

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance
Consent

AGENDA ITEM: 6 – R (1)
DATE: December 7-8, 2022

SUBJECT

Amended and Restated Cooperative Use Agreement – DSU and City of Madison

CONTROLLING STATUTE, RULE, OR POLICY

[BOR Policy 5:3](#) – Agreements and Contracts

BACKGROUND / DISCUSSION

The City of Madison and the Board of Regents, on behalf of Dakota State University (“DSU”), entered into a Cooperative Use Agreement/Joint Powers Agreement with the City of Madison (“City”) on January 24, 2000 (“Agreement”). The Agreement provided for the construction, furnishing and operation of a Community Center in Madison, located on the campus of DSU, and jointly used by DSU and the City. The City contributed approximately \$4.5M and the legislature authorized BOR to issue bonds of up to \$3M construction of the project, which bonds have since been retired. With over 20 years having passed and the financing retired, the parties desire to clean up the Agreement to remove obsolete references and to clarify/streamline the Agreement. The Amended and Restated Cooperative Use Agreement set forth in Attachment I reflects the efforts of the parties in that respect, which is substantively similar to the Agreement in terms of the financial and operational obligations of the parties.

BOR Policy 5:3 (“Contracts Requiring Board Action...D. Joint powers agreements”) requires Board approval of Joint Powers Agreements (JPA). As such, Board approval of the Amended and Restated Cooperative Use Agreement set forth in Attachment I, which meets the definition of a JPA, is necessary.

IMPACT AND RECOMMENDATION

The Amended and Restated Cooperative Use Agreement will allow DSU and the City of Madison to continue its joint operation of the Community Center in Madison for the foreseeable future.

Staff recommends approval.

ATTACHMENTS

Attachment I – Amended and Restated Cooperative Use Agreement

DRAFT MOTION 20221207_6-R(1):

I move to approve the Amended and Restated Cooperative Use Agreement in substantially similar form to that set forth in Attachment I, subject to the approval of the final version by the BOR General Counsel.

AMENDED AND RESTATED COOPERATIVE USE AGREEMENTCity of MadisonDakota State University

THIS AMENDED AND RESTATED COOPERATIVE USE AGREEMENT ("Agreement"), made and entered into this ____ day of _____, 2022, by and between the City of Madison, South Dakota, a municipal corporation, hereinafter referred to as "City", and the State of South Dakota, acting through the Board of Regents on behalf of Dakota State University, hereinafter referred to as "DSU",

WITNESSETH

PREAMBLE

WHEREAS, both the City, DSU and the South Dakota Board of Regents ("SDBOR") participated in a joint effort commencing on January 24, 2000, to build a community center as an addition attached to the fieldhouse and National Guard Armory located on the DSU campus ("Community Center"); and

WHEREAS, the voters of the City of Madison passed an initiated measure in 1999 to establish an additional one percent (1%) sales tax, which funds were used by the City to pay up to \$4.5 million dollars toward the cost of constructing, furnishing and equipping the Community Center; and

WHEREAS, the South Dakota Legislature approved, and the SDBOR, acting on behalf of DSU, issued bonds up to \$3 million dollars to construct, furnish and equip the Community Center, which bonds have since been retired; and

WHEREAS, the construction of the Community Center was completed on October 2, 2000, the cost of which, including the furnishing and maintaining said facility, as well as the use of the facility, has been shared between the City and DSU; and

WHEREAS, SDCL 1-24 authorizes public agencies including municipalities to jointly exercise and power, privilege or authority that such public agencies are capable of exercising on their own; and

WHEREAS, the City and DSU now wish to amend and restate the Cooperative Use Agreement originally entered into on January 24, 2000, to: (i) clarify and streamline certain outdated and/or obsolete provisions and (ii) effect such other amendments thereto as hereinafter provided.; and

WHEREAS, membership fees to the general public will be set by the Governing Board. DSU students carrying a minimum of 6 (six) credit hours per semester, will be members of the Community Center. DSU shall provide operating revenue to support membership of students through student fees or other sources in an amount mutually agreed upon by DSU and the City. DSU through student fees or other sources, is solely responsible for DSU debt service obligations; the City of Madison, through the second penny sales tax, is solely responsible for its debt service obligation of the Community Center.

AGREEMENT

NOW, THEREFORE, in such consideration of the mutual covenants and agreements herein contained, the undersigned governmental bodies, through their respective officials, hereby agree as follows:

1. Authority. The parties hereto have agreed to exercise their governmental powers jointly as provided by SDCL 1-24, as amended, to the fullest extent as allowed by South Dakota law. The exercise of these joint

powers is for the purpose of jointly furnishing, maintaining and operating the Community Center as specified herein. Nothing contained herein should be construed to pertain to the fieldhouse, to which the Community Center is attached.

2. Use of Real Estate. The real property on which the Community Center is constructed will continue to be provided by DSU at no additional fee or rent (other than as set forth in this Agreement) for a Community Center so long as the Community Center is located, operated and used on the premises pursuant to this Agreement. DSU agrees to maintain adequate ingress and egress to said facility and agrees that users of said facility shall be free to use designated DSU parking areas and spaces at no additional cost.
3. Use and Purpose. The Community Center will be used by the parties for the following educational, recreational and cultural purposes, to include but not be limited to: public swimming, public recreation, swimming lessons, City recreation and exercise, delivery of instruction, physical education training, athletic team practices and or competition, DSU intramurals, or other similar uses. Reasonable office space will be provided for the Recreation Supervisor for the City, if requested by the City.
4. Ownership of Community Center. Title to the Community Center is vested in and to the State of South Dakota, on behalf of SDBOR, for the use and benefit of DSU.
5. Governing Board. To provide for the effective administration and operation of the Community Center, there is hereby created a four-person governing board, whose membership is comprised of the Mayor and Finance Officer for the City, or their designee(s), and the President and Vice President for Business and Administration for DSU, or their designee(s) ("Governing Board"). The Governing Board shall be responsible for:
 - a. Hiring, firing and evaluation of the Community Center Director;
 - b. Final approval of the Community Center budget, which also must be approved by DSU and the City Commission.
 - c. Setting rates for the Community Center, including without limitations any associated fee structures for general public use and rental rates for special use of Community Center space by external parties;
 - d. Establishing policies, processes, and procedures as necessary to provide for the effective operation of the Community Center and its own organizational rules and procedures for the Board to govern its fulfillment of the duties and responsibilities set forth in this Agreement;
 - e. Receiving funds from the City, DSU, or other external parties, whether directly or through an associated third-party, for the purpose of operating and maintaining the Community Center;
 - f. Keeping and maintaining adequate books and records of all financial transactions related to receipts and expenditures of the Community Center; and
 - g. Providing an annual report to the City and DSU, which shall include without limitation, the annual operating costs and revenues, the projected operations costs and revenues for the following year, and the annual budget.

The Governing Board shall publicly post meeting agendas and open its meetings to the public in a manner generally consistent with the open meetings laws contained in SDCL chapter 1-25. The Governing Board shall also have the authority to purchase any necessary insurance for the protection of its members and/or the Community Center. The Governing Board may establish its own organizational rules of procedure, which may include the selection of officers.

6. Community Center Advisory Committee. To assist the Governing Board through the provision of recommendations and advice on the use and operation of the Community Center, there is hereby created a nine-member advisory committee, consisting of five members appointed by the City and four members appointed by DSU ("Advisory Committee"). Members shall serve three-year terms, unless removed or replaced by the City or DSU, respectively, in which case the individual subsequently appointed shall fulfill

the remainder of the three-year term. The maximum term for any one individual on the committee shall be three-terms, excluding any partial terms a member may be initially appointed to fulfill as a result of a resignation or removal of a prior member. Committee members will serve without compensation. The City and/or DSU may appoint additional non-voting members to the Advisory Committee and for such duration as the parties deem necessary and appropriate to inform or assist the committee.

If for any reason an Advisory Committee member is unable to complete the duration of their appointed term, that Committee member's position and remaining term shall be replaced by appointment respectively from the City or DSU.

The Advisory Committee shall have responsibility for the following:

- a. The Advisory Committee shall have the power to establish sub-committees to make recommendations regarding various operations or activities of the Community Center.
 - b. Advising on policies with respect to the use of the Community Center, such as establishing hours of the day the facility is open, needed equipment, and suggested programming.
 - c. Providing recommendations to the Community Center Director and Governing Board on the annual budget and any adjustments that may be necessary.
 - d. Providing recommendations on fees or rentals rates or other charges assessed for the use of the Community Center.
 - e. The Advisory Committee may establish its own organizational rules of procedure, which may include the selection of officers.
7. Community Center Director. The Community Center Director shall be responsible for:
- a. Annually preparing a budget setting forth anticipated revenues, anticipated expenses and submitting said budget to the Advisory Committee for review and to the Governing Board for final review and approval.
 - b. Managing the operation and maintenance of the Community Center in accordance with the approved budget, and providing updates and recommendations to the Advisory Committee and Governing Board in the event of any discrepancies between the projected and actual revenues during the operating year.
 - c. Ensuring the Community Center is properly maintained in good and proper order, including the grounds, and to meet any such regulations as may from time to time be established by applicable government agencies including such restriction on the use of distribution of alcoholic beverages, tobacco products or controlled substances as the Board of Regents may prescribe.
 - d. Recommending positions for employment that may be necessary for the operation of said facility, and the hiring and firing of individuals to fulfill those responsibilities.
 - e. Management and administration of employees working at the Community Center, to include without limitation, hiring, firing, evaluating, and scheduling.
8. Employees of the Community Center. All employees of the Community Center shall be employees of the City, with the City providing the necessary payroll services and associated benefits for such employees, unless otherwise mutually agreed upon in writing by the parties.
9. Ownership of Personal Property. Any and all Community Center equipment provided or purchased by or through the City or DSU, whether currently maintained or hereafter acquired for such use, shall remain for the exclusive use and benefit of the Community Center, so long as the Community Center remains in operation, unless otherwise agreed to in writing by the parties. Other entities, such as the school district, may with the prior approval of the Governing Board, buy and place equipment in the Community Center, subject to a written agreement specifying the mutually agreed terms related to the ownership, maintenance, and disposition of the equipment. The Governing Board may, out of its operating budget or

through gifts or donations received, or a combination thereof, purchase equipment and furnishings for the facility which furnishings and equipment shall be held in the name of the Community Center. In the event the Community Center dissolves, the equipment held by the Community Center shall be sixty percent (60%) the property of City and forty percent (40%) the property of DSU, unless a specific piece of equipment is subject to alternate disposition provided for in writing and signed by the pertinent parties. Any disposition of property hereunder shall be in compliance and consistent with state and local government property disposal provisions.

10. Disposition of Revenues Generated by Community Center. Revenues generated by the use of the Community Center shall be maintained and distributed by the Governing Board in accordance with its authority granted herein, for the purposes of maintaining, furnishing and operating the Community Center. In the event the Community Center dissolves, any funds held by the Community Center at the time of dissolution shall be disbursed with sixty percent (60%) going to the City and forty percent (40%) going to DSU, unless otherwise agreed to in writing by the parties.
11. Joint Utilization of the Community Center. The City and DSU shall cooperate to achieve with respect to the Community Center the maximum level of joint utilization possible to meet the needs of the respective entities. The Governing Board as created herein shall have final authority with respect to conflicts concerning use or scheduling use of the facility.
12. Insurance. The parties agree to provide liability, building and contents coverage for the Community Center as each deems reasonable and appropriate. Each party shall name the other as an additional insured on all policies of liability insurance.
13. Major Maintenance Costs. The parties to this Agreement agree that major maintenance costs such as but not limited to refinishing the roof or exterior walls, major sewer repair, or major repair of electrical, heating or water systems of said facility, above and beyond the amount available in the reserve account set forth in Section 14 below, shall be the responsibility of the City and DSU, with the City being responsible for sixty percent (60%) and DSU responsible for forty percent (40%), unless otherwise agreed to in writing by the parties. The parties further agree that no structural additions to the Community Center may be made without the express written agreement of the parties to this Agreement. The City acknowledges that DSU may not be able to contribute to such additions without the approval of the SDBOR and the State Legislature. Major maintenance and construction projects will be managed by DSU Facilities Mgmt in accordance with the SDBOR policy.
14. Operating Shortfall. In the event that the Governing Board does not have sufficient funds to meet expenses of the Community Center as they fall due, then, in that event, any additional funds for the operation of said facility provided by City or DSU shall be sixty percent (60%) apportioned to the City and forty percent (40%) apportioned to DSU, unless the parties otherwise agree in writing.
15. Reserve Account. The Governing Board shall identify reserves for major maintenance and repair expense. These reserves shall be administered in accordance with Chapter 108 of the South Dakota Session Law of the 1998 Legislative Session. These reserves shall be maintained for the purpose of covering major maintenance and repair costs, with sixty percent (60%) of the reserve account apportioned to the City and forty percent (40%) apportioned to DSU. Any jointly owned personal property, equipment and fixtures, shall be expended in accordance with the provisions of this Agreement.
16. Termination for Default: This Agreement may be terminated, in whole or in part, by either party in the event of the substantial failure by the other party to fulfill its obligations under the Agreement. Prior to such termination the terminating party shall give 90 days' written notice of intent to terminate to the other party. The defaulting party will have 90 calendar days from receipt of the notice to cure the alleged defaults. In the event the default isn't cured, and this Agreement is terminated, any property and funding

maintained or held by the Community Center shall be disbursed as provided herein, unless otherwise agreed to in writing by the City and DSU.

- 17. Filing of Agreement and Any Amendment or Supplements. This Agreement and any exhibits thereto and any amendments or supplements shall be filed and kept on public record at the Finance Office at the City and at the Business Office of DSU in Madison, South Dakota.
- 18. Governmental Funding Requirement. This Agreement is contingent on the receipt of both funds and expenditure authority from the South Dakota Legislature and the City of Madison. In the event either the Legislature or the City of Madison fails to provide such funds or expenditure authority necessary to the respective party to fulfill its obligations hereunder in any fiscal year, then and in such event this Agreement shall terminate at the end of the fiscal year during which the last funding or expenditure authority was made available to the pertinent party. The party who receives non-appropriation of funding or expenditure authority shall provide notice of the same to the other party within ten (10) calendar days of such non-appropriation governmental action.
- 19. Severability Clause. If any provision of the Agreement shall be declared illegally invalid or unenforceable, then the remaining provisions of this Agreement nevertheless shall continue in full force and effect and shall be enforceable to the fullest extent of South Dakota law.
- 20. Meeting of the Minds. This Agreement constitutes the final meeting of the minds between the parties hereto, and includes all prior negotiations had by the parties in reference to all matters herein contained, and this Agreement shall be binding upon the respective parties hereto, their respective heirs, successors, administrators, and assigns. The parties acknowledge and agree that this Agreement contains the entire and final Agreement of the parties. The parties agree that all Preamble clauses herein are made a material part of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and signatures this _____ day of _____, 20_____.

CITY OF MADISON
BY: _____
NAME: _____
TITLE: _____

ATTEST:
BY: _____
NAME: _____
TITLE: _____

SOUTH DAKOTA BOARD OF REGENTS
BY: _____
NAME: _____
TITLE: _____

ATTEST:
BY: _____
NAME: _____
TITLE: _____