

RESOLUTION NO. 2020-1463

A RESOLUTION AUTHORIZING ATCHISON COUNTY, KANSAS, TO ISSUE ITS EDUCATIONAL FACILITIES REVENUE BONDS (BENEDICTINE COLLEGE PROJECT), SERIES 2020C AND SERIES 2020D FOR THE PURPOSE OF REFUNDING CERTAIN BONDS OF BENEDICTINE COLLEGE; AUTHORIZING AND APPROVING THE EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SAID BONDS.

WHEREAS, Atchison County, Kansas (the "County"), is authorized by K.S.A 19-101 *et. seq.*, as from time to time amended (the "Act"), to exercise the powers of home rule to determine its local affairs and government including transacting all county business and performing all powers of local legislation and administration it deems appropriate, and pursuant to and in furtherance of the purposes of the Act, the County proposes to issue educational facilities revenue bonds in one or more series for the purpose of providing funds to make a loan or loans to Benedictine College (the "Borrower") to (a) advance refund on a taxable basis \$4,735,000 outstanding principal amount of County Educational Facilities Revenue Bonds (Benedictine College Project), Series 2013B, with stated maturities of October 1, 2030-2031 (the "Series 2013B Refunded Bonds"), previously issued to finance certain educational facilities of the Institution, (b) advance refund on a taxable basis \$8,000,000 outstanding principal amount of County Educational Facilities Revenue Bonds (Benedictine College Project), Series 2014A, with stated maturities of October 1, 2024-2030 (the "Series 2014A Refunded Bonds"), previously issued to finance certain educational facilities of the Institution, and (c) pay certain costs of issuance associated with the issuance of the Bonds; and

WHEREAS, the governing body of the County hereby finds and determines that the County's refunding of the Refunded Bonds in the manner provided in the Act and pursuant to the provisions of the Loan Agreements hereinafter described, will serve one or more of the public purposes set forth in the Act; and

WHEREAS, the County will issue its (a) Educational Facilities Revenue Bonds (Benedictine College Project), Series 2020C (the "Series 2020C Bonds"), pursuant to a Bond Trust Indenture between the County and the Bond Trustee dated as of March 1, 2020 (the "Series 2020C Indenture"), (b) Educational Facilities Revenue Bonds (Benedictine College Project), Series 2020D (the "Series 2020D Bonds," and together with the Series 2020C Bonds, the "Bonds"), pursuant to a Bond Trust Indenture between the County and the Bond Trustee dated as of March 1, 2020 (the "Series 2020D Indenture," together with the Series 2020C Indenture, the "Indentures"), in an aggregate principal amount of Bonds not to exceed **\$13,300,000**; and

WHEREAS, the County will make a loan (the "Series 2020C Loan") of the proceeds of the Series 2020C Bonds to the Borrower, which loan will be made pursuant to a Loan Agreement dated as of March 1, 2020, between the County and the Borrower (the "Series 2020C Loan Agreement"), to advance refund on a taxable basis the Series 2013B Refunded Bonds as described in the Series 2020C Loan Agreement, which loan will be evidenced by a promissory note of the Borrower in the principal amount of the Series 2020C Bonds (the "Series 2020C Note"); and

WHEREAS, the County will make a loan (the “Series 2020D Loan,” together with the Series 2020C Loan, the “Loans”) of the proceeds of the Series 2020D Bonds to the Borrower, which loan will be made pursuant to a Loan Agreement dated as of March 1, 2020, between the County and the Borrower (the “Series 2020D Loan Agreement,” together with the Series 2020C Loan Agreement, the “Loan Agreements”), to advance refund on a taxable basis the Series 2014A Refunded Bonds as described in the Series 2020D Loan Agreement, which loan will be evidenced by a promissory note of the Borrower in the principal amount of the Series 2020D Bonds (the “Series 2020D Note”); and

WHEREAS, the Loans are secured by a Mortgage and Security Agreement, dated as of October 1, 2000 (as originally executed the “Original Mortgage”), executed by the Institution, as Mortgagor, as amended and supplemented by the Supplemental Mortgage and Security Agreement No. 1 dated as of March 1, 2003, Supplemental Mortgage and Security Agreement No. 2 dated as of January 3, 2005, Supplemental Mortgage and Security Agreement No. 3, dated as of December 1, 2007, Supplemental Mortgage and Security Agreement No. 4, dated as of May 1, 2010, Supplemental Mortgage and Security Agreement No. 5, dated as of September 1, 2010, Supplemental Mortgage and Security Agreement No. 6, dated as of July 1, 2011, Supplemental Mortgage and Security Agreement No. 7 dated as of November 1, 2011, Supplemental Mortgage and Security Agreement No. 8 dated as of April 1, 2012, Supplemental Mortgage and Security Agreement No. 9 dated as of March 1, 2013, Supplemental Mortgage and Security Agreement No. 10 dated as of September 1, 2013, Supplemental Mortgage and Security Agreement No. 11 dated as of March 1, 2020, Supplemental Mortgage and Security Agreement No. 12 dated as of March 1, 2020, Supplemental Mortgage and Security Agreement No. 13 dated as of March 1, 2020, Supplemental Mortgage and Security Agreement No. 14 dated as of February 1, 2018, Supplemental Mortgage and Security Agreement No. 15 dated as of May 1, 2018, Supplemental Mortgage and Security Agreement No. 16 dated as of July 1, 2018, and Supplemental Mortgage and Security Agreement No. 17 dated as of March 1, 2020 (said Original Mortgage, as amended and supplemented from time to time in accordance with the provisions thereof, herein collectively called the “Mortgage”), under which the Institution grants a first mortgage lien and security interest in the Mortgaged Property described therein to Commerce Bank, as the bond trustee for the Series 2016A Bonds and the Series 2018A Bonds, to the United States Department of Agriculture Rural Development (the “USDA”), as lender under the USDA Loan, and to the Bond Trustee for the Series 2018B Bonds, the Series 2020A Bonds, the Series 2020B Bonds, the Series 2020C Bonds and the Series 2020D Bonds; and

WHEREAS, the governing body of the County further finds and determines that it is necessary and desirable in connection with the issuance of these bonds that the County enter into certain agreements, and that the County take certain other actions and approve the execution of certain other documents as herein provided;

NOW, THEREFORE, BE IT RESOLVED BY ATCHISON COUNTY, KANSAS, AS FOLLOWS:

Section 1. Authorization of Sale of Series 2020C Bonds. The Board hereby authorizes proceeding with the offering for sale of the Series 2020C Bonds in accordance with the presentation made by the Borrower. The confirmation of the sale of the Series 2020C Bonds shall be subject to the execution of a bond purchase agreement among the Purchaser, the Borrower and the County and the execution of various documents necessary to deliver the Series 2020C Bonds. The Chairman is hereby authorized to execute a bond purchase agreement (the “Series 2020C Bond Purchase Agreement”) in a form approved by Bond Counsel and the County Counselor, provided that the sale of the Series 2020C Bonds is subject to the following parameters: (a) principal amount not to exceed **\$4,800,000**; (b) a final maturity not later than the calendar year **2030**; (c) a stated taxable fixed interest rate not exceeding **3.50%** per annum; (d) if the Series

2020C Bonds are converted to a tax-exempt rate on the Tax-Exempt Conversion Date (as defined in the Series 2020C Indenture), a stated tax-exempt fixed interest rate not exceeding **3.00%** and (d) a Purchaser's fee not to exceed **1.00%**.

Section 2. Authorization of Sale of Series 2020D Bonds. The Board hereby authorizes proceeding with the offering for sale of the Series 2020D Bonds in accordance with the presentation made by the Borrower. The confirmation of the sale of the Series 2020D Bonds shall be subject to the execution of a bond purchase agreement among the Purchaser, the Borrower and the County and the execution of various documents necessary to deliver the Series 2020D Bonds. The Chairman is hereby authorized to execute a bond purchase agreement (the "Series 2020D Bond Purchase Agreement," together with the Series 2020C Bond Purchase Agreement, the "Bond Purchase Agreements") in a form approved by Bond Counsel and the County Counselor, provided that the sale of the Series 2020D Bonds is subject to the following parameters: (a) principal amount not to exceed **\$8,500,000**; (b) a final maturity not later than the calendar year **2030**; (c) a stated taxable fixed interest rate not exceeding **3.50%** per annum; (d) if the Series 2020D Bonds are converted to a tax-exempt rate on the Tax-Exempt Conversion Date (as defined in the Series 2020D Indenture), a stated tax-exempt fixed interest rate not exceeding **3.00%**; and (d) a Purchaser's fee not to exceed **1.00%**.

Section 3. Authorization of Issuance of the Bonds. The County is hereby authorized to issue and sell its (a) Series 2020C Bonds in the original principal amount not to exceed **\$4,800,000**, and (b) Series 2020D Bonds in the original principal amount not to exceed **\$8,500,000**, the proceeds of which will be used to refund the Refunded Bonds and pay certain costs related to the issuance of the Bonds. The Bonds shall be issued and secured pursuant to the herein authorized Indentures and shall bear such dates, shall be in such denominations, shall be in such forms, shall mature on the dates and in the principal amounts with a final maturity, shall bear interest at rates and shall be subject to redemption on the dates and in the principal amounts as provided in the below authorized Bond Purchase Agreements, and shall have such other terms and provisions, shall be issued, executed, authenticated and delivered in such manner and shall be subject to such provisions, covenants and agreements, as are set forth in the Indentures.

The Bonds, together with interest and premium, if any, thereon are not general obligations of the County but are limited obligations payable solely from the trust estate pledged to the payment thereof under the Indentures and shall be a valid claim of the respective holders thereof only against the trust estate and other moneys held by the applicable trustee and the revenues so pledged as aforesaid. In no event shall the Bonds be payable out of any funds or properties other than those acquired for the purpose of the Act, and the Bonds shall not be deemed to constitute a debt or liability of the State of Kansas or of any political subdivision thereof and the issuance of the Bonds shall not, directly, indirectly or contingently, obligate the County, the State of Kansas or any political subdivision thereof to levy any form of taxation therefor or to budget or make any appropriation for their payment. Nothing in the Bonds, the Indentures, the proceedings of the County authorizing the Bonds or the Act shall be construed to be a debt or loan of credit of the County, the State or any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction.

Section 4. Bank Qualification of the Bonds.

- (a) Series 2020C Bonds: Deem Designated as Qualified Tax-Exempt Obligations. The Series 2013B Refunded Bonds were designated as "qualified tax-exempt obligations" described in Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The County understands that: (1) the Series 2020C Bonds are expected to current refund the Series 2013B Refunded Bonds on a tax-exempt basis on the Tax-

Exempt Conversion Date (as defined in the Series 2020C Indenture); (2) the average maturity date of the Series 2020C Bonds is not expected to exceed the average maturity date of the Series 2013B Refunded Bonds; and (3) the final maturity date of the Series 2020C Bonds is not expected to be later than 30 years after the date the Series 2013B Refunded Bonds were issued. In addition, the County understands that neither (A) the aggregate principal amount, nor (B) the aggregate issue price (sale proceeds) of the Series 2020C Bonds is expected to exceed \$10 million. The County has been advised that on the basis of these expectations, Bond Counsel expects, to the extent that the amount of the Series 2020C Bonds does not exceed the outstanding amount of the Series 2013B Refunded Bonds, that portion of the Series 2020C Bonds will be deemed designated as qualified tax-exempt obligations under Section 265(b)(3) of the Code.

- (b) (1) Series 2020D Bonds: Deem Designated as Qualified Tax-Exempt Obligations. The Series 2014A Refunded Bonds were designated as “qualified tax-exempt obligations” described in Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the “Code”). The County understands that: (1) the Series 2020D Bonds are expected to current refund the Series 2014A Refunded Bonds on a tax-exempt basis on the Tax-Exempt Conversion Date (as defined in the Series 2020D Indenture); (2) the average maturity date of the Series 2020D Bonds is not expected to exceed the average maturity date of the Series 2014A Refunded Bonds; and (3) the final maturity date of the Series 2020D Bonds is not expected to be later than 30 years after the date the Series 2014A Refunded Bonds were issued. In addition, the County understands that neither (A) the aggregate principal amount, nor (B) the aggregate issue price (sale proceeds) of the Series 2020D Bonds is expected to exceed \$10 million. The County has been advised that on the basis of these expectations, Bond Counsel expects, to the extent that the amount of the Series 2020D Bonds does not exceed the outstanding amount of the Series 2014A Refunded Bonds on the Tax-Exempt Conversion Date, that portion of the Series 2020D Bonds will be deemed designated as qualified tax-exempt obligations under Section 265(b)(3) of the Code on the Tax-Exempt Conversion Date.
- (2) Designated as Qualified Tax-Exempt Obligations. The County understands that the amount of the Series 2020D Bonds on the Tax-Exempt Conversion Date is anticipated to exceed the outstanding amount of the Series 2014A Refunded Bonds by an amount not expected to exceed \$200,000. The County understands that to the extent the amount of the Series 2020D Bonds exceeds the outstanding amount of the Series 2014A refunded Bonds on the Tax-Exempt Conversion Date, the Borrower will either use other sources of funds to pay down the principal amount of the Series 2020D Bonds to an amount not exceeding the amount of the Series 2014A Refunded Bonds so that the entire amount of the Series 2020D Bonds may be deem designated as qualified tax-exempt obligations under Section 265(b)(3) of the Code on the Tax-Exempt Conversion Date or, to the extend feasible, the County will designate the excess portion of the Series 2020D Bonds as a “qualified tax-exempt obligation” described in Section 265(b)(3) of the Code. In order to designate a portion of the Series 2020D Bonds as a “qualified tax-exempt obligation,” the County understands that, on the Tax-Exempt Conversion Date, the County will need to certify that (A) the reasonably anticipated amount of tax-exempt obligations (other than private activity bonds which are not “qualified 501(c)(3) bonds,” and the portion of the Series 2020D

Bonds being deemed designated as “qualified tax-exempt obligations” as provided in subsection (1) above) that will be issued by the County or on behalf of the County (and all subordinate entities of the County) during the 2022 calendar year is not expected to exceed \$10 million, and (B) the County (including all subordinate entities of the County) will not issue tax-exempt obligations during the 2022 calendar year, including the portion of the Series 2020D Bonds being designated a “qualified tax-exempt obligation” (an amount up to \$200,000) in an aggregate principal amount or aggregate issue price in excess of \$10 million.

Section 5. Authorization and Approval of Documents. The following documents are hereby approved in substantially the forms presented to and reviewed by the County at this meeting to this Resolution (copies of which documents shall be filed in the records of the County), and the County is hereby authorized to execute and deliver each of such documents to which the County is a party (the “County Documents”) with such changes therein as shall be approved by the officer or officers of the County executing such documents, such officers’ signatures thereon being conclusive evidence of their approval and the County’s approval thereof:

- (a) Bond Trust Indenture dated as of March 1, 2020 (the “Series 2020C Indenture”), between the County and the Bond Trustee pursuant to which the Series 2020C Bonds shall be issued and the County shall pledge and assign the payments, revenues and receipts received pursuant to the Series 2020C Loan Agreement to the Bond Trustee for the benefit of and security of the owners of the Series 2020C Bonds upon the terms and conditions as set forth in said form of Series 2020C Indenture;
- (b) Bond Trust Indenture dated as of March 1, 2020 (the “Series 2020D Indenture”), between the County and the Bond Trustee pursuant to which the Series 2020D Bonds shall be issued and the County shall pledge and assign the payments, revenues and receipts received pursuant to the Series 2020D Loan Agreement to the Bond Trustee for the benefit of and security of the owners of the Series 2020D Bonds upon the terms and conditions as set forth in said form of Series 2020D Indenture;
- (c) Series 2020C Loan Agreement under which the County will loan the proceeds of the Series 2020C Bonds to the Borrower to provide funds to advance refund on a taxable basis the Series 2013B Refunded Bonds upon the terms and conditions as set forth in said Series 2020C Loan Agreement in consideration of payments which will be sufficient to pay the principal of, redemption premium, if any, and interest on the Series 2020C Bonds;
- (d) Series 2020D Loan Agreement under which the County will loan the proceeds of the Series 2020D Bonds to the Borrower to provide funds to advance refund on a taxable basis the Series 2014A Refunded Bonds upon the terms and conditions as set forth in said Series 2020D Loan Agreement in consideration of payments which will be sufficient to pay the principal of, redemption premium, if any, and interest on the Series 2020D Bonds;
- (e) Promissory Note (Benedictine College), Series 2020C, which Series 2020C Note will be issued as provided in the Series 2020C Loan Agreement in an aggregate principal amount equal to the aggregate principal amount of the Series 2020C Bonds to be issued, made by Benedictine College, and payable to the County and to be endorsed and assigned by the County to the Bond Trustee under the Series 2020C Indenture for the benefit and security

of the owners of the Series 2020C Bonds, securing the Borrower's obligations to make loan payments under the Series 2020C Loan Agreement;

- (f) Promissory Note (Benedictine College), Series 2020D, which Series 2020D Note will be issued as provided in the Series 2020D Loan Agreement in an aggregate principal amount equal to the aggregate principal amount of the Series 2020D Bonds to be issued, made by Benedictine College, and payable to the County and to be endorsed and assigned by the County to the Bond Trustee under the Series 2020D Indenture for the benefit and security of the owners of the Series 2020D Bonds, securing the Borrower's obligations to make loan payments under the Series 2020D Loan Agreement;
- (g) Bond Purchase Agreement dated as of the date of delivery thereof (the "Series 2020C Bond Purchase Agreement"), among the County, the Borrower and the Purchaser under which the County agrees to sell the Series 2020C Bonds to the Purchaser upon the terms and conditions as set forth in said form of Series 2020C Bond Purchase Agreement;
- (h) Bond Purchase Agreement dated as of the date of delivery thereof (the "Series 2020D Bond Purchase Agreement"), among the County, the Borrower and the Purchaser under which the County agrees to sell the Series 2020D Bonds to the Purchaser upon the terms and conditions as set forth in said form of Series 2020D Bond Purchase Agreement;
- (i) Tax Compliance Agreement dated as of March 1, 2020, among the County, the Borrower and the Bond Trustee (the "Series 2020C Tax Agreement") entered into in order to set forth certain facts, expectations, representations and covenants relating to the use and investment of proceeds of and other money related to the Series 2020C Bonds, the use of assets financed or refinanced with proceeds of the Series 2020C Bonds, and the status of the Borrower under Internal Revenue Code Section 501(c)(3). It is anticipated that the Series 2020C Tax Agreement will be supplemented and amended by a Supplemental Tax Compliance Agreement, among the County, the Borrower and the Bond Trustee dated as of the Tax-Exempt Conversion Date (as defined in the Series 2020C Indenture) for the Series 2020C Bonds entered into in order to update and confirm certain facts, expectations, representations and covenants contained in the Series 2020C Tax Agreement relating to the use and investment of proceeds of and other money related to the Series 2020C Bonds, the use of assets financed or refinanced with proceeds of the Series 2020C Bonds, and the status of the Borrower under Internal Revenue Code Section 501(c)(3) in order to establish and maintain the exclusion of interest on the Series 2020C Bonds from gross income for federal income tax purposes following the Tax-Exempt Conversion Date; and
- (j) Tax Compliance Agreement dated as of March 1, 2020, among the County, the Borrower and the Bond Trustee (the "Series 2020D Tax Agreement") entered into in order to set forth certain facts, expectations, representations and covenants relating to the use and investment of proceeds of and other money related to the Series 2020D Bonds, the use of assets financed or refinanced with proceeds of the Series 2020D Bonds, and the status of the Borrower under Internal Revenue Code Section 501(c)(3). It is anticipated that the Series 2020D Tax Agreement will be supplemented and amended by a Supplemental Tax Compliance Agreement, among the County, the Borrower and the Bond Trustee dated as of the Tax-Exempt Conversion Date (as defined in the Series 2020D Indenture) for the Series 2020D Bonds entered into in order to update and confirm certain facts, expectations, representations and covenants contained in the Series 2020D Tax

Agreement relating to the use and investment of proceeds of and other money related to the Series 2020D Bonds, the use of assets financed or refinanced with proceeds of the Series 2020D Bonds, and the status of the Borrower under Internal Revenue Code Section 501(c)(3) in order to establish and maintain the exclusion of interest on the Series 2020D Bonds from gross income for federal income tax purposes following the Tax-Exempt Conversion Date.

Section 6. Refunding of Refunded Bonds. The County authorizes and approves the refunding of the Refunded Bonds, and the County shall, and the officers, employees and agents of the County are hereby authorized and directed to, take such action, and execute such other documents, certificates and instruments, including without limitation escrow agreements or instructions, redemption or defeasance notices, and conversion notices, as may be necessary or desirable in connection with the refunding of the Refunded Bonds.

Section 7. Execution of Bonds and Documents. The Chairman and the Vice Chair of the County Commission are hereby authorized and directed to execute the Bonds and to deliver the Bonds to the Bond Trustee for authentication for and on behalf of and as the act and deed of the County in the manner provided in the Indentures. The Chairman and the Vice Chair of the County Commission are hereby authorized and directed to execute the Indentures, the Loan Agreements, the Tax Compliance Agreements, the Bond Purchase Agreements and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution, for and on behalf of and as the act and deed of the County. The County Clerk of the County is hereby authorized and directed to attest to and affix the seal of the County to the Bonds, the Indentures, the Loan Agreements, the Tax Compliance Agreements, the Bond Purchase Agreements and such other documents, certificates and instruments as may be necessary.

Section 8. Further Authority. The County shall, and the officers, employees and agents of the County are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution and to carry out, comply with and perform the duties of the County with respect to the Bonds, the Indentures, the Loan Agreements, the Tax Compliance Agreements and the Bond Purchase Agreements.

Section 9. Effective Date. This Resolution shall take effect and be in full force after its adoption by the County and publication once in the official newspaper of the County.

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ADOPTED by Atchison County, Kansas, this 3rd day of March, 2020.

(SEAL)



ATTEST:

Michelle Phillips
County Clerk

Jack Be...
Chairman of the County Commission