

**PROMISSORY NOTE, COVENANT AND
MORTGAGE**

(Lead Water Service Line Replacement
Financial Assistance Program)

Document Number

Document Name

Return to:
Stacie Running
New Richmond Utilities
156 E. 1st Street
New Richmond, WI 54017

Parcel Identification Number (PIN)

This _____ homestead property.
(is) (is not)

PROMISSORY NOTE, COVENANT AND MORTGAGE

THIS PROMISSORY NOTE, COVENANT AND MORTGAGE (the "Agreement") is made effective as of _____, 20__ by and between _____ (the "Property Owner") whose address is _____ and the CITY OF NEW RICHMOND ("City"), whose address is 156 E. First Street, New Richmond, Wisconsin 54017.

RECITALS

A. The Property Owner is the owner of certain real property located in the City of New Richmond, Wisconsin which property is legally described on the attached **Exhibit A** (the "Property").

B. The Property is the primary residence of the Property Owner.

C. To assist the Property Owner with the replacement of a lead water service line servicing the Property, the City has agreed to provide a lump sum loan of _____ and 00/100 Dollars \$_____ (the "Loan") pursuant to the terms and conditions set forth in this Agreement.

D. Property Owner and City desire to memorialize the terms, covenants, conditions, and provisions regarding the Loan in this Agreement.

NOW, THEREFORE, in consideration of their mutual covenants and agreements, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Property Owner and the City agree as follows:

1. Consideration and Use of Loan Proceeds. The City hereby provides the Loan for the benefit of the Property Owner and the Property pursuant to the terms and conditions of this Agreement. The proceeds from the Loan (collectively, the "Loan Proceeds") shall be exclusively used for payment of the cost to replace a lead service water line or lines servicing the Property. The Utilities Department of the City (the "New Richmond Utilities") shall pay the contractor directly on behalf of the Property Owner for eligible costs up to the amount of the Loan. Under no circumstances shall the Property Owner receive direct monetary reimbursement. Any costs in excess of the amount of the Loan shall be the sole responsibility of the Property Owner, and the Property Owner shall be responsible for remitting such excess costs, if any, to the contractor.

2. Promissory Note/Repayment Terms. The Property Owner promises to repay the Loan as follows:

a. The Property Owner shall pay the principal amount of the Loan together with interest as provided in Section 2(b) below over a term of 120 months;

b. Interest on the outstanding principal balance of the Loan shall accrue at a rate of three percent (3.0%) per annum;

c. Repayment shall be made through a special charge on the monthly water utility bill for the Property (the “Special Charge”) in accordance with the schedule attached hereto as **Exhibit B** (the “Loan Schedule”);

d. The Property Owner may pay the Loan in full without an interest charge, provided the amount is paid within 30 days of the first invoice for the Loan; and

e. The Property Owner may prepay all, or a portion of the balance of the Loan and accrued interest without premium or penalty.

3. Consent to Special Charge. The Property Owner hereby agrees that repayment of the Loan shall be secured by the City’s right to a special charge as provided by §66.0627 of the Wisconsin Statutes. Each month pursuant to the Loan Schedule, the Property Owner agrees that the City may levy the amount of the obligation against the Property as a Special Charge pursuant to Wisconsin Statute §66.0627(8) (ag). In connection therewith, the Property Owner:

a. acknowledges that the City has incurred financial obligations in connection with the Loan;

b. agrees that the amount of the Special Charge, if levied consistent with this Agreement, constitutes a proper exercise of the City’s authority to levy special charges in accordance with Wisconsin Statute §66.0627(8) (ag) (cm);

c. agrees that the allocation of the amount of the Special Charge to the Property is reasonable;

d. consents to the imposition and levy of such Special Charge;

e. agrees that the levy of the Special Charge in accordance herewith is authorized by signature on this Agreement, and that no further procedural steps need be taken by the City;

f. waives all notices, hearings, and appeals provided by Wisconsin Statute §66.0627 or any other statute;

g. acknowledges that the City is relying on the terms of this Agreement, and specifically the terms of this subsection in making the Loan and that if the provisions relating to the Special Charge are not enforced that the City would not have entered into this Agreement and such Agreement would be inequitable; and

h. acknowledges that an installment payment that is delinquent becomes a lien on the Property as of the date of delinquency. A lien under this subsection runs with the land and has the same priority as a special assessment lien and may be enforced by foreclosure.

This promise to pay is secured with a covenant on the Property which shall run with the

land and shall bind the Property Owner, its heirs, executors, administrators, assigns, and successors in interest until payment in full is received as provided herein.

The City shall follow its customary practice in collecting special charges, including assessing penalties and charging interest, and initiating foreclosure proceedings where appropriate.

The Special Charges collected for private lead water service line replacement loan repayments shall be placed in a segregated fund and disbursed in accordance with the requirements of the City's funding sources.

The City shall keep an accounting of private lead water service line replacement loans and payments received by the City and provide the Property Owner with such information upon request.

4. Mortgage. The Property Owner (hereinafter also referred to as the "Mortgagor") hereby mortgages to the City (hereinafter also referred to as the "Mortgagee") to secure payment of the promissory note contained herein, the Property including all fixtures and other appurtenant interests, together with any rents or profits therefrom.

Mortgagor shall not transfer, sell or convey any legal or equitable interest in the Property (by deed, land contract, option, long-term lease or in any other way) without the prior written consent of Mortgagee, unless either the indebtedness secured by this Mortgage is first paid in full or the interest conveyed is a mortgage or other security interest in the Property, subordinate to the lien of this Mortgage. The entire indebtedness under the promissory note(s) secured by this Mortgage shall become due and payable in full, at the option of the Mortgagee without notice, upon any transfer, sale or conveyance made in violation of this paragraph.

The entire indebtedness of the Loan shall become due and payable in full, if the Property is no longer the Property Owner's primary residence.

This is not a purchase money mortgage.

5. Covenants. At all times the Property Owner:

a. Will pay all taxes, special assessments and Special Charges which may be levied or assessed against the Property subject to this Agreement before they become delinquent;

b. Will retain title to the Property or upon transfer of title pay in full the remaining amount due in full pursuant to the Loan contained herein;

c. Will not commit waste nor suffer waste to be committed on the Property and will keep the Property in good condition and repair and pay when due all indebtedness which may be or become secured at any time by a mortgage or other lien on the Property;

d. Will keep the Property insured for fire and other perils for at least the full and fair market value of the Property and pay the premiums thereon when due; and

e. Agrees that, in the event that an enforcement or collections action is filed, all expenses, including reasonable attorney's fees, will be added to the amount of the Loan and will become immediately due.

6. Covenants Run with Land. All of the terms and conditions of this Agreement, including the benefits and burdens, shall run with the land and shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and assigns.

7. Modification. This Agreement may not be amended or modified in any respect whatsoever except by an instrument in writing signed by all parties. This Agreement constitutes the entire agreement between the parties with respect to the matters set forth herein and supersedes all prior negotiations, discussions, writings and agreements between them in connection therewith.

8. Notices. All notices must be sent or copied to all parties identified above, or to their successors in interest upon written notice.

9. Default.

a. Events of Default. Property Owner agrees that time is of the essence with respect to payment of principal and interest when due, and in the performance of the terms, conditions and covenants contained herein. The occurrence of any of the following events shall constitute an "Event of Default" under this Agreement.

- i. The Property Owner fails to make any payment due pursuant to the Loan when due;
- ii. The Property owner breaches any covenant, representation, or warranty contained in this Agreement;
- iii. The Property Owner becomes insolvent, files for bankruptcy, or is the subject to any bankruptcy or insolvency proceeding;
- iv. The Property Owner fails to maintain the required insurance on the Property;
- v. The Property Owner fails to timely pay all financial obligations to the City, including but not limited to, water utility bills, real estate taxes, personal property taxes, and accounts receivable invoices; and
- vi. Any legal suit or proceeding is initiated, including but not limited to a notice of foreclosure or foreclosure action, that in the City's opinion, may impair the City's interest in the Property.

b. Consequences of Default. In the event of default, the Property Owner agrees that the City may, at its option, declare the whole amount of the unpaid principal, fees, and

accrued interest of the Loan due and payable, and may exercise any rights and remedies available under law, including but not limited to:

- i. Foreclosure of the mortgaged Property;
- ii. Collection of past due amounts through legal proceedings;
- iii. Recovery of costs and expenses incurred, including reasonable attorney's fees; and
- iv. Inclusion of the entire balance of the unpaid principal and interest of the Loan in the current month's Special Charge as provided above or in the real estate tax bill for the Property.

c. Notice of Default. Upon default of the obligations under this Agreement, City shall mail notice to the Property Owner specifying: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is mailed by which date the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration and the outstanding balance becoming immediately due and owing.

10. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of both parties, and their successors and assigns.

11. Time of the Essence. Time is of the essence in this Agreement.

12. Governing Law, Jurisdiction and Venue. This Agreement is entered into in and shall be governed by and construed in accordance with the internal laws of the State of Wisconsin. All matters, whether sounding in tort or in contract, relating to the validity, construction, performance, or enforcement of this Agreement shall be controlled by, interpreted and determined in accordance with the laws of the State of Wisconsin. Any claim, dispute or litigation arising out of this Agreement shall be venued exclusively in St. Croix County Circuit Court, State of Wisconsin and shall not be removed therefrom to any other federal or state court.

13. Severability. If any term or provision of this Agreement is ever determined to be invalid or unenforceable for any reason, such term or provision shall be severed from this Agreement without affecting the validity or enforceability of the remainder of this Agreement.

14. Term. The term of this Agreement shall begin as of the date indicated below and shall terminate upon payment in full of the Loan including all fees, costs and interest that are due and owing pursuant to this Agreement.

15. Waiver and Release. The Property Owner hereby releases and waives all rights of recovery against the City and its agents, officers, representatives, employees, and insurers, including all of the assignees and successors in interest from all claims based upon the actions and/or inactions of the City, its agents, officers, representatives, employees, and insurers, related to or occurring in connection with the Property Owner's participation in the City's Lead Water

Service Line Replacement Financial Assistance Program or use of any particular contractor or contractors to perform the work to be performed on the Property in connection therewith. The claims released in this paragraph include those which may be based upon State or Federal statutes and/or administrative codes, common law, and Municipal and/or County Ordinances.

16. Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

[Signature pages follow.]

SAMPLE

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[INSERT LEGAL DESCRIPTION]

Parcel Identification No.: [INSERT PARCEL IDENTIFICATION NO.]

SAMPLE

EXHIBIT B

LOAN SCHEDULE

[INSERT LOAN SCHEDULE]