

ENROLLED ORDINANCE 165-3

AUTHORIZING THE SALE OF \$9,000,000 TAXABLE GENERAL OBLIGATION
PROMISSORY NOTES, SERIES 2010
(RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS)

WHEREAS on March 23, 2010, the County Board of Supervisors of Waukesha County, Wisconsin (the "County") adopted an ordinance authorizing the issuance of general obligation promissory notes pursuant to Ch. 67, Wis. Stats., in an amount not to exceed \$9,000,000 for the public purpose of paying the cost of capital projects included in the County's 2010 Capital Projects Expenditure Plan consisting of improvements to County parks and other park and land use projects; construction, reconstruction and improvement of County highways and bridges; improvement and expansion of County buildings; other public works projects; and County-wide technology projects (the "Projects");

WHEREAS the County Board of Supervisors deems it necessary and in the best interest of the County that such general obligation promissory notes now be issued to finance the Projects, upon the terms and conditions hereinafter provided;

WHEREAS the County Board of Supervisors has designated all of the territory within the boundaries of the County as a "recovery zone" for purposes of the American Recovery and Reinvestment Act of 2009 (the "Stimulus Act");

WHEREAS the expenditures on the Projects will promote development and economic activity in the County and constitute eligible costs for "qualified economic development purposes" pursuant to the Stimulus Act;

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 issued to finance the Projects to be qualified "Recovery Zone Economic Development Bonds" within the meaning of Subsection 1400U-2(b) 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");

WHEREAS because the County Board of Supervisors will designate the notes to be qualified Recovery Zone Economic Development Bonds, a category of 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;

WHEREAS the County has duly received bids for its proposed issue of \$9,000,000 Taxable General Obligation Promissory Notes, Series 2010 (Recovery Zone Economic Development Bonds) (the "Notes"); and

WHEREAS it has been determined that the best bid received was that submitted by Robert W. Baird & Co. Incorporated (the "Purchaser").

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that:

Section 1. Award. The bid of the Purchaser for the purchase price of \$8,955,000 be and it hereby is accepted and the Chairperson and County Clerk are authorized and directed to execute an acceptance of the offer of the Purchaser on behalf of the County. The good faith deposit of the Purchaser shall be retained by the County Treasurer until the closing of the note issue, and any good faith deposits submitted by unsuccessful bidders shall be promptly returned.

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 June 8, 2010. The Notes shall mature on April 1 of each of the years and shall bear interest at the rates per annum as follows:

<u>Year</u>	<u>Amount</u>	<u>Interest Rate</u>
2011	\$ 100,000	0.85%
2012	200,000	1.30
2013	450,000	1.80
2014	900,000	2.15
2015	1,075,000	2.75
2016	1,435,000	3.10
2017	1,435,000	3.35
2018	1,435,000	3.50
2019	1,255,000	3.90
2020	715,000	4.05

Interest on the Notes shall be payable on April 1 and October 1 of each year, commencing October 1, 2010.

At the option of the County, the Notes maturing on April 1, 2018 and thereafter shall be subject to redemption prior to maturity on April 1, 2017 or on any date thereafter. Said Notes shall be 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 on file in the County Clerk's office.

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 an amount and at the times sufficient for said purpose; such tax is levied in the following years and in the following minimum amounts:

<u>Year of Levy</u>	<u>Amount</u>
2010	\$ 380,722.50
2011	478,997.50
2012	723,647.50
2013	1,159,922.50
2014	1,310,466.25
2015	1,633,442.50
2016	1,587,163.75
2017	1,538,015.00
2018	1,308,430.00
2019	729,478.75

(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.

(d) *Appropriation.* There be and there hereby is appropriated from funds of the County on hand the sum of \$88,249.08 to be deposited in the Debt Service Account which amount will be used to meet payments with respect to debt service due on October 1, 2010.

Section 5. Debt Service Fund and Account.

(a) *Creation and Deposits.* Within the debt service fund previously established in the treasury of the County, there be and there hereby is established a separate and distinct account designated as the "Debt Service Account for \$9,000,000 Taxable General Obligation Promissory Notes, Series 2010 (Recovery Zone Economic Development Bonds), dated June 8, 2010" (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) surplus monies in the Borrowed Money Fund as specified in Section 6 hereof; (vi) all Direct Payments (defined below) received by the County; and (vii) 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., in interest-bearing obligations of the United States of America, in other obligations of the County or in other investments permitted by law, which investments shall continue to be a part of the Debt Service Account. Any investment of the Debt Service Account shall at all times conform with the provisions of the Code and any applicable 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 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, 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 purposes 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 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 purposes for which the Notes 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 Account.

Section 7. Qualified Recovery Zone Economic Development Bond Designation; Allocation of Recovery Zone Bond Volume Cap to the Notes; Compliance with Federal Tax Laws and Prevailing Wage Requirements.

(a) The Notes are hereby irrevocably designated qualified Recovery Zone Economic Development Bonds within the meaning of Subsection 1400U-2(b) of the Code. The County hereby allocates to the Notes \$9,000,000 of the volume cap for Recovery Zone Economic Development Bonds received by it pursuant to Section 1400U-1(a)(3) of the Code and Internal Revenue Service Notice 2009-50.

(b) The County hereby covenants to comply with the requirements of Section 1400U-2 of the Code and Section 54AA of the Code (to the extent applicable). 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 a "qualified economic development purpose" as defined in Subsection 1400U-2(c) of the Code. The County acknowledges that among the requirements for the Notes to qualify and continue to qualify as qualified Recovery Zone Economic Development Bonds is that the Notes, but for their qualified Recovery Zone Economic Development 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.

(c) 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 Recovery Zone Economic Development 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 Recovery Zone Economic Development Bonds within the meaning of Subsection 1400U-2(b) 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.

(d) 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.

(e) All investments made pursuant to this Ordinance 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.

(f) The County further covenants and agrees that it will comply with the federal Davis Bacon prevailing wage requirements (as determined by the Secretary of the United States Department of Labor in accordance with subchapter IV of chapter 31 of title 40 of the United States Code) in connection with the Projects to the extent those requirements are applicable to the County by virtue of the issuance of the Notes.

Section 8. Qualified Recovery Zone Economic Development 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 1400U-2(a) of the Code and Section 6431 of the Code ("Direct Payments"). The County Treasurer, together with the County's Department of Administration, 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 Account and used for no other purpose than as provided in Section 5 of this Ordinance.

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. Ratification. The Official Notice of Sale with respect to the Notes, which is on file in the County Clerk's office, is ratified and approved. In addition, all actions taken by any committee of the County Board, by the officers and employees of the County and by the County's financial consultant, Robert W. Baird & Co. Incorporated, in connection with the offering and sale of the Notes, including the preparation and distribution of the Official Statement concerning the Notes, are ratified and approved.

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 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 Notes or by the original purchaser(s) of the Notes 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 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.

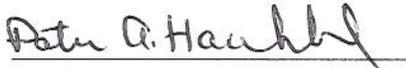
Section 15. Closing. The Chairperson and County Clerk of the County are hereby authorized and directed to execute and deliver the Notes to the purchaser thereof upon receipt of the borrowed funds, accrued interest to date of delivery and premium, if any. The Chairperson and County Clerk may execute the 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.

Section 16. Effect of Ordinance. This action by the County Board of Supervisors is taken pursuant to Section 67.12(12), Wis. Stats., and is intended to constitute a "resolution" for purposes of that section.

AUTHORIZING THE SALE OF \$9,000,000 TAXABLE GENERAL OBLIGATION
PROMISSORY NOTES, SERIES 2010
(RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS)

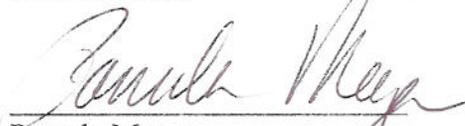
Approved by:
Finance Committee


Patricia A. Haukohl, Chair


Dave Falstad

Absent
James A. Heinrich


Robert Hutton


Pamela Meyer

Absent
Ted Rolfs


William J. Zaborowski

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: May 28, 2010, 
Kathy Nickolaus, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: X
Vetoed: _____


Date: 6-1-10, _____
Daniel P. Vrakas, County Executive

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-05/25/10

NUMBER-1650012

- 1 D. FALSTAD.....AYE
- 3 R. HUTTON.....AYE
- 5 J. JESKEWITZ.....
- 7 P. HAUKOHL.....AYE
- 9 J. HEINRICH.....
- 11 F. RUF.....AYE
- 13 P. DECKER.....AYE
- 15 P. MEYERS.....AYE
- 17 J. TORTOMASI.....AYE
- 19 S. WIMMER.....AYE
- 21 W. ZABOROWSKI.....AYE
- 23 K. CHIAVEROTTI....AYE
- 25 G. YERKE.....AYE

- 2 T. ROLFS.....AYE
- 4 J. DWYER.....AYE
- 6 J. BRANDTJEN.....AYE
- 8 T. SCHELLINGER....AYE
- 10 D. SWAN.....AYE
- 12 P. WOLFF.....AYE
- 14 M. INDA.....AYE
- 16 D. PAULSON.....AYE
- 18 K. CUMMINGS.....AYE
- 20 P. JASKE.....AYE
- 22 P. GUNDRUM.....AYE
- 24 W. KOLB.....AYE

TOTAL AYES-23

TOTAL NAYS-00

CARRIED X

DEFEATED _____

UNANIMOUS X

TOTAL VOTES-23