

**SOUTH DAKOTA BOARD OF REGENTS**

**Budget and Finance**

**AGENDA ITEM: 3 – D**

**DATE: October 7-8, 2015**

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**SUBJECT: BHSU Well Use Agreement**

This item is a companion to an item approved by the Board at its April 1-2, 2015 meeting. As noted in Committee on Budget and Finance Agenda Item III-N for that meeting, in 1988, the Board entered into an agreement with the City of Spearfish to permit the city to take water from a well that Black Hills State University had drilled for irrigation purposes and to incorporate that water into the municipal potable water system. The original agreement provided for a platted easement and right of way to provide for the well house site and for water distribution lines.

In 2007, the BHSU president executed an amendment to the use agreement, for the primary purposes of transferring to the city responsibility for maintenance of the well and for restating terms of BHSU’s use of the well for irrigation and the associated costs to pump water for such purposes. The 2007 writing recited a reaffirmation the easement and right of way previously granted.

The April 1-2, 2015 Board action provided for the termination of the original easement and vacation of the original plat and a reissuance of the easement and a replatting of the property to accommodate improved access to the site.

At the time of the April meeting, BHSU and the City continued to discuss terms for a successor well house agreement. Those discussion have now been completed and a final document has been submitted for Board approval.

The restated well use agreement has a term of five years. The agreement guarantees BHSU sufficient water to cover its irrigation permit, at the adjusted rate of \$1.15 per 1,000 gallons and increase of \$.05 per 1,000 gallon over the 2007 rate. Notwithstanding this entitlement, BHSU has agreed to honor City requests to limit its irrigation during periods when

(Continued)

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**RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR**

I move that the Board approve the proposed well use agreement between Black Hills State University and the City of Spearfish and that it authorize the Executive Director to execute the agreement on its behalf.

BHSU Well Use Agreement

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peak demand makes it difficult for the municipal system to maintain sufficient stored water to assure availability for fire emergencies or pump failure.

Prepared By:  
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## SECOND AMENDED WELL USE AGREEMENT

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the **SOUTH DAKOTA BOARD OF REGENTS**, hereinafter referred to as “BHSU” and, the **CITY OF SPEARFISH**, a South Dakota Municipal Corporation, of 625 Fifth Street, Spearfish, SD 57783, hereinafter referred to as “SPEARFISH.”

WHEREAS, the parties previously entered into a Well Use Agreement dated the 19th day of December, 1988, therein providing for, among other matters, the maintenance, operation, and allocation of costs relating to a well situated on the premises of Black Hills State University located 2,393.54 feet south 17° 09’04” west of the northeast corner of Section 9 in the Southeast Quarter, Northeast Quarter of Section 9, Township 6 North, Range 2 East of the B.H.M., Lawrence County, South Dakota, as more fully set forth in the location plat attached hereto as Exhibit “A” and by this reference incorporated herein (hereinafter “Well”); and

WHEREAS, the parties previously entered into an Amended Well Use Agreement dated the 21st day of May, 2007, therein providing for, among other matters, the restatement of the rights and responsibilities of the parties; and

WHEREAS, BHSU continues to use water from the Well; and

WHEREAS, the Well continues to be capable of pumping a quantity of water beyond the needs of BHSU, and said well has been a source of municipal water for Spearfish since the parties entered into the 1988 Agreement; and

WHEREAS, Spearfish continues to be in need of an additional water source and storage capacity which can be provided by the Well, now therefore,

WITNESSETH:

For and in consideration of the covenants hereinafter contained and flowing between the parties and for other good and valuable consideration, the sufficiency of which and receipt of which is hereby acknowledged, it is mutually understood and agreed as follows:

1. BHSU shall retain the water rights to the Well.
2. BHSU agrees to continue to grant and convey to Spearfish all water produced from the Well, except for water made available to BHSU by water permit No. 1452-1 for irrigation purposes.
3. All costs of maintaining, repairing, and improving the pump, well hole, casing, generator, and equipment associated with municipal water production shall be the responsibility of Spearfish.
4. BHSU agrees to honor and abide by water restrictions imposed by Spearfish when the municipal system is unable to maintain storage tank levels sufficient to handle emergencies including fire or pump failure during periods of peak demand peak demand.
5. BHSU agrees to separately meter its water, and BHSU shall pay Spearfish a flat rate of \$1.15 per 1000 gallons.
6. Spearfish agrees to complete and pay for normal repair costs and repair costs associated with or caused by Spearfish's or its contractors' use of the newly constructed driveway serving the Well. BHSU agrees to complete and pay for repair costs associated with or caused by BHSU's or its contractors' use of the newly constructed driveway serving the Well.
7. The term of this Second Amended Agreement shall be for a period of five (5) years from the date this Second Amended Agreement is entered into.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2015.  
 \_\_\_\_\_  
 Black Hills State University

By: \_\_\_\_\_  
 Dr. Michael G. Rush, Executive Director,  
 South Dakota Board of Regents

State of South Dakota            )  
   ) ss.  
 County of Lawrence                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned officer, personally appeared Dr. Michael G. Rush, who acknowledged himself to be the Executive Director, South Dakota Board of Regents and that he in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

*In Witness Whereof*, I have set my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2015

CITY OF SPEARFISH

By: \_\_\_\_\_  
Dana Boke, Its Mayor

ATTEST:

\_\_\_\_\_  
David H. Dutton, Finance Officer

State of South Dakota        )  
  ) ss.  
County of Lawrence         )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015  
, before me, the undersigned officer, personally appeared Dana Boke, the Mayor of the City of Spearfish, a South Dakota Municipal Corporation, and David H. Dutton, the Finance Officer of the City of Spearfish, a South Dakota Municipal Corporation, known to me or satisfactorily proven to be the persons described in the foregoing instrument, and acknowledged that they executed the same in the capacity therein stated and for the purposes therein contained.

***In Witness Whereof***, I have set my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_