(Rev 10/30/2007)

When recorded, mail to:
City of Sparks
P.O. Box 431
Sparks, Nevada 89432-0857

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City of Sparks, Nevada

Impact Fee Service Area 1

**IMPACT FEE AGREEMENT No.** 21

Dated as of **July 8, 2013**

| **Owner** :<br>C.B. Maddox<br>P.O. Box 70577<br>Reno, Nevada 89570-0577 | **City** City of Sparks<br>431 Prater Way<br>Sparks, Nevada |
|---|---|
| **Development** Kiley Ranch | |

## Article 1 DEFINITIONS

**§1.01 Definitions THIS AGREEMENT** is by and between the Owner and City, regarding the Development, and involves the following definitions.

**"Administrator"** means the Director of Community Development for the City of Sparks.

**"Administrative Manual"** means the Administrative Manual for the City of Sparks, Nevada Impact Fee Service Area Number 1 as published by the Administrator under the authority established in the Impact Fee Ordinance, and all amendments thereto.

**"Applicable Law"** means all City ordinances (including building, electrical, codes and zoning codes) and regulations, all County ordinances and regulations, all state statutes and regulations, and all federal statutes and regulations (including but not limited to the Americans with Disabilities Act and Fair Housing Act) applicable to the Project or Property. If the Owner and City have entered into a separate development agreement that fixes the law that will apply to the improvement, that definition shall control this definition so long as the development agreement is in effect. Otherwise, Applicable Law means all laws that are in effect at the time the construction or action is being completed or taken.

**"Capital Improvements Plan"** or "**CIP"** means the Impact Fee Service Area Number 1 Capital Improvements Plan for approved by the Ordinance, as that plan is amended from time to time. The CIP adopts certain land use assumptions and forecasts prospective new development in the Service Area and estimates the amount of sanitary sewer, flood control and drainage, parks and recreation, and fire station infrastructure facilities that will be needed to support that new development, and establishes impact fees to be paid by new development to finance the required infrastructure.

"**CIP Improvements**" means infrastructure improvements (sewer facilities, flood facilities, parks, and fire station facilities) identified in the CIP.

**"City Council"** means the city council for the city of Sparks, Nevada.

"**Impact Fee Ordinance**" means City of Sparks Ordinance No. 2157 enacted on December 23, 2002 and recorded as Document 2802190 on February 6, 2003 and rerecorded as Document 2837544 on April 15, 2003 in Official Records of Washoe County. The term includes all amendments to the Ordinance as well as all subsequent ordinances which are hereafter enacted relating to impact fees for the Service Area.

"**Impact Fees**" means the impact fees set forth in the CIP to be paid as improvements are constructed in the Service Area.

**"Property"** means that real property located in the City of Sparks, Washoe County, Nevada, more particularly described in Exhibit A.

**"Service Area"** means the City of Sparks, Nevada, Impact Fee Service Area No. 1 described in the Impact Fee Ordinance.

## Art 2. RECITALS

A. Pursuant to NRS Chapter 278B, City enacted the Impact Fee Ordinance establishing

the City of Sparks Impact Fee Service Area No. 1 and approving the Capital Improvements Plan which imposes Impact Fees to finance sanitary sewer, flood control and drainage, parks and recreation, and fire station infrastructure projects necessitated by and attributable to new development in that service area.

B. Owner is building the Development in the Service Area and the parties desire to enter into an agreement contemplated by NRS 278B.250 and Section 1.04 of the Administrative Manual.

## Art 3 IMPACT FEES TO BE PAID; PLACEMENT IN SPECIAL FUND ACCOUNT; REFUNDS.

### §3.01 Fee schedule; "locking up" fees; payment.

**A. Agreement to pay Impact Fees, covenant running with the land.** Owner acknowledges the obligations imposed by the Impact Fee Ordinance and agrees on behalf of itself, its assigns and its successors in interest to any portion of the Property to pay Impact Fees for the construction of improvements in the Service Area.

**B. Fee Schedule; changes.** Except as provided in Paragraph C next below, Owner shall pay Impact Fees according to the fee schedule in effect at the time that the building permits are pulled. The CIP must be periodically reviewed, and fee schedules may be changed at any time. Fees shall be determined and paid in accordance with the Administrative Manual.

**C. Locking up of Impact Fees.** So long as Owner is not in default under this Agreement, Impact Fees may be locked up as specified in '2.08 of the Administrative Manual when subdivision maps are approved by the City Council.

### §3.02 Placement in special fund account.

As provided in NRS 278B.210 (2) and Section 4 of the Impact Fee Ordinance, City Agrees to place Impact Fees Impact Fees collected by City shall be placed in an interest bearing special fund account for each type of infrastructure improvement for which the fees are collected.

### §3.03 Refund of fees collected.

Upon request by the current owner of property in the Service Area, Impact Fees collected (and not credited or reimbursed as provided below) may be refunded by City as provided NRS 278B.260, and the Administrative Manual.

## Art 4. RESERVATION OF CAPACITY; IMPACT FEE CREDITS AND REIMBURSEMENTS.

### §4.01 Agreement to reserve capacity.

As contemplated by NRS 278B.250, the parties agree that Exhibit B to this Agreement includes an estimate of the needs of the Development, as of the date of this Agreement, and the planning or other measures to be taken by the City to preserve capacity allocations for the Development. It is agreed that Exhibit B establishes a planning process based on land use and engineering assumptions and estimates of anticipated development units, service units and capacities of CIP improvements at this time. Actual needs and capacities may change and may be subject to the influence of factors outside the control of either party. City does not guarantee the construction of CIP Improvements or guarantee absolute quantities of services that will be available to the Development, and notwithstanding any quantity specified in or any provision stated in Exhibit B, Owner has no right or expectation to receive any capacity or service not actually needed by the improvements actually constructed in the Development. Estimated or stated capacities are not property rights to be sold or transferred.

**§4.02 Impact Fee Credit Agreements.** From time to time, Owner may desire to finance or construct certain CIP Improvements (or portions thereof) and receive credits against Impact Fees as provided in the Administrative Manual. A separate Impact Fee Credit Agreement shall be entered into for each CIP Improvement to be built or financed by Owner. Each Impact Fee Credit Agreement must be substantially in the form required by the Administrative Manual and must be approved by the City Council before construction starts. With respect to each Impact Fee Credit Agreement, Owner hereby agrees:

A. Owner specifically agrees that as provided in the Administrative Manual, the City is not obligated to redeem Impact Fee Credits or otherwise pay cash out of its general fund or other assets of the City.

B. Provisional and final credits shall be administered in accordance with the Administrative Manual, and Owner expressly agrees repay to the City any amounts of provisional credits that are used when unauthorized or if provisional credits used exceed the actual value of land or costs of construction as provided therein.

C. Owner may revoke any Impact Fee Credit Agreement at any time up until the actual dedication of the land or conveyance of the improvement, in which case the Owner must pay in cash to the City the amount of all credits used or transferred plus all impact fees normally due with each building permit.

**§4.03 Reimbursement Agreements.** Owner may, from time to time, desire to finance or

construct certain CIP Improvements (or portions thereof) and be reimbursed out of Impact Fees in accordance with the Administrative Manual. A separate Impact Fee Reimbursement Agreement shall be entered into for each CIP Improvement to be built or financed by Owner. Each Reimbursement Agreement must be substantially in the form required by the Administrative Manual and must be approved by the City Council before construction starts. With respect to each Reimbursement Agreement, Owner hereby agrees that, as provided in the Administrative Manual, reimbursement payments by the City shall be made only out of the appropriate trust account as specified in the Administrative Manual and only to the extent that funds are available, and the obligation to reimburse Owner are not general obligations of the City.

## ARTICLE 5. GENERAL TERMS.

### §5.01 Authority to implement this Agreement; appeals of decisions by Administrator.

A. Powers of Administrator. Except as otherwise provided in this Agreement, the Administrator has the authority to conduct all reviews, make all approvals, and take all actions on behalf of the City.

B. Appeals of decisions of Administrator. Any decision of the Administrator may be appealed by Owner to the City Manager of the City in accordance with the '1.05 of the Administrative Manual.

### §5.02 Assignments; Transfer of rights; binding effect.

Except for the transfer of final credits which may be transferred by written agreement filed with the Community Development Department, no rights or obligations hereunder may be assigned, delegated or otherwise transferred without the transferee entering into a new agreement with the City. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators and successors in interest to each party.

### §5.03 Effective date.

This Agreement becomes effective and binding on City on the date it becomes approved by the City Council.

### §5.04 Expiration and termination of Agreement.

A. General. Except as provided herein, this Agreement terminates on the later of: (i) when the Development has been completed and all Impact Fees have been paid and (ii) all Impact Fee Credit Agreements and Reimbursement Agreements have been completed and paid.

B. Exceptions.

1. If Owner sells a part of the Development to a third party who enters into a new agreement with City, this agreement terminates (including any right to receive a refund under Article 7 of the Administrative Manual) with respect to the portion of the Development described in the new agreement, which will be included in the new agreement with the City.

2. Any refund rights pursuant to NRS 278B.260 and Article 7 of the Administrative Manual survive the expiration and termination of this agreement, except as provided in subparagraph 1 above.

## §5.05 Breach and remedies

A. Default A default occurs when (i) any party repudiates, breaches or fails to perform any covenant, material term or provision in this Agreement; (ii) an event required to occur does not occur by the time required; (iii) Owner misstates or overstates the actual value of land dedicated or the actual cost of any improvement constructed or otherwise places a false claim under an Impact Fee Credit Agreement or Impact Fee Reimbursement Agreement, or under this Agreement; or (iv) any event otherwise described in this Agreement as a breach or default.

B. Notice and opportunity to cure. In the event of a default, the non-defaulting party shall give 30 days notice to the defaulting party who shall have the right to cure the default during that 30 day period.

C. Remedies If the event of a default, the non-defaulting party may bring an action for damages or equitable relief if available, or pursue any other remedy specifically provided in this Agreement.

D. Immunity for computer date errors. As required by NRS 41.0321 (2), notwithstanding any provision in this Agreement to the contrary, City shall be immune from any liability for breach of contract that is caused by an incorrect date being produced, calculated or generated by a computer or other information system that is owned by City regardless of the cause of the error.

## §5.06 Remedies cumulative; waivers of remedies.

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

enforcing this Agreement or in exercising any remedies (even in the event of continuous or repeated defaults) does not constitute a waiver, or imply a course of dealing or choice of remedies giving rise to an expectation of how a party will deal with defaults in the future. Any party may at any time (subject to applicable statutes of limitations) pursue any remedy for any default.

B. Waivers. Waivers are binding on a party only if expressed in writing signed by an authorized officer of the waiving party, and any waiver or series of waivers is only for the default or breach described in the writing, and does not constitute a waiver, an implied waiver, or any obligation to waive any future defaults or breaches. AAuthorized Officer@ means the Administrator if City is the waiving party or the president or manager of Owner if Owner is the waiving party.

C. Remedies cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by a party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by another party.

**§5.07 Amendments and modifications to this Agreement.**

This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the parties, except that any changes to the fee schedule must be approved by the City Council. All amendments and modifications must be in writing and must be attached to this Agreement. Amendments implementing a new fee structure approved by the City Council may be negotiated and approved by the Administrator without approval by the City Council.

**§5.08 Notices; when deemed sufficiently given**

A. Formal notices, demands and communications between the City and Owner must be in writing and must be sent to the addresses stated in '1.01 above.

B. If notice is sent by regular mail to the correct address, it will be deemed sufficiently given only when actually received by the correct addressee.

C. If notice is sent by registered or certified mail to the correct address, postage prepaid, it will be deemed sufficiently given the earlier of when actually received by the addressee or three business days after it is received by the U.S. Post Office as indicated on the receipt.

D. If notice is sent by courier, or overnight delivery service (Federal Express, UPS Overnight, U.S. Postal Priority Mail), and is properly addressed, it will be deemed sufficiently given when delivered as indicated in the records of the courier or service.

E. If notice is sent by facsimile, properly addressed to the addressee specified in subsection A above and is actually sent to the correct facsimile number, it will be deemed sufficiently given when receipt is confirmed by either the receiving or sending facsimile machine, provided that the confirmation is in writing and sufficiently identifies the document, and indicates the time and date that the document was received by the receiving facsimile machine.

**§5.09 Non-liability of individual officers or employees of parties**

A. No member, official or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or the City, or for any amount which may become due to the Owner or its successor, or on any obligation under the terms of this Agreement.

B. No member, manager, official or employee of the Owner(except general partners) shall be personally liable to the City, or any successor in interest, in the event of any default or breach by the Developer, or for any amount which may become due to the City or its successors, or on any obligations under the terms of this Agreement.

**§5.10 Claims against City**

NRS 268.020 requires that claims against the City must be presented to the City Clerk within 180 days after the claim arises, and must be submitted in a certain manner. Owner agrees to comply with NRS 268.020 and understands that failure to submit as required may void the claim.

**§5.11 Further documents**

Each party agrees to honor any reasonable requests by the other party to complete, execute and deliver any document necessary to accomplish the purposes hereof.

**§5.12 Approvals not to be unreasonably withheld**

Wherever this Agreement requires the approval of the City or the Developer, or any officers, agents or employees of either the City or the Developer, such approval shall not be unreasonably withheld.

**§5.13 Attorney's fees & 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, each party shall bear its own attorneys fees, regardless of who prevails. Costs may be awarded by the Court or arbitrator in accordance with the rules applicable to the proceedings, but

otherwise shall be born by the party incurring the cost.

**§5.14 Time of Essence**

Time is of the essence in the performance of this Agreement.

**§5.15 Inspection of Books and Records**

Each party shall have the right at all reasonable times to inspect the books and records of the other party pertinent to the purposes of this Agreement.

**§5.16 Governing law; jurisdiction and venue.**

The laws of the State of Nevada, without regard to conflicts of law principles, shall govern the interpretation and enforcement of this Agreement. Any action be brought to enforce this Agreement shall be brought in the Second Judicial District Court of the State of Nevada for Washoe County.

**§5.17 Modification or severability of invalid or unenforceable provisions.**

A. Each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law. If any term or provision of this Agreement or the application thereof is held to be invalid or unenforceable by a court of competent jurisdiction, it shall be deemed to be modified to bring it within the limits of validity or enforceability, but if it cannot be so modified, then it shall be severed from this Agreement but in either event the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected.

B. To prevent windfall or unintended consideration, if any material term or provision of this Agreement is deemed invalid or unenforceable or enforceable only to a limited extent, the parties agree to negotiate in good faith to adjust any counter performance, condition, or corresponding consideration, and if such negotiations fail, either party may cancel this agreement.

**§5.18 No third party beneficiaries intended**

Unless otherwise specifically identified in this Agreement, there are no third party beneficiaries intended by this agreement and no third parties have any standing to enforce any of the provisions of this Agreement.

**§5.19 Construction of Agreement**

A. Titles and headlines of this agreement are intended for editorial convenience and

are not to be construed as a part of this agreement.

B. Any reference to the masculine genders includes, where appropriate in the context, the feminine gender. Any term in the singular includes, where appropriate in the context, the plural.

C. The parties hereto were each advised by counsel in drafting and negotiating this agreement, and both parties contributed to its contents. No presumptions against or in favor either party are appropriate based on who drafted this Agreement or any provision herein.

**§5.20 Duplicate originals; counterpart signatures; recording.**

A. This Agreement may be executed in counterpart signature pages, and is binding on a party only when all parties have signed a counterpart signature page and delivered it to the party responsible for assembling and distributing the final originals of this Agreement.

B. This Agreement shall be recorded.

**§5.21 Representation by City as to validity of Agreement.**

City represents and warrants that (i) all authorizations required by State and local law (including the City Charter) has been obtained to approve this Agreement, (ii) this Agreement has been duly executed, and (iii) is valid and binding upon City and enforceable in accordance with its terms.

**§5.22 Representation and Warranties by persons who sign this agreement.**

Each person who signs this agreement represents and warrants to each other person who signs this agreement that he or she is an authorized agent of and has actual authority to execute this agreement on behalf of the party for whom he or she is signing, and that all required approvals and actions have been taken to authorize the execution of this agreement with the intent and effect of binding the party to this agreement.

**§5.23 Entire Agreement**

This Agreement (including recitals and exhibits) 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.

xxxx

EXECUTED on the dates indicated:

**City**

City of Sparks, Nevada, a municipal corporation

By_____________________________________ Date___________________________
Geno Martini, Mayor

Attest: Seal:

By_____________________________________
Teresa Gardner, City Clerk

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

This instrument was acknowledged before me on _______________________________________
by GENO MARTINI as Mayor and TERESA GARDNER as City Clerk for the City of Sparks, Nevada.

__________________________________________________
Notary Public

Approved as to Form

__________________________________
City Attorney

**Owner**
C.B. Maddox

By:_______________________________________ Date:______________________________
C.B. Maddox

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

This instrument was acknowledged before me on ________________________________________

by C.B. MADDOX and ________________________________________as Public Notary.

__________________________________________________
Notary Public

Approved as to Form

___________________________________
City Attorney

## ATTACHMENTS:

Exhibit A - Project Location
Exhibit B – Reservation Agreement

IMPACT FEE
SERVICE AREA #1
BOUNDARY

LA POSADA DR

WINGFIELD SPRINGS RD

CAMPELLO DR

HIGHLAND RANCH PKWY

445

VISTA BLVD

WINGFIELD HILLS RD

PYRAMID WAY

LOS ALTOS PKWY

DISC DR

S LOS ALTOS PKWY

N D ANDREA PKWY

N MC CARRAN BLVD

BARING BLVD

HOWARD DR

S D ANDREA PKWY

IMPACT FEE
SERVICE AREA #1
BOUNDARY

EXHIBIT A
IMPACT FEE AGREEMENT #21
IMPACT FEE AREA #1 BOUNDARY

1 inch = 4,000 feet

(Rev 5-12-03)

City of Sparks, Nevada

Impact Fee Service Area No. 1

**RESERVATION AGREEMENT**

Owner: C.B.Maddox

Development: Kiley Ranch

**Impact Fee Agreement:** Pursuant to § 4.01 of an Impact Fee Agreement between the City of Sparks, Nevada and Owner with respect to the above described Development, for purposes of planning and comparing to the assumptions contained in the CIP (and not as a binding representation or agreement), the Development is part of the overall Upper Highlands at Cimarron East which is anticipated to include 75 development units and is included in the overall capacity of the system.

**Comparison to CIP availability of facilities:** The current Capital Improvements Plan (CIP), adopted November 28, 2005, at page 5 estimates the total development units at build out in Service Area Number 1 at 28,665 based on an analysis of the Master Plan. The sewer, flood control, parks, and Fire station infrastructure projects identified in the CIP were designed to accommodate the estimated number of development units. With this agreement, the cumulative number of development units per all agreements will be 27,871 leaving capacity at a net 794 development units, leaving ample capacity for the project contemplated in this agreement.

**Reservation for future development:** The capacities described in the CIP for each type of infrastructure facility described therein, are hereby reserved for the use of future development, including the project contemplated in this agreement, consistent with the allocation of fees established in the CIP, it being understood, however, that the term "for the use of future development" includes satisfying the impact that future development has on a city-wide demand for public facilities. Once the infrastructure facilities described in the CIP are built and dedicated to the City in public trust and their operations and maintenance become financed by equalized property taxes and other public funds which must be expended for the general welfare of the City of Sparks, Nevada, the reserved use become nonexclusive.