

CITY OF MARSHALL, MINNESOTA

RESOLUTION NO 23-025

RESOLUTION APPROVING AN AMENDMENT TO THE STUDENT HOUSING REVENUE NOTE (SMSU FOUNDATION RESIDENCE HALL PROJECT), SERIES 2005, AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN ALLONGE TO THE NOTE

WHEREAS, on May 25, 2005, pursuant to a resolution adopted by the City Council of the City of Marshall, Minnesota (the “City”) on April 18, 2005 (the “Note Resolution”), the City issued its Student Housing Revenue Note (SMSU Foundation Residence Hall Project), Series 2005 (the “Note”), in the original aggregate principal amount of \$5,600,000; and

WHEREAS, the City loaned the proceeds of the Note to Southwest Minnesota State University Foundation, Inc., a Minnesota nonprofit corporation (the “Borrower”), pursuant to a Loan Agreement, dated as of May 1, 2005 (the “Loan Agreement”), between the City and the Borrower, for the purposes of financing the construction and equipping of a 140-bedroom, forty-unit student housing facility located adjacent to the campus of Southwest Minnesota State University in the 1400 Block of Birch Street in the City of Marshall, Lyon County, Minnesota (the “Project”), and the payment of certain financing and issuance costs related to the Note; and

WHEREAS, Bremer Bank, National Association, a national banking association (the “Lender”), purchased the Note from the City; and

WHEREAS, pursuant to the terms of the Note, the interest rate on the Note is adjustable on certain dates at rates determined by the Lender using the five-year London Interbank Offered Rate (“LIBOR”) Swap formula; and

WHEREAS, the use of LIBOR is currently being phased out and will no longer be available after June 30, 2023; and

WHEREAS, the Lender has informed the City and the Borrower that, as of the next interest adjustment date (May 25, 2025), interest on the Note will be calculated using the 5-year Treasury Constant Maturity index, and such change (the “Amendment”) must be reflected in the Note; and

WHEREAS, Kennedy & Graven, Chartered, as bond counsel to the City, has represented that such Amendment to the Note will not be considered a significant modification of the Note and will not result in a reissuance of the Note for tax purposes pursuant to Section 1.1001-3 of the Treasury Regulations promulgated under the Internal Revenue Code of 1986, as amended, as the rate has been replaced with a qualified floating rate (as defined in Treasury Regulation Section 1.1275-5(b)); and

WHEREAS, there has been presented before the City Council a form of Allonge to the Note, which incorporates the proposed Amendment to the Note.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARSHALL, MINNESOTA, AS FOLLOWS:

1. The City Council hereby consents to, approves, authorizes, and directs the execution of the Allonge to the Note by the Mayor and the City Administrator, substantially in the form on file with the City on the date hereof, which is hereby approved, with such changes as shall be approved by the Mayor and the City Administrator; provided that the execution thereof by the Mayor and the City Administrator shall be conclusive evidence of such approval.

2. As provided in the Loan Agreement and the Note Resolution, the Note shall not be payable from nor charged upon any funds other than the revenues 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 Note shall ever have the right to compel any exercise by the City of its taxing powers to pay any of the Note 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 have been assigned to the Lender. The Note shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the City, except the interests of the City in the Loan Agreement, and the revenues and assets thereunder, which have been assigned to the Lender.

3. The Mayor and/or the City Administrator are authorized and directed to execute and deliver any additional documents or certificates deemed necessary to carry out the transactions described in the Allonge to the Note and the intention of this resolution.

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

Approved by the City Council of the City of Marshall, Minnesota, this 28th day of March, 2023.

Mayor

ATTEST:

City Clerk