

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

AGENDA ITEM: 9 – F
DATE: June 21-22, 2023

SUBJECT

DSU Lease Agreement for Property in Madison, SD

CONTROLLING STATUTE, RULE, OR POLICY

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

[SDCL § 13-49-15](#) – Purchasing and Contracting for Institutions

BACKGROUND / DISCUSSION

Dakota State University (DSU) requests the Board of Regents’ authorization to enter into a Lease Agreement with the DSU Foundation for property in Madison, South Dakota. The space currently houses the Paulson Cyber Innovation & Entrepreneurship Center. The Lease Agreement would provide a multi-year agreement for continued housing of the Paulson Cyber Innovation & Entrepreneurship Center and articulate DSU’s option to acquire the property at the close of the lease period.

IMPACT AND RECOMMENDATIONS

Dakota State University will enter into a Lease Agreement with the DSU Foundation for lease of the subject property for a term of six years beginning July 1, 2023. Rent payments of \$57,500 would be made semi-annually. At the conclusion of the six-year initial term, DSU could exercise an option to purchase the property or continue to lease the premises. A draft of the Lease Agreement between DSU and the DSU Foundation is attached.

Staff recommends approval.

ATTACHMENTS

Attachment I – Proposed Lease Agreement for Property in Madison, SD

DRAFT MOTION 20230622_9-F:

I move to grant Dakota State University the authority to finalize and execute the Lease Agreement between Dakota State University and the Dakota State University Foundation in substantially similar form to that set forth in Attachment I.

LEASE AGREEMENT
Between
DAKOTA STATE UNIVERSITY
And
DAKOTA STATE UNIVERSITY FOUNDATION

Parties: This lease is made between Dakota State University Foundation (Lessor) and Dakota State University (Lessee).

Premises: This lease is for the property at 1400 North Washington Avenue, Madison, South Dakota 57042.

Terms: The term of this agreement shall commence July 1, 2023, and continue for an initial term of six (6) years.

Effective Date: The effective date of this agreement shall be July 1, 2023, regardless of the date of execution hereof, and shall be binding upon the parties hereto, their successors and assigns.

Rent: During the initial term of this agreement, the Lessee shall pay to the Foundation semi-annually the sum of \$57,500 rent payable in advance commencing July 2023 and on or before the 15th day of January and July every year thereafter through January 2029. Initial rental payments are to be based on the actual costs incurred by the Foundation to acquire the real estate, together with operating expenses incurred by the Foundation and listed on Exhibit "A" attached hereto and incorporated herein by this reference, which expenses may include such taxes or assessments as may be assessed against the property. Rental rates may be adjusted annually to reflect actual increases in the Foundation's chargeable operating costs. Rental payments will include a component equal to two percent (2.0%) of the cost of the facility, which sum the Foundation agrees to hold and to manage as a capital expenditure sinking fund. If it becomes necessary to undertake capital repairs, replacement or improvements, the Foundation will contract for such work to be paid from the capital repair sinking fund established hereunder, or, with the consent of the Lessee, to be paid for through a temporary adjustment to the rent sufficient to cover the actual costs to finance and to construct such repairs, replacements, or improvements. In the event that this agreement should be terminated, the Foundation shall disburse or transfer the capital expenditure sinking fund as directed by Lessee. Interest income on the sinking fund shall remain with the Foundation.

After the initial term of the agreement, the lease may be extended with the rental rate equal to the operating expenses incurred by the Foundation plus a continued amount equal to two percent (2.0%) of the cost of the facility, continued to be held and managed as a capital expenditure sinking fund.

Option to Purchase: Lessee may purchase the leased property from the Foundation at any point during the term of the lease for an amount equal to the then remaining principal balance. After the initial lease term of six years, Lessee may exercise an option to purchase the property for \$1.00. If Lessee intends to exercise the option to purchase, either during the initial lease term or thereafter,

Lessee will give sixty (60) days' notice in writing, which notice may be given to the President and CEO of the Dakota State University Foundation or their successor. Lessor shall convey the demised 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 property since the date of this Lease Agreement.

Upon exercise of the option to purchase, the Lessor agrees to furnish, at the expense of the Lessee, 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.

Availability of Funds: The Lessor agrees that the continued rental of the above-described property for the terms specified herein is dependent upon the receipt of both funds and expenditure authority from the South Dakota 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 last funding or expenditure authority shall be made available to the Lessee. The Lessor agrees that a termination because of lack of funds or expenditure authority will not result in a claim against Dakota State University, the South Dakota Board of Regents, the State of South Dakota, or any officer or employee of the State.

Condition of Property: Lessor agrees to lease, and Lessee accepts the property as is.

Maintenance During Lease: Lessee agrees to maintain the property and grounds, where applicable, in good condition. Routine wear-and-tear is expected during the lease. Lessee will provide garbage, debris, and snow removal, and lawn and landscape maintenance at Lessee's expense. Lessee agrees to comply with any municipal codes with respect to premises maintenance and upkeep.

Lessor will provide for maintenance of major building systems as needed or if required by a proper governmental authority, including heating, water conditioning, water heating, electrical, structural, and other similar systems. Lessee must inform Lessor as soon as reasonable of any problems with major building systems.

All equipment, fixtures, and furnishings purchased or supplied by Lessee shall remain the property of and title to the Lessee and may be removed, altered, or changed at any time during the life of the lease or termination.

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.

Utilities: Lessee will be responsible for all utilities during the term of the lease including natural gas, electricity, water, and sewer. Telephone and cable, including any deposits or hookup fees, will be the responsibility of Lessee.

Insurance: Lessor will maintain its own insurance for property and liability coverage in an amount equal to the replacement value of the property, but that insurance will not extend to losses suffered

by the Lessee, nor does it extend to cover actions or failure to act by the Lessee while using and enjoying the property.

Lessee, at its expense, shall provide and keep in force for the benefit of Lessor, to the extent allowed by South Dakota law comprehensive general liability coverage, insuring the interest of Lessor and Lessee with minimum limits of liability in respect of bodily injury or death of \$1,000,000.00 for each person and \$1,000,000.00 for each occurrence, and respect of property damage of \$500,000.00 for each occurrence. Lessor shall be included as a named insured on said insurance policy.

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.

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 so long as this lease 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 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.

Assignment: Neither this lease nor leased premises may be sublet or assigned by Lessee without the written consent of Lessor, which consent shall not be unreasonably withheld.

Amendment and Venue: 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.

Compliance with Applicable Laws: 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.

Exhibit A: Permitted components of Rental Rate

Retirement of remaining amount of purchase costs = $\$396,000 / 6 = \$66,000$ annual	\$66,000
Insurance and other expenses	\$34,000
Maintenance and Repair @ 2.0% of value	\$15,000
Annual Total Lease Payments	\$115,000
Semi-annual Lease Payments	\$57,500