

INTERLOCAL COOPERATION ACT AGREEMENT
CREATING THE
CODY COMMUNITY AGENCY

THIS AGREEMENT is made by and between The Village of Cody, Nebraska (the "Village"), a political subdivision of the State of Nebraska, and Cherry County School District # 30, known as Cody-Kilgore Public Schools, (the "School District"), a political subdivision of the State of Nebraska.

WHEREAS, the Interlocal Cooperation Act, Neb. Rev. Stat. § 13-801 et. seq. provides that two or more public entities may enter into an agreement for joint or cooperative action, and this Agreement is made and entered into pursuant to the provisions of that Act; and

WHEREAS, the Village and School District desire to make the most efficient use of their taxing authority and other powers to enable them to cooperate with each other and other entities as further agreed on the basis of mutual advantage to provide goods, services, and facilities in a manner and pursuant to forms of governmental organization that will accord the best results in terms of geographic, economic, population, and other factors that will influence the needs and development of local communities;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed by the parties as follows:

I. CREATION OF THE AGENCY

Pursuant to Sections 13-801 to 13-827 of R.R.S. Neb. 1943, as amended (the "Interlocal Cooperation Act"), the Village and the School District hereby create a separate joint entity which shall be named The Cody Community Agency and shall constitute a separate body corporate and politic under the provisions of the Interlocal Cooperation Act. The Agency shall be subject to control by the Village and the School District in accordance with the terms of this Agreement. The governing body of each of the parties hereto shall have approved this Agreement by resolution, prior to its execution and delivery. The Agency's offices shall be located at the School District Offices. A certified copy of each approving resolution shall be kept on file at the Agency's office. The Agency's existence shall commence upon the execution and delivery of the duplicate originals of this Agreement on behalf of the parties hereto.

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II. PURPOSES

The purposes of the Agency are as follows:

- (a) To make efficient use of the powers of the parties hereto by enabling them to cooperate with each other on a basis of mutual advantage and thereby provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with economic, educational, social, recreational and other needs for the public as served by the Village and the School District.
- (b) To provide or contract for the acquisition, finance, construction, rehabilitation, ownership and operation of community and recreational buildings and facilities, including but not limited to gymnasiums, auditoriums, social halls, grocery stores, movie theaters and related facilities and structures, including parking facilities, to serve on a shared basis the members of the public served by the City and School District.

III. ORGANIZATION

1. Governing Body. The governing body of the Agency shall be composed of six members consisting of the following.
 - a. Two members designated by the Board of the Village, who shall be a member of the Village Board of the Village.
 - b. Two members designated by the Board of Education of the School District who shall be a member of the Board of Education of the School District;
 - c. One at large member appointed by the Agency Board
 - d. One student member of the G.R.I.T Board designated by the GRIT Board.

Such governing body of the Agency is hereinafter referred to as the "Board". The Board shall have authority to adopt such by-laws for its proceedings, as it deems necessary, consistent with the terms of this Agreement.

2. Voting. Each member of the Board shall have one vote.
3. Quorum. A majority of all members of the Board shall constitute a quorum for the transaction of any Agency business.
4. Officers. The Board of the Agency shall appoint one of its members as Chairperson, one as Secretary and one as Treasurer, respectively.
5. Meetings and Notice. Meetings of the Agency's Board may be called by its Chairperson or by any two members of the Board.
6. Agency legal counsel. The Board may employ legal counsel for the agency and may set and approve compensation for such counsel.
7. Term. The term of each member of the Board shall be one year. Board members may be re-elected or reappointed for one or more terms by their respective governing boards.
8. Alternates. The Village, School District, and G.R.I.T may select up to two (2) alternate representatives for the Board to participate at Board

meetings only when that participants regular representative is unable to attend the Board meeting.

IV. DURATION

The initial term of this Agreement shall be three (3) years, unless sooner terminated in a manner set forth herein. After the initial term, this Agreement shall renew for an additional three (3) year term, unless at least ninety (90) days prior to the end of the initial term or then-existing renewal term, either party gives written notice to the other of its intention to terminate the Agreement at the end of the term.

V. POWERS

The Agency shall have such powers as are allowed by the Interlocal Cooperation Act, any amendments thereto, including, but not limited to, the powers;

1. to sue and be sued;
2. to have a seal and alter the same at pleasure or to dispense with the necessity thereof;
3. to make and execute contracts and other instruments necessary or convenient to the exercise of its powers;
4. from time to time, to make, amend and repeal by-laws, rules and regulations, not inconsistent with the Interlocal Cooperation Act and the Agreement, to carry out and effectuate its powers and purposes;
5. to make all necessary rules and regulations governing the use, operation and control of all facilities owned and operated by the Agency.
6. To acquire, hold, use and dispose of the revenues derived from the operation of the facilities owned and operated by the Agency and any other moneys of the Agency;
7. To acquire, hold, use and dispose of other personal property for the purposes of the Agency;
8. To make or cause to be made studies and surveys necessary or useful and convenient to carrying out the functions of the Agency;
9. To contract with and compensate consultants for professional services including, but not limited to, architects, engineers, planners, lawyers, accountants and others found necessary or useful and convenient to the stated purposes of the Agency;
10. To provide for a system of budgeting, accounting, auditing and reporting of all Agency funds and transactions, for a depository and for the bonding of employees;
11. To consult with representatives of Federal, State and local agencies, departments and their officers and employees and to contract with such agencies and departments;
12. To exercise such other powers as are available under the existing law applicable to each of the parties hereto
13. To borrow money, make and issue negotiable bonds, certificates, bond anticipation notes, refunding bonds and notes all in accordance with Sections 13-808 through 13-824 of the Interlocal Cooperation Act, and any amendments thereto, and to secure the payment of such bonds, certificates, refunding bonds and notes or any part thereof by a pledge of

any or all of the Agency's revenues and any other funds which the Agency has a right to, or may hereafter have the right to pledge for such purposes, but bonds or notes shall be issued by the Agency only with the approval of both the governing body of the Village and the governing body of the School District;

14. To provide in the proceedings authorizing such obligations for remedies upon default in the payment of principal and interest on any such obligations, including, but not limited too, the appointment of a trustee to represent the holders of such obligations in default and the appointment of a receiver of the Agency's property, such trustee and such receiver to have the powers and duties provided for in the proceedings authorizing such obligations;
15. To receive funds from each of the parties hereto as contribution for payment of costs of facilities to be owned and operated by the Agency
16. To hire employees, fix their compensation, benefit, personnel rules and regulations and terminate their employment; and
17. To employ a manager which may be one or the other of the parties hereto, to exercise such of the Agency' powers as shall be determined by contract;
18. To borrow money and accept grants, contributions, property or loans from and to enter into contracts, leases, or other transactions with either of the parties hereto or the State or the Federal Government; and
19. To solicit contributions from members of the general public and hold and apply contributed funds for the purposes of the Agency

Nothing in this Agreement shall be construed to authorize the Village or the School District to sue on behalf of the Agency, provided that the Village and the School District shall retain the power to sue on their own behalf and in their own respective interest.

VI. BUDGETING

The Agency will be financed by grants and other funds received by the Agency, Village, and School District. The Board shall prepare a budget based on a fiscal year ending August 31 for the operation of the Agency, the same to be adopted by the Board no later than August 15 of each year. The Board may alter such fiscal year and date for adoption of the budget in the event of any change in the budget and fiscal year of the School District.

VII. NOT FOR PROFIT

It is expressly understood that the Agency is a public body and is to be operated not for profit, and no profit or dividend will inure to the benefit of any individual. The

Agency Board shall determine the use of any Agency profit, provided that any such use must be approved by a majority vote of the Village and School District governing boards.

VIII. EXPENSES

The parties anticipate that the Agency's startup and ongoing expenses will be funded entirely through grants and/or Agency activities and operations. The parties agree that any Agency expense that is not paid by these grants or Agency activities and operations will be shared and paid equally unless agreed otherwise in writing by the Village and School District.

IX. FINANCIAL ACCOUNT

For the purpose of operating the Cooperative, the Agency Board shall maintain at least one financial account (savings, checking, or other) at the bank(s) chosen by vote of the Agency Board. Every member of the Agency Board must sign the bank's signature card and every member of the Agency Board shall be an authorized signer. All the funds of the Cooperative shall be placed in these accounts. Two signatures shall be required on each withdrawal, regardless of the amount. Unless provided otherwise in this Agreement, each expenditure or withdrawal from these accounts requires a vote of the Agency Board.

X. AUDIT

The Board shall maintain accurate accounts of all receipts and disbursements. An independent certified public accountant shall audit all receipts and disbursements of Agency funds once each year for the first three years of this Agreement and then every other year thereafter. The accountant shall submit an audit report to the Board after each audit.

XI. INSURANCE

At all times during this Agreement, the Agency shall procure and maintain the insurance coverage of the types and amounts as described below or such amounts as the parties may mutually agree:

- A. Comprehensive Commercial General Liability Insurance in the amount of \$1,000,000.00 each occurrence/\$5,000,000.00 general aggregate including coverage for bodily injury and property damage.
- B. Property insurance covering any buildings owned by the Agency with a minimum coverage limit equal to the full cost of replacement at the time of loss;
- C. Property insurance, covering all of its furniture and fixtures, machinery, equipment, stock and other personal property owned, leased by, or used by the Agency and found in or about any buildings owned, leased, or used by the Agency in an amount not less than the full replacement cost thereof. All policy proceeds will be used for the repair or replacement of the property damaged or destroyed.

- D. Workers' Compensation Insurance in the amount that satisfies the Agency's obligations and liabilities under the workers' compensation laws of the State of Nebraska.
- D. If the Agency operates owned, hired or non-owned vehicles, comprehensive automobile liability coverage will be carried at a limit of liability not less than \$1,000,000 combined bodily injury and property damage.

The Agency may satisfy any of the insurance limits above through Umbrella or Excess Liability coverage. The Village and the School District shall be named as additional insured's on the policies. The Commercial General Liability and the Property insurance shall be primary insurance and not contributing with and not supplemental to the coverage that the Village or the School District may carry. The Agency shall submit certificates of insurance to the Village and the School District no later than the effective date of this Agreement. The Agency shall not make changes in or allow the required insurance coverages to lapse without the Village's and the School District's prior written approval thereto.

XII. NONDISCRIMINATION

The Agency shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to any such person's hiring, tenure or terms, conditions or privileges of employment because of his or her race, color, religion, sex, disability, national origin or any other unlawful basis.

XIII. EMPLOYMENT ELIGIBILITY VERIFICATION

The Agency shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009 and who are physically performing services within the State of Nebraska. If the Agency employs or contracts with any Subcontractor in connection with this Agreement, the Agency shall include a provision in the contract requiring the Subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

XIV. MANNER OF ACQUIRING AND HOLDING PROPERTY

The Agency may lease, purchase or acquire by any means, from either of the parties hereto or from any other source, such real and personal property as is required for the operation of the Agency and for carrying out of the purposes of this Agreement. The title or other interest in and to all such property, personal or real, shall be held in the name of the Agency.

All conveyances of real property owned or held in the name of the Agency Shall be authorized by resolution of the Board and Executed by the Chairperson on behalf of the Agency.

XV. TERMINATION

This Agreement may be terminated only by a majority vote of the School District's governing board and a majority vote of the Village's governing board. Upon termination, all Agency assets shall be liquidated and/or distributed according to individual management plans. If a dispute arises between the Village and School District as to how the Agency's assets will be distributed, such assets shall be sold by taking bids at public auction and selling said property to the highest bidder with the proceeds therefrom being divided as set forth above. The Board shall make a report of its activities to the Village and School District within 120 days after the termination of this Agreement.

XVI. WITHDRAWAL

Either party may withdraw from this Agreement, without penalty, by submitting a written notice at least ninety (90) days in advance of the stated date of withdrawal to the other party, provided that: (1) the withdrawal must be approved by a two-thirds (2/3) concurring vote of that party's governing board, and (2) the withdrawing party must make restitution to the Cooperative for funds committed or expended on its behalf under this Agreement, if any. Upon withdrawal, all Agency assets shall be distributed to the non-withdrawing party.

XVI. NOTICE

Each party giving any Notice ("Notice") under this Agreement must give written Notice by personal delivery, registered or certified Mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid.) Notice shall be sent to the following addressees at the following addresses:

School District: Cody-Kilgore Public Schools
 Attn: Superintendent
 360 W. 4th Street
 Cody, NE 69211

With copy to:

Steve Williams, Legal Counsel
Harding & Shultz, P.C., L.L.O.
P.O. Box 82028
Lincoln, NE 68501-2028

Village: Village of Cody
 PO Box 118
 Cody, NE 69211

Notice is effective only if the party giving the Notice has complied with this section.

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XVII. ASSIGNMENT

This Agreement binds the parties and their respective successors and assignees. Neither party shall assign or otherwise dispose of this Agreement or any duty, right, or responsibility contemplated in this Agreement to any other person without the previous written consent of the other party.

X. AMENDMENT OF AGREEMENT

This Agreement may be amended upon approving resolutions adopted by the governing body of the Village and the School District.

Executed and delivered this _____ day of _____, 20

Village of Cody, Nebraska

Executed and delivered this _____ day of _____, 20

Cody-Kilgore Public Schools

MANAGEMENT AGREEMENT
UNDER THE INTERLOCAL COOPERATION AGREEMENT
FOR THE MANAGEMENT OF THE CIRCLE C MARKET

This Agreement entered into on the 13 day of December, 2012, by and between the Cody Community Agency, (Agency), the Village of Cody, (Village) and Cody-Kilgore Public Schools, (School District).

Whereas the Village has constructed a building for the sole purpose of a community grocery store,(Circle C Market), business incubator, and entrepreneurial center and the School has developed an entrepreneurial class, it is the joint desire of both the Village and the School for the Circle C Market to be managed by the Agency; and

Whereas the parties find both the students of the district and the members of the greater Cody community can benefit from the joint use of the Circle C Market for providing grocery products to the community and an educational experience for the students, thereby providing experiences and goods that will benefit the entire community; and

Whereas the parties will use the Circle C Market as a learning lab for students while providing a necessary service to the community; and

Whereas, the Village and School District created a separate joint entity called the Cody Community Agency through the approval of an Interlocal Cooperation Act Agreement Creating the Cody Community Agency (“Agency Agreement”) on December 13, 2012;

THEREFORE, in consideration of the mutual covenants of the parties, it is agreed as follows:

1. Building: The village agrees, while retaining ownership of the building located at 101 Cherry Street, Cody Nebraska , to allow exclusive use of the building by the Agency, for the expressed purpose of being utilized as a community grocery store, business incubator and entrepreneurial mentoring.
2. Building Equipment: The Agency agrees to accept from the non-profit organization G.R.I.T. store equipment including, but not necessarily limited to, shelving, refrigerator units, cash registers, and other items as the Agency may deem beneficial for the operation of the Circle C Market.
3. Management of store: The parties agree the management of the store will be a decision made by the governing board of the Agency.
4. Staffing of Store. The school agrees to utilize students to man the store during the day in which a curriculum will be developed to help students understand the managing of a small business and develop skills necessary to work in a small business. The Agency will be responsible for all costs associated with staffing the store outside of school days/hours.

5. Maintenance, Repair, Insurance, Utilities. The Agency will perform all custodial, maintenance and minor repairs to the building. Major repairs to the building such as, roof replacement, , HVAC replacement, or any other repair involving the permanent structure of the building will be the responsibility of the Village. The Village will also purchase property, and liability insurance to cover the building. The Agency will purchase insurance to cover the equipment, inventory, workman's compensation, and other items as provided in the Agency Agreement. The Agency will also be responsible for all utilities and other costs associated with operation of the grocery store. The Agency will also be required to deposit no less than 1% of any profits above the operating costs of the Circle C into a depreciation fund with moneys to be utilized for repairs, improvements, and/or additions to the facility.

6. Damage or Destruction of Facility: The parties agree that in the event of damage or destruction of said facilities covered by casualty insurance, that said facilities shall be restored to the same use to the extent possible with insurance proceeds. In the event such restoration is not possible, the parties may agree to abandon the building and to dissolve this management agreement.

7. Adding of New Facilities: The parties may agree to add other joint use facilities to be managed pursuant to the terms of this Agreement.

8. Duration of Agreement, and Provision for Amendment: The Agreement shall be effective upon ratification by a majority vote of the governing body of the Village, School District, and Agency. Amendments may be adopted by the AGENCY Board at any meeting, but shall not be effective until ratified by a majority vote of the governing body of both VILLAGE and SCHOOL. Upon adoption, this Agreement shall continue in effect during the duration of the Agency Agreement, unless earlier terminated by mutual agreement of the parties.

9. Indemnification.

A. The Village agrees to indemnify and hold the Agency and School District harmless against any and all claims, actions, damages, liability, and expenses in connection with injury or loss of life to person or damage to property arising out of the use, occupancy or operation of Facility, provided however, the Village shall not indemnify or hold the Agency or School District harmless for any matter arising out of the negligence of the Agency or School District.

B. The School District agrees to indemnify and hold the Agency and Village harmless against any and all claims, actions, damages, liability and expenses in connection with injury or loss of life to person or damage to property arising out of the use, occupancy, or operation of the Facility; provided however, the School District shall not indemnify or hold the Agency or Village harmless for any matter arising out of the negligence of the Agency or Village.

C. The Agency agrees to indemnify and hold the School District and Village harmless against any and all claims, actions, damages, liability and expenses in connection with injury or loss of life to person or damage to property arising out of the use, occupancy, or operation of the Facility;

provided however, the Agency shall not indemnify or hold the School District or Village harmless for any matter arising out of the negligence of the School District or Village.

10. **Nondiscrimination.** The parties to this Agreement shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to any such person's hiring, tenure or terms, conditions or privileges of employment because of his or her race, color, religion, sex, disability, national origin or any other unlawful basis.

11. **Employment Eligibility Verification.** The Agency shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009 and who are physically performing services within the State of Nebraska. If the Agency employs or contracts with any Subcontractor in connection with this Agreement, the Agency shall include a provision in the contract requiring the Subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

12. **Notice.** Each party giving any Notice ("Notice") under this Agreement must give written Notice by personal delivery, registered or certified Mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid.) Notice shall be sent to the following addressees at the following addresses:

School District: Cody-Kilgore Public Schools
 Attn: Superintendent
 360 W. 4th Street
 Cody, NE 69211

With copy to:

Steve Williams, Legal Counsel
Harding & Shultz, P.C., L.L.O.
P.O. Box 82028
Lincoln, NE 68501-2028

Village: Village of Cody
 PO Box 118
 Cody, NE 69211

Agency: Cody Community Agency
 PO Box
 Cody, NE 69211

Notice is effective only if the party giving the Notice has complied with this section.

13. **Assignment.** This Agreement binds the parties and their respective successors and assignees. No party shall assign or otherwise dispose of this Agreement or any

duty, right, or responsibility contemplated in this Agreement to any other person without the previous written consent of the other parties.

14. Severability. In the event any provision of this Agreement is determined to be invalid or unenforceable for any reason, such determination shall not affect the remainder of this Agreement.

15. Applicable Law. This Agreement shall be governed by the laws of the State of Nebraska.

16. Amendments. Any amendments to this Agreement must be written and approved by all parties.

17. Entirety. This Agreement constitutes the entire Agreement between the parties, and any other agreements between the parties, unless reduced to writing and executed by the parties, shall be null and void.

18. Binder. This Agreement shall be binding upon the successors and legal representatives of the parties hereto.

Executed and delivered this _____ day of _____, 20

Village of Cody, Nebraska

Executed and delivered this _____ day of _____, 20

Cody-Kilgore Public Schools

Executed and delivered this _____ day of _____, 20

Cody Community Agency
