



Legislation Details (With Text)

File #: 110657 **Version:** 2

Type: Resolution **Status:** Passed

File created: 9/1/2011 **In control:** COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE

On agenda: **Final action:** 9/20/2011

Effective date:

Title: Substitute resolution authorizing the sale and issuance of \$2,615,000 Industrial Development Revenue Refunding Bonds, Series 2011, R&B Wagner, Inc. Project, in the 9th Aldermanic District.

Sponsors: ALD. PUENTE

Indexes: INDUSTRIAL DEVELOPMENT BONDS, INDUSTRIAL REVENUE BONDS

Attachments: 1. Exhibit A, 2. Bond Financing Agreement, 3. Hearing Notice List, 4. Exhibit A-Final Version

Date	Ver.	Action By	Action	Result	Tally
9/1/2011	0	COMMON COUNCIL	ASSIGNED TO		
9/9/2011	0	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
9/9/2011	0	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
9/9/2011	0	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
9/12/2011	2	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	RECOMMENDED FOR ADOPTION	Pass	5:0
9/12/2011	1	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	SUBSTITUTED	Pass	5:0
9/20/2011	2	COMMON COUNCIL	ADOPTED	Pass	14:0
9/21/2011	2	MAYOR	SIGNED		

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ALD. PUENTE

Substitute resolution authorizing the sale and issuance of \$2,615,000 Industrial Development Revenue Refunding Bonds, Series 2011, R&B Wagner, Inc. Project, in the 9th Aldermanic District.

This substitute resolution provides the terms relating to and authorizes the sale and issuance of industrial development revenue bonds, i.e., \$2,615,000 principal amount of Industrial Development Revenue Refunding Bonds, Series 2011 (R&B Wagner, Inc. Project) to refinance the outstanding principal amount of the \$5,000,000 City of Milwaukee, Wisconsin Variable Rate Demand Industrial Development Revenue Bonds, Series 2001 (R&B Wagner, Inc. Project).

Whereas, The City of Milwaukee, Wisconsin (the "City"), is a municipal corporation organized and existing under and pursuant to the laws of the State of Wisconsin and is authorized by Section 66.1103, Wisconsin Statutes, as amended (the "Act"):

a. To issue revenue bonds to finance all or any part of the costs of the construction, equipping, reequipping, acquisition, purchase, installation, reconstruction, rebuilding, rehabilitation, improving, supplementing, replacing, maintaining, repairing, enlarging, extending or remodeling of industrial projects and the improvement of sites for

industrial projects.

b. To fund the whole or part of any revenue bonds issued by the City.

c. To enter into a revenue agreement with a Borrower pursuant to which the Borrower agrees to cause said project to be constructed and to pay the City an amount of funds sufficient to provide for the prompt payment, when due, of the principal of and interest on said revenue bonds; and

Whereas, The City has issued its \$5,000,000 City of Milwaukee, Wisconsin Variable Rate Demand Industrial Development Revenue Bonds, Series 2001 (R&B Wagner, Inc. Project), dated July 26, 2001 (the "Series 2001 Bonds"); and

Whereas, The Series 2001 Bonds were issued to finance the purchase of land, the renovation and expansion of an existing manufacturing facility and the acquisition of machinery and equipment (collectively, the "Project"), which is owned and operated by R&B Wagner, Inc., a Wisconsin corporation (the "Borrower"); and

Whereas, The Borrower determined that it would be beneficial to refinance the Project by issuing revenue refunding bonds to refund the Series 2001 Bonds (the "Refunding"); and

Whereas, On July 26, 2011 the City's Common Council (the "Governing Body") adopted an initial resolution (the "Initial Resolution") pursuant to the Act wherein it was resolved that the City would issue its revenue refunding bonds to effect the Refunding, subject however, to the satisfaction of certain conditions including the approval of this Governing Body of the terms of said bonds and the revenue agreement described in the Initial Resolution; and

Whereas, In accordance with the Initial Resolution, a notice of the adoption of the Initial Resolution was published once in The Daily Reporter (the City's official newspaper for the publication of notices pursuant to Chapter 985 of the Wisconsin Statutes) giving the electors of the City an opportunity to file a petition with the City Clerk for a referendum on the question of the issuance of the Bonds, as defined below, within 30 days of the date of publication of such notice; and

Whereas, No sufficient petition for referendum on the question of the issuance of the Bonds was filed with the City Clerk within 30 days of the publication of the notice of the adoption of the Initial Resolution; and

Whereas, The Governing Body has found and determined that the Project is a qualified "project" within the meaning of the Act and that the Borrower is an "eligible participant" within the meaning of the Act; and

Whereas, The Governing Body has found and determined that the City has derived and will continue to derive public benefits from the Project and its operation, including by way of illustration, but not limitation, the following: the provision and retention of gainful employment opportunities for the citizens of the City; the stimulation of the flow of investment capital into the City with resultant beneficial effects on the economy in the City; and the preservation and enhancement of the City's tax base; and

Whereas, The Borrower has now requested that the City provide for the issuance of its \$2,615,000 Industrial Development Revenue Refunding Bonds, Series 2011 (R&B Wagner, Inc. Project) (the "Bonds") upon the terms set forth in this resolution; and

Whereas, In connection therewith the Borrower has presented the City with proposed documentation for the Bonds, as follows:

(a) A Bond Financing Agreement, to be dated as of the date of issuance of the Bonds (the "Bond Financing Agreement"), to be entered into by and among the City, the Borrower, TCF National Bank, a national banking corporation (the "Bank"), and TCF Investment

Management, Inc. a Minnesota corporation (the "Purchaser"), setting forth the terms and conditions on which the City will sell and the Purchaser will purchase the Bonds; providing for the creation of the Bonds, the terms thereof and the security therefor; and providing for a loan of the Bond proceeds to the Borrower on repayment terms scheduled to provide the City with revenues sufficient to retire the Bonds in accordance with their terms.

(b) A Promissory Note, to be dated the date of issuance of the Bonds (the "Promissory Note"), to be issued by the Borrower payable to the order of the City in the principal equal to the Bonds as evidence of the borrowing provided for in the Bond Financing Agreement and to be assigned by the City to the Purchaser.

(c) A Tax Compliance Agreement, to be dated as of the date of issuance of the Bonds (the "Tax Agreement") to be entered into between the City, the Borrower and the Purchaser; and

Whereas, In accordance with the Act, this resolution, and the aforesaid instruments and documents, the Bonds and interest thereon shall never constitute an indebtedness of the City within the meaning of any State constitutional provision or statutory limitation, shall not constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers, and shall not constitute or give rise to any personal liability of any member of the Governing Body or of any officers or employees of the City on the Bonds or for any act or omission related to the authorization or issuance of the Bonds; and

Whereas, It is in the public interest of the City to promote, attract, stimulate, rehabilitate and revitalize commerce, industry and manufacturing to promote the betterment of the environment and the economy of the City and to stimulate a large flow of private investment funds into the City; and

Whereas, The Governing Body has found and determined that the public interest will be served if the City were to permit the Borrower to refinance the Project by refunding the Series 2001 Bonds; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that:

Section 1. Findings and Determinations.

Based on representations of the Borrower, it has been found and determined and is hereby declared:

- (a) That the Project is a qualified "project" under and for the purposes of the Act.
- (b) That the Borrower is a qualified "eligible participant" under and for the purposes of the Act.
- (c) That the Bond Financing Agreement meets the requirements of a "revenue agreement" under and for the purposes of the Act.
- (d) That the estimated aggregate cost of the Refunding is not less than \$2,615,000.
- (e) That the payments required to be made by the Borrower under the Bond Financing Agreement are sufficient in amount to pay, when due, the principal of, premium, if any, and interest on the Bonds.
- (f) That all conditions set forth in the Initial Resolution have been satisfactorily met.

Section 2. Authorization to Borrow and to Lend.

The City shall borrow, but only in the manner herein recited, the sum of \$2,615,000 to effect the Refunding. Said borrowing shall be accomplished through the sale of the Bonds

issued pursuant to the Act. The City shall lend the sum of \$2,615,000 to the Borrower pursuant to the terms of the Bond Financing Agreement, which borrowing shall be evidenced by the Promissory Note and secured as provided in the Bond Financing Agreement.

Section 3. Designation, Denomination, Tenor and Maturity of Bonds Created for Issuance.

The Bonds shall be issued in the principal amount of \$2,615,000 and shall be designated:

CITY OF MILWAUKEE, WISCONSIN
INDUSTRIAL DEVELOPMENT REVENUE REFUNDING BOND, SERIES 2011
(R&B WAGNER, INC. PROJECT)

The principal of the Bonds shall mature on September 1, 2031 and shall be subject to mandatory redemptions on the first business day of each month as described in Exhibit C to the Bond Financing Agreement, based on the interest rates then in effect, all as provided in the Bond Financing Agreement.

Capitalized terms used and not otherwise defined herein shall have the meaning set forth below:

"Fixed Rate" means, for any Reset Period, a rate per annum equal to the lesser of (1) 25 percent per annum or (2) the product of the Multiplier multiplied by the greater of (a) the sum of (i) the Credit Spread plus (ii) the applicable Treasury Rate for such Reset Period or (b) 5.25 percent per annum.

"Floating Rate" means a rate per annum equal, for each quarterly interest period, to the lesser of (1) 25 percent per annum or (2) the product of the multiplier used by the owner of the Bonds for determining the interest rate on tax-exempt borrowings, multiplied by the greater of (a) the sum of the three-month LIBOR rate (determined as provided in the Bond Financing Agreement) for such quarterly interest period plus 2.75% per annum or (b) 4.0 percent per annum.

"Initial Interest Rate" means the rate of 3.675 percent per annum.

"Interest Payment Date" means the first Business Day of each month, commencing November 2011.

"Original Issue Date" means the date on which the Bonds are issued and sold as provided in this resolution.

"Reset Date" means each of September 1, 2016, September 1, 2021 and September 1, 2026 (or, if any such day is not a Business Day, the next succeeding Business Day).

"Reset Period" means each period from, and including, a Reset Date to, but excluding, the next Reset Date or the Final Maturity Date, as the case may be.

"Taxable Event" means the circumstance of interest paid or payable on the Bonds becoming includable in the gross income of any Owner for federal income tax purposes as a consequence of any act, omission or event whatsoever including, without limitation, a failure by the City or the Borrower to observe and comply with any covenant, agreement or representation in the Bond Financing Agreement or the Tax Agreement.

"Taxable Rate" means, at any time, the interest rate that would otherwise be in effect if the multiplier used by the owner of the Bonds for determining the interest rate on tax-exempt borrowings were equal to 1.0.

The outstanding principal amount of the Bonds shall bear interest from and including the Original Issue Date until payment of the entire principal amount thereof shall have been made as provided in the Bond Financing Agreement, payable on each Interest Payment Date, at a rate per annum (subject to adjustment as provided in the Bond Financing Agreement)

equal to (i) during the period from, and including, the Original Issue Date to, but not including, the initial Reset Date, the Initial Interest Rate, and (ii) during any Reset Period, at the Fixed Rate for such Reset Period or the Floating Rate in effect from time to time during such Reset Period, as selected by the Borrower or otherwise established pursuant to the Bond Financing Agreement. Upon the occurrence of a Taxable Event, the interest rate on the Bonds shall, subject to the conditions described in the Bond Financing Agreement, be converted to a rate equal to the Taxable Rate then in effect. Upon the occurrence and during the continuance of an Event of Default under the Bond Financing Agreement, the interest rate on the Bonds shall, effective on the date of such Event of Default, be converted to a rate equal to the lesser of (i) 25 percent per annum or (ii) the Initial Interest Rate, Floating Rate, Fixed Rate or Taxable Rate, as then applicable, plus 6 percent per annum. Interest shall be computed on the basis of a 360-day year for the actual number of days elapsed.

The Bonds shall be issuable as a single fully registered bond in the denomination of the entire principal amount thereof, and when issued, will be registered in the name of the Purchaser. The Bonds and the interest thereon shall be transferable by and shall be payable to the registered owner thereof in the manner and with the effect provided in the Bond Financing Agreement. The principal of, premium, if any, and interest on the Bonds shall be payable in lawful money of the United States of America at the designated office of the Purchaser.

The Bonds shall be dated as of the Original Issue Date and issued in the form set forth in the Bond Financing Agreement, with such insertions therein as shall be necessary to comply with the terms of this resolution and with such corrections therein, if any, as bond counsel may require for conformity with the terms of this resolution, the Bond Financing Agreement and the Act.

Section 4. Execution of Bonds.

The Bonds shall be executed on behalf of the City by the Mayor under the official seal of the City attested by its City Clerk and countersigned by its City Comptroller. The signatures of the Mayor, the City Clerk and the City Comptroller may be manual or facsimile. The official seal may be actually impressed or imprinted or may be reproduced thereon by facsimile.

Section 5. Bonds as Limited Obligations.

The Bonds and interest thereon shall never be or be considered a general obligation of the City or an indebtedness of the City within the meaning of any State constitutional provision or statutory limitation and shall not constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers.

Section 6. Source of Payment; Pledge of Revenues.

The Bonds shall be limited obligations of the City payable by it solely from revenues and income derived by or for the account of the City from or for the account of the Borrower pursuant to the terms of the Promissory Note and the Bond Financing Agreement; including, without limitation, (i) all payments by the Borrower on the Promissory Note or pursuant to the terms in the Bond Financing Agreement, and (ii) all amounts derived by recourse to the collateral as described in the Bond Financing Agreement; but excluding any amounts derived by the City for its own account pursuant to the terms in the Bond Financing Agreement.

As security for the payment of the principal of, premium, if any, and interest on the Bonds, the City shall pledge and assign to the Purchaser all of its right, title and interest in and to the Promissory Note and the Bond Financing Agreement, except for its rights to receive and enforce payment of certain taxes, expenses and indemnity payments from the Borrower as set forth in the Bond Financing Agreement.

Section 7. Redemption of Bonds Prior to Maturity.

The Bonds shall be subject to optional and mandatory redemption prior to maturity as provided in the Bond Financing Agreement. Notice of any redemption of the Bonds prior to stated maturity shall be given in the manner provided in the Bond Financing Agreement.

Section 8. Determination of Revenue Payment.

The amount necessary in each year to pay the principal of, premium, if any, and interest on the Bonds is the sum of (i) the amount of principal installments due in such year in accordance with the Bond Financing Agreement, as reduced from time to time by reason of prior redemptions; plus (ii) the principal amount of the Bonds to be redeemed in such year in accordance with a call for redemption made in accordance with the Bond Financing Agreement, plus the premium, if any, payable with respect thereto; plus (iii) the amount of interest on the Bonds becoming due in such year in accordance with paragraph 3 of this resolution and the Bond Financing Agreement.

In expressing the Borrower's obligation to make the necessary revenue payments, it shall suffice herein and in the Bond Financing Agreement to state that the Borrower shall be obligated to pay the City (or the Purchaser for the account of the City) amounts sufficient to pay, when due, the principal of, premium, if any, and interest on the Bonds.

The Bond Financing Agreement contains provisions, adequate in the judgment of the Governing Body, requiring the Borrower to provide for the maintenance of the Project and the carrying of all proper insurance with respect thereto. Consequently, the Borrower need not be required to pay amounts into any reserve funds for the retirement of the Bonds or for the maintenance of the Project.

Section 9. Award of Bonds; Execution and Delivery of the Bond Financing Agreement.

The Borrower has negotiated for the sale of the Bonds to the Purchaser in installments from time to time as provided in the Bond Financing Agreement at a price of 100 percent of the principal amount thereof. Given the purposes of the financing and the involvement of the City therewith, it is the determination of the Governing Body that the Bonds shall be hereby awarded to the Purchaser at the price aforesaid with delivery to follow in the manner, at the time and subject to the conditions set forth in the Bond Financing Agreement. As evidence thereof, the Mayor, the City Clerk and the City Comptroller are hereby authorized and directed for and in the name of the City to execute, affix with the official seal of the City and deliver the Bond Financing Agreement, a copy of which is attached to this Common Council File, and in substantially the form presented herewith, or with such insertions therein or corrections thereto as shall be approved by the Mayor and the City Clerk consistent with this resolution and the terms of the Act, their execution thereof to constitute conclusive evidence of their approval of any such insertions and corrections.

Section 10. Execution and Delivery of the Tax Agreement and the Assignment of the Promissory Note.

The terms and provisions of the Tax Agreement and the Promissory Note are hereby approved. The Mayor, the City Clerk and the City Comptroller are hereby authorized for and in the name of the City to execute, affix with the official seal of the City and deliver the Tax Agreement and the assignment of the Promissory Note in the respective forms thereof, or with such insertions therein or corrections thereto as shall be approved by the Mayor, the City Clerk and the City Comptroller consistent with this resolution and the terms of the Act, their execution thereof to constitute conclusive evidence of their approval of any such insertions and corrections.

Section 11. Execution and Delivery of the Bonds.

The Mayor, the City Clerk and the City Comptroller are hereby authorized for and in the name of the City to execute the Bonds in the manner authorized by paragraph 4 of this resolution. Subject to the terms and conditions of the Bond Financing Agreement, the City shall deliver the Bonds to the Purchaser against the initial payment of the purchase price therefor.

Section 12. Designation of Registrar, Authenticating Agent and Determination Agent.

The City hereby designates and appoints TCF National Bank to perform the functions of the bond registrar and authenticating agent under the Bond Financing Agreement and to perform the interest rate determination functions under the Bond Financing Agreement with respect to the Floating Rate. The City hereby finds that the Purchaser is qualified to act as such agent.

Section 13. General Authorizations.

The Mayor, the City Clerk, the City Comptroller and the appropriate deputies and officials of the City in accordance with their assigned responsibilities are hereby each authorized to execute, publish, file and record such other documents, instruments, notices (including Internal Revenue Service Form 8038) and records and to take such other actions as shall be necessary or desirable to accomplish the purposes of this resolution and to comply with and perform the obligations of the City under the Bonds and the Bond Financing Agreement.

In the event that the Mayor, the City Clerk or the City Comptroller shall be unable by reason of death, disability, absence or vacancy of office to perform in timely fashion any of the duties specified herein (such as the execution of Bonds, the Bond Financing Agreement, the Tax Agreement or the assignment of the Promissory Note), such duties shall be performed by the officer or official succeeding to such duties in accordance with law and the ordinances of the City.

Section 14. Publication of Notice.

Notice of the sale of the Bonds, in the form of Exhibit A, a copy of which is attached to this Common Council File, shall be published forthwith in the City's official newspaper (for the publication of notices under Chapter 985 of the Wisconsin Statutes) as a class 1 notice under Chapter 985 of the Wisconsin Statutes. The City Clerk shall obtain proof, in affidavit form, of such publication, and shall compare the Notice, as printed, with Exhibit A to ascertain that no mistakes have been made therein.

Section 15. Election.

The City hereby elects to have the provisions of Section 144(a)(4) of the Internal Revenue Code of 1986, as amended, applied to the issuance of the Bonds.

Section 16. Effective Date; Conformity.

This resolution shall be effective immediately upon its adoption and approval. To the extent that any prior resolutions of the Governing Body are inconsistent with the provisions hereof, this resolution shall control and such prior resolutions shall be deemed amended to such extent as may be necessary to bring them into conformity with this resolution.

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