



Louisville Metro Government

Legislation Text

File #: O-374-14, Version: 1

ORDINANCE NO. _____, SERIES 2014

AN ORDINANCE AMENDING AND RESTATING ORDINANCE NO. 87, SERIES 2012, AUTHORIZING THE ISSUANCE OF UP TO \$7,000,000 PRINCIPAL AMOUNT OF AN INDUSTRIAL BUILDING SOLID WASTE DISPOSAL REVENUE NOTE (RECAST ENERGY LOUISVILLE, LLC PROJECT), SERIES 2014, FOR THE PURPOSE OF FINANCING CERTAIN COSTS RELATING TO CAPITAL IMPROVEMENTS AND EQUIPPING OF FACILITIES LOCATED AT 4200 BELLS LANE, LOUISVILLE, JEFFERSON COUNTY, KENTUCKY; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AMONG THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, RECAST ENERGY LOUISVILLE, LLC AND PRESIDENTIAL BANK, FSB AND RELATED DOCUMENTS; AUTHORIZING THE NEGOTIATED SALE OF THE NOTE; AND TAKING OTHER RELATED ACTION.

Sponsored by: Councilman David Tandy

WHEREAS, the Louisville/Jefferson County Metro Government (the "Issuer"), pursuant to the provisions of Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes, as amended (the "Act"), is authorized to issue its revenue bonds and notes, and loan the proceeds thereof to a corporation for the purpose of defraying the cost of acquiring, constructing, equipping and rehabilitating any pollution control, and/or solid waste disposal facility; and

WHEREAS, Recast Energy Louisville, LLC, a Virginia limited liability company (the "Borrower"), proposes that the Issuer, pursuant to the Act, assist the Borrower by issuing the Note (as hereinafter defined) for the purpose of (i) financing, or reimbursing the Borrower for, certain costs relating to capital improvements and equipping of facilities located at 4200 Bells Lane, Louisville, Jefferson County, Kentucky (the "Project"), which Project is more particularly described in the Loan Agreement hereinafter identified and approved and qualifies for financing as an "industrial building" within the meaning of the Act; (ii) funding a debt service reserve fund for the Note, and (iii) paying certain costs of issuance relating to the Note; and

WHEREAS, the acquisition, construction, equipping and rehabilitation of the Project will result in the retention of industry and a substantial number of employment opportunities in the community that would otherwise not be available; and

WHEREAS, the Legislative Council of the Issuer adopted Resolution No. 252, Series 2011 on November 10, 2011 (the "Inducement Resolution") approving industrial building revenue bond financing for the benefit of the Borrower and affirming the Issuer's agreement to undertake such financing at the appropriate time, subject to compliance with the provisions of the Act; and

WHEREAS, the Legislative Council adopted Ordinance No. 87, Series 2012 on May 10, 2012 (the "Original Bond Ordinance") approving the issuance of up to \$8,000,000 of its industrial building

solid waste disposal revenue bonds (Recast Energy Louisville, LLC Project), Series 2012 (the "Original Bonds") for the purpose of financing the Project and paying costs of issuance, among other related items; and

WHEREAS, market conditions resulted in the need for the Borrower to restructure the method of financing for the Project; and

WHEREAS, because of the change in the method of financing in order to provide for the note financing from Presidential Bank, F.S.B. (the "Lender"), there is the need for amendments to the Original Bond Ordinance to be reflected herein and to be replaced hereby; and

WHEREAS, at the request of the Borrower upon completion of the restructure of the financing plan, the Issuer is prepared to issue its revenue note pursuant to the Act for purposes of financing the acquisition, construction, equipping and rehabilitation of the Project, funding a debt service reserve fund and paying costs of issuance of the Note, upon terms which are set forth in the Loan Agreement hereinafter identified and approved; and

WHEREAS, pursuant to the provisions of Section 103.230 of the Act, the Borrower will make a request in writing, addressed to the Mayor acting on behalf of the Issuer, that the sale of the Note hereinafter identified and authorized shall be made upon a negotiated basis; and

WHEREAS, it is necessary and proper in the interests of the health, safety, convenience and general welfare of the citizens, residents and inhabitants of the Issuer and its environs that the Issuer (a) authorize the issuance and execution and delivery (together with the Borrower) of the Note pursuant to the Act in order to finance, for the benefit of the Borrower, the acquisition, construction and equipping and rehabilitation of the Project, to fund a debt service reserve fund and to pay certain costs of issuance of the Note, (b) authorize the execution of a Loan Agreement (the "Loan Agreement") among the Issuer, the Borrower and the Lender, (c) authorize and approve the necessary or related documents and actions;

BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE "COUNCIL") AS FOLLOWS:

Section 1. For the purposes set forth in the preamble, which is incorporated as a part hereof, the Issuer, acting by and through the Council, hereby:

(A) Confirms and ratifies the Inducement Resolution and the prior discussions and agreements described therein, whereby the Issuer agreed preliminarily to authorize and issue its bonds or notes for the Borrower pursuant to the Act in order to finance the Project and the changes to the Original Bond Ordinance as reflected herein and replaced hereby.

(B) Authorizes the sale, issuance, execution and delivery of not to exceed \$7,000,000 principal amount of the Louisville/Jefferson County Metro Government Industrial Building Solid Waste Disposal Revenue Note (Recast Energy Louisville, LLC Project), Series 2014 (the "Note"), which shall be issued in substantially the form and subject to the terms and specifications set forth in the Loan Agreement identified and approved herein, all subject to compliance with the provisions of the Act.

(C) Authorizes the use of the proceeds of the Note, as provided in the Loan Agreement to

pay the costs of acquisition, construction, equipping and rehabilitation of the Project, to fund a debt service reserve fund and to pay certain costs of issuance of the Note.

Section 2. The Mayor is hereby authorized, empowered and directed to execute, acknowledge and deliver on behalf of the Issuer the Loan Agreement, in substantially the form submitted and filed with the Council Clerk, with such changes therein and completions thereof as the officer executing the same may require or approve on behalf of the Issuer, upon the advice of counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. The Note shall have such terms, including, but not limited to, that the Note shall mature as to principal no later than June 30, 2024 and shall be subject to redemption and shall bear interest payable periodically at a fixed rate approved by the Borrower, all as provided in the Loan Agreement, reference to which is hereby made. The interest rate on the Note shall in no event exceed 10% per annum.

Section 4. The Mayor, the Council Clerk, the County Attorney and other appropriate Issuer officials, and each of them, for and on behalf of the Issuer, are hereby authorized, empowered and directed to do and perform any and all things necessary to effect the execution and delivery of the Loan Agreement and related documents, including, but not limited to, any tax certificates or agreements required under the Internal Revenue Code of 1986, as amended, the performance of all obligations and the preservation of all rights of the Issuer thereunder, the execution and delivery of the Note and the performance from time to time of all other actions of whatever nature necessary to carry out the authority conferred or contemplated by and the purposes of this Ordinance and the Loan Agreement and related documents, and further to approve and to execute, if required, all papers, documents, certificates or other instruments, including, but not limited to, any tax certificates or agreements required under the Internal Revenue Code of 1986, as amended, that may be required for the carrying out and effectuation from time to time of the authority conferred by and the purposes of this Ordinance and the Loan Agreement and related documents, or to evidence said authority and purposes.

Section 5. THE NOTE AND THE INTEREST THEREON DO NOT REPRESENT OR CONSTITUTE AN INDEBTEDNESS OF THE ISSUER OR THE COMMONWEALTH OF KENTUCKY WITHIN THE MEANING OF THE CONSTITUTION OR STATUTES OF THE COMMONWEALTH OR A PLEDGE OF THE FAITH AND CREDIT OF THE ISSUER OR THE COMMONWEALTH. THE ISSUER SHALL NEVER BE REQUIRED TO PAY FROM ITS OWN FUNDS ANY OBLIGATIONS DERIVING FROM THE ISSUANCE OF THE NOTE, AND THE NOTE IS DECLARED TO BE A SPECIAL AND LIMITED OBLIGATION PAYABLE SOLELY AND ONLY FROM THE RECEIPTS DERIVED UNDER THE LOAN AGREEMENT.

Section 6. It is hereby declared and certified that by the adoption of this Ordinance, the Issuer by and through the Council, as its elected legislative body, and by his approval and execution of this Ordinance the Mayor of the Issuer, as its elected chief executive officer, approve the Project and the issuance of the Note after a duly held public hearing following reasonable public notice, all within the meaning of Section 147(f) of the U.S. Internal Revenue Code of 1986, as amended.

Section 7. All acts and doings of the Issuer and/or its officials done prior to or subsequent to the date of this Ordinance which are in conformity with the purpose and intent of this Ordinance (including amending and restating the Original Bond Ordinance) or the Inducement Resolution and in

furtherance of the issuance and sale of the Note and the execution, delivery and performance of the Loan Agreement and such other documents or certificates required to be executed in connection therewith shall be, and the same hereby are, in all respects ratified, approved and confirmed.

Section 8. The provisions of this Ordinance may be supplemented from time to time by resolution of the Council.

Section 9. The provisions of this Ordinance are hereby declared to be severable and, if any section or provision shall, for any reason, be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

Section 10. In the event of any conflict or conflicts between the provisions of this Ordinance and of any prior ordinances (including the Original Bond Ordinance), resolutions or parts thereof; the provisions of this Ordinance shall prevail.

Section 11. This Ordinance shall be in full force and effect upon its passage and approval and upon publication thereof in accordance with the Act.

INTRODUCED, SECONDED AND GIVEN FIRST-READING at a duly convened meeting of the Legislative Council of the Louisville/Jefferson County Metro Government, held on the ____ day of June, 2014 and GIVEN A SECOND READING, ADOPTED AND APPROVED at a duly convened meeting of the Legislative Council of the Louisville/Jefferson County Metro Government, held on the ____ day of June, 2014, signed by the Mayor as evidence of his approval (including his approval as the Issuer's elected chief executive officer for purposes of compliance with Section 147(f) of the U.S. Internal Revenue Code of 1986, as amended), attested by the Metro Council Clerk and President of the Council, ordered published in summary form pursuant to KRS Chapter 424, duly enrolled and declared to be in full force and effect.

Attest:

_____ H. Stephen Ott Metro Council Clerk	_____ Jim King President of the Council
_____ Greg Fischer Mayor	_____ Approval Date

Approved as to Form and Legality:

Michael J. O'Connell
Jefferson County Attorney

By

Recast Energy nte \$7M Revenue Note Ord.ROC tg,bkn 060214 Draft 1

060214

CERTIFICATION

I, the undersigned, do hereby certify that I am the duly qualified Metro Council Clerk of the Louisville/Jefferson County Metro Government, and as such Clerk I further certify that the foregoing is a true, correct and complete copy of an Ordinance duly adopted by the Council of said Issuer upon second reading at a duly convened meeting held on June __, 2014, signed by the Mayor and President of the Council and now in full force and effect, all as appears from the official records of said County in my possession and under my control.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 2014.

(SEAL)

H. Stephen Ott, Metro Council Clerk