



City of West Allis

Legislation Text

File #: R-2003-0131, **Version:** 1

Resolution authorizing the issuance and sale of General Obligation Promissory Notes, Series 2003, of the City of West Allis.

WHEREAS the City of West Allis, Milwaukee County, Wisconsin (sometimes hereinafter called the "City") is presently in need of the sum of Five Million Six Hundred Sixty Thousand Dollars (\$5,660,000) for public purposes, including paying part of the costs of projects included in the City's 2003 Capital Improvement Program (consisting of improvements to streets, alleys and sidewalks and electrical improvements) and refunding obligations of the City, including interest on them; and

WHEREAS the Common Council deems it necessary and in the best interest of the City that the monies needed for such purposes be borrowed by issuing general obligation promissory notes pursuant to the provisions of Section 67.12(12), Wis. Stats., upon the terms and conditions hereinafter provided; and

WHEREAS the City has duly received bids for its proposed issue of General Obligation Promissory Notes, Series 2003 (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 of \$5,657,431.35 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 negotiable, general obligation promissory notes of the City in the aggregate principal amount of \$5,660,000, 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, 2003. The Notes shall bear interest at the rates per annum set forth in the Proposal and shall mature on April 1 of each year, in the years and principal amounts 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 October 1, 2003.

Notes maturing in the years 2011 through 2013 shall be subject to call and prior payment at the option of the City in whole or from time to time in part on April 1, 2010 or any date thereafter at the price of par plus accrued

interest to the date of redemption. The amounts and maturities of the Notes to be redeemed shall be selected by the City. If less than the entire principal amount of any maturity is to be redeemed, the Notes of that maturity which are to be redeemed shall be selected by lot.

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. Tax Provisions.

(A) Direct, Annual Irrepealable Tax. For the purpose of paying the principal of and interest on the Notes as the same become due, the full faith, credit and resources of the City are hereby irrevocably pledged and there be and there hereby is levied on all the taxable property in the City a direct, annual, irrepealable tax in the years 2003 through 2012 for payment of principal of and interest on the Notes in the years 2003 through 2013 in the amounts set forth in the Schedule. The amount of tax levied for the year 2003 shall be the total amount of debt service due on the Notes in the years 2003 and 2004; provided that the amount of such tax carried onto the tax rolls shall be abated by any amounts appropriated pursuant to subsection (D) below which are applied to payment of principal of or interest on the Notes in the year 2003.

(B) Tax Collection. 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 Notes, said tax shall be, from year to year, carried into the tax rolls of the City and collected as other taxes are collected, provided that the amount of tax carried into said tax rolls may be reduced in any year by the amount of any surplus money in the Debt Service Account created in Section 5(A) hereof.

(C) Additional Funds. If at any time there shall be on hand insufficient funds from the aforesaid tax levy to meet principal and/or interest payments on said Notes 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.

(D) Appropriation. There be and there hereby is appropriated from taxes levied in anticipation of the issuance of the Notes or other funds of the City on hand a sum sufficient to be deposited in the Debt Service Account to meet payments with respect to debt service due on October 1, 2003.

Section 5. Debt Service Fund and Account.

(A) Creation and Deposits. There 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. 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 be and there hereby is established a separate and distinct account designated as the "Debt Service Account for General Obligation Promissory Notes, Series 2003, dated April 1, 2003" (the "Debt Service Account") and such account shall be maintained until the indebtedness evidenced by the Notes is fully paid or otherwise extinguished. The City Treasurer shall deposit in such Debt Service Account (i) all accrued interest received by the City at the time of delivery of and payment for the Notes; (ii) the taxes herein levied for the specific purpose of meeting principal of and interest on the Notes when due; (iii) such other sums as may be necessary at any time to pay principal of and interest on the Notes when due; (iv) any premium which may be received by the City above the par value of the Notes and accrued interest thereon; (v) surplus

monies in the Borrowed Money Fund as specified in Section 6 hereof; and (vi) such further deposits as may be required by Sec. 67.11, Wis. Stats.

(B) Use and Investment. No money shall be withdrawn from the Debt Service Account and appropriated for any purpose 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 (i) the funds to provide for each payment of principal of and interest on the Notes 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 and interest payments on the Notes may be used to reduce the next succeeding tax levy, or may, at the option of the City, be invested by purchasing the Notes as permitted by and subject to Section 67.11(2)(a), Wis. Stats., in interest-bearing obligations of the United States of America, in other obligations of the City or in other investments permitted by law, which investments shall continue to be a part of the Debt Service Account.

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

Section 6. 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 Treasurer 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. In order to accomplish the refunding purpose for which the Notes are issued, a portion of the proceeds of the Notes shall be transferred to the Escrow Account, as provided in Section 13 hereof. 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 Account.

Section 7. No Arbitrage. All investments permitted by this resolution shall be legal investments, but no such investment shall be made in such a manner as would cause the Notes to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), or the Regulations of the Commissioner of Internal Revenue thereunder (the "Regulations"); and an officer of the City, charged with the responsibility for issuing the Notes, shall certify as to facts, estimates, circumstances and reasonable expectations in existence on the date of closing which will permit the conclusion that the Notes are not "arbitrage bonds," within the meaning of the Code or Regulations.

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. Compliance with Federal Tax Laws. (a) The City represents and covenants that the projects financed by the Notes and the Refunded Obligations defined in Section 12 and their ownership, management and use will not cause the Notes or the Refunded Obligations to be "private activity bonds" within the meaning of Section 141 of the Code (except for the 1996 Notes and the portion of the Notes which constitute qualified 501(c)(3) bonds as provided in Section 18 below). The City further covenants that it shall comply with the provisions of the Code to the extent necessary to maintain the tax-exempt status of the interest on the Notes including, if applicable, the rebate requirements of Section 148(f) of the Code. The City further covenants that it will not take any action, omit to take any action or permit the taking or omission of any action within its control (including, without limitation, making or permitting any use of the proceeds of the Notes) if taking, permitting or omitting to take such action would cause any of the Notes to be an arbitrage bond or, except for the portion of the Notes which constitute qualified 501(c)(3) bonds as provided in Section 18 below, a private activity bond within the meaning of the Code or would otherwise cause interest on the Notes to be included in the gross income of the recipients thereof for federal income tax purposes. The City Clerk or other officer of the City charged with the responsibility of issuing the Notes shall provide an appropriate certificate of the City certifying that the City can and covenanting that it will comply with the provisions of the Code and Regulations.

(b) The City also covenants to use its best efforts to meet the requirements and restrictions of any different or additional federal legislation which may be made applicable to the Notes provided that in meeting such requirements the City will do so only to the extent consistent with the proceedings authorizing the Notes and the laws of Wisconsin and to the extent that there is a reasonable period of time in which to comply.

Section 10. Designation as Qualified Tax-Exempt Obligations. The Notes are hereby designated as "qualified tax-exempt obligations" for purposes of Section 265 of the Internal Revenue Code of 1986, as amended, relating to the ability of financial institutions to deduct from income for federal income tax purposes, interest expense that is allocable to carrying and acquiring tax-exempt obligations.

Section 11. 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 12. Redemption of Refunded Obligations. (a) The City has outstanding its General Obligation Promissory Notes, Series 1996D, dated April 1, 1996 (the "1996 Notes"). The 1996 Notes maturing in the years 2004 through 2006 are called for prior payment on May 15, 2003 at the price of par plus accrued interest to the date of redemption.

The City Clerk shall cause timely notice of the call of the 1996 Notes to be given by mailing a notice thereof, in substantially the form attached hereto as Exhibit E and incorporated herein by this reference, by registered or certified mail no later than April 15, 2003, to the registered owner of each 1996 Note to be redeemed at the address shown on the registration books.

In addition to the official notice of redemption provided for in the paragraph above, the City Clerk shall cause further notice of the redemption of the 1996 Notes to be given on behalf of the City to all nationally recognized municipal securities information repositories, to all registered securities depositories in the business of holding substantial amounts of obligations of types such as the 1996 Notes (such depositories being Depository Trust Company of New York, New York) and to one or more national information services that disseminate notices of redemption of obligations such as the 1996 Notes. Each further notice of redemption shall be sent by registered or certified mail, overnight express delivery, facsimile transmission or email transmission and shall contain the information set forth in the official notice of redemption provided on Exhibit E.

(b) The City has outstanding its General Obligation Promissory Notes, Series 1997A, dated May 1, 1997 (the "1997 Notes"). The 1997 Notes maturing in the years 2005 through 2007 (the "Refunded 1997 Notes") are called for prior payment on April 1, 2004 at the price of par plus accrued interest to the date of redemption.

The Escrow Agent shall be directed pursuant to the Escrow Agreement referred to in Section 13 hereof to give notice of the call of the Refunded 1997 Notes.

The 1996 Notes and the Refunded 1997 Notes are collectively referred to herein as the "Refunded Obligations".

Section 13. Escrow Agent; Escrow Agreement; Escrow Account. U.S. Bank National Association, St. Paul, Minnesota is hereby appointed Escrow Agent of the City, for the purpose of ensuring the payment of the principal of and interest on the Refunded Obligations.

The Mayor and City Clerk are hereby authorized and directed to execute an escrow agreement substantially in the form attached hereto as Exhibit F and incorporated herein by this reference (the "Escrow Agreement") (such form may be modified by said officers prior to execution, the execution of such agreement by said officers to constitute full approval of the City of any such modifications), with the Escrow Agent, for the purpose of effecting the provisions of this Resolution.

The Note proceeds allocable to refunding the Refunded Obligations shall be deposited in an Escrow Account which is hereby created with the Escrow Agent, pursuant to the Escrow Agreement. The use, investment and disbursement of the Note proceeds by the Escrow Agent in the manner provided in the Escrow Agreement is authorized and approved.

Upon transfer to the Escrow Account of the proceeds of the Notes and any other necessary funds allocable to refunding the Refunded Obligations, the taxes heretofore levied to pay debt service on the Refunded Obligations shall be abated to the extent such transfer together with investment earnings thereon is sufficient to pay the principal of and interest on the Refunded Obligations, but such abatement shall not affect the City's pledge of its full faith, credit and resources to make such payments. The Escrow Account created by the Escrow Agreement shall hereafter serve as the debt service account (or sinking fund) for the Refunded Obligations. The Escrow Agent shall serve as custodian of said debt service account (or sinking fund).

Section 14. U.S. Treasury Securities. The Escrow Agent and Evensen Dodge Inc. are authorized to submit subscriptions for United States Treasury Securities - State and Local Government Series and to purchase other

U.S. government securities on behalf of the City in such amount as is necessary in order to carry out the refunding authorized by this resolution pursuant to Section 67.12(12), Wisconsin Statutes.

Section 15. 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 16. 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 17. 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 18. Qualified 501(c)(3) Bonds. The City elects to treat as qualified 501 (c)(3) bonds under Section 145 of the Code that portion of the Notes which will refund the 1996 Notes.

Section 19. 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.

Adopted, approved and recorded April 2, 2003.