

## RESOLUTION NO. 2023-09-01

### A RESOLUTION APPROVING AN INCENTIVE AND DEVELOPMENT AGREEMENT WITH MORGAN COMMUNITY COLLEGE

**WHEREAS**, the State of Colorado, Department of Higher Education, State Board for Community Colleges and Occupational Education, acting by and through Morgan Community College ("MCC"), an institution of higher education, intends to expand the Center for Skilled Trades and Technology within the City of Fort Morgan ("City"); and,

**WHEREAS**, in order to assist MCC with the expansion of the property within the City and facilitate successful completion of its project the City wishes to provide MCC the development incentives itemized in the attached Agreement in exchange for MCC's commitment to complete the project in a timely manner; and,

**WHEREAS**, City Staff and the City Attorney have drafted, negotiated and finalized the subject Incentive and Development Agreement between the City and MCC; and,

**WHEREAS**, the City Council desires to enter into the attached Incentive and Development Agreement with MCC, attached hereto as Exhibit A, which is incorporated herein, in order to incentivize the expansion of the college, to continue to expand the college and provide greater opportunities for people to gain higher education in the community.

#### NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO:

**SECTION 1** The City hereby authorizes the Mayor to sign the Incentive and Development Agreement, attached hereto as Exhibit A.

INTRODUCED, PASSED, APPROVED AND ADOPTED this 19<sup>th</sup> day of September, 2023, the vote upon roll call being as follows:

Ayes: Mayor Deal, Councilmembers Anderson, Garcia, Kaper, Parks, Schossow and Urdiales

Nays: None

Absent/Abstain: None



THE CITY COUNCIL OF THE CITY OF  
FORT MORGAN, COLORADO

BY:  \_\_\_\_\_

Lyn Deal, Mayor

ATTEST:

  
John Brennan, City Clerk

STATE OF COLORADO )  
COUNTY OF MORGAN )      ss.  
CITY OF FORT MORGAN )

**CERTIFICATE**

I, John Brennan, City Clerk of the City of Fort Morgan, Colorado, do hereby certify that the above and foregoing **Resolution** is a true, perfect and complete copy of the **Resolution** adopted by the City Council and is identical to the original thereof appearing in the official records of the City of Fort Morgan, Colorado, and that the same has not been, since its adoption, in any respect, rescinded or amended.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the City of Fort Morgan this 19<sup>th</sup> day of September, 2023.

  
John Brennan, City Clerk

**CITY OF FORT MORGAN, COLORADO  
INCENTIVE AND DEVELOPMENT AGREEMENT**

**THIS INCENTIVE AND DEVELOPMENT AGREEMENT ("Agreement")** is made and entered into this 19<sup>th</sup> day of September, 2023 ("Effective Date"), by and between the **CITY OF FORT MORGAN**, a home rule municipal corporation and political subdivision of the State of Colorado, whose address is 110 Main Street, Fort Morgan, Colorado 80701, hereinafter referred to as "**City**," and State of Colorado, Department of Higher Education, State Board for Community Colleges and Occupational Education, acting by and through **MORGAN COMMUNITY COLLEGE**, a state institution of higher education whose address is 920 Barlow Road, Fort Morgan, CO 80701, hereinafter referred to as "**MCC**"; and

**WHEREAS**, MCC is the owner of that certain real property located within the City and described on **Exhibit A** attached hereto (the "**Property**"), pursuant to the deed recorded on May 15, 1978, at Reception No. 622143 in the records of Morgan County, Colorado; and

**WHEREAS**, MCC intends to expand the Center for Skilled Trades and Technology (CSTT) known as Dahms-Talton Hall (the "Project") at Property, within the City of Fort Morgan; and

**WHEREAS**, in order to assist with the development of the Property and facilitate the successful completion of the Project, MCC has requested public financial support for the Project; and

**WHEREAS**, the City wishes to provide financial support to MCC, in the form of an incentive grant to MCC to offset the cost of electric system upgrades including master metering cabinet, water related items to include the water meter and plant investment fee (PIF), gas meter upgrade, and fees associated with work in the City rights-of-way, in consideration for MCC's commitment to develop the Property in a timely manner under the terms and conditions contained in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein the sufficiency of which is acknowledged and confessed, the Parties agree, promise and covenant as follows:

**1. RECITALS.** The Recitals above are hereby incorporated as if fully set forth in this paragraph.

**2. DEVELOPMENT AND INFRASTRUCTURE INCENTIVES.**

- a.** Subject to, and in consideration of, all the terms and conditions contained within this agreement, the City agrees to the following incentive grant for MCC as it relates to the Project: a total grant in the amount of one hundred twenty thousand (\$120,000), to help offset the cost of electric system upgrades including master metering cabinet, water related items including water meter and Plant

Infrastructure Fee, gas meter upgrade, and fees associated with work in the City rights-of-way at the Property.

- b. MCC, intends to expand the Project by creating an add-on to the existing Cottonwood Hall not to exceed 5,000 square feet to include an extension of the water main, the sewage treatment pipelines, and all other utilities to include gas and electricity.

### 3. ZONING AND RELATED APPROVALS

- a. Project Plan Approval; Zoning; Suitability. The City shall use reasonable efforts consistent with applicable law to support and approve the Project as contemplated by this Agreement and execute and deliver all necessary documents or instruments contemplated by or related to this Agreement. MCC is exempt from local zoning requirements, but the City may require MCC to conduct a Site Plan Advisory Review pursuant to C.R.S. 31-23-209. MCC acknowledges that it shall make its own independent investigation as to the suitability of any Properties within the City for purposes of developing the Project, and further acknowledges that they have not relied upon any representations or warranties by the City with regard to such suitability except as expressly set forth herein.

#### 4. DEFAULT AND REMEDIES

- a. MCC Default. If the City alleges that MCC is in default under this Agreement and MCC does not cure that default within thirty (30) days following written notice from the City, the City shall be entitled to the following remedies which shall be cumulative: (1) injunctive relief; (2) specific performance; (3) withholding action on any pending applications or approvals of plans, building permits or certificates of occupancy, to the extent such applications and approvals relate to MCC's alleged default; and (4) any other remedies permitted under the Code, or otherwise set forth in this Agreement or available at law or in equity. The City shall extend the cure period if the nature of the default is such that it cannot reasonably be remedied within thirty (30) days, provided MCC commences the corrective action within thirty (30) days and diligently pursues such correction thereafter.
- b. City Default. If MCC alleges that the City is in default under this Agreement and the City does not cure that default within thirty (30) days following written notice from MCC, MCC shall be entitled to the following remedies which shall be cumulative: (1) injunctive relief; (2) specific performance; and (3) any other remedies permitted under the Code, or otherwise available at law or in equity. MCC shall extend the cure period if the nature of the default is such that it cannot reasonably be remedied within thirty (30) days, provided the City commences the corrective action within thirty (30) days and diligently pursues such correction thereafter.
- c. Remedies. In addition to any other remedy allowed by law, in the event of default by MCC with respect to any provision of this Agreement, including insufficiency of

security to complete the Improvements, or failure to construct the Project by the deadlines set forth in this Agreement, the City may refuse to further process any site development or building permit application for property owned, in whole or in part, by MCC. Except as otherwise specifically provided herein, neither party shall be entitled to claim or receive any form of damages from the other, whether remedial, compensatory, punitive, or consequential, including economic damages and lost profits.

d. Additional Default and Remedy. Notwithstanding the foregoing, in the event that MCC fails to complete construction of the Project by **June 30, 2025**, then MCC may request a formal extension of the deadline, which the City shall not unreasonably deny, and which will be documented by an Amendment to this Agreement. If MCC fails to complete the Project by the extended completion deadline, then MCC shall either, at MCC's discretion: (1) convey the property to the City in the amount MCC paid to purchase the property, less One Hundred Twenty Thousand Dollars (\$120,000); or (2) pay the City One Hundred Twenty Thousand Dollars (\$120,000), which shall reflect compensation to the City for all development incentives and incentive grants provided to the MCC by the City.

## 5. MISCELLANEOUS TERMS

a. Addresses for Notice. Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage, prepaid, registered or certified mail, return receipt requested, addressed as follows:

City:  
City of Fort Morgan  
110 Main Street  
Fort Morgan, CO 80701

Morgan Community College:  
Morgan Community College  
920 Barlow Road  
Fort Morgan, CO 80701

With a copy to:  
Nina P. Williams, Esq.  
Wilson Williams LLP  
1314 Main Street, Suite 101  
Louisville, CO 80027

With a copy to such other address or the attention of such other person(s) as hereafter designated in writing by the applicable parties in conformance with this procedure. Notices shall be effective upon mailing or personal delivery in compliance with this paragraph.

b. Applicable Law. Except to the extent specifically set forth herein, this Agreement, and the terms, conditions and covenants herein contained, shall be deemed to complement and shall be in addition to the conditions and requirements of the Code and other applicable laws, rules and regulations. This Agreement shall be construed pursuant to the laws of the State of Colorado.

Jurisdiction and venue for any cause of action arising under this Agreement shall be proper and exclusive in the Morgan County District Court.

- c. Severability. It is understood and agreed by the parties that if any part, term, or provision of this Agreement is held by any court of competent jurisdiction to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
- d. Complete Agreement. This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and with the exception of the other agreements referenced herein, this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties. There shall be no modification of this Agreement except in writing, executed with the same formalities as this instrument. Subject to the conditions precedent herein, this Agreement may be enforced in any court of competent jurisdiction.
- e. Recording; Benefit. This Development Agreement shall be recorded with the Clerk and Recorder for Morgan County, Colorado; shall run with the land; and shall obligate, be binding upon and shall inure to the benefit of the parties hereto and upon and to their respective successors, grantees and assigns. MCC shall be released from further obligation hereunder in the event of sale of the Property or portions thereof with respect to that portion of the Property conveyed; provided however, that any successor, grantee or assignee of MCC, or any subsequent owner of the Property shall be bound hereby, and this document shall have been recorded and, except as otherwise provided herein, serve as a non-dischargeable covenant running with and burdening the land described in **Exhibit A**, as the burdened property, as an easement in gross for the benefit of the City. Any reference herein to MCC shall be deemed to include any purchaser, successor-in-interest or assign of MCC as to all or any part of the Property. MCC shall notify the City in writing within fifteen (15) business days after any permitted sale, transfer, or assignment of the Property, giving name and address of transferee, assignee or buyer. This Agreement does not confer any right or benefit to any third party, except as expressly set forth herein.
- f. Effective Date. The terms of this Agreement shall become binding on all Parties hereto on the date first set forth above.
- g. Force Majeure. If either party is unreasonably delayed, disrupted or interfered with by the presence of any reasonably perceived hazardous material, labor dispute, fire, adverse weather conditions not reasonably anticipated, any written or oral order, directive, interpretation or determination made by any governmental entity having jurisdiction, unavoidable casualties or any other causes reasonably beyond the delayed party's control (each a "**Force Majeure**

**Event")**, then the delayed party's time shall be extended for such duration as reasonably requested by the delayed party upon the delayed party's submission of its request for an extension of time with an explanation of the Force Majeure Event and upon agreement by the non-delaying party that a Force Majeure Event exists, which agreement shall not be unreasonably withheld. Notwithstanding the foregoing, neither party may rely on the other party's actions as a basis for reasonable delay.

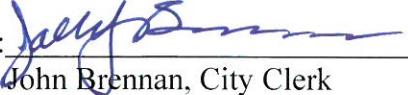
- h. No Waiver.** No waiver of any of the provisions of this Agreement shall be deemed or constitute a waiver of any other provisions herein, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.
- i. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original.
- j. Authority.** The undersigned hereby acknowledge and warrant their power and authority to bind the parties to this Agreement.
- k. State Funds.** This Agreement does not commit MCC to expend State funds. Financial obligations of MCC are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

**IN WITNESS WHEREOF**, the Parties hereto have caused their duly authorized officials to place their hands and seals upon this Agreement as of the respective dates set forth opposite the acknowledgment below of their execution of the Agreement, to be effective as of the day and year first above written.

**City of Fort Morgan**, a home rule municipal corporation and political subdivision of the State of Colorado

ATTEST:

By:   
Lyn Deal, Mayor

By:   
John Brennan, City Clerk

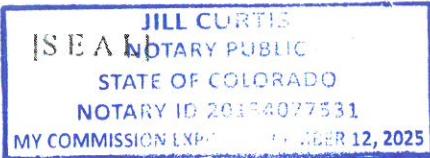
STATE OF COLORADO )  
COUNTY OF \_\_\_\_\_ ) ss.  
 )

ACKNOWLEDGED before me this 3rd day of October, 2023, by Lyn Deal,  
Mayor of the City of Fort Morgan, Colorado.

WITNESS my hand and official seal.

My commission expires: December 12, 2025

Jill Curtis  
Notary Public



State of Colorado, Department of Higher  
Education, State Board for Community Colleges  
and Occupational Education, acting by and through  
**Morgan Community College**

By: Curt Freed

Name: Curt Freed, Ph.D.

Title: President

9-27-2023

STATE OF COLORADO )  
COUNTY OF Morgan )  
                          )  
                          )  
                          )

ACKNOWLEDGED before me this 27<sup>th</sup> day of September, 2023, by Curt  
Freed, Ph.D., as President of Morgan Community College.

WITNESS my hand and official seal.

My commission expires: November 16, 2026

Chloe Hirschfeld  
Notary Public

[S E A L]



**Exhibit A**  
**Description of Property**

**[INSERT DESCRIPTION OF PROPERTY HERE]**

Received at **2:05** o'clock P.M.  
Reception No. **622143** Clifford D. Gandy, Jr., Recorder.

MAY 15 1978

EUGENE V. DOTY and CARL E. HULTQUIST

BOOK **781** PAGE **300**

whose address is **Fort Morgan**

County of **Morgan**, State of

Colorado, for the consideration of  
**Ten Dollars and other valuable consideration**  
I bars, in hand paid, hereby sell(s) and convey(s) to

State Documentary Fee  
Date **MAY 15 1978**  
**s Exempt**

MORGAN COUNTY COMMUNITY COLLEGE FOUNDATION

whose legal address is **Fort Morgan**, County of

**Morgan**, and State of **Colorado**, the following real property in the

County of **Morgan**, and State of Colorado, to wit:  
A parcel of land in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Sec. 4, Twp. 3 North, Range 57 West of the 6th P.M., desc. as commencing at a point on the West side of said NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Sec. 4, 590 feet S. of the NW corner of said Sec. 4, thence South 10°30' West 743 feet along the West side of said NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Sec. 4 to the SW corner of said NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Sec. 4, thence North 89°40' East 615 feet along the South side of said NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Sec. 4, thence North 20°42' East 681 feet to the South bank of the Upper Platte & Beaver Canal; thence North 85°10' West 629 feet parallel to the Upper Platte & Beaver Canal to the point of beginning,  
TOGETHER with all water and water rights appurtenant thereto, including but not limited to, two wells presently situated upon the said premises, and all right and title to permits and adjudication of said wells, subject to a roadway deeded to the City of Fort Morgan, Colorado, described as follows:

A parcel of land located in the NW $\frac{1}{4}$  of Sec. 4, Twp. 3 N., Rge. 57 West of the 6th P.M., more particularly described as follows: Commencing at the SW corner of the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 4, Twp. 3 North, Range 57 West of the 6th P.M., thence North along the West line of said Sec. 4, a distance of 350 ft. to the point of beginning, thence continuing North along the West line of said Section 4 a distance of 970 feet, more or less, to the North line of the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of said Section 4; thence East a distance of 30 feet; thence South parallel to the West line of said Section 4 a distance of 970 feet, more or less, to a point which is 30 feet East of the point of beginning, thence West to the point of beginning,

with all its appurtenances, and warrant(s) the title to the same, subject to taxes of 1978, due and payable in 1979 and subject to easements and rights of way of record.

I give this **15th** day of **May**, 19 **78**

*Eugene V. Doty*  
EUGENE V. DOTY  
*Carl E. Hultquist*  
CARL E. HULTQUIST

Attest: **Notary Public**

**My name**

Attest: **Notary Public**  
I certify that the above instrument was signed before me on the **15th**  
**May**, 19 **78**, by **EUGENE V. DOTY and CARL E. HULTQUIST**.

**Notary Public**  
I certify that the above instrument was signed before me on the **15th**  
**May**, 19 **78**, by **EUGENE V. DOTY and CARL E. HULTQUIST**.

*Notary Public*