

Order 263-06/07

Given first reading on 6/4/07

Public Hearing & Passage 6/18/07 9-0

NICHOLAS M. MAVODONES (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
DONNA J. CARR (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND

IN THE CITY COUNCIL

JAMES I. COHEN (5)
JAMES F. CLOUTIER (A/L)
JILL C. DUSON (A/L)
EDWARD J. SUSLOVIC (A/L)

**ORDER AUTHORIZING BORROWING FOR AIRPORT EXPANSION
IN AN AMOUNT NOT TO EXCEED \$36,100,000**

FOLLOWING a public hearing of the City Council of the City of Portland, Maine, held upon due notice pursuant to Article VII, Section 9 of the City Charter, and after due review and consideration by the City of, and reliance on, that certain Portland International Jetport Parking Feasibility Report dated January 18, 2007, **IT IS HEREBY**

ORDERED THAT:

There be and hereby is authorized the borrowing by the City of Portland through the issuance of revenue bonds or through other credit facilities and instruments or any combination thereof, in the aggregate principal amount not to exceed Thirty-six Million One Hundred Thousand Dollars (\$36,100,000) (collectively the “Revenue Bonds”) to finance a portion of the costs to design and construct Phase II of the Portland International Jetport multi-level parking garage, to acquire and install certain equipment and other improvements thereat (including redesign of surface parking areas, terminal walkway connectors and other ancillary improvements), to renovate the access loop road to and around the parking garage improvements, to demolish and remove the existing two-level parking garage, to fund a debt service reserve fund and other expenses incidental and related thereto, and it is hereby declared that the estimated period of utility of such project is at least thirty years (the “Project”).

BE IT FURTHER ORDERED

1. That such Revenue Bonds shall **not** constitute a general obligation of the City nor be backed by a pledge of the faith and credit of the City, but shall be payable solely from revenues derived from the operation of the Portland International Jetport and shall not directly or indirectly obligate the City to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, except from the revenues pledged therefor;

2. That each Bond shall state on its face that it is a limited obligation of the City payable solely from such revenues pledged therefor and that the City is not obligated to levy or to pledge any form of taxation whatever therefor or to make any appropriation for its payment, except from the revenues pledged therefor;

3. That the revenues from the Portland International Jetport be and hereby are

pledged to the payment of the principal of, premium, if any, and interest and other charges on the Revenue Bonds;

4. That the Director of Finance be and hereby is authorized to enter into a pledge agreement, line of credit agreement, trust indenture and such other agreements as may be required in order to pledge the revenues from the Portland International Jetport to the payment of the principal of, premium, if any, and interest and other charges on the borrowings hereinbefore authorized, such agreements to be in such form and contain such terms and provisions, not inconsistent herewith, as he may approve, such approval to be conclusively evidenced by his execution thereof;

5. That the Director of Finance be and hereby is authorized to prepare, issue, and sell such Revenue Bonds, on either a taxable or tax-exempt basis, or some combination thereof, as the Director of Finance shall determine, in the aggregate principal amount not to exceed of \$36,100,000 at one time, or from time to time, as one or more separate bond issues or series of bonds, and to enter into a line of credit or other loan agreements providing for the borrowing of money by the City as hereinbefore authorized and to determine the date, form, interest rate (which shall be either a fixed rate or a variable rate and, if a fixed rate, up to a maximum rate of 8.00% for any Revenue Bonds issued on a tax-exempt basis and 11.00% for any Revenue Bonds issued on a taxable basis, and if a variable rate, shall be based upon a LIBOR or other market index, with a spread to be approved by the Director of Finance), maturities (with the last maturity not to exceed 30 years from its date of issuance) and all other details of each issue of Revenue Bonds, including the form and manner of their sale and award, subject to the provisions of law, the City Charter and this Order;

6. That the Director of Finance be and hereby is authorized to borrow money in anticipation of said Revenue Bonds by the issuance and sale of notes or renewal notes in anticipation of said Revenue Bonds in minimum denominations to be approved by the Director of Finance, and to determine the date, form, interest rate (which shall be either a fixed rate or a variable rate and, if a fixed rate, up to a maximum rate of 8.00% for any note issued on a tax-exempt basis and 11.00% for any note issued on a taxable basis and if a variable rate, shall be based upon a LIBOR or other market index, with a spread to be approved by the Director of Finance), maturities (with the last maturity not to exceed 5 years from its date of issuance) and all other details of each issue of notes, including the form and manner of their sale and award, subject to the provisions of the law, the City Charter and this Order;

7. That the Director of Finance be and hereby is authorized to provide that any of the Revenue Bonds and notes hereinbefore authorized be made callable, with or without premiums, prior to their stated dates of maturity;

8. That each Revenue Bond or note issued hereunder shall be signed by the Director of Finance and by the Mayor, either or both of whose signatures may be by facsimile to the extent permitted by law, attested to by the Clerk;

9. That the Director of Finance be and hereby is authorized to negotiate, execute, and deliver, in the name of and on behalf of the City such contracts, agreements, and other documents, including agreements, contracts, leases, instruments, documents and certificates as

may be necessary or appropriate as determined and approved by the Director of Finance in connection with the issuance of the Revenue Bonds and the financing of the Project, which documents shall be in such form and contain such terms and conditions, not inconsistent herewith, as may be approved by the Director of Finance such approval to be conclusively evidenced by his execution thereof;

10. That the Director of Finance be and hereby is authorized to select the underwriter for the Revenue Bonds and to execute and deliver such contracts or agreements as may be necessary or appropriate in connection therewith;

11. That the Director of Finance be and hereby is authorized to prepare, or cause to be prepared, a Preliminary Official Statement and an Official Statement, a Request for Proposal or any other offering document for use in the offering and sale of the Revenue Bonds, such Preliminary Official Statement and Official Statement, Request for Proposal or offering document to be in such form and contain such information as may be approved by the Director of Finance, with the advice of the bond counsel for the City, and that the use and distribution of the Preliminary Official Statement and the Official Statement or offering document in the name of and on behalf of the City in connection with offering the Revenue Bonds for sale be and hereby is approved;

12. That the Director of Finance be and hereby is authorized to select the registrar, paying agent and transfer agent (the "Transfer Agent") for the Revenue Bonds and to execute and deliver such contracts and agreements as may be necessary or appropriate to secure their services;

13. That the Revenue Bonds shall be transferable only on the registration books of the City kept by the Transfer Agent, in the same principal amount of the Revenue Bonds of the same maturity (but not of another maturity) upon surrender thereof at the principal office of the Transfer Agent, with a written instrument of transfer satisfactory to the Transfer Agent duly executed by the registered owner or his attorney duly authorized in writing. Upon each exchange or transfer of a Revenue Bond, the City and the Transfer Agent shall make a charge sufficient to cover any tax, fee or any other governmental charge required to be payable with respect to such exchange or transfer, and with respect to such exchange or transfer, and subsequent to the first exchange or transfer, the cost of preparing new Revenue Bonds upon exchanges or transfer thereof to be paid by the person requesting the same;

14. That the Director of Finance be and hereby is authorized to undertake all acts necessary to provide for the issuance and transfer of such Revenue Bonds in book-entry form pursuant to the Depository Trust Company Book-Entry Only System, as an alternative to the provisions of the foregoing paragraph 13 above regarding physical transfer of Revenue Bonds, and the Director of Finance be and hereby is authorized and empowered to enter into a Letter of Representation or any other contract, agreement or understanding necessary or, in his opinion, appropriate in order to qualify the Revenue Bonds for and participate in the Depository Trust Company Book-Entry Only System;

15. That the Director of Finance and Mayor from time to time shall execute such Revenue Bonds as may be required to provide for exchanges or transfers of Revenue Bonds as

heretofore authorized, all such Revenue Bonds to bear the original signature of the Director of Finance and Mayor, and in case any officer of the City whose signature appears on any bond shall cease to be such officer before the delivery of said bond, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery thereof;

16. That, if the Revenue Bonds or notes in anticipation thereof are issued on a tax-exempt basis, the Director of Finance and Mayor be and hereby are authorized and directed to covenant and certify on behalf of the City that no part of the proceeds of the issue and sale of such Revenue Bonds or notes shall be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause such Revenue Bonds or notes to be “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended;

17. That, if the Revenue Bonds or notes in anticipation thereof are issued on a tax-exempt basis, the officers executing the Revenue Bonds be and hereby are individually authorized to covenant and agree, on behalf of the City, for the benefit of the holders of such Revenue Bonds or notes in anticipation thereof, that the City will file any required reports and take any other action that may be necessary to insure that interest on the notes will remain exempt from federal income taxation, and that the City will refrain from any action that would cause interest on the notes to be subject to federal income taxation;

18. That the Director of Finance be and hereby is authorized to covenant, certify and agree, on behalf of the City, for the benefit of the holders of such Revenue Bonds or notes in anticipation thereof, that the City will file any required reports, make any annual financial or material event disclosure, and take any other action that may be necessary to insure that the disclosure requirements imposed by Rule 15c2-12 of the Securities and Exchange Commission, if applicable, are met;

19. That the Revenue Bonds authorized by this Order are in addition to any bonds previously authorized for the same or similar purposes;

20. That the term “cost” or “costs” as used herein and applied to the Project, or any portion thereof, includes, but is not limited to (1) the purchase price or acquisition cost of all or any portion of the Project; (2) the cost of construction, building, alteration, enlargement, reconstruction, renovation, improvement, and equipping of the Project; (3) the cost of all appurtenances and other facilities either on, above, or under the ground which are used or usable in connection with the Project; (4) the cost of landscaping, site preparation and remodeling of any improvements or facilities; (5) the cost of all labor, materials, building systems, machinery and equipment; (6) the cost of land, structures, real property interests, rights, easements, and franchises acquired in connection with the Project; (7) the cost of all utility extensions and site improvements and development; (8) the cost of planning, developing, preparation of specifications, surveys, engineering, feasibility studies, legal and other professional services associated with the Project; (9) the cost of environmental studies and assessments; (10) the cost of financing charges and issuance costs, including premiums for insurance, interest prior to and during construction and for a period not to exceed three (3) years from the later of completion of construction or the issue date of such Revenue Bonds, underwriters' fees and costs, legal and accounting fees and costs, application fees, and other fees and expenses relating to the financing

transaction; and (11) the cost of all other financing authorized hereunder, whether related or unrelated to the foregoing;

21. That the Director of Finance, Mayor and Clerk and other proper officials of the City be, and hereby are authorized and empowered in its name and on its behalf to do or cause to be done all such acts and things, not inconsistent herewith, as may be necessary or desirable in order to effect the issuance, sale and delivery of the Revenue Bonds or notes in anticipation thereof hereinabove authorized;

22. That if any of the officers or officials of the City who have signed or sealed the Revenue Bonds or notes in anticipation thereof shall cease to be such officers or officials before the Revenue Bonds or notes so signed and sealed shall have been actually authenticated or delivered by the City, such Revenue Bonds or notes nevertheless may be authenticated, issued, and delivered with the same force and effect as though the person or persons who signed or sealed such Revenue Bonds or notes had not ceased to be such officer or official; and also any such Revenue Bonds or notes may be signed and sealed on behalf of the City by those persons who, at the actual date of the execution of such Revenue Bonds or notes, shall be the proper officers and officials of the City, although at the nominal date of such Revenue Bonds or notes any such person shall not have been such officer or official; and

23. That if the Director of Finance, Mayor or Clerk are for any reason unavailable to approve and execute the Revenue Bonds or notes in anticipation thereof or any other documents necessary or convenient to the issuance, execution and delivery of such Revenue Bonds or notes, the person or persons then acting in any such capacity, whether as an assistant, a deputy, or otherwise, is authorized to act for such official with the same force and effect as if such official had performed such act.