SOUTH DAKOTA BOARD OF REGENTS

Full Board

AGENDA ITEM: 31

DATE: December 12-13, 2012

SUBJECT: University of South Dakota Research Park

The University of South Dakota requests that the Board authorize the formation of a nonprofit corporation to promote and to oversee the development of a research park on the land set aside for that purpose at the University Center, Sioux Falls.

Since 2006, when the Board first acquired the grounds comprising the University Center, Sioux Falls, long range planning for the site encompassed the development of a research park. In 2009, the Legislature provided express authority to provide for the construction, development, maintenance, and operation of a research park, comprising no more than eighty acres, on the property acquired in 2006 for the University Center, and at its June 26, 2009 meeting, the Board authorized platting the portion of the campus lying between Interstate 90 and Career Avenue, as the University Center Research Park Addition to the City of Sioux Falls. Minutes of the South Dakota Board of Regents, June 25-26, 2009, pp. 1698-99 and 2451-58.

The 2012 Legislature enacted SDCL ch 5-29, which supplements its earlier actions by providing the Board with express, comprehensive authority to create research parks and to provide for their governance and operation. SL 2012, ch 46. In particular, SDCL § 5-29-16 authorizes the Board to form nonprofit research park corporations, “separate and apart from the state, to construct, finance, develop, maintain, and operate research parks,” and SDCL § 5-29-17 stipulates that each research park corporation formed by the Board pursuant to § 5-29-16 “be governed by, and all of the corporation's functions, powers, and duties shall be exercised by, a board appointed by the Board of Regents” and have the Board of Regents as its sole member.”

The attached articles of incorporation were drawn to accomplish the purposes and to reflect the restrictions set out in SDCL ch 5-29.

(Continued)

RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR

Authorize the Kathryn O. Johnson, Jack R. Warner, and James W. Abbott to incorporate the University of South Dakota Research Park, to adopt by-laws for the corporation and, in anticipation of the grant of a lease for such purposes, to begin the process of promoting the development of a research park on the lands previously set aside for that purpose.
ARTICLES OF INCORPORATION

OF

UNIVERSITY OF SOUTH DAKOTA RESEARCH PARK, INC.

We, the undersigned, of full age, for the purpose of forming a corporation under and pursuant to SDCL 5-29 and the provisions of the South Dakota Nonprofit Corporation Act, South Dakota Codified Laws, Chapters 47-22 to 47-28, inclusive, and the laws amendatory thereof and supplementary thereto, do hereby associate ourselves as a body corporate and adopt the following Articles of Incorporation.

ARTICLE I

The name of this corporation shall be UNIVERSITY OF SOUTH DAKOTA RESEARCH PARK, INC.

ARTICLE II

This corporation is formed exclusively for the purpose of constructing, financing, developing, maintaining and operating a research park as defined in SDCL § 5-29-2(3), in furtherance thereby of the objectives stated in § 5-29-1, and all acts incidental to or necessary for the accomplishment of the aforesaid purposes and do any and all acts incidental to the transaction of the business of this corporation or expedient for the attainment of the purposes stated herein.

Within the framework of these purposes, this corporation is organized and shall be operated exclusively to engage in, advance, promote, and administer charitable, educational, and scientific activities and projects of every kind and nature whatsoever in its own behalf or as the agent, trustee, or representative of others; to connect core university activities with private sector resources and companies, to foster entrepreneurship and commercialization through a robust incubation program, to grow university research capacity, resources and talent, to facilitate
physical infrastructure necessary to support creation and attraction of research and innovation based businesses, and to aid, assist, and contribute to the support of corporations, associations, and institutions which are operated exclusively for such purposes and which are described in Section 501 of the Internal Revenue Code of 1986. For those purposes and not otherwise, this corporation shall have only such powers as are required by and are consistent with the foregoing purposes, including the power to acquire and receive funds and property of every kind and nature whatsoever, whether by purchase, conveyance, lease, gift, grant, bequest, legacy, devise, or otherwise, and to own, hold, expend, make gifts, grants, and contributions of, and to convey, transfer, and dispose of any funds and property and the income therefrom for the furtherance of the purposes of this corporation hereinabove set forth, of any of them, and to lease, mortgage, encumber, and use the same, and such powers which are consistent with the foregoing purposes and which are afforded to this corporation by the South Dakota Nonprofit Corporation Act, and by any future laws amendatory thereof and supplementary thereto. Provided, however, that all such powers of the corporation shall be exercised only so that this corporation’s operations shall be exclusively within the contemplation of Section 501 of the Internal Revenue Code of 1986.

**ARTICLE III**

No part of the net income or net earnings of this corporation shall inure to the benefit of any director, or individual, and no substantial part of its activities shall consist of carrying on propaganda or otherwise attempting to influence legislation. This corporation shall not participate in, or intervene (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

All references in these Articles of Incorporation to Sections of the Internal Revenue Code include any provisions thereof adopted by future amendments thereto and any cognate provisions in future internal revenue codes to the extent such provisions are applicable to this corporation.
ARTICLE IV

The period of duration of corporation existence of this corporation shall be perpetual.

ARTICLE V

The initial registered office of this corporation is c/o President’s Office, University of South Dakota, 414 E. Clark Street, Vermillion, South Dakota 57069. The name of this corporation’s initial registered agent at such address is James W. Abbott, who by his signature as an incorporator consents to serve as registered agent.

ARTICLE VI

The name and address of each incorporator is:

<table>
<thead>
<tr>
<th>Name</th>
<th>Post Office Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kathryn O. Johnson</td>
<td>24054 Palmer Gulch Road Hill City, SD 57745</td>
</tr>
<tr>
<td>James W. Abbott</td>
<td>414 E. Clark Street Vermillion, SD 57069</td>
</tr>
<tr>
<td>Jack R. Warner</td>
<td>306 E. Capital Avenue, Ste 200 Pierre, SD 57532</td>
</tr>
</tbody>
</table>

ARTICLE VII

The operation of this Corporation shall be governed by its Board of Directors. The number of directors constituting the initial Board is three (3). The names and addresses of the persons who are to serve as such directors until the first annual meeting of the Member or until their successors are elected and shall qualify, are:

<table>
<thead>
<tr>
<th>Name</th>
<th>Post Office Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kathryn O. Johnson</td>
<td>24054 Palmer Gulch Road Hill City, SD 57745</td>
</tr>
<tr>
<td>James W. Abbott</td>
<td>414 E. Clark Street Vermillion, SD 57069</td>
</tr>
<tr>
<td>Jack R. Warner</td>
<td>306 E. Capital Avenue, Ste 200 Pierre, SD 57532</td>
</tr>
</tbody>
</table>
ARTICLE VIII

The By-Laws of the corporation shall hereafter determine the number of directors of the corporation, subject to the approval of the Member. The Directors shall be appointed at the annual meeting by the Member. Directors of this corporation shall not be personally liable for the payment of any debts or obligations of this corporation of any nature whatsoever, nor shall any of the property of the directors be subject to the payment of the debts or obligations of this corporation to any extent whatsoever. Time and place of the meetings of the Board of Directors, and such other regulations with respect to them as are not in consistent with the provisions of these Articles of Incorporation, shall be specified, from time to time, in the By-Laws of this corporation.

ARTICLE IX

This corporation shall have no capital stock and there shall be one Member with voting rights of this corporation, the South Dakota Board of Regents.

ARTICLE X

These Articles of Incorporation may be amended from time to time in the manner prescribed by law, but no such amendment shall change the purpose of the corporation, the provisions of Article VII, Article VIII, Article IX or Article XI, hereof, without the consent of the Member.

ARTICLE XI

This corporation may be dissolved in accordance with the laws of the State of South Dakota. Upon dissolution of this corporation any surplus property remaining after the payment of its debts shall be disposed of by transfer to one or more of the institutions governed by the Member in support their educational and research activities, in such proportions as the Board of Directors of this corporation shall determine, subject to the approval of the Member.
Notwithstanding any provision herein to the contrary, nothing herein shall be construed to affect the disposition of property and assets held by this corporation upon trust or other condition, or subject to any executory or special limitation, and such property, upon dissolution of this corporation, shall be transferred in accordance with the trust, condition or limitation imposed with respect to it.

IN WITNESS WHEREOF, we have hereunto set our hands this ____ day of December, 2012.

_____________________________
Kathryn O. Johnson

_____________________________
James W. Abbott

_____________________________
Jack R. Warner

STATE OF SOUTH DAKOTA  )
                        : ss
COUNTY OF ___________  )

On this ___ day of December, 2012, before me, the undersigned officer, personally appeared Kathryn O. Johnson, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[SEAL]
On this ___ day of December, 2012, before me, the undersigned officer, personally appeared James W. Abbott, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[SEAL]

My Commission Expires: ___________ Notary Public - State of South Dakota

STATE OF SOUTH DAKOTA 

: ss

COUNTY OF _____________ 

On this ___ day of December, 2012, before me, the undersigned officer, personally appeared Jack R. Warner, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[SEAL]

My Commission Expires: ___________ Notary Public - State of South Dakota

STATE OF SOUTH DAKOTA 

: ss

COUNTY OF _____________ 

On this ___ day of December, 2012, before me, the undersigned officer, personally appeared James W. Abbott, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[SEAL]

My Commission Expires: ___________ Notary Public - State of South Dakota

STATE OF SOUTH DAKOTA 

: ss

COUNTY OF _____________ 

On this ___ day of December, 2012, before me, the undersigned officer, personally appeared Jack R. Warner, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.