



BOARD MEETING

July 15, 2022 – 2:00 p.m.

100 Bank Street, Suite 401 / Burlington VT 05401 and via Zoom

MEETING MINUTES

Board Members Participating & Voting: Scott Baker (as designee for Treasurer Pearce), Bill Bates (as designee for Secretary French), Secretary Clouser, Ken Linsley, Peter Moino (as designee for Secretary Samuelson), Ed Ogorzalek, Neal Robinson, Lauren Wobby, and Steve Wisloski

Board Members Absent: Anita Bourgeois, Fritz Burkhardt, Ken Gibbons, and Stuart Wepler

Staff Participating: Michael Gaughan and Elizabeth King

Guests: Larry Bauer – Norton Rose Fulbright, Andrew Estrada – PFM, Joe DaBreo – PFM, Matt Hughey – Norton Rose Fulbright, Alberto Citarella – Middlebury College, and Derek Hamel – Middlebury College

The meeting was called to order by Mr. Linsley (acting as chair in Mr. Burkhardt's absence) at 2:02 p.m.

Administrative

Mr. Linsley asked if there were any changes to the meeting agenda. Consideration of the Middlebury College application was moved the first agenda item.

Consideration of Middlebury College Application

Mr. Gaughan provided an overview of the reason for the supplemental resolution related to the Middlebury College transaction, which was triggered by a change in the method of sale from a public sale to a tax-exempt direct placement.

Mr. Estrada reiterated PFM's recommendation to approve the transaction. Ms. Wobby congratulated the College on the improved terms. Mr. Baker indicated he would be abstaining from the votes.

Mr. Bauer introduced the resolutions to the board.

Motion: Mr. Robinson moved and Ms. Wobby seconded a motion to adopt the attached supplemental resolution approving the Middlebury College financing. The motion was approved unanimously with abstentions noted.

Motion: Ms. Wobby moved and Mr. Robinson seconded a motion to adopt the attached resolution certifying the transaction. The motion was approved unanimously with abstentions noted.

Representatives from Middlebury College, Norton Rose, and PFM left the meeting following the vote at 2:22 p.m.

Approve April 6, 2022 Board Minutes

Mr. Linsley asked if there were any comments on the prior meeting minutes. No comments were made. Mr. Robinson indicated he would abstain from the vote.

Motion: Mr. Baker moved and Ms. Wobby seconded the motion to approve the April 6, 2022 meeting minutes. The minutes were approved unanimously with abstentions noted.

Audit

Mr. Gaughan highlighted the audit noting the cost savings because of Ms. King preparing the financial statements. He noted that the Finance Committee would have the opportunity to debrief with the auditor.

There being no other business to come before the Board, on Mr. Robinson moved and Mr. Ogorzalek seconded a motion to adjourn.

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

RESOLUTION SUPPLEMENTING A RESOLUTION RELATING TO THE ISSUANCE AND
AWARD OF
ONE OR MORE ISSUES OF VERMONT EDUCATIONAL AND HEALTH BUILDINGS
FINANCING AGENCY REVENUE AND REFUNDING REVENUE BONDS
(MIDDLEBURY COLLEGE PROJECT) SERIES 2022

WHEREAS, on April 6, 2022, Vermont Educational and Health Buildings Financing Agency (hereinafter sometimes called the “Agency”) adopted a resolution authorizing the issuance and award of one or more issues of Vermont Educational and Health Buildings Financing Agency Revenue and Refunding Revenue Bonds (Middlebury College Project) Series 2022 (the “Prior Resolution”); and

WHEREAS, the Prior Resolution contemplated the public offering of said revenue bonds of the Agency described therein (the “proposed public Bonds”) for the purposes of refunding the Refunded Bonds and financing all or a portion of the Project (as each is defined in the Prior Resolution); and

WHEREAS, The President and Fellows of Middlebury College (the “College”), a private, nonprofit corporation duly incorporated and validly existing under and by virtue of the laws of the State of Vermont, which corporation operates a college in Middlebury, Vermont, after consultation with The Yuba Group, financial advisor to the College, has notified the Agency that the College has determined not to proceed with the issuance of the proposed public Bonds by the Agency for the purposes set forth in the Prior Resolution; and

WHEREAS, the College has further notified the Agency that the interests of the College are better served by accepting an offer of TD Bank, N.A. (the “Purchaser”), that entails the issuance by the Agency of its revenue bond to be purchased directly by the Purchaser, the proceeds of which purchase will be used to refund the Refunded Bonds, finance a portion of the Project (such portion, the “Improvement Project”) and pay a portion of certain expenses incurred in connection with the issuance of the Bond hereinafter mentioned; and

WHEREAS, in connection with the foregoing it is necessary for the Board of the Agency to authorize the issuance of the Bond, among other actions; 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 College and the Purchaser;
- b. the Escrow Deposit Agreement (the “Escrow Agreement”), by and among the Agency, the College and The Bank of New York Mellon Trust Company, N.A., in its capacity as the successor trustee for the Refunded Bonds; and
- c. the Loan Agreement (the “Loan Agreement”), between the Agency and the College, pursuant to which the Agency will lend the proceeds of the Bond to the College; and

WHEREAS, the Agency will not be obligated to pay the principal or redemption price, if any, of and interest on the Bond except from the revenues and funds derived from the Loan Agreement or promissory note delivered by the College to secure its obligations thereunder, 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 principal of or redemption premium, if any, or interest on the Bond; and

WHEREAS, the Agency has determined that the College 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 Prior Resolution, 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 \$65,000,000 aggregate principal amount of its Vermont Educational and Health Buildings Financing Agency Revenue Bond (Middlebury College Project) 2022 Series A (the "Bond"), dated as of such date, maturing on such dates in such years not later than August 1, 2042 and in such principal amounts and bearing interest at such rate or rates (none of such rates to exceed 6% per annum), all as determined by the Chairman or the Executive Director of the Agency (each, a "Delegate") after consultation with the College.

Section 3. The Bond shall be subject to redemption at such times, upon such terms and conditions, and at such prices (none of such prices to exceed 105% 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 College's financial advisor, such premium is consistent with comparable, privately placed bonds), all as determined by a Delegate prior to the delivery of the Bond after consultation with the College.

Section 4. The aggregate proceeds of the Bond (including accrued interest, if any) shall be applied to refund the Refunded Bonds, and pay, or reimburse the College for payment of, costs of the Improvement Project and for such other purposes as shall be set forth in the Bond Purchase Agreement.

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

Section 6. The form of the Bond set forth in the Bond Purchase Agreement is hereby approved in all respects, and the Chairman and 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 and of such changes, modifications and deletions.

Section 7. Based on the selection of the Purchaser by the College and after consultation with the College and advisors to the College and the Agency, 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, the Escrow 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. Each Delegate is hereby appointed an Agency Representative, 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 and in the Escrow Agreement.

Section 10. Each Delegate is authorized and directed (without limitation except as may be expressly set forth herein) to take such action 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, the Loan Agreement and the Escrow Agreement, and all prior actions undertaken by the Agency, including by such officers, in connection with the transactions authorized in this Resolution and the Prior Resolution are hereby ratified, approved and confirmed.

Section 11. This Resolution supplements and supersedes the Prior Resolution and shall take effect immediately upon its passage.

RESOLUTION APPROVING CERTIFICATION
TO THE GOVERNOR

WHEREAS, on April 6, 2022, Vermont Educational and Health Buildings Financing Agency (hereinafter sometimes called the “Agency”) adopted a resolution authorizing the issuance or one or more issues of Vermont Educational and Health Buildings Financing Agency Revenue and Refunding Revenue Bonds (Middlebury College Project) Series 2022 (the “Prior Resolution”); and

WHEREAS, the Prior Resolution contemplated the public offering of said revenue bonds of the Agency described therein (the “proposed public Bonds”) for the purposes of refunding the Refunded Bonds and financing all or a portion of the Project (as each is defined in the Prior Resolution); and

WHEREAS, The President and Fellows of Middlebury College (the “College”), a private, nonprofit corporation duly incorporated and validly existing under and by virtue of the laws of the State of Vermont, which corporation operates a college in Middlebury, Vermont, after consultation with The Yuba Group, financial advisor to the College, notified the Agency that the College has determined not to proceed with the issuance by the Agency of the proposed public Bonds; and

WHEREAS, the College also notified the Agency that the interests of the College are better served by accepting an offer of TD Bank, N.A. (the “Purchaser”), that entails the issuance by the Agency of its revenue bond to be purchased directly by the Purchaser, the proceeds of which purchase will be used to refund the Refunded Bonds, finance a portion of the Project (such portion, the “Improvement Project”) and pay a portion of certain expenses incurred in connection with the issuance of the Bond hereinafter mentioned; and

WHEREAS, in connection with the foregoing, on July 15, 2022, the Board of the Agency adopted a resolution authorizing the issuance and sale of its Vermont Educational and Health Buildings Financing Agency Revenue Bond (Middlebury College Project) 2022 Series A (the “Bond”) in an aggregate principal amount not to exceed \$65,000,000 (the “Supplemental Resolution”); and

WHEREAS, the proceeds of the Bond will be used to (i) pay, or reimburse The President and Fellows of Middlebury College (the “College”) for paying, all or a portion of the cost of capital projects relating to the College’s capital facilities over the next two fiscal years, including, but not limited to, renovations to the Johnson Memorial Building, rehabilitation and replacement of various athletic facilities, including Kohn Field, soccer fields, and tennis courts, and upgrade of information systems (collectively, the “Improvement Project”); (ii) to refund all of the Agency’s Revenue Refunding Bonds (Middlebury College Project) Series 2012A, and (iii) to finance the payment of a portion of certain expenses incurred in connection with the issuance of the Bonds; 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, in connection with the adoption of the Prior Resolution, the Board considered pertinent information, data and material respecting the need for and the feasibility and desirability of issuing the proposed public Bonds and examined the financial records of the College relating to its ability to make payments to repay the proposed public Bonds and the interest thereon when due; and

WHEREAS, in connection with the adoption of the Supplemental Resolution, the Board examined updated information from the College relating to its ability to make payments to repay the Bond and the interest thereon when due; and

WHEREAS, the Board has been advised by counsel that the Governor's May 5, 2022 approval pursuant to Section 147(f) following a duly noticed public hearing held on March 31, 2022, will apply to the Bond; and

WHEREAS, the Board has been further advised by counsel that the Agency should re-certify to the Governor that the College will generate sufficient revenues from all operations to meet its obligations to repay the Bond and the interest thereon when due; and

WHEREAS, there has been prepared and submitted to the Board a form of certification to the Governor required under 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 pursuant to such plan of financing of Vermont Educational and Health Buildings Financing Agency Revenue Bond (Middlebury College Project) 2022 Series A, in an aggregate principal amount not to exceed \$65,000,000 is hereby approved in substantially the form presented to this meeting, with such changes, insertions and omissions as may be approved by the Chairman, Treasurer, Secretary 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, Treasurer, Secretary 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.

_____, 2022

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

Re: NOT TO EXCEED \$65,000,000 VERMONT EDUCATIONAL AND HEALTH BUILDINGS FINANCING AGENCY REVENUE BOND (MIDDLEBURY COLLEGE PROJECT) 2022 SERIES A

Dear Governor Scott:

Vermont Educational and Health Buildings Financing Agency (the “Agency”) proposes to issue its Revenue Bond (Middlebury College Project) 2022 Series A (the “Bond”), on behalf of The President and Fellows of Middlebury College (the “College”), 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 College for the purpose of (i) refunding the Agency’s outstanding Revenue Refunding Bonds (Middlebury College Project) Series 2012A, (ii) paying, or reimbursing the College for paying, all or a portion of the cost of acquiring, constructing, renovating or equipping capital projects relating to the College’s capital facilities over the next two fiscal years, including, but not limited to, renovations to the Johnson Memorial Building, rehabilitation and replacement of various athletic facilities, including Kohn Field, soccer fields, and tennis courts, and upgrade of information systems (the “Improvement Project”) and (iii) paying, or reimbursing the College for paying, certain costs incurred in connection with the issuance of the Bond.

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

The Agency has been advised by its counsel that your approval on May 5, 2022, of the issuance of the Agency’s revenue bonds for the benefit of the College pursuant to Section 147 of the Internal Revenue Code of 1986, as amended (the “Code”), will apply to the issuance of the Bond, and no additional approval of any elected officer is required under the Code.

The members of the Agency have considered pertinent information, data and material respecting the need for and the feasibility and desirability of financing the Improvement Project and issuing the Bond. Based on the purchaser selection by the College, the Agency has accepted the proposal of TD Bank, N.A., to purchase the Bond.

Based on the foregoing and, among other things, the commitment of TD Bank, N.A., 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 Improvement Project is needed and that the College 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

Executive Director