



Legislation Text

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Resolution approving the issuance and sale of Conduit Revenue Refunding Bonds, Series 2020, for the Amherst H. Wilder Foundation Project, located at 451 Lexington Parkway and authorizing the execution of documents relating thereto, District 13, Ward 1

WHEREAS,

(a) The Housing and Redevelopment Authority of the City of Saint Paul, Minnesota (the "HRA") is duly organized and existing under the Constitution and laws of the State of Minnesota; and

(b) The purpose of Minnesota Statutes, Sections 469.152 to 469.1655 (the "Act"), as found and determined by the legislature, is to promote the welfare of the State of Minnesota 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;

(c) Factors necessitating the active promotion and development of economically sound industry and commerce are the increasing concentration of population in the metropolitan 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;

(d) The Board of Commissioners (the "Board") of the HRA has received from the Amherst H. Wilder Foundation, a Minnesota nonprofit corporation organized under the laws of the State of Minnesota (the "Borrower"), a proposal that the HRA assist in refunding outstanding tax-exempt revenue bonds as hereinafter described, through the issuance of a one or more series of tax-exempt or taxable revenue bonds, as further defined below, the "Bonds," pursuant to the Act;

(e) The HRA desires to facilitate the selective development of the community, retain and improve the tax base and help to provide the range of services and employment opportunities required by the population, and the refinancing of existing debt described below will assist the HRA in achieving those objectives and will enhance the image and reputation of the community;

(f) Proceeds derived from the sale of the Bonds will be loaned to the Borrower, pursuant to the terms of a Loan Agreement between the HRA and the Borrower (the "Loan Agreement") to be used to: (i) refund outstanding revenue bonds (the "Series 2010-3 Bonds") previously issued by the Port Authority of the City of Saint Paul (the "Port Authority"), which refinanced prior revenue bonds of the Port Authority, the proceeds of which were used to finance the cost of the construction of the approximately 99,000 square-foot community center and administrative facility of the Borrower, known as the Wilder Center, and related parking ramp (collectively, the "Project") located at the southwest corner of the intersection of Lexington and University Avenues, in the City of Saint Paul, Minnesota (the "City"), including payment of a swap termination fee and costs of issuance of the Series 2010-3 Bonds; and (ii) finance any related transaction costs and fund necessary reserves. The Wilder Center and related parking ramp are owned and operated by the Borrower;

(g) The HRA has been advised by Ballard Spahr LLP, as bond counsel to the HRA, that the Port Authority has been requested to consent to the issuance of the Bonds by the HRA, and the Port Authority has advised Ballard Spahr LLP that the Port Authority can consent to the issuance of the Bonds at the staff level via written communication;

(h) Based on representations of the Borrower, no public official of the HRA or the City 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;

(i) The Bonds proposed to be issued by the HRA to refinance the Port Authority's Series 2010-3 Bonds and the Project will constitute special, limited revenue obligations of the HRA secured solely by: (i) the revenues derived from the Loan Agreement; (ii) a debt service reserve fund which may be funded by proceeds of the Bonds to be held by the Trustee (defined below) for the benefit of the holders of the Bonds; (iii) a mortgage and security agreement granted by the Borrower with respect to the Project (as described below); and (iv) other security provided or arranged by the Borrower;

(j) Under the terms of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), the Bonds may not be issued on a tax-exempt basis unless the Board approves the Bonds after a public hearing following publication of a notice published in accordance with the requirements of the Code and the applicable Treasury Regulations;

(k) The Borrower has represented to the HRA that the Minnesota Department of Employment and Economic Development approved the Project pursuant to Section 469.154, subdivision 4, of the Act in connection with the Port Authority's issuance of the bonds that were refunded with proceeds of the Series 2010-3 Bonds;

(l) Pursuant to the Act and Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), and regulations promulgated thereunder, a notice of public hearing in the required form was published in the *Legal Ledger*, the official newspaper of the HRA on September 28, 2020, and posted on the HRA's website prior to the date hereof;

(m) On this date, following the publication of a notice of a public hearing as required by the Act and the Code, the Board conducted a public hearing at which a reasonable opportunity was provided for interested individuals to express their views on the proposal to refinance the Series 2010-3 Bonds and the Project (the "Public Hearing"); and

(n) The Bonds will be purchased by Piper Sandler & Co. (the "Underwriter") pursuant to the Bond Purchase Agreement (the "Bond Purchase Agreement"), among the Underwriter, the HRA, and the Borrower.

NOW, THEREFORE, BE IT RESOLVED 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 hereby authorized to approve the issuance, sale, and delivery of the Bonds of the HRA in an original aggregate principal amount not to exceed \$25,000,000. 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 Chair of the HRA (or any Commissioner), the Executive Director of the HRA, and the Director of the Office of Financial Services (collectively, the "HRA Officials"), in their discretion. The Bonds shall be issued under the terms of an Indenture of Trust, dated on or after November 1, 2020 (the "Indenture"), between the HRA and Wilmington Trust, National Association or such other bond trustee named therein (the "Trustee"). The HRA will loan the proceeds of the Bonds (the "Loan") to the Borrower for purposes of refunding the Series 2010-3 Bonds and refinancing the Project, funding any necessary reserves for the Bonds, and funding costs of issuance for the Bonds.

(b) Pursuant to the Loan Agreement, the Borrower has agreed to repay the 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 Bonds. In addition, the 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 Underwriter deem necessary or desirable.

(c) The Borrower shall pay to the HRA any and all costs incurred by the HRA in connection with the Bonds, whether or not the issuance of the Bonds is carried to completion, and whether or not the Bonds or operative instruments are executed and delivered. The Borrower shall also comply with the HRA's fee policies respecting revenue bond issues.

(d) The Bonds will be special, limited revenue obligations of the HRA. The Bonds 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 the Bonds shall ever have the right to compel any exercise of the taxing power of the HRA or the City to pay the Bonds or the interest thereon, nor to enforce payment thereof against any property of the HRA or the City. The Bonds shall not constitute a debt of the HRA or the City within the meaning of any constitutional, charter or statutory limitation.

(e) It is desirable, feasible and consistent with the objects and purposes of the Act to issue the Bonds to refund the Series 2010-3 Bonds. The HRA will seek and must obtain the consent of the Port Authority to the refunding and redemption of the Series 2010-3 Bonds prior to issuing the Series 2020 Bonds as described in Recital (g) above.

(f) The Indenture, the Loan Agreement, the Mortgage, Security Agreement and Assignment of Rents, dated on or after November 1, 2020 (the "Mortgage"), from the Borrower to the Trustee, the Bond Purchase Agreement, and the other financing documents to which the Borrower is a party are referred to herein as the "Financing Documents."

SECTION 2. THE BONDS.

2.1 Authorized Amount and Form of Bonds The Bonds are hereby approved and shall be issued pursuant to this Resolution in substantially the form attached to the Indenture 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; and the total aggregate principal amount of the Bonds that may be outstanding hereunder is expressly limited to \$25,000,000, unless any duplicate Bonds are issued pursuant to the Indenture. The Bonds shall bear interest at the rates set forth therein and in the Bond Purchase Agreement.

Except as otherwise provided in this resolution, all rights, powers, and privileges conferred and duties and liabilities imposed upon the HRA or the Board by the provisions of this resolution or of the aforementioned documents shall be exercised or performed by the HRA or by such members of the Board, 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 Financing Documents shall be deemed to be a covenant, stipulation, obligation, or agreement of any member of the Board of Commissioner of the HRA, or any officer, agent, or employee of the HRA in that person's individual capacity, and neither the Board 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 Financing Documents, the Bonds or in any other document relating to the Bonds, and no obligation therein or herein imposed upon the HRA or the breach thereof, shall constitute or give rise to any pecuniary liability of the HRA or any charge upon its general credit or taxing powers. In making the agreements, provisions, covenants, and representations set forth in such documents, the HRA 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.

2.2 The Bonds. The Bonds shall be designated, shall be numbered, shall be dated, shall mature, shall be subject to redemption prior to maturity and have such other terms, details, and provisions as are prescribed in the Indenture. The Bonds shall bear interest at fixed rates established by the terms of the Indenture; provided that the net interest cost for the Bonds shall not exceed 6.0% per annum and the final maturity date of the Bonds shall not be later than January 1, 2051. The HRA hereby authorizes the issuance of the Bonds in minimum denominations of \$5,000 subject to obtaining a rating in the BBB or Baa category or higher. The HRA hereby authorizes the 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 HRA Officials and bond counsel. If the Bonds carry a credit rating below the BBB or Baa category, then the Bonds shall be issued with the authorized minimum denominations required by the HRA's conduit bond issuance policy.

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

2.3 Execution The Bonds shall be executed on behalf of the HRA by the signatures of its Chair or any Commissioner, the Executive Director, and the Director of the Office of Financial Services (collectively, the "HRA Officials") and shall be sealed with the seal of the HRA; provided that the seal may be intentionally omitted as provided by law. In case any officer whose signature shall appear on the Bonds shall cease to be such officer before the delivery of the Bonds, 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 Bonds.

The HRA Officials and other officers, employees, and agents of the HRA are hereby authorized to execute and deliver, on behalf of the HRA, the Financing Documents to which it is a party and such other documents as are necessary or appropriate in connection with the issuance, sale, and delivery of the Bonds, including various certificates of the HRA, the Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038, a certificate as to arbitrage and rebate, and similar documents. The HRA hereby approves the execution and delivery by the Trustee of the Indenture and all other instruments, certificates, and documents prepared in conjunction with the issuance of the Bonds that require execution by the Trustee. The Trustee is hereby appointed as bond registrar and paying agent with respect to the Bonds. The HRA hereby authorizes Ballard Spahr LLP, as bond counsel of the HRA, to prepare, execute, and deliver its approving legal opinion with respect to the Bonds.

2.4 Disposition of Proceeds of the Bonds. Upon delivery of the Bonds to the Underwriter, the Underwriter shall, on behalf of the HRA, advance a portion of the proceeds of the Bonds to the bond trustee for the Series 2010-3 Bonds to refund and redeem the Series 2010-3 Bonds.

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 herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or paragraphs in this Resolution contained 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 Ballard Spahr LLP, as Bond Counsel to the HRA, 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 Bonds. 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 forms of the proposed 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 and such other documents as Bond Counsel considers appropriate in connection with the issuance of the Bonds, in the name of and on behalf of the HRA. 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 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 of the Bonds 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 Bonds 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/her place and stead.

3.5 Preliminary Official Statement and Official Statement. The HRA 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," as it relates to the HRA), including the appendices thereto, and the HRA assumes no responsibility for the sufficiency, accuracy, or completeness of such information. Subject to the foregoing, the HRA 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 HRA for use in connection with the offer and sale of the Bonds. The HRA hereby approves the Continuing Disclosure Agreement, dated on or after November 1, 2020 (the "Continuing Disclosure Agreement"), between the Borrower and the Trustee, as dissemination agent or any other dissemination agent named therein, in substantially the form on file with the Executive Director of the HRA, and hereby authorizes the Trustee to execute and deliver the Continuing Disclosure Agreement.

3.6 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.

3.7 Costs Associated with the Bonds. The Borrower has agreed and it is hereby determined that any and all costs incurred by the HRA in connection with the financing of the Project will be paid by the Borrower. It is understood and agreed that the Borrower shall indemnify, defend and hold harmless 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 or the Bonds, as provided for and agreed to by and between the Borrower and the HRA in the Loan Agreement.

3.8 Other Required Actions. The officers of the HRA, bond counsel, other attorneys, engineers, and other agents or employees of the HRA 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 any of the HRA 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

HRA or the City delegated the duties of any such HRA Official with the same force and effect as if such documents were executed and delivered by such HRA Official.

3.9 Invalidity. In case any one or more of the provisions of this resolution, 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.

SECTION 4. ADOPTION.

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