

SOUTH DAKOTA BOARD OF REGENTS

Academic and Student Affairs
Consent

AGENDA ITEM: 4 – L
DATE: December 5-7, 2017

SUBJECT

Joint Powers Agreement – SDSU & SD Department of Agriculture

CONTROLLING STATUTE, RULE, OR POLICY

[BOR Policy 5:3.](#)

BACKGROUND/DISCUSSION

The South Dakota Department of Agriculture (DOA) has contracted with South Dakota State University (SDSU) for a number of years to establish and continue an Extension Forester position at SDSU within the Cooperative Extension Service. The previous Joint Powers Agreement ran from October 1, 2014 through September 30, 2017. The current agreement runs from October 1, 2017 through September 30, 2020. DOA will provide up to \$80,000 to SDSU in FY18, with SDSU providing non-federal matching funds, as provided for in Exhibit A of Attachment I.

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

IMPACT AND RECOMMENDATION

The attached JPA will allow SDSU to continue to receive funding from DOA to maintain the Extension Forester position within the Cooperative Extension Service at SDSU.

Staff recommends approval.

ATTACHMENTS

Attachment I – Joint Powers Agreement

DRAFT MOTION 20171205__4-L:

I move to approve the Joint Powers Agreement set forth in Attachment I.

SOUTH DAKOTA DEPARTMENT OF AGRICULTURE
STATE OF SOUTH DAKOTA
JOINT POWERS AGREEMENT

AGREEMENT made and entered into by and between the South Dakota Department of Agriculture, an agency of the State of South Dakota, 523 East Capitol Ave., Pierre, SD 57501-3182, (hereinafter "SDDA") and the South Dakota State University, Brookings for the SDSU Cooperative Extension Service of Ag Hall 154, Box 2207D, Brookings, SD 57007 (hereinafter "SDSU").

I
GENERAL PROVISIONS

The SDDA hereby enters into this Agreement for services with SDSU in consideration of and pursuant to the terms and conditions set forth herein, for the purpose of establishing and continuing a position of an Extension Forester at SDSU within the Cooperative Extension Service.

1. SDSU and SDDA will perform those services described in the Work Plan, attached hereto as Exhibit A and by this reference incorporated herein.

2. SDSU services under this Agreement shall commence on October 1, 2017, and end on the 30th Day of September, 2020, unless terminated pursuant to terms hereof.

3. SDSU will have access to SDDA equipment, supplies, and facilities as needed and approved by SDDA.

4. SDDA will make payment for services as provided in the annual work plan. Payments will be made upon submission of non-cash vouchers from SDSU. Documentation of expenditures is necessary to show that the required match for federal funds has been met by SDSU.

5. SDSU agrees to report to the SDDA any event encountered in the course of performance of this Agreement which results in injury to a person or property of third parties, or which may otherwise subject SDSU or the SDDA to liability. SDSU shall report any such event to the SDDA immediately upon discovery. SDSU's obligation under this section shall only be to report the occurrence of any event to the SDDA and to make any other report provided for by their duties or applicable law. SDSU's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the SDDA under this section shall not excuse or satisfy any obligation of SDSU to report any event to law enforcement or other entities under the requirements of any applicable law.

7. This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event SDSU breaches any of the terms or

conditions hereof, this Agreement may be terminated by the SDDA at any time with or without notice. If termination for such a default is effected by the SDDA, any payments due to SDSU at the time of termination may be adjusted to cover any additional costs to the SDDA because of SDSU's default. Upon termination the SDDA may take over the work and may award another party an agreement to complete the work under this Agreement. If after the SDDA terminates for a default by SDSU it is determined that SDSU was not at fault, then SDSU shall be paid for eligible services rendered and expenses incurred up to the date of termination.

8. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the SDDA. Termination for any of these reasons is not a default by the SDDA nor does it give rise to a claim against the SDDA.

9. This Agreement may not be assigned without the express prior written consent of the SDDA. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

10. This Agreement shall be governed by and construed in accordance with the laws of the SDDA of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

11. SDSU 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.

12. SDSU may not use subcontractors to perform the services described herein without the express prior written consent of the SDDA. SDSU will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the SDDA, and to provide insurance coverage for the benefit of the SDDA in a manner consistent with this Agreement. SDSU will cause its subcontractors, agents, and employees to comply, with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

13. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to Gregory Josten on behalf of the SDDA, and by Dr. James Doolittle, on behalf of SDSU, or such authorized designees as either party may

from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

14. 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.

15. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

II. JOINT POWERS

A. The SDDA and SDSU agree to the following provisions pursuant to the Joint Powers Act (SDCL 1-24):

1. This Agreement does not establish a separate legal entity as contemplated by SDCL 1-24-5. The cooperative undertaking described herein will be financed and conducted under the provisions of this agreement by the SDDA and SDSU respectively. Each party has responsibilities under the terms of this Agreement and no joint board or joint administrator will be used. Purchase and maintenance of equipment used to fulfill the agreement will be undertaken by the respective agencies as described herein. No real property will be purchased to use for this Agreement.
2. A copy of this Agreement will be filed by the SDDA, with the Attorney General and the Legislative Research Council not more than 14 days after execution as required by SDCL 1-24-6.1
3. Financing required by this Agreement will come from regular annual budgets.
4. All parties must comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352, 42 U.S.C. 2000d) and, in accordance with Title VI of that act, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.
5. Nothing in this Agreement shall be construed as an indemnification by one party of the other for liabilities of a party or third person for property loss, or damage, or death, or personal injury arising out of the performance of

this Agreement. Any liabilities or claims for property loss, or death, or personal injury by a party or its agents, employees, contractors or assigns or by third persons, arising out of and during this agreement shall be determined according to applicable law.

In Witness Whereof, the parties signify their agreement effective the date above first written by the signatures affixed below.

SDDA

BY: _____ Date: _____
Mike Jaspers, Secretary

AND BY: _____ Date: _____
William Smith, Division Director

SDSU

BY: _____ Date: _____
James Doolittle, Associate VP Research Assurance and
Sponsored Programs

- State Agency Coding (MSA Center) 03228.
- State Agency MSA Company for which contract will be paid 2019.
- Object/subobject MSA account to which voucher will be coded 5204140.
- Name and phone number of contact person in State Agency who can provide additional information regarding this contract Greg Josten, 605-394-2279.

EXHIBIT A

SOUTH DAKOTA COOPERATIVE EXTENSION
WORK PLAN
FOR AN EXTENSION FORESTER

This annual work plan for the extension forestry position assigned to Dr. John Ball will be in effect from October 1, 2017 until September 30, 2018 and supersedes any previous work plans or addendums to the Joint Powers Agreement (JPA) between the Division of Resource Conservation and Forestry (RCF) and the Cooperative Extension service (SDSU).

This annual work plan also addresses the financial assistance that will be provided by RCF in support of the extension forestry efforts provided by SDSU within the parameters of the work plan listed below.

1. Financial Assistance to be Provided By SDDA

- a. RCF agrees to provide up to \$80,000 in federal funds to SDSU.
- b. RCF will make payments only on a reimbursable basis.
- c. RCF will make quarterly reimbursements upon receipt of an appropriate reimbursement claim with supporting documentation.

2. Match Requirements for SDSU

- a. SDSU must match all funds provided by RCF. Each dollar provided by RCF must be matched by non-federal funds or qualifying in-kind expenses incurred by SDSU.
- b. SDSU must provide adequate documentation of the required match before payment is made.
- c. SDSU may charge an administrative fee or indirect charge equal to the indirect rate allowed by the United States Forest Service for federal grants provided to RCF. This rate is negotiated by RCF each year with the United States Forest Service. For this work plan, **the indirect rate is 26.90 percent**. The difference between the University's administrative fee and the allowed indirect rate for RCF may be used as in-kind match.
- d. SDSU must provide quarterly progress and accomplishment reports before reimbursement claims will be paid.
- e. SDSU must submit final reimburse claims by no later than September 30, 2018.

3. Anticipated Work Plan for the Extension Forester Position – based on 50% of John's work year (130 workdays).

- a. **General Forest Health Assistance to RCF** (*Anticipated workload – 20 workdays*)
 - i. Provide advice and assistance to the Forest Health (FH) Administrator and the State Forester about insect and disease issues within the state.
 - ii. Monitor potential and existing insects and diseases that may affect trees in South Dakota.
 - iii. Assist in the planning and development of forest insect and disease suppression efforts as directed by the State Forester.

- iv. Conduct appropriate reviews of applicable research that will enable RCF to attack infestations in the most effective manner.
- b. **Western Bark Beetle (WBB) on Private Lands** (*Anticipated workload – 5 workdays*)
 - i. Conduct workshops and public forums on WBB at the request of RCF
 - ii. Assess the extent and severity of WBB outbreaks
 - iii. Conduct mortality studies on suppression techniques recommended by RCF
 - iv. Attend and participate in public forums, hearings, and other events as a Forest Health Specialist for RCF as directed by the State Forester.
- c. **Custer State Park (CSP) WBB Monitoring** (*Anticipated Workload – 5 workdays*)
 - i. Assist RCF to conduct monitoring of beetle activity in CSP and prepare a written report of findings (*Workload – Schedule 2 trips to CSP*)
 - ii. Each field trip should be scheduled with the FH Administrator and SDSU at least 4 weeks in advance.
- d. **Emerald Ash Borer Project (EAB)** (*Anticipated Workload – 20 workdays*)
 - i. Assist RCF with maintaining the strategic suppression plan to suppress any EAB infestations within the state.
 - ii. Assist RCF with planning one EAB readiness field exercise in a community with an EAB readiness plan.
 - iii. Assist RCF with implementing the EAB readiness plans as necessary.
- e. **Urban Forestry Volunteer Coordinator for RCF** (*Anticipated Workload – 5 workdays*)
 - i. Continue to conduct a statistically valid urban tree inventory system for the entire state using volunteers from the local communities.
 - ii. Assist division personnel to conduct regional tree care workshops.
- f. **Training Sessions, Workshops, and Conferences** (*Anticipated Workload – 15 workdays*)
 - i. Assist RCF to plan and conduct forest health training sessions for RCF personnel and others as directed by the State Forester.
 - ii. Assist RCF to plan and conduct training sessions on forest management, agro-forestry, and other topics as directed by the State Forester.
- g. **Insect and Disease Identification and Diagnostic Services** (*Anticipated Workload – 15 workdays*)
 - i. Review I&DC reports, e-samples, and samples submitted by RCF personnel or staff and follow-up with a written report on each submitted sample (*Anticipate 36 samples*). Copies of the written report should be provided to the Forest Health Administrator.
 - ii. Provide lab diagnostics when needed to identify a sample (*Anticipate 12 samples*).
 - iii. Conduct an on-site field investigation when identification cannot be made from a sample (*Anticipate 20 field investigations*). All field visits will be approved and scheduled through the Forest Health Administrator.
- h. **Publish Pest Alerts and Pest Bulletins** (*Anticipated Workload – 35 workdays*)
 - i. Publish pest updates weekly throughout the growing season and at least bi-weekly throughout the rest of the year (*Workload – 21 updates – 10 workdays*).

- ii. Review existing pest bulletins and update 12 per year that are older than 5 years (*Workload 12 bulletins – 10 workdays*).
- iii. Develop new pest bulletins on common tree and shrub pests that can be used by the general public and other natural resource professionals (*Workload – 10 workdays*).
- iv. Review any pest bulletins prepared by RCF personnel (*Anticipated Workload – 5 workday*).

4. **Reporting Requirements** (*Anticipated Workload – 10 workdays*)

- a. Prepare and submit a detailed monthly report to the State Forester and FH Administrator on all activities covered by this work plan. The report will consist of a short narrative and a completed spreadsheet report provided by the FH Administrator.
- b. Prepare and submit annual federal reports to the State Forester, Greg Josten, and the Forest Health Supervisor as requested. RCF will submit all federal reports to the USFS.
- c. Provide an updated weekly schedule (each Friday) via email to the FH Administrator and the State Forester.
- d. Participate in weekly staff conference calls, division meetings, tours, official program reviews, and other meetings as directed by the State Forester.

5. **Recognition**

SDSU agrees to provide recognition of the contribution RCF has made to an extension forester position within SDSU by acknowledging all work accomplished through this work plan. Work performed by SDSU outside of the work plan are not to be attributed to RCF without prior authorization.

6. **Signatures**

The parties signify their agreement to this work plan by the signatures affixed below.

SDDA

BY: _____ Date: _____
William Smith, Director

SDSU

BY: _____ Date: _____
James J. Doolittle, Associate VP for Research, South Dakota State University

- State Agency Coding (MSA Center) - 03228.
- State Agency MSA Company for which contract will be paid 2019.
- Object/Sub-object MSA account to which voucher will be coded 5204140.
- Name and phone number of contact person in State Agency who can provide additional information regarding this contract Greg Josten, 605-394-2279.