

**CITY OF WEST ALLIS
RESOLUTION R-2024-0444**

**RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF A \$2,000,000
GENERAL OBLIGATION PROMISSORY NOTE TO THE STATE OF WISCONSIN
RELATED TO THE READY FOR REUSE PROGRAM**

WHEREAS, on July 10, 2024, the Common Council of the City of West Allis, Milwaukee County, Wisconsin (the "City") adopted Resolution No. R-2024-0380, which authorized the submission of a Wisconsin Ready for Reuse Loan Application (the "Loan Application") to the Wisconsin Department of Natural Resources;

WHEREAS, the City's Loan Application seeks funds from the State of Wisconsin Ready for Reuse Loan Program (the "Ready for Reuse Program") to clean up hazardous substances and petroleum at 11** S. 70th Street in the City (the "Project");

WHEREAS, the City's Loan Application was filed on July 19, 2024, and requires a thirty day comment period prior to final action being taken on the Loan Application;

WHEREAS, the thirty day comment period is planned to begin on August 1, 2024 and end on September 1, 2024;

WHEREAS, if the City's Ready for Reuse Loan Application is approved, the City will then enter into a Ready for Reuse Program Loan Agreement with the State of Wisconsin Department of Natural Resources (the "Loan Agreement");

WHEREAS, as security for the Ready for Reuse Loan, the State of Wisconsin Department of Natural Resources ("DNR") requires the City issue a general obligation promissory note pursuant to Section 67.12(12), Wisconsin Statutes, to DNR;

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, the City is authorized by the provisions of Section 67.12(12), Wisconsin Statutes, to borrow money and issue general obligation promissory notes for such public purposes;

WHEREAS, in Resolution No. R-2024-0380, the Economic Development Executive Director and Finance Director of the City of West Allis (each an "Authorized Officer") were authorized and directed to "enter into and take any and all other actions on behalf of the City of West Allis which they deem necessary or desirable in connection with the Ready for Reuse Application"; and

WHEREAS, for the avoidance of doubt, given the requirement of the Ready for Reuse Program that the City issue a general obligation promissory note to DNR, in order to facilitate the execution of the Loan Agreement in a timely manner, the Common Council hereby determines that it is necessary, desirable and in the best interest of the City to have an Authorized Officer determine when it is appropriate for the City to issue a promissory note (the "Note") pursuant to Section 67.12(12), Wisconsin Statutes, to DNR in order to provide security for the Loan Agreement;

WHEREAS, the Common Council hereby directs the City Attorney, prior to the issuance of the Note, to negotiate an appropriate agreement with Land by Label LLC, the developer of 11** S. 70th Street, to provide for the repayment of any amounts owed by the City to DNR under the Note (the "Repayment Agreement").

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

Section 1. Authorization and Award of the Note. For the purpose of paying the cost of the Project, the City is authorized to borrow pursuant to Section 67.12(12), Wisconsin Statutes, the principal sum of up to TWO MILLION DOLLARS (\$2,000,000.00) from DNR in accordance with the terms of the Loan Agreement to be entered into with DNR pursuant to the authorization in Resolution No. R-2024-0380. Subject to the satisfaction of the conditions set forth in Section 13 of this Resolution, the Mayor and City Administrator/Clerk are hereby authorized, empowered and directed to make, execute, issue and sell to the DNR for and on behalf of and in the name of the City, the Note in the principal amount of up to TWO MILLION DOLLARS (\$2,000,000.00). The purchase price for the Note shall be paid upon requisition therefore as provided in the Loan Agreement.

Section 2. Terms of the Note. The Note shall be designated "General Obligation Promissory Note"; shall be dated its date of issuance; shall be in the denomination of \$0.01 or any integral multiple thereof; shall bear interest at the rate of 0.00% per annum and shall mature on the date or dates to be set in the Loan Agreement, which shall not be more than twenty years after the date of issuance of the Note.

Section 3. Redemption Provisions. The Note is subject to optional prepayment, in whole or in part, on any date.

Section 4. 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 A and incorporated herein by this reference.

Section 5. Tax Provisions.

(A) Direct Annual Irrepealable Tax Levy. For the purpose of paying the principal of the Note 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 a direct annual irrepealable tax in the years 2024 through 2043 for the payments due in the years 2025 through 2044 in the amounts as are sufficient to meet the principal payments when due.

(B) Tax Collection. So long as any part of the principal on the Note 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 Note, 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 payments on said Note 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 6. Segregated Debt Service Fund Account.

(A) Creation and Deposits. There shall 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 General Obligation Promissory Note" (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 money raised by the taxes herein levied and any amounts appropriated for the specific purpose of meeting principal of the Note when due; (ii) such other sums as may be necessary at any time to pay principal of the Note when due; (iii) surplus monies in the Borrowed Money Fund as specified below; and (iv) 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 the Note until all such principal has been paid in full and the Note canceled; provided (i) the funds to provide for each payment of principal of the Note 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 payments on the Note may be used to reduce the next succeeding tax levy, or may, at the option of the City, be invested by purchasing the Note as permitted by and subject to Section 67.11(2)(a), Wisconsin Statutes, or 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.

(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 7. Proceeds of the Note; Segregated Borrowed Money Fund. The proceeds of the Note (the "Note Proceeds") 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. 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 8. Execution of the Note; Closing; Professional Services. The Note shall be issued in typewritten form, executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Clerk (except that one of the foregoing signatures shall be manual), sealed with its official or corporate seal, and delivered to DNR upon execution of the Loan Agreement. In the event that either of the officers whose signatures appear on the Note shall cease to be such officers before the delivery of the Note, such signatures shall, nevertheless, be valid and sufficient for all purposes to the same extent as if they had remained in office until such delivery. For the avoidance of doubt, 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 delivery of the Note.

Section 9. Payment of the Note; Fiscal Agent. The principal of the Note shall be paid by the City Clerk (the "Fiscal Agent").

Section 10. Persons Treated as Owners; Transfer of Note. The City Clerk shall keep books for the registration and for the transfer of the Note. 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 principal 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 City 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 Mayor and City Clerk shall execute and deliver in the name of the transferee or transferees a new Note of a like aggregate principal amount and maturity and the City Clerk shall record the name of each transferee in the registration book. No registration shall be made to bearer. The City Clerk 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 necessary to effect any such transfer.

Section 11. Record Date. The fifteenth day of the calendar month next preceding each principal payment date shall be the record date for the Note (the "Record Date"). Payment of principal on the Note shall be made to the registered owner of the Note as they appear on the registration book of the City at the close of business on the Record Date.

Section 12. 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 13. Conditions on Issuance and Sale of the Note. The issuance of the Note and the sale of the Note to DNR are subject to:

(a) The conclusion of the thirty day comment period following the submission of the City's Loan Application; (b) The approval of the Loan Application by DNR; (c) The successful negotiation of the Loan Agreement; and (d) The successful negotiation of the Repayment Agreement.

The Note shall not be issued, sold or delivered until these conditions are satisfied. Upon satisfaction of these conditions, the Mayor and City Administrator/Clerk are authorized, empowered and directed to make, execute, issue and sell the Note to the DNR.

Section 14. 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.

SECTION 1: **ADOPTION** "R-2024-0444" of the City Of West Allis
Municipal Resolutions is hereby *added* as follows:

ADOPTION

R-2024-0444(*Added*)

PASSED AND ADOPTED BY THE CITY OF WEST ALLIS COUNCIL JULY 30, 2024.


	AYE	NAY	ABSENT	ABSTAIN
Ald. Ray Turner	<u> </u>	<u> </u>	<u> X </u>	<u> </u>
Ald. Kimberlee Grob	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Ald. Chad Halvorsen	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Ald. Marissa Nowling	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Ald. Suzzette Grisham	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Ald. Danna Kuehn	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Ald. Dan Roadt	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Ald. Patty Novak	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Ald. Kevin Haass	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Ald. Marty Weigel	<u> X </u>	<u> </u>	<u> </u>	<u> </u>

Attest

Presiding Officer



Rebecca Grill, City Clerk, City Of
West Allis



Dan Devine, Mayor, City Of West
Allis

