

BOARD OF TRUSTEES OF THE NEBRASKA STATE COLLEGES
ITEMS FOR DISCUSSION AND ACTION\FISCAL, FACILITIES AND AUDIT

ACTION: **Approve Developers Agreement for Student Housing in Norfolk for Wayne State College**

Wayne State College (WSC) is requesting approval of an Agreement with Phillip Street Apartments LLC (Developer) for student housing in Norfolk, Nebraska. The Agreement outlines specifications and requirements for the Developer to build housing units that will house Growing Together Career Scholar students each year during their required nine (9) months of cooperative education in Norfolk. This is a two-phased project beginning with fifteen (15) housing beds in the fall of 2024 and spring of 2025, thirty (30) additional beds for a total of forty five (45) from fall of 2025 through spring of 2028, and ending with thirty (30) housing beds in the fall of 2028 and spring 2029. The units will be built and owned by the Developer and leased to the College. WSC will pay the Developer \$127,710 annually for the first fifteen (15) housing beds for a total of \$510,840 over the four (4) year lease term. WSC will pay the Developer \$255,420 annually for the additional thirty (30) housing beds for a total of \$1,021,680 over the four (4) year lease term. The total cost of the Agreement is \$1,532,520. This Agreement is very similar to the Agreement the Board approved in January 2022 for the first cohort of Growing Together Career Scholar students.

The System Office and Wayne State College recommend approval of the Developers Agreement for Student Housing in Norfolk for Wayne State College.

ATTACHMENTS:

- WSC Agreement for Student Housing in Norfolk - Phillip Avenue 2022-10-11 (PDF)

AGREEMENT

Between

**The Board of Trustees of the Nebraska State Colleges doing business as
WAYNE STATE COLLEGE**

and

Phillip Street Apartments LLC

This AGREEMENT (the “**Agreement**”) is between the Board of Trustees of the Nebraska State Colleges doing business as **Wayne State College**, (“**College**”) and **Phillip Street Apartments LLC** (“**Developer**”). This Agreement is effective November 11, 2022 and shall end on April 30, 2029.

The College desires to have a student housing project constructed consisting of 45 student housing beds (the “**Project**”) within the site owned by Developer in downtown Norfolk, Nebraska (the “**Site**”) as depicted on attached Exhibit A (Site Map). The parties agree as follows.

DEVELOPER RESPONSIBILITIES

Developer will submit final design plans and specifications to the College for review and approval no later than March 1, 2023.

Developer will complete project construction for student housing consisting of 15 beds no later than July 1, 2024 and an additional 30 beds no later than July 1, 2025. The Project will be owned and operated by the Developer.

Developer shall perform work on the Project as set forth in attached Exhibit B (Exterior and Interior Preliminary Renderings) and Exhibit C (Housing Specs and Requirements). The Developer shall furnish drawings, documents, reports, surveys, renderings, exhibits, models, prints, photographs, and other materials as requested by the College.

Developer will work cooperatively with a Construction Observer. During construction, a Construction Observer hired by the College will perform on-site field observations to monitor quality assurance of operations and development. The Construction Observer will also work with the Developer to communicate to the College the activities, progress, and construction of agreed upon student housing in accordance with Developer’s submitted and approved design plans and specifications.

Developer will construct and maintain property to rental standards as defined by the City of Norfolk.

Developer will exercise professional skill and judgment while performing responsibilities under this Agreement.

Developer will engage and manage its consultants and subcontractors while performing responsibilities under this Agreement.

COLLEGE'S RESPONSIBILITIES

College will review Developer's final design plans and specifications and make an approval decision in a timely manner.

College will pay Developer the monthly lease/rental fees for 15 beds in housing units in August 2024 for Fall 2024 semester (5 months- August through December) and in January 2025 for Spring 2025 semester (4 months- January through April). The lease/rental fees per month will be \$946 per bed. Students will be required to live in the approved housing units for nine (9) months (August – April) and maintain sufficient renter's insurance. The last payment due for the 15 beds will be in January 2028. Each Fall semester payment will total \$70,950 and each Spring semester payment will total \$56,760 for a total 4-year amount of \$510,840.

College will pay Developer the monthly lease/rental fees for 30 beds in housing units in August 2025 for Fall 2025 semester (5 months- August through December) and in January 2026 for Spring 2026 semester (4 months- January through April). The lease/rental fees per month will be \$946 per bed. Students will be required to live in the approved housing units for nine (9) months (August – April) and maintain sufficient renter's insurance. The last payment due for the 30 beds will be in January 2029. Each Fall semester payment will total \$141,900 and each Spring semester payment will total \$113,520 for a total 4-year amount of \$1,021,680.

The total payments by College to Contractor related to this Agreement is \$1,532,520.

CONTRACTUAL TERMS OF AGREEMENT

Access to Records. The Developer agrees to maintain complete records regarding the expenditures of funds provided by the College under this Agreement. The Developer agrees to allow authorized representatives of the College, the Board, the funding Federal Agency, if any, and the United States Comptroller General, if appropriate, free access at reasonable times to all records generated or maintained as a result of this Agreement for a period of three (3) years after the termination of this Agreement.

ADA & Drug-Free Workplace Requirements. All provisions of this Agreement are subject to the Americans with Disabilities Act (ADA). Further, the Developer certifies that the Developer operates a drug-free workplace and, during the term of this Agreement, will be in compliance with the provisions of the Drug-Free Workplace Act of 1988.

Attorneys' Fees. Should either party hereto commence any action or proceeding in court to enforce any provision hereof or for damages by reason of an alleged breach of any provision of this Agreement or for declaratory relief, the prevailing party shall be entitled to recover from the losing party or parties such amount as the court may adjudge to be reasonable attorney fees for services rendered to the prevailing party in such action or proceeding.

Amendments. This Agreement is not subject to modification or amendment except by a writing of the same formality as this Agreement and executed by the signatories hereto, both College and Developer.

Applicable Law and Venue. This Agreement shall in all respects be governed by the laws of the State of Nebraska applicable to agreements executed and to be wholly performed within this State, and the venue for any disputes shall be sited in Madison County, Nebraska.

College Representative for Agreement. The designated College representative for purposes of monitoring and oversight of this Agreement is: Michael Keibler, 402-375-7198, mikeibl1@wsc.edu.

Conflict of Interest. Developer affirms that to the best of its knowledge, there exists no actual or potential conflict between Developer's business or financial interests and the provisions of the Services.

Force Majeure. A Force Majeure event is an Act of God (e.g., fire, flood, inclement weather, epidemic, earthquake); war or act of terrorism; governmental acts, orders, or restrictions; or any other reason where failure to perform is beyond the reasonable control, and is not caused by the negligence, intentional conduct or misconduct of Developer. If a Force Majeure event occurs and is continuing for thirty (30) days or more, either party may terminate this Agreement upon written notice to the other, provided such Force Majeure event has not been resolved prior to the effective date of such termination.

Hiring. Developer shall not hire any officer or employee of College to perform any Service. If the Service is to be performed in connection with a state contract or grant, Developer shall not hire any employee of the Nebraska state government to perform any Service.

Indemnification. Developer shall indemnify, defend, protect and hold harmless College and its Board members, officers, employees, agents, and representatives (collectively, "**College Indemnitee**"), against all direct liabilities, demands, claims, costs, damages, injury (including death), settlements, and expenses (including without limitation, interest and penalties, but not including any consequential damages) incurred by College Indemnitee ("**Losses**"), but only in proportion to and to the extent such Losses were caused negligently or intentionally by Developer or its officers, employees or agents or arising out of the performance of the Services or Developer's breach of this Agreement. Developer will require in all sub-contracts for services under this Agreement an indemnification clause requiring the sub-contractor to indemnify College Indemnitee as indicated in this Section.

College shall indemnify, defend, protect and hold harmless Developer and its directors, officers, employees, agents, and representatives (collectively, "**Developer Indemnitee**"), against all direct liabilities, demands, claims, costs, damages, injury (including death), settlements, and expenses (including without limitation, interest and penalties, but not including any consequential damages) incurred by Developer Indemnitee (also, "**Losses**"), but only in proportion to and to the extent such Losses were caused negligently or intentionally by College or its officers, employees, or agents or arising out of College's breach of this Agreement.

Insurance. Developer, at its sole cost and expense, shall insure its activities in connection with this Agreement, and/or cause its Consultants to insure such activity, as appropriate. In the event that Developer hires any Consultants to perform any part of this Agreement, Developer is responsible for ensuring that these insurance provisions shall apply to each contracting entity. Developer and each of its Consultants of any tier shall obtain, keep in force, and maintain insurance as follows:

Comprehensive or Commercial Form General Liability Insurance (contractual liability included) as follows:

Each Occurrence	\$1,000,000
Products/Completed Operations Aggregate	\$1,000,000

Personal and Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000

However, if any such insurance is written on a claims-made form, coverage shall continue for a period of not less than three years following termination of this Agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the commencement of the Term of this Agreement.

Professional (Errors & Omissions) Liability Insurance with minimum limits of \$1,000,000 for each claim and \$1,000,000 in the aggregate. If the above insurance is written on a claims-made form, it shall continue for three (3) years following termination of this Agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the commencement of any professional services performed for this Agreement. Such coverage shall be required of each Consultant hired directly or indirectly to perform professional services for this Agreement and shall include College as an indemnified party for vicarious liability caused by professional services performed for this Agreement.

Workers' Compensation and Employer's Liability Insurance as required by Nebraska law or as required in the State in which any work will be performed under this Agreement. Employer's Liability limits shall not be less than \$1,000,000 for bodily injury for each accident, \$1,000,000 bodily injury by disease each employee, and \$1,000,000 policy limit for bodily injury by disease.

Independent Contractor. Developer shall perform the Services as an independent contractor and not as an agent or employee of College.

Legal and Regulatory Compliance. Developer shall perform all Services and prepare documents in compliance with the applicable requirements of laws, codes, rules, regulations, and ordinances.

Non-Discrimination. The Developer agrees to comply fully with Title VI of the Civil Rights Act of 1964, as amended, the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §§48-1101 to 48-1125, as amended, and Board Policy 5000 in that there shall be no discrimination against any employee who is employed in the performance of this Agreement, or against any applicant for such employment, because of age, color, national origin, race, religion, disability, sex, sexual orientation, or gender identity. This provision shall include, but not be limited to employment, promotion, demotion, transfer, recruitment, layoff, termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Developer further agrees to insert a similar provision in all subcontracts for services allowed under this Agreement.

Notice. All notices and demands required or allowed to be given hereunder shall be given in writing and delivered by U.S. certified mail, postage prepaid, and return receipt requested, or by personal delivery. Notices shall be considered given upon the earlier of (a) personal delivery or (b) two (2) business days after deposit in the United States mail, postage prepaid, certified, or registered, return receipt requested. Notices shall be addressed as provided below for the respective party; provided that if any party gives notice in writing of a change of name or address, notices to such party shall thereafter be given to the address stated in that notice:

College:

Dr. Marysz Rames
Office of the President
Wayne State College
Hahn Building, Room 217
1111 Main Street
Wayne, Nebraska 68787
Telephone: 402-375-7200
marames1@wsc.edu

and

Dr. Michael Keibler
Executive Director, Cooperative Education &
Industry Liaison
Wayne State College
Hahn Building, Room 208
1111 Main Street
Wayne, Nebraska 68787
Telephone: 402-375-7198
mikeibl1@wsc.edu

Developer:

Kelby Herman
Phillip Street Apartments LLC
1302 West 7th Street
Wayne, Nebraska 68787
Email : kelbyherman@live.com
Telephone: 402-350-1231

Relationship. Nothing contained in this Agreement shall be deemed or construed by the parties or by any third person to create a relationship of principal and agent or partnership or a joint venture between College and Developer or between either or both of them and any third party.

Severability. Nothing contained herein shall be construed as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute law, ordinance, or regulation contrary to which the parties have no legal right to contract, the latter shall prevail, but the provisions of this Agreement affected shall be limited only to the extent necessary to bring it within the requirements of such law.

Successors and Assigns. This Agreement shall be binding upon College and Developer and their respective successors and assigns. Neither the performance of this Agreement nor any part thereof, nor any monies due or to become due hereunder, may be assigned by either party without the prior written consent and approval of the other.

Termination. Until June 30, 2023, Developer or College may terminate this Agreement by giving the other party at least thirty (30) business days' written notice of such termination. Upon termination, all services performed, and all expenses incurred under and in accordance with this Agreement up to and

including the date of such execution shall not be subject to reimbursement or compensation under this Agreement.

After July 1, 2023, Developer or College may terminate this Agreement for cause if either party breaches this Agreement and/or fails to cure such breach within the time periods specified. This termination shall become effective if, within thirty (30) days (or more, if authorized in writing) after receipt of a notice of intention to terminate and specifying such breach, breached party does not make diligent and good faith efforts to cure such breach as soon as reasonably practicable. In the event that Developer or College terminates this Agreement for cause, the College shall not be obligated to pay for any Services.

Timely Performance. TIME IS OF THE ESSENCE OF THIS AGREEMENT AND OF EACH PROVISION HEREOF. The time in which any act required or permitted by this Agreement is to be performed shall be determined by excluding the day upon which the event occurs from whence the time commences. If the last day upon which performance would otherwise be required or permitted is a Saturday, Sunday, or holiday, then the time for performance shall be extended to the next day which is not a Saturday, Sunday, or holiday.

Unavailability of Funding. College may terminate this Agreement in the event the Career Scholars scholarship program is no longer funded by the State. In the event funds to finance this Agreement become unavailable either in full or in part due to reductions in appropriations for a future fiscal year, the College may terminate the Agreement by notice in writing to the Developer. The notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. The College shall be the final authority as to the availability of funds. The effective date of Agreement termination or reduction in consideration shall be the actual effective date of the elimination or reduction of appropriations. In the event of a reduction, not total elimination of availability of funding, the Developer may cancel this Agreement or propose an amendment to this Agreement.

Waiver. Nothing in this Agreement shall constitute a waiver or limitation of any rights which either party may have under applicable law.

The Parties have executed this Agreement:

**The Board of Trustees of the Nebraska State
Colleges d.b.a. Wayne State College**

Developer

By: _____

By: _____

Its: Chancellor

Its: _____

Date: _____

Date: _____

Attachments:

Exhibit A - Site Map

Exhibit B – Exterior and Interior Preliminary Renderings

Exhibit C – Housing Specs and Requirements

Exhibit A - Site Map

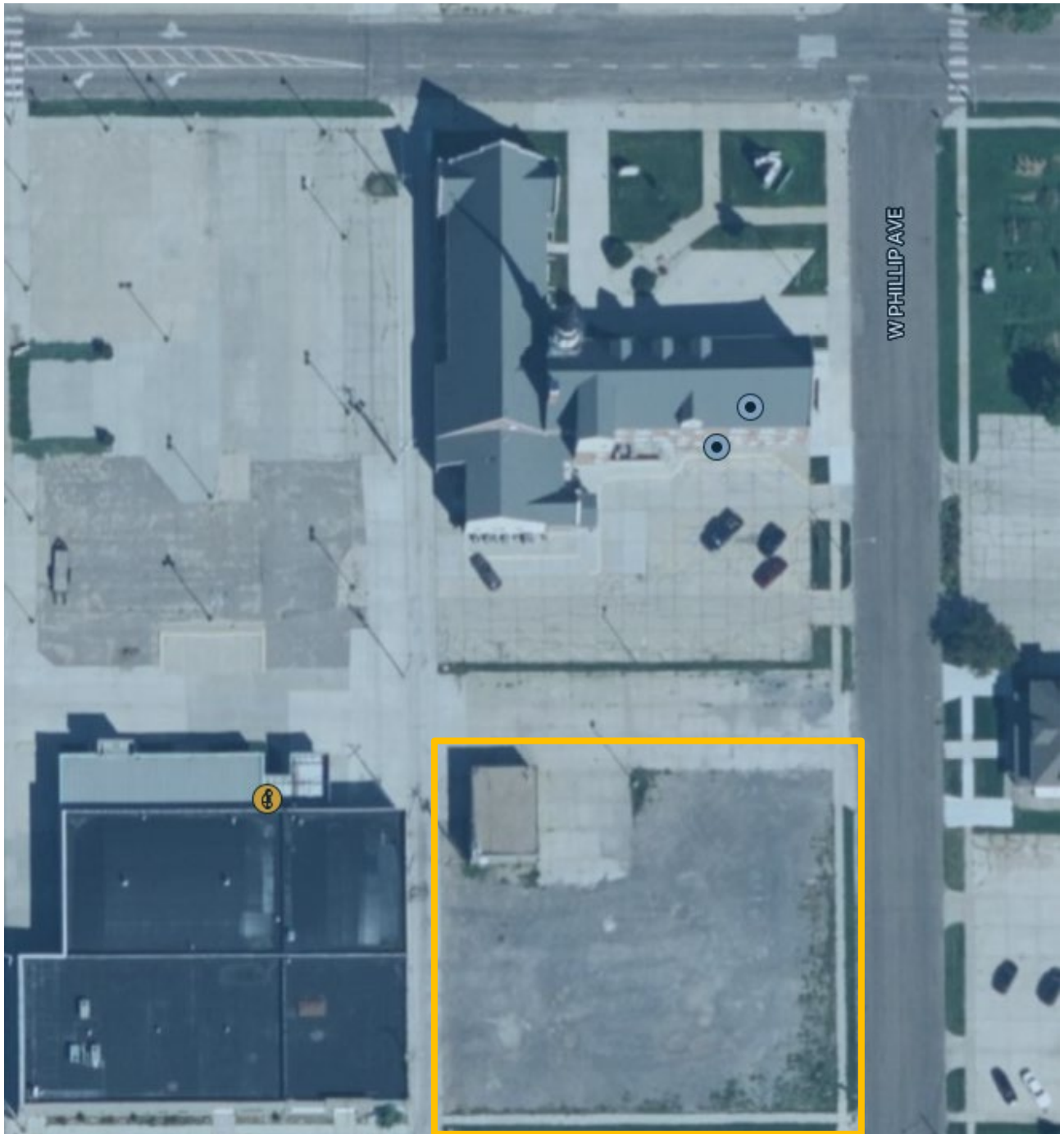


Exhibit B – Exterior and Interior Preliminary Renderings







Exhibit C – Housing Specs and Requirements

1. Housing complex will meet ADA guidelines for accommodations.
2. Housing complex will consist of 1-, 2-, or 3-bedroom units.
 - 2.1. Each unit will provide the student a single room that can accommodate a bed, dresser and nightstand, with reasonable closet space.
 - 2.2. Rooms will have individual locking entry doors.
 - 2.3. Each housing complex will have a reasonable number of bathrooms to accommodate the number of beds in the unit.
3. Housing complex will provide a parking space for each student within reasonable proximity to the complex.
4. Housing complex will provide door locking systems that restrict access for non-residents, and screens on all ground floor windows.
5. Exterior lighting shall be provided for buildings, walks, stairs, roadways, parking, etc. to ensure safety and security. Lighting is required at all exterior doors. The design of the building and grounds must reflect the importance of student security.
6. Access to US Postal Service boxes shall be provided for each unit.
7. Utilities for each unit not included in the monthly rent: electric and WIFI.
8. Each unit is to have its own washer and dryer, refrigerator, stove, and dishwasher, as well as HVAC unit.
9. Design of units shall facilitate student interaction through use of community spaces, multi-purpose rooms and location of entry or stairways for connection.
10. Outdoor fixtures, landscaping and furniture in common area shall be reflective of the purpose of the area.
11. Landscaping shall be appropriate to the climate and reflective of the landscaping in the surrounding area.
12. Electrical Devices Provided:
 - 12.1. Convenience Outlets
 - 12.2. Ceiling Lights
 - 12.3. Telephone Outlets
 - 12.4. Cable TV Outlets
 - 12.5. Power and Cable TV outlets.
 - 12.6. Data Outlets
13. External racks to store and secure bicycles.
14. Developer will be responsible for maintenance of the building and grounds.