



AGENDA MEMO - PLANNING

PLANNING COMMISSION MEETING DATE: MARCH 12, 2013

DEPARTMENT: PLANNING

ITEM DESCRIPTION: THE BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION

**** STAFF REPORT ****

PROJECT DESCRIPTION

The request is for possible action regarding the reestablishment of the Development Agreement between the College of Southern Nevada (CSN) and city of Las Vegas on approximately 42.02 acres at the northwest corner of Elkhorn Road and Grand Montecito Parkway.

ISSUES

There have been no significant changes to the site development standards, density, or permitted use table. The following list highlights the primary changes between the original and proposed development agreements.

- Section 2.07 - Identifies potential courses of action given the outcome of the proposed federal legislation.
- Section 3.02 – Requires the construction of at least one building within five years from the effective date.
- Section 5.01 – Removes the requirement for CSN to provide land to the US Postal Service for a post office.
- Section 7.02 – Modify Grand Montecito Parkway construction responsibilities. Since the majority of the Parkway adjacent to the site has been constructed in conjunction with the existing Regional Transportation Commission (RTC) park and ride facility, the college will now be required to construct amenity zones for portions of Grand Montecito Parkway within 60 days of obtaining the property from the BLM.
- Section 7.06 – Encourage shared parking with the existing RTC park and ride facility.
- Section 12.01 – Add language to account for failure of legislation to become law or failure to commence construction by the college within five years.
- Section 13.01 – Allows for a 30-year agreement term, with the possibility of a 15 year extension.

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BACKGROUND INFORMATION

<i>Related Relevant City Actions by P&D, Fire, Bldg., etc</i>	
02/20/08	The City Council approved a Director's Report (DIR-26231) for a Development Agreement between the city of Las Vegas and the College of Southern Nevada.
09/02/09	The City Council approved a Director's Report (DIR-35636) for a six-month extension to the Development Agreement between the city of Las Vegas and the College of Southern Nevada.
02/03/10	The City Council approved a Director's Report (DIR-37018) for a second six-month extension to the Development Agreement between the city of Las Vegas and the College of Southern Nevada.
02/03/10	The City Council approved Director's Report (DIR-37158) for an amendment to the Development Agreement between the College of Southern Nevada and the city of Las Vegas to allow for additional extensions of time.
03/03/10	The City Council approved the first 24-month development review report (DIR-37342) between the College of Southern Nevada and the City of Las Vegas.

On February 20, 2008, the College of Southern Nevada (CSN) and the city of Las Vegas entered into a development agreement to build an academic urban village in the northwest area of town. Section 2.07 of the original development agreement established an 18-month deadline from the February 20, 2008 effective date of the agreement for the College to obtain a federal land patent for the subject site, with the opportunity for a one-time six-month extension. When the patent was not obtained within the initial 18 months, a six-month extension was granted by the City Council on September 2, 2009.

When it became apparent that land patent would not be obtained within the six-month period granted by the extension, an amendment to the original development agreement was approved on February 3, 2010 to allow for an unlimited number of six-month extensions provided that each was approved by the City Council. A six-month extension was approved concurrently with the amended development agreement and a new expiration date of August 3, 2010 was established.

On March 3, 2010, a 24-month development report was reviewed and approved by the City Council as required by Section 11.01 of the development agreement. Upon submittal of the second report in early 2012, it was discovered that the College had not yet obtained the required land patent and there had been no subsequent six-month extensions of time requested since August of 2010. Since the land patents had not been obtained and there were no additional extensions of time requests submitted, the College was deemed to be in noncompliance with the terms of the agreement per the provisions outlined in Section 2.07 and therefore the agreement was expired.

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Section 2.07 further states that the only obligation or liability between the City and College in event that the patent was not obtained within the prescribed timeframe was that both parties attempt to negotiate a new agreement to accomplish the goals established by the expired document, which is the purpose of this request.

ANALYSIS

This request is an effort between the City and College to negotiate a new agreement in order to accomplish the goals and objectives that were established by the original development agreement. The intent of the document is the development of a mixed-use college campus, which will include complimentary commercial and residential facilities in addition to typical academic functions. The commercial functions are intended to provide on-site training opportunities for students as well as the necessary services for student life. The inclusion of residential units will make it possible for students, faculty and employees to live onsite and reduce vehicle trips to and from the campus. While there will be commercial and residential uses included on the campus, CSN will retain ownership of the land, and the bulk of the square footage will be dedicated to academic uses.

Development Agreement Statutory Requirements

The Nevada Revised Statutes (NRS) govern the content of Development Agreements. NRS §278.0201 establishes the minimum requirements for Development Agreements, which are as follows:

- Description of the land that is the subject of the agreement;
- Duration of the agreement;
- Permitted uses of the land;
- Density or intensity of use;
- Maximum height and size of proposed buildings; and
- Any provisions for the dedication of any portion of the land for public use.

The following analysis demonstrates the proposed development agreement's compliance with the minimum standards as required by NRS.

Description of the Land

The legal description of the land being utilized by CSN for the proposed campus is defined in Exhibit B of the development agreement.

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Duration of the Agreement

Per Section 13.01, the agreement expires five years from the document's effective date, unless extended or terminated earlier pursuant to the terms of the agreement. If at least one building has commenced construction within five years, the agreement is automatically extended for a total term of 30 years from the effective date.

Permitted Uses of Land

The list of permitted uses is attached as Exhibit C and includes a mix of residential, commercial and civic uses.

Density/Intensity of Use

Section Three of the Development Agreement lists the maximum residential density, maximum commercial square footage and maximum educational square footage allowed for the site. The maximum number of residential units is 500, the maximum amount of commercial square footage is 475,000 square feet, and there is no limit for educational uses.

Maximum Height and Size of Proposed Buildings

Figures 9, 10 and Map 2 (Northwest Campus Site Plan) identify the maximum building heights for the subject site. Depending on the location of the structure, the maximum permissible height is between seven and 12 stories. The site plan depicted on Map 2, however, indicates that all proposed buildings will be between one and four stories in height. All residential adjacency 3 to 1 proximity slopes are required to be maintained from the residential dwellings adjacent to the west property line.

Any Provisions for the Dedication of any Portion of the Land for Public Use

Section Five addresses land for public use. There is no requirement in this agreement for the College to provide any land for public use.

College of Southern Nevada Northwest Campus Design Standards Manual

The College Of Southern Nevada Northwest Campus Design Standards document, which is included as Exhibit D, outlines the minimum development standards for the subject site. These standards, in conjunction with Section Three of the development agreement, will serve to guide the development of the campus. The development standards for the site are based on the Town Center Design Standards Manual, so that the campus will fit seamlessly into the Town Center area. The site will be built in phases with the goal of creating a sustainable, low energy and low water use development with a distinct campus feel.

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The site plans for the campus, shown on Maps 1 and 2, depict multi-story buildings along both sides of Durango Drive and along the north side of Elkhorn Road. The Agreement states the College is required to commence construction of the first building within five years of the effective date, however the details of the type or use of the first building is not identified and the specifics are to be negotiated in the future. If the construction of the first building is started within five years of the effective date, the agreement is automatically extended for a total of 30 years and the remainder of the campus will be built at the discretion of CSN.

Figures 9, 10 and the Map 2 “Northwest Campus Site Plan” identify the maximum building heights for the subject site. Depending on the location of the structure, the maximum permissible height is between seven and 12 stories. The site plan depicted on Map 2, however, indicates that all proposed buildings will be between one and four stories in height. All residential adjacency 3 to 1 proximity slopes are required to be maintained from the residential dwellings adjacent to the west property line. Architectural standards such as building façade, exterior features, exterior building materials and exterior colors generally replicate the existing requirements for the Town Center plan area.

Street standards for the subject site will match the dimensions and landscape standards specified in the Town Center manual. Access to the academic and commercial buildings will be served by an interior campus road network. Plaza areas provide open and gathering space for users of the site and are linked together by a campus wide pedestrian network.

Parking will be provided by a pair of surface lots located adjacent to the east side of Grand Montecito Parkway and a planned parking structure adjacent to the west boundary of the campus. Parking ratios have been included in the design standards to account for the reduced parking requirements of mixed-use developments. There is currently an existing Regional Transportation Commission (RTC) park-and-ride facility located adjacent to the proposed campus. It is encouraged that CSN enter into a shared parking agreement with the RTC to maximize parking opportunities. The mass transit option for students and employees of the campus will assist in further reducing the campus’s parking demand.

The landscaping of the campus is required to be comprised of drought tolerant plants and trees. Approved ground covers include Purple Verbena, Green Dalia, Trailing Yellow Lantana, and Dwarf Coyote Bush. Approved shrubs include the Texas Sage, Sage, Deer Grass, and Cassia. Four specific 36-inch box trees, the Rio Grande Ash, Mexican Fan Palm, Chitalpa and Purple Robe Locust, are to be used in combination throughout the campus.

Signage standards for the campus are similar to exiting Town Center standards and prohibit signage that is not allowed per Title 19.06 and the Town Center Development Standards Manual.

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Revisions to Proposed Development Agreement

The proposed agreement introduces new language that better reflects the conditions present in 2013 that affect the subject site. The bulleted list provides an overview of the major changes to the document. The subsequent table describes each change line by line and the proposed language for that section.

- Recital changes
- Section 2.07 - Identifies potential courses of action given the outcome of the proposed federal legislation.
- Section 3.02 – Requires the construction of at least one building within five years from the effective date.
- Section 5.01 – Removes the requirement for CSN to provide land to the US Postal Service for a post office.
- Section 7.02 – Modify Grand Montecito Parkway construction responsibilities. Since the majority of the Parkway adjacent to the site has been constructed in conjunction with the existing Regional Transportation Commission (RTC) park and ride facility, the college will now be required to construct amenity zones for portions of Grand Montecito Parkway within 60 days of obtaining the property from the BLM.
- Section 7.06 – Encourage shared parking with the existing RTC park and ride facility.
- Section 12.01 – Add language to account for failure of legislation to become law or failure to commence construction
- Section 13.01 – Allows for a 30-year agreement term, with the possibility of a 15 year extension.

Section	Previous/Proposed Language
Recital A Previous	The City and the College entered into a Memorandum of Understanding ("MOU") on April 5, 2006 so that the College could acquire the City's interest in and develop certain real property described in Exhibit "A" attached hereto and incorporated herein (hereinafter the "Property") as the College's Northwest Campus. The MOU expired on October 5, 2007; and
Recital A Proposed	On February 20, 2008, the City Council approved a development agreement between the City and NSHE concerning the Property located within the boundaries of the City, which is currently leased to the City by the Bureau of Land Management through Lease number N-61839 under the Recreation And Public Purposes Act;

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Section	Previous/Proposed Language
Recital B Previous	The Parties have been working together pursuant to the MOU and are in the final stages of reaching full accord on the terms of the acquisition and development of the Property; and
Recital B Proposed	The purpose of such agreement was to memorialize an agreement between the City and NSHE regarding the ultimate development of such land as the College of Southern Nevada Northwest Campus, requiring the College to design and construct the campus in accordance with mutually agreed-upon design standards and to permit and prohibit certain uses upon the property in accordance with such agreement;
Recital C Previous	The Parties entered into an Exclusive Negotiating Agreement ("ENA") on October 3, 2007 in order to continue such negotiations beyond the expiration of the MOU, and to enter into a formal development agreement pursuant to NRS 278.0201, which will encompass the Parties' final understanding of the development of the Property; and
Recital C Proposed	Such agreement required the College to obtain a land patent for the Property from the Federal Government by August 19, 2009, or the agreement would expire;
Recital D Previous	The Property is located within the boundaries of the City and is leased to the City by the Bureau of Land Management (BLM) in Lease number N-61839 ("Lease") under the Recreation And Public Purposes Act ("R&PP Act"); and
Recital D Proposed	On February 3, 2010, the City approved an amendment to such agreement that permitted NSHE another 18 months, until August 2, 2011 to secure a land patent from the BLM for the Property, or that agreement was null and void, unless an extension of a 18 month period was granted prior to the August 2, 2011 expiration;
Recital E Previous	The College also submitted a request to lease the Property from the BLM under the R& PP Act; and
Recital E Proposed	No extension of time was granted by the City prior to August 2, 2011, and as such, that agreement expired by its terms;
Recital F Previous	The City entered into a Cooperative Agreement with the Regional Transportation Commission of Southern Nevada ("RTC") on October 3, 2007 to allow the RTC to utilize approximately fifteen (15) acres of the Property for a Park 'n Ride facility and other related uses. A description of the RTC area is attached hereto as Exhibit "B"; and

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Section	Previous/Proposed Language
Recital F Proposed	Congressman Mark Amodei introduced a bill to the United States House of Representatives known as the Las Vegas Public Land and Tule Springs Fossil Beds and National Monument Act of 2012, which in Section 9 delineates a transfer of the Property on behalf of the College for the express purpose of construction the Northwest Campus by the College ("Federal Legislation"). The Federal Legislation, as introduced, indicates at Section 9(b)(1)(A(i)(II), that: "as a precondition of the conveyance, the Board of Regents shall, by mutual assent, enter into a binding development agreement with the City of Las Vegas that: (aa) provides for the orderly development of the Federal land to be conveyed under this subclause; and (bb) complies with State law;"
Recital G Previous	The United States Postal Service ("USPS") is exploring the need for approximately 5 acres of the Site for a postal facility in the Northwest area and the Parties desire to facilitate such need and incorporate a postal facility in the development of the Site; and
Recital G Proposed	This Agreement is intended by the Parties to comply with such requirement. If the Federal Legislation does not become law, then the Parties intend for this Agreement to be terminable by the City;
Recital H Previous	The College intends to coordinate with the RTC and USPS as adjacent neighbors to maximize the benefits and efficiencies under this Agreement and the Cooperative Agreement; and
Recital H Proposed	Upon passage of the Federal Legislation, The City intends, pursuant to the terms of this Agreement, to relinquish Lease number N-61839 in favor of NSHE, once the Transferred Property is conveyed to NSHE;
Recital I Previous	The City intends, pursuant to the terms of this Agreement, to relinquish Lease number N -61839 in favor of the College receiving the patent from the United States on the Property less: 1) the acreage governed by the aforementioned Cooperative Agreement with the RTC, and 2) the area needed for the postal facility if the City grants that use prior to the grant of the federal land patent to the College; and
Recital I Proposed	The City derives its authority, pursuant to NRS 278.0201 through 278.0207 and 19.16.150 of the Las Vegas Municipal Code, to enter into development agreements with entities having a legal or equitable interest in real property to establish long-range plans for the development of such property;
Recital J Previous	With the exclusion of the RTC area, the Property will hereinafter be referred to as the "Site" for development by the College as the Northwest Campus and possibly the postal facility area. A description of the Site is attached hereto as Exhibit "C"; and

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Section	Previous/Proposed Language
Recital J Proposed	The Board of Regents of NSHE is a Nevada constitutional body and has authority to enter into this Agreement to provide for the higher educational needs of the citizens of the State of Nevada;
Recital K Previous	The City of Las Vegas zoned the Property T -C Town Center District under section 19.06.110 of Title 19 of the Las Vegas Municipal Code; and
Recital K Proposed	The City desires to enter into this Agreement in conformance with the requirements of NRS 278.0201 through NRS 278.0207 and LVMC 19.16.150 and as otherwise permitted by law and this Agreement, to provide for public services, public uses and urban infrastructure, to further the goals and values of the City's Centennial Hills Sector Plan and the Las Vegas 2020 Master Plan, to promote the health, safety and general welfare of the City and its inhabitants, to minimize uncertainty in planning for and securing the orderly development of the College's Northwest Campus, to insure attainment of the maximum efficient utilization of resources within the City at the least economic cost to its citizens and otherwise achieve the goals and purposes for which the State statute and City ordinance authorizing development agreements were enacted. As a result of the development of the Property as proposed by College, the City will receive needed educational facilities and opportunities, jobs, sales and other tax revenues, and substantial improvements to the public infrastructure. The City will additionally receive a greater degree of certainty with respect to the phasing, timing and orderly development of the City infrastructure by agreeing to the use and development of the Site by College;
Recital L Previous	The City has authority, pursuant to NRS 278.0201 through 278.0207 and 19.18.090 of the Las Vegas Municipal Code, to enter into development agreements with entities having a legal or equitable interest in real property to establish long-range plans for the development of such property; and
Recital L Proposed	In exchange for these and other benefits to the City, and in accordance with the legislative intent evidenced by the State statutes authorizing development agreements and the intent of the City in adopting an ordinance allowing development agreements, College will receive reasonable assurances that it may develop the Northwest Campus in accordance with this Agreement. Because of the nature of the Northwest Campus and the many constituents that it will serve while also balancing its development with the other needs of NSHE and College, the development of the Northwest Campus will take a long period of time to fully complete. The College's decision to commence development of the Northwest Campus is based on expectations of proceeding with the Northwest Campus to completion;
Recital M Previous	The Board of Regents of NSHE is a Nevada constitutional body and has authority to enter into this Agreement to provide for the higher educational needs of the citizens of the State of Nevada; and

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Section	Previous/Proposed Language
Recital M Proposed	<p>In the absence of this Agreement, the College believes it would have no assurance that it could complete the Northwest Campus and would therefore be exposed to significant economic risk. For any number of currently foreseeable and unforeseeable reasons, including, without limitation, regional traffic and related impacts (for example, impacts on air quality) resulting from development outside the jurisdiction of the City and issues relating to water use and availability, pressures on the City could be created to (i) halt the Northwest Campus at a point short of total build out, (ii) reduce the scope of the Northwest Campus, (iii) defer or delay completion of the Northwest Campus, or (iv) apply new rules or requirements in such a manner as to significantly increase the cost of the Northwest Campus or to otherwise burden its development. The burden of interest carrying costs, the difficulty of obtaining financing or funding, the risk of losing existing financing commitments and the potential loss of anticipated revenues associated with these development risks and uncertainties would, in the absence of this Agreement, deter and discourage the College from making a long-term commitment to the development of the Northwest Campus. In addition, the cost of certain improvements to be constructed by the College will be substantial and may not match the timing of the revenue or appropriations associated with the Northwest Campus which is a necessary element of the overall provision of educational opportunities. Accordingly, the College cannot prudently commence the development of the Northwest Campus without reasonable assurance from the City that it will be able to complete the Northwest Campus</p>
Recital N Previous	<p>The City desires to enter into this Agreement in conformance with the requirements of NRS 278.0201 through NRS 278.0207 and LVMC 19 and 18.090 and as otherwise permitted by law and this Agreement, to provide for public services, public uses and urban infrastructure, to further the goals and values of the City's Centennial Hills Sector Plan and the Las Vegas 2020 Master Plan, to promote the health, safety and general welfare of the City and its inhabitants, to minimize uncertainty in planning for and securing the orderly development of the College's Northwest Campus, to insure attainment of the maximum efficient utilization of resources within the City at the least economic cost to its citizens and otherwise achieve the goals and purposes for which the State statute and City ordinance authorizing development agreements were enacted. As a result of the development of the Property as proposed by the College subject to the Cooperative Agreement between City and RTC, the City will receive needed educational facilities and opportunities, jobs, sales and other tax revenues, and substantial improvements to the public infrastructure. The City will additionally receive a greater degree of certainty with respect to the phasing, timing and orderly development of the City infrastructure by agreeing to the use and development of the Site by the College; and</p>

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Section	Previous/Proposed Language
Recital N Proposed	The Parties are aware of the provisions of NRS 341, which governs the State Public Works Board, and the Parties understand that the State Public Works Board has final authority to approve and inspect all development of state-owned buildings within Nevada, such as the Northwest Campus. The Parties agree that this Agreement is not meant under any circumstance to circumvent the authority of the State Public Works Board, but that this Agreement is in the best interest of the residents living near the Transferred Property, and is meant to complement the actions of the State Public Works Board by permitting NSHE to work cooperatively with the City and its residents by presenting its development plans to the Las Vegas City Council prior to submission to the State Public Works Board, and to design and construct its Northwest Campus in accordance with the land uses and development standards approved herein.
Recital O Previous	In exchange for these and other benefits to the City, and in accordance with the legislative intent evidenced by the State statutes authorizing development agreements and the intent of the City in adopting an ordinance allowing development agreements, the College will receive reasonable assurances that it may develop the Northwest Campus in accordance with this Agreement. Because of the nature of the Northwest Campus and the many constituents that it will serve while also balancing its development with the other needs of NSHE and the College, the development of the Northwest Campus will take a long period of time to fully complete. The College's decision to commence development of the Northwest Campus is based on expectations of proceeding with the Northwest Campus to completion; and
Recital O Proposed	NSHE has given notice as required by the relevant law, and brought this Agreement for approval at a public meeting of the Board of Regents. The Board of Regents found this Agreement to be in the public interest and lawful in all respects, and approved the execution of this Agreement by the Chancellor of NSHE and the President of the College.

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Section	Previous/Proposed Language
Recital P Previous	<p>In the absence of this Agreement, because NSHE does not own the Property and the Property is currently leased to the City; the College believes it would have no assurance that it could complete the Northwest Campus and would therefore be exposed to significant economic risk. For any number of currently foreseeable and unforeseeable reasons, including, without limitation, regional traffic and related impacts (for example, impacts on air quality) resulting from development outside the jurisdiction of the City and issues relating to water use and availability, pressures on the City could be created to (i) halt the Northwest Campus at a point short of total build out, (ii) reduce the scope of the Northwest Campus, (iii) defer or delay completion of the Northwest Campus, or (iv) apply new rules or requirements in such a manner as to significantly increase the cost of the Northwest Campus or to otherwise burden its development. The burden of interest carrying costs, the difficulty of obtaining financing or funding, the risk of losing existing financing commitments and the potential loss of anticipated revenues associated with these development risks and uncertainties would, in the absence of this Agreement, deter and discourage the College from making a long-term commitment to the development of the Northwest Campus. In addition, the cost of certain improvements to be constructed by the College will be substantial and may not match the timing of the revenue or appropriations associated with the Northwest Campus which is a necessary element of the overall provision of educational opportunities. Accordingly, the College cannot prudently commence the development of the Northwest Campus without reasonable assurance from the City that it will be able to complete the Northwest Campus; and</p>
Recital P Proposed	N/A
Recital Q Previous	<p>NSHE has given notice as required by the relevant law, and brought this Agreement for approval at a public meeting of the Board of Regents. The Board of Regents found this Agreement to be in the public interest and lawful in all respects, and approved the execution of this Agreement by the Chancellor of NSHE and the President of the College.</p>
Recital Q Proposed	N/A

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Section	Previous/Proposed Language
2.07 Previous	<p><u>Relinquishment of R&PP Act Lease.</u> The College is pursuing legislation in Congress that would grant a federal land patent for the Site to the College, subject to the requirements of this Agreement. In order that the College is able to finance the development of its Northwest Campus in the manner currently envisioned and on a time table which would justify the City to relinquish its Lease on the entire Site, the patent cannot be restricted so as to prevent private entities from leasing portions of the Site or leasing space within buildings for profitable ventures. The Parties agree that this Agreement shall be effective for its Term notwithstanding the grant of the federal land patent for the Site to the College. The College will notify the City in the event the College determines that it is unlikely to obtain the land patent. College shall have 18 months from the Effective Date of this Agreement to secure such patent, or this Agreement shall be null and void and the parties shall have no further liability or obligation to each other, except for the obligation to attempt to negotiate a new development agreement as set forth below. Such 18-month period may be extended for additional Period of 6 months upon the written approval of the City Council and College.</p> <p>The College may not commence work on the Site until it obtains such a land patent and is in compliance with the terms of this Agreement.</p> <p>The City will when and where requested indicate its willingness to relinquish its R&PP lease as to the Site, subject to the terms of this Agreement, as a final condition to the grant of patent to the College so long as the patent will allow the development of the Northwest Campus as envisioned by this Agreement. Thereafter, the City will file when appropriate a relinquishment of its R&PP lease with the BLM for the Site in order for the College to receive the land patent.</p> <p>In the event the College is unable to secure a patent of the Site that is unrestricted as referenced above: 1) the parties shall attempt to enter into a new development agreement to accomplish the goals of the parties set forth herein, and 2) the City shall not be under any obligation to relinquish its Lease of the Site unless and until a mutually acceptable agreement is executed.</p>

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Section	Previous/Proposed Language
2.07 Proposed	<p><u>Disposition of the Property.</u> The College is pursuing the Federal Legislation in Congress that would act to convey the Property to the College, upon the execution of a binding development agreement between the Parties. The Parties acknowledge that the Federal Legislation may become law, and it may fail.</p> <p>The following options are available to the Parties regarding disposition of the Property:</p> <p>(a) Federal Legislation Becomes Law. If the Section 9 of the Federal Legislation becomes law, the City shall, when appropriate, process a relinquishment of its R&PP lease N-61839 with the BLM for the Property in order for the College to hold the land conveyance free of the encumbrance of such lease.</p> <p>(b) Federal Legislation does not become law within a time certain. If the Federal Legislation does not become law within two years from the Effective Date of this Agreement, the City may terminate this Agreement in its entirety pursuant to the provisions of paragraph (insert paragraph # here), herein.</p> <p>(c) Federal Legislation Fails. If the Federal Legislation does not survive the legislative process, the City may terminate this Agreement in its entirety upon failure of the Federal Legislation pursuant to the provisions of paragraph (insert paragraph # here), herein.</p> <p>(d) Disposition of Property without Federal Legislation. If the Federal Legislation either does not become law within a time certain or the Federal Legislation fails, and the City does not act to terminate this Agreement, the City Council, in its sole discretion, may direct City staff to process a relinquishment of its R&PP lease N-61839 with the BLM for the Property in order for the College to obtain a some other property interest in the Property pursuant to existing laws. If such an event occurs, NSHE understands and acknowledges that the Property will continue to be encumbered by this Agreement and the entirety of NSHE's and the College's obligations remain effective.</p>
3.02 Previous	<p><u>Time for Construction and Completion of the Site.</u> The Parties acknowledge and agree that it is in their respective best interests that development of the Site be accomplished to best support the College's objectives and purpose, but on a reasonable time table within the abilities of the College that justifies the City's relinquishment of the Site. In light of this mutual objective, and subject to the terms of the Applicable Rules, the College shall have the discretion as to the time of commencement, construction and completion of the Site, with the exception of the construction of Grand Montecito Parkway.</p>

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Section	Previous/Proposed Language
3.02 Proposed	<p><u>Time for Construction and Completion of the Site.</u> The Parties acknowledge and agree that it is in their respective best interests that development of the Site be accomplished to best support the College's objectives and purpose, but on a reasonable time table within the abilities of the College that justifies the City's relinquishment of the Site. In light of this mutual objective, and subject to the terms of the Applicable Rules, the College shall commence construction upon at least one building (details re: size and use to be negotiated) within five years of the Effective Date, or the City may terminate/cancel this Agreement pursuant to paragraph 13.02. The City understands that build-out of the entire Northwest Campus will take many years and an amount of financing that may not be available at commercially reasonable rates, so completion of the Northwest Campus shall be at the discretion of the College.</p>
Section 5.01 Previous	<p><u>Post Office.</u> The College acknowledges that the City committed a portion of the Site to the USPS to be used as a post office. The USPS has requested five (5) acres of land within the Site. Although the final location of the post office has not been determined, the College will provide such land to the USPS in a current "as is" condition and in a location that is mutually agreeable to the City, the College and the USPS. If USPS needs to acquire such location prior to College obtaining the patent for the Site, the City shall cooperate with USPS and BLM in relinquishing such location in favor of USPS. Neither the City nor the College will be responsible for any on-site grading, paving, utilities or construction of the post office. Nothing herein limits the College's ability to negotiate with the USPS for contribution for road improvements or any other costs or fees incurred by the College under this Agreement. If the post office has not pulled a building permit for its facility within six (6) years from the Effective Date, this section 5.01 shall cease to be effective and the five acres committed to the USPS can be developed by the College. In the event the USPS determines that it does not need a post office on the Site as evidenced in writing, the College is relieved of its obligation to provide land for a post office within the Site.</p>
Section 5.01 Proposed	<p><u>Other Public Facilities.</u> City agrees that College shall have no obligation, other than those identified in this Agreement, to participate in, pay, contribute or otherwise provide for any land, facilities, equipment or physical improvements for public or civic buildings, inside or outside of the Site or otherwise provide or pay any further exaction, including, special assessment district assessments, other assessments or development fees, as a substitute therefore, including, without limitation, sites and related improvements and equipment for fire stations, police stations, schools and libraries. The College agrees that the City shall have no obligation, other than those identified in this Agreement and its normal and customary duties as a municipal corporation providing services to its constituents, to participate in, pay, contribute or otherwise provide for any land, facilities, equipment or physical improvements for the development of the Site.</p>

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Section	Previous/Proposed Language
Section 7.02 Previous	<p><u>Grand Montecito Parkway.</u></p> <p>(a) Grand Montecito Parkway is that road designed to go north and then west across the Site to Durango Drive from its current termination point at the intersection of Elkhorn Road. In general, the extension of Grand Montecito Parkway has been approved by the City.</p> <p>(b) Grand Montecito Parkway ultimately may include, without limitation, curb, gutter, drainage and sewer facilities, sidewalk, street lights, pavement, striping, medians, landscaping, trails, amenity zones, and traffic control devices, including conduits and foundations and signage. The cost of the Grand Montecito Parkway will be allocated as follows: The College shall be responsible for and pay for half of the costs of the extension of Grand Montecito Parkway on the Site for any part of that extension where Grand Montecito Parkway is adjacent to land patented to and occupied by the College and where the RTC does not hold the right of occupancy on both sides of the proposed Grand Montecito Parkway. As long as the College has received the land patent for the Site, the College:</p> <p style="padding-left: 40px;">(i) shall fulfill its obligations of this sub-section when the College or the RTC is prepared to commence the construction of the extension of Grand Montecito Parkway, whichever may occur first. (ii) RTC shall be responsible for and pay for half of the costs of the extension of Grand Montecito Parkway except that RTC shall pay for all of the costs of the extension adjacent to the land where RTC holds the right of occupancy on both sides of the proposed Grand Montecito Parkway.</p> <p style="padding-left: 40px;">(iii) The City shall cause a supplement to the Cooperative Agreement to be executed with and by the RTC which memorializes the cost responsibilities for the extension of the Grand Montecito Parkway as set forth in (i) and (ii) above.</p> <p>(c) After road dedication to the City, the College shall submit to the City encroachment agreements for maintenance of the landscaping within the public right-of-way.</p> <p>(d) In the event the RTC commences construction of the extension of Grand Montecito Parkway prior to the time the College has obtained the land patent for the Site, the City will be responsible for the costs of the extension which are not the obligation of RTC, and the College will reimburse the City those costs which the City has expended pursuant to this provision within sixty days of obtaining the land patent for the Site, or the City will defer the improvements to be completed by the College until the land patent is issued, and the College will commence these improvements within 60 days of obtaining the land patent for the Site.</p>

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Section	Previous/Proposed Language
Section 7.02 Proposed	<p><u>Grand Montecito Parkway.</u></p> <p>(a) Grand Montecito Parkway is the road that goes north from Elkhorn Road to Osa Blanca Road as shown on Exhibit “B.”</p> <p>(b) Grand Montecito Parkway ultimately may include, without limitation, curb, gutter, drainage and sewer facilities, sidewalk, street lights, pavement, striping, medians, landscaping, trails, amenity zones, and traffic control devices, including conduits and foundations and signage. Grand Montecito Parkway has been substantially constructed through the Property as a part of the RTC Park and Ride Project. The RTC constructed the full-width (curb-to-curb) of Grand Montecito Parkway, and constructed the amenity zone, including sidewalk and streetlights on all portions of the Property abutting the RTC Park and Ride Facility. The remaining unconstructed portion of Grand Montecito Parkway amenity zone, including, without limitation, landscaping, sidewalk and streetlights and including additional paving, curb and gutter for a dedicated right-turn lane at Elkhorn Road in accordance with Exhibit “B” shall be constructed by the College within 60 days of obtaining a conveyance of the Property from the BLM.</p> <p>(c) The City shall cause a supplement to the Cooperative Agreement to be executed with and by the RTC which memorializes the cost responsibilities for the extension of the Grand Montecito Parkway as set forth in (i) and (ii) above.</p> <p>(d) After road dedication to the City, the College shall submit to the City encroachment agreements for maintenance of the landscaping within the public right-of-way.</p> <p>(e) The College shall enter into an agreement with the RTC for the shared use and maintenance of the existing private perimeter roadways on the west and south sides of the RTC facility west of Grand Montecito Parkway.</p>
Section 7.06 Previous	N/A

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Section	Previous/Proposed Language
Section 7.06 Proposed	<p><u>Shared Parking Facilities</u>. The College and the RTC will jointly use and maintain the shared parking aisles that have been constructed on the boundary between the land to be developed by the College and the RTC Park and Ride Facility. The College and the RTC are encouraged to permit joint use of the parking facilities adjacent to those parking aisles.</p>
Section 8.01 Previous	<p><u>Flood Control Facilities and Technical Drainage Studies</u>. The College shall submit a Master Drainage Study addressing the overall drainage impacts to the Site and adjacent roadways. The phased development of the Site will require that a Technical Drainage Study be required for each phase of development. The Master Drainage Study and the Technical Drainage Studies for each phase of development shall be prepared in accordance with the Clark County Regional Flood Control District (CCRFC) Hydraulic Criteria and Drainage Design Manual. The College agrees to implement the drainage study requirements and follow the recommendations of approval from the City of Las Vegas, with concurrence by the Clark County Regional Flood Control District and the Nevada Department of Transportation (NDOT). Drainage study updates may be required based upon the development phasing.</p> <p>The drainage studies shall identify the necessary storm drain system and/or other mitigation measures needed to protect the Site development from the existing condition flows and the ultimate condition flows for both the 10-year and 100-year storms. The facilities identified in the drainage studies must be designed and constructed by the College with each phase of development and may include both on-site and adjacent off-site facilities. The College agrees that Grand Montecito Parkway may include storm drain facilities as determined by the drainage study for the Site. The College shall be responsible for paying the costs of constructing any facilities necessary, whether interim or ultimate, and shall comply with Section 7.05 of this Agreement regarding Acquisitions of Rights of Way and Easements to accommodate such facilities. All interim and on-site storm drain facilities must be maintained by the College. The College will not be responsible for the technical drainage studies for the USPS or RTC sites.</p>
Section 8.01 Proposed	<p><u>Flood Control Facilities and Technical Drainage Studies</u>. The College shall submit a Master Drainage Study addressing the overall drainage impacts to the Site and adjacent roadways. The phased development of the Site will require that a Technical Drainage Study be required for each phase of development. The Master Drainage Study and the Technical Drainage Studies for each phase of development shall be prepared in accordance with the CCRFC Hydraulic Criteria and Drainage Design Manual. The College agrees to implement the drainage study requirements and follow the recommendations of approval from the City of Las Vegas, with concurrence by the Clark County Regional Flood Control District and the Nevada Department of Transportation. Drainage study updates may be required based upon the development phasing.</p>

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Section	Previous/Proposed Language
Section 11.01 Previous	<p><u>Frequency of Reviews.</u> As required by NRS 278.0205 and the Development Agreement Ordinance, at least once every twenty-four (24) months during the Term, the College shall provide and the City shall review in good faith a report submitted by the College documenting the extent of the Parties' material compliance with the terms of this Agreement during the preceding twenty-four (24) months. If at the time of review an issue not previously identified in writing is required to be addressed, the review, at the request of either party, shall be continued to afford sufficient time for response. The Parties shall be permitted an opportunity to be heard before the City Council regarding their performance under this Agreement in the manner set forth in the Development Agreement Ordinance.</p>
Section 11.01 Proposed	<p><u>Frequency of Reviews.</u> As required by NRS 278.0205 and the Development Agreement Ordinance, at least once every twenty-four (24) months during the Term, the College shall provide and the City shall review in good faith a report submitted by the College documenting the extent of the Parties' material compliance with the terms of this Agreement during the preceding twenty-four (24) months. If at the time of review an issue not previously identified in writing is required to be addressed, the review, at the request of either party, shall be continued to afford sufficient time for response. The Parties shall be permitted an opportunity to be heard before the City Council regarding their performance under this Agreement in the manner set forth in the Development Agreement Ordinance. In addition, if the City desires to terminate/cancel the agreement based upon the failure by the College to construct a building upon the Property in conformance with paragraph 3.02, herein, or the City desires to terminate/cancel this Agreement upon a failure of the Federal Legislation or a failure of the Federal Legislation to become law two years from the Effective Date of this Agreement, the City may require a hearing to review the status of the development contemplated by this Agreement, and take any action as provided by NRS 278.0205.</p>

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Section	Previous/Proposed Language
<p>Section 12.01 Previous</p>	<p><u>Opportunity to Cure; Default.</u> In the event of any noncompliance with any provision of this Agreement, the Party alleging such noncompliance shall deliver to the other by certified mail a thirty (30) day notice of default and opportunity to cure. The time of notice shall be measured from the date of certified mailing. The notice of default shall specify the nature of the alleged default and the manner in which it may be satisfactorily corrected, during which thirty (30) day period the party alleged to be in default shall not be considered in default for the purposes of termination or institution of legal proceedings.</p> <p>If the default cannot be reasonably cured within the thirty (30) day cure period, the non-compliant Party may timely cure the default for purposes of this Section Twelve if it commences the appropriate remedial action within the thirty (30) cure period and thereafter prosecutes such action to completion within a reasonable period of time. If no agreement between the Parties is reached regarding the appropriate timeframe for remedial action, the cure period shall not be longer than sixty (60) days from the date the sixty (60) day notice of default and opportunity to cure was mailed to the non-compliant party.</p> <p>If the default is corrected, then no default shall exist and the noticing party shall take no further action. If the alleged default is not corrected within the relevant cure period, the party alleging non-compliance may elect anyone or more of the following courses:</p> <p style="padding-left: 40px;">(a) City Manager/ President Resolution. The City Manager and the President of the College shall meet to discuss the alleged default and seek to resolve the matter in a mutually agreeable time frame.</p> <p style="padding-left: 40px;">(b) Mediation. The Parties shall submit the issues to mediation to attempt resolution.</p>

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Section	Previous/Proposed Language
Section 12.01 Proposed	<p><u>Opportunity to Cure; Default.</u> Except for a termination/cancellation of this Agreement for a failure by the College to commence construction of a building upon the Property within the requisite time period as provided by paragraph 3.02, or a failure of the Federal Legislation to become law two years from the Effective Date of this Agreement, or the Federal Legislation otherwise dies, in the event of any noncompliance with any other provision of this Agreement, the Party alleging such noncompliance shall deliver to the other by certified mail a thirty (30) day notice of default and opportunity to cure. The time of notice shall be measured from the date of certified mailing. The notice of default shall specify the nature of the alleged default and the manner in which it may be satisfactorily corrected, during which thirty (30) day period the party alleged to be in default shall not be considered in default for the purposes of the institution of legal proceedings. If the default cannot be reasonably cured within the thirty (30) day cure period, the non-compliant Party may timely cure the default for purposes of this Section Twelve if it commences the appropriate remedial action within the thirty (30) cure period and thereafter prosecutes such action to completion within a reasonable period of time. If no agreement between the Parties is reached regarding the appropriate timeframe for remedial action, the cure period shall not be longer than sixty (60) days from the date the sixty (60) day notice of default and opportunity to cure was mailed to the non-compliant party.</p> <p>If the default is corrected, then no default shall exist and the noticing party shall take no further action. If the alleged default is not corrected within the relevant cure period, the party alleging non-compliance may elect anyone or more of the following courses:</p> <ul style="list-style-type: none"> (a) City Manager/ President Resolution. The City Manager and the President of the College shall meet to discuss the alleged default and seek to resolve the matter in a mutually agreeable time frame. (b) Mediation. The Parties shall submit the issues to mediation to attempt resolution. (c) Litigation.
Section 12.07 Previous	<p><u>Default by City.</u> In the event the City substantially defaults under this Agreement, the College shall have the right to terminate this Agreement as set forth in Section 12.01. Notwithstanding the forgoing, the College shall have the option, in its sole discretion, to maintain this Agreement in effect, and seek to enforce all of the City's obligations herein under the provisions set forth in Sections 12.01 and</p>
Section 12.07 Proposed	<p>Section not included</p>

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Section	Previous/Proposed Language
Section 13.01 Previous	<p><u>Term.</u> The term of this Agreement shall commence upon the Effective Date and shall expire on the thirtieth (30th) anniversary of the Effective Date, unless extended by written agreement executed by the City and the College or unless terminated earlier pursuant to the terms hereof. City agrees that the College shall have the right to request extension of the term of this Agreement for an additional fifteen (15) years upon the following conditions:</p> <p style="padding-left: 40px;">(a) the College provides written notice of such extension to the City at least one hundred-eighty (180) days prior to the expiration of the original thirty (30) year term of this Agreement;</p> <p style="padding-left: 40px;">(b) the College is not in default of this Agreement; and</p> <p style="padding-left: 40px;">(c) the College and the City enter into an amendment to this Agreement memorializing the extension of the term.</p>
Section 13.01 Proposed	<p><u>Term.</u> Except as otherwise provided below, the term of this Agreement shall commence upon the Effective Date and shall expire on the Fifth (5th) anniversary of the Effective Date, unless extended by amendment to this Agreement or terminated earlier pursuant to the terms hereof. Provided that the College has commenced construction of at least one building in conformance with paragraph 3.02, above, the term of this Agreement shall be automatically extended to a total term of thirty (30) years from the Effective Date of this Agreement</p>
Section 13.02 Previous	<p><u>Financing.</u> The College has previously provided financing commitments and options to the City in compliance with the MOU. The College shall have the sole discretion as to the amount and conditions of financing throughout the term of this Agreement. No obligation or requirement for financing is placed on the City.</p>
Section 13.02 Proposed	<p><u>Termination.</u> Notwithstanding the provisions of Section 12, herein, if the College does not commence construction of at least one building pursuant in conformance with paragraph 3.02 of this Agreement, or the Federal Legislation does not become law within two years of the Effective Date of this Agreement, or the Federal Legislation otherwise dies, the City may terminate/cancel this Agreement pursuant to the provisions of Section 11, herein, and NRS 278.0205.</p>

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Section	Previous/Proposed Language
Section 13.03 Previous	<p><u>Assignment to a Third Party.</u> Assignment or a transfer of rights or obligations under this Agreement to a third person other than as provided herein is not a contemplated transaction under this Agreement. The College shall not sell or transfer any or all of its rights or obligations under this Agreement to a third person other than as provided herein without the approval of the City Council and any such unapproved transfer is void and is an immediate default of this Agreement notwithstanding the cure provisions of Section Twelve.</p> <p>(a) To an Affiliate of College. Except as otherwise provided by Section 13.02(e), below, the rights of the College under this Agreement may be freely transferred or assigned to an Affiliate of the College provided that such entity shall assume in writing all obligations of the College hereunder in a form acceptable to the City, to be accepted by the City Manager.</p> <p>(b) Transfer Not to Relieve the College of its Obligation. Except as expressly provided herein, no assignment or transfer of any portion of the Site shall relieve the College of its obligations hereunder as to the portion of the Site so assigned or transferred, and such assignment or transfer shall be subject to all of the terms and conditions of this Agreement, provided, however, that no such transferee shall be deemed to be the College hereunder. This subsection shall have no effect upon the validity of obligations recorded as covenants, conditions, restrictions or liens against parcels of real property.</p> <p>(c) In Connection with Financing Transactions. Following its receipt of a patent for the Site, the College shall have full discretion and authority to encumber the Site or portions thereof, in connection with financing transactions, without limitation to the size or nature of any such transaction, the amount of land involved or the use of the proceeds there from, and may enter into such transactions at any time and from time to time without permission of or notice to City. All such financing transactions shall be subject to the terms and conditions of this Agreement.</p>
Section 13.03 Proposed	<p><u>Financing.</u> The College shall have the sole discretion as to the form, amount and conditions of financing throughout the term of this Agreement. No obligation or requirement for financing is placed on the City</p>
Section 13.04 Previous	<p><u>Amendment or Cancellation of Agreement.</u> Except as otherwise permitted by NRS Chapter 278 and this Agreement, this Agreement may only be amended or canceled upon the mutual consent of the College and the City Council. Any proposed amendments shall be considered solely by the City Council.</p>

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Section	Previous/Proposed Language
Section 13.04 Proposed	<p><u>Assignment to a Third Party.</u> Assignment or a transfer of rights or obligations under this Agreement to a third person other than as provided herein is not a contemplated transaction under this Agreement. The College shall not sell or transfer any or all of its rights or obligations under this Agreement to a third person other than as provided herein without the approval of the City Council and any such unapproved transfer is void and is an immediate default of this Agreement notwithstanding the cure provisions of Section Twelve.</p> <p>However, following a conveyance of the Property, or lease to the College from the BLM, if the City chooses to relinquish its RP&P lease upon a failure of the Federal Legislation, the College shall have full discretion and authority to encumber the Site or portions thereof, in connection with financing transactions, without limitation to the size or nature of any such transaction, the amount of land involved or the use of the proceeds there from, and may enter into such transactions at any time and from time to time without permission of or notice to City. All such financing transactions shall be subject to the terms and conditions of this Agreement.</p>

FINDINGS

It has been determined that the proposed Development Agreement complies with the minimum standards mandated by NRS §278.0201. Furthermore, the development of the mixed-use college campus will allow the Town Center to be increasingly more self-sustaining by providing educational and employment opportunities within walking distance or minimal driving distance of area residents.

NEIGHBORHOOD ASSOCIATIONS NOTIFIED 32

NOTICES MAILED NEWSPAPER ONLY

APPROVALS 0

PROTESTS 0