

Lease Agreement with USDA

BACKGROUND

Oregon State University staff is seeking Board of Trustees approval to enter into a new ground lease agreement that would extend an existing leasing relationship with the United States Department of Agriculture (USDA) Agricultural Research Service, National Clonal Germplasm Repository (“NCGR”). The new ground lease would be consistent with the key terms of the Non-Binding Term Sheet (“Term Sheet”), which has been executed by the parties and is included as Attachment 1. Under the Board’s [delegation of authority](#) to the university, leases that involve an initial term of more than fifteen years or consideration over \$15 million in base rent require Board approval.

OSU currently leases approximately 4.17 acres of land to NCGR at OSU’s Lewis Brown Farm on Peoria Road (as shown in Figures 1 and 2). This proposed new lease would serve to extend the current leasing relationship, which commenced on January 1, 1978. While this is a ground lease only, it will include the facilities currently on the land that have been constructed by NCGR under the current lease. NCGR owns all facilities on the premises.

In addition to the existing facilities, NCGR desires to construct a greenhouse facility on the premises, valued at more than \$10 million, and has requested a lease term over 15 years in duration to allow NCGR to receive a sufficient return on the useful life of this investment. The Dean of the College of Agricultural Sciences is in contact with the program/project manager from the U.S. Army Corps of Engineers and has reviewed and approved the plans, contingent on Board approval of this ground lease.

College of Agricultural Sciences staff recommend extending the ground lease pursuant to the parameters outlined on the Term Sheet because the construction of the greenhouse facility will further enhance the collaboration between OSU and NCGR, as described below:

- USDA is a primary contributor to the College of Agricultural Sciences’ annual portfolio of nearly \$100 million in research activity.
- USDA scientists working on the leased land also provide support to OSU’s academic programs, particularly in graduate education, and OSU and NCGR collaborate on agricultural research.
- NCGR employees work on joint research projects with OSU faculty, advise OSU graduate students, and provide regular seminars concerning their research.
- OSU courses take regular field trips to visit both the facilities and NCGR employees at the leased site.
- NCGR employs OSU undergraduate students at facilities on the leased site.
- NCGR staff provide research summaries at OSU field day events.
- NCGR provides space for OSU research activities such as maintaining beehives at the USDA ARS North Farm.
- NCGR has financially contributed to infrastructure improvements at the OSU Lewis Brown farm.
- NCGR makes its hazelnut collection available to OSU’s Dr. Shawn Mehlenbacher on a yearly basis to support his breeding research program.

KEY LEASE TERMS

The key ground lease terms are noted below.

- Square Footage / Site Area
 - Amount: Approximately 4.17 acres
 - Rationale: This is the same as footprint as the current ground lease.
- Lease Term and Renewal Options
 - Duration: A new ground lease term through December 31, 2041, with a 10-year option (upon mutual agreement) to extend to December 31, 2051.
 - Rationale: Collaboration between USDA and OSU's College of Agricultural Sciences, as detailed above, is important and a term of this duration will allow USDA sufficient useful life of this investment.
- Lease Commencement
 - Estimated date: Effective immediately upon execution of the new ground lease
 - Rationale: USDA desires to commence construction as soon as possible, given current availability of funding.
- Initial Lease Rate
 - Amount: \$0; other consideration
 - Rationale: NCGR preserves 12,000+ accessions of genetic resources making them available to researchers at OSU and around the world. As detailed above, NCGR efforts at this location benefit Oregon State University in the form of faculty collaborations, graduate and undergraduate student development, outreach and engagement, reciprocal use of space, and other types of support. Due to this extensive collaboration and reciprocity, and consistent with the terms of the current ground lease, the College of Agricultural Sciences does not recommend the charging rent for the new ground lease.
- Improvements
 - Ownership: All improvements on the premises are owned by NCGR
 - Removal: NCGR to remove and restore the premises to its original condition at the end of the ground lease or earlier termination, conditional upon the passage of an applicable appropriation or authorization by Congress from which expenditures may be made.
 - Rationale: This is the standard USDA provision that allows for removal of improvements at the conclusion of the ground lease.

FINANCIAL SUMMARY

The key estimated financial parameters for the ground lease are noted below:

- NCGR is responsible for all operating expenses and utility costs of the premises, as well as any property taxes.
- There are no associated costs anticipated for the college or OSU.

RECOMMENDATION

Staff recommend that the Finance & Administration Committee recommend that Board authorize the OSU president to move forward with the negotiation and execution of a ground lease agreement between OSU and the United States Department of Agriculture (USDA) Agricultural Research Service, National Clonal Germplasm Repository (NCGR), that is consistent with the terms set forth in the Term Sheet described in Attachment 1.

Figure 1.

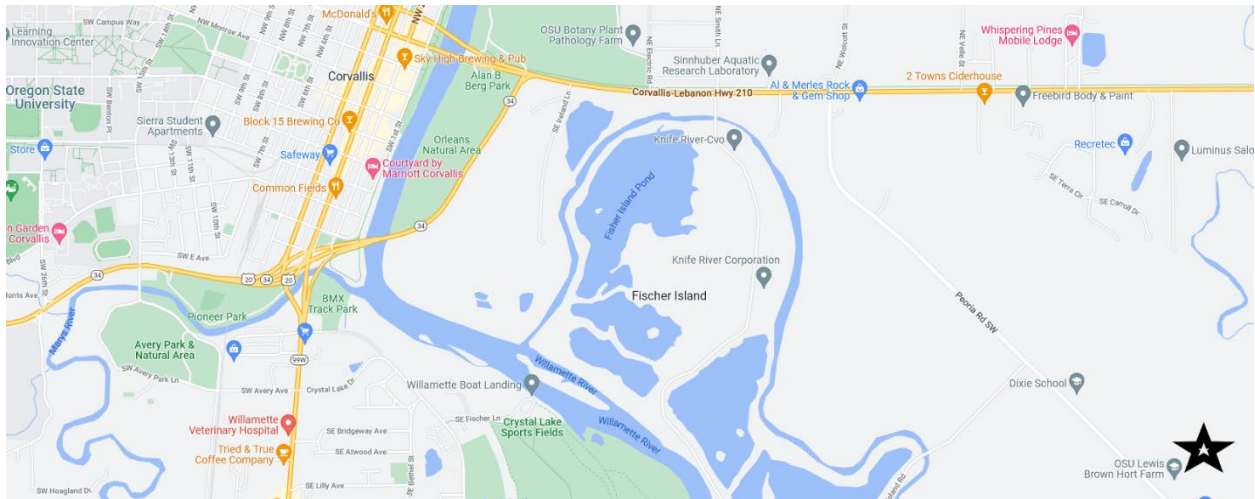
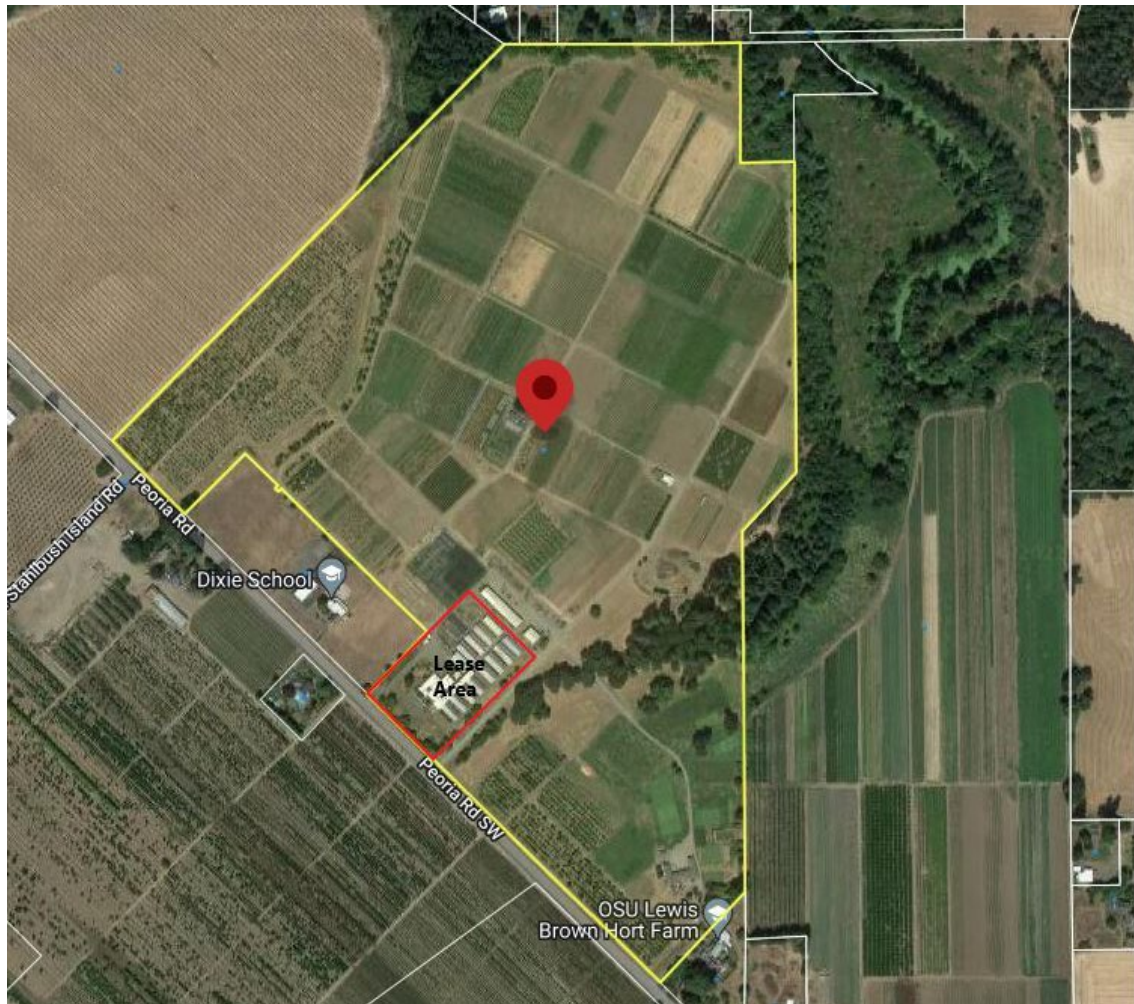


Figure 2.



May 27, 2022 Board of Trustees Meeting

Non-Binding Term Sheet (“Term Sheet”), which has been executed by the parties.

Below are the mutually agreed upon Basic Terms for extension of a ground lease between Oregon State University and USDA-ARS NCGR

This Term Sheet sets forth terms for continued discussion of a leasing relationship whereby OSU and the United State Department of Agriculture, Agricultural Research Service, National Clonal Germplasm Repository (NCGR) collaborate on agricultural research.

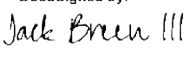
NCGR would lease land for its offices, laboratory facilities, greenhouses and plant collections from OSU. The obligations of each party will be consistent with the terms set forth in this non-binding term sheet, to be detailed more fully in a lease agreement, subject to approval by the Board of Trustees for OSU. This term sheet is not intended to be binding on either party nor to serve as a basis for claims arising out of detrimental reliance, quasi-contract, unjust enrichment, or other similar theories. By their signatures below, OSU and NCGR evidence their intention to continue discussions and begin preparation of a Lease, in mutual good faith and consistent with the following terms.

1. Tenant: United State Department of Agriculture, Agricultural Research Service, National Clonal Germplasm Repository (“NCGR”)
2. Landlord: Oregon State University (“OSU”)
3. Facility: NCGR at Lewis Brown Farm, Linn County, Oregon, located at 33447 Peoria Road, Corvallis, OR 97333.
4. Premises: 4.17 acres as shown on Exhibit A, and described on Exhibit B.
5. Use: Maintaining and operating NCGR owned facilities, including offices, laboratory facilities, greenhouses and performing activities which are consistent with the cooperative program with OSU, including but not limited to plant collections, maintaining and preserving valuable fruit and nut germplasm, and making such germplasm readily available to plant breeders and agriculturalists.
6. Facility Access: Separate driveway direct from Peoria Rd SW.
7. Lease Term: NCGR requests to exercise the 20-year mutual extension option. The current term expires December 31, 2027, and this early extension would become effective immediately, extending the expiration date to December 31, 2041. The parties agree to execute a new lease to effectuate the extension.
8. Renewal Option: NCGR requests an additional mutual extension option of 10 years, which if exercised would extend the expiration date to December 31, 2051.
9. Lease Commencement: The Lease extension will commence upon execution of the amendment.
10. Rental Rate: In light of the benefits to OSU of the collaboration, rent will not be charged.

11. Utilities: NCGR pays for all utilities, including but not limited to their own natural gas service and electric service. NCGR owns and maintains their own septic system and well water system at their own expense.
12. Real Property Taxes: OSU and NCGR are exempt for most purposes from other federal, state and local taxes. If any real estate taxes are levied, assessed or imposed against the owners of the real property by a taxing authority authorized by law to levy, assess and collect real estate taxes on the Premises, NCGR shall reimburse to OSU, such tax or taxes, upon receipt of paid tax receipts or other similar evidence of payment acceptable to NCGR. Real estate taxes do not include special assessments for specific purposes, assessments or business improvement districts, and/or community development assessments.
13. Improvements: NCGR must obtain prior written consent from OSU for any future improvements.
14. Ownership of Improvements: All buildings and improvements on the Premises are owned and maintained by NCGR. At the expiration or termination of the lease, NCGR will remove the improvements, at NCGR's cost, and restore the Premises to its original condition, not later than 180 days following expiration or termination and is conditional upon the passage of an applicable appropriation or authorization by Congress from which expenditures may be made and shall not obligate the United States upon failure of Congress to so act.
15. Sublease/ Assignment: NCGR does not have the right to assign or sublease, without OSU approval, which may be withheld in sole discretion.
16. Signage: NCGR may erect signage subject to OSU approval.
17. Fiber: NCGR may connect to OSU's network connection, which OSU provides in "as is" condition. NCGR acknowledges and agrees that OSU is acting solely in the role of an Internet Service Provider in offering only Internet connectivity. OSU does not warrant, either expressed or implied, the security of the network connection or the suitability of the network connection for any activity. NCGR acknowledges and agrees to assume all risk and responsibility related to any such use of the OSU's network connection. NCGR further acknowledges and agrees that it will be compliant with all applicable Federal, State, local, and other compliance rules and regulations. OSU reserves the right, at its sole discretion, to refuse to provide or to revoke NCGR's access to the network connection if evidence of compliance with rules and regulations cannot be satisfactorily demonstrated. Under no circumstances shall NCGR allow the OSU network connection be used by non-affiliated or sponsored third-parties without prior approval of OSU. Under no circumstances is NCGR allowed to use OSU's Wi-Fi. NCGR agrees to pay OSU, at OSU's then current rate, for connection to their network.
18. Parking: NCGR parking is located on the Premises and is maintained and managed by NCGR.
19. Other Key Terms:
 - Unless modified, terms and conditions from the existing lease shall remain in effect. The parties agree that the 1981 OSU memo has no legal effect on the arrangement.

- NCGR must comply with then current OSU policies, rules, and standards.
- NCGR will be charged applicable OSU fees, such as field service fees at the Lewis Brown farm. Fees can be found: <https://fees.oregonstate.edu/Public/BrowseInternal.aspx>, for the College of Agricultural Sciences unit and Corvallis Farm Unit Operations department, and are subject to change from time to time. The payment of these fees are conditional upon the passage of an applicable appropriation or authorization by Congress from which expenditures may be made and shall not obligate the United States upon failure of Congress to so act. OSU's obligation to perform or provide any services is conditioned upon NCGR payment.
- Pending Risk Management review and approval: NCGR, will share, when possible, their farm equipment with the OSU College of Agricultural Sciences (CAS) at Lewis Brown research farm. Farm equipment owned and maintained by the OSU CAS at the Lewis Brown farm will share, when possible, their equipment with the NCGR. This is a reciprocal arrangement and parties will not bill each other for the use of such equipment. The parties agree this sharing arrangement does not affect the amount or application of OSU fees. For each particular equipment borrowing event, the parties agree to refuel shared equipment to a level comparable to when sharing commenced. The parties agree to maintain their own equipment without compensation from the sharing party.
- NCGR will ensure that any construction or maintenance activities comply with state and local building codes.

OSU:

DocuSigned by:
 3/3/2022 | 16:38:50 PST
B561B3BCA1143BC

Jack P. Breen III
Chief Operating Officer, College of Agricultural Sciences
Oregon State University

NCGR:

Holly Wood/ March 2, 2022

Holly Wood
Real Estate Lease Contracting Officer