



Legislation Text

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990616
SUBSTITUTE 1

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Substitute resolution authorizing the issuance of Industrial Development Revenue Bonds (Accurate Metal Products, Inc. Project).
- Analysis -

This substitute resolution authorizes the issuance of \$1,000,000 of industrial development revenue bonds to finance costs related to the acquisition and renovation of an existing manufacturing facility at 8165 West Tower Avenue and the acquisition of new machinery and equipment, all of which is to be owned by AMP Properties, LLC, and leased to Accurate Metal Products, Inc.

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"):

(a) To issue industrial development revenue bonds to finance all or any part of the costs of the construction, equipping, reequipping, 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, AMP Properties, LLC, a Wisconsin limited liability company (the "Borrower"), has heretofore requested the Municipality to issue industrial development revenue bonds to finance a project in the Municipality on behalf of the Borrower as an eligible participant under the Act; and

Whereas, The Common Council of the City of Milwaukee ("Common Council") has heretofore found and determined that said project consisting of the acquisition of certain land (the "Project Site") within the Municipality, the renovation of an existing manufacturing facility (the "Facility") on the Project Site, and acquisition of certain new machinery and equipment (the "Equipment") and installation of the Equipment in the Facility (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, At least 30 days prior to entering into the revenue agreement, the Borrower gave notice of intent to enter into the revenue agreement, and provided information on the number of jobs the Borrower expects to be eliminated, created or maintained on the Project Site and elsewhere in the State of Wisconsin 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 Borrower has a collective bargaining agreement; and

Whereas, The Municipality has received from the Department of Commerce of the State of Wisconsin an estimate that the Project will maintain 25 jobs and create 16 new jobs in the Municipality over the next two years; and

Whereas, On April 20, 1999, the Common Council adopted an Initial Resolution pursuant to the Act 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 April 30, 1999, 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 September 3, 1999, pursuant to a public notice substantially in the form of Exhibit A which is attached to this Common Council File, a public hearing was held in the offices of the Department of City Development, 809 North Broadway, Milwaukee, Wisconsin, and conducted in a manner that provided a reasonable opportunity to be heard for persons with differing views on both the issuance of revenue bonds and the location and nature of the proposed Facility to be financed with revenue bonds; and

Whereas, The Borrower has now requested that the Municipality provide for the issuance of \$1,000,000 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 Borrower has presented the Municipality with proposed documentation for the Bonds, as follows:

(a) A Bond Purchase Agreement (the "Bond Purchase Agreement"), to be entered into by and among the Municipality, the Borrower, and M&I Northern Bank (the "Original Purchaser"), setting forth the terms and conditions on which the Municipality will sell and the Original Purchaser

will purchase the Bonds.

(b) A Loan Agreement to be dated as of September 1, 1999 (the "Agreement"), to be entered into by and between the Municipality and the Borrower providing for the Municipality's issuance of the Bonds, a loan of the Bond proceeds to the Borrower on repayment terms made to the Municipality through payments to the Trustee (as hereinafter defined) scheduled to provide the Municipality with revenues sufficient to retire the Bonds in accordance with their terms, and the Municipality's assignment to the Trustee in trust of the Municipality's rights under the Agreement and the revenues received.

(c) An Indenture of Trust to be dated as of September 1, 1999 (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.

(d) A Promissory Note (the "Note") from the Borrower payable to the order of the Municipality in the principal amount of \$1,000,000 as evidence of the borrowing provided for in the Agreement and to be assigned by the Municipality to the Trustee; 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 officials 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, It is the finding and determination of the Common Council that the public interest will be served if the Municipality were to encourage and induce the Borrower to undertake the Project in the Municipality; 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. 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 Borrower is a qualified "eligible participant" under and for the purposes of the Act.
- (c) That the 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 \$1,000,000.
- (e) That the payments required to be made by the Borrower under the Agreement are sufficient in amount to pay when due the principal of, premium, if any, and interest on the Bonds.
- (f) That no reserve fund need be established in connection with the retirement of the Bonds or maintenance of the Project.
- (g) The Borrower is obligated to cause the Project to be maintained in good repair, working order and condition, and adequately insured as specified in the Agreement.
- (h) That all conditions set forth in said Initial Resolution have been satisfactorily met.

2. The Municipality shall borrow, but only in the manner herein recited, a sum not to exceed \$1,000,000 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 \$1,000,000 to the Borrower pursuant to the terms of the Agreement. The 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 Agreement, the Indenture and the assignment of the Note in the forms 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. The Bonds shall be issued in the aggregate principal amount of \$1,000,000, shall be dated the date of their original issuance, shall become due and payable on September 1, 2019, and shall be designated:

CITY OF MILWAUKEE, WISCONSIN INDUSTRIAL DEVELOPMENT REVENUE BONDS, SERIES 1999 (ACCURATE METAL PRODUCTS, INC. PROJECT)

As used herein, the following terms shall have the following respective meanings:

"Bank's Federal Tax Rate" shall mean the tax rate at which the Original Purchaser, or any other bank that is the registered Bondowner, would be taxed for federal income tax purposes pursuant to the applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), or any future United States internal revenue or similar laws applicable to such bank, if its taxable income were in the highest tax bracket specified by the Code.

"Initial Rate of Interest" shall mean a rate of interest per annum, determined on or before the original date of issuance of the Bonds, calculated as follows: (LIBOR/SWAP Rate for 7 Years plus 1.9 percent) multiplied by (1.0 minus Bank's Federal Tax Rate) plus 1.0.

"LIBOR/SWAP Rate" shall mean the rate of interest per annum determined by the Original Purchaser, or any other bank that is the registered Bondowner, based upon information from the Knight-Ridder Screen Bid Side Bond equivalent (or a comparable service providing such information) for the applicable Reset Period.

"LIBOR/SWAP Rate of Interest" shall mean a rate of interest per annum, determined on the applicable Reset Date for the Reset Period selected by the Borrower, calculated as follows: (LIBOR/SWAP Rate for selected Reset Period plus 1.9 percent) multiplied by (1.0 minus Bank's Federal Tax Rate) plus 1.0.

"Reset Date" shall mean the date on which the Borrower resets the fixed interest rate on the Bonds based upon the then expiring Reset Period previously chosen by the Borrower which Reset Date shall always be on a September 1. The first Reset Date shall be September 1, 2006.

"Reset Period" shall mean one or more annual periods of time not to exceed seven years.

The Bonds shall bear interest from the date of their original issuance through and including August 31, 2006 at a fixed rate equal to the Initial Rate of Interest. On September 1, 2006, the first Reset Date, and each Reset Date thereafter, the Bonds shall bear a fixed interest rate equal to the LIBOR/SWAP Rate of Interest. Interest shall be payable commencing on December 1, 1999 and quarterly thereafter on the first day of March, June, September and December of each year.

The Bonds shall be issued as fully registered Bonds in such denominations and transferable as provided in the Indenture. The Bonds shall be issued in the form 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. 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 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. The Municipality designates and appoints M&I National Trust Company, West Bend, Wisconsin, to perform the functions of Trustee under the Indenture.

6. 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. 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 Borrower pursuant to the terms of the Agreement and the Indenture; including without limitation: (i) payments by the Borrower pursuant to the terms of the Agreement, and (ii) all cash and securities held from time to time in the trust funds created under the Indenture, and the investment earnings thereon; but excluding any amounts derived by the Municipality for its own account pursuant to the terms of the 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: (i) in respect of the Agreement (except for Unassigned Rights as defined therein) and the Note and all payments thereon, (ii) in all moneys and securities held by the Trustee for deposit in, or deposited in, the Bond Fund and the Project Fund created under the Indenture and investment earnings thereon described in the Indenture, and (iii) all proceeds of any of the foregoing.

8. The Bonds shall be subject to mandatory and optional redemption prior to maturity, and optional and mandatory tender for purchase, as provided in the Indenture.

9. 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. Any moneys held as a part of 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. The terms and provisions of the Agreement, Indenture and the Note are approved.

12. 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 by reason of prior redemptions of Bonds in accordance with the Indenture; plus, (ii) the amount of interest on the Bonds becoming due in such year in accordance with the applicable interest rate on the Bonds as specified in paragraph 3 of this Resolution.

13. The Borrower has negotiated a sale of the Bonds to the Original Purchaser at a price of one hundred 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 Original 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 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.

14. 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 Municipality shall deliver the Bonds to the Original Purchaser.

15. 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 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 Agreement or the Indenture), such duties shall be performed by the officer or official succeeding to such duties in accordance with law and the rules of the Municipality.

16. This Resolution shall be effective immediately upon its passage and approval. To the extent that any prior Resolution of the Common Council are inconsistent with the provisions hereof, this Resolution shall control and such prior Resolution shall be deemed amended to such extent as may be necessary to bring them in conformity with this Resolution.

17. The Mayor, the City Clerk and the City Comptroller shall not execute and deliver the Agreement or the Indenture as provided in paragraph 2 of this Resolution unless simultaneously with the issuance of the Bonds, the Borrower shall enter into a Disadvantaged Business Enterprise Agreement (the "Business Agreement") with the Municipality, in a form satisfactory to the Municipality, providing for the Borrower to make a "good faith effort," as defined in the Business Agreement, to utilize certified "Disadvantage Business Enterprises," as defined in the Business Agreement, in the construction of the Project.

18. Notice of the sale of the Bonds, in substantially the form of Exhibit B which is attached to this Common Council File, 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 hereto as Exhibit B to ascertain that no mistake had been made therein.

19. 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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