

Village of Hewitt/Sanitary Utility

October 14, 1991

Resolution 1991.20 RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF UP TO \$135,000 GENERAL OBLIGATION SEWAGE SYSTEM BONDS AND NOTES

WHEREAS, The Village of Hewitt, Wood County, Wisconsin (the "Municipality") desires to plan, design and construct a wastewater treatment facility (the "Project"), assigned Clean Water Fund Project #4097-01 by the Department of Natural Resources, to be operated for a public purpose as a public utility by the Municipality; and

WHEREAS, the planning, design and construction of the Project are necessary to meet the needs of the Village of Hewitt and the residents thereof; and

WHEREAS, under the provisions of Chapter 67 of the Wisconsin Statutes, the Village of Hewitt (as defined in Section 67.01(5) of the Statutes) may, by action of its governing body, provide for the acquisition, planning, design, construction, development, extension, enlargement, renovation, rebuilding, repair or improvement of land, water, properties, buildings, equipment or facilities from the proceeds of bonds which are general obligations of the Village; and

WHEREAS, pursuant to Section 67.04(3), any Municipality may issue bonds to provide funds for the payment of outstanding bonds or notes; and

WHEREAS, the Village of Hewitt has entered or intends to enter into a Financial Hardship Assistance Agreement with the State of Wisconsin, Department of Natural Resources, substantially in the form attached hereto and incorporated by reference, setting forth the terms and conditions whereby certain monies advanced by the State of Wisconsin to the Village of Hewitt will be deemed to be either a grant or a loan; and

WHEREAS, the Municipality deems it to be necessary, desirable and in its best interest to authorize and sell general obligation sewerage system bonds of the Village of Hewitt

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pursuant to the provisions of Chapter 67 of the Wisconsin Statutes, to pay the costs of the Project; and

WHEREAS, other than the Prior Bonds, no bonds of the Municipality are outstanding.

NOW, THEREFORE, be it resolved by the governing body of the Village of Hewitt that:

Section 1. Definitions. The following terms shall have the following meanings in this Resolution unless the text expressly or by implication requires otherwise:

- (a) "Act" means Chapter 67 of the Wisconsin Statutes;
- (b) "Bond Registrar" means the Municipal Treasurer which shall act as Paying Agent for the Bonds;
- (c) "Bonds" mean the \$135,000 General Obligation Sewerage System Bonds, Series 1991 of the Village of Hewitt dated as of the Closing Date, 1991, authorized to be issued by this Resolution;
- (d) "Bond Year" means the twelve-month period ending each May 1;
- (e) "Closing Date" means the date of closing on the Clean Water Fund Loan when the Bonds are delivered to the State pursuant to the Financial Assistance Agreement;
- (f) "Debt Service Fund" shall mean the Debt Service Fund of the Municipality, which shall be the "debt service fund" as such term is defined in the Act;
- (g) "Financial Hardship Assistance Agreement" shall mean the Financial Hardship Assistance Agreement by and between the State of Wisconsin, Department of Natural Resources and the Village of Hewitt dated as of the Closing Date substantially in the form attached hereto and incorporated herein by reference;
- (h) "Fiscal Year" means the twelve-month period ending on each December 31;
- (i) "Governing Body" means the Village of Hewitt, or such other body as may hereafter be the chief legislative body of the Village of Hewitt;

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- (j) "Initial Resolution" means that certain resolution relating to the Bonds adopted by the Governing Body on October 2, 1991, titled: "Initial Resolution Authorizing Not Exceeding \$135,000 General Obligation Sewerage System Bonds and Notes";
- (k) "Municipal Treasurer" means the Treasurer of the Village of Hewitt who shall act as Bond Registrar and Paying Agent;
- (l) "Municipality" means the Village of Hewitt;
- (m) "Project" means the Project described in the preamble to this Resolution. All elements of the Project are to be owned and operated by the Village of Hewitt as described in the preamble hereto;
- (n) "Record Date" means the close of business on the fifteenth day of the calendar month next preceding any principal or interest payment date; and

Section 2. Authorization of the Bonds and the Financial Hardship Assistance Agreement. For the purpose of paying the cost of the Project described in the Initial Resolution (including legal, fiscal, engineering, and other expenses), there shall be borrowed on the full faith and credit of the Village of Hewitt up to the sum of \$135,000; and fully registered general obligation bonds of the Village of Hewitt are authorized to be issued in evidence thereof and sold to the Wisconsin Clean Water Fund in accordance with the terms and conditions of the Financial Hardship Assistance Agreement, which is incorporated herein by this reference; and the President and Clerk of the Village of Hewitt, to execute the Financial Hardship Assistance Agreement.

Section 3. Terms of the Bond. The Bonds shall be designated "General Obligation Sewerage System Bonds, Series 1991 (the "Bonds"); shall be dated as of the Closing Date; shall be numbered one and upward; shall bear interest at the rate of 3.795% per annum; shall be issued in denominations of \$.01 or any integral multiple thereof; and shall mature on the dates and in the amounts as set forth in Exhibit B of the Financial Hardship Assistance Agreement as it is from time-to-time adjusted by the state based upon the actual draws made by the Village of Hewitt. Interest on the Bonds shall be payable on May 1 and November 1 of each year, commencing on May 1, 1992. The Bonds shall not be subject to redemption prior to maturity except as provided in the Financial Hardship Assistance Agreement.

Section 4. Limitation of Debt. The amount and terms of the debt, if any, authorized by this Resolution shall be governed by the terms of the Financial Hardship Assistance Agreement, and no debt is authorized here under except as may be incurred by and required to be paid by the Municipality under the terms of the Financial Hardship Assistance Agreement.

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Section 5. Form, Execution, Registration and Payment of the Bonds. The Bonds shall be issued as registered obligations in substantially the form attached hereto as Exhibit A and incorporated herein by this reference.

The Bonds shall be executed in the name of the Municipality by the manual signatures of the Village President and the Clerk, and shall be sealed with its official or corporate seal, if any.

The principal of, premium, if any, and interest on the Bonds shall be paid by the Municipal Treasurer, who is hereby appointed as the Municipality's registrar (the "Bond Registrar").

Both the principal of and interest on the Bonds shall be payable in lawful money of the United States of America by the Bond Registrar. Payment of principal of the final maturity on the Bond will be payable upon presentation and surrender of the Bond to the bond Registrar. Payment of principal of the final maturity on the bond will be payable upon presentation and surrender of the Bond to the bond Registrar. Payment of principal on the Bond (except the final maturity) and each installment of interest shall be made to the registered owner of each Bond who shall appear on the registration books of the Municipality, maintained by the Bond Registrar, on the Record Date and shall be paid by check or draft of the Bond Registrar and mailed to such registered owner at his or its address as appears on such registration books or at such other address may be furnished in writing to such registered owner to the Bond Registrar.

Section 6. Bond Proceeds. The sale proceeds of the Bonds (exclusive of accrued interest and any premium received) shall, forthwith upon receipt, be placed in and kept by the Treasurer as a separate fund to be known as the General Obligation Sewerage System Bonds, Series 1991, Borrowed Money Fund (hereinafter referred to as the "Borrowed Money Fund"). Monies in the Borrowed Money Fund shall be used solely for the purposes for which borrowed or for transfer to the Debt Service Fund as provided by law.

Section 7. Tax Levy. In order to provide for the collection of a direct annual tax sufficient in amount to pay and for the express purpose of paying interest on the bonds as it falls due and also to pay and discharge the principal thereof at maturity, there is hereby levied upon all of the taxable property in the Municipality, in addition to all other taxes, a non-repealable, direct, annual tax on an amount sufficient for that purpose. This tax shall be from year to year carried into the tax roll of the Municipality and collected in addition to all other taxes and in the same manner and at the same time. This tax, based on a true interest cost rate of 3.795% per annum, shall be in the amounts set forth in Exhibit B of the Financial Hardship Assistance Agreement, as Exhibit B is amended from time to time by the State to reflect actual draws made by the Municipality.

Section 8. Debt Service Fund. The proceeds of said the taxes levied pursuant to the Initial Resolution and Section 7 above, when collected by the Municipal Treasurer, shall

be placed and kept by the Municipal Treasurer as a separate fund irrevocably pledged for paying the principal of and interest on the Bonds so long as any such Bonds shall remain outstanding, to be known as the General Obligation Sewerage System Bonds, Series 1991, Debt Service Fund (hereinafter referred to as "Debt Service Fund"). The accrued interest and any premium received at the time of delivery of the Bonds shall be paid over t the Debt Service Fund. Interest on or principal of the Bonds falling due at any time when there shall be on hand in the Debt Service Fund insufficient funds for the payment of such principal and interest shall be paid promptly when due from other funds of the Municipality.

Section 9. Deposits and Investments. The Debt Service Fund shall be kept apart from monies in the other funds and accounts of the Municipality and the same shall be used for no purpose other than the prompt payment of principal of the interest on the Bonds as the same becomes due and payable. All monies therein shall be deposited in special and segregated accounts in a public depository selected under Chapter 34 of the Wisconsin Statutes and may be temporarily invested until needed in legal investments subject to the provisions of Section 66.04(2) and 67.10(3) of the Wisconsin Statues. All income derived from such investments shall be regarded as revenues of the Municipality. No such investment shall be in such a manner as would cause the bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, or the Regulations of the Commissioner of Internal Revenue thereunder.

The Treasurer of the Municipality shall, on the basis of the facts, estimates and circumstances in existence on the date of closing, make such certifications as are necessary to permit the conclusion that the bonds are not "arbitrage bonds" under Section 148 of the Internal Revenue Code of 1986, as amended, or the Regulation of the Commissioner of Internal Revenue thereunder.

Section 10. Operation of Project; Municipality Covenants. It is covenanted and agreed by the Municipality with the owner or owners of the Bonds, and each of them, that the Municipality will perform all of the obligations as set forth in the Financial Hardship Assistance Agreement.

Section 11. Sale of Bonds. The sale of bonds to the State of Wisconsin clean water Fund for the purchase price of up to \$135,000 , and at par, is ratified and confirmed; and the officers of the Municipality are authorized and directed to do any and all acts, including executing the Financial Hardship Assistance Agreement and the Bonds as hereinabove provided, necessary to conclude delivery of the bonds to said purchaser, as soon after adoption of this Resolution as is convenient. The purchase price for the Bonds shall be paid upon requisition therefor as provided in the Financial Hardship Assistance Agreement.

Section 12. Application of Bond Proceeds. The proceeds of the sale of the bonds, less the expenses incurred in authorizing, issuing and delivering the Bonds, shall be deposited by the Municipality into a special fund designated as "Clean Water CWF-Hardship Project Fund." The Clean Water CWF-Hardship Project Fund shall be used solely for the purpose of paying the costs of the Project (including capitalized interest, if any, on the bonds)

*[and refunding expended proceeds of Prior Bonds] as more fully described in the preamble hereof and in the Financial Hardship Assistance Agreement. Moneys in the Clean Water CWF-Hardship Project Fund shall be disbursed within three (3) business days of their receipt from the State of Wisconsin and shall not be invested in any interest-bearing account.

Section 13. Amendment to Resolution. After the issuance of any of the bonds, no change or alteration of any kind in the provisions of this Resolution may be made until all of the Bonds have been paid in full as to both principal and interest, or discharged as herein provided, except: (a) the Municipality may, from to time, amend this Resolution without the consent of any of the owners of the Bonds, but only to cure any ambiguity, administrative conflict, formal defect, or omission or procedural inconsistency of this Resolution; and (b) this Resolution may be amended, in any respect, with a written consent of the owners of not less than two-thirds (2/3) of the principal amount of the Bonds then outstanding, exclusive of Bonds held by the Municipality or the maturity of any Bond issued hereunder, or a reduction in the rate of interest on any Bonds, or in the amount of the principal obligation thereof, or in the amount of the redemption premium payable in the case of redemption thereof, or change the terms upon which the Bonds may be redeemed or make any other modification in the terms of the payment of such principal or interest without the written consent of the owner of each such Bond to which the change is applicable.

Section 14. Defeasance. When all Bonds have been discharged, all pledges, covenants and other rights granted to the owners thereof by this Resolution shall cease. The Municipality may discharge all Bonds due on any date by irrevocably depositing in escrow with a suitable bank or trust company a sum of cash and/or bonds or securities issued or guaranteed as to principal and interest of the U.S. Government, or of a commission, board or other instrumentality of the U.S. Government, maturing on the dates and bearing interest at the rates required to provide funds sufficient to pay when due the interest to accrue on each of said Bonds to its maturity or, at the Municipality's option, if said Bond is prepayable to any prior date upon which it may be called for redemption, and to pay and redeem the principal amount of each such Bond at maturity, or at the Municipality's option, if said Bond is prepayable, at its earliest redemption date, with the premium required for such redemption, if any, proved that notice of the redemption of all repayable Bonds on such date has been duly given or provided for.

Section 15. Rebate Fund. The Municipality shall establish and maintain, so long as the Bonds are outstanding, a separate account to be known as the "Rebate Fund". the Rebate Fund is for the sole purpose of paying rebate to the United States of America, if any, on amounts of Bond Proceeds held by the Municipality. The Municipality hereby covenants and agrees that it shall pay from the Rebate Fund the rebate amounts as determined herein to the United States of America.

The Municipality may engage the services of accountants, attorneys or other consultants necessary to assist it in determining rebate amounts.

The rebate amounts are equal to the sum of:

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(i) The excess of --

(a) the aggregate amounts earned from the date of issuance and delivery of the Bonds on all nonpurpose obligations in which gross proceeds of the Bonds have been invested (other than nonpurpose obligations attributable to an excess described herein) over

(b) the aggregate amounts which would have been earned if the yield on such nonpurpose obligations (other than nonpurpose obligations attributable to an excess described herein) had been equal to the yield on the Bonds, plus

(ii) any income attributable to the excess described in clause (i) above.

The rebate amounts payable to the United States shall be determined on or prior to the end of the Fifth (5th) Bond Year of the bonds and the fifth (5th) anniversary of such date by the Municipality for each Bond Year during which the Bonds remain outstanding and upon retirement of the Bonds. Such rebate amounts shall be deposited in the Rebate Fund. The rebate amounts shall be paid to the United States in installments, as follows:

(I) subject to clause (III) below, the first such installment shall be paid no later than thirty (30) days after the end of the fifth (5th) Bond Year of the Bonds;

(II) subject to clause (III) below, an additional installment shall be paid on or prior to the last day of each additional installment payment period during which the Bonds remain outstanding. For purposes of this cause (II), an installment payment period shall commence on the last day on which a preceding installment of the rebate amount was required to be paid, and shall end on the day preceding the fifth (5th) anniversary of such payment date;

(III) anything herein to the contrary notwithstanding, the last installment shall be paid no later than thirty (30) days after the Bonds have been retired; and

(IV) each installment shall be in an amount which, when aggregated with the amount of any prior installments paid to the United States hereunder, will equal at least ninety percent (90%) of the total rebate amount payable to the United States hereunder as of the date such installment is paid; provided, however, that the last installment shall be an amount equal to the entire remaining balance of the rebate amount payable to the United States hereunder.

Amounts held in the Rebate Fund and the investment income therefrom are not pledged as security for the Bonds and may only be used to pay amounts to the United States.

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The Municipality shall maintain or cause to be maintained records of such determinations for each Bond Year until six (6) years after payment in full of the bonds and shall make such records available upon reasonable request therefor.

The Municipality hereby agrees it will disburse all monies in the Rebate Fund to the United States of America at the times and in the manner set forth in the applicable income tax regulations.

Section 16. Resolution a Contract. The provisions of this Resolution shall constitute a contract between the Municipality and the owner or owners of the Bonds, and after issuance of any of the Bonds no change or alteration of any kind in the provisions of this Resolution may be made, except as provided in Section 13, until all of the bonds have been paid in full as to both principal and interest. The owner or owners of any of the Bonds shall have the right in addition to all other rights, by mandamus or other suit or action in any court of competent jurisdiction, to enforce such owner's or owners' rights against officers and agents thereof including, but without limitation, the right to require the Municipality, its Governing body and any other authorized body, to take any and all actions necessary to carry out all of the provisions and agreements contained in this Resolution.

Section 17. Requirements of Municipality. The officers of the Municipality, staff of the Municipality, attorneys for the Municipality, financial consultants of the Municipality, or other agents or employees of the Municipality are hereby authorized to do all acts and things required of them by this Resolution for the full, punctual and complete performance of all of the provisions of this Resolution.

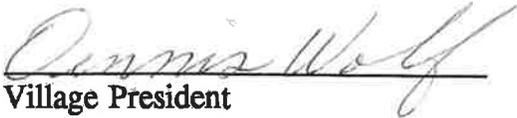
Section 18. Illegal or Invalid Provisions. In case any one or more of the provisions of this Resolution or any of the bonds shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Resolution or of the Bonds.

Section 19. Conflicting Resolutions. All ordinances, resolutions, or orders, or parts thereof heretofore enacted, adopted or entered, in conflict with the provisions of this Resolution, are hereby repealed and this Resolution shall be in effect from and after its passage.

*Section 20. Call of Prior Bonds. The officers of the Municipality are authorized and directed to call the Prior Bonds for prior payment on the earliest date(s) on which they can be redeemed and refunded with proceeds of the Bonds.

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Passed:
Approved:


Village President

Attest:

Municipal Clerk