

**CITY OF FALCON HEIGHTS
COUNCIL RESOLUTION**

April 9, 2014

No. 14-07

**RESOLUTION APPROVING THE ISSUANCE AND SALE OF AN
EDUCATIONAL FACILITIES REVENUE REFUNDING NOTE
(MOUNDS PARK ACADEMY PROJECT), SERIES 2014 AND
AUTHORIZING THE EXECUTION OF DOCUMENTS RELATING THERETO**

WHEREAS,

(a) Minnesota Statutes, Chapter 469.152 to 469.1655, as amended (the "Act"), as found and determined by the legislature, is to promote the welfare of the state 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;

(b) 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 educational opportunities for such population;

(c) The City Council of the City of Falcon Heights (the "City") has received from Mounds Park Academy, a Minnesota nonprofit corporation (the "Borrower"), a proposal that the City assist in refinancing a Project hereinafter described through the issuance of a revenue note, as further defined below, the "Note", pursuant to the Act;

(d) The Project consists of refunding the outstanding principal balance of two series of tax exempt revenue bonds issued by the City of Maplewood, Minnesota ("Maplewood") in 2003 and 2005 to finance and refinance various capital improvements to the Borrower's facilities located at 2051 Larpenteur Avenue East in Maplewood and finance the acquisition of real property located at 2025 Larpenteur Avenue East in Maplewood;

(e) The City has been advised by representatives of the Borrower that conventional, commercial financing to pay 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 Project would be significantly reduced;

(f) Based on representations of the Borrower, no public official of 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; and

(g) A public hearing on the Project was held on this date, after notice was published and materials made available for public inspection at the City's offices, all as required by the Act and Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), at which public hearing all those appearing who desired to speak were heard and written comments were accepted.

BE IT RESOLVED by the City Council of the City of Falcon Heights, as follows:

SECTION 1. LEGAL AUTHORIZATION AND FINDINGS.

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

(a) The City is a municipal corporation and a political subdivision of the State of Minnesota (the "State") and is authorized under the Act to assist the revenue producing project herein referred to, and to issue and sell the Note, as hereinafter defined, 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 of the Educational Facilities Revenue Refunding Note (Mounds Park Academy Project), Series 2014 (the "Note") by the City, pursuant to the Act, is in the best interest of the City, and the City hereby determines to issue the Note and to sell the Note to Bremer Bank, National Association, in Minneapolis, Minnesota (the "Lender"), as provided herein. The City will loan the proceeds of the Note (the "Loan") to the Borrower in order to finance the Project.

(c) Pursuant to a Loan Agreement (the "Loan Agreement") to be entered into between the City and the Borrower, the Borrower has agreed to repay the Note in specified amounts and at specified times sufficient to pay in full when due the principal of, premium, if any, and interest on the Note. 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 City and the Borrower deem necessary or desirable for the financing of the Project. A draft of the Loan Agreement has been submitted to the City.

(d) Pursuant to a Pledge Agreement (the "Pledge Agreement") to be entered into between the City and the Lender, the City has pledged and granted

a security interest in all of its rights, title, and interest in the Loan Agreement to the Lender (except for certain rights of indemnification and to reimbursement for certain costs and expenses). A draft of the Pledge Agreement has been submitted to the City.

(e) Pursuant to a Mortgage, Security Agreement and Fixture Financing Statement (the "Mortgage") and an Assignment of Leases and Rents (the "Assignment") each to be executed by the Borrower in favor of the Lender, the Borrower has secured payment of amounts due under the Loan Agreement and Note by granting to the Lender a mortgage and security interest in and an assignment of leases from the property described therein. Drafts of the Mortgage and the Assignment have been submitted to the City but will not be executed by the City.

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

(g) On the basis of information available to the City it appears, and the City hereby finds, that the Project constitutes properties, real and personal, used or useful in connection with one or more revenue producing enterprises within the meaning of Subdivision 2(d) of Section 469.153 of the Act; that the Project furthers the purposes stated in Section 469.152.

(h) It is desirable, feasible and consistent with the objects and purposes of the Act to issue the Note, for the purpose of refinancing the Project.

SECTION 2. THE NOTE.

2.1 Authorized Amount and Form of Note. The Note is hereby approved and shall be issued pursuant to this Resolution in substantially the form submitted to the City 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 Note that may be outstanding hereunder shall not exceed \$7,750,000, unless a duplicate Note is issued pursuant to Section 2.7. The Note shall bear interest at a variable rate (which shall be reset every 5 years) as set forth therein and not the date of issuance will not exceed 8% per annum.

2.2 The Note. The Note shall be dated as of the date of delivery to the Lender, shall be payable at the times and in the manner, shall bear interest at the rate, and shall be subject to such other terms and conditions as are set forth therein.

2.3 Execution. The Note shall be executed on behalf of the City by the signatures of its Mayor and its Administrator and shall be sealed with the seal of the City; provided that the seal may be intentionally omitted as provided by law. In case any officer whose signature shall appear on the Note shall cease to be such officer before the delivery of the Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if had remained in office until delivery. In the event of the absence or disability of the Mayor or the Administrator, such officers of the City as, in the opinion of the attorney for the City, may act in their behalf, shall without further act or authorization of the City Council execute and deliver the Note.

2.4 Delivery of Initial Note. Before delivery of the Note there shall be filed with the Lender (except to the extent waived by the Lender) the following items:

- (1) an executed copy of each of the following documents:
 - (a) the Loan Agreement;
 - (b) the Pledge Agreement;
 - (c) the Mortgage;
 - (d) the Assignment;
- (2) an opinion of Counsel for the Borrower as prescribed by the Lender and Bond Counsel;
- (3) the opinion of Bond Counsel as to the validity and tax exempt status of the Note;
- (4) a 501(c)(3) determination letter from the Internal Revenue Service evidencing that the Borrower is exempt from income taxation under Section 501(c)(3) of the Code;
- (5) such other documents and opinions as Bond Counsel may reasonably require for purposes of rendering its opinion required in subsection (3) above or that the Lender may reasonably require for the closing.

2.5 Disposition of Proceeds of the Note. Upon delivery of the Note to Lender, the Lender shall, on behalf of the City, disburse the proceeds of the Note for refunding of the tax exempt bonds issued by Maplewood in accordance with the terms of the Loan Agreement.

2.6 Registration of Transfer. The City will cause to be kept at the office of the Administrator a Note Register in which, subject to such reasonable regulations as it may prescribe, the City shall provide for the registration of transfers of ownership of the Note. The Note shall be initially registered in the name of the Lender and shall be transferable upon the Note Register by the Lender in person or by its agent duly authorized in writing, upon surrender of the Note together with a written instrument of transfer satisfactory to the Administrator, duly executed by the 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 within Note of the City of Falcon Heights, and does hereby irrevocably constitute and appoint _____ attorney to transfer said Note on the books of said City with full power of substitution in the premises. The undersigned certifies that the transfer is made in accordance with the provisions of Section 2.9 of the Resolution authorizing the issuance of the Note.

Dated: _____

Registered Owner

Upon such transfer the Administrator shall note the date of registration and the name and address of the new Lender in the applicable Note Register and in the registration blank appearing on the Note.

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

2.8 Ownership of Note. The City may deem and treat the person in whose name the Note is last registered in the Note Register and by notation on the 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 City shall not be affected by any notice to the contrary.

2.9 Limitation on Note Transfers. The Note will be issued to an "accredited investor" and without registration under state or other securities laws, pursuant to an exemption for such issuance; and accordingly the Note may not be assigned or transferred in whole or part, nor may a participation interest in the Note be given pursuant to any participation agreement, except to another "accredited investor" or "financial institution" in accordance with an applicable exemption from such registration requirements and with full and accurate disclosure of all material facts to the prospective purchaser(s) or transferee(s).

2.10 Issuance of a New Note. Subject to the provisions of Section 2.9, the City shall, at the request and expense of the Lender, issue a new note, in aggregate outstanding principal amount equal to that of the Note surrendered, and of like tenor except as to number, principal amount, and the amount of the periodic installments payable thereunder, and registered in the name of the Lender or such transferee as may be designated by the 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 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 City 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 Note. All such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute recitals of the City as to the correctness of all statements contained therein.

3.3 Authorization to Execute Agreements. The forms of the proposed Loan Agreement and the Pledge Agreement are hereby approved in substantially the form presented to the City Council, 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 Mayor and the Administrator of the City are authorized to execute the Loan Agreement and the Pledge Agreement and such other documents as Bond Counsel considers appropriate in connection with the issuance of the Note, in the name of and on behalf of the City. In the event of the

absence or disability of the Mayor or the Administrator such officers of the City as, in the opinion of the attorney for the City, may act on their behalf, shall without further act or authorization of the City Council 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 City herein authorized shall be conclusive evidence of the approval of such documents in accordance with the terms hereof.

3.4 Qualified Tax Exempt Obligation. In order to qualify the Note as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code, the City hereby makes the following factual statements and representations;

- (a) the Note will be issued after August 7, 1986;
- (b) the Note is not treated as a "private activity bond" under Section 265(b)(3) of the Code;
- (c) the City hereby designates the Note as a qualified tax-exempt obligation for purposes of Section 265(b)(3) of the Code;
- (d) the reasonably anticipated amount of tax-exempt obligations (other than obligations described in clause (ii) of Section 265(b)(3)(C) of the Code) which will be issued by the City (and all entities whose obligations will be aggregated with those of the City) during the calendar year 2014 will not exceed \$10,000,000; and
- (e) not more than \$10,000,000 of obligations issued by the City during the calendar year 2014 have been designated for purposes of Section 265(b)(3) of the Code.

Adopted by the City Council of the City of Falcon Heights, this 9th day of April, 2014.

Moved by: *Long*

Approved by: *Peter Lindstrom*
Peter Lindstrom
Mayor
April 9, 2014

LINDSTROM 5 In Favor
GOSLIN
HARRIS 0 Against
LONG
MERCER-TAYLER

Attested by: *Bart Fischer*
Bart Fischer
City Administrator
April 9, 2014