



Legislation Text

File #: 19-1001, **Version:** 2

TO: Mayor Richard C. Irvin

FROM: Martin S. Lyons, Chief Financial Officer/City Treasurer

DATE: November 5, 2019

SUBJECT:

An Ordinance authorizing the issuance and sale of adjustable rate demand economic development revenue bonds, aurora university, in one or more series, of the City of Aurora, Kane, DuPage, Will and Kendall Counties, Illinois, in an aggregate principal amount not to exceed \$45,000,000, and confirming the sale thereof; authorizing the execution and delivery of one or more loan agreements, trust indentures, bond purchase agreements and related documents; authorizing the distribution of one or more official statements; approving the delivery of one or more letters of credit, one or more reimbursement agreements and one or more remarketing agreements; and authorizing certain related matters.

PURPOSE:

As a home rule municipality, the City of Aurora may issue Private Activity Bonds for qualified not-for-profit entities. Aurora University and the City have partnered in this issuance in the past and the University would like to refinance the 2004 Bonds and to issue new bonds for major capital improvements on the Aurora/Montgomery campus. A public hearing will be held giving notice for this issuance, and the Village of Montgomery has already held such a hearing (they will not be issuing any bonds)

BACKGROUND:

The City of Aurora and Aurora University have worked together to help build a premier campus in Aurora. Part of this relationship has involved the City's assistance through the issuance of conduit financing in the form of Private Activity Bonds. Private Activity Bonds do not involve the City financial statements in any manner other than the recording of the transaction in the Comprehensive Annual Financial Report Notes and in the recording of modest issuance fees that are paid by the University. The City has confirmed that no liability for these bonds are actual or moral can be incurred by the City through consultation with our bond counsel Chapman and Cutler and through our auditor Sikich, LLC. This confirmation is also clearly stated in the attached documents that will be included in the total bond transcript.

Aurora University approved resolutions at the October 25, 2019 Board of Trustee meeting for the issuance of the above bonds (Attached).

These improvements will involve substantial construction jobs for the community, and will allow the University to grow and remain a premier institution for higher education in Aurora and the Midwest

DISCUSSION:

The attached bond transcript documents outline the combined not to exceed requested Private Activity Bonds for Aurora University. These bonds are broken down into three uses and amounts as follows:

The 2019 Refunding Bonds - \$12.0 million to refund the outstanding bonds from the 2004 issue done by the City for Aurora University.

2019 New Issue Bonds to refinance existing taxable loans of the University with BMO Harris Bank for \$14.2 million

2020 New Issue Bonds to finance new construction at Aurora University for \$15.0 million.

While the total combined issue is listed as not to exceed \$45 million, the actual issue amount should be very close to the above breakdown which totals to \$41.2 million. This is because the bonds will be variable rate and should be issued at par, so there should be minimal discount or premium that would change the amount of the bonds from the actual bond proceeds. The not to exceed amount provides the University with flexibility since the final sale will not occur until 2020. Again, there is no liability to the City regarding these bonds. Bond proceeds for both 2019 and 2020 issues may also be used to cover the costs of issuance.

The 2020 issue for new construction includes the construction of certain educational, athletic, and administrative facilities and representatives from Aurora University will be available to define the project further.

Based on an aldermanic request, for the City Council meeting, I have attached several more documents relating to this issue as listed below. The City's Bond Counsel will be present to answer any questions regarding these documents, but will not have a presentation.

- * 2019 and 2020 Bond Counsel Opinions
- * Refunding and New Money Loan Agreements (City not a party)
- * Refunding and New Money Trust Indentures
- * Refunding and New Money Bond Purchase Agreements (BPA)

IMPACT STATEMENT:

This ordinance has no impact on the City's financial statements or debt. This investment by Aurora University will improve the university's financial status as well as provide funding for campus improvements keeping the university a premier institution in Aurora and the Midwest.

RECOMMENDATIONS:

That the City Council approve the attached Ordinance authorizing the issuance of Private Activity Bonds in a not to exceed amount of \$45 million in 2019/20.

cc: Finance Committee



CITY OF AURORA, ILLINOIS

ORDINANCE NO. _____
DATE OF PASSAGE _____

An Ordinance authorizing the issuance and sale of adjustable rate demand economic development revenue bonds, aurora university, in one or more series, of the City of Aurora, Kane, DuPage, Will and Kendall Counties, Illinois, in an aggregate principal amount not to exceed \$45,000,000, and confirming the sale thereof; authorizing the execution and delivery of one or more loan agreements, trust indentures, bond purchase agreements and related documents; authorizing the distribution of one or more official statements; approving the delivery of one or more letters of credit, one or more reimbursement agreements and one or more remarketing agreements; and authorizing certain related matters.

WHEREAS, the City of Aurora has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals, and welfare; and

WHEREAS, the City of Aurora, Kane, DuPage, Will and Kendall Counties, Illinois (the "Issuer"), has a population of more than 25,000, and, in accordance with the provisions of Section 6(a) of Article VII of the 1970 Constitution of the State of Illinois, the Issuer is a home rule unit of government, and, as such, may exercise any power or perform any function pertaining to its government and affairs; and:

WHEREAS, pursuant to the Constitution and the laws of the State of Illinois, and particularly its powers as a home rule unit of government under the Constitution of the State of Illinois, the City Council of the Issuer has adopted Ordinance No. 4519 on March 23, 1976, as supplemented and amended (the "Enabling Ordinance," such Enabling Ordinance and such provisions of the Constitution hereinafter collectively referred to as the "Act"); and

WHEREAS, pursuant to the Constitution and the laws of the State of Illinois, and particularly the Act, the Issuer is authorized and empowered to issue its revenue bonds and to lend the proceeds thereof for the purpose of financing or refinancing "projects," within the meaning of the Act; and

WHEREAS, Aurora University, an Illinois not-for-profit corporation (the "University"), has requested the Issuer to issue its revenue bonds, in one or more series and lend the proceeds from the sale thereof to the University; and

WHEREAS, the University desires to apply the proceeds from the sale of such revenue bonds to (a) refund all or a portion of the outstanding \$12,000,000 original principal amount City of Aurora, Kane, DuPage, Will and Kendall Counties Adjustable Rate Demand Economic Development Bonds, Aurora

University, Series 2004 (the "Series 2004 Bonds"), heretofore issued by the Issuer for the benefit of the University, (b) refinance all or a portion of the funds loaned by BMO Harris Bank N.A. (formerly known as Harris N.A.) to the Corporation pursuant to an amended and restated loan agreement dated as of October 24, 2016, as supplemented and amended from time to time (the "Taxable Loan"), (c) finance, refinance or reimburse the University for the costs of the acquisition, construction, renovation, improvement, or equipping of certain educational, athletic, and administrative facilities of the Corporation and related infrastructure (the "Project") and (d) pay costs relating to the issuance of such revenue bonds, including the credit enhancement thereof (collectively, the "Financing Purposes"); and

WHEREAS, the proceeds of the Series 2004 Bonds and a portion of the proceeds of the Taxable Loan were used by the University to finance, refinance or reimburse the Corporation for all or a portion of the costs of the acquisition, construction, renovation, improvement and equipping of certain educational, athletic, and administrative facilities of the Corporation and related infrastructure located within the Issuer's city limits; and

WHEREAS, additionally, a portion of the proceeds of the Taxable Loan were used to finance or reimburse the Corporation for all or a portion of the costs of certain real and personal property owned and operated by the Corporation, including but not limited to the acquisition, construction and equipping of athletic and administrative facilities and related infrastructure in Montgomery, Illinois; and

WHEREAS, in furtherance of the purposes set forth in the Act, the Issuer wishes to assist the University to accomplish the Financing Purposes by the sale and issuance of its revenue bonds, in one or more series, and the loan of the proceeds from the sale thereof, and by authorizing such actions as might be required to implement such stated intentions; and

WHEREAS, pursuant to and in accordance with the provisions of the Constitution and the laws of the State of Illinois, and particularly the Act, the Issuer is now prepared to issue and sell (a) its Adjustable Rate Demand Economic Development Revenue Refunding Bonds, Aurora University, Series 2019 (the "Series 2019 Bonds") and (b) its Adjustable Rate Demand Economic Development Revenue Bonds, Aurora University, Series 2020 (the "Series 2020 Bonds" and collectively with the Series 2019 Bonds, the "Bonds"), which Bonds shall be issued in an aggregate principal amount not to exceed \$45,000,000; and

WHEREAS, the Bonds will bear interest at variable rates established in accordance with the Indentures (as hereinafter defined), and the proceeds from the sale thereof will be loaned to the University through the purchase of one or more of the University's promissory notes (each, a "Note") to be issued by the University pursuant to the related Loan Agreement (as hereinafter defined) and assigned by the Issuer to the Trustee (as hereinafter defined) pursuant to the related Indenture (as hereinafter defined) as security for the related series of Bonds; and

WHEREAS, drafts of the following documents have been previously provided to and are on file with the Issuer, and will be executed and delivered by the Issuer (collectively, the "Issuer Documents"):

(a) one or more Trust Indentures (each an "Indenture," and collectively, the "Indentures") between the Issuer and The Bank of New York Mellon Trust Company, N.A., as Trustee (the "Trustee"), providing for the issuance thereunder of the related series of Bonds and setting forth the

terms and provisions applicable to such series of the Bonds, including securing each series of the Bonds by an assignment thereunder of the Issuer's right, title and interest in and to the related Note and certain of the Issuer's rights in and to the related Loan Agreement (as hereinafter defined);

(b) one or more Loan Agreements (each, a "Loan Agreement," and collectively, the "Loan Agreements") between the Issuer and the University, under which the Issuer will loan the proceeds of the related series of Bonds to the University, all as more fully described in the related Loan Agreement, including the form of the related Note attached thereto; and

(c) one or more Bond Purchase Agreements (each, a "Purchase Agreement," and collectively, the "Purchase Agreements") among the Issuer, Robert W. Baird & Co. and any other investment bank or financial institution named therein, as underwriters (collectively, the "Underwriter"), providing for the sale by the Issuer and the purchase by the Underwriter of the related series of Bonds; and

WHEREAS, in connection with the issuance of the Bonds, the following additional documents will be executed and delivered by parties other than the Issuer (collectively, the "Additional Transaction Documents"):

(a) one or more Remarketing Agreements between the University and Robert W. Baird & Co., as remarketing agent (the "Remarketing Agent") and the University pursuant to which the Remarketing Agent agrees, among other things, to use its best efforts to remarket any of the related series of Bonds tendered by the owners thereof for purchase as provided in the related Indenture;

(b) one or more Official Statements, relating to the offering of each series of the Bonds; and

(c) one or more direct pay letters of credit (each, a "Letter of Credit," and collectively, the "Letters of Credit") issued by BMO Harris Bank N.A., as credit provider (the "Credit Provider"), pursuant to the terms of one or more Reimbursement Agreements (each, a "Reimbursement Agreement," and collectively, the "Reimbursement Agreements") between the University and the Credit Provider.

WHEREAS, the City Council of the Issuer hereby finds and determines that the issuance of the Bonds for the stated purposes is beneficial for the welfare of the government and affairs of the Issuer, is a proper public purpose and is in the public interest; and

WHEREAS, the City Clerk of the Issuer has caused a notice of public hearing with respect to the plan of finance of the costs of the Financing Purposes through the issuance of the Bonds to be published in The Beacon News, a newspaper of general circulation in the City of Aurora, Illinois, pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), on November 19, 2019, and the City Council of the Issuer has conducted said public hearing on November 26, 2019;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Aurora, Illinois, as follows: Be It Ordained by the City Council of the City of Aurora, Kane, DuPage, Will and Kendall Counties, Illinois, as follows:

Section 1. Recitals. The City Council of the Issuer hereby finds that all of the recitals contained in the preambles to this Ordinance are full, true and correct, and does incorporate them into this Ordinance by this reference.

Section 2. Public Hearing Approval. Pursuant to the Act, the Issuer does hereby authorize and approve the accomplishment of the Financing Purposes through the issuance of the Bonds in

accordance with the terms of the Loan Agreements and the Indentures, and does hereby determine that the Financing Purposes are collectively a “project” within the meaning of the Act, and that the Financing Purposes are in furtherance of the public purposes set forth in the Act; and that the Issuer hereby approves the accomplishment of the Financing Purposes through the issuance of the Bonds, as described in the aforesaid notice of public hearing which is hereby incorporated by reference, which approval shall be considered the public approval required by Section 147(f) of the Code.

Section 3. Issuer Documents. The Issuer is hereby authorized to enter into the Issuer Documents in substantially the same forms now before the City Council of the Issuer; that the forms, terms and provisions of the Issuer Documents be, and they hereby are, in all respects approved; that the Mayor of the Issuer be, and hereby is, authorized, empowered and directed to execute, and the City Clerk of the Issuer be, and hereby is, authorized, empowered and directed to attest and to affix the official seal of the Issuer to, the Issuer Documents in the name, for and on behalf of the Issuer, and thereupon to cause the Issuer Documents to be delivered to the University, each such Loan Agreement (as executed) to provide for the loan of the proceeds of the related series of Bonds to the University and the use of such proceeds for the Financing Purposes in the manner and with the effect therein provided, such Issuer Documents to be in substantially the same form now before the City Council of the Issuer or with such changes and revisions therein as the officer executing the Issuer Documents on behalf of the Issuer shall approve, his or her execution thereof to constitute conclusive evidence of such approval of any and all changes or revisions therein from the form of the Issuer Documents now before the City Council of the Issuer; that from and after the execution and delivery of the Issuer Documents, the officers, employees and agents of the Issuer are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Issuer Documents as executed; provided, however, the Bonds shall be issued to effect the Financing Purposes and in no event shall the aggregate principal amount of Bonds issued in one or more series exceed \$45,000,000; and that the Issuer Documents shall constitute, and hereby is made, a part of this Ordinance, and copies of the Issuer Documents shall be placed in the official records of the Issuer, and shall be available for public inspection at the office of the City Clerk of the Issuer.

Section 4. Bond Trustee. The designation of The Bank of New York Mellon Trust Company, National Association to serve as Trustee, Paying Agent and Registrar with respect to the Bonds is hereby approved.

Section 5. The Bonds. The form of each series of the Bonds now before the City Council of the Issuer, subject to appropriate insertions and revisions in order to comply with the provisions of the Indenture (as executed and delivered) be, and the same hereby are, approved; that the Bonds of each series shall be executed in the name, for and on behalf of the Issuer with the manual signature of its Mayor and attested with the manual signature of its City Clerk and the official seal of the Issuer shall be impressed or imprinted thereon; that the Bonds of each series shall bear interest at initial rates not to exceed 10% per annum, subject to adjustment thereafter in accordance with the related Indenture, and shall be payable over a term not to exceed 35 years from date of issuance; that the Mayor of the Issuer or the City Clerk of the Issuer shall cause the Bonds of each series, as so executed and attested, to be delivered to the Trustee for authentication; and that when such Bonds shall be executed on behalf of the Issuer in the manner contemplated by the Indenture and this Ordinance, in an aggregate principal amount not to exceed \$45,000,000, they shall represent the approved form of Bonds of the Issuer.

Section 6. Distribution of Official Statements. The preparation and distribution of the Official Statement for each series of the Bonds by the Underwriter is hereby approved in substantially the same form now before the City Council of the Issuer or with such changes or revisions therein as the Mayor of the Issuer shall approve by written certificate, his execution of the related Indenture to

constitute conclusive evidence of such approval of any and all changes and revisions therein from the form of the Official Statement before the City Council of the Issuer.

Section 7. Additional Transaction Documents. The Issuer does hereby approve the execution and delivery of the Additional Transaction Documents. The final forms of the Additional Transaction Documents shall be approved by the Mayor of the Issuer, the Mayor's execution of the related Indenture to constitute conclusive evidence of the Mayor's approval and the Issuer's approval of the final forms of the Additional Transaction Documents.

Section 8. Other Documents. The Mayor, the City Clerk and any other officer, employee or agent of the Issuer be, and each of them hereby is, authorized and directed to execute, attest, seal and deliver any and all documents and certificates, to do any and all things deemed necessary to effect the issuance and sale of the Bonds and the execution and delivery of the Issuer Documents and such other instruments (including one or more tax exemption certificates and agreements and financing statements), and to perform the obligations and duties of the Issuer hereunder and thereunder, all as shall be necessary and desirable to carry out the intent and purposes of this Ordinance, including the preambles to this Ordinance.

Section 9. Authorization and Ratification of Subsequent Acts. All acts of the City Council of the Issuer and the officers and employees of the Issuer that are in conformity with the intent and purposes of this Ordinance, whether heretofore or hereafter taken or done, be, and the same are hereby, in all respects, ratified, confirmed and approved.

Section 10. Severability. The provisions of this Ordinance are hereby declared to be separable, and if any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions of this Ordinance.

Section 11. Publication. A full, true and complete copy of this Ordinance shall be printed or published promptly after passage in pamphlet form by authority of the City Council of the Issuer.

Section 12. Conflicts. All ordinances, resolutions, or parts thereof, in conflict herewith are hereby superseded to the extent of such conflict; and that this Ordinance shall be in full force and effect immediately and forthwith upon its passage, approval and publication in pamphlet form as aforesaid.

Section 13. Effective Date. This Ordinance shall be in full force and effect immediately upon its passage, as by law provided.