

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

AGENDA ITEM: 6 – F

DATE: October 7-8, 2015

SUBJECT: DSU Purchase – Madison Community Hospital

Dakota State University requests the Board grant the Executive Director the authority to execute the purchase agreement set forth in Attachment I, contingent upon receipt of an acceptable environmental audit, which shall not require remedial measures with costs exceeding 10% of the purchase price (\$160,000), and must also include a commercially reasonable plan from DSU to cover any required remedial work.

By way of background, the Board adopted a resolution at its [December 2013](#) meeting requesting the Governor approve acquisition of an option to purchase the land and facilities that currently house the Madison Community Hospital. The Governor approved the option to purchase on January 28th, 2014 (Attachment II), which option was subsequently amended on October 17th, 2014 (Attachment III), extending the expiration date from September 1, 2014 to January 31, 2016. The acquisition was authorized by the South Dakota Legislature by way of the following: 2015 session – [SB110](#); 2014 session – [SB19](#); and 2012 session – [HB1051](#). The acquisition cost is \$1.6M and will be funded from a grant from the Great Plains Education Foundation. DSU will renovate this facility into student housing and a Learning Engagement Center. The estimated cost to renovate this facility is \$7.5M, however, the university will continue to refine this estimate, presenting a Facility Design Plan and a final renovation budget at the December, 2015 Board meeting. Funding for the renovation of this facility will come from bond proceeds of approximately \$7 million and \$500,000 from a Title III grant. The auxiliary system funds will support the annual bond payment, as outlined in the Facility Program Plan. This cost estimate includes demolition of portions of the facility and renovation of the remaining.

The Madison Community Hospital anticipates moving out of the facility by the middle of October, after which, the environmental audit and personal property inventory can be completed. The environmental audit of the facility, which must be completed prior to committing to purchase the property pursuant to [BOR Policy 6:2](#), is anticipated to be completed with a final report provided on or before November 15th. The personal property inventory will be completed

RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR

I move to grant the Executive Director the authority to execute the purchase agreement set forth in Attachment III, contingent upon receipt of an acceptable environmental audit, which shall not require remedial measures with costs exceeding 10% of the purchase price, and must also include a commercially reasonable plan from DSU to cover any required remedial work.

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between the time the Madison Hospital moves out and closing on the property. Final execution of the purchase agreement, pending the environmental audit findings, and closing would occur on or before December 1, 2015. DSU understands that the bond market is subject to change and time is of the essence. DSU will proceed with closing upon receipt of a satisfactory environmental audit, or as soon thereafter as is reasonably possible, which is anticipated to occur around November 15, 2015.

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (“Agreement”), is made and entered into this _____ day of _____, 2015, by and between **Madison Community Hospital**, a benevolent corporation organized under the laws of the State of South Dakota, of Madison, South Dakota, hereinafter called “Hospital” and/or “Seller,” and the **State of South Dakota, by and through the South Dakota Board of Regents, for the use and benefit of Dakota State University**, hereinafter called “DSU” and/or “Buyer.”

In consideration of the mutual covenants herein contained by and between the parties, the parties agree as follows:

1. The parties acknowledge that this Agreement is entered into as an addendum to and part of an Option to Purchase, and later an Addendum to Option to Purchase (collectively the “Option Documents”), granted by Hospital to DSU pursuant to the terms of SDCL 5-2-1, and is to be executed upon written approval of the Governor of the State of south Dakota and application of state law as set forth in said statute. Copies of said documents are attached hereto as the terms of this Agreement were incorporated into the Option Documents.

2. Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer, in fee simple, free of all encumbrances, by good and sufficient warranty deed, the real property situated in the County of Lake, State of South Dakota, described as:

Lots 1 through 12, inclusive, of Block 1 of H. P. Smith’s Addition to Madison, Lake County, South Dakota;

Lots 3 through 9, inclusive, of Block 14 of Kennedy’s Second Extension of Blocks 12, 13 and 14 of Kennedy’s Subdivision to Madison, Lake County, South Dakota;

Lots 1 and 2 of Madison Clinic Addition to Madison, Lake County, South Dakota; and

The vacated alley bisecting Block 1, H. P. Smith’s Addition to Madison from north to south, and lying between Lots 1 to 6, inclusive, on the east

and Lots 7 to 12, inclusive, on the west, being 14 feet in width; and that certain alley lying between Lots 6 and 7 and the 14-foot alley in H. P. Smith's Addition to Madison on the north, and Lot 1 of Aird's Resubdivision, and Lots 4 to 9, inclusive, of Kennedy's Subdivision of Block 14, Kennedy's Second Extension of Madison on the south, said alley running east and west and being 13.5 feet wide, all in Lake County, South Dakota.

(collectively, "the Property"),

(3) As consideration, Buyer agrees to pay to Seller the sum of One Million Six Hundred Thousand Dollars (\$1,600,000.00), payable in the following manner:

The sum of One Million Six Hundred Thousand Dollars (\$1,600,000.00) on or before closing, or the date of possession, whichever is sooner.

(4) Seller shall convey title by good and sufficient Warranty Deed, and Seller shall pay the necessary transfer fee, if any. If the title be found imperfect except building restrictions, easements, and applicable zoning restrictions, Seller shall have a reasonable time to perfect same. The parties agree to split equally the cost of a basic policy of title insurance on the Property. The parties further agree to split equally the cost of the closing. Buyer shall pay expenses related to the preparation of this Purchase Agreement and the Option to Purchase, pursuant to SDCL 5-2-1. Each of the parties shall pay their own attorney's fees. Seller shall be responsible for preparation of the Warranty Deed and Certificate of Value. The parties shall pay any costs associated with recording documents on their behalf, i.e. Buyer shall pay to record their Warranty Deed.

(5) Date of Buyer's possession and closing shall be December 1, 2015, or as may be otherwise agreed-upon by the parties in writing. Risk of loss will pass from Seller to Buyer on that date. Until that date, Seller will continue in full force and effect the insurance on the Property in a company authorized to do business in the state of South Dakota for the sum of at least the purchase price herein against fire, lightning, wind, and extended coverage, with loss payable as the interests of the parties shall appear.

(6) The parties agree that in addition to the Property, the following personal property shall be conveyed by Buyer to Seller as part of the consideration herein: all fixtures, unless agreed upon by the parties to be removed, all window treatments, and any other personal property located at the Property on the date of closing.

(7) Buyer acknowledges that they have inspected the Property, both real and personal, and accepts them "as is" with no warranties expressed or implied made by Seller to Buyer about the condition of the Property.

(8) The parties agree that the 2014 real estate taxes due in 2015 shall be paid by Seller, and Seller shall be responsible for any 2015 taxes prorated to the date of possession due and payable in 2016. Buyer represents it is exempt from real estate tax. Buyer shall be responsible for preparation of any documents and filing of the same relative to Buyer's status of being exempt from real estate taxes. Seller is aware that the real property described as Lots 1 and 2 of Madison Clinic Addition to Madison, Lake County, South Dakota, is presently not exempt from property taxes.

(9) The parties acknowledge and agree that Seller operates a hospital on the Property being conveyed herein. Buyer agrees that Buyer shall not sell or lease the P Property to any individual or corporation that would directly or indirectly compete with Seller and the operation of a hospital also providing other medical services and pharmacy services so long as Seller provides any of said services in Lake County, South Dakota.

(10) The parties further agree that the time of payment shall be an essential part of this contract. If the final payment due under this contract is not paid by the payment date owing to the failure or neglect of Buyer to comply with the terms herein, but for this cause, Buyer shall not be released from the fulfillment of their part on this contract, if so determined by the Seller.

(11) This contract may not be assigned by Buyer without the prior written consent of Seller, which consent shall not be unreasonably withheld.

(12) It is agreed that all the covenants and agreements herein contained shall extend to and be obligatory upon the successors and assigns of the respective parties.

IN TESTIMONY WHEREOF, the parties hereto set their hands on the day and year first above written.

SELLER:

BUYER:

MADISON COMMUNITY HOSPITAL,
A Benevolent Corporation organized
under the laws of the State of South
Dakota
State of South Dakota)

STATE OF SOUTH DAKOTA, by and
through the South Dakota Board of
Regents, for the use and benefit of
Dakota State University

: ss
County of Lake)

On this _____ day of _____, 201____, before me, the undersigned officer,
personally appeared _____, who acknowledged himself/herself to be the

Prepared by:
 Lammers, Kleibacker & Brown, LLP
 Attorneys at Law
 108 N. Egan Ave., PO Box 45
 Madison, SD 57042
 Ph. (605) 256-6677

OPTION TO PURCHASE

THIS OPTION TO PURCHASE, is granted this 30th day of December, 2013, by the **Madison Community Hospital**, a benevolent corporation organized under the laws of the State of South Dakota, of Madison, South Dakota, hereinafter referred to as "Hospital," to the **State of South Dakota, by and through the South Dakota Board of Regents, for the use and benefit of Dakota State University**, hereinafter referred to as "DSU," and is executed pursuant to the provisions of SDCL 5-2-1, as follows:

(1) For one dollar and other valuable consideration, receipt of which is hereby acknowledge, Hospital hereby grants to DSU the exclusive option to purchase the following described real estate:

Lots 1 through 12, inclusive, of Block 1 of H. P. Smith's Addition to Madison, Lake County, South Dakota;

Lots 3 through 9, inclusive, of Block 14 of Kennedy's Second Extension of Blocks 12, 13 and 14 of Kennedy's Subdivision to Madison, Lake County, South Dakota;

Lots 1 and 2 of Madison Clinic Addition to Madison, Lake County, South Dakota; and

The vacated alley bisecting Block 1, H. P. Smith's Addition to Madison from north to south, and lying between Lots 1 to 6, inclusive, on the east and Lots 7 to 12, inclusive, on the west, being 14 feet in width; and that certain alley lying between Lots 6 and 7 and the 14-foot alley in H. P. Smith's Addition to Madison on the north, and Lot 1 of Aird's Resubdivision, and Lots 4 to 9, inclusive, of Kennedy's Subdivision of

Block 14, Kennedy's Second Extension of Madison on the south, said alley running east and west and being 13.5 feet wide, all in Lake County, South Dakota.

This Option shall expire on the 1st day of September, 2014, at midnight of that day.

This Option is to authorize DSU to enter into a Purchase Agreement, a copy of which is attached hereto, incorporated herein, and identified as Exhibit "A," for the purchase of Hospital's building and real estate located adjacent to DSU under the terms and conditions of said Purchase Agreement, taking into consideration the fact that Hospital is in the process of constructing a new facility at a separate location and Hospital will continue to reside in its current location until said facility is completed, the precise date of which is unknown, as set forth in the attached Purchase Agreement.

It is contemplated that upon approval of the Legislature, DSU will enter into the Purchase Agreement as set forth herein.

This Option is to be exercised by written notice, signed by DSU, and conveyed to Hospital prior to the expiration date.

The total purchase price is as set forth in the attached Purchase Agreement, as are the terms and conditions of said purchase.

This is an exclusive option and may not be assigned by DSU without the prior written permission of Hospital, which permission will not be unduly withheld.

This Option is also subject to terms contained with the attached Purchase Agreement wherein DSU agrees not to sell or lease said property to a competitor of Hospital and that DSU would work with Hospital to arrive at a possession date that would allow Hospital to vacate the current hospital building and move into Hospital's new facility once completed.

DSU agrees that they have had the right to inspect said property in its present condition and accepts said property "as is," as set forth in said Purchase Agreement.

All covenants and agreements contained herein shall extend to and be obligatory upon the parties' successors and assigns.

APPROVAL OF GOVERNOR OF THE STATE OF SOUTH DAKOTA
PURSUANT TO SDCL 5-2-1

I, Dennis Daugaard, Governor of the State of South Dakota, being otherwise fully advised in the premises, and having reviewed said Option and attached Purchase Agreement, hereby approve the exercising of the Option to Purchase provided execution of the Purchase Agreement for the purchase of the real estate described herein.

Dated this 28th day of January, 2014.

STATE OF SOUTH DAKOTA

By: Dennis Daugaard
Governor of the State of South Dakota

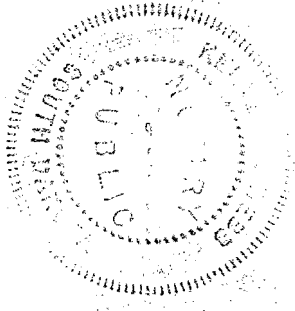
ATTEST:

Kelsey Wedo

Kelsey Wedo

Commission Expires: 02/18/2010

Vernon L. Larson
Comm. of School & Public Lands



ADDENDUM TO OPTION TO PURCHASE

THIS ADDENDUM TO OPTION TO PURCHASE, is entered into by the **Madison Community Hospital**, a benevolent corporation organized under the laws of the State of South Dakota, of Madison, South Dakota, hereinafter referred to as "Hospital," and the **State of South Dakota, by and through the South Dakota Board of Regents, for the use and benefit of Dakota State University**, hereinafter referred to as "DSU."

The purpose of this Addendum is to extend the expiration date of said Option to expire on the 31st day of January, 2016.

In all other respects, the Option to Purchase as originally set forth shall remain in full force and effect effective on the date originally executed.

Dated this 17th day of October, 2014.

MADISON COMMUNITY HOSPITAL,
A South Dakota Benevolent Corporation

By: Tammy Miller
Tammy Miller, CEO

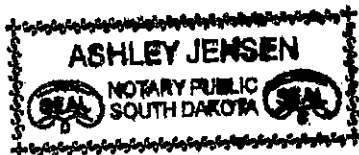
State of South Dakota)

: ss

County of Lake)

On this 17th day of October, 2014, before me, the undersigned officer, personally appeared **Tammy Miller**, who acknowledged herself to be the CEO of **Madison Community Hospital**, a South Dakota benevolent corporation, and that she, as such CEO, being authorized to do so, executed the foregoing instrument for the purposes therein.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Ashley Jensen
Notary Public, South Dakota
My commission expires: 10/11/2019

ACKNOWLEDGEMENT

The State of South Dakota, by and through the South Dakota Board of Regents, for the use and benefit of Dakota State University, hereby acknowledges receipt of the Addendum to Option to Purchase this 27nd day of October, 2014.

DAKOTA STATE UNIVERSITY

By: Mariusz P Rames
Its Interim President

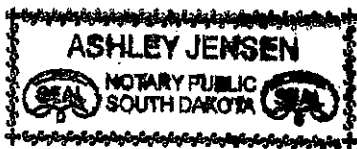
ATTEST:

[Signature]

State of South Dakota)
 : ss
County of Lake)

On this 27nd day of October, 2014, before me, the undersigned officer, personally appeared Mariusz Rames, who acknowledged himself to be the President of Dakota State University, and that he, as such President, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.




Ashley Jensen
Notary Public, South Dakota
My commission expires: 10/11/2019

APPROVAL OF GOVERNOR OF THE STATE OF SOUTH DAKOTA
PURSUANT TO SDCL 5-2-1

I, Dennis Daugaard, Governor of the State of South Dakota, being otherwise fully advised in the premises, and having approved the Option and attached Purchase Agreement, hereby approve the Addendum to Option to Purchase and the exercising of said Option with attached Addendum and the execution of the Purchase Agreement for the purchase of the real estate described in said Purchase Agreement.

Dated this 30th day of October, 2014.

STATE OF SOUTH DAKOTA



DENNIS DAUGAARD
GOVERNOR of South Dakota

ATTEST:



VERNON L. LARSON, Commissioner
of School and Public Lands

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

On this 30 day of October, 2014, before me the undersigned Notary Public, personally appeared DENNIS DAUGAARD, GOVERNOR of South Dakota, known to me to be the person who executed the Deed for the purposes contained therein.

In witness whereof I hereunto set my hand and official seal.

(NOTARY SEAL)

Doreen Kaeper
Notary Public, South Dakota

My Commission expires: July 5, 2017

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

On this 3rd day of November, 2014, before me the undersigned Notary Public, personally appeared VERNON L. LARSON, COMMISSIONER of School and Public Lands, known to me to be the person who executed the Deed for the purposes contained therein.

In witness whereof I hereunto set my hand and official seal.

(NOTARY SEAL)

Vernon L. Larson
Notary Public, South Dakota

My Commission expires: December 16th 2016

ACKNOWLEDGEMENT

The State of South Dakota, by and through the South Dakota Board of Regents, for the use and benefit of Dakota State University, hereby acknowledges receipt of the Addendum to Option to Purchase this 30th day of January, 2015.

SOUTH DAKOTA BOARD OF REGENTS

By: [Signature]
Its Executive Director

State of South Dakota)
 : ss
County of Lake)

On this 30 day of January 2015, before me, the undersigned officer, personally appeared Jack Warner, who acknowledged himself to be the Executive Director of the South Dakota Board of Regents, and that he, as such Executive Director, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Signature]
Notary Public, South Dakota
My commission expires: 10-20-19