**CONSTRUCTION REIMBURSEMENT AGREEMENT**

THIS CONSTRUCTION REIMBURSEMENT AGREEMENT (“Agreement”) dated effective the 12th day of June, 2024, by and between **PAYSON CITY CORPORATION**, a municipal corporation and political subdivision of the State of Utah, with its principal offices located at 439 West Utah Avenue, Payson, UT 84651 (herein "City") and **NEBO SCHOOL DISTRICT**, a political subdivision of the State of Utah, with its principal offices located at 350 South Main, Spanish Fork, Utah, 84660 (herein the “School District”).

**RECITALS**

**1.** The School District desires to construct a parking lot at approximately 303 East 400 North in Payson, Utah (the “Barnett Parking Lot”), and which will incorporate a City owned storm drain facility (the “Storm Drain Facility”). Herein jointly referred to as the “Projects”.

**2.** City desires to have a Storm Drain Facility located beneath the Barnett Parking Lot, as it has been determined that the construction of the City’s Storm Drain Facility will be beneficial by providing increased storm drain collection beyond the School District and the Barnett Parking Lot.

**3.** The School District has determined that the construction of the Barnett Parking Lot and the City’s Storm Drain Facility will be beneficial by providing increased storm drain collection from a wide area near the Barnett Parking Lot, and the School District will provide an easement to City for maintenance and repair of the Storm Drain Facility.

**4.** The School District agrees to construct the Barnett Parking Lot and Storm Drain Facility in accordance with the terms and conditions set forth herein.

**5.** City agrees to reimburse the School District for the construction costs of the Storm Drain Facility in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing, the mutual promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending legally to be bound, hereby agree as follows:

**OPERATIVE PROVISIONS**

**1. Project Design.** The School District shall be solely responsible for the preparation of the design of the Barnett Parking Lot, and City shall be solely responsible for the preparation of the design of the Storm Drain Facility. Accordingly, the School District and City, respectively, shall prepare all specifications, drawings, and all other documents necessary for bidding and constructing the same. The aforementioned documents may be prepared by the School District and City staff, or by outside consultants, or by a combination of the School District and City staff and outside consultants. All drawings and specifications shall be prepared, and as necessary stamped by the appropriate licensed professionals. The School District shall provide appropriate contract documents for the Barnett Parking Lot and the Storm Drain Facility, which will be included in the bid package. The description of the Projects and plans for the Barnett Parking Lot and the Storm Drain Facility are attached hereto as Exhibit “A” (the “Plans”).

**2. Bidding.** The School District shall be solely responsible to obtain bids for construction of the Barnett Parking Lot and the Storm Drain Facility, including alternates, in accordance with the Plans and applicable specifications. The School District shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances throughout the bidding process. The School District shall provide City with copies of all final drawings and specifications available to bidders, and any and all addenda provided to bidders; shall advise City of all pre-bid meetings scheduled in furtherance and in preparation of obtaining bids for the Barnett Parking Lot and the Storm Drain Facility; and will cooperate with City in all aspects of the bidding process.

**3. Contract Award.** Designated School District and City officials shall meet following the bid opening, review the bids, and determine the lowest responsive and responsible bidder. The School District and City shall determine whether to include any or all of the proposed alternates in the construction contract.

**4. City Easement.** The School District currently owns the property on which the Barnett Parking Lot is to be constructed. Upon execution of this Agreement, the School District agrees to provide a permanent easement under the respective property to City for the purpose of access and maintenance of the Storm Drain Facility. In accordance herewith, the School District shall execute the Easement, attached hereto as Exhibit “B”, which contains the legal descriptions and site map of the easement from the School District to the City for the Storm Drain Facility.

**5. Construction of the Project.** The School District owns the Barnett Parking Lot property and the City will own the Storm Drain Facility to be constructed beneath the Barnett Parking Project. The School District and City hereby agree to the construction of the Projects as described herein.

**6. Construction Duties.** The School District hereby agrees to oversee and be responsible for the construction of the Barnett Parking Lot and City’s Storm Drain Facility in accordance with applicable Payson City specifications and this Agreement. The School District shall contract for and oversee the construction of the Barnett Parking Project in accordance with applicable federal, state, and local laws, rules, regulations, building codes, and ordinances; and in accordance with the Plans and applicable specifications. In addition, the School District will be responsible for the following items:

1. To obtain all requisite permits, approvals, and authorizations from Payson City for the Projects.
2. To contract and oversee the construction and installation of the Barnett Parking Lot and City’s Storm Drain Facility.

**7. Construction Costs.** Subject to the reimbursement by the City set forth below, the School District hereby agrees to pay all labor, material, and other costs associated of the construction of the Barnett Parking Lot and Storm Drain Facility.

**8. Reimbursement of Construction Costs.** The City’s proportionate share of the costs shall be the full cost of the construction and installation of the Storm Drain Facility and those costs directly associated with that facility. The City shall reimburse the School District the costs associated with the construction and installation of the Storm Drain Facility in accordance with the terms of this Agreement. Unless otherwise specified in a written change order or addendum to this Agreement that is signed by all the parties hereto, neither the School District nor City shall unilaterally agree to any amount above the contract proposal, regardless of the actual costs required in completing the Projects, except in the event a party hereto desires and agrees to unilaterally pay any and all costs associated with such written change order or addendum.

**9. Payments.** Within thirty (30) days of final completion, positive inspection, and acceptance of the Storm Drain Facility, the School District shall invoice City for reimbursement for construction of the Storm Drain Facility. City hereby agrees that within thirty (30) days of receipt of the invoice to pay in full to the School District, at the above address, in lawful money of the United States of America, its share of all construction costs, as per the terms of this Agreement, incurred by School District in connection with the construction of the City’s Storm Drain Facility.

**10. Time.** Time is of the essence of each term, provision, and covenant of this Agreement.

**11. Rights and Remedies.** In the event of a default, the School District and/or the City, as applicable, may pursue any and all remedies available at law or in equity. The rights and remedies of the parties shall not be exclusive. In general, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to or shall limit or affect any rights at law or by statute or otherwise of any party aggrieved as against the other party for a breach or threatened breach of any provision hereof, it being the intention of this paragraph to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

**12. Costs and Expenses of Enforcement.** In the event that any party herein fails to perform their obligations hereunder, the party in default shall pay all costs and expenses, including attorneys’ fees, incurred by the non-defaulting party in enforcing its rights or in obtaining redress for the breach, whether by filing suit or otherwise.

**13. No Liens.** The parties hereto shall ensure that the School District property shall remain free from any liens arising out of the Projects, and as applicable, shall indemnify, hold harmless, and agree to defend the other party from any liens that may be placed on the School District property pertaining to the Projects.

**14. Waiver or Forbearance.** Unless otherwise indicated herein, failure by any party to insist upon the strict performance of any covenant, agreement, term, or condition of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, shall not constitute a waiver of any such covenant, agreement, term, or condition. To be effective, any waiver must be signed by all parties hereto.

**15. Governing Law, Jurisdiction, and Venue.** This Agreement shall be construed according to the laws of the State of Utah in all respects, and the parties hereto consent to jurisdiction and venue in the courts of Utah County, State of Utah.

**16. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their representatives, successors, and assigns; provided, however, that this provision shall not be construed as permitting assignment, substitution, delegation or other transfer of rights or obligations except upon the prior written consent of all parties hereto.

**17. Severability.** In the event that any condition, covenant, or other provision herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant, or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

**18. Entire Agreement; Amendments.** This instrument constitutes the entire agreement between the parties and supersedes all prior agreements, whether written or oral. This Agreement may only be modified by a written change order or addendum, signed by all the parties hereto.

**19. Notices.** Any notice required or desired to be given under this Agreement shall be considered given either: (i) when delivered in person to the recipient named below; or (ii) three (3) days after deposit in the United States mail in a sealed envelope or container, either registered or certified mail, return receipt requested, postage prepaid, addressed by name to the person and party intended. All notices shall be given at the following addresses:

If to Payson City: Payson City Corporation

Attn: Jason Sant, Legal Counsel

439 W. Utah Ave.

Payson, Utah 84651

If to the School District: Nebo School District

Attn: Reed B. Park, Legal Counsel

350 South Main

Spanish Fork, Utah 84660

Such addresses may be changed by notice to the other party given in the same manner as above provided. Any notice given hereunder shall be deemed given as of the date delivered or mailed.

**20. Counterparts.** This Agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts when taken together shall constitute only one instrument.

**21. No Partnership, Joint Venture, or Third Party Rights.**  Except as specifically set forth herein, nothing in this Agreement shall be construed as creating any partnership, joint venture, or business arrangement among the parties hereto, nor any rights or benefits to third parties.

**22. No Recording.** The Parties hereto agree that neither this Agreement nor a memorandum hereof shall be recorded with the Office of the Utah County Recorder.

**-Signatures on Following Page-**

**IN WITNESS WHEREOF,** the parties have executed this Agreement as of the day and year first above written.

**“School District”**

**NEBO SCHOOL DISTRICT**

**A political subdivision of the State of Utah**

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**Lisa H Rowley, Board President Michael Harrison, Business Administrator**

**"Payson City"**

**William R. Wright, Mayor**

**ATTEST:**

**Kim E. Holindrake, City Recorder**

**EXHIBIT “A”**

**[Depiction of the Projects/Plans]**

**EXHIBIT “B”**

**[Easement]**