

MEMORANDUM OF UNDERSTANDING

This agreement is entered into this ____ day of ____, 2014, between the **NORTHERN WYOMING COMMUNITY COLLEGE DISTRICT /GILLETTE COLLEGE** (hereinafter referred to as COLLEGE and the **CITY OF GILLETTE** (hereinafter referred to CITY). The College and the City may be referred to hereinafter collectively as the Parties.

I. PURPOSE

The Parties entered into a previous MOU, dated 6/25/2008, for the financing and construction of student housing units and now intend to finance and construct a dormitory through a similar arrangement. The Parties desire to enter into a mutually beneficial agreement to finance and construct a dormitory (hereinafter the PROJECT) to complement the existing student housing buildings for the COLLEGE upon CITY owned property within the boundaries of the Gillette College Campus in the City of Gillette. The Parties acknowledge that the PROJECT will enhance the COLLEGE and the CITY by improving the ability of the COLLEGE to provide services to its students, most particularly housing, into the future. Providing housing for students of the COLLEGE into the future is also a benefit to the CITY by improving the availability of housing in Gillette in general by specifically providing for one group of potential housing customers. The Parties further acknowledge that the PROJECT shall be used for student housing for so long as any obligations issued to fund the PROJECT are outstanding and in force and not defeased. The Parties also acknowledge that the financing of the PROJECT, including any obligations that may be issued to fund the PROJECT, such as Lease Participation Certificates, will involve performance into the future beyond the terms of office of the members of the governing bodies of both the COLLEGE and the CITY and the Parties specifically acknowledge the specific benefits they derive from the extended term of the various agreements and performances.

II. PROJECT

This Memorandum of Understanding (MOU) shall outline the terms of the understanding between the Parties with respect to the financing, construction and operation of a dormitory for the COLLEGE, upon City owned property in the Gillette Tech Center subdivision. Financing for the PROJECT will be provided

through a Wyoming Statutory Trust by the sale of Lease Participation Certificates secured by a lease on the Project to be repaid by lease payments from the CITY and COLLEGE, subject to annual appropriation. The City will cause the construction, of the Project according to the terms of this MOU, which will consist of a dormitory, which will be owned jointly by the CITY and the COLLEGE after the payment of the obligations.

It is the intent of the Parties to follow this MOU with further agreements providing for the following:

- (1) Documents concerning the financing of the Project.
- (2) A lease of CITY-owned building space by the COLLEGE which will commence upon the date that a certificate of occupancy is issued, subject to the terms of the financing documents, upon terms negotiated by the CITY and COLLEGE.
- (3) The ongoing operation and maintenance of the dormitory shall be the responsibility of the COLLEGE. Any future renovation, addition to the owned space, or major repairs necessary for the proper functioning of the building shall be the responsibility of the COLLEGE.
- (4) The construction of future and additional student housing facilities will require an additional MOU.

III. FINANCING OF FACILITY

It is agreed by the Parties that the following contributions will be provided in order to provide for the construction and furnishing of the Project:

- (1) The PARTIES anticipate that the estimated cost of the construction of the PROJECT will be \$12,500,000 dollars.
 - A. COLLEGE – the COLLEGE, will service 17% of the construction cost of the PROJECT.
 - B. CITY-the CITY will service 83% of the construction cost of the PROJECT.
- (2) CITY – The CITY will finance the PROJECT through a Wyoming Statutory Trust by the sale of Lease Participation Certificates secured by a lease on the Project to be repaid by lease payments from the CITY and COLLEGE, subject to annual appropriation. The CITY will engage the

services of appropriate Underwriters and Trustee Banks and Bond Counsel to establish the financing of this PROJECT.

IV. OWNERSHIP OF FACILITY

It is the intent of the Parties that the PROJECT, following retirement of the financed construction debt and termination of any interest held by any trustee in connection with that debt, will be owned jointly by the CITY and the COLLEGE, 83% by CITY and 17% by the COLLEGE. The Parties agree that the COLLEGE and CITY each shall own a share of the PROJECT, including the land and improvements, proportionate to their respective financial contributions to the PROJECT. The CITY shall cause to be prepared a Condominium Plat, subject to the approval of the COLLEGE, in which the dormitory will consist of two seamless condominium units, one of which will be owned by the COLLEGE and other will be owned by the CITY. The two condominium units will be sized to reflect the financial contributions to the PROJECT by the CITY and the COLLEGE. The lot and exterior of the building will be a Common area, owned by the COLLEGE and CITY through their ownership of the two condominium units.

The Parties agree that either Party may purchase the interest of the other party at the amount of their capital investment in the PROJECT less depreciation. The Parties may record a Notice of this MOU in the property records of the Campbell County Clerk and Recorder of Deeds.

V. USE OF FACILITY

The Parties agree that the COLLEGE, upon construction completion, will operate the entire facility and pay all costs associated with regular operations of the buildings including, heat/AC, lights, cleaning, and general maintenance, as well as exterior maintenance of the parking lot and landscaping.

The Parties also agree that in exchange for doing so, the COLLEGE shall be the sole recipient of all revenue from the operation of the facility, but shall also be required to place ten (10%) of all such revenue into a facility maintenance and replacement account for the future repair and replacement of major building components (i.e. roof, heating/AC). The COLLEGE agrees to provide an annual report to the CITY regarding the balance of such an account and to obtain concurrence in its expenditure from the CITY. The Parties agree that contributions to this account shall be required until such time as the account balance reaches \$400,000.

The COLLEGE agrees that, outside of providing housing for its full-time students or faculty and/or others that may be obtaining educational services from the COLLEGE, it will not sublet or rent the facility or any part thereof without prior written approval of the CITY.

VI. FURNISHINGS AND EQUIPMENT

The Parties agree that the COLLEGE shall provide furnishings and equipment for the PROJECT as well as Internet access, local telephone and other technologies as it deems appropriate.

The Parties further agree that the COLLEGE, upon commencement of operations to house students, will provide all disposable cleaning/housekeeping supplies for the PROJECT.

VII. PROJECT MANAGEMENT

The Parties agree that the CITY will be responsible for the design and construction management of the overall Project and will serve as the conduit for COLLEGE input into those facets of the Project. Additionally, regardless of the foregoing, the Parties agree that the COLLEGE will have direct participation in programming and building design and finish issues.

VIII. COMPLIANCE WITH LAW

The Parties represent that their possession, occupancy, and use of the premises will comply with all applicable federal, state, county and city laws and regulations.

IX. FIRE AND CASUALTY INSURANCE

The Parties agree that the COLLEGE shall maintain fire and extended coverage insurance on the Project in such amounts as are deemed appropriate for fire and extended coverage insurance on all personal property located in the premises.

X. LIABILITY INSURANCE

The Parties agree that the COLLEGE shall, at its own expense, maintain a policy or policies of comprehensive general liability insurance with respect to the respective activities of each in the building with the premiums thereon fully paid on or before the due date(s), issued by and binding upon an insurance company approved by the COLLEGE and the CITY. The insurance policies shall afford

minimum protection of not less than \$1,000,000 combined single limit coverage of bodily injury, property damage or combination thereof, holding the CITY harmless and naming the CITY as an additional insured and that each party hereto mutually agrees to hold the other harmless for their activities related to the PROJECT.

XI. INDEMNITY AGREEMENT

The Parties agree that the COLLEGE and CITY will enter into an agreement to indemnify one another as a result of claims arising from a specified event.

XII. SIGNATURES

In witness whereof, the Parties, through their authorized representatives, have executed this MOU on the dates set out below and certify that they have read, understood and agree to the terms and conditions of this MOU as set forth herein.

DRAFT

Northern WY Community College District
Gillette College

by:

City of Gillette, Wyoming

John Opseth, Mayor

Dated this _____ day of _____.

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