



Legislation Text

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Resolution authorizing the issuance and amendment of conduit revenue notes under Minnesota Statutes, Sections 469.152 through 469.1655 for the Cretin-Derham Hall Project located at 550 South Albert Street and approving related documents; District 15, Ward 3
WHEREAS,

(a) Under the Minnesota Municipal Industrial Development Act, Minnesota Statutes, Sections 469.152-469.1655, as amended (the "Act"), each housing and redevelopment authority of the State of Minnesota, including the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota (the "HRA"), is authorized to issue revenue bonds to finance, in whole or in part, the costs of the acquisition, construction, improvement, or extension of revenue producing enterprises, whether or not operated for profit;

(b) The Board of Commissioners (the "Board") of the HRA has received from Cretin-Derham Hall, a Minnesota nonprofit corporation organized under the laws of the State of Minnesota (the "Borrower"), a proposal that the HRA assist in financing and refinancing a Project hereinafter described through the issuance or amendment of certain revenue notes, pursuant to the Act;

(c) The Borrower has proposed that the HRA approve (i) amendments to the terms of Educational Facilities Revenue Refunding Note, Series 2013 (Cretin-Derham Hall Project), issued by the HRA on September 24, 2013 in the original aggregate principal amount of \$11,630,000, approximately \$10,880,000 of which is currently outstanding (as amended, the "Series 2013 Note"), and (ii) the issuance by the HRA of revenue notes in one or more series (the "Series 2019 Note" and, together with the Series 2013 Note, the "Notes") pursuant to the Act, proceeds of which will be loaned to the Borrower, to finance the acquisition, construction and equipping of an approximately 6,000 square foot entry and gathering space addition, along with certain other improvements, to the Borrower's existing school facilities located at 550 South Albert Street, Saint Paul, Minnesota (the "School Facility") and other related costs (collectively, the "Project"). The School Facility is owned and operated by the Borrower on real property leased from the Brothers of the Christian Schools, Midwest Province;

(d) The HRA has been advised by representatives of the Borrower that conventional, commercial financing to finance and refinance the capital cost of the Project is available only on a limited basis and at such high costs of borrowing that the economic feasibility of operating the School Facility would be significantly reduced; and

(e) Based on representations of the Borrower, no public official of the HRA has either a direct or indirect financial interest in the Project nor will any public official either directly or indirectly benefit financially from the Project; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Housing and

Redevelopment Authority of the City of Saint Paul, Minnesota, as follows:

SECTION 1. LEGAL AUTHORIZATION AND FINDINGS.

1.1 Findings. The HRA hereby finds, determines and declares as follows:

(a) The HRA is a body corporate and politic and a political subdivision of the State of Minnesota and is authorized under the Act to assist the revenue producing project herein referred to, and to issue and sell or amend the Notes, for the purpose, in the manner and upon the terms and conditions set forth in the Act and in this Resolution.

(b) The issuance and sale or amendment of the Notes by the HRA, pursuant to the Act, is in the best interest of the HRA, and the HRA hereby determines to issue the Series 2019 Note and to sell the Series 2019 Note to Bank of America, N.A. a national banking association (the "Series 2019 Lender"), as provided herein and in a Note Purchase Agreement among the HRA, the Series 2019 Lender and the Borrower (the "Note Purchase Agreement"). The HRA will loan the proceeds of the Series 2019 Note (the "Series 2019 Loan") to the Borrower in order to finance the Project.

(c) Pursuant to a Loan Agreement (the "Series 2019 Loan Agreement") to be entered into between the HRA and the Borrower, the Borrower has agreed to repay the Series 2019 Loan in specified amounts and at specified times sufficient to pay in full when due the principal of, premium, if any, and interest on the Series 2019 Note. In addition, the Series 2019 Loan Agreement contains provisions relating to the maintenance and operation of the Project, indemnification, insurance, and other agreements and covenants which are required or permitted by the Act and which the HRA and the Borrower deem necessary or desirable for the financing of the Project.

(d) The Series 2019 Note will be subject to a Continuing Covenant Agreement (the "Continuing Covenant Agreement") to be entered into between the Series 2019 Lender and the Borrower.

(e) The Series 2019 Note will be subject to a Bond Compliance Agreement (the "Compliance Agreement") to be entered into between the HRA and the Borrower.

(f) Pursuant to a Pledge Agreement (the "Pledge Agreement") to be entered into between the HRA and the Series 2019 Lender, the HRA has pledged and granted a security interest in all of its rights, title, and interest in the Series 2019 Loan Agreement to the Series 2019 Lender (except for certain rights of indemnification and to reimbursement for certain costs and expenses).

(g) Pursuant to an Amendment No. 1 to Loan Agreement (the "Loan Agreement Amendment") to be entered into among the HRA, the Borrower, and Banc of America Public Capital Corp, as the holder of the Series 2013 Note (the "Series 2013 Lender"), the Borrower, the HRA and the Series 2013 Lender have agreed to certain amendments to that certain Loan Agreement, dated as of September 24, 2013 relating to the Series 2013 Note (the "2013 Loan Agreement").

(h) The amendments to the Series 2013 Note requested by the Borrower and

agreed to by the HRA and the Series 2013 Lender shall be set forth in that certain Amendment No. 2 to Educational Facilities Revenue Note, Series 2013 (Cretin-Derham Hall Project) (the "Series 2013 Note Amendment").

(i) The Notes will be special, limited obligations of the HRA. The Notes shall not be payable from or a charge upon any funds other than the revenues pledged to the payment thereof, nor shall the HRA or the City be subject to any liability thereon. No holder of either of the Notes shall ever have the right to compel any exercise of the taxing power of the HRA or the City to pay the Notes or the interest thereon, nor to enforce payment thereof against any property of the HRA or the City. The Notes shall not constitute a debt of the HRA or the City within the meaning of any constitutional or statutory limitation.

(j) It is desirable, feasible and consistent with the objects and purposes of the Act to issue or amend the Notes, for the purpose of financing or refinancing the costs of the Project.

(k) Application has been made to the Commissioner of the Department of Employment and Economic Development of the State of Minnesota for approval of the Project as tending to further the purposes and policies of the Act. The Series 2019 Note shall not be sold to the Series 2019 Lender unless and until such approval is obtained.

SECTION 2. THE NOTES.

2.1 Authorized Amount and Form of Notes. The Series 2019 Note and the Series 2013 Note Amendment are hereby approved and shall be issued or amended pursuant to this Resolution in substantially the form on file with the Executive Director of the HRA with such appropriate variations, omissions and insertions as are necessary and appropriate and are permitted or required by this Resolution, and in accordance with the further provisions hereof. The Series 2019 Note shall be issued in a denomination equal to its entire principal balance; the Series 2013 Note Amendment shall be in the amount of the outstanding principal balance of the Series 2013 Note; and the total aggregate principal amount of the Notes that may be outstanding hereunder is expressly limited to \$19,500,000, unless a duplicate Note of the applicable series is issued pursuant to Section 2.6 hereof or Section 2.6 of the HRA's Resolution No. RES 13-1279. The Notes shall bear interest at variable rates as set forth therein.

2.2 The Notes. The Series 2019 Note and the Series 2013 Note Amendment shall be dated as of the date of delivery to the Series 2019 Lender and Series 2013 Lender (collectively, the "Lenders" and each a "Lender"), respectively, shall be payable at the times and in the manner, and shall be subject to such other terms and conditions, as are set forth therein.

2.3 Execution of Notes. The Series 2019 Note and the Series 2013 Note Amendment shall be executed on behalf of the HRA by the signatures of its Chair or any Commissioner, the Executive Director of the HRA, and the Director of the Office of Financial Services of the City (collectively, the "HRA Officials") and shall be sealed with the seal of the HRA and the seal of the City. The seal of the HRA may be intentionally omitted as provided by law. In case any officer whose signature shall appear on the Notes shall cease to be such officer before the delivery of the Notes, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. In the event of the absence or disability of any of the HRA Officials such officer(s)

of the HRA as, in the opinion of the City Attorney, may act in their behalf, shall without further act or authorization of the Board execute and deliver the Notes.

2.4 Disposition of Proceeds of the Notes. Upon delivery of the Series 2019 Note to Series 2019 Lender, the Series 2019 Lender shall, on behalf of the HRA, advance the proceeds of the Series 2019 Note in accordance with the terms of the Series 2019 Loan Agreement.

2.5 Registration of Transfer. The Series 2013 Note shall be registered and transferrable as provided therein and in Resolution No. RES 13-1279 authorizing the issuance of the Series 2013 Note. The Series 2019 Note shall be registered and transferrable as provided herein. The HRA will cause to be kept at the office of the Executive Director a Note Register for Series 2019 Note in which, subject to such reasonable regulations as it may prescribe, the HRA shall provide for the registration of transfers of ownership of the Series 2019 Note. The Series 2019 Note shall be initially registered in the name of the Series 2019 Lender, and shall be transferable upon the applicable Note Register by the Series 2019 Lender in person or by its agent duly authorized in writing, upon surrender of the Series 2019 Note together with a written instrument of transfer satisfactory to the Executive Director, duly executed by the Series 2019 Lender or its duly authorized agent. The following form of assignment shall be sufficient for said purpose.

For value received _____ hereby sells, assigns and transfers unto _____ the attached Note of the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota, and does hereby irrevocably constitute and appoint _____ attorney to transfer said Note on the books of said Authority with full power of substitution in the premises. The undersigned certifies that the transfer is made in accordance with the provisions of Sections 2.5, 2.7 and 2.8 of the Resolution authorizing the issuance of the Note.

Dated:

Registered Owner

Upon such transfer the Executive Director of the HRA shall note the date of registration and the name and address of the successor Series 2019 Lender in the applicable Note Register and in the registration blank appearing on the Series 2019 Note; subject to receipt of a purchaser letter or certification as required by Section 2.8 hereof.

2.6 Mutilated, Lost or Destroyed Series 2019 Note. In case the Series 2019 Note issued hereunder shall become mutilated or be destroyed or lost, the HRA shall, if not then prohibited by law, cause to be executed and delivered, a new Series 2019 Note of like outstanding principal amount, number, series and tenor in exchange and substitution for and upon cancellation of such mutilated Series 2019 Note, or in lieu of and in substitution for such Series 2019 Note destroyed or lost, upon payment by the Series 2019 Lender of the reasonable expenses and charges of the HRA in connection therewith, and in the case of a destroyed or lost Series 2019 Note, the filing with the HRA of evidence satisfactory to the HRA with indemnity satisfactory to it. If the mutilated, destroyed or lost Series 2019 Note has already matured or been called for redemption in accordance with its terms it shall not be necessary to issue a new Series 2019 Note prior to payment.

2.7 Ownership of Notes. In accordance with the policy of the HRA, the Lenders will be

required to execute and deliver a purchaser letter or certification to the HRA, confirming that each Lender is either (a) a “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended (the “1933 Act”), that purchases the Notes for its own account or for the account of a qualified institutional buyer, or (b) an “accredited investor” as defined in Regulation D promulgated under the 1933 Act, that purchases the Notes for its own account and without registration under state or other securities laws, pursuant to an exemption for such sale. The HRA may deem and treat the person in whose name the Series 2019 Note is last registered in the applicable Note Register and by notation on such Series 2019 Note whether or not such Note shall be overdue, as the absolute owner of such Note for the purpose of receiving payment of or on account of the Principal Balance, redemption price or interest and for all other purposes whatsoever, and the HRA shall not be affected by any notice to the contrary.

2.8 Limitation on Series 2019 Note Transfers. The Series 2019 Note will initially be issued to a “qualified institutional buyer” or an “accredited investor” and without registration under state or other securities laws, pursuant to an exemption for such sale; and accordingly the Series 2019 Note may not be assigned or transferred in whole or part, except to a “qualified institutional buyer” or an “accredited investor” as provided herein. The HRA will require, as a precondition to any transfer, that the transferee provide to the HRA a purchaser letter or certification in a form satisfactory to the HRA and other evidence satisfactory to the HRA that the transferee is a “qualified institutional buyer” or an “accredited investor” substantially in the form required of, and delivered upon issuance of the Series 2019 Note by, the Series 2019 Lender in accordance with Section 2.7 hereof.

2.9 Issuance of a New Series 2019 Note. Subject to the provisions of Section 2.8, the HRA shall, at the request and expense of the Series 2019 Lender, issue a new Series 2019 Note, in aggregate outstanding principal amount equal to that of the Series 2019 Note surrendered, and of like tenor except as to number, series principal amount, and the amount of the periodic installments payable thereunder, and registered in the name of the Series 2019 Lender or such transferee as may be designated by the Series 2019 Lender.

SECTION 3. MISCELLANEOUS.

3.1 Severability. If any provision of this Resolution shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any provisions of any constitution or statute or rule or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions contained herein invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or paragraphs contained in this Resolution shall not affect the remaining portions of this Resolution or any part thereof.

3.2 Authentication of Transcript. The officers of the HRA are directed to furnish to Bond Counsel certified copies of this Resolution and all documents referred to herein, and affidavits or certificates as to all other matters which are reasonably necessary to evidence the validity of the Notes. All such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute recitals of the HRA as to the correctness of all statements contained therein.

3.3 Authorization to Execute Agreements. The proposed forms of the Series 2019 Note,

Series 2013 Note Amendment, Series 2019 Loan Agreement, Note Purchase Agreement, Compliance Agreement, Loan Agreement Amendment, and Pledge Agreement (collectively and, together with such other documents as Bond Counsel considers appropriate in connection with the issuance or amendment of the Notes, the "Financing Documents") are hereby approved in substantially the form on file with the HRA, together with 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 prior to the execution of the documents. The HRA Officials are authorized to execute the Financing Documents to which the HRA is a party, in the name of and on behalf of the HRA. In the event of the absence or disability of the any of the HRA Officials, such officer(s) of the HRA as, in the opinion of the City Attorney, may act on their behalf, shall without further act or authorization of the Board do all things and execute all instruments and documents required to be done or executed by such absent or disabled officers. The execution of any instrument by the appropriate officer or officers of the HRA herein authorized shall be conclusive evidence of the approval of such documents in accordance with the terms hereof.

3.4 Future Amendments. The authority to approve, execute and deliver future amendments to the Financing Documents entered into by the HRA in connection with the issuance or amendment of the Notes and any consents required under the Financing Documents is hereby delegated to the Executive Director, subject to the following conditions: (a) such amendments or consents do not require the consent of the holder of the applicable Note, or such consent has been obtained; (b) such amendments or consents do not materially adversely affect the interests of the HRA; (c) such amendments or consents do not contravene or violate any policy of the HRA; and (d) such amendments or consents are acceptable in form and substance to the counsel retained by the HRA 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 Executive Director shall be conclusive evidence of the approval of such instruments in accordance with the terms hereof. In the absence of the Executive Director any instrument authorized by this paragraph to be executed and delivered may be executed by the officer of the HRA or the City authorized to act in his or her place and stead.

3.5 Governmental Program. The HRA 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 HRA shall not waive the right to treat the investment as a program investment.

3.6 Costs; Indemnification by Borrower. The Borrower has agreed and it is hereby determined that any and all costs incurred by the HRA in connection with financing the Project will be paid by the Borrower whether or not the Notes are issued or amended and whether or not the Project is carried to completion. It is understood and agreed that the Borrower shall indemnify the HRA against all liabilities, losses, damages, costs and expenses (including attorney's fees and expenses incurred by the HRA) arising with respect to the Project, the Financing Documents, or the Notes, as further provided in the Loan Agreements. In addition, the Borrower shall pay the administrative fee of the HRA as provided in the Loan Agreements.

3.7 Headings; Terms. Paragraph headings in this resolution are for convenience of reference only and are not a part hereof, and shall not limit or define the meaning of any provision hereof. Capitalized terms used, but not defined, herein shall have the meanings given them in, or pursuant to, the Financing Documents.