

# SOUTH DAKOTA BUILDING AUTHORITY

## MINUTES OF THE SPECIAL MEETING

April 14, 2014

Pursuant to due notice, the South Dakota Building Authority met on Monday, April 14, 2014 at 3:00 P.M., CDT via telephone. Tom Graham, Chairman, instructed the Executive Secretary to call the roll.

Present: Mr. Tom Graham  
Mr. Doug Hajek  
Mr. D. J. Mertens  
Mr. James Breckenridge  
Mr. Dennis Neugebauer  
Mr. Steve Zellmer

Absent: Mr. James Roby

Other staff and representatives of the Authority present were:

Mr. Donald Templeton, Executive Secretary  
Mr. Todd Meierhenry, Meierhenry Sargent, LLP  
Mr. Mick Jost, South Dakota Health and Educational Facilities Authority  
Mr. Dustin Christopherson, South Dakota Health and Educational Facilities Authority  
Mr. James Terwilliger, Bureau of Finance & Management  
Mr. Bruce Bonjour, Perkins Coie  
Mr. Jack Arnold, Dougherty & Company

A quorum was declared by the Chairman and the meeting was called to order.

Mr. Don Templeton advised the Authority members that the notice of the meeting had been posted at the entrance of the office of the South Dakota Building Authority on April 9, 2014. A copy of that notice is attached hereto and is an integral part of the minutes (*See Attachment #1*).

The Chairman asked for consideration of the minutes for the November 22, 2013 special meeting. Mr. Hajek moved to approve the minutes of the meeting as presented, seconded by Mr. Neugebauer. All members present voted aye. Motion carried.

### **Introduction of New Members and election of Vice Chairman**

The Chairman introduced the two new board members, James Breckenridge and Steve Zellmer, and each new member told a little about their background.

Doug Hajek volunteered to serve as Vice Chairman and this motion was moved by Mr. Mertens and seconded by Mr. Neugebauer. All members present voted aye. Motion carried.

### **Funding of four prepayments**

Mr. Templeton explained that the funding for the prepayment of four South Dakota Building Authority bond issues was a significant part of the Governor's fiscal year 2015 budget. Mr. Templeton reviewed HB 1206 and explained that the bill received great support from the legislature with only one final vote opposing the bill.

Jim Terwilliger explained the sources of the funds for HB 1206, with the major source being the state's receipt of unclaimed properties.

Mr. Templeton reviewed the prepayment dollar amount of \$56,257,251 relative to HB 1206 and the South Dakota Building Authority existing outstanding bonds.

The three escrow agreements on file at the Authority office were reviewed by Mr. Bruce Bonjour.

Mr. Templeton and Mr. Todd Meierhenry explained that once the three escrows were fully funded and verified by Eide Bailly, the bonds will no longer be reported as outstanding in the South Dakota Building Authority's financial statements.

Mr. Templeton explained that he and Jack Arnold are working with the state to try to improve the state's credit rating from AA+ to AAA and the prepayment of this debt will be a step taken towards that goal.

Mr. Bonjour reviewed the 01-SDBA-14 Thirty-Third Supplemental Bond Resolution to approve the authorization of prepayment and partial prepayment of certain Lease obligations relating to the Authority's (i) State Lease Revenue Trust Certificates, Series 1993A (\$11,018,853), (ii) Revenue Bonds, Series 2005B (\$6,040,293), (iii) Revenue Bonds, Series 2008 (\$32,465,540), and (iv) Taxable Revenue Bonds, Series 2010B (Recovery Zone Economic Development Bonds) (\$6,732,565), authorizing the establishment of certain escrows to provide for the payment, partial payment and refunding of the Series 1993A Certificates, Series 2005B Bonds, and Series 2008 Bonds, the Series 2010B cash center and authorizing certain related matters. (*see Attachment #2*). Mr. Doug Hajek moved to approve the Resolution, seconded by Mr. D. J. Mertens and upon roll call, the ayes were: Graham, Breckenridge, Zellmer, Mertens, Neugebauer and Hajek ; nays: none; abstain: none.

### **Contracts**

Mr. Templeton and Mr. Meierhenry reviewed the Meierhenry Sargent LLP contract explained that it is very similar to previous years. Mr. Neugebauer moved to approve this contract and Mr. Zellmer seconded. All members present voted aye. Motion carried.

Mr. Templeton reviewed the Chapman and Cutler LLP contract and stated how important it is to do the yearly rebate calculations. Mr. Hajek moved to approve this contract and Mr. Breckenridge seconded. All members present voted aye, Motion carried.

**Other**

Mr Templeton talked about the Department of Legislative Audit's engagement letter and discussed the Y-T-D SDBA financial statement.

**Adjournment**

The Chairman stated that there being no further business at this meeting, the meeting would be adjourned at 3:40 p.m. CDT.

# South Dakota Building Authority

Attachment #1

330 South Poplar, Suite 102  
P.O. Box 846  
Pierre, SD 57501

Tel: 605-224-9200  
FAX: 605-224-7177

Date: April 4, 2014

To: Members of the South Dakota Building Authority

From: Don A. Templeton, Executive Secretary

Re: Notice of Special Meeting

You are hereby notified that the Chairman has set Monday, April 14, 2014 as the date for the Special Meeting of the South Dakota Building Authority to be held via telephone conference at 3:00 p.m. (CDT) 2:00 p.m. (MDT).

**You may participate in the meeting by dialing 1-877-336-1828 and enter your Participant Access Code, which is 4677196 followed by the # key.**

The following members have indicated they will be available for the meeting:

Tom Graham	Doug Hajek	Dennis Neugebauer
Jim Breckenridge	D.J. Mertens	Steve Zellmer

An agenda is enclosed and information on the agenda items will be sent via email or Federal Express if a hardcopy is requested.

Cc: Todd Meierhenry, Meierhenry Sargent LLP  
Bruce Bonjour, Perkins Coie  
Jack Arnold, Dougherty & Co.

**01-SDBA-14****THIRTY-THIRD SUPPLEMENTAL RESOLUTION**

Authorizing the prepayment of certain Lease obligations relating to the Authority's (i) State Lease Revenue Trust Certificates, Series 1993A, (ii) Revenue Bonds, Series 2005B, (iii) Revenue Bonds, Series 2008, and (iv) Taxable Revenue Bonds, Series 2010B (Recovery Zone Economic Development Bonds), authorizing the establishment of certain escrows to provide for the payment and refunding of the Series 1993A Certificates, Series 2005B Bonds, and Series 2008 Bonds, and authorizing certain related matters.

WHEREAS, the South Dakota Building Authority (the "*Authority*") is a body corporate and politic, duly created and organized under the provisions of "An Act to Create the South Dakota Building Authority and to Define its Powers and Duties," approved March 14, 1967, as amended, for the purpose of acquiring property, whether real, personal or mixed, for constructing, completing, remodeling and installing fixed equipment in any and all buildings and facilities as the Legislature of the State of South Dakota, by law, declared to be in the public interest for any officer, department, board, commission or other agency of the State of South Dakota; and

WHEREAS, the Authority has heretofore authorized the issuance of State Lease Revenue Trust Certificates (the "*Series 1993A Certificates*") in the principal amount of \$33,075,000 pursuant to an Indenture of Trust and Assignment of Interest in Rental Payments under Certain Leases, dated as of June 1, 1993 (the "*Series 1993 Indenture*"); and

WHEREAS, the Series 1993 Certificates represent interests in rental payments to be received by the Authority from time to time under the Lease dated as of October 15, 1992, between the Authority, as Lessor, and the Department of Human Services of the State of South Dakota, as Lessee, as amended by a First Lease Supplement dated as of June 1, 1993, between the same Lessor and Lessee, which lease is sometimes referred to in documents relating to the Series 1993A Certificates as the "*Series A Lease*" (as so amended, the "*Series 1993A Lease*") and which relates to the George S. Mickelson Center for the Neurosciences (the "*Series 1993A Project*"); and

WHEREAS, the Authority has since 1984 issued multiple series of revenue bonds (collectively, the "*Revenue Bonds*") pursuant to the Resolution of the Authority entitled "RESOLUTION Authorizing and Providing for the Issue of Revenue Refunding Bonds by the South Dakota Building Authority," adopted March 8, 1984 (the "*Original Resolution*"), as the same has been amended from time to time by Supplemental Resolutions, most recently by the Resolution adopted on November 8, 2013 (the "*Thirty-Second Supplemental Resolution*") providing for the issuance of \$81,840,000 in aggregate principal amount of the Authority's Revenue Bonds, Series 2013B (Tax-Exempt), Series 2013C (Taxable) and Series 2013D (Taxable); and

WHEREAS, among other supplements and amendments to the Original Resolution, the Authority has heretofore authorized the issuance of Revenue Bonds (the "*Series 2005A Bonds*")

and the “*Series 2005B Bonds*”) in the principal amounts of \$4,500,000 and \$8,135,000, respectively, pursuant to the Resolution of the Authority entitled “Twenty-First Supplemental Bond Resolution for South Dakota Building Authority Revenue Bonds, Series 2005A and Series 2005B, and Authorizing the Execution, Issue and Registration of said Series of Bonds,” adopted March 22, 2005 (the “*Twenty-First Supplemental Resolution*”); and

WHEREAS, the Authority has heretofore authorized the issuance of Revenue Bonds (the “*Series 2008 Bonds*”) in the principal amount of \$75,685,000 pursuant to the Resolution of the Authority entitled “Twenty-Sixth Supplemental Bond Resolution for South Dakota Building Authority Revenue Bonds, Series 2008, and authorizing the Execution, Issue and Registration of said Series of Bonds and Related Matters,” adopted July 2, 2008 (the “*Twenty-Sixth Supplemental Resolution*”); and

WHEREAS, the Authority has heretofore authorized the issuance of Revenue Bonds (the “*Series 2010 Bonds*”) in the principal amount of \$30,940,000 pursuant to the resolution of the Authority entitled “Twenty-Eighth Supplemental Bond Resolution for South Dakota Building Authority Revenue Bonds, Series 2010, and authorizing the Execution, Issue, Sale and Registration of said Series of Bonds and Related Matters,” adopted August 12, 2010 (the “*Twenty-Eighth Supplemental Resolution*”), which Series 2010 Bonds, included \$14,600,000 in principal amount of Taxable Revenue Bonds, Series 2010B (Recovery Zone Economic Development Bonds) (the “*Series 2010B Bonds*”); and

WHEREAS, the facilities financed with proceeds of the Revenue Bonds have been leased by the Authority to various departments and offices of the State of South Dakota under lease agreements (collectively, the “*Authority Leases*” and, together with the Series 1993A Lease, the “*Leases*”), with the rental payments and associated fees received by the Authority under such Authority Leases being used to pay debt service on the Revenue Bonds; and

WHEREAS, the facilities financed with proceeds of the Series 2005B Bonds, relating to the George S. Mickelson Criminal Justice Center (the “*Series 2005B Project*”), have been leased by the Authority to the South Dakota Office of Attorney General and Department of Public Safety under a Lease dated as of April 1, 2005 (the “*Series 2005B Lease*”); and

WHEREAS, the facilities financed with proceeds of the Series 2008 Bonds, relating to laboratory and science facilities at South Dakota public universities (the “*Series 2008 Project*”), have been leased by the Authority to the South Dakota Board of Regents under Lease, dated as of February 1, 1984, as amended by a Seventeenth Lease Supplement, dated as of July 1, 2008 (as so amended, the “*Series 2008 Lease*”); and

WHEREAS, the facilities financed with proceeds of the Series 2010B Bonds, relating to the dietary wing of the George S. Mickelson Center for the Neurosciences (the “*2010B Project*”), have been leased by the Authority to the South Dakota Department of Human Services under a Lease, dated as of October 15, 1992, as amended by a First Lease Supplement, dated as of September 1, 2010 (as so amended, the “*Series 2010B Lease*”); and

WHEREAS, pursuant to the provisions of House Bill 1206, adopted during the 2014 Session of the South Dakota Legislature (the “Act”), which took immediate effect upon being signed by the Governor, the State of South Dakota has appropriated the aggregate sum of \$56,257,251 (the “Appropriation”) to be transferred from the South Dakota Bureau of Finance and Management to the Authority to be used by the Authority to prepay the following amounts with respect to the following Leases:

- (1) \$11,018,853 with respect to the Series 1993A Lease,
- (2) \$6,040,293 with respect to the Series 2005B Lease,
- (3) \$32,465,540 with respect to the Series 2008 Lease, and
- (4) \$6,732,565 with respect to the Series 2010B Lease; and

WHEREAS, the Authority is authorized by the Act to establish one or more irrevocable escrows to hold portions of the Appropriation in order to provide for the defeasance and payment of the 1993A Certificates, the Series 2005B Bonds, and the Series 2008 Bonds (the “Refunded Obligations”); and

WHEREAS, the Act further authorizes the Authority to enter into other arrangements from time to time to pay or prepay debt service and other fees and expenses relating to the Series 2010B Bonds, to the extent permitted under Chapter 5-12 of the Codified laws of the State of South Dakota, using the portion of the Appropriation allocated for prepayment of the 2010B Lease;

NOW, THEREFORE, BE IT RESOLVED BY THE SOUTH DAKOTA BUILDING AUTHORITY as follows:

*Section 1. General.* This Thirty-Third Supplemental Resolution is supplemental to and is adopted in accordance with the provisions of Article III of the Original Resolution, as heretofore amended and supplemented. The preambles of this Thirty-Third Supplemental Resolution are hereby incorporated into this text as if set out in full herein.

*Section 2. Definitions.* The following words and phrases shall have the following meanings:

(A) “*Authorized Officers*” means the Chairman and the Executive Secretary, or in the absence or unavailability of either such officer and a written delegation to such effect, any action to be taken by the Authorized Officers hereunder may be taken by the other officer.

(B) “*Code*” means the Internal Revenue Code of 1986, as amended, together with the regulations adopted thereunder.

(C) “*Escrow Agent*” means The First National Bank in Sioux Falls, in its capacity as escrow agent under an Escrow Agreement.

(D) “*Escrows*” means the escrow accounts established under the Escrow Agreements.

(E) “*Escrow Agreements*” means (i) the Series 1993A Escrow Agreement, (ii) the Series 2005B Escrow Agreement, and (iii) the Series 2008 Escrow Agreement, as described below in Section 4 of this Resolution, each being between the Authority and The First National Bank in Sioux Falls, as Escrow Agent.

(F) “*Leases*” means (i) the Series 1993A Lease, (ii) the Series 2005B Lease, (iii) the Series 2008 Lease, and (iv) the Series 2010B Lease.

(G) “*Obligations*” means (i) the Series 1993A Certificates, (ii) the Series 2005B Bonds, (iii) the Series 2008 Bonds, and (iv) the Series 2010B Bonds.

(H) “*Refunded Obligations*” means (i) the Series 1993A Certificates, (ii) the Series 2005B Bonds, and (iii) the Series 2008 Bonds.

(I) “*Resolution*” or “*Bond Resolution*” means the Original Resolution as it may from time to time be supplemented, modified or amended by any resolution supplemental thereto pursuant to the provisions thereof.

*Section 3. Determination of Public Interest.* The Authority hereby determines that the transactions provided for in this Thirty-Third Supplemental Resolution are in the public interest and are necessary for the performance of its duties and the exercise of its powers and functions under Chapter 5-12 of the South Dakota Codified Laws.

*Section 4. Authorization of Escrow Agreements.* The Chairman and the Executive Secretary of the Authority be and they are hereby authorized to execute and acknowledge and deliver in the name of and on behalf of the South Dakota Building Authority,

- (i) a Series 1993A Escrow Agreement between the Authority and The First National Bank in Sioux Falls, as escrow agent (the “*Series 1993A Escrow Agreement*”), providing for the defeasance to maturity of the outstanding Series 1993A Certificates in accordance with Section 11.12 of the 1993 Indenture,
- (ii) a Series 2005B Escrow Agreement between the Authority and The First National Bank in Sioux Falls, as escrow agent (the “*Series 2005B Escrow Agreement*”), providing for the defeasance of the Series 2005B Bonds in accordance with Article X of the Original Resolution and the provisions of the Twenty-First Supplemental Resolution, and providing for all of the then-outstanding Series 2005B Bonds to be called for early redemption on September 1, 2015, and
- (iii) a Series 2008 Escrow Agreement between the Authority and The First National Bank in Sioux Falls, as escrow agent (the “*Series 2008 Escrow Agreement*”), providing for the partial defeasance of \$27,500,000 of the outstanding Series 2008 Bonds in accordance with Article X of the Original Resolution and the provisions of the Twenty-



Sixth Supplemental Resolution, and providing for \$23,530,000 of the then-outstanding Series 2008 Bonds to be called for early redemption on June 1, 2018.

Each Escrow Agreement shall be substantially in the form of the corresponding draft escrow agreement on file with the Executive Secretary of the Board and with such other or further changes as may be approved by such officer or director of the Authority executing the same. Such execution thereof shall constitute irrevocable, final, conclusive evidence of approval by such officers' and this Board's approval of any and all such changes from the form of the Escrow Agreements presented to this meeting and approved hereby.

The Authorized Officers, and any other appropriate office of the Authority, are each hereby authorized to take such actions as any such officer may regard as necessary or appropriate in order to effect the partial defeasance and refunding of the Series 2008 Bonds, including but not limited to arranging for the issuance of new Bond certificates reflecting the division of the Series 2008 Bonds into a defeased portion and an undefeased portion.

*Section 5. Engagement of Financial Advisor and Accounting Firm.* The Authority shall engage the services of Dougherty & Company LLC (the "*Financial Advisor*"), on such terms as the Executive Secretary may regard as appropriate, to advise the Authority regarding the selection and purchase of securities to be held pursuant to the Escrow Agreements, as to the investment of moneys received in prepayment of the 2010B Lease, and on such related matters as the Executive Secretary may consider necessary to carry out the purposes of this Resolution. The Authority shall engage the services of Eide Bailly LLP (the "*Accounting Firm*"), on such terms as the Executive Secretary may regard as appropriate, to provide any verification reports necessary to effect the defeasance of the Series 1993A Certificates, Series 2005B Bonds, or Series 2008 Bonds, or otherwise to determine the amount and sufficiency of funds available to pay debt service on any of the Obligations. The Authority and its officers shall be entitled to rely conclusively on any such determination made by the Accounting Firm.

*Section 6. Use of Appropriation.* The Authority shall deposit the following respective portions of the Appropriation with the Escrow Agent to be held and used as provided under the applicable Escrow Agreement:

- (1) \$11,018,853 with respect to the Series 1993A Lease,
- (2) \$6,040,293 with respect to the Series 2005B Lease, and
- (3) \$32,465,540 with respect to the Series 2008 Lease.

Notwithstanding the foregoing, in the event the Accounting Firm should determine that the amount needed in order to provide for the defeasance and redemption of any of the Series 1993A Certificates, Series 2005B Bonds, or Series 2008 Bonds is less than the portion of the Appropriation indicated above, any amount that is determined not to be needed for such purpose shall be transferred to the State General Fund by the Authority (or by the Escrow Agent at the Authority's direction, to the extent such amount is then held under an Escrow Agreement).

The remainder of the Appropriation (\$6,732,565) shall be used by the Authority to pay or prepay, from time to time, any governmental expenses permissible under Chapter 5-12 of the Codified Laws of South Dakota, including payment and prepayment of debt service and associated fees and expenses relating to the Series 2010B Bonds. Such amount may be invested initially in a cash center within the South Dakota Investment Council; and the Authority may contract with third parties in order to provide arrangements for such payments or prepayments and for the investment of moneys pending such payments or prepayments.

*Section 7. Unused Funds.* Upon a determination by the Accounting Firm of the amounts necessary for payment or prepayment of the Obligations and any related fees and expenses, any remaining funds (including any such excess amounts then held by the Escrow Agent under an Escrow Agreement) shall be transferred to the State General Fund at the end of the current fiscal year ending June 30, 2014. Thereafter, as of the end of each fiscal year to and including the fiscal year ending June 30, 2021, the Authority shall file an annual report with the Bureau of Finance and Management specifying any lease rentals, any fees received pursuant to the Act, and any interest earnings thereon which the Authority, with the advice of the Accounting Firm, has determined are no longer expected to be required for the purposes set forth in section 2 of the Act (namely, to pay or prepay lease rental and associated fees with respect to the Leases). Any such amounts not then expected to be required shall be deposited into the State General Fund with thirty days of the filing of the annual report. Any Lease rentals and fees received by the Authority pursuant to the Act, or interest earnings thereon, which are not applied by June 2, 2021, to pay or prepay any such amounts, shall be deposited into the State General Fund by June 30, 2021.

*Section 8. Tax Covenants.* The Authority covenants that it will take no action in the investment of the Appropriation or of other funds which would result in any of the Obligations being classified as “arbitrage bonds” within the meaning of Section 148 of the Code. Further, the Authority covenants that it will take such actions as may be necessary in order to ensure that the interest on any Obligations (other than the Series 2010B Bonds) remains excluded from the gross income of the holders thereof for federal income tax purposes under Section 103 of the Code, and that the Series 2010B Bonds do not lose their treatment as Recovery Zone Economic Development Bonds under Section 1400U-2 of the Code.

*Section 9. Additional Documents.* The Authority does hereby authorize and approve the execution and delivery by its Chairman, Vice Chairman, Secretary or Executive Secretary of such documents as any such officer may regard as necessary and desirable in connection with the execution of the Escrow Agreements, the refunding and defeasance of the Refunded Obligations, and the other transactions contemplated hereunder, with such execution of such documents to constitute conclusive evidence of their approval and the Authority’s approval of the form of such document.

*Section 10. Authorized Acts.* The Authorized Officers are hereby each authorized and directed to do all such acts and things and to execute and deliver all such other documents, agreements, certificates and elections, and perform such other acts, as may be necessary or desirable in order to effectuate any of the actions authorized pursuant to this Resolution.

*Section 11. Repeal of Conflicting Provisions.* Any resolutions, or parts thereof, in conflict with the provisions of this Thirty-Third Supplemental Resolution, are hereby repealed.

*Section 12. Effective Date.* This Thirty-Third Supplemental Resolution shall become effective upon its passage.