

APN: 514-081-01 – City of Sparks
APN: 516-281-03 – David L. Hurt

Agreement TO COOPERATE IN THE SALE OF City OWNED PROPERTY

1. Parties and descriptions

| | |
|--------------|-----------------------------------------------------------------------------------------------------------|
| Owner | David L. Hurt 2770 Spanish Springs Road Sparks, NV 89436-0621 APN: 516-281-03 |
| Owner | City of Sparks, a municipal corporation 431 Prater Way Sparks, Nevada 89431-0857 APN: 514-081-01 |

2. Recitals.

A. WHEREAS David L Hurt (Hurt) is the fee owner of APN 516-281-03 (Hurt Property) as more particularly described on Exhibit “A” attached hereto and by this reference made a part hereof; and

B. WHEREAS The City of Sparks (City) is the fee owner of APN 514-081-01 (“City Property”) as more particularly described on Exhibit “B” attached hereto and by this reference made a part hereof. City has determined that it is in the best interest of the City for the purposes of economic development as defined in NRS 268.063(4) to sell its property in conjunction with the Hurt property; and

C. WHEREAS Hurt has entered into an agreement to sell the described Hurt property to a prospective buyer (Buyer); and

D. WHEREAS The City and Hurt are entering into this Agreement to Cooperate in the Sale of City Owned Property (the Agreement) in order to facilitate the development of the combined City and Hurt property in accordance with NRS 268.063(4); and

E. WHEREAS City by signing this Agreement shall not incur any liability for the Hurt property and Hurt by signing this Agreement shall not incur any liability for the City property.

NOW THEREFORE, the parties agree as follows.

§3.01 Closing.

For the term of this Agreement properties as described in Exhibit A and Exhibit B shall close together and the sale of each shall be contingent of the sale of the other for the purpose of residential development as set forth in NRS 268.0639(4)

§3.02 Term.

This Agreement shall commence on the date the Agreement is signed by the City, and is intended to be a temporary agreement not to exceed 250 days, unless extended in writing by mutual agreement of the parties, so long as Hurt is not in default hereunder.

Hurt agrees that any decision to sell the City Property shall be solely at the discretion of City but shall be contingent upon the sale of Hurt Property. Both the City Property and the Hurt Property will be sold as a whole, or not at all, during the term of this Agreement.

The term of this Agreement is proposed and set forth in order to allow time for Buyer to enter into and satisfy the terms of a Purchase and Sale Agreement (PSA) with City for the City Property. Said PSA is anticipated to include requirements that the Buyer perform their due diligence and to apply for and have the City consider approval of all land use entitlements necessary for the intended future use.

No part of this Agreement shall be interpreted as a guarantee or commitment that land use entitlements shall be granted or that the City Property shall be sold. All entitlements shall be contingent on City Council approval. The sale of the City Property is contingent on the approval of the City Council.

§3.03 Sale of property; fees and proceeds

A. The City shall obtain summary and review appraisals for City Property separate and distinct from any and all appraisals performed for the Hurt property. The City shall not be responsible for obtaining or paying for any appraisals on Hurt property. Hurt shall not be responsible for obtaining or paying for any appraisals on City property.

B. Price and other considerations and conditions for the sale of the City Property shall be described in detail in a PSA between the City and the Buyer. The price and conditions of

sale for the City Property shall be contingent upon receipt of approval from City Council.

C. Real estate broker commissions. Hurt and Buyer are solely responsible for the payment of any real estate broker commissions for this transaction. The City shall not pay any real estate broker commissions.

§3.04 Warranties, reservations and obligations of City.

A. City represents that it has good and marketable title to the City Property identified herein as evidenced by a Commitment For Title Insurance issued by a title insurance company to be selected and agreed to by the parties to this Agreement.

B. City agrees to pay its share of the closing costs and escrow fees based on the City Property.

C. City agrees that any decision to sell the City Property shall be contingent on sale of the Hurt Property to the same buyer.

D. **Defects.** That City has no knowledge of any defect or condition of the City Property which would make the City Property unsafe or would impair the sale of the Combined Property.

E. **Limitation on improvements.** City is under no obligation to landscape, repair, or improve City Property for the term of this Agreement.

F. **Further encumbrances.** City will not grant any deeds of trust, liens, easements, licenses, or other encumbrances on the City Property which would impair ability to sell the properties.

G. **Hazardous substances.** City has obeyed all Environmental Laws and has not and shall not suffer or permit the storage or release of any significant amount of any Hazardous Substance on the Properties. "Environmental Laws" means any federal or state statute relating to the protection of health, safety and the indoor or 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 or materials, including, but not limited to the 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 set out in NRS 40.505.

H. **Disc Drive.** City agrees to review and consider approval of any street cut permit

applied for by Hurt on Disc Drive so long as said street cut permit is in compliance with all City codes pertaining to such and is designed to the satisfaction of the City Engineer.

§3.05 **Warranties, reservations and obligations of Hurt**

A. Hurt represents that they have good and marketable title to the property identified herein as evidenced by a Commitment For Title insurance issued by an agreed upon title company.

B. **Defects.** That Hurt has no knowledge of any defects or condition of the Hurt Property which would make the property unsafe or would impair the joint sale of the property.

C. **Limitations on improvements.** Hurt is under no obligation to landscape, repair, or improve Hurt property for this joint sale.

D **Further encumbrances.** Hurt will not grant and deeds of trust, liens, easements, licenses, or other encumbrances on the property which would impair ability to sell the property.

E **Hazardous substances.** Hurt takes all responsibility for the condition of their property and acknowledges that the City is not responsible for any existing or preexisting condition on Hurt Property. Hurt agrees to indemnify and hold harmless the City for any and all conditions associated with the Hurt Property now or discovered in the future.

§3.06 **Liability**

A. City by signing this Agreement shall not incur any liability for the Hurt Property. Hurt by signing this Agreement shall not incur any liability for the City Property.

B. **Definitions.** “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, and economic damages. “An act or omission” includes any act, negligence, or omission, including any breach of an obligation herein. A “related party” includes all officers, employees, agents, contractors and subcontractors of the party who are acting within the scope of their assigned and lawful duties, as well as anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

C. **Limitations and conditions.** The laws of Nevada regarding comparative negligence apply to these indemnifications. The obligations of each indemnifying party 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 the indemnifying party. If the liability is asserted by an employee of an indemnifying party, the indemnification herein is not limited to damages, compensation or benefits payable by or for the indemnifying party under worker's compensation acts, disability benefit acts or other employee benefit acts. Each indemnifying party shall be permitted to participate, if it chooses, in the defense of any action claiming liability, even if the indemnified party is indemnified hereunder. Either party may set off any of its rights under this subsection against any consideration it provides under this agreement. The obligations to indemnify and save harmless herein survive the expiration or termination of this Agreement with respect to any act or omission which occurred before expiration or early termination.

§3.07 **General Terms**

A. **Breach, notice and right to cure.** In the event that either party ("breaching party") breaches any representation or agreement herein, or fails to perform any obligation herein, the other party shall provide notice thereof before exercising any remedies, and shall give the "breaching party" ten calendar days from the date of notice to cure the breach, except if the breach cannot reasonable by cured within that ten days, the "non-breaching party" shall give such additional time needed provided, however, that "breaching party" shall diligently pursue its obligations to cure. In addition to all remedies provided in law and equity, City may terminate this Agreement in the event of a material breach hereof which is not promptly remedied by Hurt. All remedies are cumulative to each other and any other remedies afforded by law and equity.

B. **Non-transferrable, non-alienable.** Except to the purchasers of the Properties (i) no right hereunder may be assigned, divided, transferred, encumbered or granted by Hurt or City.

C. **No third Party beneficiary rights.** This Agreement is not intended to nor shall it be construed as creating any rights in any parties except for Hurt and City.

D. **Governing Law; choice of jurisdiction.** The ordinances of the City of Sparks and Washoe County and the laws of Nevada shall govern this agreement, without regard to conflicts of laws principles. Any action brought to enforce this agreement shall be brought in the Second Judicial District Court for the State of Nevada in and for Washoe County.

E. **Notices.** All notices, demands and correspondence required or provided for under this agreement shall be in writing and delivered in person or by courier or mailed, postage prepaid, to the addresses indicated above or any subsequent address provided in writing to the sending party. When delivered in person or by courier, notice will be deemed given when actually delivered to a person at the addresses indicated above, and when mailed, three business days after depositing in the U.S. Mail system.

F. **Claims.** Pursuant to NRS 268.020, all demands and accounts against the City of Sparks must be presented to the City Council, in writing, within six months from the time the demands or accounts become due. No demand or account may be audited, considered, allowed, or paid by the City unless this requirement is strictly complied with.

G. **Additional Documents; notice of termination or release.** The parties agree to execute such additional documents and to take such additional actions as are reasonably necessary to carry out the purposes hereof.

H. **Attorneys fees and costs.** If any party hereto institutes any action or proceeding (including arbitration, if authorized, or litigation) against the other or others arising out of or relating to this Agreement, the prevailing party may be awarded reasonable attorney fees and costs of the proceeding as determined by the court.

I. **No waiver.** The failure of either party to this agreement to insist on the performance of any of the terms and conditions of this agreement shall not constitute a waiver unless expressed in writing, and any written waiver shall be limited only to the waiver expressed therein and shall not be construed as or create an implication or expectation that any future waivers will be given.

J. **Entire Agreement and modification of agreement.** This agreement constitutes the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this agreement shall not be binding on either party unless incorporated herein. No modification to this agreement is effective unless agreed upon in writing signed by authorized agents of both parties.

K. **Enforcement; Partial Invalidity.** This agreement shall be enforced only to the extent permitted by law. If any provision herein is deemed invalid or unenforceable, it shall be deemed modified to the extent to bring it within the limits of validity, but if it cannot be so modified, then the offending provision shall be stricken from this agreement. In either event, the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement or modification of the invalid provision.

L. **Capacity and authorization.** Each party represents to the other that it has the legal power to enter into and that all required authorizations have been obtained to bind the party to this agreement. Each person who signs this agreement warrants and represents to the other party that he or she has actual authority to execute this agreement to bind the party for whom he or she is signing.

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EXECUTED on the dates indicated below.

OWNER

David L. Hurt

OWNER:

City of Sparks,
a municipal corporation

By _____
Geno Martini, Mayor

Date _____

Attest:

By _____
Teresa Gardner
City Clerk

Date _____

Approved as to form

Shirle Eiting
Chief Asst. City Attorney

STATE OF NEVADA)
) Acknowledgment in Representative Capacity
COUNTY OF WASHOE) NRS 240.1665

This instrument was acknowledged before me on _____
by Geno R. Martini as Mayor and Teresa Gardner as City Clerk of the City of Sparks, Nevada.

Notary Public

STATE OF NEVADA)
) Acknowledgment
COUNTY OF WASHOE)

This instrument was acknowledged before me on _____
by _____ as

Notary Public