

AMENDED AND RESTATED BY-LAWS

OF

SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY

(as of September 18, 2014)

ARTICLE I.

NAME, PRINCIPAL OFFICE AND SEAL

Section 1. Name. The name of this Authority, a public body politic and corporate, shall be SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY (SDSTA), as provided in SDCL Ch. 1-16H.

Section 2. Principal Office. The principal office of the SDSTA shall be located at the City of Lead, Lawrence County, South Dakota. The SDSTA may have such other offices within the State of South Dakota as the Directors designate or as the business of the SDSTA may require.

Section 3. Seal. The corporate seal of the SDSTA shall be a circular disk having inscribed around the periphery thereof the words, "South Dakota Science and Technology Authority", and in the center the word, "Seal."

ARTICLE II.

BOARD OF DIRECTORS

Section 1. Membership of the Board. The Board shall consist of seven voting members to be appointed by the Governor and the President of the South Dakota School of Mines and Technology as an ex-officio, non-voting member. Not all Directors shall be of the same political party.

Section 2. Terms of Office. The terms of the voting members of the Board shall be six (6) years.

Section 3. Vacancies and Reappointments. Any person appointed to fill a vacancy on the Board of Directors shall serve for the unexpired term of his predecessor. All voting Directors shall be eligible for reappointment.

Section 4. Removal. Any Director may be removed by the Governor for cause, including incompetence, neglect of duty or malfeasance in office.

Section 5. Powers. The Board of Directors of the SDSTA shall possess and exercise all of the powers granted in Senate Bill 216 as adopted by the South Dakota Legislature, as signed and approved by the Governor on February 11, 2004 (the "Act"), as the same has been or hereafter may be amended, and by all other laws consistent with said Act and as may be necessary to effectuate the purpose of said Act.

Section 6. Indemnification of Directors.

Section 6.1. The SDSTA shall indemnify and hold harmless any person, including Directors, officers, members of committees, employees, agents, and their heirs, executors, administrators, representatives and successors, who was or is a party or is threatened to be made a party to any threatened proceedings or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the SDSTA) by reason of the fact that he or she is or was a

Director, officer, employee or agent of the SDSTA, or is or was serving at the request of the SDSTA as a Director, officer, employee or agent of another authority, partnership, joint venture, trust or other enterprise, against expenses, including attorney's fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with the action, suit or proceeding if he or she acted in good faith and within the scope of his or her functions and duties on behalf of the SDSTA and in a manner not constituting willful and wanton misconduct by such individual and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner not constituting willful and wanton misconduct by such individual and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

Section 6.2. The SDSTA shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit, including all appeals, by or in the right of the SDSTA to procure a judgment in its favor by reason of the fact that he or she is or was a Director, officer, employee or agent of the SDSTA, or is or was serving at the request of the SDSTA as a director, trustee, officer, employee or agent of another

authority, partnership, joint venture, trust or other enterprise, against expenses (including attorney's fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner not constituting willful and wanton misconduct by such individual, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been finally adjudged to be liable for willful and wanton misconduct in the performance of his or her duty to the SDSTA unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as such court shall deem proper.

Section 6.3. To the extent that a Director, officer, employee or agent has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 6.1 or 6.2, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him or her in connection therewith.

Section 6.4. Except in a situation governed by Section 6.3, any indemnification under Section 6.1 or 6.2 (unless ordered by a court) shall be made by the SDSTA only as authorized in the specific case upon a determination that indemnification of the Director, officer, employee or agent is proper in the circumstances because he or she

has met the applicable standard of conduct set forth in Section 6.1 or 6.2. Such determination shall be made (a) by a majority vote of the Directors of the SDSTA acting at a meeting at which a quorum consisting of directors who were not parties to such action, suit or proceeding is present, or (b) if such a quorum is not obtainable (or even if obtainable), and a majority of disinterested Directors so directs, by independent legal counsel (compensated by the SDSTA) in a written opinion, or (c) an action is brought before any Circuit Court in South Dakota and a determination is made that indemnification is proper because he or she has met the standard of conduct in Section 6.1.

Section 6.5. Expenses of each person indemnified hereunder incurred in defending a civil, criminal, administrative, or investigative action, suit, or proceeding (including all appeals), or threat thereof, may be paid by the SDSTA in advance of the final disposition of such action, suit or proceeding as authorized by the Directors, whether a disinterested quorum exists or not.

Section 6.6. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled as a matter of law or under these Bylaws, any agreement, vote of members, any insurance purchased by the SDSTA, or otherwise both as to action in his or her official capacity and as to action in other capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, employee or agent and shall inure to the benefit

of the heirs, executors, and administrators of such a person.

Section 6.7. The SDSTA may purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the SDSTA, or is or was serving at the request of the SDSTA as a director, trustee, officer, employee or agent of another authority, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the SDSTA would have the power to indemnify him or her against such liability under the provisions of this Article or of the laws of the State of South Dakota. Anything in this Article II, Section 6 to the contrary notwithstanding, the SDSTA's obligation to indemnify as provided for in this Article II, Section 6 is limited to the extent to which the SDSTA has insurance coverage available to cover and pay any such obligation.

Section 7. Committees. There shall be three standing committees and such ad hoc committees as the Board or the Chairperson deem necessary and appropriate from time to time. The Audit Committee shall review and report to the Board on the budget and finances of the authority, arrange for and report on audits of the SDSTA's books and records and perform such other duties as may be assigned from time-to-time by the Board or the Chairperson. The Audit Committee may retain legal counsel, auditors and such other consultants as it deems necessary to perform its duties. The Nominating Committee shall make nominations for the various offices

of the SDSTA. The Personnel Committee shall review and report to the Board on matters relating to employees and personnel, including employee policies and salaries and shall perform such other duties as may be assigned from time-to-time by the Board or the Chairperson. The Chairperson shall determine the number of members of each committee and make appointments to the committees.

Section 8. Compensation and Expenses. Voting members of the Board shall be compensated from SDSTA funds as provided in SDCL 1-16H-7 and 4-7-10.4. Voting members of the Board shall be reimbursed at such rates as are established from time-to-time by the South Dakota Board of Finance for necessary expenses, including travel and lodging expenses, incurred in connection with the performance of their duties as Board members.

ARTICLE III.

OFFICERS OF THE SDSTA

Section 1. Officers and Election of Officers. The officers of the SDSTA shall be a Chairperson, two or more Vice-Chairpersons and Secretary-Treasurer, all of whom shall be members of the Board of Directors. Officers shall be elected annually by the Directors at the annual meeting. All duly-elected officers shall hold office until their successor has been duly elected and qualified.

Section 2. Chairperson. The Chairperson of the SDSTA shall preside at all meetings of the SDSTA, have general supervision over the affairs of the SDSTA and shall perform such other duties as shall be necessary or desirable by reason of his or her position as

Chairperson, or as may be assigned by resolution of the SDSTA, duly adopted by at least four Directors, at a meeting held pursuant to these By-Laws.

Section 3. Vice-Chairperson. The Vice-Chairperson so designated by the Board shall perform all duties incumbent upon the Chairperson during the absence or disability of the latter, and each Vice-Chairperson shall perform such other duties as shall be assigned by resolution of the SDSTA, duly adopted by at least four Directors, at a meeting held pursuant to these By-Laws.

Section 4. Secretary-Treasurer. The Secretary-Treasurer shall be responsible for the funds, books and records of the SDSTA, and shall perform such other duties as shall be assigned by resolution of the SDSTA, duly adopted by at least four Directors, at a meeting held pursuant to these By-Laws.

ARTICLE IV.

MEETINGS

Section 1. Annual Meetings. The annual meeting of the SDSTA shall be held during the month of June at such time and date, and in such place, as may be designated by the Board of Directors.

Section 2. Special Meetings. A special meeting of the SDSTA may be held upon call by the Chairperson, the Executive Director or any four (4) Directors of the SDSTA upon at least forty-eight (48) hours' notice to each Director. Such notice shall specify the time and place and general purpose of the meeting and shall be given to each Director, either personally, or by telefax, United States mail

or contract carrier (if by United States mail or contract carrier, notice shall be deemed adequate if deposited in the United States mail or delivered to the contract carrier 72 hours or more before the meeting); provided, however, that at any meeting at which all of the directors of the SDSTA are present, notice of the time and place and purpose of the meeting shall be deemed waived.

Section 4. Quorum. Four voting Directors shall constitute a quorum. The affirmative vote of no less than four voting Directors shall be necessary for any action taken by the SDSTA. Except as otherwise provided herein or in the Act, a vacancy among the membership of the Board shall not impair the right of a quorum to exercise all the rights and perform all the duties of the SDSTA.

Section 5. Electronic Meetings. Any regular or special meeting of the Directors may be held by telephone, video link, via the Internet or via any other electronic medium, provided that all of the participants can fully participate in the meeting, and further provided that an appropriate, reasonably convenient place is made available for the public to monitor the meeting.

Section 6. Open Meetings. Anything in these By-Laws to the contrary notwithstanding, all meetings of the Board shall be open to the public as required by SDCL Ch. 1-25, except as otherwise permitted or required by the Act.

ARTICLE V.

ADMINISTRATIVE PERSONNEL

Section 1. Executive Director. The SDSTA may employ an

Executive Director and Assistant Executive Director upon such terms and conditions as the SDSTA shall deem proper. The Executive Director shall have general and active supervision, control and management of the affairs and business of the SDSTA, subject to the orders and resolutions of the SDSTA and supervision of the Chairperson. The Executive Director shall have general supervision and direction of all agents and employees of the SDSTA and shall see that all orders and resolutions of the SDSTA are carried into effect.

Section 2. Delegation of Duties. Whenever an officer is absent or whenever for any reason the Directors may deem it desirable, the board may delegate the powers and duties of an officer to any other officer or officers or to any Director or Directors.

Section 3. Other Personnel. The SDSTA may employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment, and fix their compensation.

Section 4. Bond. The Executive Director and such other officers or employees as the Board may from time-to-time designate shall execute a bond in the penal sum of \$100,000 or, in lieu thereof, the Chairperson of the SDSTA shall execute a blanket bond covering each Director, the Executive Director and the employees or other officers of the SDSTA, each bond to be conditioned upon the faithful performance of the duties of the office or offices covered and shall be executed by a surety company authorized to transact

business in this state and filed in the office of the Secretary of State. In lieu of the purchase of bonds, the SDSTA may purchase insurance providing the same general protection as the above-mentioned bonds, with a limit of liability not less than the amount set forth above. The cost of such bonds or insurance shall be paid by the SDSTA.

ARTICLE VI.

ADMINISTRATION

Section 1. Annual Audit and Accounting Procedure. The SDSTA may cause an audit of its books to be made at least once each year by an auditor or auditors designated by the Board of Directors, and the cost thereof shall be paid as a part of the administrative costs of the SDSTA.

Section 2. Documents. The Executive Director shall keep a record of the proceedings of the SDSTA and shall be custodian of all books, documents and papers filed with the SDSTA, the minute book or journal of the SDSTA, and its official seal. The Executive Director may cause copies to be made of all minutes and other records and documents of the SDSTA and may give certificates under the official seal of the SDSTA to the effect that such copies are true copies, and all persons dealing with the SDSTA may rely upon such certificates.

Section 3. Execution of Documents. All contracts and agreements entered into by the SDSTA may, unless the Directors by resolution otherwise direct, be executed on behalf of the SDSTA by any officer of the Board of Directors.

Nothing in these By-Laws shall be deemed to limit in any manner the right of the Directors by resolution adopted at a meeting to designate other or different officers to execute a specified document or documents at any time.

The Directors and officers of the SDSTA shall be permitted by resolution to use facsimile or electronic signatures where such are not prohibited by any rule of law.

Section 4. Fiscal Year. The SDSTA shall operate on a fiscal year basis beginning July 1 of each year and ending June 30 of the next succeeding year.

Section 5. Payments. All bills, notes, checks or other instruments for the payment of money shall be signed and countersigned by such officers and in such manner as may be prescribed by resolution of the Directors.

Section 6. SDSTA Action. Any action taken by the SDSTA under the Act may be authorized by resolution at any regular or special meeting, and each such resolution shall, unless otherwise provided therein or as required by applicable law, take effect immediately and need not be published or posted.

ARTICLE VII.

ANNUAL REPORT

The SDSTA shall keep an accurate account of all its activities and of all its receipts and expenditures and shall annually in the month of November, make a report thereof to the Directors, the Governor's Office of Economic Development and the Legislature.

ARTICLE VIII.

AMENDMENT

These By-Laws may be amended by the affirmative vote of at least four Directors of the SDSTA at any regular meeting, provided ten (10) days' previous written notice of the proposed amendment has been given to all Directors. Such notice may, however, be waived if unanimous consent is given to the adoption of the amendment.

Adopted as amended and restated this 18th day of September, 2014.



Cary Peterson
Chairperson

ATTEST:

Patricia A. Lebrun
Secretary/Treasurer