

Agreement re: Payment Schedule for Nevada State College

Certificates of Participation

Series 2013C

Between the State of Nevada, by and through the Nevada State Treasurer (“the State”)

And

Nevada System of Higher Education

Administration Offices

Whereas, NRS 353.550 provides that a “state agency may propose a project to acquire real property, an interest in real property or an improvement to real property through an agreement which has a term, including the terms of any options for renewal, that extends beyond the biennium in which the agreement is executed if the agreement (*inter alia*) (p)rovides that all obligations of the State of Nevada and the state agency are extinguished by the failure of the Legislature to appropriate money for the ensuing fiscal year for payments due pursuant to the agreement”;

Whereas, NRS 353.550(2) allows financing of such an agreement by certificates of participation upon waiver by the Nevada State Board of Finance, upon recommendation of the Nevada State Treasurer, of the prohibition on certificates of participation; such waiver being based on a determination that it is in the best interests of this State and complies with federal securities law;

Whereas, the Nevada System of Higher Education (“NSHE”) is a state agency for purposes of agreements under NRS 353.500-.630 when it is anticipated that payments under the agreements will be made with state appropriations

Whereas, NSHE, on behalf of the Nevada State College (“NSC”), intends to cause to be constructed a building to house a combined nursing and education facility and another building to house a student center and administration offices (“the Project”), on the NSC campus on land owned by it (“the Premises”);

Whereas, NSHE wishes to finance the construction of the Project through certificates of participation with assistance of the Office of the State Treasurer, pursuant to NRS 353.570;

Whereas the Legislature’s Interim Finance Committee has approved the Project;

Whereas, NSHE entering into a ground lease, thirty-five years in duration, of the Premises to the Nevada Real Property Corporation (“NRPC”), a Nevada nonprofit corporation, for a nominal annual rent, which may be prepaid for the term of the lease;

Whereas, NRPC, as lessor, and the State, by and through NSHE, on behalf of NSC, as lessee, is entering into a lease-purchase agreement pursuant to NRS 353.550, under which lease NSHE shall pay all expenses and shall pay as rent amounts as necessary to meet the amortization requirements of the certificates of participation;

Whereas, NRPC is entering into an indenture agreement whereby the State or its designee shall assign an indenture trustee (“the Trustee”) the right to receive payments of rent in trust for the holders of certificates of participation and the duty to pay to said holders their payments when due;

Whereas, the certificates of participation shall be sold either through one or more underwriters or in a competitive sale and shall be secured by the rent payments under the lease purchase agreement;

Whereas, the State Treasurer, on behalf of NRPC, and NSHE, on behalf of NSC, seek to establish a payment schedule consistent with anticipated obligations of the lease-purchase agreement and certificate payments;

NOW, therefore, in consideration of the aforesaid premises, the parties agree to the payment schedules as follows:

1. NSHE shall make semiannual payments of base rent, in the amount set forth on the attached schedule (“Schedule A”), plus additional rent (“as defined in the lease-purchase agreement) to the Treasurer, attention: Deputy Treasurer-Debt Management, on July 15 and January 15 of each year, starting with July 15,_____.
2. NSHE shall deposit said payments to the Trustee by wire transfer to an account of the trustee’s designation.
3. The amount of the semi-annual payments paid by NSHE have been calculated by the State Treasurer to ensure that the payment stream is consistent with the Debt Service Schedule, which shall become available upon sale of the certificates of participation.
4. Upon signature, this Agreement shall take effect as of the effective date of the lease-purchase agreement referred to hereinabove.
5. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by fax and first class mail, postage prepaid on the date posted, and addressed to the following representatives:

Director of Banking Investment NSHE 2601 Enterprise Road Reno, Nevada 89512 (775) 784-1127 (fax)	Deputy Treasurer—Debt Management Office of the Nevada State Treasurer Capitol Complex 101 N. Carson Street, No. 4 Carson City, Nevada 89701 (775) 684-5781 (fax)
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6. Upon determining that it will be unable to make a payment or payments herein, NSHE shall immediately give notice to the Office of the State Treasurer of that determination, of the amount of the anticipated shortfall, and of any information relevant thereto, including planning with respect to making up such shortfall.
7. Pursuant to section 3.3 of the Lease-Purchase Agreement and the attachment thereto, NSHE shall annually certify to the Authorized Officer of the Lessee, who until further notice shall be the Deputy Treasurer, Debt Management, that funds have been or have not been appropriated in a sufficient amount to prevent termination for nonappropriation thereunder.
8. The parties are associated with each other only for the purpose and to the extent set forth in this agreement, and in respect to performance of services pursuant to this agreement, each party is and shall be a public agency separate and distinct from the other party and subject only to the terms of this agreement, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities and obligations of the other agency or any other party.
9. If any provision contained in this agreement is held to be unenforceable by a court, this agreement shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision of this agreement unenforceable.
10. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The parties consent to jurisdiction and venue of the 1st Judicial District Court for the State of Nevada, in and for Carson City and Storey County.