

SOUTH DAKOTA BOARD OF REGENTS

Academic and Student Affairs

AGENDA ITEM: 7 – C
DATE: October 5-6, 2022

SUBJECT

West River Health Sciences and Monument Health

CONTROLLING STATUTE, RULE, OR POLICY

[BOR Policy 1:1](#) – General Authority, Powers, and Purpose of the Board

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

BACKGROUND / DISCUSSION

Per BOR Policy 5:3, any contract and agreement relating to the creation and operation of off-campus instructional sites intended to operate for one academic year or more must be provided to the Board for formal approval. Attachment I and Attachment II is a coalescing of work by multiple stakeholders including Monument Health (Rapid City), Black Hills State University, South Dakota State University, and the Board of Regents.

History:

In the late 1980's, an agreement between the Board of Regents and the West River Management Advisory Committee (WRMAC) was entered into and governed the nursing programs in western South Dakota. The original agreement for WRMAC included a lease option for the utilization of space between BOR and Monument Health.

Senate Bill 55 Task Force (SB55) recommendations included strong evidence to support movement to one nursing program. The recommendation of SB55 was that a memorandum of understanding would be entered in to govern the work of the WRHSC steering committee.

Lease Agreement:

The desire of Monument Health was to move the lease out of the original memorandum of understanding and into a new lease agreement (Attachment I). Therefore, this lease agreement will be entered into between the Board of Regents and Monument Health for space needs until the building project is completed at Black Hills State University.

(Continued)

DRAFT MOTION 20221006_7-C:

I move to approve the attached Lease and Memorandum of Understanding as presented authorizing the president of the board to sign. This Lease and Memorandum of Understanding replace any previous agreement with respect to the West River Health Science Center and Committee.

Attachment I was developed between Monument Health and the Board of Regents Legal Counsel with collaboration by both BHSU and SDSU. This lease will serve to control the agreement of space utilization between BOR and Monument Health.

Memorandum of Understanding:

As outlined in the June 2021 board item, “a memorandum of understanding (MOU) will be required between BHSU and SDSU to ensure commitment of resources, succinct communications, and efforts for success (including recruitment, retention, and completion) are defined”. The MOU as outlined in Attachment II will control the resource allocations in personnel and facilities, student advising, student recruitment expectations, and other reporting requirements shared between all parties. This MOU will be utilized by the West River Health Sciences Center steering committee to ensure increased communications and programming needs are accurately provided.

IMPACT AND RECOMMENDATION

This Lease and the Memorandum of Understanding has been evaluated by the WRHSC steering committee which includes representation from Monument Health, Black Hills State University, South Dakota State University, and the Board of Regents. Legal counsel Nathan Lukkes has evaluated the attached Lease and Memorandum of Understanding to ensure it meets the requirements of the Board of Regents.

Dr. Brian Maher recommends approval for both the Lease and the Memorandum of Understanding.

ATTACHMENTS

Attachment I – Draft Lease between Monument Health and the Board

Attachment II – Memorandum of Understanding

LEASE AGREEMENT

This Lease Agreement ("Lease") is entered into this _____ day of _____, 2022 by and between Monument Health Rapid City Hospital, Inc., (hereinafter "Lessor") and the Board of Regents, a South Dakota body corporate and public, (hereinafter "Tenant") and collectively herein "Parties".

RECITALS:

WHEREAS, Lessor owns real property located at 1011 11th Street in Rapid City South Dakota that is suitable for the needs of Tenant; and

WHEREAS, Lessor currently leases a portion of said real property to Tenant in conjunction with the West River Nursing Education Programs Agreement dated July 1, 1989 and to which Lessor is a party; and

WHEREAS, Tenant is in the process of updating the Memorandum of Understanding (MOU) with the West River Health Science Center to which Lessor will not be party; and

WHEREAS, Lessor and Tenant have determined it is in their mutual best interests to enter into this Lease independent of the MOU; and

WHEREAS, the execution of this Lease shall have the effect of terminating the obligations of and between the parties set forth in the West River Nursing Education Programs Agreement dated July 1, 1989;

NOW, THEREFORE, the Parties do hereby agree as follows:

1. **PROPERTY:** Lessor agrees to lease to Tenant a portion of the property that is located at 1101 11th Street, Rapid City, South Dakota. The leased space consists of approximately twenty-eight thousand (28,000) square feet of exclusive use space, along with shared access to common areas (hereafter "Property") as shown on Exhibit A.
2. **USE OF PROPERTY:** The Property shall be used by Tenant for the purpose of operating an accredited nursing program ("Program") only and shall not be used for other purposes. Tenant shall not do or permit anything to be done in or about the Property, nor bring or keep anything therein which will in any way increase the existing rate of or affect any fire or other insurance upon the building or any of its contents, or cause a cancellation of any insurance policy covering the building or any part thereof, or any of its contents. Tenant shall not do or permit anything to be done in or about the Property that will in any way obstruct or interfere with the rights of other tenants or occupants of the building, or injure or annoy them, or use or allow the Property to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance or loitering in, on or about the Property.
3. **TERM:** This Lease shall commence on _____, 2022 and shall expire on _____, 2023. This Lease shall automatically renew for successive twelve (12) month terms unless one party notifies the other in writing of its intention to terminate the lease at least ninety (90) days prior to the end of the current term. The Parties agree that the Lease may be renewed on a month-to-month basis if mutually beneficial to both Parties and agreed to at least ninety (90) days prior to the end of the current term.
4. **TERMINATION:** The Parties agree that the Lease may be terminated in any of the following events:

- a. At the end of the initial term or any renewal term upon ninety (90) day notice given by either party prior to the end of the relevant term;
- b. Action by Legislature to discontinue funding of the Program;
- c. Upon agreement, in writing, of both Parties to terminate as of the date contained in such writing;
- d. Upon a material breach of the Lease and the failure of the alleged breaching party to rectify the matter within ninety (90) days of the written notice of the alleged breach;
- e. Upon thirty (30) days' notice in the event this Lease or the contributions Lessor made pursuant thereto cause or threaten to cause the loss of Lessor's tax exempt status, licensure, or reimbursement; or threaten to or result in Lessor's disqualification to participate in government sponsored or tax exempt service, reimbursement or financing programs; or result in like penalty.

In the event of termination of this Lease, Tenant agrees to return and quietly surrender the Property. The Parties further agree to use their good faith efforts to the extent not restricted by budgetary, contract, legal, administrative, or other concerns, to terminate the Lease in a manner which causes the least adverse effect to the Parties and the beneficiaries or the Program. No beneficiary or other third party shall, however, have the right in equity or at law, to enforce the aforesaid provision.

5. RENT: Lessor agrees to lease the Property to Tenant free of rent except for payment of certain expenses as may be otherwise provided below.
6. REPAIR AND MAINTENANCE: Tenant shall maintain the interior of the Property in good condition and repair and shall keep the property free from hazards, or dangers of fire or any nuisance.

Lessor shall, at its cost and expense, make all repairs in and to the Property except when the disrepair is due to carelessness, omission, neglect, improper conduct or other cause of the Tenant or the respective employees, agents, students, or visitors of the Tenant in which event the damage shall be repaired, restore or replaced promptly by the Tenant at its cost and expense and to the satisfaction of Lessor. Any repairs, restorations, or replacements for which the Tenant is responsible may be made, upon request and at a mutually agreed cost, by Lessor in which case the Tenant shall reimburse Lessor within sixty (60) days of receipt of a bill therefor. Any repairs, restoration or replacements made by the Tenant shall be subject to prior approval by Lessor and shall be in quality and class equal to the original work and shall be done by a professional contractor.

Lessor will maintain and keep in reasonable repair the roof and exterior of the building including sidewalks and parking area.

For purposes of safety, the Tenant understands and agrees to notify the Lessor as soon as reasonably possible of any needed repairs of which they have knowledge, and agree not to undertake repairs without first notifying Lessor. The Tenant understands that Lessor has maintenance personnel available to respond to emergencies. Such personnel may be contacted twenty-four hours per day by calling Plant Operations 605-755-8888 or through the hospital switchboard 605-755-1000.

7. FIXTURES: All structural fixtures, equipment, and improvements attached to or built into the space demised at the commencement of this Lease by Lessor or at the expense of the Tenant shall be and remain part of the Property and shall not be removed by the Lessor unless such removal will not materially damage the structural soundness of the building and upon the further condition that the cost of repairing any damage to the Property arising from such removal shall be paid by the Tenant.
8. FURNISHINGS, EQUIPMENT & RESOURCES: As further consideration for the operation of the Program, Lessor agrees to allow Tenant use of the office and classroom equipment and furniture

currently located in the Property. Maintenance, repair, and/or replacement of any equipment and all furnishings shall be at the sole cost of the Tenant. It is understood and agreed that any furniture and equipment purchased by the Tenant for replacement or otherwise shall be and remain the sole property of the Tenant except as provided in paragraph 6 above.

Tenant agrees that termination of this Lease for any reason shall terminate the Tenant's right to use the above resources and the furnishings and equipment originally owned by Lessor for which the Tenants have not expended maintenance or repair approximating its fair market value.

9. **INSURANCE:** Lessor, at its cost and expense, shall insure the property against loss or damage by fire or other broad form casualty and will maintain a policy of general liability insurance coverage.

Tenant, at its sole cost and expense, shall keep in force during the term of this Lease general liability insurance with limits of at least \$1,000,000.00 per occurrence for injuries to or death of persons occurring in, on or about the Property, naming Lessor as additional insured. Tenant shall provide Lessor with proof of such coverage which shall provide that Lessor must be given ten (10) day notice of any insurance cancellation. Tenant shall likewise be responsible for carrying, and shall pay the cost of any casualty insurance as Tenant deems appropriate, with respect to any of Tenant's personal property and equipment.

10. **UTILITIES AND SERVICE:** Lessor shall be responsible for providing utility service to the Property to the same extent that it provides such services to the remainder of the building. Lessor will furnish the following services as a part of Tenant's rent:

- a. Any utilities including fuel and electricity, provided through existing utility systems, necessary to provide heat, lighting and air conditioning;
- b. Janitorial and office cleaning service including removal of refuse;
- c. Installation and replacement of all necessary light bulbs, starters and ballasts;
- d. Elevator service in common with other occupants;
- e. Painting of interior walls as necessary to maintain adequate appearance, and
- f. Removal of ice and snow from the sidewalks, driveway and parking area.

Lessor does not warrant that any of the above services will be free from interruption caused by repair, renewals, improvements, alterations, strikes, accidents inability to obtain fuel supplies or any other causes beyond the reasonable control of Lessor. No such interruption of service shall be deemed a material breach of this Lease nor render Lessor liable to Tenant for damages provided, however, that Lessor will at all times use reasonable efforts to promptly remedy any situation that interrupts such services.

11. **PARKING:** Lessor grants to Tenant, the common use with other occupants of the building, of the off-street parking located on the property. Such parking is limited and Tenant agrees to comply with reasonable requests on limiting the number of spaces available for use. Lessor agrees to repair, maintain, remove snow and illuminate the parking lot at its expense.
12. **ALTERATIONS, IMPROVEMENTS AND SIGNS:** Tenant shall not make or cause to be made any alterations, additions or improvements to or of the Property or any part thereof without the advance written consent of Lessor and any alterations, additions or improvements to or of said Property, except movable furniture and trade fixtures, shall at once become a part of the realty and belong to Lessor. Tenant shall obtain Lessor's consent prior to placing any signs on or about the Property.

13. **HAZARDOUS MATERIALS HANDLING:** Tenant shall, at its own expense, procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for Tenant's use of the Property, including without limitation, discharge of materials or waste into or through any sanitary sewer serving the Property. Except as discharged into the sanitary sewer in strict accordance and conformity with all applicable hazardous materials laws, Tenant shall cause any and all hazardous materials removed from the Property to be removed and transported solely by duly licensed haulers to duly licensed facilities for final disposal of such materials and wastes. Tenant shall in all respects handle, treat, deal with and manage any and all hazardous materials in, on, under or about the Property in total conformity with all applicable hazardous materials laws and prudent industry practices regarding management of such hazardous materials. Upon expiration or earlier termination of this term of the Lease, Tenant shall cause all hazardous materials to be removed from the Property and transported for use, storage or disposal in accordance and compliance with all applicable hazardous materials laws. Tenant shall not take any remedial action in response to the presence of any hazardous materials in or about the Property, nor enter into any settlement agreement, consent decree or other compromise in respect to any claims relating to any hazardous materials in any way connected with the Property without first notifying Lessor of Tenant's intention to do so and affording Lessor ample opportunity to appear, intervene or otherwise appropriately assert and protect Lessor's interest with respect thereto.
14. **QUIET ENJOYMENT:** Lessor warrants that upon Tenants performance and use as covenanted, they shall and may peaceably have, hold and enjoy the Property demised for the term of this Lease subject to the term of this Lease and for so long as Lessor or its affiliates are the owners of the Property.
15. **ASSIGNMENT AND SUBLETTING:** Tenant shall not assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest therein and shall not sublet the Property or any part thereof, or any right or privilege appurtenant thereto or permit any other person to occupy or use the Property, or any portion thereof, without the advance written consent of Lessor. The Tenant may, however, without the prior written consent of Lessor, allocate the exclusive space granted to it pursuant to this Lease, between or among its participating institutions or its nursing programs as it, solely, deems appropriate so long as adequate space is provided for the nursing program's operation and the Tenant does not at any time occupy space in the excess of that granted.
16. **INDEMNIFICATION:** Each Party shall be responsible for its own negligence.
17. **ENTRY BY LANDLORD:** Lessor reserves and shall at any reasonable time have the right to enter the Property, to inspect the same and to supply such service as is to be provided by Lessor to Tenant hereunder, to show said Property to prospective purchasers of the building, prospective mortgagees, lenders or tenants, to post notices of non-responsibility, and to alter, improve or repair the Property and any portion of the building of which the Property are a part, always providing that the business of Tenant shall not be unreasonably interfered with.
18. **NOTICES:** All notices and other communications hereunder shall be in writing and shall be deemed to have been given when mailed by first-class certified mail, postage prepaid, addressed to:

Lessor: Monument Health Rapid City Hospital, Inc.
 Attn: Real Estate Department
 P.O. Box 6000
 Rapid City, SD 57709-6000

Tenant: Board of Regents
 Attn: Legal Counsel
 306 E Capitol Ave, Suite 200
 Pierre, SD 57501

19. MISCELLANEOUS.

- (a) Governing Laws. This Lease shall be interpreted, constructed, and governed according to the laws of the State of South Dakota, without regard to the principles of conflict of laws.
- (b) Entire Agreement. This Lease constitutes the entire agreement between the parties with respect to the subject matter hereof and shall bind and inure to the benefit of the parties. Any litigation pertaining in any manner to this Lease shall only be conducted in the Seventh Judicial Circuit Court for the State of South Dakota, located in Rapid City, Pennington County, South Dakota.
- (c) Waiver. The failure to enforce or to require the performance at any time of any of the provisions of this Lease shall in no way be constructed to be a waiver of such provisions, and shall not affect either the validity of this Lease or any part hereof or the right of any party thereafter to enforce each and every provision in accordance with the terms of this Lease.
- (d) Severability. If any term, provision, covenant, or condition of this Lease is found to be invalid, void, or unenforceable, the remainder of the Lease shall remain in full force and effect and shall in no way be affected, impaired, or invalidated, unless to do so would be materially destroy the underlying purpose of the Lease.
- (e) Change of Law. In the event of a change of law affecting the enforceability or legality of this Lease, the Parties shall use their best efforts to renegotiate this Lease to conform to change of law and to preserve the interests of the parties hereunder.

20. **INTEGRATION AND MERGER:** This Lease contains the entire agreement of the Parties. No other promises, covenants or consideration are a part of this Lease. All of the Parties' discussions regarding this Lease are incorporated herein or intentionally omitted. For avoidance of doubt, this Lease terminates the obligations of and between the Parties set forth in the West River Nursing Education Programs Agreement dated July 1, 1989.

IN WITNESS WHEREOF, this Lease has been executed as of the date first noted above by:

LESSOR
Monument Health Rapid City Hospital, Inc.

TENANT
Board of Regents of the State of South Dakota

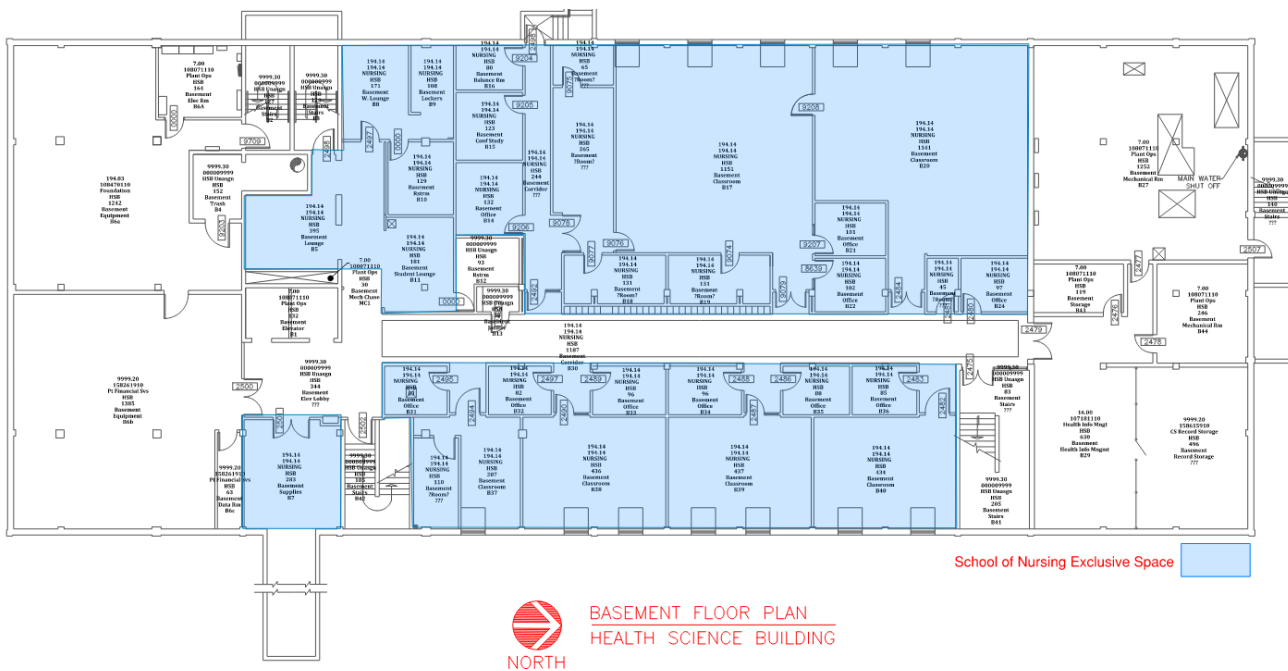
By: _____

By: _____

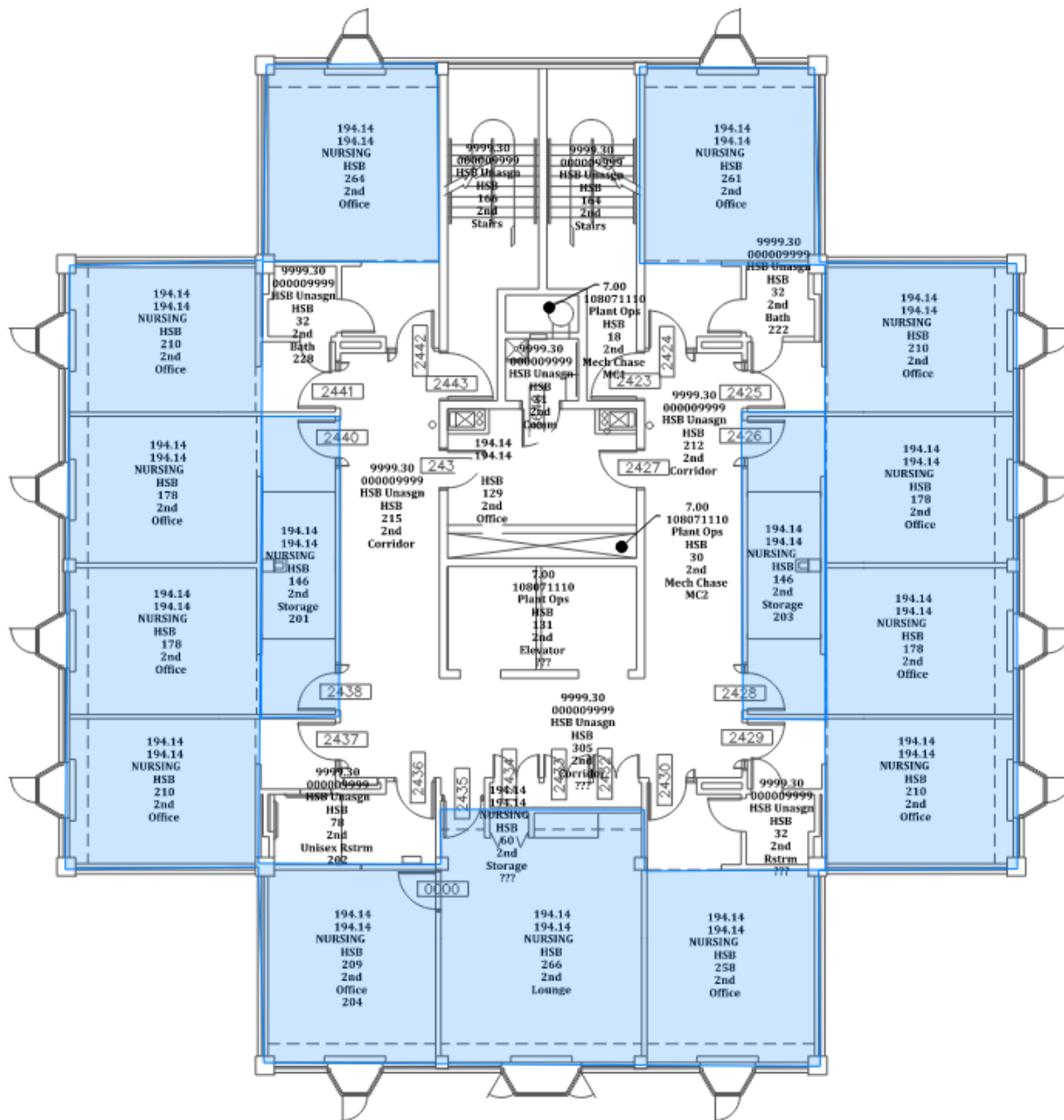
Its: _____

Its: _____

Exhibit A – Floor Plan







School of Nursing Exclusive Space



2ND FLOOR PLAN

HEALTH SCIENCE BUILDING

West River Healthcare Consortium Agreement Governance, Funding, and Operations Model

This Agreement (“Agreement”), which is subject to the approval and oversight of the Board of Regents (“BOR”), is entered into by and between Black Hills State University (“BHSU”) and South Dakota State University (“SDSU”) for the purpose of outlining the roles, responsibilities, and expectations of the Parties regarding the delivery of certain programming at the West River Health Science Center (“WRHSC”) in Rapid City, an expansion of BHSU-RC.

WHEREAS, nursing education in Rapid City has a long history, with the legislature appropriating funding by way of SB31 during the 1989 legislative session to expand nursing education through the establishment of associate and baccalaureate degree nursing programs West River through a cooperative effort among SDSU, the University of South Dakota (“USD”), and Rapid City Regional Hospital; and

WHEREAS, in the fall of 1989, the West River Management Advisory Council was created, by way of an MOU between the BOR and Rapid City Regional Hospital (now Monument Health), to manage the West River Nursing Education Programs; and

WHEREAS, in 2005, Dakota State University (“DSU”), who was partnering with Rapid City Regional Hospital for its Respiratory Care program, was invited to join the West River Advisory Council, which prompted its name change to the West River Healthcare Consortium Management Advisory Committee; and

WHEREAS, in 2019, DSU transferred its Respiratory Care program to SDSU; and

WHEREAS, in 2020, the WRHSC was formally adopted and approved by the BOR, which was a coordinated effort between BHSU, SDSU, USD, Monument Health (“MH”), the West River Area Health Education Center (“WRAHEC”), and other stakeholders interested in advancing the west river workforce needs in nursing and healthcare; and

WHEREAS, in 2021, the BOR approved SDSU as the sole nursing program within the WRHSC, with BHSU providing the prerequisite programming for entry into the nursing major at SDSU, with USD phasing out its BSN program west river in academic years 2021-2022 and 2022-2023; and

WHEREAS, the execution of this Agreement shall have the effect of terminating any prior agreement(s) and/or understanding(s) of the Parties regarding the subject matter hereof, with the terms and conditions of this Agreement controlling; and

NOW, THEREFORE, the Parties hereby agree as follows:

1. **PURPOSE:** This Agreement shall fix the terms and conditions of the Parties’ cooperative efforts to support the offering of SDSU’s standard and accelerated Bachelor of Science in Nursing (“BSN”) degree programs, as well as various graduate degree programs, and

BHSU's Associate of Science Applied Health Sciences ("Applied Health Sciences") degree program at the WRHSC and/or BHSU's campus in Spearfish, to address the targeted local workforce needs for Rapid City and the surrounding region ("Western South Dakota"). These efforts shall include promoting access for site-bound students, both traditional and non-traditional, in addition to enhancing seamless transfer opportunities between relevant associates and baccalaureate degrees.

2. **PROGRAMMING:** The current healthcare programs at the WRHSC consist of SDSU's BSN Nursing Program and BHSU's Applied Health Sciences Program (collectively, "Healthcare Programs"). The Healthcare Programs shall be based out of the WRHSC in Rapid City and/or BHSU's campus in Spearfish for the Applied Health Sciences Program, but will adhere to the faculty standards, curricula, philosophy, goals, policies, and other aspects of the programs offered at or through the home campus (i.e., SDSU or BHSU) to ensure Commission on Collegiate Nursing Education (CCNE) and State Board of Nursing approval. The education shall be comparable in quality to that provided at the home campus, and regular communication between the WRHSC-based Healthcare Programs and home campuses is required, as appropriate. The required pre-nursing curriculum will be offered by BHSU through their Applied Health Sciences curriculum.
3. **OBLIGATIONS OF THE PARTIES:** In furtherance of the purposes and intent of this Agreement, the Parties shall perform the functions and roles set forth below.
 - A. BHSU shall be directly responsible for:
 1. Administrative management of the WRHSC, to include the provision of student success services, including, but not limited to, student advising, financial aid advising, academic advising, and technology assistance/support. However, once a student has matriculated to SDSU, then SDSU shall assume the lead role in all student success services.
 2. Monitoring and reporting on all students enrolled, registered, and newly matriculated into the WRHSC, to include coding of all Applied Health Students and pre-nursing students intending to pursue SDSU's BSN in the manner prescribed by the BOR Vice President for Academic Affairs.
 3. Offering the primary pre-nursing program for WRHSC students planning to pursue SDSU nursing baccalaureate programs at the WRHSC, except for those transfer students who already meet or exceed the credit hours needed for participation in such programs.
 4. Implementing, facilitating, or recommending student recruitment strategies for the programs at the WRHSC addressed in this Agreement.
 5. Communicating and collaborating with SDSU on all the Applied Health Sciences needs at or through the WRHSC, to include, without limitation, enhancing student retention and completion in Healthcare Programs.
 6. Supporting and maintaining the Healthcare Programs, to include, without limitation, collaborating with SDSU to identify any necessary changes in programing, structure, or operation of this Agreement.
 7. Collaborating with SDSU to facilitate the recruitment, enrollment, and advising of pre-healthcare students and the delivery of pre-healthcare and non-healthcare

supportive or requisite course work as required by each Healthcare Program.

8. To the extent possible, providing classroom space for nursing courses necessary to supplement the space to be provided by MH in its Lease Agreement with BOR. Upon completion of the renovation and construction of the WRHSC authorized in SB 43 during the 2022 legislative session, BHSU will provide all facilities (for all aspects) of the Healthcare Programs at the WRHSC.

B. SDSU shall be directly responsible for:

1. Managing and maintaining all aspects of the baccalaureate and graduate nursing programs offered at or through the WRHSC, subject only to BOR policy or direction, and the terms of this Agreement.
2. Working with BHSU to dual assign students into both the BHSU Applied Health Sciences Program and the SDSU Nursing Program, as appropriate.
3. Implementing, facilitating, or recommending student recruitment strategies for the programs at the WRHSC addressed in this Agreement.
4. Reviewing and validating reporting on registered and newly matriculated students to the WRHSC with the WRHSC Academic Coordinator.
5. Ensuring all students intending to pursue SDSU's BSN at the WRHSC are coded in the manner prescribed by the BOR Vice President for Academic Affairs.
6. Communicating and collaborating with BHSU on all Applied Health Sciences needs at or through the WRHSC, to include, without limitation, ensuring the WRHSC Academic Coordinator has the information necessary to provide timely and accurate communication to students at the WRHSC pursuing degrees through SDSU.
7. Supporting and maintaining the WRHSC programming identified herein, to include, without limitation, collaborating with BHSU to identify any necessary changes in programming, structure, or operation of this Agreement.
8. Collaborating with BHSU to assist with technology assistance/support and the testing center for students once the students have matriculated to SDSU.

At all times through the term of this Agreement, the BOR shall maintain its role as the governing body of the parties hereto, providing the necessary approvals, facilitation and/or coordination necessary to further the objectives of this Agreement. The BOR shall have the overall authority to establish, manage, and maintain all aspects of the WRHSC programming in accordance with BOR Policy, as it would any other post-secondary educational instruction within the system. The Parties shall adhere to all applicable BOR policies and the associated processes in furtherance of this Agreement.

4. **HOME CAMPUS RESPONSIBILITIES:** The "Home Campus" shall mean the campus through which the student is enrolled, regardless of the student's physical location. The Home Campus will manage all tuition, fees, financial assistance, academic records and reports, resident credit, graduation and honors requirements, curriculum and program courses of study, accreditation, budget, faculty and staff, and office and clinical facilities. The Home Campus will permit students enrolled in Healthcare Programs to have all the rights and privileges on their campus (related to activities and facilities) as would one of their own enrolled students. The Home Campus will be the bookstore servicing campus for

students enrolled in Healthcare Programs at WRHSC; however, bookstores may be managed online for students or the WRHSC Bookstore can assist with book orders. Library services are managed online by the student's Home Campus.

5. **TERM:** This Agreement shall commence upon signature, with the initial terms expiring on June 30, 2024. This Agreement shall automatically renew without modification of its terms and conditions for successive one-year terms (July 1 – June 30), unless the Parties otherwise mutually agree in writing to amend the Agreement, or the Agreement is terminated in accordance with Section 6 below.
6. **TERMINATION:** It is the intent of the parties that this Agreement and WRHSC Healthcare Programs created hereby shall endure and provide long-term benefit to the citizens and healthcare delivery system(s) of Western South Dakota. However, all parties recognize that it may be necessary or prudent to terminate this Agreement and therefore agree that it may be terminated in the following events:
 - A. At the end of the initial term, or any renewed term, upon one hundred eighty (180) days' notice given prior to the end of the relevant term;
 - B. Action by the South Dakota State Legislature to discontinue funding of the WRHSC-based Healthcare Programs;
 - C. Failure on the part of either Party hereto to receive required approvals or accreditation from third parties or upon the failure of any conditions precedent to the ability of the parties to commence their obligations hereunder;
 - D. Upon the enactment of any law in the State of South Dakota specifically prohibiting performance of this Agreement; and
 - E. Action of the BOR necessitating or requiring termination of the Agreement.
7. **STEERING COMMITTEE:** The WRHSC Steering Committee ("Steering Committee") is hereby formed to provide input and support to the BOR, BHSU, and SDSU, to enhance recruitment and delivery of the Healthcare Programs offered by and through the WRHSC.
 - A. **Charge.** The Steering Committee shall be advisory to the BOR and shall function at the request of the BOR. The BOR may seek advice from the Steering Committee on matters including, but not limited to:
 1. Providing resolution on issues uniquely related to the WRHSC-based healthcare programs;
 2. Providing recommendation(s) to the BHSU, SDSU, and/or MH when problems occur;
 3. Reviewing the healthcare program budgets as they relate to WRHSC needs and goals, and make recommendations thereon;
 4. Reviewing recruitment and enrollment plans for consistency with market need for healthcare graduates in Western South Dakota and the broader service area, and reviewing the availability of direct and in-kind resources available to support those efforts;
 5. Reviewing and providing recommendations on reports related to the subject matter

of this Agreement;

6. Providing oversight of any other ad hoc committees as may be necessary to support or assist the WRHSC; and
7. Creating and/or provide reports requested by the BOR.

B. Voting Members. The Steering Committee shall be comprised of the following voting members:

1. Three (3) representatives from BHSU, appointed by the President of BHSU, or their designee;
2. Three (3) representatives from SDSU, appointed by the President of SDSU, or their designee; and
3. One (1) representative from MH, appointed by the President & CEO of MH, or their designee.

C. Non-voting Members. The Steering Committee will also include the following ex-officio members, without voting rights:

1. BOR Chief Academic Officer;
2. WRHSC Academic Coordinator; and
3. WRAHEC Academic Representative.

D. Meetings. The WRHSC Academic Coordinator shall facilitate the meetings and call for agenda items from the Steering Committee. Additional participants may be invited to attend meetings of the Steering Committee to present information to aid in informing the decisions and/or recommendations of the Steering Committee. The Steering Committee shall meet as necessary to fulfill its obligations and responsibilities, but no less frequently than quarterly.

8. FERPA: The parties acknowledge the confidential nature of certain data, information and/or records that may be shared, accessed, or received in the delivery or facilitation of the Healthcare Programs identified herein, which may include education records that are subject to the privacy requirements established under the Family Education Rights and Privacy Act of 1974, 20 USC §1232g, 34 CFR Part 99 ("FERPA"). With respect to any such data, information and/or records shared, accessed or received hereunder, the Parties constitute "school officials" with a "legitimate educational interest" under FERPA in their respective roles in providing for the delivery or facilitation of the healthcare programs identified herein. The Parties will adhere to all confidentiality requirements pertaining to any data, information and/or records shared, accessed or received pursuant to this Agreement, exercising at least the same level of diligence used to protect and safeguard its records of a like nature.

9. MISCELLANEOUS:

- A. Governing Laws. This Agreement shall be interpreted, constructed, and governed according to the laws of the State of South Dakota, without regard to the principles of conflict of laws. Any litigation pertaining in any manner to this Lease shall only be

conduct in the Seventh Judicial Circuit Court for the State of South Dakota, located in Rapid City, Pennington County, South Dakota.

- B. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and shall bind and inure to the benefit of the parties. This Agreement may not be amended or otherwise changed unless agreed to in writing by the Parties. Nothing contained in this Agreement shall be construed to permit the assignment or delegation of any rights or duties under this Agreement without the written consent of the other Party.
- C. Waiver. The failure to enforce or to require the performance at any time of any of the provisions of this Agreement shall in no way be constructed to be a waiver of such provisions, and shall not affect either the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every provision in accordance with the terms of this Agreement.
- D. Severability. If any term, provision, covenant, or condition of this Agreement is found to be invalid, void, or unenforceable, the remainder of the Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated, unless to do so would be materially destroy the underlying purpose of the Agreement.
- E. Change of Law. In the event of a change of law affecting the enforceability or legality of this Agreement, the Parties shall use their best efforts to renegotiate this Agreement to conform to change of law and to preserve the interests of the parties hereunder.
- F. Integration and Merger: This Agreement contains the entire agreement of the Parties pertaining to the subject matter. No other promises, covenants or consideration related thereto are a part of this Agreement. All of the Parties' discussions regarding this Agreement are incorporated herein or intentionally omitted. For avoidance of doubt, this Agreement terminates the obligations of and between the Parties set forth in or resulting from the West River Nursing Education Programs Agreement dated July 1, 1989.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed, each by its duly authorized officer, on the dates stated below.

South Dakota State University

Black Hills State University

Name
Title

Name
Title

Date

Date

Acknowledged and approved by:
South Dakota Board of Regents

Name
Title

Date