

RESOLUTION NO. 20-0035

RESOLUTION AUTHORIZING THE ISSUANCE OF \$9,905,000 GENERAL OBLIGATION PROMISSORY NOTES AND THE ISSUANCE AND SALE OF A \$9,905,000 NOTE ANTICIPATION NOTE IN ANTICIPATION THEREOF

WHEREAS, on December 16, 2019, the Common Council of the City of Manitowoc, Manitowoc County, Wisconsin (the "City") adopted a resolution (the "Set Sale Resolution"), providing for the sale of a Note Anticipation Note (the "Note") for public purposes, including street and sidewalk improvement projects, storm sewer improvements, park projects, environmental remediation, improvements to public buildings and structures, network upgrades and equipment, tax incremental projects, and the acquisition of land, vehicles and equipment (the "Project");

WHEREAS, the Common Council hereby finds and determines that the Project is within the City's power to undertake and therefore serves a "public purpose" as that term is defined in Section 67.04(1)(b), Wisconsin Statutes;

WHEREAS, cities are authorized by the provisions of Chapter 67, Wisconsin Statutes, to borrow money and issue general obligation promissory notes for such public purposes;

WHEREAS, it is the finding of the Common Council that it is necessary, desirable and in the best interest of the City to authorize the issuance of and covenant to issue general obligation promissory notes (the "Securities") to provide permanent financing for the Project;

WHEREAS, the Securities have not yet been issued or sold;

WHEREAS, cities are authorized by the provisions of Section 67.12(1)(b), Wisconsin Statutes, to issue note anticipation notes in anticipation of receiving the proceeds from the issuance and sale of the Securities;

WHEREAS, it is the finding of the Common Council that it is necessary, desirable and in the best interest of the City to authorize the issuance and sale of a note anticipation note pursuant to Section 67.12(1)(b), Wisconsin Statutes (the "Note"), in anticipation of receiving the proceeds from the issuance and sale of the Securities, to provide interim financing to pay the cost of the Project;

WHEREAS, it is the finding of the Common Council that it is necessary, desirable and in the best interest of the City to sell the Note to Zions Bancorporation, N.A. (the "Purchaser"), pursuant to the terms and conditions of the Preliminary Private Placement Memorandum attached hereto as Exhibit A and incorporated herein by this reference (the "Proposal"); and

WHEREAS, the City was duly organized and is validly existing and operating under and by virtue of the laws of the State of Wisconsin.

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

Section 1. Authorization and Issuance of Securities. The City hereby authorizes the issuance and declares its intention and covenants to issue the Securities pursuant to the provisions of Chapter 67, Wisconsin Statutes, in an amount sufficient to retire any outstanding note anticipation notes issued for the purpose of paying the cost of the Project. There is hereby levied on all the taxable property in the City a direct, annual, irrevocable tax sufficient to pay the interest on said Securities as it becomes due, and also to pay and discharge the principal thereof.

Section 2. Authorization and Sale of the Note. In anticipation of the sale of the Securities, for the purpose of paying the cost of the Project, there shall be borrowed pursuant to Section 67.12(1)(b), Wisconsin Statutes, the principal sum of NINE MILLION NINE HUNDRED FIVE THOUSAND DOLLARS (\$9,905,000) from the Purchaser in accordance with the terms and conditions of the Proposal. The Proposal is hereby accepted and the Mayor and City Clerk or other appropriate officers of the City are authorized and directed to execute an acceptance of the Proposal on behalf of the City. To evidence the obligation of the City, the Mayor and City Clerk are hereby authorized, empowered and directed to make, execute, issue and sell to the Purchaser for, on behalf of and in the name of the City, the Note in the principal amount of NINE MILLION NINE HUNDRED FIVE THOUSAND DOLLARS (\$9,905,000) for the sum set forth on the Proposal, plus accrued interest to the date of delivery.

Section 3. Terms of the Note. The Note shall be designated "Note Anticipation Note"; shall be issued in the aggregate principal amount of \$9,905,000; shall be dated February 5, 2020; shall be in the denomination of \$100,000 or more; shall be numbered R-1; and shall bear interest at the rate per annum and mature on August 5, 2020 as set forth on the schedule attached hereto as Exhibit B and incorporated herein by this reference (the "Schedule"). Interest shall be payable at maturity. Interest shall be computed upon the basis of a 360-day year of twelve 30-day months and will be rounded pursuant to the rules of the Municipal Securities Rulemaking Board.

Section 4. Redemption Provisions. The Note is subject to redemption prior to maturity, at the option of the City, on May 5, 2020 or on any date thereafter. Said Note is redeemable as a whole or in part, and if in part by lot, at the principal amount thereof, plus accrued interest to the date of redemption. Before the redemption of the Note, unless waived by the registered owner, the City shall give notice of such redemption by registered or certified mail at least thirty (30) days prior to the date fixed for redemption to the Purchaser or registered owner of the Note at the address shown on the registration books.

Section 5. Form of the Note. The Note shall be issued in registered form and shall be executed and delivered in substantially the form attached hereto as Exhibit C and incorporated herein by this reference.

Section 6. Security. The Note shall in no event be a general obligation of the City and does not constitute an indebtedness of the City nor a charge against its general credit or taxing power. No lien is created upon the Project or any other property of the City as a result of the issuance of the Note. The Note shall be payable only from (a) any proceeds of the Note set aside for payment of interest on the Note as it becomes due and (b) proceeds to be derived from the issuance and sale of the Securities, which proceeds are hereby declared to constitute a special trust fund, hereby created and established, to be held by the City Clerk or City Treasurer and expended solely for the payment of the principal of and interest on the Note until paid. The City

hereby agrees that, in the event such monies are not sufficient to pay the principal of and interest on the Note when due, if necessary, the City will pay such deficiency out of its annual general tax levy or other available funds of the City; provided, however, that such payment shall be subject to annual budgetary appropriations therefor and any applicable levy limits; and provided further, that neither this Resolution nor any such payment shall be construed as constituting an obligation of the City to make any such appropriation or any further payments.

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 Note Anticipation Note, dated February 5, 2020" (the "Debt Service Fund Account") and such account shall be maintained until the indebtedness evidenced by the Note is fully paid or otherwise extinguished. There shall be deposited into the Debt Service Fund Account (i) all accrued interest received by the City at the time of delivery of and payment for the Note; (ii) any proceeds of the Note representing capitalized interest on the Note or other funds appropriated by the City for payment of interest on the Note, as needed to pay the interest on the Note when due; (iii) proceeds of the Securities (or other obligations of the City issued to pay principal of or interest on the Note); (iv) such other sums as may be necessary at any time to pay principal of and interest on the Note when due and which are appropriated by the Common Council for that purpose; (v) surplus monies in the Borrowed Money Fund as specified below; and (vi) such further deposits as may be required by Section 67.11, Wisconsin Statutes.

(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 Note until all such principal and interest has been paid in full and the Note canceled; provided that such monies may 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. Said 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 the Note is fully paid or otherwise extinguished, and shall at all times be invested in a manner that conforms with the provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and any applicable Treasury Regulations (the "Regulations").

(C) Remaining Monies. When the Note has 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. Covenants of the City. The City hereby covenants with the owners of the Note as follows:

(A) It shall issue and sell the Securities as soon as practicable, as necessary to provide for payment of the Note;

(B) It shall segregate the proceeds derived from the sale of the Securities into the special trust fund herein created and established and shall permit such special trust fund to be used for no purpose other than the payment of principal of and interest on the Note until paid. After the payment of principal of and interest on the Note in full, said trust fund may be used for such other purposes as the Common Council may direct in accordance with law; and,

(C) It shall maintain a debt limit capacity such that its combined outstanding principal amount of general obligation bonds or notes or certificates of indebtedness and the \$9,905,000 authorized for the issuance of the Securities to provide for the payment of the Note shall at no time exceed its constitutional debt limit.

Section 9. Proceeds of the Note; Segregated Borrowed Money Fund. The proceeds of the Note (the "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 a special fund (the "Borrowed Money Fund") separate and distinct from all other funds of the City and disbursed solely for the purpose or purposes for which borrowed or for the payment of the principal of and the interest on the Note. Monies in the Borrowed Money Fund may be temporarily invested in Permitted Investments. Any monies, including any income from Permitted Investments, remaining in the Borrowed Money Fund after the purpose or purposes for which the Note has been issued have been accomplished, and, at any time, any monies as are not needed and which obviously thereafter cannot be needed for such purpose(s) shall be deposited in the Debt Service Fund Account.

Section 10. No Arbitrage. 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 Note to be an "arbitrage bond" 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 Note, shall certify as to facts, estimates, circumstances and reasonable expectations in existence on the date of delivery of the Note to the Purchaser which will permit the conclusion that the Note is not an "arbitrage bond," within the meaning of the Code or Regulations.

Section 11. Compliance with Federal Tax Laws. (a) The City represents and covenants that the projects financed by the Note and the ownership, management and use of the projects will not cause the Note to be a "private activity bond" 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 tax-exempt status of the interest on the Note 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 Note) if taking, permitting or omitting to take such action would cause the Note to be an arbitrage bond or a private activity bond within the meaning of the Code or would

otherwise cause interest on the Note to be included in the gross income of the recipients thereof for federal income tax purposes. The City Clerk or other officer of the City charged with the responsibility of issuing the Note 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.

(b) 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 Note provided that in meeting such requirements the City will do so only to the extent consistent with the proceedings authorizing the Note and the laws of the State of Wisconsin and to the extent that there is a reasonable period of time in which to comply.

Section 12. Designation as Qualified Tax-Exempt Obligation. The Note is hereby designated as a "qualified tax-exempt obligation" for purposes of Section 265 of the Code, 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.

Section 13. Execution of the Note; Closing; Professional Services. The Note shall be issued in printed form, executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Clerk, sealed with its official or corporate seal, if any, or a facsimile thereof, and delivered to the Purchaser upon payment to the City of the purchase price thereof, plus accrued interest to the date of delivery (the "Closing"). The facsimile signature of either of the officers executing the Note may be imprinted on the Note in lieu of the manual signature of the officer but, unless the City has contracted with a fiscal agent to authenticate the Note, at least one of the signatures appearing on the Note shall be a manual signature. In the event that either of the officers whose signatures appear on the Note shall cease to be such officers before the Closing, such signatures shall, nevertheless, be valid and sufficient for all purposes to the same extent as if they had remained in office until the Closing. The aforesaid officers are hereby authorized and directed to do all acts and execute and deliver the Note 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 Note, 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 Note is hereby ratified and approved in all respects.

Section 14. Payment of the Note; Fiscal Agent. The principal of and interest on the Note shall be paid by the City Clerk or the City Treasurer (the "Fiscal Agent").

Section 15. Persons Treated as Owners; Transfer of Note. The City shall cause books for the registration and for the transfer of the Note to be kept by the Fiscal Agent. 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 surrender of the Note 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 Note or Notes 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 Note surrendered for transfer.

The City shall cooperate in any such transfer, and the Mayor and City Clerk are authorized to execute any new Note or Notes necessary to effect any such transfer.

Section 16. Record Date. The 15th calendar day next preceding the interest payment date shall be the record date for the Note (the "Record Date"). 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 City at the close of business on the Record Date.

Section 17. Continuing Disclosure. The continuing disclosure requirements of SEC Rule 15c2-12 promulgated by the Securities and Exchange Commission pursuant to the Securities and Exchange Act of 1934 (the "Rule") are not applicable to the Note because the Purchaser will covenant that it will hold and not make a primary offering of the Note, or otherwise will establish an exception to the Rule relating to the Note.

Section 18. Record Book. The City Clerk shall provide and keep the transcript of proceedings as a separate record book (the "Record Book") and shall record a full and correct statement of every step or proceeding had or taken in the course of authorizing and issuing the Note in the Record Book.

Section 19. 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 January 20, 2020.

Introduced _____

(Signed) _____

Adopted _____

(Signed) _____

Approved _____

Justin M. Nickels
Mayor

ATTEST:

Deborah A. Neuser
City Clerk

(SEAL)

EXHIBIT A

Proposal

To be provided by Robert W. Baird & Co. Incorporated and incorporated into the Resolution.

(See Attached)

DRAFT

EXHIBIT B

Debt Service Schedule

To be provided by Robert W. Baird & Co. Incorporated and incorporated into the Resolution.

(See Attached)

R
B

EXHIBIT C

(Form of Note)

NUMBER _____ UNITED STATES OF AMERICA DOLLARS
STATE OF WISCONSIN
MANITOWOC COUNTY
CITY OF MANITOWOC \$ _____
NOTE ANTICIPATION NOTE

R- _____
MATURITY DATE: August 5, 2020 ORIGINAL DATE OF ISSUE: February 5, 2020 INTEREST RATE: _____% CUSIP: 563588 _____

REGISTERED OWNER: ZIONS BANCORPORATION, N.A.

PRINCIPAL AMOUNT: _____ DOLLARS (\$ _____)

FOR VALUE RECEIVED, the City of Manitowoc, Manitowoc County, Wisconsin (the "City"), hereby acknowledges itself to owe and promises to pay to the registered owner identified above (or to registered assigns), on the maturity date identified above, the principal amount identified above, and to pay interest thereon at the rate of interest per annum identified above until such principal amount is fully repaid, all subject to the provisions set forth herein regarding redemption prior to maturity. Interest is payable at maturity.

This Note is payable as to principal and interest upon presentation and surrender hereof at the office of the City Clerk or City Treasurer.

This Note is issued by the City pursuant to the provisions of Section 67.12(1)(b), Wisconsin Statutes, in anticipation of the sale of general obligation promissory notes (the "Securities"), to provide interim financing for public purposes, including street and sidewalk improvement projects, storm sewer improvements, park projects, environmental remediation, improvements to public buildings and structures, network upgrades and equipment, tax incremental projects, and the acquisition of land, vehicles and equipment (the "Project"), as authorized by a resolution adopted on January 20, 2020. Said resolution is recorded in the official minutes of the Common Council for said date.

This Note shall be payable only from (a) any proceeds of the Note set aside for payment of interest on the Note as it becomes due and (b) proceeds to be derived from the issuance and sale of the Securities, which proceeds have been declared to constitute a special trust fund and to be held by the City Clerk or City Treasurer and expended solely for the payment of the principal of and interest on the Note until paid. In the event such monies are not sufficient to pay the principal of and interest on this Note when due, if necessary, the City will pay such deficiency out of its annual general tax levy or other available funds of the City; provided, however, that any such payment shall be subject to annual budgetary appropriation therefor and any applicable levy limits; and provided further, that no such payment nor any action authorizing this Note shall

be construed as constituting an obligation of the City to make such appropriation or to make any further payment.

The City has authorized the issuance of the Securities and has covenanted to issue the Securities in an amount sufficient to repay the Note pursuant to said resolution. **THE NOTE IS NOT A GENERAL OBLIGATION OF THE CITY AND DOES NOT CONSTITUTE AN INDEBTEDNESS OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION OR PROVISION NOR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER. NO LIEN IS CREATED UPON THE PROJECT OR ANY OTHER PROPERTY OF THE CITY AS A RESULT OF THE ISSUANCE OF THE NOTE.**

The Note is subject to redemption prior to maturity, at the option of the City, on May 5, 2020 or on any date thereafter. Said Note is redeemable as a whole or in part, and if in part by lot, at the principal amount thereof, plus accrued interest to the date of redemption.

Before the redemption of the Note, unless waived by the registered owner, the City shall give notice of such redemption by registered or certified mail at least thirty (30) days prior to the date fixed for redemption to the registered owner of the Note to be redeemed, in whole or in part, at the address shown on the registration books. Any notice provided as described herein shall be conclusively presumed to have been duly given, whether or not the registered owner receives the notice. The Note shall cease to bear interest on the specified redemption date, provided that federal or other immediately available funds sufficient for such redemption are on deposit with the registered owner at that time. Upon such deposit of funds for redemption the Note shall no longer be deemed to be outstanding.

The Note is issued in registered form in the denomination of \$100,000 or more. This Note may be exchanged at the office of the City Clerk or City Treasurer for a like aggregate principal amount of Notes of the same maturity in other authorized denominations.

This Note is transferable by a written assignment duly executed by the registered owner hereof or by such owner's duly authorized legal representative. Upon such transfer a new registered Note, in authorized denomination or denominations and in the same aggregate principal amount, shall be issued to the transferee in exchange hereof.

The City 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, premium, if any, hereon and interest due hereon and for all other purposes, and the City shall not be affected by notice to the contrary.

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. The City has authorized and covenanted to issue and sell the Securities, the sale of which this Note anticipates, as soon as practicable and to set aside the proceeds of the Securities into a special trust fund for the payment of the principal of and interest on this Note.

This Note has been designated by the Common Council as a "qualified tax-exempt obligation" pursuant to the provisions of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

No delay or omission on the part of the owner hereof 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.

IN WITNESS WHEREOF, the City of Manitowoc, Manitowoc County, Wisconsin, by its governing body, has caused this Note to be executed for it and in its name by the manual or facsimile signatures of its duly qualified Mayor and City Clerk; and to be sealed with its official or corporate seal, if any, all as of the original date of issue specified above.

CITY OF MANITOWOC
MANITOWOC COUNTY, WISCONSIN

By: _____
Justin M. Nickels
Mayor

(SEAL)

By: _____
Deborah A. Neuser
City Clerk



ASSIGNMENT

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

(Name and Address of Assignee)

(Social Security or other Identifying Number of Assignee)

the within Note and all rights thereunder and hereby irrevocably constitutes and appoints _____, Legal Representative, to transfer said Note on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

(e.g. Bank, Trust Company
or Securities Firm)

(Registered Owner)

NOTICE: This signature must correspond with the name of the registered owner as it appears upon the face of the within Note in every particular, without alteration or enlargement or any change whatever.

(Authorized Officer)

*The Internal Revenue Code of 1986 (IRC Section 149) requires that for interest on a municipal obligation with a term greater than one year to be exempt from federal income tax, the obligation must be issued and remain in registered form.

Section 67.09, Wisconsin Statutes provides that the City Clerk of the City when acting as the registrar shall record the registration of each note or bond in its bond registrar. Therefore, if this Note is to be assigned, the City Clerk of the City should be notified and a copy of this Assignment should be sent to the City Clerk of the City for his or her records.