

**SOUTH DAKOTA BOARD OF REGENTS**

**Budget and Finance**  
**Consent**

**AGENDA ITEM: 5 – M (1)**  
**DATE: October 4-5, 2023**

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**SUBJECT**

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

**CONTROLLING STATUTE, RULE, OR POLICY**

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

**BACKGROUND / DISCUSSION**

The South Dakota Department of Agriculture and Natural Resources (SDDANR) 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 [August 2020](#) meeting, ran through September 30, 2023. 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, 2023 through September 30, 2026. SDDANR will provide up to \$90,000 to SDSU in year one (October 1, 2023 – September 30, 2024) with SDSU providing matching non-federal 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 SDDANR to maintain the Extension Forester position within the Cooperative Extension Service at SDSU.

Staff recommends approval.

**ATTACHMENTS**

Attachment I – Extension Forestry JPA (w/Exhibit A – Work Plan)

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**DRAFT MOTION 20231004\_5-M(1):**

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

ATTACHMENT I 2

JOINT POWERS AGREEMENT  
BETWEEN  
SOUTH DAKOTA DEPARTMENT OF AGRICULTURE AND NATURAL  
RESOURCES  
RESOURCE CONSERVATION & FORESTRY DIVISION  
AND  
SOUTH DAKOTA STATE UNIVERSITY

This Joint Powers Agreement (“Agreement” hereinafter) made and entered into by and between the South Dakota Department of Agriculture and Natural Resources, Resource Conservation and Forestry Division, an agency of the State of South Dakota, 523 East Capitol Ave., Pierre, SD 57501-3182, (hereinafter "DANR") and the South Dakota State University, 1015 Campanile Ave, SAD 200, Box 2201, Brookings, SD 57007 (hereinafter "SDSU").

I.  
GENERAL PROVISIONS

A. DANR and SDSU hereby enter into this Agreement in consideration of and pursuant to the terms and conditions set forth herein.

SDSU and DANR will perform those services described in the Work Plan, attached hereto as Exhibit A and by this reference incorporated herein.

1. This Agreement shall commence on October 1, 2023 and end on September 30, 2026, unless sooner terminated pursuant to the terms hereof.

2. DANR will make payment for services as provided in Exhibit A. The total contract amount will not exceed \$90,000 annually. The contract amount is comprised of up to \$90,000 to be paid by DANR for activities in Exhibit A and SDSU matching funds up to equal to the amount paid by DANR. 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.

3. 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 DANR. For this agreement, the DANR indirect rate will be provided in the annual work plans. The difference between the SDSU’s administrative fee and the allowed indirect rate for DANR may be used as in-kind match upon written agreement between DANR and SDSU.

4. SDSU agrees to report to DANR any event encountered during performance of this Agreement which results in injury to a person or property of third parties, or which may otherwise subject SDSU or DANR to liability. SDSU shall report any such event to DANR immediately upon discovery. SDSU's obligation under this section shall only be to report the occurrence of any event to DANR 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 DANR 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.

5. This Agreement may be terminated by DANR or SDSU hereto upon thirty (30) days written notice. In the event SDSU breaches any of the terms or conditions hereof, this Agreement may be terminated by DANR at any time with or without notice. If termination for such default is affected by DANR, any payments due to SDSU at the time of termination may be adjusted to cover any additional costs to DANR because of SDSU’s default. Upon termination DANR may take over the work and may award another party an agreement to complete the work under this Agreement. If after DANR terminates for a default by SDSU it is determined that

SDSU was not at fault, then SDSU shall be paid for eligible service rendered and expenses incurred up to the date of termination.

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

7. This Agreement may not be assigned without the express prior written consent of DANR. 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.

8. This Agreement shall be governed by and construed in accordance with the laws of South Dakota without regards to any conflicts of law principles, decisional law, or statutory provision that would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement shall be in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

9. 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.

10. SDSU may not use subcontractors to perform the services described herein without the express prior written consent of DANR. SDSU will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify DANR, and to provide insurance coverage for the benefit of DANR 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.

11. 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 Marcus Warnke on behalf of the DANR, Dianne Nagy 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.

12. 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.

13. 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

DANR 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 DANR 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 DANR, with the Attorney General and Legislative Research Council not more than 14 days after the execution as required by SDCL 1-24-6.1.
3. 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 exclude from participating in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediate take any measures necessary to effectuate this agreement.
4. Nothing in this Agreement shall be construed as an indemnification by one party or the other for liabilities of a party or third party 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.
5. The parties signify their agreement to this work plan by the signatures affixed below.

IN WITNESS WHEREOF, the parties signify their agreement effective the date first written by the signatures affixed below.

SDSU

STATE OF SOUTH DAKOTA

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Print/ Signature)

\_\_\_\_\_  
Hunter Roberts  
Secretary  
South Dakota Department of Agriculture  
and Natural Resources

\_\_\_\_\_  
(title)

EXHIBIT A THE  
JOINT POWERS AGREEMENT  
BETWEEN  
SD DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES  
RESOURCE CONSERVATION AND FORESTRY DIVISION  
AND  
SOUTH DAKOTA STATE UNIVERSITY

WITNESSETH:

WHEREAS, the South Dakota Department of Agriculture and Natural Resources, Resource Conservation and Forestry Division (DANR) and South Dakota State University (SDSU) entered into the Joint Powers Agreement last dated October 1, 2023 to provide an annual work plan for an extension forestry position; and

WHEREAS, Paragraph 1 of the Agreement provides: “DANR and SDSU will perform those services 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”; and

WHEREAS, DANR and SDSU have mutually agreed that the annual Work Plan for the extension forestry position assigned to Dr. John Ball is in effect from October 1, 2023 until September 30, 2024; and

WHEREAS, DANR and SDSU have mutually agreed that this Work Plan supersedes any previous work plans or addendums to the JPA between DANR and SDSU; and

WHEREAS, DANR and SDSU have mutually agreed that the annual Work Plan addresses the financial assistance that will be provided by DANR in support of the extension forestry efforts provided by SDSU within the parameters listed below.

NOW THEREFORE IT IS MUTUALLY AGREED AS FOLLOWS:

1. **Financial Assistance to be Provided By DANR**

- a. DANR agrees to provide an amount not to exceed \$90,000 in federal funds to SDSU.
- b. DANR will make payments only on a reimbursement basis.
- c. DANR 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 DANR. Each dollar provided by DANR 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 DANR.

This rate is negotiated by DANR each year with the United States Forest Service. For this work plan, **the indirect rate is 14.31 percent**. The difference between the University's administrative fee and the allowed indirect rate for DANR 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, 2024.
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 DANR** (*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 DANR 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 DANR
    - 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 DANR as directed by the State Forester.
  - c. **Custer State Park (CSP) WBB Monitoring** (*Anticipated Workload – 5 workdays*)
    - i. Assist DANR 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 DANR to maintain the state readiness plan to slow the spread of any EAB infestations within the state.
    - ii. Assist DANR to plan one EAB readiness field exercise in a community with an EAB readiness plan.
    - iii. Assist DANR to implement the EAB readiness plans as necessary.
    - iv. Conduct workshops and public forums on EAB at the request of DANR.
    - 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 DANR as directed by the State Forester.
  - e. **Urban Forestry Volunteer Coordinator for DANR** (*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 DANR to plan and conduct forest health training sessions for DANR personnel and others as directed by the State Forester.
    - ii. Assist DANR 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 DANR 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 – 20 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 DANR 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 and the Forest Health Supervisor as requested. DANR 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 DANR and USFS has made to the extension forester position within SDSU by acknowledging all work accomplished through this work plan. SDSU must acknowledge DANR 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 DANR without prior authorization.

**6. Signatures**

The parties signify their agreement to this work plan by the signatures affixed below.

IN WITNESS WHEREOF, the parties signify their agreement effective the date first written by the signatures affixed below.

SDSU

STATE OF SOUTH DAKOTA

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Print/ Signature)

\_\_\_\_\_  
Hunter Roberts  
Secretary  
South Dakota Department of  
Agriculture and Natural Resources

\_\_\_\_\_  
(title)