



Legislation Text

File #: 09-0290, Version: 1

Resolution Approving the Refunding of Building Authority Bonds, Series 1998 (**Roll Call Vote Required**)

Recommended for Council is a Resolution approving the issuance by the City of Ann Arbor Building Authority of its 2009 Building Authority Refunding Bonds (Limited Tax General Obligation) ("Refunding Bonds"), for the purpose of refinancing \$3,560,000 of the aggregate outstanding principal amount of prior Building Authority Bonds (Limited Tax General Obligation), Series 1998.

The City's municipal financial advisors have calculated that based on current interest rates, and after factoring in bond issuance costs, the refunding will yield net present value debt service savings of more than \$150,000 over the next 8 years. The Authority proposes to sell the Refunding Bonds by competitive sale.

The Resolution approves the refinancing, the form of Refunding Contract between the City and the Building Authority, and the execution of related documentation by the Mayor, City Clerk, City Administrator, Chief Financial Officer and Treasurer.

The City's bond counsel, Dykema Gossett, prepared the resolution, with further review by the City Attorney.

Prepared by: Tom Crawford, Chief Financial Officer

Reviewed by: Mary Joan Fales, Senior Assistant City Attorney

CITY OF ANN ARBOR

COUNTY OF WASHTENAW, STATE OF MICHIGAN

**RESOLUTION APPROVING REFUNDING OF CITY OF ANN ARBOR
BUILDING AUTHORITY AND BUILDING AUTHORITY REFUNDING BONDS,
SERIES 1998**

Minutes of a regular meeting of the City Council of the City of Ann Arbor (the "City"), County of Washtenaw, State of Michigan held in the City Hall on the 20th day of April, 2009, at 7:00 o'clock p.m. Eastern Standard Time.

PRESENT: Councilmembers Smith, Briere, Derezinski, Rapundalo, Greden, Taylor, Teall, Higgins, Hohnke, Anglin and Mayor Hieftje, 11;

ABSENT: 0

The following preamble and resolution were offered by Councilmember Higgins and supported by Councilmember Teall:

WHEREAS, the Commission of the City of Ann Arbor Building Authority (the "Authority") is undertaking proceedings to issue its 2009 Building Authority Refunding Bonds (Limited Tax General Obligation) in the maximum principal amount of \$3,750,000 (the "Refunding Bonds"), to refund its

Building Authority and Building Authority Refunding Bonds (Limited Tax General Obligation), Series 1998, dated December 1, 1998, maturing in the years 2010-2016 (collectively, the “Prior Bonds to be Refunded”); and,

WHEREAS, the refunding will result in lower costs to the City of Ann Arbor (the “City”) for the use of the facilities financed by the Prior Bonds to be Refunded and leased to the City pursuant to a Limited Tax Full Faith and Credit General Obligation Contract of Lease; and,

WHEREAS, a Refunding Contract between the City and the Authority has been prepared and submitted to Council respecting said refunding; and,

WHEREAS, it is necessary that the City undertake and make certain covenants and representations respecting the Authority’s issuance and sale of the Refunding Bonds.

NOW, THEREFORE, IT IS RESOLVED THAT:

1. The Refunding Contract between the City and the Authority is hereby approved, and the Mayor and the City Clerk are hereby authorized and directed to execute said contract on behalf of the City in substantially the form submitted.

2. The Council hereby approves of the preparation and circulation of a preliminary and final official statement by the Authority in connection with the Refunding Bonds and authorizes the Chief Financial Officer to execute said official statement on behalf of the City.

3. The City hereby covenants to comply with the continuing disclosure requirements of Securities and Exchange Commission Rule 15c2 12 (the “Rule”), and in connection therewith appoints the Chief Financial Officer as its “Disclosure Representative” in accordance with the Rule.

4. The City shall, to the extent permitted by law, take all actions within its control necessary to maintain the exclusion of the interest on the Authority’s Refunding Bonds from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended, (the “Code”), and to prevent the Authority’s Refunding Bonds from being or becoming “private activity bonds” as that term is used in Section 141 of the Code.

5. The Mayor, City Clerk, City Administrator, Chief Financial Officer and Treasurer are further authorized to execute such certificates and documents on behalf of the City as may be necessary to assist the Authority in effectuating the issuance and sale of its Refunding Bonds as described herein.

6. This Resolution shall take effect immediately upon adoption. All resolutions and parts of resolutions, insofar as the same may be in conflict herewith, are hereby rescinded.

A roll call vote on the foregoing resolution was taken, the results of which are as follows:

AYES: Councilmembers Smith, Briere, Derezinski, Rapundalo, Greden, Taylor, Teall, Higgins, Hohnke, Anglin and Mayor Hieftje, 11;

NAYS: 0

RESOLUTION DECLARED ADOPTED.

Jacqueline Beaudry, City Clerk

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council of the City of Ann Arbor, County of Washtenaw, State of Michigan, at a regular meeting held on April 20, 2009, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

Jacqueline Beaudry, City Clerk

April 27, 2009

REFUNDING CONTRACT REGARDING 1998 BONDS

THIS CONTRACT, made and entered into as of the first day of _____, 2009, by and among the CITY OF ANN ARBOR BUILDING AUTHORITY, a public corporation organized and existing under the authority of Act 31, Public Acts of Michigan, 1948 (First Extra Session), as amended (the "Act") (the "Authority"), under the provisions of Act 31, Public Acts of Michigan, 2001, as amended, ("Act 34") and the Act (collectively the "Acts"), and the CITY OF ANN ARBOR, a Michigan municipal corporation organized and existing under the Constitution and laws of the State of Michigan (the "City").

WITNESSETH:

WHEREAS, the Authority has been incorporated under and in pursuance of the provisions of the Act for the purpose of acquiring, furnishing, equipping, owning, improving, enlarging, operating

and maintaining a building or buildings, automobile parking lots or structures, recreational facilities, stadiums, and the necessary site or sites therefor, together with appurtenant properties and facilities necessary or convenient for the effective use thereof, for use for any legitimate public purpose of the City; and

WHEREAS, the City and the Authority have entered into a Limited Tax Full Faith and Credit General Obligation Contract of Lease under date of December 1, 1998 (the "Contract") wherein the Authority agreed to acquire public facilities and lease said facilities to the City; and

WHEREAS, bonds have been issued by the Authority pursuant to the Contract, denominated Building Authority and Building Authority Refunding Bonds (Limited Tax General Obligation), dated December 1, 1998 (collectively, the "Prior Bonds"); and

WHEREAS, the Authority and the City have been advised that under current conditions in the bond market the Prior Bonds maturing in the years 2010 through 2016, inclusive, could be refunded at an interest savings; and

WHEREAS, it is the determination and judgment of the Authority and the City that the Prior Bonds maturing in the years 2010 through 2016, inclusive, should be refunded to secure for the City the interest savings anticipated and thereby permit the operation of the financed facilities in a more economical fashion for the benefit of the users of the facilities and the taxpayers of the City; and

WHEREAS, the execution of this contract (the "Refunding Contract") is necessary in order to implement a refunding program;

NOW, THEREFORE, in consideration of the premises and the covenants of each other, the parties hereto agree as follows:

1. The Authority and the City hereby approve and confirm the refunding of the callable Prior Bonds maturing in the years 2010 through 2016, inclusive (the "Prior Bonds to be Refunded") on their respective permissible call dates under the provisions of the Acts in the manner provided by and pursuant to this Refunding Contract.

2. The Authority will issue a single series of refunding bonds (the "Refunding Bonds") in the total principal amount of not to exceed \$3,750,000 in order to pay part or all of the costs of refunding the Prior Bonds to be Refunded. All costs of retiring the Prior Bonds to be Refunded and of issuing the Refunding Bonds, including payment of the principal of and interest on the Prior Bonds to be Refunded, call premiums, underwriting discount, bond and other printing, administrative, legal and financial advisory expenses, credit enhancement costs, rating fees, trustee and paying agent/registrars fees and all related expenses shall be paid from the proceeds of sale of the Refunding Bonds or from cash amounts to be made available by the City to pay such costs.

3. To carry out and accomplish the refunding in accordance with the provisions of Michigan law, the Authority shall take the following steps:

(a) The Authority will adopt a resolution providing for the issuance of the Refunding Bonds in the aggregate principal amount of not to exceed \$3,750,000 (the "Refunding Bond Resolution"), such Resolution to be substantially in the form attached hereto and based upon the Authority's analysis of the financial benefits of the refunding. The Refunding Bonds shall mature or be subject to mandatory sinking fund redemption annually, as authorized by law, and will be issued in anticipation of the debt service installment payments required to be made by the City as provided in the Contract and as hereinafter provided in this Refunding Contract and will be secured primarily by the contractual obligations of the City to pay said installments when due, including interest. After due adoption of the Refunding Bond Resolution, the Authority will take all legal procedures and steps necessary to effectuate the sale and delivery of the Refunding Bonds.

(b) The Authority, upon receipt of proceeds of sale of the Refunding Bonds, will comply with all provisions and requirements of law, the Refunding Bond Resolution and this Refunding Contract relative to the disposition and use of the proceeds of sale thereof.

(c) The Authority shall not make any investments or take any other actions which would cause the Refunding Bonds herein authorized to be constituted as arbitrage bonds pursuant to any applicable federal statutes or regulations.

(d) The Authority shall take all steps necessary to refund the Prior Bonds to be Refunded on the first

permissible call date for the Prior Bonds to be Refunded.

4. The full principal amount of the Refunding Bonds shall be charged to and paid by the City to the Authority in annual principal installments, together with interest and other expenses as herein provided. It is understood and agreed that the Refunding Bonds of the Authority will be issued in anticipation of such payments by the City.

It is agreed that the City shall pay to the Authority, at least one business day prior to the annual maturity date of principal amounts of the Refunding Bonds, such principal amount, and in addition, at least one business day prior to each interest payment date on the Refunding Bonds, as accrued interest on the principal installments remaining unpaid, an amount sufficient to pay all interest due on the next succeeding interest payment date. From time to time as the Authority is billed by the registrar/transfer/paying agent for the Refunding Bonds for their services, and as other costs and expenses accrue to the Authority from handling of the payments made by the City or from other action taken in connection with the Refunding Bonds, the Authority shall notify the City of the amount of such fees, costs and expenses, and the City shall, within thirty (30) days from such notification, remit to the Authority sufficient funds to pay such amounts.

The Authority shall, within thirty (30) days after the delivery of the Refunding Bonds, furnish the City with a complete schedule of said installments and the interest thereon and due dates and shall also, at least thirty (30) days prior to each due date, advise the City, in writing, of the exact amount due on the next due date. The failure to give such notice shall not, however, excuse the City from making required payments when due under the provisions hereof.

5. The City, pursuant to authorization of Section 8a of the Act, hereby irrevocably pledges its full faith and credit for the prompt and timely payment of its obligations pledged for payment of the Refunding Bonds as expressed in this contract. Pursuant to such pledge, if other funds are not available, the City shall be required to pay such amounts from any of its general funds as a first budget obligation and shall each year levy an ad valorem tax on all the taxable property in the City in an amount which, taking into consideration estimated delinquencies in tax collections, will be sufficient to pay such obligations under this Refunding Contract becoming due before the time of the following year's tax collections, such annual levy shall however be subject to applicable constitutional, statutory and charter limitations. Commitments of the City are expressly recognized as being for the purpose of providing funds to meet the contractual obligations of the City in anticipation of which the Authority Refunding Bonds are issued. Nothing herein contained shall be construed to prevent the City from using any, or any combination of, the means and methods provided in Section 8a of the Act for the

purpose of providing funds to meet its obligations under this Refunding Contract, and if at the time of making the annual tax levy there shall be other funds on hand earmarked and set aside for the payment of the contractual obligations due prior to the next tax collection period, then such annual tax levy may be reduced by such amount.

6. Additional moneys over and above any of the payments specified in this Refunding Contract may be prepaid as provided in the Contract.

7. All provisions of the Contract not inconsistent herewith, and particularly all covenants relative to the payment of and security for the Prior Bonds made by the City therein, shall remain in full force and effect and shall apply with equal effect to the Refunding Bonds authorized hereby, it being understood that upon issuance of the Refunding Bonds, the Prior Bonds to be Refunded will be defeased and the Refunding Bonds shall be substituted therefor and shall be outstanding in their place and stead.

8. Nothing herein contained shall in any way be construed to prevent additional financing under the provisions of the Act.

9. The obligations and undertakings of each of the parties to this Refunding Contract shall be conditioned upon the successful accomplishment of the proposed refunding, and therefore if for any reason whatsoever the Refunding Bonds are not issued, then this contract shall be considered void and of no force and effect; provided, however, that in such event, all costs and expenses shall be paid by the City in accordance with existing commitments to the Authority, and the Authority shall not be obligated for such costs and expenses.

10. The Authority and the City each recognize that the holders from time to time of the Refunding Bonds will have contractual rights in this Refunding Contract, and it is therefore covenanted and agreed by each of them that so long as any of the Refunding Bonds shall remain outstanding and unpaid, the provisions of this Refunding Contract shall not be subject to any alteration or revision which would in any manner materially affect either the security of the Refunding Bonds or the prompt payment of principal of or interest thereon. The City and the Authority further covenant and agree that they will each comply with their respective duties and obligations under the terms of this Refunding Contract promptly at all times and in the manner herein set forth, and will not suffer to be done any act which would in any way impair the Refunding Bonds, the security therefor, or the prompt payment of principal of and interest thereon. It is hereby declared that the terms of this Refunding Contract insofar as they pertain to the security of the Refunding Bonds shall be deemed

to be for the benefit of the holders of said Refunding Bonds.

11. This Refunding Contract shall remain in full force and effect for a period of forty (40) years from the date hereof, or until such lesser time as the Refunding Bonds issued by the Authority are paid, at which time this Refunding Contract shall be terminated, and the provisions of the Contract relative to disposition of the financed facilities shall be carried out. In any event, the obligations of the City to make the payments required hereunder shall be terminated at such time as all of the Refunding Bonds are paid in full by the City, together with all interest and penalties and other obligations hereunder.

12. This Refunding Contract shall inure to the benefit of and be binding upon the respective parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the CITY OF ANN ARBOR BUILDING AUTHORITY, by its Commission, and the CITY OF ANN ARBOR, MICHIGAN, by its City Council, have each caused its name to be signed to this instrument by its duly authorized officers and its seal to be affixed hereto the day and year first above written.

In the presence of:

(Seal)

(Seal)

CITY OF ANN ARBOR BUILDING AUTHORITY
By: _____
_____, Chairman
By: _____
_____, Secretary

CITY OF ANN ARBOR
By: _____
John Hieftje, Mayor
By: _____
Jacqueline Beaudry, City Clerk

Approved as to Substance

By _____
Tom Crawford
Its Chief Financial Officer

Approved as to Substance

Roger W. Fraser, City Administrator

Approved as to Form and Substance

Stephen K. Postema, City Attorney

STATE OF MICHIGAN)
) SS
COUNTY OF WASHTENAW)

On this ____ day of _____, 2009, before me appeared _____ and _____, to me personally known, who, being by me duly sworn, did, each for himself, say that they are respectively the Chairman and Secretary of the Commission of the CITY OF ANN ARBOR BUILDING AUTHORITY, a public corporation of the State of Michigan, and that said instrument was signed and sealed on behalf of said Authority by authority of its Commission, and the said persons acknowledged said instrument to be the free act and deed of said Authority.

Notary Public, State of Michigan, Coun

STATE OF M)
) SS
COUNTY OF)

On this ____ day of _____, 2009, before me appeared John Hieftje and Jacqueline Beaudry, to me personally known, who, being by me duly sworn, did, each for himself, say that they are respectively the Mayor and Clerk of the CITY OF ANN ARBOR, Michigan, a municipal corporation in the State of Michigan, and that said instrument was signed and sealed on behalf of said City by authority of its City Council, and the said persons acknowledged said instrument to be the free act and deed of said City.

Notary Public, State of Michigan, County of Washtenaw
My Commission Expires: _____