

RESOLUTION

RESOLUTION NO. 2020-19

RESOLUTION AUTHORIZING THE BORROWING OF \$600,000.00; PROVIDING FOR THE ISSUANCE AND SALE OF A GENERAL OBLIGATION PROMISSORY NOTE THEREFOR; AND LEVYING A TAX IN CONNECTION THEREWITH

WHEREAS, the Common Council (the "Governing Body") hereby finds and determines that it is necessary, desirable and in the best interest of the City of Waterloo, Jefferson County(ies), Wisconsin (the "Issuer") to raise funds for the purpose of:

Lending program for private lead service line replacement.

(the "Borrowing Purpose"); and

WHEREAS, the Governing Body hereby finds and determines that the Borrowing Purpose is within the Issuer's power to undertake and therefore serves a "public purpose" as that term is defined in Section 67.04(1)(b) of the Wisconsin Statutes; and

WHEREAS, the Issuer is authorized by the provisions of Section 67.12(12) of the Wisconsin Statutes to borrow money and issue general obligation promissory notes for such public purposes.

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the Issuer that:

Section 1. Authorization of the Note. For the purpose of paying the cost of the Borrowing Purpose, there shall be borrowed pursuant to Section 67.12(12) of the Wisconsin Statutes, the principal sum of \$600,000.00 from Avestar Credit Union (the "Lender") in accordance with the terms set forth herein.

Section 2. Issuance of the Note. To evidence such indebtedness, the Mayor and the Clerk are hereby authorized, empowered and directed to make, execute, issue and deliver to the Lender for, on behalf of and in the name of the Issuer, a general obligation promissory note aggregating the principal amount of \$600,000.00 (the "Note").

Section 3. Terms of the Note. The Note shall be designated "General Obligation Promissory Note"; shall be dated the date of its issuance; shall bear interest at the rate of 3.890% per annum; and shall be payable as follows:

Borrower will pay this loan in one principal payment of \$600,000.00 plus interest on May 29, 2028. This payment due on May 29, 2028, will be for all principal and all accrued interest not yet paid. In addition, Borrower will pay regular annual payments of all accrued unpaid interest due as of each payment date, beginning August 1, 2020, with all subsequent interest payments to be due on the same day of each year after that.

Interest on this Note is computed on a 365/365 simple interest basis; that is, by applying the ratio of the interest rate over the number of days in a year, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this Note is computed using this method.

Section 4. Prepayment Provisions. The Note shall have prepayment privileges on any principal or interest payment date on or after 05-29-2028.

Section 5. Form of the Note. The Note shall be issued in registered form and shall be attached hereto and incorporated herein by this reference.

Section 6. Direct Annual Irrepealable Tax Levy. For the purpose of paying the principal of and interest on the Note as the same becomes due, the full faith, credit and resources of the Issuer are hereby irrevocably pledged, and a direct annual irrepealable tax is hereby levied upon all taxable property of the Issuer. Said direct annual irrepealable tax shall be levied in the years and amounts as follows:

<u>Levy Year</u>	<u>Amount</u>
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The aforesaid direct annual irrepealable tax hereby levied shall be collected in addition to all other taxes and in the same manner and at the same time as other taxes of the Issuer levied in said years are collected. So long as any part of the principal of or interest on the Note remains unpaid, the tax herein above levied shall be and continues irrepealable except that the amount of tax carried onto the tax roll may be reduced in any year by the amount of any surplus in the Debt Service Fund Account created herein. If at any time there shall be on hand insufficient funds from the aforesaid tax levy to meet principal and/or interest payments on the Note when due, the requisite amount shall be paid from other funds of the Issuer then available, which sums shall be replaced upon the collection of the taxes herein levied. In the event the Issuer 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.

Section 7. Debt Service Fund Account. There is hereby established in the Issuer's treasury a fund account separate and distinct from every other Issuer fund or account designated "Debt Service Fund Account for \$600,000.00 General Obligation Promissory Note." Such fund shall be maintained in accordance with generally accepted accounting practices. There shall be deposited in said fund account any premium plus accrued interest paid on the Note at the time of delivery to the Lender, all money or funds raised by taxation pursuant to Section 6 hereof and all other sums as may be necessary to pay interest on the Note when the same shall become due and to retire the principal installments on the Note. Said fund account shall be used for the sole purpose of paying the principal of and interest on the Note and shall be maintained for such purpose until such indebtedness is fully paid or otherwise extinguished. Sinking funds established for obligations previously issued by the Issuer may be considered as separate and distinct accounts within the Debt Service Fund Account.

Section 8. Segregated Borrowed Money Fund. The proceeds of the Note (the "Note Proceeds") (other than any premium and accrued interest

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(Continued)**

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which must be paid at the time of the delivery of the Note into the Debt Service Fund Account created above) shall be deposited into an account separate and distinct from all other funds and be disbursed solely for the purposes for which borrowed or for the payment for the principal of and the interest on the Note.

Section 9. Arbitrage Covenant. The Issuer shall not take any action with respect to the Note Proceeds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken on the date of the delivery of and payment for the Note (the "Closing"), would cause the Note to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code") and any income tax regulations promulgated thereunder (the "Regulations").

The Note Proceeds may be temporarily invested in legal investments until needed, provided however, that the Issuer hereby covenants and agrees that so long as the Note remains outstanding, moneys on deposit in any fund or account created or maintained in connection with the Note, whether such moneys were derived from the Note Proceeds or from any other source, will not be used or invested in a manner which would cause the Note to be an "arbitrage bond" within the meaning of the Code or Regulations.

The Clerk, or other officer of the Issuer charged with responsibility for issuing the Note, shall provide appropriate certifications of the Issuer, for inclusion in the transcript of proceedings, setting forth the reasonable expectations of the Issuer regarding the amount and use of the Note Proceeds and the facts and estimates on which such expectations are based, all as of the Closing.

Section 10. Additional Tax Covenants; Exemption from Rebate; Qualified Tax-Exempt Obligation Status. The Issuer hereby further covenants and agrees that it will take all necessary steps and perform all obligations required by the Code and Regulations (whether prior to or subsequent to the issuance of the Note) to assure that the Note is an obligation described in Section 103(a) of the Code, the interest on which is excluded from gross income for federal income tax purposes, throughout its term. The Clerk or other officer of the Issuer charged with the responsibility of issuing the Note, shall provide appropriate certifications of the Issuer as of the Closing, for inclusion in the transcript of proceedings, certifying that it can and covenanting that it will comply with the provisions of the Code and Regulations.

Further, it is the intent of the Issuer to take all reasonable and lawful actions to comply with any new tax laws enacted so that the Note will continue to be an obligation described in Section 103(a) of the Code, the interest on which is excluded from gross income for federal income tax purposes.

For Note Proceeds allocable to a Borrowing Purpose for new projects or acquisitions, the Issuer reasonably expects to:

- qualify for the small issuer rebate exception because it (including any entities subordinate to the Issuer) will issue no more than \$5,000,000 of tax-exempt obligations (including the Note(s)) during the current calendar year.
- qualify for the eighteen month rebate exception under Section 1.148-7(d) of the Regulations.
- qualify for the two-year rebate exception under Section 148(f)(4) of the Code.
- not qualify for an exception to rebate.

The Issuer hereby designates the Note to be a "qualified tax-exempt obligation" pursuant to the provisions of Section 265(b)(3) of the Code and in support of such designation, the Clerk or other officer of the Issuer charged with the responsibility for issuing the Note, shall provide appropriate certifications of the Issuer, all as of the Closing.

Section 11. Execution of the Note. The Note shall be prepared in typewritten form, executed on behalf of the Issuer by the manual or facsimile signatures of the Mayor and Clerk, sealed with its official or corporate seal thereof, if any, and delivered to the Lender upon payment to the Issuer of the purchase price thereof, plus accrued interest to the date of delivery; provided that, if this is a refinancing, the refunding Note shall be immediately exchanged for the note being refinanced. In the event that either of the officers whose signatures appear on the Note shall cease to be such officers before the delivery of the Note, such signatures shall nevertheless be valid and sufficient for all purposes to the same extent as if they had remained in office until such delivery. The aforesaid officers are hereby authorized to do all acts and execute all documents as may be necessary and convenient for effectuating the Closing.

Section 12. Payment of the Note. The principal of and interest on the Note shall be paid by the Clerk or Treasurer in lawful money of the United States.

Section 13. Registration and Transfer of Note. The 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 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 Clerk, shall be made on such Note.

Section 14. Conflicting Resolutions; Severability; Effective Date. All prior resolutions, rules or other actions of the Issuer or any parts thereof in conflict with the provisions hereof shall be, and the same are, hereby rescinded insofar as the same may so conflict. In the event that any one or more provisions hereof shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions hereof. The foregoing shall take effect immediately upon adoption and approval in the manner provided by law.

Section 15. Financial Reports. Officials of the Issuer are hereby authorized and directed, so long as the Note is outstanding, to deliver to Lender any audit statement or other financial information Lender may reasonably request and to discuss its affairs and finances with Lender.

Adopted and recorded this 21st day of May, 2020.

(Seal)

By: _____
Jenifer Quimby, Mayor

ATTEST:

By: _____
Authorized Signer, Clerk

DRAFT

GENERAL OBLIGATION PROMISSORY NOTE

UNITED STATES OF AMERICA STATE OF WISCONSIN CITY OF WATERLOO

original date of issue:

05-29-2020

REGISTERED OWNER: Avestar Credit Union

PRINCIPAL AMOUNT: SIX HUNDRED THOUSAND & 00/100 DOLLARS
(\$600,000.00)

Section 1. Payment Schedule. KNOW ALL MEN BY THESE PRESENTS, that the City of Waterloo, Jefferson County(ies), Wisconsin (the "Issuer"), hereby acknowledges itself to owe and for value received promises to pay to the registered owner identified above, or to registered assigns, (the "Lender") the principal amount identified above, payable with interest at the rate of 3.890% per annum as follows:

Borrower will pay this loan in one principal payment of \$600,000.00 plus interest on May 29, 2028. This payment due on May 29, 2028, will be for all principal and all accrued interest not yet paid. In addition, Borrower will pay regular annual payments of all accrued unpaid interest due as of each payment date, beginning August 1, 2020, with all subsequent interest payments to be due on the same day of each year after that.

Both the principal of and interest on this Note are payable to the Lender in lawful money of the United States at the office of the Lender. Payment of the last installment of principal of this Note shall be made upon presentation and surrender hereof to the Issuer's Clerk or Treasurer.

Interest on this Note is computed on a 365/365 simple interest basis; that is, by applying the ratio of the interest rate over the number of days in a year, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this Note is computed using this method.

Section 2. 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 5.000% of the unpaid amount. Unpaid principal and interest bear interest after maturity until paid (whether by acceleration or lapse of time) at the rate computed on the basis of a 365 day year.

Section 3. Security. For the prompt payment of this Note together with interest hereon as aforesaid and for the levy of taxes sufficient for that purpose, the full faith, credit and resources of the Issuer are hereby irrevocably pledged.

Section 4. Purpose and Authorization. This Note is issued pursuant to the provisions of Section 67.12(12), Wisconsin Statutes, for the purpose of paying the cost of the "Borrowing Purpose" as defined and authorized by a resolution of the Issuer's Common Council (the "Governing Body") duly adopted at a meeting held on 05-21-2020. Said resolution is recorded in the official minutes of the Governing Body for said date.

Section 5. Prepayment. This Note is subject to redemption prior to maturity on any principal or interest payment date on or after 05-29-2028, at the unpaid principal amount thereof, plus accrued interest to the date of redemption. All prepayments, if applicable, shall be applied first upon the unpaid interest and then applied upon the unpaid principal in inverse order of maturity.

Section 6. Transferability. This Note is transferable by a written assignment, in a form satisfactory to the Issuer's Clerk, duly executed by the registered owner hereof or by such owner's duly authorized legal representative. Upon such transfer a new registered Note may be issued to the transferee in exchange hereof if requested by said transferee. The Issuer may deem and treat the registered owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof, and interest due hereon and for all other purposes, and the Issuer shall not be affected by notice to the contrary.

Section 7. Certifications. It is hereby certified and recited that all conditions, things and acts required by law to exist 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 Issuer, including this Note, does not exceed any limitation imposed by law or the Constitution of the State of Wisconsin; and that a direct annual irrepealable tax has been levied sufficient to pay this Note, together with the interest thereon, when and as payable. It is hereby further certified that the Issuer has designated this Note to be a "qualified tax-exempt obligation" pursuant to the provisions of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

Section 8. Default. Upon the occurrence of any one or more of the following events of default, then the unpaid balance shall, at the option of Lender, without notice, mature and become immediately payable: (a) Issuer fails to pay any amount when due under this Note or under any other instrument evidencing any indebtedness of Issuer to Lender; (b) any representation or warranty made under this Note or information provided by Issuer to Lender in connection with this Note is or was false or fraudulent in any material respect; (c) a material adverse change occurs in Issuer's financial condition; (d) Issuer 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. The unpaid balance shall automatically mature and become immediately payable in the event Issuer 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.

Section 9. Issuer Obligations. Issuer agrees to pay all costs of collection before and after judgment, including, without limitation, reasonable attorney's fees (including those incurred in successful defense or settlement of any counterclaim brought by Issuer or incident to any action or proceeding involving Issuer brought pursuant to the United States Bankruptcy Code) and waive presentment, protest, demand and notice of dishonor. Subject to Wis. Stat. § 893.80, Issuer agrees to indemnify and hold harmless Lender, its directors, officers and agents, from and under this Note or the activities of Issuer. This indemnity shall survive payment of this Note. Issuer acknowledges that Lender has not made any representation or warranties with respect to, and the Lender does not assume any responsibility to Issuer for, the collectability or enforceability of this Note or the financial condition of Issuer. Issuer has independently determined the collectability and enforceability of this Note. Issuer authorizes Lender to disclose financial and other information about Issuer to others.

Section 10. Waiver. No failure on the part of Lender to exercise, and no delay in exercising, any right, power or remedy under this Note shall

**GENERAL OBLIGATION PROMISSORY NOTE
(Continued)**

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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.

Section 11. Rights of Lender. The remedies provided in this Note are cumulative and not exclusive of any remedies provided by law. Without affecting the liability of Issuer, 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 Issuer, Lender may from time to time, without notice, renew or extend the time for repayment subject to the time limits prescribed in Wis. Stat. § 67.12(12).

Section 12. Venue: Interpretation. Unless otherwise prohibited by law, the venue for any legal proceeding relating to collection of this Note shall be, at Lender's option: (a) the county in which Lender has its principal office in this state; (b) the county in which Issuer is located; (c) or the county in which this Note was executed by Issuer. This Note is intended by Issuer and Purchase as the 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 Issuer 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.

LINE OF CREDIT ADDENDUM. This Note evidences a Closed End Line of Credit. Multiple advances may be allowed until the entire line has been fully advanced.

LOAN COVENANTS. Borrower to maintain minimum debt service coverage ratio (DSCR) of 1.20x beginning with the year ending 12-31-2020, calculated as follows: Cash available for debt service, depreciation and amortization divided by the sum of all annual debt payments on the property. Tested annually via audited financial statements.

Annual audited financial statements required as requested by lender.

Borrower will be required to be a member of Avestar Credit Union.

PREPAYMENT PENALTY. 1% of the prepaid amount for the first half of the loan term and 1/2 % thereafter, only if refinanced with another lender.

LOAN FEES. Borrower will pay a one-time upfront origination fee of 25bps or .25 percent of the loan amount which equates to \$1,500.00. The Lender will directly pay Servion Commercial Loan Resources, Inc. a document preparation fee of \$400.00.

IN WITNESS WHEREOF, the Issuer, by its Governing Body, has caused this Note to be executed for it and in its name by the signatures of its duly qualified Mayor and Clerk or persons authorized by law to sign on their behalf, and to be sealed with its official or corporate seal, if any, all as of the original date of issue identified above.

CITY OF WATERLOO, WISCONSIN:

(Seal)

By: _____
Jenifer Quimby, Mayor

By: _____
Authorized Signer, Clerk

REGISTRATION

This Note shall be registered in registration records kept by the Clerk of the Issuer, such registration to be noted in the registration blank below and upon said registration records, and this Note may thereafter be transferred only in accordance with the terms of this Note, such transfer to be made on such records and endorsed hereon.

<u>Date of Registration</u>	<u>Name of Lender</u>	<u>Signature of Clerk</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

EXHIBIT TO LOAN DOCUMENTS

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$600,000.00	05-29-2020	05-29-2028	01-2020-05-29			***	
References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "*****" has been omitted due to text length limitations.							

Borrower: Waterloo
136 North Monroe Street
Waterloo, WI 53594-1125

Lender: Avestar Credit Union
Main Office - Commercial Lending
125 West Madison Street
Waterloo, WI 53594

This EXHIBIT TO LOAN DOCUMENTS (this "Exhibit") dated May 29, 2020, is made by AVESTAR CREDIT UNION, a Wisconsin based non-profit financial institution ("Lender") and the CITY OF WATERLOO, a Wisconsin municipality ("Borrower").

WHEREAS, Lender has agreed to extend a loan to Borrower in the maximum principal amount of SIX HUNDRED THOUSAND and 00/100 Dollars (\$600,000.00), as evidenced by, among other things, that certain promissory note dated as of even date herewith (as the same may be amended, renewed or replaced, the "Note", that certain Issuer's Certificate, the "Certificate", and Resolution, the "Resolution" (the Note, the Certificate, the Resolution and any other documents related to the Loan are each a "Loan Document" and, collectively, the "Loan Documents"); and

WHEREAS, Lender and Borrower desire to memorialize and modify certain terms relating to the Loan Documents, as more particularly set forth in this Exhibit.

NOW, THEREFORE, in consideration of the foregoing, which are incorporated into and made a part of this Exhibit, the covenants, promises, and agreements contained in this Exhibit, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Lender and Borrower covenant, promise, and agree as follows:

1. Defaults: Events of Default. With respect to Section 8. Default. of the Note, Lender and Borrower agree to remove items (c) and (f)
2. Prepayment Provisions. With respect to Section 4. Prepayment Provisions of the Resolution, Lender and Borrower agree that a prepayment penalty shall only apply if the subject loan is refinanced by another lender.
3. Note Proceeds : Tax Exempt Status. With respect to Section 16. of the Issuer's Certificate, the Lender and Borrower agree to remove this section. With respect to Section 29. of the Issuer's Certificate, the Lender and Borrower agree to remove this section, as the subject loan is not tax exempt.
4. Effect. In the event the terms and provisions of this Exhibit conflict with any provisions of the Loan Documents, this Exhibit shall control.
5. Counterparts. This Exhibit may be executed in several counterparts, each of which shall be deemed an original and such counterpart together shall constitute one and the same instrument.
6. Binding. This Exhibit shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.
7. Governing Law and Interpretation. This Exhibit shall be construed in accordance with the laws of the State of Wisconsin.

BORROWER:

WATERLOO

By: _____
Jennifer Quimby, Authorized Signer

LENDER:

AVESTAR CREDIT UNION

X _____
Kay Radloff, President