

CITY OF MARSHALL, MINNESOTA

RESOLUTION NO. 24-024

RESOLUTION CALLING A PUBLIC HEARING ON THE PROPOSED ISSUANCE OF CONDUIT REVENUE BONDS UNDER MINNESOTA STATUTES, SECTIONS 469.152 THROUGH 469.1655, TO FINANCE A NEW FACILITY IN THE CITY OF MARSHALL, MINNESOTA FOR THE BENEFIT OF FOUNDATION FOR INNOVATION IN EDUCATION AND SOUTHWEST WEST CENTRAL SERVICE COOPERATIVE AND GRANTING PRELIMINARY APPROVAL OF THE PROPOSED ISSUANCE OF SUCH BONDS

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

Section 1. Recitals.

WHEREAS, Minnesota Statutes, Sections 469.152-469.1655, as amended (the “Act”), authorizes the City to issue revenue bonds to finance, in whole or in part, the costs of the acquisition, construction, reconstruction, improvement, betterment, or extension of a project constituting any properties, real or personal, used or useful in connection with a revenue producing enterprise, whether or not operated for profit; and

WHEREAS, as a condition to undertaking the project and issuing revenue bonds under the Act, the City Council of the City must find that the project furthers the purposes stated in Section 469.152 of the Act and the Commissioner of the Minnesota Department of Employment and Economic Development (“DEED”) must approve the project on the basis of preliminary information the Commissioner of DEED requires, as tending to further the purposes and policies of the Act; and

WHEREAS, prior to submitting an application to DEED requesting approval of a project, the City Council of the City must conduct a public hearing on the proposal to undertake and finance the project, and notice thereof, stating the time and place of the hearing, the general nature of the project and an estimate of the principal amount of bonds or other obligations to be issued to finance the project, and that a draft copy of the proposed application to DEED, together with all attachments and exhibits, will be available for public inspection, must be published at least once not less than 14 days nor more than 30 days prior to the date fixed for the hearing, in the official newspaper and a newspaper of general circulation of the City; and

WHEREAS, in order to issue the revenue bonds or other obligations as obligations the interest on which is not includable in gross income for federal income tax purposes, a public hearing must also be held in accordance with the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”), and Treasury Regulations promulgated thereunder (the “Regulations”); and

WHEREAS, Foundation for Innovation in Education, a Minnesota nonprofit corporation (“Borrower”), has requested that the City issue one or more series of revenue bonds, to be designated Public Project Lease Revenue Bonds (SWWC Service Cooperative Project), Series 2024 (the “Bonds”) and loan the proceeds derived from the sale of the Bonds to Borrower, pursuant to the terms of a Loan Agreement between the City and Borrower (the “Loan Agreement”). Proceeds of the Bonds will be

applied by Borrower to the following purposes (collectively, the “Project”): (i) the acquisition, construction, and equipping of an approximately 16,100 square-foot facility (the “Facility”) to be located at or about the intersection of Channel Parkway and London Road in the City of Marshall, Minnesota (the “Facility”); (ii) the funding of capitalized interest; and (iii) the payment of a portion of the costs of issuing the Bonds; and

WHEREAS, the Facility will be owned for federal tax purposes by the Borrower and will be 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”). SWWC 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, including independent school districts, cities, counties, and other governmental agencies, as well as nonprofit organizations, and on its members’ behalf, which activities constitute “essential public and governmental purposes” under the Cooperative Act.; 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 Bonds proposed to be issued by the City to finance the Project and related costs will constitute revenue bonds secured solely by: (i) the lease payments derived from the lease arrangement between the Borrower and the Cooperative (collectively, the “Lease”); (ii) a pledge and assignment of all revenues of the Cooperative, including membership fees and grants; (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 debt service reserve fund to be held by the trustee for the benefit of the holders of the Bonds, if applicable; and (v) 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, under the Loan Agreement, the Borrower will be required 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 for the Bonds to secure the payment of the principal of, premium (if any), and interest thereon.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. A notice of the public hearing shall be published in accordance with the requirements of the Act and Section 147(f) of the Code and related Regulations. The costs of the preparation and publication of such notice of public hearing shall be paid by the Borrower or the Cooperative. The Borrower and the Cooperative shall work with the staff of the City and Kennedy & Graven, Chartered, as Bond Counsel for the City with respect to the Bonds, to coordinate the publication of such notice in the official newspaper of the City and a newspaper of general circulation in the City. The notice of public hearing shall be published in substantially the form attached hereto as Exhibit A, once on a date not less than 14 days nor more than 30 days prior to the date of the public hearing.

2. The City Council will conduct the public hearing on Tuesday, March 26, 2024, or on another date as is deemed appropriate by City staff, with respect to the proposal of the Borrower and the Cooperative to undertake and finance the Project and related costs and with respect to the issuance of the Bonds, as requested by the Borrower and the Cooperative.

3. The City hereby grants preliminary approval for the issuance of the Bonds for the purposes referenced in this resolution and in an aggregate principal amount not to exceed \$11,000,000, subject to the approval of the Project by DEED, as required by the Act, and subject to the mutual agreement of the City, the Borrower, the Cooperative, and the initial purchaser(s) of the Bonds as to the details of the Bonds and provisions for their payment. In all events, it is understood, however, that the Bonds shall not constitute a pecuniary liability or charge, lien, or encumbrance, legal or equitable, upon any funds, assets, taxing powers, or any other property of the City except the City's interest in the Loan Agreement; and the Bonds, when, as, and if issued shall recite in substance that the Bonds, including interest thereon, are payable solely from the revenues received from the Loan Agreement and other property pledged to the payment thereof, and shall not constitute general or moral obligations of the City. The Bonds shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation. The holder(s) of the Bonds shall never have the right to compel any exercise of the taxing power of the City to pay the outstanding principal of the Bonds, or the interest thereon or to enforce payment thereof against any property of the City.

4. It is hereby found and determined that the Project furthers the purposes set forth in the Act and the Project constitutes a "project" within the meaning of Section 469.153, subdivision 2(b) of the Act.

5. In accordance with Section 469.154 of the Act, the City shall cooperate with the Borrower and the Cooperative in submitting the proposal for the financing of the Project to DEED, including the execution of necessary documentation by City officials.

6. 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 to target employment opportunities to qualified individuals who are unemployed or economically disadvantaged. Such individuals may be identified by mechanisms as are available to the Borrower and the Cooperative, such as a first source agreement in which the Borrower agrees to use a designated employment office as a first source for employment recruitment, referral, and placement, and by other means.

7. The Borrower shall pay to the City any and all costs incurred by the City in connection with the Bonds or the financing of the Project, whether or not the financing of the Project is approved by DEED, whether or not the financing is carried to completion, and whether or not the Bonds or operative instruments are executed and delivered. In addition to the application fee paid by the Borrower or by the Cooperative on behalf of the Borrower to the City on or before the date hereof, the Borrower shall also pay to the City upon closing on the Bonds a 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.

8. Kennedy & Graven, Chartered is authorized to act as bond counsel ("Bond Counsel") for the City with respect to the Bonds and to assist in the preparation and review of necessary documents relating to the Bonds. The Mayor, the City Administrator, Finance Director, and City Clerk and other officers, employees, and agents of the City are hereby authorized to assist Bond Counsel in the preparation of such documents.

9. The adoption of this resolution does not constitute a guaranty or firm commitment that the City will issue the Bonds as requested by the Borrower and the Cooperative. The City retains the right in its sole discretion to withdraw from participation and accordingly not to issue the Bonds, or issue the Bonds in an amount less than the amount referred to herein, should the City at any time prior to issuance thereof determine not to issue the Bonds, or to issue the Bonds in an amount less than the amount referred to in paragraph 3 hereof, or should the parties to the transaction be unable to reach agreement as to the terms and conditions of any of the documents required for this financing transaction.

10. (a) The United States Department of the Treasury has promulgated final regulations governing the use of the proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City or a borrower from the City for project expenditures paid prior to the date of issuance of such bonds. Those regulations, Section 1.150-2 of the Regulations, require that the City adopt a statement of official intent to reimburse an original expenditure not later than sixty (60) days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds occur within eighteen (18) months after the later of: (i) the date the expenditure is paid; or (ii) the date the project is placed in service or abandoned, but in no event more than three (3) years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

(b) The City reasonably expects to reimburse the Borrower for the expenditures made for costs of the Project from the proceeds of the Bonds. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds, or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations and also qualifying expenditures under the Act.

(c) Based on representations by the Borrower and Cooperative, no expenditures for the Project have been made by the Borrower or the Cooperative more than sixty (60) days before the date of adoption of this resolution other than: (i) expenditures to be paid or reimbursed from sources other than the Bonds; (ii) expenditures permitted to be reimbursed under prior regulations pursuant to the transitional provision contained in Section 1.150-2(j)(2)(i)(B) of the Regulations; (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations; (iv) expenditures in a “de minimis” amount (as defined in Section 1.150-2(f)(1) of the Regulations); or (v) pursuant to a declaration of official intent by the Borrower in accordance with Section 1.150-2 of the Regulations.

(d) Based on representations by the Borrower, as of the date hereof, there are no funds of the Borrower reserved, allocated on a long term-basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis, or otherwise set aside) to provide permanent financing for the expenditures related to the Project to be financed from proceeds of the Bonds, other than pursuant to the issuance of the Bonds. This resolution, therefore, is determined to be consistent with the budgetary and financial circumstances of the Borrower as they exist or are reasonably foreseeable on the date hereof.

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

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Adopted by the City Council of the City of Marshall, Minnesota, this 27th day of February, 2024.

Mayor

ATTEST:

City Clerk

EXHIBIT A

CITY OF MARSHALL, MINNESOTA

**NOTICE OF PUBLIC HEARING ON THE ISSUANCE OF CONDUIT
REVENUE BONDS PURSUANT TO MINNESOTA STATUTES,
SECTIONS 469.152 TO 469.1655**

NOTICE IS HEREBY GIVEN that the City Council of the City of Marshall, Minnesota (the “City”) will conduct a public hearing on Tuesday, March 26, 2024, at or after 5:30 p.m. in the Council Chambers of the Marshall City Hall, 344 West Main Street, Marshall, Minnesota, to consider a proposal by the Foundation for Innovation in Education, a Minnesota nonprofit corporation (“Borrower”), for the issuance of one or more series of taxable and/or tax-exempt conduit revenue bonds or other obligations (the “Bonds”), under Minnesota Statutes, Sections 469.152 to 469.1655, as amended, the proceeds of which are proposed to finance all or a portion of the costs of (i) the acquisition, construction, and equipping of an approximately 16,100 square-foot facility to be located at or about the intersection of Channel Parkway and London Road in the City (the “Facility”); (ii) the funding of capitalized interest; and (iii) the payment of a portion of the costs of issuing the Bonds (collectively, the “Project”). The Facility will be owned by the Borrower and will be leased to and operated by Southwest West Central Service Cooperative (the “Cooperative”), a service cooperative established pursuant to Minnesota Statutes, Section 123A.21, as amended, and used by the Cooperative and its members, including public school districts, cities, counties, and other governmental units or nonprofit organizations, as an administration, office, meeting and training center. After the public hearing, the City Council will consider adoption of a resolution giving final approval to the issuance of the Bonds and loaning the proceeds thereof to the Borrower to finance the Project. The aggregate face amount of the Bonds proposed to be issued to finance the Project is presently estimated not to exceed \$11,000,000.

The Bonds if and when issued will be special, limited revenue obligations of the City, and the Bonds and interest thereon will be payable solely from the revenues and assets pledged to the payment thereof. No holder of any Bond will have the right to compel any exercise of the taxing power of the City to pay the Bonds or the interest thereon, nor to enforce payment against any property of the City except money payable by the Borrower to the City and pledged to the payment of the Bonds. Before issuing the Bonds, the City will enter into one or more loan agreements with the Borrower, whereby the Borrower will be obligated to make payments at least sufficient at all times to pay the principal of and interest on the Bonds when due.

A draft copy of the proposed application to the Department of Employment and Economic Development for approval of the Project, together with all attachments and exhibits, shall be available for public inspection following the publication of this notice, at City Hall during normal business hours. Anyone desiring to be heard during the public hearing will be afforded an opportunity to do so.

Published: March [], 2024

**BY ORDER OF THE CITY COUNCIL OF
THE CITY OF MARSHALL, MINNESOTA**