



Legislation Text

File #: 990245, Version: 2

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SUBSTITUTE 2
981590

THE CHAIR

Substitute resolution authorizing issuance of Industrial Development Revenue Bonds (SEMCO, Inc. Project).

- Analysis -

This substitute resolution authorizes the issuance of up to \$3,500,000 of Industrial Development Revenue Bonds, Series 1999 (SEMCO, Inc. Project), to finance costs related to the acquisition of a nine-acre site in the Towne Corporate Park (107th and West Brown Deer Road) and the construction and equipping of an 82,000 square foot manufacturing facility to be owned and operated by SEMCO, Inc., a manufacturer of custom paper filing products.

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 66.521, Wisconsin Statutes, as amended (the "Act"):

(a) To issue 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, replacing, 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 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, SEMCO, Inc., a Wisconsin corporation (the "Borrower"), has heretofore requested the City to issue industrial development revenue bonds to finance a project on behalf of the Borrower 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 acquisition of certain land (the "Project Site") located in the City, construction of a 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; all of which will be used by the Borrower in connection with its business of manufacturing custom filing paper products (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 Eligible Participant shall have given notice of intent to enter into the revenue agreement, and provided information on the number of jobs the Eligible Participant expects to be eliminated, created or maintained at 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 Eligible Participant has a collective bargaining agreement; and

Whereas, The City 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 March 2, 1999, the Common Council adopted an Initial Resolution pursuant to the Act (File No. 981590) wherein it was resolved that the City would issue industrial development revenue bonds to finance the Project, subject, however, to the satisfaction of certain conditions including the approval of the Common Council of the terms of the bonds and the revenue agreement described in said Initial Resolution; and

Whereas, On March 10, 1999, notice of the adoption of the Initial Resolution and waiver of public bidding was published in accordance with Sections (10)(b) and (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 21, 1999, 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 City 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 City; and

Whereas, The Borrower has now requested that the City provide for the issuance of up to \$3,500,000 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 City with proposed documentation of the Bonds, as follows:

- a. A Bond Placement Agreement, to be dated as of the date of adoption of this Bond Resolution (the "Bond Placement Agreement"), to be entered into by and among the City, the Borrower and Banc One Capital Markets, Inc. (the "Placement Agent"), setting forth the terms and conditions on which the City will sell and the Bond Purchaser will use its best efforts to place the Bonds.
- b. An Indenture of Trust, to be dated as of June 1, 1999 (the "Indenture"), to be entered into between the City 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 June 1, 1999 (the "Loan Agreement"), to be entered into between the City 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 City with revenues sufficient to retire the Bonds in accordance with their terms.
- d. A Promissory Note, to be dated June 16, 1999 (the "Promissory Note"), to be issued by the Borrower payable to the order of the City in the principal amount of up to \$3,500,000 as evidence of the borrowing provided for in the Loan Agreement and to be assigned by the City to the Trustee.
- e. A Remarketing Agreement, to be dated June 16, 1999 (the "Remarketing Agreement"), between the Borrower and Bank One Capital Markets, Inc. as Remarketing Agent; and

Whereas, American National Bank and Trust Company of Chicago (the "Bank"), will issue an irrevocable letter of credit (the "Letter of Credit") in an amount sufficient to pay, when due, the principal of and interest on and purchase price of the Bonds from time to time; 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 Common Council or of any officials 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 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 City; the stimulation of the flow of investment capital into the City with resultant beneficial effects on the economy of the City; and the preservation and enhancement of the City's tax base; and

Whereas, The development of the Project and the issuance of the 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 up to \$3,500,000.
 - 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 all conditions set forth in said Initial Resolution have been satisfactorily met.
2. Authorization to Borrow and Lend. The City shall borrow, but only in the manner herein recited, a sum of up to \$3,500,000 for the purpose of financing the Project. Said borrowing shall be accomplished through the sale of the Bonds issued pursuant to the Act. The City shall lend a sum of up to \$3,500,000 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 City 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 up to \$3,500,000 and shall be designated:

CITY OF MILWAUKEE, WISCONSIN, ADJUSTABLE RATE INDUSTRIAL DEVELOPMENT REVENUE BONDS, SERIES 1999 (SEMCO, INC. PROJECT)

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. Execution and Authentication of Bonds. The Bonds shall be executed on behalf of the City 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 City 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 the Bond.

5. Designation of Trustee. The City designates and appoints American National Bank and Trust Company of Chicago 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 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.

7. 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 Loan Agreement and the Indenture; including without limitation: (i) payments by the Borrower pursuant to the terms of the Loan Agreement and the Promissory Note, (ii) amounts derived by recourse to the Letter of Credit 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 City 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 City 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 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 Loan Agreement, the Promissory Note, the Placement Agreement 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 City 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.

The City also approves and ratifies the use and distribution of a Preliminary Offering Memorandum and an Offering Memorandum, in substantially the form submitted to the City in connection with the issuance, sale and delivery of the Bonds. The City has not confirmed, and assumes no responsibility for, the accuracy, sufficiency or fairness of any statements in the Preliminary Offering Memorandum, the Offering Memorandum 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 Placement Agent, other than with regard to the material contained in the caption "The Issuer" (as it relates to the City), which information is correct.

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 (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. Award of Bonds; Execution and Delivery of the Bond Purchase Agreement. The terms and conditions of the Bond Purchase Agreement are hereby approved. 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 City to execute, affix with the official seal of the City 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 City 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 City 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.

16. General Authorization. The Mayor and the City Clerk and the appropriate deputies and officials of the City 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 purpose of this Resolution and to comply with and perform the obligations of the City under the Bond Purchase Agreement, the Bonds, and 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 City.

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 unless simultaneously with the issuance of the Bonds, the Borrower shall enter into a Disadvantaged Business Enterprise Agreement (the "Agreement") with the City, in a form satisfactory to the City 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.

19. Public Approval. The Common Council, on behalf of the City, 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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