



Legislation Text

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980120
SUBSTITUTE 1
971449
THE CHAIR

Substitute resolution authorizing Industrial Development Revenue Bonds (Service Heat Treating, Inc. Project).
- Analysis -

This substitute resolution provides details relating to and authorizes the issuance of industrial development revenue bonds, i.e., \$3,000,000 principal amount of Industrial Development Revenue Bonds, Series 1998 (Service Heat Treating, Inc. Project), to finance costs related to a building addition and the acquisition and installation of heat treating equipment in the City of Milwaukee at 9320 North 107 Street and 10536 West Glenbrook Court, all of which are to be owned and operated by Service Heat Treating, Inc., a Wisconsin corporation and Service Continuous, Inc., a Wisconsin corporation.

Whereas, The City of Milwaukee, Wisconsin (the "Municipality"), is a municipal corporation organized and existing under and pursuant to the laws of the State of Wisconsin and is authorized by Section 66.521, Wisconsin Statutes, as amended, (the "Act") to:

a. To issue industrial development revenue bonds to finance all or any part of the costs of the construction, equipping, re-equipping, acquisition, purchase, installation, reconstruction, rebuilding, rehabilitation, improving, supplementing, maintaining, repairing, enlarging, extending or remodeling of a project which qualifies under the Act and the improvement of the site therefor.

b. To enter into a revenue agreement with an eligible participant pursuant to which the eligible participant agrees to cause said project to be constructed and to pay the Municipality an amount of funds sufficient to provide for the prompt payment when due of the principal of and interest on said industrial development revenue bonds; and

Whereas, Service Heat Treating, Inc. and Service Continuous, Inc. (collectively, the "Borrowers"), have heretofore requested the Municipality to issue industrial development revenue bonds to finance a project on behalf of the Borrowers as the eligible participant (the "Eligible Participant") under the Act; and

Whereas, The Common Council of the City of Milwaukee (the "Common Council") has heretofore found and determined that said project consisting of the construction of a building addition and the acquisition and installation of heat treating equipment, and any necessary related improvements, for the purpose of commercial heat treating of steel products (the "Project") is a qualified "project" within the meaning of the Act and that the Borrowers are an "eligible participant" within the meaning of the Act; and

Whereas, At least 30 days prior to entering into the revenue agreement, the Eligible Participant shall have given notice of intent to enter into the revenue agreement, and have provided information on the number of jobs the Eligible Participant expects to be eliminated, created or maintained on the project site and elsewhere in this State by the Project, to the Department of Commerce of the State of Wisconsin and to any collective bargaining agent in the State of Wisconsin with whom the Eligible Participant has a collective bargaining agreement; and

Whereas, The Municipality has received from the Department of Commerce of the State of Wisconsin an estimate of the net number of jobs expected to be eliminated, created or maintained as a result of the Project; and

Whereas, On January 20, 1998, the Common Council adopted an Initial Resolution pursuant to the Act (File No. 971449) wherein it was resolved that the Municipality would issue industrial development revenue bonds to finance the Project, subject however, to the satisfaction of certain conditions including the approval by the Common Council of the terms of the bonds and the revenue agreement described in said Initial Resolution; and

Whereas, On February 5, 1998, notice of the adoption of the Initial Resolution was published in accordance with Section (10)(b) of the Act, and notice of adoption of the Waiver Resolution was published in accordance with Section (11)(b)2. of the Act, and no sufficient petition has been filed with the City Clerk requesting a referendum on the question of the issuance of said industrial development revenue bonds; and

Whereas, On May 19, 1998, a public hearing was held in the offices of the Department of City Development and conducted in a manner that provided a reasonable opportunity to be heard for persons with differing views on both issuance of revenue bonds and the location and nature of the proposed facility to be financed with revenue bonds; and

Whereas, Notice of the public hearing, substantially in the form attached to this Common Council File as Exhibit A, was published by one insertion in the official newspaper of the Municipality for the publication of notices pursuant to Chapter 985 of the Wisconsin Statutes no less than 14 days before the scheduled date of the hearing; and

Whereas, The official newspaper is a newspaper of general circulation in the locality of the Project; and

Whereas, The Common Council is an elected legislative body of the Municipality; and

Whereas, The Borrowers have now requested that the Municipality provide for the issuance of \$3,000,000 principal amount of industrial development revenue bonds upon the terms set forth in this Resolution (as herein described, the "Bonds"); and

Whereas, In connection therewith the Borrowers have presented the Municipality with proposed documentation for the Bonds, as follows:

- a. A Bond Purchase Agreement, to be dated as of the date of adoption of this Bond Resolution (the "Bond Purchase Agreement"), to be entered into by and among the Municipality, the Borrowers and M&I Bank of Menomonee Falls (the "Bond Purchaser(s)"), setting forth the terms and conditions on which the Municipality will sell and the Bond Purchaser(s) will purchase the Bonds.
- b. An Indenture of Trust, to be dated as of May 1, 1998 (the "Indenture"), to be entered into between the Municipality and the corporate trustee hereinafter designated (the "Trustee"), providing for the creation of the Bonds, the terms thereof and the security therefor.
- c. A Loan Agreement, to be dated as of May 1, 1998 (the "Loan Agreement"), to be entered into between the Municipality and the Borrowers providing for a loan of the Bond proceeds to the Borrowers on repayment terms scheduled to provide the Municipality with revenues sufficient to retire the Bonds in accordance with their terms.
- d. A Promissory Note, to be dated May 29, 1998 (the "Promissory Note"), to be issued by the Borrowers payable to the order of the Municipality in the principal amount of \$3,000,000 as evidence of the borrowing provided for in the Loan Agreement and to be assigned by the Municipality to the Trustee.
- e. Two Security Agreements, to be dated as of May 1, 1998 (the "Security Agreements"), from the Borrowers to the Municipality, and from the Municipality to be assigned to the Trustee, providing collateral security for the performance of the Borrowers' obligations under the Loan Agreement; 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 Municipality within the meaning of any State constitutional provision or statutory limitation, shall not constitute or give rise to a pecuniary liability of the Municipality 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 Common Council or of any officers or employees of the Municipality 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 Municipality to encourage and promote the development of projects such as the Project in order to realize public benefits such as, but not limited to, the provision and retention of gainful employment opportunities for the citizens of the Municipality; the stimulation of the flow of investment capital into the Municipality with resultant beneficial effects on the economy in the Municipality; and the preservation and enhancement of the Municipality's tax base; and

Whereas, The development of the Project and the issuance of Bonds to finance the Project as herein recited will, in the judgment of the Common Council, serve the intended accomplishments of public purpose and in all respects conform to the provisions and requirements of the Act; now, therefore, be it

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

1. Determinations. It has been found and determined and is declared:

- a. That the Project is a qualified "project" under and for the purposes of the Act.
- b. That the Borrowers are qualified "eligible participants" under and for the purposes of the Act.
- c. That the Loan Agreement meets the requirements of a "revenue agreement" under and for the purposes of the Act.
- d. That the estimated aggregate cost of providing the Project and paying the costs incident to the financing is not less than \$3,000,000.
- e. That the payments required to be made by the Borrowers under the Loan 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 said Initial Resolution have been satisfactorily met.

2. Authorization to Borrow and Lend. The Municipality shall borrow, but only in the manner herein recited, a sum of \$3,000,000 for the purpose of financing the Project. Said borrowing shall be accomplished through the sale of the Bonds issued pursuant to the Act. The Municipality shall lend a sum of \$3,000,000 to the Borrowers pursuant to the terms of the Loan Agreement, which borrowing shall be evidenced by the Promissory Note. The Loan Agreement is approved as necessary to effectuate the purposes of the Act. The Mayor, the City Clerk and the City Comptroller are authorized and directed for and in the name of the Municipality to execute and deliver the Loan Agreement in the form thereof presented herewith or with such insertions therein or corrections thereto as shall be approved by them consistent with this Resolution, their execution thereof to constitute conclusive evidence of their approval of any such insertions and corrections.

3. Designation, Denomination, Tenor and Maturity of Bonds Created for Issuance. The Bonds shall be issued in the principal amount of \$3,000,000 and shall be designated:

CITY OF MILWAUKEE, WISCONSIN, INDUSTRIAL DEVELOPMENT REVENUE BONDS, SERIES 1998 (SERVICE HEAT TREATING, INC. PROJECT)

The Bonds shall mature in accordance with the schedule provided below with a maturity date on June 1st of each year:

1999/Principal Amount \$200,000

2000/Principal Amount \$200,000

2001/Principal Amount \$325,000

2002/Principal Amount \$325,000

2003/Principal Amount \$325,000

2004/Principal Amount \$325,000

2005/Principal Amount \$325,000

2006/Principal Amount \$325,000

2007/Principal Amount \$325,000

2008/Principal Amount \$325,000

The Bonds shall bear interest from their original issue date at the rate of 5.85% per annum. Interest shall be payable on September 1, 1998, and quarterly thereafter on the first day of March, June, September and December in each calendar year until paid.

The interest rate on the Bonds shall be subject to adjustment as follows:

a. Upon the occurrence of a Determination of Taxability (as defined in the Indenture) with respect to the Bonds, the interest rate on the Bonds shall, effective on the date upon which interest on the Bonds becomes includable in gross income, be converted to bear interest at a rate per annum equal to the rate of interest adopted by M&I Marshall & Ilsley Bank, Milwaukee, Wisconsin, from time to time as its base rate for interest determinations (the "Prime Rate"), with such interest rate changing as and when the Prime Rate changes. Any amounts of additional interest due in respect of prior interest periods by reason of the retroactive application of the change in interest rates shall be payable on the first Interest Payment Date occurring more than ninety days after such Determination of Taxability or, at the option of the Borrowers, in a lump sum on any earlier date

b. In the event of an increase or decrease in the Corporate Tax Rate, the rate of interest on the Bonds (other than the interest rate in effect following a Determination of Taxability) shall be decreased (in the case of an increase in the Corporate Tax Rate) or increased (in the case of a decrease in the Corporate Tax Rate) to the Adjusted Tax Exempt Rate, effective as of the effective date of such change in the Corporate Tax Rate. "Corporate Tax Rate" means the highest marginal statutory rate of federal income tax imposed on corporations and "Adjusted Tax Exempt Rate" means the annual rate determined by multiplying the interest rate initially borne by the Bonds by a fraction, the numerator of which is one minus the Corporate Tax Rate in effect following such a change in the Corporate Tax Rate and the denominator of which is (ii) one minus the Corporate Tax Rate in effect on the date of issuance of the Bonds.

c. If, other than as provided in clause (b) above, at any time as a result of any other change in the Internal Revenue Code, any payment of interest or principal or any amount in respect of or measured in whole or in part by reference to interest on or principal of the Bonds is subject to or affected by a preference tax (meaning a tax imposed by sections 55 through 58 of the Internal Revenue Code or any successor sections thereto or any similar federal tax preferences or similar items), an excess profits tax or other federal tax which changes the basis of taxation of the payments of interest on or principal of the Bonds to a Bondowner (or former Bondowner), or affects any method used or calculation involved in determining any federal tax, then, upon written notice to such effect from such Bondowner (or former Bondowner) to the Trustee and the Municipality, which notice shall specify such change in the Internal Revenue Code and set forth the date as of which any payment may have become subject to such preference, excess profits or other federal tax, the Bonds shall bear additional interest equal to the amount which, after giving effect to all taxes, interest, penalties and additions to tax which are payable by the Bondowners (or former Bondowners) as a result of, attributable to or in respect of such payment, shall be equal to the amount of any such preference, excess profits or other federal taxes and any interest, penalties and additions to tax which are payable by the Bondowners (or former Bondowners) as a consequence of such change (compiled on the assumption that taxes are payable by all Bondowners and former Bondowners at the Corporate Tax Rate. Notwithstanding the foregoing provisions, no payment of additional interest shall be required in respect of a preference, excess profits or other federal tax to which this clause (c) relates to the extent that such tax is imposed and computed without regard to whether interest on the Bonds is or may be exempt from tax under the provisions of Section 103 of the Internal Revenue Code, any other provision of law or any successor provisions thereto.

During the continuance of a default in the payment of any amount due on the Bonds, the Bonds and (to the extent legally enforceable) interest thereon shall bear interest at a rate equal to the Prime Rate plus 2% per annum.

Interest on the Bonds shall be calculated on the basis of actual number of days elapsed and a 365-day year.

The Bonds shall specify, as their original issue date, the date of issuance thereof. Each Bond shall be dated, as its registration date, the date of its authentication.

The Bonds shall be issued in the respective forms therefor as set forth in the Indenture, with such insertions therein as shall be necessary to comply with the terms of this Resolution and with such corrections therein, if any, as the approving bond attorney may require for conformity with the terms of this Resolution, the Indenture and the Act.

4. Execution and Authentication of Bonds. The Bonds shall be executed on behalf of the Municipality with the facsimile or manual signature of its Mayor and its City Clerk, countersigned with the facsimile or manual signature of its City Comptroller and shall have impressed, imprinted or otherwise reproduced thereon an official seal, if any, of the Municipality or a facsimile thereof. No Bond shall be issued unless first authenticated by the Trustee (as fiscal agent and bond registrar), to be evidenced by the manual signature of an authorized signatory of the Trustee on each Bond.

5. Designation of Trustee. The Municipality designates and appoints M&I First National Bank to perform the functions of Trustee under the Indenture.

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

7. Source of Payment; Pledge of Revenues. The Bonds shall be limited obligations of the Municipality payable by it solely from revenues and income derived by or for the account of the Municipality from or for the account of the Borrowers pursuant to the terms of the Loan Agreement and the Indenture; including without limitation: (i) payments by the Borrowers pursuant to the terms of the Loan Agreement and the Promissory Note, (ii) amounts derived by recourse to the Security Agreement or the Guaranty Agreements, and (iii) all cash and securities held from time to time in the Trust Funds, and the investment earnings thereon; but excluding any amounts derived by the Municipality for its own account pursuant to the terms of the Loan Agreement.

As security for the payment of the principal of, premium, if any, and interest on the Bonds, the Municipality shall pledge and assign to the Trustee all of its right, title and interest in and to the Promissory Note, the Security Agreement and the "Trust Estate" described in the Indenture.

8. Redemption of Bonds Prior to Maturity. The Bonds shall be subject to mandatory and optional redemptions prior to maturity as provided in the Indenture.

9. Trust Funds. The trust funds and accounts created under the Indenture to be held in the custody of the Trustee and applied for the uses and purposes provided in the Indenture are authorized and approved.

10. Investment of Trust Funds. Any moneys held as a part the trust funds held by the Trustee under the Indenture may be invested and reinvested by the Trustee in "Qualified Investments" in accordance with, and as defined in, the Indenture.

11. Approval of Documents. The terms and provisions of the Promissory Note, the Security Agreements and the Indenture are approved. The Mayor, the City Clerk and, where appropriate, the City Comptroller are authorized for and in the name of the Municipality to execute and deliver the Indenture and the assignments of the Promissory Note and the Security Agreements, in the forms thereof presented herewith, or with such insertions therein or corrections thereto as shall be approved by them 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.

12. 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 becoming due in such year in accordance with the table in paragraph 3 of this Resolution (as reduced from time to time by reason of prior redemptions and open market purchases of Bonds in accordance with the Indenture); plus (ii) the principal amount of Bonds to be redeemed in such year in accordance with a call for redemption made in accordance with paragraph 8 of this Resolution and the Indenture, 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 the interest rates specified in paragraph 3 of this Resolution.

13. Award of Bonds; Execution and Delivery of the Bond Purchase Agreement. The Borrowers have negotiated for the sale of the Bonds to the Bond Purchaser at a price of 100 percent of the principal amount of the Bonds. Given the purposes of the financing and the involvement of the Municipality therewith, it is the determination of the Common Council that the Bonds shall be awarded to the Bond 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 Purchase Agreement. As evidence thereof the Mayor, the City Clerk and, where appropriate, the City Comptroller are authorized and directed for and in the name of the Municipality to execute, affix with the official seal of the Municipality and deliver the Bond Purchase Agreement in the form presented herewith, or with such insertions therein or corrections thereto as shall be approved by the Mayor and 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.

14. Execution and Delivery of the Bonds. The Mayor, the City Clerk and the City Comptroller are authorized for and in the name of the Municipality to execute the Bonds in the manner authorized by paragraph 4 of this Resolution. Subject to the terms and conditions of the Bond Purchase Agreement, the Issuer shall deliver the Bonds to the Bond Purchaser.

15. Election. The Municipality elects to have the provisions of Section 144(a)(4) of the Internal Revenue Code of 1986 applied to the Bonds.

16. General Authorization. The Mayor and the City Clerk and the appropriate deputies and officials of the Municipality in accordance with their

assigned responsibilities are each authorized to execute, deliver, publish, file and record such other documents, instruments, notices (including, without limitation, the 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 Municipality under the Bond Purchase Agreement, the Bonds, the Loan Agreement and the Indenture.

In the event that said officials 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 the Bond Purchase Agreement, the Bonds, the Loan Agreement, the Indenture or the assignment(s) of the Promissory Note(s)), such duties shall be performed by the official succeeding to such duties in accordance with law and the rules of the Municipality.

17. Effective Date; Conformity. This Resolution shall be effective immediately upon its passage and approval. To the extent that any prior Resolutions of the Common Council 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 in conformity with this Resolution.

18. DBE Agreement. In the event the portion of the Project financed by the Bonds includes construction: The Mayor, the City Clerk and the City Comptroller shall not execute and deliver the Loan Agreement as provided in paragraph 2 of this Resolution unless simultaneously with the issuance of the Bonds, the Borrowers shall enter into a Disadvantaged Business Enterprise Agreement (the "Agreement") with the Municipality, in a form satisfactory to the Municipality, providing for the Borrowers to make a "good faith effort," as defined in the Agreement, to utilize certified "Disadvantaged Business Enterprises," as defined in the Agreement, in the construction of the Project.

19. Publication of Notice. Notice of the sale of the Bonds, in the form attached to this Common Council File as Exhibit B, shall be published forthwith in the official newspaper of the Municipality as a class 1 notice under Chapter 985 of the Wisconsin Statutes. The City Clerk of the Municipality shall obtain proof in affidavit form, of such publication, and shall compare the notice as printed with the form attached to this Common Council File as Exhibit B to ascertain that no mistake had been made therein.

20. Public Approval. The Common Council, on behalf of the Municipality, approves the issuance of the Bonds for the purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended.

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