



City of West Allis

Legislation Text

File #: R-2010-0089, **Version:** 2

Resolution Awarding the Sale of \$6,975,000 General Obligation Corporate Purpose Bonds, Series 2010C.

By Administration and Finance Committee

WHEREAS, on February 16, 2010, the Common Council of the City of West Allis, Milwaukee County, Wisconsin (the "City") adopted initial resolutions authorizing the issuance of general obligation bonds in an amount not to exceed \$1,980,000 for the public purpose of financing water system improvements; in an amount not to exceed \$1,320,000 for the public purpose of financing sanitary sewer improvements; in an amount not to exceed \$1,700,000 for the public purpose of financing storm sewer improvements; and in an amount not to exceed \$2,715,000 to finance street improvement projects (collectively, the "Initial Resolutions");

WHEREAS, pursuant to the provisions of Section 67.05, Wisconsin Statutes, within 15 days following the adoption of the Initial Resolutions, the City Clerk caused a notice to electors to be published in the My Community NOW-Midwest, stating the purpose and maximum principal amount of the bond issues authorized by the Initial Resolutions and describing the opportunity and procedure for submitting a petition requesting a referendum on the bond issues authorized by the Initial Resolutions;

WHEREAS, to date, no petition for referendum has been filed with the City Clerk, and the time to file such a petition shall expire on March 18, 2010;

WHEREAS, on February 16, 2010, the Common Council of the City also adopted a resolution (the "Set Sale Resolution") providing that the general obligation bond issues authorized by the Initial Resolutions be combined, issued and sold as a single issue of bonds designated as "General Obligation Corporate Purpose Bonds" (the "Bonds") for the purpose of paying the cost of the projects described in the Initial Resolutions (the "Project");

WHEREAS, the Common Council deems it to be necessary, desirable and in the best interest of the City that the Bonds be issued in the aggregate principal amount of \$6,975,000 for the following purposes and in the following principal amounts: \$1,560,000 to finance water system improvements; \$1,000,000 to finance sanitary sewer improvements; \$1,700,000 to finance storm sewer improvements; and \$2,715,000 to finance street improvement projects;

WHEREAS, the Common Council hereby finds and determines that the Project is within the City's power to undertake and therefore serves a "public purpose" as that term is defined in Section 67.04(1)(b), Wisconsin Statutes;

WHEREAS, pursuant to the Set Sale Resolution, the City directed its financial advisor, Ehlers & Associates, Inc. ("Ehlers") to take the steps necessary to sell the Bonds;

WHEREAS, Ehlers, in consultation with the officials of the City, prepared a Notice of Sale (a copy of which is attached hereto as Exhibit A and incorporated herein by this reference) setting forth the details of and the bid requirements for the Bonds and indicating that the Bonds would be offered for public sale on March 16,

2010;

WHEREAS, the City Clerk (in consultation with Ehlers) caused notice of the sale of the Bonds to be published and/or announced and caused the Notice of Sale to be distributed to potential bidders offering the Bonds for public sale;

WHEREAS, the Notice of Sale provided the option for bidders to submit bids for the Bonds to be issued as tax-exempt bonds ("Tax-Exempt Bonds") or as taxable Build America Bonds (Direct Payment) ("Taxable Bonds");

WHEREAS, the City has duly received bids for the Bonds as described on the Bid Tabulation attached hereto as Exhibit B and incorporated herein by this reference (the "Bid Tabulation");

WHEREAS, after reviewing the bids received, the City has determined to issue the Bonds as Taxable Bonds;

WHEREAS, it has been determined that the bid proposal (the "Proposal") submitted by the financial institution listed first on the Bid Tabulation fully complies with the bid requirements set forth in the Notice of Sale and is deemed to be the most advantageous to the City. Ehlers has recommended that the City accept the Proposal. A copy of said Proposal submitted by such institution (the "Purchaser") is attached hereto as Exhibit C and incorporated herein by this reference;

WHEREAS, it is the finding of the Common Council that it is desirable and in the best interest of the City to take the steps necessary to irrevocably designate the Bonds to be qualified "Build America Bonds" within the meaning of Subsection 54AA(g) of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations promulgated thereunder by the U.S. Department of Treasury (the "Regulations") so that the City may claim refundable credits with respect to each interest payment on the Bonds, payable to the City by the Secretary of the United States Department of the Treasury ("Treasury"); and

WHEREAS, because the Common Council will designate the Bonds to be qualified Build America Bonds, the interest on the Bonds will be includible in gross income for federal income tax purposes under Subsection 54AA(f)(1) of the Code.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City that:

Section 1A. Ratification of the Notice of Sale and Offering Materials. The Common Council of the City hereby ratifies and approves the details of the Bonds set forth in Exhibit A attached hereto as and for the details of the Bonds. The Notice of Sale and any other offering materials prepared and circulated by Ehlers are hereby ratified and approved in all respects. All actions taken by officers of the City and Ehlers in connection with the preparation and distribution of the Notice of Sale and any other offering materials are hereby ratified and approved in all respects.

Section 1B. Award of the Bonds. The Proposal of the Purchaser offering to purchase the Bonds for the sum set forth on the Proposal, plus accrued interest to the date of delivery, is hereby accepted (subject to the condition that no valid petition for a referendum is filed by March 18, 2010 in connection with any of the Initial Resolutions). The Mayor and City Clerk or other appropriate officers of the City are authorized and directed to execute an acceptance of the Proposal 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. The Bonds bear interest at the rates set forth on the Proposal.

Section 2. Terms of the Bonds. The Bonds shall be designated "Taxable General Obligation Corporate Purpose Bonds, Series 2010C (Build America Bonds - Direct Payment)"; shall be issued in the aggregate principal amount of \$6,975,000; shall be dated April 1, 2010; shall be in the denomination of \$5,000 or any integral multiple thereof; shall be numbered R-1 and upward; and shall bear interest at the rates per annum; and mature on April 1 of each year, in the years and principal amounts as set forth on the Pricing Summary attached hereto as Exhibit D-1 and incorporated herein by this reference. Interest is payable semi-annually on April 1 and October 1 of each year commencing on October 1, 2010. Interest shall be computed upon the basis of a 360-day year of twelve 30-day months and will be rounded pursuant to the rules of the Municipal Securities Rulemaking Board. The schedule of principal and interest payments due on the Bonds is set forth on the Debt Service Schedule attached hereto as Exhibit D-2 and incorporated herein by this reference (the "Schedule").

Section 3. Redemption Provisions. (a) Optional Redemption. The Bonds maturing on April 1, 2019 and thereafter shall be subject to redemption prior to maturity, at the option of the City, on April 1, 2018 or on any date thereafter. Said Bonds shall be redeemable as a whole or in part, and if in part, from maturities selected by the City and within each maturity, by lot, at the principal amount thereof, plus accrued interest to the date of redemption.

(b) Extraordinary Redemption. The Bonds shall be subject to redemption prior to maturity, in whole or in part, at the option of the City, on any day, at a redemption price equal to 100% of the principal amount redeemed plus accrued interest to the date of redemption, in the event that an Extraordinary Event occurs.

An "Extraordinary Event" will have occurred if either (a) Section 54AA or 6431 of the Code is repealed, amended or modified in a manner which results in a reduction or elimination of the City's 35% cash subsidy payment from the United States Treasury or (b) the United States Treasury fails to make a cash subsidy payment to which the City is entitled and such failure is not caused by any action or inaction by the City.

(c) Mandatory Redemption. If the Proposal specifies that any of the Bonds are subject to mandatory redemption, the terms of such mandatory redemption are set forth on an attachment hereto as Exhibit MRP and incorporated herein by this reference.

Section 4. Form of the Bonds. The Bonds shall be issued in registered form and shall be executed and delivered in substantially the form attached hereto as Exhibit E and incorporated herein by this reference.

Section 5. Tax Provisions.

(A) Direct Annual Irrepealable Tax Levy. For the purpose of paying the principal of and interest on the Bonds as the same becomes due, the full faith, credit and resources of the City are hereby irrevocably pledged, and there is hereby levied upon all of the taxable property of the City a direct annual irrepealable tax in the years 2010 through 2029 for the payments due in the years 2010 through 2030 in the amounts set forth on the Schedule. The amount of tax levied for the year 2010 shall be the total amount of debt service due on the Bonds in the years 2010 and 2011; 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 2010.

(B) Tax Collection. So long as any part of the principal of or interest on the Bonds remains unpaid, 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 onto the tax roll of the City and collected in addition to all other taxes and in the same manner and at the same time as other taxes of the City for said years are collected, except that the amount of tax carried onto the tax roll may be reduced in any year by the amount of any surplus money in the Debt Service Fund Account created below.

(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 Bonds 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. The City hereby appropriates from proceeds of the Bonds or other funds of the City on hand a sum sufficient to be irrevocably deposited in the segregated Debt Service Fund Account created below and used to pay the interest on the Bonds coming due on October 1, 2010 as set forth on the Schedule.

Section 6. Segregated Debt Service Fund 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. Debt service or 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 hereby is established a separate and distinct account designated as the "Debt Service Fund Account for \$6,975,000 Taxable General Obligation Corporate Purpose Bonds, Series 2010C (Build America Bonds - Direct Payment), dated April 1, 2010" (the "Debt Service Fund Account") and such account shall be maintained until the indebtedness evidenced by the Bonds is fully paid or otherwise extinguished. The City Treasurer shall deposit in the Debt Service Fund Account (i) all accrued interest received by the City at the time of delivery of and payment for the Bonds; (ii) any premium which may be received by the City above the par value of the Bonds and accrued interest thereon; (iii) all money raised by the taxes herein levied and any amounts appropriated for the specific purpose of meeting principal of and interest on the Bonds when due; (iv) such other sums as may be necessary at any time to pay principal of and interest on the Bonds when due; (v) surplus monies in the Borrowed Money Fund as specified below; (vi) all Direct Payments (defined below) received by the City; and (vii) such further deposits as may be required by Section 67.11, Wisconsin Statutes.

(B) Use and Investment. No money shall be withdrawn from the Debt Service Fund 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 the Bonds 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), Wisconsin Statutes, or in permitted municipal investments under the pertinent provisions of the Wisconsin Statutes ("Permitted Investments"), which investments shall continue to be a part of the Debt Service Fund Account. Any investment of the Debt Service Fund Account shall at all

times conform with the provisions of the Code and any applicable Regulations.

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

Section 7. Proceeds of the Bonds; Segregated Borrowed Money Fund. The proceeds of the Bonds (the "Bond Proceeds") (other than any premium and accrued interest which must be paid at the time of the delivery of the Bonds into the Debt Service Fund Account created above) shall be deposited into a special fund separate and distinct from all other funds of the City and disbursed solely for the purposes for which borrowed or for the payment of the principal of and the interest on the Bonds. Monies in the Borrowed Money Fund may be temporarily invested in Permitted Investments. Any monies, including any income from Permitted Investments, remaining in the Borrowed Money Fund after the purposes for which the Bonds 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 Account.

Section 8. Qualified Build America Bond Designation; Irrevocable Election; Compliance with Federal Tax Laws. (a) The Bonds are hereby irrevocably designated qualified Build America Bonds within the meaning of Subsection 54AA(g) of the Code, and the City hereby irrevocably elects to apply Subsection 54AA (g) of the Code to the Bonds. The City represents that all Bond Proceeds, less costs of issuance financed with such Bond Proceeds (which costs shall be in an amount not to exceed 2% of such Bond Proceeds) plus all income from temporary Permitted Investments with respect to such Bond Proceeds ("Available Project Proceeds") shall be used only for capital expenditures. The City acknowledges that among the requirements for the Bonds to qualify and continue to qualify as qualified Build America Bonds is that the Bonds, but for their qualified Build America Bond designation, would be tax-exempt for federal income tax purposes, and hence that the requirements of the Code and Regulations regarding tax-exempt obligations apply to the Bonds. The City hereby covenants to comply with such requirements.

(b) The City thus further represents and covenants that the projects financed by the Bonds and their ownership, management and use will not cause the Bonds 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 qualified Build America Bond status of 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 the Bonds to lose their status as qualified Build America Bonds within the meaning of Subsection 54AA(g) of the Code and the Regulations. 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.

(c) 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 the State of Wisconsin and to the extent that there is a reasonable period of time in which to comply.

(d) All investments made pursuant to this Resolution shall be Permitted 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 Code or 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 delivery of the Bonds to the Purchaser which will permit the conclusion that the Bonds are not "arbitrage bonds," within the meaning of the Code or Regulations.

Section 9. Qualified Build America Bonds - Application for Direct Payments to the City. The City shall claim available refundable credits from the Treasury with respect to each interest payment on the Bonds as provided under Subsection 54AA(g)(1) of the Code ("Direct Payments"). The Fiscal Agent (defined below) is hereby authorized and directed to take all necessary actions on behalf of the City to apply for the receipt by the City of such Direct Payments, including the timely filing of necessary Internal Revenue Service forms and information returns for that purpose and/or submitting requests electronically if and as the Treasury establishes an electronic platform in connection with its direct payment procedures. All Direct Payments received by the City shall be promptly deposited in the Debt Service Fund Account and used for no other purpose than as provided in Section 6 of this Resolution.

Section 10. Execution of the Bonds; Closing; Professional Services. The Bonds shall be issued in printed form, executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Clerk, authenticated, if required, by the Fiscal Agent (defined below), sealed with its official or corporate seal, if any, or a facsimile thereof, and delivered to the Purchaser upon payment to the City of the purchase price thereof, plus accrued interest to the date of delivery (the "Closing"). The facsimile signature of either of the officers executing the Bonds may be imprinted on the Bonds in lieu of the manual signature of the officer but, unless the City has contracted with a fiscal agent to authenticate the Bonds, at least one of the signatures appearing on each Bond shall be a manual signature. In the event that either of the officers whose signatures appear on the Bonds shall cease to be such officers before the Closing, such signatures shall, nevertheless, be valid and sufficient for all purposes to the same extent as if they had remained in office until the Closing. The aforesaid officers are hereby authorized and directed to do all acts and execute and deliver the Bonds and all such documents, certificates and acknowledgements as may be necessary and convenient to effectuate the Closing. The City hereby authorizes the officers and agents of the City to enter into, on its behalf, agreements and contracts in conjunction with the Bonds, including but not limited to agreements and contracts for legal, trust, fiscal agency, disclosure and continuing disclosure, and rebate calculation services. Any such contract heretofore entered into in conjunction with the issuance of the Bonds is hereby ratified and approved in all respects.

Section 11. Payment of the Bonds; Fiscal Agent. The principal of and interest on the Bonds shall be paid by Bond Trust Services Corporation, Roseville, Minnesota, which is hereby appointed as the City's registrar and fiscal agent pursuant to the provisions of Section 67.10(2), Wisconsin Statutes (the "Fiscal Agent") The City will enter into a contract with the Fiscal Agent to serve as the City's fiscal agent pursuant to Section 67.10(2), Wisconsin Statutes. The Mayor and City Clerk are hereby authorized to enter into such a contract on the City's behalf. Such contract may provide among other things, for the performance by the Fiscal Agent of the functions listed in Wis. Stats. Sec. 67.10(2)(a) to (j), where applicable, with respect to the Bonds.

Section 12. Persons Treated as Owners; Transfer of Bonds. The City shall cause books for the registration and for the transfer of the Bonds to be kept by the Fiscal Agent. 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 Fiscal Agent, 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 Fiscal Agent shall record the name of each transferee in the registration book. No registration shall be made to bearer. The Fiscal Agent 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.

Section 13. Record Date. The fifteenth day of each calendar month next preceding each interest payment date shall be the record date for the Bonds (the "Record Date"). 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 Record Date.

Section 14. 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 ("DTC"), 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 15. Payment of Issuance Expenses. The City authorizes the Purchaser to forward the amount of the proceeds of the Bonds allocable to the payment of issuance expenses to KleinBank, Chaska, Minnesota at Closing for further distribution as directed by Ehlers.

Section 16. Official Statement. The Common Council hereby approves the Preliminary Official Statement with respect to the Bonds and deems the Preliminary Official Statement as "final" as of its date for purposes of SEC Rule 15c2-12 promulgated by the Securities and Exchange Commission pursuant to the Securities and Exchange Act of 1934 (the "Rule"). All actions taken by officers of the City in connection with the preparation of such Preliminary Official Statement and any addenda to it or Final Official Statement are hereby ratified and approved. In connection with the Closing, the appropriate City official shall certify the Preliminary Official Statement and any addenda or Final Official Statement. The City Clerk shall cause copies of the Preliminary Official Statement and any addenda or Final Official Statement to be distributed to the Purchaser.

Section 17. Undertaking to Provide Continuing Disclosure. The City hereby covenants and agrees, for the benefit of the owners of the Bonds, to enter into a written undertaking (the "Undertaking") required by 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 owners of the Bonds or by the Purchaser on behalf of such owners (provided that the rights of the owners and the Purchaser 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 18. Record Book. The City Clerk shall provide and keep the transcript of proceedings as a separate record book (the "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 the Bonds in the Record Book.

Section 19. 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, any reference required by the bond insurer to the municipal bond insurance policy shall be made in the form of Bond provided herein.

Section 20. Conflicting Resolutions; Severability; Effective Date. All prior resolutions, rules or other actions of the Common Council or any parts thereof in conflict with the provisions hereof shall be, and the same are, hereby rescinded insofar as the same may so conflict. In the event that any one or more provisions hereof shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions hereof. The foregoing shall take effect immediately upon adoption and approval in the manner provided by law.