

# FOR BOARD ACTION

Agenda Item # 5

Meeting Date:

3/30/04

**SUBJECT:**

MMUA Municipal Bond Pool

**PREPARED BY:**

Larry Koshire, General Manager

ITEM DESCRIPTION:

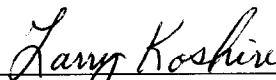
For a number of years, the Minnesota Municipal Utilities Association (MMUA) Board has been evaluating the concept of a municipal bond pool. Municipal bond pools are used in other states, and provide benefits to those that participate through lower issuance and rate costs.

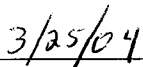
MMUA is in the process of setting up the necessary documentation, and creation of a pool using the joint venture legislation to get the program off the ground. I have attached a copy of a summary sheet of the MMUA proposed finance program and the articles of incorporation that are proposed under the title of "Midwest Consortium of Municipal Utilities." Under separate cover, I have also provided the Board with a copy of a recent Power Point presentation to the MMUA membership describing the program and providing an example of issuance costs and savings under the MMUA program.

At the March 30 Board meeting, we will have a representative from MMUA present to make a brief presentation on the program and answer any questions that the Board may have. Joining the pool program does not commit a utility to any financing; however, it does provide an attractive option should financing be needed in the future. RPU may have that need through projects and capital needs that it is incurring on an ongoing basis for both the water and electric utilities. Therefore, the bond pool is an attractive and low cost option for the Board to consider. Should the Board desire to evaluate the program further, we would provide additional information and return possibly at the April meeting for action on the part of the Board. This information is also being directed to the City Director of Finance for his comments and review.

UTILITY BOARD ACTION REQUESTED:

No action required. This is a discussion item.

  
\_\_\_\_\_  
General Manager

  
\_\_\_\_\_  
Date

**ROCHESTER PUBLIC UTILITIES**



## MMUA Finance Program

To assist municipal electric, water and wastewater utilities throughout the State of Minnesota, the Minnesota Municipal Utilities Association is developing a program to provide low-cost financing to its members. Bonds will be issued by the Midwest Consortium of Municipal Utilities, a nonprofit organization being created by MMUA members. The bond proceeds will fund the financing program, from which individual members can then borrow within one year after the bond issue date (expected to be in June 2004). Both tax-exempt and taxable financing will be available.

The MMUA Finance Program will make municipal utility financing more affordable and easy and have a number of attractive features, including:

- Flexible amounts from \$200,000 or less to \$10 million or more
- Terms up to 30 years
- Flexible repayment
- No prepayment penalty
- Fixed or variable rates
- Simple application
- Low transaction costs
- Insulation of city from risk of bond pool default
- Borrowing through loans or leases

The MMUA Financing Program takes advantage of the economies of scale offered through pooled financing, which allows municipal utilities to:

- Reduce individual cities' transaction costs by sharing bond issuance costs
- Participate in bond issues of sufficient size to achieve the lowest cost of borrowing through favorable pricing

Funds will be available for municipal utility purposes, including:

- New construction
- Equipment
- Refinancing of existing debt

For additional information on the MMUA Finance Program, contact MMUA at 800-422-0119.

**ARTICLES OF INCORPORATION  
OF  
MIDWEST CONSORTIUM OF MUNICIPAL UTILITIES**

**THE UNDERSIGNED**, being of full age, for purposes of forming a corporation under Chapter 317A of the Minnesota Statutes, known as the Minnesota Nonprofit Corporation Act, as amended from time to time, does hereby form a body corporate and adopt the following Articles of Incorporation.

**ARTICLE I  
NAME**

The name of the corporation (the "Corporation") shall be "Midwest Consortium of Municipal Utilities."

**ARTICLE II  
REGISTERED OFFICE**

The registered office of the Corporation shall be at:

12805 Highway 55  
Suite 212  
Plymouth, MN 55441-3880

**ARTICLE III  
DURATION**

The duration of the Corporation shall be perpetual.

**ARTICLE IV  
PURPOSES AND POWERS**

(a) The purpose of the Corporation is and shall be to operate as a joint venture by utilities pursuant to Minnesota Statutes Section 452.25, to enable the municipal utilities which are the members of the Corporation to make more efficient use of their powers as governmental agencies in the provision of utility services.

(b) The Corporation shall have and may exercise any and all of the powers, privileges, responsibilities, and duties which are or may be authorized to, conferred upon or exercised by a joint venture formed under Minnesota Statutes Section 452.25 and future laws amendatory thereof and supplementary thereto, including but not limited to the following:

- (i) any and all of the powers, privileges, responsibilities and duties of the separate utilities which are or which become members of the Corporation, which are hereby authorized to and conferred upon the Corporation, including but not limited to the following:
  - (1) the power of eminent domain;
  - (2) the power to borrow money, incur debt and issue tax-exempt and taxable bonds to finance utility property;
  - (3) the power to acquire, own, construct, and operate utilities systems and property;
  - (4) all powers of municipal power agencies under Minnesota Statutes Chapter 453 and municipal gas agencies under Minnesota Statutes Chapter 453A which may be exercised by cities;
  - (5) all powers which may be exercised by municipalities under the Municipal Industrial Development Act, Minnesota Statutes Section 469.152 *et seq.*;
  - (6) all powers under the joint powers law, Minnesota Statutes Section 471.59; and
  - (7) all powers of the separate utilities which are or which become members of the Corporation under their city charters and other official governing documents, and under Minnesota Statutes Chapter 216B, Chapter 412, Section 444.075, Chapter 453, Chapter 453A, Section 465.01, and Chapter 475, and under any and all other applicable law; and.
  
- (ii) all powers specifically authorized to and conferred upon a joint venture by utilities pursuant to Minnesota Statutes Section 452.25, including but not limited to the following enumerated powers:
  - (1) the power to provide utility services as authorized under Minnesota Statutes Section 452.25, Subdivision 3(a);
  - (2) all powers authorized under Minnesota Statutes Section 452.25, Subdivision 5;
  - (3) the power to expend public funds and transfer real and personal personal property as authorized under Minnesota Statutes Section 452.25, Subdivision 6(a).

(c) The Corporation shall have all powers afforded by the Minnesota Nonprofit Corporation Act and by future laws amendatory thereof and supplementary thereto, including the power:

(i) to acquire and receive funds and property of every kind and nature whatsoever, whether by purchase, conveyance, lease, gift, grant, bequest, legacy, devise, or otherwise, outright or in trust;

(ii) to hold, own, expend, give, grant, contribute, convey, transfer and dispose of any funds and property and the income therefrom in furtherance of the above-stated purposes, and to lease, mortgage, encumber and use the same;

(iii) to borrow money and incur indebtedness, and in connection therewith to draw, make, accept, endorse, execute, and issue notes, drafts, bills of exchange, bonds, debentures, or any other negotiable or non-negotiable instruments or evidences of indebtedness of any kind or nature whatsoever, and to secure payment thereof and any interest thereon by mortgage, pledge, deed of trust, assignment or otherwise on, of, or with respect to all or any part of the Corporation;

(iv) to invest in, acquire, hold, pledge, sell, exchange, transfer or otherwise dispose of securities of any nature and to exercise all the rights, powers and privileges of ownership thereof, including any and all voting rights;

(v) to act as trustee or co-trustee of trusts and to otherwise act in a fiduciary capacity when so designated in any inter vivos or testamentary instruments, and in such capacity, to be named as beneficiary of insurance policies or annuity contracts;

(vi) to contract with private parties and federal, state, and local governments and their agencies and instrumentalities;

(vii) to be a member of other nonprofit corporations; and

(viii) such other powers which are consistent with the foregoing purposes and which are afforded by the Minnesota Nonprofit Corporation Act.

(d) The Corporation elects to be deemed a municipal utility for purposes of Minnesota Statutes Chapter 216B and other federal and Minnesota laws regulating utility operations.

(e) The Corporation shall be deemed a political subdivision of the State of Minnesota exercising essential governmental functions, for federal and state income tax purposes.

(f) The Corporation may exercise its powers and carry out its activities anywhere within and outside of the State of Minnesota.

**ARTICLE V**  
**PROHIBITED ACTS**

Other than to members that are subdivisions, units, or agencies of the United States or a state or local government, the Corporation shall in no way, directly or indirectly, incidentally or otherwise, afford pecuniary gain, dividends, or other pecuniary remuneration to any of its members, directors, or officers, as such, nor shall any part of the net earnings of the Corporation in any way inure to the private benefit of such member, director or officer of the Corporation, or to any private individual; provided, however, that the Corporation shall be authorized to make reasonable allowance and payment for actual expenditures incurred or services rendered to or for the benefit of the Corporation. The Corporation shall not lend money to, guarantee, or pledge its assets as security for an obligation of, become a surety for, or otherwise financially assist any person or organization, except as permitted by Minnesota Statutes Section 317A.501 and as permitted by Article IV above.

**ARTICLE VI**  
**INCORPORATOR**

The name and post office address of the person who is the sole Incorporator of the Corporation is:

Peter L. Cooper, Esq.  
McGrann Shea Anderson Carnival  
Straughn & Lamb, Chartered  
800 Nicollet Mall, Suite 2600  
Minneapolis, MN 55402-7035

**ARTICLE VII**  
**MEMBERS**

The Corporation shall have members. The initial members of the Corporation shall be the municipal utilities of the following cities in the State of Minnesota:

**[TO COME]**

The criteria and procedures for admission of additional members and the conditions, rights, terms, and privileges of members shall all be as specified in the By-Laws of the Corporation. The By-Laws may establish more than one class of members.

**ARTICLE VIII**  
**BOARD OF DIRECTORS**

The property, affairs, and business of the Corporation shall be managed by its Board of Directors. The Board of Directors shall consist exclusively of persons directly appointed by the municipal utilities which are the members of the Corporation. The number, qualifications, terms of office, method of election, powers, authority, and duties of directors, the time and place of their meetings, and such other provisions with respect to the Board of Directors as are not inconsistent with these Articles of Incorporation, shall be as specified in the By-Laws of the Corporation.

**ARTICLE IX**  
**PERSONAL LIABILITY**

Neither the members, the directors, nor the officers of the Corporation shall be personally liable to any extent whatsoever for any debts or obligations of the Corporation, nor shall their property be subject to payment of any debts or obligations of the Corporation.

**ARTICLE X**  
**DISSOLUTION**

The Corporation may be dissolved in accordance with the laws of the State of Minnesota. Upon dissolution, and after payment of all liabilities and obligations of the Corporation and all costs and expenses incurred in connection with dissolution and winding up the affairs of the Corporation, any remaining assets shall be distributed to the municipal utilities which are the members of the Corporation in such proportions as shall be determined by:

- (a) the Board of Directors of the Corporation, if the dissolution of the Corporation is not required by the laws of the State of Minnesota, then in existence, to be conducted under court supervision; or
- (b) a court of competent jurisdiction, if the dissolution of the Corporation is required by the laws of the State of Minnesota, then in existence, to be conducted under court supervision.

Notwithstanding anything to the contrary hereinabove contained in this Article X, if any assets at the time of dissolution are held by the Corporation in trust or upon condition or subject to any executory or special limitation, and if the condition or limitation occurs by reason of the

dissolution of the Corporation, such assets shall revert or be returned, transferred, or conveyed in accordance with the terms and provisions of such trust, condition, or limitation.

**ARTICLE XI**  
**AMENDMENTS**

These Articles of Incorporation may be amended or restated by the affirmative vote of a majority of all directors of the Corporation without further approval by the members.

**ARTICLE XII**  
**CONSENT IN WRITING**

Provided that all directors are notified of the text of the proposed written action prior to the signing by any of the directors, any action may be taken by the Board of Directors or any committee thereof without a meeting, by written action of the Board of Directors or committee thereof signed by the number of directors that would be required to take the same action at a meeting of the Board or committee thereof at which all directors were present. Such action shall be effective on the date on which the last signature of the required number of directors is placed on such writing or writings, or such earlier or later date as set forth therein.

**ARTICLE XIII**  
**CITATIONS**

All references in these Articles of Incorporation to particular or general provisions of Minnesota statutes or laws shall mean and include, as now enacted or as hereafter amended, such particular or general provisions of Minnesota statutes or Minnesota laws as are or may hereafter be applicable, cognate to such provision.



**IN WITNESS WHEREOF**, the undersigned Incorporator has executed these Articles of Incorporation this \_\_\_\_ day of \_\_\_\_\_, 2004.

---

Peter L. Cooper, Incorporator

158516.doc;1