

CERTIFICATE OF MINUTES RELATING TO
CERTIFICATES OF PARTICIPATION, SERIES 2004

Governing Body: Common Council of the City of Rapid City, South Dakota

Kind, date, time and place of meeting: a special meeting, held _____, at ____ o'clock p.m.,
at the offices of the Common Council.

Members present:

Members absent:

Documents attached:

Minutes of said meeting (pages): ____ through ____, including

RESOLUTION

RESOLUTION RELATING TO LEASE-PURCHASE OF
AIRPORT FACILITIES; AUTHORIZING THE EXECUTION
AND DELIVERY OF A GROUND LEASE AGREEMENT, A
TRUST AGREEMENT AND A LEASE-PURCHASE
AGREEMENT AND APPROVING AND AUTHORIZING THE
EXECUTION OF RELATED DOCUMENTS

I, the undersigned, being the duly qualified and acting recording officer of the political corporation issuing the obligations referred to in the title of this certificate, certify that the documents attached hereto, as described above, have been carefully compared with the original records of the corporation in my legal custody, from which they have been transcribed; that the documents are a correct and complete transcript of the minutes of a meeting of the governing body of the political corporation, and correct and complete copies of all resolutions and other actions taken and of all documents approved by the governing body at the meeting, insofar as they relate to the obligations; and that the meeting was duly held by the governing body at the time and place and was attended throughout by the members indicated above, pursuant to call and notice given as required by law.

WITNESS my hand officially as such recording officer this ____ day of _____,
2004.

Finance Officer

RESOLUTION RELATING TO LEASE-PURCHASE OF
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BE IT RESOLVED by the Common Council of the City of Rapid City, South Dakota (the "City"), as follows:

Section 1. Recitals.

1.01. The City is authorized by South Dakota Codified Laws, Section 9-21-18.1, as amended (the "Act"), to enter into lease-purchase agreements for acquisition of real or personal property that the governing body considers necessary or appropriate to carry out its governmental and proprietary functions. The governing body finds that it is necessary and appropriate to acquire and construct the interests in land, improvements and equipment more fully described in Exhibit A attached hereto by means of the Lease (as hereinafter defined) (the "Facilities").

1.02. The City has agreed with The First National Bank in Sioux Falls, as trustee (the "Trustee"), that the Trustee will, pursuant to a Ground Lease Agreement between the City and the Trustee (the "Ground Lease"), acquire certain interests in real property (the "Land") from the City, and the Trustee will lease its interest in the Land and lease and agree to sell the Facilities to be acquired, constructed and equipped thereon to the City pursuant to a Lease-Purchase Agreement between the Trustee and the City (the "Lease").

1.03. The Trustee will execute and deliver a Declaration of Trust (the Trust Agreement), pursuant to which the Trustee will (i) issue Certificates of Participation (the "Certificates") in the lease payments to be made by the City under the Lease and (ii) receive, hold and invest the proceeds of the sale of the Certificates and disburse such proceeds for payment of Construction Costs and Costs of Issuance (as defined in the Lease).

1.04. Dougherty & Company LLC (the Purchaser) is hereby retained by the City to underwrite the Certificates. Dorsey & Whitney LLP is hereby retained by the City as bond and disclosure counsel for the Certificates.

1.05. Forms of the following documents relating to the Facilities (the Documents) will be prepared and submitted to the City and, when received, are hereby directed to be filed with the Finance Officer of the City: (a) the Lease; (b) the Trust Agreement; (c) the Ground Lease; (d) the Certificate Purchase Agreement; (e) the Certificates; and (f) the Official Statement by which the Purchaser will offer the Certificates for sale to the public.

1.06. Section 147(f) of the Internal Revenue Code of 1986 requires that prior to the issuance of the Certificates the Board of the Rapid City Regional Airport (the Board) shall give notice and the Mayor of the City shall hold a public hearing on the proposed Facilities, the Lease and the issuance of the Certificates issued therefor. Pursuant to such requirement, a public hearing on the Facilities, the Lease and the Certificates was called by resolution of the Board at a

meeting held on _____, 2004. Notice of the public hearing was published on _____, 2004, and the public hearing provided for therein was held on March 15, 2004 at 1:15 o'clock p.m. in the offices of the Mayor of the City.

Section 2. Authorization and Approval of the Documents. The financing described above is found to be favorable and is hereby approved. The President and Executive Director of the Board are authorized to approve the execution and delivery of the Ground Lease, the Lease and the Certificates in a principal amount not to exceed the sum of (i) \$1,300,000 for construction, land acquisition, equipment and related engineering costs, plus (ii) costs of issuance (including underwriter's discount not exceeding 2.5% of the principal amount of certificates to be issued), and (iii) bond insurance premium, if any. The Certificates shall bear interest at a rate or rates per annum resulting in an average interest rate not greater than 4.75% per annum and shall mature over a period not to exceed 10 years. The President and Executive Director are directed to enter into a Certificate Purchase Agreement with the Original Purchaser whereby the Purchaser will agree to purchase the Certificates; the execution of the Certificate Purchase Agreement by the President and Executive Director shall be conclusive evidence of their approval of the principal amount, purchase price, interest rates and other terms set forth therein. The President, Executive Director and City Attorney are authorized to approve the final forms of Documents and the President and Executive Director are directed to execute the Lease, the Ground Lease, the Trust Agreement and such other documents as shall be required to give effect to the transactions herein contemplated, as so approved. Copies of all Documents shall be delivered, filed and recorded as provided therein. The City will cooperate in the issuance of the Certificates, and the Mayor, City Finance Officer and City Attorney shall execute such other instruments as are necessary to the issuance of the Certificates.

Section 3. Modifications, Absence of Officers. The approval hereby given to the Documents includes an approval of such additional details therein as may be necessary and appropriate and such modifications thereto, deletions therefrom and additions thereto as may be necessary and appropriate prior to the execution of the Documents. The execution of any instrument by the appropriate officer or officers of the City or the Board herein authorized shall be conclusive evidence of the approval of such documents in accordance with the terms hereof. In the absence of the President or Executive Director, any of the Documents authorized by this resolution to be executed may be executed by such officers as, in the opinion of the City's Attorney, may execute documents in their stead and take all actions and execute all documents approved hereby.

Section 4. Payment of Lease Payments. The Lease Payments and other amounts due under the Lease, as defined therein, are expected to be paid primarily from payments received under a lease between the Board and the federal Transportation Security Administration (the TSA Payments) and to the extent the TSA Payments are insufficient to pay the Lease Payments and other amounts due under the Lease as they become due, from general revenues of the Regional Airport. The City will pay to the Trustee promptly when due, all of the Lease Payments and other amounts required under the Lease. To provide moneys to make such payments, the City will include in its annual budget, for each fiscal year during the term of the Lease, moneys sufficient to pay and for the purpose of paying all Lease Payments and other amounts due under the Lease, and will take all other actions necessary to provide moneys for the

payment of the obligations of the City under the Lease from sources of the City lawfully available for this purpose.

Section 5. Tax Matters. The City covenants and agrees with the Trustee and the registered owners from time to time of the Certificates that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest component of the Lease Payments to become subject to taxation under the Internal Revenue Code of 1986, as amended (the “Code”), and regulations issued thereunder (the “Treasury Regulations”), in effect at the time of such action, and that it will take, or it will cause its officers, employees or agents to take, any and all actions within its powers to ensure that the interest component of the Lease Payment will not become subject to taxation under the Code and the Treasury Regulations, as presently existing or as hereafter amended and made applicable to the Certificates.

Section 6. Arbitrage Certification. The President and Executive Director being the officers of the Board charged with the responsibility for issuing the Certificates pursuant to this resolution, are hereby authorized and directed to execute and deliver to the Trustee a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Treasury Regulations, stating the facts, estimates and circumstances in existence on the date of issue and delivery of the Certificates which make it reasonable to expect that the proceeds of the Certificates will not be used in a manner that would cause the Lease or the Certificates to be arbitrage certificates within the meaning of the Code and Regulations.

Section 7. Arbitrage Rebate. The City acknowledges that the Certificates are subject to the rebate requirements of Section 148(f) of the Code. The City covenants and agrees to retain such records, make such determinations, file such reports and documents and pay such amounts at such times as are required under said Section 148(f) and applicable Treasury Regulations to preserve the exclusion of interest on the Certificates from gross income for federal income tax purposes. In furtherance of the foregoing, the City Finance Officer is hereby authorized and directed to execute a tax certificate and the City hereby covenants and agrees to observe and perform the covenants and agreements contained therein, unless amended or terminated in accordance with the provisions thereof.

Section 8. Lease of Facilities. The City covenants and agrees that it will not enter into a lease or use agreement relating to the Regional Airport constituting or comprising the Facilities unless the lease contains a provision to the effect that (1) the lessee has made an irrevocable election not to claim depreciation or an investment credit under the Code with respect to the leased premises and (2) the term of the lease is not more than eighty percent of the reasonably expected economic life of the Regional Airport facilities constituting or comprising the Facilities.

Section 9. Continuing Disclosure. The City acknowledges that the Certificates are subject to the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12) (as in effect and interpreted from time to time, the “Rule”). The Rule governs the obligations of certain underwriters to require that issuers of municipal obligations enter into agreements for the benefit of the holders of the obligations to provide continuing disclosure with respect to the obligations. To provide for the public availability of certain information relating to the

Certificates and the security therefor and to permit participating underwriters in the primary offering of the Certificates to comply with the Rule, which will enhance the marketability of the Certificates, the Mayor and the City Finance Officer are hereby authorized and directed to execute an Agreement Concerning Continuing Disclosure, by which the City agrees to provide such information, either directly or through a disclosure agent, and the City hereby covenants and agrees to observe and perform the covenants and agreements contained therein, unless amended or terminated in accordance with the provisions thereof, for the benefit of the registered owners or beneficial owners from time to time of the Outstanding Certificates as therein provided.

Section 10. Amendment. This resolution may be amended from time to time, prior to the issuance of the Certificates, by an administrative resolution adopted by this Council.

Section 11. Effective Date. This resolution shall become effective in accordance with Section 9-19-13, South Dakota Codified Laws.

Adopted _____, 2004.

Mayor

ATTEST:

Finance Officer

EXHIBIT A

Construction of an addition to the airport terminal primarily to house facilities for security services and a separate building to house the offices of the federal Transportation Security Administration at the Rapid City Regional Airport in Pennington County, South Dakota

Response to Questions re Airport “Deal”

1. SDCL Chapter 54-6A relates only to “lease-purchase agreements for the use of personal property by an individual, primarily for personal, family or household purposes ..” and specifically states in 54-6A-3 that the chapter does not apply to “lease-purchase agreements . . . made with governmental agencies.” Therefore I will not address any of the questions outlined in Alderman Kooiker’s correspondence of 3/21 that relate to that chapter of SDCL.
2. **City Finance Officer Jim Preston said this is a complicated transaction that is not used very often and that South Dakota is probably the one place it is allowed.** The implication here would be that South Dakota allows transactions that would be questionable elsewhere. Actually, ~~because only North and South Dakota Supreme Courts hold that Revenue Bonds are debt and South Dakota law generally requires 60% voter approval, the South Dakota Legislature has made certain exceptions to the voter approval. Therefore, South Dakota has this rather unique method of financing which is not even necessary in other states.~~ only North and South Dakota Supreme Courts hold that revenue bonds are debt. Because South Dakota law generally requires 60% voter approval to issue debt, the South Dakota Legislature has made certain exceptions to the voter approval. Therefore, South Dakota has this rather unique method of financing with provisions not necessary in other states where revenue bonds are not considered debt.
3. **Is this a bond issue or a lease/leaseback, etc?** It is a revenue bond. **What exactly is being sold, leased or purchased?** Exhibit A outlines the purpose as “Construction of an addition to the airport terminal primarily to house facilities for security services and a separate building to house the offices of the Federal Transportation Security Administration at the Rapid City Regional Airport in Pennington County, South Dakota.”
4. **This is being sold as a “low cost to taxpayers.” Doesn’t a mortgage cost more than a straight-out purchase? Doesn’t the airport have funds in reserve?** This debt is not being repaid by our taxpayers, but rather by airport revenue which includes the obligation from the U.S. General Services Administration to lease space for the Transportation Security Administration. Naturally a mortgage costs more than a purchase, as does issuing bonds for 2012 projects, CIP, etc. However, it does provide up-front money for construction that is not available from current airport fund balances that are obligated for other purposes.
5. **Did the City go out for bid or RFP? Why was Dougherty & Co, selected, why Dorsey & Whitney, why a Sioux Falls rather than Rapid City bank as trustee?** I contacted two firms for quotes. Dougherty & Co. was selected because of the low rate for all inclusive costs not to exceed 4.17%. ~~Dougherty & Co.~~ Lynn Endorf, a bond counsel with Dorsey & Whitney, was selected because he has been our bond counsel for debt transactions for the past approximately 25 years, and the First National Bank in South Dakota was chosen because it is, to my knowledge, the only bank in South Dakota that has a full-fledged trust department. They have the expertise, experience and also this would consolidate all of our trust activity with one bank. This is also the bank used by the State of South Dakota for all SRF loans, etc.
6. **If the question actually relates to the fact that some of the players in this transaction would have been involved with the lease/leaseback transaction,** Dougherty & Co. was

involved with that transaction as a financial advisor to the State because the firm had served in that role for many years. ~~as a financial advisor to the State because the firm had served in that role for many years.~~ In fact, had the lease/leaseback become a reality for municipalities in South Dakota, Dougherty & Co. would have been very negatively impacted because the cities would have used proceeds from the lease/leaseback rather than issuing bonds to finance local improvements. Lynn Endorf was involved in the lease/leaseback issue at the request of South Dakota municipalities to protect our interests. That firm was not part of the transaction when originally proposed. The First National Bank in South Dakota is the bank used by the State for trust activity.

7. **Who will own the land and the property during these 10 years?** The City owns the land, subject to a ground lease. The City also retains all operational obligations. The Bank, as trustee, will own the building on behalf of the bondholders until the final payment is made and ownership reverts to the City. In our traditional lease-purchase arrangements, for example with fire trucks, ambulances and garbage trucks, the financing company is listed as a lien holder until payment is finalized and the lien is removed.
8. **If there isn't a tax implication or tax benefit to the agreement, why did the IRS require a public hearing?** The public hearing is required when proceeds will be used for and repaid by a private business. For these purposes, the Federal government is considered a private business. This is similar to our issuance of bonds for economic development purposes such as has been done for the BH Regional Eye Institute, Nash Finch, RC Journal, Westhills Village and many others.
9. **Why weren't any of the key players at this hearing and why wasn't the Council notified?** The hearing is a formality, and no one usually appears. Public notice had been published, the issue had been heard by the Airport Board and also acted upon at the March 10 Legal & Finance Committee and was scheduled for Council action on March 15. I believe that Jason Green was present to answer questions.
10. **How much will the bonds cost to issue?** Approximately \$40,000 including underwriting, bond counsel and initial trustee fee. This cost of issuance is included in the 4.17% all inclusive cost.
11. **Will the lease for the TSA cover the additional cost of bonding?** Yes, cost of financing was included in the calculation of the lease payment.
12. **Is the TSA requiring the City to build this building? If the TSA mandates it, then why don't they pay for it?** The TSA, through the General Services Administration, is paying for the additional space they desire through the 10-year lease arrangement.
13. **Is a public vote required for a bond issue? Who is going to buy these bonds?** SDCL 6-8B-2 indicates that an election is required for the issuance of bonds (debt) "unless otherwise provided." SDCL 9-21-18.1 authorizes municipalities to enter into lease-purchase agreements to lease real or personal property for a term of not to exceed ten years with the approval of more than 60% of the members-elect of the governing body. The bonds will likely be purchased by individual purchasers in South Dakota, but we will not know until the sale date.
14. **What is the cost of the building and how much "extra" space will there be?** Defer to airport administration –