

**SOUTH DAKOTA BOARD OF REGENTS**

**Committee on Budget and Finance**

**AGENDA ITEM: III – V**

**DATE: December 12-13, 2012**

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**SUBJECT: SDSU Aurora Storage Shed Rental Agreement Request and Draft Lease**

SDSU requests approval of a lease agreement with the South Dakota Crop Improvement Association. The 70' x 120' Machine shed is located in the County of Brookings, N ½, SW ¼ of Section 26. The purpose of the lease is for storing agronomic research machinery and other research related items belonging to SDSU.

The term of the lease agreement shall be for seven years, commencing on March 1, 2013 and ending March 1, 2020. Payment of the lease is by improvements, namely, provide a 50' X 100' 6" concrete floor, two concrete 10' aprons and a dividing wall to separate the main storage area, to be funded at the estimated cost of \$32,000 paid by the SDSU Foundation Seed.

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**RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR**

Authorize South Dakota State University to enter into a lease with the South Dakota Crop Improvement Association, for use of a machine shed to be located in the N ½, SW ¼ of Section 26 of Brookings County, for a term commencing on March 1, 2013 and ending March 1, 2020, for non-cash consideration in the form of certain facility improvements to be provided on behalf of the university for the estimated cost of \$32,000, by the SDSU Foundation Seeds.

## LEASE AGREEMENT

This Lease Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, between South Dakota Crop Improvement Association, 2380 Research Park Way Suite 136, Brookings, SD 57006-1785, hereinafter referred to as “Landlord” and South Dakota State University, Brookings, SD 57007, hereinafter referred to as the “Tenant”:

### WITNESSETH:

1. Property: Landlord in consideration of the rents and covenants hereinafter specified does hereby lease and let unto the Tenant of the following described buildings situated in the County of Brookings, in the State of South Dakota:  
  
A 70’ x 120 Machine Shed located in the N ½, SW ¼ of Section 26, hereinafter referred to as “Aurora Storage Shed.”
2. Term: The term of this Lease Agreement shall be for seven years commencing March 1, 2013 and ending March 1, 2020.
3. Purpose: It is understood by the parties that the Aurora Storage Shed are leased for the purpose of storing agronomic research machinery and other research related items belonging to SDSU.
4. Rent: Tenant shall provide a 50’ X 100’ 6” concrete floor, two concrete 10’ aprons and a dividing wall to separate the main storage area in lieu of payment for said lease. Estimated Cost of Improvement is \$32,000 to be paid by Foundation Seed.
5. Husbandry: Tenant agrees to take the best care in maintaining the Aurora Storage Shed. Normal Wear and Tear are expected. Any significant damage to the Aurora Storage Shed will be the responsibility of the tenant.
6. Possession: Tenant’s possession of the property shall commence upon the commencement of this Lease on March 1, 2013 and shall be nonexclusive. Landlord shall have the right to continued entry upon the Aurora Storage Shed and it shall not be considered a breach of this Lease for the Landlord to conduct other activities in the Aurora Storage Shed not inconsistent with Tenant’s purposes.
7. Environmental provisions: Tenant represents and warrants to Landlord and Landlord’s successors and assigns that no dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials, or substances as defined in or governed by the provisions of any Federal, State or local law, statute, code, ordinance, regulation, requirement or rule relating thereto (collectively, the “Environmental Regulations”), including without limitation asbestos, asbestos containing materials, nuclear fuel waste, petroleum products, trash, garbage or

any other waste or substances that would subject the Landlord or any other occupant of the property to any damages, penalties, or liabilities under any applicable Environmental Regulation.

8. Liability/Insurance: Each party to this agreement shall be solely responsible for any and all actions, suits, damages, liability or other proceedings brought against it as a result of the alleged negligence, misconduct, error or omission of any of its officers, agents or employees. Neither party is obligated to indemnify the other party or to hold the other party harmless from costs or expenses incurred as a result of such claims; and each shall continue to enjoy all rights, claims and defenses available to it under law. Tenant relies upon the Public Entity Pool for Liability (PEPL) fund for tort liability coverage. The PEPL fund is a funded self-insurance program for State employees, which offers one million dollars per occurrence coverage for general liability, automobile liability, public officials, errors and omissions, law enforcement liability, and some medical malpractice liability.
9. Reclamation: Upon the expiration of this Lease, Tenant agrees that it will at such time vacate the premises of the Landlord and restore the Storage Sheds to the condition, excluding normal wear and tear, as it was at the inception of this Lease Agreement.
10. Default: Time is of the essence hereof. In the event of any default in the performance of any of the terms, conditions or covenants of this Lease, the parties hereto in addition to every remedy now or hereafter available to them in law and equity, shall have the right to remedies herein set forth and the same shall be deemed cumulative and not exclusive to those available to them at law or equity; provided, however, that upon any event of default, the defaulting party shall have thirty (30) days within which to cure such alleged default after receipt of written notice from the non-defaulting party.
  - A. Termination of Lease
  - B. Right of reentry with or without termination of Lease
  - C. Releasing of premises
  - D. The right to own and possess with or without termination all crops harvested and not harvested
  - E. The right to remove all property and persons from the premises
  - F. The right to restore and repair the premises to good condition and hold defaulting party liable
  - G. For all expenses, rent deficiency and indebtedness due under the Lease
11. Authority: The parties represent and warrant that they have the authority to execute this Agreement and fully bind the respective parties to this Lease Agreement.
12. Binding Nature: The terms, covenants and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of

the parties hereto. All such parties shall be jointly and severally liable unto its terms, covenants and conditions as the benefits and burdens accrue to them as Landlord and Tenant.

13. Notice: Any notice required to be given by this Agreement shall be by certified mail or hand delivery as follows:

If to Landlord:	With copy to :
Neal Foster SDCIA Box 2207A, SDSU Brookings, SD 57007	Dr. Doug Malo Plant Science Dept. Head Ag Hall 219, SDSU Brookings, SD 57007

If to Tenant:	With a copy to :
Jack Ingemansen Foundation Seed 1200 N. Campus Dr., Box 2207A Brookings, SD 57007	Dr. Daniel Scholl SDAES, Director Ag Hall 135, SDSU Brookings, SD 57007

14. Funding Out: Since the term of this agreement extends beyond the current fiscal year, it is made contingent upon the Legislature of South Dakota making the necessary appropriations for the expenditures hereunder after such current fiscal year shall have expired. Both parties acknowledge that legislative action may require the curtailment or termination of some or all of South Dakota State University’s research and educational programs. The entities acknowledge further that they are obligated to respond to such legislative action and may determine that it is necessary in the public interest to curtail this program. Termination of this lease in response to a failure of appropriations shall not be deemed a breach of this lease.

15. Modification: This Lease Agreement may not be altered, amended or modified in any manner, except by written agreement executed by Landlord and Tenant. IN WITNESS WHEREOF, the parties have signed this Lease on the date first above written.

LANDLORD South Dakota Crop Improvement Association	TENANT South Dakota State University	LEASE PAYER Foundation Seed
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_____ By: Neal Foster, SDCIA	_____ By: Wes Tschetter, SDSU	_____ By: Doug Malo
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