

Southeast Tech
Bonding Resolution – Health and Education Facilities Authority
EXECUTIVE SUMMARY

Purpose:

To approve by roll call vote a resolution approving (i) a facility fee increase, (ii) the executive, delivery and performance of a supplement to a certain sublease agreement between the Sioux Falls School District, as tenant, and the South Dakota Board of Education, as Lessor, and (iii) certain related matters in connection therewith.

The resolution follows the approval of HB1098 by the 2013 South Dakota Legislature to provide approximately \$20 million of proceeds to finance the acquisition, construction, and other costs associated with a transportation technology building on the campus of Southeast Technical Institute.

The State Board of Education adopted a resolution approving certain increases in the Facility Fees charged to students of the four technical institutes beginning with the 2016-17 Academic year. Beginning July 1, 2016, the Facility Fees will increase from \$28 per credit to \$30 per credit. For the academic year beginning July 1, 2017 and subsequent years the Facility Fees charged to students will increase to \$35 per credit hour.

The attached resolution provides for the increase in facility fees, the execution of a lease agreement between the Sioux Falls School District and the South Dakota Board of Education, and other matters relating to the issuance of the Series 2015C Bonds.

Administrative Recommendation to School Board:

Approve the resolution as presented authorizing the increase in facility fees, sublease agreement, and related matters.

RESOLUTION APPROVING (i) A FACILITY FEE INCREASE, (ii) THE EXECUTION, DELIVERY AND PERFORMANCE OF A SUPPLEMENT TO A CERTAIN SUBLEASE AGREEMENT BETWEEN THE SCHOOL DISTRICT, AS TENANT, AND THE SOUTH DAKOTA BOARD OF EDUCATION, AS LESSOR, AND (iii) CERTAIN RELATED MATTERS IN CONNECTION THEREWITH

RECITALS

WHEREAS, the SIOUX FALLS SCHOOL DISTRICT NO. 49-5 (the “School District”) is authorized pursuant to law to operate a post secondary vocational technical education institute under the general supervision of the South Dakota Board of Education (the “Board”);

WHEREAS, the South Dakota Health and Educational Facilities Authority (the “Authority”) is authorized pursuant to Chapter 1-16A, South Dakota Codified Laws, to issue bonds to finance the acquisition, improvement, repairing and equipping of post-secondary vocational technical education facilities for lease to and purchase by the Board and/or for use by the School District and other school districts or LEAs authorized to operate post-secondary vocational technical education programs (all such School Districts and LEAs being referred to herein as “Participating Institutions”);

WHEREAS, Title 13, SDCL, provides that to secure lease purchase rentals payable by participating institutions and the State Board of Education (the “Board”) to the Authority, (i) the State Treasurer may pledge earnings on the Vocational Education Facilities Fund and (ii) the Board may pledge certain amounts of tuition and other student fees required to be paid to the Treasurer and deposited into the Tuition Subaccount;

WHEREAS, the Authority has established a program (the “Program”) whereby the Board may lease purchase post-secondary vocational technical education facilities from the Authority and sublease such facilities to the Participating Institutions, including the School District;

WHEREAS, the Authority and the Board have heretofore entered into a Lease Purchase Agreement dated as of August 1, 1988 (as amended and supplemented from time to time, the “Lease”) pursuant to which the Board is leasing with an option to purchase certain facilities the acquisition of which was financed or refinanced with the proceeds derived from the issuance and sale by the Authority of its Vocational Education Program Revenue Bonds (the “Bonds”) as amended and supplemented from time to time pursuant to an Indenture of Trust dated as of August 1, 1988 (as amended and supplemented from time to time, the “Indenture”) between the Authority and The First National Bank in Sioux Falls, as Trustee (the “Trustee”);

WHEREAS, pursuant to a Sublease dated as of August 1, 1988 between the Board and the School District (as heretofore supplemented and amended the “Sublease”), the School District is currently leasing certain improvements described therein from the Board;

WHEREAS, in order to provide a credit against Lease Rentals owed by the Board under the Lease Purchase Agreement as heretofore amended and supplemented, the School District and all other Participating Institutions have heretofore entered into that certain Amended and Restated Facility Fee Tuition Collection and Deposit Agreement (as amended and supplemented from time to time, the “Collection Agreement”) with the Board, the South Dakota Treasurer (the “Treasurer”) and The First National Bank in Sioux Falls, as Escrow Holder (the “Escrow Holder”);

WHEREAS, Section 8 of the Collection Agreement provides that each Participating Institution, including the School District (with respect to Southeast Technical Institute), shall collect certain “Facility Fees” as established by the Board from time to time;

WHEREAS, on January 29, 2015, the State Board of Education adopted a resolution approving certain increases in the Facility Fees charged to students of the Southeast Technical Institute and other Participating Institutions, beginning with the 2015-16 Academic Year, effective July 1, 2015, which Facility Fees the School Board of the School District agrees to impose and collect;

WHEREAS, the Authority proposes to issue bonds (the "Series 2015C Bonds") so as to provide approximately \$20 million of proceeds to finance the acquisition, construction, and other costs associated a transportation technology center at Southeast Technical Institute in Sioux Falls, South Dakota to house various technical programs, including diesel, auto, and auto body collision programs and other facility improvements for other programs at Southeast Technical Institute, as authorized by the South Dakota Legislature under Section 5 of Chapter 6 of the 2013 Session Laws (HB 1098) (collectively, the “Series 2015C Project”);

WHEREAS, proceeds of the Series 2015C Bonds will also expected to fund costs of issuance of the Series 2015C Bonds, capitalized interest, and a deposit to the debt service reserve fund such that the total principal amount of the Series 2015C Bonds may be in an amount not in excess of \$20 million; and

WHEREAS, the Series 2015C Bonds are to be issued pursuant to an Eighteenth Supplemental Indenture of Trust between the Authority and the Trustee (the "Eighteenth Supplemental Indenture");

WHEREAS, the Authority and the Board will enter into a Twentieth Supplemental Lease Purchase Agreement (the "Twentieth Supplement") which will provide for a portion of the proceeds of the Series 2015C Bonds to be used to acquire the Series 2015C Project;

WHEREAS, the School District has determined that it is in the best interest of the School District to enter into a Supplement to Sublease with respect to its Series 2015C Project and for related matters (the "Supplement to Sublease");

WHEREAS, the Authority, the Board, and Dougherty & Company LLC (the "Underwriter") will enter into a bond purchase agreement (the "Bond Purchase Agreement") for the purpose of selling the Series 2015C Bonds; and

WHEREAS the Supplement to Sublease, the Eighteenth Supplemental Indenture, the Twentieth Supplement, the Bond Purchase Agreement and related documents will be in forms substantially similar to those previously used in connection with the Program, as modified, revised or supplemented in the manner herein provided or contemplated;

NOW THEREFORE, BE IT RESOLVED, by the School Board of the School District as follows:

FACILITY FEES

1.1 This School District Board expressly approves the following increase in Facilities Fees:

(a) For the 2015-16 Academic Year, beginning effective July 1, 2015, the Facility Fees for Southeast Technical Institute shall be \$30.00 per credit hour for all full-time and part-time students; and

(b) For the 2016-17 Academic Year, beginning effective July 1, 2016 (and continuing thereafter in subsequent Academic Years, unless and until modified by the Board), the Facility Fees for Southeast Technical Institute shall be \$35.00 per credit hour for all full-time and part-time students, except as otherwise adjusted by the Board as provided herein.

This School District Board further expressly ratifies and confirms the covenant in Section 8 of the Collection Agreement that it, the Board and the other school districts party thereto, shall increase (and may decrease) the Facility Fees from time to time so that the estimated amounts collected as Facility Fees in an Academic Year, together with appropriations by the Legislature and other available amounts shall be sufficient to equal or exceed one hundred three percent (103%) of the scheduled debt service on Outstanding Bonds as provided in more detail in such Section 8.

1.2 The Authorized Officers, or any one of them, shall be hereby authorized and directed to prepare and furnish to the Trustee certified copies of all proceedings and records of the School District relating to the power and authority of the School District to execute and deliver certificates as to matters within their knowledge or as shown by the books and records under their custody and control, including a general and non-litigation certificate, any tax certificate and agreement relating to any Bonds and matters governed by Section 148 of the Internal Revenue Code of 1986, as amended. Such certified copies and certificates shall be deemed representations, covenants and agreements of the School District as to the facts, covenants and agreements contained therein.

1.3 The Business Manager or other Authorized Officer is hereby authorized and directed to certify a copy of this Resolution and to certify as to the accuracy of the information

relating to the School District in any preliminary or final official statement relating to any Bonds issued by the Authority.

SUBLEASE OF SERIES 2015C PROJECT

1.4 By adoption of this Resolution, this School District Board (a) authorizes the Series 2015C Project, including participation by the School District in connection with the financing thereof, (b) approves the Supplement to Sublease, the Twentieth Supplement, the Bond Purchase Agreement and related documents (the "Series 2015C Program Documents"), (c) ratifies and confirms the authorization of the imposition, collection and allocation of the Facility Fees for the benefit of the Board, the Authority and the holders from time to time of the Series 2015C Bonds as provided in the Collection Agreement and the Series 2015C Program Documents.

1.5 The execution and delivery by the President and the Business Manager, or in their absence any other officer of the School District (collectively, the "Authorized Officers"), of a Supplement to Sublease with respect to the Series 2015C Project and any additional or supplemental instruments or documents required in connection with the Series 2015C Bonds or contemplated by the Series 2015C Program Documents (including, if necessary or appropriate, a deed conveying title to the property on which the Series 2015C Project is to be located) (collectively, the "Series 2015C District Documents").

1.6 The Series 2015C District Documents shall be executed in the name and on behalf of the School District by the Authorized Officers, in substantially the form of previous agreements for the Program, but with all such changes therein, not inconsistent with law, as may be approved by the officers executing the same, which approval shall be conclusively evidenced by the execution thereof. The execution and delivery of the Series 2015C District Documents by the Authorized Officers shall be conclusive evidence of authorization by this School Board without any further action or resolution of this School Board.

1.7 The Authorized Officers, or any one of them, shall be hereby authorized and directed to prepare and furnish to the Trustee, certified copies of all proceedings and records of the School District relating to the power and authority of the School District to execute and deliver the Supplement to Sublease and any other District Documents as well as certificates as to matters within their knowledge or as shown by the books and records under their custody and control, including a general and non-litigation certificate, any tax certificate and agreement relating to the Series 2015C Bonds and matters governed by Section 148 or other provisions of the Internal Revenue Code of 1986, as amended. Such certified copies and certificates shall be deemed representations, covenants and agreements of the School District as to the facts, covenants and agreements contained therein.

The Business Manager or other Authorized Officer is hereby authorized and directed to certify a copy of this Resolution and to certify as to the accuracy of the information relating to the School District in any preliminary or final official statement relating to the Series 2015C Bonds.

**ADOPTED THIS ____ DAY OF _____, 2015 BY A ROLL CALL VOTE
IN WHICH MEMBERS _____**

**ALL _____
VOTED IN FAVOR OF ADOPTION OF THIS RESOLUTION AND MEMBERS
_____**
VOTED AGAINST SUCH ADOPTION.

Business Manager,
SIOUX FALLS SCHOOL DISTRICT NO. 49-5