

ITEMS FOR DISCUSSION AND ACTION FISCAL, FACILITIES AND AUDIT

February 27, 2020

ACTION: **Approve Resolution Authorizing the Sale of Bonds to Provide for Math Science Facility in Accordance with LB 297 (2019) and to Refund 2014 Building Bonds, and Related Matters**

The proposed bond issue is the result of LB297 passed during the 2019 legislative session. LB297 extends the provision of LB198 (2013) by indicating the legislative intent to provide the state payments an additional fourteen (14) years, through June 30, 2035, for the purposes of renovation of and construction of an addition to the Math Science Facility at Chadron State College. At the same time, it may be favorable to refinance the Facilities Corporation's Series 2014 Building Bonds originally issued under LB198 in 2013.

The legislature, in LB198 (2013), appropriated \$2,216,000 for 2013-14 and indicated its intention to appropriate \$2,216,000 per fiscal year through June 30, 2021 for the Rangeland Center at Chadron State College and the U.S. Conn Library project at Wayne State College. LB297 (2019) extends the intention to appropriate \$2,216,000 annually through June 30, 2035.

To authorize the issuance of the bonds, action is necessary by the Board of Trustees, and additional action must be taken by the Nebraska State College Facilities Corporation. The Board of Trustees needs to approve a resolution, which follows. The Resolution would authorize the issuance by the Corporation of not to exceed \$28,000,000 aggregate principal amount of Facilities Bonds to finance the cost of the CSC Math Science Building and an additional amount as may be determined necessary to refinance the Series 2014 Bonds. The Chancellor or Vice Chancellor for Finance and Administration is authorized to approve the final terms of the issuance and sale of the Facilities Bonds.

Mary Jane Darby from Janney (financial advisor) and Coleen Duncan from Gilmore Bell (bond counsel) will be available at the board meeting to respond to any questions.

The System Office recommends approval of the Resolution Authorizing Sale of Bonds for Math Science Facility and Bond Refunding.

ATTACHMENTS:

- Board Adopting Resolution (PDF)

**THE BOARD OF TRUSTEES OF
THE NEBRASKA STATE COLLEGES**

RESOLUTION

FEBRUARY 27, 2020

**AUTHORIZING
FACILITIES BONDS
OF
THE NEBRASKA STATE COLLEGES FACILITIES CORPORATION**

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE NEBRASKA STATE COLLEGES, AS FOLLOWS:

Section 1. Findings and Determinations. The Board of Trustees (the “**Board**”) of the Nebraska State Colleges (“**NSC**”), hereby finds and determines as follows:

(a) It is necessary, desirable, advisable and in the best interests of NSC to construct, acquire, furnish and improve a Math Science Building at NSC’s Chadron State College (together with all furnishings and fixtures located or incorporated therein or related thereto, collectively, the “**Project**”).

(b) It is necessary, desirable, advisable and in the best interests of NSC that NSC request the Nebraska State Colleges Facilities Corporation (the “**Corporation**”) to refinance certain of the Corporation’s and NSC’s outstanding debt and financing obligations (as described in more detail below, the “**Refunded Bonds**”), which Refunded Bonds were issued to finance the costs of facilities at NSC’s Chadron State College and Wayne State College (collectively, the “**Refunded Facilities**”; and, together with the Project, the “**Facilities**”) to provide NSC with additional flexibility in managing its financing structure.

(c) The Bonds, the Refunded Bonds, and the financing of the Facilities are authorized pursuant to Legislative Bill 198, One Hundred Third Legislature, Second Session (“**LB 198**”), passed by the Nebraska (the “**State**”) Legislature on May 20, 2013 and approved by the Governor on May 25, 2013, as amended and extended by Legislative Bill 297, One Hundred Sixth Legislature, First Session (“**LB 297**”), passed by the State Legislature on May 21, 2019 and approved by the Governor on May 27, 2019 (LB 198 and LB 297 together, the “**Act**”).

Section 2. Authorization of Bonds; Financing Agreement. The Board hereby authorizes the issuance of Facilities Bonds in one or more series (the “**Bonds**”) to be issued by the Corporation. The Bonds shall be issued under a Bond Resolution (the “**Bond Resolution**”) of the Corporation, substantially in the form of the Bond Resolution related to the Refunded Bonds. The Bonds shall be secured by the Board’s obligations to make certain payments under a Financing Agreement by and among the Board and the Corporation (the “**Financing Agreement**”). Pursuant to the Financing Agreement, the Corporation will act as the Board’s agent for the financing or refinancing, as applicable, the Facilities, and will hold the Facilities in trust for the Board. The Corporation will assign its rights under the Financing Agreement to a trustee (as determined pursuant to **Section 3** below, the “**Trustee**”) for the benefit of the holders of the Bonds.

Section 3. Determination of Final Terms. In connection with the issuance and sale of the Bonds by the Corporation, the Chair, Vice-Chair, or Secretary of the Board, or the Chancellor or the Vice Chancellor for Finance and Administration of NSC, or such officer authorized to perform the duties of such role (each, an “**Authorized Officer**”), is hereby authorized to specify, determine, designate, establish and appoint, as the case may be (a) the price at which the Bonds may be sold to the underwriter or underwriters thereof (the “**Underwriter**”), (b) the title (including series designation) of the Bonds, dated date and aggregate principal amount, which aggregate stated principal amount shall not exceed \$28,000,000 for the financing of the Project (which amount may be increased to the extent of any original issue discount as determined appropriate by such Authorized Officer) and such additional principal amount as may be necessary to defease the Refunded Bonds and to pay costs of issuance, (c) the principal maturities and dates, including the final maturity no later than June 30, 2035, (d) the rate or rates of interest to be borne by each principal maturity and the dates on which interest shall be due, (e) whether the Bonds will be subject to redemption prior to their stated maturity, and if subject to such optional redemption or mandatory sinking

fund redemption, the provisions governing such redemption, including redemption prices, (f) the amount and due date of each sinking fund installment for any of the Bonds issued as term Bonds, (g) the identity of the Underwriter and the Trustee and any separate paying agent and registrar and escrow agent, as may be determined appropriate, (h) whether to refinance any or all of the Refunded Bonds, (i) whether Bonds shall bear interest on a tax-exempt or taxable basis, and (j) all other terms and provisions of the Bond Resolution, the Financing Agreement and the Bonds not otherwise specified or fixed by this Resolution.

Section 4. Refunding; Project. (a) Each Authorized Officer is hereby authorized to determine whether to refinance the outstanding principal amount of the Corporation's Building Bonds (CSC Rangeland Center and WSC U.S. Conn Library Projects), Series 2014 (the "**Refunded Bonds**"), and apply a portion of the proceeds of the Bonds to such refinancing.

(b) NSC and the Corporation are hereby authorized to apply a portion of the proceeds of the Bonds to finance the Project, as determined by an Authorized Officer pursuant to **Section 3** above.

(c) NSC and the Corporation are hereby authorized to apply a portion of the proceeds of the Bonds to finance capitalized interest on the Bonds, as determined by an Authorized Officer pursuant to **Section 3** above, and subject to applicable law.

Section 5. Bond Documentation. In connection with the issuance and sale of the Bonds by the Corporation, each Authorized Officer is hereby authorized and directed to approve the form and content of, and to execute and deliver, one or more of any or all of the following documents (collectively, the "**Financing Documents**"):

- (a) The Financing Agreement;
- (b) The Bond Resolution;
- (c) A Purchase Agreement setting forth the terms of the sale of the Bonds to the Underwriter;
- (d) An Escrow Agreement providing for the defeasance and payment of the Refunded Bonds;
- (e) A Tax Compliance Agreement setting forth certain expectations and covenants of NSC with regards to any Bonds issued as tax-exempt Bonds;
- (f) A Continuing Disclosure Undertaking of the Board to assist the Underwriter with its regulatory obligations; and
- (g) Any other contract, agreement, instrument, certificate or other document that any Authorized Officer may deem necessary, appropriate, advisable or desirable to effectuate, in accordance with the terms of this Resolution, the delivery of and payment for the Bonds.

Section 6. Preliminary Official Statement; Official Statement. Each Authorized Officer is each hereby authorized to prepare, approve and finalize a Preliminary Official Statement related to the Bonds, with such disclosures as are necessary to conform to and describe the transaction, and the public distribution of the same by the Underwriter is hereby approved for use in connection with the sale of the Bonds. Each Authorized Officer is hereby authorized, if requested, to deem the information contained in the Preliminary Official Statement to be "final" as of its date, except for the omission of such information as is permitted by Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (the "**Rule**"), and to take such other actions or execute such other documents as the Underwriter shall reasonably request to comply with the Rule. Each Authorized Officer is further authorized to prepare, approve and finalize a final Official Statement related to the Bonds.

Section 7. Limited Obligations. In the Financing Agreement, the Board will pledge for payment of amounts due thereunder all amounts deposited, paid in, or accruing to the Board under and pursuant to the Act, and certain other funds; *provided, however*, that no amounts appropriated by the State under the Act may be applied to the Bonds or the Project until provision has been made for the defeasance

or repayment of the Refunded Bonds. The Bonds shall be secured solely by amounts deposited by the Board with the Trustee from time to time to pay debt service on the Bonds. No debt service reserve fund shall be funded with respect to the Bonds.

Section 8. Further Authority; Ratification. Without in any way limiting the power, authority or discretion elsewhere herein granted or delegated, the Board hereby (a) authorizes and directs each Authorized Officer and all other officers, officials, employees and agents of NSC to carry out or cause to be carried out, and to perform such obligations of NSC and such other actions as they, or any of them, in consultation with Bond Counsel, or NSC's Financial Advisor, as appropriate, shall consider necessary, advisable, desirable or appropriate in connection with this Resolution, including, without limitation, the execution and delivery of all related documents, instruments, certifications and opinions, and (b) delegates, authorizes and directs to an Authorized Officer the right, power and authority to exercise his or her independent judgment and absolute discretion in (1) determining and finalizing the terms and provisions of the Bond Resolution or the Financing Agreement not specifically set forth in this Resolution, (2) the taking of all actions and the making of all arrangements necessary, proper, appropriate, advisable or desirable in order to effectuate the execution and delivery of the Financing Agreement and the issuance, sale and delivery of the Bonds and the application of proceeds thereof, and (3) the engagement of external professionals, advisors and agents. The execution and delivery by an Authorized Officer or by any such other officers, officials, employees or agents of NSC of any such agreements, documents, instruments, certifications and opinions, or the doing by them of any act in connection with any of the matters that are the subject of this Resolution, shall constitute conclusive evidence of both the Board's and their approval of the terms, provisions and contents thereof and of all changes, modifications, amendments, revisions and alterations made therein and shall conclusively establish their absolute, unconditional and irrevocable authority with respect thereto from the Board and the authorization, approval and ratification by the Board of the documents, instruments, certifications and opinions so executed and the actions so taken.

All actions heretofore taken by an Authorized Officer and all other officers, officials, employees and agents of NSC including, without limitation, the expenditure of funds and the selection, appointment and employment of bond counsel, disclosure counsel, the financial advisor and other advisors and agents in connection with the execution and delivery of the Financing Agreement and the issuance, sale and delivery of the Bonds, together with all other actions taken in connection with any of the matters that are the subject hereof, are in all respects hereby authorized, adopted, specified, accepted, ratified, approved and confirmed.

Section 9. Contract; Repeal. The provisions of this Resolution, of any supplemental resolution, and of any resolutions or other proceedings providing for the execution and delivery of the Financing Documents and the sale of the Bonds and the terms and provisions thereof shall constitute a contract between NSC, the Trustee and the registered owners of the Bonds, and the provisions thereof shall be enforceable by any owner of a Bond for the equal benefit and protection of all such owners similarly situated, by mandamus, accounting, mandatory injunction or any other suit, action or proceeding at law or in equity that is presently or may hereafter be authorized under the laws of the State in any court of competent jurisdiction. Such contract is made under and is to be construed in accordance with the laws of the State.

After the execution and delivery of the Financing Documents, and the issuance, sale and delivery of the Bonds, this Resolution and any supplemental resolution shall not be subject to repeal, but shall be subject to modification or amendment only to the extent and in the manner provided for in this Resolution or in the Financing Documents.

Section 10. Rights Conferred. With the exception of rights or benefits herein expressly conferred, nothing expressed or mentioned in or to be implied from this Resolution, the Financing

Documents or the Bonds is intended or should be construed to confer upon or give to any person other than NSC, the Corporation, the Trustee and the registered owners of the Bonds, any legal or equitable right, remedy or claim under or by reason of or in respect to this Resolution or the Financing Documents or any covenant, condition, stipulation, promise, lease or provision herein or herein contained. The Resolution and the Financing Documents and all of the covenants, conditions, stipulations, promises, agreements and provisions hereof and thereof are intended to be and shall be for and inure to the sole and exclusive benefit of NSC, the Corporation, the Trustee and the registered owners from time to time of the Bonds as herein and therein provided.

Section 11. Liability of Officers. No officer or employee of NSC shall be individually or personally liable for the performance of any duties or obligations under the Financing Documents or the payment of the principal of or interest on any Bond. Nothing herein contained shall, however, relieve any such officer or employee from the performance of any duty provided or required by law.

Section 12. Severability; Effect. If any one or more of the covenants or agreements or portions thereof provided in this Resolution or the Financing Documents on the part of NSC to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant or covenants, or such lease or agreements, or such portions thereof, shall be deemed severable from the remaining covenants and agreements or portions thereof provided in this Resolution and the Financing Documents and the invalidity thereof shall in no way affect the validity of the other provisions of this Resolution or of the Financing Documents, but the Trustee and the registered owners of the Bonds shall retain all the rights and benefits afforded to them hereunder and under the Financing Documents or any applicable provisions of law.

If any provisions of this Resolution shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein or therein contained inoperative or unenforceable or invalid to any extent whatsoever.

Section 13. Applicable Law. This Resolution shall be construed and interpreted in accordance with the laws of the State.

Section 14. Repeal of Inconsistent Resolutions. Any resolution of the Board inconsistent with this Resolution is hereby repealed to the extent of such inconsistency.

Section 15. Force and Effect. This Resolution shall take effect and be in force from and after its adoption according to law.