

**CITY OF DURHAM, NORTH CAROLINA**

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**SERIES RESOLUTION**

**ADOPTED MAY 16, 2011**

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**AUTHORIZING AND SECURING**

***City of Durham, North Carolina,  
Utility System Revenue and Revenue Refunding Bonds, Series 2011***

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RESOLUTION NO. \_\_\_\_\_

**A SERIES RESOLUTION AUTHORIZING THE ISSUANCE UNDER THE PROVISIONS OF THE STATE AND LOCAL GOVERNMENT REVENUE BOND ACT, AS AMENDED, OF UTILITY SYSTEM REVENUE AND REVENUE REFUNDING BONDS OF THE CITY OF DURHAM, SERIES 2011; THE PRIVATE SALE OF THE 2011 BONDS; AND VARIOUS AGREEMENTS AND ACTIONS IN CONNECTION WITH SUCH TRANSACTIONS**

**WHEREAS**, the City of Durham, North Carolina, a municipal corporation in the State of North Carolina (the “City”), owns and operates a water and wastewater system, providing water and sewer services inside and outside the jurisdiction of the City (the “Utility System”); and

**WHEREAS**, the City is empowered, under the Constitution and laws of the State of North Carolina, particularly the State and Local Government Revenue Bond Act (being Chapter 159-80 et seq. of the General Statutes of North Carolina), as the same may be amended from time to time (the “Act”), to issue its revenue bonds to finance or refinance the costs of extensions, additions and capital improvements to, or the acquisition, renewal or replacement of capital assets of, or purchasing and installing new equipment for the Utility System; and

**WHEREAS**, the City Council for the City (the “City Council”), on May 16, 2011, adopted an Amended and Restated Bond Order (the “Bond Order”), amending and restating a Bond Order adopted by the City Council on December 5, 1994 (the “1994 Bond Order”), which authorizes and secures water and sewer utility system revenue bonds of the City; and

**WHEREAS**, the City Council has determined that the City will (1) finance the costs of various improvements to the City’s utility system, including water supply and storage upgrades; water and wastewater treatment improvements; water line and sewer main extension, repair and replacement; and water meter upgrades (collectively, the “Project”), (2) refund all or a portion of the City’s Water and Sewer Utility System Revenue Bonds, Series 2001 (the “Refunding”) and (3) pay the costs of issuing the 2011 Bonds; and

**WHEREAS**, in order to obtain a portion of the funds to finance the Project and refund the Refunded Bonds (as defined herein), the City has determined to approve the transactions described herein whereby the City will authorize and approve (1) the issuance of a series of bonds to be known as the City of Durham, Utility System Revenue and Revenue Refunding Bonds, Series 2011 (the “2011 Bonds”) in an aggregate principal amount of not to exceed \$70,000,000, and (2) a Bond Purchase Agreement among the Local Government Commission, the City and Citigroup Global Markets Inc., as representative of the underwriters named therein, providing for the sale of the 2011 Bonds authorized hereunder; and

**NOW, THEREFORE, BE IT RESOLVED** by the City Council for the City of Durham, North Carolina that the City Council has determined to adopt, in accordance with Section 2.3 of the Bond Order, this Series Resolution authorizing the issuance of the Bonds, as follows:

**ARTICLE I.**

**DEFINITIONS**

Section 1.01. **Meaning of Words and Terms.** Unless otherwise required by the context or except as set forth in this Series Resolution, words and terms used in this Series Resolution which are defined in the Bond Order have the meanings assigned to them in the Bond Order. The terms in this Section 1.01 defined for all purposes of this Series Resolution and of any instrument amendatory hereof or supplemental hereto, and of any other instrument or any other document pertaining hereto, except where the context by clear implication otherwise requires, have the meanings herein specified:

“*Arbitrage and Tax Regulatory Certificate*” means, collectively, the Arbitrage and Tax Regulatory Certificate dated [date] by the City related to the 2011 Bonds.

“*Authorized Denomination*” means \$5,000 and any integral multiple thereof.

“*Interest Payment Date*” means December 1, 2011, and each December 1 and June 1 thereafter.

“*Mail*” means first-class United States mail, postage prepaid.

“*Purchase Agreement*” means the Bond Purchase Agreement among the Local Government Commission, the City and Citigroup Global Markets Inc., as representative of the underwriters named therein, providing for the initial purchase of the 2011 Bonds.

“*Refunded Bonds*” means the 2001 Bonds maturing on and after June 1, 2012.

“*Record Date*” means, with respect to each Interest Payment Date, the 15<sup>th</sup> day of the calendar month immediately preceding the Interest Payment Date whether or not a business day.

“*Redemption Date*” means the date on which 2011 Bonds have been called for redemption or are to be redeemed pursuant to this Series Resolution.

“*Redemption Price*” means, with respect to any 2011 Bond, the principal amount thereof plus the applicable premium, if any, payable on redemption thereof plus accrued interest to the Redemption Date.

“*Series Resolution*” means this Series Resolution adopted by the City Council for the City on May 16, 2011, and any amendments or supplements thereto.

“*2011 Bonds Account*” means the account within the Construction Fund by that name created and so designated by Section 4.01 herein.

“*2011 Bonds*” means the City of Durham, North Carolina Utility System Revenue and Revenue Refunding Bonds, Series 2011 issued pursuant to the Bond Order and this Series Resolution.

“*Trustee*” means, initially, U.S. Bank National Association, or any successor or successors thereto appointed pursuant to the Bond Order or this Series Resolution.

“*Underwriters*” means Citigroup Global Markets Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated.

Section 1.02. ***Parties Interested Herein.*** Except as otherwise expressly provided in this Series Resolution, nothing herein expressed or implied is intended or to be construed to confer on or to give to any Person, other than the City, the Trustee, the Underwriters and the owners from time to time of the 2011 Bonds, any right, remedy or claim under or by reason hereof or any covenant, condition or stipulation hereof. All the covenants, stipulations, promises and agreements herein contained by and on behalf of the City are for the sole and exclusive benefit of the City, the Trustee, the Underwriters and the owners of the 2011 Bonds, except as herein otherwise provided.

Section 1.03. ***Ratification.*** All action heretofore taken (not inconsistent with the provisions of this Series Resolution) by the City with respect to (1) the Project and the Refunding and the financing and refinancing thereof, (2) the sale and delivery of the 2011 Bonds for that purpose, and (3) the acceptance and execution of the Purchase Agreement submitted by the Underwriters to the City, is hereby ratified, approved and confirmed.

[End of Article I]

### The 2011 Bonds

Section 1.04. **Authorization of Financing and Authorization of 2011 Bonds.** There is hereby authorized and shall be issued, under and pursuant to the Constitution and the laws of the State, including the Act, the Bond Order and this Series Resolution, the 2011 Bonds of the City in the amounts and subject to the conditions herein provided. No 2011 Bonds may be issued under the provisions of this Series Resolution and the Bond Order except in accordance with this Article. The total principal amount of 2011 Bonds that may be issued is hereby expressly limited to \$70,000,000.

Section 1.05. **Issuance of Bonds.** The Bonds will be designated “*City of Durham, North Carolina Utility System Revenue and Revenue Refunding Bonds, Series 2011.*” The 2011 Bonds will be issuable as fully registered bonds in any Authorized Denomination. The 2011 Bonds will be numbered from R-1 upwards. The 2011 Bonds will be substantially in the form set forth in Exhibit A with such appropriate variations, omissions and insertions as are permitted or required by this Series Resolution.

Section 1.06. **Delivery of 2011 Bonds.** Before the delivery by the Trustee of any of the 2011 Bonds, the items required under Section 2.4 of the Bond Order must be filed with the Trustee. The 2011 Bonds must be in Authorized Denominations and executed substantially in the form and in the manner set forth in the Exhibit to this Series Resolution and will be deposited with the Trustee for authentication, but before the 2011 Bonds may be authenticated and delivered, there must be filed with the Trustee a certificate of the Finance Officer collectively setting forth the following:

- (A) the aggregate principal amount of 2011 Bonds to be issued, not in excess of the maximum amount previously established in Section 2.01 of this Series Resolution;
- (B) an amortization schedule for the 2011 Bonds;
- (C) the interest rates for the 2011 Bonds, such interest rates resulting in a true interest cost not in excess of 6.00%; and
- (D) any change to the redemption provisions provided in Sections 3.01 and 3.02 herein.

When the items required under Section 2.4 of the Bond Order and the document required by this Section 2.03 have been filed with the Trustee and when the 2011 Bonds have been executed and authenticated as required by this Series Resolution, the Trustee shall deliver the 2011 Bonds, but only on payment to the Trustee of the purchase price of the 2011 Bonds. The Trustee is entitled to rely on the resolutions and certificates mentioned in this Section as to all matters stated therein.

### Section 1.07. **Details of 2011 Bonds; Payment.**

(a) The 2011 Bonds will mature on June 1 of the years and in the amounts and will bear interest (computed on the basis of a 360-day year of twelve 30-day months) as set forth in the Finance Officer’s certificate referred to in Section 2.03 above.

(b) Both the principal of and the interest on the 2011 Bonds are payable in any lawful coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for the payment of public and private debts. Each 2011 Bond shall bear interest until its principal sum has been paid, but if such 2011 Bond has matured or has been called for redemption and the Redemption Date has occurred and funds are available for the payment thereof in full in accordance with the terms of the Bond Order, such 2011 Bond shall

then cease to bear interest as of the maturity date or Redemption Date. The 2011 Bonds will be dated as of the date of their initial delivery, except that 2011 Bonds issued in exchange for or on the registration of transfer of 2011 Bonds will be dated as of the Interest Payment Date preceding the day of authentication thereof, unless (1) the date of such authentication precedes November 15, 2011, in which case they will be dated as of the date of their initial delivery, (2) the date of such authentication is between the Record Date and an Interest Payment Date, in which case they will be dated as of such following Interest Payment Date or (3) the date of such authentication is an Interest Payment Date to which interest on the 2011 Bonds has been paid in full or duly provided for in accordance with the terms of the Bond Order, in which case they will be dated as of such Interest Payment Date; except that if, as shown by the records of the Paying Agent, interest on the 2011 Bonds is in default, 2011 Bonds executed and delivered in exchange for or on registration of transfer of 2011 Bonds will be dated as of the date to which interest on the 2011 Bonds has been paid in full. If no interest has been paid on the 2011 Bonds, 2011 Bonds executed and delivered in exchange for or upon the registration of transfer of 2011 Bonds will be dated the date of initial authentication and delivery thereof.

(d) The 2011 Bonds will be delivered by means of a book-entry system with no physical distribution of definitive 2011 Bonds made to the public. One definitive 2011 Bond for each maturity of each Series is to be delivered to The Depository Trust Company, New York, New York (“DTC”), and immobilized in the custody of the Trustee on behalf of DTC. A book-entry system will be employed, evidencing ownership of the 2011 Bonds in denominations of \$5,000 or any integral multiple thereof, with transfers of beneficial ownership effected on the records of DTC and its participants (the “DTC Participants”) pursuant to rules and procedures established by DTC.

Each DTC Participant will be credited in the records of DTC with the amount of such DTC Participant’s interest in the 2011 Bonds. Beneficial ownership interests in the 2011 Bonds may be purchased by or through DTC Participants. The holders of these beneficial ownership interests are hereinafter referred to as the “Beneficial Owners.” The Beneficial Owners will not receive definitive 2011 Bonds representing their beneficial ownership interests. The ownership interests of each Beneficial Owner will be recorded through the records of the DTC Participant from which such Beneficial Owner purchased its 2011 Bonds. Transfers of ownership interests in the 2011 Bonds will be accomplished by book entries made by DTC and, in turn, by DTC Participants acting on behalf of Beneficial Owners. SO LONG AS CEDE & CO., AS NOMINEE FOR DTC, IS THE OWNER OF THE 2011 BONDS, THE TRUSTEE SHALL TREAT CEDE & CO. AS THE ONLY OWNER OF THE 2011 BONDS FOR ALL PURPOSES UNDER THE BOND ORDER, INCLUDING RECEIPT OF ALL PRINCIPAL AND PREMIUM, IF ANY, AND INTEREST ON THE 2011 BONDS, RECEIPT OF NOTICES, VOTING AND REQUESTING OR DIRECTING THE TRUSTEE TO TAKE OR NOT TO TAKE, OR CONSENTING TO, CERTAIN ACTIONS UNDER THE BOND ORDER.

Payments of principal, interest and premium, if any, with respect to the 2011 Bonds, so long as DTC is the only Owner of the 2011 Bonds, will be paid by the Trustee directly to DTC or its nominee, Cede & Co., as provided in the Blanket Letter of Representations dated July 15, 1995 from the City to DTC (the “Letter of Representation”). DTC will remit such payments to DTC Participants, and such payments thereafter will be paid by DTC Participants to the Beneficial Owners. The Trustee and the City are not and will not be responsible or liable for payment by DTC or DTC Participants, for sending transaction statements or for maintaining, supervising or reviewing records maintained by DTC or DTC Participants.

If (a) DTC determines not to continue to act as securities depository for the 2011 Bonds or (b) the Trustee and the City determine to discontinue the book entry system in accordance with DTC’s rules and the City fails to identify another qualified securities depository to replace DTC,

the City will deliver fully registered definitive 2011 Bonds to DTC in the denomination of \$5,000 or integral multiples thereof as such Owner may request.

THE CITY AND THE TRUSTEE HAVE NO RESPONSIBILITY OR OBLIGATION WITH RESPECT TO (A) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC OR ANY DTC PARTICIPANT; (B) THE PAYMENT BY DTC OR ANY DTC PARTICIPANT OF ANY AMOUNT DUE TO ANY BENEFICIAL OWNER IN RESPECT OF THE PRINCIPAL OF AND PREMIUM, IF ANY, AND INTEREST ON THE 2011 BONDS; (C) THE DELIVERY OR TIMELINESS OF DELIVERY BY DTC OR ANY DTC PARTICIPANT OF ANY NOTICE DUE TO ANY BENEFICIAL OWNER WHICH IS REQUIRED OR PERMITTED UNDER THE TERMS OF THE BOND ORDER TO BE GIVEN TO OWNERS; (D) THE SELECTION OF BENEFICIAL OWNERS TO RECEIVE PAYMENTS IN THE EVENT OF ANY PARTIAL REDEMPTION OF THE 2011 BONDS; OR (E) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC OR ITS NOMINEE, CEDE & CO., AS OWNER.

(d) The 2011 Bonds and any premiums on the redemption thereof prior to maturity are payable in any lawful coin or currency of the United States of America, at the designated corporate trust office of the Trustee on presentation and surrender. Interest on the 2011 Bonds will be paid by the Trustee by check or draft mailed on the Interest Payment Date to each Owner as its name and address appear on the register kept by the Trustee on the Record Date. At the written request of any Owner of at least \$1,000,000 in aggregate principal amount of the 2011 Bonds and while a book-entry system is in place with respect to the 2011 Bonds, principal and interest may be payable by wire transfer at the address specified in writing by the Owner by the Record Date. CUSIP number identification with appropriate dollar amounts for each CUSIP number shall accompany all payments of principal of, premium, if any, and interest on any 2011 Bonds, whether by check or by wire transfer.

Section 1.08. **Arbitrage and Tax Covenants.** The City covenants that it will not take or permit, or omit to take or cause to be taken, any action that would adversely affect the exclusion from federal income taxation of the interest on the 2011 Bonds and, if it should take or permit, or omit to take or cause to be taken, any such action, the City will take or cause to be taken all lawful actions within its power necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof. The City acknowledges that the continued exclusion of interest on the 2011 Bonds from an Owner's gross income for federal income tax purposes depends, in part, on compliance with the arbitrage limitations imposed by Section 148 of the Code. The City covenants that it will comply with all the requirements of Section 148 of the Code, including the rebate requirements, and that it will not permit at any time any of the proceeds of the 2011 Bonds or other funds under their control be used, directly or indirectly, to acquire any asset or obligation, the acquisition of which would cause the 2011 Bonds to be "*arbitrage bonds*" for purposes of Section 148 of the Code.

Section 2.06. **Notification of Rating Agency.** The Trustee hereby agrees to promptly notify the LGC, Moody's, if the 2011 Bonds are rated by Moody's, S&P, if the 2011 Bonds are rated by S&P, and Fitch Ratings, if the 2011 Bonds are rated by Fitch Ratings, at the address set forth in the Bond Order, of (1) any appointment of a successor Trustee, other than a successor by corporate acquisition, (2) any amendment or supplement to the Bond Order, (3) any provision for payment of the 2011 Bonds in accordance with Article X of the Bond Order and (4) the giving of notice of the call for redemption of any 2011 Bonds under Section 3.03.

[End of Article II]

## ARTICLE II.

### REDEMPTION OF THE 2011 BONDS

Section 3.01. **Optional Redemption of the 2011 Bonds.** The 2011 Bonds maturing on or before June 1, 2021, are not subject to call and redemption prior to maturity. The 2011 Bonds maturing on or after June 1, 2022 may be redeemed prior to their maturities, at the option of the City, from any funds that may be available for such purpose, either in whole or in part on any date on or after June 1, 2021 at the Redemption Price of 100% of the principal amount of the 2011 Bonds to be redeemed plus accrued interest thereon to the Redemption Date.

Section 3.02. **Mandatory Redemption.** The 2011 Bonds maturing on June 1, 2041 (the “Term Bonds”) are subject to mandatory redemption prior to maturity in part, with the 2011 Bonds to be redeemed being selected pursuant to Section 3.04, at the redemption price of 100% of the principal amount thereof, without premium, in amounts and on the dates as follows:

REDEMPTION DATE <u>(JUNE 1)</u>	PRINCIPAL <u>AMOUNT</u>	REDEMPTION DATE <u>(JUNE 1)</u>	PRINCIPAL <u>AMOUNT</u>
2032	\$2,325,000	2037	\$2,970,000
2033	2,440,000	2038	3,115,000
2034	2,565,000	2039	3,270,000
2035	2,690,000	2040	3,435,000
2036	2,825,000	2041*	3,605,000

\*Maturity

At its option, to be exercised on or before the 45th day next preceding any mandatory redemption date, the City may (a) deliver to the Trustee for cancellation, Term Bonds or portions thereof (in Authorized Denominations) in any aggregate principal amount desired, or (b) receive a credit in respect of its mandatory redemption obligation for the Term Bonds (in Authorized Denominations) which prior to said date have been purchased or redeemed (otherwise than through mandatory redemption pursuant to this Section) and cancelled by the Trustee and not theretofore applied as a credit against any mandatory redemption obligation. Each such Term Bond or portion thereof so delivered or previously purchased or redeemed and cancelled by the Trustee shall be credited by the Trustee at 100% of the principal amount thereof against the obligation of the City to redeem the Term Bonds on such mandatory redemption date, and any excess over such amount shall be credited against future mandatory redemption obligations in chronological order, unless otherwise designated by the City, and the principal amount of the Term Bonds so to be redeemed shall be accordingly reduced.

The City will on or before the 45th day next preceding each such mandatory redemption date furnish the Trustee with its certificate indicating whether or not and to what extent the provisions of (a) and (b) of the preceding paragraph are to be availed of with respect to such mandatory redemption payment.

Section 3.03. **Notice of Redemption.** Notice of redemption will be given by the Trustee (1) to the North Carolina Local Government Commission by Mail, (2)(A) to DTC or its nominee in accordance with its rules and procedures at the address provided to the Trustee by DTC or (B) if DTC or its nominee is no longer the Owner of the 2011 Bonds, to the then-registered owners by Mail, not less than 30 days nor more than 60 days before the Redemption Date to each Owner of 2011 Bonds or portions thereof to

be redeemed at the last address shown on the registration books kept by the Trustee and (3) to the MSRB (as defined herein) through the MSRB's Electronic Municipal Market Access system pursuant to the procedures promulgated by the MSRB.

Neither the failure to mail the notice nor any defect in any notice mailed shall affect the sufficiency of the proceeding for the redemption of any 2011 Bonds as to which no such defect or failure occurred. Such notice must (1) specify the 2011 Bonds to be redeemed, the Redemption Date, the Redemption Price and the place or places where amounts due on such redemption must be payable (which must be the principal office of the Paying Agent) and if less than all of the 2011 Bonds are to be redeemed, the numbers of the 2011 Bonds and the portions of 2011 Bonds to be redeemed, (2) if sufficient moneys are not then on deposit in the Debt Service Fund to pay the full Redemption Price of the 2011 Bonds, state that the proposed optional redemption is conditioned on there being sufficient moneys on deposit in the Debt Service Fund to pay the Redemption Price of the 2011 Bonds called for redemption, and (3) state that on the Redemption Date, the 2011 Bonds to be redeemed will cease to bear interest. The City may revoke any optional redemption for which notice has been given on written instruction to the Trustee delivered in sufficient time for the Trustee to give notice thereof at least five days before the Redemption Date (or if DTC or its nominee is the registered Owner of the 2011 Bonds, such shorter time as permitted by DTC's rules and procedures) to the persons to whom and in the manner in which the notice of redemption was given.

The actual receipt by any Owner of a 2011 Bond of notice of redemption is not a condition precedent to redemption, and failure to receive notice shall not affect the validity of the proceedings for the redemption of the 2011 Bonds or the cessation of interest on the Redemption Date. Notice of redemption of the 2011 Bonds shall be given by the Trustee at the expense of the City.

If moneys are on deposit in the Debt Service Fund to pay the Redemption Price of the 2011 Bonds called for redemption and premium, if any, thereon on a Redemption Date, 2011 Bonds or portions thereof thus called and provided for as hereinabove specified will not bear interest after such Redemption Date and will not be considered to be Outstanding or to have any other rights under the Bond Order other than the right to receive payment. No payment of principal will be made by the Trustee on any 2011 Bonds or portions thereof called for redemption until such 2011 Bonds or portions thereof have been delivered for payment or cancellation or the Trustee has received the items required by Section 3.5 of the Bond Order with respect to any mutilated, lost, stolen or destroyed 2011 Bonds.

Section 3.04. ***Selection of 2011 Bonds To Be Redeemed.*** If less than all of the 2011 Bonds are called for redemption, the City shall determine the maturities and amounts thereof to be redeemed. If a book-entry system through DTC is used for determining beneficial ownership of the 2011 Bonds and less than all the 2011 Bonds of any maturity are called for redemption, DTC shall select the 2011 Bonds to be redeemed pursuant to its rules and procedures or, if the book-entry system through DTC or any other securities depository for determining beneficial ownership of the 2011 Bonds has been discontinued, the Trustee shall select the 2011 Bonds to be redeemed by lot in such manner at the Trustee in its discretion may deem proper, but, in any event, the portion of any 2011 Bond to be redeemed must be in an Authorized Denomination.

If a 2011 Bond subject to redemption is in a denomination larger than the minimum Authorized Denomination, a portion of such 2011 Bond may be redeemed, but only in a principal amount such that the unredeemed portion of such 2011 Bond is equal to an Authorized Denomination. For any 2011 Bond in a denomination of more than the minimum Authorized Denomination, the Trustee shall treat each such 2011 Bond as representing a single 2011 Bond in the minimum Authorized Denomination plus that number of 2011 Bonds that is obtained by dividing the remaining principal amount of such 2011 Bond by the minimum Authorized Denomination.

If it is determined that one or more, but not all, of the Authorized Denominations of principal amount represented by any 2011 Bond is to be called for redemption, then, on notice of intention to redeem such Authorized Denominations of principal amount of such 2011 Bond, the Owner of such 2011 Bond, on surrender of such 2011 Bond to the Trustee for payment of the principal amount of such 2011 Bond, will be entitled to receive new 2011 Bonds in the aggregate principal amount of the unredeemed balance of the principal amount of such 2011 Bond. New 2011 Bonds representing the unredeemed balance of the principal amount of such 2011 Bonds will be issued to the Owner thereof without charge therefor.

If the Owner of any 2011 Bond of a denomination greater than the amount being redeemed fails to present such 2011 Bond to the Trustee for payment and exchange as aforesaid, such 2011 Bond will, nevertheless, become due and payable on the date fixed for redemption to the extent of the denomination being redeemed and to that extent only.

Section 3.05. ***No Partial Redemption After Default.*** Anything in the Bond Order to the contrary notwithstanding, if an Event of Default occurs and is continuing hereunder there will be no redemption of less than all of the Bonds Outstanding.

Section 3.06. ***Payment of Redemption Price.*** The City will cause to be deposited in the Debt Service Fund, an amount sufficient to pay the Redemption Price of 2011 Bonds to be redeemed on the Redemption Date, and such 2011 Bonds will be deemed to be paid within the meaning of Article X of the Bond Order.

[End of Article III]

## ARTICLE IV.

### REVENUES, ACCOUNTS AND FUNDS

Section 4.01. ***Application of Bond Proceeds and Other Funds.*** On delivery of the 2011 Bonds to the Underwriters, the Underwriters will transfer the purchase price of the Bonds, which is equal to the par amount of the 2011 Bonds, plus net original issue premium on the Bonds, if any, less the Underwriters' discount, to the Trustee on behalf of the City. On receipt of that aggregate amount from the Underwriters, the Trustee will dispose of the proceeds of the 2011 Bonds as provided for in a Certificate of the Finance Officer to be delivered at closing.

Section 4.02. ***Funds and Accounts.*** The City hereby establishes and creates a 2011 Bonds Account within the Construction Fund to keep the proceeds of the 2011 Bonds so deposited separate from the proceeds of any other series of Bonds issued under the Bond Order.

There shall be deposited into the 2011 Bonds Account of the Construction Fund that portion of the proceeds of the 2011 Bonds set forth in the Certificate of the Finance Officer required by Section 4.01 herein. Moneys will be disbursed from the Construction Fund in accordance with the procedures outlined in Section 4.03 of this Series Resolution. If the Refunding is completed, the amount shown on the Certificate of the Finance Officer shall be used to refund the Refunded Bonds shall be deposited in the Debt Service Fund and used to redeem the Refunded Bonds on the date the 2011 Bonds are issued.

Section 4.03. ***Application of Construction Fund.***

(a) The 2011 Bonds Account will be applied for any of the following purposes:

- (1) the payment of Costs of Issuance related to the 2011 Bonds;
- (2) the payment of all other Costs of Construction; and
- (3) transfer to the Debt Service Fund to make up any deficiency therein in accordance with the priorities established in Section 5.4 of the Bond Order.

(b) On the filing from time to time with the Trustee of a requisition in the form of Exhibit B attached hereto, and other appropriate documentation with respect to Costs of Construction, signed by a City Representative and, as to disbursements other than for Costs of Issuance, stating by general classification the purpose for which each disbursement is to be made and that such work was actually performed, such service was actually rendered or such materials, supplies or equipment actually delivered, installed or fabricated, the Trustee will make or cause to be made a disbursement from the 2011 Bonds Account, as directed, for the payment of such Costs of Construction.

(c) On the completion of all extensions, additions and capital improvements to, or the acquisition, renewal or replacement of capital assets of, or purchasing and installing new equipment for the Utility System financed with the proceeds of the 2011 Bonds, the City will deliver a certificate to the Trustee stating the fact and date of such completion and stating that all of the Costs of Construction have been determined and paid (or that all of such Costs of Construction have been paid less specified claims which are subject to dispute and for which a retention in the 2011 Bonds Account is to be maintained in the full amount of such claims until such dispute is resolved). On the receipt by the Trustee of such certificate, the Trustee will retain in the 2011 Bonds Account the sum equal to the amount estimated by the City to be necessary for

payment of the items of Costs of Construction payable from the account that is not then due and payable. The balance remaining in the 2011 Bonds Account will be deposited in the Debt Service Fund and applied, with any investment earnings thereon, first to the next payment of Interest due with respect to the 2011 Bonds and then to the next Principal Installment with respect to the 2011 Bonds.

[End of Article IV]

## **ARTICLE V.**

### **SUPPLEMENTAL SERIES RESOLUTIONS**

This Series Resolution and the rights and obligations of the City and the Owners may be modified or amended at the same times, in the same manner and for the same purposes as the Bond Order, but if the modification or amendment affects only the 2011 Bonds, the percentage to be applied under Section 7.3 of the Bond Order will be applied only to the Outstanding 2011 Bonds.

Before the City adopts any supplemental resolution pursuant to this Section, there must have been delivered to the Trustee and the City an opinion of Bond Counsel stating that such supplemental resolution is authorized or permitted by the Bond Order, complies with the terms hereof, will, upon the adoption thereof, be valid and binding upon the City in accordance with its terms and will not adversely affect the federal income tax status of the 2011 Bonds.

The City will send a copy of all supplemental resolutions to be adopted under Section 7.3 of the Bond Order or for the purpose of issuing additional bonds under Section 6.8 of the Bond Order to Moody's, if the 2011 Bonds are rated by Moody's, S&P, if the 2011 Bonds are rated by S&P, and Fitch Ratings, if the 2011 Bonds are rated by Fitch Ratings, at least 10 days before the effective date thereof.

[End of Article V]

## ARTICLE VI.

### MISCELLANEOUS PROVISIONS

Section 6.01. ***State Law Governs.*** This Series Resolution is adopted with the intent that the laws of the State govern its construction. To the extent permitted by applicable law, jurisdiction for the resolution of any conflict arising from this Series Resolution shall lie exclusively with the General Court of Justice of the State of North Carolina, Durham County, or the U.S. District Court for the Eastern District of North Carolina. Any attempt to contravene this Section is an express violation of this Series Resolution.

Section 6.02. ***Titles, Headings, Captions, Etc.*** The titles, captions and headings of the articles, sections and subdivisions of this Series Resolution have been inserted for convenience of reference only and will in no way modify or restrict any of the terms or provisions hereof.

Section 6.03. ***Severability.*** If any provision of this Series Resolution is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

Section 6.04. ***Continuing Disclosure.*** The City agrees, in accordance with Rule 15c2-12 (the “Rule”) promulgated by the Securities and Exchange Commission (the “SEC”) and for the benefit of the Owners and the Beneficial Owners of the 2011 Bonds, as follows, to provide:

(1) by not later than seven months after the end of each Fiscal Year, beginning with the Fiscal Year ending June 30, 2011, to the Municipal Securities Rulemaking Board (the “MSRB”), the audited financial statements of the City for the preceding Fiscal Year, if available, prepared in accordance with Section 159-34 of the General Statutes of North Carolina, as it may be amended from time to time, or any successor statute, or if such audited financial statements are not then available, unaudited financial statements of the City for such Fiscal Year to be replaced subsequently by audited financial statements to the City to be delivered within 15 days after such audited financial statements become available for distribution;

(2) by not later than seven months after the end of each Fiscal Year, beginning with the Fiscal Year ending June 30, 2011, to the MSRB, (a) the financial and statistical data as of a date not earlier than the end of the preceding Fiscal Year for the type of information included in the Official Statement dated on or about May 19, 2011 relating to the 2011 Bonds, in the tables captioned “NUMBER OF WATER AND SEWER CUSTOMERS” and “LIST OF MAJOR USERS” in *Appendix A* (the “Official Statement”), and (b) the combined budget of the City for the current Fiscal Year, to the extent such items described in (a) and (b) are not included in the audited financial statements referred to in paragraph (1) above;

(3) in a timely manner not in excess of 10 Business Days after the occurrence of the event, to the MSRB notice of any of the following events with respect to the 2011 Bonds:

- (a) principal and interest payment delinquencies;
- (b) non-payment related defaults, if material;

- (c) unscheduled draws on the debt service reserves reflecting financial difficulties;
  - (d) unscheduled draws on any credit enhancements reflecting financial difficulties;
  - (e) substitution of any credit or liquidity providers, or their failure to perform;
  - (f) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material events affecting the tax status of the 2011 Bonds;
  - (g) modification of the rights of the Beneficial Owners of the 2011 Bonds, if material;
  - (h) call of any of the 2011 Bonds, if material, and tender offers;
  - (i) defeasance of any of the 2011 Bonds;
  - (j) release, substitution or sale of any property securing repayment of the 2011 Bonds, if material;
  - (k) rating changes;
  - (l) bankruptcy, insolvency, receivership or similar event of the City;
  - (m) the consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to such actions, other than pursuant to its terms, if material; and
  - (n) appointment of a successor or additional trustee or the change of name of a trustee, if material; and
- (4) in a timely manner, to the MSRB, notice of a failure of the City to provide required annual financial information described in (a) or (b) above on or before the date specified.

The City agrees to provide all documents described in this section in an electronic format as prescribed by the MSRB and accompanied by identifying information as prescribed by the MSRB.

The City agrees that its undertaking under this Article is intended to be for the benefit of the Owners and the Beneficial Owners of the 2011 Bonds and is enforceable by the Trustee or by any of them, including an action for specific performance of the City's obligations under this Article, but a failure to comply will not be an Event of Default under Section 9.1 of the Bond Order and will not result in acceleration of the payment of the 2011 Bonds. An action must be instituted, had and maintained in the manner provided in this paragraph for the benefit of all of the Owners and Beneficial Owners of the 2011 Bonds.

The City may modify from time to time, consistent with the Rule, the information provided to the extent necessary or appropriate in the judgment of the City, but:

(1) any such modification may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law or change in the identity, nature or status of the City;

(2) the information to be provided, as modified, would have complied with the requirements of the Rule as of the date of the Official Statement, after taking into account any amendments or interpretations of the Rule as well as any changes in circumstances;

(3) any such modification does not materially impair the interest of the Owners or the Beneficial Owners, as determined by Bond Counsel or by the approving vote of the Owners of a majority in principal amount of the 2011 Bonds pursuant to Section 7.3 of the Bond Order.

Any annual financial information containing modified operating data or financial information will explain, in narrative form, the reasons for the modification and the impact of the change in the type of operating data or financial information being provided.

The provisions of this Article terminate on payment, or provision having been made for payment in a manner consistent with the Rule, in full of the principal of and interest on the 2011 Bonds.

The City may discharge its undertakings described above by transmitting the documents or notices referred to above in a manner subsequently authorized or required by the SEC in lieu of the manner described above.

Section 6.05. ***Application to Local Government Commission.*** The City Council hereby ratifies and confirms its request to the Local Government Commission to sell the 2011 Bonds at private sale and without advertisement in accordance with the provisions of Section 159-123 of the General Statutes of North Carolina.

Section 6.06. ***Approval of Amount of 2011 Bonds and Interest Rate.*** The Finance Officer is hereby authorized and directed to approve (1) the actual amount of the 2011 Bonds and each maturity of the 2011 Bonds to be issued under this Series Resolution, subject to the limits specified in Section 2.04, (2) the interest rates for each maturity of the 2011 Bonds, not in excess of the maximum set forth in Section 2.04, (3) any change from the redemption provisions set forth in Sections 3.01 and 3.02 herein and (4) the sale of the 2011 Bonds at a price to be finally determined by the City Manager or the Finance Officer of not less than 98% of the face amount thereof.

Section 6.07. ***Approval of Preliminary Official Statement and Final Official Statement.*** The City hereby approves and consents to the use and distribution of copies of the Preliminary Official Statement, the final Official Statement, the Bond Order and this Series Resolution by the Underwriters in connection with the public offering of the 2011 Bonds. Any of the Mayor, City Manager and Finance Officer is hereby authorized and directed to deliver the final Official Statement relating to the 2011 Bonds, in substantially the form of the draft of the Preliminary Official Statement presented at the April 4, 2011 meeting of the City Council, together with such changes, modifications, and deletions as the Finance Officer, with the advice of counsel, may deem necessary and appropriate; such execution and delivery is conclusive evidence of the approval and authorization in all respects of the form and content thereof.

Section 6.08. ***Authorization for Other Acts.***

(a) The Finance Officer and other officers, agents and employees of the City and the officers and agents of the Trustee are hereby authorized and directed to do all acts and things required of them by the provisions of the 2011 Bonds, the Bond Order, this Series Resolution and the Purchase Agreement for the full, punctual and complete performance of the terms, covenants, provisions and agreements of the same and also to do all acts and things required of them by the provisions of this Series Resolution, including the advancement of any fees and expenses in connection with the transactions described therein with the expectation that such fees and expenses will be reimbursed to the City from 2011 Bond proceeds.

(b) The Mayor, the Finance Officer, the City Attorney, the City Clerk and any Deputy City Clerk, or any of them or their deputies, are further authorized and directed (without limitation except as may be expressly set forth herein) to employ and compensate advisers, bond counsel, counsel, and consultants, to take such action and to execute and deliver any such documents, deeds, certificates, undertakings, agreements, opinions or other instruments as they, with the advice of counsel, may deem necessary and appropriate to effect the transactions contemplated by the Bond Order, this Series Resolution and the Purchase Agreement.

Section 6.09. ***Holidays.*** Except as otherwise provided herein, whenever any payment or action to be made or taken hereunder is stated to be due on a day which is not a business day, such payment or action is to be made or taken on the next following business day, and such extension of time is to be included in computing interest, if any, in connection with such payment or action.

Section 6.10. ***Acceptance and Execution of Purchase Agreement; Approval of Award.*** The Purchase Agreement providing for the sale of the 2011 Bonds authorized hereunder in substantially the form presented at this meeting is hereby approved and accepted by the City; the award of the 2011 Bonds by the Local Government Commission to the Underwriters as underwriters for the 2011 Bonds and the selection of the Underwriters as the underwriters is hereby approved; and the Mayor or City Manager, or other appropriate officials of the City hereby are authorized and directed to approve additional underwriter at any time and to execute the Purchase Agreement on the behalf and in the name of the City at such time as may be determined by the Mayor, City Manager or Finance Officer, and so to enter into the Purchase Agreement as provided in such agreement, with such changes, variations, omissions and insertions as any official executing such document shall approve. The execution thereof by such officials constitutes conclusive evidence of such approval.

Section 6.11. ***Series Resolution Effective.*** This Series Resolution takes effect immediately on the delivery and payment for the 2011 Bonds.

**EXHIBIT A**

**FORM OF 2011 BOND**

**CITY OF DURHAM, NORTH CAROLINA  
UTILITY SYSTEM REVENUE AND REVENUE REFUNDING BONDS, SERIES 2011**

No. R- §

<u>INTEREST RATE</u> %	<u>DATED DATE</u>	<u>MATURITY DATE</u> June 1, 20__	<u>CUSIP</u>
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**REGISTERED OWNER: CEDE & CO.**

**PRINCIPAL AMOUNT: DOLLARS**

*The City of Durham, North Carolina* (the “City”), a municipal corporation of the State of North Carolina (the “State”), for value received, promises to pay, but solely from the sources and in the manner hereinafter provided, to the Owner named above the Principal Amount stated above on the Maturity Date set forth above (or earlier as hereinafter described), and to pay such Owner at his address as it appears on the register kept by U.S. Bank National Association, the Trustee for the 2011 Bonds, at the close of business on the 15<sup>th</sup> day of the month preceding each hereinafter-described Interest Payment Date (each, a “Record Date”), interest on such Principal Amount at the Interest Rate set forth above from the Interest Payment Date next preceding the date hereof unless (1) the date hereof precedes November 15, 2011, in which case this 2011 Bond will be dated as of the Dated Date, (2) the date hereof is between the Record Date and any December 1 or June 1, beginning December 1, 2011 (each, an “Interest Payment Date”), in which case this 2011 Bond will be dated as of such following Interest Payment Date or (3) the date hereof is any Interest Payment Date to which date interest on the 2011 Bonds has been paid in full or duly provided for in accordance with the terms of the Bond Order and the Series Resolution, in which case this 2011 Bond will be dated from such Interest Payment Date; except that if, as shown by the records of the Trustee, interest on this 2011 Bond is in default, this 2011 Bond will be dated as of the date to which interest on this 2011 Bonds has been paid in full. If no interest has been paid on this 2011 Bond, this 2011 Bond will be dated the date of initial authentication and delivery thereof. Both principal and interest and any premium on the redemption before the maturity of all or part hereof are payable in lawful coin or currency of the United States of America.

THE 2011 BONDS ARE SPECIAL OBLIGATIONS OF THE CITY. THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE 2011 BONDS ARE NOT PAYABLE FROM THE GENERAL FUNDS OF THE CITY, NOR DO THEY CONSTITUTE A LEGAL OR EQUITABLE PLEDGE, CHARGE, LIEN, OR ENCUMBRANCE UPON ANY OF ITS PROPERTY OR UPON ANY OF ITS INCOME, RECEIPTS, OR REVENUES EXCEPT THE FUNDS WHICH ARE PLEDGED UNDER THE BOND ORDER (HEREINAFTER DEFINED). NEITHER THE CREDIT NOR THE TAXING POWER OF THE STATE OR THE CITY ARE PLEDGED FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE 2011 BONDS, AND NO OWNER OF THIS 2011 BOND HAS THE RIGHT TO COMPEL THE EXERCISE OF THE TAXING POWER BY THE STATE OR THE CITY OR THE FORFEITURE OF ANY OF ITS PROPERTY IN CONNECTION WITH ANY DEFAULT.

The 2011 Bonds will be delivered by means of a book-entry system with no physical distribution of definitive 2011 Bonds made to the public. One definitive 2011 Bond for each maturity will be delivered to The Depository Trust Company, New York, New York (“DTC”), and immobilized in its custody. A book-entry system will be employed, evidencing ownership of the 2011 Bonds in Authorized

Denominations (hereinafter defined) with transfers of beneficial ownership effected on the records of DTC and its participants (the “*DTC Participants*”) pursuant to rules and procedures established by DTC. Each DTC Participant will be credited in the records of DTC with the amount of such DTC Participant’s interest in the 2011 Bonds. Beneficial ownership interests in the 2011 Bonds may be purchased by or through DTC Participants. The holders of these beneficial ownership interests are hereinafter referred to as the “*Beneficial Owners*.” The Beneficial Owners will not receive definitive 2011 Bonds representing their beneficial ownership interests. The ownership interests of each Beneficial Owner will be recorded through the records of the DTC Participant from which such Beneficial Owner purchased its 2011 Bonds. Transfers of ownership interests in the 2011 Bonds will be accomplished by book entries made by DTC and, in turn, by DTC Participants acting on behalf of Beneficial Owners. SO LONG AS CEDE & CO., AS NOMINEE FOR DTC, IS THE OWNER OF THE 2011 BONDS, THE TRUSTEE SHALL TREAT CEDE & CO. AS THE ONLY OWNER OF THE 2011 BONDS FOR ALL PURPOSES UNDER THE BOND ORDER, INCLUDING RECEIPT OF ALL PRINCIPAL AND PREMIUM, IF ANY, AND INTEREST ON THE 2011 BONDS, RECEIPT OF NOTICES, VOTING AND REQUESTING OR DIRECTING THE TRUSTEE TO TAKE OR NOT TO TAKE, OR CONSENTING TO, CERTAIN ACTIONS UNDER THE BOND ORDER.

If (a) DTC determines not to continue to act as securities depository for the 2011 Bonds or (b) the Trustee and the City determine to discontinue the book entry system in accordance with DTC’s rules and the City fails to identify another qualified securities depository to replace DTC, the City will deliver fully registered definitive 2011 Bonds to each Beneficial Owner in the denomination of \$5,000 or integral multiples thereof as such Owner may request.

The City and the Trustee have no responsibility or obligation with respect to (a) the accuracy of any records maintained by DTC; (b) the payment by DTC of any amount in respect of the principal of and premium, if any, and interest on the 2011 Bonds; (c) the delivery or timeliness of delivery by DTC of any notice due to any Beneficial Owner which is required or permitted under the terms of the Bond Order (hereinafter defined) to be given to the Owners; (d) the selection of Owners to receive payments in the event of any partial redemption of the 2011 Bonds; or (e) any consent given or other action taken by DTC, or its nominee.

This Bond is one of a duly authorized series of Utility System Revenue Bonds of the City, designated “*City of Durham, North Carolina Utility System Revenue and Revenue Refunding Bonds, Series 2011*” (the “*2011 Bonds*”), issued under a Bond Order adopted by the City Council (the “*City Council*”) of the City on December 5, 1994 (as amended and restated on May 16, 2011, the “*Bond Order*”) and a Series Resolution adopted by the City Council on May 16, 2011 (the “*Series Resolution*”). Unless the context indicates otherwise, all capitalized, undefined terms used herein have the meanings ascribed to them in the Bond Order and the Series Resolution. The 2011 Bonds are being issued to (1) finance the costs of various improvements to the City’s utility system, including water supply and storage upgrades; water and wastewater treatment improvements; water line and sewer main extension, repair and replacement; and water meter upgrades (collectively, the “*Project*”), (2) refund all or a portion of the City’s Water and Sewer Utility System Revenue Bonds, Series 2001 (the “*Refunding*”) and (3) pay the costs of issuing the 2011 Bonds.

The 2011 Bonds, together with interest thereon, are special obligations of the City payable solely from Revenues (except to the extent paid out of moneys attributable to Bond proceeds or the income from the temporary investment thereof and, under certain circumstances, proceeds from insurance and condemnation awards) after payment of the Current Expenses of the Utility System and constitute a valid claim of the respective Owners thereof only against the funds and other moneys held by the Trustee for the benefit of the Owners of the Bonds, which amounts are pledged and assigned pursuant to the Bond Order for the equal and ratable payment of the Bonds and will be used for no other purpose than to pay the principal of, premium, if any, and interest on the Bonds, except as may be otherwise expressly

authorized in the Bond Order. The 2011 Bonds and any Additional Bonds issued under the Bond Order are parity obligations under the Bond Order.

As used herein, “*Revenues*” means all rates, fees (including any tap, monitoring or connection fees), rentals, assessments, capacity fees, impact fees (unless a Certificate of a City Representative filed with the Trustee states that, pursuant to a resolution adopted by the City Council, such assessments, capacity fees or impact fees are not to be Revenues because the proceeds thereof are to be utilized exclusively for the payment of the cost of the capital projects for which they were collected) or other charges or other money received by the City in connection with the ownership, management and operation of the Utility System, and all parts thereof, including amounts received from the investment of money in any Fund or Account (but not including amounts received from interest or other investment income earned in the Construction Fund and, during the construction period, the Reserve Fund), all as calculated in accordance with generally accepted accounting principles, but shall not include (1) net proceeds of insurance or condemnation awards or other extraordinary items, (2) any amounts collected by the City representing sales or use taxes which may be required by law or agreement to be paid to the State or a governmental unit thereof, (3) refundable deposits made by customers of the Utility System, (4) any interest rate subsidy received by the City from the United States Treasury, (5) any proceeds or any gain or loss from extinguishment of debt or the sale, exchange or other disposition of capital assets, or (6) any amounts otherwise included under the definition as Revenues but not permitted by law to be pledged under the Bond Order. “*Current Expenses*” means the current expenses of operation, maintenance and current repair of the Utility System, as calculated in accordance with generally accepted accounting principles except as otherwise provided in the Bond Order, and includes, without limiting the generality of the foregoing: insurance premiums; any rebate required to be paid to the United States Government; fees and expenses of the Trustee and any Paying Agent; fees and expenses of any entity providing credit support or liquidity for any Series of the Bonds; administrative and engineering expenses of the City relating solely to the Utility System; labor; executive compensation; the cost of materials and supplies used for current operations; and charges for the accumulation of appropriate reserves for current expenses not annually recurrent, but which are such as may reasonably be expected to be incurred as determined by the City in accordance with generally accepted accounting principles except as otherwise provided in the Bond Order. “*Current Expenses*” will not include (1) any allowance for depreciation or replacements of capital assets of the Utility System, (2) moneys payable as Interest and as interest on General Obligation Indebtedness, Subordinate Indebtedness or Other Indebtedness, (3) moneys deposited or transferred to the Reserve Fund pursuant to the applicable Series Resolution, (4) any loss from extinguishment of debt or the sale, exchange or other disposition of capital assets, (5) any accrued expenses for other post-retirement benefits not resulting in (i) payments of such benefits to current or future retired employees or (ii) deposits of funds into an irrevocable trust for the purpose of making future payments of such benefits to current or future retired employees and (6) any payment out of the Operating Fund to any other fund of the City to cover indirect administrative expenses only if made at the end of each Fiscal Year after the City has met all other financial obligations imposed by the Bond Order or the Series Resolution.

Reference is made to the Bond Order for a more complete statement of the provisions thereof and of the rights of the City, the Trustee and the Owners of the Bonds. An original of the Bond Order is on file and may be inspected at the principal office of the Trustee in Charlotte, North Carolina. By the purchase and acceptance of this Bond, the Owner hereof signifies assent to all of the provisions of the aforementioned documents.

This Bond is issued and the Bond Order was made and adopted pursuant to the Constitution and laws of the State, and particularly in conformity with the provisions, restrictions and limitations of General Statutes of North Carolina Section 159-80 *et seq.*, as amended.

This Bond is exchangeable upon the presentation and surrender hereof at the principal corporate trust office of the Trustee for a 2011 Bond or 2011 Bonds of other Authorized Denominations. Upon

surrender for registration of transfer, duly endorsed for transfer or accompanied by an assignment duly executed by the Owner hereof or his or her attorney duly authorized in writing, the Trustee will authenticate and deliver in the name of the transferee or transferees a new fully registered 2011 Bond or 2011 Bonds. The Trustee may require the payment by any Owner requesting registration of transfer or exchange of 2011 Bonds of any tax, fee or other governmental charge required to be paid with respect to such registration of transfer or exchange. The Trustee is not required to register the transfer of or exchange any 2011 Bonds selected, called or being called for redemption in whole or in part. The person in whose name this Bond is registered will be deemed and regarded as the absolute owner hereof for all purposes, and payment of this Bond will be made only to or upon the written order of the Owner hereof or his or her legal representative. All such payments will be valid and effectual to satisfy and discharge this Bond to the extent of the sum or sums paid.

Notwithstanding anything provided above, payment of interest on the 2011 Bonds may, at the option of any Owner in an aggregate principal amount of at least \$1,000,000, be transmitted by wire transfer to such Owner to the address specified in writing by the Owner by the relevant Record Date.

The 2011 Bonds maturing on or before June 1, 2021, are not subject to call and redemption prior to maturity. The 2011 Bonds maturing on or after June 1, 2022 may be redeemed prior to their maturities, at the option of the City, from any funds that may be available for such purpose, either in whole or in part on any date on or after June 1, 2021 at the Redemption Price of 100% of the principal amount of the 2011 Bonds to be redeemed plus accrued interest thereon to the Redemption Date.

The 2011 Bonds maturing on June 1, 20\_\_ (the "Term Bonds") are subject to mandatory redemption prior to maturity in part, with the 2011 Bonds to be redeemed being selected pursuant to the Series Resolution, at the redemption price of 100% of the principal amount thereof, without premium, in amounts and on the dates as follows:

REDEMPTION DATE <u>(JUNE 1)</u>	PRINCIPAL <u>AMOUNT</u>	REDEMPTION DATE <u>(JUNE 1)</u>	PRINCIPAL <u>AMOUNT</u>
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\*Maturity

At its option, to be exercised on or before the 45th day next preceding any mandatory redemption date, the City may (a) deliver to the Trustee for cancellation, Term Bonds or portions thereof (in Authorized Denominations) in any aggregate principal amount desired, or (b) receive a credit in respect of its mandatory redemption obligation for the Term Bonds (in Authorized Denominations) which prior to said date have been purchased or redeemed (otherwise than through mandatory redemption pursuant to this Section) and cancelled by the Trustee and not theretofore applied as a credit against any mandatory redemption obligation. Each such Term Bond or portion thereof so delivered or previously purchased or redeemed and cancelled by the Trustee shall be credited by the Trustee at 100% of the principal amount thereof against the obligation of the City to redeem the Term Bonds on such mandatory redemption date, and any excess over such amount shall be credited against future mandatory redemption obligations in chronological order, unless otherwise designated by the City, and the principal amount of the Term Bonds so to be redeemed shall be accordingly reduced.

The City will on or before the 45th day next preceding each such mandatory redemption date furnish the Trustee with its certificate indicating whether or not and to what extent the provisions of (a) and (b) of the preceding paragraph are to be availed of with respect to such mandatory redemption payment.

Notice of redemption will be given by the Trustee (1) to the North Carolina Local Government Commission by Mail, (2)(A) to DTC or its nominee in accordance with its rules and procedures at the address provided to the Trustee by DTC or (B) if DTC or its nominee is no longer the Owner of the 2011 Bonds, to the then-registered owners by Mail, not less than 30 days nor more than 60 days before the Redemption Date to each Owner of 2011 Bonds or portions thereof to be redeemed at the last address shown on the registration books kept by the Trustee, (3) to the MSRB (as defined herein) through the MSRB's Electronic Municipal Market Access system pursuant to the procedures promulgated by the MSRB.

If less than all of the 2011 Bonds are called for redemption, the City shall determine the maturities and amounts thereof to be redeemed. If a book-entry system through DTC is used for determining beneficial ownership of the 2011 Bonds and less than all the 2011 Bonds of any maturity are called for redemption, DTC shall select the 2011 Bonds to be redeemed pursuant to its rules and procedures or, if the book-entry system through DTC or any other securities depository for determining beneficial ownership of the 2011 Bonds has been discontinued, the Trustee shall select the 2011 Bonds to be redeemed by lot in such manner at the Trustee in its discretion may deem proper, but, in any event, the portion of any 2011 Bond to be redeemed must be in an Authorized Denomination.

If a 2011 Bond subject to redemption is in a denomination larger than the minimum Authorized Denomination, a portion of such 2011 Bond may be redeemed, but only in a principal amount such that the unredeemed portion of such 2011 Bond is equal to an Authorized Denomination. For any 2011 Bond in a denomination of more than the minimum Authorized Denomination, the Trustee shall treat each such 2011 Bond as representing a single 2011 Bond in the minimum Authorized Denomination plus that number of 2011 Bonds that is obtained by dividing the remaining principal amount of such 2011 Bond by the minimum Authorized Denomination.

If it is determined that one or more, but not all, of the Authorized Denominations of principal amount represented by any 2011 Bond is to be called for redemption, then, on notice of intention to redeem such Authorized Denominations of principal amount of such 2011 Bond, the Owner of such 2011 Bond, on surrender of such 2011 Bond to the Trustee for payment of the principal amount of such 2011 Bond, will be entitled to receive new 2011 Bonds in the aggregate principal amount of the unredeemed balance of the principal amount of such 2011 Bond. New 2011 Bonds representing the unredeemed balance of the principal amount of such 2011 Bonds will be issued to the Owner thereof without charge therefor.

If the Owner of any 2011 Bond of a denomination greater than the amount being redeemed fails to present such 2011 Bond to the Trustee for payment and exchange as aforesaid, such 2011 Bond will, nevertheless, become due and payable on the date fixed for redemption to the extent of the denomination being redeemed and to that extent only.

The Bond Order permits amendment thereto with the approval of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding. The Bond Order also contains provisions permitting the City to adopt amendments to the Bond Order without the consent of the Owners of the Bonds for certain purposes.

Any consent or request by the Owner of this 2011 Bond shall be conclusive and binding upon such Owner and upon all future Owners of this 2011 Bond and of any Bond issued upon the transfer of this 2011 Bond whether or not notation of such consent or request is made upon this Bond.

This 2011 Bond is issued with the intent that the laws of the State of North Carolina shall govern its legality, validity, enforceability and construction.

All acts, conditions and things required to happen, exist and be performed precedent to and in the issuance of this 2011 Bond and the execution of the Bond Order have happened, existed and have been performed as so required.

This 2011 Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Bond Order until it shall have been authenticated by the execution by the Trustee of the certificate of authentication endorsed hereon.

*[signatures continue on the next page]*

*IN WITNESS WHEREOF*, the City of Durham, North Carolina has caused this 2011 Bond to be executed with the manual or facsimile signatures of the Mayor and the City, and has caused the City's official seal or a facsimile thereof to be impressed or imprinted hereon.

**CITY OF DURHAM, NORTH CAROLINA**

By: \_\_\_\_\_  
Mayor, City of Durham

[SEAL]  
Attest:

By: \_\_\_\_\_  
City Clerk

The issue hereof has been approved under the provisions of The State and Local Government Revenue Bond Act.

\_\_\_\_\_  
T. VANCE HOLLOMAN  
Secretary of the Local Government Commission

**CERTIFICATE OF AUTHENTICATION**

Date of Authentication: \_\_\_\_\_

This 2011 Bond is one of the Utility System Revenue and Revenue Refunding Bonds, Series 2011 designated herein issued under the provisions of the within-mentioned Bond Order and Series Resolution.

**U.S. BANK NATIONAL ASSOCIATION,**  
as Trustee

By: \_\_\_\_\_  
Vice President

**ASSIGNMENT**

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

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(Please print or typewrite Name and Address,  
including Zip Code, and Federal Taxpayer Identification or  
Social Security Number of Assignee)

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the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints

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

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

Signature guaranteed by:

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**NOTICE:** Signature must be guaranteed by a participant of the Securities Transfer Agent Medallion Program (“*STAMP*”) or similar program.

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

**TRANSFER FEE MAY BE REQUIRED**

**EXHIBIT B**

**FORM OF REQUISITION – 2011 BONDS**

U.S. Bank National Association  
214 North Tryon Street, Hearst Tower  
27<sup>th</sup> Floor  
Charlotte, North Carolina 28202  
Attention: Account Manager

Re: Disbursement from the 2011 Bonds Account of the Construction Fund (the “*2011 Bonds Account*”) relating to the City of Durham, North Carolina Utility System Revenue and Revenue Refunding Bonds, Series 2011

Dear \_\_\_\_\_ :

Under Section 4.03 of a Series Resolution (the “*Series Resolution*”) adopted by the City of Durham, North Carolina (the “*City*”) on May 16, 2011, we hereby request you to disburse to the City from the 2011 Bonds Account as follows:

1. The amount to be disbursed is \$ \_\_\_\_\_.
2. The purpose of the disbursement is to \_\_\_\_\_.
3. The disbursement herein requested is a reimbursement for costs actually expended by the City in connection with the Project, as defined in the Series Resolution, for services actually rendered or for materials, supplies or equipment actually delivered, installed or fabricated, and such costs were due and payable, were a proper charge against the 2011 Bonds Account, and have not been the basis of any prior requisition which has been paid.

DATED this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**CITY OF DURHAM, NORTH CAROLINA**

By: \_\_\_\_\_  
City Representative

STATE OF NORTH CAROLINA            )  
  )  
CITY OF DURHAM                            )        ss:

I, D. Ann Gray, City Clerk of the City of Durham, North Carolina, ***DO HEREBY CERTIFY*** that the foregoing is a true and exact copy of a resolution entitled “**A SERIES RESOLUTION AUTHORIZING THE ISSUANCE UNDER THE PROVISIONS OF THE STATE AND LOCAL GOVERNMENT REVENUE BOND ACT, AS AMENDED, OF UTILITY SYSTEM REVENUE AND REFUNDING BONDS OF THE CITY OF DURHAM (THE “2011 BONDS”); THE PRIVATE SALE OF THE 2011 BONDS; AND VARIOUS AGREEMENTS AND ACTIONS IN CONNECTION WITH SUCH TRANSACTIONS**” adopted by the City Council of the City of Durham, North Carolina, at a meeting held on the 16<sup>th</sup> day of May, 2011.

***WITNESS*** my hand and the corporate seal of the City of Durham, North Carolina, this the 16<sup>th</sup> day of May, 2011.

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D. Ann Gray  
City Clerk  
City of Durham, North Carolina