

RESOLUTION NO. 21-2003

"RESOLUTION RELATING TO THE REISSUANCE OF \$945,000 OF THE PRIVATE SCHOOL FACILITY REVENUE BONDS (ASSUMPTION HIGH SCHOOL PROJECT) SERIES 1998 OF BUFFALO, IOWA AND APPROVING AND AUTHORIZING AN AMENDMENT TO THE BONDS AND THE EXECUTION AND DELIVERY OF A FIRST SUPPLEMENTAL TRUST INDENTURE; AND RELATED MATTERS."

WHEREAS, the City of Buffalo, Iowa (the "Issuer"), is a municipal corporation and political subdivision organized and existing under the Constitution and laws of the State of Iowa, and is empowered by the provisions of Chapter 419 of the Code of Iowa, 2004, as amended (the "Act") to issue revenue bonds and to loan the proceeds to one or more parties to be used to pay the cost of acquiring, constructing, improving and equipping a "project", as that term is defined in the Act, including land, buildings, and improvements suitable for use as a facility for an organization described in Section 501(c)(3) of the Internal Revenue Code which is exempt from federal income tax under Section 501(a) of the Internal Revenue Code (the "Tax Exempt Organization") and to retire any existing indebtedness on a facility for a Tax Exempt Organization; and;

WHEREAS, Assumption High School, an Iowa nonprofit corporation (the "Borrower") has provided for the (i) roof and window replacement, heating and cooling system upgrades and other energy improvements at the existing high school facility located at 1020 W. Central Park Avenue in Davenport, Iowa (the "Project"), (ii) refinancing existing loans, the proceeds of which were used for roof and systems upgrades at the existing high school and (iii) paying related costs, including costs of issuance of the Bonds (the "Project") within the boundaries of the Issuer; and

WHEREAS, to provide financing for the Project, the Issuer has previously issued its Private School Facility Revenue Bonds (Assumption High School Project) (the "Bonds") in the original principal amount of \$1,295,000 and has loaned the proceeds of the Bonds to the Borrower pursuant to the provisions of a Loan Agreement dated as of December 1, 1998 between the Issuer and the Borrower (the "Loan Agreement"), the obligation of which is sufficient to pay the principal of, redemption premium, if any, and interest on the Bonds as and when the same shall be due and payable; and

WHEREAS, in connection with the issuance of the Bonds, the Issuer entered into an Indenture of Trust dated as of December 1, 1998 (the "Original Indenture") by and between the Issuer and Quad City Bank & Trust Company (the "Trustee"); and

WHEREAS, the Bonds identified by Cusip No. 119569 AB7 (the "Relevant Bonds") currently provide for an interest rate of 5.375% per annum; and

WHEREAS, the Trustee has agreed to a decrease in the interest rate on the Relevant Bonds to the rate of 4.58% per annum, and the Issuer and the Trustee have been requested by the

Borrower to amend the Original Indenture and the Bonds to provide for such interest rate reduction pursuant to a First Supplemental Trust Indenture (the "First Supplemental Indenture") by and between the Issuer and the Trustee; and

WHEREAS, Section 11.02 of the Original Indenture permits the Trustee and the Issuer, with the consent of Bondholders, to enter into such First Supplemental Indenture, and the Bondholders have expressed their willingness to consent to the First Supplemental Indenture, as shall be evidenced by their signed consents attached thereto; and

WHEREAS, it is deemed necessary and advisable that the Issuer authorize the amendment to the Bonds and the execution and delivery of the First Supplemental Indenture, and the substitution of a revised Page 1 of the Relevant Bonds to reflect the terms of the Relevant Bonds as amended.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Buffalo, Iowa as follows:

Section 1. Approval and Authorization. That it is hereby determined that it is necessary and advisable that the Issuer approve the documents and transactions described in this Resolution.

Section 2. Authorization of First Supplemental Indenture. That the form and content of the First Supplemental Indenture between the Issuer and the Trustee, a copy of which is on file with the Issuer, the provisions of which are incorporated herein by reference, be and the same hereby are in all respects authorized, approved and confirmed, that the Mayor and the City Clerk of the Issuer be and they hereby are authorized, empowered and directed to execute, attest, seal and deliver the First Supplemental Indenture for and on behalf of the Issuer, including necessary counterparts, in substantially the form and content now before this meeting, but with such changes, modifications, additions or deletions therein as shall to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all changes, modifications, additions or deletions therein from the form and content of the First Supplemental Indenture now before this meeting, and that from and after the execution and delivery of the First Supplemental Indenture the Mayor and City Clerk of the Issuer are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the First Supplemental Indenture as executed.

Section 3. Authorization of Substitution of New Bonds. The decrease in the interest rate on the Relevant Bonds to the rate of 4.58% per annum, is hereby authorized. It is hereby authorized that a revised Page 1 of the Relevant Bonds shall be prepared and be delivered to the Trustee for substitution in the Relevant Bonds in order to carry out and reflect the amendment to the Bonds.

Section 4. Reissuance; Bank Qualification. The Bonds, as a result of the decrease in interest rate, will be treated as being "reissued" on the date of such modification to the Bonds. For purposes of Section 265(b)(3) of the Internal Revenue Code, \$945,000, the principal amount of the Bonds presently outstanding, will be treated as having been issued during this calendar year. In order to qualify the Bonds as "qualified tax exempt obligations" within the meaning of Section 265(b)(3) of the Code, the Issuer hereby makes the following factual statements and representations:

(A) The Issuer hereby designates the Bonds as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code;

(B) The reasonably anticipated amount of tax-exempt obligations (other than obligations described in clause (ii) of Section 265(b)(3)(c) of the Code) which will be issued by the Issuer (and all entities whose obligations will be aggregated with those of the Issuer) during this calendar year 2004 will not exceed \$10,000,000; and

(C) Not more than \$10,000,000 of obligations issued by the Issuer during this calendar year 2004 have been designated for purposes of Section 265(b)(3) of the Code.

The Issuer shall use its best efforts to comply with any federal procedural requirements which may apply in order to effectuate the designation made by this paragraph.

Section 5. Miscellaneous. The Mayor and City Clerk are hereby authorized and directed to execute, attest, seal, and deliver any and all additional certificates, documents, opinions or other papers and perform all other acts necessary or appropriate to effect the First Supplemental Indenture, amendment to the Bonds and substitution of a revised Page 1 of each of the Relevant Bonds, and to carry out the intent and purpose of this Resolution, including the preamble hereto.

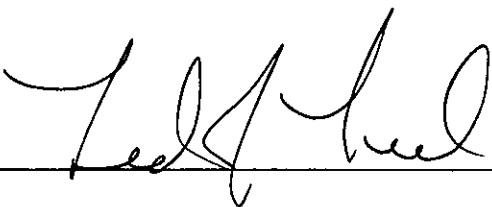
Section 6. Severability. The provisions of this Resolution are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not effect the validity of the remainder of the sections, phrases and provisions.

Section 7. Repealer. All resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict; provided, however, except to the extent of such conflict and as provided herein, all provisions of prior resolutions of the City Council, and all provisions of the Loan Agreement and the Bond, and the respective obligations of the parties thereunder shall remain unchanged and in full force and effect.

Section 8. Effective Date. This Resolution shall become effective immediately upon its passage and approval.


Passed this 05 day of January, 2004.

CITY OF BUFFALO, IOWA

(SEAL) 

Mayor

Attest:



City Clerk

CERTIFICATE

I, the undersigned, being first duly sworn do hereby depose and certify that I am the duly appointed, qualified, and acting City Clerk of Buffalo, Iowa; that as such I have in my possession, or have access to, the complete corporate records of said City and of its City Council and officers; that I have carefully compared the transcript hereto attached with the aforesaid corporate records; and that said transcript hereto attached is a true, correct and complete copy of all the corporate records showing the action taken by the City Council of said City at a meeting open to the public on January 5, 2004, for the purpose of considering a resolution relating to the reissuance of the City's Private School Facility Revenue Bonds (Assumption High School Project), Series 1998, of Buffalo, Iowa and approving and authorizing an amendment to the Bonds and the execution and delivery of a First Supplemental Trust Indenture; and related matters; that said proceedings remain in full force and effect and have not been amended or rescinded in any way; that said meeting and all action thereat was duly and publicly held, with members of the public in attendance, in accordance with a notice of meeting and tentative agenda, a copy of which was timely served on each member of the City Council and posted on a bulletin board or other prominent place easily accessible to the public and clearly designated for that purpose at the principal office of the City Council (a copy of the face sheet of said agenda being attached hereto) pursuant to the local rules of the City Council and the provisions of Chapter 21, Iowa Code, and upon reasonable advance notice to the public and media at least 24 hours prior to the commencement of the meeting as required by said law.

Witness my hand and the Corporate Seal of said City hereto affixed this 15 day of January, 2004.

(Seal)

Carol A. Sennauer
City Clerk

(This Notice to be Posted)

NOTICE AND CALL OF MEETING

Governmental Body: The City Council of
Buffalo, Iowa

Date of Meeting: January 5, 2004

Time of Meeting: _____ . m.

Place of Meeting: City Hall
Buffalo, Iowa

PUBLIC NOTICE IS HEREBY GIVEN that the above-mentioned governmental body will meet at the date, time and place above set out. The tentative agenda for said meeting is as follows:

1. Resolution relating to the reissuance of \$945,000 of the Private School Facility Revenue Bonds (Assumption High School Project), Series 1998, of Buffalo, Iowa and approving and authorizing an amendment to the Bonds and the execution and delivery of a First Supplemental Trust Indenture; and related matters.
2. Such additional matters as are set forth on the additional _____ page(s) attached hereto (attach copy of agenda).

This notice is given at the direction of the Mayor, pursuant to Chapter 21, Iowa Code, as amended, and the local rules of said governmental body.

City Clerk

FIRST SUPPLEMENTAL TRUST INDENTURE

THIS FIRST SUPPLEMENTAL TRUST INDENTURE (the "First Supplemental Indenture"), dated as of January 1, 2004, by and between the City of Buffalo, Iowa, a municipal corporation duly organized and existing under the laws of the State of Iowa (the "Issuer"), and Quad City Bank & Trust Company (the "Trustee"), a banking corporation organized under the laws of the State of Iowa with its principal office located in Buffalo, Iowa, supplementing and amending that certain Indenture of Trust dated as of December 1, 1998 (the "Original Indenture" and as supplemented by this First Supplemental Indenture, the "Indenture"), by and between the Issuer and the Trustee. Capitalized terms not defined herein shall have those meanings assigned to them in the Original Indenture and the Loan Agreement, defined herein.

WITNESSETH:

WHEREAS, the Issuer and the Trustee have previously entered into the Original Indenture in connection with the issuance and delivery of the Issuer's Private School Facility Revenue Bonds (Assumption High School Project) Series 1998 in the principal amount of \$1,295,000 (the "Bonds") the proceeds of which were loaned by the Issuer to Assumption High School (the "Borrower"), pursuant to a Loan Agreement between the Issuer and the Borrower (the "Loan Agreement"), dated as of December 1, 1998; and

WHEREAS, the Bonds identified by Cusip No. 119569 AB7 (the "Relevant Bonds") currently provide for an interest rate of 5.375% per annum; and

WHEREAS, at the request, and pursuant to the representations of the Borrower, Buffalo Savings Bank and Quad City Bank & Trust Company as bondholders (the "Bondholders") and the Borrower have agreed to a decrease in the interest rate on the Relevant Bonds to the rate of 4.58% per annum, and

WHEREAS, the Issuer and the Trustee have been requested by the Borrower to amend the Original Indenture to provide for the interest rate reduction on the Relevant Bonds; and

WHEREAS, Section 11.02 of the Original Indenture permits the Trustee and the Issuer, with the consent of Bondholders, to enter into such Supplemental Indenture and the Bondholders have consented to this First Supplemental Indenture, as evidenced by their signed consents attached hereto; and

WHEREAS, Treasury Regulation Section 1.1001-3(e)(2)(ii) allows a change in the annual yield of an instrument so long as the modified yield does not vary from the annual yield as unmodified (determined as of the date of the modification) by more than the greater of: (a) 25 basis points; or (b) 5% of the annual yield as unmodified; and

WHEREAS, as the modified annual yield on the Bonds exceeds the parameters of Treasury Regulation Section 1.1001-3(e)(2)(ii), the Bonds will be treated as being "reissued" for federal tax purposes.

WHEREAS, consistent with the terms of the Original Indenture, and in order to allow for the interest rate reduction on the Relevant Bonds, the Borrower and the Trustee desire to supplement and amend the Original Indenture as provided herein; and

WHEREAS, the Borrower has requested that the Issuer execute this First Supplemental Trust Indenture, and based upon the Borrower's representations and request the Issuer has executed this First Supplemental Indenture.

NOW, THEREFORE, THIS FIRST SUPPLEMENTAL INDENTURE WITNESSETH, in order to allow for the interest rate reduction on the Relevant Bonds, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Issuer and the Trustee do hereby agree that the Original Indenture shall be amended and supplemented as follows:

Section 1. Amendment to Section 2.02 of the Original Indenture. The description of the \$945,000 Term Bond bearing interest at the rate of 5.375% and maturing on October 1, 2014 as it appears in Section 2.02 of the Original Indenture is hereby amended by reducing the interest rate on such Term Bond from 5.375% to 4.58%.

Section 2. Amendment to Bonds. The Bonds, the form of which is attached to the Original Indenture as Exhibit A, are hereby modified by providing for a decrease in the interest rate on the Relevant Bonds to the rate of 4.58% per annum. A new first page of each of the Relevant Bonds reflecting such amendment is attached hereto and is delivered to the Trustee for substitution in the original Relevant Bonds.

Section 3. Authorization. Except as otherwise provided in this First Supplemental Indenture, the provisions of the Original Indenture are hereby ratified, approved and confirmed. This First Supplemental Indenture shall be construed as having been authorized, executed and delivered under the provisions of Article XI of the Original Indenture.

Section 4. Representations. The Trustee hereby represents and warrants to the Issuer that its representations set forth in the Original Indenture are correct on and as of the date hereof as if made on and as of said date and as if each reference therein to the Indenture were referenced to the Indenture as amended by this First Supplemental Indenture.

Section 5. Original Indenture Provisions. Except as hereinbefore provided, all of the covenants, agreements and provisions of the Original Indenture shall be construed with and are a part of this First Supplemental Indenture and vice versa, to the same extent as if incorporated verbatim herein or therein, and shall be fully enforceable in the manner provided in the Original Indenture by and for the Trustee and the Bondholders.

COPY

Section 6. Counterparts. This First Supplemental Indenture may be simultaneously executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.