



Louisville Metro Government

Legislation Text

File #: O-006-16, Version: 1

ORDINANCE NO. ____, SERIES 2016

AN ORDINANCE OF THE LOUISVILLE/JEFFERSON COUNTY METRO COUNCIL AUTHORIZING AN AMENDMENT TO THE INTEREST RATE OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT RECOVERY ZONE FACILITY REVENUE BONDS, SERIES 2010A (ECL PROPERTIES, LLC PROJECT); AND APPROVING, AUTHORIZING AND ACKNOWLEDGING THE EXECUTION AND DELIVERY OF (1) A FIRST AMENDMENT TO BOND PURCHASE AND LOAN AGREEMENT AMONG LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, ECL PROPERTIES, LLC AND REPUBLIC BANK & TRUST COMPANY, A KENTUCKY BANKING CORPORATION (THE "BONDHOLDER"); (2) AMENDED AND RESTATED SERIES 2010A SPECIMEN BONDS (THE "AMENDED AND RESTATED BONDS"); AND (3) ALL OTHER RELATED DOCUMENTS NECESSARY THERETO.

Sponsored by: Councilwoman Marianne Butler

WHEREAS, Louisville/Jefferson County Metro Government ("Metro Government") is a consolidated local government and political subdivision of the Commonwealth of Kentucky (the "Commonwealth") and as such is authorized by the Industrial Buildings for Cities and Counties Act, as amended, KRS 103.200 to 103.285 (the "Act"), to issue industrial building revenue bonds for the purpose of defraying the cost of any "industrial building" (as defined in the Act), including specifically land, buildings, improvements, equipment, machinery, and other facilities suitable for use as health-care or related facilities, in order to accomplish the public purpose of promoting the economic development of the Commonwealth, relieving conditions of unemployment, and encouraging the increase of industry therein, **provided that such bonds are payable solely from the revenues derived from the industrial building and do not constitute an indebtedness of Metro Government within the meaning of the Constitution and laws of the Commonwealth.**

WHEREAS, on December 2, 2010, by its Ordinance No. 233, Series 2010, the Metro Council of Louisville/Jefferson County Metro Government ("Metro Council"), after determining that the acquisition and constructing of a 25,000 square foot, two story medical office building located at 1935 Bluegrass Avenue, Louisville, Kentucky (the land, buildings, improvements, furniture, fixtures and equipment comprising such project being hereinafter collectively referred to as the "Project") met the public purposes of promoting economic development of the Commonwealth, relieving conditions of unemployment, and encouraging industry herein, authorized and approved the issuance of bonds as provided for in the Act.

WHEREAS, on December 28, 2010, Metro Government issued pursuant to the Act its (1) Louisville/Jefferson County Metro Government Recovery Zone Facility Revenue Bonds, Series 2010A (ECL Properties, LLC Project) in the original principal amount of \$3,500,000.00 (the "Series 2010A Bonds"), and (2) Louisville/Jefferson County Metro Government Recovery Zone Facility Revenue Bonds, Series 2010B (ECL Properties, LLC Project) in the original principal amount of \$628,305.00 (the "Series 2010B Bonds", collectively with the Series 2010A Bonds, the "Bonds"), for the benefit of ECL Properties, LLC, a Kentucky

limited liability company (the “Company”) to defray the cost of acquiring and constructing the Project.

WHEREAS, at the same time as the issuance of the Bonds, Metro Government authorized the execution and delivery of a Bond Purchase and Loan Agreement (the “Bond and Loan Agreement”) among Metro Government, the Company, and the Bondholder.

WHEREAS, pursuant to the Bond and Loan Agreement, the Company executed and delivered to Metro Government on December 28, 2010, (1) a promissory note in the principal amount of \$3,500,000.00 (the “Series 2010A Note”), and (2) a promissory note in the principal amount of \$628,305.00 (the “Series 2010B Note” and collectively with the Series 2010A Note, the “Notes”), in each of which the Company promised to make payments in amounts sufficient to pay principal of and interest on the respective Bonds when due. The Bondholder purchased the Bonds, and as a result, Metro Government assigned all of its right, title and interest in the Notes to the Bondholder.

WHEREAS, the Series 2010B Bonds and the Series 2010B Note have since been paid off by the Company and are no longer in effect.

WHEREAS, the Company has requested Metro Government approve the amendment and restatement of the Series 2010A Bonds to reflect an interest rate equal to (i) the sum of the 5 Year Federal Home Loan Bank Rate plus 2.15% (ii) multiplied by 0.68, until the next Index Rate Change Date (as defined in the Series 2010A Bonds), with an interest rate floor equal to 4.16% per annum (as adjusted on each Index Rate Change Date), and authorize the execution and delivery of the First Amendment to Bond Purchase and Loan Agreement, the Amended and Restated Bonds and any other documents deemed necessary by the Bondholder to effectuate the amendment to the interest rate (collectively, the “Bond Documents”) and take any and all related actions.

WHEREAS, the Bondholder has consented to the amendment to the interest rate of the Series 2010A Bonds.

WHEREAS, Metro Government has determined that it is necessary and proper to authorize the amendment to the interest rate of the Series 2010A Bonds and to authorize the execution and delivery of the Bond Documents and to take any and all related actions.

NOW, THEREFORE, BE IT ORDAINED by the Metro Council of the Louisville/Jefferson County Metro Government as follows:

1. Recitation. The facts and recitations set out in the preamble of this Resolution are adopted and incorporated as a part hereof, and the terms defined in the preamble shall have the same meanings when used herein.

2. Authorization of Amendment to the Interest Rate in the Series 2010A Bonds. The Metro Council hereby authorizes the amendment to the interest rate of the Series 2010A Bonds to be equal to (i) the sum of the 5 Year Federal Home Loan Bank Rate plus 2.15% (ii) multiplied by 0.68, adjusting as of each Index Rate Change Date (as defined in the Series 2010A Bonds), with an interest rate floor equal to 4.16% per annum (as adjusted on each Index Rate Change Date) and hereby authorizes and directs the Mayor or any other designated officer of the Metro Government to execute, acknowledge and deliver on behalf of Metro Government, and have attested by the Metro Council Clerk of Metro Government, the Bond Documents with such changes therein as the officers executing such documents on behalf of Metro Government shall approve, as shall be conclusively evidenced by their execution and delivery thereof.

3. Authority to Consummate Transactions in Connection with the Amendment. The Mayor of Metro Government, Metro Council Clerk and other appropriate officers and employees of Metro Government, and each of them, for and on behalf of Metro Government, are hereby authorized, empowered and directed to do and undertake any and all things necessary to carry out the authority conferred by this Ordinance, and further to execute all customary papers, documents, certificates or other instruments that may be required for the effectuation of the authority conferred by this Ordinance, or to evidence such authority and to execute and otherwise take all action necessary to the full realization of the rights, accomplishments and purposes of Metro Government under the Bond Documents, and to discharge all of the obligations of Metro Government thereunder. Further, to the extent legally possible, the Mayor and the Metro Council Clerk are hereby authorized to approve any and all other actions so deemed necessary for the approval by Metro Government and to consummate the terms and conditions of this Ordinance, provided that neither Metro Government nor any of its elected officials, officers, employees or agents incur any general liability thereby.

4. Limited Liability. No recourse shall be had for the payment of the principal of or premium or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement therein contained against any past, present or future elected official, officer, employee or agent of Metro Government, as such, either directly or through Metro Government, under any rule of law or equity, statute or constitution, or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such elected officials, officers, employees, or agents as such shall be expressly waived or released as a condition of and consideration for the enactment of this Ordinance and the amendment to the Bond Documents.

5. THE AMENDED AND RESTATED BONDS NOT A DEBT OF THE METRO GOVERNMENT. THE AMENDED AND RESTATED BONDS SHALL NOT BE A GENERAL OBLIGATION OF THE METRO GOVERNMENT; NEITHER THE AMENDED AND RESTATED BONDS NOR PREMIUM, IF ANY, NOR INTEREST THEREON CONSTITUTE OR GIVE RISE TO ANY INDEBTEDNESS OF THE METRO GOVERNMENT WITHIN THE MEANING OF THE CONSTITUTION AND LAWS OF THE COMMONWEALTH OR ANY CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER; THE AMENDED AND RESTATED BONDS AND THE PAYMENT OF INTEREST AND PREMIUM, IF ANY, THEREON SHALL BE SECURED AND PAYABLE SOLELY AND ONLY BY A PLEDGE OF AMOUNTS TO BE PAID BY THE COMPANY UNDER SUCH LOAN OR SALE AGREEMENT; NO PART OF SAID PROJECT COSTS WILL BE PAYABLE OUT OF ANY GENERAL FUNDS, REVENUES, ASSETS, PROPERTIES OR OTHER CONTRIBUTIONS OF THE METRO GOVERNMENT.

6. Severability. The provisions of this Ordinance are severable, and if any section, phrase, or provision hereof shall for any reason be declared invalid or unenforceable, such declaration shall not affect the validity of the remainder of this Ordinance.

7. Prior Conflicting Actions Superseded. To the extent that any prior ordinance, resolution, order, or part thereof, of Metro Government is in conflict with the provisions of this Ordinance, the provisions of this Ordinance shall prevail and be given effect.

8. Effective Date. This Ordinance shall be in full force and effect from and after its enactment and publication as provided by law.

INTRODUCED, SECONDED, AND GIVEN FIRST READING at a duly convened regular meeting of the Louisville/Jefferson County Metro Council held on January 7, 2016.

GIVEN SECOND READING AND ENACTED at a duly convened regular meeting of the Louisville/Jefferson County Metro Council held on _____, 2016, signed by the Mayor of Metro Government as evidence of his approval, attested under seal by the Metro Council Clerk, and ordered to be published in summary form, filed, and indexed as provided by law.

H. Stephen Ott
Metro Council Clerk

President of the Council

Greg Fischer, Mayor

Approved:

Date

APPROVED AS TO FORM AND LEGALITY:

Michael O'Connell
Jefferson County Attorney

By:
Nicholas Lococo
Assistant County Attorney

Ordinance Approving Interest Rate Amendment for ECL Properties Bonds ROC nl,bkn 123015 000616

CERTIFICATION

The undersigned certifies that he is the duly appointed and acting Clerk of the Louisville/Jefferson County Metro Council, that the foregoing ordinance was duly adopted at a duly convened meeting of the Metro Council held on _____, 2016, that all actions taken in connection with such ordinance were in compliance with the requirements of KRS 61.800 to 61.850, and that said ordinance is now in full force and effect, all as appears from the official records of Metro Government in my custody and under my control.

H. Stephen Ott, Council Clerk

(SEAL)

Dated: _____, 2016

