

Town of Cottage Grove Resolution 2016-07 Authorizing Borrowing

W. B. A. GP 224B (8/06) 11329

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EXHIBIT A RESOLUTION [Term Credit Agreement]

Prepared and intended for use by commercial banks in transactions governed by Wisconsin Law.

(Adopted at an Open Meeting held September 6, 2016)

WHEREAS the Town of Cottage Grove Dane County, Wisconsin ("Town"), is presently in need of funds up to a maximum aggregate amount of *Two Hundred Seventy Thousand Four Hundred Forty Dollars 00/100 (\$ 270,440.00) for public purpose(s) of: (1)

; and
WHEREAS, the Town Board deems it necessary and in the best interests of the Town that, pursuant to the provisions of Section 67.12(12), Wisconsin Statutes, the sum of up to *Two Hundred Seventy Thousand Four Hundred Forty Dollars and 00/100* Dollars (\$270,440.00) be borrowed for such purpose(s) from time to time upon the terms and conditions hereinafter set forth:

NOW, THEREFORE, BE IT RESOLVED, that for the purpose(s) hereinabove set forth the Town, by its Chairperson, and Clerk, pursuant to Section 67.12(12), Wisconsin Statutes, borrow from Bank of Sun Prairie ("Lender"), from time to time, in one or more advances, a maximum aggregate amount of \$ 270,440.00 , or, if less, the aggregate principal amount of all advances as may be required to meet the above - stated purpose(s);

BE IT FURTHER RESOLVED, that each such advance shall be requested in writing by the Town Clerk and/or Town Treasurer , which request may be conclusively relied upon by Lender;

BE IT FURTHER RESOLVED, that to evidence such indebtedness, said Chairperson and Town Clerk shall make, execute and deliver to the Lender for and on behalf of the Town the promissory note of the Town to be dated 9/1/2016 , in said principal amount with interest at the rate of *One and Sixty-one Hundredths percent (1.610 %) per annum and payable as follows:

[Check (a), (b), (c) or (d); only one shall apply.]

- (a) **Single Payment.** In one payment on 3/15/2017 , PLUS interest payable as set forth below.
- (b) **Installments of Principal and Interest (2).** In _____ equal payments of \$ _____ due on _____ , and on the same days(s) of each _____ month thereafter every 7th day thereafter every 14th day thereafter, PLUS a final payment of the unpaid balance and accrued interest due on _____ . All payments include principal and interest.
- (c) **Installments of Principal.** In _____ equal payments of principal of \$ _____ due on _____ , and on the same day(s) of each _____ month thereafter every 7th day thereafter every 14th day thereafter, PLUS a final payment of the unpaid principal due on _____ , PLUS interest payable as set forth below.
- (d) **Other.** _____

Interest is payable on _____ , and on the same day of each _____ month thereafter, every 7th day thereafter, every 14th day thereafter, and at maturity, or, if box (b) is checked, at the times so indicated. Interest is computed for the actual number of days principal is unpaid on the basis of a 360 day year a 365 day year. (2)

Said interest to be payable on the dates set forth above on the outstanding principal balance, with no prepayment privileges prepayment privileges on any principal or interest payment date on or after 9/1/2016 .

A copy of the promissory note shall be attached to this resolution.

- (1) Here describe each purpose in detail. If the purpose is meeting general and current municipal expenses or refinancing obligations of the Town, so specify.
- (2) Section 67.12(12), Wisconsin Statutes, does not place any restrictions on the basis of interest rate calculations.

BE IT FURTHER RESOLVED, that there be, and there hereby is, levied on all the taxable property of the Town, a direct annual irrevocable tax sufficient in amount to pay the principal and interest on said note as the same becomes due and payable, said tax to be in the following minimum amounts: (3)

Amount of Tax (principal and interest)	To Meet Note Payments Due On	Year of Levy (must be in year(s) prior to due date)
\$ 272,766.15	3/15/2017	For the year 2016
\$ _____	_____	For the year _____
\$ _____	_____	For the year _____
\$ _____	_____	For the year _____
\$ _____	_____	For the year _____
\$ _____	_____	For the year _____
\$ _____	_____	For the year _____
\$ _____	_____	For the year _____
\$ _____	_____	For the year _____
\$ _____	_____	For the year _____

If at any time there shall be on hand insufficient funds from the aforesaid tax levy to meet principal and/or interest payments on said note when due, the requisite amount shall be paid from other funds of the Town then available, which sums shall be replaced upon the collection of the taxes herein levied.

In the event that the Town exercises its prepayment privilege, if any, then no such direct annual tax shall be included on the tax rolls for the prepayments made and the amount of direct annual tax hereinabove levied shall be reduced accordingly for the year or years with respect to which said note was prepaid.

In each of said levy years, the direct annual tax so levied shall be carried into the tax rolls each year and shall be collected in the same manner and at the same time as other taxes of the Town for such years are collected; provided, that the amount of tax carried into the tax roll may be reduced in any year by the amount of any surplus in the debt service account for the note. So long as any part of the principal of, or interest on, said note remains unpaid, the proceeds of said tax shall be segregated in a special fund used solely for the payment of the principal of, and interest on, said note.

BE IT FURTHER RESOLVED, that there be and there hereby is established in the treasury of the Town, if one has not already been established, a debt service fund, separate and distinct from every other fund, which shall be maintained in accordance with generally accepted accounting principles. Sinking funds established for obligations previously issued by the Town may be considered as separate and distinct accounts within the debt service fund. Within the debt service fund, there be and there hereby is established a separate and distinct account designated as the "Debt Service Account for Promissory Note dated 9/1/2016," which account shall be used solely for the purpose of paying principal of and interest on said note. There shall be deposited in said account any accrued interest paid on said note at the time it is delivered to the Lender, all money raised by taxation or appropriated pursuant hereto, and such other sums as may be necessary to pay principal and interest on said note when the same shall become due.

BE IT FURTHER RESOLVED, that the proceeds of said note shall be used solely for the purposes for which it is issued, but may be temporarily invested until needed in legal investments, provided that no such investment shall be in such a manner as would cause said note to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, or the Regulations of the Commissioner of Internal Revenue thereunder; and an officer of the Town, charged with the responsibility for issuing the note, shall certify by use of an arbitrage certificate, if required, that, on the basis of the facts, estimates and circumstances in existence on the date of the delivery of the note, it is not expected that the proceeds will be used in a manner that would cause said note to be an "arbitrage bond."

BE IT FURTHER RESOLVED, that the projects financed by the note and their ownership, management and use will not cause the note to be a "private activity bond" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended, and that the Town shall comply with the provisions of the Code to the extent necessary to maintain the tax-exempt status of the interest on the note.

BE IT FURTHER RESOLVED, that the Town Clerk shall keep records for the registration and for the transfer of the note. The person in whose name the note shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of either principal or interest on the note shall be made only to the registered owner thereof. All such payments shall be valid and effectual to satisfy and discharge the liability upon such note to the extent of the sum or sums so paid. The note may be transferred by the registered owner thereof by presentation of the note at the office of the Town Clerk, duly endorsed for the transfer or accompanied by an assignment duly executed by the registered owner or his legal representative duly authorized in writing. Upon such presentation, the note shall be transferred by appropriate entry in the registration records and a similar notation, including date of registration, name of new registered owner and signature of the Town Clerk, shall be made on such note.

BE IT FURTHER RESOLVED, that the note is hereby designated as a "qualified tax-exempt obligation" for purposes of Section 265 of the Internal Revenue Code of 1986, as amended, relating to the ability of financial institutions to deduct from income, for federal income tax purposes, interest expense that is allocable to carrying and acquiring tax-exempt obligations. (4)

BE IT FURTHER RESOLVED, that the Town officials are hereby authorized and directed, so long as said note is outstanding, to deliver to the Lender any audit statement or other financial information the Lender may reasonably request and to discuss its affairs and finances with the Lender.

BE IT FURTHER RESOLVED, that said note shall be delivered to the Lender on or after the date of said note, upon receipt of the total principal amount of the loan evidenced thereby, plus accrued interest, if any, to date of delivery, provided that, if this is a refinancing, the refunding note shall be immediately exchanged for the note being refinanced.

(3) First tax levy should be for the current year unless tax roll has already been delivered for collection, and amount of levy should be sufficient to meet all principal and interest payments coming due prior to date for collection of next succeeding tax levy.

(4) Delete this paragraph if the Town will be issuing more than \$10,000,000 of tax-exempt obligations in the calendar year. In that case, banks will not be entitled to deduct, for federal income tax purposes, interest expense that is allocable to carrying or acquiring the note.

PROMISSORY NOTE

No. _____ Town of Cottage Grove (NAME) \$ 270,440.00 Dated 9/1/2016

1. Promise to Pay and Payment Schedule. For value received, the Town of Cottage Grove, Dane County, Wisconsin ("Town"), promises to pay to Bank of Sun Prairie, or registered assigns ("Lender"), the sum of *Two Hundred Seventy Thousand Four Hundred Forty Dollars 00/100 Dollars (\$270,440.00), payable with interest at the rate of One and Sixty-one Hundredths percent (1.610%) per annum as follows:

[Check (a), (b), (c) or (d); only one shall apply.]

- (a) [X] Single Payment. In one payment on 3/15/2017, PLUS interest payable as set forth below.
(b) [] Installments of Principal and Interest. In _____ equal payments of \$ _____ due on _____ and on [] the same day(s) of each _____ month thereafter [] every 7th day thereafter [] every 14th day thereafter, PLUS a final payment of the unpaid balance and accrued interest due on _____. All payments include principal and interest.
(c) [] Installments of Principal. In _____ equal payments of principal of \$ _____ due on _____ and on [] the same day(s) of each _____ month thereafter [] every 7th day thereafter [] every 14th day thereafter, PLUS a final payment of the unpaid principal due on _____. PLUS interest payable as set forth below.
(d) [] Other. _____

Principal and interest on this note shall be payable only to the Lender in lawful money of the United States of America at the office of the Lender. The final installment of principal on this note shall be payable only upon presentation and surrender of this note to the Town Treasurer.

2. Interest Payment. Interest is payable on _____, and on [] the same day of each _____ month thereafter, [] every 7th day thereafter, [] every 14th day thereafter, and at maturity, or, if box 1(b) is checked, at the times so indicated. Interest is computed for the actual number of days principal is unpaid on the basis of [] a 360 day year [] a 365 day year.

3. Prepayment. Full or partial prepayment of this note [] is not permitted [X] is permitted on any principal or interest payment date without penalty on or after 9/1/2016. All prepayments shall be applied first upon the unpaid interest and then applied upon the unpaid principal in inverse order of maturity.

4. Other Charges. If any payment (other than the final payment) is not made on or before the 10th day after its due date, Lender may collect a delinquency charge of 18.00% of the unpaid amount. Unpaid principal and interest bear interest after maturity until paid (whether by acceleration or lapse of time) at the rate [] which would otherwise be applicable plus _____ percentage points [X] of 18% per year, computed on the basis of [] a 360 day year [X] a 365 day year. Town agrees to pay a charge of \$ 33.00 for each check presented for payment under this note which is returned unsatisfied.

5. Security. For the prompt payment of this note with interest and the levying and collection of taxes sufficient for that purpose, the full faith, credit and resources of the Town are hereby irrevocably pledged.

6. Transferability. This note is transferable only upon the records of the Town kept for that purpose at the office of the Town Clerk, by the Lender in person or its legal representative duly authorized in writing, upon presentation of a written instrument of transfer satisfactory to the Town Clerk and upon such transfer being similarly noted hereon. The Town may deem and treat the person in whose name this note is registered as the absolute owner hereof for the purpose of receiving payment of or on account of the principal or interest hereof and for all other purposes.

7. Wisconsin Statutes; Authorization. This note issued under the terms of and for purposes specified in Section 67.12(12), Wisconsin Statutes; and is authorized by a resolution of the Town Board duly adopted by the Board at its open meeting duly convened on 9/6/2016 which resolution is recorded in the official book of its minutes pertaining to said date.

8. Internal Revenue Code. This note has been designated by the Town as a "qualified tax-exempt obligation" for purposes of Section 265 of the Internal Revenue Code of 1986, as amended. (1)

9. Certifications and Recitations of Town. It is hereby certified and recited that all conditions, things and acts required by law to exist, to be or to be done prior to and in connection with the issuance of this note have been done, have existed and have been performed in due form and time; that the aggregate indebtedness of the Town, including this note, does not exceed any limitation imposed by law, and that the Town has levied a direct annual irrepealable tax sufficient to pay this note together with interest thereon when and as payable.

THIS NOTE CONTAINS ADDITIONAL PROVISIONS ON PAGE 2

(Impress official or corporate seal, if any) Town of Cottage Grove, Dane County, Wisconsin. By Kris Hampton, CHAIRPERSON. By Kim Banigan, TOWN CLERK.

(1) Delete this paragraph if the Town will be issuing more than \$10,000,000 of tax-exempt obligations in the calendar year. In that case, lenders will not be entitled to deduct, for federal income tax purposes, interest expense that is allocable to carrying or acquiring the note.

NOTE: Official or corporate seal, if any, to be affixed.

10. Default and Enforcement. Upon the occurrence of any one or more of the following events of default: (a) Town fails to pay any amount when due under this note or under any other instrument evidencing any indebtedness of Town to Lender, (b) any representation or warranty made under this note or information provided by Town to Lender in connection with this note is or was false or fraudulent in any material respect, (c) a material adverse change occurs in Town's financial condition, (d) Town fails to timely observe or perform any of the covenants or duties in this note, (e) an event of default occurs under any agreement securing this note, or (f) Lender deems itself insecure, then the unpaid balance shall, at the option of Lender, without notice, mature and become immediately payable. The unpaid balance shall automatically mature and become immediately payable in the event Town becomes the subject of bankruptcy or other insolvency proceedings. Lender's receipt of any payment on this note after the occurrence of an event of default shall not constitute a waiver of the default of the Lender's rights and remedies upon such default.

11. Venue. To the extent not prohibited by law, Town consents that venue for any legal proceeding relating to collection of this note shall be, at Lender's option, the county in which Lender has its principal office in this state, the county in which Town is located or the county in which this note was executed by Town.

12. Obligations and Agreements of Town. Town agrees to pay all costs of collection before and after judgment, including reasonable attorneys' fees (including those incurred in successful defense or settlement of any counterclaim brought by Town or incident to any action or proceeding involving Town brought pursuant to the United States Bankruptcy Code) and waive presentment, protest, demand and notice of dishonor. Subject to Section 893.80, Wisconsin Statutes, Town agrees to indemnify and hold harmless Lender, its directors, officers and agents, from and under this note or the activities of Town. This indemnity shall survive payment of this note. Town acknowledges that Lender has not made any representation or warranties with respect to, and the Lender does not assume any responsibility to Town for, the collectability or enforceability of this note or the financial condition of Town. Town has independently determined the collectability and enforceability of this note. Town authorizes Lender to disclose financial and other information about Town to others.

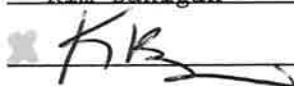
13. No Waiver; Rights and Remedies of Lender. No failure on the part of Lender to exercise, and no delay in exercising, any right, power or remedy under this note shall operate as a waiver of such right, power or remedy; nor shall any single or partial exercise of any right under this note preclude any other or further exercise of the right or the exercise of any other right. The remedies provided in this note are cumulative and not exclusive of any remedies provided by law. Without affecting the liability of Town, Lender may, without notice, accept partial payments, release or impair any collateral security for the payment of this note or agree not to sue any party liable on it. Without affecting the liability of Town, Lender may from time to time, without notice, renew or extend the time for payment subject to the time limits prescribed in Section 67.12(12), Wisconsin Statutes.

14. Interpretation. This note is intended by Town and Lender as a final expression of this note and as a complete and exclusive statement of its terms, there being no conditions to the enforceability of this note. This note may not be supplemented or modified except in writing. This note benefits Lender, its successors and assigns, and binds Town and its successors and assigns. The validity, construction and enforcement of this note are governed by the internal laws of Wisconsin. Invalidity or unenforceability of any provision of this note shall not affect the validity or enforceability of any other provisions of this note.

REGISTRATION PROVISIONS

This note shall be registered in registration records kept by the Town Clerk of the Town of Cottage Grove, Wisconsin, such registration to be noted in the registration blank below and upon said registration records, and this note may thereafter be transferred only upon presentation of a written instrument of transfer satisfactory to the Town Clerk duly executed by the Lender or its attorney, such transfer to be made on such records and endorsed hereon.

REGISTRATION

Date of Registration	Name of Lender	Signature of Town Clerk
<u>9/01/2016</u>	<u>Bank of Sun Prairie</u>	<u>Kim Banigan</u> 
_____	_____	_____
_____	_____	_____
_____	_____	_____