

**REIMBURSEMENT CONTRACT
(CCC Infrastructure Expansion)**

This Redevelopment Contract is made and entered into as of the 12th day of ~~August~~ ^{September}, 2023, by and between the City of Grand Island, Nebraska, a Nebraska municipality of the first class ("City"), and Central Community College, a Nebraska Nonprofit Corporation ("College").

WITNESSETH:

WHEREAS, the College presented its plan for expanded facilities, housing and infrastructure to the City Council on September 20, 2022;

WHEREAS, the College asked for up to \$500,000.00 of the City's federal ARPA allocation towards investment in the needed infrastructure;

WHEREAS, the City voted on March 14, 2023 in Resolution 2023-71 to allocate up to \$500,000.00 of the City's federal ARPA allocation to the College for the infrastructure portion of the expansion project;

WHEREAS, City and College desire to enter into this Reimbursement Contract in order to provide for the expansion of the campus;

WHEREAS, the City is willing to support the above described expansion of the campus in accordance with the College's presentation; provided that, College is willing to agree to covenants and conditions regarding reimbursement of expended funds; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, City and College do hereby covenant, agree and bind themselves as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.01 Terms Defined in this Reimbursement Contract.

Unless the context otherwise requires, the following terms shall have the following meanings for all purposes of this Reimbursement Contract, such definitions to be equally applicable to both the singular and plural forms and masculine, feminine and neutral gender of any of the terms defined:

“City” means the City of Grand Island, Nebraska.

“College” means the Grand Island campus of Central Community College.

“Governing Body” means the Mayor and City Council of the City.

“Mortgage” shall mean a real estate mortgage, deed of trust or other instrument creating an encumbrance or lien as security for a loan on the Redevelopment Project Area.

“Mortgage Holder” shall mean a mortgagee, trustee or holder in reference to a Mortgage.

“Redevelopment Project Area” means that certain real property situated in the City of Grand Island, Hall County, Nebraska which is owned by Central Community College.

“Redevelopment Project” means the improvements to the Grand Island campus of Central Community College and as used herein, shall without limitation, those improvements include the Redevelopment Project Improvements:

“Redevelopment Project Improvements” shall mean the Private Improvements and Public Improvements.

“Private Improvements” shall mean the anticipated private improvements to be constructed, improved or rehabilitated as part of the Redevelopment Project that is within the Redevelopment Project Area:

- Paving of extension of Tech Drive;

“Public Improvements” shall mean the anticipated public improvements, constructed, improved or rehabilitated as part of the Redevelopment Project that is within the Community Redevelopment Area:

- Public utilities in dedicated easements or abutting rights-of-ways including, but not limited to, sanitary and storm sewer, municipal electrical service and water mains;
- Any other public improvements permitted by the Act.

“Reimbursement Contract” means this redevelopment contract between the City and College, as the same may be amended from time to time.

Section 1.02 Construction and Interpretation.

The provisions of this Reimbursement Contract shall be construed and interpreted in accordance with the following provisions:

(a) Whenever in this Reimbursement Contract it is provided that any person may do or perform any act or thing the word "may" shall be deemed permissive and not mandatory and it shall be construed that such person shall have the right, but shall not be obligated, to do and perform any such act or thing.

(b) The phrase "at any time" shall be construed as meaning at any time or from time to time.

(c) The word "including" shall be construed as meaning "including, but not limited to."

(d) The words "will" and "shall" shall be construed as mandatory.

(e) The words "herein," "hereof," "hereunder", "hereinafter" and words of similar import shall refer to the Reimbursement Contract as a whole rather than to any particular paragraph, section or subsection, unless the context specifically refers thereto.

(f) Forms of words in the singular, plural, masculine, feminine or neutral shall be construed to include the other forms as the context may require.

(g) The captions to the sections of this Reimbursement Contract are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary by implication or otherwise any of the provisions hereof.

ARTICLE II

FINDINGS AND REPRESENTATIONS

Section 2.01 Findings and Representations City.

The City makes the following findings and representations:

(a) The City deems it to be in the public interest and in furtherance of the purposes of the City to accept the proposal submitted by College as specified herein.

(b) The expansion is expected to achieve the public purposes of by among other things, increasing employment, increasing investment, and improving public infrastructure.

Section 2.02 Representations of College.

The College makes the following representations:

(a) The College is a Nebraska Nonprofit Corporation, having the power to enter into this Reimbursement Contract and perform all obligations contained herein and by proper action has been duly authorized to execute and deliver this Reimbursement Contract.

(b) The execution and delivery of this Reimbursement Contract and the consummation of the transactions herein contemplated will not conflict with or constitute a breach of or default under any bond, debenture, note or other evidence of indebtedness or any contract, loan agreement or lease to which College is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the College contrary to the terms of any instrument or agreement.

(c) There is no litigation pending or to the best of its knowledge threatened against College affecting its ability to carry out the acquisition, construction, equipping and furnishing of the project or the carrying into effect of this Reimbursement Contract or in any other matter materially affecting the ability of College to perform its obligations hereunder.

(d) College agrees and covenants for itself its successors and assigns that it will not discriminate against any person or group of persons on account of race, sex, color, religion, national origin, ancestry, disability, marital status or receipt of public assistance in connection with the Project. College will comply with all applicable federal, state and local laws related to the Project.

ARTICLE III

THE PARTIES OBLIGATIONS RELATING TO REIMBURSEMENT

A. OBLIGATIONS OF THE CITY

Section 3.01 A City General Fund Grant Reimbursement.

(a) City agrees to timely provide the College the sum of up to \$500,000.00, for purposes of assisting in the implementation of the Project and as reimbursement in the design, construction and implementation of the eligible Public and Private Improvements identified in paragraph 3.01A (d) below. The Authority shall grant those funds to the College or its lender if an assignment of said funds has been received by the City for reimbursement of eligible costs paid by the College but only for those Improvements identified in paragraph 3.01A (d) below.

(b) College shall provide City a detailed budget with expenditure categories for all reimbursable Public Costs identified in paragraph 3.01A.

(c) College shall submit invoices and proof of payment to the contractor for items to be reimbursed set aside funds. The Assistant City Administrator shall approve or deny a request for reimbursement within fourteen (14) days of College's submittal of invoices and proof of payment. Upon the Assistant City Administrator's approval, the invoices shall be submitted to the City Administrator for further approval or denial within fourteen (14) days of submittal. Thereafter, the City shall, within ten (10) days of approval by the City Administrator, forward funds to the College.

(d) Reimbursement requests shall be submitted no more than one time per calendar month and shall be paid by the City within sixty (60) days of receipt. The request shall be signed by the designated party for the College, for the following public and private infrastructure improvements, to wit:

- 1) Replacement, relocation or abandonment of the City's sanitary sewer collection system, manholes and surface repair and acquisition, construction and installation of other necessary improvements and betterments to the City's sanitary sewer system and facilities.
- 2) Replacement, relocation or abandonment of the City's storm sewer collection system, manholes and surface repair and acquisition, construction and installation of other necessary improvements and betterments to the City's storm system and facilities.
- 3) Replacement, relocation or abandonment of the City's drinking water main distribution pipes, valves, vaults and surface repair and acquisition, construction and installation of other necessary improvements and betterments to the City's drinking water system and facilities.
- 4) Construction of extension of Tech Drive to City street construction standards as approved by City Engineer.
- 5) Installation of electrical main conduit and transformer pads.

PROVIDED, HOWEVER, IN ALL EVENTS THE TOTAL REIMBURSEMENT HEREUNDER SHALL NOT EXCEED \$500,000.00. The amount of costs on paragraph 3.01A(d) may shift between categories. The parties agree that any pledge and grant paid pursuant to this paragraph 3.01A to the College as reimbursement for the cost of the public and private infrastructure improvements are for the benefit of the City and the public and are granted pursuant to the contract provisions described herein and that such grant funds are not under the dominion and control of the College and should not be construed as income to the College under Internal Revenue Code Section 61 (I.R.C. § 61).

Any amounts paid for the professional fees, design fees attributable to the above list of improvements shall qualify as reimbursable costs.

The amounts set forth above are reasonable best estimates at the time and it is agreed to and understood that such estimates are subject to change as part of the specific site plans, design specifications, locations, City approvals and public regulations. The reimbursable amounts may be applied or reallocated to any one or all of the stated line items above, irrespective of the costs set forth above, up to the total maximum reimbursable amount of \$500,000.

(e) No disbursement requests shall be made later than December 1, 2023. Any funds remaining in the account described in paragraph 3.06A (d) after said date shall revert to the City free and clear of any obligation to College or its lender.

B. OBLIGATIONS OF COLLEGE

Section 3.02A Construction Project. College shall:

(a) Shall, provide and pay for: (1) the timely installation of the extension of sanitary sewer mains, potable water mains, electrical infrastructure, storm water detention cells, extension and paving of public and private roads and public sidewalks.

(b) Construct or provide for the construction of all Private Improvements and Public Improvements in compliance with all applicable local, state, and federal building and construction laws and codes.

(c) Until construction of the Project has been completed, make reports in such detail and at such times as may be reasonably requested by the City as to the actual progress of College with respect to construction of the Project. Such reports shall include actual expenditures incurred. Require any general contractor chosen by the College, to obtain and keep in force at all times until completion of construction, policies of insurance including coverage for contractors' general liability and completed operations.

(d) Retain copies of all supporting documents that are associated with the construction of the Project and that are received or generated by the College.

ARTICLE IV

DEFAULT, REMEDIES; INDEMNIFICATION

Section 4.01 General Remedies of City and College.

Subject to the further provisions of this Article IV, in the event of any failure to perform or breach of this Reimbursement Contract or any of its terms or conditions, by any party hereto or any successor to such party, such party, or successor, shall, upon written notice from the other, proceed immediately to commence such actions as may be reasonably designed to cure or remedy such failure to perform or breach which cure or remedy shall be accomplished within a reasonable time by the diligent pursuit of corrective action. Any curing of any default or breach by a Mortgage Holder of College shall be deemed to be a curing by College. In case such action is not taken, or diligently pursued, or the failure to perform or breach shall not be cured or remedied within a reasonable time, this Reimbursement Contract shall be in default and the aggrieved party may institute such proceedings as may be necessary or desirable to enforce its rights under this Reimbursement Contract, including, but not limited to, proceedings to compel specific performance by the party failing to perform or in breach of its obligations. The College hereby acknowledges and agrees that the City shall have completed its required performances and satisfied all of its obligations under this Reimbursement Contract upon payment of grant amounts to the College as set forth in this Reimbursement Contract.

Section 4.02 Forced Delay Beyond Party's Control.

For the purposes of any of the provisions of this Reimbursement Contract, neither the City nor the College, as the case may be, nor any successor in interest, shall be considered in breach of or default in its obligations with respect to the conveyance or preparation of the Project Area or any part thereof for redevelopment, or the beginning and completion of construction of the Project, or progress in respect thereto, in the event of forced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault including, but not restricted to, acts of God, pandemics, or of the public enemy, acts of the Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays in subcontractors due to such causes or delays in the issuance of any necessary permits and other governmental approvals; any delay caused by any action, inaction, order, ruling, moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over any portion of the Project Area, over the construction anticipated to occur thereon or over any uses thereof, or by delays in inspections or in issuing approvals by private parties or permits by governmental agencies, governmental requirements and/or shutdowns, or other labor disputes, damage to work in progress by reason of fire or other casualty, unavailability of labor or materials, default of general contractor or other contractors, or causes beyond the reasonable control of a party then, it being the purpose and intent of this provision that in the event of the occurrence of any such forced delay, the time or times for performance of the obligations of the City or of the College with respect to construction of the Project, as the case may be, shall be extended for the period of the forced delay: Provided, that the party seeking the benefit of the provisions of this section shall, within thirty (30) days after the beginning of any such forced delay, have first notified the other party thereto in writing, and of the cause or causes thereof and requested an extension for the period of the forced delay. The provisions of this Section will not operate to excuse any party from the prompt payment of any monies required by this Reimbursement Contract.

Section 4.03 Limitations of Liability; Indemnification.

Notwithstanding anything in this Article IV or this Reimbursement Contract to the contrary, the City's respective elected officials, officers, directors, appointed officials, employees, agents or their governing bodies shall have any pecuniary obligation or monetary liability under this Reimbursement Contract. The sole obligation of the City under this Reimbursement Contract shall be those covenants, promises, pledges, grants, responsibilities and liabilities stated herein. The College releases the City from, agrees that the City shall not be liable for, and agrees to indemnify and hold the City harmless from any liability for any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project; provided that, the College's indemnification under this paragraph shall not apply to intentional misconduct and acts or omissions of the City or their respective elected officials, officers, directors, appointed officials, employees, agents and members of their governing bodies and further provided that, this indemnification shall only apply to the College and not to any other parties.

College agrees to indemnify and hold City harmless to the extent of any payments in connection with carrying out completion of the Project the City may make, for failure of College to make payments of all amounts lawfully due to all persons, firms, or organizations who

performed labor or furnished materials, equipment, or supplies used in construction of the Project; provided that, the College's indemnification under this paragraph shall not apply to intentional misconduct and negligent acts or omissions of the City or its respective elected officials, officers, directors, appointed officials, employees, agents and members of their governing bodies and further provided that, this indemnification shall only apply to the College and not to any other parties.

The Redeveloper will indemnify and hold the City and its respective elected officials, directors, officers, appointed officials, agents, employees and members of their governing bodies free and harmless from any loss, claim, damage, demand, tax, penalty, liability, disbursement, expense (excluding litigation expenses, attorneys' fees and expenses, or court costs), arising out of any damage or injury, actual or claimed, of whatsoever kind or character, to property (including loss of use thereof) or persons, occurring or allegedly occurring in, on or about that portion of the Project owned by the College, during the term of this Reimbursement Contract or arising out of any action or inaction of College, related to activities of the College or its agents during the construction of the public infrastructure or public right of ways in the Project; provided that, the College's indemnification under this paragraph shall not apply to intentional misconduct and negligent acts or omissions of the City or its respective elected officials, officers, directors, appointed officials, employees, agents and members of their governing bodies and further provided that, this indemnification shall only apply to the College and not to any other parties. The City does not waive its governmental immunity by entering into this Reimbursement Contract and fully retain all immunities and defenses provided by law.

ARTICLE V MISCELLANEOUS

Section 5.01 Governing Law.

This Reimbursement Contract shall be governed by the laws of the State of Nebraska, including but not limited to the Act.

Section 5.02 Assignment or Conveyance.

That prior to the completion of the Public Improvements, this Reimbursement Contract shall not be assigned by the College without the written consent of the City. Such consent shall not be unreasonably withheld, conditioned or delayed.

Section 5.03 Binding Effect: Amendment.

This Reimbursement Contract shall be binding on the parties hereto and their respective successors and assigns. The Reimbursement Contract shall not be amended except by a writing signed by the party to be bound.

Section 5.04 Effective Date and Implementation of Reimbursement Contract.

This Reimbursement Contract is in full force and effect from and after the date of execution hereof by both the College and the City.

Section 5.05 Notices to Parties.

Notices to Parties shall be mailed by certified U. S. Mail, return receipt requested, postage prepaid, to the following addresses:

To College:

Joel L. King
VP Administrative Services
3134 W. Hwy 34
PO Box 4903
Grand Island, NE 68802-4903
(308) 398-7315

To City:

Grand Island City Clerk
100 E. 1st Street
Grand Island, NE 68801

With Copy to:

Stacy R. Nonhof
Assistant City Attorney
100 E. 1st Street
Grand Island, NE 68801

Section 5.06 Grants.

The City and College agree that any grant paid hereunder to the College as reimbursement for the cost of the Public Improvements are for the benefit of the City and the public and are granted pursuant to the contract provisions described herein and that such grant funds are not under the dominion and control of the College and should not be construed as income to the College under the Internal Revenue Code Section 61 (I.R.C. § 61). Notwithstanding any contrary provisions herein, any grant(s) described in this Reimbursement Contract will be timely made by the applicable governmental entity.

Section 5.07 Termination of the Reimbursement Contract.

Notwithstanding any contrary provision, this Reimbursement Contract shall terminate without notice upon payment by the City in an amount not to exceed \$500,000.00.

Section 5.08 Counterparts. This Reimbursement Contract may be executed in one or more counterparts which, when assembled, shall constitute an executed original hereof.

Section 5.09 Effective Date of the Reimbursement Contract. This Reimbursement Contract shall not be effective and not be in full force and effect until approved by the Grand Island City Council.

IN WITNESS WHEREOF, City and College have signed this Reimbursement Contract as of the date and year first above written.

ATTEST:

Ronald J. Helmer
Accounts Manager, Central Community College

CENTRAL COMMUNITY COLLEGE
GRAND ISLAND, NEBRASKA

By: Joel L. King
Joel L. King, VP Administrative Services

ATTEST:

Joel Graner, Pro Tem
Clerk

THE CITY OF
GRAND ISLAND, NEBRASKA

By: Roger J. B. Hulse
Mayor

Approved as to Form:

Stacy R. Nonhof
Stacy R. Nonhof, Assistant City Attorney