

RESOLUTION NO. 2010-13

RESOLUTION AUTHORIZING AN APPLICATION FOR A STATE TRUST FUND LOAN FROM AND THE ISSUANCE OF CERTIFICATES OF INDEBTEDNESS TO THE STATE OF WISCONSIN BOARD OF COMMISSIONERS OF PUBLIC LANDS, AND MAKING CERTAIN COVENANTS RELATING TO THE BUILD AMERICA BOND PROGRAM

WHEREAS, the Common Council hereby finds and determines that it is necessary, desirable and in the best interest of the City of Cedarburg, Ozaukee County, Wisconsin (the "City") to raise funds in an amount not to exceed \$800,000 for the public purpose of financing the Washington Avenue reconstruction project (the "Project"), and there are insufficient funds on hand to pay said cost;

WHEREAS, the provisions of Section 24.61(3), Wisconsin Statutes, authorize the Board of Commissioners of Public Lands (the "Board") to make loans from moneys under its control or belonging to its trust funds to cities for such public purposes;

WHEREAS, City staff has previously prepared and the Common Council has approved an application for a state trust fund loan in the form required by the Board (the "Application");

WHEREAS, it is the finding of the Common Council that it is necessary, desirable and in the best interest of the City to borrow moneys from the Board through its state trust fund loan program under the terms and conditions specified in the Application, and to authorize the execution and delivery of one or more certificates of indebtedness evidencing the City's obligation to repay amounts drawn on such loan (the "Certificates");

WHEREAS, it is the finding of the Common Council that it is desirable and in the best interest of the City to take the steps necessary to irrevocably designate the Certificates to be qualified "Build America Bonds" within the meaning of Subsection 54AA(g) of the Internal Revenue Code of 1986, as amended (the "Code") and the applicable regulations promulgated under the Code (the "Regulations") so that the City may claim refundable credits with respect to each interest payment on the Certificates, payable to the City by the Secretary of the United States Department of the Treasury ("Treasury"); and

WHEREAS, because the Common Council will designate the Certificates to be qualified Build America Bonds, the interest on the Certificates will be includible in gross income for federal income tax purposes under Subsection 54AA(f)(1) of the Code.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City that:

Section 1. Ratification of the Application. The Application in substantially the form previously presented to this Common Council is hereby authorized and ratified in all material respects. All actions undertaken by representatives of the City in connection with the preparation of the Application are hereby ratified and approved. Pursuant to Section 24.66(2), Wisconsin Statutes, the Application has been executed by a majority of the Common Council and submitted, with all accompanying exhibits, to the Board for recording as provided under Section 24.66(6), Wisconsin Statutes.

Section 2. Authorization of the Borrowing and the Issuance of the Certificates. For the purpose of paying the cost of the Project, there shall be borrowed from the Board pursuant to Section 24.61(3), Wisconsin Statutes, the principal sum of not to exceed EIGHT HUNDRED THOUSAND DOLLARS (\$800,000) in accordance with the terms and conditions of the Application upon its approval by the Board. To evidence the obligation of the City to repay such loan, pursuant to Section 24.67, Wisconsin Statutes, the Mayor and City Clerk are hereby authorized, empowered and directed to make, execute, issue and deliver to the Board for, on behalf of and in the name of the City, Certificates pursuant to Section 24.67(1), Wisconsin Statutes, aggregating the principal amount of such loan, not to exceed EIGHT HUNDRED THOUSAND DOLLARS (\$800,000).

Section 3. Terms of the Certificates. The Certificates shall be issued in the aggregate principal amount of not to exceed \$800,000, shall be dated as of their date(s) of issuance and delivery, shall mature on March 15 in each year and shall have a final maturity date which is 10 years after the 15th day of March preceding the date of delivery. The Certificates shall bear interest at the rate of 4.25% per annum (calculated on the basis of actual days and a 365-day year). Payments of the principal of and interest on outstanding Certificates shall be made annually on March 15. Such annual payments will be made to the Secretary of Administration of the State of Wisconsin as indicated on respective certified annual billing statements to be provided to the City by the Board pursuant to Section 24.70(2), Wisconsin Statutes. The debt service schedule for the maximum principal amount authorized by the Application, assuming the entire principal amount were drawn on June 30, 2010, is set forth on Exhibit A and incorporated herein by this reference (the "Schedule"). The actual debt service schedule shall vary based on the principal amount drawn and the date or dates said amount is drawn.

Section 4. Additional Payments and Prepayment. Pursuant to Section 24.63(4), Wisconsin Statutes, and the procedures of the Board, the City may make additional payments or prepayments with respect to the Certificates after January 1 and prior to September 1 of each year (or during such period as the Board may otherwise prescribe) during which the Certificates are outstanding. In the event the City desires to make any such additional payment or prepayment, the City must provide at least 30 days written notice to the Board.

Section 5. Form of the Certificates. The Certificates shall be issued in registered form, shall be executed and delivered in the form provided by the Board pursuant to Section 24.67(1), Wisconsin Statutes, which is presently in substantially the form attached hereto as Exhibit B and incorporated herein by this reference.

Section 6. Tax Provisions.

(A) Direct Annual Irrepealable Tax Levy. For the purpose of paying the principal of and interest on the Certificates as the same becomes due, the full faith, credit and resources of the City are hereby irrevocably pledged, and there is hereby levied upon all of the taxable property of the City, in addition to all other taxes, a direct annual irrepealable tax in an amount and at the times sufficient for that purpose, which tax shall be in such amounts as are necessary to provide for payment of the principal of and interest on the Certificates when due. Pursuant to Section 24.66(5), Wisconsin Statutes, the levy imposed hereby shall be void in whole

or in part if the Board declines to make all or any portion of the loan evidenced by the Certificates.

(B) Tax Collection. So long as any part of the principal of or interest on the Certificates remains unpaid, the City shall be and continue without power to repeal such levy or obstruct the collection of said tax until all such payments have been made or provided for. After the issuance of the Certificates, as provided under Section 24.70(3), Wisconsin Statutes, said tax shall be, from year to year, carried onto the tax roll of the City and collected in addition to all other taxes and in the same manner and at the same time as other taxes of the City for said years are collected, except that the amount of tax carried onto the tax roll may be reduced in any year by the amount of any surplus money in the Debt Service Fund Account created below.

(C) Additional Funds. 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 Certificates when due, the requisite amounts shall be paid from other funds of the City then available, which sums shall be replaced upon the collection of the taxes herein levied.

#### Section 7. Segregated Debt Service Fund Account.

(A) Creation and Deposits. There be and there hereby is established in the treasury of the City, if one has not already been created, a debt service fund, separate and distinct from every other fund, which shall be maintained in accordance with generally accepted accounting principles. Debt service or sinking funds established for obligations previously issued by the City may be considered as separate and distinct accounts within the debt service fund.

Within the debt service fund, there hereby is established a separate and distinct account designated as the "Debt Service Fund Account for \$800,000 State Trust Fund Loan," which designation shall also include the date of delivery of each of the Certificates (the "Debt Service Fund Account") and such account shall be maintained until the indebtedness evidenced by the Certificates is fully paid or otherwise extinguished. The City Treasurer shall deposit in the Debt Service Fund Account (i) all money raised by the taxes herein levied and any amounts appropriated for the specific purpose of meeting principal of and interest on the Certificates when due; (ii) such other sums as may be necessary at any time to pay principal of and interest on the Certificates when due; and (iii) all Direct Payments (defined below) received by the City.

(B) Use and Investment. No money shall be withdrawn from the Debt Service Fund Account and appropriated for any purpose other than the payment of principal of and interest on the Certificates until all such principal and interest has been paid in full and the Certificates canceled; provided (i) the funds to provide for each payment of principal of and interest on the Certificates prior to the scheduled receipt of taxes from the next succeeding tax collection may be invested in direct obligations of the United States of America maturing in time to make such payments when they are due or in other investments permitted by law; and (ii) any funds over and above the amount of such principal and interest payments on the Certificates may be used to reduce the next succeeding tax levy, or may, at the option of the City, be invested in permitted municipal investments under the pertinent provisions of the Wisconsin Statutes ("Permitted Investments"), which investments shall continue to be a part of the Debt Service

Fund Account. Any investment of the Debt Service Fund Account shall at all times conform with the provisions of the Code and any applicable Regulations.

(C) Remaining Monies. When all of the Certificates have been paid in full and canceled, and all Permitted Investments disposed of, any money remaining in the Debt Service Fund Account shall be transferred and deposited in the general fund of the City, unless the Common Council directs otherwise.

Section 8. Proceeds of the Certificates; Segregated Borrowed Money Fund. The proceeds of the Certificates (the "Proceeds") shall be deposited into a special fund separate and distinct from all other funds of the City (the "Borrowed Money Fund") and disbursed solely for the purposes for which borrowed as provided in the Application. Monies in the Borrowed Money Fund may be temporarily invested in Permitted Investments.

Section 9. Qualified Build America Bond Designation; Irrevocable Election; Compliance with Federal Tax Laws. (a) The Certificates are hereby irrevocably designated qualified Build America Bonds within the meaning of Subsection 54AA(g) of the Code, and the City hereby irrevocably elects to apply Subsection 54AA(g) of the Code to the Certificates. The City represents that all Proceeds, less costs of issuance financed with such Proceeds (which costs shall be in an amount not to exceed 2% of such Proceeds) plus all income from temporary Permitted Investments with respect to such Proceeds ("Available Project Proceeds") shall be used only for capital expenditures. The City acknowledges that among the requirements for the Certificates to qualify and continue to qualify as qualified Build America Bonds is that the Certificates, but for their qualified Build America Bond designation, would be tax-exempt for federal income tax purposes, and hence that the requirements of the Code and Regulations regarding tax-exempt obligations apply to the Certificates. The City hereby covenants to comply with such requirements.

(b) The City thus further represents and covenants that the projects financed by the Certificates and their ownership, management and use will not cause the Certificates to be "private activity bonds" within the meaning of Section 141 of the Code. The City further covenants that it shall comply with the provisions of the Code to the extent necessary to maintain the qualified Build America Bond status of the Certificates including, if applicable, the rebate requirements of Section 148(f) of the Code. The City further covenants that it will not take any action, omit to take any action or permit the taking or omission of any action within its control (including, without limitation, making or permitting any use of the proceeds of the Certificates) if taking, permitting or omitting to take such action would cause any of the Certificates to be an arbitrage bond or a private activity bond within the meaning of the Code or would otherwise cause the Certificates to lose their status as qualified Build America Bonds within the meaning of Subsection 54AA(g) of the Code and the Regulations. The City Clerk or other officer of the City charged with the responsibility of issuing the Certificates shall provide an appropriate certificate of the City certifying that the City can and covenanting that it will comply with the provisions of the Code and Regulations.

(c) The City also covenants to use its best efforts to meet the requirements and restrictions of any different or additional federal legislation which may be made applicable to the Certificates provided that in meeting such requirements the City will do so only to the extent

consistent with the proceedings authorizing the Certificates and the laws of the State of Wisconsin and to the extent that there is a reasonable period of time in which to comply.

(d) All investments made pursuant to this Resolution shall be Permitted Investments, but no such investment shall be made in such a manner as would cause the Certificates to be "arbitrage bonds" within the meaning of Section 148 of the Code or the Regulations and an officer of the City, charged with the responsibility for issuing the Certificates, shall certify as to facts, estimates, circumstances and reasonable expectations in existence on the date of delivery of the Certificates to the Purchaser which will permit the conclusion that the Certificates are not "arbitrage bonds," within the meaning of the Code or Regulations.

Section 10. Qualified Build America Bonds - Application for Direct Payments to the City. The City shall claim available refundable credits from the Treasury with respect to each interest payment on the Certificates as provided under Subsection 54AA(g)(1) of the Code ("Direct Payments"). The Fiscal Agent (defined below) is hereby authorized and directed to take all necessary actions on behalf of the City to apply for the receipt by the City of such Direct Payments, including the timely filing of necessary Internal Revenue Service forms and information returns for that purpose and/or submitting requests electronically if and as the Treasury establishes an electronic platform in connection with its direct payment procedures. All Direct Payments received by the City shall be promptly deposited in the Debt Service Fund Account and used for no other purpose than as provided in Section 7 of this Resolution above.

Section 11. Payment of the Certificates; Fiscal Agent. The principal of and interest on the Certificates shall be paid by the City Clerk or City Treasurer (the "Fiscal Agent").

Section 12. Execution of the Certificates; Closing; Professional Services. The Certificates shall be issued in the form provided by the Board, executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Clerk as provided in Section 24.67, Wisconsin Statutes, and delivered to the Board in exchange for and as evidence of the City's obligation to repay the loan of trust fund moneys from the Board as of the date of the Closing. The aforesaid officers, together with other officials of the City, are hereby authorized and directed to do all acts and execute and deliver the Certificates and all such documents, certificates and acknowledgements as may be necessary and convenient to effectuate the Closing. The City hereby authorizes the officers and agents of the City to enter into, on its behalf, agreements and contracts in conjunction with the Certificates, including but not limited to agreements and contracts for legal, trust, fiscal agency, disclosure and continuing disclosure, and rebate calculation services. Any such contract heretofore entered into in conjunction with the issuance of the Certificates is hereby ratified and approved in all respects.

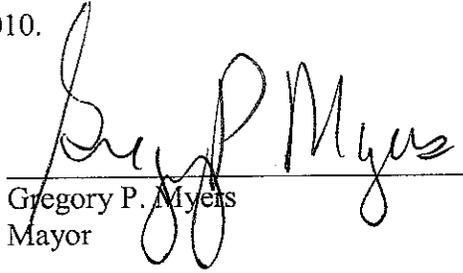
Section 13. Persons Treated as Owners; Transfer of Certificates. The City shall cause books for the registration and for the transfer of the Certificates to be kept by the Fiscal Agent. The person in whose name any Certificate shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of either principal or interest on any Certificate 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 Certificate to the extent of the sum or sums so paid.

If it is transferable, any Certificate may be transferred by the registered owner thereof by surrender of the Certificate at the office of the Fiscal Agent, 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 Mayor and City Clerk shall execute and deliver in the name of the transferee or transferees a new Certificate or Certificates of a like aggregate principal amount, series and maturity and the Fiscal Agent shall record the name of each transferee in the registration book. No registration shall be made to bearer. The Fiscal Agent shall cancel any Certificate surrendered for transfer. The City shall cooperate in any such transfer, and the Mayor and City Clerk are authorized to execute any new Certificate or Certificates necessary to effect any such transfer.

Section 14. Record Date. The last day of February of each year shall be the record date for the Certificates (the "Record Date"). Payment of interest on the Certificates on any interest payment date shall be made to the registered owners of the Certificates as they appear on the registration book of the City at the close of business on the Record Date.

Section 15. Conflicting Resolutions; Severability; Effective Date. All prior resolutions, rules or other actions of the Common Council 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.

Adopted, approved and recorded June 14, 2010.

  
\_\_\_\_\_  
Gregory P. Myers  
Mayor

ATTEST:

  
\_\_\_\_\_  
Constance K. McHugh  
City Clerk

(SEAL)

EXHIBIT A

Maximum Debt Service Schedule

(See Attached)

**CITY OF CEDARBURG, WISCONSIN**

**\$800,000 STATE TRUST FUND LOAN (W/ BAB STATUS)**

**CLOSE JUNE 30, 2010**

**Debt Service Schedule**

Date	Principal	Coupon	Interest	Total P+I
03/15/2011	74,653.29	4.250%	24,032.88	98,686.17
03/15/2012	67,774.48	4.250%	30,911.69	98,686.17
03/15/2013	70,739.35	4.250%	27,946.82	98,686.17
03/15/2014	73,745.77	4.250%	24,940.40	98,686.17
03/15/2015	76,879.97	4.250%	21,806.20	98,686.17
03/15/2016	80,096.58	4.250%	18,589.59	98,686.17
03/15/2017	83,551.47	4.250%	15,134.70	98,686.17
03/15/2018	87,102.41	4.250%	11,583.76	98,686.17
03/15/2019	90,804.26	4.250%	7,881.91	98,686.17
03/15/2020	94,652.42	4.250%	4,033.75	98,686.17
<b>Total</b>	<b>\$800,000.00</b>	<b>-</b>	<b>\$186,861.70</b>	<b>\$986,861.70</b>

**Yield Statistics**

Bond Year Dollars	\$4,394.49
Average Life	5.493 Years
Average Coupon	4.2521803%
Net Interest Cost (NIC)	4.2521803%
True Interest Cost (TIC)	4.2115332%
Bond Yield for Arbitrage Purposes	4.2115332%
All Inclusive Cost (AIC)	4.2115332%

**IRS Form 8038**

Net Interest Cost	4.2521803%
Weighted Average Maturity	5.493 Years

EXHIBIT B

FORM OF CERTIFICATE OF INDEBTEDNESS

STATE OF WISCONSIN  
BOARD OF COMMISSIONERS OF PUBLIC LANDS

CERTIFICATE OF INDEBTEDNESS

**COPY**  
\$800,000

Chapter 24 of the Wisconsin Statutes authorizes the Board of Commissioners of Public Lands to invest State Trust Funds in loans to municipalities. The municipalities are empowered to borrow from the Trust Funds in accordance with the provisions of Chapter 24 and this Certificate of Indebtedness.

The City of Cedarburg, Ozaukee County, Wisconsin, did on May 10, 2010, apply for a Trust Fund Loan from the Board of Commissioners of Public Lands in the amount of EIGHT HUNDRED THOUSAND DOLLARS (\$800,000), together with interest thereon at the rate of 4.25 percent per annum, payable in annual installments. The term of the loan is for 10 years.

The Mayor and City Clerk of the City of Cedarburg have been authorized to execute and deliver to the Board, the necessary Certificates of Indebtedness for the sums owing according to the terms of such loan, all in conformity with Chapter 24 of the Wisconsin Statutes.

This Certificate of Indebtedness is issued pursuant to and in conformity with Chapter 24 of the Wisconsin Statutes.

The City of Cedarburg, Ozaukee County, Wisconsin, acknowledges that it is indebted to the State of Wisconsin Board of Commissioners of Public Lands in the amount of EIGHT HUNDRED THOUSAND DOLLARS (\$800,000) together with the interest thereon at the rate of 4.25 percent per annum, to be repaid as provided in the application for the loan, the payment schedule and Chapter 24, payable in annual installments on March 15 of each year with the first payment due on March 15, 20\_\_, and the final payment due March 15, 20\_\_.

Any prepayments must be made on or after January 1 and prior to September 1 of each year. It is agreed that in the event of such prepayment, thirty days written notice of the prepayment must be given to the Board of Commissioners of Public Lands and that any additional payment or prepayment must be sent to the Board of Commissioners of Public Lands Office.

Annual payments will be made payable to the Secretary of Administration as indicated on the annual billing statement.

ATTESTED:

The Mayor and City Clerk of the City of Cedarburg, by virtue of the authority vested in them at \_\_\_\_\_, Wisconsin, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Signed:

**COPY**  
\_\_\_\_\_  
Mayor

Countersigned:

\_\_\_\_\_  
City Clerk