

ENROLLED ORDINANCE 163-106

AUTHORIZING THE SALE OF \$15,700,000 GENERAL OBLIGATION
PROMISSORY NOTES, SERIES 2009

WHEREAS on February 24, 2009, the County Board of Supervisors of Waukesha County, Wisconsin (the "County") adopted an ordinance authorizing the issuance of general obligation promissory notes pursuant to Ch. 67, Wis. Stats., in an amount not to exceed \$8,000,000 for the public purpose of paying the cost of capital projects included in the County's 2009 Capital Projects Expenditure Plan consisting of improvements to County parks and other park and land use projects; construction, reconstruction and improvement of County highways and bridges; improvement and expansion of County buildings; other public works projects; Health and Human Services technology projects; and County-wide technology projects; and

WHEREAS, on February 24, 2009, the County Board of Supervisors also adopted an ordinance authorizing the issuance of general obligation promissory notes in an amount not to exceed \$7,700,000 for the public purpose of refunding obligations of the County, including interest on them, specifically: the County's General Obligation Promissory Notes, Series 2001B, dated May 1, 2001, maturing in the years 2009 and 2010 and the General Obligation Promissory Notes, Series 2002, dated April 1, 2002, maturing in the years 2010 through 2012 (collectively, the "Refunded Obligations"); and

WHEREAS the County Board of Supervisors deems it necessary and in the best interest of the County that the general obligation promissory notes authorized by such ordinances now be issued, upon the terms and conditions hereinafter provided; and

WHEREAS the County has duly received bids for its proposed issue of General Obligation Promissory Notes, Series 2009 (the "Notes"); and

WHEREAS it has been determined that the best bid received was that submitted by BMO Capital Markets (the "Purchaser"); and

WHEREAS it has been determined to issue the Notes in the aggregate principal amount of \$15,700,000.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that:

Section 1. Award. The bid of the Purchaser for the purchase price of \$15,778,411.41 be and it hereby is accepted and the Chairperson and County Clerk are authorized and directed to execute an acceptance of the offer of the Purchaser on behalf of the County. The good faith deposit of the Purchaser shall be retained by the County Treasurer until the closing of the note issue, and any good faith deposits submitted by unsuccessful bidders shall be promptly returned.

Section 2. The Notes. The Chairperson and County Clerk shall make, execute and deliver the Notes to the Purchaser, for and on behalf of the County. The Notes shall be negotiable, general

obligation promissory notes of the County, registered as to both principal and interest, in the denomination of Five Thousand Dollars (\$5,000) each or whole multiples thereof, numbered from R-1 upward and dated April 15, 2009. The Notes shall mature on April 1 of each of the years and shall bear interest at the rates per annum as follows:

<u>Year</u>	<u>Amount</u>	<u>Interest Rate</u>
2010	\$ 3,650,000	1.50%
2011	2,490,000	2.00
2012	2,360,000	2.00
2013	300,000	2.25
2014	650,000	2.50
2015	950,000	2.75
2016	1,450,000	3.00
2017	1,450,000	3.25
2018	1,300,000	3.25
2019	1,100,000	3.375

Interest on the Notes shall be payable on April 1 and October 1 of each year, commencing October 1, 2009.

The Notes shall not be subject to optional redemption.

Section 3. Form of Notes. The Notes shall be in substantially the form on file in the County Clerk's office.

Section 4. Tax Provisions.

(a) *Direct, Annual Irrepealable Tax.* For the purpose of paying the principal of and interest on the Notes as the same become due, the full faith, credit and resources of the County are hereby irrevocably pledged and there be and there hereby is levied on all the taxable property in the County a direct, annual, irrepealable tax in an amount and at the times sufficient for said purpose; such tax is levied in the following years and in the following minimum amounts:

<u>Year of Levy</u>	<u>Amount</u>
2009	\$3,993,500.00
2010	2,781,225.00
2011	2,602,725.00
2012	515,750.00
2013	854,250.00
2014	1,133,062.50
2015	1,598,250.00
2016	1,552,937.50
2017	1,358,250.00
2018	1,118,562.50

(b) *Tax Collection.* The County 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 Notes, said tax shall be, from year to year, carried into the tax rolls of the County and collected as other taxes are collected, provided that the amount of tax carried into said tax rolls may be reduced in any year by the amount of any surplus money in the Debt Service Account created in Section 5(A) hereof.

(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 Notes when due, the requisite amounts shall be paid from other funds of the County then available, which sums shall be replaced upon the collection of the taxes herein levied.

(d) *Appropriation.* There be and there hereby is appropriated from funds of the County on hand the sum of \$92,603.17 to be deposited in the Debt Service Account which amount will be used, together with the \$78,411.41 of premium to be deposited into the Debt Service Account pursuant to Section 5(a) hereof, to meet payments with respect to debt service due on October 1, 2009.

Section 5. Debt Service Fund and Account.

(a) *Creation and Deposits.* Within the debt service fund previously established in the treasury of the County, there be and there hereby is established a separate and distinct account designated as the "Debt Service Account for \$15,700,000 'General Obligation Promissory Notes, Series 2009' dated April 15, 2009" (the "Debt Service Account") and such account shall be maintained until the indebtedness evidenced by the Notes is fully paid or otherwise extinguished. The County Treasurer shall deposit in such Debt Service Account (i) all accrued interest received by the County at the time of delivery of and payment for the Notes; (ii) the taxes herein levied for the specific purpose of meeting principal of and interest on the Notes when due; (iii) such other sums as may be necessary at any time to pay principal of and interest on the Notes when due; (iv) any premium which may be received by the County above the par value of the Notes and accrued interest thereon; (v) surplus monies in the Borrowed Money Fund as specified in Section 6 hereof; and (vi) such further deposits as may be required by Sec. 67.11, Wis. Stats.

(b) *Use and Investment.* No money shall be withdrawn from the Debt Service Account and appropriated for any purpose other than the payment of principal of and interest on the Notes until all such principal and interest has been paid in full and canceled; provided (i) the funds to provide for each payment of principal of and interest on the Notes 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 Notes may be used to reduce the next succeeding tax levy, or may, at the option of the County, be invested by purchasing the Notes as permitted by and subject to Section 67.11(2)(a), Wis. Stats., in interest-bearing obligations of the United States of America, in other obligations of the County or in other investments permitted by law, which investments shall continue to be a part of the Debt Service Account.

(c) *Remaining Monies.* When all of the Notes have been paid in full and canceled, and all permitted investments disposed of, any money remaining in the Debt Service Account shall be deposited in the general fund of the County, unless the County Board of Supervisors directs otherwise.

Section 6. Proceeds of the Notes. All monies received by the County upon the delivery of the Notes to the Purchaser, except for accrued interest and premium, if any, shall be deposited by the County Treasurer into a special fund (the "Borrowed Money Fund") which shall be maintained separate and distinct from all other funds of the County and shall be used for no purpose other than the purposes for which the Notes are issued. In no event shall monies in the Borrowed Money Fund be used to fund operating expenses of the general fund of the County or of any special revenue fund of the County that is supported by property taxes. Monies in the Borrowed Money Fund may be temporarily invested as provided in Section 66.0603(1m), Wis. Stats. Any monies, including any income from permitted investments, remaining in the Borrowed Money Fund after the purposes for which the Notes have been issued have been accomplished, and, at any time, any monies as are not needed and which obviously thereafter cannot be needed for such purposes shall be deposited in the Debt Service Account.

Section 7. No Arbitrage. All investments permitted by this resolution shall be legal investments, but no such investment shall be made in such a manner as would cause the Notes to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), or the Regulations of the Commissioner of Internal Revenue thereunder (the "Regulations"); and an officer of the County, charged with the responsibility for issuing the Notes, shall certify as to facts, estimates, circumstances and reasonable expectations in existence on the date of closing which will permit the conclusion that the Notes are not "arbitrage bonds," within the meaning of the Code or Regulations.

Section 8. Persons Treated as Owners; Transfer of Notes. The County Clerk shall keep books for the registration and for the transfer of the Notes. 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 any 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 County 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 Chairperson and County 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 County Clerk shall record the name of each transferee in the registration book. No registration shall be made to bearer. The County Clerk shall cancel any Note surrendered for transfer.

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

The fifteenth day of each calendar month next preceding each interest payment date shall be the record dates for the Notes. Payment of interest on the Notes on any interest payment date shall be made to the registered owners of the Notes as they appear on the registration book of the County at the close of business on the corresponding record date.

Section 9. Compliance with Federal Tax Laws.

(a) The County represents and covenants that the projects financed by the Notes and by the Refunded Obligations and their ownership, management and use will not cause the Notes or the Refunded Obligations to be "private activity bonds" within the meaning of Section 141 of the Code. The County 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 Notes including, if applicable, the rebate requirements of Section 148(f) of the Code. The County 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 Notes) if taking, permitting or omitting to take such action would cause any of the Notes to be an arbitrage bond or a private activity bond within the meaning of the Code or would otherwise cause interest on the Notes to be included in the gross income of the recipients thereof for federal income tax purposes. The County Clerk or other officer of the County charged with the responsibility of issuing the Notes shall provide an appropriate certificate of the County certifying that the County can and covenanting that it will comply with the provisions of the Code and Regulations.

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

Section 10. Designation as Qualified Tax-Exempt Obligations. The Notes are hereby designated as "qualified tax-exempt obligations" for purposes of Section 265 of the Internal Revenue Code of 1986, as amended, relating to the ability of financial institutions to deduct from income for federal income tax purposes, interest expense that is allocable to carrying and acquiring tax-exempt obligations.

Section 11. Utilization of The Depository Trust Company Book-Entry-Only System. In order to make the Notes eligible for the services provided by The Depository Trust Company, New York,

New York, the County agrees to the applicable provisions set forth in the Blanket Issuer Letter of Representations previously executed on behalf of the County and on file in the County Clerk's office.

Section 12. Ratification. The Official Notice of Sale with respect to the Notes, which is on file in the County Clerk's office, is ratified and approved. In addition, all actions taken by any committee of the County Board, by the officers and employees of the County and by the County's financial consultant, Robert W. Baird & Co. Incorporated, in connection with the offering and sale of the Notes, including the preparation and distribution of the Official Statement concerning the Notes, are ratified and approved.

Section 13. Undertaking to Provide Continuing Disclosure. The County covenants and agrees, for the benefit of the holders of the Notes, to enter into a written undertaking (the "Undertaking") required by SEC Rule 15c2-12 promulgated by the Securities and Exchange Commission pursuant to the Securities and Exchange Act of 1934 (the "Rule") to provide continuing disclosure of certain financial information and operating data and timely notices of the occurrence of certain events in accordance with the Rule. The Undertaking shall be enforceable by the holders of the Notes or by the original purchaser(s) of the Notes on behalf of such holders (provided that the rights of the holders and the purchaser(s) to enforce the Undertaking shall be limited to a right to obtain specific performance of the obligations thereunder and any failure by the County to comply with the provisions of the Undertaking shall not be an event of default with respect to the Notes).

The County Clerk, or other officer of the County charged with the responsibility for issuing the Notes, shall provide a Continuing Disclosure Certificate for inclusion in the transcript of proceedings, setting forth the details and terms of the County's Undertaking.

Section 14. Redemption of the Refunded Obligations. The Refunded Obligations are hereby called for prior payment and redemption on April 27, 2009 at a price of par plus accrued interest to the date of redemption.

The County hereby directs the County Clerk to work with its financial consultant, Robert W. Baird & Co. Incorporated, to cause timely notice of redemption, in substantially the forms on file in the County Clerk's office and incorporated herein by this reference (the "Notices"), to be provided at the times, to the parties and in the manner set forth on the Notices.

Section 15. Records. The County Clerk shall provide and keep a separate 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 these Notes.

Section 16. Bond Insurance. If the purchaser of the Notes determines to obtain municipal bond insurance with respect to the Notes, the officers of the County are authorized to take all actions necessary to obtain such municipal bond insurance. The Chairperson and County Clerk are authorized to agree to such additional provisions as the bond insurer may reasonably request and which are acceptable to the Chairperson and County Clerk including provisions regarding restrictions on investment of Note proceeds, the payment procedure under the municipal bond

insurance policy, the rights of the bond insurer in the event of default and payment of the Notes by the bond insurer and notices to be given to the bond insurer. In addition, appropriate reference to the municipal bond insurance policy shall be made in the form of Note provided herein.

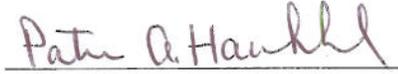
Section 17. Closing. The Chairperson and County Clerk of the County are hereby authorized and directed to execute and deliver the Notes to the purchaser thereof upon receipt of the borrowed funds, accrued interest to date of delivery and premium, if any. The Chairperson and County Clerk may execute the Notes by manual or facsimile signature, but at least one of said officers shall sign the Notes manually.

The officers of the County are hereby directed and authorized to take all steps necessary or convenient to close this issue as soon as practicable hereafter, in accordance with the terms of sale thereof; and said officers are hereby authorized and directed to execute and deliver such documents, certificates and acknowledgments as may be necessary or convenient in accordance therewith.

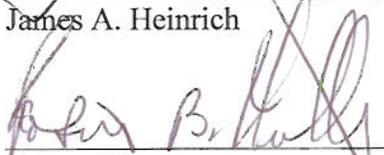
Section 18. Effect of Ordinance. This action by the County Board of Supervisors is taken pursuant to Section 67.12(12), Wis. Stats., and is intended to constitute a "resolution" for purposes of that section.

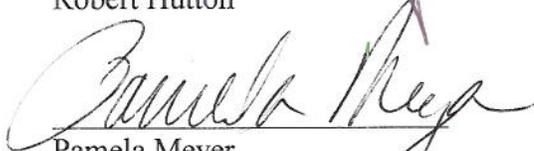
AUTHORIZING THE SALE OF \$15,700,000 GENERAL
OBLIGATION PROMISSORY NOTES, SERIES 2009

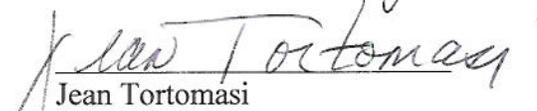
Approved by:
Finance Committee


Patricia A. Haukohl, Chair


James A. Heinrich


Robert Hutton


Pamela Meyer


Jean Tortomasi


Steven C. Wimmer


William J. Zaborowski

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 3/27/09, 
Kathy Nickolaus, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: X
Vetoed: _____

Date: 3-29-09, 
Daniel P. Vrakas, County Executive

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-03/24/09

(ORD) NUMBER-1630107

- 1 D. FALSTAD.....AYE
- 3 R. HUTTON.....AYE
- 5 J. JESKEWITZ.....AYE
- 7 P. HAUKOHL.....AYE
- 9 J. HEINRICH.....AYE
- 11 F. RUF.....AYE
- 13 P. DECKER.....AYE
- 15 P. MEYERS.....AYE
- 17 J. TORTOMASI.....AYE
- 19 S. WIMMER.....AYE
- 21 W. ZABOROWSKI.....AYE
- 23 J. PLEDL.....AYE
- 25 G. YERKE.....AYE

- 2 T. ROLFS.....
- 4 J. DWYER.....AYE
- 6 J. BRANDTJEN.....AYE
- 8 T. SCHELLINGER....AYE
- 10 D. SWAN.....AYE
- 12 P. WOLFF.....AYE
- 14 B. MORRIS.....AYE
- 16 D. PAULSON.....AYE
- 18 K. CUMMINGS.....AYE
- 20 P. JASKE.....AYE
- 22 P. GUNDRUM.....AYE
- 24 W. KOLB.....AYE

TOTAL AYES-24

TOTAL NAYS-00

CARRIED_____

DEFEATED_____

UNANIMOUS X

TOTAL VOTES-24