

Recording Requested by and
When Recorded Mail To:

Lisa Hunderman, City Clerk
City of Sparks
431 Prater Way
P.O. Box 857
Sparks, Nevada 89432-0857

<p>The undersigned hereby affirms that this document submitted for recording does not contain the personal information of any person or persons per N.R.S. 239B.030.</p> <hr/> <p>Signature of Declarant or Agent</p>

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into this ___ day of _____, 2019, by and between the CITY OF SPARKS, a municipal corporation of the State of Nevada (“City”), and WASHOE COUNTY SCHOOL DISTRICT, a county school district of the State of Nevada (“WCSD”). The City and WCSD are sometimes individually referred to as a “Party” and collectively as the “Parties.”

RECITALS

- A. The City is authorized, pursuant to Chapter 278 of the Nevada Revised Statutes and Title 20 of the Sparks Municipal Code, to enter into development agreements such as this Agreement with persons having a legal or equitable interest in real property in order to establish long-range plans for the development of such property.
- B. WCSD is a county school district created pursuant to Chapter 386 of the Nevada Revised Statutes to administer public education within Washoe County.
- C. WCSD has entered into a cooperative agreement to purchase the Property legally described by “Exhibit A” attached hereto and incorporated herein by reference (the “Property”), and under the terms of that cooperative agreement, WCSD is authorized to negotiate and enter into this Agreement and, upon closing of escrow, will be authorized to develop the Property as described in this Agreement.
- D. The Property currently consists of one (1) parcel approximately 87.02 acres in size, as shown in “Exhibit B” attached hereto and incorporated herein by reference.
- E. WCSD proposes developing the Property as a public high school as allowed by the Code in effect on the date of this Agreement and the land use entitlements described in Case

Number PCN19-0007 and the Land Plan attached hereto and incorporated herein by reference as “Exhibit C.”

- F. The Parties acknowledge that this Agreement will (i) promote the health, safety and general welfare of the City and its inhabitants, (ii) minimize uncertainty in planning for and securing orderly development of the Property and surrounding areas, (iii) ensure attainment of the maximum efficient utilization of resources within the City at the least economic cost to its citizens, and (iv) otherwise achieve the goals and purposes for which the laws governing development agreements were enacted.
- G. As a result of the development of the Property, the City will receive needed educational facilities and services for its residents, as well as employment opportunities for City residents associated with such educational facilities and services.
- H. WCSD understands and acknowledges that there are insufficient public facilities and infrastructure available at the Property in order to properly construct, populate, and serve the Property. Subject to the terms and conditions of this Agreement, WCSD agrees to provide the necessary improvements to public facilities and infrastructure on the Property and outside the Property as specifically provided for in the Infrastructure Plan attached hereto and incorporated herein by reference as “Exhibit D.”
- I. WCSD understands and acknowledges that due to the Property’s location and characteristics, certain design requirements and development restrictions as stated in this Agreement are appropriate and necessary.
- J. WCSD desires to enter into a development agreement with City pursuant to NRS 278.0201 to obtain reasonable assurances that it may develop the Property in accordance with the terms, conditions, and intent of this Agreement. WCSD’s decision to enter into this Agreement and commence development of the Property is based on expectations of proceeding and the right to proceed with the Property in accordance with this Agreement and any other Applicable Rules.
- K. WCSD further acknowledges that this Agreement was made part of the record at the time of its approval by the City Council, and WCSD agrees without protest to the requirements, obligations, limitations, and conditions imposed by this Agreement.
- L. The City Council, having determined that the development of the Property in the manner proposed in this Agreement and all exhibits hereto is beneficial to the City, that this Agreement is in conformance with the City’s Comprehensive Plan, the Sparks Municipal Code, and state and federal law, and that all other substantive and procedural requirements for approval of this Agreement have been satisfied, and after giving notice as required by relevant law, and after introducing this agreement by ordinance at a public meeting on May 13, 2019, and after a subsequent public hearing to consider the substance of this Agreement on May 28, 2019, found this Agreement to be in the public interest and lawful in all respects, and approved the execution of this Agreement by the Mayor of the City of Sparks.

NOW, THEREFORE, in consideration of the foregoing recitals, the promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

SECTION ONE DEFINITIONS

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following terms shall have the following meanings:

“Administrative Review” means the process by which the Administrator reviews and decides upon an application submitted to the City pursuant to Section 20.05.007 of the Code.

“Administrator” means the person holding the position of City Manager of the City of Sparks at any time or his designee.

“Agreement” means this Development Agreement and at any given time includes all addenda and exhibits incorporated by reference and all amendments that hereafter are duly entered into in accordance with the terms of this Agreement.

“Applicable Rules” means and refers to:

- (a) The provisions of the Code and all other uniformly applied City rules, policies, regulations, ordinances, laws, general or specific, which were in effect on the Effective Date, including without limitation City ordinances, resolutions, or regulations governing the permitted uses of land, density and standards for design;
- (b) This Agreement; and
- (c) The term “Applicable Rules” does not include:
 - (i) Any ordinances, laws, policies, regulations or procedures adopted by a governmental entity other than City;
 - (ii) Any fee or monetary payment prescribed by City ordinance which is applied to any development or construction subject to the City’s jurisdiction; or
 - (iii) Any applicable state or federal law or regulation.

“Building Codes” means the Building Codes and Fire Codes in effect at the time of issuance of a permit for a particular development activity.

“City” means the City of Sparks, together with its successors and assigns.

“City Council” means the Sparks City Council.

“City Engineer” means the person holding the position of City Engineer of the City of Sparks at any time.

“Code” means the Sparks Municipal Code, including all ordinances, rules, regulations, standards, criteria, manuals, appendices, and other references adopted therein.

“Conditional Use Permit Requests” means WCSD’s applications for conditional use permits pursuant to Section 20.05.008 of the Code, which are being processed concurrently with this Agreement under Case Numbers CU19-0003 and CU19-0004.

“Effective Date” means the date, on or after the adoption by City of an ordinance approving the execution of this Agreement, and the subsequent execution of this Agreement by the Parties, on which this Agreement is recorded in the Office of the County Recorder of Washoe County. Each Party agrees to cooperate as requested by the other Party to cause the recordation of this Agreement without delay.

“Entitlement” means any land use approval, including without limitation, any Administrative Review, conditional use permit, zoning approval, minor or major deviation, permitted land use, building permit, grading permit, and other land use entitlements or permits, issued for the Project or any portion of the Property or in favor of WCSD or its successor(s) in connection with the development of the Property.

“Entitlement Request” means a request by WCSD or its authorized designee for any land use approval for development of the Project in accordance with this Agreement, including, without limitation, a request for any Administrative Review, minor or major deviation, Comprehensive Plan amendment, or zoning amendment.

“Infrastructure Plan” means a collection of documents that fully describe the public and private infrastructure, on and off the Property, necessary to support the adopted Land Plan, including, but not limited to, grading plans, drainage studies, sanitary sewer studies, traffic studies, and utility improvement plans. The Infrastructure Plan is attached hereto and incorporated herein as Exhibit D.

“Land Plan” means a collection of documents that fully describe the physical characteristics of the Property and the permitted uses of the Property, including, but not limited to, a detailed description and depiction of the permitted uses, intensities, and locations within the Project; site plan for the Project; conceptual building elevations for the Project; physical characteristics of the Property such as floodplain, slope, and soil; Slope Analysis; the availability and accessibility of water that meets applicable health standards and is sufficient in quantity for the reasonably foreseeable needs of the Project; the availability and accessibility of utilities; the availability and accessibility of public services; the availability and accessibility of water and services for fire protection, prevention, and containment; and the effect of the Project on existing public streets. The Land Plan is attached hereto and incorporated herein as Exhibit C.

“Nonconforming Entitlement Request” means any Entitlement Request that seeks to change the permitted use of the Property or any request by WCSD or its authorized designee for any

amendment to this Agreement, the Land Plan, the Infrastructure Plan, or the Conditional Use Permit Requests.

“Party,” when used in the singular form, means either WCSD or City, and in the plural form of “Parties” means WCSD and City.

“Project” means the Property and any and all improvements provided for or constructed thereupon.

“Property” means that certain 87.02 acres of real property that are the subject of this Agreement as described in Exhibit A and depicted in Exhibit B.

“Term” means the temporal duration of this Agreement.

“WCSD” means Washoe County School District, together with its successors and assigns as permitted by the terms of this Agreement.

SECTION TWO APPLICABLE RULES AND CONFLICTING LAWS

2.1 Reliance on the Applicable Rules

City and WCSD agree that WCSD will be permitted to carry out and complete the development of the Project in accordance with the terms of this Agreement, the Land Plan, the Infrastructure Plan, and the Applicable Rules. The terms of this Agreement shall supersede any conflicting provision of the Code except as provided in Section 2.2 below.

2.2 Application of Subsequently Enacted Rules by the City

The City shall not amend, alter or change any Applicable Rule as applied to the development of the Project, or apply a new fee, rule, regulation, resolution, policy or ordinance to the development of the Project, except as follows:

- (a) The development of the Project shall be subject to the Building Codes and Fire Codes in effect at the time of issuance of the permit for the particular development activity.
- (b) The application of a new uniformly applied rule, regulation, resolution, policy or ordinance to the development of the Project is permitted, provided that such action is necessary to protect the health, safety and welfare of City residents and/or users of the Project, does not reduce the permitted land use types, does not prevent the type of development in the Project as set forth in this Agreement, and is consistent with the efficient development and preservation of the entire Project.
- (c) Nothing in this Agreement shall preclude the application to the Project of new or changed rules, regulations, policies, resolutions or ordinances specifically

mandated and required by changes in state or federal laws or regulations necessary to protect the health, safety and welfare of City residents. In such event, the provisions of Sections 2.4 and 2.5 of this Agreement are applicable.

- (d) Should the City adopt or amend rules, regulations, policies, resolutions or ordinances and apply such rules to the development of the Project, other than pursuant to one of the above Sections 2.2(a), 2.2(b) or 2.2(c), WCSD shall have the option, in its sole discretion, of accepting or rejecting such new or amended rules by giving written notice of such acceptance or rejection within 90 days of the application of such new or amended rules to the Project. If accepted, City and WCSD shall subsequently execute an amendment to this Agreement evidencing WCSD's acceptance of the new or amended ordinance, rule, regulation or policy within a reasonable time. If rejected, the new or amended rules will not apply to the Project. WCSD's failure to accept or reject new or amended rules within 90 days constitutes acceptance of the new or amended rules for that instance.

2.3 *Application of New Fees*

Notwithstanding Section 2.2 above, City may increase existing cost-based processing fees, entitlement processing fees, Entitlement Request fees, inspection fees, plan review fees, facility fees, sewer connection fees, effluent fees, and any other fees that uniformly apply to all or similarly situated development in the City.

2.4 *Conflicting Federal or State Rules*

In the event that any federal or state laws or regulations prevent or preclude compliance by City or WCSD with one or more provisions of this Agreement or require changes to any approval given by City, this Agreement shall remain in full force and effect as to those provisions not affected, and:

- (a) Notice of Conflict. A Party, upon learning of any such matter, will provide the other Parties with written notice of the conflicting laws or regulations and provide a copy of any such law, rule, regulation or policy together with a statement of how any such matter conflicts with the provisions of this Agreement; and
- (b) Modification Conferences. The Parties shall, within thirty (30) calendar days of the notice referred to in the preceding subsection, meet and confer in good faith and attempt to modify this Agreement to bring it into compliance with any such federal or state law, rule, regulation or policy.

2.5 *City Council Hearings*

In the event a Party believes that an amendment to this Agreement is necessary due to the effect of any federal or state law, rule, regulation or policy, the proposed amendment shall be scheduled for hearing before the City Council. The City Council shall determine the exact nature of the amendment necessitated by such federal or state law or regulation. WCSD shall have the right to

offer oral and written testimony at the hearing and may support or oppose such change. Any amendment ordered by the City Council pursuant to a hearing contemplated by this Section is subject to judicial review, but any petition for such judicial review shall be filed within twenty-five (25) calendar days from the date of the filing the notice of decision with the City Clerk.

SECTION THREE PLANNING AND DEVELOPMENT OF THE PROJECT

3.1 Permitted Uses

Subject to all the terms and conditions of this Agreement, WCSD agrees to build the Project described by the Land Plan, a public high school accommodating a total population of 2,275 persons, including students, faculty, and staff, subject to the design standards adopted in the Code and this Agreement.

3.2 Required Infrastructure Improvements

Subject to all the terms and conditions of this Agreement, WCSD agrees to construct all infrastructure necessary to support the Project as described in the Infrastructure Plan. WCSD further agrees to install, at WCSD's expense, offsite infrastructure necessary to provide services to the Project, including without limitation:

- (a) Sanitary sewer conveyance upgrades that are necessary based on the increased flows resulting from the anticipated land use changes and the topography of the site and surrounding areas. Prior to the issuance of any building permit for the primary building in the Project, WCSD shall provide a final sanitary sewer report for the Project for review and approval by the City Engineer. City cannot issue a certificate of occupancy for the Project until the sanitary sewer conveyance upgrades identified in the City's Capital Improvement Plan as Sanitary Sewer Upgrade Projects – Tyler Way and 18th Street, approved for the fiscal year ending June 30, 2020, are completed. The Parties acknowledge and agree that events occurring after the Effective Date of this Agreement, including but not limited to construction delays or decreased available funding, may delay City's completion of the sanitary sewer conveyance upgrades identified in this paragraph, and that such delay shall not be a basis for any claim under this Agreement by WCSD. City will make reasonable efforts to complete the sanitary sewer conveyance upgrades identified in this paragraph as scheduled and approved in the Capital Improvements Plan:

- (b) Improvements to streets, sidewalks, curbs, and gutters that are necessary based on the increased traffic resulting from the anticipated land use changes in the Project. This includes offsite improvements identified in the Infrastructure Plan as follows, provided that all distances specified in this subsection (b) may be modified if such modification is approved by the City Engineer:

- (i) Prior to the issuance of any certificate of occupancy for the Project, the intersection of El Rancho Drive and Sun Valley Boulevard shall be improved as follows:
 - (1) The existing westbound-to-northbound right-turn lane at the intersection of El Rancho Drive and Sun Valley Boulevard shall be converted to a free right-turn lane, and an acceleration lane at least 280 feet in length with a merge taper at least 144 feet in length shall be constructed.
 - (2) During final design of these improvements, consideration shall be given to intentionally either including or excluding within the acceleration lane the northernmost driveway of the apartment complex located at 4700 Sun Valley Boulevard, APN 035-170-01. The length of the acceleration lane may be adjusted to accommodate this northernmost driveway with the approval of the Nevada Department of Transportation and Washoe County.
- (ii) Prior to the issuance of any certificate of occupancy for the Project, WCSD shall construct a roundabout at the intersection of El Rancho Drive and Sullivan Lane. This roundabout shall have a shared through and right-turn lane on the northbound approach, a left-turn lane and a right-turn pocket on the westbound approach, and a left-turn lane and shared through and left-turn lane on the southbound approach.
- (iii) Prior to the issuance of any certificate of occupancy for the Project, WCSD shall improve the intersection of McCarran Boulevard and Sullivan Lane as follows:
 - (1) Modify the northbound lane configurations to include one left-turn lane and a shared through and right-turn lane;
 - (2) Modify the southbound lane configurations to include two left-turn lanes, one through lane, and one right-turn lane;
 - (3) Extend the eastbound left-turn pocket to include at least 600 feet of striped pocket, 170 feet of deceleration length, and 180 feet of taper to provide a conservative length for peak queue storage; and
 - (4) Modify northbound and southbound signal hardware to allow for protected left turns.
- (iv) Prior to the issuance of any certificate of occupancy for the Project, WCSD shall construct the following pedestrian and bicyclist improvements:

- (1) Bicycle lanes on the east and west sides of Sullivan Lane north of McCarran Boulevard;
 - (2) Sidewalks at such locations as are necessary to fill gaps in existing pedestrian infrastructure at the following locations: on the east side of Sullivan Lane between Wedekind Road and El Rancho Drive; on the west side of Sullivan Lane between Green Vista Drive and Niblick Drive; on the east side of El Rancho Drive between Sullivan Lane and Sun Valley Boulevard; and on the north side of McCarran Boulevard between El Rancho Drive and Sullivan Lane.
- (v) Prior to the issuance of any certificate of occupancy for the Project, WCSD shall implement a 15 miles-per-hour school zone on Sullivan Lane during the morning arrival and afternoon dismissal peak travel periods, which times shall be based on the actual scheduled hours of operation of the Project. School zone flashers shall be designed and installed to the approval of the City Engineer.
 - (vi) Prior to the issuance of any certificate of occupancy for the Project, WCSD shall provide analysis indicating optimized traffic signal timings for the a.m. peak, afternoon dismissal peak, and p.m. peak, to the approval of the agency or agencies having jurisdiction, at the following intersections:
 - (1) El Rancho Drive and McCarran Boulevard;
 - (2) El Rancho Drive and Sun Valley Boulevard; and
 - (3) Sullivan Lane and McCarran Boulevard.
 - (vii) All external and internal streets, parking facilities, and sidewalks shall be designed to City of Sparks standards. WCSD shall obtain all required permits and other approvals for all improvements from all appropriate agencies, including but not limited to City, Nevada Department of Transportation, Washoe County, and RTC.
- (c) Revegetation with native plants of those portions of the Property that are not developed as part of the Project, as identified in the Land Plan.
 - (d) Flood control and drainage improvements that are necessary based on the anticipated land use changes in the Project. WCSD shall design and construct all flood control and drainage improvements, whether onsite or offsite, required to comply with the Truckee Meadows Regional Drainage Manual and the approval of the Administrator. Design rainfall depths shall utilize the 24-hour point precipitation frequency estimates from the National Oceanic and Atmospheric Administration Atlas 14 (NOAA Atlas 14). Such flood control and drainage

improvements shall include, without limitation, any impacts or improvements to the Orr Ditch, and the following:

- (i) The Project involves diverting approximately 5,630 linear feet of the Orr Ditch to allow for the construction of structures as identified in the Land Plan. An inverted siphon, located south of the proposed high school site, will be designed to convey a minimum flow of one hundred sixty (160) cubic feet per second of water, which is the calculated capacity flow of the Orr Ditch channel upstream of the proposed siphon structure. The siphon inlet structure shall not directly or indirectly divert any channel flow over the remaining golf course, undeveloped areas of the Property, or onto adjacent properties unless the upstream channel exceeds the capacity flow condition described above. Each individual pipe of the inverted siphon low point shall be equipped with a mechanical drain. The low point drain system will outfall into the pond established for the Sun Valley Dam flood event. At no time shall the drain system be opened during a potential or current flood event. The low point drain operations shall be coordinated with the City Engineer. WCSD shall install the siphon structure and all modifications to the downstream stilling basin on Washoe County property prior to issuance of any mass grading permit for the Project, unless the Parties approve and execute an agreement whereby WCSD will indemnify City for any and all damages, including but not limited to offsite downstream impacts, that may arise from grading activities conducted prior to completion of the siphon structure and modifications to the stilling basin. WCSD is solely responsible for obtaining any necessary approvals of third parties, including without limitation the Orr Ditch Company, for any improvements or alterations to the Orr Ditch.
 - (ii) WCSD shall install and maintain a drainage system on the Property designed to carry the 100-year storm event from the Sun Valley Dam, which is estimated to be one hundred forty (140) cubic feet per second. Prior to the issuance of any building permit for the Project, WCSD and City will develop a standard maintenance and operating procedure for the maintenance and operation of the drainage system on the Property. The standard maintenance and operating procedure will include but not be limited to scheduled inspections of the system, debris removal, outlet protection maintenance, and detention facility maintenance. WCSD shall be responsible for all maintenance responsibilities on the Property.
- (e) Public safety conditions and improvements that are necessary based on the anticipated land use changes in the Project, including, without limitation:
- (i) A second fire apparatus access road shall be completed to the approval of the City Engineer and the Fire Chief prior to the storage of any combustible materials on the Property. The second fire apparatus access road shall be an all-weather material with a minimum width of twenty (20) feet, shall be

capable of maintaining access during a 100-year flood event to the approval of the City Engineer and the Fire Chief, and shall be owned and maintained by WCSD.

- (ii) Prior to storage of any combustible materials on the Property, fire hydrants shall be installed throughout the Property to the approval of the Fire Chief.
 - (iii) Prior to the issuance of any certificate of occupancy for the Project, WCSD shall create and submit a Fire Protection Plan to the Fire Chief for review and approval in accordance with the then current edition of the International Wildland Urban Interface Code. The Fire Protection Plan must contain provisions for defensible space around the perimeter of the Project.
 - (iv) WCSD shall submit an Emergency Action Plan (EAP) for the Sun Valley Dam (NV00238) located in Sparks, Nevada, to the State of Nevada Department of Conservation and Natural Resources, Division of Water Resources, for review and approval as required by law. The EAP shall address the downstream hazard conditions that are affected by development of the Project in conformance with the Land Plan and the Infrastructure Plan and to the approval of the City Engineer, recognizing that the Property is in both the emergency spill discharge and dam failure flow paths, and shall contain all information required by law or the State of Nevada Department of Conservation and Natural Resources, Division of Water Resources. The EAP shall address the maintenance of the Sun Valley Dam, the outfall of the Sun Valley Dam, all drainage and detention facilities on the Property, and the downstream stilling basin facilities south of the Property. The EAP shall be approved by the State of Nevada Department of Conservation and Natural Resources, Division of Water Resources, prior to the issuance of any certificate of occupancy for the Project.
- (f) All infrastructure, whether onsite or offsite, shall be constructed in substantial conformance with:
- (i) Applicable construction standards;
 - (ii) Design standards required for dedication to the City of Sparks, if applicable; and
 - (iii) Approval of the Administrator.
- (g) Prior to the issuance of any permit for offsite improvements, WCSD shall provide to the City a performance bond, an irrevocable letter of credit, or other form of surety in the amount of the estimated construction cost of the public improvements described in the Infrastructure Plan and in this Agreement. Such performance bond, irrevocable letter of credit, or other form of surety shall be to the approval of the Administrator in the Administrator's sole discretion and shall be accompanied

by a completed Engineer's Estimate, the form for which will be provided by the City.

3.3 Effluent

City will provide and WCSD will purchase and use for landscaping irrigation purposes a minimum of fifty (50) and a maximum of one hundred (100) acre-feet per year of treated effluent. The amount of treated effluent to be provided may be modified beyond the maximum set forth in this section if such modification is approved by the City Engineer. The terms of WCSD's purchase and use of said effluent, including the purchase price, shall be determined based on the terms and schedules set forth in Chapter 13.85 of the Code. The amount of treated effluent actually provided shall be the estimated amount needed based on and stated in final landscaping plans for the Project, which shall be reviewed by City through the Administrative Review process. WCSD shall transfer and convey to City valid, decreed Truckee River water rights in an amount equal to the amount of treated effluent provided under this Section. The amount of treated effluent to be provided shall be finally determined pursuant to an effluent agreement that shall be executed prior to issuance of any certificate of occupancy for the Project.

3.4 Entitlement Requests

- (a) City shall reasonably cooperate with WCSD to:
 - (i) Expediently process all Entitlement Requests in connection with the Property that are in compliance with the Applicable Rules, Land Plan, Infrastructure Plan, and this Agreement; and
 - (ii) Promptly consider the approval of Entitlement Requests, subject to reasonable conditions not otherwise in conflict with the Applicable Rules, Land Plan, the Infrastructure Plan, or this Agreement.
- (b) Required Conditional Use Permits for Property. The Parties acknowledge and agree that two conditional use permits are required to legally allow development of the Property as proposed in the Land Plan. One Conditional Use Permit Request is being processed under case number CU19-0003 and is required to allow the relocation of electrical transmission lines to the northern portion of the Property. A second Conditional Use Permit Request is being processed under case number CU19-0004 and is required pursuant to Section 20.04.011 of the Code to allow development on the Property due to the slopes existing on the Property. WCSD has submitted both Conditional Use Permit Requests, and the terms and conditions of any approvals of such Conditional Use Permit Requests shall be deemed in conformance with and incorporated by reference as part of the Land Plan, Infrastructure Plan, and this Agreement.
- (c) Concurrent Processing of Initial Entitlement Requests. The Parties agree that the most efficient and expeditious manner in which to process this Agreement and the Conditional Use Permit Requests described in Section 3.4(b) is to consolidate final

approval of all three requests at the same meeting of the City Council. The City agrees to process this Agreement and the Conditional Use Permit Requests described in Section 3.4(b) concurrently in order to present them to the Planning Commission and the City Council as a single set. WCSD agrees to waive any statutory or Code requirements related to limitations of time for processing individual Entitlement Requests in order to facilitate action on this Agreement and the Conditional Use Permit Requests described in Section 3.4(b) at single meetings of the Planning Commission and City Council. WCSD understands and acknowledges that but for this Agreement, the Planning Commission would have authority to finally decide whether to approve or deny the Conditional Use Permit Requests subject to appeal or review as described in Section 20.05.013 of the Code, but WCSD specifically and expressly agrees that the City Council will review and take action upon the Conditional Use Permit Requests during the same meeting at which the City Council reviews and takes action upon this Agreement. WCSD acknowledges and agrees that notwithstanding any statute, ordinance, or law, any action taken by the Planning Commission on the Conditional Use Permit Requests shall be of no force or effect until such action is reviewed and acted upon by City Council.

- (d) Other Entitlement Requests. Except as provided herein, all other Entitlement Request applications shall be processed by City according to the Applicable Rules. WCSD agrees and acknowledges that additional Entitlement Requests, including but not limited to one or more Administrative Reviews, will be required for the development of the Project. Specifically, Section 20.02.013 of the Code requires an Administrative Review for the development of any school. Such additional Entitlement Requests enable the Administrator to evaluate for conformance with Code the building elevations, hydrology, grading, photometric plan, parking plan, and other design elements of the Project. The Parties acknowledge that the procedures for processing such Entitlement Request applications are governed by the Code. In addition, any additional application requirements delineated herein shall be supplemental and in addition to such Code requirements. The Parties acknowledge and agree that nothing contained in this Agreement constitutes in any way a pre-approval or authorization of any Entitlement Request. With respect to those future Entitlement Requests that are reasonably anticipated by the Parties, the Parties acknowledge and agree as follows:
 - (i) The Land Plan provides for a high school with a total population of 2,275 persons, including students, faculty, and staff, and 1,366 parking spaces within the Project. This parking ratio represents a ten (10) percent reduction in required parking from the parking standard set forth in Section 20.04.009 of the Code. The minor deviation process set forth in Section 20.05.010 of the Code permits such a reduction. Upon approval of this Agreement, this minor deviation shall be deemed approved as part of the Land Plan.
 - (ii) WCSD must submit a lighting and photometric plan with any Administrative Review for the Project. In addition to all requirements of the

Code, such lighting and photometric plan shall be developed in coordination with the Reno-Tahoe Airport Authority and shall provide for adequate screening and line-of-sight shielding from lights on athletic fields associated with the Project to the approval of the Administrator. Nothing contained in this Agreement constitutes in any way a pre-approval or authorization of an Administrative Review or lighting and photometric plan.

- (iii) The Parties acknowledge and agree that Section 20.03.040 of the Code limits the hours that construction activities may be performed. WCSD or its agents or contractors may apply for a temporary use permit to conduct construction activities outside of the hours permitted by the Code if weather or safety conditions so require. Nothing contained in this Agreement constitutes in any way a pre-approval or authorization of a temporary use permit for this purpose. Notwithstanding any other provision of this Agreement, if Section 20.03.040 of the Code is amended to extend the hours during which construction activities are permitted, the more permissive version of Section 20.03.040 of the Code shall apply.

3.5 Modification or Amendment of the Agreement

This Agreement may not be modified or amended, except by the mutual written agreement of the Parties.

3.6 Deviation from Design Standards

Any request for variance or deviation from a particular requirement of the Code shall be processed and considered according to the requirements of the Code in effect on the Effective Date, unless otherwise agreed to by the Parties.

3.7 Anti-Moratorium

The Parties agree that no moratorium or future ordinance, resolution or other land use rule or regulation imposing a limitation on the construction, rate, timing, or sequencing of the development of property, including those that affect building permits, occupancy permits or other entitlements to use or develop land that are issued or granted by City shall apply to the development of the Project or any portion thereof. Notwithstanding the foregoing, City may adopt ordinances, resolutions, or rules or regulations that are necessary to:

- (a) Comply with any state or federal laws or regulations as provided by Section 2.4, above;
- (b) Alleviate or otherwise contain a legitimate, bona fide harmful and/or noxious use of the Property, in which event the ordinance shall contain the most minimal and least intrusive alternative possible, and shall not, in any event, be imposed arbitrarily; or

- (c) Maintain City's compliance with federal and state sewerage, storm water conveyance, storm water discharge, water system, and utility regulations and permits. The Parties acknowledge and agree that nothing contained in this Agreement constitutes in any way a reservation of sanitary sewer capacity.

3.8 *Property Dedications to City*

Except as provided herein, any real property (and fixtures thereupon) transferred or dedicated to City or any other public entity shall be free and clear of any mortgages, deeds of trust, liens or other encumbrances. Nothing contained in this Agreement constitutes in any way a pre-approval or acceptance by the City of any transfer or dedication of real property to the City.

3.9 *Inclusion of Additional Property*

The City Council will consider the inclusion of additional property ("Additional Parcels") in the Project by formal amendment of this Agreement provided that:

- (a) Each Additional Parcel is contiguous to some portion of the Property or immediately across the street;
- (b) Development of each Additional Parcel must conform to this Agreement; and
- (c) WCSD obtains the necessary annexation, zoning, and land use approvals and approval of all necessary technical studies for each Additional Parcel. In no event shall this Agreement be amended to include Additional Parcels without contemporaneously amending Exhibits A through D to reflect the proposed expansion of the Project.

The Parties agree that nothing contained in this Agreement constitutes in any way a pre-approval or authorization of the inclusion of Additional Parcels in the Project.

SECTION FOUR REVIEW OF DEVELOPMENT

4.1 *Frequency of Review*

At City's request, WCSD shall appear before the City Council to review WCSD's compliance with the terms of this Agreement pursuant to NRS 278.0205. The Parties agree that the first review shall occur no later than twelve (12) months after the Effective Date of this Agreement, and WCSD shall provide an updated report every twelve (12) months on the anniversary date of that first review thereafter, or as otherwise requested by City upon thirty (30) days' written notice to WCSD. Within sixty (60) days after issuance of the last certificate of occupancy for the Project, WCSD shall appear before the City Council for a final review, after which WCSD's review obligations associated with this Development Agreement shall be deemed satisfied and complete. For any such review, WCSD shall provide, and City shall review, a report submitted by WCSD documenting

the extent of WCSD's and City's material compliance with the terms of this Agreement during the preceding reporting period. The report shall contain information regarding the progress of the Project, including without limitation the status of development within the Project and the anticipated phases of development for the next calendar year.

In the event WCSD fails to submit such a report within thirty (30) days following written notice from City that the deadline for such a report has passed, WCSD shall be in default of this provision and City shall prepare such a report and conduct the required review in such form and manner as City may determine in its sole discretion. City shall charge WCSD for its reasonable expenses, fees, and costs incurred in conducting such review and preparing such report. If at the time of review an issue not previously identified in writing is required to be addressed, the review may, at the request of either Party, be continued to afford reasonable time for response.

4.2 *Opportunity to be Heard*

The report required by this Section shall be considered solely by the City Council. WCSD shall be permitted an opportunity to be heard orally and in writing before the City Council regarding performance of the Parties under this Agreement.

4.3 *Action by the City Council*

At the conclusion of the public hearing on the review, the City Council may take any action permitted by NRS 278.0205, NRS 278.02053, and/or this Agreement.

SECTION FIVE DEFAULT

5.1 *Material Default; Opportunity to Cure*

In the event of any material default of any provision of this Agreement, the Party alleging such noncompliance shall deliver to the other by certified mail a ten (10) day notice of default and opportunity to cure. The time of notice shall be measured from the date of receipt of the certified mailing. The notice of noncompliance shall specify the nature of the alleged noncompliance and the manner in which it may be satisfactorily corrected, during which ten (10) day period the party alleged to be in noncompliance shall not be considered in default for the purposes of termination or institution of legal proceedings.

If the material default cannot reasonably be cured within the ten (10) day cure period, the defaulting Party may timely cure the material default for purposes of this Section if it commences the appropriate remedial action within the ten (10) day cure period and thereafter diligently prosecutes such action to completion within a period of time acceptable to the non-breaching Party. If no agreement between the Parties is reached regarding the appropriate timeframe for remedial action, the cure period shall not be longer than ninety (90) days from the date on which the ten (10) day notice of material default and opportunity to cure was received by the defaulting Party.

If the material default is corrected, then no default shall exist and the noticing Party shall take no further action. If the material default is not corrected within the relevant cure period, the defaulting Party is in default, and the Party alleging material default may elect any one or more of the following courses.

- (a) Amendment or Termination by City. After proper notice and the expiration of the above-referenced period for WCSD to correct the alleged material default, the City may give notice of intent to amend or terminate this Agreement as authorized by NRS Chapter 278. Following any such notice of intent to amend or terminate, the matter shall be scheduled and noticed as required by law for consideration and review solely by the City Council. Following consideration of the evidence presented before the City Council and a finding that a material default has occurred by WCSD and remains uncured, City may amend or terminate this Agreement. Termination shall not in any manner rescind, modify, or terminate any Entitlement held in the Project and/or in favor of WCSD, as determined under the Applicable Rules, existing or received as of the date of the termination. WCSD shall have twenty-five (25) days after receipt of written notice of termination to institute legal action pursuant to this Section to determine whether a material default existed and whether City was entitled to terminate this Agreement.
- (b) Termination by WCSD. In the event City materially defaults under this Agreement, WCSD shall have the right to terminate this Agreement after providing notice and an opportunity to cure as set forth in this Section. WCSD shall have the option, in its discretion, to maintain this Agreement in effect, and seek to enforce all of City's obligations by pursuing an action for specific performance or other appropriate judicial remedy.

5.2 Force Majeure; Unavoidable Delay; Extension of Time

Neither Party hereunder shall be deemed to be in default, and performance shall be excused, where delays or defaults are caused by war, national disasters, terrorist attacks, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, third-party lawsuits, or acts of God. If written notice of any such delay is given to one Party or the other within thirty (30) days after the commencement thereof, an automatic extension of time shall be granted coextensive with the period of the enforced delay, or longer as may be required by circumstances or as may be subsequently agreed to between City and WCSD.

5.3 Limitation on Monetary Damages

The Parties agree that they would not have entered into this Agreement if either were to be liable for monetary damages based upon a breach of this Agreement or any other allegation or cause of action based upon or with respect to this Agreement. Accordingly, the Parties (or their permitted assigns) may pursue any course of action at law or in equity available for breach of contract, except that neither Party shall be liable to the other or to any other person or entity for any monetary damages based upon a breach of this Agreement or any other allegation or cause of action based upon or with respect to this Agreement.

5.4 *Venue*

Jurisdiction for judicial review under this Agreement shall rest exclusively with the Second Judicial District Court, County of Washoe, State of Nevada or the United States District Court, District of Nevada. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, unless a Party is seeking injunctive relief, the Parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.

5.5 *Waiver*

Failure or delay in giving notice of default shall not constitute a waiver of any default. Except as otherwise expressly provided in this Agreement, any failure or delay by any Party in asserting any of its rights or remedies in respect of any default shall not operate as a waiver of any default or any such rights or remedies, or deprive such Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any of its rights or remedies.

5.6 *Applicable Laws; Attorney Fees*

This Agreement shall be construed and enforced in accordance with the laws of the State of Nevada. Each Party shall bear its own attorney fees and court costs in connection with any legal proceeding hereunder, and in no event shall any prevailing Party in such a legal proceeding be entitled to an award of attorney fees.

SECTION SIX GENERAL PROVISIONS

6.1 *Term of Agreement*

The Term of this Agreement shall commence upon the Effective Date. If an Administrative Review for the Project is approved within three (3) years of the Effective Date or within any extension of the Term of this Agreement, this Agreement shall remain in full force and effect for three (3) years after the date of the Administrative Review approval, or thirty (30) days after issuance of the last certificate of occupancy for the Project, whichever first occurs. If no Administrative Review for the Project is approved within three (3) years of the Effective Date, this Agreement shall automatically terminate unless the Term of this Agreement has been extended pursuant to this Section. WCSD shall have the right to request one extension of the Term of this Agreement for an additional two (2) years upon the following conditions:

- (a) WCSD provides written notice of such request to City at least one hundred eighty (180) days prior to the expiration of the original Term of this Agreement;

- (b) WCSD is not in default of this Agreement; and
- (c) The City Council finds that an extension is in the best interests of the City.

6.2 *Expiration of the Agreement*

Expiration of the Agreement Term pursuant to Section 6.1 shall not in any manner rescind, modify, or terminate any Entitlement in the Project and/or in favor of WCSD, as determined under the Applicable Rules, existing or received as of the date of the expiration, and future development of any other portion of the Project not holding such Entitlements shall be subject to all applicable Codes in effect at the time of development. Notwithstanding any other provision of this Agreement, the Conditional Use Permit Requests contemplated by this Agreement shall expire in accordance with the terms thereof.

6.3 *Assignment*

Neither Party may sell, assign, or transfer any of its rights or obligations under this Agreement without the express written consent of the other Party, which may refuse consent for any reason in its sole discretion.

6.4 *Indemnity; Hold Harmless*

Except as expressly provided in this Agreement, WCSD shall hold City, its officers, agents, employees, and representatives harmless from liability for damage or claims for damage for personal injury including death and claims for property damage which may arise from the direct or indirect operations of WCSD or those contractors, subcontractors, agents, employees, or other persons acting on WCSD's behalf that relate to the development of the Project. WCSD agrees to and shall defend City and its officers, agents, employees, and representatives from actions for damages caused or alleged to have been caused by reason of WCSD's activities in connection with the development of the Project other than any challenges to the validity of this Agreement or City's approval of related Entitlements. The Parties agree to equally pay all costs and attorney fees for a defense in any legal action filed in a court of competent jurisdiction by a third party challenging the validity of this Agreement. The provisions of this Section shall not apply to the extent such damage, liability, or claim is proximately caused by the intentional or negligent act of City, its officers, agents, employees, or representatives. This Section shall survive any termination of this Agreement.

6.5 *Binding Effect of Agreement*

Subject to the terms of this Agreement, the burdens of this Agreement bind, and the benefits of this Agreement inure to, the Parties' respective assigns and successors-in-interest and the Property that is the subject of this Agreement.

6.6 Relationship of Parties

It is understood and agreed that the contractual relationship between City and WCSD is such that WCSD is not an agent of City for any purpose and City is not an agent of WCSD for any purpose. Nothing contained in this Agreement shall be construed as creating a joint venture or partnership.

6.7 Counterparts

This Agreement may be executed at different times and in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any signature page of this Agreement may be detached from any counterpart without impairing the legal effect to any signatures thereon, and may be attached to another counterpart, identical in form thereto, but having attached to it one or more additional signature pages.

Delivery of a counterpart by facsimile or portable document format (pdf) through electronic mail transmission shall be as binding an execution and delivery of this Agreement by such Party as if the Party had delivered an actual physical original of this Agreement with an ink signature from such Party. Any Party delivering by facsimile or electronic mail transmission shall promptly thereafter deliver an executed counterpart original hereof to the other Party.

6.8 Notices

All notices, demands and correspondence required or provided for under this Agreement shall be in writing. Delivery may be accomplished in person, by certified mail (postage prepaid return receipt requested), or via electronic mail transmission. Mail notices shall be addressed as follows:

To City: City of Sparks
Attn: City Manager
431 Prater Way
Sparks, Nevada 89431

To WCSD: Washoe County School District
Attn: Pete Etchart, COO
425 East Ninth Street
Reno, Nevada 89512

Any Party may change its address by giving notice in writing to the other Party and thereafter notices, demands, and other correspondence shall be addressed and transmitted to the new address. Notices given in the manner described shall be deemed delivered on the day of personal delivery or the date delivery of mail is first attempted.

6.9 Entire Agreement

This Agreement constitutes the entire understanding and agreement of the Parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all

negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof.

6.10 Waiver

All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate officers of WCSD or approved by the City Council, as the case may be.

6.11 Recording; Amendments

Promptly after execution hereof, an executed original of this Agreement shall be recorded in the Official Records of Washoe County, Nevada. All amendments hereto must be in writing signed by the appropriate officers of City and WCSD in a form suitable for recordation in the Official Records of Washoe County, Nevada. Upon completion of the performance of this Agreement, a statement evidencing said completion shall be signed by the appropriate officers of the City and WCSD and shall be recorded in the Official Records of Washoe County, Nevada. A revocation or termination shall be signed by the appropriate officers of the City or WCSD and shall be recorded in the Official Records of Washoe County, Nevada.

6.12 Headings; Exhibits; Cross References

The recitals, headings and captions used in this Agreement are for convenience and ease of reference only and shall not be used to construe, interpret, expand or limit the terms of this Agreement. All exhibits attached to this Agreement are incorporated herein by the references contained herein. Any term used in an exhibit hereto shall have the same meaning as in this Agreement unless otherwise defined in such exhibit. All references in this Agreement to sections and exhibits shall be to sections and exhibits to this Agreement, unless otherwise specified.

6.13 Severability of Terms

If any term or other provision of this Agreement is held to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect, provided that the invalidity, illegality or unenforceability of such terms does not materially impair the Parties' ability to consummate the transactions contemplated hereby. If any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall, if possible, amend this Agreement so as to affect the original intention of the Parties.

6.14 Exercise of Discretion

Wherever a Party to this Agreement has discretion to make a decision, it shall be required that such discretion be exercised reasonably unless otherwise explicitly provided in the particular instance that such decision may be made in the Party's "sole" or "absolute" discretion or where otherwise allowed by applicable law.

6.15 *No Third-Party Beneficiary*

This Agreement is intended to be for the exclusive benefit of the Parties hereto and their permitted assignees, if any. No third-party beneficiary to this Agreement is contemplated and none shall be construed or inferred from the terms hereof. In particular, no person purchasing or acquiring title to land within the Project, residing outside the Project, or attending or planning to attend school or any event in the Project shall, as a result of such purchase, acquisition, residence, or attendance, have any right to enforce any obligation of WCSD or City nor any right or cause of action for any alleged breach of any obligation hereunder by any Party hereto.

6.16 *Gender Neutral*

In this Agreement (unless the context requires otherwise), the masculine, feminine and neutral genders and the singular and the plural include one another.

[Signatures on following page]

IN WITNESS WHEREOF, this Agreement has been executed by the Parties on the day and year first above written.

CITY OF SPARKS, a municipal corporation of the State of Nevada

WASHOE COUNTY SCHOOL DISTRICT, a county school district of the State of Nevada

By: _____
Ron Smith, Mayor

By: _____
Katy Simon Holland,
President of the Board of Trustees

ATTEST:

APPROVED AS TO FORM

By: _____
Lisa Hunderman, City Clerk

By: _____
Neil Rombardo,
Chief General Counsel

APPROVED AS TO FORM

By: _____
Chester H. Adams, City Attorney

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me this _____ day of _____, 2019,
by _____.

Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me this _____ day of _____, 2019,
by _____.

Notary Public