



City of Blaine Anoka County, Minnesota

Blaine City Hall
10801 Town Sq Dr NE
Blaine MN 55449

Legislation Details (With Text)

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Title: RESOLUTION APPROVING THE ISSUANCE AND SALE OF A HOUSING FACILITIES REVENUE NOTE, SERIES 2016 AND AUTHORIZING THE EXECUTION OF DOCUMENTS RELATING THERETO (ACCAP TOWNHOME PROJECT)
Sponsors: Joe Huss

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ECONOMIC DEVELOPMENT AUTHORITY - Joe Huss, Finance Director

RESOLUTION APPROVING THE ISSUANCE AND SALE OF A HOUSING FACILITIES REVENUE NOTE, SERIES 2016 AND AUTHORIZING THE EXECUTION OF DOCUMENTS RELATING THERETO (ACCAP TOWNHOME PROJECT)

ACCAP has been working with the City and Anoka County on a residential redevelopment concept that would include the removal of ACCAP's four homes, the two homes not purchased by the Anoka County Highway Department, and six of the now vacant lots that were purchased by the ACHD. ACCAP has reached an agreement to purchase the two homes currently still privately held. The proposed redevelopment project would include 30 townhomes within five separate buildings on this property. ACCAP would own all units and would rent the units to residents at 80% of the area median income (\$65,800-family of four). Rents would range from \$1,300 to \$1,500 based on the number of bedrooms. Previously, the City's economic development arm (Blaine EDA) agreed to assist ACCAP in the redevelopment by providing funds for site assembly and redevelopment. A total of \$900,000 has been pledged to ACCAP with \$450,000 pledged April 3, 2014 and another \$450,000 pledged April 16, 2015. A comprehensive land use amendment, rezoning, preliminary plat and conditional use permit was approved by the City of Blaine on June 19, 2014.

ACCAP is now requesting the use of the Blaine EDA's bonding authority to issue conduit housing bonds to provide funding for the project. Issuing through the EDA would allow the

bonds to be issued as bank qualified debt which would provide a lower interest rate on the bonds and allow for lower issuance costs. The estimated total cost of the project is \$6.7 million and ACCAP is seeking approval of the EDA to issue no more than \$5 million in conduit debt for the project.

Per Minnesota Statute 462C.02, before the EDA can issue housing bonds, the City must adopt an ordinance that provides that authority to the EDA. An ordinance to that effect was introduced at the September 1 Council meeting and will be presented for second reading and adoption at this evening's Council meeting.

Issuance of the conduit bonds is expected to take place at the September 15 Council Meeting. The bonds would not constitute a charge, lien, or encumbrance upon any property of the City and would be repaid only with the revenues derived from the project itself. As such, the bonds are not considered an obligation of the City and would not be a charge against the City's general credit or taxing powers.

By motion, adopt the following resolution.

WHEREAS,

(a) Minnesota Statutes, Chapter 462C, as amended (the "Act"), confers upon cities the power to issue revenue bonds to finance a program for the purposes of planning, administering, making or purchasing loans with respect to one or more multi-family housing project developments;

(b) The Board of Commissioners of the Blaine Economic Development Authority (the "EDA") has received a proposal that it issue its Housing Facilities Revenue Note (ACCAP Townhome Project), Series 2016, in one or more series (the "Note") in the aggregate amount not to exceed \$5,000,000 to provide funds to be loaned to Anoka County Community Action Program, Inc., a Minnesota nonprofit corporation and 501(c)(3) organization (the "Borrower") to finance acquisition, construction and equipping of an approximately 30-unit multifamily rental housing facility consisting of approximately 22 two bedroom townhomes, 6 three bedroom townhomes, and 2 four bedroom townhomes to be located in the area bounded by University Avenue, 109th Avenue, 111th Avenue and 4th Street in the City of Blaine, Minnesota (the "City") (the "Project"; and (ii) finance certain other costs related to the Project;

(c) The issuance and sale of the Note by the EDA, pursuant to the Act, helps provide access to affordable housing to the community and is in the interest of the EDA, and the EDA hereby determines to issue the Note and to sell the Note to Northeast Bank 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 assist in financing the Project;

(d) The City has by ordinance authorized the EDA to exercise on behalf of the City, all of the powers conferred by Minnesota Statutes, Section 462C.01 to 462C.10;

(e) The EDA 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 EDA 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 issuance of the Note, a housing program for the Project (the “Housing Program”) and the proposal to undertake the Project is scheduled to be held on this date, after notice was published and materials made available for public inspection at the City Hall, all as required by the Act and Section 147(f) of the Internal Revenue Code of 1986, as amended, at which public hearing all those appearing who desire to speak will be heard and written comments will be accepted.

BE IT RESOLVED by the Board of Commissioners of the Blaine Economic Development Authority (the “EDA”), as follows:

SECTION 1. LEGAL AUTHORIZATION AND FINDINGS

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

(a) The EDA is a body corporate and politic and a political subdivision of the State of Minnesota 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 Housing Facilities Revenue Note, Series 2016 (ACCAP Townhome Project) (the “Note”) by the EDA, pursuant to the Act, is in the best interest of the EDA, and the EDA hereby determines to issue the Note and to sell the Note to Northeast Bank in Minneapolis, Minnesota, Minnesota, or another bank in Minnesota (the “Lender”), as provided herein. The EDA 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 EDA and the Borrower, 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 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 EDA and the Borrower deem necessary or desirable for the financing of the Project. A draft of the Loan Agreement is on file with the EDA.

(d) Pursuant to a Pledge Agreement (the “Pledge Agreement”) to be entered into between the EDA and the Lender, the EDA 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 is on file with the EDA.

(e) Pursuant to a Mortgage, Security Agreement and Fixture Financing Statement (the “Mortgage”) 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 the property described therein. A draft of the Mortgage is on file with the EDA.

(f) Pursuant to a Disbursing Agreement (the “Disbursing Agreement”) to be entered into between the Lender, a disbursing agent and the Borrower, the proceeds of the Note will be disbursed to the Borrower for the acquisition, construction and equipping of the Project. A draft of the Disbursing Agreement is on file with the EDA.

(g) Pursuant to an assignment of development agreement (the “TIF Assignment”) to be executed by the Borrower in favor of the Lender, the Borrower has assigned its interest under the Development Agreement, dated as of June 6, 2016, between the EDA and the Borrower. A draft of the TIF Assignment is on file with the EDA.

(h) Pursuant to a subordination agreement, between the EDA and the Lender, and the Borrower (the “Subordination Agreement”) to be executed by the EDA in favor of the Lender, the EDA will subordinate its rights under the Combination Mortgage, Security Agreement and Fixture Financing Statement, dated as of June 24, 2016, from the Borrower to the EDA securing the Borrower’s \$450,000 Promissory Note, dated as of June 24, 2016, to the EDA. A draft of the Subordination Agreement is on file with the EDA.

(i) The Note will be a special, limited obligation of the EDA. The Note shall not be payable from or charged upon any funds other than the revenues pledged to the payment thereof, nor shall the EDA 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 EDA to pay the Note or the interest thereon, nor to enforce payment thereof against any property of the EDA. The Note shall not constitute a debt of the EDA within the meaning of any constitutional or statutory limitation.

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

(k) The payments under the Loan Agreement are fixed to produce revenue sufficient to provide for the prompt payment of principal of, premium, if any, and interest on the Note 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 taxes and special assessments levied upon or with respect to the Project and payable during the term of the Loan Agreement.

(l) There is no litigation pending or, to the actual knowledge of the EDA, threatened against the EDA questioning the EDA’s execution or delivery of the Note,

Loan Agreement, or Pledge Agreement or questioning the due organization of the EDA, or the powers or authority of the EDA to issue the Note and undertake the transactions contemplated hereby.

(m) The execution, delivery and performance of the EDA's obligations under the Note, Pledge Agreement, and Loan Agreement do not and will not violate any order against the EDA of any court or other agency of government, or any indenture, agreement or other instrument to which the EDA is a party or by which it or any of its property is bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument.

1.2 Authorization and Ratification of Project. In anticipation of the issuance of the Note 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 EDA hereby authorizes the Borrower, in accordance with the provisions of the Act and subject to the terms and conditions imposed by the Lender, to provide for the acquisition, construction and equipping of the Project by such means as shall be available to the Borrower and in the manner determined by the Borrower, and without advertisement for bids as may be required for the construction and acquisition of other municipal facilities; the EDA hereby ratifies, affirms, and approves all actions heretofore taken by the Borrower consistent with and in anticipation of such authority; and 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 Note as the Borrower considers necessary, including the use of interim, short term financing, subject to reimbursement from the proceeds of the Note if and when delivered but otherwise without liability on the part of the EDA.

SECTION 2. THE NOTE.

2.1 Authorized Amount and Form of Note. The Note is hereby approved and, subject to approval by the City after a public hearing, shall be issued pursuant to this Resolution in substantially the form submitted to the Board of Commissioners 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 is expressly limited to \$5,000,000, unless a duplicate Note is issued pursuant to Section 2.7. The Note shall bear interest at a variable rate as set forth therein.

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 EDA by the signatures of its President and Executive Director and shall be sealed with the seal of the EDA; 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 such officer had remained in office until delivery. In the event of the absence or disability of the President

and Executive Director such officers of the EDA as, in the opinion of the EDA Attorney, may act in their behalf, shall without further act or authorization of the Board of Commissioners 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 Disbursing Agreement;
- (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 EDA, disburse the proceeds of the Note for payment of Project Costs in accordance with the terms of the Loan Agreement and the Disbursing Agreement.

2.6 Registration of Transfer. The EDA will cause to be kept at the office of the Executive Director a Note Register in which, subject to such reasonable regulations as it may prescribe, the EDA 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 President and Executive Director, 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 Blaine Economic Development Authority, and does hereby irrevocably constitute and appoint _____ attorney to transfer said Note on the books of said EDA 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 Executive Director 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 EDA 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 EDA in connection therewith, and in the case of a Note destroyed or lost, the filing with the EDA of evidence satisfactory to the EDA 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 EDA 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 EDA 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). The EDA will require, as a precondition to any transfer, that the transferee provide to the EDA a written letter or certificate in a form satisfactory to the EDA and other evidence satisfactory to the EDA that the transferee is a financial institution or other accredited investor under the securities laws.

2.10 Issuance of a New Note. Subject to the provisions of Section 2.9, the EDA 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 EDA 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 EDA as to the correctness of all statements contained therein.

3.3 Authorization to Execute Agreements. The EDA hereby consents to the TIF Assignment and the Subordination Agreement. The forms of the proposed Loan Agreement, the Pledge Agreement, the TIF Assignment and the Subordination Agreement are hereby approved in substantially the form presented to the Board of Commissioners, 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 President and the Executive Director of the EDA are authorized to execute the Loan Agreement, the Pledge Agreement, a consent to the TIF Assignment, the Subordination 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 EDA. In the event of the absence or disability of the President or the Executive Director such officers of the EDA as, in the opinion of the EDA 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 EDA 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 Internal Revenue Code of 1986, as amended (the “Code”), the EDA 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 EDA 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 EDA (and all entities whose obligations will be aggregated with those of the EDA) during the calendar year 2016 will not exceed \$10,000,000; and
- (e) not more than \$10,000,000 of obligations issued by the EDA during the

calendar year 2016 have been designated for purposes of Section 265(b)(3) of the Code.

3.5 Effective Date. This resolution shall be in full force and effect from and after its passage and after approval by the City Council of the City of the issuance of the Note, the Housing Program and the proposal to undertake the Project after a public hearing.

Adopted by the Blaine Economic Development Authority, this 15th day of September, 2016.