

CONSTRUCTION PROVISIONS

(Unless otherwise specified herein, capitalized words have the meaning ascribed to them in the Impact Fee Credit Agreement or reimbursement agreement to which this is attached, or the Impact Fee Agreement referenced therein -- which together with these provisions are collectively referred to as the Agreement.)

●1.1 Prior approvals; changes and assignments. Prior to commencement of construction of each facility, Owner shall submit for approval by the Department: (i) detailed plans and specifications (ii) a proposed construction budget, (iii) proposed schedule, and (iv) list of contractors and subcontractors or persons who will perform the work. Approved items become a part of this Agreement and changes must be approved by the Department. No right hereunder may be assigned and no duty hereunder may be delegated without all parties' consent.

●1.2 Completion and payment bonds. If provisional credits are used, or if progress payments are authorized, the Department may require the posting of completion and a payment bonds (or a builder control arrangement in lieu of a payment bond) before the before construction starts.

●1.3 Insurance. Owner shall have and provide proof of insurance satisfactory to the Department before commencing construction and shall pay all premiums and keep all such insurance in effect during the entire course of construction. Insurance must include (i) industrial insurance coverage and protection as required by NRS Chapters 616A-D, 617 and 618, (ii) comprehensive general liability with at least a \$ 2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and, if required by the Department, coverage for products liability and completed operations; (iii) automobile liability insurance as required by law; and (iv) any other insurance reasonably required by the Department based on unique circumstances of the construction activity. If Owner is constructing improvements on land that is owned by the City, Owner shall cause an endorsement to be issued naming City as an additional insured.

●1.4 Pursuit of construction; change orders; risks.

A. Owner agrees to commence and complete construction in accordance with the schedule in the attached agreement or as otherwise approved by the Department. Owner agrees to diligently pursue construction at all times, and if construction is commenced and then stops for more than 120 days, City may declare a default as provided below. Owner agrees confer with the Department at least monthly to review costs and progress of the construction.

B. Owner may approve change orders or incur expense overruns without advance approval of the Department if the sum total of all change orders and overruns do not exceed the "Change Order Threshold" amount specified in the attached agreement. Changes in excess of the Change Order Threshold must be approved by the City Council before costs are incurred.

C. All risks of loss or destruction of work or facilities in progress shall be borne by Owner.

●1.5 Inspections; final inspection; lien releases; final amounts of credits or reimbursement, transfer of ownership.

A. Owner agrees that City may periodically inspect the construction of the improvements.

B. Upon completion of construction offer the improvements for final inspection by the Department and to complete all "punch list" items reasonably required by the Department.

C. Upon completion of the "punch list," Owner shall submit proof of the actual costs of construction and the Department shall determine a final payment amount for the improvement which shall not exceed the lesser of (i) the actual costs of construction, and (ii) the initial construction budget amount stated in the attached agreement plus the Change Order Threshold Amount plus all other changes approved by the City Council.

D. Prior to the award of final credits or prior to each reimbursement, Owner shall furnish lien releases from all subcontractors, laborers, and materialmen who supplied equipment or materials to the project.

E. Prior to final payment or award of final credits, Owner shall deliver all deeds, bills of sale, maps or other

documents conveying title to or dedicating the improvements to City. Owner shall deliver to City all drawings, blueprints, plans and specifications which shall become the property of the City.

●1.6 Construction standards, practices and indemnification.

A. Owner warrants, represents and agrees that all improvements constructed by Owner hereunder (i) shall be built in accordance with plans and specifications approved by the Department, and in accordance with the standards and specifications in the Orange Book in effect at the time of construction, (ii) shall be built in compliance with Applicable Law, (iii) shall be constructed in a workmanlike manner, (iv) shall be built with new materials (unless otherwise agreed) which shall be free from faults and defects, and (v) shall be free from the release of hazardous substances as defined NRS 40.504 and 40.505. The ■Orange Book■ means the latest edition of the ■Standard Specifications for Public Works Construction■ sponsored and distributed by the Regional Transportation Commission in conjunction with the City and other local government entities.

B. Owner shall follow best management practices regarding the management of the staging, storage and work sites and shall at all times keep the premises free from accumulation of waste materials, and at the completion of the work shall remove all waste materials, rubbish, tools, supplies and equipment.

C. To the fullest extent permitted by law, Owner shall indemnify, hold harmless and defend the indemnified parties from and against all liability arising out of or resulting from the work and caused in whole or in part by an act or omission of Owner or a related party. ■Indemnified parties■ includes the City, its officers, employees, agents and contractors. ■Liability■ includes all claims, actions, damages, losses, judgments, injuries, costs and expenses, including but not limited to attorneys' fees and costs, including those related to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom. ■Arising out of the work■ includes all construction activities for all improvements constructed by Owner or a related party. ■An act or omission■ includes any act, negligence, or omission. ■Of Owner or a related party■ includes Owner and all officers (including managers and members), employees, agents, contractors and subcontractors of Owner as well as anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. The obligations of Owner hereunder shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section. The indemnification shall not be diminished or limited in any way to the total limits of insurance required in this contract or otherwise available to Owner or subcontractors. If the liability is asserted by an employee of Owner or a related party, the indemnification herein is not limited to damages, compensation or benefits payable by or for the Owner or related party under worker's compensation acts, disability benefit acts or other employee benefit acts. City shall be permitted to participate, if it chooses, in the defense of any action claiming liability, even if City is indemnified hereunder. City may set off any of its rights under this subsection against any consideration it provides under this agreement.

●1.7 Licensing requirements; compliance with laws; employment practices; public works.

A. Owner agrees to obtain and continuously maintain all licenses (including contractor's licenses, business licenses etc) and permits (including building permits, storm water pollution prevention permits and other environmental permits) required to do the work and to do business in the State of Nevada, County of Washoe, and City of Sparks.

B. In addition to complying with Applicable Law with respect to the Project, Owner agrees to pay all required taxes, fees, unemployment premiums, industrial insurance premiums or payments, and to comply with all laws of the State of Nevada, County of Washoe, and City of Sparks.

C. In connection with the performance of work under this agreement, Owner agrees not to discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, sexual orientation or age, including, without limitation, with regard to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including, without limitation, apprenticeship. Owner agrees to prohibit any such discrimination in any agreements Owner has with contractors and subcontractors.

D. Owner agrees to treat City employees with due respect and not to threaten, harass (including illegal sexual harassment as defined by City policy), assault, batter or cause injury to any City employee.

E. Due to the nature of the financing and other circumstances, the parties do not contemplate that the

work constitutes a public work under NRS Chapter 338, but in the event that any portion of the work is determined to be a public works project or is otherwise covered by NRS Chapter 338, this Agreement may be cancelled by either party. If it is not cancelled, Owner agrees to comply with all applicable provisions of NRS Chapter 338, including, but not limited to, paying prevailing wages, and following employment practices prescribed therein.

●1.9 No agency, partnership or joint venture. It is specifically understood and agreed to by and between the parties that (i) the any improvements made hereunder are private and the city has no interest in or responsibilities for, or due to, third parties concerning any improvements until such time, and only until such time, that City accepts the dedication of such improvements in accordance with Nevada law, (ii) Owner shall have full power over and exclusive control over them, and (iii) City and Owner hereby renounce the existence of any form of agency relationship, joint venture, partnership or other co-relationship and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer.

●1.10 City obligations City represents, warrants and agrees:

- A. To provide all surveys, drawings, plans and specifications it has regarding the project upon request.
- B. To obtain all easement or other property rights necessary to accomplish the work unless the land is being dedicated by Owner.

DEDICATION PROVISIONS

With respect to any land or improvements to be dedicated under this Agreement:

●2.1. Preliminary Title Report. Prior to the award of final credits or any first reimbursement, Owner shall provide a preliminary title report furnished by a title company satisfactory to the Department. The Department shall review the title report and determine the "permitted exceptions" acceptable to the City.

●2.2 Included in dedication. Unless specifically excluded in the dedication map or deed, dedication includes all is together with all tenements, hereditaments, and appurtenances (including water rights, permits and mineral rights) belonging to such property or in any way pertaining, and all improvements, buildings, and fixtures thereon.

●2.3 Warranties, representations, agreements. With the delivery of the Dedication Deed, Owner warrants and represents to City:

A. That, except as disclosed in the Preliminary Title Report approved by City, Owner holds good and marketable title to the property in fee simple without encumbrances, liens, restrictions, covenants, conditions, rights of redemption, or other title exceptions. There are no leases or tenants or persons occupying the property. There are no boundary disputes involving or encroachments upon or by any adjacent properties.

B. That Owner dedicates the property free and clear of all liens (including but not limited to mechanics liens), encumbrances, and conditions except for the permitted exceptions approved by City.

C. That Owner has the authority to dedicate the property and has obtained all approvals and consents and all required parties have joined in the instrument dedicating the property under (i) Owner's enabling documents (corporate charter, partnership agreement, operating agreement or the like), (ii) Nevada's community property laws, (iii) any court order, contract, trust agreement, or regulatory requirement binding on Owner, and (iii) the laws of Nevada and the state in which Owner has its principal office.

D. That to the best of Owner's knowledge, there is no existing or pending litigation regarding the condition or ownership of the property, and there are no claims, no condemnations or sales in lieu thereof, no foreclosures or deeds in lieu of foreclosure, and no environmental or health regulatory actions in progress involving the property dedicated, nor, to the knowledge of Owner, nor has any such action, suit, proceeding or claim been threatened.

E. That Owner is not a debtor under any bankruptcy law and the property is not part of any bankruptcy estate.

F. That Owner has complied with all Environmental Laws with respect to the property and has not, and has no knowledge of any release of any Hazardous Substance on or about the property. Except as otherwise disclosed, Owner has no knowledge that the property contains an underground storage tank. ■Environmental Laws• means all city or county ordinances, all federal or state statutes relating to the protection of health, safety and the indoor and outdoor environment; the conservation, management or use of natural resources and wildlife; the protection or use of surface water or ground water; or the management, manufacture, possession, presence, use generation, transportation, treatment of Hazardous Substances, including but not limited to laws identified in NRS 40.504 as those laws are amended from time to time. ■Hazardous Substance• has the meaning set out in NRS 40.504 as now existing or hereafter amended, and includes, without limitation, asbestos, polychlorinated biphenyls and petroleum. ■Release• has the meaning ascribed in NRS 40.505.

G. That Owner has no actual knowledge of any dangerous or hazardous condition of the property which may cause damage or harm to persons using it in accordance with the purposes of the dedication, or which may frustrate the purposes of the dedication except as disclosed to City prior to dedication.

H. That the property currently has direct and unimpeded access to all adjacent streets.

I. That Owner has paid all taxes and assessments (including special assessments and assessments by common interest communities) which are or may become liens on the Property as they have become due, and has not received any notices from any taxing or assessment authority that taxes or assessments have not been paid.

J. That owner agrees to hold harmless, defend (at Owner's expense) and indemnify City from all liability or loss of title or property rights arising out of the breach of any of the foregoing.

Default, Notice and remedies

3.1 Excuse due to force majeure.

Except as provided elsewhere herein, if a ■force majeure• makes performance of an obligation or cure of a breach or default impossible, such performance or cure is excused for the duration of the force majeure provided that the obligated party (i) within a reasonable time after the commencement of the force majeure notifies the other party of the nature of the force majeure, when it commenced, why it makes performance or cure impossible, and the expected duration (if known), and (ii) agrees to and does in fact diligently pursue remediation of the effects of the force majeure, and (iii) agrees to notify the other party immediately when it becomes possible to commence efforts to cure the default. A ■force majeure• is defined as (i) without the fault of and beyond the reasonable control of the obligated party, a war; insurrection; riot; flood; earthquake; fire; casualty; act of God; act of a public enemy; quarantine restriction or other effect of epidemic or disease; freight embargo; weather-caused delay; lack of transportation attributable to any of these; or (ii) labor strikes, boycotts or picketing (unless the labor action is taken because of an alleged violation of the prevailing wage provisions in this Agreement, if any); (iii) provided, however, that if the breach or default is the failure to pay money, the force majeure must actually prevent access to or payment from a bank account or payment mechanism, such as during a banking holiday, moratorium, or sabotage of wire or automated transfer systems. A force majeure does not include general economic or market conditions, or the financial condition of a party even if they are influenced by any of the foregoing. A force majeure is deemed to cease for purposes of this Agreement and a party is deemed to be in breach of an obligation or cure when it becomes possible for the obligated party to commence to perform the obligation or cure.

3.2 Default, notice and right to cure.

A. Default. Subject to the provisions above regarding force majeure, a default occurs when (i) any representation of a material fact expressed herein was false at the time it was made, or, if a continuing representation, becomes false as a result of a subsequent event or occurrence; (ii) any warranty made herein is breached at the time made or, if a continuing warranty, is breached as a result of a subsequent event or occurrence; (iii) any party repudiates, breaches or fails to perform any covenant, material term or provision in the Agreement; (iv) an event required to occur does not occur by the time required; or (v) any event otherwise described in the Agreement as a breach or default.

- B. Notice and right to cure. Unless otherwise specified,
1. In the event of a default of an obligation to pay money, the non-defaulting party shall give notice and the obligor shall have TEN DAYS from the date that the notice is deemed given to cure the default.
 2. In the event of the default of a provision other than an obligation to pay money, the non-defaulting party shall provide notice and the defaulting party shall have THIRTY DAYS from the date that the notice is given to cure the default.

3.3 Remedies.

A. Remedies by City: If the event of a default is suffered or caused by Owner and not cured within the period of time specified, City may, subject to any specific provision regarding remedies herein, (i) order that work be stopped, the violation of which shall be a default; (ii) suspend any counter-performance due hereunder; (iii) revoke any provisional credits awarded for the project (iv) refuse to make any reimbursement payments, (v) terminate this Agreement; (vi) complete with its own resources or enter into a public works contract to complete any unfinished work and bring an action to recover the costs; (viii) bring an action for specific performance if the default involves breach of an obligation to dedicate or sell real property; and/or (viii) pursue any other remedy provided by law or specifically provided for in this Agreement.

B. Remedies by Owner If the default is caused or suffered by City and not cured within the time specified, Owner may, subject to any specific provision regarding remedies herein, (i) suspend any counter performance due from Owner hereunder, (ii) terminate this Agreement; or (iii) pursue any other remedy provided by law or specifically provided in this Agreement.

C. Remedies cumulative; waivers. All remedies stated in this Agreement are cumulative with each other and with any remedy afforded in law or equity, including bringing legal action for damages or other relief including specific performance for agreements to dedicate or sell real property. The election of any remedy does not constitute a waiver of any other remedy.

3.4 Waivers. Any forbearance, inaction, or failure to promptly pursue any remedy (whether intentional or negligent) shall not be deemed a waiver of any default or remedy. Waivers must be expressed in writing signed by the waiving party, and a waiver of a default is limited to the specific default identified in the written waiver and does not constitute a course of dealing or implication that similar defaults will be waived in the future.

General Terms

The general terms stated in the Impact Fee Agreement which is incorporated into the Impact Fee Credit Agreement shall apply to this agreement.