



City of West Allis

Legislation Text

File #: R-2004-0100, **Version:** 1

Resolution Authorizing the Issuance and Sale of Approximately \$5,505,000 Taxable Bond Anticipation Notes, Series 2004D, pursuant to Section 67.12(1)(b), Wisconsin Statutes.

WHEREAS on February 18, 2004, the Common Council of the City of West Allis, Milwaukee County, Wisconsin (the "City") adopted a resolution (the "Initial Resolution"), authorizing the issuance of taxable general obligation bonds pursuant to Chapter 67 of the Wisconsin Statutes in an amount not to exceed \$6,200,000 for the public purpose of providing financial assistance to community development projects under Section 66.1105, Wisconsin Statutes, in the City's Tax Incremental District No. 5 (including paying capitalized interest on the bonds); and

WHEREAS the Common Council has determined that the City is presently in need of \$5,505,000 for such purpose; and

WHEREAS the City intends to issue taxable general obligation bonds (the "Securities") for such purpose pursuant to the Initial Resolution; and

WHEREAS the Securities have not yet been issued and sold; and

WHEREAS it is now necessary and desirable to anticipate the issuance of the Securities and to provide interim financing for the project to be financed by the Securities by the issuance and sale of bond anticipation notes pursuant to Section 67.12(1)(b), Wisconsin Statutes; and

WHEREAS due to certain provisions contained in the Internal Revenue Code of 1986, as amended, the bond anticipation notes are to be issued on a taxable rather than tax-exempt basis; and

WHEREAS the City has duly received bids for its proposed issue of Taxable Bond Anticipation Notes, Series 2004D (the "Notes") as described on the bid tabulation attached hereto as Exhibit A and incorporated herein by this reference; and

WHEREAS it has been determined that the best bid received was that submitted by the bidder (the "Purchaser") whose bid is attached hereto as Exhibit B and incorporated herein by this reference (the "Proposal");

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis, Milwaukee County, Wisconsin, that:

Section 1. Award. The bid of the Purchaser for the purchase price set forth in the Proposal be and it hereby is accepted and the Mayor and City Clerk are authorized and directed to execute an acceptance of the offer of said successful bidder on behalf of the City. The good faith deposit of the Purchaser shall be retained by the City 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 Mayor and City Clerk shall make, execute and deliver the Notes to the Purchaser, for and on behalf of the City. The Notes shall be 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 1, 2004. The Notes shall be in the aggregate principal amount of \$5,505,000, shall bear interest at the rate per annum set forth in the Proposal and shall mature on April 1, 2009, as set forth in the debt service schedule attached hereto as Exhibit C and incorporated herein by this reference (the "Schedule").

Interest on the Notes shall be payable on April 1 and October 1 of each year, commencing April 1, 2005.

The Notes are subject to call and prior payment at the option of the Issuer in whole or from time to time in part by lot on April 1, 2007 or on any date thereafter, at the price of par plus accrued interest.

Section 3. Form of Notes. The Notes shall be in substantially the form attached hereto as Exhibit D and incorporated herein by this reference.

Section 4. Security. The Notes shall in no event be a general obligation of the City and no lien shall be created upon any property of the City as a result of the issuance of the Notes. The City hereby pledges to the payment of the Notes (a) proceeds of the Notes set aside for payment of interest on the Notes as the same becomes due, and (b) the proceeds to be derived from the issuance and sale of the Securities, which proceeds are hereby declared to constitute a special trust fund to be held by the City Treasurer and expended solely for the payment of the principal of and interest on the Notes until paid. The City agrees that, in the event such monies are not sufficient to pay the principal of and interest on the Notes when due, the City will pay such deficiency out of the tax levy or other available funds of the City; provided, however, that such payment shall be subject to annual budgetary appropriations therefor and applicable levy limitations, if any; and, provided further, that neither this Resolution nor any such payment shall be construed as constituting an obligation of the City to make any such appropriation or any further payment.

Section 5. Debt Service Fund.

(A) Creation and Deposits. There be and there hereby is established in the treasury of the City a separate and distinct fund designated as the "Debt Service Fund for 'Taxable Bond Anticipation Notes, Series 2004D,' dated April 1, 2004" ("Debt Service Fund"), and said Fund shall be maintained until the obligation evidenced by the Notes is fully paid or otherwise extinguished. The City Treasurer shall deposit in the Debt Service Fund (i) all accrued interest received by the City at the time of delivery of and payment for the Notes; (ii) any proceeds of the Notes representing capitalized interest on the Notes or other funds appropriated by the City for payment of interest on the Notes, as needed to pay the interest on the Notes when due; (iii) proceeds of the Securities to the extent necessary to pay principal of or interest on the Notes; (iv) such other sums, including tax monies, as may be necessary at any time to pay principal of and interest on the Notes when due and which are appropriated by the Common Council for that purpose; and (v) surplus monies in the Borrowed Money Fund as specified in Section 7 hereof.

(B) Use and Investment. No money shall be withdrawn from the Debt Service Fund and appropriated for any purposes 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 that such monies may be invested in permissible municipal investments under Section 66.0603(1m), Wis. Stats., which investments shall continue as a part of the Debt Service Fund.

(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 Fund shall be deposited in the general fund of the City, unless the Common Council directs otherwise.

Section 6. Covenants of City. The City hereby covenants with the owners of the Notes that:

(a) It shall issue and sell the Securities as soon as practicable, as necessary to provide for payment of the Notes.

(b) It shall segregate the proceeds derived from the sale of the Securities into the trust fund herein created and shall permit the trust fund to be used for no purpose other than the payment of the principal of and interest on the Notes, until paid. After the payment of principal of and interest on the Notes in full, said trust fund may be used for such other purposes as the Common Council may direct in accordance with law and the resolution authorizing the Securities.

(c) It will not incur additional general obligation debt unless it has sufficient debt issuance capacity to permit the issuance of (i) the Securities in an amount sufficient to pay the Notes and (ii) the debt proposed to be incurred.

Section 7. Proceeds of the Notes. All monies received by the City upon the delivery of the Notes to the Purchaser thereof, except for accrued interest and premium, if any, shall be deposited by the City Clerk into a special fund (the "Borrowed Money Fund") which shall be maintained separate and distinct from all other funds of the City and shall be used for no purpose other than the purposes for which the Notes are issued. 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 Fund.

Section 8. Persons Treated as Owners; Transfer of Notes. The City 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 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 or Notes of a like aggregate principal amount, series 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 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 City at the close of business on the corresponding record date.

Section 9. 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 City agrees to the applicable provisions set forth in the Blanket Issuer Letter of Representations previously executed on behalf of the City and on file in the City Clerk's office.

Section 10. Undertaking to Provide Continuing Disclosure. The City 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 City to comply with the provisions of the Undertaking shall not be an event of default with respect to the Notes).

The City Clerk, or other officer of the City 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 City's Undertaking.

Section 11. Records. The City 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 12. Bond Insurance. If the Purchaser of the Notes determines to obtain municipal bond insurance with respect to the Notes, the officers of the City are authorized to take all actions necessary to obtain such municipal bond insurance. The Mayor and City Clerk are authorized to agree to such additional provisions as the bond insurer may reasonably request and which are acceptable to the Mayor and City 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 13. Closing. The Mayor and City Clerk of the City 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 Mayor and City 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 City 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.

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