



# City of West Allis

## Legislation Text

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**File #:** R-2010-0218, **Version:** 1

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Resolution Authorizing the Issuance and Sale of Up to \$2,005,496 General Obligation Sewerage System Promissory Notes, Series 2010, and Providing for Other Details and Covenants With Respect Thereto.

WHEREAS, the City of West Allis, Milwaukee County, Wisconsin (the "Municipality") owns and operates a sewerage system (the "System") which is operated for a public purpose as a public utility by the Municipality; and

WHEREAS, certain improvements to the System are necessary to meet the needs of the Municipality and the residents thereof, consisting of the construction of a project (the "Project") assigned Clean Water Fund Program Project No. 4638-04 by the Department of Natural Resources, and as described in the Department of Natural Resources approval letter for the plans and specifications of the Project, or portions thereof, issued under Section 281.41 of the Wisconsin Statutes, assigned No. S-2010-0460 and dated June 17, 2010, No. S-2010-0345 and dated April 26, 2010 and No. S-2009-0939 and dated February 16, 2010 by the DNR; and

WHEREAS, under the provisions of Section 67.12(12), Wisconsin Statutes, any municipality (as defined in Section 67.01(5), Wisconsin Statutes) may, by action of its governing body, issue promissory notes as evidence of indebtedness for any public purpose (as defined in Section 67.04(1)(b), Wisconsin Statutes) which promissory notes are general obligations of the municipality; and

WHEREAS, the Municipality deems it to be necessary, desirable and in its best interest to authorize and sell general obligation promissory notes of the Municipality, pursuant to the provisions of Section 67.12(12), Wisconsin Statutes, to pay the cost of the Project; and

WHEREAS, such notes are to be issued for purposes of Sections 281.58, 281.59, 281.60 or 281.61, Wisconsin Statutes; and

WHEREAS, the only outstanding general obligations of the Municipality are an obligation, dated January 1, 1995, General Obligation Promissory Notes, dated March 1, 2002, Taxable General Obligation Refunding Bonds, dated August 1, 2002, General Obligation Refunding Bonds, dated August 1, 2002, General Obligation Corporate Purpose Bonds, Series 2004A, dated April 1, 2004, Taxable General Obligation Community Development Bonds, Series 2004B, dated April 1, 2004, General Obligation Refunding Bonds, Series 2004C, dated April 1, 2004, State Trust Fund Loan, dated October 26, 2005, State Trust Fund Loan, dated April 1, 2005, General Obligation Corporate Purpose Bonds, Series 2005A, dated May 1, 2005, General Obligation Corporate Purpose Bonds, Series 2006A, dated May 1, 2006, General Obligation Refunding Bonds, Series 2006C, dated October 1, 2006, State Trust Fund Loan, dated July 26, 2006, Taxable General Obligation Land Remediation Promissory Notes, Series 2006, dated November 22, 2006, Taxable General Obligation Land Remediation Promissory Notes, dated April 11, 2007, General Obligation Corporate Purpose Bonds, Series 2007A, dated May 1, 2007, Taxable General Obligation Land Remediation Promissory Notes, dated January 23, 2008, General Obligation Corporate Purpose Bonds, Series 2008A, dated June 1, 2008, Taxable General Obligation Land Remediation Promissory Notes, dated June 11, 2008, Taxable General Obligation Land Remediation Promissory Notes, dated December 23, 2008, General Obligation Corporate Purpose Bonds, dated

March 27, 2009, Taxable General Obligation Corporate Purpose Bonds, dated March 27, 2009, General Obligation Promissory Notes, dated April 1, 2009, State Trust Fund Loan, dated April 1, 2009, State Trust Fund Loan, dated January 14, 2010, State Trust Fund Loan, dated January 14, 2010, Taxable General Obligation Refunding Bonds, Series 2010A, dated March 29, 2010, General Obligation Refunding Bonds, Series 2010B, dated March 29, 2010, Taxable General Obligation Corporate Purpose Bonds, Series 2010C (Build America Bonds - Direct Payment), dated April 1, 2010, and State Trust Fund Loan, dated July 2, 2010, currently outstanding in an aggregate principal amount not exceeding \$78,565,008.

NOW, THEREFORE, be it resolved by the Governing Body of the Municipality that:

Section 1. Definitions. The following terms shall have the following meanings in this Resolution unless the text expressly or by implication requires otherwise:

- (a) "Act" means Chapter 67, Wisconsin Statutes;
- (b) "Bond Registrar" means the Municipal Treasurer which shall act as Paying Agent for the Notes;
- (c) "Debt Service Fund" means the Debt Service Fund of the Municipality, which shall be the "debt service fund" as such term is defined in the Act;
- (d) "Financial Assistance Agreement" means the Financial Assistance Agreement by and between the State of Wisconsin by the Department of Natural Resources and the Department of Administration and the Municipality pursuant to which the Notes are to be issued and sold to the State, substantially in the form attached hereto and incorporated herein by this reference;
- (e) "Fiscal Year" means the twelve-month period ending on each December 31;
- (f) "Governing Body" means the Common Council, or such other body as may hereafter be the chief legislative body of the Municipality;
- (g) "Municipal Treasurer" means the Treasurer of the Municipality who shall act as Bond Registrar and Paying Agent;
- (h) "Municipality" means the City of West Allis, Milwaukee County, Wisconsin;
- (i) "Notes" means the \$2,005,496 General Obligation Sewerage System Promissory Notes, Series 2010, of the Municipality dated their date of issuance, authorized to be issued by this Resolution;
- (j) "Note Year" means the twelve-month period ending on each May 1;
- (k) "Project" means the Project described in the preamble to this Resolution. All elements of the Project are to be owned and operated by the Municipality as part of the System as described in the preamble hereto; and
- (l) "Record Date" means the close of business on the fifteenth day of the calendar month next preceding any principal or interest payment date.

Section 2. Authorization of the Notes and the Financial Assistance Agreement. For the purpose of paying the cost of the Project (including legal, fiscal, engineering and other expenses), there shall be borrowed on the full

faith and credit of the Municipality up to the sum of \$2,005,496; and fully registered general obligation promissory notes of the Municipality are authorized to be issued in evidence thereof and sold to the State of Wisconsin Clean Water Fund Program in accordance with the terms and conditions of the Financial Assistance Agreement, which is incorporated herein by this reference and the Mayor and City Clerk of the Municipality are hereby authorized, by and on behalf of the Municipality, to execute the Financial Assistance Agreement.

Section 3. Terms of the Notes. The Notes shall be designated "General Obligation Sewerage System Promissory Notes, Series 2010" (the "Notes"); shall be dated their date of issuance; shall be numbered one and upward; shall bear interest at the rate of 2.400% per annum; shall be issued in denominations of \$0.01 or any integral multiple thereof; and shall mature on the dates and in the amounts as set forth in Exhibit B of the Financial Assistance Agreement and in the Note form attached hereto as Exhibit A as it is from time to time adjusted by the State of Wisconsin based upon the actual draws made by the Municipality. Interest on the Notes shall be payable commencing on May 1, 2011 and semiannually thereafter on May 1 and November 1 of each year. The Notes shall not be subject to redemption prior to maturity except as provided in the Financial Assistance Agreement.

Section 4. Form, Execution, Registration and Payment of the Notes. The Notes shall be issued as registered obligations in substantially the form attached hereto as Exhibit A and incorporated herein by this reference.

The Notes shall be executed in the name of the Municipality by the manual signatures of the Mayor and City Clerk, and shall be sealed with its official or corporate seal, if any.

The principal of, premium, if any, and interest on the Notes shall be paid by the Municipal Treasurer, who is hereby appointed as the Municipality's Bond Registrar.

Both the principal of and interest on the Notes shall be payable in lawful money of the United States of America by the Bond Registrar. Payment of principal of the final maturity on the Note will be payable upon presentation and surrender of the Note to the Bond Registrar. Payment of principal on the Note (except the final maturity) and each installment of interest shall be made to the registered owner of each Note who shall appear on the registration books of the Municipality, maintained by the Bond Registrar, on the Record Date and shall be paid by check or draft of the Municipality and mailed to such registered owner at his or its address as it appears on such registration books or at such other address may be furnished in writing by such registered owner to the Bond Registrar.

Section 5. Application of Note Proceeds; Borrowed Money Fund. The sale proceeds of the Notes (exclusive of accrued interest and any premium received, which shall be deposited in the Debt Service Fund) shall, forthwith upon receipt, be placed in and kept by the Treasurer as a separate fund to be known as the "General Obligation Sewerage System Promissory Notes, Series 2010, Borrowed Money Fund" (hereinafter referred to as the "Borrowed Money Fund"). Monies in the Borrowed Money Fund shall be used solely for the purposes for which borrowed or for transfer to the Debt Service Fund as provided by law. Moneys in the Borrowed Money Fund shall be disbursed within three (3) business days of their receipt from the State of Wisconsin and shall not be invested in any interest-bearing account.

Section 6. Tax Levy. (a) For the express purpose of paying interest on the Notes as it falls due and also to pay and discharge the principal thereof at maturity, the full faith, credit and taxing powers of the Municipality are hereby pledged and there is hereby levied upon all of the taxable property in the Municipality, in addition to all other taxes, a direct, annual irrevocable tax in an amount and at the times sufficient for that purpose. This tax shall be for the years 2010 through 2029, inclusive, and shall be in such amounts as are necessary to provide for

payment of the principal of and interest on the Notes in 2011 through 2030, inclusive, when due.

Assuming the entire principal amount of the Notes is drawn, this tax will be in the following amounts:

<u>Levy Year</u>	<u>Amount</u>
2010	\$ 48,666.70
2011	131,666.72
2012	131,642.38
2013	131,617.45
2014	131,591.91
2015	131,565.76
2016	131,538.99
2017	131,511.57
2018	131,483.49
2019	131,454.75
2020	131,425.31
2021	131,395.16
2022	131,364.30
2023	131,332.70
2024	131,300.33
2025	131,267.18
2026	131,233.25
2027	131,198.50
2028	131,162.90
2029	131,126.46

The actual tax carried onto the tax rolls each year shall equal the amount necessary to repay the actual principal amount drawn under the Notes, and any interest thereon, when due.

(b) The Municipality 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 Municipality 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 Fund created in Section 7 hereof.

(c) 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 Municipality then available, which sums shall be replaced upon the collection of the taxes herein levied.

Section 7. Debt Service Fund. The proceeds of the taxes levied pursuant to Section 6 above, when collected by the Municipal Treasurer, and such further deposits as may be required by Section 67.11, Wisconsin Statutes, shall be placed and kept by the Municipal Treasurer as a separate fund irrevocably pledged for paying the principal of and interest on the Notes so long as any such Notes shall remain outstanding, to be known as the "General Obligation Sewerage System Promissory Notes, Series 2010 Debt Service Fund" (hereinafter referred to as "Debt Service Fund"). The accrued interest and any premium received at the time of delivery of the Notes

shall be paid into the Debt Service Fund. Interest on or principal of the Notes falling due at any time when there shall be on hand in the Debt Service Fund insufficient funds for the payment of such principal and interest shall be paid promptly when due from other funds of the Municipality.

Section 8. Deposits and Investments. The Debt Service Fund shall be kept apart from monies in the other funds and accounts of the Municipality and the same shall be used for no purpose other than the prompt payment of principal of and interest on the Notes as the same becomes due and payable. All monies therein shall be deposited in special and segregated accounts in a public depository selected under Chapter 34 of the Wisconsin Statutes and may be temporarily invested until needed in legal investments subject to the provisions of Section 66.0603(1m) and 67.10(3), Wisconsin Statutes. All income derived from such investments shall be regarded as revenues of the Municipality. No such investment shall be 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, or the Regulations of the Commissioner of Internal Revenue thereunder.

An officer of the Municipality charged with responsibility for issuing the Notes shall, on the basis of the facts, estimates and circumstances in existence on the date of closing, make such certifications as are necessary to permit the conclusion that the Notes are not "arbitrage bonds" under Section 148 of the Internal Revenue Code of 1986, as amended, or the Regulations of the Commissioner of Internal Revenue thereunder.

Section 9. Operation of Project; Municipality Covenants. It is covenanted and agreed by the Municipality with the owner or owners of the Notes, and each of them, that the Municipality will perform all of the obligations of the Municipality as set forth in the Financial Assistance Agreement.

Section 10. Sale of Notes. The sale of the Notes to the State of Wisconsin Clean Water Fund Program for the purchase price of up to \$2,005,496 and at par, is ratified and confirmed; and the officers of the Municipality are authorized and directed to do any and all acts, including executing the Financial Assistance Agreement and the Notes as hereinabove provided, necessary to conclude delivery of the Notes to said purchaser, as soon after adoption of this Resolution as is convenient. The purchase price for the Notes shall be paid upon requisition therefor as provided in the Financial Assistance Agreement, and the officers of the Municipality are authorized to prepare and submit to the State requisitions and disbursement requests in anticipation of the execution of the Financial Assistance Agreement and the issuance of the Notes.

Section 11. Amendment to Resolution. After the issuance of any of the Notes, no change or alteration of any kind in the provisions of this Resolution may be made until all of the Notes have been paid in full as to both principal and interest, or discharged as herein provided, except: (a) the Municipality may, from time to time, amend this Resolution without the consent of any of the owners of the Notes, but only to cure any ambiguity, administrative conflict, formal defect, or omission or procedural inconsistency of this Resolution; and (b) this Resolution may be amended, in any respect, with a written consent of the owners of not less than two-thirds (2/3) of the principal amount of the Notes then outstanding, exclusive of Notes held by the Municipality; provided, however, that no amendment shall permit any change in the pledge of tax revenues of the Municipality or the maturity of any Note issued hereunder, or a reduction in the rate of interest on any Note, or in the amount of the principal obligation thereof, or in the amount of the redemption premium payable in the case of redemption thereof, or change the terms upon which the Notes may be redeemed or make any other modification in the terms of the payment of such principal or interest without the written consent of the owner of each such Note to which the change is applicable.

Section 12. Rebate Fund. Unless the Notes are exempt from the rebate requirements of the Internal Revenue

Code of 1986, as amended (the "Code"), the Municipality shall establish and maintain, so long as the Notes are outstanding, a separate account to be known as the "Rebate Fund." The sole purpose of the Rebate Fund is to provide for the payment of any rebate liability with respect to the Notes under the relevant provisions of the Code and the Treasury Regulations promulgated thereunder (the "Regulations"). The Rebate Fund shall be maintained by the Municipality until all required rebate payments with respect to the Notes have been made in accordance with the relevant provisions of the Code and the Regulations.

The Municipality hereby covenants and agrees that it shall pay to the United States from the Rebate Fund, at the times and in the amounts and manner required by the Code and the Regulations, the portion of the "rebate amount" (as defined in Section 1.148-3(b) of the Regulations) that is due as of each "computation date" (within the meaning of Section 1.148-3(e) of the Regulations). As of the date of this Resolution, the provisions of the Regulations specifying the required amounts of rebate installment payments and the time and manner of such payments are contained in Sections 1.148-3(f) and (g) of the Regulations, respectively. Amounts held in the Rebate Fund and the investment income therefrom are not pledged as security for the Notes and may only be used for the payment of any rebate liability with respect to the Notes.

The Municipality may engage the services of accountants, attorneys or other consultants necessary to assist it in determining the rebate payments, if any, owed to the United States with respect to the Notes. The Municipality shall maintain or cause to be maintained records of determinations of rebate liability with respect to the Notes for each computation date until six (6) years after the retirement of the last of the Notes. The Municipality shall make such records available to the State of Wisconsin upon reasonable request therefor.

Section 13. Resolution a Contract. The provisions of this Resolution shall constitute a contract between the Municipality and the owner or owners of the Notes, and after issuance of any of the Notes no change or alteration of any kind in the provisions of this Resolution may be made, except as provided in Section 11, until all of the Notes have been paid in full as to both principal and interest. The owner or owners of any of the Notes shall have the right in addition to all other rights, by mandamus or other suit or action in any court of competent jurisdiction, to enforce such owner's or owners' rights against the Municipality, the Governing Body thereof, and any and all officers and agents thereof including, but without limitation, the right to require the Municipality, its Governing Body and any other authorized body, to take any and all actions necessary to carry out all of the provisions and agreements contained in this Resolution.

Section 14. Requirements of Municipality. The officers of the Municipality, staff of the Municipality, attorneys for the Municipality, financial consultants of the Municipality, or other agents or employees of the Municipality are hereby authorized to do all acts and things required of them by this Resolution for the full, punctual and complete performance of all of the provisions of this Resolution.

Section 15. Illegal or Invalid Provisions. In case any one or more of the provisions of this Resolution or any of the Notes shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Resolution or of the Notes.

Section 16. Continuing Disclosure. The officers of the Municipality are hereby authorized and directed, if requested by the State of Wisconsin, to provide to the State of Wisconsin Clean Water Fund Program and to such other persons or entities as directed by the State of Wisconsin such ongoing disclosure regarding the Municipality's financial condition and other matters, at such times and in such manner as the Clean Water Fund Program may require, in order that securities issued by the Municipality and the State of Wisconsin satisfy rules and regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of

1934, as amended and as it may be amended from time to time, imposed on brokers and dealers of municipal securities before the brokers and dealers may buy, sell, or recommend the purchase of such securities.

Section 17. Conflicting Resolutions. All ordinances, resolutions, or orders, or parts thereof heretofore enacted, adopted or entered, in conflict with the provisions of this Resolution, are hereby repealed and this Resolution shall be in effect from and after its passage.

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