



## **BOARD MEETING**

August 6<sup>th</sup>, 2020– 10:00 a.m.

Via Zoom

## **MEETING MINUTES**

**Board Members Participating & Voting:** Scott Baker (as designee for Treasurer Pearce), Bill Bates (as designee for Secretary French), Fritz Burkhardt, Ken Gibbons, Ken Linsley, Peter Moino (as designee for Secretary Smith), Ed Ogorzalek, Neal Robinson, Steve Wisloski, and Stuart Wepler

**Board Members Absent:** Anita Bourgeois, Brad Ferland (as designee for Secretary Susanne Young), and one board seat that is currently vacant

**Staff Participating:** Michael Gaughan

**Guests:** Larry Bauer – Norton Rose Fulbright, Joe Dabreo – PFM, Jim Foley – Lynch & Foley, Matt Hughey – Norton Rose Fulbright, and Twila Perry – Lyndon Institute

The meeting was called to order by Mr. Burkhardt at 10:00 a.m.

### Administrative

Mr. Burkhardt asked if there were any changes to the meeting agenda.

### Approve May 7<sup>th</sup>, 2020 Board Minutes

The Board discussed the prior board meeting.

*Motion: Mr. Wepler moved and Mr. Bates seconded the motion to approve the May 7<sup>th</sup>, 2020 meeting minutes. The minutes were approved unanimously following a roll call vote.*

### Consideration of Financing Application from the Lyndon Institute

Ms. Perry from the Lyndon Institute discussed elements of the Lyndon Institute's application for financing including the need for the proposed financing and an overview of the changes at the institute over the last several years. She discussed changes to the boarding component of the school considering COVID-19.

Mr. DaBreo from PFM then provided an overview of the transaction and their written analysis. He noted that the entire financing package is with Key Government Bank. The security structure of the transaction was discussed, in particular, the inclusion of a pledge on the endowment and mortgage on the property. Mr. DaBreo stated PFM's positive recommendation to the Board for the transaction.

At approximately 10:30 a.m., Mr. Linsley left the meeting.

Following Mr. DaBreo's briefing, Mr. Gibbons noted that he would be recusing himself from the subsequent conversation and vote given past affiliation with Union Bank that will be refinanced as part of the transaction.

Mr. Wepler asked questions on the current and past uses of the line of credit. Ms. Perry provided further insight into the topic. Mr. Wisloski then discussed the pledge of the endowment and asked Mr. DaBreo if effectively, the loan was fully collateralized by business assets in addition to the mortgage. Mr. DaBreo answered affirmatively.

Mr. Wisloski then asked counsel to clarify statutory clause of "rents and otherwise," to be inclusive of all pledged assets in addition to operating revenue. Counsel noted that, "rents and otherwise" is not defined in statute and, further, under the financing documents, sources of repayment of the bond are not limited to operating revenues.

Mr. Hughey from Norton Rose Fulbright and Mr. Gaughan provided an update on the TEFRA process indicating that the meeting would take place the week of August 17<sup>th</sup>, 2020. Mr. Hughey then described the approving resolutions.

Mr. Baker indicated that he would be recusing himself from the vote due to a conflict with Key Bank.

*Motion: Mr. Wisloski moved and Mr. Robinson seconded a motion to adopt the attached resolutions approving the Lyndon Institute financing recommending the transaction to the Governor for approval. The motion was approved unanimously with after a roll call vote of all members in attendance and not abstaining.*

Representatives from the Lyndon Institute and PFM left the meeting following the vote at 11:10 a.m.

PFM Renewal Contract

Mr. Gaughan updated the board on the proposed renewal contract with PFM. He noted the revised economics of the contract that fairly represent the work burden.

*Motion: Mr. Wepler moved and Mr. Ogorzalek seconded the motion allowing the Executive Director to sign the contract renewal with PFM. The minutes were approved unanimously following a roll call vote.*

*There being no other business to come before the Board, on Mr. Ogorzalek moved and Mr. Wisloski seconded a motion to adjourn. The motion passed unanimously.*

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These Minutes were approved by the Board of Directors at a duly warned meeting on \_\_\_\_\_.

RESOLUTION RELATING TO THE ISSUANCE AND AWARD  
OF NOT TO EXCEED \$6,000,000  
VERMONT EDUCATIONAL AND HEALTH BUILDINGS  
FINANCING AGENCY REVENUE BOND  
(LYNDON INSTITUTE PROJECT) 2020 SERIES A

WHEREAS, Lyndon Institute, Inc. (the “Corporation”) is a private, nonprofit corporation duly incorporated and validly existing under and by virtue of the laws of the State of Vermont, and is an eligible institution within the meaning of such term as used in the Act (hereinafter mentioned); and

WHEREAS, the Corporation has previously incurred certain indebtedness (the “Indebtedness to be Refunded”); and

WHEREAS, the Corporation desires (i) to pay, or reimburse itself for paying, a portion of the cost of the acquisition, construction and equipping of capital projects constituting a part of the Corporation’s two-year capital/deferred maintenance plan at the Corporation’s educational facilities in Lyndon Center, Vermont (collectively, the “Project”); (ii) to refund all or a portion of the Indebtedness to be Refunded; and (iii) to finance the payment of a portion of certain expenses incurred in connection with the issuance of the Bond hereinafter mentioned; and

WHEREAS, the Corporation has made application to Vermont Educational and Health Buildings Financing Agency (hereinafter called the “Agency”) for assistance under Title 16, Chapter 131, Sections 3851-3862, Vermont Statutes Annotated, as amended (the “Act”), for (i) refinancing the Indebtedness to be Refunded and (ii) financing a portion of the costs of the Project by the Agency’s lending to the Corporation sufficient funds for paying, with other available funds, such costs; and

WHEREAS, the Agency has considered such application of the Corporation and all other pertinent information, data and materials respecting the need for, and the feasibility and the desirability of refinancing the Indebtedness to be Refunded and financing the Project and has determined that each of such financing and refinancing is necessary and desirable and will effectuate the purposes of the Act and otherwise serve the public interest; and

WHEREAS, the Agency will certify to the Governor of the State, prior to the issuance of the Bond, that in its opinion the Project is needed and will provide adequate revenue derived from rents or otherwise to repay the Bond and the interest thereon when due; and

WHEREAS, there have previously been presented to the staff of the Agency forms of the following documents relating to the issuance of the Bond:

a. the Bond Purchase Agreement (the “Bond Purchase Agreement”), among the Agency, the Corporation and Key Government Finance, Inc. (the “Purchaser”); and

b. the Loan Agreement (the “Loan Agreement”), between the Agency and the Corporation, pursuant to which the Agency will lend the proceeds of the Bond to the Corporation; and

WHEREAS, the Agency will not be obligated to pay the purchase price or principal or redemption price, if any, of and interest on the Bond except from the revenues and funds derived from the Loan Agreement or the promissory note delivered in accordance therewith, and neither the faith and credit nor the taxing power of the State of Vermont or of any political subdivision thereof is pledged as security for the payment of the purchase price or principal of or redemption premium, if any, or interest on the Bond; and

WHEREAS, the Purchaser has reviewed the operations and finances of the Corporation and extended an offer for credit as set forth in the commitment letter to be signed by the Corporation prior to the execution of the Bond Purchase Agreement; and

WHEREAS, the Agency has determined that the Corporation is financially responsible and capable of fulfilling its obligations under the documents referred to above;

NOW, THEREFORE, THE BOARD OF VERMONT EDUCATIONAL AND HEALTH BUILDINGS FINANCING AGENCY HEREBY RESOLVES, as follows:

Section 1. Capitalized words and terms used in this Resolution and not defined herein shall have the same meanings in this Resolution as such words and terms are given in the Bond Purchase Agreement or the Loan Agreement, as the case may be.

Section 2. Pursuant to the authority granted to it by the Act, the Agency hereby authorizes the issuance of not to exceed \$6,000,000 aggregate principal amount of its Vermont Educational and Health Buildings Financing Agency Revenue Bond (Lyndon Institute Project) 2020 Series A (the "Bond"), dated as of such date, maturing on such dates in such years not later than 2045 and in such principal amounts and bearing interest at such rate or rates, all as determined by the Chairman or the Executive Director of the Agency (each, a "Delegate").

Section 3. The Bond shall be subject to redemption at such times, upon such terms and conditions, and at such prices (no such price to exceed 103% of the principal amount of the Bond being redeemed, provided that notwithstanding such maximum price, a make-whole or cost-of-funds premium shall be permitted if, in the opinion of the Agency's financial advisor, such premium is consistent with comparable, privately placed bonds), all as determined by a Delegate prior to the award of the Bond.

Section 4. The proceeds of the Bond (including accrued interest, if any) shall be applied in accordance with the Bond Purchase Agreement.

Section 5. The forms, terms and provisions of the Bond Purchase Agreement and the Loan Agreement are hereby approved in all respects, and any Delegate is hereby authorized and directed to execute and deliver the Bond Purchase Agreement and the Loan Agreement in substantially the forms presented to this meeting together with such changes, modifications and deletions as such Delegate, with the advice of counsel, may deem necessary and appropriate; such execution and delivery to be conclusive evidence of the approval and authorization thereof by the Agency.

Section 6. The form of the Bond set forth in the Bond Purchase Agreement is hereby approved in all respects, and the Chairman or Executive Director are hereby authorized and

directed to execute, by facsimile or manual signature, the Bond in definitive form, which shall be in substantially the form presented to this meeting together with such changes, modifications and deletions as they, with the advice of counsel, may deem necessary and appropriate and consistent with the Bond Purchase Agreement; such execution and delivery to be conclusive evidence of the approval and authorization thereof by the Agency.

Section 7. The Agency hereby awards the Bond to the Purchaser in the aggregate principal amount determined pursuant to Section 2 of this Resolution and at the interest rate or rates determined pursuant to said Section 2 at a purchase price equal to 100% of the principal amount of the Bond.

Section 8. Upon its execution in the form and manner set forth in the Bond Purchase Agreement, the Bond shall, upon due and valid execution and acceptance of the Bond Purchase Agreement and the Loan Agreement by the proper parties thereto, be delivered to the Purchaser against payment therefor in accordance with and subject to the provisions of the Bond Purchase Agreement.

Section 9. The Chairman and the Executive Director are each hereby appointed Agency Representatives, as that term is defined in the Bond Purchase Agreement and the Loan Agreement, with full power to carry out the duties set forth therein.

Section 10. The Chairman and the Executive Director of the Agency are authorized and directed (without limitation except as may be expressly set forth herein) to take such action (including the holding of and supervision at one or more public hearings as may be required by applicable law) and to execute and deliver any such documents, certificates, undertakings, agreements or other instruments as they, with the advice of counsel, may deem necessary or appropriate to effect the transactions contemplated by the Bond Purchase Agreement and the Loan Agreement.

Section 11. This Resolution shall take effect immediately upon its passage.

RESOLUTION APPROVING CERTIFICATION  
TO THE GOVERNOR

WHEREAS, the Board of Vermont Educational and Health Buildings Financing Agency (herein sometimes called the “Agency”) has adopted a resolution authorizing the issuance and sale of not to exceed \$6,000,000 aggregate principal amount of its Vermont Educational and Health Buildings Financing Agency Revenue Bond (Lyndon Institute Project) 2020 Series A (the “Bond”); and

WHEREAS, all or a portion of the proceeds of the Bond will be used to (i) pay, or reimburse Lyndon Institute, Inc. (the “Corporation”) for paying, a portion of the cost of the acquisition, construction and equipping of capital projects constituting a part of the Corporation’s two-year capital/deferred maintenance plan at the Corporation’s educational facilities in Lyndon Center, Vermont (collectively, the “Project”); (ii) refund certain outstanding indebtedness of the Corporation, and (iii) finance the payment of a portion of certain expenses incurred in connection with the issuance of the Bond; and

WHEREAS, Section 3856 of Title 16, Vermont Statutes Annotated, as amended, provides that no bonds of the Agency may be issued to acquire or construct any facilities unless the Agency first certifies to the Governor of the State of Vermont that in its opinion such facilities are needed and will provide adequate revenue derived from rents or otherwise to repay such bonds and the interest thereon when due; and

WHEREAS, the Board has considered pertinent information, data and material respecting the need for and the feasibility and desirability of issuing the Bond; and

WHEREAS, the Board has examined the financial records of the Corporation relating to its ability to make payments under the Loan Agreement mentioned in said resolution to repay the Bond and the interest thereon when due; and

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”), provides that, under such circumstances, approval of an “applicable elected representative” following a duly noticed public hearing must be obtained prior to the issuance of obligations, such as the Bond, if such obligations are to be treated as qualified bonds for purposes of the Code; and

WHEREAS, the Agency will conduct a duly noticed public hearing on or about August 17, 2020; and

WHEREAS, the Governor is the “applicable elected representative” for purposes of Section 147(f)(2)(C) of the Code; and

WHEREAS, there has been prepared and submitted to the Board a form of certification to the Governor required by Section 3856 of Title 16, Vermont Statutes Annotated, as amended; and

WHEREAS, the Board has examined and considered said form of certification; now, therefore;

BE IT RESOLVED, by the Board of Vermont Educational and Health Buildings Financing Agency that the certification in connection with the issuance of not to exceed \$6,000,000 aggregate principal amount of Vermont Educational and Health Buildings Financing Agency Revenue Bond (Lyndon Institute Project) 2020 Series A, is hereby approved in substantially the form presented to this meeting, with such changes, insertions and omissions as may be approved by the Chairman or Executive Director of the Agency, his signing of such certification to be conclusive evidence of his approval of any such changes, insertions and omissions, and said Chairman or Executive Director is hereby authorized and directed to sign said certification in the name of and on behalf of the Agency and to deliver or cause to be delivered said certification to the Governor of the State of Vermont.



August \_\_, 2020

Honorable Philip B. Scott  
Governor, State of Vermont  
Pavilion Office Building  
109 State Street  
Montpelier, Vermont 05602

Re: NOT TO EXCEED \$6,000,000 VERMONT EDUCATIONAL AND HEALTH  
BUILDINGS FINANCING AGENCY REVENUE BOND  
(LYNDON INSTITUTE PROJECT) 2020 SERIES A

Dear Governor Scott:

Vermont Educational and Health Buildings Financing Agency proposes to issue its Revenue Bond (Lyndon Institute Project) 2020 Series A (the “Bond”), on behalf of Lyndon Institute, Inc. (the “Corporation”), a private, nonprofit corporation incorporated and existing under the laws of the State of Vermont, and an eligible institution within the meaning of said term as defined in Section 3851 of Title 16, Vermont Statutes Annotated, as amended, to provide funds to the Corporation for the purpose of (i) refunding a portion of the Corporation’s outstanding indebtedness, (ii) paying, or reimbursing the Corporation for paying, a portion of the cost of the acquisition, construction and equipping of capital projects constituting a part of the Corporation’s two-year capital/deferred maintenance plan at the Corporation’s educational facilities in Lyndon Center, Vermont (collectively, the “Project”) and (iii) paying certain costs incurred in connection with the issuance of the Bond.

The Agency proposes to enter into a Loan Agreement with the Corporation providing for the loan of the proceeds of the Bond to the Corporation, which Loan Agreement requires the Corporation to make payments sufficient to pay the principal or purchase price of and premium, if any, and interest on the Bond as the same becomes due and payable. The Corporation will bear all costs incurred in connection with, and will pay certain costs and expenses of the Agency relating to, the Project.

The members of the Agency have considered pertinent information, data and material respecting the need for and the feasibility and desirability of financing the Project and issuing the Bond. Based on the purchaser selection by the Corporation, the Agency has accepted the proposal of Key Government Finance, Inc. to purchase the Bond.

Based on the foregoing and, among other things, the commitment of Key Government Finance, Inc. to purchase the Bond, in compliance with the provisions of Section 3856 of Title 16, Vermont Statutes Annotated, as amended, the Agency hereby certifies that, in its opinion, the Project is needed and that the Corporation will generate sufficient revenues from all operations to meet its obligations under the Loan Agreement in order to repay the Bond and the interest thereon when due.

Vermont Educational and Health  
Buildings Financing Agency

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Executive Director