

**BOARD OF REGENTS
MINUTES OF THE MEETING
March 11, 2013**

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**BOARD OF REGENTS
MINUTES OF THE MEETING
Board of Regents Conference Room
306 E. Capital Ave, Pierre, SD
March 11, 2012**

The Board of Regents convened via teleconference at 4:00 p.m. on March 11.

ROLL CALL:

Kathryn Johnson, President - PRESENT
Dean Krogman, Vice President - ABSENT
Randy Schaefer, Secretary - PRESENT
Terry Baloun, Regent - ABSENT
James Hansen, Regent - PRESENT
Harvey Jewett, Regent - PRESENT
Randy Morris, Regent - ABSENT
Carole Pagones, Regent - PRESENT
Patrick Weber, Regent - PRESENT

Also present were Jack Warner, Executive Director and CEO; Monte Kramer, System Vice President of Finance and Administration; James Shekleton, General Counsel; Janelle Toman, Director of Communications; Molly Weisgram, Executive Administrative Assistant; SDSM&T Acting President Duane Hrcir; Pat Mahon, SDSM&T Dean of Students, and Tim Henderson, SDSM&T Chief Financial Officer.

Regent President Johnson called the public meeting of the Board of Regents to order and declared a quorum present.

APPROVAL OF THE AGENDA

IT WAS MOVED by Regent Jewett, seconded by Regent Hansen to approve the agenda as published.

ROLL CALL:

Johnson - AYE
Krogman - ABSENT
Schaefer - AYE
Baloun - ABSENT
Hansen - AYE
Jewett - AYE
Morris - ABSENT
Pagones - AYE
Weber - AYE

The MOTION CARRIED.

**SDSM&T TENANT LEASE AGREEMENT – TECHNOLOGY HOUSING, LLC
(ROCKER SQUARE)**

Dr. Jack Warner introduced the item by explaining that because of anticipated strong freshmen and sophomore enrollments for the fall 2013 term, the South Dakota School of Mines and Technology has submitted a second request for authorization to negotiate with Technology Housing, LLC (Rocker Square) apartments to obtain placement to house 148 sophomore students for the 2013-2014 academic year and subsequent summer term.

He said that a prior request was submitted and reviewed at the December Board meeting; however, a request for updated projections delayed action. Housing and new application numbers remain at a double digit increase over the previous year supporting the request, creating a demand for additional required sophomore housing.

Pat Mahon, SDSM&T Dean of Students, clarified that the SDSM&T-owned housing options would be filled at 100% capacity before any students would be directed to Rocker Square. She reiterated that Rocker Square would only be for overflow sophomores.

Questions regarding percentages of instate versus out-of-state students were addressed. Dr. Mahon stated that last year, 48% of students were from out-of-state and 52% were in state, although there is a trend toward a growing out-of-state student population.

Dr. Mahon explained that student feedback is positive. Students want to be close to campus; however, lodging options are drawing them further from campus. The Rocker Square option keeps them close with the apartment-style housing they want.

Regents asked for and received clarification that this is a one-year lease agreement.

IT WAS MOVED by Regent Jewett, seconded by Regent Pagonos to authorize the South Dakota School of Mines and Technology to enter into a lease agreement with Technology Housing, LLC (Rocker Square) for the calendar year, August 15, 2013 - August 15, 2014. SDSM&T will provide the Board with a recap of the finances at the end of the lease.

ROLL CALL:

Johnson - AYE
Krogman - ABSENT
Schaefer - AYE
Baloun - ABSENT
Hansen - AYE
Jewett - AYE
Morris - ABSENT
Pagonos - AYE
Weber - AYE

The MOTION CARRIED.

ADJOURN

IT WAS MOVED by Regent Jewett, seconded by Regent Pagonos to adjourn the meeting of the full board at 4:18 p.m.

ROLL CALL:

Johnson - AYE
Krogman - ABSENT
Schaefer - AYE
Baloun - ABSENT
Hansen - AYE
Jewett - AYE
Morris - ABSENT
Pagonos - AYE
Weber - AYE

The MOTION CARRIED.

SOUTH DAKOTA BOARD OF REGENTS

Full Board

AGENDA ITEM: 2

DATE: March 11, 2013

SUBJECT: SDSM&T Tenant Lease Agreement – Technology Housing, LLC (Rocker Square)

Anticipating strong freshmen and sophomore enrollments for the fall 2013 term, the South Dakota School of Mines and Technology submitted a second request for authorization to negotiate with Technology Housing, LLC (Rocker Square) apartments to obtain placement to house 148 sophomore students for the 2013-2014 academic year and subsequent summer term.

A prior request was submitted and reviewed at the December Board meeting. A request for updated projections delayed action. Housing and new application numbers remain at a double digit increase over the previous year supporting the request, creating a demand for additional required sophomore housing. This is a one-year lease agreement. SDSM&T is conducting a housing study and will submit a report at the June 2013 Board of Regents meeting for future planning.

Sophomore students would be assigned pursuant to the same procedures, and subject to the same contract requirements and policies, currently in place for on campus assignments; however, they would be assigned rooms in the Rocker Square facility. The SDSM&T housing system would assign resident assistants to the facility and would provide the same levels of programming and supervision that would be provided on campus. Technology Housing will be responsible for all repairs, maintenance, property taxes, utilities, and grounds care including garbage and snow removal.

In order to be able to commence with contracting and assignment practices, SDSM&T requests authorization to finalize the attached agreement prior to the Board’s April 3-4, 2013

(Continued)

RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR

Authorize the South Dakota School of Mines and Technology to enter into a lease agreement with Technology Housing, LLC (Rocker Square) for the calendar year, August 15, 2013 - August 15, 2014. SDSM&T will provide the Board with a recap of the finances at the end of the lease.

meeting. Returning students ordinarily begin to request housing assignments beginning in January, so immediate action is necessary.

SDSM&T Resident Services

Projected enrollment growth is coming to fruition at the South Dakota School of Mines and Technology. This past year, the first-time freshman class increased by 9.8%. The limited housing capacity at SDSM&T is now at the forefront of both short-term and long-term planning discussions. In order to continue to grow, it is paramount that SDSM&T provide a safe and desirable environment for students to live and learn.

The university currently provides on-campus housing for approximately 25% of our total student population (planned occupancy excluding resident assistants is 605 beds), and manages an additional 45 bed spaces in apartments owned by the SDSM&T Foundation. These apartments are old and are slated to be demolished in future years according to the campus master plan.

The immediate need is to house freshman and sophomore students who are required to live on-campus, per Board of Regents policy 3:6 – Student Housing - General. It is anticipated that there will be a shortage of more than 150 bed spaces for sophomores in the fall of 2013. In order to accommodate this shortage, SDSM&T proposes to enter into a one-year lease agreement with Technology Housing, LLC for a furnished 148 bed apartment complex (Rocker Square), with parking, adjacent to the campus, to meet student housing needs. Technology Housing will be responsible for all repairs, maintenance, property taxes, utilities, and grounds care including garbage and snow removal. It agrees to insure the structure and secure comprehensive general liability insurance of \$2,000,000 per occurrence. SDSM&T is responsible for routine cleaning of public areas and student rooms at the time an occupant vacates. SDSM&T will pay a total sum of \$790,000 in six periodic payments and will be entitled to pro-rated reimbursement in the event the structure is destroyed and/or uninhabitable. The agreement is contingent upon the Legislature making necessary appropriations and SDSM&T maintains the right to terminate the lease in the event of inadequate appropriations.

Precedence for similar agreements have been experienced at other universities across the country (see Attachment I) and has been experienced at the School of Mines through the lease agreement with the University Foundation and previously with National American University. The rest of the 2013-2014 anticipated housing shortage will be accommodated by exemptions for sophomores who have legitimate requests to live in other housing arrangements such as living at home with family members, married, parents with dependent children, or living in Greek housing.

Pricing for Rocker Square will be at the same level as the existing University Apartment rate listed in the SDSM&T official fee schedule. This price per semester is listed as

\$2,627.75/bed. These apartments compare very favorably with the existing University Apartments as the Rocker Square apartments are new, with modern bathrooms and kitchen appliances, and washer/dryer combinations in each unit. \$2,627.75 will be charged for 108 beds for single room occupancy and \$1,991 for 40 beds for double room occupancy for the fall and spring semesters. This will total a nine month revenue of \$727,712. As with its regular residence halls, SDSM&T will try and maximize summer occupancy through students, summer camps, and conferences. SDSM&T will want to do this with Rocker Square for the one summer contemplated in this agreement in order to meet expenses and allow for every potential to generate revenue above the \$790,000 lease price. Summer revenue that will average \$500 a month per single bed space, based on 50% occupancy, will generate an additional \$120,000 (see Attachment II).

Students residing in Rocker Square will be contracted with Residence Life through the standard housing agreement and be subject to all BOR, School of Mines, and Residence Life policies and procedures including room reservations, student conduct, and billing. In order to provide an optimal community for our sophomore residents, Student Life will employ five Resident Assistants (RA's) and assign them to Rocker Square. These RA's would provide programming opportunities to meet the learning and development outcomes set forth by Student Affairs and Residence Life. The RA's would also provide a health and safety component in the building with duty coverage, nightly rounds, and frequent interaction with residents.

By 2017-2018, SDSM&T housing is projected to be 424 beds short for students required to live on campus if the current growth rates continue as projected (see Attachment III). SDSM&T must also continue to address the needs and desires of its upper-class and graduate students. Therefore it hired housing consultant, Hay Dobbs, to create a housing master plan to address future housing needs. SDSM&T anticipates bringing this comprehensive study to the June 2013 Board of Regents meeting.

Students will begin housing sign-ups in January 2013 for the fall 2013 semester. Therefore, SDSM&T is requesting approval of the attached lease (Attachment IV) as reviewed and approved by legal counsel and BOR Executive Director Dr. Jack Warner.

Exhibit A: Examples of other campuses solutions to similar housing shortage situations include:

Washington University in St. Louis

Leased private apartment near the University for 3-years to alleviate on-campus housing shortage from 2007-2010. (School of Mines Director of Residence Life personally managed this situation during his employment with Washington University)

University of Iowa

Currently leasing one apartment complex and is proposing leasing two more next to campus to alleviate housing shortages on campus.

<http://housing.uiowa.edu/departments/univapts/communityinfo.htm>; <http://www.kcrg.com/news/local/University-of-Iowa-to-Lease-More-Private-Apartment-Space-181519621.html>

University of Minnesota

Currently uses and staffs a portion of a 425-bed apartment complex near campus owned by a Minneapolis non-profit. Other Minneapolis colleges also use the facility and provide staffing.

<http://www.housing.umn.edu/halls/uv/index.html>

Columbus State University, Georgia

Provides management and staffing of a private apartment adjacent to campus.

<http://www.fontainehall.com/>

Exhibit B: Rocker Square Simplified Pro Forma as of 3/7/13

| | | |
|--|-----------|-------------------------------------|
| <u>Revenues</u> | | |
| | 567,432 | 108 beds at \$2,627/semester |
| | 159,280 | 40 beds at \$1,991/semester |
| | 726,712 | Total nine month revenue |
| | 120,000 | Summer-50% occupancy, \$500/mo avg. |
| Total Rev | 846,712 | |
| Lease Amount | (790,000) | |
| Residence Life RA staffing / student custodial | (56,000) | |

Exhibit C: Projected Housing Needs through 2017-2018

Below are housing projections for the next five academic years based on the following assumptions:

- In the past, juniors and seniors have lived on-campus but limited space prohibits them to do so. As enrollment climbs, housing for juniors and seniors is in greater demand within close proximity to the campus.
- 2013-2014 first time based on a recruiting goal of a freshmen class of 540 with an 86% on-campus housing rate (historically, 84%-87% of first time freshmen live on).
- 5% increase in first time freshmen/new transfer students, fy15-fy18.
- 80% retention rate, freshman to sophomore (in line with current retention rate)

Residence Hall Occupancy**2012-2013 Fall Housing Numbers**

| | |
|---|------------|
| First Time Freshmen | 397 |
| New Transfer Students | 22 |
| Returning Sophomores | 184 |
| Other | 6 |
| Total Fall Occupancy | 609 |
| Residence Hall Bed Shortage (lenient exemptions, i.e., allergies, living with extended family members) | 38 |

Total Residence Hall Occupancy

| Spring | Fall |
|--------|------|
| 2013 | 2012 |
| 99% | 101% |

2012-2013 Spring Housing Numbers – Updated 1/17/13

| | |
|---------------------------------------|------------|
| First Time Freshmen (HS Class of '12) | 377 |
| Sophomores (HS Class of '11) | 193 |
| Beyond Sophomore Year | 16 |
| Total Spring Occupancy | 586 |

2013-2014 Projections

| | |
|------------------------------------|------------|
| First Time Freshmen | 464 |
| New Transfer Students | 24 |
| Returning Sophomores | 302 |
| Total Projected Occupancy | 790 |
| Residence Hall Bed Shortage | 185 |

2014-2015 Projections

| | |
|------------------------------------|------------|
| First Time Freshmen | 488 |
| New Transfer Students | 26 |
| Returning Sophomores | 371 |
| Total Projected Occupancy | 885 |
| Residence Hall Bed Shortage | 280 |

2016-2017 Projections

| | |
|------------------------------------|------------|
| First Time Freshmen | 539 |
| New Transfer Students | 30 |
| Returning Sophomores | 410 |
| Total Projected Occupancy | 979 |
| Residence Hall Bed Shortage | 374 |

2017-2018 Projections

| | |
|------------------------------------|-------------|
| First Time Freshmen | 566 |
| New Transfer Students | 32 |
| Returning Sophomores | 431 |
| Total Projected Occupancy | 1029 |
| Residence Hall Bed Shortage | 424 |

Application & Registration Year to Date Comparison Data- Updated March 6, 2013

| First-time Freshmen | Fall 2012 | Fall 2013 | % increase |
|----------------------------|------------------|------------------|-------------------|
| Applications | 981 | 1219 | +24.3% |
| Registrations | 182 | 246 | +35.2% |
| Housing Applications | 205 | 255 | +24.4% |

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into this ____ day of _____, 2013, by and between South Dakota School of Mines & Technology (hereafter referred to as "SDSM&T") and Technology Housing, LLC.

RECITALS

WHEREAS, SDSM&T desires to locate suitable housing for university students, and Technology Housing, LLC, is the owner of an apartment complex known as Rocker Square located at 311 St. Joseph Street, Rapid City, South Dakota;

WHEREAS, Technology Housing, LLC, wishes to satisfy SDSM&T's request for additional student housing for SDSM&T;

NOW, THEREFORE, in consideration of the mutual benefits to be enjoyed by the parties hereto, Technology Housing, LLC, and SDSM&T hereby agree as follows:

1. Grant of Lease. Technology Housing, LLC, agrees to lease and let to SDSM&T, and SDSM&T agrees to lease and let from Technology Housing, LLC, to be used as housing to meet university needs the following described real and personal property (hereinafter referred to as "Student Housing"):

Lots eleven through sixteen (11-16), Block 3, Denman's Addition of Section six (6), Township One (1) North of Range, Eight (8) East of the Black Hills Meridian, Rapid City, Pennington County, South Dakota, including all improvements, parking, common areas, and personal property located thereon.

2. Term. The term of this Agreement ("Term") shall commence on August 15, 2013 and continue until midnight, August 15, 2014.
3. Rent. SDSM&T shall pay a total payment of \$790,000 in rent for Student Housing to Technology Housing, LLC, excepting from payment any occurrence set forth in Paragraph 11 of this Agreement, with the first payment of \$200,000 to be paid on or before September 15, 2013, and the remaining payments to be made on or before the following dates and in the following amounts:

November 15, 2013 - \$120,000

January 20, 2014 - \$200,000

March 20, 2014 - \$120,000

June 1, 2014 - \$75,000

August 1, 2014 - \$75,000

4. Maintenance and Repair. Technology Housing, LLC, shall maintain the roof, walls, floors, electrical, plumbing, heating, air conditioning, major appliances, and the structure of Student Housing, including parking and all common areas, in a good state of repair. Additionally, Technology Housing, LLC, will ensure that fire detection, including sprinkler systems, building security systems and locking mechanisms, and emergency exits are in compliance with all applicable codes and in working order at all times.
5. Routine site maintenance, Snow Removal and Grounds. SDSM&T will promptly submit all routine requests for maintenance and repair to Technology Housing, LLC. Snow removal, landscaping, and mowing are to be provided by Technology Housing, LLC.
6. Cleaning. SDSM&T will be responsible for routine hallway, lobby and stairway/stairwell cleaning and cleaning of an individual unit when a student occupant vacates. Technology Housing, LLC, will remain responsible for all other maintenance on these areas as well as all others consistent with the terms of this Agreement.
7. Parking. Parking shall be used for the benefit of SDSM&T, and all parking areas, sidewalks, driveways, and all other common facilities and areas are subject to a common easement in favor of Technology Housing, LLC, and SDSM&T.
8. Utilities and Taxes. All utilities for Student Housing, including but not limited to: water, electric, sewer, cable, high speed internet access, landline telephone communications, and garbage removal, shall be paid by Technology Housing, LLC. Technology Housing, LLC, shall further maintain responsibility for property tax obligations.
9. Insurance. Technology Housing, LLC, shall be responsible for insuring Student Housing structure. Further, Technology Housing, LLC shall carry comprehensive general liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence. Technology Housing, LLC, will furnish to SDSM&T, upon request, a certificate of insurance which states that such coverage is in effect.
10. Use of Student Housing. Student Housing shall be used exclusively for SDSM&T housing needs, and maintenance or repair issues in individual units of Student Housing shall require request by Technology Housing, LLC, to SDSM&T reasonably in advance of any entrance to the individual units.
11. Fire or Other Casualty. In the event that the building is destroyed by fire or other casualty, or otherwise rendered uninhabitable, the parties may enter into a mutually acceptable successor agreement. The parties agree that they will work together and provide best efforts to find and provide subsequent acceptable housing during the remainder of the Term of this Agreement. SDSM&T shall be credited at least \$65,000 per month beginning the month of the occurrence and each month until the month in which the students are in subsequent acceptable housing. The parties intend that SDSM&T will receive a prorated reimbursement of sums tendered to Technology Housing, LLC, in advance of the loss, if any.

12. Vacate Upon Expiration. Upon expiration of this Agreement, SDSM&T shall quietly surrender to Technology Housing, LLC, Student Housing premises in as good condition and repair as when taken, reasonable wear and tear and damage excepted. SDSM&T may remove, at or prior to termination of this Agreement, any furniture, furnishings, fixtures, or equipment, installed at the expense of SDSM&T, and Student Housing shall be restored to its original condition at the expense of SDSM&T, normal wear and tear excepted.
13. Entire Agreement. This Agreement constitutes the entire understanding between the parties with respect to the subject matter thereof and replaces and supersedes in their entirety all prior agreements, written or unwritten, and documents between the parties with respect thereto.
14. Modifications. This agreement may be modified from time to time only on mutual agreement in writing of the parties.
15. Inurement. This Agreement shall be binding upon the parties thereto and upon their respective successors and assigns.
16. Environmental Law Compliance. The parties to this Agreement shall not store, use or dispose of any hazardous substance, the storage, use, or disposal of which is regulated under any statute, rule, or ordinance, on or about Student Housing Premises.
17. Failure of Appropriations. This Agreement 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. Technology Housing, LLC, acknowledges that legislative action may require the curtailment or termination of some or all of SDSM&T's educational programs; and Technology Housing, LLC, acknowledges further that SDSM&T is obligated to respond to such legislative action and may determine that it is necessary in the public interest to terminate its use of Student Housing premises, subject of this Agreement. Technology Housing, LLC, does hereby agree to release SDSM&T from all liability for actions taken in response to the failure of the Legislature of the State of South Dakota to make adequate appropriations or to grant adequate expenditure authority. In the event that SDSM&T should terminate its use of Student Housing premises in response to such legislative action, this Agreement, and all of the rights and obligations arising hereunder, shall automatically terminate, subject to the reimbursement by Technology Housing, LLC, for sums tendered by SDSM&T in advance prior to termination of use, in the manner described in Paragraph 11 of this Agreement.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, both parties hereto have set their hands the day and year first above written.

SOUTH DAKOTA SCHOOL OF MINES & TECHNOLOGY

By: _____
Duane Hrncir, Acting President

State of South Dakota

ss.

County of Pennington

On this ____ day of _____, 2013, before me, a Notary Public, personally appeared Duane Hrncir, who acknowledged himself to be the Acting President of South Dakota School of Mines & Technology, a public institution of higher education, and that he, as such Acting President being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the institution by himself as Acting President.

In witness whereof I hereunto set my hand and official seal

(Notary Public)

My Commission Expires: _____

TECHNOLOGY HOUSING, LLC

By: _____
Hani F. Shafai, PE
Technology Housing, LLC

State of South Dakota

ss.

County of Pennington

On this ____ day of _____, 2013, before me a Notary Public, personally appeared Hani F. Shafai, who acknowledged himself to be _____ of Technology Housing, LLC, and that he, as such _____ being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as _____.

In witness whereof I hereunto set my hand and official seal

(Notary Public)

My Commission Expires: _____

The South Dakota Board of Regents adjourned its special business meeting on March 11, 2013 and will meet again in regular session on April 3-4, 2013 in Aberdeen, South Dakota.

I, Jack Warner, Executive Director and CEO of the South Dakota Board of Regents, declare that the above is a true, complete and correct copy of the minutes of the Board of Regents meeting held on March 11, 2013.

A handwritten signature in black ink, appearing to read "Jack Warner", written in a cursive style.

Jack Warner
Executive Director and CEO