



Request for Council Action

TO: Mayor and City Council
FROM: Tim Murray, City Administrator
MEETING DATE: October 23, 2018
SUBJECT: Resolution 2018-220 Providing Preliminary Approval to the Issuance of Revenue Obligations under Minnesota Statutes, Chapters 462C and 474A, as amended, and Taking Other Actions in Connection Therewith

Background:

John Cameron, the owner/developer of the Faribault Place property (former K-Mart site) is looking to move forward on the construction of up to 140 units of senior housing. The proposed financing for his project includes the issuance of up to \$23,000,000 of housing revenue bonds which the City would need to authorize.

The attached resolution authorizes the submission of an application for allocation of the State's bonding authority and grants preliminary approval to the issuance of the bonds. If the Council adopts the attached resolution, we will then schedule the required public hearing for the regular City Council meeting on Tuesday, November 27, 2018. Following the public hearing, the City Council will then be asked to consider a resolution approving the housing program, providing final approval to the issuance of the bonds, and authorizing the execution of documents in connection with the bonds.

A letter from bond counsel at Kennedy & Graven (Julie Eddington) is attached which provides additional information and details on the project and the proposed financing. We are also scheduling a time at an upcoming Joint Committee meeting for John Cameron to provide an update to the Council on his proposed project (prior to the public hearing).

Recommendation:

Approve Resolution 2018-220

Attachments:

- Resolution 2018-220
- Letter from Bond Counsel

CITY OF FARIBAULT, MINNESOTA

RESOLUTION NO. 2018-220

RESOLUTION PROVIDING PRELIMINARY APPROVAL TO THE ISSUANCE OF REVENUE OBLIGATIONS UNDER MINNESOTA STATUTES, CHAPTERS 462C AND 474A, AS AMENDED, AND TAKING OTHER ACTIONS IN CONNECTION THEREWITH

BE IT RESOLVED by the City Council (the “City Council”) of the City of Faribault, Minnesota (the “City”), as follows:

Section 1. Recitals.

1.01. Pursuant to Minnesota Statutes, Chapter 462C, as amended (the “Housing Act”), the City is authorized to carry out the public purposes described in the Housing Act by providing for the issuance of revenue bonds to provide funds to finance or refinance multifamily housing developments.

1.02. Development Company Faribault, LLC, a Minnesota limited liability company or an affiliate (the “Borrower”), has proposed to acquire, construct, and equip up to 140 units of senior housing to be located in the City (the “Project”).

1.03. The Borrower is requesting that the City issue revenue obligations, in one or more series, as taxable or tax-exempt obligations (the “Bonds”), in the approximate principal amount of \$23,000,000, in order to finance the Project.

1.04. Under Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”), prior to the issuance of the Bonds, the City Council must conduct a public hearing after one publication of notice in a newspaper circulating generally in the City at least fourteen (14) days before the hearing. Under Section 462C.04, subdivision 2 of the Housing Act, a public hearing must be held on the housing program after one publication of notice in a newspaper circulating generally in the City at least fifteen (15) days before the hearing.

1.05. Pursuant to Section 146 of the Code, the Bonds must receive an allocation of the bonding authority of the State of Minnesota. An application for such an allocation must be made pursuant to the requirements of Minnesota Statutes, Chapter 474A, as amended (the “Allocation Act”). The City Council must grant preliminary approval to the issuance of the Bonds to finance the Project and authorize the submission of an application to the office of Minnesota Management & Budget for an allocation of bonding authority with respect to the Bonds to finance the Project.

Section 2. Preliminary Findings. Based on representations made by the Borrower to the City to date, the City Council hereby makes the following preliminary findings, determinations, and declarations:

(a) The Bonds will finance a multifamily housing development designed and intended to be used for rental occupancy by seniors.

(b) The proceeds of the Bonds will be loaned to the Borrower and the proceeds thereof, along with other available funds, will be used to finance the Project, finance capitalized interest during the construction of the Project, fund required reserve funds, and pay costs of issuance of the Bonds. The City will enter into one or more loan agreements (or other revenue

agreement) with the Borrower requiring loan repayments from the Borrower in amounts sufficient to repay the loan of the proceeds of the Bonds when due and requiring the Borrower to pay all costs of maintaining and insuring the Project, including taxes thereon.

(c) In preliminarily authorizing the issuance of the Bonds, the City's purpose is to further the policies of the Housing Act.

(d) The Bonds will be special, limited obligations of the City payable solely from the revenues pledged to the payment thereof, will not be a general or moral obligation of the City, and will not be secured by or payable from revenues derived from any exercise of the taxing powers of the City.

Section 3. Submission of an Application for an Allocation of Bonding Authority. The City Council hereby authorizes the submission of an application for allocation of bonding authority with respect to the Bonds in the approximate principal amount of \$23,000,000 pursuant to Section 146 of the Code and the Allocation Act in accordance with the requirements of the Allocation Act. City staff and Kennedy & Graven, Chartered, acting as bond counsel to the City ("Bond Counsel"), shall take all actions, in cooperation with the Borrower, as are necessary to submit an application for an allocation of bonding authority to the office of Minnesota Management & Budget.

Section 4. Public Hearing. The City Council shall meet at 6:00 p.m. on Tuesday, November 27, 2018, to conduct a public hearing on the Housing Program, the Project, and the issuance of the Bonds by the City. Notice of such hearing (the "Public Notice") will be published as required by Section 462C.04, subdivision 2 of the Act and Section 147(f) of the Code. Bond Counsel is hereby authorized and directed to publish the Public Notice, in substantially the form attached hereto as EXHIBIT A, in the *Faribault Daily News*, the official newspaper of and a newspaper of general circulation in the City, at least fifteen (15) days before the meeting of the City Council at which the public hearing will take place. At the public hearing reasonable opportunity will be provided for interested individuals to express their views, both orally and in writing, on the Project, the Housing Program, and the proposed issuance of the Bonds.

Section 5. Housing Program. Bond Counsel shall prepare and submit to the City a draft Housing Program to authorize the issuance by the City of up to \$23,000,000 in revenue bonds to finance the acquisition, construction, and equipping of the Project by the Borrower.

Section 6. Preliminary Approval. The City Council hereby provides preliminary approval to the issuance of the Bonds in the estimated principal amount not to exceed \$23,000,000, subject to: (i) a public hearing as required by the Housing Act and Section 147(f) of the Code; (ii) final approval following the preparation of bond documents; and (iii) final determination by the City Council that the financing of the Project and the issuance of the Bonds are in the best interests of the City.

Section 7. Reimbursement of Costs under the Code.

7.01. The United States Department of the Treasury has promulgated regulations governing the use of the proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City or the Borrower for project expenditures paid prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the "Regulations") require that the City adopt a statement of official intent to reimburse an original expenditure not later than sixty (60) days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds occur within eighteen (18) months after the later of: (i) the date the expenditure is paid; or (ii) the date the project is placed in service or

abandoned, but in no event more than three (3) years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the Bonds.

7.02. To the extent any portion of the proceeds of the Bonds will be applied to expenditures with respect to the Project, the City reasonably expects to reimburse the Borrower for the expenditures made for costs of the Project from the proceeds of the Bonds after the date of payment of all or a portion of such expenditures. All reimbursed expenditures shall be capital expenditures, costs of issuance of the Bonds, or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations and also qualifying expenditures under the Act.

Based on representations by the Borrower, other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures permitted to be reimbursed under prior regulations pursuant to the transitional provision contained in Section 1.150-2(j)(2)(i)(B) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a “de minimis” amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures with respect to the Project to be reimbursed with the proceeds of the Bonds have been made by the Borrower more than sixty (60) days before the date of adoption of this resolution of the City.

7.03. Based on representations by the Borrower, as of the date hereof, there are no funds of the Borrower reserved, allocated on a long term-basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Project to be financed from proceeds of the Bonds, other than pursuant to the issuance of the Bonds. This resolution, therefore, is determined to be consistent with the budgetary and financial circumstances of the Borrower as they exist or are reasonably foreseeable on the date hereof.

Section 8. Costs. The Borrower will pay the administrative fees of the City and pay, or, upon demand, reimburse the City for payment of, any and all costs incurred by the City in connection with the issuance of the Bonds, whether or not the Bonds are issued.

Section 9. Commitment Conditional. The adoption of this resolution does not constitute a guaranty or firm commitment that the City will issue the Bonds as requested by the Borrower. The City retains the right in its sole discretion to withdraw from participation and accordingly not to issue the Bonds, or issue the Bonds in an amount less than the amount referred to herein, should the City at any time prior to issuance thereof determine that it is in the best interest of the City not to issue the Bonds, or to issue the Bonds in an amount less than the amount referred to in Section 6 hereof, or should the parties to the transaction be unable to reach agreement as to the terms and conditions of any of the documents required for the transaction.

Section 10. Effective Date. This resolution shall be in full force and effect from and after its passage.

Adopted by the City Council of the City of Faribault, Minnesota this 23rd day of October, 2018.

Mayor

ATTEST:

City Administrator

EXHIBIT A

NOTICE OF PUBLIC HEARING

CITY OF FARIBAULT, MINNESOTA

NOTICE OF PUBLIC HEARING ON THE APPROVAL OF A HOUSING PROGRAM FOR A MULTIFAMILY HOUSING DEVELOPMENT AND THE ISSUANCE OF REVENUE BONDS UNDER MINNESOTA STATUTES, CHAPTER 462C, AS AMENDED

NOTICE IS HEREBY GIVEN that the City Council of the City of Faribault, Minnesota (the “City”) will hold a public hearing on Tuesday, November 27, 2018, at or after 6:00 p.m. at City Hall, located at 208 First Avenue NW in the City, to consider a proposal that the City approve and authorize the issuance of its revenue bonds, in one or more series, as taxable or tax-exempt obligations (the “Bonds”), pursuant to Minnesota Statutes, Chapter 462C, as amended (the “Act”), for the purposes of (i) financing the acquisition, construction, and equipping of up to 140 units of senior housing to be located at _____ in the City (the “Project”); (ii) funding any required reserve funds; (iii) financing capitalized interest during the construction of the Project; and (iv) paying the costs of issuing the Bonds. Development Company Faribault, LLC, a Minnesota limited liability company or an affiliate (collectively, the “Borrower”), will own the Project. The aggregate principal amount of the proposed Bonds is estimated not to exceed \$23,000,000.

Following the public hearing, the City Council will consider a resolution approving a housing program prepared in accordance with the requirements of the Act and granting approval to the issuance of the Bonds.

The Bonds will be special, limited obligations of the City, and the Bonds and interest thereon will be payable solely from the revenues and assets pledged to the payment thereof. No holder of any Bond will have the right to compel any exercise of the taxing power of the City to pay the Bonds or the interest thereon, nor to enforce payment against any property of the City except money payable by the Borrower to the City and pledged to the payment of the Bonds. Before issuing the Bonds, the City will enter into an agreement with the Borrower, whereby the Borrower will be obligated to make payments at least sufficient at all times to pay the principal of and interest on the Bonds when due.

At the time and place fixed for the public hearing, the City Council will give all persons who appear at the hearing an opportunity to express their views with respect to the proposal. In addition, interested persons may direct any questions or file written comments respecting the proposal with the City Administrator, at or prior to said public hearing.

Dated: [Date of Publication]

BY ORDER OF THE CITY COUNCIL OF
THE CITY OF FARIBAULT, MINNESOTA

/s/ Tim Murray
City Administrator
City of Faribault, Minnesota



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October 19, 2018

Tim Murray, City Administrator
Deanna Kuennen, Community and Economic Development Director
City of Faribault
208 First Avenue NW
Faribault, MN 55021

Re: Resolution calling a public hearing on the issuance of conduit revenue bonds proposed to be issued by the City of Faribault for the benefit of Faribault Senior Living

Dear Deanna and Tim,

Development Company Faribault, LLC, a Minnesota limited liability company or an affiliate (the "Borrower"), has proposed to acquire, construct, and equip up to 140 units of senior housing to be located at in the City (the "Project"). In order to finance the Project, the Borrower is requesting that the City of Faribault (the "City") issue one or more series of conduit revenue bonds (the "Bonds") in the principal amount not to exceed \$23,000,000. Enclosed is a resolution to be considered by the City Council on Tuesday, October 23, 2018, calling a public hearing on the issuance of the Bonds and taking other actions related to the issuance of the Bonds.

The Bonds, if authorized by the City, will be issued in one or more series as housing revenue bonds under Minnesota Statutes, Chapter 462C, as amended (the "Act"). In accordance with the Act, the City will be required to conduct a public hearing on the issuance of the Bonds and the approval of a housing program. Additionally, Section 146 of the Internal Revenue Code of 1986, as amended (the "Code") requires that the Bonds receive an allocation of bonding authority of the State of Minnesota. An application for this allocation must be made pursuant to Minnesota Statutes, Chapter 474A, as amended (the "Allocation Act"). The enclosed resolution authorizes the City to take actions to prepare the housing program and an application for allocation in accordance with Section 146 of the Code and the Allocation Act.

If the City Council adopts the enclosed resolution, the City Council will be asked to conduct the public hearing required under the Act and the Code at the City Council meeting to be held on Tuesday, November 27, 2018. Following the public hearing, the City Council will be asked to consider a resolution approving the housing program, providing final approval to the issuance of the Bonds, and authorizing the execution of documents in connection with the Bonds.

If issued, the Bonds will be secured solely by the revenues derived from the loan agreement to be executed by the Borrower and from other security provided by the Borrower. The Bonds will not constitute a general or moral obligation of the City and will not be secured by or payable from any

property or assets of the City (other than the interests of the City in the loan agreements) and will not be secured by any taxing power of the City. The Bonds will not be subject to any debt limitation imposed on the City, and the issuance of the Bonds will not have any adverse impact on the credit rating of the City, even in the event that the Borrower encounters financial difficulties with respect to the Project to be financed with the proceeds of the Bonds.

The Borrower will agree to pay the out-of-pocket expenses of the City with respect to this transaction as well as the City's administrative fee.

Please contact me with any questions you may have prior to the City Council meeting.

Sincerely,

Julie A. Eddington