

SHEBOYGAN COUNTY

RESOLUTION NO. 23 (2010/11)

RE: Authorizing the Sale of \$6,385,000 Taxable General Obligation Promissory Notes (Build America Bonds – Direct Payment)

**Printed as amended*

WHEREAS Sheboygan County, Wisconsin (sometimes hereinafter called the "County") is presently in need of the sum of Six Million Three Hundred Eighty-Five Thousand Dollars (\$6,385,000) for the public purpose of financing the construction and improvement of highways;

WHEREAS on September 21, 2010, the County Board of Supervisors adopted an initial resolution (the "Initial Resolution") authorizing the issuance of not to exceed \$6,385,000 general obligation promissory notes for such purpose;

WHEREAS the County Board of Supervisors deems it necessary and in the best interest of the County that the monies needed for such purpose be borrowed by issuing general obligation promissory notes ("Notes") pursuant to the provisions of Section 67.12(12), Wis. Stats., and the Initial Resolution, upon the terms and conditions hereinafter provided;

WHEREAS it is the finding of the County Board of Supervisors that it is desirable and in the best interest of the County to take the steps necessary to irrevocably designate the Notes 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 County may claim refundable credits with respect to each interest payment on the Notes, payable to the County by the Secretary of the United States Department of the Treasury ("Treasury"); and

WHEREAS because the County Board of Supervisors will designate the Notes to be qualified Build America Bonds, the interest on the Notes 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 County Board of Supervisors of Sheboygan County, Wisconsin, that:

Section 1. Sale of Notes. The County shall sell and deliver its \$6,385,000 Taxable General Obligation Promissory Notes, Series 2010C (Build America Bonds - Direct Payment), issued for the purpose above stated, to Robert W. Baird & Co. Incorporated (the "Purchaser") for the purchase price set forth in the Note Purchase Agreement attached hereto as Exhibit A and incorporated herein by this reference (the "Proposal"). The Proposal is hereby approved, and the appropriate County officials are hereby authorized and directed to execute the same.

Section 2. The Notes. The Chairperson and County Clerk shall make, execute and deliver the Notes to the Purchaser, for and on behalf of the County. The Notes shall be negotiable, general obligation promissory notes of the County, 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 November 9, 2010. The Notes shall bear interest at the rates per annum set forth in the Proposal and shall mature on May 1 of each year, in the years and principal amounts set forth in the Proposal and the debt service schedule attached hereto as Exhibit B and incorporated herein by this reference (the "Schedule").

Interest on the Notes shall be payable on May 1 and November 1 of each year, commencing May 1, 2011.

The Notes maturing on May 1, 2019, and thereafter shall be subject to redemption prior to maturity, at the option of the County, on May 1, 2018, or on any date thereafter. Said Notes are redeemable as a whole or in part, and if in part, from maturities selected by the County and within each maturity, by lot, at the principal amount thereof, plus accrued interest to the date of redemption.

Section 3. Form of Notes. The Notes shall be in substantially the form attached hereto as Exhibit C 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 County are hereby irrevocably pledged and there be and there hereby is levied on all the taxable property in the County a direct, annual, irrepealable tax in the years 2010 through 2019 for payment of principal of and interest on the Notes in the years 2011 through 2020 in the amounts set forth in the Schedule.

(B) Tax Collection. The County 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 County 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 County then available, which sums shall be replaced upon the collection of the taxes herein levied.

Section 5. Debt Service Fund and Account.

(A) Creation and Deposits. There be and there hereby is established in the treasury of the County, 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 County 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 \$6,385,000 'Taxable General Obligation Promissory Notes (Build America Bonds - Direct Payment)' " (the "Debt Service Account") and such account shall be maintained until the indebtedness evidenced by the Notes is fully paid or otherwise extinguished. The County Treasurer shall deposit in such Debt Service Account (i) all accrued interest received by the County 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 County above the par value of the Notes and accrued interest thereon; (v) all Direct Payments (defined

below) received by the County; 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 County, be invested by purchasing the Notes as permitted by and subject to Section 67.11(2)(a), Wis. Stats., 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 Internal Revenue Code of 1986, as amended (the "Code") and any applicable Treasury Regulations (the "Regulations").

(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 transferred and deposited in the general fund of the County, unless the County Board of Supervisors directs otherwise.

Section 6. Proceeds of the Notes. All monies received by the County upon the delivery of the Notes to the Purchaser thereof, except for accrued interest and premium, if any, shall be deposited by the County Treasurer into a special fund (the "Borrowed Money Fund") which shall be maintained separate and distinct from all other funds of the County and shall be used for no purpose other than the purpose for which the Notes are issued. In no event shall monies in the Borrowed Money Fund be used to fund operating expenses of the general fund of the County or of any special revenue fund of the County that is supported by property taxes. 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 purpose for which the Notes have been issued has been accomplished can be used to finance authorized capital expenditures.

Section 7. Qualified Build America Bond Designation; Irrevocable Election; Compliance with Federal Tax Laws. (a) The Notes are hereby irrevocably designated qualified Build America Bonds within the meaning of Subsection 54AA(g) of the Code, and the County hereby irrevocably elects to apply Subsection 54AA(g) of the Code to the Notes. The County represents that all Note Proceeds, less costs of issuance financed with such Note Proceeds (which costs shall be in an amount not to exceed 2% of such Note Proceeds) plus all income from temporary Permitted Investments with respect to such Note Proceeds ("Available Project Proceeds") shall be used only for capital expenditures. The County acknowledges that among the requirements for the Notes to qualify and continue to qualify as qualified Build America Bonds is that the Notes, 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 Notes. The County hereby covenants to comply with such requirements.

(b) The County thus further represents and covenants that the projects financed by the Notes and their ownership, management and use will not cause the Notes to be "private activity bonds" within the meaning of Section 141 of the Code. The County 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 Notes including, if applicable, the rebate requirements of Section 148(f) of the Code. The County 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 a private activity bond within the meaning of the Code or would otherwise cause the Notes to lose their status as qualified Build America Bonds within the meaning of Subsection 54AA(g) of the Code and the Regulations. The County Clerk or other officer of the County charged with the responsibility of issuing the Notes shall provide an appropriate certificate of the County certifying that the County can and covenanting that it will comply with the provisions of the Code and Regulations.

(c) The County 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 County will do so only to the extent consistent with the proceedings authorizing the Notes 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 Notes to be "arbitrage bonds" within the meaning of Section 148 of the Code or the Regulations and an officer of the County, charged with the responsibility for issuing the Notes, shall certify as to facts, estimates, circumstances and reasonable expectations in existence on the date of delivery of the Notes to the Purchaser which will permit the conclusion that the Notes are not "arbitrage bonds," within the meaning of the Code or Regulations.

Section 8. Qualified Build America Bonds - Application for Direct Payments to the County. The County shall claim available refundable credits from the Treasury with respect to each interest payment on the Notes as provided under Subsection 54AA(g)(1) of the Code ("Direct Payments"). The County Clerk or County Treasurer are hereby authorized and directed to take all necessary actions on behalf of the County to apply for the receipt by the County 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 County shall be promptly deposited in the Debt Service Fund Account and used for no other purpose than as provided in Section 5 of this Resolution.

Section 9. Persons Treated as Owners; Transfer of Notes. The County 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 County 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 Chairperson and County 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 County Clerk shall record the name of each transferee in the registration book. No registration shall be made to bearer. The County Clerk shall cancel any Note surrendered for transfer.

The County shall cooperate in any such transfer, and the Chairperson and County 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 County at the close of business on the corresponding record date.

Section 10. 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 County agrees to the applicable provisions set forth in the Blanket Issuer Letter of Representations previously executed on behalf of the County and on file in the County Clerk's office.

Section 11. Official Statement. The County Board of Supervisors hereby approves the Preliminary Official Statement with respect to the Notes 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 County 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 County official shall certify the Preliminary Official Statement and any addenda or Final Official Statement. The County Clerk shall cause copies of the Preliminary Official Statement and any addenda or Final Official Statement to be distributed to the Purchaser.

Section 12. Undertaking to Provide Continuing Disclosure. The County covenants and agrees, for the benefit of the holders of the Notes, 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 Notes 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 County to comply with the provisions of the Undertaking shall not be an event of default with respect to the Notes).

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

Section 13. Records. The County 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 14. Bond Insurance. If the Purchaser of the Notes determines to obtain municipal bond insurance with respect to the Notes, the officers of the County are authorized to

take all actions necessary to obtain such municipal bond insurance. The Chairperson and County Clerk are authorized to agree to such additional provisions as the bond insurer may reasonably request and which are acceptable to the Chairperson and County 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 15. Closing. The Chairperson and County Clerk of the County 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 Chairperson and County 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 County 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.

Respectfully submitted this 19th day of October, 2010.

FINANCE COMMITTEE

Roger Te Stroete
Chairperson

William Goehring
Vice-Chairperson

Secretary

Constance Ziegelbauer

ADOPTED 10.19.2010