based payments monthly under interest rate swap

transactions that would commence on such Prepayment Date, and mature on, or as close as commercially practicable to, the Maturity Date.

3. The Calculation Agent shall determine the Prepayment Premium hereunder with respect to each Prepayment reasonably and in good faith. The Calculation Agent's determination in good faith shall be conclusive and binding in the absence of manifest error or the District demonstrates that the Calculation Agent has erred or used an unreasonable basis for determination of the Prepayment Premium.

## APPENDIX C

### **FORM OF INVESTOR LETTER**

[Date of Purchase]

Minnehaha Creek Watershed District Treasurer, Registrar  
15320 Minnetonka Boulevard  
Minnetonka, Minnesota 55345

Minnehaha Creek Watershed District Conservation Program Notes of 2018

Ladies and Gentlemen:

[NAME OF PURCHASER] (“Bank”) has agreed to purchase the above-referenced Notes (the “Notes”) in the amount of [AMOUNT] which were issued in the original aggregate principal amount of \$8,000,000 by the Minnehaha Creek Watershed District (the “District”) pursuant to the resolution of the District adopted September 13, 2018 (the “Resolution”). All capitalized terms used herein, but not defined herein, shall have the respective meanings set forth in the Resolution. The undersigned, an authorized representative of the Bank, hereby represents to you that:

1. The Bank has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal obligations, to be able to evaluate the risks and merits of the investment represented by the purchase of the Notes.
2. The Bank has authority to purchase the Notes and to execute this letter and any other instruments and documents required to be executed by the Bank in connection with the purchase of the Notes.
3. The undersigned is a duly appointed, qualified and acting representative of the Bank and is authorized to cause the Bank to make the certifications, representations and warranties contained herein by execution of this letter on behalf of the Bank.

The Bank is (a) an affiliate of Wells Fargo Bank, National Association, (b) a trust or other custodial arrangement established by Wells Fargo Bank, National Association or one of its affiliates, the owners of the beneficial interests in which are limited to “qualified institutional buyers” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended (the “1933 Act”) or (c) a qualified institutional buyer that is a commercial bank having a combined capital and surplus of \$5,000,000,000 or more.

The Bank understands that no official statement, prospectus, offering circular, or other comprehensive offering statement is being provided with respect to the Notes. The Bank has made its own inquiry and analysis with respect to the District, the Notes and the security therefor, and other material factors affecting the security for and payment of the Notes.

The Bank acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, regarding the District, to which a reasonable investor would attach significance in making investment decisions, and has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the District, the Notes and the security therefor, so that as a reasonable investor, it has been able to make its decision to purchase the Notes.

The Bank understands that the Notes (i) are not registered under the 1933 Act and are not registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, (ii) are not listed on any stock or other securities exchange, and (iii) carry no rating from any credit rating agency.

The Notes are being acquired by the Bank for investment for its own account and not with a present view toward resale or distribution; provided, however, that the Bank reserves the right to sell, transfer or redistribute the Notes, but agrees that any such sale, transfer or distribution by the Bank shall be to a Person:

that is an affiliate of the Bank;

that is a trust or other custodial arrangement established by the Bank or one of its affiliates, the owners of any beneficial interest in which are limited to qualified institutional buyers;

that is a qualified institutional buyer that is a commercial bank having a combined capital and surplus of \$5,000,000,000 or more who executes an investor letter substantially in the form of this letter.

Notwithstanding the foregoing, the Notes may not be transferred if the outstanding principal amount of the Notes is less than \$250,000 without the prior written consent of the District.

[PURCHASER]

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**Kutak Rock LLP**  
60 South Sixth Street, Suite 3400, Minneapolis, MN 55402-4018  
office 612.334.5000

**Stephen C. Rosholt**  
612.334.5000  
stephen.rosholt@kutakrock.com

**Draft: 8/28/18**

October 1, 2018

Wells Fargo Bank, National Association  
Minneapolis, Minnesota

Re: \$8,000,000 General Obligation Conservation Program Note of 2018  
Minnehaha Creek Watershed District

Ladies and Gentlemen:

We have acted as bond counsel to Minnehaha Creek Watershed District (the “District”) in connection with the issuance by the District of its General Obligation Conservation Program Note of 2018, dated October 1, 2018, in the principal amount of \$8,000,000 (the “Notes”) in exchange for the District’s outstanding Conservation Program Note of 2013 (the “Prior Note”). The Prior Note was issued for the purpose of refunding a prior obligation issued to provide funds to acquire certain property (the “Project”) as part of the District’s capital improvement program under its watershed management plan.

We have examined such certified proceedings, documents and certifications of public officials as we deemed necessary to render this opinion, including the form of the Note and a resolution of the Board of Managers adopted on September 13, 2018 (the “Note Resolution”). As to questions of fact material to our opinion, we have relied upon such certified proceedings, documents and certifications furnished to us without undertaking to verify such facts by independent investigation. We have also relied on the opinion dated October 1, 2018, of Smith Partners PLLP, counsel to the District, that the Project is included in the duly adopted capital improvement program of the District’s watershed management plan, and that no further plan amendment was required for the Project.

We have not been engaged or undertaken to verify the accuracy, completeness or sufficiency of any offering material relating to the Notes, and we express no opinion relating thereto.

Based on our examination, we are of the opinion, as of the date hereof, as follows:

1. The District is a validly existing watershed district under Minnesota law, with authority to adopt and perform its obligations under the Note Resolution and to issue the Note.
2. The Note Resolution has been duly adopted and is a valid and binding obligation of the District, enforceable in accordance with its terms except as described below. The Note

Resolution duly authorizes the execution, delivery and performance of the Note and no further order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by, any governmental or public body or authority is required on the part of the District to authorize, or is required in connection with the execution, delivery and performance of, or the legality, validity, binding effect or enforceability of, the Note.

3. The Note is a valid and binding general obligation of the District issued under authority of Minnesota Statutes, Section 103D.335, enforceable in accordance with its terms except as described below, for the payment of which the District has pledged its full faith and credit and taxing powers.

4. The Notes are payable as to principal and interest from and are secured by the District's Bond Fund established under Minnesota Statutes, Section 103D.905, to which the District has pledged ad valorem taxes to be levied as described in the Note Resolution. The District is required to levy general ad valorem taxes under Minnesota Statutes, Section 103B.241 on all taxable property in the District without limitation as to rate or amount, if necessary, to pay principal and interest on the Note.

5. The Note is exempt from registration under the Securities Act of 1933, as amended; the Notes are municipal securities under the Securities Exchange Act of 1934, as amended; and the Note Resolution is not required to be qualified under the Trust Indenture Act of 1939, as amended.

6. To our Actual Knowledge, the execution, delivery and performance by the District of its obligations under the Note Resolution and the Note will not (a) violate any provision of any law, statute, rule or regulation or any order, writ, judgment, injunction, decree, determination or award of any court, governmental agency or arbitrator presently in effect having applicability to the District, (b) violate or contravene any provisions of the organizational documents of the District, or (c) result in a breach of or constitute a default under any indenture, loan or credit agreement or any other agreement, lease or instrument to which the District is a party or by which it or any of its properties may be bound.

It is to be understood that the rights of the holder of the Note and the enforceability thereof and of the Note Resolution may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and that their enforcement may be subject to the exercise of judicial discretion in appropriate cases.

As to the accuracy of certain factual matters, we have relied on representations made by the District in the Note Resolution and certificates of one or more officers of the District reasonably believed by us to be appropriate sources of information, in each case without independent verification thereof or other investigation; provided, however, that our Primary Lawyers have no Actual Knowledge concerning the factual matters upon which reliance is placed that would render such reliance unreasonable. For purposes of this opinion letter, the term "Primary Lawyers" means lawyers in this firm who have given substantive legal attention to representation

of the District in connection with this matter, and the term “Actual Knowledge” means the conscious awareness by such Primary Lawyers at the time this opinion letter is delivered of facts or other information without any other investigation.

This opinion letter is limited to the laws of the State of Minnesota and the federal laws of the United States of America.

We express no opinion as to the enforceability or effect in the Note Resolution of (i) any provision that provides for the payment of late charges, increased interest rates upon default, liquidated damages or other similar amounts, to the extent the same constitute penalties, or (ii) any provision waiving legal or equitable defenses or other procedural, judicial or substantive rights, such as rights to damages, rights to counterclaim or set-off, the application of statutes of limitation and rights to notice.

Very truly yours,

KUTAK ROCK LLP

By \_\_\_\_\_  
Stephen C. Rosholt

SCR/bjm





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## MEMORANDUM

**TO:** Minnehaha Creek Watershed District Board of Managers  
Mr. James Wisker, District Administrator

**FROM:** Doug Green, Client Representative  
Mark LeMay, Senior Project Manager

**DATE:** September 10, 2018

**SUBJECT:** 325 Blake Road Financing Opinion Letter

### Purpose

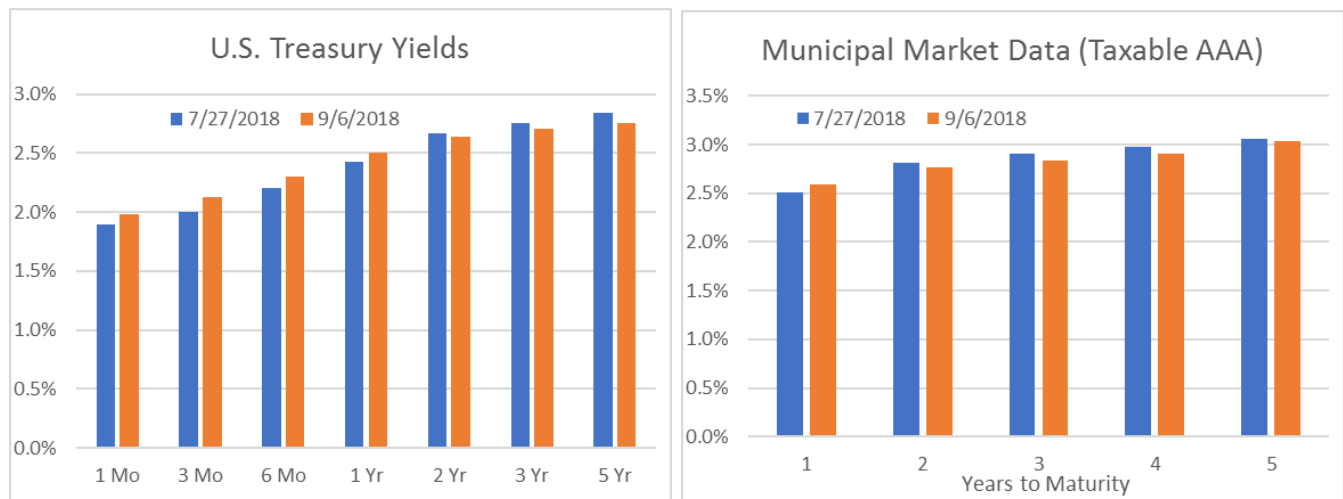
The purpose of this memorandum is to provide the Board of Managers an update on the interest rate environment and offer an opinion on the terms of the Note to be considered by the Board of Managers at its September 13, 2018 meeting.

### Background

The proposed extension of the District's 2013 Note is expected to be priced the week of September 24, 2018, ahead of the October 1, 2018, maturity date on the 2013 Note. Wells Fargo previously provided the District with an estimated fixed rate of 3.65%, which was based on market conditions as of July 27, 2018. The preliminary term sheet also allowed the District to pre-pay the Note at any time subject to a breakage fee.

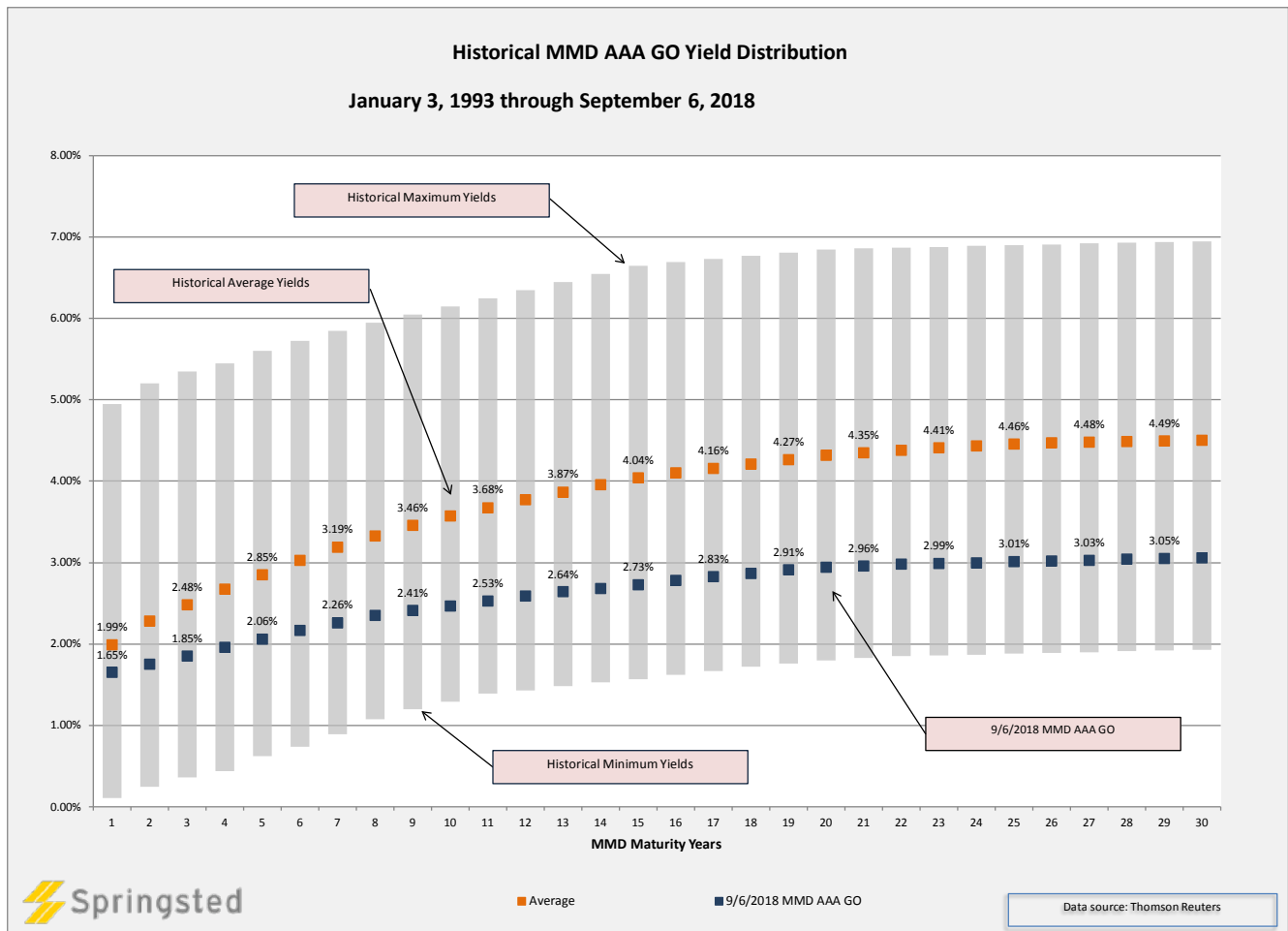
### Interest Rate Update

Since that time, there has been very little change in the interest rate environment. The two graphs depict the differences in rates from July 27, 2018 to September 6, 2018 on two taxable indices. The first graph shows the yields for United States Treasury Bills and Notes with maturities five years and less. The second graph shows the change in the Municipal Market Data Taxable AAA scale (MMD), which reflects the direction of yields on taxable municipal debt obligations.



Based on the current market conditions, we expect the final rate to be close to 3.65%. A caveat to this is that we are in a rising rate environment, with nearly all analysts predicting that the Fed will raise the Fed Funds rate at the end of September from 2.00% to 2.25%. We do not know if or how or how much this will affect Wells Fargo rate on the MCWD Note, as Wells may have factored in at least some anticipated increase to its indicative rate. It still makes sense to lock in a rate now, as most analysts predict yet another Fed rate increase of 25 basis points or more by January of 2019.

To show the rate environment on a longer term historical basis, below is a graph of MMD AAA rated General Obligation yields from 1993 forward. This index is traditionally used as the basis for setting municipal debt yields, with spreads to the yields shown. Currently, the scale is well below overall average yields, confirming that it is an attractive time to borrow on an historical basis.



**Terms of the 2018 Note**

There is no change in the basic financial terms from the original Term Sheet provided by Wells Fargo. The only small change is that Wells Fargo agreed to allow any principal prepayments to be in \$50,000 denominations as opposed to \$250,000 denominations, which provides the District more flexibility in sizing any prepayments it may want to make in the future.

**Recommendations**

It continues to be Springsted’s opinion that the interest rate and financial terms reflect market conditions and meet the financing needs of the District.

October XX, 2018

Minnehaha Creek Watershed District  
Board of Managers  
15320 Minnetonka Boulevard  
Deephaven, MN 55345

Wells Fargo Bank, National Association  
Minneapolis, Minnesota

Re: Cold Storage Property, 325 Blake Road  
City of Hopkins

Dear Board of Managers and Wells Fargo:

Pursuant to a September 22, 2011 action of the Board of Managers, on September 23, 2011 the Minnehaha Creek Watershed District ("District") signed a purchase agreement with Blake Road Partners LLC for fee acquisition of the above property ("Project"), and closed on this purchase on [DATE]. On September 22, 2011 the Board adopted Resolution 11-086 awarding sale of \$15,000,000 Conservation Program Notes for financing this Project. On September 13, 2018, the Board of Managers adopted Resolution 18-YYY authorizing issuance of its General Obligation Conservation Program Note of 2018, dated October 1, 2018, in the principal amount of \$8,000,000 (the "Notes") in exchange for the District's outstanding Conservation Program Note of 2013 (the "Prior Note").

On September 26, 2011, we issued the attached legal opinion confirming that the Project is included in the duly adopted capital improvement program of the District's watershed management plan, and that no further plan amendment was required for the Project. The District is a duly authorized watershed district pursuant to Minnesota Statutes Chapters 103D and 103B, and as such "may levy a tax to pay the increased costs of preparing a plan under sections 103B.231 and 103B.235 or for projects identified in an approved and adopted plan necessary to implement the purposes of section 103B.201." Minn. Stat. Sec. 103B.241, subd. 1. On January 11, 2018, the Board of Managers adopted a new 2018 to 2027 Watershed Management Plan, which includes an acknowledgement of the 2011 acquisition of the Cold Storage Property at 325 Blake Road, and also identifies a future regional stormwater management and greenway project at the site, see Minnehaha Creek Subwatershed CIP at pages 477-78.

We would be pleased to answer any further questions you may have regarding this matter.

Sincerely,

Louis N. Smith  
Counsel, Minnehaha Creek Watershed District

Cc: James Wisker, MCWD Administrator  
Stephen Rosholt



September 26, 2011

Board of Managers  
Minnehaha Creek Watershed District  
18202 Minnetonka Boulevard  
Deephaven MN 55391

Ms. Cynthia Chamberlain  
Wells Fargo Bank, National Association  
Wells Fargo Center  
90 South 7th Street  
Minneapolis, MN 55402

Re: Cold Storage Property, 325 Blake Road  
City of Hopkins

Dear Board of Managers and Ms. Chamberlain:

Pursuant to a September 22, 2011 action of the Board of Managers, on September 23, the Minnehaha Creek Watershed District ("District") signed a purchase agreement with Blake Road Partners LLC for fee acquisition of the above property ("Cold Storage property" or "Project"), with closing to be scheduled within ten (10) business days. Also on September 22, 2011, the Board adopted Resolution 11-086 awarding sale of \$15,000,000 Conservation Program Notes for financing this Project. You requested our opinion that the Project has been included in the duly adopted capital improvement program of the District's watershed management plan ("Plan"), and that no further plan amendment is required for the Project.

The District is a duly authorized watershed district pursuant to Minnesota Statutes Chapters 103D and 103B, and as such "may levy a tax to pay the increased costs of preparing a plan under sections 103B.231 and 103B.235 or for projects identified in an approved and adopted plan necessary to implement the purposes of section 103B.201." Minn. Stat. §103B.241, subd. 1.

**Louis N. Smith  
Charles B. Holtman  
Michael J. Welch**

**Of Counsel  
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The District's capital improvement program, at Section 6.8 and Table 31 of the Plan, includes land rights acquisition under the District's land conservation program for the purpose of "[c]onserv[ing] and enhanc[ing] green infrastructure through Land Conservation and restoration efforts to proactively address water quality, runoff management, and other water resources issues." The Plan identifies Key Conservation Areas to prioritize acquisition efforts and resources and sets forth a process to evaluate acquisitions. The components of this process are:

- District staff investigates a potential acquisition, evaluates the acquisition against ranking criteria identified in the plan and affords the District's standing technical advisory team an opportunity to review and advise on the acquisition.
- The District obtains an appraisal of acquisition value.
- District staff and legal counsel develop a purchase agreement for Board review.
- The Board authorizes District execution of the purchase agreement and performance according to its terms.

The District's capital improvement program, as approved by the Minnesota Board of Water and Soil Resources and Hennepin and Carver Counties, provides that a land rights acquisition that accords with the substantive priorities and criteria referenced above and that has been evaluated and authorized in accordance with the described process may be ordered, implemented and funded by the District.

The Cold Storage property is identified as within a Key Conservation Area in the Plan (Figure 33) and more specifically in the Minnehaha Creek Subwatershed portion of the Plan (Figure 19). The Plan's implementation program establishes an estimated budget for the planning period of \$30,000,000 for implementation of land conservation program activities. The District's records confirm that each of the process steps identified above has been accomplished. Accordingly, the acquisition is included in the Plan and no Plan amendment is required.



We would be pleased to answer any further questions you may have regarding this matter.

Sincerely,



Louis N. Smith

c: Eric Evenson, MCWD Administrator  
Mark Ten Eyck, MCWD Land Conservation Program Manager

Minnehaha Creek Watershed District  
325 Blake Road - 2018 Loan  
SCHEDULE OF EVENTS

August 1, 2018							September 1, 2018							October 1, 2018						
S	M	T	W	Th	F	S	S	M	T	W	Th	F	S	S	M	T	W	Th	F	S
			1	2	3	4							1		1	2	3	4	5	6
5	6	7	8	9	10	11	2	3	4	5	6	7	8	7	8	9	10	11	12	13
12	13	14	15	16	17	18	9	10	11	12	13	14	15	14	15	16	17	18	19	20
19	20	21	22	23	24	25	16	17	18	19	20	21	22	21	22	23	24	25	26	27
26	27	28	29	30	31		23	24	25	26	27	28	29	28	29	30	31			
							30													

November 1, 2018							December 1, 2018							January 1, 2019						
S	M	T	W	Th	F	S	S	M	T	W	Th	F	S	S	M	T	W	Th	F	S
				1	2	3							1			1	2	3	4	5
4	5	6	7	8	9	10	2	3	4	5	6	7	8	6	7	8	9	10	11	12
11	12	13	14	15	16	17	9	10	11	12	13	14	15	13	14	15	16	17	18	19
18	19	20	21	22	23	24	16	17	18	19	20	21	22	20	21	22	23	24	25	26
25	26	27	28	29	30		23	24	25	26	27	28	29	27	28	29	30	31		
							30	31												

Schedule of Events		
Date	Event	Responsible Party
August 17, 2018	Springsted sends financing memo to MCWD for the August 23 Board meeting.	Springsted
August 23, 2018	MCWD Board meeting to consider financing options.	Springsted District Staff
August 27, 2018	Kutak Rock sends draft <b>Note Awarding Resolution, Form of Note and Bond Counsel Opinion</b> to all parties to review.	Kutak Rock
August 31, 2018	Comments on draft <b>Note Awarding Resolution, Form of Note and Bond Counsel Opinion</b> due to Kutak Rock.	District Staff Kutak Rock Springsted Wells Fargo
September 5, 2018	Final <b>Note Awarding Resolution, Form of Note and Bond Counsel Opinion</b> sent to MCWD.	Kutak Rock
September 13, 2018	MCWD Board considers <b>Note Awarding Resolution</b> .	District Staff
Week of September 17, 2018	Kutak Rock sends <b>Closing Certificate of District</b> to all parties.	Kutak Rock
Week of September 24, 2018	Final pricing on 2018 Note is determined.	Springsted District Staff Wells Fargo
Week of September 24, 2018	District staff obtains signatures on financing documents.	District Staff
October 1, 2018	MCWD makes \$2.0 million payment on 2013 Note.	District Staff
October 1, 2018	Wells Fargo terminates 2013 Note and closes on 2018 Note. Wells Fargo sends <b>Purchaser's Investment Letter</b> to MCWD.	Wells Fargo