

SOUTH DAKOTA BOARD OF REGENTS

Committee on Budget and Finance

AGENDA ITEM: III – G

DATE: June 10-11, 2015

SUBJECT: Lease-Purchase Agreement to Acquire Land for Agricultural Experiment Station

In its 2015 Session, the Legislature enacted a Board sponsored bill that authorizing the Board to enter into a lease-purchase agreement to acquire some 320 acres of land, consisting of 280 tillable acres and 40 acres in the Conservation Reserve Program, in Moody County for the use of the Agricultural Experiment Station. The Legislation, Senate Bill 25, also appropriated grant and contract indirect recovery funds, royalty funds, and income from sales of services to cover the annual lease payments of \$120,000 over the fifteen year lease.

The South Dakota State University Foundation acquired the land pursuant to a Charitable Remainder Trust (CRT) agreement with the donors. A lease payment will enable the SDSU Foundation to meet the annuity requirements of the CRT agreement.

The university and its foundation have completed negotiations for the lease-purchase agreement. (attached) The effective date of the lease coincides with the effective date of the authorizing legislation. The university requests Board action at this meeting in order to assure that the lease is in place on the effective date of the authorizing legislation.

RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR

Approve the a lease-purchase agreement Between the Board and the South Dakota State University Foundation for acquisition of the property, described as: NW ¼ of Section 28 and the SE ¼ of Section 21, Township 108N, Range 50W, all in Moody County South Dakota. Annual lease payment not to exceed \$120,000 with a term not to exceed fifteen years. Annual lease payment is to be paid from other funds derived from grant and contract indirect recovery, royalty funds and income from sales of services.

FARM LEASE-PURCHASE

THIS LEASE-PURCHASE AGREEMENT made this _____ day of _____ 2015, by and between ROBERT O. AND ESTHER M. BINNEWIES CHARITABLE REMAINDER ANNUITY TRUST #1, SOUTH DAKOTA STATE UNIVERSITY FOUNDATION, Trustee, of Brookings, South Dakota, hereinafter called the Lessor, and SOUTH DAKOTA STATE UNIVERSITY AGRICULTURAL EXPERIMENT STATION, hereinafter called the Lessee.

WITNESSETH

That the Lessor, for and in consideration of the Lease-Purchase payments agreed to be paid by Lessee as hereinafter specified and the covenants herein contained, leases to the Lessee, the real property herein described, being situated in Moody County, South Dakota, to-wit:

The Southeast Quarter (SE ¼) of Section Twenty-one (21) and the Northwest Quarter (NW ¼) of Section Twenty-eight (28), both in Township One Hundred Eight (108) North, Range Fifty (50) West of the 5th P.M., Moody County, South Dakota.

Together with all improvements located thereon and all rights, privileges and appurtenances to the same as hereinafter provided and subject only to those conditions hereinafter set forth.

1. Term. Lessee shall have and hold the above-described premises from July 1, 2015 and continue through December 31, 2029, subject to the conditions hereinafter set forth.
2. Lease-Purchase. Lessee agrees to pay Lessor semi-annual installments of Fifty-Five-Thousand-Three-Hundred-Thirty Dollars (\$55,330) on or before July 1 and December 31 of each year. The first installment is due on or before July 1, 2015.

Upon satisfaction of all Lease-Purchase payments set forth above, the Lessee automatically exercises an option to purchase the hereinbefore described property for the aggregate lease payments previously made and other good and valuable consideration. Lessee may purchase the above described real premises prior to December 31, 2029 if the Lessee can pay sufficient funds to the Lessor so that any remaining payments to the Robert O. Binnewies and Esther M. Binnewies Family Charitable Remainder Annuity Trust, dated December 30, 2014, can be paid by the Lessor. Lessee will give sixty (60) days notice in writing to the Lessor, which notice may be given to the President & CEO of the South Dakota State University Foundation, or his Successor. Lessor shall convey the premises by Warranty Deed, free and clear of all liens and encumbrances, except those that Lessee may have created or suffered, and excepting any taxes, assessments, rates, duties, imposts, or charges that may have become a lien against the premises since the date of this Lease-Purchase Agreement.

Upon Purchase, the Lessor agrees to furnish at the equal expense of both parties a policy of title insurance issued by a title insurance company authorized to do business in the State of South Dakota containing only the printed exceptions usually and customarily found in such policies, and will furnish certificates showing all real estate taxes to be paid for calendar years ending prior to the year of purchase.

3. Alterations and Trade Fixtures. During the term of this Lease-Purchase, Lessee may make improvements without obtaining prior consent of Lessor. Any improvements shall become a part

of the real estate itself and Lessee shall not be entitled to reimbursement from Lessor for said improvements. This shall include any improvements made by Lessee prior to the date of this agreement.

4. Taxes, Special Assessments, and Insurance. Lessee shall pay all real property taxes, if any, and assessments. Lessee shall provide property and liability insurance in an amount equal to the replacement value attributable to the premises described above. Lessee shall also pay for the annual tax return preparations required as result of the land held inside a charitable remainder annuity trust.
5. Utilities, Debris Removal, Etc. Lessee shall pay all utilities, including water, gas, electric, propane and telephone. Lessee shall be responsible for all operating costs, including, but not limited to, garbage and debris removal, weed control, fencing and snow removal.
6. Inspection. Lessee agrees to permit Lessor or Lessor's agents to inspect or examine the leased premises at any reasonable time and to permit Lessor to make such repairs to the leased building which Lessor may deem desirable or necessary for its safety or preservation and which Lessee has not covenanted herein to do or has failed so to do.
7. Lessee's Liability. To the extent permitted by South Dakota Law, including but not limited to the qualified and sovereign immunity statutes, Lessee agrees to be liable for the negligent acts of its officers and employees engaged in the scope of their employment arising from or be due to the use of misuse of any part of the leased premises or failure to properly maintain the same.
8. Lessee's Liability Insurance. The State of South Dakota has not waived sovereign immunity for itself or its agencies, including Lessee. Nevertheless, on the effective date of this lease, it has waived immunity for certain tortious acts of its employees and to the extent that the Bureau of Administration purchases liability insurance pursuant to SDCL Ch. 3-21 or that the state maintains liability coverage pursuant to SDCL Ch. 3-22. On the effective day of this lease, the coverage document provides for \$1,000,000 per occurrence. Lessor hereby agrees that the Lessee's liability insurance requirements are met by SDCL Chs. 3-21 and 3-22 and Lessee's participation in the Public Entity Pool for Liability agreement.
9. Assignment. Neither this Lease-Purchase nor leased premises may be sublet or assigned by Lessee without the written consent of Lessor, which consent shall not be unreasonably withheld.
10. Default. If said Lease-Purchase payments or any of the covenants and agreements herein contained on the part of Lessee shall at any time be in arrears, unpaid or unfulfilled and shall remain in such status sixty (60) days after the giving of notice in writing thereof by Lessor to Lessee, Lessee may purchase the property as set forth in Section 2 herein. Failure to purchase will result in termination of this Agreement. Upon termination, Lessor may enter in and upon said premises and again have, possess and enjoy the same, subject to Lessee's right to remove property.
11. Quiet Environment. Lessor agrees that upon compliance with the terms and conditions of this Lease-Purchase, Lessee shall and may peacefully and quietly have, hold, and enjoy the leased premises for the term of this Agreement.

12. Waiver of Subrogation. Lessor and Lessee hereby agree that neither shall be liable to the other for loss arising out of damage to or destruction of the demised premises or the contents thereof when such loss is caused by any of the perils included within the standard form of fire and extended coverage insurance. This agreement shall be binding whether or not such damage or destruction shall be caused by the negligence of either Lessor or Lessee or their agents, servants, or employees, and further, any and all right of subrogation by any insurance carrier is hereby waived. The parties hereto will sign any and all documents necessary to implement his provision.

13. Lessor's Interest Not Subject to Mechanic's Liens. Lessee agrees not to permit any mechanic's liens to be legally placed of record against said real estate or any buildings or structures located thereon; and if any such liens shall be filed, Lessee agrees to have them removed. No person who furnishes work, labor, services or materials at the request or order of Lessee shall have a lien on said real estate or any buildings or structures located thereon which is paramount to the rights of Lessor under this Lease-Purchase so long as this Agreement is in existence. Lessee shall have no authority to create or permit to be created any lien for labor or material which shall have the effect of placing a cloud on the title of Lessor in and to said real estate and any buildings or structures located thereon. All such material men and laborers and mechanics shall have the right to demand payment for their materials or labor from Lessee only. The filing of a mechanic's lien shall not, of itself, constitute a default by Lessee, provided that Lessee shall within ninety (90) days after notice of the filing of such lien, extinguish, cancel or release such lien or post bond with Lessor to guarantee her against loss by reason thereof, and provided Lessee shall have the right to dispute the amount of validity of such lien by diligently taking proper legal steps to remove said lien.

If any mechanic's lien shall be placed on record by reason of any order or contract of Lessor, then the provisions of this Lease-Purchase applicable to the duties of Lessee with respect to mechanic's liens shall be incumbent upon Lessor to perform. At Lessor's sole discretion, Lessee may procure a mechanic's lien waiver satisfactory to Lessor pertaining to any improvements.

14. Zoning and Ordinances and Covenants. Lessee agrees to comply with all zoning requirements, restrictive covenants and conditions, and city, county and state laws, statutes and ordinances.

15. The Lessor agrees that the continued Lease-Purchase of the hereinbefore described property for the terms hereinbefore specified is dependent upon receipt of both funds and expenditure authority from the Legislature. In the event that the Legislature does not provide said funds or expenditure authority for any fiscal year, then and in such event, this Agreement is null and void and said Agreement shall expire at the end of the fiscal year in which the last funding or expenditure authority shall be made available for the Lessee. The Lessor agrees that a termination because of lack of funds or expenditure authority will not result in a claim against the University, the South Dakota Board of Regents, the State of South Dakota, or any officer or employee of the State.

16. This Agreement contains the entire agreement between the parties, and is subject to and will be construed under the laws of the State of South Dakota, and may be amended only in writing signed by both parties. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

17. The parties will comply with all federal, state, and local laws, regulations, ordinances, guidelines, permits, and requirements applicable to providing services pursuant to the Agreement and will be solely responsible for obtaining current information on such requirements.
18. The Lessor agrees to hold harmless and indemnify the State of South Dakota, the South Dakota Board of Regents, South Dakota State University, their officers, agents or employees, from and against any and all actions, suits, damages, liability or other proceedings that may arise as a result of its performance of this contract. Nothing herein requires the Lessor to be responsible for any action, suit, damage, liability or other proceeding that may arise as a result of the negligence, misconduct, error or omission of the State of South Dakota, the South Dakota Board of Regents, South Dakota State University, their officers, agents or employees.

IN WITNESS WHEREOF, the duly authorized representatives of the parties hereto have hereunto set their hands and official seals the day and year first above written

ROBERT O. AND ESTHER M. BINNEWIES
CHARITABLE REMAINDER ANNUITY TRUST,
SDSU FOUNDATION, TRUSTEE

SOUTH DAKOTA STATE UNIVERSITY
AGRICULTURAL EXPERIMENT
STATION

By: Steve Erpenbach
Its: President & CEO
LESSOR

By: Dr. Barry Dunn
Its: Dean of the College of Agriculture
Biological Sciences

And

By: Wesley G. Tschetter
Its: Vice President Finance & Business
LESSEE