

MEMORANDUM OF UNDERSTANDING

This agreement is entered into and effective this 15th day of June, 2008, 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 desire to enter into a mutually beneficial agreement to finance and construct student housing (hereinafter the PROJECT) 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 bonds 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 bonds that may be issued to fund the PROJECT, 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 understanding between the Parties with respect to the financing, construction and operation of student housing buildings for the COLLEGE upon City-owned property in the Gillette Tech Center subdivision. The COLLEGE will provide financing for the PROJECT and the CITY will cause the construction of the same, according to the terms of this MOU, which will be owned jointly by the CITY and the COLLEGE or it's Building Authority, as dictated by the terms of the PROJECT financing.

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

- (1) Documents related to the specific terms of the financing of the PROJECT whereby the COLLEGE, through the Northern Wyoming Community College District Building Authority (hereinafter "District Building Authority"), will supply the capital to finance the entire PROJECT, of which \$7,100,000 of principal and associated interest will be repaid by the CITY.
- (2) A lease of CITY-owned real estate by the District Building Authority (the "Ground Lease") for the financing term of the City portion of the debt associated with the PROJECT.
- (3) A lease – purchase by the CITY of that portion of the PROJECT associated with its contribution that results in an ownership interest on the part of the CITY following retirement of its portion of the debt associated with its construction.
- (4) The operation and maintenance of the facility following its construction.

The Parties agree that any 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) COLLEGE – The COLLEGE, through the District Building Authority, will supply the capital to finance the PROJECT. The COLLEGE will also service any portion of the debt over and above the principal amount of \$7.1 million committed to by the CITY. The Northern Wyoming Community College Building Authority Lease Revenue Bonds Series 2008 B (the 2008 B bonds) will be issued to finance the construction of the PROJECT. The issuance of the 2008B bonds, and the use of the funds derived from the sale thereof, are described in a number of documents including a Facilities Lease Agreement between the Northern Wyoming Community College Building Authority and the Northern Wyoming Community College District (the "Facilities Lease"). The Parties contemplate that another series of bonds will be issued in early

2009 on similar terms and conditions which will supply sufficient funding to complete the cost of the PROJECT.

(2) CITY – The CITY will provide funding to service up to \$7.1 million of principal associated with the PROJECT over a term determined by the CITY, for the design and construction of the PROJECT and associated site improvements, as well as plant investment fees and the site itself (Tract B of the Gillette Tech Center subdivision; approximately 17.32 acres).

(3) The Parties also agree that any PROJECT construction costs in excess of the \$8.5 million PROJECT budget will be paid by the COLLEGE and any savings below that amount will be credited against annual lease payments in proportion to the Parties' overall financial contributions to PROJECT construction costs.

IV. CONSTRUCTION OF FACILITY

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.

The CITY has entered into a Construction Manager At Risk contract (the "Construction Contract") with Van Ewing Construction Inc. (the "Contractor") to construct the PROJECT. The CITY has also contracted with Klipp Architects (the "Architect") for design services related to the PROJECT. The CITY has paid expenses billed by both the Architect and the Contractor to date.

V. PROJECT Construction Contract Payments

All invoices associated with the construction of the PROJECT shall be reviewed by the CITY and forwarded to the COLLEGE for payment from bond proceeds.

The CITY shall forward requests to the COLLEGE for payments due the Contractor and other expenses of the PROJECT as construction proceeds under the terms of the Construction Contract, in a timely manner. The COLLEGE shall promptly provide those funds to the CITY for payment to the Contractor or others from the Series 2008B PROJECT Fund and the future contemplated issue in 2009

referred to above. The CITY shall pay the Contractor the amounts due under the Construction Contract from the funds provided from the Series 2008B PROJECT Fund and the future contemplated bond issue in 2009 referred to above and shall use those funds for no other purpose. The CITY has made payments to the Contractor and the Architect as of June 4, 2008 in the amount of \$716,058.71 and shall be reimbursed for those payments from the Series 2008B PROJECT Fund.

VI. Facilities Lease Agreement Payments

The CITY shall pay up to \$7,100,000 of the principal and associated interest of the cost of the PROJECT, in roughly equal annual payments by making the payments in Schedule C of the Facilities Lease, to the COLLEGE, until \$7,100,000 and associated interest in principal has been paid, subject to annual appropriation by the CITY. The CITY and the COLLEGE understand and intend that the obligation of the CITY to pay a portion of the cost of the PROJECT shall constitute a current expense of the CITY and shall not in any way be construed to be a general obligation of other indebtedness of the CITY in contravention of any applicable constitutional or statutory limitation or requirements concerning the creation of indebtedness by the CITY. No provision of this MOU shall constitute a pledge of the general tax revenues, funds or monies of the CITY.

VII. OWNERSHIP OF FACILITY

It is the intent of the Parties that the student housing buildings, following retirement of the debt and initial ownership by the District Building Authority, will be owned jointly by the CITY and the COLLEGE. The Parties agree that the District Building Authority may mortgage its leasehold interest in the PROJECT to secure the bond obligation and provide a security interest therein to the Bond Trustee including the site during the term of the Ground Lease as provided by the terms of said Ground Lease.

The Parties shall record a Notice of this MOU in the property records of the Campbell county Clerk and Recorder.

The Parties agree that the COLLEGE and CITY each shall own a share of 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, and shall transfer fee ownership of a portion of the PROJECT, equivalent to building 3, according to the construction documents to the COLLEGE . Upon termination of the Ground Lease, or payment of the Bond

obligation, whichever is sooner, said Condominium Plat shall be filed in the property records of the Campbell County Clerk and Recorder.

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.

VIII. 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 \$800,000.

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.

IX. 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.

X. 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.

XI. 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.

XII. 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 occurring in each 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.

XIII. 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.


XIV. 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.

**Northern WY Community College District
Gillette College**


by: _____

City of Gillette, Wyoming


Duane Evenson, Mayor

Dated this 15th day of June, 2008.