Legislation Text

File #: RES PH 21-170, **Version:** 1

Resolution authorizing the issuance and sale of conduit charter school lease revenue refunding bonds, under Minnesota Statutes, Sections 469.152 through 469.1655, for the Nova Classical Academy Project, 1455 Victoria Way and approving related documents; District 9, Ward 2

WHEREAS, 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

WHEREAS, 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 HRA, is authorized to issue revenue bonds to finance or refinance, in whole or in part, the costs of the acquisition, construction, improvement, or extension of revenue producing enterprises, whether or not operated for profit; and

WHEREAS, Friends of Nova Classical Academy, a Minnesota nonprofit corporation (the "Borrower"), has requested that the HRA issue one or more series of revenue bonds to be designated the Charter School Lease Revenue Bonds (Nova Classical Academy Project) Series 2021 (the "Bonds") and loan the proceeds derived from the sale of the Bonds to the Borrower, pursuant to the terms of a Second Amended and Restated Loan Agreement between the HRA and the Borrower (the "Loan Agreement") to be used, together with funds held by the bond trustee for the Series 2011A Bonds (as defined below) and Nova Classical Academy, a Minnesota nonprofit corporation and public charter school (the "School"), to (i) refund the HRA's Charter School Lease Revenue Bonds (Nova Classical Academy Project) Series 2011A (the "Series 2011A Bonds"), the proceeds of which financed the acquisition, construction and equipping of the public charter school facility located at 1455 Victoria Way (formerly referred to as 1415 Mercer Way) in the City of Saint Paul, Minnesota (the "School Facility"); (ii) if necessary, fund a debt service reserve fund; and (iii) pay the costs of issuing the Bonds (collectively, the "Project"); and

WHEREAS, the School Facility is owned by the Borrower and will be leased to and operated by the School; and

WHEREAS, the Bonds proposed to be issued by the HRA to finance the Project will constitute revenue obligations secured solely by: (i) the revenues derived from the Loan Agreement; (ii) a pledge and assignment of all School revenues, as more specifically set forth in the Financing Documents (defined below) including money due to the School from the State of Minnesota Lease Aid Payment Program (the "Program"); (iii) an agreement to pay the money due to the School from the Program to a dedicated account subject to a monthly transfer to Trustee held accounts for the benefit of the holders of the Bonds, as more specifically set forth in the Financing Documents; (iv) other revenues pledged to or otherwise received by the Borrower, except for those revenues necessary for ordinary operational expenses and required under Minnesota law; (v) a debt service reserve fund to be held by the Trustee (defined below) for the benefit of the holders of the Bonds; (vi) a first mortgage and security agreement granted by the Borrower with respect to the Project; (vii) an operating reserve fund; and (viii) other security provided or arranged by the Borrower or the School; and

WHEREAS, under the terms of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), the Bonds may not be issued as tax-exempt bonds unless the Board of Commissioners of the HRA (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; and

WHEREAS, on the date hereof, 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 undertake and finance the Project and the proposed issuance of the Bonds (the "Public Hearing").

NOW, THEREFORE, BE IT RESOLVED THAT:

1. For the purposes set forth above, there is hereby authorized the issuance, sale, and delivery of the Bonds of the HRA in an original aggregate principal amount not to exceed $6,250,000. 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 of the City (collectively, the "HRA Officials"), in their discretion. The Bonds shall be issued as additional bonds on parity with all or a portion of the HRA's outstanding Charter School Lease Revenue Bonds (Nova Classical Academy Project) Series 2016A, in the aggregate principal amount of $16,830,000 (the "Series 2016A Bonds") and Taxable Charter School Lease Revenue Bonds (Nova Classical Academy Project) Series 2016B, in the aggregate principal amount of $230,000 (the "Series 2016B Bonds" and together with the Series 2016A Bonds, the "Series 2016 Bonds"), under the terms of a Second Amended and Restated Indenture of Trust, dated on or after August 1, 2021 (the "Indenture"), between the HRA and U.S. Bank National Association, a national banking association, as trustee (the "Trustee").

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 4.00% per annum. The HRA hereby authorizes the issuance of the Bonds in minimum denominations of $25,000 subject to obtaining a rating in the BB category or higher.

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 Executive Director of the HRA, with the amendments referenced herein. 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.

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 forms in the Indenture on file with the Executive Director of the HRA, 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 HRA Officials, in their discretion, shall determine. The execution of the Bonds with the manual or facsimile signatures of the HRA Officials and the delivery of the Bonds by the HRA shall be conclusive evidence of such determination.

2. The Bonds shall be special, limited obligations of the HRA 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 Third Amended and Restated Mortgage, Security Agreement and Assignment of Rents, to be dated on or after August 1, 2021 (the "Mortgage"), from the Borrower, as mortgagor, to the Trustee, as mortgagee; (ii) the Amended and Restated Assignment of Lease, dated on or after August 1, 2021 (the "Assignment"), from the Borrower, as assignor, to the Trustee, as assignee, and consented to by the School; and (iii) the Second Amended and Restated Pledge and Covenant Agreement, dated on or after August 1, 2021 (the "Pledge Agreement"), from the School to the Trustee. The

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Bonds will be subject to the provisions of a Tax Regulatory Agreement, dated on or after August 1, 2021 (the "Tax Regulatory Agreement"), among the Borrower, the School and the Trustee. The Board hereby authorizes and directs the HRA 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 HRA, and the Trustee as set forth therein.

All of the provisions of the Indenture, 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 Indenture shall be substantially in the form on file with the Executive Director of the HRA, which is hereby approved, with such necessary and appropriate variations, omissions, and insertions as do not materially change the substance thereof, or as the HRA Officials, in their discretion, shall determine, and the execution thereof by the HRA Officials shall be conclusive evidence of such determination.

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 Project, 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 Project 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 HRA or 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 HRA or 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 HRA or the City except the interests of the HRA 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 HRA or the City within the meaning of any constitutional or statutory limitations.

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

6. The HRA hereby approves and authorizes and directs the HRA Officials to execute and deliver the Loan Agreement, the Indenture, the Bond Purchase Agreement, and such other documents as bond counsel to the HRA considers appropriate in connection with the issuance of the Bonds (collectively, the "Financing Documents"); provided that the Bond Purchase Agreement may be executed on behalf of the HRA solely by the Executive Director of the HRA. All of the provisions of the Financing Documents, when executed and delivered 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 Financing Documents shall be substantially in the forms on file with the Executive Director of the HRA which are hereby approved, with such omissions and insertions as do not materially change the substance thereof, or as the HRA Officials, in their discretion, shall determine, and the execution of the Financing Documents by the HRA Officials shall be conclusive evidence of such determination.

7. 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 Kennedy & Graven, Chartered, as bond counsel of the HRA, to prepare, execute, and deliver its approving legal opinion with respect to the Bonds. 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. The electronic signature of a party to the Financing Documents, including all acknowledgements, authorizations, directions, waivers and consents thereto (or any amendment or supplement thereto) shall be as valid as an original signature of such party and shall be effective to bind such party to the Financing Documents. Any electronically signed Financing Documents shall be deemed (i) to be "written" or "in writing," (ii) to have been signed, and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, (i) "electronic signature" means (a) a manually signed original signature that is then transmitted by electronic means or (b) a signature obtained through DocuSign, Adobe or a similarly digitally auditable signature gathering process; (ii) "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a portable document format ("pdf") or other replicating image attached to an electronic mail or internet message; and, (iii) "electronically signed document" means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

8. 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 - The 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 August 1, 2021 (the "Continuing Disclosure Agreement"), among the Borrower, the School, and the Trustee, 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.

9. 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 aforementioned 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 aforementioned 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.

10. 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 HRA 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 HRA and any holder from time to time of the Bonds issued under the provisions of this resolution.

11. In case any one or more of the provisions of this resolution, other than the provisions contained in Section 4 hereof, 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.

12. 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.

13. 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.

14. 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.

15. The authority to approve, execute and deliver future amendments and consents to the Financing Documents entered into by the HRA in connection with the issuance of the Bonds and consents required under the financing documents is hereby delegated to the HRA 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 to 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

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of any instrument by the HRA Officials shall be conclusive evidence of the approval of such instruments in accordance with the terms hereof. In the absence of any of the HRA Officials 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.

16. 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.

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