CITY OF INDEPENDENCE

RESOLUTION NO. 16-0510-01

RESOLUTION GIVING PRELIMINARY APPROVAL TO THE PROPOSED ISSUANCE OF CONDUIT REVENUE BONDS FOR THE BENEFIT OF THE BEACON ACADEMY PUBLIC CHARTER SCHOOL PROJECT UNDER MINNESOTA STATUTES, SECTIONS 469.152 THROUGH 469.1655

WHEREAS, the City of Independence (the “City”) is a statutory city 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 city of the State of Minnesota, including the City, 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; and

WHEREAS, under the provisions of Section 469.154, subdivision 9, of the Act, the City may enter into and perform contracts and agreements with other municipalities including an agreement whereby the City issues its revenue bonds in behalf of another municipality, and under Minnesota Statutes, Section 471.656, the City may issue bonds to finance the acquisition or improvement of real property located outside of the corporate boundaries of the City if the governing body of the city in which the real property is located consents, by resolution, to issuance of such bonds; and

WHEREAS, Friends of Beacon, a Minnesota nonprofit corporation (the “Borrower”), has requested that the City issue one or more series of revenue bonds (the “Bonds”) in a principal amount of approximately $17,000,000 and loan the proceeds derived from the sale of the Bonds to the Borrower, under the terms of a Loan Agreement, dated on or after June 1, 2016 (the “Loan Agreement”), between the City and the Borrower, to finance: (i) the acquisition of 12.52 acres of land and the buildings located on the land at 3420 Nevada Avenue North in the City of Crystal, renovate the interiors of the existing buildings, and add an addition to the existing buildings to increase the total square footage from approximately 61,200 square feet to 76,200 square feet for use as a public charter school for grades K through 8 (collectively, the “Project”); (ii) fund required reserves for the Bonds, if any; (iii) finance interest on the Bonds during the construction and renovation of the Project; and (iv) pay a portion of the costs of issuing the Bonds; and

WHEREAS, the Project will be owned by the Borrower and leased to and operated by Beacon Academy, a Minnesota nonprofit corporation and operating public charter school (the “School”), as a public charter school; and

WHEREAS, the Bonds proposed to be issued by the City to finance the Project will constitute revenue bonds secured solely by: (i) the revenues derived from the Loan Agreement; (ii) a pledge and assignment of all School revenues, including money due to the School from the State of Minnesota Lease Aid Payment Program (the "Program"); (iii) an agreement to pay all money due to the School from the Program to a dedicated account subject to a monthly sweep to the trustee accounts for the benefit of the holders of the Bonds; (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 a trustee for the benefit of the holders of the Bonds; (vi) a mortgage and security agreement granted by the Borrower with respect to the Project; and (vii) other security provided or arranged by the Borrower or the School; and

WHEREAS, pursuant to Section 469.154, subdivision 4, of the Act, prior to submitting an application to the Minnesota Department of Employment and Economic Development ("DEED") for approval of the Project, the Council of the City must conduct a public hearing on the proposal to undertake and finance the Project; and

WHEREAS, a notice of such public hearing must be published at least once not less than fourteen (14) days, nor more than thirty (30) days, prior to the date fixed for the public hearing in the official newspapers of the City and in a newspaper of general circulation in the City and such notice must state the time and place of the public hearing, the general nature of the Project, and an estimate of the principal amount of the Bonds to be issued to finance the Project; and

WHEREAS, such notice must state that a draft copy of the proposed application to DEED, together with all attachments and exhibits, will be available for public inspection following the publication of the notice and must specify the place and times where and when it will be so available; and

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), and regulations promulgated thereunder, requires that prior to the issuance of the Bonds, this Council must approve the Bonds after conducting a public hearing thereon preceded by publication of a notice of public hearing (in the form required by Section 147(f) of the Code and applicable regulations) in a newspaper of general circulation at least fourteen (14) days prior to the public hearing date; and

WHEREAS, in accordance with the requirements of the Act and the Code, a notice of public hearing in the form required by the Act and Section 147(f) of the Code was published in the *Crow River News,* an official newspaper of the City and a newspaper of general circulation in the City, on Thursday, April 21, and was published in *The Pioneer*, an official newspaper of the City and a newspaper of general circulation in the City, on Saturday, April 23; and

WHEREAS, the Council conducted a public hearing this same date with respect to the proposal to issue the Bonds and to undertake and finance the Project for the benefit of the Borrower and the School;

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The City hereby grants preliminary approval for the issuance of the Bonds for the purposes referenced in this resolution and in an aggregate principal amount not to exceed $17,000,000, subject to the approval of the Project by DEED, as required by the Act, and subject to the mutual agreement of the City, the Borrower, the School, and the initial purchaser(s) of the Bonds as to the details of the Bonds and provisions for their payment. In all events, it is understood, however, that the Bonds shall not constitute a pecuniary liability or charge, lien, or encumbrance, legal or equitable, upon any funds, assets, taxing powers, or any other property of the City except the City's interest in the Loan Agreement; and the Bonds, when, as, and if issued, shall recite in substance that the Bonds, including

interest thereon, are payable solely from the revenues received from the Loan Agreement and other property pledged to the payment thereof, and shall not constitute general or moral obligations of the City. The Bonds shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation. The holder(s) of the Bonds shall never have the right to compel any exercise of the taxing power of the City to pay the outstanding principal of the Bonds, or the interest thereon or to enforce payment thereof against any property of the City.

2. It is hereby found and determined that the Project furthers the purposes set forth in the Act and the Project constitutes a "project" within the meaning of Section 469.153, subdivision 2(b), of the Act.

3. In accordance with Section 469.154 of the Act, the City will cooperate with the Borrower in submitting the proposal for the financing of the Project to DEED, including the execution of necessary documentation by City officials. The Borrower has agreed to pay all costs incurred by the City in connection with the financing of the Project.

4. In accordance with Section 469.154, subdivision 7, of the Act, the officers, employees, and agents of the City are hereby authorized and directed to encourage the Borrower and School to provide employment opportunities to economically disadvantaged or unemployed individuals. Such individuals may be identified by such mechanisms as are available to the Borrower and the School, such as a first source agreement in which the School agrees to use a designated State employment office as a first source for employment recruitment, referral, and placement.

5. The Borrower shall pay to the City any and all costs incurred by the City in connection with the Bonds or the financing of the Project, whether or not the financing of the Project is approved by DEED, whether or not the financing is carried to completion, and whether or not the Bonds or operative instruments are executed and delivered. The Borrower shall also comply with the City's deposit and fee policies respecting such revenue bond issues.

6. 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 not to issue the Bonds, or to issue the Bonds in an amount less than the amount referred to in paragraph 1 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.

7. (a) The United States Department of the Treasury has promulgated final 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 a borrower from the City 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.

(b) The City reasonably expects to reimburse the Borrower and the School for the expenditures made for costs of the Project from the proceeds of the Bonds in an estimated maximum aggregate principal amount of $17,000,000 after the date of payment of all or a portion of the costs of the

Project. All reimbursed expenditures shall be capital expenditures, a cost 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.

(c) Based on representations by the Borrower, no expenditures for the Project have been made by the Borrower or the School more than sixty (60) days before the date of adoption of this resolution 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 minimus" amount (as defined in Section 1.150-2(f)(1) of the Regulations).

(d) 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.

(e) In anticipation of the issuance of the Bonds to finance all or a portion of the Project, and in order that completion of the Project will not be unduly delayed when approved, the Borrower is hereby authorized to make such expenditures and advances toward payment of that portion of the costs of the Project to be financed from the proceeds of the Bonds, as the Borrower considers necessary, including the use of interim, short-term financing, subject to reimbursement from the proceeds of the Bonds if and when delivered but otherwise without liability on the part of the City.

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

Adopted by the City Council of the City of Independence this 10th day of May, 2016.

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Marvin D. Johnson, Mayor

ATTEST:

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Mark Kaltsas, City Administrator

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