

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

AGENDA ITEM: 7 – Q

DATE: April 2-4, 2019

SUBJECT

SDSU Transfer of Facilities Resolution

CONTROLLING STATUTE, RULE, OR POLICY

SDCL [7-27-1](#) & [7-27-6](#)

BACKGROUND/DISCUSSION

South Dakota State University and its Cooperative Extension Service received, via federal surplus, title to three wooden structures and two steel Quonsets (“Buildings”) located in Tyndall, SD from the U.S. Department of Agriculture’s Federal Extension Service (“USDA”) in 1966. When the Buildings were transferred they were to be used for extension educational use (i.e., 4-H youth work), which was carried out by way of a long-term lease to Bon Homme County (“County”). The Buildings are affixed to land owned by the County, and the County has been responsible for the maintenance, use control, repair and liabilities associated with the Buildings since entering into the long-term lease in 1966.

The County has recently expressed interest in retaining full ownership of the Buildings for the purpose of being able to better use the Buildings and the land upon which they are affixed. The USDA has signed off on the Buildings’ ownership being transferred to the County and the Commissioner of School and Public has disclaimed any interest in the Buildings. The Buildings are leased to the County for reasons enumerated in [SDCL 7-27-1](#), are owned by a separate public corporation (i.e., BOR), and are therefore authorized to be transferred to the County pursuant to [SDCL 7-27-6](#).

IMPACT AND RECOMMENDATION

SDSU requests the Board of Regents adopt the Resolution set forth in Attachment I authorizing the transfer of the Buildings to the County. Staff recommends approval.

ATTACHMENTS

- Attachment I – Resolution transferring certain buildings used as 4-H facilities to Bon Homme County, as authorized by SDCL 7-27-6
- Attachment I, Exhibit A – Supplemental Memorandum of Agreement
- Attachment I, Exhibit B – Overhead Satellite Map Depicting Building Location
- Attachment I, Exhibit C – Transfer Agreement

DRAFT MOTION 2019-0402_7-Q:

I move to approve and adopt the Resolution set forth in Attachment I, authorizing the transfer of the Buildings to the County.

RESOLUTION**A resolution authorizing the transfer of certain buildings used as 4-H facilities located in Tyndall, South Dakota, to Bon Homme County, as authorized by SDCL 7-27-6.**

WHEREAS, the South Dakota Board of Regents (“SDBOR”), on the behalf of South Dakota State University and its Cooperative Extension Service (“SDSU-CES”), received, via federal surplus, title to three (3) Kindem-Holst-Lazaard wooden structures and two (2) Great Lakes sheet steel Quonsets (together, “Buildings”) from the U.S. Department of Agriculture’s Federal Extension Service (“USDA”) via a 1966 Agreement, which is attached hereto as Exhibit A and incorporated herein as if set forth in full; and

WHEREAS, the intent of the transfer, expressed in the 1966 Agreement, was that the Buildings should be used for “Extension educational use (primarily 4-H youth work),” and that Bon Homme County (“County”) should receive a long-term lease of the Buildings from SDBOR/SDSU-CES to achieve that use; and

WHEREAS, as consideration for the long-term lease, the County was responsible for “maintenance, use control, repair and liabilities” of the Buildings; and

WHEREAS, the County has recently expressed interest in retaining full ownership of the Buildings for the purpose of being able to better use them and the County land to which they are affixed in the best interests of Bon Homme County residents and the general public, thereby suggesting termination of the 1966 Agreement under its terms; and

WHEREAS, USDA has signed off on the Buildings’ ownership transition between SDBOR/SDSU-CES and County, and the Commissioner of School and Public Lands has disclaimed any interest in these buildings; and

WHEREAS, the Buildings are leased by the county for reasons specified in SDCL 7-27-1, are owned by a separate public corporation (SDBOR), and are therefore authorized to be transferred to the County pursuant to SDCL 7-27-6; and

WHEREAS, the Buildings currently rest on land owned by Bon Homme County, as visually depicted in the document attached hereto as Exhibit B and incorporated herein as if set forth in full, and as described below:

Lot B of the East ½ of the Northeast ¼ of Section 1, Township 94, Range 60 West, in the City of Tyndall, South Dakota.

NOW, THEREFORE, the SDBOR, on the behalf of SDSU-CES and as authorized by SDCL 7-27-6, hereby authorizes the Executive Director & CEO to execute a transfer agreement in substantively similar form to the transfer agreement attached hereto as Exhibit C and

incorporated herein as if set forth in full, thereby authorizing the conveyance and transfer of the aforementioned Buildings to the County in accordance with the terms thereof.

Dated this ____ day of April, 2019

SOUTH DAKOTA BOARD OF REGENTS

By _____
Kevin V. Schieffer
President

Certification:

I have compared the foregoing with an action taken by the Board of Regents at its meeting on the _____ day of April, 2019, and I hereby certify that the same is a true, correct, and complete copy thereof and that the same has not been rescinded.

Dated this ____ day of April, 2019

SOUTH DAKOTA BOARD OF REGENTS

By _____
James Morgan
Secretary

EXHIBIT A (3 pages)

SUPPLEMENTARY MEMORANDUM OF AGREEMENT
Between the Federal Extension Service & S.D. Coop. Extens. Service of the USDA
and Bon Homme County

3 Kindem-Holst-Lazaard wooden structures 40' x 100' and 2 Great Lakes sheet
(number and description)
steel Quonsets 40' x 100' Serial No.'s 180751 & 180750 quonsets

have been transferred to the Federal Extension Service of the USDA and South Dakota Cooperative Extension Service, S.D.S.U., for use in furtherance of the County Extension educational program (4-H youth work).

The South Dakota Cooperative Extension Service, under it's Cooperative Memorandum of Understanding with the County Commissioners of Bon Homme County as the legal governing body of the County for the conduct of Extension work in the County, agrees to assign the above described buildings for Extension educational use (primarily 4-H youth work) to Bon Homme County until such time that they and the South Dakota Cooperative Service shall terminate this agreement.

The maintenance, use control, repair and liabilities related to the use of these buildings under this use assignment shall be the responsibility of the Bon Homme County Extension Board and the County Commissioners of Bon Homme County.

All major structural changes to these buildings to adapt them to the assigned use shall be agreed to in writing by both parties to this agreement. The costs of any such agreed to alternations shall be borne by Bon Homme County.

The quonsets will be located on Lot B of the E $\frac{1}{4}$ of the N.E. $\frac{1}{4}$ Section 1-94-60 in the city of Tyndall, S.D., South Dakota.
(description of property)

Date 12-6-66
Signed Frank W. Mann
Chr. Bon Homme C. Commissioners

Date October 12, 1966
Signed John I. Stone
Director of South Dakota
Cooperative Extension Service

Date 12-19-66
Signed Clinton Bass
Chr. Bon Homme
County Extension Board

FORM AD-109
(REV. 12-62)

UNITED STATES DEPARTMENT OF AGRICULTURE

REPORT NO.

Report of:

EXCESS SERVICEABLE PROPERTY

DATE 9/28/66

Request for:

1. FROM: Federal Extension Service USDA South Dakota Cooperative Extension Service S. Dak. State Univ., Brookings, So. Dak.		4. TO Area 2 Operations Committee c/o Farmers Home Administration 1520 Market Street St. Louis, Missouri 63103	
2. PROPERTY LOCATION AND HOLDING ACTIVITY Binsites at Tyndall, South Dakota Agricultural Stabilization & Conservation Service, Huron, South Dakota		5. SHIP REQUESTED PROPERTY TO Bon Homme County Has purchased land on which binsites are located. <i>Quonsets</i>	
3. SIGNATURE (AGENCY REPORTING OR REQUESTING OFFICIAL) <i>J. P. ...</i>		6. BILLING AND SHIPPING INSTRUCTIONS (GB/L'S, PACKING, ETC.) Quonsets will not be moved	
TITLE Director, Division of Management Operations			

7. PROPERTY ITEMS (COMPLETELY DESCRIBE EACH ITEM TO SHOW HOW USEABLE IT IS; REPAIRS NEEDED; AGE; ETC.)

QUANTITY	ITEM DESCRIPTION	COND. CODE*	ORIGINAL COST**	B. DISPOSITION INSTRUCTION
2	Great Lakes sheet steel Quonsets 40' X 100' Serial No's 180751 & 180750 Located at Binsites at Tyndall, South Dakota. Will not be moved from those sites. Bon Homme County has purchased the land on which the quonsets are located.	02	\$9,400.00	TRANSFER AUTHORIZED BY AOC

This form is to be used in requesting property held by one Activity at one location. Indicate Excess property by item number.

In the "CONDITION-CODE" column one "LETTER" and one "NUMBER" code symbol which will indicate the actual condition of each line item of property listed. (Example: O-3)

Indicate disposition cost to the Government (estimated if not known) when record value is less than actual cost.

New - New
O - Good; Usable without repairs
E - Fair; Reconditioned
R - Used; Repairs Required

1 - Excellent
2 - Good
3 - Fair
4 - Poor

(NUMBER CODES)

ABOVE DISPOSITION AUTHORIZED:

SIGNATURE
C. G. Pollock

TITLE C. G. POLLOCK, CHAIRMAN
AREA 2 - ACC - ST. LOUIS

DATE 30T 6 1966

AUTH. NO. 874

FORM AD-109
(REV. 12-62)

UNITED STATES DEPARTMENT OF AGRICULTURE

REPORT NO.

Report of:
 Request for:

EXCESS SERVICEABLE PROPERTY

DATE
9/28/66

1. FROM: Federal Extension Service USDA South Dakota Cooperative Extension Service. S. Dak. State Univ., Brookings, So. Dak.		4. TO Area 2 Operations Committee c/o Farmers Home Administration 1520 Market Street St. Louis, Missouri 63103	
2. PROPERTY LOCATION AND HOLDING ACTIVITY Binsites at Tyndall, South Dakota Agricultural Stabilization & Conservation Service, Huron, South Dakota		5. SHIP REQUESTED PROPERTY TO Bon Homme County has purchased the land on which the three Kindem's are located	
3. SIGNATURE (AGENCY REPORTING OR REQUESTING OFFICIAL) <i>J. P. Conroy</i>		6. BILLING AND SHIPPING INSTRUCTIONS (GB/L'S, PACKING, ETC.) XXXXXXXX will not be moved Kindems	
TITLE Director, Division of Management Operations			

7. PROPERTY ITEMS (COMPLETELY DESCRIBE EACH ITEM TO SHOW HOW USEABLE IT IS; REPAIRS NEEDED; AGE; ETC.)			
QUANTITY	ITEM DESCRIPTION	COND. CODE*	ORIGINAL COST**
3	Kindem - Holst - Lazaard structures 40" X 100" wooden structures Located at Binsites at Tyndall, South Dakota # 47011. Will not be moved from the present site. Bon Homme County has purchased the land on which the Kindems are not located.	02	

8. DISPOSITION INSTRUCTION
TRANSFER AUTHORIZED BY AOC

Use separate form in requesting property held by one Activity at one location. Indicate Excess
property by the number.

The "FUNCTION-CODE" column one "LETTER" and one "NUMBER" code symbol which will
indicate the actual condition of each line item of property listed. (Example: 0-3)

Indicate actual acquisition cost to the Government (estimated if not known) when record value is less
than actual cost.

COND. CODES: New - New
0 - Used; Usable without repairs
E - Used; Reconditioned
R - Used; Repairs Required

1 - Excellent
2 - Good
3 - Fair
4 - Poor

(NUMBER CODES)

ABOVE DISPOSITION AUTHORIZED:

SIGNATURE
C. C. Pollock

TITLE
C. C. POLLOCK, CHAIRMAN
AREA 2 - AOC - ST. LOUIS

DATE
OCT 6 1966

AUTH. NO.

EXHIBIT B – Overhead Satellite Map Depicting Buildings (1 page)

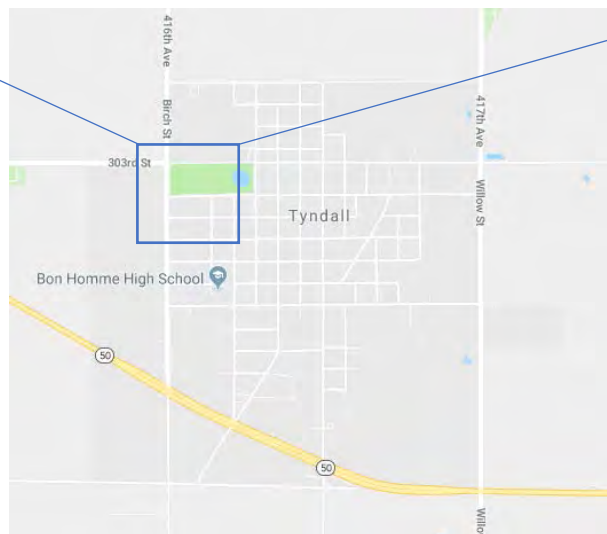


EXHIBIT C (3 pages)

REAL PROPERTY IMPROVEMENT TRANSFER AGREEMENT BETWEEN
THE SOUTH DAKOTA BOARD OF REGENTS AND THE BON HOMME COUNTY BOARD OF
COMMISSIONERS

This Agreement is made and entered into this _____ day of _____, 2019, by and between the South Dakota Board of Regents (“SDBOR”) for South Dakota State University (“SDSU”), a public institution of higher education under the control and management of the SDBOR and the operator of the South Dakota Cooperative Extension Services (“CES”), and the Board of Commissioners of Bon Homme County, a public corporation,

RECITALS

WHEREAS, the SDBOR, on the behalf of SDSU-CES, currently owns in fee simple three (3) Kindem-Holst-Lazaard wooden structures and two (2) Great Lakes sheet steel Quonsets (together, “Buildings”), affixed to the following described land owned in fee simple by the County:

Lot B of the East ½ of the Northeast ¼ of Section 1, Township 94, Range 60 West, in the City of Tyndall, South Dakota; and

WHEREAS, the County and SDSU-CES, entered into a long-term lease agreement, entitled “Supplementary Memorandum of Agreement,” on December 19, 1966, whereby the SDSU-CES leased the Buildings to the County for Extension educational use in keeping with SDCL chapter 7-27, with the lease to end at “such time that [the County] and the [SDBOR] shall terminate this agreement”; and

WHEREAS, the County seeks to terminate the 1966 lease by receiving the gratuitous transfer of these Buildings from the SDBOR, on the behalf of SDSU-CES, as doing so is in the best interests of Bon Homme County residents and the general public, and would allow the County more beneficial use of the land without negatively impacting Extension educational programming; and

WHEREAS, the SDBOR agrees to the gratuitous transfer of these Buildings in principle, but requires certain standard waivers and guarantees as a precondition of the transfer.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual rights and obligations set forth herein, and upon good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the SDBOR and the County agree as follows:

1. The SDBOR shall transfer, by quit claim, the Buildings and all of its interests therein, to the County within seventy-two hours of the final execution of this Agreement.
2. Immediately after the moment of transfer, the County shall assume and/or retain all obligations over the Buildings that are associated with operating a public facility, including costs for utilities, upkeep, and general liability and property insurance.
3. As consideration for this gratuitous transfer, the County does hereby covenant to protect, indemnify, defend and hold the SDBOR, SDSU, CES, and their officers, employees, and agents harmless from and against any claims for liability, loss, expense (including reasonable attorneys' fees), damages, or injuries incurred by the aforesaid institutions and individuals arising out of, resulting from, relating to or connected with any use of, or the physical existence of, the Buildings. The County further covenants that the foregoing indemnity and hold harmless provision shall survive the above-referenced transfer in perpetuity.
4. The County recognizes and accepts that the SDBOR, SDSU, and CES disclaim all warranties of any kind (including, without limitation, warranties of habitability and fitness for a particular purpose, or regarding hazardous materials) associated with the Buildings. The County acknowledges and agrees that it accepts the Buildings "as is," with respect to all facts, circumstances, conditions and defects, and the SDBOR, SDSU, and CES has no obligation to determine or correct any such facts, circumstances, conditions or defects or to compensate the County for the same. The SDBOR, SDSU, and CES have specifically bargained for the assumption by the County of all responsibility to investigate the Buildings, laws and regulations, rights, facts, leases, service contracts, violations, and all risk of adverse conditions and all parties have structured this transaction in consideration thereof. The County additionally covenants that the foregoing warranty disclaimer and its acceptance of "as is" condition shall survive the above-referenced transfer.
5. The County and the SDBOR, SDSU, and CES acknowledge together that the moment this transfer is perfected, the legal authority underlying the 1966 Supplementary Memorandum of Agreement between the U.S Department of Agriculture's Federal Extension Service, SDSU-CES, and the County, shall cease to be effective for any and all purposes.

Dated this ____ day of _____, 2019

FOR THE BON HOMME COUNTY BOARD OF COMMISSIONERS:

FOR THE SOUTH DAKOTA BOARD OF REGENTS:

Paul B. Beran
Executive Director & CEO
South Dakota Board of Regents