

SOUTH DAKOTA BOARD OF REGENTS

Academic and Student Affairs
Consent

AGENDA ITEM: 4 – J (1)
DATE: August 4-5, 2020

SUBJECT

Extension Forestry Joint Powers Agreement – SDSU & SD Department of Agriculture

CONTROLLING STATUTE, RULE, OR POLICY

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

BACKGROUND / DISCUSSION

The South Dakota Department of Agriculture (SDDA) 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 current Joint Powers Agreement, which was originally approved by the Board at its [December 2017](#) meeting, runs through September 30, 2020. The Joint Powers Agreement (JPA) set forth in Attachment I will allow the parties to continue their relationship, with the new JPA spanning October 1, 2020 through September 30, 2023. SDDA will provide up to \$80,000 to SDSU in year one (October 1, 2020 – September 30, 2021) with SDSU providing non-federal matching funds, as provided for in Exhibit A to 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 SDDA to maintain the Extension Forester position within the Cooperative Extension Service at SDSU.

Staff recommends approval.

ATTACHMENTS

Attachment I – Extension Forestry JPA

DRAFT MOTION 20200804_4-J(1):

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



**SOUTH DAKOTA DEPARTMENT OF AGRICULTURE
RESOURCE CONSERVATION & FORESTRY
DIVISION
AND THE SOUTH DAKOTA STATE
UNIVERSITY COOPERATIVE
EXTENSION SERVICE - EXTENSION FORESTER
JOINT POWER AGREEMENT**

This Agreement is 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

A. SDDA hereby enters into this Agreement for services with SDSU in consideration of and pursuant to the terms and conditions set forth herein.

1. SDDA and SDSU will perform those services described in the Work Plan, attached hereto as Exhibit A and by this reference incorporated herein. The Work Plan will be reviewed and approved annually by the above mentioned parties.

2. Services under this Agreement shall commence on October 1, 2020 and end on September 30, 2023, unless sooner terminated pursuant to the 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.

6. This Agreement may be terminated by any of the above listed parties hereto upon thirty (30) days written notice. In the event that SDSU breach any of the terms or conditions hereof, this Agreement may be terminated by SDDA at any time with or without notice. If termination for such a default is effected by SDDA, any payments due to SDSU at the time of termination may be adjusted to cover any additional costs to SDDA because of SDSU's default. Upon termination SDDA may take over the work and may award another party an agreement to complete the work under this Agreement. If after 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.

7. 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 SDDA. Termination for any of these reasons is not a default by SDDA nor does it give rise to a claim against SDDA.

8. This Agreement may not be assigned without the expressed prior written consent of 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.

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

10. 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.

11. SDSU may not use subcontractors to perform the services described herein without the express prior written consent of 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.

12. 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 SDDA, and 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.

13. 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.

14. 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. 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 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 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.

SDSU

BY: _____ Dated this __ Day of _____, 2020.
James Doolittle, Associate VP Research Assurance and Sponsored Programs.

SDDA

BY: _____ Dated this __ Day of _____, 2020.
William Smith, Division Director
SD Department of Agriculture



**SOUTH DAKOTA DEPARTMENT OF AGRICULTURE
RESOURCE CONSERVATION & FORESTRY DIVISION
AND SOUTH DAKOTA STATE UNIVERSITY
SOUTH DAKOTA COOPERATIVE EXTENSION
WORK PLAN FOR AN EXTENSION FORESTER
EXHIBIT A**

This annual work plan for the extension forestry position assigned to Dr. John Ball is in effect from October 1, 2020 until September 30, 2021 and supersedes any previous work plans or addendums to the Joint Powers Agreement (JPA) between the South Dakota Department of Agriculture, Resource Conservation and Forestry Division (SDDA) and South Dakota State University, Cooperative Extension Service (SDSU).

This annual work plan also addresses the financial assistance that will be provided by SDDA 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. SDDA agrees to provide an amount not to exceed \$80,000 in federal funds to SDSU.
- b. SDDA will make payments only on a reimbursement basis.
- c. SDDA 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 SDDA. Each dollar provided by SDDA 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 SDDA. This rate is negotiated by SDDA each year with the United States Forest Service. For this work plan, **the indirect rate is 17.5 percent**. The difference between the University's administrative fee and the allowed indirect rate for SDDA 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 reimbursement claims by no later than October 31, 2021.

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

- a. **General Forest Health Assistance to SDDA** (*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 SDDA 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 SDDA
 - ii. Assess the extent and severity of WBB outbreaks
 - iii. Attend and participate in public forums, hearings, and other events as a Forest Health Specialist for SDDA as directed by the State Forester.
- c. **Custer State Park (CSP) WBB Monitoring** (*Anticipated Workload – 5 workdays*)
 - i. Assist SDDA to conduct monitoring of beetle activity in CSP and prepare a written report of findings to be submitted to the State Forester and CSP (*Workload – Schedule 2 trips to CSP*)
 - ii. Each field trip should be scheduled with the FH Administrator and SDSU at least 2 weeks in advance.
- d. **Emerald Ash Borer Project (EAB)** (*Anticipated Workload – 20 workdays*)
 - i. Assist SDDA to maintain the state readiness plan to slow the spread of any EAB infestations within the state.
 - ii. Assist SDDA to plan one EAB readiness field exercise in a community with an EAB readiness plan.
 - iii. Assist SDDA to implement the EAB readiness plans as necessary.
 - iv. Conduct workshops and public forums on EAB at the request of SDDA.
 - v. Assess the extent and severity of EAB infestations.
 - vi. Attend and participate in public forums, hearings, and other events as a Forest Health Specialist for SDDA as directed by the State Forester.
- e. **Urban Forestry Volunteer Coordinator for SDDA** (*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 SDDA to plan and conduct forest health training sessions for SDDA personnel and others as directed by the State Forester.
 - ii. Assist SDDA to plan and conduct training sessions on forest management, agro-forestry, and other topics as directed by the State Forester.
 - iii. Workshops may be live and/or recorded and posted on the internet.
- g. **Insect and Disease Identification and Diagnostic Services** (*Anticipated Workload – 15 workdays*)
 - i. Review Insect & Disease reports, e-samples, and samples submitted by SDDA personnel or staff and follow-up with a written report on each submitted sample (*Anticipated Workload – 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 (*Anticipated Workload – 12 samples*).

- iii. Conduct an on-site field investigation when identification cannot be made from a sample (*Anticipate Workload – 20 field investigations*). All field visits will be approved and scheduled through the Forest Health Administrator.

h. Publish Pest Alerts, Pest Bulletins, and communications using other forms of media (*Anticipated Workload – 35 workdays*)

- i. Publish pest updates weekly throughout the growing season and at least bi-weekly throughout the rest of the year (*Anticipated Workload – 21 updates – 10 workdays*).
- ii. Review existing pest bulletins and update 12 per year that are older than 5 years (*Anticipated 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 (*Anticipated Workload – 10 workdays*).
- iv. Review any pest bulletins prepared by SDDA personnel (*Anticipated Workload – 5 workdays*).

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. SDDA will submit all federal reports to the US Department of Agriculture, Forest Service (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 SDDA and USFS has made to the extension forester position within SDSU by acknowledging all work accomplished through this work plan. SDSU must acknowledge SDDA and USFS support in all published media including written, video, audio, electronic or other media developed as a result of this award. Work performed by SDSU outside of the work plan is not to be attributed to SDDA 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 SD Department of Agriculture

SDSU

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