

## SPARKS YOUTH SPORTS FOUNDATION AGREEMENT

THIS AGREEMENT made on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, between the CITY OF SPARKS, NEVADA, a municipality organized under the laws of the State of Nevada herein referred to as the "CITY", and the SPARKS YOUTH SPORTS FOUNDATION, a non-profit corporation organized under the laws of the State of Nevada, herein referred to as "FOUNDATION."

WHEREAS, the FOUNDATION desires to coordinate the usage of youth sports facilities owned by the CITY, or under joint use agreement between the CITY with the Washoe County School District; to facilitate youth educational sports activities; and to reinvest fees collected by the FOUNDATION to aid continuation of youth sports programs, maintenance and improvements of Facilities.

WHEREAS, the CITY deems it beneficial to the City of Sparks and its citizens thereof that such sports facilities be made available to the general public through the efforts of the FOUNDATION, and that such arrangement will provide the most effective means of operation for the citizens of the City of Sparks; and

WHEREAS, the FOUNDATION is willing to assist the CITY in providing some of the ongoing maintenance and repairs to these Facilities, and

WHEREAS, the CITY believes that this arrangement would be in the best interest of the citizens of the City of Sparks;

THEREFORE, in consideration of mutual covenants contained herein, the parties agree as follows:

### 1. Description of Facilities

The CITY will allow the FOUNDATION to administer programs and coordinate usage of the fields and facilities set forth in Attachment "A," (the "Facilities"). Attachment "A" may be amended from time to time at the sole discretion of the CITY, by providing sixty (60) day notice to the FOUNDATION. Attachment "A" may be amended to include newly constructed youth Facilities or Facilities converted to youth sport activities. Added Facilities may include CITY facilities or those Facilities commonly referred to as "joint use" Facilities, upon approval of the applicable government or private entity. If for any reason the CITY desires to delete any of the Facilities from Attachment "A", notice of such deletion shall be provided to the FOUNDATION on or before October 1<sup>st</sup> of each year so that the FOUNDATION will have this information for scheduling the use of the Facilities for the upcoming season.

2. Term

The term of this Agreement shall commence on the date first written above and terminate on the thirty-first (31<sup>st</sup>) day of December of the following year unless renewed by joint written agreement of the parties.

Renewal shall be for a period of one (1) year. Upon joint written agreement of the parties said renewal to commence on the first (1<sup>st</sup>) day of January of the year next and renewed on each anniversary date thereafter. Written notice of nonrenewal shall be served by certified mail on the other party sixty (60) days prior to the expiration date. As used herein the words "expiration date" shall refer to the thirty-first (31<sup>st</sup>) day of December of each year.

3. Use of Facilities

The parties agree that the FOUNDATION is composed of representatives of the youth sports organizations listed in the Articles of Incorporation or the FOUNDATION's By-Laws. FOUNDATION shall notify CITY within thirty (30) days of any changes to the participating sports organizations that compose the FOUNDATION or of any changes to the FOUNDATION's Articles of Incorporations or the FOUNDATION's By Laws. If the CITY in its sole discretion deems that such change is material to its decision to allow the FOUNDATION to control its Facilities in accordance with the Agreement, the CITY may terminate this Agreement by providing sixty (60) days written notice to the FOUNDATION in accordance with paragraph 12 of this Agreement.

Each individual sports organization shall comply with the FOUNDATION's requirements and establish a board, budget, must be self-sustaining and a non-profit organization. The primary use of the Facilities shall be to encourage youth recreational sports activities by the youth participants of the represented organizations. Newly formed youth sports organizations that meet the requirements of the FOUNDATION are invited to participate through the FOUNDATION.

The FOUNDATION shall require that a new organization to present their Board members, budget and proof of non-profit status to the FOUNDATION to be considered an Affiliated Youth Sports Program.

The FOUNDATION agrees not to use or allow an affiliated youth sports organization to use the Facilities for any purpose in violation of any federal, state, municipal statute or ordinance, or of any regulation, order or directive of a governmental agency, as such statutes, ordinances, regulations, orders or directives not existing or may hereafter provide, concerning the use and safety of the Facilities. On the breach of any provision hereof by the FOUNDATION or an affiliated sports organization,

the CITY may, at its option, terminate this Agreement in accordance with Paragraph 12 of this Agreement.

The CITY agrees the FOUNDATION shall coordinate usage and allocation of the youth facilities within the parameters set by the City; including but not limited to park hours, renovation projects, and park availability. The CITY shall have control of setting Facility fees.

Upon proof provided to the CITY that the youth sports organization has complied with the FOUNDATION requirements and the sports organization has complied with the CITY's requirements a field permit will be issued by the CITY to the youth sports organization. A copy of each permit issued shall be sent to the FOUNDATION by the CITY.

The FOUNDATION shall require the daily cleanup of all Facilities by member organizations following daily use.

#### 4. Improvements

All permanent additions, changes and other improvements to the Facilities shall only be constructed at CITY direction with prior written approval from the CITY. Said improvements shall remain thereon and shall not be removed therefrom, and at the expiration of this Agreement such improvements shall be the property of the CITY except for trade fixtures. If any destruction or damage results to any Facilities or improvements thereon due to the removal of trade fixtures, the FOUNDATION will cause it to be repaired at its sole expense within thirty (30) days. Any buildings(s) hereafter built at the Facilities by the FOUNDATION, the CITY, or other public or private entity shall be constructed and maintained in compliance with the laws of the State of Nevada, fire, building and health ordinances and all other laws applicable within the CITY, including laws pertaining to public works prevailing wage, if applicable. Such buildings (s) shall be constructed under the inspection and subject to the lawful requirements of the building department of the CITY, or of such other agency or office authorized by law to inspect or make rules covering the erection and inspection of buildings. No building additions, changes or improvements shall be constructed without the prior written approval of the CITY.

#### 5. Maintenance and Repairs

The CITY shall be responsible for general facility maintenance at its discretion to include but not limited to: mowing, vandalism repair, paving, irrigation parts and systems, fertilization, aerating, field maintenance, and restrooms. The CITY shall provide all equipment, labor and supplies necessary to accomplish the above listed items.

The FOUNDATION shall ensure that its member organizations assist in the maintenance of the Facilities under their use. Such assistance by the FOUNDATION and its organizations shall be coordinated with the CITY with prior written approval from the CITY of the assistance to be provided by the organizations. This assistance includes, but is not limited to sod replacement, fencing repair, scoreboard maintenance, general

facility cleanliness. Under no circumstances shall the FOUNDATION or any of its organizations make any changes to City property including but not limited to playing fields or structures without prior written approval from the CITY.

#### 6. Utilities & Player Fees

The CITY shall be responsible for all utility costs including, but not limited to, gas, water, electricity, and sewer. The FOUNDATION shall pay the CITY a player assessment fee and lighting fee. At CITY's discretion the player assessment and lighting fees may be used for facility asset preservation of CITY facilities or to help defray CITY costs for Facility utilities. The player assessment and lighting fees are to be managed by the Parks and Recreation Department at its discretion. If the player assessment fees charged to the FOUNDATION are to be raised, written notice will be provided 180 days prior to fee enforcement to the FOUNDATION, the FOUNDATION will be provided the opportunity to provide input to the decision to raise these costs. These fees shall be paid by the FOUNDATION to the CITY within 30 days of the end of the applicable season. The CITY will provide a report to the FOUNDATION of current and projected application of the fees collected on or before December 1<sup>st</sup> of each year.

The FOUNDATION will implement a Facilities conservation program, emphasizing the merits of not using facility lighting earlier than necessary and for the extinguishing of lighting immediately following the last activity, including clean-up, at each facility.

The FOUNDATION shall provide a report to the CITY on or before December 1 of each year detailing the following:

- A. The activities of the FOUNDATION toward improvement, maintenance and repair activities of the Facilities, including the Facility, date, description of activity, and amount expended.
- B. The current condition of each Facility and whether its condition appears to be improving or deteriorating.
- C. If requested by the CITY, a representative of the FOUNDATION shall appear before the Parks and Recreation Commission and/or the City Council to explain the report, describe problems, make recommendations and respond to questions.

#### 7. Permit Process Implementations

In addition to any other rights granted in this Agreement, the CITY grants to the FOUNDATION permission to enter into the Facilities at any time, for a reasonable period of time and in a reasonable manner, for the following purposes:

- A. To inform Facility users of the ordinances and rules regarding the need for a valid permit for use of the Facility;
- B. To inquire whether the group using the Facility has a valid permit;
- C. To inform authorities, to the same extent as any citizen has such a right of the possible existence of a breach of the rules and/or laws regulating the use of the Facility.

## 8. Delegation to Security Service

In addition to any other rights granted in this Agreement, the FOUNDATION may engage the services of a private security service to implement Section 7 above, provided the security service first agrees to abide by the following requirements:

- A. The FOUNDATION and any security service it engages, shall each obtain and maintain in force at all times a comprehensive general liability insurance policy covering and insuring the CITY, the FOUNDATION, and where applicable, the security service, occasioned by the activities contemplated here in at the Facilities. The liability insurance policy is to be a two million dollar (\$2,000,000.00), combined, single limit, occurrence based policy, in a form satisfactory to the City. The FOUNDATION, and if applicable, the security service, shall furnish a Certificate of Insurance with Endorsement to the CITY, at the FOUNDATION's or security services expense, and to name the CITY as an Additional Insured under the liability policy. The liability policy shall contain a provision that such policy shall not be cancelled without thirty (30) days prior written notice received by the CITY. Insurance coverage by this paragraph shall be provided by a company licensed to do business in the State of Nevada with a Best rating of A.VII or above.
- B. The FOUNDATION, and if applicable, the security service, shall indemnify, defend and hold the CITY and CITY's officers, agents, servants and/or employees harmless from any and all costs, liability, damage, or expense, including costs of suit and expenses of legal services, claimed by anyone by reason or injury or damage to persons or property sustained in, on or about the Facilities, or arising out of the FOUNDATION's or the security service, or their officers, agents, servants and/or employees, excepting such liability as may be caused solely by the negligence of the CITY or of its officers, agents, servants and/or employees while acting within the course and scope of their official duties, agency and/or employment. The FOUNDATION, and if applicable, the security service, shall give the CITY prompt and timely notice of any claim made or suit instituted coming to its knowledge, which in any way directly or indirectly, contingently or otherwise, affects or might affect either party or the security service.
- C. The CITY may revoke the rights of any security service under this amendment at any time and for any reason by giving notice to the FOUNDATION, whereupon the FOUNDATION shall immediately notify the security service of the termination.
- D. The FOUNDATION, and if applicable the security service, shall keep records of instances of unauthorized use observed, including the place, date, time, number of persons using the field without a permit, and a brief description of the incident.

## 9. Insurance

The FOUNDATION shall assure that each member organization provides evidence of insurance coverage equaling a minimum of Two Million Dollars (\$2,000,000) of general liability insurance with endorsements to cover the FOUNDATION and the CITY as

primary insured, and any other entity providing Facilities under the governorship of the FOUNDATION.

The FOUNDATION and each of its individual member organizations shall insure their trade fixtures at a value they deem appropriate by them. The CITY shall not be responsible for repair, replacement or damage to any trade fixture installed by the FOUNDATION or if applicable, the member organization. The FOUNDATION and/or its member organization shall hold the CITY harmless for any loss to a trade fixture.

10. Non-liability of the CITY for liens and assessments

The FOUNDATION shall indemnify and hold harmless the CITY in and against all liens and charges of any and every nature that may at any time be established against any additions to the Facilities or improvements they caused to be installed thereof.

11. Encumbrance, assignment, or license

The FOUNDATION shall not encumber, or assign the rights or obligations arising from this Agreement, or any other right or privilege connected therewith without first obtaining the written consent of the Sparks City Council. Any such consent given shall not be consent to a subsequent encumbrance or assignment. An unauthorized encumbrance, or assignment, by the FOUNDATION shall be void and shall terminate the agreement at the option of the CITY without notice or right to cure. The interest of the FOUNDATION in this Agreement is not assignable by operation of law without the written consent of the CITY.

12. Termination

The failure of a party hereto to comply with each and every term and condition of this Agreement shall constitute a breach of this Agreement. The breaching party shall have ten (10) working days after receipt of written notice from the other party of any breach to correct the condition specified in the notice, or if the correction cannot be made within the ten (10) working day period, the party shall have a reasonable time to correct the default but not longer than thirty (30) working days as long as the correction commences within (10) working days following receipt of the written notice.

Upon breach of this Agreement by either party or for any other reason whatsoever, and no correction is made as outlined above, either party may terminate this Agreement upon giving sixty (60) days written notice to the other party. Upon termination, any player assessment or lighting fees, paid to the FOUNDATION for fees and permits for the use of the Facilities, collected by the FOUNDATION under the authority provided by this Agreement shall be provided to the CITY within ten (10) days following termination.

13. Notices

Any and all notices, requests, demands or other communications to or upon a party in connection with this Agreement shall be in writing and shall be personally delivered or sent by facsimile or other electronic facsimile transmission, or by certified mail postage prepaid, to the respective designated representative and at the address for each party as follows:

The CITY

Director of Parks and Recreation  
98 Richards Way  
Sparks, NV 89431

The FOUNDATION

President, SYSF  
P.O. Box 50807  
Sparks, NV 89435

14. No Conflict

Each party represents and warrants to the other that the party has the right to enter into this Agreement, and that this Agreement presents no conflict with any obligation of the party with any third party.

15. Entire Agreement

This Agreement sets forth the entire understanding and agreement of the parties regarding and/or relating to it and the subjects covered by this Agreement, and the Agreement supersedes all prior representations, negotiations and agreements.

Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one party whatsoever with respect to the indebtedness, liabilities, and obligations of the other or any other party.

16. Attorney's Fees

In the event of any legal action to enforce the terms and provisions of this Agreement, the prevailing party in such action shall be entitled to recover from the other reasonable attorney's fees incurred in each connection with any such action.

17. Force Majeure

Any delay or failure of either party to perform its obligations hereunder shall be excused to the extent that such delay or failure is caused by an event or occurrence beyond its reasonable control, such as, by way of example and not by way of limitation, acts of God, acts of refusal to act by governmental authority (whether valid or invalid), fire, floods, storms, explosions, riots, natural disasters, sabotage or labor problems which may materially impact the Event or its economic viability. A party claiming a force majeure

shall give the other party notice thereof as soon as practicable. Should the event of force majeure continue beyond thirty (30) days, or such shorter time period as may be reasonable under the circumstances, either party may terminate this Agreement.

18. Amendments

This Agreement, including any term or provision hereof, may be amended only by an instrument in writing and signed by the parties hereto.

19. No third party beneficiary rights

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third party beneficiary status hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

20. Headings

The section headings used in this Agreement are for the convenience only, and are not intended to broaden or limit this Agreement or the interpretation thereof.

21. Anti-Waiver

The failure of either party to enforce any provision of this Agreement shall not be construed or considered a waiver or release of such provisions, and such provision shall remain in full force and effect.

22. No Agency Relationship/Joint Venture

Neither party shall have authority, express or implied, to act as an agent on behalf of the other party or to bind the other party to any obligation. The parties agree that the FOUNDATION is an independent entity. The FOUNDATION shall maintain, in full force and effect through the term of this Agreement, the applicable business license from the CITY. The parties further acknowledge and agree that the FOUNDATION is an independent entity.

23. Indemnification

The services to be performed under this Agreement will be performed entirely at the FOUNDATION'S own risk, and the FOUNDATION expressly assumes all responsibility for the condition of any Facilities except as provided otherwise in this Agreement. The CITY shall not be responsible or be held liable for any injury or damage to any person or property resulting from the use, misuse, or failure of any such Facilities or equipment used by the FOUNDATION or any of the FOUNDATION's members, participants or volunteers. The FOUNDATION accepts full responsibility for, and agrees to indemnify the CITY from and against any and all loss, liability, and claims for any injury or damage whatsoever, whether such injury or damage is to the FOUNDATION, its



members, participants or volunteers.

23. Governing Laws

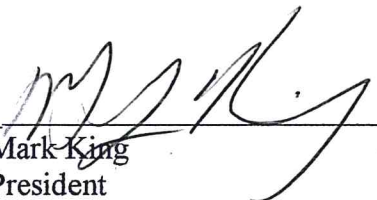
This Agreement shall not be construed for or against a party by virtue of which party drafted the Agreement. The Agreement shall be governed by and interpreted in accordance with the laws of the State of Nevada.

24. Non-Discrimination Clause

In connection with the performance of this Agreement, FOUNDATION agrees not to discriminate because of race, creed, color, national origin, disability, sex, sexual orientation or age. Any violation of these provisions by FOUNDATION shall constitute a material breach of contract.

IN WITNESS WHEREOF, the said parties have executed this instrument the date and year first above written.

**Sparks Youth Sports Foundation**

By:   
Mark King  
President

Date: 11-10-14

**The City of Sparks**

By: \_\_\_\_\_  
Stephen W. Driscoll, ICMA-CM  
City Manager

Date: \_\_\_\_\_

## Sparks Youth Sports Foundation Agreement

### APPENDIX A

#### City of Sparks Park Sites:

Site availability is dependent upon approval from the City of Sparks.

Aimone Park  
Burgess Park  
Church Park  
Disc Dr. Park  
Golden Eagle Regional Park  
Longford Park  
Oppio Park  
Pah Rah Park  
Poulakidas Park  
Shadow Mountain Sports Complex

#### City of Sparks/Washoe County School District Jointly Developed Sites:

Site availability is dependent upon mutual agreement with the City of Sparks and WCSD.

Alice Maxwell Elementary School  
Bud Beasley Elementary School  
Dilworth Middle School  
Jerry Whitehead Elementary School  
Katherine Dunn Elementary School  
Lincoln Park Elementary School  
Lloyd Diedrichson Elementary School  
Marvin Moss Elementary School  
Mendive Middle School  
Sparks Middle School  
Reed High School/Shadow Mountain Sports Complex