

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

AGENDA ITEM: 7 – O

DATE: March 30 – April 1, 2016

SUBJECT: SDSU Land Lease Agreement for Agricultural Experiment Station in Hughes County

South Dakota State University requests the authority to enter into a land lease agreement (“Agreement”) on behalf of the South Dakota Agricultural Experiment Station at SDSU (“Experiment Station”) with Dakota Lakes Research Farm Corporation. The purpose of the Agreement is to provide the Experiment Station with access to land in Hughes County to conduct agricultural research. The leased land is eight hundred thirteen (813) acres, more or less, and includes all water rights and easements that are appurtenant to the described real estate, and also included is the easement for the pumping station at the Missouri River which provides irrigation water to this real estate.

The key terms of the Agreement are below:

- Term
 - Five (5) years, from July 1, 2016 to June 30, 2021.
- Lease Payment
 - SDSU must pay \$140,000 annually towards operations and maintenance
 - Approximately \$113,000 is already budgeted annually, so this lease will require an increase of approximately \$27,000 annually in operating funds, which will come from federal appropriations
- Employees
 - SDSU must employ, or continue to employ, at least 4.5 FTE, to include 1 FTE research manager and at least 3.5 FTE support personnel
 - The 1 FTE research manager is already in place.

(Continued)

RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR

I move to approve, and authorize South Dakota State University to enter into, the land lease agreement between South Dakota State University, on behalf of the Agricultural Experiment Station at SDSU, and Dakota Lakes Research Farm Corporation for real estate described in Exhibit A of the land lease agreement attached to this agenda item, which by this reference is incorporated herein, comprising 813 acres, more or less along with all water rights and easements that are appurtenant to the described real estate, and also included is the easement for the pumping station at the Missouri River, which provides irrigation water to this real estate. The land lease agreement is for five (5) years and includes an annual lease payment of \$140,000.

- 3.0 FTE of support personnel are already in place.
- 0.5 FTE of support personnel is a clerical position that was vacated some years ago and not filled. This position is already budgeted.

The legal description of the property to be leased is described below:

Parcel 1: 463 acres more or less.

NE $\frac{1}{4}$ (Less Lot H-1 in W $\frac{1}{2}$ NE $\frac{1}{4}$ and less Lot H-1 in NE $\frac{1}{4}$ NE $\frac{1}{4}$);

NW $\frac{1}{4}$ (less Lot H-1);

E $\frac{1}{2}$ W $\frac{1}{4}$; NW $\frac{1}{4}$ SW $\frac{1}{4}$;

And that portion of Lot 1 not deeded to the USA by a deed dated

July 29, 1963, and recorded in Book 259, page 467, more particularly described as follows: That portion of Lot 1 of Section 32, Township 110 North, Range 76 West of the 5th P. M., lying northerly of the Missouri River, described as follows:

Beginning at the Southeast corner of said Lot 1, thence Westerly along the south line of said lot 1, a distance of 330 feet, thence North 45 degrees west to the west line of said Lot 1, thence Northerly along the West line of said Lot 1, to the Northwest corner thereof, thence Easterly along the north line of said Lot 1 to the Northeast corner thereof, thence Southerly along the east line of said Lot 1 to the point of beginning. All of the above described property is located in Section 32, Township 110 North, of Range 76, west of the 5th P.M., Hughes County, South Dakota.

Parcel 2: 350 acres more or less.

All of Lots 3 and 4, S $\frac{1}{2}$ of the NW $\frac{1}{4}$, SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ and the SW $\frac{1}{4}$, less Highway Right of Way. All of the above property is located in Township 110 North, Range 76 West of the 5th P.M., Hughes County South Dakota-Section 5.

**AGREEMENT BETWEEN
THE DAKOTA LAKES RESEARCH FARM CORPORATION
AND
SOUTH DAKOTA STATE UNIVERSITY**

THIS AGREEMENT is made and entered into this 1st day of July, 2016, by and between the Dakota Lakes Research Farm Corporation, a not-for-profit 501(C)(3) corporation in South Dakota (“Dakota Lakes”) with 21310 308th Ave, Pierre, SD 57501 being its principal place of business; and South Dakota State University (“SDSU”), a public land grant university under the control and management of the South Dakota Board of Regents with its principal place of business at SAD 200, Box 2201, Brookings, South Dakota 57007-0291 on behalf of the South Dakota Agricultural Experiment Station at South Dakota State University (“Experiment Station”).

WHEREAS Dakota Lakes has as its primary mission supporting projects designed to research, identify, and demonstrate the best methods of stabilizing the agricultural economy through promoting agricultural diversity, increasing production efficiency, minimizing negative environmental effects, maintaining soil productivity, and developing techniques to mitigate biological stress effects; and

WHEREAS the Experiment Station’s primary mission is to conduct research in service to agriculture and to the South Dakota rural community at large and contribute research-based knowledge to the long-term and sustainable economic and community wellbeing in South Dakota, the region and globally; and

WHEREAS both entities’ missions share extensive common ground and their respective physical and intellectual resources are complimentary for conducting agriculture research aimed at stabilizing and sustaining agriculture productivity and profitability;

NOW THEREFORE, in consideration of the mutual benefits to be enjoyed by the parties hereto and in consideration of the covenants hereinafter mentioned, Dakota Lakes and SDSU hereby enter into an agreement whereby Dakota Lakes allows non-exclusive use of the following described premises to the Experiment Station for its use in conducting research:

Real Estate described in Exhibit A, which is attached hereto and by this reference incorporated herein, comprising 813 acres, more or less, along with all water rights and easements that are appurtenant to the described real estate, and also included is the easement for the pumping station at the Missouri River which provides irrigation water to this real estate.

Dakota Lakes and SDSU hereby agree to the following additional terms:

1. TERM

The term of this agreement shall be for a period of five (5) years, from July 1, 2016 to June 30, 2021.

2. USE OF PROPERTY

The real property, facilities, and equipment will be used to operate both a research and production enterprise. The production enterprise involves all operations of the Dakota Lakes Research Farm as governed by its Board of Directors that are not specifically related to the research enterprise. Dakota Lakes is entrusting SDSU through the Experiment Station to operate the research enterprise. Specifically, this enables them to develop and conduct research projects pertinent to it and the citizens of the State and in harmony with the mission and goals of Dakota Lakes. In all cases during the term of this agreement, both enterprises will use only low-disturbance no-till techniques unless specifically exempted by the Dakota Lakes Board.

3. DAKOTA LAKES OBLIGATIONS AND RIGHTS

Dakota Lakes will be the farm operator for all legal matters. Dakota Lakes is responsible for the following:

- i. The real estate taxes before they are delinquent for each year of the agreement.
- ii. All costs associated with the operation of Dakota Lakes' corporate business.
- iii. The design, development, and construction of additional buildings and facilities on the real property, with design and specifications for any new building(s) discussed with the Experiment Station director.
- iv. All expenses associated with operation, maintenance, and repair of the fixed irrigation facilities including the irrigation pump station and underground lines.
- v. All expenses associated with crop and livestock production.

All expenses associated with operation and maintenance of the buildings and grounds in a condition appropriate for use in crop and livestock production.

Maintain property, casualty, and liability insurance during the term of this agreement including the buildings, farm and irrigation equipment, and other items and supplies deemed to be appropriate by Dakota Lakes.

- vi. Direction of the production enterprise on said real estate through its Board of Directors and its designee(s). The production enterprise will be managed in a manner that optimizes return while utilizing exemplary sustainable practices. Top priority will be placed on preserving the research value of the property and providing research opportunities for scientific partners.
- vii. Setting research priorities in cooperation with the Experiment Station regarding both the production and research enterprises.

- viii. Allow the Experiment Station to install signage acceptable to the Dakota Lakes Board of Directors identifying the farm as a field station site of the South Dakota Agricultural Experiment Station.

4. SDSU OBLIGATIONS AND RIGHTS

SDSU is responsible for the following:

- i. Management and operation of a research enterprise in coordination and cooperation with the Dakota Lakes Board of Directors and its designees. This program is to adhere to the Dakota Lakes Research Farm mission and priorities. The research enterprise will be managed so that it does not compromise the long-term utility of the property for future research.
- ii. Management and operation of the production enterprise on a fee for services basis and at the direction of the Dakota Lakes Board of Directors.
- iii. Employment, supervision and evaluation of a research manager and a minimum of 3.5 FTE support personnel to fulfill the objectives of the production and research enterprises. These personnel shall wholly be SDSU employees and shall be bound by all policies and practices of SDSU and the South Dakota Board of Regents.
- iv. Provide sufficient operations and maintenance funding (\$140,000 annually) to fulfill the objectives of the production and research enterprises. SDSU agrees to not allow liens to attach to the real estate.
- v. Annual presentation of the planned research program to Dakota Lake's Board of Directors prior to the annual membership meeting.
- vi. Maintenance (at the expense of the Experiment Station) of the premises to appropriately high standards of image for public research stations by maintaining the area around the building site and the road ditches, general maintenance and organization of the interior, exterior of buildings and building sites. Practices used will conform to the sustainability goals of Dakota Lakes as set forth by Sustainability Standards and Goals at Dakota Lakes Research Farm 2016, which is attached hereto as EXHIBIT B.
- vii. Include Dakota Lakes representation on research manager search committees.
- viii. Documents, presentations and other materials that pertain to the Experiment Station program at Dakota Lakes and produced by or on behalf of the Experiment Station will bear a joint and mutually acceptable acknowledgement of both Dakota Lakes and the Experiment Station.

5. Farm Income

All income associated with the sale of bulk farm commodities is the property of Dakota Lakes. This does not include crops grown for breeding program seed increases (within reason) and those retained by projects for analysis or research purposes. It does include payments received through the United States Department of Agriculture Farm Service Agency.

GENERAL TERMS AND CONDITIONS

1. PRESERVATION OF WATER RIGHTS AND PERMITS

The Parties agree during the term of this agreement to preserve the water rights attributable to this real estate by appropriately managing the land and water and filing all necessary reports required with the South Dakota Department of Environment and Natural Resources and any other governmental entity having jurisdiction over the maintenance of such water rights.

2. OWNERSHIP OF FACILITIES, FIXTURES, AND EQUIPMENT

The existing pumping station and all underground pipelines and other irrigation equipment and any improvements are the property of Dakota Lakes, and upon termination of this agreement, will remain the property of Dakota Lakes. Upon expiration or termination of the agreement, SDSU will quit and surrender to Dakota Lakes the buildings in as good order and condition as when the same were entered upon by the Experiment Station, loss by fire or inevitable accident, damage by the elements, and reasonable use and wear excepted. Experiment Station will remove at its own expense all of its property and equipment from the premises within thirty (30) days of expiration, and Dakota Lakes shall provide access for said removal.

3. PEACEFUL POSSESSION

Dakota Lakes agrees that SDSU, upon performing the covenants aforesaid, shall peacefully and quietly have, hold and enjoy nonexclusive use of the premises for research purposes as approved by Dakota Lakes' Board of Directors.

4. PROHIBITION AGAINST ASSIGNMENT

SDSU shall not have the right to assign use of this property without the express written consent of Dakota Lakes.

5. NOTICES

Any notice or report required by this Agreement shall be effective upon delivery or deposit in U.S. Mail and shall be sent to:

South Dakota AES
PO Box 2207
South Dakota State University
Brookings, SD 57007

or

Dakota Lakes Research Farm
PO Box 2
Pierre, SD 57501

Payments and reimbursements required under this MOA shall be submitted to the contact addresses, which may be updated in writing by the parties.

6. LEGISLATIVE FUNDING CONTINGENCIES

Since the operations of this contract extend beyond the current fiscal year, this agreement is made contingent upon the Legislature of South Dakota and/or federal government making the necessary appropriations for the expenditures hereunder after such current fiscal year shall have expired. Dakota Lakes acknowledges that state or federal action may require the curtailment or termination of some or all of Experiment Station's programs; and Dakota Lakes acknowledges further that Experiment Station's governing board is obligated to respond to such state or federal action and may determine that it is necessary to terminate the research enterprise established hereunder. Dakota Lakes does hereby agree to release SDSU from all liability for actions taken in response to the failure of state or appropriations. In the event that SDSU should terminate its operations at the research farm in response to such action, this agreement shall automatically terminate. Insofar as is practical, SDSU agrees to provide notice to Dakota Lakes of its intent to terminate the agreement hereunder by April first of the calendar year in which the termination will become effective. The parties shall promptly meet to discuss any matters incidental to the termination, including the transfer of title to personal property.

7. HOLD HARMLESS AND INDEMNIFICATION

Dakota Lakes agrees to hold harmless and indemnify SDSU, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as a result of performing services hereunder. This section does not require Dakota Lakes to hold harmless and indemnify against claims or damages arising solely from acts or omissions of the State of South Dakota, the South Dakota Board of Regents, South Dakota State University, Experiment Station, its officers or employees.

8. NON-DISCRIMINATION

The parties agree not to discriminate or harass individuals on the basis of sex, race, color, creed, national origin, ancestry, citizenship, gender, gender identification, transgender, sexual orientation, religion, age, disability, genetic information, U.S. veteran status, or any other status that may become protected under U.S. and South Dakota law against discrimination.

9. DEBARMENT, SUSPENSION AND INELIGIBILITY

Dakota Lakes certifies that neither Dakota Lakes nor its principals are presently debarred, suspended, proposed for debarment or suspension, or declared ineligible from participating in transactions by the federal, state or local government.

10. COMPLIANCE

Dakota Lakes will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this agreement, and will be solely responsible for obtaining current information on such requirements.

11. SEVERABILITY

In the event that any court of competent jurisdiction shall hold any provision of this agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

12. COMPLETE AGREEMENT

This agreement contains the entire agreement of the parties and is subject to and will be construed under the laws of the State of South Dakota. This agreement may be amended or supplemented only in writing signed by both properly authorized representatives of each of the parties hereto.

13. RELATIONSHIP OF PARTIES

Nothing contained herein shall be deemed or construed by anyone as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto. The parties remain responsible for the employment of and workers compensation for their own respective employees.

14. CORPORATE STATUS

Dakota Lakes certifies that it is in good corporate standing, including not-for-profit status, and has not been debarred from participation in state or federal contracts. Dakota Lakes further certifies that it will maintain good corporate standing including not-for-profit status, and eligibility to participate in state or federal contracts throughout the term of this agreement and will take all required efforts to maintain said statuses.

EXHIBIT A

The property involved in this agreement includes:

Parcel 1: 463 acres more or less.

NE $\frac{1}{4}$ (Less Lot H-1 in W $\frac{1}{2}$ NE $\frac{1}{4}$ and less Lot H-1 in NE $\frac{1}{4}$ NE $\frac{1}{4}$);

NW $\frac{1}{4}$ (less Lot H-1);

E $\frac{1}{2}$ W $\frac{1}{4}$; NW $\frac{1}{4}$ SW $\frac{1}{4}$;

And that portion of Lot 1 not deeded to the USA by a deed dated

July 29, 1963, and recorded in Book 259, page 467, more

particularly described as follows: That portion of Lot 1 of Section 32, Township 110 North, Range 76 West of the 5th P. M., lying northerly of the Missouri River, described as follows:

Beginning at the Southeast corner of said Lot 1, thence Westerly along the south line of said lot 1, a distance of 330 feet, thence North 45 degrees west to the west line of said Lot 1, thence Northerly along the West line of said Lot 1, to the Northwest corner thereof, thence Easterly along the north line of said Lot 1 to the Northeast corner thereof, thence Southerly along the east line of said Lot 1 to the point of beginning.

All of the above described property is located in Section 32, Township 110 North, of Range 76, west of the 5th P.M., Hughes County, South Dakota.

Parcel 2: 350 acres more or less.

All of Lots 3 and 4, S $\frac{1}{2}$ of the NW $\frac{1}{4}$, SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ and the SW $\frac{1}{4}$, less Highway Right of Way.

All of the above property is located in Township 110 North, Range 76 West of the 5th P.M., Hughes County South Dakota-Section 5.

EXHIBIT B

Sustainability standards and goals at Dakota Lakes Research Farm 2016

- Landscaping and grounds plantings will use native species to every extent possible. These should be chosen in a manner that negates to every extent possible the need for supplemental water, fertilizer, and pesticide applications.
- Only low-disturbance seeding techniques will be used.
- Integrated pest management techniques will be used in all instances to avoid unnecessary use of pesticides.
- The station will be fossil fuel neutral by 2026.
- Livestock will be integrated to minimize nutrient export from the property.
- Livestock will be managed in a manner that does not entail a CAFO designation.
- Fertilizer applications will be made in a manner that minimizes losses to ground and surface water. Research treatments excepted.
- Border areas and road ditches will be managed to provide habitat for native flora and fauna.
- Soil test levels will be managed at the lowest level that produces optimum yields. With the exception of areas used for research in determining optimum levels. This will reduce the potential of nutrient movement to ground and surface waters.
- No annual crop residue will be removed from fields except in cases where this is part of an approved research program. Fields may be grazed using high-intensity, short-duration methods. Perennial crop residue may be removed in special cases if the nutrients are replaced.