(Passed 7-0 absent Cole, Pizzo)

RESOLUTION 03-18
TO AUTHORIZE AN AMENDED AND RESTATED INSTALLMENT PAYMENT CONTRACT, DATED AS OF JULY, 2003, BY AND BETWEEN THE CITY OF BLOOMINGTON AND FIFTH THIRD LEASING COMPANY TO AMEND AND RESTATE ITS $1,296,566 INSTALLMENT PAYMENT CONTRACT DATED AS OF AUGUST 4, 1999, AS SUPPLEMENTED, AND AUTHORIZING OTHER ACTIONS, INCLUDING WITHOUT LIMITATION, EXECUTION OF IRS FORM 8038-G AND RELATED TAX CERTIFICATES OR DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF SUCH LEASE OBLIGATIONS

WHEREAS, the City of Bloomington, Indiana (the "City") by virtue of the laws of the State of Indiana, and through the guidance of the Internal Revenue Code of 1986, as amended, is authorized and empowered among other things (a) to enter into the Amended and Restated Installment Payment Contract, dated as of July 24th, 2003 (the "Amended and Restated Contract"), with Fifth Third Leasing Company ("Fifth Third"), and the City, which amends and restates the Installment Payment Contract, dated as of August 4, 1999, as supplemented (the "Prior Agreement"), with the Fifth Third and the City, (b) to provide moneys for its Installment Payment Contract obligations (the "Contract Obligations") for the purpose of currently refunding the outstanding principal amount of its previously issued $1,296,566 in principal amount of obligations pursuant to the Prior Agreement and (c) to enact this Legislation and execute and deliver the agreements and instruments hereinafter identified; and,

WHEREAS, the City issued the Prior Obligations in order to finance the acquisition of energy savings infrastructure improvements for the Departments of Public Works, Parks & Recreation and Utilities (the "Project") authorized with the adoption of Common Council Resolution 99-24; and,

WHEREAS, the City seeks to change the existing interest rate mode on the Prior Obligations to a different interest rate mode, in order to effectuate cost savings, reducing the rate from 5.55% to 3.90%; and

WHEREAS, such a change in the interest rate mode creates a reissuance and current refunding under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder; and,

WHEREAS, the Common Council of the City of Bloomington (the "Legislative Authority") has determined and does hereby confirm that the reissuance and refunding of the Prior Obligations, will be in the best interest of the City;

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BLOOMINGTON, INDIANA:

SECTION 1. Pursuant to the laws of the State of Indiana and under the guidance of the Internal Revenue Code of 1986, as amended, Section 103, Sections 141 – 150, Section 1001 and Treasury Regulation Section 1.1001-3 (collectively, the "Internal Revenue Code Provisions"), this Legislative Authority hereby finds and determines that the reissuance and refunding of the Prior Obligations is consistent with the requisite provisions of Indiana municipal law and the Internal Revenue Code Provisions.

SECTION 2. The City has been advised that as a result of a change in the interest rate mode, the Contract Obligations are treated as currently refunding the Prior Obligations for tax purposes. The Prior Obligations are considered reissued in the form of the Contract Obligations in a principal amount that reflects any principal payments made between the date of issuance of the Prior Obligations and the date of issuance of the Contract Obligations. It is hereby determined to be necessary to, and the City shall consider the Prior Obligations reissued for tax purposes, thereby currently refunding the Prior Obligations with the Contract Obligations for tax purposes in accordance with the Internal Revenue Code Provisions. In connection with the current refunding, this Legislative Authority hereby determines that it is appropriate for the City to execute and deliver (i) the Amended and Restated Contract, (ii) Internal Revenue Service Form 8038-G, (iii) tax certificates or documents, and any other certificates or documents required to accomplish the current refunding.

SECTION 3. That this Council hereby authorizes and directs the Mayor, Controller, and City Clerk, to execute and deliver the Amended and Restated Contract, IRS Form 8038-G, tax certificate or document, and such other documents and certificates and to do all the acts and things required of it by the provisions of the Amended and Restated Contract to the end that full and complete performance of all of the terms, covenants and provisions of the Amended and Restated Contract shall be effected (the "Closing Documents").

SECTION 4. That the Closing Documents authorized by this Resolution shall be subject to such changes, insertions and omissions as are not adverse to the City, and approval of any changes, insertions and omissions shall be conclusively evidenced by the execution of said documents by the Mayor, Controller and City Clerk.

SECTION 5. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were taken in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including open meetings laws, and the rules of this Council adopted in accordance therewith.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 23rd day of July, 2003.

Chris Gaal

CHRIS GAAL, President
Bloomington Common Council

ATTEST:

Regina Moore

REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 24th day of July, 2003.

Regina Moore

REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 24 day of JULY, 2003.

~~JOHN FERNANDEZ,~~ Mayor
City of Bloomington
JAMES McNAMARA
DEPUTY MAYOR

SYNOPSIS

This resolution authorizes the City to enter into an Amended and Restated Installment Payment Contract for payment of the principal balance for the energy savings project completed pursuant to a Performance Contracting Agreement, which was authorized by the Common Council with the adoption of Resolution 99-24, in order to reduce the rate of interest paid on the obligation. It further authorizes the Mayor, Controller and City Clerk to execute documents on behalf of the City to effect this interest rate reduction.

Controller
Mayor
Legal (5)

Parks & Rec
Public Works
Utilities

Fifth-Third Bank

CA/CA