SOUTH DAKOTA BOARD OF REGENTS

Academic and Student Affairs
Consent

AGENDA ITEM: 5 – Q (1)
DATE: December 8-9, 2021

SUBJECT
NSU Termination of Joint Powers Agreement

CONTROLLING STATUTE, RULE, OR POLICY
BOR Policy 5:3 – Agreements and Contracts

BACKGROUND / DISCUSSION
Northern State University (“NSU”), the Aberdeen School District, and the City of Aberdeen entered into a Joint Powers Agreement dated August 22, 2005 (“JPA”), for the construction and management of the Clark Swisher Activities complex in Aberdeen. The primary purpose of the JPA was to provide a home football stadium for NSU varsity football games. With the recent completion of Dacotah Bank Stadium at NSU, that purpose is no longer necessary, leaving the bulk of the JPA inapplicable. The parties wish to terminate the JPA and replace it with an updated agreement by and between NSU and the Aberdeen School District to address the current facility needs of the parties.

Board of Regents Policy 5:3 – Agreements and Contracts (“Contracts Requiring Board Action…D. Joint powers agreements”), requires Board approval of JPAs. As such, Board approval of the JPA termination set forth in Attachment I is necessary.

IMPACT AND RECOMMENDATION
The attached JPA termination will allow NSU, the Aberdeen School District, and the City of Aberdeen to terminate their existing JPA, which no longer accurately reflects the needs of the parties, and replace the same with a new facility use agreement by and between NSU and the Aberdeen School District.

Staff recommends approval.

ATTACHMENTS
Attachment I – JPA Termination Agreement
Attachment I, Exhibit A – Agreement for Use of Facilities

DRAFT MOTION 20211208_5-Q(1):
I move to approve the Termination of Joint Powers Agreement set forth in Attachment I.
AGREEMENT FOR
TERMINATION OF JOINT POWERS AGREEMENT

IT IS HEREBY AGREED, by and among Northern State University ("the University"), Aberdeen School District No.6-1 ("School"), and the City of Aberdeen ("City"), in consideration of the mutual promises set forth herein, as follows:

WHEREAS, the Parties hereto entered into a Joint Powers Agreement, dated August 22, 2005, for the construction and management of the Clark Swisher Activities Complex ("the facility"); and

WHEREAS, one of the primary purposes of said Joint Powers Agreement was to provide a home football stadium for Northern State University varsity football games, with appropriate logos and signage to indicate that the facility is a home football stadium; and,

WHEREAS, with the construction of Dacotah Bank Stadium, that purpose is no longer necessary; and,

WHEREAS, the Joint Powers Agreement is to be terminated and all of the rights and obligations set forth therein shall be cancelled, and the Parties released from the obligations and promises set forth therein; and,

WHEREAS, the University still has need for facility for track practice and for varsity track meets; and,

WHEREAS, the School has need for the use of the Barnett Center for certain indoor track meets and other athletic activities; and,

WHEREAS, the City has need for the facility for certain purposes; now, therefore,

IT IS HEREBY AGREED, in consideration of the mutual agreements set forth herein, as follows:

1. The Joint Powers Agreement dated August 22, 2005, shall be, and is hereby, terminated, all the rights and obligations arising therefrom cancelled, and each Party is hereby released by each of the other Parties for any and all obligations and liabilities arising out of said Joint Powers Agreement.

2. In consideration for the termination of said Joint Powers Agreement, and for the mutual releases of the Parties hereto, and in light of the ongoing
needs of the Parties hereto to use certain facilities of the other Parties, the School and the University have negotiated and will execute an Agreement for Use of Facilities, a copy of which is labelled Exhibit A, and incorporated by this reference herein, and the City and the School have negotiated and will execute an Agreement for Use of Facilities, a copy of which is labelled Exhibit B, and incorporated by this reference herein.

Dated: __________________________  ABERDEEN SCHOOL DIST., NO 6-1

Dr. Becky Guffin, Superintendent  Printed Name

Brad Olson, Board President  Printed Name

Dated: __________________________  NORTHERN STATE UNIVERSITY

Dr. Neal Schnoor, President  Printed Name

Dated: __________________________  SD BOARD OF REGENTS

Dr. Brian Maher, Executive Director  Printed Name

Dated: __________________________  CITY OF ABERDEEN

Travis Schaunaman, Mayor  Printed Name

Joe Gaa, City Manager  Printed Name
AGREEMENT FOR USE OF FACILITIES

THIS AGREEMENT is entered into by and between Northern State University (“the University”) and the Aberdeen School District No. 6-1 (“the School”) on this the ___ day of ________________, 2021, for the purposes and in light of the mutual consideration set forth herein.

WHEREAS, the Parties hereto, together with the City of Aberdeen, entered into a Joint Powers Agreement, dated August 22, 2005, for the construction and management of the Clark Swisher Activities Complex (“the facility”); and,

WHEREAS, one of the primary purposes of said Joint Powers Agreement was to provide a home football stadium for the University varsity football games, with appropriate logos and signage to indicate that the facility is a home football stadium; and,

WHEREAS, with the construction of Dacotah Bank Stadium, that purpose is no longer necessary; and

WHEREAS, the Joint Powers Agreement is to be terminated and all of the rights and obligations set forth therein are to be cancelled, and the Parties released from the obligations and promises set forth therein; and,

WHEREAS, the University still has need for a facility for its track and field program; and,

WHEREAS, the School has need for the use of the University’s athletic facilities, primarily the Barnett Center facilities, when the School’s facilities are unavailable; and

WHEREAS, to provide for those needs, the Parties hereto enter into this Agreement; now, therefor,

IT IS HEREBY AGREED, in consideration of the mutual agreements set forth herein, as follows:

1. The University may have the use of the facility for track and field practices and track and field meets, the use to be governed by the procedures set forth herein, including the use of dressing facilities for track meets.

2. The scheduling of the University track practice and track meets will be arranged by mutual agreement of the University and the School.
3. The School will have first priority in scheduling of the track and field facility for its track practices and track meets. The University shall have second priority for use of the facility for that purpose.

4. In conjunction with its use of the facility as above specified, the University shall provide all personnel on the facility site to conduct said track practices and track meets.

5. In conjunction with its use of the facility as above specified, the University shall be responsible for any custodial costs incurred at the School’s negotiated employee rate per hour. The University shall be responsible for any damage done to School property.

6. In conjunction with its use of the facility as above specified, the University shall provide proof of insurance in the form, and at the limits, set forth in the School policy as a condition of the use of the facility.

7. Except as set forth to the contrary herein, all costs of operation and general maintenance of the facility shall be paid by the School.

8. The School shall make all improvements upon the facility’s track and field equipment and facilities to render it suitable for high school varsity competition. Any improvements necessary for intercollegiate competition shall be made by the University.

9. The School shall have the use of the University’s athletic facilities, as currently provided, particularly the use of the Barnett Center gymnasium, indoor track facilities, and competitive swimming pool, in accordance with the policies and procedures currently in effect for said use.

10. The scheduling of the School’s use of said facilities shall be arranged by mutual agreement of the University and the School.

11. The University will have first priority in scheduling the University’s athletic facilities.

12. The University agrees to abide by video and music copyright regarding use of the video board and audio equipment. The University should have site licensed video and audio materials and play materials appropriate for use at the facility. In addition, University agrees to indemnify the School and hold it harmless from any and all costs, fees, penalties and damages of any kind; including the payment of the School’s reasonable attorney fees, incurred or owed by the School arising out of the performance or play of any
copyrighted music/video during University's use of the School’s facilities under this agreement.

13. The University can use the video board to show its own advertising but use of the video board requires play of the School’s facilities video board sponsors. Those sponsors need to be played a minimum of twice per event. (Play counts can/should be submitted after the event.) Video board sponsors are listed within the Display Studio Software.

14. The University agrees that the School reserves all concession rights for all school facilities and may assign or operate them according to its own judgment during the term of this agreement.

Dated: _____________________________        ABERDEEN SCHOOL DIST., NO 6-1

_____________________________        Printed Name
Dr. Becky Guffin, Superintendent

_____________________________        Printed Name
Brad Olson, Board President

Dated: _____________________________        NORTHERN STATE UNIVERSITY

_____________________________        Printed Name
Dr. Neal Schnoor, President