

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

AGENDA ITEM: 7 – P

DATE: March 30 – April 1, 2016

SUBJECT: SDSU Graduate Nursing Program – West River Office Lease Agreement

South Dakota State University requests authorization to lease office and classroom space at 1220 Mt. Rushmore Rd., Rapid City, SD, allowing the College of Nursing West River leadership to relocate graduate teaching faculty, schedule and deliver graduate and doctoral courses and create a new area that supports SDSU’s diversity outreach activities under the Native American (NA) grant initiative. The proposed space to be leased consists of the entire first floor of the building, which is approximately 5,600 square feet. The lease agreement includes provisions for building improvements to be made both by SDSU and the Lessor. A draft of the lease agreement is attached, containing the terms of the proposed lease. Upon approval of this request, SDSU will execute the lease agreement and relocated the graduate teaching faculty and programs to the leased space.

Due to constraints in scheduling and space availability, SDSU has outgrown the primary site provided for nursing education at the Rapid City Regional Health Science Building. The critical need for new space to deliver SDSU’s West River undergraduate and graduate nursing programs has been discussed for many years. Recent flooding, electrical and security issues, as well as a request to relinquish first floor space to Regional Health’s accounting staff, consisting of roughly 80 employees, exacerbated space planning issues and has been brought before the West River Management Advisory Committee members since 2013. In 2014, SDSU and USD nursing leadership collaborated on a space study, addressing each program’s future needs. They also participated in two additional space planning meetings held at Black Hills Rapid City (BH-RC). When USD expanded their nursing degree to a BS in 2014, it required more space due to scheduling limitations for added courses. USD currently teaches courses at both the Rapid City Regional Health Science Building, as well as Black Hills – Rapid City (BH-RC) campuses.

(Continued)

RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR

I move to approve the authorization of the lease agreement between South Dakota State University (SDSU) and Rushmore Road Chiropractic, LLC, which would permit SDSU’s graduate nursing program to occupy the office space at 1220 Mt. Rushmore Road, Rapid City, SD.

SDSU is the only state school offering graduate nursing courses and provides 95% of the advance practice nurses providing healthcare in the state. SDSU's graduate nursing programs (nursing education, nursing administration, clinical nurse specialist and family nurse practitioner) were brought to Rapid City and located with SDSU undergraduate nursing program in the early 1990's. SDSU added the Doctor of Nursing Practice and Doctor of Philosophy programs in Rapid City due to a growing need for nurse scientists and doctorally-prepared advance practitioners. Thirty-five west river graduate students are enrolled in nine masters and doctoral courses offered spring 2016. Due to space and scheduling constraints, these courses are scheduled later in the day or are scheduled on a Friday/Saturday which allows access to rooms with special equipment (poly-com), physical examination rooms, etc.

Greater undergraduate and graduate student enrollment increased need to employ more teaching faculty. The West River Nursing has 14 full time faculty positions with six doctorally-prepared faculty teaching in the graduate and doctoral program. As a result, west river nursing employs 25-30 part time nursing instructors and temporary clinical assistants to supervise undergraduate acute care and community clinical experiences. Due to the limited space and their limited teaching assignment, all share one common office when needed. Additionally, part time PhD and DNP faculty assigned to teach in the graduate and doctoral programs are no longer provided offices due to the space limits. The lack of parking is also an issue at the Rapid City Regional Health Science Center, as there are not enough parking spaces for the Regional Health accounting staff, much less the faculty for SDSU and USD. Students are required to park on the residential streets.

Another issue has been the fact that the Rapid City Health Science Center is a controlled access facility. Rapid City Regional Health staff, SDSU staff, USD staff, and all students are required to have security badge access. This limitation to access has proven very inconvenient to the educators, students, weekend class offerings, and visitors. Relocation of the graduate programs would alleviate some of the inconvenience.

Also, an initiative to increase the number of Native American nurses enrolled in both SDSU pre-nursing and nursing courses is driven by Bush Innovation grant funding. The grant is co-led by Drs. Robin Peterson-Lund and B. Hobbs and resulted in employing a part time Diversity Officer/Outreach Coordinator and Native American mentor/coordinator. These staff positions are located at the West River Department. The employees are located in office space assigned to an Assistant Professor yet to be hired.

OFFICE SPACE LEASE AGREEMENT

THIS LEASE is made and entered on this day of _____, 2016, by and between Rushmore Road Chiropractic, LLC, as Landlord, hereafter referred to as Lessor, and the South Dakota State University, as Lessor, hereafter referred to as Tenant.

ARTICLE 1

LEASED PREMISES

1. Description of Premises. Lessor leases to Tenant and Tenant leases from Lessor, on the terms and conditions hereinafter set forth, certain real property, called the "Premises", which includes the building and other related improvements located at:
 - a. Address: 1220 Mt. Rushmore Road
 - b. City: Rapid City
 - c. State: South Dakota
 - d. Zip code: 57701
 - e. County: Pennington

The leased premises consist of the entire first floor of the building, an area of approximately 5,600 square feet within the building.

2. Quiet enjoyment. Lessor covenants and agrees, so long as Tenant is not in default under the terms of this Lease, to provide quiet and peaceful possession of the Premises and that Tenant may enjoy all of the rights granted without interference.
3. Tenant will not assign this Lease in whole or in part nor sublease all or part of the Premises without Lessor's prior written consent, which the Lessor agrees will not be unreasonably withheld or delayed.

ARTICLE 2

TERM

1. The term of this Lease will be for a period commencing on _____, 2016 and ending on _____, 2017.
2. The term of this Lease may be extended upon mutual agreement of the Lessor and Tenant for up to four years, commencing on _____, 2017 and ending on _____, 2021.
3. Extension of the term of this lease beyond the first extension period noted in Article 2, paragraph 2, shall require 6 months notification prior the ending date of the first extension.

ARTICLE 3

RENT

1. Rent. Tenant agrees to pay to Lessor, at Lessor's address, equal monthly installments of \$6,430 during the term of this Lease, which is computed at a rate of \$1.15 per square foot per year. Rental payments are due on the first day of each and every month.
2. Rent. Upon mutual agreement to extend the lease, the equal monthly installments will be modified annually. Tenant agrees to pay to Lessor, at Lessor's address, equal monthly

installments of \$6,930 for term of 2017 – 2018, \$7,430 for term of 2018-2019, \$7,930 for term of 2019 - 2020, and \$8,430 for term of 2020 – 2021.

3. Rent. The monthly installments referenced above includes janitorial services of \$430/month.
4. Grace Period. Lessor agrees that Tenant will have a fifteen day grace period after each rent payment is due in which no penalty or interest will be accrued. Lessor agrees that Tenant will not be considered in default if payment of rent is made within the fifteen day grace period.
5. Commencement of rent begins on the month after renovations are completed for occupancy or on the month when the Tenant occupies the space.
6. Renewal term. None.
7. If the commencement date occurs on a day other than the first day of a calendar month, or if the expiration date occurs on a day other than the last day of a calendar month, then the monthly rent for the fractional month will be prorated on a daily basis based upon the actual days elapsed.

ARTICLE 4

TAXES, ASSESSMENTS AND UTILITIES

1. Tenant's Obligations. Taxes attributable to the cost or value of Tenant's equipment, furniture, fixtures, and other personal property. Taxes attributable to leasehold improvements made to the premises by the Tenant.
2. Lessor's Obligations. Lessor agrees to pay, when due, all taxes of any kind, measured by or attributable to the Building, the real property, or the income or receipts of the Lessor. Taxes attributable to leasehold improvements made to the premises by the Lessor are the Lessor's obligation.
3. Utilities and Services are to be paid to the vendor by either the Lessor or Tenant as indicated below if it should apply and if a service does not exist, then it will be deemed not applicable.
 - a. Electricity – Tenant
 - b. Gas – Tenant
 - c. Water – Lessor
 - d. Sewer – Lessor
 - e. Telephone & Communications – Tenant
 - f. Landscaping – Lessor
 - g. Lawn mowing – Lessor
 - h. Snow removal – Lessor
 - i. Garbage service – Lessor
 - j. Cable television – Tenant
8. Janitorial. Janitorial services are included within the Rent (reference Article 3, Rent, Paragraph 3). The janitorial services include daily trash removal and spot cleaning in restrooms. Once a week, janitorial services include vacuuming, cleaning, trash removal, dusting, and cleaning restrooms. Janitorial services include annual cleaning of windows. More frequent janitorial services as needed and requested by the Tenant shall be paid by the Tenant.
9. Parking. Lease includes shared access to the 51 unassigned parking spaces.
10. Mailing. Tenant will have a designated mailing address at Premises and Tenant mail will be separate from Lessor and other occupiers' mail.

ARTICLE 5

INSURANCE

1. "All-Risk" Coverage. Lessor will keep in force "all-risk" coverage, excluding flood and earthquake for the replacement of the Building.
2. General Liability. Tenant as a state institution, is covered by the Public Entity Pool for Liability (PEPL) as provided for in SDCL ch. 3-22. Coverage provided to the Tenant through the PEPL fund satisfies its obligation to provide liability coverage. The Tenant's coverage will be noncontributing with any insurance that may be carried by the Lessor for covered items set forth by SDCL ch. 3-22 and the PEPL agreement.

ARTICLE 6

MAINTENANCE, REPAIRS, AND ALTERATIONS

1. The Lessor shall maintain the premises and keep them in good repair at the Lessor's expense. Repairs and maintenance shall include, but not be limited to, maintenance of the exterior of the premises, building exterior, sidewalks, paving, parking lot striping, and roof.
2. The Lessor further agrees to maintain the interior of the premises, including but not limited to the heating, ventilating, and air conditioning systems, the plumbing systems, fire suppression system, fire alarm & detection system, electrical power systems, electrical lighting systems, ceilings, ceiling finishes, floor finishes, fire extinguishers, and wall coverings. The Lessor shall have the right, with prior approval of the Tenant to enter the premises at all reasonable times to inspect them, to make repairs, and to maintain the building of which the premises are a part.
3. Improvements. Tenant shall have the right to renovate, alter, and remodel the south wing of the leased space to suit the tenant's use, prior to commencement of the lease. Tenant shall have the right to make miscellaneous small alterations in the north wing of the building. The cost of these renovations and alterations shall be borne by the Tenant. The scope and quality of the renovations, alterations, and remodeling shall be subject to written consent of the Lessor. The Tenant will provide the Lessor with plans, drawings, and specifications as the Lessor may reasonably request for Lessor's consideration of the proposed alterations.
4. Improvements. Lessor shall replace finished flooring (carpet and vinyl) throughout the first floor and repaint the first floor of the building, renovated and non-renovated space, prior to commencement of the lease. The cost of these improvements shall be borne by the Lessor.
5. Improvements. Subject to the prior written consent of the Lessor, Tenant shall have the right to make such additions, alterations, changes, or improvements to the Premises as Tenant shall deem necessary or desirable after commencement of the lease.
6. Improvements. If approved by the Lessor, Tenant will complete all Alterations in a good and workmanlike manner consistent with the standards and quality of construction and materials customary in the Building. All alterations, whether temporary or permanent in character, made in or upon the Premises by the Tenant will become the Lessor's property, and at the end of the Term will remain on the Premises without compensation to the Tenant.

7. Signs. The Lessor grants to the Tenant the right to utilize space on the building sign post, to install reasonable signage designating the nature of the business being conducted in said premises, including but not limited to, lettering placed on or near entry of said premises. Tenant will install signage in accordance with local statutes, ordinances, and codes. Upon termination of their lease, the Tenant will remove all such signs and will restore any damages resulting to the premises by reason of such removal of signs.

ARTICLE 7

LESSOR'S ACCESS TO PREMISES

1. Tenant agrees to permit Lessor and his agents to enter the Premises at reasonable times during usual business hours for the purpose of performing any work therein which may be necessary.

ARTICLE 8

INDEMNIFICATION

1. Lessor agrees to indemnify and hold harmless Tenant against and from any and all claims by or on behalf of any person arising from any condition of any street, curb, or sidewalk adjoining the Premises, arising from any breach or default on the part of the Lessor, or arising from any act or negligence of Lessor or any other occupant of the Premises, or any part thereof, or of its or their agents, contractors, servants, employees or licensees, or arising from any accident, injury or damage whatsoever caused to any person or property occurring during the term of this lease in or about the Premises, or upon or under the sidewalks and the land adjacent thereto, and from and against all judgments, costs, expenses and liabilities incurred in or about any such claim or action.
2. This section does not require Lessor to be responsible for or defend against claims or damages arising solely from errors or omissions of South Dakota State University, its officers, agents, or employees.

ARTICLE 9

EVENTS OF DEFAULT; REMEDIES

1. Events of Default. Lessor shall be in default if Lessor fails to perform any of the agreements, terms, covenants or conditions hereof on Lessor's part to be performed, and failure continues for a period of thirty days after written notice by Tenant or if default is of such a nature that it cannot be reasonably cured within the thirty day period, Lessor has not in good faith commenced performance within the thirty day period to diligently proceed curing such default.
2. Funding Out. 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 restrictions, this Lease will be terminated by the Tenant. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.
3. Remedies on Default. Upon the expiration of the cure period with respect to any event of default as set forth in Section 1 above, Tenant shall have the right to terminate this Lease.

4. Tenant shall, upon the expiration or earlier termination of this Lease, return possession of the Premises to Lessor in good order, condition and repair, as improved, reasonable wear and tear excepted. Tenant shall leave the Premises and appurtenances thereto free and clear of rubbish and broom clean.

ARTICLE 10

NOTICE

1. All notices or demands under this Lease shall be sent by United States mail, First Class, postage prepaid, to the addresses set out below for Lessor and Tenant, and notices sent thusly shall be deemed properly given.

To Tenant:
College of Nursing
Wagner Hall
South Dakota State University
Brookings, SD 57007

To South Dakota State University
Attn.: Vice President of Budget and Finance
Office of Budget and Finance
South Dakota State University
Brookings, SD 57007

To Lessor:
Attn.: Greg Scherr
Rushmore Road Chiropractic, LLC
1220 Mt. Rushmore Road
Rapid City, SD 57701

ARTICLE 11

WAIVER

1. Failure of any party to insist upon the strict performance of any or all of the terms or conditions of this lease shall not constitute, nor be construed as, a waiver of that party's right to enforce any such terms or conditions, but the same shall continue in full force and effect.

ARTICLE 12

CANCELLATION

1. The Tenant may cancel this lease upon 30 days' notice in writing. The notice required shall not release either Lessor or Tenant from full performance of all terms and conditions of this lease during the continuing occupancy of Tenant after the notice of termination but before Tenant vacates the premises.

ARTICLE 13

GENERAL PROVISIONS

1. Successors and Assigns. This Lease shall bind and inure to the benefit of the parties hereto and their successors and assigns.
2. Construction. The language in all parts of this Lease shall be in all cases construed according to its plain meaning and not strictly for or against Lessor or Tenant.
3. Severability. If any term, covenant, condition or provision of this lease is held by a Court of competent jurisdiction to be invalid, void, or unreasonable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
4. Non Discrimination Provision. The parties agree not to discriminate or harass individuals on the basis of sex, race, color, creed, national origin, ancestry, citizenship, gender, gender identification, transgender, sexual orientation, religion, age disability, genetic information or US veteran status or any other status that may become protected under US and South Dakota law against discrimination.
5. Subcontractor Provision. Lessor may not use subcontractors to perform the services described herein without the express prior written consent of the Tenant. Lessor will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Lease and the policies and procedures of the Tenant applicable to Tenant's use of the Premises, to indemnify the Tenant, and to provide insurance coverage for the benefit of the Tenant in a manner consistent with this Lease. Lessor will cause its subcontractors, agents, and employees to comply with 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.
6. Compliance. Lessor and its agents and employees will comply will all federal, state, and local laws, regulations, ordinances, guidelines, permits and requirements applicable to this Lease. In addition, Lessor shall comply with all laws and regulations specifically applicable to the Premises due to Tenant's use and Tenant's improvements of the Premises under this lease, including but not limited to the Americans with Disabilities Act, the Family Educational Rights and Privacy Act, the Health Information Privacy and Accountability Act to the extent applicable to Lessor's services described herein. Should any legislation, regulation or government policy become effective which would cause either party to be in violation of such laws due to this Lease, then the parties agree to negotiate in good faith to modify the terms of this Lease and comply with the applicable law.
7. Reporting Provision. Lessor agrees to report to the Tenant any event encountered in the course of performance of this Lease which results in injury to the person or property of third parties, or which may otherwise subject Lessor or the Tenant to liability. Lessor shall report any such event to the Tenant immediately upon discovery. Lessor's obligation under this section shall only be to report the occurrence of any event to the Tenant and to make any other report provided for by their duties or applicable law. Lessor's obligation to the report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the Tenant under this section shall not excuse or satisfy any

obligation of Lessor to report any event to law enforcement or other entities under the requirements of any applicable law.

- 8. Audit. The Tenant, through an authorized representative, will have reasonable access to and right to examine and copy records, books and papers related to the performance of this Lease.
- 9. Law Governing. This lease shall be governed by and construed in accordance with the laws of the State of South Dakota and any lawsuit pertaining to or affecting this Lease shall be venued in South Dakota.
- 10. Entire Agreement. This Lease, together with any written modifications or amendments executed by both parties, hereinafter entered into, shall constitute the entire agreement between the parties and shall supersede any prior agreements or understandings, if any, whether written or oral, which the parties may have had relating to the subject matter.
- 11. Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

The parties hereto have executed this Lease as of the day and year first above written.

TENANT

SOUTH DAKOTA STATE UNIVERSITY

OFFICE OF BUDGET AND FINANCE

Signature _____
Wesley Tschetter, VP of Finance & Budget/CFO

Date _____

LESSOR

RUSHMORE ROAD CHIROPRACTIC

Signature _____

Date _____