

STATE OF SOUTH DAKOTA

BOARD OF TECHNICAL EDUCATION

RESOLUTION (i) AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF (A) A SUPPLEMENTAL INDENTURE OF TRUST, (B) A SUPPLEMENT TO LEASE PURCHASE AGREEMENT, (C) TWO SUPPLEMENTS TO SUBLEASE WITH SIOUX FALLS SCHOOL DISTRICT AND WATERTOWN SCHOOL DISTRICT, RESPECTIVELY, AND (D) A BOND PURCHASE AGREEMENT AND (ii) APPROVING CERTAIN RELATED MATTERS IN CONNECTION THEREWITH

Adopted April __, 2022

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RECITALS

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 and improvement of post-secondary vocational technical education facilities for use by the Participating Institutions and the Board;

WHEREAS, the Authority and the Board of Education Standards *f/k/a* the State Board of Education (“*State Board*”) have heretofore entered into a Lease Purchase Agreement dated as of August 1, 1988 as supplemented by various Supplements through and including a Twenty-First Supplement to Lease Purchase Agreement dated as of November 1, 2021 (collectively, as so supplemented, the “*Lease*”) pursuant to a program sponsored by the Authority (the “*Program*”) pursuant to which the State Board leased, with an option to purchase, certain facilities the acquisition and/or improvement and equipping of which was financed or refinanced in part or in whole with the proceeds derived from the issuance and sale by the Authority from time to time of its Vocational Education Program Revenue Bonds listed on Exhibit A attached hereto (the “*Prior Bonds*”), which Exhibit is hereby incorporated herein;

WHEREAS, the State Board has heretofore entered into four Sublease Agreements, each dated as of August 1, 1988, between the State Board and, respectively, Mitchell School District 17-2, Rapid City Area School District No. 51-4, Sioux Falls School District 49-5, and Watertown School District No. 14-4 (collectively, the “*School Districts*”), each as heretofore amended or supplemented (the “*Subleases*”); and

WHEREAS, the State Board is a party to that certain First Supplement to General Pledge and Escrow Agreement dated as of August 1, 1988 (as amended and supplemented, the “*Pledge Agreement*”) to which the Authority, the State Treasurer and U.S. Bank Trust Company, National Association (as successor to The First National Bank in Sioux Falls), as Escrow Holder (the “*Escrow Holder*”) are also parties; and

WHEREAS, the State Board is a party to that certain Amended and Restated Facility Fee Tuition Collection and Deposit Agreement dated September 1, 2008 (as amended and supplemented, the “*Collection Agreement*”) to which the State Treasurer, the Escrow Holder, the School Districts and the Authority are also parties; and

WHEREAS, pursuant to Section 13-39A-19, South Dakota Codified Laws, the South Dakota Board of Technical Education (the “*Board*”) is the lawful successor to the State Board with respect to all rights, privileges, obligations and duties is the statutory successor to the State Board under and respect to the Lease, Subleases, Pledge Agreement, Collection Agreement and all other agreements related to any of the foregoing and with respect to the Prior Bonds and additional bonds issued under the Indenture identified below (the Prior Bonds and any such additional bonds being referred to herein as the “*Bonds*”); and

WHEREAS, Title 1-16A and Title 13, South Dakota Codified Laws, permits the Board to lease purchase post-secondary vocational technical education facilities from the Authority and permits the Board to sublease such facilities to the School Districts and Local Education Agencies (collectively the “*Participating Institutions*”);

WHEREAS, the Authority issued the Bonds 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 “*Original Trustee*”); and

WHEREAS, U.S. Bank Trust Company, National Association, is the successor to the Original Trustee and has assumed all obligations of the Original Trustee under the Indenture (the “*Trustee*”);

WHEREAS, pursuant to the Program in order to provide a credit against Lease Rentals owed by the Board under the Lease, all Participating Institutions have heretofore entered into the Collection Agreement providing for the collection of Facility Fees on a current basis (no less frequently than quarterly) and the deposit of such Facility Fees to the Tuition Subaccount (an account of the Treasurer’s maintained with the Escrow Holder and pledged pursuant to the Pledge Agreement);

WHEREAS, executed counterparts or copies of the Original Indenture and all Supplemental Indentures described above, the Pledge Agreement, the Collection Agreement, the Lease and all related documents and instruments heretofore executed and delivered in connection with the Program are on file with the Board;

WHEREAS, pursuant to 1-16A-95, beginning on July 1, 2013, and except for certain refunding obligations, the issuance of any additional bonds, notes, or other obligations of the Authority which are payable out of receipts, rentals, and other payments made pursuant to lease purchase agreements with the Participating Institutions or the Board under the authority of chapter 13-39 is required to have been approved by the South Dakota Legislature before issuance;

WHEREAS, the Board has been informed of a proposal by Truist Bank (“*Truist*”) to purchase a new series of Bonds (the “*Series 2022 Bond*”) upon terms and conditions the Board has determined to be favorable;

WHEREAS, the Board has been presented at this meeting with the projections attached hereto (the “*Financial Projections*”) which are based upon estimated receipts, rentals, and other payments, including appropriations by the Legislature, student fee payments (including the Facility Fee Increase), and other balances or revenues pledged under the Indenture, Collection

Agreement and the Pledge Agreement which demonstrate that Program Revenues will not be less than one hundred three percent (103%) of projected scheduled payments of principal and interest on all Bonds (which, for this purpose includes the Series 2022 Bond and excludes the Refunded Bonds as defined below which are to be redeemed on August 1, 2022) in calendar year 2022 and in each future year in which any Bonds are outstanding; and

WHEREAS, in order for the Series 2022 Bond to be issued, it shall be necessary for the Board and various other parties to execute and deliver a Twentieth Supplemental Indenture Trust (the “*Series 2022 Supplemental Indenture*”) (ii) a Twenty-Second Supplement to Lease Purchase Agreement (the “*Series 2022 Lease Supplement*”), (iii) two Supplements to Sublease with Sioux Falls School District No. 49-5 and Watertown School District No. 14-4, respectively, (the “*Series 2022 Sublease Supplements*”), (iv) an Escrow Agreement with respect to the Refunded Bonds (the “*Escrow Agreement*”) and (v) a Bond Purchase Agreement (the “*Series 2022 Bond Purchase Agreement*”) and, together with the documents referenced in clauses (i), (ii), (iii) and (iv) of this paragraph, the “*Series 2022 Program Documents*”);

NOW THEREFORE, BE IT RESOLVED, by the South Dakota Board of Technical Education as follows:

THE PROGRAM

Section 1.1 This Board finds that it is desirable and expedient to further expand the Program as herein described.

Section 1.2 This Board hereby determines that it is necessary and appropriate for the Authority to issue and sell its Bonds in one or more series in an aggregate principal amount not to exceed \$14,000,000 (the “*Series 2022 Bond*”) pursuant to the Series 2022 Supplemental Indenture for the purposes of refunding on a current basis all of the Outstanding Series 2012A Bonds (the “*Refunded Bonds*”).

Section 1.3 Based on the Financial Projections attached hereto and reviewed by the Board, the Board hereby determines pursuant to Section 1-16A-93 that the estimated receipts, rentals, and other payments, including appropriations by the South Dakota Legislature, student fee payments, and other balances and revenues pledged under the Indenture or any other agreement or arrangement with respect to the outstanding Bonds will not be less than one hundred three percent (103%) of the projected scheduled payments of principal and interest on all outstanding Bonds, which for purposes of this determination shall include the Series 2022 Bond. The Authority may conclusively rely upon this determination of the Board.

Section 1.4 The President of the Board, Vice President of the Board and Secretary of the Board (collectively the President of the Board, the Vice President of the Board, and Secretary of the Board being referred to herein as the “*Authorized Officers*”) are hereby authorized and directed on behalf of this Board to do all things reasonably necessary and appropriate so that Series 2022 Bond may be issued pursuant to the Series 2022 Supplemental Indenture in an amount sufficient to refund the Refunded Bonds, to fund any required deposit to the Debt Service Reserve Fund under the Indenture, and to pay costs of issuance of the Series 2022 Bond. The Series 2022 Bond shall be entitled to the benefit of the Series 2022 Lease

Supplement, the Series 2022 Sublease Supplement, the Lease, the Subleases, the Pledge Agreement and the Collection Agreement and to the benefit of any amounts on deposit and available in the Tuition Subaccount (as defined in the Indenture) on a parity with all other Bonds issued under the Indenture.

Section 1.5 Upon the issuance and sale of the Series 2022 Bond by the Authority, the Board shall enter into the Series 2022 Lease Supplement with the Authority and any other or further supplements or related documents as may be necessary to effectuate the purposes of this resolution, including the Series 2022 Lease Supplement and the Series 2022 Sublease Supplements. The Series 2022 Lease Supplement shall be substantially in the form similar to previous Supplements to Lease executed in connection with the Program, and may be subject to such modifications, variations, insertions and other changes as may be reasonably necessary and appropriate in the judgment of the Authorized Officers to effectuate the Program consistent with State law, previously adopted policies of the Board and this resolution.

Section 1.6 This Board hereby approves the execution and delivery of all of the Series 2022 Program Documents which shall provide as follows:

A. The Board shall lease the projects financed by the Refunded Bonds and refunded by the Series 2022 Bond (the "*Refunded Projects*") from the Authority pursuant to the Lease as supplemented by the Series 2022 Lease Supplement, and the amount of Lease Rentals payable by the Board thereunder shall be in an amount sufficient so that on each date on which any payment is due with respect to any outstanding Series 2022 Bond, there shall be on deposit in the Debt Service Fund for the Series 2022 Bond (after taking into account the other Program Revenues available therefor which are required or permitted to be transferred under the Program Documents, the Pledge Agreement, and the Collection Agreement to the Debt Service Fund) an amount which is fully sufficient to pay the principal of and premium and interest on such Series 2022 Bond on such payment date.

B. The Series 2022 Program Documents shall be executed in the name and on behalf of the Board by any one or more Authorized Officers in substantially the form described herein, but with such changes therein, not inconsistent with law, as may be approved by the officer executing the same, which approval shall be conclusively evidenced by the execution thereof. Such changes may include changes requested by the purchaser of the Series 2022 Bond or any rating services as a condition to a rating on the Series 2022 Bond or other revisions authorized or contemplated hereby, including changes to effectuate the Program pursuant to State law and previously adopted policies of the Board.

Section 1.7 This Board hereby approves the sale of the Series 2022 Bond by the Authority to Truist Bank pursuant to the Series 2022 Bond Purchase Agreement at the price, bearing interest at the rates and maturing on the dates to be approved by the Authority, subject to the limitations and conditions set forth herein in Section 1.10 hereof, and the Series 2022 Bond may be sold in one or more series or in conjunction with the sale of other Bonds issued in connection with the Program.

Section 1.8 The appointment by the Authority of Perkins Coie LLP as bond counsel and disclosure counsel in connection with the Series 2022 Bond and the Program is hereby approved. All fees and expenses incurred in connection with the Series 2022 Bond and the Program, including the Authority's fees and expenses, the underwriter's compensation provided for in the Series 2022 Bond Purchase Agreement, bond counsel fees and other costs of issuance shall be payable out of the proceeds of the Series 2022 Bond or other amounts available to the Program.

Section 1.9 The Board hereby ratifies and confirms each of its covenants, agreements and pledges in the Lease, Subleases, Pledge Agreement, and Collection Agreement, including without limitation its covenant and agreement to seek appropriations in an amount sufficient to pay all Lease Rentals and other amounts as set forth in Section 4.07 of the Lease.

Section 1.10 The adoption of this Resolution by this Board is intended to and shall be the final and conclusive authorization of this Board for the execution, delivery and performance of the Series 2022 Program Documents and all related documents, instruments and certificates so long as (1) the Series 2022 Bond are entitled to the benefit of Program Revenues; (2) the Series 2022 Bond bears an initial interest rate not in excess of 4.0% per annum with a final stated maturity of no later than August 1, 2041; (3) the purchase price of the Series 2022 Bond to be paid by Truist Bank will be not less than 99% of the principal amount of the Series 2022 Bond; (4) bond counsel is of the opinion that the Series 2022 Program Documents are the legal, valid and binding obligations of the Board enforceable in accordance with their terms; and (5) an Authorized Officer and the Authority approve the form of the Series 2022 Program Documents for execution and delivery.

OFFERING AND SALE OF SERIES 2022 BOND

Section 2.1 Any Authorized Officer is hereby authorized and directed to prepare and furnish to the Trustee or Authority, certified copies of all proceedings and records of the Board relating to the power and authority of the Board to execute and deliver the Series 2022 Program Documents, and 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, and such certified copies and certificates shall be deemed representations of the Board as to the facts stated therein. Any Authorized Officer shall be authorized to execute and deliver all Series 2022 Program Documents and to perform all other acts necessary to cause the Series 2022 Program Documents to be valid and binding pursuant to this Resolution, and a single signature of an Authorized Officer shall be sufficient in all cases to evidence the approval and binding nature of any document or instrument authorized hereby.

ADOPTED THIS ___ DAY OF APRIL, 2022 BY A ROLL CALL VOTE IN WHICH MEMBERS _____

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

By: _____

Its: _____

Exhibit A

The following bonds have been issued by the South Dakota Health and Educational Facilities Authority in connection with its Vocational Education Program:

1. South Dakota Health and Educational Facilities Authority Vocational Education Program Revenue Bonds, Series 1988 in the original principal amount of \$11,120,000 (the “*Series 1988 Bonds*”),
2. South Dakota Health and Educational Facilities Authority Vocational Education Program Revenue Bonds, Series 1990 in the original principal amount of \$1,315,000 (the “*Series 1990 Bonds*”),
3. South Dakota Health and Educational Facilities Authority Vocational Education Program Revenue Bonds, Series 1992 in the original principal amount of \$8,785,000 (the “*Series 1992 Bonds*”),
4. South Dakota Health and Educational Facilities Authority Vocational Education Program Revenue Bonds, Series 1993 in the original principal amount of \$9,780,000 (the “*Series 1993 Bonds*”),
5. South Dakota Health and Educational Facilities Authority Vocational Education Program Revenue Bonds, Series 1997 in the original principal amount of \$10,365,000 (the “*Series 1997 Bonds*”),
6. South Dakota Health and Educational Facilities Authority Vocational Education Program Revenue Bonds, Series 1998A in the original principal amount of \$4,705,000 (the “*Series 1998A Bonds*”),
7. South Dakota Health and Educational Facilities Authority Vocational Education Program Revenue Bonds, Series 1999 in the original principal amount of \$7,135,000 (the “*Series 1999 Bonds*”),
8. South Dakota Health and Educational Facilities Authority Vocational Education Program Revenue Bonds, Series 2004 in the original principal amount of \$6,265,000 (the “*Series 2004 Bonds*”),
9. South Dakota Health and Educational Facilities Authority Vocational Education Program Revenue Bonds, Series 2007 in the original principal amount of \$8,805,000 (the “*Series 2007 Bonds*”),
10. South Dakota Health and Educational Facilities Authority Vocational Education Program Revenue Bonds, Series 2008 in the original principal amount of \$19,465,000 (the “*Series 2008 Bonds*”),

11. South Dakota Health and Educational Facilities Authority Vocational Education Program Revenue Bonds, Series 2010A and Series 2010B in the original principal amount of \$23,590,000 (collectively, the “*Series 2010AB Bonds*”),
12. South Dakota Health and Educational Facilities Authority Vocational Education Program Revenue Bonds, Series 2010C in the original principal amount of \$12,605,000 (the “*Series 2010C Bonds*”),
13. South Dakota Health and Educational Facilities Authority Vocational Education Program Revenue Bonds, Series 2011A in the original principal amount of \$20,140,000 (the “*Series 2011A Bonds*”),
14. South Dakota Health and Educational Facilities Authority Vocational Education Program Revenue Bonds, Series 2012A in the original principal amount of \$18,810,000 (the “*Series 2012A Bonds*”),
15. South Dakota Health and Educational Facilities Authority Vocational Education Program Revenue Bonds, Series 2014A in the original principal amount of \$1,790,000 (the “*Series 2014A Bonds*”),
16. South Dakota Health and Educational Facilities Authority Vocational Education Program Refunding Revenue Bonds, Series 2015A, in the original principal amount of \$20,590,000 (the “*Series 2015A Bonds*”),
17. South Dakota Health and Educational Facilities Authority Vocational Education Program Revenue Bonds, Series 2015B, in the original principal amount of \$16,050,000 (the “*Series 2015B Bonds*”) and
18. South Dakota Health and Educational Facilities Authority Vocational Education Program Revenue Bonds, Series 2015C in the original principal amount of \$17,320,000 (the “*Series 2015C Bonds*”) and
19. South Dakota Health and Educational Facilities Authority Program Refunding Revenue Bond, Series 2021 in the original principal amount of \$30,316,000 (the “*Series 2021 Bond*”)