

Facilities Corporation

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February 28, 2022

ACTION: Approve Resolution Authorizing and Approving the Form of a Bond Resolution for the Issuance of Facilities Bonds; Authorizing a Financing Agreement, a Tax Compliance Agreement, a Bond Purchase Agreement; and Approving the Refinancing of the Corporation's Series 2016 Building Bonds; and Related Matters

Upon approval of a related resolution by the Board of Trustees, the Facilities Corporation is being asked to approve the enclosed resolution authorizing the issuance of facilities bonds and refinancing the 2016 Series bonds. The Resolution authorizes and approves the form of a bond resolution for the issuance of facilities bonds; authorizes a financing agreement, a tax compliance agreement and a bond purchase agreement; approves the refinancing of the Corporation's Series 2016 Building Bonds and related matters.

At the November 2021 Facilities Corporation meeting, the Board's Financial Advisor provided options for refinancing the Series 2016 (LB957) bonds and extending the maturity from 2030 to 2040, which provides for additional debt capacity in the near term, taking advantage of the extended funding provided by the State in LB384. The proceeds generated from the bond issue will be used to fund a portion of the costs for the Wayne State College Athletic & Recreation Project and the Peru State College Indoor/Outdoor Athletic Complex. Per Board of Trustees action, bond proceeds will be split with 57% of the proceeds from the refinancing allocated to the WSC Athletic & Recreation Project and 43% toward the PSC Indoor/Outdoor Athletic Complex project. The funding for the PSC project will be contingent on the Board of Trustees approving the Program Statement for this project during the April 2022 meeting.

The plan at this time is to move forward with bonding according to the enclosed schedule, and to fund the approved projects or other renewal, repair, renovation, or replacement projects. The Resolution will authorize the Facilities Corporation to refinance the 2016 Series bonds and issue new bonds up to \$25,000,000 in aggregate principal and such additional principal as may be necessary to refinance the 2016 refunded bonds and cost of issuance.

The President, Secretary or Treasurer of the Corporation is authorized to approve the final terms of the issuance and sale of the Facilities bonds.

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

The System Office recommends approval of the Resolution authorizing the sale of the bonds and the refinancing of the 2016 bond Series.

**THE BOARD OF DIRECTORS OF
THE NEBRASKA STATE COLLEGES FACILITIES CORPORATION**

RESOLUTION

FEBRUARY 28, 2022

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

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE NEBRASKA STATE COLLEGES FACILITIES CORPORATION, AS FOLLOWS:

Section 1. Findings and Determinations. The Board of Directors of the Nebraska State Colleges Facilities Corporation (the “**Corporation**”), hereby finds and determines that:

(a) The Board of Trustees of the Nebraska State Colleges (the “**Board**”) has requested the assistance of the Corporation to finance a portion of the facilities improvement projects of the Board (collectively, the “**Project**”) under and pursuant to Legislative Bill 384, One Hundred Seventh Legislature, First Session (codified in Section 85-419 et seq. R.R.S. Neb. 2012, as amended, and as the same may be amended from time to time, the “**Act**”).

(b) The Board has further requested that the Corporation assist the Board with refunding certain outstanding bonds of the Nebraska State Colleges Facilities Corporation, as determined pursuant to **Section 4** below, the “**Refunded Bonds**”).

Section 2. Authorization of Bonds; Financing Agreement. The Corporation hereby authorizes the issuance of Facilities Program 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. In the Bond Resolution, 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. The Bonds shall be secured by the Board’s obligations to make certain payments under a Financing Agreement by and between 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 Project and other facilities refinanced thereby.

Section 3. Determination of Final Terms. In connection with the issuance and sale of the Bonds by the Corporation, the President, Vice-President, or Secretary/Treasurer of the Corporation, 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 \$25,000,000 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 refinance the Refunded Bonds and to pay costs of issuance, (c) the principal maturities and dates, including the final maturity not beyond December 31, 2041, (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, or credit enhancement and related documentation as may be determined appropriate, (h) whether to refinance any or all of the Refunded Bonds, and to call any of the Refunded Bonds for early redemption, (i) whether Bonds shall bear interest on a tax-exempt or taxable basis, (j) the identity of the Facilities financed with proceeds of the Bonds, and (k) 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 Deferred Maintenance and Refunding Bonds, Series 2016 of the Corporation (the “**Refunded Bonds**”) to achieve savings or other strategic purpose, and apply a portion of the proceeds of the Bonds to such refinancing; and

(b) The Board is hereby authorized to apply a portion of the net proceeds of the Bonds to finance the Project, as determined by an Authorized Officer pursuant to **Section 3** above.

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 the Board with regards to any Bonds issued as tax-exempt Bonds; and
- (f) 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 each series of 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 each 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 one or more final Official Statements related to the Bonds.

Section 7. Limited Obligations. The Board’s obligations under the Financing Agreement shall not be secured by any revenues of the Board, but the Board may agree in a Financing Agreement to apply appropriations received pursuant to the Act to all or a portion of the Board’s obligations under the Financing Agreement. 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.

Section 8. Further Authority; Ratification. Without in any way limiting the power, authority or discretion elsewhere herein granted or delegated, the Corporation hereby (a) authorizes and directs each Authorized Officer and all other officers, officials, employees and agents of the Board to carry out or cause to be carried out, and to perform such obligations of the Board and such other actions as they, or any of them, in consultation with Bond Counsel, Disclosure Counsel, or the Board’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 the Corporation 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 Corporation'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 Corporation and the authorization, approval and ratification by the Corporation 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 the Corporation 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 among the Corporation, the Board, 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 of Nebraska (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 the Corporation, the Board, 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 the Corporation, the Board, 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 the Corporation 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 the Corporation 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. Electronic Transactions. All documents, agreements, certificates, and instruments related to the Bonds shall be valid, binding, and enforceable against the Board when executed and delivered by means of (i) an original manual signature; (ii) a faxed, scanned, or photocopied manual signature, or (iii) any other electronic signature permitted by electronic signatures laws, including any relevant provisions of the Uniform Commercial Code, in each case to the extent applicable. Each faxed, scanned, or photocopied manual signature, or other electronic signature, shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each document, agreement, certificate, and instrument related to the Bonds may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute one and the same document, agreement, certificate, or instrument, as applicable.

Section 14. Applicable Law. This Resolution shall be construed and interpreted in accordance with the laws of the State.

Section 15. Repeal of Inconsistent Resolutions. Any resolution of the Corporation inconsistent with this Resolution is hereby repealed to the extent of such inconsistency.

Section 16. Force and Effect. This Resolution shall take effect and be in force from and after its adoption according to law.