

24.



City of West Allis Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
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R-2010-0096 Resolution Introduced

Resolution relative to the approval of two agreements with Ehlers and Associates, Inc. for Arbitrage Consulting Services and Arbitrage Monitoring Services.

Introduced: 4/6/2010

Controlling Body: Administration & Finance Committee

Sponsor(s): Administration & Finance Committee

COMMITTEE RECOMMENDATION

adopt

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
APR 06 2010			Barczak				
			Czaplewski				
			Kopplin				✓
	✓	✓	Lajsic	✓			
			Narlock	✓			
			Reinke				✓
			Roadt				
			Sengstock				
			Vitale	✓			
			Weigel				
			TOTAL	3	0		2

SIGNATURE OF COMMITTEE MEMBER

Chair

[Signature]
Vice-Chair

Member

COMMON COUNCIL ACTION

ADOPT

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
APR 06 2010			Barczak				✓
			Czaplewski	✓			
			Kopplin				✓
		✓	Lajsic	✓			
			Narlock	✓			
			Reinke				✓
			Roadt	✓			
	✓		Sengstock	✓			
			Vitale	✓			
			Weigel	✓			
			TOTAL	7	1		3



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Resolution

File Number: R-2010-0096

Final Action:

APR 06 2010

Sponsor(s): Administration & Finance Committee

Resolution relative to the approval of two agreements with Ehlers and Associates, Inc. for Arbitrage Consulting Services and Arbitrage Monitoring Services.

WHEREAS, the City of West Allis issues debt every year; and,

WHEREAS, said debt issuances are sometimes structured in different ways; and,

WHEREAS, in most debt issuances there are investment restrictions that relate directly to interest costs being paid by the City; and,

WHEREAS, federal law is complicated in tracking the arbitrage yield restrictions and rebate requirements; and,


WHEREAS, it is necessary and in the best interest of the City to hire an expert consultant to perform the arbitrage consulting services and arbitrage monitoring services; and,

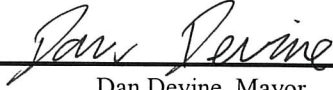
WHEREAS, Ehlers and Associates, Inc., the City's Financial Advisor, is capable of, interested in, and willing to perform said services at a reasonable and fair cost.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis that the two attached agreements between the City of West Allis and Ehlers and Associates, Inc. be and are hereby approved.

BE IT FURTHER RESOLVED by the Common Council of the City of West Allis that the proper City officials are hereby authorized and directed to execute said agreements on behalf of the City.

ADM\ORDRES\ADMR390

ADOPTED APR 06 2010

Paul M. Ziehler, City Admin. Officer, Clerk/Treas.

APPROVED 4/14/10

Dan Devine, Mayor

AGREEMENT FOR ARBITRAGE CONSULTING SERVICES

City of West Allis
7525 West Greenfield Avenue
West Allis, WI 53214

Effective as of March 12, 2010

Ehlers & Associates, Inc. ("Ehlers") and the City of West Allis, WI ("Client") do hereby mutually agree to the following with regard to the provision of arbitration consulting services. In consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, it is agreed by and between Ehlers and Client that Ehlers will provide certain arbitration consulting services to assist the Client in complying with the arbitration provisions, all as more particularly described in this Agreement.

EHLERS RESPONSIBILITIES - SCOPE OF SERVICES

Ehlers agrees to provide Client with a general education of the arbitration yield restriction and rebate requirements.

FEE ARRANGEMENT

Ehlers will charge Client a fee of \$200 per hour to provide the arbitration consulting services set forth above. Ehlers will invoice Client for the amount due.

LIMIT OF LIABILITY

To the fullest extent permitted by applicable law, the total aggregate liability of Ehlers under this Agreement for any actions or omissions taken by Ehlers in the performance of this Agreement shall be limited to the fees paid by Client to Ehlers under this Agreement. However, such liability limitation shall not apply to the extent penalty and/or interest is imposed on Client by the IRS on any additional rebate amount or yield reduction payment that results from the gross negligence or intentional misconduct of Ehlers in rendering the services outlined in this Agreement. In such case, it is agreed that Ehlers will be liable only for penalty and/or interest imposed by the IRS on any additional rebate amount or yield reduction payment that results from the gross negligence or intentional misconduct of Ehlers. The Client is ultimately responsible for the completion and filing of IRS Form 8038-T or 8038-R. Client, and not Ehlers, shall be responsible for payment of any rebate amount or yield reduction payment due and any interest or penalty for failure to make timely payments. Under no circumstances shall any employee or agent of Ehlers have any personal liability arising out of this Agreement and no party shall seek or claim any such personal liability.

NO THIRD PARTY BENEFICIARY

No third party shall have any rights or remedies under this Agreement. This Agreement is made solely for the benefit of the parties hereto, and no other person, partnership, limited liability company, association, or corporation shall acquire or have any rights under this Agreement.

CONFIDENTIALITY: DISCLOSURE OF INFORMATION

Client Information All information, files, records, memoranda and other data of the Client ("Client Information") shall be deemed by the parties to be the property of Client. Ehlers may disclose Client Information to third parties in connection with the performance by it of its duties hereunder.

Ehlers Information Client acknowledges that in connection with the performance by Ehlers of its duties hereunder, Client may become aware of internal files, records, memoranda and other data, including without limitation computer programs of Ehlers ("Ehlers Information"). Client acknowledges that all Ehlers Information, except reports prepared by Ehlers for the Client and is required under the open records law, is

confidential and proprietary to Ehlers, and agrees that Client will not, directly or indirectly, disclose the same or any part thereof to any person or entity except with the express written consent of Ehlers.

TERMINATION OF CONTRACT

Either party may terminate this Agreement with or without cause at any time during the term of this Agreement by sending written notice of termination to the other party at least 30 days prior to the effective date of termination. Termination of this Agreement shall extend to the termination of all Addenda to this Agreement.

SEVERABILITY

To the extent any provision of this Agreement shall be determined invalid or unenforceable, the invalid or unenforceable portion shall be deleted from this Agreement, and the validity and enforceability of the remainder shall be unaffected.

ENTIRE AGREEMENT

There are no representations, covenants, warranties, promises, agreements, conditions or undertakings, oral or written, between Client and Ehlers other than as set forth herein. Except or otherwise expressly provided herein, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon Ehlers.

AMENDMENT

Ehlers and Client may mutually agree in writing to amend this Agreement (which amendment shall be reflected in an Addendum to this Agreement), the scope of services and/or the fee arrangement at any time. No modification, alteration, or amendment to this Agreement shall be binding upon any party hereto until such modification, alteration, or amendment is reduced to writing and duly executed by both parties hereto.

GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of Milwaukee County, State of Wisconsin.

NOTICE

All notices given shall be in writing and shall be deemed to have been given when delivered, transmitted by first class, registered or certified mail, postage prepaid and addressed as follows:

If to Client:
City of West Allis
7525 West Greenfield Avenue
West Allis, WI 53214
Attention: Finance Director

If to Ehlers:
Ehlers & Associates, Inc.
3060 Centre Pointe Drive
Roseville, MN 55113
Attention: President

In Witness Whereof, the parties have executed this Agreement this 16th day of April,

2010
By: [Signature] Title: CAO/COO

Ehlers & Associates, Inc.

By: [Signature] Title: PRESIDENT

MASTER AGREEMENT FOR ARBITRAGE MONITORING SERVICES

City of West Allis
7525 West Greenfield Avenue
West Allis, WI 53214

Effective as of [Insert Date]
For the following Obligation

\$XX,XXX,XXX
[Insert Remainder of Bond Caption]



With a Closing Date of [Insert Delivery Date]

Ehlers & Associates, Inc. ("Ehlers") and the City of West Allis, MN ("Client") do hereby mutually agree to the following with regard to the provision of arbitrage monitoring services. In consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, it is agreed by and between Ehlers and Client as follows:

The above referenced debt is subject to the arbitrage provisions of the Internal Revenue Code of 1986 and related Treasury regulations. To comply with the statute and regulations the Client must undertake certain calculations. Ehlers will provide certain arbitrage monitoring services for all funds related to this issue to assist the Client in complying with the arbitrage provisions, all as more particularly described in this Agreement.

EHLERS RESPONSIBILITIES - SCOPE OF SERVICES

Ehlers agrees to provide the following services to Client:

1. Review the following documents:
 - a. Information Return for Tax-Exempt Governmental Obligations (Form 8038-G)
 - b. Arbitrage Certificate
 - c. Official Statement
 - d. Addendum to Official Statement, if any
 - e. Closing Memorandum, if any
 - f. Post Sales Report, if any
 - g. Verification Report, if any
 - h. Prior Arbitrage Calculation, if any
 - i. Trust Indenture, if any
 - j. Credit Enhancement Agreement, if any
2. Calculate the Client's arbitrage liability under Section 148(f) of the Internal Revenue Code of 1986, as amended and applicable Treasury regulations in connection with this issue, including:
 - a. Obtain nonpurpose investment transaction data for all funds related to this issue
 - b. Review and analyze nonpurpose investment transaction data as required based on the aforementioned documents
 - c. Compute/verify the amount of spend-down penalties payable to the IRS for issues applying such provisions
 - d. Confirm the arbitrage yield
 - e. Compute/verify the amount of excess earnings, if any, on nonpurpose investments and the value of those earnings as of the applicable computation date
 - f. Determine the rebate amount and rebate payment due to the IRS, if any
 - g. Compute/verify the yield reduction payment due on yield restricted nonpurpose investments, if any

- h. Assist with the purchase of State and Local Government Series of U.S. Treasuries for yield restriction of the investments, if necessary
 - i. Prepare arbitrage reports, including computational methods and assumptions used in the analysis and conclusions supporting the calculation
 - j. Prepare IRS Form 8038-T or 8038-R, if required
 - k. Obtain a legal opinion for the arbitrage reports and IRS Form 8038-T or 8038-R, if required
 - l. Deliver arbitrage reports, along with legal opinion and IRS Form 8038-T or 8038-R, if applicable
 3. Maintain a system for computing and tracking the arbitrage liability and future arbitrage computation dates, as necessary.
 4. Evaluate and make recommendations on record keeping practices for those funds and accounts subject to arbitrage compliance.
 5. Apprise Client of any changes in the arbitrage regulations that may occur during the term of this Agreement.
-

CLIENT RESPONSIBILITIES

Client agrees to provide Ehlers with timely and accurate information regarding pertinent cash and investment activity as well as pertinent revenue and expenditure activities for all funds related to this review. The information that shall be provided includes:

1. A detailed transaction listing of revenues and expenditures made within all funds related to this issue for the applicable computation period, including:
 - a. Deposits and withdrawals of gross proceeds, including all investment activity such as interest revenues
 - b. Any other information Ehlers may deem necessary to complete the calculations such as running balances
 2. Client agrees to notify Ehlers of the full redemption of this issue and issues covered by subsequent Addenda prior to the final stated maturity date. Failure to do so will relieve Ehlers of any responsibilities under this Agreement.
 3. Client agrees to notify Ehlers if the Client disagrees with any of the assumptions contained in the summary of computational information of the arbitrage report. Such notice will be made within ten business days upon Client's receipt of said report.
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FEE ARRANGEMENT

Ehlers will charge Client a base fee of \$2,000 per bond year to determine spending exceptions, bona fide debt service fund exemptions, penalty calculations, rebate amounts and yield reduction payments for all funds related to this issue on an annual basis. Depending on the structure of the transaction, certain complexities may require computational work that extends beyond the scope of a standard arbitrage calculation. Conversely, the amount of computational work required to prepare future arbitrage calculations may decrease due to aggressive expenditures of gross proceeds. In such instances, Ehlers will charge additional fees and/or offer discounts in accordance with the fee schedule set forth below.

Additions to Base Fee	
Variable rate issue	\$500 annually
Commingled funds	\$195 per hour
Transferred proceeds analysis	\$500 to \$1,000 per issue
Debt service residual analysis	\$195 per hour
Variable rate computation period analysis	To be negotiated
Universal cap analysis	To be negotiated
IRS Form 8038-T preparation	\$500 to \$1,000 per form
IRS Form 8038-R preparation	\$500 to \$1,000 per form
Legal opinion	To be determined

Discounts to Base Fee	
Monitoring of debt service fund only	\$1,000 per year
Monitoring of reserve fund only	\$1,000 per year
Monitoring of yield restriction only	\$1,000 per year
Discretionary discounts	To be determined by Ehlers

Ehlers will invoice Client for the amount due. The invoice will be sent in the same package as the report. The invoice is due and payable by the Client within 60 days of the invoice date. Other obligations may be covered by this Agreement in an Addendum. The fees shown in the Addendum may differ from those shown above.

LIMIT OF LIABILITY

To the fullest extent permitted by applicable law, the total aggregate liability of Ehlers under this Agreement for any actions or omissions taken by Ehlers in the performance of this Agreement shall be limited to the fees paid by Client to Ehlers under this Agreement. However, such liability limitation shall not apply to the extent penalty and/or interest is imposed on Client by the IRS on any additional rebate amount or yield reduction payment that results from the gross negligence or intentional misconduct of Ehlers in rendering the services outlined in this Agreement. In such case, it is agreed that Ehlers will be liable only for penalty and/or interest imposed by the IRS on any additional rebate amount or yield reduction payment that results from the gross negligence or intentional misconduct of Ehlers. The Client is ultimately responsible for the completion and filing of IRS Form 8038-T or 8038-R. Client, and not Ehlers, shall be responsible for payment of any rebate amount or yield reduction payment due and any interest or penalty for failure to make timely payments. Under no circumstances shall any employee or agent of Ehlers have any personal liability arising out of this Agreement and no party shall seek or claim any such personal liability.

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Ehlers Information Client acknowledges that in connection with the performance by Ehlers of its duties hereunder, Client may become aware of internal files, records, memoranda and other data, including without limitation computer programs of Ehlers ("Ehlers Information"). Client acknowledges that all Ehlers Information, except reports prepared by Ehlers for the Client and is required under the open records law, is confidential and proprietary to Ehlers, and agrees that Client will not, directly or indirectly, disclose the same or any part thereof to any person or entity except with the express written consent of Ehlers.

TERM / TERMINATION OF CONTRACT

The term of this Agreement shall begin on the effective date of this Agreement and shall continue until such time as the above-referenced issue is no longer outstanding. Either party may terminate this Agreement with or without cause at any time during the term of this Agreement by sending written notice of termination to the other party at least 30 days prior to the effective date of termination. Termination of this Agreement shall extend to the termination of all Addenda to this Agreement and the issues covered by such Addenda. Should this Agreement be terminated, Ehlers shall be relieved of all liability for the above-referenced issue and any issues described in the Addenda to this Agreement.

SEVERABILITY

To the extent any provision of this Agreement shall be determined invalid or unenforceable, the invalid or unenforceable portion shall be deleted from this Agreement, and the validity and enforceability of the remainder shall be unaffected.

EVENT OF DEFAULT OR REFUNDING

Ehlers is relieved of all its liability and obligations agreed to herein should Client be in default on its principal and/or interest payments due on the above referenced issue. In addition, Ehlers is relieved of all its liability and obligations agreed to herein should the above referenced issue be refunded.

ENTIRE AGREEMENT

There are no representations, covenants, warranties, promises, agreements, conditions or undertakings, oral or written, between Client and Ehlers other than as set forth herein. Except or otherwise expressly provided herein, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon Ehlers.

AMENDMENT

Ehlers and Client may mutually agree in writing to amend the issues covered by this Agreement (which amendment shall be reflected in an Addendum to this Agreement), the scope of services and/or the fee arrangement at any time. No modification, alteration, or amendment to this Agreement shall be binding upon any party hereto until such modification, alteration, or amendment is reduced to writing and duly executed by both parties hereto.

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If to Client:

City of West Allis
7525 West Greenfield Avenue
West Allis, WI 53214
Attention: Finance Director

If to Ehlers:

Ehlers & Associates, Inc.
3060 Centre Pointe Drive
Roseville, MN 55113
Attention: President

In Witness Whereof, the parties have executed this Agreement this _____ day of _____,
20____

By: _____ Title: _____

Ehlers & Associates, Inc.

By: _____ Title: _____

For Authorization purposes at this time

[Signature]
4/16/10