

..Number

090330

..Version

Proposed Substitute B

..Reference

..Sponsor

The Chair

..Title

Substitute resolution authorizing the sale and issuance of up to \$89,215,825.57 Sewerage System Second Lien Revenue Bonds.

..Analysis

This resolution authorizes and provides for the sale of Sewerage System Second Lien Revenue Bonds for financing the costs of improvements to the City's Sewerage System. The City will use the Sewerage System Second Lien Revenue Bonds to borrow for Sewer Maintenance Fund purposes from the State of Wisconsin Clean Water Fund program. The Clean Water Fund Program is one of the State's subsidized loan programs included in the Environmental Improvement Fund. The Clean Water Fund Program provides loans to municipalities at subsidized rates for wastewater treatment and urban storm water projects.

The Clean Water Fund Program has received funds from the American Recovery and Reinvestment Act of 2009, and has indicated that it will use the funds to grant finance up to 50% of qualified projects that are approved. In connection with the City's application for funding from the Clean Water Fund Program, the City will also apply for, and accept, such grants.

This resolution also authorize up to \$17.5 million of the borrowing be from Contingent Borrowing Authorization. This will provide additional funding so that DPW can apply for the maximum amount of grant funding available prior to the October, 2009 deadline.

..Body

Whereas, The City of Milwaukee, Wisconsin (the "City") owns and operates a sewerage system (the "System") which is operated for a public purpose as a public utility by the City; and

Whereas, Certain improvements to the System are necessary to meet the needs of the City and the residents thereof, consisting of the construction of one or more capital improvements of the System, each constituting a "Project" eligible for funding under the Clean Water Fund Program administered by the State of Wisconsin Department of Natural Resources (the "Department of Natural Resources"); and

Whereas, Under the provisions of Chapter 66 of the Wisconsin Statutes any City may, by action of its governing body, provide for purchasing, acquiring, constructing, extending, adding to, improving, operating and managing a public utility from the proceeds of bonds, which bonds are to be payable only from the revenues received from any source by such utility, including all rentals and fees; and

Whereas, On August 2, 2001, the Common Council of the City adopted Common Council File Number 991863 authorizing the issuance of Sewerage System Revenue Bonds (the “First Lien Bonds”), as amended by Common Council File Number 021776 adopted on April 15, 2003, and collectively the resolutions constitute the Sewerage System Revenue Bonds Bond Resolution of the City (the “Master Resolution”); and

Whereas, As of June 2, 2009 there were outstanding \$48,115,000 aggregate principal amount of Sewerage System Revenue Bonds of the City (the “Outstanding First Lien Bonds”) which are equally and ratably secured under the terms of the Master Resolution; and

Whereas, Pursuant to Section 3.07 of the Master Resolution, the City is authorized and permitted to issue Subordinate Obligations constituting evidences of indebtedness payable out of, and which may be secured by a pledge of, such amounts in the Subordinate Obligation Fund as may from time to time be available for the purpose of payment thereof; and

Whereas, On June 20, 2006, the Common Council of the City adopted Common Council File Number 060091 (the “Second Lien Resolution”) authorizing the issuance of Sewerage System Second Lien Revenue Bonds (the “Second Lien Bonds”); and

Whereas, as of June 2, 2009 there were outstanding \$47,952,275.36 aggregate principal amount of Sewerage System Second Lien Revenue Bonds of the City (the “Outstanding Second Lien Bonds”) which are equally and ratably secured under the terms of the Second Lien Resolution; and

Whereas, Pursuant to Section 12 of the Second Lien Resolution, the City is authorized and permitted to issue Parity Second Lien Obligations constituting evidences of indebtedness payable out of, and which may be secured by a pledge of, such amounts in the State Loan Program Debt Service Account as may from time to time be available for the purpose of payment thereof; and

Whereas, Pursuant to the provisions of Section 66.0621 of the Wisconsin Statutes, the City deems it to be necessary, desirable and in its best interest to authorize and sell Sewerage System Second Lien Revenue Bonds of the City payable solely from available moneys in the Subordinate Obligation Fund maintained under the Master Resolution to pay the costs of the Projects; and

Whereas, Other than the Outstanding First Lien Bonds and Outstanding Second Lien bonds, no bonds or obligations payable from the revenues of the System are now outstanding; and

Whereas, The City may issue general obligation debt in order to provide interim financing for System projects (“Interim Financing”), and intends to permanently finance the Interim Financing with bonds issued pursuant to this resolution; and

Whereas, Funding from the American Recovery and Reinvestment Act of 2009, have made grants available through the Clean Water Fund Program, and the City desires to apply for, and accept, such grants;

Whereas, The 2009 Budget of the City authorizes \$130,000,000 Contingent Borrowing for purposes not contemplated at the time of adoption of the budget; and

Whereas, It is anticipated that Clean Water Program grant funds will be approved but such funds have not been released to the City; the City needs to enter into contracts in order to qualify for the grant funds; such projects would be included in the 2010 budget regardless of whether Clean Water Fund Program funds were available; and the City desires \$17,500,000 to fund the program pending approval and receipt of the grant funds; and

Whereas, The City desires to use up to \$17,500,000 of Contingent Borrowing to provide for a portion of the authorized amount to be borrowed for projects; now therefore, be it

Resolved, By the Common Council of the City of Milwaukee, Wisconsin, as follows:

1. The detailed resolution appended to this file relating to the authorization and issuance of up to \$89,215,825.57 aggregate principal amount of Sewerage System Second Lien Revenue Bonds of the City of Milwaukee (the "Bonds") for financing capital improvements to the System of the City is hereby approved. \$17,500,000 of the aggregate principal amount shall be from Contingent Borrowing, and the balance from various existing authorizations for Sewer purpose debt.

2. Such appended document is considered as a formal part of this resolution.

3. It is hereby delegated to the Commissioners of the Public Debt of the City, subject to the limitations as contained herein, the power with respect to the Bonds to determine and carry out the following: (a) the date or dates, maturity date or dates, principal amount of each maturity, and the amount and date of each Sinking Fund Installment, if any; provided, however, that the Bonds shall mature at any such time or times not exceeding 40 years from the date of issuance; (b) the interest rate or rates, if any, of the Bonds or the manner of determining such rate or rates, the date from which interest on the Bonds shall accrue, the dates on which interest on the Bonds shall be payable, if any; provided, however, that the interest rate for the Bonds maturing in any year shall not exceed 8% per annum; (c) the redemption price or prices, if any, the redemption terms; (d) the provisions for the sale or exchange of the Bonds and for the delivery thereof; (e) directions for the application of the proceeds of the Bonds, including the interest on such Bonds to be capitalized from the proceeds thereof, if any, and the date or dates to which such capitalized interest shall accrue; (f) the form of the Bond or Bonds; and (g) any other provisions that are not in conflict with this resolution. The Commissioners of the Public Debt of the City shall adopt in one or more resolutions actions taken pursuant to the authority granted herein, which resolutions shall be filed with the City Clerk of the City.

3. The Bonds shall be sold at private sale to the State of Wisconsin Clean Water Fund Program, or other similar type program, on such date or dates and at such price or prices, all as shall be determined by the Commissioners of the Public Debt; provided that the Bonds shall be sold at a price not less than 98% of the par value thereof and at a true interest cost rate not in excess of 7% per annum.

4. The Bonds shall be executed in accordance with the provisions of this resolution. An Authorized Officer is hereby authorized to execute and deliver, in the name and on behalf of the City, any and all documents and instruments, with such technical changes as may be recommended by the City Attorney, and to do and cause to be done any and all acts and things,

said Authorized Officer deems necessary or advisable in connection with the offering, sale and issuance of the Bonds and to carry out the transactions contemplated by this resolution. For purposes of the Clean Water Fund Program Financial Assistance Application, the Commissioner of Public Works is designated as the Authorized Representative.

5. The interest on the Bonds is intended to be excluded from gross income for purposes of federal income taxation. In order to maintain such exclusion, the City affirms that the tax covenant made in this resolution shall apply to the Bonds. In furtherance of the foregoing, the City shall comply with the provisions of the Tax Certificate executed by an Authorized Officer in connection with the Bonds; the obligation of the City to comply with the provisions herein with respect to the rebate to the Department of the Treasury of the United States of America relating to the Bonds shall remain in full force and effect so long as the City shall be required by the Code to rebate such earnings on the gross proceeds of the Bonds notwithstanding that the Bonds are no longer outstanding.

6. A Continuing Disclosure Certificate, in the form of a Supplemental Certificate authorized by File Number 031384 adopted on February 10, 2004, is authorized to be executed and delivered by the Comptroller for the Bonds.

7. The City of Milwaukee authorizes and directs the appropriate officers and employees of the City to take all action necessary or appropriate to comply with and carry out all of the provisions of the Continuing Disclosure Certificate as amended from time to time. Notwithstanding any other provision of the resolution, failure of the City to perform in accordance with the Continuing Disclosure Certificate shall not constitute a default under the Resolution and the Continuing Disclosure Certificate may be enforced only as provided therein.

8. Common Council File Number 060091 remains in full force and effect, and debt may be issued pursuant to that resolution up to the amount authorized therein.

9. That debt issued for Sewer Maintenance Fund purposes, as detailed in Exhibit A of Common Council File Numbers 080960 and 081159, apart from this resolution ("Other SMF Debt") shall not likewise be issued pursuant to this resolution. Provided, however, that debt may be issued pursuant to this resolution in order to refund Other SMF Debt.

10. \$17,500,000 is appropriated to the Sewer Maintenance Fund and is funded from the \$17,500,000 of Bonds from Contingent Borrowing authorized herein pending receipt of Clean Water Fund Program grant funds.

11. The proper City Officials and employees are authorized to:

- 1) Apply for grants in connection with the City's application for funding from the Clean Water Fund Program; and
- 2) Accept up to \$20,000,000 of grants from the Clean Water Fund Program.

..Requestor  
Comptroller

..Drafter  
Comptroller  
RSL  
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7/28/09