



Legislation Text

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990676
SUBSTITUTE 1

THE CHAIR

Substitute resolution authorizing the issuance of Industrial Development Revenue Bonds (Sellers Absorbent Materials, Inc. Project Series 1999).

- Analysis -

This substitute resolution authorizes the issuance of \$5,000,000 of in finance costs related to the acquisition, construction, improvement and equipping of facilities by Sellers Absorbent Materials, Inc. The project will be at 6540 North Industrial Road and another location to be determined in the City.

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.
- (c) To finance an industrial project which is located entirely outside the geographic limits of the municipality, but only if the revenue agreement with respect to such project also relates to another project of the same eligible participant some part of which is located within such limits; and

Whereas, Sellers Absorbent Materials, Inc., a Wisconsin corporation (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 and rehabilitation and/or construction of two manufacturing facilities (the "Facilities") located in the City of Milwaukee (collectively the "Project Site"), the rehabilitation of the Facilities, and the acquisition of certain machinery and equipment (the "Equipment"), and installation of the Equipment in the Facilities (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 of the net number of jobs expected to be eliminated, created or maintained as a result of the Project; and

Whereas, On June 2, 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 June 17, 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 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 Facilities to be financed with revenue bonds; and

Whereas, The Borrower has now requested that the Municipality provide for the issuance of \$5,000,000 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 U.S. Bancorp Piper Jaffray, Minneapolis, Minnesota (the "Underwriter"), setting forth the terms and conditions on which the Municipality will sell and the Underwriter will use its best efforts to obtain a purchaser for the Bonds.
- (b) An Indenture of Trust to be dated as of September 1, 1999 (the "Indenture"), to be entered into by and 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 September 1, 1999 (the "Loan Agreement"), to be entered into between the Municipality and the Borrower providing for a loan of the proceeds from the sale of the Bonds (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 September 1, 1999 (the "Promissory Note"), to be issued by the Borrower payable to the order of the Municipality in the principal amount of \$5,000,000 as evidence of the borrowing provided for in the Loan Agreement and to be assigned by the Municipality to the Trustee.
- (e) An Offering Circular (the "Offering Circular"), describing the Bonds and the security and source of payment therefor.
- (f) A Letter of Credit to be dated the date of issuance of the Bonds (the "Credit Facility"), to be issued by Firststar Bank Milwaukee, N.A., Milwaukee, Wisconsin (the "Credit Facility Provider"), to provide for the payment of the principal and interest on the Bonds.
- (g) A Remarketing Agreement to be dated September 1, 1999 (the "Remarketing Agreement"), between the Borrower and U.S. Bancorp Piper Jaffray as Remarketing Agent; 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 furtherance of the Borrower's charitable purposes; 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 strengthening of the Borrower's presence in the region; 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 this 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 \$5,000,000.
- (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 such capacity, the "Remarketing Agent") in determining the interest rate on the Bonds as provided in the Indenture.
- (g) 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 \$5,000,000 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 \$5,000,000 to the Borrower pursuant to the terms of the Loan Agreement. 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. The Bonds shall be issued in the aggregate principal amount of \$5,000,000 and shall be designated:

CITY OF MILWAUKEE, WISCONSIN INDUSTRIAL DEVELOPMENT REVENUE BONDS (SELLERS ABSORBENT MATERIALS, INC. PROJECT) SERIES 1999

The Bonds shall be dated, bear interest and mature, and shall be subject to redemption prior to maturity as provided for in the Indenture. Without limiting the generality of the foregoing, the interest rate on the Bonds shall vary from time to time in accordance with the method set forth in the Indenture, the applicable provisions of which are incorporated herein by reference.

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. 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 U.S. Bancorp Piper Jaffray to perform the functions of Remarketing Agent and U.S. Bank Corporate Trust Services, St. Paul, Minnesota 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 Indenture and the Loan Agreement; including without limitation: (i) amounts derived pursuant to the Credit Facility, (ii) payments by the Borrower pursuant to the terms of the Loan Agreement, and (iii) 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 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 (i) in respect of the Promissory Note and all payments thereon, (ii) in all moneys and securities held by the Trustee for deposit in, or deposited in, the Bond Fund, the Construction Fund and the Credit Facility 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 Loan Agreement, Promissory Note, the Bond Purchase Agreement, the Credit Facility 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 Loan Agreement and 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 approval of any such insertions and corrections.

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 (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 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.

13. The Borrower has negotiated for the sale of the Bonds by the Underwriter 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 such purchasers as may be arranged by 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. The Municipality approves and ratifies the use and distribution of the Preliminary Offering Circular and the Offering Circular, in substantially the form submitted to the Municipality in connection with the issuance, sale and delivery of the Bonds. The Municipality has not confirmed, and assumes no responsibility for, the accuracy, sufficiency or fairness of any statements in the Preliminary Offering Circular, the Offering Circular or any other written material used in connection with the offer and sale of the Bonds or in any way relating to the Project, the Borrower, the Bank or the Underwriter, other than with regard to the material contained in the caption "The Issuer" (as it relates to the Municipality) which information is correct.

15. 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.

16. The Municipality elects to issue the Bonds in an aggregate principal amount exceeding \$1,000,000 but not exceeding \$10,000,000 as provided in Section 144(a)(4) of the Internal Revenue Code of 1986.

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

18. 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.

19. The Mayor, the City Clerk and the City Comptroller shall not execute and deliver the Bonds, the Indenture or the Loan Agreement 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.

20. Notice of the sale of the Bonds, in 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 of Exhibit B to ascertain that no mistake had been made therein.

21. 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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