

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

AGENDA ITEM: 7 – T

DATE: October 4-6, 2016

SUBJECT: South Dakota State University Performing Arts Center Theatre and Music Education Addition – Memorandum of Understanding with City of Brookings

South Dakota State University requests Board approval of the attached Memorandum of Understanding Regarding the Performing Arts Center at SDSU (“Updated MOU”) between the Board, SDSU, the City of Brookings, and the Brookings School District.

Background

In 1998 legislative session, [SB 23](#) authorized the Board of Regents to contract for the construction, completion, furnishing, equipping and maintaining of a Performing Arts Center at South Dakota State University (“PAC”).

In 2000, the Board approved and subsequently executed a *SDSU Performing Arts Center Memorandum of Understanding* dated on or about February 2000 (“Original MOU”). Under the Original MOU, the City of Brookings provided \$6,000,000 of funding towards the original construction of the PAC. The Original MOU also set forth the use of the PAC by the Brookings Community and Brookings School District.

At the Board’s December 2015 meeting, the Board approved the SDSU Performing Arts Center Theatre and Music Education Addition (“PAC Addition”) [Facility Program Plan](#). As articulated in the Facility Program Plan, SDSU anticipated that some funds would be provided by the City of Brookings and that the renovated PAC will include additional defined uses by the Brookings School District and the Brookings Community.

Updated MOU

Attachment I contains the proposed Updated MOU. Updated MOU, if approved, will replace the Original MOU and will acknowledge all of the original commitments found in the Original MOU. The Updated MOU also adds the new commitments by both the City of Brookings and SDSU related to the PAC Addition project as approved by the Board (at the

DRAFT MOTION 20161004_7-T: I move to approve the Memorandum of Understanding Regarding the Performing Arts Center at SDSU with the City of Brookings, as contained in Attachment I.

December 2015 meeting) and the funding approved by the South Dakota Legislature (with [HB 1051](#) of the 2012 Legislative Session and as amended by [HB 1016](#) of the 2016 Legislative Session).

Some key aspects of the Revised MOU include:

- Continued memorialization of the Original MOU funding by the City of Brookings;
- Additional funding by the City of Brookings in the amount of \$6,000,000 for the PAC Addition project;
- Clarification of the responsibility for collaborative review of facility plans and construction;
- Clarification of the responsibility for ADA compliance for the facility;
- The parameters for use of the facility by the Brookings School District and the Brookings Community;
- Enhancement of the MOU provisions regarding an Advisory Committee to review and provide advice on the collaborative use of the facility;
- Inclusion of the SDSU Performing Arts Center Policy that sets forth the policies and procedures applicable to the Performing Arts Center; and
- New terms that set forth that the Brookings School District and Brookings Community use under the Revised MOU expire upon the passage of twenty-five (25) years.

At its meeting on August 9, 2016, the City of Brookings approved the Revised MOU in its current form. SDSU responsible personnel reviewed the Revised MOU for content and agree to its terms.

MEMORANDUM OF UNDERSTANDING
REGARDING THE PERFORMING ARTS CENTER AT SDSU

WHEREAS, the Seventy-Third session of the Legislature of the State of South Dakota by Chapter 107 (SB 23), signed March 13, 1998, authorized the Board of Regents to contract for the construction, completion, furnishing, equipping and maintaining of a Performing Arts Center at South Dakota State University, Brookings, at an estimated cost of \$10,400,000 paid from other funds under the control of the Board of Regents, from gifts and grants to South Dakota State University specifically for this purpose, including bond proceeds provided by the City of Brookings, and from financing provided pursuant to chapter 13-51A, all of which were appropriated to the Board of Regents for the purposes of the act; and

WHEREAS, Section 2 of the act provided that the Board of Regents should set aside the sum of \$1,040,000 for the purpose of maintenance and repair of the facility to be paid from other funds under the control of the Board of Regents including gifts and grants; and

WHEREAS, Section 3 of the act empowered the Board of Regents to expend funds obtained for the purpose of the act and appropriated the funds to the Board; and

WHEREAS, Section 4 provided that the administration of the design and construction of these facilities and oversight of building committees appointed therefor, as provided in Chapter 5-14-3 shall be under the general charge and supervision of the Governor and the executive director of the Board of Regents or their designees; and

WHEREAS, the City of Brookings by virtue of the power granted to the City of Brookings under SDCL 9-12-4 and 9-12-5 has the power to enter into an agreement with the State of South Dakota and with any authorized agency of the state to carry out any authorized municipal function, and is authorized to give and convey any personal property of the municipality to the state to be used for an authorized public purpose upon the terms and in the manner provided by resolution of the governing body; and

WHEREAS, the State of South Dakota caused to be platted property described as follows, to-wit:

Plat of South Dakota State University, located in the Southwest Quarter of the West half of the northeast Quarter, Section 24, Township 110 North, Range 50 West, Brookings, Brookings County, South Dakota

and upon which real property is constructed the Performing Arts Center facility as authorized by Chapter 107 of the 1998 Session Laws for the State of South Dakota; and

WHEREAS, the State of South Dakota is expanding the original construction of the Performing Arts Center facility on the campus of South Dakota State University, Brookings, South Dakota, on behalf of the Board of Regents of the State of South Dakota, as authorized by 2016 HB 1016; and

WHEREAS, the City of Brookings has determined the facility has positive, far-reaching benefits that extend well beyond that of South Dakota State University which will aid in the Brookings area becoming a major destination and generator for the appreciation and expansion of cultural awareness, fine arts, and artistic creativity warranting the City of Brookings' commitment to contribute to the financing for the expansion of said facility to enhance the availability of multi-use facilities for the City and surrounding area; and

WHEREAS, in order to recognize the cooperative effort of the City of Brookings and South Dakota State University for the use of the facility, which is being jointly expanded, and in order to reduce to writing the contractual obligation of the Board of Regents and the local unit of government, namely, the City of Brookings, a municipal corporation of the State of South Dakota, the undersigned parties have approved this Memorandum of Understanding for intergovernmental cooperation with respect to the Performing Arts Center.

NOW, THEREFORE, this Memorandum of Understanding and legal binding contract is entered into by and between the Board of Regents of the State of South Dakota on behalf of South Dakota State University and the City of Brookings, a municipal corporation of the State of South Dakota, to replace all prior agreements of the parties and to set forth in writing in general terms the funds to be provided by the City of Brookings for the Performing Art Center construction and expansion and the right of access to the facility and the nature of the cooperative arrangements, which will be utilized in the use of the facility to maximize the benefit, not only to the campus of South Dakota State University, but also to the City of Brookings and surrounding Brookings County area.

1. All parties to this agreement recognize that this is a legal binding contract granting right of access to the facility in the manner contractually established by the Board of Regents and the City of Brookings, which is granted and given in consideration of the payment by the City of Brookings of \$6,000,000 for the original construction and \$6,000,000 for the expansion of and the equipping and furnishing of a Performing Arts Center facility at South Dakota State University, Brookings, South Dakota.
2. All parties to this agreement recognize that the facility is primarily intended for the educational and cultural needs of the campus of South Dakota State University, under the direction of the Board of Regents.
3. The administration of South Dakota State University, through the Board of Regents, shall be responsible for the primary management and maintenance of the facility, including scheduling, security, maintenance, control of food service, formulation and enforcement of building rules, and establishment of fee schedules for use of the facility.

A copy of the South Dakota State University Performing Arts Center Policy is provided in Appendix A. This policy is subject to revision by South Dakota State University over the course of the lifetime of this Memorandum of Understanding.

4. Special activities, such as events sponsored by the City of Brookings, the Brookings School District, or other community organizations for which other accommodations in the surrounding area are not available or appropriate, shall be scheduled and permitted when the facility is available and not needed for other duly scheduled events or activities. South Dakota State University shall make available fifty (50) days in each calendar year for scheduling in the facility for use by Brookings School District or groups sponsored by the City. The priority of users of the facility is established in the South Dakota State University Performing Arts Center Policy (See Appendix A).

In consideration of the financial participation from the City of Brookings toward this project, the City of Brookings will be entitled use of the facility through South Dakota State University adopted scheduling and reservation procedures, guaranteeing up to ten (10) days for each calendar year without a facility rental charge for a period of twenty-five (25) years after South Dakota State University's final acceptance of the expanded Performing Arts Center. Once scheduled, the reservations will not be revoked by the managing entity due to other priorities, absent written agreement of the parties. The City of Brookings will pay applicable set-up, equipment, custodial, food service, or security fees associated with the use pursuant to South Dakota State University's usual and customary fee schedule for such services. Upon expiration of the twenty-five (25) year period, priority scheduling set forth in this Memorandum of Understanding shall continue, but all access will be subject to the facility rental charges and all other fees in accordance with South Dakota State University's Performing Arts Center customary fee schedules.

5. The administration of South Dakota State University shall cooperate with City and School District officials and other organizations in the use of the facility for major spectator events or other activities to the extent that such events do not cause hazards to the maintenance of the facility or conflict with regularly scheduled South Dakota State University events or activities.
6. All parties to this agreement agree to the establishment of an advisory committee comprised of three (3) members, said members including: (1) the Executive Vice President for Academic Affairs at South Dakota State University, or designee; (2) the Mayor of the City of Brookings, or designee from the Brookings City Council; and (3) the Superintendent of the Brookings School District, or designee. Other individuals may be invited to attend meetings of the advisory committee with the consent of all members of the advisory committee in an ex-officio capacity. The primary function of the committee shall be to further the cooperative effort among the parties regarding use of the facility for major spectator events or other appropriate activities. The committee shall make recommendations to the administration of South Dakota State University on the matters listed below and other issues as the committee deems appropriate:
 - a) Short and long-term scheduling plans for the use of the Performing Arts

Center by the School District, City, and University;

- b) Annual identification of community arts, cultural, music or other groups eligible for sponsorship by the City of Brookings for use of the facility at actual cost. This list will be reviewed and revised on an annual basis; and
- c) Improvements in operation policies and procedures which will enhance utilization of the Center.

Only members of the Advisory Committee may formally vote to forward a recommendation. In the event of disagreement, the administration of South Dakota State University shall be the final deciding authority.

- 7. Any use of the Performing Arts Center by the City of Brookings or the Brookings School District shall not result in any liability to South Dakota State University, the South Dakota Board of Regents, or the State of South Dakota arising from the use of the facility. Any liability that may arise from the use of the Performing Arts Center shall be the sole responsibility of the sponsors of any such event or activity scheduled for the facility.
- 8. The parties hereby agree that the Performing Arts Center expansion project will be completed in accordance with the federal ADA provisions and that the City of Brookings ADA Policy adopted November 25, 2003, will be followed in the SDSU Performing Arts Center expansion construction project as follows:
 - a. The City will review and approve the project drawings prior to project bid date. The City will review and approve change orders that have an ADA component for conformity with City ADA requirements and as set forth in Section 8 herein. Thereafter, all reviews and approvals by City shall only be for review that the said City ADA requirements contained in the approved project drawings and change orders were completed. City shall provide its review and feedback within the two (2) week review period that is standard in University and State Engineer processes. Construction and all installations must adhere to the ADA approved plans prepared by the architect and the architect's agent. . ADA Policies, to include the City's ADA Policy requirements as set forth in Section 8C, including the City's specific ADA requirements for Family Restrooms, Platform Lifts and Automatic Door Openers.
 - b. The City's specific ADA requirements for Family Restrooms, Platform Lifts, and Automatic Door Openers as set forth in the above referenced City's ADA policy will be complied with to the extent they are not otherwise required by the federal ADA. The City may advise the University regarding other "Best Practices" standards of the City's ADA policy referenced herein that are not required by the federal ADA, however, the University shall consider this

advisory information and may decide whether to accept the Best Practice as the construction standard, or defer to the requirements of the federal ADA.

- c. Upon final acceptance and occupancy of the building by the University, all ADA grievances and complaints shall be submitted to the University Title IX/EO Coordinator for handling in compliance with South Dakota Board of Regents and University policies and procedures. Referrals from the University may be made to the City process, if required, on a case by case basis.

This Memorandum of Understanding does not constitute a binding contract concerning the specific use of the facility for any specific events, but it does impose an obligation and duty upon the State of South Dakota to provide for a right of access to the facility in the manner contractually established herein.

This Memorandum of Understanding may be terminated by the South Dakota Board of Regents for failure of appropriation which shall result in no liability to the State, the Board of Regents, or South Dakota State University for said termination. At the expiration of twenty-five (25) years as set forth in section 4 herein, this Memorandum of Understanding may be unilaterally terminated by the South Dakota Board of Regents without penalty or liability.

This Memorandum of Understanding for the intergovernmental cooperation and use of the facility being constructed on the campus of South Dakota State University is executed by South Dakota State University and is accepted and agreed to by the Board of Regents and the City of Brookings.

Dated this _____ day of _____, _____.

SOUTH DAKOTA STATE UNIVERSITY:

SOUTH DAKOTA BOARD OF REGENTS:

Barry H. Dunn, President

CITY OF BROOKINGS:

BROOKINGS PUBLIC SCHOOL DISTRICT:

