

COMMON COUNCIL OF  
CITY OF MENASHA, WISCONSIN

RESOLUTION NO. R-15-10

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**INITIAL RESOLUTION REGARDING  
INDUSTRIAL DEVELOPMENT REVENUE BOND  
FINANCING TO BENEFIT  
FOX VALLEY HEMATOLOGY & ONCOLOGY, S.C.**

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WHEREAS, Section 66.1103 of the Wisconsin Statutes (the "Act") authorizes the City of Menasha, Wisconsin (the "Issuer"), to authorize the issuance and sale of bonds by the Issuer to construct, equip, re-equip, acquire by gift, lease or purchase, install, reconstruct, rebuild, rehabilitate, improve, supplement, replace, maintain, repair, enlarge, extend or remodel industrial projects; and

WHEREAS, FVHO Investors, LLC, a Wisconsin limited liability company, and/or a related limited liability entity to be formed (collectively, the "Borrower") desires to complete a project consisting of financing the (i) acquisition of land, (ii) construction of an approximately 17,500 square foot medical clinic to be located on Province Terrace in the City of Menasha, Wisconsin (the "Facility"), (iii) acquisition and installation of equipment at the Facility and (iv) payment of certain professional costs and costs of issuance (collectively, the "Project"), which Project will be owned by the Borrower and leased to Fox Valley Hematology & Oncology, S.C., a Wisconsin corporation, all of which would contribute to the well-being of the City of Menasha, Wisconsin; and

WHEREAS, the cost of the Project is presently estimated to be greater than \$5,500,000, and the amount proposed to be financed with one or more series of tax-exempt and/or taxable industrial development revenue bonds does not exceed \$5,500,000; and

WHEREAS, it is the public interest of the Issuer to promote, attract, stimulate, rehabilitate and revitalize commerce, industry and manufacturing, to promote the betterment of the environment and the economy of the Issuer; and

WHEREAS, the Borrower has requested that the Issuer now approve an initial resolution (the "Initial Resolution") providing for the financing of the Project in an amount not to exceed \$5,500,000; and

WHEREAS, the Issuer is a municipality organized and existing under and pursuant to the laws of the State of Wisconsin, and is authorized to enter into revenue agreements with eligible participants with respect to the Project whereby eligible participants agree to cause said Project to be constructed and to pay the Issuer an amount of funds sufficient to provide for the prompt payment when due of the principal and interest on said industrial development revenue bonds.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Menasha, Wisconsin, as follows:

1. Based upon representations of the Borrower, it is the finding and determination of the Common Council that 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. The Issuer shall:

(a) Finance the Project in an amount not to exceed \$5,500,000; and

(b) Issue industrial development revenue bonds in one or more series of tax-exempt and/or taxable bonds (the “Bond(s)”), in an amount not to exceed \$5,500,000 in order to finance costs of the Project.

2. The aforesaid plan of financing contemplates, and is conditioned upon, the following:

(a) The Bonds shall never constitute an indebtedness of the Issuer 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 Issuer or a charge against its general credit or taxing powers;

(c) The Project shall be subject to property taxation in the same amount and to the same extent as though the Project were not financed with industrial development revenue bonds;

(d) The Borrower shall find a purchaser for all of the Bonds; and

(e) The City’s out-of-pocket costs, including but not limited to legal fees and Trustee’s fees, in connection with the issuance and sale of the Bonds shall be paid by the Borrower; and

(f) A notice of public hearing required by federal law for purposes of Section 147(f) of the Internal Revenue Code, as amended, shall be published in a newspaper of general circulation in the City of Menasha to provide interested individuals or parties the opportunity to testify.

3. The aforesaid plan of financing shall not be legally binding upon the Issuer nor be finally implemented unless and until:

(a) The details and mechanics of the same are authorized and approved by a further resolution of the Common Council which shall be solely within the discretion of the Common Council;

(b) The City Clerk shall cause notice of adoption of this Initial Resolution, in the form attached hereto as Exhibit A, to be published once in a newspaper of general circulation in the City of Menasha, and the electors of the City of Menasha shall have been given the opportunity to petition for a referendum on the matter of the aforesaid Bond issue, all as required by law;

(c) Either no such petition shall be timely filed or such petition shall have been filed and said referendum shall have approved the Bond issue;

(d) The City Clerk shall have received an employment impact estimate issued under Section 560.034 of the Wisconsin Statutes;

(e) All documents required to consummate the financing have been duly authorized and delivered; and

(f) The Issuer and the Borrower have resolved all land use and special use issues with respect to the affected property and the Project.

4. Pursuant to the Act, all requirements that the Project be subject to the contracting requirements contained in Section 66.1103 are waived, the Borrower having represented that it is able to negotiate satisfactory arrangements for completing the Project and that the Issuer's interests are not prejudiced thereby.

5. The City Clerk is directed, following adoption of this Initial Resolution (i) to publish notice of such adoption not less than one time in the official newspaper of the City of Menasha, Wisconsin, such notice to be in substantially the form attached hereto as Exhibit A and (ii) to file a copy of this Initial Resolution, together with a statement indicating the date the Notice to Electors was published, with the Secretary of Business Development of the State of Wisconsin within twenty (20) days following the date of publication of such notice.

6. This Initial Resolution is an "initial resolution" within the meaning of the Act and official action toward issuance of the Bonds for purposes of Sections 103 and 144 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder. Furthermore, it is the reasonable expectation of the Issuer that proceeds of the Bonds may be used to reimburse expenditures made on the Project prior to the issuance of the Bonds. The maximum principal amount of debt expected to be issued for the Project on the date hereof is \$5,500,000. This statement of official intent is made pursuant to Internal Revenue Code §1.150-2.

Adopted: July 6, 2010

**CITY OF MENASHA, WISCONSIN**

[SEAL]

By: \_\_\_\_\_  
Donald Merkes, Mayor

By: \_\_\_\_\_  
Deborah A. Galeazzi, City Clerk

## EXHIBIT A

### NOTICE TO ELECTORS OF THE CITY OF MENASHA, WISCONSIN

TAKE NOTICE that the Common Council of the City of Menasha, Wisconsin (the "Issuer"), at a regular meeting held at City Hall, 140 Main Street, Menasha, Wisconsin, on July 6, 2010, adopted an Initial Resolution pursuant to Section 66.1103 of the Wisconsin Statutes, as amended, expressing the intention to issue not to exceed \$5,500,000 of industrial development revenue bonds of the Issuer (the "Bonds") on behalf of FVHO Investors, LLC, a Wisconsin limited liability company, and/or a related limited liability entity to be formed (collectively, the "Borrower"). The Borrower desires to complete a project consisting of financing the (i) acquisition of land, (ii) construction of an approximately 17,500 square foot medical clinic to be located on Province Terrace in the City of Menasha, Wisconsin (the "Facility"), (iii) acquisition and installation of equipment at the Facility and (iv) payment of certain professional costs and costs of issuance (collectively, the "Project"), which Project will be owned by the Borrower and leased to Fox Valley Hematology & Oncology, S.C., a Wisconsin corporation. The Borrower has represented that the net number of full-time equivalent jobs which the Project is expected to create at the Project site is 20.

Pursuant to the terms of Section 66.1103 of the Wisconsin Statutes, all requirements that the Project be subject to the contracting requirements contained in Section 66.1103 are waived, the Borrower having represented that it is able to negotiate satisfactory arrangements for completing the Project and that the Issuer's interests are not prejudiced thereby.

THE BONDS SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF THE ISSUER, NOR SHALL THE BONDS GIVE RISE TO ANY PECUNIARY LIABILITY OF THE ISSUER, NOR SHALL THE BONDS BE A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF THE ISSUER. RATHER, THE BONDS SHALL BE PAYABLE SOLELY FROM THE REVENUES AND OTHER AMOUNTS TO BE DERIVED PURSUANT TO THE REVENUE AGREEMENT RELATING TO SAID PROJECT TO BE ENTERED INTO BETWEEN THE ISSUER AND THE BORROWER.

The Initial Resolution may be inspected in the office of the City Clerk at 140 Main Street, Menasha, Wisconsin, during business hours.

TAKE FURTHER NOTICE THAT THE ELECTORS OF THE CITY OF MENASHA MAY PETITION FOR A REFERENDUM ON THE QUESTION OF THE BOND ISSUE. Unless within thirty (30) days from the date of the publication of this Notice a petition signed by not less than five percent (5%) of the registered electors of the City of Menasha is filed with the City Clerk requesting a referendum on the question of the issuance of the Bonds, the Issuer will issue the Bonds without submitting the proposition for the electors' approval. If such petition is filed as aforesaid, then the Bonds shall not be issued until approved by a majority of the electors of the City of Menasha voting thereon at a general or special election.

Deborah A. Galeazzi, City Clerk  
City of Menasha, Wisconsin

Lynda R. Templen  
(414) 978-5505  
ltemplen@whdlaw.com

July 1, 2010

Deborah A. Galeazzi  
City Clerk  
City of Menasha  
140 Main Street  
Menasha, WI 54952

Steven Sabatke  
Grants Analyst  
Wisconsin Department of Commerce  
201 West Washington Avenue, 6<sup>th</sup> Floor  
Madison, WI 53702

**RE: \$5,500,000 City of Menasha, Wisconsin  
Industrial Development Revenue Bonds, Series 2010  
(Fox Valley Hematology & Oncology, S.C. Project)**

Greetings:

We understand that in the near future, the Common Council of the City of Menasha, Wisconsin (the "City"), will take action on an Initial Resolution for industrial development revenue bond financing under Section 66.1103 of the Wisconsin Statutes on behalf of FVHO Investors, LLC, a Wisconsin limited liability company, and/or a related limited liability entity to be formed (collectively, the "Borrower").

Section 66.1103 of the Wisconsin Statutes requires that prior to the adoption of the Initial Resolution, a document containing a good faith estimate of the legal fees which will be paid from the bond proceeds must be filed with the City Clerk of the City and with the Wisconsin Department of Commerce. This letter is that document.

Estimating legal fees at this stage in the proceedings is difficult because many of the most significant factual matters which may affect legal costs are not known in detail at this time. The size and structure of the bond issue have not been finalized. These and other matters normally are negotiated and determined after the Initial Resolution is adopted. As a result, the scope and amount of work

which the various parties may choose to refer to their lawyers can vary considerably as the economic aspects of the financing develop.

The relationship of these variables to an estimate of aggregate legal fees is evident from the principles which lawyers apply in charging fees for their services. Fees for services rendered by any Wisconsin lawyer should be consistent with, and grounded upon, the Rules of Professional Conduct for Attorneys of the American Bar Association, as currently enforced in Wisconsin. Those rules set forth the following basic guidelines:

A lawyer's fee shall be reasonable. Factors to be considered as guides in determining the reasonableness of a fee include the following:

- (1) The time and labor required, the novelty and the difficulty of the questions involved, and the skill requisite to perform the legal service properly.
- (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
- (3) The fee customarily charged in the locality for similar legal services.
- (4) The amount involved and the results obtained.
- (5) The time limitations imposed by the client or by the circumstances.
- (6) The nature and length of the professional relationship with the client.
- (7) The experience, reputation and ability of the lawyer or lawyers performing the services.
- (8) Whether the fee is fixed or contingent.

The maximum principal amount of the bonds will not exceed \$5,500,000.

The following is a good faith estimate of the legal fees which will be paid from the proceeds of the bonds with respect to this financing:

COUNSEL

FEE ESTIMATE

Bond Counsel

\$28,500, plus disbursements

Counsel to the Eligible Participant

It is unknown whether the legal fees and disbursements of such counsel will be paid from the proceeds of the bonds

Attorneys who have not yet been identified who may be involved in the transaction, including, without limitation, counsel to any Trustee involved, any real estate counsel involved, and any counsel to the initial bond purchaser(s)

It is unknown whether the legal fees and disbursements of such counsel will be paid from the proceeds of the bonds

The actual fee charged by each of the lawyers acting in this matter may vary considerably from the estimates provided above. Without purporting to be exhaustive, the following are reasons why actual fees may be higher or lower than the estimate: (i) assumptions regarding the size, structure, complexity and timing of the bond financing may change; (ii) clients may alter the scope of their lawyers' engagement; (iii) parties may require legal opinions or legal advice beyond that normally requested in similar financings; and (iv) unforeseen legal problems may arise.

We are writing and filing this letter to comply with the requirements of Section 66.1103 of the Wisconsin Statutes. To the extent that we have estimated attorneys' fees other than our own, we did so on the basis of prior experience and information available to us at the time of writing this letter.

Please complete and return the receipt below in the envelope provided. A copy of this letter is enclosed for your files. Thank you.

Very truly yours,

Lynda R. Templen

The undersigned acknowledge receipt of the foregoing this \_\_\_\_ day of July, 2010.

**WISCONSIN DEPARTMENT OF  
COMMERCE**

By: \_\_\_\_\_  
Steven Sabatke, Grants Analyst

**CITY OF MENASHA, WISCONSIN**

By: \_\_\_\_\_  
Deborah A. Galeazzi, City Clerk

**[WHYTE HIRSCHBOECK DUDEK S.C. WILL PUBLISH NOTICE OF  
PUBLIC HEARING ON BEHALF OF THE CITY AFTER PUBLIC  
HEARING DATE HAS BEEN DETERMINED]**

NOTICE OF PUBLIC HEARING

The City of Menasha, Wisconsin, will hold a public hearing at \_\_\_\_\_ p.m. on \_\_\_\_\_, 20\_\_\_, at City Hall, 140 Main Street, Menasha, Wisconsin, regarding the proposed issuance of City of Menasha, Wisconsin, Industrial Development Revenue Bonds, Series 2010 (Fox Valley Hematology & Oncology, S.C. Project), in an aggregate amount not to exceed \$5,500,000, pursuant to Section 66.1103 of the Wisconsin Statutes, to finance a project to be owned by FVHO Investors, LLC, a Wisconsin limited liability company, and/or a related limited liability entity to be formed (the "Borrower").

The project consists of financing the (i) acquisition of land, (ii) construction of an approximately 17,500 square foot medical clinic to be located on Province Terrace in the City of Menasha, Wisconsin (the "Facility"), (iii) acquisition and installation of equipment at the Facility and (iv) payment of certain professional costs and costs of issuance (collectively, the "Project"), which Project will be owned by the Borrower and leased to Fox Valley Hematology & Oncology, S.C., a Wisconsin corporation. The bonds are special, limited obligations of the City and do not constitute a charge against its general credit or taxing powers.

At the hearing, all persons will be afforded a reasonable opportunity to express their views, both orally and in writing, on the proposed bonds.

Published: \_\_\_\_\_, 20\_\_\_

Deborah A. Galeazzi  
City Clerk  
City of Menasha, Wisconsin

**Notice of Intent to Obtain a Municipal Industrial Revenue Bond**

Section 66.1103 (4m) (a) 1 of the Wisconsin Statutes requires the person or business who intends to obtain an industrial revenue bond issue from a Wisconsin municipality to notify this intention to the Department of Commerce and to any collective bargaining agent in the state with whom the person or business has a collective bargaining agreement. This notification must occur at least 30 days prior to entering into the revenue agreement or signing the loan contract. The person or business must provide information on the number of full-time jobs that are expected to be eliminated, created, or maintained at the project site and elsewhere in Wisconsin as a result of the project which is the subject of this notice. The person or business named below hereby gives notice of intent to obtain an Industrial Revenue Bond pursuant to s. 66.1103 of the Wisconsin Statutes.

**I. Project**

A. Person: Janice A. Arendt  
 Business: FVHO Investors, LLC, c/o Fox Valley Hematology & Oncology, S.C.  
 Address: 900 East Grant Street  
 Post Office/ZIP: Appleton, WI 54911

B. Project site: City of Menasha, Wisconsin  
 (Name of city, village or town in which the project is located)

C. Project type:     Expansion at Present Location         Relocation Within Same Municipality  
                           Relocation From Within State         Relocation from Out-of-State         New Business  
                           Branch-Wisconsin Operation         Branch-Out-of-State Operation         Other: \_\_\_\_\_

D. Maximum amount of IRB financing: \$5,500,000

**II. Employment Estimates (to result within the next 3 years)**

Number of Full-Time Jobs	Before Project	To Be Maintained	To Be Created	To Be Eliminated	Net Total Number of Jobs
A. <u>At the Project Site</u>	0	0	20	0	20
B. <u>At All Other Wisconsin Operations</u>	84	84	0	0	84
C. <u>Net Totals</u>	84	84	20	0	104

D. Will any jobs transfer from one or more locations to the project site?        Yes  No

Number of jobs to transfer: \_\_\_\_\_

Location(s) the jobs will transfer from: (municipality) N/A

\_\_\_\_\_  
 Signed/Person completing this form

\_\_\_\_\_  
 Janice A. Arendt

\_\_\_\_\_  
 June , 2010  
 Date

\_\_\_\_\_  
 Telephone Number