

Resolved 1-07/08
Tab 24 7-16-07

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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)

**FINDINGS OF FACT AND RESOLUTION AUTHORIZING THE ISSUANCE OF
UP TO TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000)
OF REVENUE BONDS
(2007 AERO PORTLAND ME, LLC PROJECT)**

WHEREAS, the Finance Authority of Maine Act, 10 M.R.S.A., Ch. 110, §§ 961 et seq. (the "Act"), authorizes and empowers the City of Portland, Maine (the "City") to provide financing for eligible projects within the corporate limits of the City, and to make and enter into all financing documents, loan agreements, security agreements, mortgages, contracts, trust agreements and other agreements necessary or convenient to carry out each such financing; and

WHEREAS, Aero Portland ME, LLC (the "Company") desires the City to issue its revenue bonds (and notes in anticipation thereof) in an amount not to exceed \$2,500,000 (the "Bonds") and to loan the proceeds thereof to the Company to finance the acquisition of a ground leasehold interest in land located at the Portland International Jetport, 261 Yellowbird Road in Portland, Maine, with an approximately 19,200 square foot air cargo building located thereon (the "Improvements") and the renovation, furnishing and equipping of the Improvements (the "Project") (expected to be managed by Aeroterm U.S., Inc.); and

WHEREAS, Section 1064(1) of the Act authorizes the City Council of the City as the municipal officers of the City to provide, by resolution for the issuance of the Bonds upon receipt of a Certificate of Approval issued by the Finance Authority of Maine (the "Authority"); and

WHEREAS, the Certificate of Approval of the Authority is expected to be issued and received prior to issuance of the Bonds; and

WHEREAS, Section 1064(6) of the Act provides that the Bonds shall not constitute any debt or liability of the State of Maine, its political subdivisions or any municipality thereof nor a pledge of the faith and credit of the State of Maine, its political subdivisions or any municipality but shall be payable solely from revenues of the project for which they are issued, and that the issuance of such Bonds shall not directly or indirectly or contingently obligate the State of Maine, its political subdivisions or any municipality thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment; and

WHEREAS, the City Council, being the municipal officers of the City and acting as the "applicable elected representative" of the City have held a public hearing at 7:00 p.m. on July 16, 2007 after reasonable public notice posted in 2 public and conspicuous places within the City on or before July 2, 2007 and published in the *Portland Press Herald* on June 29 and June 30, 2007 which paper is of general circulation in the City, about the proposed issue of the Bonds for the

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Project as required by the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 147(f)(2), and regulations thereunder;

NOW, THEREFORE, following such public hearing held by the City Council of the City of Portland, Maine, held upon due notice, **THE CITY OF PORTLAND HEREBY FINDS AND RESOLVES:**

1. **THAT** the City Council hereby finds and determines that:
 - a. The City is a duly organized municipality of the State of Maine and the City Council is comprised of the duly elected municipal officers of the City; and
 - b. The Act authorizes and empowers the City to issue the Bonds and loan the proceeds thereof to the Company to finance the cost of the Project; and
 - c. The Act authorizes the City to enter into financing documents including lease financing agreements, finance agreements, security agreements, mortgages, contracts, and trust agreements and all other contracts and agreements which are necessary or convenient to the exercise of its powers under the Act; and
 - d. The Certificate of Approval, the receipt of which is a necessary precondition to issuance of the Bonds, is expected to be issued and received as required by Section 1064(1)(A) of the Act prior to issuance of the Bonds, which Certificate authorizes the City to proceed to issue the Bonds to finance the Project; and
 - e. Based solely upon representations of the Company, the proceeds of the Bonds in an aggregate principal amount not to exceed \$2,500,000 will be required and, when added to the funds provided by the Company, will be sufficient to pay the estimated costs of the Project.
 - f. Based solely upon representations of the Company, the revenues and funds of the Project will be sufficient to pay the principal and interest on the Bonds and to pay the cost of maintaining and repairing the Project.

2. **THAT** pursuant to the Act, there is hereby authorized and approved the issuance of the Bonds (and notes in anticipation thereof) in an aggregate principal amount not to exceed \$2,500,000. The proceeds of the Bonds, if and when issued by the City, shall be loaned to the Company and used to finance the Project or to reimburse the Company for costs of the Project. Nothing herein shall obligate the City to issue the Bonds, which shall be issued in the sole discretion of the City.

3. **THAT** the Company shall be obligated to pay to the City, directly or indirectly, such sums as shall be sufficient to pay the principal of, premium, if any, and interest on Bonds and notes as and when the same shall become due and payable.

4. **THAT** the Bonds and notes shall be, and shall contain on their face, a statement substantially to the effect that the Bonds and notes shall not constitute any debt or liability

of the City, the State of Maine, its political subdivisions or any municipality therein or a pledge of the faith and credit of the City, the State of Maine, its political subdivision or any municipality, but shall be payable solely from revenues of the Project for which they are issued; and the issuance of the Bonds and notes shall not directly or indirectly or contingently obligate the City, the State of Maine, its political subdivisions or any municipality therein to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

5. **THAT** the Clerk is hereby authorized and directed to publish or cause to be published a notice of intent to issue the Bonds no later than fourteen (14) days after the date hereof in the *Portland Press Herald*, a newspaper of general circulation in the City, and the *Daily Kennebec Journal*, the state newspaper of the State of Maine. Such publications shall constitute the notice of intent to issue the Bonds required by Section 1064(1)(C) of the Act.

6. **THAT** the Bonds shall consist of registered bonds without coupons and that the date, maturities (up to the maximum term permitted by law), minimum denominations and interest rate or rates, (whether fixed, variable, or subject to multiple modes at the Company's discretion), place of payment, and other details of the Bonds and notes shall be determined by the Director of Finance and said Bonds and notes shall be executed in the name of the City by the Mayor and Director of Finance, sealed with the seal of the City, attested to by its Clerk, and be in such form and contain such terms and provisions, not inconsistent herewith, as they may approve, their approval to be conclusively evidenced by their execution thereof.

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

8. **THAT** the Bonds shall be transferable only on the registration books of the City kept by the transfer agent, and said principal amount of the bonds of the same maturity (but not of other maturity) in the minimum denomination (if any) of the Bonds 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 bond the City 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 bonds upon exchanges or transfer thereof to be paid by the person requesting the same.

9. **THAT** the Director of Finance is hereby authorized to undertake all acts necessary to provide for the issuance and transfer of such 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 regarding physical transfer of 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 her opinion, appropriate in order to qualify the bonds for and participate in the Depository Trust Company Book-Entry Only System.

10. **THAT** the Mayor and the Director of Finance from time to time shall execute such Bonds as may be required to provide for exchanges or transfers of Bonds as heretofore authorized, all such Bonds to bear the original signature of the Mayor and the Director of Finance, 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.

11. **THAT** the Director of Finance is authorized to negotiate, approve, execute, deliver, and record, in the name of and on behalf of the City, a bond purchase agreement, a loan agreement, a trust indenture, a finance agreement, a lease – leaseback agreement or lease and financing agreement, a remarketing agreement and such other contracts, deeds, leases, assignments, certificates, memoranda, abstracts, agreements, and other documents, including but not limited to a non-arbitrage certificate, an IRS Form 8038, and any other certificates documents or agreements as may be necessary or appropriate as determined and approved by such Director of Finance in connection with the financing of the Project to carry out (i) the provisions of this Resolution, and (ii) the execution, sale, and delivery of the Bonds (the “Bond Documents”), which Bond Documents shall be in such form and contain such terms, provisions, and conditions, not inconsistent herewith, as may be satisfactory to and approved by the Director of Finance such approval to be conclusively evidenced by his execution thereof.

12. **THAT** the Director of Finance is hereby authorized to prepare, or cause to be prepared, a Preliminary Official Statement and an Official Statement or other offering document for use in the offering and sale of the Bonds, such Preliminary Official Statement and Official Statement or other offering document to be in such form and contain such information as may be approved by the Treasurer and/or Finance Director, and that the distribution of the Preliminary Official Statement and the Official Statement or other offering document in the name of and on behalf of the City in connection with offering the Bonds be and hereby is approved.

13. **THAT** the Director of Finance be and hereby is authorized to approve the Company’s selection of the underwriter, trustee and remarketing agent for the Bonds and the Director of Finance of the City be and hereby is authorized and empowered to execute and deliver such contracts or agreements as may be necessary or appropriate in connection therewith.

14. **THAT** the Director of Finance be and hereby is authorized and directed to covenant and certify on behalf of the City that no part of the proceeds of the issue and sale of the Bonds authorized to be issued hereunder shall be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause such notes to be “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended.

15. **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 Bonds and notes, that the City will file any required reports and take any other action that may be necessary to insure that interest on the Bonds and notes will remain exempt from federal income taxation, and that the City will refrain from any action that would cause interest on the Bonds and notes to be subject to federal income taxation.

16. THAT the term “cost” or “costs” as used herein and applied to the Projects, 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, design, feasibility studies, legal and other professional services associated with the Project; (9) the cost of environmental studies and assessments; and (10) the cost of financing charges and issuance costs, including premiums for insurance, letter of credit fees, interest prior to and during construction, underwriters' fees and costs, legal and accounting fees and costs, application fees, and other fees and expenses relating to the financing transaction;.

17. THAT the Mayor, Director of Finance 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 other acts and things as may be necessary or desirable in order to effect the issuance, sale and delivery of the Bonds.

18. THAT if the Mayor, the Director of Finance or Clerk are for any reason unavailable to approve and execute the Bonds or any of the Bond Documents, the person or persons then acting in any such capacity whether as an assistant, a deputy, as the “acting” official or otherwise, are each individually authorized to act for such official with the same force and effect as if such official had herself or himself performed such act.

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

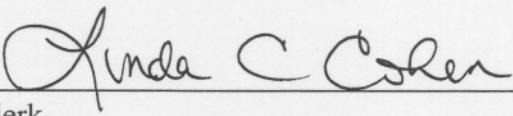
20. THAT, the Bond Documents and each agreement, contract, certificate or document executed pursuant to the foregoing resolution and any action taken or not taken by the City pursuant to the foregoing resolution or pursuant to the Bond Documents or any such agreement, contract, certificate or documents executed pursuant to this resolution shall not create or constitute a debt or liability of the Issuer or a pledge of its faith or credit or directly or indirectly obligate the Issuer to expend any funds of the Issuer or levy or pledge any form of taxation or to make any appropriation for payment.

21. **THAT** during the term of the Bonds, all authority granted pursuant to these resolves shall be, remain and continue, in full force and effect without the necessity of any further action of the City Council.

22. **THAT** the Company shall pay any expenses incurred by the City with respect to the issuance of the Bonds and shall further agree to indemnify the City with respect thereto, all as more particularly described in the Inducement Resolution and the Inducement Agreement dated March 6, 2006 between the City and the Company.

Duly adopted on July 16, 2007.

Attest:



Clerk