

ZANESVILLE BOARD OF EDUCATION SPECIAL BOARD MEETING

February 12, 2009

Mrs. Stewart called the meeting to order @ 8:00 a.m. Those answering roll call: Mr. Bunting, Mr. Eppley, Mrs. Hoffer, Mrs. Stewart, Mr. Swope. Also present were Mr. Martin and Ms. Nye.

Reading of Notice

The purpose of the special board meeting is to (#1) approve resolutions necessary for our construction project, (#2) approve a resolution determining to proceed with the submission to the electors of Zanesville City School District the question of the renewal of an existing \$1,438,952 emergency tax levy, pursuant to sections 5705.194 through 5705.197 of the Revised Code and (#3) any other business which may lawfully be considered at that meeting.

#09-039 A Resolution Determining To Proceed With The Submission To The Electors Of Zanesville City School District The Question Of The Renewal Of An Existing \$1,438,952 Emergency Tax Levy, Pursuant To Sections 5705.194 Through 5705.197 Of The Revised Code.

Mrs. Hoffer moved and Mr. Eppley seconded to approve the following resolution;

WHEREAS, on January 15, 2009, this Board adopted a resolution declaring it necessary to submit to the electors of the District the question of the renewal of an existing tax levy in excess of the ten-mill limitation, as described below, a copy of which resolution was certified to the Muskingum County Auditor; and

WHEREAS, that County Auditor has certified to this Board that the total tax (assessed) valuation of the District is \$387,289,550 and that the estimated annual tax levy required throughout the life of the proposed levy to produce the annual amount of \$1,438,952 as set forth in that resolution, calculated in the manner provided by Section 5705.195 of the Revised Code, is 3.42 mills for each one dollar of valuation, which amounts to 34.2 cents for each one hundred dollars of valuation;

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of the Zanesville City School District, County of Muskingum, State of Ohio, that:

Section 1. This Board hereby determines to proceed with the submission to the electors at an election to be held on May 5, 2009, of the question of the renewal of an existing tax levy in excess of the ten-mill limitation (commencing with a levy on the tax list and duplicate for the year 2009 to be first distributed to the Board in calendar year 2010) in order to raise the amount of \$1,438,952 each year for five years for the purpose of providing for the emergency requirements of this District, at the annual tax rate as is necessary to raise that amount, which rate is currently estimated by the Muskingum County Auditor to be 3.42 mills for each one dollar of valuation, which amounts to 34.2 cents for each one hundred dollars of valuation.

Section 2. The Treasurer is authorized and directed to certify to the Muskingum County Board of Elections copies of this resolution and the resolution of this Board and certificate of the County Auditor referred to in the preambles hereto, on or before February 19, 2009. This Board hereby requests that the Board of Elections give timely notice, prepare the ballots, and make other necessary arrangements for the submission of this question to the electors of this District, all in accordance with law.

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Section 3. It is hereby found and determined that all formal actions of this Board and of any of its committees concerning and relating to the adoption of this resolution were adopted in an open meeting of this Board, and that all deliberations of this Board and of any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 4. This resolution shall be in full force and effect from and immediately upon its adoption. Those voting aye : Mr. Bunting, Mr. Eppley, Mrs. Hoffer, Mrs. Stewart, Mr. Swope. President declared motion carried.

#09-040 A Resolution Declaring A Single Source For The New School Buildings

Mr. Bunting moved and Mr. Swope seconded to approve the following resolution;

WHEREAS, Section 3313.46 of the Revised Code requires boards of education to advertise for bids for a period of two weeks when they determine to make certain improvements to school buildings, the cost of which will exceed \$25,000, and to award contracts to the lowest responsible bidders, except in cases of urgent necessity; and

WHEREAS, the District is performing certain facilities improvements including the construction of a new High School and two elementary schools; and

WHEREAS, the Board has been advised that only one telephone system, telephone switches and network vendor (CISCO) exist for the new school building to match those installed in the ELPP building phase;

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of the Zanesville City School District, Muskingum County, Ohio, that:

Section 1. Finding of Single Source Necessity. For the aforesaid reasons, this Board hereby finds, determines and declares that a single source exists with respect to the new building telephone system, telephone switches and network, that compliance with the relatively lengthy procedures prescribed by Section 3313.46 of the Revised Code could compromise the educational integrity and mission of the District, and that said Section 3313.46 does not apply to the contract approved in Section 2 herein.

Section 2. Approval of Contract. The President or Vice-President and Treasurer of this Board and the Superintendent, each and all, are hereby authorized and directed to enter into a contract for such telephone system, telephone switches and network, and to take all other actions necessary and appropriate to carry out the work in accordance with the intentions of this Board as expressed in this Resolution.

Section 3. Prior Acts Ratified and Confirmed. Any actions previously taken by School District officials or agents of this Board in furtherance of the matters set forth in this Resolution are hereby approved, ratified and confirmed.

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Section 4. Compliance with Open Meeting Requirements. This Board finds and determines that all formal actions of this Board and any of its committees concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Board or committees, and that all deliberations of this Board and any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 5. Captions and Headings. The captions and headings in this Resolution are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof.

Section 6. Effective Date. This Resolution shall be in full force and effect from and immediately upon its adoption.

Those voting aye: Mr. Eppley, Mrs. Hoffer, Mrs. Stewart, Mr. Swope, Mr. Bunting. President declared motion carried.

#09-041 A Resolution Accepting The Lowest Responsible And Responsive Bid Of Microman, Inc. For The District Wide Technology Contract In Connection With The School District's Ohio School Facilities Commission Project

Mr. Eppley moved Mr. Bunting seconded to approve the following resolution;

WHEREAS, pursuant to Sections 3313.46 and 3318.10 of the Revised Code, after advertising for bids for a period of two or more weeks, this Board received competitive bids for the District Wide Technology contract in connection with the School District's Ohio School Facilities Commission Project (the "Project"); and

WHEREAS, The Quandel Group, Inc., Construction Manager for the Project, has prepared a revised estimate of the basic Project costs based on the lowest responsible and responsive bid received; and

WHEREAS, the Construction Manager, and Stubbs, Addis, Schappa, McDonald Architects, Ltd., Architect for the Project, have recommended the award of the bid package referenced in the heading of this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of the Zanesville City School District, Muskingum County, Ohio, that:

Section 1. Award of Contract. The bid of Microman, Inc., in the amount of \$2,941,518 (Base Bid of \$2,791,318, Alternate Bid #1 of \$49,700, Alternate Bid #2 of \$49,700, and Alternate Bid #3 of \$100,500) is determined to be the lowest responsible and responsive bid for the work described above and is accepted by this Board, subject to the approval of the Ohio School Facilities Commission (the "Commission").

Section 2. Notification to Successful Bidder. The Treasurer is authorized and directed to give written notice of the acceptance to the successful bidder at the address specified on the bid form submitted by that bidder.

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Section 3. Return of Bid Security to Unsuccessful Bidders. The Treasurer is authorized and directed to return the bid guaranty submitted by each unsuccessful bidder to such bidder.

Section 4. Approval of Contract. The President or Vice-President, Superintendent and Treasurer of this Board are authorized and directed to execute, on behalf of this Board, a contract with the successful bidder substantially in the form set forth in the Project Manual. That contract is approved, together with any changes or amendments that are not inconsistent with this Resolution and not substantially adverse to the School District and that are approved by the Treasurer on behalf of the School District, all of which shall be conclusively evidenced by the signing of the contract or amendments to the contract by the President or Vice-President, Superintendent and Treasurer of this Board.

Section 5. Prior Acts Ratified and Confirmed. Any actions previously taken by School District officials or agents of this Board in furtherance of the matters set forth in this Resolution are hereby approved, ratified and confirmed.

Section 6. Certification and Delivery of Resolution. The Treasurer is directed to deliver or cause to be delivered a certified copy of this Resolution to the Commission.

Section 7. Compliance with Open Meeting Requirements. This Board finds and determines that all formal actions of this Board and any of its committees concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Board or committees, and that all deliberations of this Board and any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 8. Captions and Headings. The captions and headings in this Resolution are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof.

Section 9. Effective Date. This Resolution shall be in full force and effect from and immediately upon its adoption.

Those voting aye: Mrs. Hoffer, Mrs. Stewart, Mr. Swope, Mr. Bunting, Mr. Eppley. President declared motion carried.

#09-042 Approval Of Construction Escrow Agreement

Mrs. Hoffer moved and Mr. Swope seconded to approve the following construction Escrow Agreement with Huntington Bank:

CONSTRUCTION CONTRACT RETAINAGE ESCROW AGREEMENT

This Construction Contract Retainage Escrow Agreement (this "Agreement") is dated as of _____, 2009 between the Board of Education of the Zanesville City School District, Ohio (the "Owner"), with a mailing address of 160 N. 4th Street, Zanesville, Ohio 43701, Attention: Treasurer, and The Huntington

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National Bank (the "Escrow Agent"), with a mailing address of _____, related to the Owner's facilities improvement project.

- (1) In accordance with certain contracts entered into between the Owner and the various Contractors (the "Contractors") set forth in one or more Consent to Designation of Escrow Agent, a copy of which is attached hereto as **Exhibit A**, in connection with the Owner's facilities improvement project, Escrow Agent agrees to its appointment as escrow agent to hold the funds for Contractors being delivered to the Escrow Agent by the Owner herewith in compliance with Owner's obligations set forth in Ohio Revised Code Sections 153.13, 153.14 and 153.63 and the General Condition ("Escrow Funds"). The Escrow Agent hereby accepts such appointment.
- (2) During the time the aforementioned funds are in the custody of the Escrow Agent, the Owner shall direct in writing the Escrow Agent in regards to investing in the classes of securities listed below.
 - (a) Certificates of Deposit of Banks having assets of \$250,000,000.00 or more, including those of the Escrow Agent's own bank.
 - (b) Treasury offerings of the United States Government and its agencies.
 - (c) Commercial accounts payable or withdrawable, in whole or in part, on demand or negotiable order of withdrawal accounts with commercial banks or savings and loan associations which would qualify as ORC 135.03 depositories.
 - (d) Money Market Mutual Funds, including funds sponsored by an affiliate of the Escrow Agent, the assets of which exclusively consist of any of the securities described in Section (2)(b) herein.
- (3) All earnings or other income received from such investment and reinvestment, less losses, if any, incurred on such investment and reinvestment, shall be added to the Escrow Funds and shall be disbursed as part of the Escrow Funds in accordance with Section (4) hereof. Escrow Agent shall provide Owner with a monthly statement accounting for principal and interest.
- (4) The Escrow Funds shall be held by the Escrow Agent and not disbursed until one of the following events has occurred, in which event the Escrow Agent is authorized and directed to disburse the Escrow Funds, or a portion thereof, in the manner indicated:
 - (a) As soon as practicable after receipt of written notice in the form of **Exhibit B** attached hereto and signed by the Owner and individual Contractors set forth in the Consent to Designation of Escrow Agent indicating that such Contractor's contract has been completed ("Completion Certificate") and specifying the amount of the Escrow Funds to be released and the person to whom such funds are to be released.
 - (b) As soon as practicable after receipt of an arbitration order or an order of a court with appropriate jurisdiction, specifying the amount of the Escrow Funds to be released and the person to whom the Escrow Funds are to be released ("Order").
 - (c) As soon as practicable after receipt of a written certificate signed by the Owner ("Owner Certificate") stating that either (i) a Contractor is in default or has breached its contract

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with the Owner and has not cured such violation to the Owner's satisfaction within thirty (30) days of written notice to such Contractor; or (ii) that a Contractor cannot be located and requesting the Escrow Funds be returned to the Owner. The Escrow Agent may reasonably request such other certifications, representations or legal opinions as it deems necessary to comply with such written request. Once such Escrow Funds are returned to the Owner pursuant to such request, the Escrow Agent shall have no duty or responsibility regarding such Escrow Funds.

Within 30 days of receipt by the Escrow Agent of a Completion Certificate, Order or Owner Certificate, the Escrow Agent shall pay the specified amount of Escrow Funds and a proportionate amount of the accrued income, less any applicable Escrow Agent fees and expenses, to the person so indicated in such Completion Certificate, Order or Owner Certificate. In no event shall the Escrow Agent be required to take any action under this Section 4 until it shall have received proper written notification in the form of either a Completion Certificate, an Order or an Owner Certificate.

- (5) The Escrow Agent's ordinary compensation for its services under this Agreement shall be fixed in the amount of fifteen per-cent (15%) of income earned on the Escrow Funds, payable monthly, prorated among all accounts making up such Escrow Funds. In case any action or proceeding is brought against the Escrow Agent, the Owner shall have the right to assume the defense of the action or proceeding. At its own expense, the Escrow Agent may employ separate counsel and participate in the defense.
- (6) The Escrow Agent may resign and be discharged from its duties and obligations hereunder by giving thirty (30) days written notice to the Owner and the Contractors. Upon any such resignation of the Escrow Agent, the Owner shall appoint a successor Escrow Agent who shall have all rights of an Escrow Agent hereunder and be bound by the provisions hereof. The Escrow Agent shall deliver the Escrow Funds in its possession at the time to the successor Escrow Agent so appointed.
- (7) The Escrow Agent undertakes to perform only such duties as are expressly set forth herein and shall not be subject to, nor have liability or responsibility under, nor be obligated to recognize any other agreement between or directions or instructions of any of the parties hereto or any other person in carrying out Escrow Agent's duties hereunder, except for written directions or notices delivered to the Escrow Agent in accordance with Section 4 of this Agreement. The Escrow Agent's duties and obligations are purely ministerial in nature, and nothing herein shall be construed to give rise to any fiduciary obligations of the Escrow Agent.
- (8) The Owner and the Contractors shall furnish the Escrow Agent with a list of persons authorized to act on their behalf, together with specimen signatures of such persons. The Escrow Agent may rely upon any written Completion Certificate, Owner Certificate, notice, instruction or request furnished to it hereunder and reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent may act in reliance upon the reasonable advice of counsel satisfactory to it in reference to any matter connected with its obligations hereunder and shall not incur any liability for any action taken in accordance with such advice.
- (9) The Escrow Agent shall not be responsible for any act or failure to act hereunder except in the case of its negligence or willful misconduct.

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- (10) In case of any dispute regarding this Agreement, the Escrow Agent shall not be required to institute legal proceedings of any kind and shall be entitled to deposit the Escrow Fund with any court of competent jurisdiction and thenceforth be relieved of any further duty or responsibility hereunder.
- (11) If all or part of the Escrow Funds held by the Escrow Agent hereunder shall be attached, garnished or levied upon under any order of court, or if the delivery thereof shall be stayed or enjoined by any order of court, or if any other writ, order, judgment, or decree shall be made or entered by any court affecting the Escrow Funds or any part thereof, the writ, order, judgment, or decree so entered or issued, whether with or without jurisdiction, and in case Escrow Agent obeys and complies with any such writ, order judgment, or decree, Escrow Agent shall not be liable to the Owner or the Contractors, their successors, or assigns, notwithstanding that such writ, order, judgment or decree be subsequently reversed, modified, annulled, set aside, or vacated.
- (12) In the event that the bank acting as Escrow Agent merges or consolidates with another bank or sells or transfers all or substantially all of its assets or trust business, then the successor or resulting bank shall be the Escrow Agent hereunder without the necessity of further action or the execution of any document, so long as such successor or resulting bank meets the requirements of a successor escrow agent hereunder.
- (13) All escrow accounts which are held by the Escrow Agent shall be made available for audit by the Auditor of the State of Ohio during normal business hours of the Escrow Agent.
- (14) This Agreement shall terminate and be of no further force and effect on the date when all monies comprising the Escrow Funds have been disbursed in accordance with the terms hereof.
- (15) This Agreement may be amended, modified or supplemented only by a writing signed by each of the parties, and any such amendment shall be effective only to the extent specifically set forth in such writing.
- (16) This Agreement may be executed in any number of counterparts, and by each of the parties on separate counterparts, each of which, when so executed, shall be deemed an original, but all of which shall constitute but one and the same instrument.
- (17) This Agreement shall be a contract under the laws of the State of Ohio and for all purposes shall be governed by and construed and enforced in accordance with the laws of said State.
- (18) Any litigation arising out of or relating in any way to this Agreement or the performance hereunder shall be brought only in the courts of Ohio, and the parties hereto hereby irrevocably consent to such jurisdiction.
- (19) Notice from one of the parties to the other under this Agreement will be sufficient for the purpose if it is contained in a writing mailed by first class mail postage prepaid and is actually received by the intended recipient at the address initially set forth in this Agreement or to any other address which may be designated from time to time by either party in writing delivered to the other party or via e-mail or facsimile transmission.

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(20) Escrow Agent hereby warrants and represents that neither it nor any person, company, affiliated group or organization that holds, owns or otherwise has a controlling interest in Escrow Agent has provided material assistance to an organization listed on the United States Department of State Terrorist exclusion list. Escrow Agent acknowledges receipt of a current version of the U.S. Department of State Terrorist exclusion list, and Escrow Agent shall provide to Customer a fully completed and executed Declaration Regarding Material Assistance/Nonassistance to a Terrorist Organization.

IN WITNESS WHEREOF; the parties hereto executed this agreement on the date and year first above written.

Board of Education of the Zanesville City School District
("Owner")

By: _____
Title: President, Board of Education

Date: _____

By: _____

Title: Treasurer, Board of Education

Date: _____

The Huntington National Bank
("Escrow Agent")

By _____

Title _____

Date: _____

EXHIBIT A

Consent to Designation of Escrow Agent

Contractor: _____

Address: _____

Tax ID No.: _____

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I have read the Construction Contract Retainage Escrow Agreement dated as of _____, 2009 between the Board of Education of the Zanesville City School District as Owner and The Huntington National Bank as Escrow Agent, and I agree to the designation of The Huntington National Bank as the Escrow Agent and the terms of the Construction Contract Retainage Escrow Agreement.

Signature of Contractor Authorized Representative

Title

Date: _____

Contract No.: _____

EXHIBIT B

Form of Completion Certificate

To: The Huntington National Bank, Escrow Agent under the Construction Contract Retainage Escrow Agreement dated _____, 2009 between the Board of Education of Zanesville City School District, Ohio (the "Owner"), and The Huntington National Bank

From: Owner and Contractor, as indicated below

The Owner, and the Contractor indicated below, each hereby certify that the Contractor's contract has been completed and the Escrow Funds indicated below are to be released to the Contractor in accordance with the terms of the Construction Contract Retainage Escrow Agreement.

OWNER:

Printed Name and Title of Authorized Owner Representative: _____

Signature of Authorized Owner Representative: _____

Date: _____

CONTRACTOR:

Name of Contractor: _____

Printed Name and Title of Authorized Contractor Representative: _____

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Signature of Authorized Contractor Representative: _____

Date: _____

Tax ID No.: _____

Contract No.: _____

**Retainage Escrow
Deposit Amount
To be Released:** _____

Those voting aye: Mrs. Stewart, Mr. Swope, Mr. Bunting, Mr. Eppley, Mrs. Hoffer. President declared motion carried.

#09-043 Adjournment

Mr. Swope moved and Mrs. Hoffer seconded that the special meeting be adjourned @ 8:30 a.m. Those answering roll call: Mr. Swope, Mr. Bunting, MR. Eppley, Mrs. Hoffer, Mrs. Stewart. President declared motion carried.

President

Treasurer