

CITY OF MARSHALL, MINNESOTA

RESOLUTION NO. 24-035

GRANTING FINAL APPROVAL OF THE ISSUANCE OF CONDUIT REVENUE BONDS FOR THE BENEFIT OF FOUNDATION FOR INNOVATION IN EDUCATION AND SOUTHWEST WEST CENTRAL SERVICE COOPERATIVE UNDER MINNESOTA STATUTES, SECTIONS 469.152 THROUGH 469.1655 AND APPROVING RELATED DOCUMENTS

WHEREAS, the City of Marshall, Minnesota (the “City”) is a home rule city and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota; and

WHEREAS, under the Minnesota Municipal Industrial Development Act, Minnesota Statutes, Sections 469.152-469.1655, as amended (the “Act”), the City is authorized to carry out the public purposes described in the Act by providing for the issuance of revenue bonds to finance, in whole or in part, the costs of the acquisition, construction, reconstruction, improvement, betterment, or extension of a “project,” which may comprise any properties, real or personal, used or useful in connection with a revenue producing enterprise, or any combination of two or more such enterprises engaged in any business; and

WHEREAS, Foundation for Innovation in Education, a Minnesota nonprofit corporation (the “Borrower” or “Foundation”), has requested that the City issue its: (i) Education Services Facility Lease Revenue Bonds (SWWC Service Cooperative), Series 2024A (the “Series 2024A Bonds”); and (ii) Taxable Education Services Facility Lease Revenue Bonds (SWWC Service Cooperative), Series 2024B (the “Series 2024B Bonds,” and collectively with the Series 2024A Bonds, the “Bonds”); and

WHEREAS, the proceeds of the Bonds are proposed to be loaned by the City to the Borrower pursuant to the terms of a Loan Agreement, dated as of or after April 1, 2024 (the “Loan Agreement”), between the City and the Borrower, and applied to finance the following: (i) the acquisition, construction, and equipping of an approximately 16,100 square-foot facility (the “Facility”) on real property located at or about the intersection of Channel Parkway and London Road in the City of Marshall, Minnesota (the “Land”), to be owned by the Foundation and leased to and operated by the Cooperative; (ii) the funding of capitalized interest; and (iii) the payment of a portion of the costs of issuing the Bonds (collectively, the “Project”); and

WHEREAS, the Land and the Facility will be owned by the Borrower and leased to and operated by the Southwest West Central Service Cooperative (“Cooperative” or “SWWC”), a service cooperative and a public corporation and agency established pursuant to Minnesota Statutes, Section 123A.21, as amended (the “Cooperative Act”), in accordance with a Lease Agreement, dated as of or after April 1, 2024, by and between the Foundation, as landlord, and the Cooperative, as tenant (the “Lease”), pursuant to which the Cooperative will operate the Facility for the purpose of providing educational programs and services to its members, including independent school districts, cities, counties, and other governmental agencies, as well as nonprofit organizations, and on its members’ behalf; and

WHEREAS, the Borrower has represented to the City that it is exempt from federal income taxation under Section 501(a) of the Internal Revenue Code of 1986, as amended (the “Code”), as a result of the application of Section 501(c)(3) of the Code; and

WHEREAS, the Cooperative has represented to the City that was formed by agreement pursuant to the Cooperative Act as a public corporation and agency for the purpose of providing educational programs and services to its members and on its members' behalf, which activities constitute "essential public and governmental purposes" under the Cooperative Act; and

WHEREAS, the Bonds are proposed to be issued by the City to finance the Project and will constitute conduit revenue bonds secured solely by: (i) the revenues derived from the Loan Agreement; (ii) a pledge and assignment of the Cooperative's revenues, as more specifically set forth in the Financing Documents (as defined below), including money provided by the Cooperative's participating members; (iii) other revenues pledged to or otherwise received by the Borrower, except for those revenues necessary for ordinary operational expenses and required under Minnesota law; (iv) a mortgage, security agreement and assignment of rents granted by the Borrower for the benefit of the trustee for the Bonds, U.S. Bank Trust Company, National Association (the "Trustee"), with respect to the Land and Facility; (v) an assignment of the Lease between the Borrower and the Cooperative; and (vi) other security provided or arranged by the Borrower or the Cooperative; and

WHEREAS, the Bonds shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation; shall not constitute nor give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers; shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the City other than the City's interest in the Loan Agreement; and

WHEREAS, the Loan Agreement requires the Borrower to make payments thereunder in amounts and at times sufficient to pay the principal of, premium (if any), and interest on the Bonds when due, and the loan repayments required to be made by the Borrower to the City under the terms of the Loan Agreement will be assigned by the City to the Trustee to secure the payment of the principal of, premium (if any), and interest on the Bonds; and

WHEREAS, the purpose of the Act, as found and determined by the legislature, is to promote the welfare of the state by the active attraction and encouragement and development of economically sound industry and commerce to prevent so far as possible the emergence of blighted and marginal lands and areas of chronic unemployment; and

WHEREAS, factors necessitating the active promotion and development of economically sound industry and commerce are the increasing concentration of population in certain areas and the rapidly rising increase in the amount and cost of governmental services required to meet the needs of the increased population and the need for development of land use which will provide an adequate tax base to finance these increased costs and the need for access to employment opportunities for such population; and

WHEREAS, the City desires to facilitate the selective development of the community, retain and improve the tax base and help to provide the range of services, facilities and education opportunities required by the population, and the Project will enable the Cooperative to continue to provide educational programs and services to its members, including independent school districts, cities, counties, and other governmental agencies, as well as nonprofit organizations, thereby (i) enhancing education services in the 18 counties in southwest and central Minnesota served by the Cooperative and contributing to improvement of the quality of life for residents of the City and the surrounding areas and helping to ensure a labor pool for attracting and retaining sound industry and commerce, and (ii) reduce the cost of borrowing by local governments for public purposes; and

WHEREAS, the Bonds are to be issued by the City pursuant to the Act; and

WHEREAS, under Section 147(f) of the Code and the regulations promulgated thereunder, prior to the issuance of the Bonds, the City Council must conduct a public hearing following reasonable public notice, defined to include one publication of a notice in a newspaper circulating generally in the City no fewer than 7 days before the hearing, and under Section 469.154, subdivision 4 of the Act, a public hearing must be held on the issuance of the Bonds and the proposed Project after one publication of notice in the official newspaper and a newspaper of general circulation of the City not less than 14 days nor more than 30 days before the hearing; and

WHEREAS, pursuant to a resolution adopted on February 27, 2024, the City Council, among other actions: (i) granted preliminary approval for the issuance of the Bonds under the Act in an aggregate principal amount not to exceed \$11,000,000 for the benefit of the Borrower and the Cooperative subject to approval of the Project by the Commissioner of the Minnesota Department of Employment and Economic Development (“DEED”), as required by the Act and subject to mutual agreement of the City, the Borrower, the Cooperative, and the initial purchaser(s) of the Bonds; (ii) directed the publication of a notice of public hearing on the proposal of the Borrower and the Cooperative to undertake and finance the Project; (iii) directed the preparation of an application and submission thereof to DEED on the proposal to finance the Project, in cooperation with the Borrower and Cooperative; and (iv) declared the official intent of the City to reimburse original expenditures from the proceeds of tax-exempt bonds, in accordance with Treasury Regulations, Section 1.150-2; and

WHEREAS, a notice of public hearing (the “Public Notice”) was published on March 12, 2024 in the *Marshall Times*, the official newspaper of and a newspaper of general circulation in the City, with respect to the required public hearing under Section 147(f) of the Code and the Act; and

WHEREAS, on the date hereof, the City Council conducted a duly noticed public hearing at which a reasonable opportunity was provided for interested individuals to express their views, both orally and in writing, on the following issues: (i) approval of the issuance of the Bonds pursuant to the requirements of Section 147(f) of the Code and the regulations promulgated thereunder; and (ii) approval of the Bonds and the Project pursuant to the requirements of the Act; and

WHEREAS, following the public hearing on the date hereof the City Council considered the following resolution; and

NOW THEREFORE BE IT RESOLVED by the City Council (the “Council”) of the City of Marshall, Minnesota (the “City”), as follows:

1. In anticipation of the approval of the Project by the Commissioner of DEED and all other necessary entities and the issuance of the Bonds to finance all or a portion of the Project, the issuance, sale, and delivery of the Bonds is hereby authorized in one or more series in an aggregate principal amount not to exceed \$11,000,000. If the Bonds are issued in more than one series, the separate series shall be separately designated in such manner as is deemed appropriate by the Mayor and the City Administrator of the City (collectively, the “City Officials”), in their discretion. The Bonds shall be issued under the terms of an Indenture of Trust, dated as or after April 1, 2024 (the “Indenture”), between the City and the Trustee. The Bonds shall bear interest at fixed rates established by the terms of the Indenture. The Bonds shall be designated, shall be numbered, shall be dated, shall mature, shall be subject to redemption prior to maturity, shall be in such form, and shall have such other terms, details, and provisions as are prescribed in the Indenture, in substantially the form on file with the City, with the amendments referenced herein. The City hereby authorizes the Series 2024A Bonds to be issued as “tax-exempt bonds” the interest on which is excluded from gross income for federal and State of Minnesota income tax purposes. Any separate series of Bonds may be issued as “taxable bonds” if deemed necessary and appropriate by the City Officials and bond counsel. The Bonds will be purchased by Robert

W. Baird & Co. Incorporated (the “Underwriter”), pursuant to a Bond Purchase Agreement, dated on or after the date hereof among the City, the Underwriter, the Borrower, and the Cooperative (the “Bond Purchase Agreement”).

All of the provisions of the Bonds, when executed as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Bonds shall be substantially in the form set forth in the Indenture on file with the City, which forms are hereby approved, with such necessary and appropriate variations, omissions, and insertions (including changes to the aggregate principal amount of each series of the Bonds, the stated maturities of each series of the Bonds, the principal amount of Bonds maturing on each maturity date, the interest rates on the Bonds, and the terms of redemption of the Bonds) as the City Officials, in their discretion, shall determine. The execution of the Bonds with the manual or facsimile signatures of the City Officials and the delivery of the Bonds by the City shall be conclusive evidence of such determination.

2. The Bonds shall be special, limited obligations of the City payable solely from the revenues provided by the Borrower pursuant to the Loan Agreement and from the revenues and security pledged, assigned, and granted pursuant to the following documents: (i) the Mortgage, Security Agreement and Assignment of Rents, dated as of or after April 1, 2024 (the “Mortgage”), between the Borrower, as mortgagor, and the Trustee, as mortgagee; and (ii) the Assignment of Lease, dated as of or after April 1, 2024 (the “Assignment”), from the Borrower, as assignor, to the Trustee, as assignee, and consented to by the Cooperative. The Council hereby authorizes and directs the City Officials to execute and deliver the Indenture to the Trustee, and hereby authorizes and directs the execution of the Bonds in accordance with the terms of the Indenture, and hereby provides that the Indenture shall provide the terms and conditions, covenants, rights, obligations, duties, and agreements of the owners of the Bonds, the City, and the Trustee as set forth therein. The Trustee is hereby appointed as bond registrar and paying agent with respect to the Bonds. The Borrower and the Cooperative will provide certain ongoing reports to the holders of the Bonds pursuant to the Continuing Disclosure Undertaking, dated as of or after April 1, 2024, by the Borrower and the Cooperative.

3. The loan repayments to be made by the Borrower under the Loan Agreement are fixed to produce revenues sufficient to provide for the prompt payment of principal of, premium, if any, and interest on the Bonds issued under this resolution when due, and the Loan Agreement also provides that the Borrower is required to pay all expenses of the operation and maintenance of the Facility, including, but without limitation, adequate insurance thereon and insurance against all liability for injury to persons or property arising from the operation thereof, and all lawfully imposed taxes and special assessments levied upon or with respect to the Facility and payable during the term of the Loan Agreement.

4. As provided in the Loan Agreement, the Bonds shall not be payable from nor charged upon any funds other than the revenue pledged to their payment, nor shall the City be subject to any liability thereon, except as otherwise provided in this paragraph. No holder of the Bonds shall ever have the right to compel any exercise by the City of any taxing powers to pay the Bonds or the interest or premium thereon, or to enforce payment thereof against any property of the City except the interests of the City in the Loan Agreement and the revenues and assets thereunder, which will be assigned to the Trustee under the terms of the Indenture. The Bonds shall recite that the Bonds are issued pursuant to the Act, and that the Bonds, including interest and premium, if any, thereon, are payable solely from the revenues and assets pledged to the payment thereof, and the Bonds shall not constitute a debt of the City within the meaning of any constitutional or statutory limitations.

5. The City Officials are hereby authorized and directed to execute and deliver the Loan Agreement, the Indenture, the Bond Purchase Agreement, and such other documents as the City’s bond

counsel considers appropriate in connection with the issuance of the Bonds provided that the Bond Purchase Agreement may be executed on behalf of the City solely by the City Administrator of the City (collectively, the “City Documents”). The forms of the City Documents and all other documents listed in Sections 1 and 2 hereof and exhibits thereto, are hereby approved with such necessary and appropriate variations, omissions, and insertions as do not materially change the substance thereof, or as the City Officials, in their discretion, shall determine, and the execution thereof by the City Officials shall be conclusive evidence of such determination. Subject to the provisions of Section 14 hereof, the City Documents and any consents and such other documents as are necessary or appropriate in connection with the issuance, sale, and delivery of the Bonds, including without limitation various certificates of the City, the Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038, an endorsement of the City to the Tax Certificate of the Borrower and the Cooperative, and similar documents (collectively, the “Financing Documents”), are directed to be executed in the name and on behalf of the City by the City Officials. Subject to the provisions of Section 14 hereof, the Bonds are to be executed in the name of and on behalf of the City by the City Officials, and are to be delivered to the Trustee for authentication and delivery to the Underwriter. Any other Financing Documents and certificates necessary to the transaction described above may be executed by one or more appropriate officers of the City.

All of the provisions of the Financing Documents, when executed as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof.

6. The City hereby authorizes Kennedy & Graven, Chartered, as bond counsel to the City, to prepare, execute, and deliver its approving legal opinion with respect to the Bonds.

7. The City has not participated in the preparation of the Preliminary Official Statement or the Official Statement relating to the offer and sale of the Bonds (collectively, the “Official Statement”), and has made no independent investigation with respect to the information contained therein (other than with respect to information provided under the captions “THE ISSUER” and “ABSENCE OF LITIGATION – Issuer” or other similarly worded captions as it relates to the City, including the appendices thereto, and the City assumes no responsibility for the sufficiency, accuracy, or completeness of such information. Subject to the foregoing, the City hereby consents to the distribution and the use by the Underwriter of the Official Statement in connection with the offer and sale of the Bonds. The Official Statement is the sole material consented to by the City for use in connection with the offer and sale of the Bonds.

8. Except as otherwise provided in this resolution, all rights, powers, and privileges conferred and duties and liabilities imposed upon the City or the Council by the provisions of this resolution or of the aforementioned documents shall be exercised or performed by the City or by such members of the Council or the City, or such officers, board, body, or agency thereof as may be required or authorized by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation, or agreement herein contained or contained in the aforementioned documents shall be deemed to be a covenant, stipulation, obligation, or agreement of any member of the Council, or any officer, agent, or employee of the City in that person’s individual capacity, and neither the Council, the City nor any officer or employee executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

No provision, covenant, or agreement contained in the aforementioned documents, the Bonds or in any other document relating to the Bonds, and no obligation therein or herein imposed upon the City or

the breach thereof, shall constitute or give rise to any pecuniary liability of the City or any charge upon its general credit or taxing powers. In making the agreements, provisions, covenants, and representations set forth in such documents, the City has not obligated itself to pay or remit any funds or revenues, other than funds and revenues derived from the Loan Agreement which are to be applied to the payment of the Bonds, as provided therein and in the Indenture.

9. Except as herein otherwise expressly provided, nothing in this resolution or in the aforementioned documents expressed or implied, is intended or shall be construed to confer upon any person or firm or corporation, other than the City or any holder of the Bonds issued under the provisions of this resolution, any right, remedy, or claim, legal or equitable, under and by reason of this resolution or any provisions hereof, this resolution, the aforementioned documents and all of their provisions being intended to be and being for the sole and exclusive benefit of the City and any holder from time to time of the Bonds issued under the provisions of this resolution.

10. In case any one or more of the provisions of this resolution, other than the provisions limiting the liability of the City or limiting the liability of the members of the City Council or the officers, agents, or employees of the City, including without limitation Section 4, or of the aforementioned documents, or of the Bonds issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this resolution, or of the aforementioned documents, or of the Bonds, but this resolution, the aforementioned documents, and the Bonds shall be construed and endorsed as if such illegal or invalid provisions had not been contained therein.

11. The Bonds, when executed and delivered, shall contain a recital that they are issued pursuant to the Act, and such recital shall be conclusive evidence of the validity of the Bonds and the regularity of the issuance thereof, and that all acts, conditions, and things required by the laws of the State of Minnesota relating to the adoption of this resolution, to the issuance of the Bonds, and to the execution of the aforementioned documents to happen, exist, and be performed precedent to the execution of the aforementioned documents have happened, exist, and have been performed as so required by law.

12. The officers of the City, bond counsel, other attorneys, engineers, and other agents or employees of the City are hereby authorized to do all acts and things required of them by or in connection with this resolution, the aforementioned documents, and the Bonds for the full, punctual, and complete performance of all the terms, covenants, and agreements contained in the Bonds, the aforementioned documents, and this resolution. In the event that for any reason either of the City Officials is unable to carry out the execution of any of the documents or other acts provided herein, such documents may be executed and such actions may be taken by any official or employee of the City delegated the duties of any such City Official with the same force and effect as if such documents were executed and delivered by such City Official.

13. The Borrower has agreed and it is hereby determined that the Borrower will pay the City's one-time administrative fee equal to (A) 0.25% of the original principal amount of the Bonds issued by the City up to \$10,000,000, plus (B) 0.15% of the original principal amount of the Bonds in excess of 10,000,000, which fee shall be set forth in the Loan Agreement, and any and all costs incurred by the City in connection with the financing of the Project. It is understood and agreed that the Borrower shall indemnify, defend and hold harmless the City and any subordinate entity of the City, including the Economic Development Authority in and for the City of Marshall, Minnesota (the "EDA"), against all liabilities, losses, damages, costs and expenses (including attorney's fees and expenses incurred by the City or EDA) arising with respect to the Project or the Bonds, as provided for and agreed to by and between the Borrower and the City in the Loan Agreement.

14. The approval hereby given to the various Financing Documents referred to above includes approval of such additional details therein as may be necessary and appropriate and such modifications thereof, deletions therefrom and additions thereto as may be necessary and appropriate and approved by bond counsel to the City, the appropriate City staff person, or by the officers authorized herein to execute or accept, as the case may be, said documents prior to their execution; and said officers or staff members are hereby authorized to approve said changes on behalf of the City. The execution of any instrument by the appropriate officer or officers of the City herein authorized shall be conclusive evidence of the approval of such document in accordance with the terms hereof. In the event of absence or disability of either City Official, any of the documents authorized by this resolution to be executed by the City may be executed without further act or authorization of the Council by any member of the Council or any duly designated acting official, or by such other officer or officers of the City as, in the opinion of the City Attorney, may act in their behalf.

The authority to approve, execute and deliver future amendments to Financing Documents entered into by the City in connection with the issuance of the Bonds and consents required under the Financing Documents is hereby delegated to the City Officials, subject to the following conditions: (a) such amendments or consents do not require the consent of the respective holders of the Bonds or such consent has been obtained; (b) such amendments or consents do not materially adversely affect the interests of the City; (c) such amendments or consents do not contravene or violate any policy of the City, and (d) such amendments or consents are acceptable in form and substance to the counsel retained by the City to review such amendments. The authorization hereby given shall be further construed as authorization for the execution and delivery of such certificates and related items as may be required to demonstrate compliance with the agreements being amended and the terms of this resolution. The execution of any instrument by the City Officials shall be conclusive evidence of the approval of such instruments in accordance with the terms hereof. In the absence of the City Officials any instrument authorized by this paragraph to be executed and delivered may be executed by the officer of the City authorized to act in his/her place and stead.

15. On the basis of information available to the City, it appears, and the City hereby finds, that the Project constitutes properties, real and personal, used or useful in connection with one or more revenue producing enterprises within the meaning of Section 469.153, Subdivision 2(b) and Section 469.155, Subdivision 4 of the Act; that the Project furthers the purposes stated in the Act, including in particular, Section 469.152; that the availability of the financing under the Act and willingness of the City to furnish such financing will be a substantial inducement to the Borrower to undertake the Project, and that the effect of the Project, if undertaken, will be to assist in the prevention of the emergence of blighted and marginal land, to help prevent chronic unemployment, to help the surrounding area retain and improve the tax base, to provide the range of service and employment opportunities required by the population, to help prevent the movement of talented and educated persons out of the state and to areas within the state where their services may not be as effectively used, and to promote more intensive development and use of land within surrounding communities.

16. In accordance with Section 469.154 of the Act, the City Administrator is hereby authorized and directed to submit the proposal for the Project to DEED. The City Administrator and other officers, employees and agents of the City are hereby authorized to provide DEED with any preliminary information needed for this purpose, and the City Administrator is authorized to initiate and assist in the preparation of such documents as may be appropriate to the Project, if it is approved.

17. In accordance with Section 469.154, subdivision 7, of the Act, the officers, employees, and agents of the City are hereby authorized and directed to encourage the Borrower and the Cooperative to provide employment opportunities to economically disadvantaged or unemployed individuals. Such individuals may be identified by such mechanisms as are available to the Borrower and the Cooperative,

such as a first source agreement in which the Borrower and the Cooperative agrees to use a designated State employment office as a first source for employment recruitment, referral, and placement.

18. The City has established a governmental program of acquiring purpose investments for qualified 501(c)(3) organizations' projects. The governmental program is one in which the following requirements of §1.148-1(b) of the federal regulations relating to tax-exempt obligations shall be met:

(a) the program involves the origination or acquisition of purpose investments;

(b) at least 95% of the cost of the purpose investments acquired under the program represents one or more loans to a substantial number of persons representing the general public, states or political subdivisions, 501(c)(3) organizations, persons who provide housing and related facilities, or any combination of the foregoing;

(c) at least 95% of the receipts from the purpose investments are used to pay principal, interest, or redemption prices on issues that financed the program, to pay or reimburse administrative costs of those issues or of the program, to pay or reimburse anticipated future losses directly related to the program, to finance additional purpose investments for the same general purposes of the program, or to redeem and retire governmental obligations at the next earliest possible date of redemption;

(d) the program documents prohibit any obligor on a purpose investment financed by the program or any related party to that obligor from purchasing bonds of an issue that finances the program in an amount related to the amount of the purpose investment acquired from that obligor; and

(e) the City shall not waive the right to treat the investment as a program investment.

19. The City understands that the Borrower and the Cooperative will pay directly to the City any and all costs paid or incurred by the City in connection with the transactions authorized herein, including but not limited to the administrative fee of the City.

20. This resolution shall be in full force and effect from and after its passage.

Adopted by the City Council of the City of Marshall, Minnesota, this 26th day of March, 2024.

Mayor

ATTEST:

City Clerk

STATE OF MINNESOTA

COUNTY OF LYON

CITY OF MARSHALL

I, the undersigned, being the duly qualified and acting City Clerk of the City of Marshall, DO HEREBY CERTIFY that I have compared the attached and foregoing extract of minutes with the original thereof on file in my office, and that the same is a full, true and complete transcript of the minutes of a meeting of the City Council of said City duly called and held on the date therein indicated, insofar as such minutes relate to approving the issuance of conduit revenue bonds to finance the acquisition, construction and equipping of an education services facility for the benefit of Foundation for Innovation in Education and Southwest West Central Service Cooperative.

WITNESS my hand this ____ day of _____, 2024.

City Clerk