

**BORROWING RESOLUTION 2018-2**

Town of Dane, Dane County

**WHEREAS**, the Town of Dane, DANE COUNTY, WISCONSIN (hereinafter referred to as the *Town*) determines that it is presently in need of funds aggregating Two Hundred Eighty-Five Thousand (\$285,000.00), for a municipal obligation, authorized by this **BORROWING RESOLUTION 2018-2**, for the following public purposes, to-wit:

*To fund the Town’s contribution to the local fire district for the purchase a two fire trucks and other various general fund expenses.*

**WHEREAS**, the Town Board deems it necessary and in the best interests of the *Town* that, pursuant to the provisions of WISCONSIN STATUTES ANNOTATED §67.12(12), the sum of Two Hundred Eighty-Five Thousand (\$285,000.00), shall be borrowed upon the terms and conditions hereinafter set forth for the purpose herein above stated;

**NOW, THEREFORE, BE IT RESOLVED**, for the purposes herein above set forth, by the Town Board of the Town of Dane as follows:

**SECTION 1. AUTHORIZATION OF THE NOTE.**

Pursuant to §67.12(12) WIS. STATS., the Town Chair and the Town Clerk are hereby expressly authorized, empowered and directed, to make, execute, and issue to **BANK OF PRAIRIE DU SAC**, Prairie du Sac, Wisconsin, (hereinafter referred to as the *Lender*) a general obligation promissory note (“Note”) in the principal sum amount of Two Hundred Eighty-Five Thousand (\$285,000.00), plus accrued interest not to exceed an annual rate of 3.95% per annum, with the following maximum principal and interest payments:

<b>DATE</b>	<b>PAYMENT</b>	<b>INTEREST</b>	<b>PRINCIPAL</b>
3/1/2019	\$17,434.68	\$6,415.04	\$11,019.64
9/1/2019	\$17,434.68	\$5,411.11	\$12,023.57
3/1/2020	\$17,434.68	\$5,173.65	\$12,261.03
9/1/2020	\$17,434.68	\$4,931.49	\$12,503.19
3/1/2021	\$17,434.68	\$4,684.55	\$12,750.13
9/1/2021	\$17,434.68	\$4,432.74	\$13,001.94
3/1/2022	\$17,434.68	\$4,175.95	\$13,258.73
9/1/2022	\$17,434.68	\$3,914.09	\$13,520.59
3/1/2023	\$17,434.68	\$3,647.06	\$13,787.62
9/1/2023	\$17,434.68	\$3,374.75	\$14,059.93
3/1/2024	\$17,434.68	\$3,097.07	\$14,337.61
9/1/2024	\$17,434.68	\$2,813.90	\$14,620.78
3/1/2025	\$17,434.68	\$2,525.14	\$14,909.54

9/1/2025	\$17,434.68	\$2,230.68	\$15,204.00
3/1/2026	\$17,434.68	\$1,930.40	\$15,504.28
9/1/2026	\$17,434.68	\$1,624.19	\$15,810.49
3/1/2027	\$17,434.68	\$1,311.93	\$16,122.75
9/1/2027	\$17,434.68	\$993.51	\$16,441.17
3/1/2028	\$17,434.68	\$668.79	\$16,765.89
8/6/2028	\$17,389.46	\$292.34	\$17,097.12
<b>TOTALS</b>	<b>\$348,648.38</b>	<b>\$63,648.38</b>	<b>\$285,000.00</b>

**SECTION 2. FORM OF NOTE.**

The Note shall be in substantially in the following form:

**PROMISSORY NOTE**  
Amount of Each Note

No. \_\_\_

Date of Issue

**FOR VALUE RECEIVED** on August 7, 2018, the undersigned **TOWN OF DANE, DANE COUNTY, WISCONSIN**, (hereinafter called the *Town*) promises to pay to the order of **BANK OF PRAIRIE DU SAC** (hereinafter *Lender*) the principal sum of Two Hundred Eighty-Five Thousand (\$285,000.00), together with interest at a rate not to exceed 3.95% per annum. Principal and interest shall be due and payable as follows:

Principal and interest payments of \$17,434.68 shall be payable semi-annually commencing on March 1, 2019 and subsequently every six months thereafter, provided all principal and interest is fully paid on or before August 6, 2028.

Principal and interest on this Note shall be payable in lawful money of the UNITED STATES OF AMERICA.

The *Town* shall have the right and option to prepay any and all of the amount outstanding on this Note. Any such prepayments are to be applied first upon the unpaid interest and then next applied upon the unpaid principal. For prompt payment of this Note with interest thereon as aforesaid and the levying and collection of taxes sufficient for those purposes, the full faith, credit and resources of the TOWN OF DANE are hereby irrevocably pledged.

This Note is issued under the terms of and for the purposes specified in §67.12(12) WIS. STATS., and is authorized by the resolution of the Town Board of the *Town* duly adopted by a majority vote of the members of the Town Board at its meeting duly convened on August 6, 2018, which resolution is recorded in the official book of its minutes pertaining to said date.

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 or the CONSTITUTION OF THE STATE OF WISCONSIN, and that the Town has levied a direct irrevocable annual tax sufficient to pay this Note together with interest thereon when and as payable.

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 the 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, or (e) an event of default occurs under any agreement securing this Note, then, at the option of *Lender* and thirty (30) days after *Lender* has notified the *Town* in writing of the event of default and Town has failed to cure such default, the unpaid balance may 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.

No delay or omission on the part of the holder thereof to exercise any right hereunder shall impair such right or be considered as a waiver thereof or as a waiver of or acquiescence in any default hereunder.

To the extent not prohibited by law, the *Town* and *Lender* agree that the venue for any legal proceeding relating to the collection of this Note shall be Dane County, Wisconsin.

Town agrees to pay all costs of collection before and after judgment, including reasonable attorney's fees (including those incurred in successful defense or settlement of any counterclaim brought by the Town or incident to any action or proceeding involving the 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 representations 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 the 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.

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 the 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 the 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.

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 the 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.

**IN WITNESS WHEREOF**, the TOWN BOARD of the TOWN OF DANE, DANE COUNTY, WISCONSIN, has caused this Note to be signed on behalf of said Town by its duly elected Town Chair and the Town Clerk as of August 7, 2018.

**TOWN OF DANE  
DANE COUNTY, WISCONSIN**

BY: \_\_\_\_\_  
DAVID KOENIG, TOWN CHAIR

BY: \_\_\_\_\_  
ANGIE VOLKMAN, TOWN CLERK

**SECTION 3. REDEMPTION PROVISION.**

At the option of the Town, the Note shall be subject to redemption prior to maturity at any time. The Note shall be redeemable as a whole or in part, and if in part, from maturities selected by the Town and within maturity by lot, at the principal amount plus accrued interest to the date of redemption.

**SECTION 4. NO PROPERTY PLEDGED.**

The Town is not pledging any property as security for the Note.

**SECTION 5. DIRECT ANNUAL IRREPEALABLE TAX LEVY.**

For the purpose of paying the principal and of the interest on the Note as the same becomes due, the full faith, credit and resources of the Town are hereby irrevocably pledged, and there is hereby levied upon all of the taxable property of the Town a direct annual irrepealable tax in the years and in the amounts as follows:

<b>YEAR</b>	<b>TAX LEVY</b>
2019	\$34,869.36
2020	\$34,869.36
2021	\$34,869.36
2022	\$34,869.36
2023	\$34,869.36
2024	\$34,869.36
2025	\$34,869.36
2026	\$34,869.36
2027	\$34,869.36
2028	\$34,824.14

The direct annual irrepealable tax hereby levied shall be carried onto the tax roll and collected in addition to all other taxes and in the same manner and at the same time as other taxes of the Town for 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 to be irrepealable except that the amounts of tax carried onto the tax roll may be reduced in any year by the amount of any surplus in the Debt Service Fund created by Section Six below.

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

**SECTION 6. DEBT SERVICE FUND ACCOUNT.**

The Town hereby establishes in the Town treasury a fund account separate and distinct from all other funds or accounts in the Town designated "Debt Service Fund Account" for the \$285,000.00 Town of Dane General Obligation Promissory Note dated August 7, 2018. This fund account shall be used solely for the purpose of paying the principal of and interest on the Note. There shall be deposited in said fund account all accrued interest paid on the Note at the time the Note is delivered to the Purchaser, any

premium, all money raised by the taxation pursuant to Section Five hereof and all other sums as may be necessary to pay principal of and interest on the Note as the same becomes due. This fund account shall be maintained for such purpose until such indebtedness is fully paid of otherwise extinguished.

**SECTION 7. BORROWED MONEY FUND; REIMBURSEMENTS.**

The proceeds of the Note (“Note Proceeds”)(other than any premium and accrued interest 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 disbursed solely for the purposes for which borrowed or for the payment of the principal of and interest on the Note.

The Town declares its reasonable expectation to reimburse itself from the Note Proceeds for expenditures relating to the public purposes recited above which it pays from other funds of the Town no more than 60 days prior to receipt of the Note Proceeds. Pursuant to the United States Treasury Regulation Section 1.150-2, the Town hereby declares its official intent to reimburse itself from the proceeds of the Note authorized hereby for any expenditure for which the Note is obtained and which it has paid from other funds within 60 days prior to the date of adoption of this Resolution. The maximum principal amount of debt expected to be incurred for such purposes does not exceed the maximum principal amount of the Note. The declaration and the Resolution, of which it is a part, shall be publicly available in the official books, records, or proceedings of the Town Board.

**SECTION 8. ARBITRAGE COVENANT.**

The Town 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 any payment for the Note (the “Closing”), would cause said Note to be an “arbitrage bond” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, (the “Code”) or any income tax regulations promulgated thereunder (the “Regulations”).

The Note Proceeds may be temporarily invested in legal investments until needed, provided however, that the Town 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 “arbitrage bonds” within the meaning of the Code or Regulations.

The Town Clerk, or other officer of the Town charged with responsibility for issuing the Note, shall provide an appropriate certificate of the Town, for inclusion in the transcript of the proceedings, setting forth the reasonable expectations of the Town

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 9. ADDITIONAL TAX COVENANTS; SMALL ISSUER EXEMPTION FROM REBATE; QUALIFIED TAX-EXEMPT OBLIGATION STATUS.**

The Town 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 as 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 Town Clerk or other officer of the Town charged with the responsibility of issuing the Note, shall provide an appropriate certificate of the Town 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.

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

In accordance with Section 148(f)(4)(D) of the Code, the Town covenants that it is a governmental unit with general taxing powers; that the Note is not “private activity bonds” as defined in Section 141 of the Code; that ninety-five percent (95%) or more of the net proceeds of the Note are to be used for local governmental activities of the Town; and that the aggregate face amount of all tax-exempt obligations (other than “private activity bonds”) issued by the Town, including all subordinate entities of the Town, during calendar year 2018 will not exceed \$10,000,000.00. If for any reason the Town did not qualify for the small issuer exemption for the rebate requirements of the Code, the Town covenants that it would take all necessary steps to comply with such requirements.

The Town Board hereby designates the Note to be “qualified tax-exempt obligations” pursuant to the provisions of Section 265(b)(3) of the Code and in support of such designation, the Town Clerk or other officer of the Town charged with the responsibility for issuing the Note, shall provide an appropriate certificate of the Town, all as of the Closing.

**SECTION 10. EXECUTION OF THE NOTE.**

The Note shall be issued in typewritten or printed form, executed on behalf of the Town by the manual or facsimile signatures of the Town Chair and Town Clerk, authenticated by its fiscal agent, if any, and sealed with its official or corporate seal, if any, or a facsimile thereof. In the event that either of the officers whose signatures appear of the Note ceases 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 and deliver all documents as may be necessary and convenient to effectuate the Closing.

The aforesaid officers are also hereby authorized and directed, so long as the Note is outstanding, to deliver to Lender any audit statement or other financial information the Lender may reasonably request and to discuss its affairs and finances with the lender.

**SECTION 11. PAYMENT OF THE NOTE.**

The principal of and interest on the Note shall be paid in lawful money of the United States of America.

**SECTION 12. PERSON TREATED AS OWNERS; TRANSFER OF NOTE.**

The Town shall keep books for the registration and for the transfer of the Note. The person in whose name any 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.

Any Note may be transferred by the registered owner thereof by surrender 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 attorney duly authorized in writing. Upon such transfer, the Town Chair and Town Clerk shall execute and deliver in the name of the transferee(s) a new Note or Notes of a like aggregate principal amount, series and maturity and the Town Clerk shall record the name of each transferee in the registration book. No registration shall be made to bearer. The Town Clerk shall cancel any Note surrendered for transfer.

The Town shall cooperate in any such transfer, and the Town Chair and Town Clerk are authorized to execute any new Note or Notes necessary to affect any such transfer.

The 1<sup>st</sup> day of the calendar month in which each payment is due shall be the record date of the Note. Payment of interest on the Note on any interest payment date shall be made to the registered owners of the Note as they appear on the registration book of the Town at the close of business on the corresponding record date.

**SECTION 13. CONFLICTING RESOLUTION, SEVERABILITY, EFFECTIVE DATE.**

All prior resolutions, rules, or other actions of the Town Board or any parts thereof in conflict with the provisions hereof shall be, and the same are, hereby rescinded

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.

**PASSED AND ADOPTED** this August 6, 2018.

SIGNED:

ATTEST:

\_\_\_\_\_  
DAVID KOENIG, TOWN CHAIR

\_\_\_\_\_  
ANGIE VOLKMAN, TOWN CLERK

STATE OF WISCONSIN        }  
  } ss.  
COUNTY OF DANE            }

**CERTIFICATION**

I hereby certify that the above foregoing **BORROWING RESOLUTION** was duly adopted by the TOWN OF DANE, WISCONSIN, by at least a three-fourths vote of the members-elect of the TOWN BOARD, on August 6, 2018, and approved by the Town Chair on August 6, 2018.

\_\_\_\_\_  
ANGIE VOLKMAN  
TOWN CLERK for the  
TOWN OF DANE