

SOUTH DAKOTA BOARD OF REGENTS

Academic and Student Affairs

AGENDA ITEM: 5 – B
DATE: August 4-5, 2020

SUBJECT

Research Park Reports / USD Discovery District Annual Meeting

CONTROLLING STATUTE, RULE, OR POLICY

[SDCL chapter 5-29](#)

BACKGROUND / DISCUSSION

The USD Discovery District, Research Park at SDSU and Ascent Innovation will present to the Board, providing updates on the current status of operations at the three parks.

The Board’s August meeting will also serve as the time and place for the USD Research Park, Inc. (dba USD Discovery District) annual meeting. The annual meeting is the time and place for the Board to appoint directors to the Board of Directors of the USD Discovery District. The current makeup of the Board of Directors is set forth in Attachment I. There are three terms set to expire in 2020, which are currently occupied by Bob Sutton, Dave Kapaska, and Deb Peters, all of which are seeking reappointment for their second 3-year term. As such, there are three appointments pending before the Board at its meeting, which would become effective upon approval.

Additionally, the USD Discovery District is requesting the Board approve the bylaw amendments set forth in Attachment II, which would have the effect of allowing the Board of Directors to consist of between ten and fifteen members instead of the current fixed membership of eleven.

IMPACT AND RECOMMENDATION

The Board of Directors recommends and requests the Member (BOR) take the following action:

Reappoint Bob Sutton, Dave Kapaska and Deb Peters to serve three year terms on the Board of Directors of the USD Discovery District.

(Continued)

DRAFT MOTION 20200804_5-B:

I move to reappoint Bob Sutton, Dave Kapaska, and Deb Peters to serve three year terms on the Board of Directors of the USD Discovery District, and to approve the Bylaws amendments set forth in Attachment II.

Additionally, the proposed amendment to the bylaws would allow the USD Discovery District to adjust its Board of Directors, as necessary and appropriate, between ten and fifteen directors, which directors would remain subject to the appointment by the Board.

Staff recommends approval.

ATTACHMENTS

Attachment I – USD Discovery District Board of Directors

Attachment II – Proposed USD Discovery District Bylaws Amendments

2020 Discovery District Board of Directors

3 Year Term – Expires 2022

Russell Olson, Sec./Treas., Heartland

Paul Hanson, Sanford USD

Regent Kevin Schieffer, SD BOR

3 Year Term – Expires 2021

Ryan Pidde, Mickelson & Compay

Mayor Paul TenHaken, City of Sioux Falls

Kim Patrick, Sanford Health

3 Year Term – Expires 2020

Bob Sutton, Vice President/Vice Chair, Avera Health

Dr. Dave Kapaska, formerly Avera Health

Deb Peters, SD Association of Healthcare Organizations

Ex-Officio, Voting

Sheila Gestring, Chairman

Dr. Brian Maher, SD BOR

Ex-Officio, Non-Voting

USD Vice Pres. for Research, currently Dan Engebretson

USD Dean of Beacom School of Business, currently Venky Venkatachalam

USD GEAR Center Director, currently (vacant)

Vice Pres. & Dean of USD Community College for Sioux Falls, currently (vacant)

South Dakota Board of Regents General Counsel, currently Nathan Lukkes

Governor's Office of Economic Development, currently (vacant)

BYLAWS
OF
UNIVERSITY OF SOUTH DAKOTA RESEARCH PARK, INC.

ARTICLE I

Location

The principal office of this corporation, at which the general business of this corporation shall be transacted and where the record of this corporation shall be kept, shall be at 414 East Clark Street, Vermillion, South Dakota 57069.

ARTICLE II

Members and Annual Meeting

As provided in the Articles of Incorporation, this corporation has one member with voting rights of this corporation, the South Dakota Board of Regents, which shall hold its annual meeting of the Member pursuant to SDCL 47-23-4 immediately following the first regularly scheduled meeting of the South Dakota Board of Regents in each calendar year, or at such other time and place may be designated from time to time by the Member.

ARTICLE III

Directors

The Board of Directors shall consist of between ten (10) and fifteen (15)~~eleven (11)~~ members. The President of the University of South Dakota and the Executive Director of the South Dakota Board of Regents shall serve as ex officio, voting members of the Board of Directors. The Member or the Board of Directors may also designate other ex officio members without vote as

needed. ~~(a)~~The first full Board of Directors shall be selected as follows: (i) the Articles of Incorporation have identified the first three Directors (all of whom have been nominated by the Member, and one of whom is the President of the University of South Dakota), and (ii) six additional directors shall be appointed by the initial three Directors set forth in the Articles of Incorporation and approved by the Member. These initial eight Appointed Directors and the President of the University of South Dakota as an ex officio Director shall serve a one-year term as the Board of Directors.

Thereafter, all appointed Directors shall be selected by the Member at the annual meeting of the Member from a slate of nominees submitted by the current Board of Directors directly or through a nominating committee under Article VI, Section 1, which may be supplemented by the Member.

Each Director shall hold office until his or her successor has been selected and qualified at the next regular annual meeting of the Board of Directors following the expiration of his term, unless such Director sooner dies, resigns, or is removed from the Board of Directors. After the initial one year term for all directors, three Directors shall be elected to a one (1) year term; ~~three~~ Directors shall be elected to a two (2) year term and three Directors shall be elected to a three (3) year term, so that there are staggered terms. Thereafter, each Director shall serve a three (3) year term, so that each year three terms are expiring. The Member shall approve selections of the remaining Board Members to fill vacancies as they arise upon death, resignation, removal, or expiration of term, and Directors may be reappointed for three (3) terms, and upon expiration of a term, shall serve until the vacancy is filled.

ARTICLE IV

Meetings of the Board of Directors

Section 1. The annual meeting of the Board of Directors shall be held at such time in the month of March in each year as may be designated from time to time by the Board of Directors and at the place, within or without the State of South Dakota, designated from time to time by the Board of Directors. If the Board of Directors does not fix a different time or place, such meeting shall be held at 10:00 o'clock a.m., Central Time, on the first Friday in March, at a location designated by the Board, and if none, at the principal office of the corporation, unless such day is a holiday, in which case the meeting shall be held at such time and place on the next succeeding business day.

Section 2. Other regular meetings of the Board of Directors may be established by the Board of Directors. Such meetings may be held without notice at the principal office of this corporation or at such other place or places as the Board of Directors from time to time designate.

Section 3. Special meetings of the Board of Directors may be called at any time by (a) the Chair of the Board of Directors, or (b) by the Board of Directors, or (c) upon the written request of three or more members of the Board of Directors. Any person or group of persons entitled to call a special meeting of the Board of Directors may make a written request to the Secretary to call the meeting, and the Secretary shall give notice of the meeting, setting forth the time, place and purpose thereof, to be held between five and thirty days after receiving the request. If the Secretary fails to give notice of the meeting within seven days from the day on which the request was made, the person or persons who requested the meeting may fix the time and place of the meeting and give notice in the manner hereinafter provided.

Section 4. Written notice of each annual meeting of the Board of Directors stating the time and place thereof shall, unless sent electronically pursuant to Article IV, Section 7 below, be mailed, postage prepaid, not less than five nor more than thirty days before the meeting, excluding the day of the meeting, to each director at his or her address according to the last available records of this corporation. Written notice of each special meeting of the Board of Directors stating the time, place and purpose thereof shall, unless sent electronically pursuant to Article IV, Section 7 below, be mailed, postage prepaid, not less than five nor more than thirty days before the meeting, excluding the day of the meeting, to each director at his or her address according to the last available records of this corporation; no business shall be transacted at any special meeting other than the business specified in such notice. Any director may make written waiver of notice before, at, or after a meeting. The waiver shall be filed with the person who has been designated to act as Secretary of the meeting, who shall enter it upon the records of the meeting. Appearance at a meeting is deemed a waiver unless it is solely for the purpose of asserting the illegality of the meeting.

Section 5. At all meetings of the Board of Directors, each director shall be entitled to cast one vote on any question coming before the meeting. The presence of a majority of the members of the Board of Directors shall constitute a quorum at any meeting thereof, but the directors present at any meeting, although less than a quorum, may adjourn the meeting from time to time. Except as otherwise provided by law or these Bylaws, majority vote of the directors present at any meeting, if there be a quorum, shall be sufficient to transact any business.

Section 6. When a meeting of the Board of Directors is adjourned to another time or place, notice of the adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.

Section 7. Any notices required to be provided hereunder by written notice may also be provided by electronic email to the noticed party's email address as listed in the records of the Corporation. Any action that could be taken at a meeting of the Board of Directors may be taken without a meeting when authorized in writing signed by all of the directors. The Directors may participate in a meeting of the Board or a Committee of the Board by means of conference call, televideo, or internet-based conferencing equipment, and such participation shall constitute presence in person at such meeting.

Section 8. Directors may be removed by the Member for cause, including incompetence, neglect of duty, or malfeasance in office.

Section 9. Any individual appointed to the Board of Directors or other corporate position may hold a concurrent position as a member, employee or officer of the Member, including a member, employee or officer also identified as representing the Member for the purposes of these Bylaws; and in such event, there shall be no liability on the part of any such individual for breach of any fiduciary obligation, to either the corporation or to the Member, arising from acts or omissions committed in good faith in reliance on the terms of this Agreement and the conditions of his or her appointment.

ARTICLE V

Officers

Section 1. The officers of this corporation shall be a President, a Vice President, a Secretary-Treasurer and such other officers as the Board of Directors may from time to time designate. For purposes of presiding and conducting the meetings of the Board of Directors and serving as a spokesperson for the Board, the President of the University of South Dakota shall serve as Chair of

the Board of Directors. The Chair of the Board of Directors shall preside at meetings of the Board of Directors. If the Chair of the Board of Directors is not present, the Vice Chair shall preside at meetings of the Board of Directors. Officers shall be elected by the Board of Directors to serve until their respective successors are chosen and have qualified. Any officer may at any time be removed by the Board of Directors with or without cause. The same person may hold any two offices at the same time except the offices of (a) President and Vice President and (b) President and Secretary-Treasurer. The officers need not be directors of this corporation.

Section 2. The President shall be the chief executive officer of this corporation. He or she shall have general supervision, direction, and active management of the affairs of this corporation. He or she shall execute on behalf of this corporation all contracts, deeds, conveyances, and other instruments in writing which may be required or authorized by the Board of Directors for the proper and necessary transaction of the business of the corporation.

Section 3. The Vice President shall perform the duties of the President in the case of the latter's absence or disability. The execution by the Vice President on behalf of this corporation of any instrument shall have the same force and effect as if it were executed on behalf of the corporation by the President. The Vice President shall also serve as Vice Chair of the Board of Directors.

Section 4. The Secretary-Treasurer shall record all proceedings of the meetings of the Board of Directors in a book to be kept for that purpose. He or she shall give or cause to be given all notices of meetings of the Board of Directors and all other notices required by law or by these Bylaws, and in case of his or her absence or refusal or neglect to do so, any such notice may be given by the President or Vice President. The Secretary-Treasurer shall be the custodian of all books,

correspondence, and papers relating to the business of this corporation. He or she shall join with the President or Vice President in the execution on behalf of this corporation of all contracts, deeds, conveyances, and other instruments in writing which may be required or authorized to be so executed by the Board of Directors for the proper and necessary transaction of the business of this corporation. The Secretary-Treasurer shall present at each annual meeting of the Board of Directors a full report of the transactions and affairs of this corporation for the preceding year and shall also prepare and present to the Board of Directors such other reports as it may desire and request at such time or times as it may designate.

The Secretary-Treasurer shall also have the custody of all the funds and securities of this corporation. When necessary and proper he or she shall endorse on behalf of this corporation all checks, drafts, notes and other obligations and evidences of the payment of money payable to this corporation or coming into his or her possession, and shall deposit the same, together with all other funds of this corporation coming into his or her possession, in such bank or banks as may be selected by the Board of Directors. He or she shall keep full and accurate account of all receipts and disbursements of this corporation in books belonging to the corporation, which shall be open at all times to the inspection of the Board of Directors. He or she shall from time to time make such other reports to the Board of Directors as it may require.

Section 5. Any officer of this corporation, in addition to the powers conferred upon him or her by these Bylaws shall have such additional powers and perform such additional duties as may be prescribed from time to time by said Board.

ARTICLE VI

Committees

Section 1. The Board of Directors may act by and through such committees as may be specified in resolutions adopted by a majority of the directors in office. Each committee shall have such duties and responsibilities as are granted to it from time to time by the Board of Directors. Each such committee shall at all times be subject to the control and direction of the Board of Directors.

Section 2. The Board of Directors shall, by resolution adopted by a majority of the entire board, designate from among its members an Executive Committee consisting of three or more Directors, including the Chair of the Board of Directors. The Board of Directors may designate one or more Directors as alternate members of the Executive Committee, who may replace any absent member or members of the Executive Committee at any meeting thereof. In the interim between meetings of the Board of Directors, the Executive Committee shall have all the authority of the Board of Directors except to amend these Bylaws or as otherwise provided by law. All acts done and powers and authority conferred by the Executive Committee from time to time within the scope of its authority shall be, and may be deemed to be, and may be certified as being, the act and under the authority of the Board of Directors. The Chairman of the Board, or the President in the absence of the Chairman of the Board, shall preside at all meetings of the Executive Committee. The Executive Committee shall elect from its members a chairman to preside at any meeting of the Executive Committee at which the Chairman of the Board and the President shall be absent. Two members of the Executive Committee shall constitute a quorum for the transaction of business.

Section 3. Each committee of this corporation may establish the time for its regular meetings and may change that time as it from time to time deems advisable. Special meetings of any

committee of this corporation may be called by the chairman of that committee, or by the President. Two days' notice by mail, telephone, or telegraph shall be given of any special meeting of a committee. At all meetings of a committee of this corporation each member thereof shall be entitled to cast one vote on any question coming before such meeting. The presence of a majority of the membership of any committee of this corporation shall constitute a quorum at any meeting thereof, but the members of a committee present at any such meeting, although less than a quorum, may adjourn the meeting from time to time. A majority vote of the members of a committee of this corporation present at any meeting thereof, if there be a quorum, shall be sufficient for the transaction of the business of such committee.

ARTICLE VII

Fiscal Year

Unless otherwise fixed by the Board of Directors, the fiscal year of this corporation shall begin on January 1 and end on the succeeding December 31.

ARTICLE VIII

Miscellaneous

Section 1. This corporation may have a corporate seal, which may be altered from time to time by resolution of the Board of Directors.

Section 2. These Bylaws may be amended from time to time in the manner prescribed by law. Notwithstanding the foregoing, without consent of the Member, Article III of these Bylaws may not be amended.

Section 3. To the full extent permitted by any applicable law, this corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened,

pending or completed action, suit or proceeding, wherever brought, whether civil, criminal, administrative or investigative, other than an action by or in the right of the corporation, by reason of the fact that such person is or was a director, officer, employee, or member of a committee of this corporation, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding.

Indemnification provided by this Bylaw shall be in addition to and independent of and shall not be deemed exclusive of any other rights to indemnification to which any person may be entitled by contract or otherwise under law. Indemnification provided by this Bylaw shall continue as to a person who has ceased to be a member of the Board of Directors, officer, employee or committee member, shall inure to the benefit of the heirs, executors and administrators of such person and shall apply whether or not the claim against such person arises out of matters occurring before the adoption of this Bylaw. However, any indemnification realized other than under this Bylaw shall apply as a credit against any indemnification provided by this Bylaw.

This corporation may, to the full extent permitted by applicable law from time to time in effect, purchase and maintain insurance on behalf of any person who is or was a member of the Board of Directors, officer or employee or this corporation or a member of a committee of this corporation against any liability asserted against such person and incurred by such person in any such capacity.

Section 4. Notwithstanding anything herein to the contrary, it is the parties' intent that nothing in these Bylaws waives any applicable sovereign or Eleventh Amendment immunity of the

Member, Board of Directors, or their agents, managers, employees, or persons operating through them.

The foregoing Bylaws were adopted by the _____ on the ____ day of _____, 20~~2018~~.

Secretary