

Agreement re: Payment Schedule for Nevada State University (formerly Nevada State College)

Refunding Certificates of Participation

Series 2023

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 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 University, formerly Nevada State College (“NSU”), caused 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

NSU campus on land owned by it (“the Premises”) and certificates of participation were issued with the assistance of the Office of the State Treasurer, pursuant to NRS 353.570;

Whereas, NSHE wishes to refinance the construction of the Project through refunding 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 has entered 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 was be prepaid for the term of the lease;

Whereas, NRPC, as lessor, and the State, by and through NSHE, on behalf of NSU, as lessee, are 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 plus additional rent (as defined in the lease-purchase agreement);

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

Whereas, the refunding 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 NSU, 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 January 15, 2024; provided, however, that with respect to the first rent payment due for a budgetary biennium (July 15 of odd-numbered years), in the event of a delay in enactment of the legislative budgetary appropriation for NSHE, NSHE shall on request be granted an extension of time of 31 days to transmit payment.
2. NSHE shall deposit said payments to the Treasurer by wire transfer to an account of the Treasurer’s designation.
3. The amount of the semi-annual payments to be paid by NSHE will be calculated to ensure that the payment stream is consistent with the Debt Service Schedule and anticipated additional rent. Interest accrued on funds paid by NSHE herein while held pending payment by the Treasurer to the trustee or the trustee to holders, shall be credited, less amounts paid into the Rebate Fund, as defined in the Indenture, to base and additional rent for the next biennium.
4. NSHE has previously set aside and maintained in an account (“the Stabilization Account”) held by NSHE, funds in the amount of \$5,077,125. The Stabilization Account shall be considered fully funded when the balance in the fund equals one and one-quarter times the average annual debt service, as shown on Schedule A, to wit: \$ _____ (“Required Balance”). Investment of funds in the Stabilization Account shall be in accordance with section 6.03 of the Indenture (“the Tax Covenant”).
5. On July 15 of each year, NSHE shall report to the Treasurer the balance as of June 30 and all deposits, interest, earnings, and other activities on the Stabilization Account through the preceding June 30 of the just prior Fiscal Year. NSHE may withdraw amounts from the Stabilization Account at any time provided that as of June 30 and December 31 of each year the amount on deposit in the Stabilization Account is at least equal to the Required Balance.
6. Upon signature, this Agreement shall take effect as of the effective date of the lease-purchase agreement referred to hereinabove.

7. 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, electronic mail or first class mail, postage prepaid on the date posted, and addressed to the following representatives:

Chief Financial Officer 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) 684-5776 (fax)
---	---

8. 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.
9. 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.
10. 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.
11. 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.

12. This Agreement may be signed in counterparts.
13. 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.

NEVADA STATE TREASURER

By: _____
Zachary B. Conine, Treasurer, or such officer's designee Date _____

**BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, ON
BEHALF OF NEVADA STATE UNIVERSITY**

Recommended:

DeRionne P. Pollard, President

Date

Approved:

Dale Erquiaga, Acting Chancellor

Date

Approved As To Form

Deputy Attorney General

Date

Schedule A to Agreement re: Payment Schedule for Nevada State University
(Formerly Nevada State College)

Refunding Certificates of Participation

Series 2023

Between the State of Nevada,

by and through the Nevada State Treasurer (“the State”)

And

Nevada System of Higher Education

Administration Offices