

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

AGENDA ITEM: 7 – N

DATE: May 9-11, 2017

SUBJECT: South Dakota Soybean Research and Promotion Council Sponsorship Agreement – SDSU Center of Excellence in Soybean Research

South Dakota State University requests Board approval of the sponsorship agreement between SDSU and the South Dakota Soybean Research and Promotion Council (SDSPRC), set forth in Attachment I, to establish a Center of Excellence in Soybean Research in the new greenhouse facilities under construction on campus. The provisions of the sponsorship agreement mirrors the verbiage accepted by SDSRPC’s board of directors and that were contained in the project proposal, which cleared federal compliance review by the United Soybean Board. The key provisions of the sponsorship are as follows:

1. SDSRPC will provide \$1,000,000 to SDSU for the Center, which will be paid in three installments, with \$334,000 paid upon execution of the sponsorship agreement; \$333,000 paid on June 30, 2017; and \$333,000 paid on September 30, 2017;
2. SDSU will dedicate 2,100 square feet, or 20% of the total bed and greenhouse space of the new greenhouse, for soybean research for 30 years from the date of the sponsorship agreement, which research will be prioritized, reviewed and funded by the SDSRPC and affiliated organizations;
3. Attribution of the sponsorship will be prominently displayed in the head house, with additional recognition displayed at the entrance of each SDSRPC sponsored laboratory space within the greenhouse; and
4. SDSU’s College of Agriculture and Biological Sciences will pay 50% of the usage fees associated with use of the Center by SDSRPC sponsored projects during years 1-5 of the sponsorship agreement and 25% of the usage fees during years 6-10, after which the entirety of the usage fees associated with its use of the Center will be charged to sponsored projects.

Background

(Continued)

DRAFT MOTION 20170509_7-N: I move to approve the \$1,000,000 sponsorship of the South Dakota Soybean Research and Promotion Council contained herein and authorize the Executive Director to execute the sponsorship agreement in substantially similar form to that set forth in Attachment I.

In the 2012 legislative session, HB 1051 authorized the Board of Regents to contract for the construction of a new head house and greenhouse at South Dakota State University. Funds totaling \$2.7 million were raised, in addition to \$1.1 million of HEFF funds; total fund-raising needed was \$4.8 million. Early in fundraising the SDSRPC requested a proposal for contribution to the greenhouse project. The SDSRPC recognized that new modern greenhouse space for research and teaching is important to enabling SDSU to address their needs and concerns for research and education that will strengthen the soybean economic sector. The SDSRPC signaled its interest to contribute \$1 million toward establishing stable long-term greenhouse space for research and education.

The SDSRPC is South Dakota's soybean checkoff management organization. The checkoff assesses soybean growers 1% of their soybean sales. The funds are divided between the national checkoff body, United Soybean Board (USB) and SDSRPC. The SDSRPC manages the state-focused promotion, research and education related to the soybean industry sector. The USB ensures compliance with the federal act and order which enables the soybean checkoff program and is administered by the United State Department of Agriculture (USDA) and manages national soybean promotion, research and education activities.

The SDSRPC awards approximately \$1 million in research and education grants annually to SDSU to enable SDSU's service to the industry. The SDSRPC maintains close communication and cooperation with SDSU in order to inform and enable SDSU agriculture research and education undertakings. Additional research and education grant and contract funds are obtained annually from the national and regional organizations as well as from the USDA National Institute of Food and Agriculture (USDA NIFA).

The SDSRPC recognized that the long-term ability of SDSU to serve the research and education needs of the South Dakota soybean economy demands modern greenhouse space availability for the long-term. However, during the fundraising period, the USDA and USB implementation of the soybean checkoff act and order transitioned away from enabling limited support for research and education construction to funding projects only.

A project was developed to establish a center of excellence dedicated to soybean research with long term stability. The project establishes a Center of Excellence in Soybean Research for 30 years, which coincides with the useful life of the new greenhouse and the long term stability of soybean research intended by SDSU. The Center of Excellence comprises 2,100 square feet of greenhouse bed space in the new greenhouse dedicated to soybean research. Funding sources for this research will come from SDSRPC, USB, USDA NIFA and other agriculture research funding entities. SDSU intends to remain active in soybean research for several decades in order to develop innovations and solve problems to contribute to the economic vitality of the soybean sector throughout the coming decades. SDSU expects that the soybean industry will remain a prominent sector for the next several decades.

A Center of Excellence in Soybean Research will increase the profile and research funding competitiveness of SDSU scientists. It will provide a focal point for the ongoing relationship between SDSU and SDSRPC in which SDSRPC communicates its research needs to SDSU and funds nearly 5% of the research grants and contracts annually in the SDSU College of Agriculture and Biological Sciences. The \$1 million proceeds of the SDSRPC Center of Excellence sponsorship will enable the College of Agriculture and Biological Sciences to internally reimburse the \$1 million of new greenhouse construction costs incurred by the college.

Center for Excellence in Soybean Research at South Dakota State University

This Agreement is by and between South Dakota Soybean Research and Promotion Council, a 501(c)(3) non-profit corporation located at 5000 South Broadband Lane, Suite 100, Sioux Falls, South Dakota (“SDSRPC”) and South Dakota State University (“University” or “SDSU”), a public institution of higher education under the control and management of the South Dakota Board of Regents (“SDBOR”). The purpose of the Agreement is to define the roles, relationships and obligations of both parties for a Center for Excellence in Soybean Research at the University.

WHEREAS, the University is South Dakota’s designated Land-Grant University established under South Dakota Codified Laws Ch. 13-58;

WHEREAS, the mission of the University defined by South Dakota Board of Regents Policy 1:10:2 is to serve students and clients through teaching, research and extension activities;

WHEREAS, the University is constructing a new head house and greenhouse complex on the north side of campus in support of that mission;

WHEREAS, the University proposed that the South Dakota Soybean Research and Promotion Council sponsor a Center for Excellence in Soybean Research at South Dakota State University in order to further research and innovation related to soybeans;

WHEREAS, the soybean industry and the South Dakota Soybean Research and Promotion Council desire to sponsor a Center for Excellence in Soybean Research at the University to strengthen the soybean industry by generating new knowledge and technologies for soybean production; and

WHEREAS, the parties desire to collaborate to foster an environment of intellectual and scientific innovation to enhance soybean related knowledge and technologies;

NOW THEREFORE, in consideration of the promises hereof and the mutual covenants and agreements contained herein, the parties hereto agree as follows:

- I. Center for Excellence in Soybean Research at South Dakota State University (“Center”):
 - a. The University is building a new head house and greenhouse complex, built and operated by SDSU on the north side of campus.
 - b. The University will dedicate 2,100 square feet, or twenty percent (20%) of total bed and bench greenhouse space as calculated by the square footage of the new greenhouse complex, for soybean research for thirty (30) years from the date of final execution of this Agreement for the Center.
 - c. SDSRPC will provide one million dollars (\$1,000,000) to the University for the Center. SDSRPC will make three (3) payments as follows: 1) \$334,000 at execution of this Agreement; 2) \$333,000 on June 30, 2017; and 3) \$333,000 on September 30, 2017. The University will invoice the amount due thirty (30) days prior to the second and third payment dates.
- II. Center Management and Use:

- a. The Center will be operated and managed as part of the University College of Agriculture and Biological Sciences and used to support the mission of the University.
- b. The Center will foster an environment of intellectual and scientific innovation.
- c. Collaborative externally funded research addressing the research priorities of the SDSRPC, United Soybean Board, and North Central Soybean Research Programs may occur in the Center pursuant to separate written agreements of the University, participants, and funding entities in accordance with University policies and procedures.
- d. Soybean checkoff funds may be obtained and used for specific projects and programs in accordance with the applicable program protocols, statutes, and regulations.
- e. In recognition of SDSRPC's sponsorship, the University College of Agriculture and Biological Sciences will pay usage fees for SDSRPC use of the Center on behalf of SDSRPC according to the proposed schedule: 50% during years 1-5 of the agreement and 25% during years 6-10. Full usage fees will be applied to SDSRPC contracts funded in year 11 and will continue throughout remaining term of the 30-year Center of Excellence agreement. This usage fee coverage applies only to research funded by the SDSRPC and does not extend to research funded by other soybean checkoff organizations or other sponsors.
- f. University will provide general reports of projects supported by the SDSRPC in the Center annually.

III. Project Objectives and how they will positively affect SD Soybean Farmers:

- a. In order for South Dakota soybean farmers to benefit from increased availability of research-based solutions to soybean production challenges, the Center for Excellence in Soybean Research at South Dakota State University has five (5) objectives:
 1. Provide new knowledge and technologies for South Dakota soybean farmers and the soybean industry. Collaborative and multi-state research will be conducted within the Center to solve current and emerging soybean production problems prioritized, reviewed, and funded annually by the South Dakota Soybean Research and Promotion Council, North Central Soybean Research Program, and United Soybean Board.
 2. Impact South Dakota farmers by delivering practices and technologies that improve soybean yield and the profitability of soybean production. The Center for Excellence in Soybean Research will enhance the quality and accuracy of SDSU's management recommendations, enabling farmers to sustainably increase soybean yield despite South Dakota's variable climatic conditions.
 3. Guarantee a minimum of 2,100 square feet of the north greenhouse complex is allocated annually and exclusively for soybean research aimed at solving soybean production problems prioritized, reviewed, and funded annually by soybean checkoff organizations including but not limited to the SDSRPC, North Central Soybean Research Program, and the United Soybean Board.

4. Ensure that research for the benefit of the South Dakota soybean industry is ongoing over the 30-year life of the Center for Excellence in Soybean Research. Research conducted within the Center will include that which has been prioritized, reviewed and funded annually by soybean checkoff organizations including the SDSRPC, North Central Soybean Research Program, and the United Soybean Board.
5. Ensure the vitality and resiliency of soybean farming in South Dakota. The Center for Excellence in Soybean Research will support M.S. and Ph.D. level training of students to focus on soybean science as a long-term strategy for soybean yield improvement, yield stability, and profitability of production.

IV. Signage and Attribution:

- a. Attribution of USDA soybean checkoff and SDSRPC sponsorship of the Center will be provided throughout the 30-year lifespan of the Center. Attribution, identifying the contribution, will be prominently displayed in the head house using a medium that will last the lifespan of this Agreement. Additional recognition will be displayed at the entrance of each SDSRPC sponsored laboratory space within the greenhouse using the SDSRPC logo, the United Soybean Board logo and a newly created logo for the Center for Excellence in Soybean Research. Publications, presentations and all other outputs of research conducted within the Center will contain recognition that the work was conducted within the Center and made possible by the soybean checkoff and SDSRPC. Attribution for sponsorship of the Center will be prominently displayed on the iGrow website. Attribution and signage will be in accordance with University policies and procedures.
- b. Termination of Signage and Attribution. In addition to any rights and remedies available at law, the SDBOR may terminate this Agreement and all rights and benefits hereunder, including terminating the Naming:
 1. In the event of any default in payment of the funds as provided in this Agreement, or in the unlikely event the SDBOR determines in its reasonable and good faith opinion that circumstances have changed such that the attribution chosen would adversely impact the reputation, image, mission or integrity of the State, University or the SDBOR, in the event of a continued association with and the continuation of the Naming provided for herein.
 2. Upon any such termination of this Agreement and/or the attribution hereunder, the SDBOR, and University shall have no further obligation or liability and shall not be required to return any portion of amounts already paid. The SDBOR and University, however, may in their sole and absolute discretion determine an alternative recognition for the portion of the funds already received.
- c. Modification of Naming. If, during the useful life of the facility or Center and during the term of this Agreement, the facility or Center is transferred or conveyed from the University, closed, deconstructed, destroyed or severely damaged, significantly

renovated, upgraded, or modified; relocated, or replaced, then the attribution and signage will cease. In such event, however, SDSRPC, if available, and in consultation with and as mutually agreed by the Board and University, will have the right, for no additional payment, to have another available and equivalent University Center named after the SDSRPC.

- d. **Publicity.** For purposes of publicizing the sponsorship and the attribution and signage, University will have the right, without charge, to use the logos of SDSRPC and photograph the individuals representing SDSRPC and use the names, likenesses, and images of the individuals in photographic, audiovisual, digital or any other form of medium (the "Media Materials") and to use, reproduce, distribute, exhibit, and publish the Media Materials in any manner and in whole or in part, including in brochures, website postings, informational and marketing materials, and reports and publications worldwide in any medium describing University's development, educational, research, and outreach activities.

V. **Terms and Conditions:**

- a. **Relationship of Parties.** The University shall have control over the Center and any activities performed under this Agreement. The University's relationship to the SDSRPC under this Agreement shall be that of independent contractor and not as an agent, joint venturer, or partner of sponsor. Neither party has the authority or right to bind the other party or incur any liability on behalf of the other party.
- b. **Fiscal Management.** The University shall maintain complete and accurate accounting records in accordance with accepted accounting practices for institutions of higher education. These records shall be available for inspection, review, and audit at reasonable times by the SDSRPC, or its duly authorized representative, at SDSRPC's expense, for three (3) years following the end of the University's fiscal year (ending June 30 of any given year) in which such costs are incurred.
- c. **Lobbying.** No funds provided under this Agreement shall be used for lobbying purposes.
- d. **Waiver.** A Party's failure to enforce any of its rights herein may not be construed as a waiver of such rights; nor may one or more instances of non-enforcement be construed as a continuing waiver or as a waiver in other instances.
- e. **Severability.** If any provision of this Agreement is rendered invalid or unenforceable by any law or regulation, or declared null and void by any court of competent jurisdiction, that part will be reformed, if possible, to conform to law and if reformation is not possible, that part will be deleted and the remainder of the provisions of this Agreement will, subject to this paragraph, remain in full force and effect, unless enforcement of this Agreement without the invalid or unenforceable clause would be grossly inequitable under the circumstances or would frustrate the primary purpose of this Agreement.
- f. **Force Majeure.** A party will not be liable to the other party for inability to perform any of its obligations under this Agreement when its inability is the result of an act of God, earthquake, epidemic, order of civil or military authorities, flood, fire, war, civil

disturbance, strike, act of terror, or other natural cause over which the Party has no control. A party failing to perform an obligation under this Agreement because of force majeure must give the other party written notice of the force majeure as soon as possible after its occurrence. A party whose performance is excused because of force majeure must resume performance as soon as reasonably possible upon cessation of the force majeure.

- g. Funding Out. Parties acknowledge that legislative action may require curtailment or termination of some or all of the University’s research and educational programs. Parties acknowledge further that the University is obligated to respond to such legislative action and may determine that it is necessary to curtail or terminate this program. Parties also acknowledge termination or failure to perform terms of this Agreement in response to legislative action will not be deemed a breach of this Agreement.
- h. Assignment. This Agreement and the rights and benefits hereunder may not be assigned by either party without the prior written consent of the other party, which consent shall be in the sole and absolute discretion of the non-assigning party.
- i. Entire Agreement. This Agreement constitutes the entire agreement of the parties with regard to the matters referred to herein, and supersedes all prior oral and written agreement, if any, of the parties in respect hereto. This Agreement may not be modified or amended except by written agreement executed by both parties hereto. The captions inserted in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.
- j. Compliance with Laws. In performance of the work, the parties shall comply with all applicable international, national, regional and local laws, codes, regulations, rules and orders.
- k. This Agreement will be governed by and construed in accordance with the laws of the State of South Dakota with venue in the courts of South Dakota.
- l. This Agreement and the recognition and naming provided for herein are subject to the approval by the Board and this Agreement will not be effective unless and until approved by the Board.

ACCEPTED AND AGREED TO:

South Dakota Soybean Research and Promotion Council (“SDSRPC”)

South Dakota Board of Regents (“SDBOR”)

By: _____

By: _____