

AGREEMENT FOR THE GRANT OF RIGHTS OF WAY BETWEEN THE CITY OF SPARKS AND THE SUN VALLEY GENERAL IMPROVEMENT DISTRICT

This AGREEMENT FOR THE GRANT OF RIGHTS OF WAY (“Agreement”) entered into this ___ day of _____, 2020 by and between the CITY OF SPARKS, NEVADA, a municipal corporation chartered under the laws of the State of Nevada (“City” or “Sparks”), and THE SUN VALLEY GENERAL IMPROVEMENT DISTRICT, a quasi-municipal corporation and body politic, organized pursuant to the provisions of NRS Chapter 318 of the Nevada Revised Statutes (“SVGID”). The City and SVGID may be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, the parties are public agencies as defined in NRS 277.100(1)(a); and

WHEREAS, NRS 277.180 and NRS 277.060 provide that any one or more public agencies in Washoe County may enter into a cooperative agreement with any one or more other public agencies within said county to acquire, operate and maintain water facilities and to perform services in connection therewith if said agreement is approved by the respective governing bodies; and

WHEREAS, SVGID provides, among other services, water service within its recognized and recorded service area; and

WHEREAS, pursuant to NRS 318.258, a petition was filed with SVGID by the fee owners of real property currently designated as Assessor Parcel 083-011-15, hereafter (“Subject Property”), located within the Sparks City limits for inclusion within SVGID for the provision of water service only; and

WHEREAS, the designated water service provider for the City, the Truckee Meadows Water Authority, has agreed that water service can be more efficiently and effectively provided to the Subject Property by SVGID and has executed an amendment to its wholesale water supply agreement with SVGID to allow SVGID to provide water service to the Subject Property; and

WHEREAS, by action taken January 23, 2020 at an open public meeting, the Board of Trustees of SVGID approved the Subject Property owner’s petition and authorized annexation of the Subject Property for water services only, which annexation to be effective upon its recordation with the Washoe County Recorder and Secretary of State; and

WHEREAS, the parties desire through this Agreement to set forth the terms, conditions, and consideration pursuant to which SVGID will have a right of access for its water conveyance facilities within the City’s public roadways that may be constructed within the Subject Property.

NOW, THEREFORE, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SVGID and the City of Sparks agree as follows:

1. The property subject to this Agreement consists of approximately 386.86 acres (APN 083-011-15), currently owned by QK LLC (the "Subject Property"). It is located north of Highland Ranch Parkway and west of Pyramid Highway. See attached Exhibit "A".
2. SVGID – and its permitted successors and assigns, if any – is hereby granted by the City a right-of-way, privilege, and permit in, upon, over, under, across and along the public roadways and alleys of the City located within the Subject Property and adjacent to the Subject Property along Highland Ranch Parkway; for its use for the purpose of laying, installing, constructing, upgrading, maintaining and operating all necessary, appropriate or convenient water mains and pipes and appurtenances and appliances necessary in order to properly, successfully, and conveniently construct, extend, upgrade, maintain and operate a water system for supplying water to the Subject Property, upon the terms, conditions, restrictions, and limitations hereinafter set forth and contained in the Constitution and laws of the State of Nevada, the Charter of the City of Sparks, and the Sparks Municipal Code. The water system to be constructed shall meet the specifications equal to or exceeding those required of the Truckee Meadows Water Authority. This grant extends to all public roadways that may be constructed within the Subject Property and adjacent to the Subject Property along Highland Ranch Parkway, and does not extend to any other public roadways or any other City-owned or City-controlled land or other property located outside of the Subject Property.
3. All water mains, pipes, appliances, and other equipment which shall be laid and used by SVGID for the provision of water services within the Subject Property shall be installed, constructed, and used with the least practicable interference with the ordinary travel and use of the public roads within the Subject Property. SVGID shall promptly repair all public roads when excavated by it, pursuant to any reasonable specifications, instructions and directions of the City Engineer, so that the resulting condition of such public roadways is as good as the roadway was before the work was initiated and performed by SVGID. The Parties anticipate that SVGID will perform its own roadway repair work under this Agreement. However, should SVGID choose to contract with a private paving company for pavement repairs, it may contract directly as long as such third party meets the City Engineer's minimum licensing requirements and is bound by contract to the same terms of this Agreement. In such an instance, SVGID shall notify Sparks and the City may choose to oversee and inspect the pavement repairs to assure compliance with its standards.
4. SVGID acknowledges that prevailing wage requirements under NRS 338.013 to 338.090, inclusive, may apply to the construction of water facilities to the Subject Property pursuant to NRS 318.144(2) if the developer does not pay all of the initial construction costs of such water facilities.
5. The City agrees to waive the penalties imposed by Sparks Municipal Code Chapter 12 for street cuts made by SVGID that are necessitated by emergency repairs and emergency maintenance. The City also agrees to waive street cut penalties (and any street cut permit fees) in the event street cuts are necessitated by maintenance activities, upon a demonstration by SVGID that such activities could not practically or cost-effectively be deferred to a time outside of the penalty time period and provided that SVGID utilizes an

appropriately qualified paving contractor to complete street repairs. However, if the City permanently patches a section of roadway that had been temporarily patched by SVGID, then SVGID shall pay all fees associated with the permanent patch completed by the City. In no case will street cut fees be imposed on SVGID for its street cuts made in any roadways that are scheduled to be replaced within twelve (12) months following the date of the applicable street cut. SVGID will notify The City of any emergency street cuts performed after hours within 24 hours or the next Business day.

6. SVGID shall relocate at its own cost and expense any pipes and appurtenances installed, maintained, or used under this Agreement if and when made necessary by any lawful installation, relocation or modification of sanitary sewers or storm drains by the City, or any change of grade, alignment or width of any public roadway then existing, by the City, except where such relocation is necessitated by a developer-funded project, in which case the City shall require the project developer to bear the costs of relocation. SVGID will also be responsible for any costs associated with the repair of then-existing utilities and improvements within the public right-of-way necessitated by SVGID-initiated relocation activities occurring under this Agreement. The City agrees to cooperate with SVGID in determining least cost solutions for utility relocations and to notify SVGID of scheduled street maintenance projects to maximize opportunities for coordination of construction. The City shall provide SVGID sufficient advance notice to allow SVGID to complete due diligence and schedule coordinated required work. Nothing contained in this Agreement shall be construed as constituting a contractual obligation of SVGID to assume jurisdiction over or the obligation to maintain a public roadway within the Subject Property, nor shall any provision of this Agreement be construed to prohibit or restrict payment by the State of Nevada or any other appropriate governmental entity to SVGID for relocating SVGID's facilities as permitted by NRS Chapter 408.
7. Nothing in this Agreement shall impair or interfere with SVGID's right to furnish and sell water to all customers within the Subject Property. SVGID shall have the right to extend its water system over, under, upon, across and along public roadways which may be added to the City's corporate territory within the Subject Property from time to time, subject to SVGID providing the City's street-cut coordinator with notice at (775) 353-5555, and obtaining street-cut permits when necessary.
8. The rights and privileges granted by this Agreement are on the condition that SVGID, and its successors and assigns, if any, shall pay to the City during each calendar year a right-of-way fee based on the gross revenues derived by SVGID from the sale of water, including the base rate and all volumetric water usage charges, but not including other fees collected ("Gross Revenues"), to its customers located within the Subject Property ("Right-of-Way Fee"). The Right-of-Way Fee shall be collected through a percentage surcharge to each of SVGID's customers located within the Subject Property (including as the Subject Property is subdivided in the future) and shall be calculated based on (a) the maximum statutory fee under NRS 354.59883 (currently capped at five percent of SVGID's Gross Revenues from customers located within the Subject Property), and (b) each customer's monthly water bill. In no event may the annual Right-of-Way Fee paid to the City exceed the statutory maximum under NRS 354.59883. The Right of Way Fee shall be noted as a Sparks fee on the customer bill. The Parties understand that if the

statutory cap placed on local government fees within NRS 354.59883 is amended or repealed in the future then the City may take action to increase the Right-of-Way Fee it charges public utilities and such a change would apply to the Right-of-Way Fee owed and collected pursuant to this Section.

Payments by SVGID to the City of Right-of-Way Fee collections shall be made quarterly no later than thirty (30) days following the end of each quarter. SVGID may make such payments based upon estimated Gross Revenues, but in that event must provide an accounting at the end of each fiscal year and the Parties agree to adjust the payments for the succeeding fiscal year to reflect any discrepancies, including, but not limited to, any payments in excess of the statutory limit. The City may at any reasonable time examine the books and records of SVGID during the term of this Agreement for the purpose of verifying SVGID's Gross Revenues and the appropriate Right-of-Way Fee owed. This Agreement does not eliminate or otherwise modify any obligation of SVGID to pay applicable permit fees and other fees of like nature, to the extent required by Sparks Municipal Code.

9. The Parties agree that the Subject Property was approved for annexation into SVGID solely for the provision of water services and that Subject Property remains within the Sparks city limits. Governmental services other than water service will be provided to the Subject Property by the City. SVGID will recover its costs and any other fees or charges associated with the provision of water services to the Subject Property, in accordance with its tariff, and as each may be adjusted from time to time by way of public hearings following publication and notification to affected SVGID water service customers in accordance with NRS Chapter 318 requirements. SVGID agrees that the City will continue to have the right to levy and collect general ad valorem property taxes on the Subject Property up to Nevada's statutory property tax cap, as that cap may be adjusted from time to time pursuant to Nevada law, and that SVGID will not attempt to levy or collect any general taxes on the Subject Property in any form, including ad valorem property taxes pursuant to NRS 318.225 through 318.240, inclusive. The parties agree SVGID is not prohibited from imposing fees or other charges as may be approved through its tariff to fund its capital improvement program and ensure consistency in burden for that purpose with unincorporated SVGID water service customers.
10. SVGID may not assign, delegate, transfer, or sell any portion of its rights, privileges and obligations under this Agreement without prior written consent of the City. Any assignment entered into pursuant to this Section shall place the assignee into the same position of the assignor, such that all obligations and duties stemming from this Agreement and any amendments to this Agreement as may be agreed to from time to time, will remain in full effect against the assignee, as if the assignee were the original party to this Agreement. Any non-permitted transfer or assignment of this Agreement shall be void and not merely voidable.
11. GENERAL PROVISIONS:

11.1 This Agreement constitutes the entire understanding and agreement of the Parties with respect to the provision of water services to the Subject Property, and

supersedes and replaces all prior understandings and agreements, whether verbal or in writing, with respect to the subject matter hereof.

- 11.2 This Agreement is binding upon and inures to the benefit of the Parties and their respective heirs, estates, personal representatives, successors and assigns.
- 11.3 This Agreement is made in, and shall be governed, enforced, and construed under the laws of the State of Nevada and any venue for any dispute arising out of this Agreement shall be in Washoe County.
- 11.4 This Agreement may not be modified, terminated, or amended in any respect, except pursuant to an instrument in writing approved by the governing bodies of both Parties.
- 11.5 In the event either Party brings any legal action or other proceeding with respect to the breach, interpretation, or enforcement of this Agreement, or with respect to any dispute relating to any transaction covered by this Agreement, the losing Party in such action or proceeding shall reimburse the prevailing Party for all reasonable costs of litigation, including reasonable attorney fees.
- 11.6 Each of the Parties hereto shall approve the effectiveness of this Agreement by appropriate resolution, ordinance or governing board action at the time of executing this Agreement.
- 11.7 If either Party fails to require the other to perform a term of this Agreement, that failure does not prevent the Party from later enforcing that term and all other terms. If either Party elects to not seek remedies regarding the other Party's breach of a term, that election does not waive a later breach of this Agreement.
- 11.8 SVGID shall be responsible and liable for any contractors, subcontractors, or agents who perform work pursuant to this Agreement. The City has no control or supervisory powers over the manner or method of any SVGID contractors, subcontractors or agents and all personnel SVGID uses or provides are its employees, contractors, subcontractors, or agents, and not the City's employees, agents, or subcontractors for any purpose whatsoever.
- 11.9 The Parties may enforce all legal rights and obligations under this Agreement without further authorization. The Parties agree to provide to each other all nonconfidential documents and records pertaining to this Agreement that a party requests to assist in evaluating compliance with this Agreement.
- 11.10 If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.
- 11.11 This Agreement does not bestow any rights upon any third party, but binds and benefits the City and SVGID only.

11.12 If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either Party.

11.13 All notices, demands, or other communications required or permitted to be given in connection with this Agreement, shall be in writing, and shall be deemed delivered when personally delivered to a party (by personal delivery to an officer or authorized representative of a corporate part) or, if mailed, three (3) business days after deposit in the United States mail, postage prepaid, certified or registered mail, addressed to the Parties as follows:

SVGID: Sun Valley General Improvement District
Attn: General Manager
5000 Sun Valley Boulevard
Sun Valley, NV 89433-8229

The City: City of Sparks
Attn: City Clerk
431 Prater Way
Sparks, Nevada 89431

[SIGNATURE PAGE TO FOLLOW]

**SUN VALLEY GENERAL
IMPROVEMENT DISTRICT**

CITY OF SPARKS, NEVADA

Sandra Kinserworth

Chairman, Board of Trustees

Mayor

ATTEST/SEAL:

Joseph Baskie

Secretary, Board of Trustees

ATTEST/SEAL:

City Clerk



APPROVED AS TO FORM:

City Attorney