



Legislation Text

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021545
SUBSTITUTE 1

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Substitute resolution of intent to issue Industrial Development Revenue Bonds (Phoenix Products/Florine Investments Project).

This substitute resolution sets forth the intent of the City of Milwaukee to issue Industrial Development Revenue Bonds in an amount not to exceed \$3,000,000 to finance costs related to the acquisition, rehabilitation, remodeling, equipping and related improvement of the facilities located at 8711 West Port Avenue, in the City of Milwaukee, including site acquisition and improvement and the funding of interest during construction for use in the manufacture of lighting products and drying ovens and related manufacturing and service activities.

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 66.1103, Wisconsin Statutes, as amended (hereinafter sometimes referred to as the "Act"):

(a) To issue revenue bonds to finance all or any part of the costs of the construction, equipping, reequipping, 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, Phoenix Products Company, Inc., a Wisconsin corporation, and Florine Investments, LLC, a Wisconsin limited liability company (individually or as part of any combination, joint venture or partnership, the "Eligible Participant"), has been considering undertaking a project in the City and the Eligible Participant has represented to the City that it would be an encouragement and inducement for the Eligible Participant to proceed if the project could be financed with revenue bonds; and

Whereas, The Eligible Participant has represented that the intended use of the project financing is for the acquisition, rehabilitation, remodeling, equipping and related improvement of the facilities (the "Facilities"), located at 8711 West Port Avenue, in the City of Milwaukee (the "Project Site"), including site acquisition and improvement and the funding of interest during construction (collectively referred to as the "Project"), all of which will be used by the Eligible Participant in connection with the manufacture of lighting products and drying ovens and related manufacturing and service activities; and

Whereas, The Eligible Participant has estimated that the cost of the Project will be approximately \$3,000,000; and

Whereas, The Eligible Participant has represented that it expects the Project to create 7 jobs at the Project Site which would be moved from another site in the City and to have

no further job impact in the State of Wisconsin; and

Whereas, Prior to the date of adoption of this Resolution, a statement which provides a good faith estimate of attorneys' fees which are expected to be paid from the proceeds of the revenue bonds has been filed with the City Clerk and with the Department of Commerce of the State of Wisconsin; and

Whereas, It is in the public interest of the City to promote, attract, stimulate, rehabilitate and revitalize commerce, industry and manufacturing to promote the betterment of the environment and the economy of the City and to stimulate a large flow of private investment funds into the City; and

Whereas, Section (11)(b)1. of the Act contains provisions requiring competitive bidding for certain construction contracts with regard to the construction of projects financed under the Act; and

Whereas, Section (11)(b)2. of the Act empowers the governing body of a municipality to waive the requirements of Section (11)(b)1. with respect to a particular project; and

Whereas, It is the finding and determination of the Common Council of the City of Milwaukee ("Common Council") that the Project is a qualified "project" within the meaning of the Act and that the Eligible Participant is an "eligible participant" within the meaning of the Act; and

Whereas, It is the finding and determination of the Common Council that the City will derive public benefits from the Project and its operation, including by way of illustration but not limitation, the following: 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 in the City, and the preservation and enhancement of the City's tax base; and

Whereas, It is the finding and determination of the Common Council that the public interest will be served if the City were to encourage and induce the Eligible Participant to undertake the Project in the City; now, therefore, be it

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

1. Subject to the conditions specified in paragraph 2, the City shall pursue and consummate a financing having the following elements:

(a) The City shall issue revenue bonds pursuant to the Act at one or more times in one or more series in such aggregate principal amount not in excess of \$3,000,000 as the Eligible Participant shall request to finance the Project and related permissible costs and, under Treas. Reg. Sec. 1.150-2, to reimburse any expenditures made on costs of the Project prior to issuance of the bonds with proceeds of the bonds (said bonds being hereinafter called the "Bonds").

(b) The Bonds shall be limited obligations of the City payable by the City solely out of revenues derived from the Eligible Participant or otherwise provided for pursuant to the terms of a loan or similar agreement (hereinafter called the "Revenue Agreement") to be entered into between the City and the Eligible Participant.

(c) The Revenue Agreement shall require the Eligible Participant to acquire, construct or install the Project and to provide the City with revenues sufficient to pay when due the principal of, premium, if any, and interest on the Bonds.

(d) The Revenue Agreement shall require the Eligible Participant to submit to the Department of Commerce within 12 months after the Project is completed or 2 years after

the Bonds are issued, whichever is sooner, the net number of jobs eliminated, created or maintained on the Project Site and elsewhere in the State of Wisconsin as a result of the Project.

(e) A clause prohibiting discrimination in employment and subcontracting shall apply to the contractual arrangements for the Project as provided in the Act.

(f) The Bonds shall have such maturities, interest rates and redemption limitations as the Eligible Participant and the initial Bond purchaser(s) shall propose.

2. The issuance of the Bonds by the City shall be on the following conditions:

(a) The Bonds shall not constitute an indebtedness of the City within the meaning of any State constitutional provision or statutory limitation.

(b) The Bonds shall not constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers.

(c) The Eligible Participant shall be responsible for finding a purchaser or purchasers for all of the Bonds.

(d) Prior to the issuance of the Bonds: (1) the electors of the City shall have been given the opportunity to petition for a referendum on the matter of the Bond issue as required by the Act; (ii) either no such petition shall be timely filed or such petition shall have been filed or said referendum shall have approved the Bond issue; and (iii) the Common Council, by further resolution, shall have authorized and approved the terms of the Bonds and the Revenue Agreement.

(e) The Bonds shall be issued pursuant to the Act and the delivery of the Bonds shall be accompanied with the approving legal opinion of the law firm of Quarles & Brady LLP or such other nationally recognized firm of bond attorneys as shall be acceptable to the City and the Eligible Participant.

(f) The Eligible Participant shall enter into one or more agreements with the City to use its "best efforts," as defined in such agreement(s) to utilize certain disadvantaged/emerging business enterprises in the renovation, expansion and equipping of the Facilities.

3. All out-of-pocket costs in connection with the issuance and sale of the Bonds shall be paid either from the proceeds of the Bonds or by the Eligible Participant.

4. The City Clerk shall cause notice of adoption of this Resolution to be published, in substantially the form attached to this Common Council File as Exhibit A, once in the City's official newspaper for the publication of notices pursuant to Chapter 985 of the Wisconsin Statutes and shall cause evidence of publication (including a copy of the notice as published) indicating the date of publication of such public notice to be filed with the Secretary of the Department of Commerce of the State of Wisconsin within 20 days following publication of such notice.

5. The appropriate officials of the Department of City Development are authorized to hold a public hearing on the question of the issuance of the Bonds so as to fulfill the public approval requirement of Section 147(f) of the Internal Revenue Code of 1986, as amended. Notice of the public hearing shall be published as a class 1 notice in the Milwaukee Journal Sentinel at least 14 days prior to the scheduled date for such hearing.

6. It is the finding and determination of the Common Council that the City will not control the design, costs, construction or operation of the Project; that no public moneys will be expended for the Project; that the City will have no beneficial ownership

in the Project (except as required by Federal tax law for bonds of this type); that the primary reason for requiring competitive bidding for construction of municipal projects is to protect the taxpayers against excessive expenditures of public funds and that such reason, although sound as applied to public works, is not applicable to the Project in which no general funds or tax revenues of the City will be used or put at risk; that it would be more efficient and expedient for the accomplishment of the public purposes of the revenue bond issue if the Eligible Participant were to have complete control of the letting of contracts for construction of the Project. Therefore, the City does waive the provisions of Section (11) (b)1. of the Act with regard to the Project.

7. The City Clerk shall cause this Resolution to be published together with the public notice required by paragraph 4.

8. This Resolution shall be effective immediately upon its passage and approval. Unless the Bonds shall have been issued prior thereto, the authorities and authorizations given by this Resolution shall expire on the second anniversary date of the date of adoption of this Resolution or on such later date as the Common Council may specify by resolution adopted either before or after such date.

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