



Legislation Text

File #: 001471, Version: 1

001471
SUBSTITUTE 1

THE CHAIR

Substitute resolution authorizing the issuance of Variable Rate Demand Industrial Development Revenue Bonds (Skyway Airlines Project).

This substitute resolution provides details relating to and authorizes the issuance of \$7,000,000 principal amount of Variable Rate Demand Industrial Development Revenue Bonds, Series 2001 (Skyway Airlines Project), to finance costs of the construction of an aircraft maintenance facility (including a hangar and related office, storage and parking space) in the City of Milwaukee at General Mitchell International Airport, all of which are to be owned by the County of Milwaukee and operated by Astral Aviation, Inc., a Delaware corporation doing business as Skyway Airlines.

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 66.1103, 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, Astral Aviation, Inc. (the "Borrower"), has requested the Municipality to issue industrial development revenue bonds to finance a project on behalf of the Borrower as the eligible participant under the Act; and

Whereas, The Common Council of the City of Milwaukee (the "Common Council") has found and determined that said project consisting of the construction, acquisition and equipping of an aircraft maintenance facility (including a hangar and related office, storage and parking space) (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 shall have given notice of intent to enter into the revenue agreement and have provided information on the number of jobs the Borrower 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 Borrower 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 February 6, 2001, the Common Council adopted an Initial Resolution pursuant to the Act (File No. 001369) 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 15, 2001, notice of the adoption of the Initial Resolution was published in accordance with Section (10) (b) of the Act, and no sufficient petition was filed with the City Clerk requesting a referendum on the question of the issuance of said industrial development revenue bonds; and

Whereas, On February 28, 2001, a public hearing was held in the First Floor Board Room of 809 North Broadway and conducted in a manner that provided a reasonable opportunity to be heard for persons with differing views on both the issuance of the revenue bonds and the location and nature of the proposed facility to be financed with the 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 Borrower has now requested that the Municipality provide for the issuance of \$7,000,000 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, 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 Borrower and Robert W. Baird & Co. (the "Underwriter"), setting forth the terms and conditions on which the Municipality will sell and the Underwriter will purchase the Bonds.
- b. An Indenture of Trust, to be dated as of March 1, 2001 (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 March 1, 2001 (the "Loan Agreement"), to be entered into between the Municipality and the Borrower providing for a loan of the Bond proceeds to the Borrower 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 the date of original issuance of the Bonds (the "Promissory Note"), to be issued by the Borrower payable to the order of the Municipality in the principal amount of \$7,000,000 as evidence of the borrowing provided for in the Loan Agreement and to be assigned by the Municipality to the Trustee.
- e. A Letter of Credit, to be dated the date of issuance of the Bonds (the "Credit Facility") to be issued by Firststar Bank, National Association (the "Credit Facility Provider") to provide for the payment of the principal and interest on the Bonds; 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 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 Borrower is a qualified "eligible participant" 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 \$7,000,000.
- e. That the payments required to be made by the Borrower 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 the Underwriter is qualified to act as remarketing agent in determining the interest rate on the Bonds as provided in the Indenture.
- g. That the Borrower has agreed to a Disadvantaged Business Enterprise Agreement (the "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 Agreement, to utilize certified "Disadvantaged Business Enterprises," as defined in the Agreement, in the construction of the Project.
- h. That all conditions set forth in said Initial Resolution have been satisfactorily met or provided for.

2. Authorization to Borrow and Lend. The Municipality shall borrow, but only in the manner herein recited, a sum of \$7,000,000 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 \$7,000,000 to the Borrower 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 \$7,000,000, shall become due and payable on March 1, 2033 (or such earlier maturity date as may be assigned pursuant to the Indenture during any Reset Period), and shall be designated:

CITY OF MILWAUKEE, WISCONSIN VARIABLE RATE DEMAND INDUSTRIAL DEVELOPMENT REVENUE BONDS, SERIES 2001 (SKYWAY AIRLINES PROJECT)

and shall be designated on or after the Conversion Date:

CITY OF MILWAUKEE, WISCONSIN INDUSTRIAL DEVELOPMENT REVENUE BONDS, SERIES 2001 (SKYWAY AIRLINES PROJECT)

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

"Adjusted Interest Rate" means, with respect to each Reset Period and Bonds of each stated maturity, the interest rate determined and certified to the Trustee by the Remarketing Agent as provided in the Indenture. Each Adjusted Interest Rate shall be the lesser of (a) 20 percent per annum, or (b) the minimum rate of interest which, in the judgment of the Remarketing Agent, under prevailing market conditions, taking into account the current rates for tax-exempt securities comparable in term, security and creditworthiness to such Bonds, would enable such Bonds to be sold at a price of par on the date of commencement of the Reset Period.

"Calculation Period" means the period from the date of issuance of the Bonds through the following Wednesday (whether or not a Business Day), and thereafter while the Bonds bear interest at the Variable Rate, the period from Thursday of each week (whether or not a Business Day) or any proposed Conversion Date through and including the earlier of (i) the following Wednesday (whether or not a Business Day) or (ii) the day immediately preceding a proposed Conversion Date.

"Conversion Date" means the date on which the interest rate on the Bonds is converted from the Variable Rate to the Adjusted Interest Rates as provided in the Indenture.

"Determination Date" means (i) with respect to the initial Calculation Period, the last Wednesday before the date of issuance of the Bonds, (ii) thereafter, with respect to each Calculation Period commencing on a Thursday, the Wednesday immediately preceding the commencement of such Calculation Period or, if such Wednesday is not a Business Day, the next preceding Business Day, and (iii) with respect to each Calculation Period commencing on a proposed Conversion Date, such proposed Conversion Date.

"Mandatory Tender Date" means each date on which all Bonds are required to be tendered for purchase pursuant to the Indenture.

"Reset Period" means (i) the period from the Conversion Date through and including the last day of February specified by the Borrower as the termination date of the first Reset Period and (ii) each period thereafter from and including the next March 1st through and including the last day of February specified by the Borrower as the termination date for such Reset Period.

"Variable Rate" means the interest rate borne by the Bonds from time to time prior to the

Conversion Date, if any, determined in accordance with the Indenture. The Variable Rate for each Calculation Period shall be determined on the Determination Date with respect thereto and shall be the lesser of (i) 12 percent per annum, or (ii) the minimum rate of interest which, in the judgment of the Remarketing Agent, under prevailing market conditions, taking into account the current rates for tax-exempt securities comparable in length of interest rate adjustment periods, liquidity, security and creditworthiness to the Bonds, would enable the Bonds to be sold at a price of par, plus accrued interest, if any, on the first day of the Calculation Period.

From the date of issuance of the Bonds and prior to the Conversion Date, if any, the Bonds shall bear interest at the Variable Rate determined from time to time in accordance with the Indenture, payable on the first Business Day of each month, commencing the first month after issuance of the Bonds, on each Mandatory Tender Date, and at maturity. From and after the Conversion Date, if any, the Bonds shall bear interest during each Reset Period at the applicable Adjusted Interest Rates, payable on the first day of March, June, September and December of each year, commencing the first such date which is at least 30 days after the Conversion Date, and at maturity. Interest accruing at the Variable Rate shall be computed on the basis of a 365 or 366-day year, as the case may be, and the actual number of days elapsed. Interest accruing at the Adjusted Interest Rates shall be calculated on the basis of a 360-day year comprising twelve 30-day months.

The Bonds shall be issuable as fully registered bonds in denominations of \$5,000 or any multiple thereof, and when issued will be registered in the name of Cede & Co., as registered owner and nominee for The Depository Trust Company, New York, New York ("DTC"). The beneficial owners of the Bonds will not receive physical delivery of bond certificates. Beneficial ownership will be evidenced by book-entry only. Bonds and the interest thereon shall be transferable by and shall be payable to the registered owners thereof in the manner and with the effect provided in the Indenture. 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 corporate trust office of the Trustee, as paying agent, or the office of any successor or additional paying agent designated by the Municipality and approved by the Borrower.

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. 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 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 Firststar Bank, National Association to perform the functions of Trustee and Tender Agent 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 Borrower pursuant to the terms of the Loan Agreement, the Promissory Note and the Indenture; including without limitation: (i) payments under the Credit Facility, (ii) payments by the Borrower pursuant to the terms of the Loan Agreement and the Promissory Note, 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 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, and to mandatory and optional tender for purchase, 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 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. Approval of Documents. The terms and provisions of the Promissory Note 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 assignment of the Promissory 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 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 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 determined in accordance with paragraph 3 of this Resolution.

13. Award of Bonds; Execution and Delivery of the Bond Purchase Agreement. The Borrower has negotiated for the sale of the Bonds to the Underwriter at a price of 0.5 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 Underwriter 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. 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 Underwriter.

15. 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 of the Promissory Note), such duties shall be performed by the official succeeding to such duties in accordance with law and the rules of the Municipality.

16. Effective Date; Conformity. This Resolution shall be effective immediately upon its adoption 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.

17. 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.

18. 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.

19. Issuance Fee. Issuance of the Bonds is expressly conditioned on the Municipality being paid, upon issuance, a fee equal to 0.5 percent of the principal amount of the Bonds issued, less any application fee previously paid to the Municipality.

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