



City of West Allis

Legislation Text

File #: R-2004-0099, **Version:** 2

Resolution Authorizing the Sale of Approximately \$2,275,000 General Obligation Refunding Bonds, Series 2004C.

WHEREAS the City of West Allis, Milwaukee County, Wisconsin (the "City") has duly received bids for its proposed issue of General Obligation Refunding Bonds, Series 2004C (the "Bonds") as described on the bid tabulation attached hereto as Exhibit A and incorporated herein by this reference;

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"); and

WHEREAS it has been determined that the Bonds shall be issued in the principal amount of \$2,275,000;

NOW, THEREFORE, BE IT RESOLVED 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 bond issue, and any good faith deposits submitted by unsuccessful bidders shall be promptly returned.

Section 2. The Bonds. The Mayor and City Clerk shall make, execute and deliver the Bonds to the Purchaser, for and on behalf of the City. The Bonds shall be negotiable, general obligation bonds of the City, in the aggregate principal amount of \$2,275,000, 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, 2004. The Bonds 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 Bonds shall be payable on April 1 and October 1 of each year, commencing October 1, 2004.

Bonds maturing in the years 2013 and 2014 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, 2012 or on any date thereafter at the price of par plus accrued interest to the date of redemption. The amounts and maturities of the Bonds to be redeemed shall be selected by the City. If less than the entire principal amount of any maturity is to be redeemed, the Bonds of that maturity which are to be redeemed shall be selected by lot.

Section 3. Form of Bonds. The Bonds 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 Bonds 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 2004 through 2013 for payment of principal of and interest on the Bonds in the years 2004 through 2014 in the amounts set forth in the Schedule. The amount of tax levied for the year 2004 shall be the total amount of debt service due on the Bonds in the years 2004 and 2005; 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 Bonds in the year 2004.

(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 Bonds, 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 in any year there shall be insufficient funds from the tax levy to pay the principal of or interest on the Bonds when due, the said principal or interest shall be paid from other funds of the City on hand, said amounts to be returned when said taxes have been collected.

(D) Appropriation. There be and there hereby is appropriated from 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, 2004.

Section 5. Debt Service Fund and Account.

(A) Creation and Deposits. Within the debt service fund previously established in the treasury of the City, there be and there hereby is established a separate and distinct account designated as the "Debt Service Account for 'General Obligation Refunding Bonds, Series 2004C,' dated April 1, 2004" (the "Debt Service Account") and said Account shall be maintained until the indebtedness evidenced by the Bonds 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 Bonds; (ii) the taxes herein levied for the specific purpose of meeting principal of and interest on the Bonds when due; (iii) such other sums as may be necessary at any time to pay principal of and interest on the Bonds when due; (iv) any premium which may be received by the City over and above the par value of the Bonds 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 Bonds 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 Bonds 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 Bonds may be used to reduce the next succeeding tax levy, or may, at the option of the City, be invested by purchasing the Bonds 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 Bonds 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. Borrowed Money Fund. All monies received by the City upon the delivery of the Bonds to the Purchaser thereof except for accrued interest and premium, if any, shall be deposited by the City Treasurer into a Borrowed Money Fund and such fund shall be maintained separate and distinct from all other funds of the City and shall be used for no purpose other than the purpose for which the Bonds are issued. In order to accomplish the purpose for which the Bonds are issued, proceeds of the Bonds 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 purpose for which the Bonds have been issued has been accomplished, and, at any time, any monies as are not needed and which obviously thereafter cannot be needed for such purpose 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 Bonds 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 Bonds, shall certify as to facts, estimates, circumstances and reasonable expectations in existence on the date of closing which will permit the conclusion that the Bonds are not "arbitrage bonds," within the meaning of said Code or Regulations.

Section 8. Persons Treated as Owners; Transfer of Bonds. The City Clerk shall keep books for the registration and for the transfer of the Bonds. The person in whose name any Bond 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 Bond 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 Bond to the extent of the sum or sums so paid.

Any Bond may be transferred by the registered owner thereof by surrender of the Bond 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 Bond or Bonds 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 Bond surrendered for transfer.

The City shall cooperate in any such transfer, and the Mayor and City Clerk are authorized to execute any new Bond or Bonds 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 Bonds. Payment of interest on the Bonds on any interest payment date shall be made to the registered owners of the Bonds 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 Bonds and the Refunded Obligations defined in Section 12 and their ownership, management and use will not cause the Bonds or the Refunded Obligations to be "private activity bonds" within the meaning of Section 141 of the Code. 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 Bonds 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 Bonds) if taking, permitting or omitting to take such action would cause any of the Bonds to be an arbitrage bond or a private activity bond within the meaning of the Code or would otherwise cause interest on the Bonds 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 Bonds 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 Bonds provided that in meeting such requirements the City will do so only to the extent consistent with the proceedings authorizing the Bonds 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 Bonds are hereby designated as "qualified tax-exempt obligations" for purposes of Section 265 of the Code 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 Bonds 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. Call of Refunded Obligations. The City has outstanding its General Obligation Promissory Notes, Series 2000, dated March 15, 2000 (the "2000 Notes") and its General Obligation Corporate Purpose Bonds, Series 2000, dated March 15, 2000 (the "2000 Bonds"). The 2000 Notes maturing in the years 2006 through 2010 are called for prior payment on March 1, 2005 at the price of par plus accrued interest to the date of redemption, and the 2000 Bonds maturing in the years 2008 through 2014 are called for prior payment on April 1, 2007 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 2000 Notes and 2000 Bonds to be redeemed (collectively, the "Refunded Obligations").

Section 13. Escrow Agent; Escrow Agreement; Escrow Account. Associated Trust Company, National Association, Green Bay, Wisconsin 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 E 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 Bond 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 Bond 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 Bonds 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. SLGS Subscriptions. The Escrow Agent and Stifel, Nicolaus & Company, Incorporated 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 67.04, Wisconsin Statutes.

Section 15. Undertaking to Provide Continuing Disclosure. The City covenants and agrees, for the benefit of the holders of the Bonds, 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 Bonds or by the original purchaser(s) of the Bonds 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 Bonds).

The City Clerk, or other officer of the City charged with the responsibility for issuing the Bonds, 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 Bonds.

Section 17. Bond Insurance. If the Purchaser of the Bonds determines to obtain municipal bond insurance with respect to the Bonds, 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 Bond 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 Bonds 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 Bond provided herein.

Section 18. Closing. The Mayor and City Clerk are hereby authorized and directed to execute and deliver the Bonds to the Purchaser thereof upon receipt of the purchase price. The Mayor and City Clerk may execute the Bonds by manual or facsimile signature, but at least one of said officers shall sign the Bonds manually.

The officers of the City hereby are directed and authorized to take all necessary steps to close the bond 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.

ADM\ORDRES\ADMR248.2305K