

**AGREEMENT REGARDING  
NOVEMBER 2002 STATE QUESTION 1:  
PARKS AND OPEN SPACE BOND ISSUE - TRUCKEE RIVER  
ROCK PARK RESTROOM-PROJECT FUNDING**

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between Washoe County, a political subdivision of the State of Nevada (hereinafter, “Washoe County”) and City of Sparks, a political subdivision of the State of Nevada (hereinafter, the “Grantee”), collectively referred to as the “Parties.”

**WHEREAS**, in 2001, The Nevada Legislature (AB 9 of the 17<sup>th</sup> Special Session) proposed and in November 2002, the voters of Nevada (State Question 1) approved a bond measure which included the allocation of \$10,000,000 for the enhancement of the Truckee River corridor, authorizing the use of funds to acquire and develop land and water rights, provide recreational facilities, provide parking for and access to and along the river, or restore the Truckee River Corridor. Washoe County has designated the Project as being eligible for AB9-SQ1 money and has entered into a memorandum of understanding with the State of Nevada Department of Conservation and Natural Resources regarding such use.

**WHEREAS**, upon the recommendation of the Truckee River Funding Group, the Washoe County Board of County Commissioners has determined the amount of funding and approved a list of projects to be facilitated and completed by use of the 2002 State Question-1 Parks and Open Space Bond funds;

**WHEREAS**, the Grantee’s Rock Park Restroom (the “Project”), a Truckee River recreation and restoration effort to benefit residents of the region, is an approved project recommended for \$530,438 in State Question-1 Parks and Open Space Bond funding;

**WHEREAS**, the parties desire to document, by this Agreement, a funding arrangement pursuant to which Washoe County will reimburse Grantee for the Project;

**NOW, THEREFORE**, be it resolved the parties agree as follows:

**1. Project Scope of Work (“the work”)**

Will consist of construction of a restroom facility to be built on site; design, survey and engineering; lift station; directional bore; materials testing; site preparation and concrete slab; utility upgrades (sewer/water) and connections; permits to be located on APN 034-291-05, commonly known as Rock Park, owned and managed by the City of Sparks.

**2. Exhibits**

Attached hereto and incorporated herein are the following Exhibits  
Exhibit A –Vicinity Map and project location map  
Exhibit B – Work Plan

3. **Term** This Project Funding Agreement shall be effective from \_\_\_\_\_, 2014 to December 31, 2015, unless sooner terminated by either party as specified in paragraph 13 and 14 herein.

**4. Design and Construction**

- a. Grantee is hereby authorized to perform or have another perform necessary, qualified, and competent design, survey, engineering, materials and utility testing, construction services and related work for the Project subject to the terms and conditions herein as more particularly described in the Work Plan attached hereto and incorporated herein as Exhibit "B". Grantee and Washoe County shall develop at a later date, if necessary, a more detailed Scope of Work for the Project which is conceptually consistent with the Work described in Exhibit B, and which Washoe County must approve in writing prior to any Project funding disbursement to Grantee. In the event of any inconsistency between Work described in Exhibit B and the later developed Scope of Work approved by Washoe County, the terms and conditions of the later developed and County approved Scope of Work shall control.
- b. General Project Administration. Grantee shall perform or have performed Project planning, design, contract preparation, and financial administration, including, without limitation, obtaining all required permitting, conducting environmental assessments and National Environmental Policy Act (NEPA), Commission on Cultural Affairs (CCA), Nevada Division of Environmental Protection (NDEP and EPA), review processes, preparing all construction bid documents, advertising and bid award, pre-construction and post construction mitigation and re-vegetation, monitoring and maintenance of the Project site.
- c. By execution of this Agreement, Grantee covenants with Grantor, through its Community Services Department, to perform the Work pursuant to and in accordance with the terms and conditions of this Agreement, as set forth in Exhibit B, and any future developed and approved Scope of Work. Grantee further covenants to perform or covenants to have another perform the Work in compliance with all applicable federal, state, local laws and applicable regulations, including, without limitation, competitive bidding laws, prevailing wage requirements and United States Army Corps of Engineers' ("USACE") Section 104 cost credit requirements. Grantee shall select consultants and award bids to contractors who can perform with the requisite skill, judgment, and experience required by the Work under this Agreement or any future Scope of Work approved by Washoe County.

5. **Project Design Process** Grantee and Washoe County agree that the following guidelines, requirements, and specifications apply to the Project design phase and process:

- a. Grantee shall be responsible for the survey, design and engineering phase of the Project, shall retain, as reasonably necessary, appropriately licensed design professionals and shall oversee, monitor and satisfy all scheduling requirements herein. Grantee shall coordinate employees, contractors, consultants, and other professionals employed by or under contract with Grantee for the Project, and shall use its reasonable best efforts to keep the Project on schedule by coordinating the work of all such employees, contractors, consultants, and other

professionals. Grantee shall not be responsible for delays or other causes beyond Grantee's reasonable control.

- b.** Grantor designees from its Community Services Department shall be included in the design process and reserve the right to review and modify the design plans to ensure that the design plans conform to locally adopted community plans and is consistent with Exhibit B. Washoe County shall designate a single point of contact and provide a comprehensive list containing names and phone numbers of key contacts. Grantee shall confer with Grantor concerning cost, design and placement of facilities and improvements at the following stages of design completion:

  - a. 50% design completion
  - b. 100% design completion
- c.** Grantee shall submit one (1) electronic copy of design plans and specifications (in a format acceptable) to Grantor for review *prior* to extensive reproduction of said plans and advertising for bid. The County shall reply promptly to all design review and modification requests and provide written approval or disapproval within fifteen (15) days from receipt. All segments of the design plans that do not meet with building code requirements or otherwise are not approved shall be promptly revised to meet such requirements.
- d.** Grantee shall provide construction drawings, specifications, and plans that are complete, accurate, coordinated, and adequate for Project advertising, bidding, and construction. Design shall take into account existing site features and structures and safely and efficiently integrate such features and structures into the Project design. Final design elements must be appropriate for the purpose intended and evidence the demonstrated aesthetic, functional, and operational objectives of Project that are consistent and compatible with the Truckee River and natural surroundings.
- e.** After receiving written approval from Grantor, Grantee shall provide to Washoe County (1) hardcopy version and one (1) electronic version (in an electronic format acceptable to Grantor) of the complete set of final Project design plans and specifications, including drawings, and a final estimate of the total Project design and construction costs.
- 6. Project Construction Process.** The Parties agree to the following construction procedures and process to be accomplished according to the proposed Project and Work Plan contained in Exhibits A and B.

  - a.** Grantee shall have the exclusive responsibility for preparing all construction documents, which shall be provided to Grantor for review and approval. The parties must agree on the form and substance of the construction documents within the time frames established by Exhibits A and B.
  - b.** Grantee shall prepare and advertise for competitive bidding construction of the Project, including, according to established procedures in Nevada Revised Statutes.

- c. Grantee shall provide Grantor one (1) electronic copy (in a format acceptable to Grantor) of all bid proposal forms, bond forms, builder qualifications, history and experience forms, and final contract for construction, shop drawings, samples and product data for supplied elements of the Project.
- d. Grantee shall advise Grantor of proposed substitutions and all alternates and change orders for construction of the Project. Grantee shall provide administration of all aspects of Project construction and shall consult with, and obtain approval from, Grantor on all material technical matters.
- e. Grantor shall be notified of, and may participate in, any pre-bid conferences. Grantee shall conduct necessary job site construction meetings with contractors, professionals, builders, and other necessary parties, at which Grantor shall be present. Meeting schedules may be modified to accommodate construction with approval of Grantor. Grantee shall record the minutes of such job site meetings, which will include, at a minimum, status of requests for information, requests for proposals, change orders, and outstanding issues, and will identify the person(s) responsible for action of every item or issue. Grantee will update, copy, and distribute meeting minutes within two (2) business days of the meeting. Change orders must be approved by the Grantor before work may proceed.
- f. Grantee agrees to perform or have another perform all work in compliance with all applicable laws and further agrees to indemnify, defend and hold harmless Grantor from and against any and all losses, liabilities, damages, claims, liens, encumbrances, obligations, liabilities, actions, causes of actions, costs and expenses of any kind whatsoever, including without limitation, claims of bond holders and attorney's, and other professional expenses and fees, suffered or incurred by, or asserted against Grantor, which arise from or related to, in whole or in part, Grantee's negligence in the design, construction or maintenance of the Project.
- g. Grantor shall visit the Project with sufficient frequency to familiarize itself with the progress and quality of the work. Grantor shall promptly notify Grantee in writing of any defective material or workmanship, or any unsatisfactory Work which is discovered and such defect, shall be remedied promptly without additional charge or cost to Grantor. Failure of Grantor to inspect and discover such defects shall not relieve the contractor or other professionals from any obligation to perform the Work or any future Scope of Work according to approved Project plans and specifications.
- h. Grantee shall promptly notify Grantor in writing of any information it obtains pertaining to any claim or alleged claim, including but not limited to mechanics' liens, construction liens and builder's trust fund claims, or similar claims, involving any Project builder, supplier, contractor, or subcontractor, whether or not such claims or alleged claims arise from or relate to the Project.
- i. Both parties agree, in good faith, to coordinate and use their reasonable best efforts to complete the Project according to the proposed construction and permitting schedules and approved Project Scope of Work and plans and specifications. Upon substantial completion

of the Project construction, Grantee shall notify Grantor, who shall conduct a final inspection of the Project. Based on such final inspection, Washoe County shall reasonably determine whether the Project, or any phase or element thereof, has been constructed in material compliance with the approved Project Scope of Work and plans and specifications. In the event that Grantor determines that the Scope of Work or approved plans and specifications have not been met in all material respects, Grantor shall notify Grantee in writing and provide Grantee with a list of actions that must be undertaken in order to bring the Project into material compliance with the Scope of Work and approved plans and specifications. Thereafter, Grantee shall reasonably and diligently pursue completion of said actions such that Grantor may conclude that the Project has been constructed in material compliance with the Scope of Work, approved plans and specifications and satisfactorily completed. Following Grantor's satisfactory determination, Grantor shall provide a letter of acceptance of the Project.

- j. Project shall begin no earlier than August 12, 2014, and be complete by December 31, 2015, unless otherwise extended by mutual agreement of the parties. Grantor shall have final approval authority over each phase specified above, provided such approval shall not be unreasonably withheld or delayed.

**7. Maintenance of Project Restoration Components.** Grantee agrees to maintain the Project improvement and have improvements open and available to the public to use for a minimum of three (3) years commencing upon issuance of Grantor's letter of acceptance in accordance with Section 8.9 above

**8. Project Funding.**

- a. Funding Sources. The total estimated Project cost is \$530,438 as identified in Exhibit B. Grantee has previously expended cash match for related site improvements of \$551,353 also outlined in Exhibit B. Grantor has allocated the amount of \$530,438 from the State Question 1 Parks and Open Space Bond funds for all SQ-1 funded elements identified in Project. If the total amount of State Bond Funds set forth in this Section 10.1 is not needed to complete the Project, the unspent balance of such funds, along with any accrued interest income, will be transferred to Grantor for subsequent re-allocation pursuant to Section 10.4. Grantee is solely responsible for any Project costs that exceed Grantor's total SQ-1 contribution amount of \$530,438.
- b. Grantee shall be responsible for all increased Project costs caused by Grantee's negligence, including but not limited to, material errors and omissions in all application and permitting processes, plans, specifications and contract documents, material defects in scope of work or plans and specifications matters; material failure to meet the Project's performance or hydrologic/hydraulic standards; change orders not accepted by Washoe County; and contractor claims of any kind or nature. Grantor's total amount of State Bond Funds specified in Section 10.1 shall be allocated to Grantee for performance of the Project when Grantor receives an approved Work Plan from the State of Nevada.

- c. State Question 1 Policies. Grantee covenants to comply with all policies and procedures adopted by the State for State Question 1 projects and Grantor has provided a complete and current copy of such policies and procedures to Grantee or shall provide online internet access to such policies and procedures. Grantee shall submit Project and budget information on forms, and within specified deadlines, prescribed by Grantor and State. It is Grantee's responsibility to be aware of and adhere to all policies and procedures required by the State. In the event of any inconsistency between this Agreement and the State policies and procedures, the State policy and procedures shall govern.
- d. Obligation of Funding. The State Bond Funds must be legally obligated (encumbered) by June 30, 2019. If the State Bond Funds have not been spent or legally obligated by June 30, 2019, then the Board of Washoe County Commissioners may determine to reallocate funds to another Truckee River project.
- e. Grantee understands and agrees that the Grantor shall only reimburse Grantee for authorized expenses after Grantor reviews and approves invoices submitted by Grantee for compliance with this Agreement, plans and specifications for the Work and any future Scope of Work approved by Grantor. Grantor further reserves the right to withhold any funds in the event Grantee, its agents, representatives, contractors or subcontractors fail to perform the Work in accordance with applicable federal or state laws, codes and regulations, this Agreement and plans and specifications. For any up-front costs incurred by Grantee after the execution of the agreement that are directly related to the Project, Grantor shall reimburse Grantee for those authorized costs, charges and expenses, as long as the total amount reimbursed, including such up-front costs, does not exceed the total amount of \$530,438. Grantee shall be solely responsible for any costs, charges, and expenses of the Project that exceed the amount of \$530,438.
- f. Authorized Reimbursements. Funding for the Project will be disbursed by Grantor to Grantee on a reimbursement basis. Reimbursement of Grantee expenses will be paid on a quarterly basis (Jan-March, April-June, July-Sept. and Oct.-December) as invoices, accompanied by supporting documentation, are received by Grantor. Invoices are due to Grantor by the fifteenth day of the month following the end of the quarter. Supporting documentation includes an exact itemization of project expenditures for the period of the invoice, a listing of check numbers, amounts and payees for the period, copies of itemized invoices for all expenditures and copies of properly documented timesheets or labor reports. Grantor agrees that occasionally it will be necessary to process invoices twice in a quarter so that Grantee's unbilled grant reimbursement cap is not exceeded. Grantor shall cause payment to be made within thirty (30) days of receipt of complete, undisputed reimbursement requests.
- g. The State Question One Program prohibits reimbursement of Project funds for the following expenses:
  - a. Secretarial or word processing services (normal, temporary, or overtime);
  - b. Other staff charges, such as filing; proofreading, regardless of when
  - c. Indirect and administrative overhead costs such as salaries and benefits;
  - d. Photocopy expenses
  - e. Computer time.

- h. In addition to those unauthorized reimbursements contained in Section 10.7 above, the State allows reimbursement of Project Funds for the following:
  - a. Local telephone expenses or office supply costs; and
  - b. The cost of first-class travel not to exceed the Government Standard Approved Rate.
  
- i. Project Funding Match. As required by Assembly Bill 9 and Section 10.1 of the Funding Agreement, Grantee is required to provide a match equivalent to fifty percent (50%) of the total project cost, equivalent to \$530,438. Eligibility to receive the bond proceeds is contingent upon meeting the required matching contribution of project related expenditures. Project cost match previously expended site improvements as outlined in Exhibit B. Grantee shall provide documentation of its ability to meet the documented match amount of \$530,438 of the Project. Written records must substantiate Grantee's funding match amount, including, but not limited to, properly documented time sheets or labor reports, documentation and justification of values utilized for labor, equipment and materials, including an exact itemized list of expenditures, a listing of check numbers, amounts and payees, copies of itemized invoices and support information for all expenditures. All accounting documentation must be maintained by Grantee and is subject to audit upon reasonable, advance notice. Grantor reserves the right to request in writing additional documentation from Grantee regarding preferred documentation of funding match.
  
- j. Other Match Credit. Additional funding match credits can be granted for cash expended for the value of services, materials or equipment after commencement of the project. The State must approve any funding match, either budgeted or expended. Grantee may contribute additional funding match credit, but will not be held liable for any match credit over and above the amount of \$530,438. For any up-front costs incurred by Grantee directly related to the Project prior to the effective date of this Agreement, but after July 1, 2000, Grantor agrees that those costs will be applied toward the match share for the Project allocation.

**9. Reporting and Auditing Requirements.**

- a. Grantee shall be responsible to Washoe County for providing Project status reports quarterly, and a final report within sixty (60) days after completion of the Project. Quarterly reports due dates are:
  - Jan.-March activity due April 15
  - April-June activity due June 15
  - July-Sept. activity due Sept. 15
  - Oct.-Dec. activity due Jan. 15

Quarterly reports will provide Project status, brief statements that will address any problems encountered, time delays expected and any adjustments to the completion date, and financial status. The final report shall provide a description of the fully completed Project. Attached to final report shall be a final accounting and exact itemization of total project revenue and expenditures, with a list of all check numbers, amounts and payees. The first report will be due with the first quarterly invoice and quarterly thereafter.

- b. All accounting documentation must be maintained by Grantee and is subject to audit by any of Grantors agents. Grantee must maintain and make available its books, files and records to facilitate any such audit. Grantee must comply with and fully participate with any federal, state or local audit requirements. Grantor reserves the right to request additional documentation from Grantee regarding revenues or expenditures. Grantor reserves the right to reject all or part of any proffered documentation of recipient's expenditures that does not materially comply with State policies and procedures. Improperly or insufficiently matched State Bond Funds will be subject to repayment by the recipient (from non-State Question 1 sources), in part or in total.
- c. Grantee agrees to maintain all records relevant to its State Question 1 Rock Park Restroom Project for which funds were allocated in accordance with NRS Chapter 239; additionally, recipient must keep records at least six (6) years from the end of the state fiscal year (July-June) in which the project was completed. If any litigation concerning the project is begun before the expiration of this six (6) year period, the individual file must be retained for six (6) calendar years from the date of resolution of the litigation; and before any files are destroyed recipient must contact the State Department of Conservation and Natural Resources to obtain and verify final disposition instructions. This requirement also applies to the recipient's contractors and any subcontractors.

#### **10. Truckee River Water Quality Compliance Requirements.**

- a. Any water quality benefits associated with the Project shall be owned by and credited to the Truckee Meadows Water Reclamation Facility (TMWRF) jointly owned by the Cities of Reno and Sparks (Cities). Water quality benefits owned by and credited to TMWRF shall include, but not be limited to, pollution credits, which arise from or relate to the Project. Washoe County and Grantee shall not unreasonably deny the Cities access to the Project or to any data generated by the Project to prove or calculate the water quality benefit. Additionally, Washoe County, Grantee and the Cities may agree to conduct appropriate sampling, monitoring and analysis to determine the water quality benefit.
- b. Grantee and Washoe County acknowledge that flows in the Truckee River are governed by pre-existing agreements, judgments, and decrees. Grantee and Washoe County further acknowledge that flows in the Truckee River shall be additionally governed by the Truckee River Operating Agreement ("TROA"). Washoe County and Grantee acknowledge that the Project is designed to succeed and be compatible with any and all flow and operating scenarios envisioned in TROA. In consideration of the commitments set forth herein, Grantee and Washoe County commit that they will not seek alteration of the flows related to existing river operations nor to those currently scheduled in TROA, or seek water appropriations, inconsistent with existing operations or TROA for the Project.

**11. Termination.** In the event Grantee fails to perform any duty or satisfy any term or condition contained in this Agreement, Grantor shall provide Grantee with written notice thereof and Grantee shall thereafter have thirty (30) days or other reasonable time period to cure or diligently commence to cure such failure. If Grantee fails to cure, or fails to



diligently pursue curing, any defect in performance to the reasonable satisfaction of Grantor, Grantor may terminate this Agreement with thirty (30) days advance written notice to Grantee.

**11.1** In the event no funds or insufficient funds are appropriated and budgeted in any fiscal year for the payments due to Grantee under this Agreement, the County will immediately notify Grantee of such occurrence. In such event, this Agreement shall immediately terminate, without penalty or expense to the County, except for any such funds, which are due and payable to Grantee hereunder, for which services have been rendered on or before the date of said notice from the Grantor.

**12.** Grantee may terminate this Funding Agreement prior to commencement of construction upon thirty (30) days written notice to Grantor if (i) final design plans are not approved; or (ii) required permits, agreements, or subcontracts cannot be secured upon terms reasonably satisfactory to Grantee, and in that event, all unexpended funds shall promptly be returned to Grantor.

### **13. Insurance.**

- a.** Grantee's contracts with any consultants or subcontractors hired for the purposes of designing or constructing any phase or element of the Project mentioned herein shall require each consultant or subcontractor to provide evidence of insurance for:
  - (1) General liability;
  - (2) Automobile liability; and
  - (3) Professional liability (if the contract involves any design work).
- b.** All policies of general liability and automobile liability insurance shall be endorsed to add Grantor and grantee as additional insureds.

### **14. General Provisions.**

- a.** Entire Agreement. This Agreement represents the full and complete understanding by all of the parties and changes may be made only with the written approval of the parties.
- b.** Assignment. This Agreement shall be binding upon the parties, their representatives, successors and assigns. No assignment or transfer of this agreement or any part thereof shall occur unless mutually agreed upon in writing by both parties.
- c.** Modification. This Agreement may be modified in writing and signed by both parties.
- d.** Severability. Each paragraph and provision of this Agreement is severable, and if one or more paragraphs or provisions of this Agreement are declared invalid, the remaining paragraphs and provisions of this Agreement will, if possible, remain in full force and effect.

- e. Covenants of Further Assurance. The parties to this Agreement covenant and agree to act in good faith and to take such further action as may be required to fully effectuate the intentions of the parties under this Agreement.
- f. All notices required by this Agreement shall be in writing, must be sent to the addresses provided below and are deemed effective upon placement in the United States Mail, postage prepaid addressed to:

**Grantor**

Washoe County  
Attn: Director  
Community Services Dept.  
PO Box 11130  
Reno, NV 89520

**Grantee**

City of Sparks  
Attn: Director  
Parks and Recreation Dept.  
98 Richards Way  
Sparks, NV 89431

- g. Choice of law; venue. This Agreement shall be construed in accordance with and be governed by the laws of the State of Nevada. All parties hereto consent to the personal jurisdiction of the Nevada State Courts located in Washoe County, Nevada and to the service of process by any means authorized by rules of Court or under the laws of the State of Nevada. The exclusive venue of any action, proceeding or counterclaim arising out of or in connection with this Agreement shall be Washoe County, Nevada.
- h. To the fullest extent of NRS Chapter 41 liability limitations, each party shall indemnify, hold harmless and defend, not excluding the others right to participate, the other from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorney fees and costs, arising out of any alleged negligent or willful acts or omissions of the party, its officers, employees and agents. This indemnification obligation is conditioned upon service of written notice to the other party within 30 days of the indemnified party's notice of actual or pending claim or cause of action. The indemnifying party shall not be liable for reimbursement of any attorney fees and costs incurred by the indemnified party due to said party exercising its right to participate with legal counsel.

IN WITNESS WHEREOF, the parties hereto have executed this agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2014

**CITY OF SPARKS**, by and through its  
City Council

\_\_\_\_\_  
Geno Martini, Mayor

STATE OF NEVADA  
COUNTY OF WASHOE

On the \_\_\_\_\_ day of \_\_\_\_\_, 2014, \_\_\_\_\_ personally appeared before me, a Notary Public, and acknowledged to me that he executed the above instrument for the purpose therein contained.

\_\_\_\_\_  
Notary Public

**COUNTY OF WASHOE**, by and through its  
Board of County Commissioners

\_\_\_\_\_  
David Humke, Chairman

STATE OF NEVADA  
COUNTY OF WASHOE

On the \_\_\_\_\_ day of \_\_\_\_\_, 2014, \_\_\_\_\_, personally appeared before me, a Notary Public, and acknowledged to me that he executed the above instrument for the purpose therein contained.

\_\_\_\_\_  
Notary Public