

PORT AUTHORITY OF WINONA MINUTES

DATE: September 13, 2007

PRESENT: President Cichanowski, Commissioners Johnson, Kiekbusch, Hansen, Thurley and Borzyskowski, Executive Secretary Sorensen

ABSENT: Commissioner Glubka

1. **CALL TO ORDER – APPROVAL OF MINUTES**

The meeting was called to order at 4:00 p.m. by President Cichanowski. A motion was made by Commissioner Borzyskowski, seconded by Commissioner Thurley to approve the minutes from the August 16, 2007 meeting. Motion carried unanimously.

2. **REMARKS BY THE PRESIDENT**

President Cichanowski commented on the devastating flood of August 18th and 19th and hopes that efforts to move forward continue as they have.

3. **OLD BUSINESS**

A. **Bluffview Montessori Bond Issue**

Port Authority Commissioners were asked to review and give final approval for the issuance of \$5.7 million in Lease Revenue Bonds for the refunding and building addition and Bluffview Montessori School. The Port Authority reviewed the initial request at their August meeting. A motion was made by Commissioner Thurley, seconded by Commissioner Borzyskowski to approve the resolution below. The motion carried with Commissioners Cichanowski, Johnson, Kiekbusch, Thurley and Borzyskowski, voting Aye and Commissioner Hansen Abstained.

Extract of Minutes of a Meeting of the
Board of Commissioners of the
Port Authority of Winona, Minnesota

Pursuant to due call and notice thereof, a regular meeting of the Board of Commissioners of the Port Authority of Winona, Minnesota, was duly held at the Council Chambers in the City of Winona on Thursday, the 13th day of September, 2007, at 4 o'clock P.M.

The following members were present:

President Cichanowski, Commissioners Thurley, Borzyskowski, Kiekbusch, Johnson and Hansen

and the following was absent:

Commissioner Glubka

Commissioner Thurley introduced the following resolution and moved its adoption:

RESOLUTION # 653

RESOLUTION AUTHORIZING THE ISSUANCE OF
LEASE REVENUE BONDS PURSUANT TO
MINNESOTA LAW, AND AUTHORIZING THE EXECUTION OF VARIOUS
DOCUMENTS IN CONNECTION THEREWITH
(BLUFFVIEW MONTESSORI SCHOOL PROJECT)

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner Borzyskowski, and after full discussion thereof and upon vote being taken thereon, the following voted in favor thereof:

President Cichanowski, Commissioners Thurley, Borzyskowski, Kiebusch and Johnson

and the following abstained:

Commissioner Hansen

whereupon said resolution was declared duly passed and adopted.

RESOLUTION AUTHORIZING THE ISSUANCE OF
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1. Authority. The Port Authority of Winona (the "Authority") is, by the Constitution and laws of the State of Minnesota, including Minnesota Statutes, Sections 469.152 to 469.1651, as amended (the "Act"), authorized to issue and sell its revenue bonds for the purpose of financing revenue producing payments within the boundaries of the City of Winona (the "City") and to enter into agreements necessary or convenient in the exercise of the powers granted by the Act.

2. Authorization of Project; Documents Presented. BMS Building Corporation (the "Corporation") has proposed to the Board of Commissioners that the Authority issue and sell its Lease Revenue Bonds (Bluffview Montessori School Project) Series 2007A (the "Series A Bonds") and its Taxable Lease Revenue Bonds (Bluffview Montessori School Project) Series 2007B (the "Series B Bonds") in an aggregate principal amount not to exceed \$5,700,000, in substantially the forms set forth in the hereinafter defined Indenture (collectively, the "Bonds"), pursuant to the Act and loan the proceeds thereof to the Corporation in order to advance refund the Authority's Lease Revenue Bonds, Series 1999 (Bluffview Montessori School Project) and to finance the construction and equipping of an approximately 15,700 square foot addition to the existing public (charter) schoolhouse located in the City of

Winona (the "City") (the "Project"). Forms of the following documents relating to the Bonds have been submitted to the Authority:

(a) Loan Agreement (the "Loan Agreement") dated as of October 1, 2007 between the Authority and the Corporation, whereby the Authority agrees to make a loan to the Corporation of the gross proceeds of sale of the Bonds and the Corporation agrees to undertake and complete the Project and to pay amounts in repayment of the loan sufficient to provide for the full and prompt payment of the principal of, premium, if any, and interest on the Bonds; and

(b) Indenture of Trust (the "Indenture") dated as of October 1, 2007, between the Authority and Wells Fargo Bank, National Association, as trustee (the "Trustee"), authorizing the issuance of and pledging certain revenues, including those to be derived from the Loan Agreement, as security for the Bonds, and setting forth proposed recitals, covenants and agreements relating thereto; and

(c) Amended and Restated Mortgage, Security Agreement and Assignment of Rents (the "Mortgage"), dated as of October 1, 2007, from the Corporation to the Trustee, by which the Corporation amends a mortgage lien on and security interest heretofore granted to the Trustee in certain mortgaged property, as described therein, as further security for the payment of the Bonds and assigns to the Trustee its interests in all rents with respect to the mortgaged property (this document is not executed by the Authority); and

(d) Assignment of Amended and Restated Lease (the "Assignment of Lease"), dated as of October 1, 2007, from the Corporation to the Trustee, by which the Corporation assigns its interest in an Amended and Restated Lease Agreement dated as of October 1, 2007 between the Corporation, as Lessor, and the Bluffview Montessori School (the "School"), as Lessee to the Trustee (this document not to be executed by the Authority); and

(e) Disbursing Agreement (the "Disbursing Agreement") dated as of October 1, 2007 by and among the Corporation, the Trustee and the Disbursing Agent (this document not to be executed by the Authority); and

(f) Tax Regulatory Agreement (the "Tax Regulatory Agreement") dated as of October 1, 2007 by and among the Authority, the Corporation, the School and the Trustee; and

(g) Bond Purchase Agreement (the "Bond Purchase Agreement"), by and between Dougherty & Company LLC (the "Underwriter"), the Corporation, the School and the Authority, providing for the purchase of the Bonds from the Authority by the Underwriter and setting the terms and conditions of purchase; and

(h) Preliminary Official Statement, including all Appendices thereto (together the "Official Statement"), describing the offering of the Bonds, and certain terms and provisions of the foregoing documents.

3. Findings. It is hereby found, determined and declared that:

(a) The Project constitutes a Project authorized by and described in the Act.

(b) On the basis of information available to the Authority it appears, and the Authority hereby finds, that the Project constitutes properties, real and personal, used or useful in connection with one or more revenue producing enterprises engaged in any business within the meaning of Subdivision 2b of Section 469.153 of the Act; that the Project furthers the purposes stated in Minnesota Statutes, Section 469.152; that the availability of the financing under the Act and willingness of the Authority to furnish such financing will be substantial inducement to the Corporation to undertake the Project, and that the effect of the Project, if undertaken, will be to encourage the development of economically sound industry and commerce, to assist in the prevention of the emergence of blighted and marginal land, to help prevent chronic unemployment, to help the Authority retain and improve the tax base and to provide the range of service and employment opportunities required by the population, to help prevent the movement of talented and educated persons out of the state and to areas within the state where their services may be as effectively used, to promote more intensive development and use of land within the City and eventually to increase the tax base of the community.

(c) There is no litigation pending or, to the best of its knowledge, threatened against the Authority relating to the Bonds, the Loan Agreement, the Bond Purchase Agreement or the Indenture or questioning the due organization of the Authority, or the powers or authority of the Authority to issue the Bonds and undertake the transactions contemplated hereby.

(d) The execution, delivery and performance of the Authority's obligations under the Bonds, the Indenture, the Bond Purchase Agreement and the Loan Agreement do not and will not violate any order of any court or other agency of government of which the Authority is aware or in which the Authority is a party, or any indenture, agreement or other instrument to which the Authority is a party or by which it or any of its property is bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument.

(e) It is desirable that the Bonds be issued by the Authority upon the terms set forth in the Indenture, under the provisions of which the Authority's interest in the Loan Agreement will be pledged to the Trustee as security for the payment of principal of, premium, if any, and interest on the Bonds.

(f) The Loan Agreement provides for payments by the Corporation to the Trustee for the account of the Authority of such amounts as will be sufficient to pay the principal of, premium, if any, and interest on the Bonds when due. The Loan Agreement obligates the Corporation to pay for all costs of operation and maintenance of the Project, including adequate insurance, taxes and special assessments. A reserve fund has been established under the provisions of the Indenture in connection with the issuance of the Bonds.

(g) Under the provisions of the Act, and as provided in the Loan Agreement and Indenture, the Bonds are not to be payable from nor charged upon any funds other than amounts payable pursuant to the Loan Agreement and moneys in the funds and accounts held by the Trustee which are pledged to the payment thereof; neither the Authority nor the City is subject to any liability thereon; no owners of the Bonds shall ever have the right to compel the exercise of the taxing power of the Authority or the City to pay any of the Bonds or the interest thereon, nor to enforce payment thereof against any property of the Authority or the City; the Bonds shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the Authority or the City (other than the interest of the Authority in the Loan Repayments to be made by the Corporation under the Loan Agreement); and each Bond issued under the Indenture shall recite that such Bond, including interest thereon, shall not constitute or give rise to a charge against the general credit or taxing powers of the Authority or the City.

4. Approval and Execution of Documents. The forms of Loan Agreement, Indenture, Bond Purchase Agreement and Tax Regulatory Agreement referred to in paragraph 2, are approved. The Loan Agreement, Indenture, Tax Regulatory Agreement, and Bond Purchase Agreement shall be executed in the name and on behalf of the Authority by the President and the Executive Secretary, or executed or attested by other officers of the Authority, in substantially the form on file, but with all such changes therein, not inconsistent with the Act or other law, as may be approved by the officers executing the same, which approval shall be conclusively evidenced by the execution thereof; and then shall be delivered to the Trustee.

5. Approval, Execution and Delivery of Bonds. Subject to the approval of the issuance of the Bonds by the Minnesota Department of Employment and Economic Development, the Authority shall proceed forthwith to issue the Bonds, in the forms and upon the terms set forth in the Indenture, which terms are for this purpose incorporated in this resolution and made a part hereof; provided, however, that the initial aggregate principal amount of the Bonds shall not exceed \$5,700,000, the final maturity date shall not be later than December 1, 2037, and the net effective interest rate shall not be greater than 7.00% for the Series A Bonds and 9.00% for the Series B Bonds. Subject to the foregoing, the principal amounts of the Bonds, the maturities, the interest rates thereon, and any provisions for the optional or mandatory redemption thereof shall all be as set forth in the final form of the Indenture to be approved, executed and delivered by the officers of the Authority authorized to do so by the provisions of this Resolution, which approval shall be conclusively evidenced by such execution and delivery. The Underwriter has agreed pursuant to the provisions of the Bond Purchase Agreement, and subject to the conditions therein set forth, to purchase the Bonds at the purchase price set forth in the Bond Purchase Agreement, and said purchase price is hereby accepted. The President, Executive Secretary and other Authority officers are authorized and directed to prepare and execute the Bonds as prescribed in the Indenture and to deliver them to the Trustee, together with a certified copy of this Resolution and the other documents required by Section 2.06 of the Indenture, for authentication,

registration and delivery to the Underwriter. As provided in the Indenture, each Bond shall contain a recital that it is issued pursuant to the Act, and such recital shall be conclusive evidence of the validity and regularity of the issuance thereof.

6. Official Statement. The Authority hereby consents to the circulation by the Underwriter of the Official Statement in offering the Bonds for sale; provided, however, that the Authority has not independently verified the information in the Official Statement and makes no representations or warranties as to, the accuracy or completeness of the information in the Official Statement.

7. Certificates, etc. The President, Executive Secretary and other officers of the Authority are authorized and directed to prepare and furnish to bond counsel and the purchaser of the Bonds, when issued, certified copies of all proceedings and records of the Authority relating to the Bonds, and such other affidavits and certificates as may be required to show the facts appearing from the books and records in the officers custody and control or as otherwise known to them; and all such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute representations of the Authority as to the truth of all statements contained therein.

8. Submission To Department of Employment and Economic Development. In accordance with the Act, the President and the Executive Secretary of the Authority are hereby authorized and directed to submit the proposal for the Project to the Department of Employment and Economic Development requesting its approval, and other officers, employees and agents of the Authority are hereby authorized to provide the Department of Employment and Economic Development with such preliminary information as it may require.

Adopted by the Board of Commissioners of the Port Authority of Winona, Minnesota this 13th day of September, 2007.

STATE OF MINNESOTA

COUNTY OF WINONA

PORT AUTHORITY OF WINONA

I, the undersigned, being the duly qualified and acting Executive Secretary of the Port Authority of Winona, Minnesota, DO HEREBY CERTIFY that I have compared the attached and foregoing extract of minutes with the original thereof on file in my office, and that the same is a full, true and complete transcript of the minutes of a meeting of the Board of Commissioners, duly called and held on the date therein indicated, insofar as such minutes related to a resolution approving the Bluffview Montessori School Project.

B. Railroad Dike Breach Mitigation Completion

A Resolution to finalize the Railroad Dike Breach Project was presented to the Commissioners for review. This project was an activity in the mitigation for the Dredging of the Commercial Harbor. A motion was made by

Commissioner Kiekbusch, seconded by Commissioner Johnson. The motion carried with all Commissioners present voting Aye.

RESOLUTION # 654

WHEREAS, a contract was let for the Railroad Dike Breach Wetland Mitigation Project; and

WHEREAS, the original contract price for these improvements is \$36,380.40; and

WHEREAS, the contract has been completed according to the plans and specifications; and

WHEREAS, the final price for the improvements is \$38,588.40.

NOW, THEREFORE, BE IT RESOLVED by the Port Authority of Winona, Minnesota:

1. The Port Authority of Winona hereby accepts the work.
2. The Port Authority hereby authorizes the final estimate in the amount of \$38,588.40.

Passed and adopted by the Port Authority of Winona at a meeting thereof held this 13th day of September, 2007.

4. OLD BUSINESS

A. Request from Minnesota Wood Recyclers

Minnesota Wood Recyclers requested an extension on the compost site property which is owned by the Port Authority and leased to Minnesota Wood Recyclers. The City is working with Bruce Reed to relocate the Compost Site to the Sewer Treatment Plant. A motion to approve an extension until September 30, 2007 was made by Commissioner Johnson, seconded by Commissioner. The motion carried with all Commissioners present voting Aye.

5. ADJOURNMENT

Prior to adjournment the Commissioners reviewed the reports of the Port Dock at the Commercial Harbor. The year to date tonnage to August 2007 is 188,000 tons.

A motion to adjourn the meeting was made by Commissioner Borzyskowski, seconded by Commissioner Thurley. The motion carries with all those present voting Aye. The meeting was adjourned at 4:30 p.m.

Lucy McMartin
Program Development Director