

LEASE AGREEMENT

This LEASE AGREEMENT is made this _____ day of _____, 2018, by and between NEVADA VETERANS MEMORIAL PLAZA, a non-profit Nevada corporation, hereinafter called LESSEE, and the CITY OF SPARKS, NEVADA, a municipal corporation, hereinafter called LESSOR, and collectively called PARTIES.

WHEREAS, LESSEE’s non-profit purpose is to fully thank and memorialize the Military servicemembers who have given their lives so that others can live in a free nation and state,

WHEREAS, LESSEE wishes to build the Nevada Veterans Memorial Plaza within the Sparks Marina Park located at 300 Howard Drive, Sparks, Nevada 89431, to honor the memories and sacrifices of fallen Military servicemembers, and

WHEREAS, LESSOR has determined that the lease of the premises subject to this Lease Agreement, hereinafter called LEASE, to LESSEE will benefit the public.

W I T N E S S E T H

NOW, THEREFORE, in consideration of the agreements, conditions, and covenants contained herein, the parties agree as follows:

1. DESCRIPTION OF PREMISES

LESSOR shall lease, demise, and let to the LESSEE those certain premises situated in the City of Sparks, County of Washoe, State of Nevada, within the Sparks Marina Park located at 300 Howard Drive, consisting of the entire grassy area within the concrete path, and commonly called “The Hill,” including improvements thereon, as depicted in Exhibit A attached hereto and as described in Exhibit B attached hereto. The demised premises do not include the concrete path surrounding the grassy area.

2. TERM

A. The term of this LEASE shall be for an initial term beginning March 1, 2018 and ending June 30, 2023. LESSEE shall have the option to renew the LEASE for up to three (3) additional five (5) year terms, the extended term(s) to begin on the expiration of the initial term or prior extended term, as applicable. In order to exercise its option to extend this lease, LESSEE must give the LESSOR written notice of its election to exercise the option not later than sixty (60) days prior to the expiration of the term. LESSEE may only exercise its option to extend the LEASE if it is not in default of any provision of this lease. Further, LESSEE’s option to extend this LEASE is subject to and contingent upon written approval by the LESSOR’s City Manager or designee.

B. LESSEE shall at all times during the term peaceably have, hold, and enjoy the leased premises without suit, trouble, or hindrance from the LESSOR, provided that LESSEE has performed and fulfilled each and every condition and covenant herein required to be performed by LESSEE.

C. In the event of the termination of the lease, or for any other reason, LESSEE will peaceably and quietly leave, surrender and yield up to the LESSOR the leased premises in good order, condition and repair, reasonable use and wear thereof excepted.

D. Upon the termination or expiration of this LEASE, LESSEE shall not remove nor cause to be removed any improvements or fixtures erected or placed by LESSEE on the leased premises, and said improvements and fixtures shall upon said expiration or termination of the term hereof remain upon the premises and become property of LESSOR without compensation to LESSEE.

3. RENTAL

LESSEE agrees to pay LESSOR as rent for the leased premises the sum of ONE THOUSAND DOLLARS (\$1,000.00), due upon the effective date of this LEASE; TWO THOUSAND DOLLARS (\$2,000.00), due upon January 1, 2019; TWO THOUSAND DOLLARS (\$2,000.00), due upon January 1, 2020; and ONE THOUSAND DOLLARS (\$1,000.00) per year thereafter, due upon January 1, 2021, and January 1 of each year thereafter while this LEASE remains in effect. Payments shall be made to LESSOR at the City of Sparks Finance Department, 431 Prater Way, Sparks, Nevada. If this LEASE is terminated for any reason during its term, no rental payment will be prorated or refunded, in whole or in part, but no additional rental payments will become due after the date of termination.

4. IMPROVEMENTS

LESSEE must obtain all permits, licenses, entitlements, and approvals required by law before erecting improvements or making alterations upon the leased premises, and LESSOR shall not unreasonably withhold or delay processing an application for such permits, licenses, entitlements, or approvals. LESSEE shall pay all expenses and liabilities arising out of or in any way connected with such improvements, including without limitation application fees, building permit fees, and any other government permit fees, regardless of whether such fees are imposed by LESSOR or any other government entity. LESSEE shall keep the leased premises and improvements thereon free and clear of all liens of mechanics or materialmen.

5. LESSOR'S RESERVATION OF ACCESS AND USE

LESSOR reserves to itself free and unrestricted access and use of the rest of the Sparks Marina Park and to its facilities on the leased premises. The foregoing reservation shall not unreasonably conflict with LESSEE's use of the leased premises. In the event of an emergency or if reasonably necessary to protect public safety, LESSOR may restrict all access to and use of the leased premises, including LESSEE's access and use. Except during permitted special events held on the premises or as reasonably necessary to construct improvements upon or maintain the leased premises, LESSEE shall not restrict the public's lawful access to and lawful use of the premises.

6. SPECIAL EVENTS UPON THE LEASED PREMISES

A. LESSEE is permitted to conduct special events on the leased premises. Special events must be approved in advance by the Director of Parks and Recreation or designee through the LESSOR’s electronic special event application process.

B. LESSOR will waive special event application fees for events organized by LESSEE upon the leased premises. LESSOR will not waive special event application fees for events organized upon the leased premises by LESSEE’s sublessees. LESSOR will not waive City service charges as defined in Sparks Municipal Code § 9.34.010(A) related to additional police services, additional fire services, or road closures connected with any special event organized by LESSEE upon the leased premises.

7. SUBLEASES AND ASSIGNMENTS

A. LESSEE shall not assign this lease. LESSEE shall not lease or rent the premises without the prior written approval of LESSOR’s City Manager or designee.

B. No holding over by LESSEE shall operate to renew or extend this LEASE without the written consent of LESSOR.

C. LESSEE may accept donations from other persons or entities to which the leased premises are subleased. LESSEE shall not demand any donations or seek or accept any rental fee or admission fee from any persons or entities to which the leased premises are subleased.

8. WAIVER

The waiver by LESSOR of any breach of any condition herein contained shall not be deemed to be a waiver of such condition or any subsequent breach of the same.

9. NOTICES

Any and all notices or demands by or from LESSOR to LESSEE, or LESSEE to LESSOR, shall be in writing and served by certified mail, return receipt requested, upon:

LESSOR:
City of Sparks
City Manager
P.O. Box 857
Sparks, Nevada 89432

LESSEE:
Nevada Veterans Memorial Plaza
Vice-Chair
P.O. Box 50967
Sparks, Nevada 89435

10. TRASH AND UTILITIES

A. LESSOR will place garbage or trash receptacles near the outer edge of the leased premises and will empty those receptacles. LESSEE shall pay for all garbage and trash removal that exceeds the on-site capacity provided by LESSOR.

B. LESSEE shall empty any garbage or trash receptacles placed within the leased premises into dumpsters and shall remove garbage and/or trash from the leased premises that is not within garbage or trash receptacles.

C. LESSOR shall pay for electricity and water serving the leased premises, provided that all lights or other electrical equipment installed on the leased premises are to the approval of the LESSOR's City Manager or designee.

11. INDEMNIFICATION

A. LESSOR, its officers, agents, employees, and contractors are to be free from all liability and claim for damage by reason of any person or persons, including LESSEE, or damage to property of any kind whatsoever and to whomsoever belonging, including LESSEE, from any cause whatsoever, while such persons or property are in, upon, or in any way connected with the leased premises during the term of this LEASE or any extension thereof, except in the case of LESSOR's grossly negligent or intentional acts and/or omissions. LESSOR expressly reserves for itself and its officers, agents, employees, and contractors all immunities available by law.

B. LESSEE shall hold harmless, indemnify, and defend LESSOR against all liabilities and losses incurred by reason of LESSEE's use of the leased premises during the term of this LEASE.

12. INSURANCE

A. LESSEE shall maintain General Liability Insurance coverage and limits no less than \$1,000,000 (or an amount customarily carried by LESSEE, whichever is greater) combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall be increased to equal twice the required occurrence limit.

B. LESSEE's insurance policies shall contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages:

a. LESSOR, its officers, agents, employees, and volunteers are to be included as additional insureds in respect to damages and defense arising from: activities performed by or on behalf of LESSEE; products and operations of LESSEE; premises owned, occupied, or used by LESSEE; or automobiles owned, leased, hired, or borrowed by the LESSEE. The coverage shall contain no special

limitations on the scope of protection afforded to LESSOR, its officers, agents, employees, contractors, or volunteers.

b. LESSEE's insurance coverage shall be Primary insurance as it relates to City, its officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, employees, or volunteers shall be in excess of LESSEE's insurance and shall not contribute with it in any way.

c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officers, agents, employees, or volunteers.

d. LESSEE's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, or non-renewed by either LESSEE or by the insurer, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to LESSOR.

C. Insurance is to be placed with insurers with a Best's rating of no less than A-VII. LESSOR, with the approval of LESSOR's Risk Manager, may accept coverage with carriers having lower Best's ratings upon review of financial information concerning LESSEE and insurance carrier. LESSOR reserves the right to require that LESSEE's insurer be a licensed and admitted insurer in the State of Nevada, or on the Insurance Commissioner's approved but not admitted list.

D. LESSEE shall furnish to LESSOR certificates of insurance and original endorsements effecting coverage required by this LEASE. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by LESSOR before work on the premises commences. LESSOR reserves the right to require complete certified copies of all required insurance policies at any time. LESSEE must provide the following documents to LESSOR at City of Sparks, Attention: Purchasing Division, P.O. Box 857, Sparks, Nevada 89432-0857:

1. Certificate of Insurance. LESSEE must provide a Certificate of Insurance form to THE CITY OF SPARKS to evidence the insurance policies and coverage required of LESSEE.

2. Additional Insured Endorsements. An original Additional Insured Endorsement, signed by an authorized insurance company representative, must be submitted to the City, by attachment to the Certificate of Insurance, to evidence the endorsement of THE CITY OF SPARKS as additional insured.

3. Policy Cancellation Endorsement. Each insurance policy shall be endorsed to specify that without thirty (30) days' prior written notice to the LESSOR, the policy shall not be cancelled, non-renewed, and/or reduced or materially altered in its limits, and shall provide that notices required by this paragraph shall be sent by certified mail to the address specified above. In the case of non-payment of premium, only ten (10) days' prior written notice to LESSOR is required. A copy of this signed endorsement must be attached to the Certificate of Insurance.

E. LESSEE shall require that all sub-lessees, renters or other users of the premises not covered by LESSEE's policy shall furnish separate certificates and endorsements to LESSOR prior to their use of the facility. All coverages for sub-lessees, renters and other users of the premises shall be subject to all of the requirements stated herein.

F. Miscellaneous Conditions

1. LESSEE shall be responsible for and remedy all damage or loss to any property, including property of LESSOR outside of the leased premises, caused in whole or in part by LESSEE, any sublessee, or any of LESSEE's agents, employees, officers, volunteers, or contractors.

2. Nothing herein contained shall be construed as limiting in any way the extent to which LESSEE may be held responsible for payment of damages to persons or property resulting from its operations or the operations of any of LESSEE's agents, employees, officers, volunteers, contractors, or sublessees.

3. In addition to any other remedies LESSOR shall have if LESSEE fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, LESSOR may, at its sole option:

a. Purchase such insurance to cover any risk for which LESSOR may be liable through the operations of LESSEE under this LEASE at LESSEE's expense, and demand payment therefor or deduct or retain the amount of the premiums for such insurance from any sums due under the LEASE;

b. Order LESSEE to stop work under this LEASE; and/or,

c. Terminate this LEASE.

4. It is further agreed that if at any time during the term or extended term of this LEASE, the LESSEE shall fail, refuse, or neglect, after being given ten (10) days' written notice, to procure, keep, or maintain any insurance required by this LEASE to be procured by the LESSEE, or to keep and maintain the same in full force and effect, the LESSOR, at its option (and without such act constituting a waiver of the default by the LESSEE thus occurring) may procure or renew such insurance and thereupon, the amount or amounts of money paid as the premium or premiums thereon, plus interest at a rate of twelve (12) percent per annum shall be collectible as though it were rent then matured

hereunder and shall be due and payable within thirty (30) days after written demand for reimbursement therefore shall have been made by the LESSOR upon the LESSEE and the LESSEE's failure to effect such reimbursement within such time thereafter, such demand shall constitute a default herein.

13. DAMAGE OR DESTRUCTION

If during the term of this LEASE the premises, including improvements, are partially or wholly damaged or destroyed by fire, earthquake, flood, vandalism, graffiti, or other hazard, contingency, casualty, cause, or risk, including any destruction required by an authorized public authority, and as a result the premises or any portion thereof, including improvements, are declared unsafe or unfit for occupancy by any authorized public authority, whether or not such destruction or damage is covered by insurance, this LEASE shall not terminate except as provided in Section 16 of this LEASE. Any insurance proceeds payable to LESSEE as a result of the damage or destruction shall be applied to the cost of repair or reconstruction of the premises and improvements thereon.

14. NO PARTNERSHIP

Nothing contained in this LEASE shall be deemed, construed, or represented by LESSOR or LESSEE or by any third person to create the relationship of principal and agent, or of a partnership, joint venture, or any other association of any kind or nature between LESSOR and LESSEE. Nor shall any act or acts of either LESSOR or LESSEE be deemed to establish or be any relationship except that of a landlord and tenant.

15. NON-PROFIT STATUS

Each year on or before the anniversary of the effective date of this LEASE, LESSEE shall provide proof of its lawful status as a non-profit organization and a list of LESSEE's officers, directors, or managers. This LEASE shall terminate automatically if LESSEE ceases to maintain its lawful status as a non-profit organization.

16. TERMINATION

A. In the event LESSEE breaches any condition of this lease, LESSOR shall serve written notice of the breach and the actions required of LESSEE to cure such breach. LESSEE shall have thirty (30) days after service of the notice of breach to cure same. If LESSEE fails to cure the breach within thirty (30) days of service of the notice, LESSOR may terminate this LEASE.

B. Upon termination or expiration of the LEASE, LESSEE shall at its sole cost and expense vacate the premises, remove its personal property therefrom, and leave the same in a clean and orderly condition. In the event LESSEE fails to remove its personal property from the premises or fails to leave the premises in a clean and orderly condition, LESSOR may clean or cause the premises to be cleaned, and LESSEE shall be liable for all costs of same.

C. At any point after termination or expiration of the LEASE, LESSOR may demolish any and all improvements upon the premises and repurpose the premises as LESSOR chooses in its sole discretion.

17. PREMISES TO BE USED FOR LEGAL PURPOSES ONLY

A. LESSEE covenants and agrees that it will conform to and obey all ordinances, rules, laws, and regulations of the City of Sparks, County of Washoe, State of Nevada, and the United States of America, and all public authorities, boards, or officers, relating to said premises, or improvements upon the same, or use thereof, and will not, during such term, permit the same to be used for any illegal or immoral purpose, business or occupation.

B. LESSEE expressly acknowledges that all statutes, ordinances, regulations, rules, and laws of the City of Sparks, County of Washoe, State of Nevada, and United States of America that are or may become applicable to the Sparks Marina Park apply with equal force and effect to the leased premises.

C. LESSEE shall prohibit and take all reasonable steps to prevent any person from burying, spreading, or otherwise depositing upon or near the leased premises the remains of any natural person or animal, including ashes. LESSEE's tacitly or actively permitting, allowing, or encouraging any person to bury, spread, or otherwise deposit the remains of any natural person or animal upon or near the leased premises shall constitute a material breach of this LEASE.

D. LESSEE shall secure all necessary permits required in connection with improvements or operations on the leased premises and shall comply with all federal, state, and local statutes, ordinances, and regulations that may affect LESSEE's use of the leased premises in any respect.

18. MAINTENANCE AND REPAIR

A. LESSEE shall be responsible for all maintenance and repair of the premises and all improvements or infrastructure thereon, including but not limited to benches, trash receptacles, trees, plants, grass, shrubs, flagpoles, lighting, railings, bricks, structures, memorials, walls, hardscape, curbs, sidewalks, security systems, signs, kiosks, reader boards, educational or presentation systems, electrical systems to the point of connection with other electrical equipment within the Sparks Marina Park, irrigation systems upon the leased premises and to the point of connection with other irrigation systems within the Sparks Marina Park, and all other improvements thereon, whether designated as real or personal property, except as otherwise provided in Section 18(B) below.

B. During the entire term of the LEASE and at the LESSEE's sole cost and expense, LESSEE shall make all repairs, alterations and/or improvements, whether ordinary or extraordinary, that may be required by any present or future law, ordinances, regulations, or statutes in connection with the occupation and use of the leased premises, except roads, streets, parking lots, and off-premises sewer, drainage, and water systems. Notwithstanding this subsection, LESSEE shall maintain and repair irrigation systems upon the leased premises and to

the point of connection with LESSOR's other irrigation systems within the Sparks Marina Park. LESSEE shall coordinate its irrigation schedule for the leased premises with LESSOR's irrigation schedule for the Sparks Marina Park. LESSEE shall make all repairs which may be necessary to prevent the improvements upon the premises from falling into a state of ill repair. For the purposes of this subsection, the term "ill repair" means a condition that, if not cured, constitutes a legal waste or is reasonably likely to result in harm to a person or property.

C. In the event that biohazard materials are found upon the leased premises, LESSEE shall contact LESSOR through the Sparks Police Department nonemergency dispatch telephone number. LESSOR shall respond to the leased premises within two (2) hours of LESSEE's call to safely remove the biohazard materials. LESSEE shall take all actions reasonably necessary to keep persons and animals away from the biohazard materials upon finding same until LESSOR's personnel arrive to safely remove the biohazard materials. "Biohazard materials" includes, without limitation, hypodermic devices that are removed from packaging and human bodily fluids reasonably likely to contain viruses or other agents constituting a threat to human safety. This section does not create or imply any duty by LESSOR to inspect the leased premises for biohazard materials or any other defect or dangerous condition.

D. Except as provided in Section 18(C), LESSEE shall keep and maintain at its expense the leased premises free of debris, trash, and garbage of every description and at all times keep the premises in an orderly, clean, safe, and sanitary condition. In the event LESSEE fails to maintain the premises in accordance with the provisions contained herein, LESSOR may do so at LESSEE's sole cost and expense.

E. During the term of this LEASE, LESSEE shall keep and maintain signs stating that LESSEE is solely responsible for the maintenance of the premises and all improvements thereon. The sign shall be prominently displayed at all intended access points to the premises, shall state LESSEE's or LESSEE's agent's name, address, and phone number for reporting any and all maintenance deficiencies, and shall be to the approval of LESSOR's City Manager or designee.

F. Except as provided in Section 18(C), LESSOR has no obligation to maintain the premises or any improvements thereon during the term of the LEASE.

19. CONDITION AND FITNESS FOR USE OF DEMISED PREMISES

A. LESSEE acknowledges that the leasing of the premises, including all improvements and personal property thereon, was after examination and inspection of their condition by the LESSEE, and that no representations or warranties were made by the LESSOR or its agents as to the condition of the premises.

B. LESSEE acknowledges that the LESSOR has made no representations or warranties that the demised premises are fit for any particular use despite any past usage of the premises.

C. LESSEE acknowledges that water will be available on the leased premises only between April 1 and October 1 of each calendar year. LESSOR's City Manager or designee may,

at his or her sole discretion, make water available at other times upon written application by LESSEE.

20. SECURITY

LESSEE shall be responsible for the security and safety of the leased premises and may take whatever steps are lawful and reasonably necessary under the circumstances to provide for the security and safety of the leased premises, persons, and animals thereon.

21. POLICY OF NON-DISCRIMINATION

LESSEE shall not discriminate against any person on the basis of race, creed, color, religion, national origin, disability, age, sex, sexual orientation, gender, or gender identity.

22. IMPROVEMENTS TO BECOME CITY PROPERTY

Upon termination or expiration of the LEASE, all improvements and fixtures upon the leased premises shall become the sole property of the LESSOR. If LESSEE abandons the premises during the term of the LEASE, the improvements and fixtures upon the premises will not become the property of the LESSOR until the termination or expiration of the LEASE. If LESSEE abandons the premises during the term of the LEASE, LESSOR may, at its sole discretion, terminate the LEASE pursuant to Section 16 and/or complete, maintain, demolish, and/or repurpose all or any part of the premises, improvements, and fixtures, and LESSEE shall be liable for the costs of said completion, maintenance, demolition, and/or repurposing.

23. SEVERANCE

If any term, covenant or condition of the LEASE is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this LEASE shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

24. ATTORNEY FEES

In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of rights pursuant to, this LEASE or as a result of any alleged breach of any provision of this LEASE, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorney fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

25. GENERAL COVENANTS

A. This LEASE shall constitute the entire contract between the parties hereto, and no modification hereof shall be binding unless endorsed hereon in writing.

B. All covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators, successors and assigns, as the case may be, of the respective parties.

C. The provisions of this LEASE may be altered, changed or amended only by the written and signed mutual consent of the parties hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year herein above first written.

LESSEE
NEVADA VETERANS MEMORIAL PLAZA
BY: _____

STATE OF NEVADA)
COUNTY OF WASHOE) ss.

On this ____ day of _____, 2018, before me, a Notary Public, personally appeared _____ from Nevada Veterans Memorial Plaza, who acknowledged to me that he executed the foregoing instrument.

NOTARY PUBLIC

LESSOR
CITY OF SPARKS
BY: _____
GENO MARTINI, Mayor

ATTEST:

APPROVED AS TO FORM:

TERESA GARDNER
City Clerk

CHESTER H. ADAMS
City Attorney

STATE OF NEVADA)
COUNTY OF WASHOE) ss.

On this ____ day of _____, 2018, before me, a Notary Public, personally appeared _____ from City of Sparks, who acknowledged to me that he executed the foregoing instrument.

NOTARY PUBLIC