

CONSTRUCTION GRANT AGREEMENT

By and between the

WILLIAM N. PENNINGTON FOUNDATION

and

CITY OF RENO

CONSTRUCTION GRANT AGREEMENT

THIS CONSTRUCTION GRANT AGREEMENT ("Agreement") is made and entered into as of ____ day of _____, 2022 by and between **CITY OF RENO** ("Grantee") and the **WILLIAM N. PENNINGTON FOUNDATION** ("Foundation").

RECITALS

WHEREAS, Grantee has submitted a grant application package the terms and conditions of which are incorporated herein by reference ("Grant Request") to Foundation for a grant to be used to build the Moana Springs Community Aquatics and Fitness Center ("Project") located at 240 West Moana Lane which site location is shown on the preliminary site plan attached hereto and incorporated by reference as Exhibit "A".

WHEREAS, Foundation has approved a grant to Grantee in the Grant Amount to assist in the construction of the Project, as described in the Grant Request; and

WHEREAS, Foundation, in reliance upon the representations and warranties made by Grantee in this Agreement, is willing to fund the Grant Request in accordance with all terms and conditions in this Agreement.

NOW THEREFORE, in consideration of the mutual promises and the representations and warranties of Grantee contained in this Agreement, Foundation and Grantee do hereby agree as follows:

SECTION 1

GRANT: TERMS AND CONDITIONS

1. Grant. Foundation hereby agrees to fund a grant in an amount not to exceed \$9,000,000 (the "Grant Amount") for the sole purpose of constructing the Project described in the Grant Request and in reliance on and subject to, as the case may be, (a) the terms and conditions set forth in this Agreement and (b) Grantee's representations and warranties set forth in this Agreement.
2. Payment Terms. The Grant Amount shall be paid to Grantee under the following schedule with Grantee Representative (see section 2.1 of this Agreement) certifying attainment of the requirements referenced:
 - a. 50%, or \$4,500,000 upon the start of construction of the Project.

- b. 50%, or \$4,500,000 on or before July 31, 2023.
- 3. Conditions. The Grant and any payments remaining are subject to the following conditions:
 - a. Receipt of approval from the City of Reno for the Project subject to all of the requirements of such.
 - b. Proof of actual funds on deposit, signed "bankable" commitments to include bond commitments in an amount sufficient to cover the \$45,000,000 estimated costs of constructing, furnishings and equipping the Project.

SECTION 2

REPRESENTATIVES

1. Grantee Representative. Grantee Representative is Kerrie Koski, Director of Public Works/City Engineer. All acts and agreements approved by, entered into, or executed by Grantee Representative shall be binding on Grantee.
2. Foundation Representative. Foundation appoints Richard Stoltz as "Foundation Representative". Foundation Representative shall be responsible solely to Foundation and shall owe no duty to Grantee in the performance of his or her duties as Foundation Representative. Foundation will send Grantee a written notification certifying Foundation Representative's signature. Foundation Representative responsibilities shall include, without limitation, the following:
 - a. Project plan review to ensure that Project's plans and specifications accurately reflect the Project as it was described in the Grant Request.
 - b. Visits to the Project during any phase of construction on behalf of Foundation in order to satisfy Foundation that Project construction is proceeding in accordance with the plans and specifications thereof.
3. Access to Project Information. Grantee shall provide Foundation Representative with full and complete access to the following:
 - a. The Project construction site and the Project during construction and at all times thereafter.

- b. All books and records related to the Project in any manner, including, but not limited to, invoices, bills of material, lien waivers, payment records, design reports, surveys, or any other information which may reasonably relate to the progress of the Project or any problems which may materialize.
- c. Any of Grantee's staff or employees, any employees or agents of the architect or any employees or agents of any construction contractor or sub-contractor for purposes of discussing any aspect of the Project, construction or maintenance thereof.

SECTION 3

DESIGN AND CONSTRUCTION

1. General. Grantee, its selected design team and its selected general contractor ("Project Team") shall create and submit to Foundation a "Gantt chart" ("Project Schedule") setting forth all dates related to the Project, including each phase of the Project's construction as fully set forth in Sections 3.2 and 3.3.
2. Project Phases. Grantee shall adhere to the following project phases.
 - a. Design Phase. Upon completion of the Planning Phase, the Project Team shall prepare a project design using its best efforts to complete any necessary or required construction documents in a timely manner (collectively called the "Design Phase").
 - b. Construction Phase. Grantee shall bid the project to establish the general contractor's contract amount ("Construction Costs"). Grantee shall use its best efforts to substantially complete all aspects of work to complete the Project in a timely manner (collectively called the "Construction Phase").
3. Design Firm. Grantee shall furnish Foundation Representative with the credentials of the proposed design firm. Grantee shall have made reasonable effort, prior to furnishing credentials to Foundation Representative, to ensure that the architect is qualified for the project and is in good standing in its professional arena. A copy of the contract between Grantee and the design firm shall be furnished to Foundation as well as any subsequent amendments or modifications of such contract. Grantee shall notify Foundation of the name of the architect that has been designated as the supervising architect.
 - a. The final plans and specifications shall be prepared after the Schematic Design

Presentation Package has been approved. A final budget will also be prepared showing an architectural breakdown of Construction Costs.

4. Cost Projection. Grantee and the designer shall prepare and furnish to Foundation Representative, simultaneously with the final plans and specifications, a detailed cost projection for:
 - a. All labor, materials, and services necessary for construction of the building in accordance with the plans and specifications as stated in the Grant Request.
 - b. All project amenities, including the installation charges for such items as included in the Grant Request. The list of project amenities and related installation charges shall be set forth in Exhibit "B" and incorporated herein by reference.
5. Bid Process. The Grantee shall comply with Chapter 338 and Chapter 332 of the Nevada Revised Statutes for letting the public works contract and for any purchases necessary in the completion of the public works project. Grantee shall not enter into a pay for services contract with an active board member of the organization benefiting from this grant.
6. Construction Contract. When a general contractor has been selected, Grantee shall furnish a fully executed copy of the construction agreement between such general contractor and Grantee to Foundation and any modifications or amendments thereof shall also be furnished to Foundation immediately.
7. Payment and Performance Bond. Pursuant to Chapter 239 of the NRS and as required by the City of Reno in its public works contract documents, the general contractor shall be required to post a payment and performance bond in an amount at least equal to the Construction Costs as security to Grantee for the full and faithful performance of all obligations of the general contractor. Grantee shall furnish a copy of the payment and performance bond to Foundation.
8. Insurance Coverage. Prior to commencement of actual construction, Grantee shall obtain, or require its contractor to obtain, at a minimum, the following types of insurance coverage:
 - a. Workers' compensation and employer's liability.
 - b. Builder's risk insurance, written on a completed value form, for the full insurance of not less than the Grant Amount, including both Grantee and Foundation as insureds with respect to each party's interest in the Project.
 - c. Commercial general liability insurance with a total each occurrence limit of not less than the Grant Amount, including both Grantee and Foundation as insureds with respect

to each party's interest in the Project.

These coverages are to be considered as Construction Costs under the Grant Request and evidence of such coverage shall be furnished to Foundation within ten (10) days of commencement of construction on the Project.

9. Project Completion. All phases of the Project, including procurement and installation of all furnishings and equipment shall be completed by December 2024 "Project Completion".
10. Completion Report. At completion of the Project, Grantee shall deliver to Foundation a "Completion Report" consisting of the following:
 - a. A certificate of occupancy (if required by local governing agencies).
 - b. A document signed by Grantee Representative, the project designer and the contractor certifying that all work called for by the contract for construction has been completed in accordance with the plans and specifications and accepted.
 - c. A letter from Grantee co-signed by the project designer and general contractor certifying that Grantee received a complete set of "as built" drawings and its supporting documents for the Project.

SECTION 4

PUBLICITY

1. Donor Recognition. The Foundation reserves the right to name the building and such reservation is to be determined on or before July 31, 2023 referred to in Section 1.2(b).
2. Naming Opportunities. Foundation may entertain other naming opportunities in the Project as outlined below:
 - a. Grantee may provide an interior single prominent display in the Project on which to honor as many donors as it wishes in recognition of their contributions.
 - b. Grantee may request up to twelve interior and up to two exterior locations in the Project for other naming opportunities. These naming opportunities will not be mounted to the exterior of the building and be limited to donors who make significant contributions to the organization. The locations and the nature and text of each recognition fixture shall avoid detracting from the location and fixture that recognizes Foundation's

contribution.

- c. Grantee shall notify Foundation as soon as a naming opportunity has been extended and accepted by a contributor.
3. Press Releases. Under no circumstances shall Grantee be permitted to issue a press release or similar public announcement regarding the Grant without the prior written approval of the Grantor's Directors.

SECTION 5

REPRESENTATIONS AND WARRANTIES

The following representations and warranties are true and correct as of the signing of the Agreement and each request for payment by Grantee shall constitute an affirmation that the following representations and warranties remain true and correct as of the date of such request and, unless Foundation is notified to the contrary prior the disbursement of the requested payment, will be true and correct on the date of such payment. Grantee hereby represents and warrants that:

1. Exempt Status. Grantee is granted sales/use tax-exempt status.
2. Title. Grantee has good and marketable title in fee simple for the real property upon which the project is to be constructed, subject only to reasonable rights-of-way, easements, conditions, covenants, and restrictions which will not interfere with the construction and operation of the Project, and written proof thereof shall be furnished to Foundation in a form satisfactory to Foundation.
3. Authority. Grantee has taken all action necessary to authorize (a) the execution and delivery by Grantee of this Agreement and any related documents required in connection therewith to which Grantee is a party, (and (b) the consummation of the transactions contemplated in this Agreement and any related documents required in connection therewith.
4. Ability to Perform. The Project can be constructed, furnished and equipped on the site in full compliance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities now in force or which hereafter may be in force ("Requirements"), which shall impose any duty upon Grantee with respect to the improvement, use, occupation or alteration of the Project by Grantee, including, but not limited to, the Americans with Disabilities Act ("ADA"). The Project shall have the following features:
 - a. The Project shall be free-standing and shall not share a common wall with any

building(s).

- b. The Project shall include a facility that is approximately 52,000 gross square feet in size computed in accordance with common or accepted methods.
5. Construction. All construction related to the Project shall be performed within the perimeter of the site as shown on Exhibit "A" and shall be in accordance with the plans and specifications approved by Grantee and its designer and as furnished to Foundation.
6. Compliance. The anticipated use of the Project complies with all applicable zoning ordinances, building codes, regulations and ADA requirements affecting the premises and all requirements for such use have been or will be satisfied before construction of the Project commences.
7. Payment of Obligations. Grantee shall pay all obligations incurred by Grantee for the cost of designing, constructing, and furnishing as required by Section 6.1 of this Agreement.
8. No Litigation. Grantee has no knowledge, actual or constructive, of any claim, fact, circumstance or any other event which may or could give rise to any action, suit, claim, damages or other liability or proceeding against Grantee or any of its real property.
9. Licenses/Permits. Grantee possesses or will obtain prior to commencement of construction all franchises, certificates, licenses, permits and other authorizations from governmental or regulatory authorities that are necessary for the construction, ownership, maintenance, or operation of the Project and Grantee is not in violation of these licenses, permits or agreements or any requirements in any respect.
10. No Untrue Statements. The representations, warranties and statements made by Grantee to Foundation do not contain any untrue statement, and, when taken together, do not omit to state any material fact necessary to make such representations, warranties, and statements, in light of the circumstances in which they are made, and are not misleading.
11. No Modification. No specific warranty or representation contained herein shall be deemed to modify or limit any general warranty or representation.
12. Reliance on Warranties. Grantee acknowledges that all of the representations, warranties and covenants made by Grantee in this Agreement were material inducement to Foundation to approve the Grant Request and enter into this Agreement and Grantee further acknowledges that all of the representations, warranties and covenants contained herein are made with the knowledge and expectation that Foundation is placing complete reliance thereon.

SECTION 6

PROGRESS PAYMENTS, PROCEDURE

The Grant Amount shall be distributed to Grantee in accordance with the payment terms specified in Section 1.2 of this agreement and subject to the following provisions:

1. General Ledger Account. Grantee will use a separate "Fund" in its general ledger solely dedicated to the Project to track revenues and expenses. In addition, the Grantee will use Project Codes to add another layer of tracking of all revenues and expenses related to this Grant.
2. Grantee shall provide the Foundation a yearly report of revenues and expenses that post to the Project Code specific to the Project.

Retainage. Grantee shall comply with Chapter 338 of the Nevada Revised Statutes with regard to retention.

SECTION 7

DEFAULT IN PERFORMANCE

1. Events of Default. Each of the following shall be considered an "Event of Default" and shall entitle Foundation to the remedies provided for in Section 7.2, as well as any and all other remedies, whether at law or in equity, provided for or otherwise available to Foundation or as otherwise provided for in this Agreement:
 - a. Breach of Agreement. If Grantee fails or refuses to comply with any of the covenants, conditions, agreements or obligations contained in this Agreement or any other instrument or document given in connection with this grant.
 - b. Breach of Warranty. If Grantee breaches any representation or warranty contained in this Agreement or any other writing given in connection with the Grant Request.
 - c. Breach of Construction Contract. If Grantee shall fail or refuse to comply with any term or condition of the construction contract.
 - d. Not in Accordance with Plans. If the description, area, character, or condition of the Project is different from the information provided to Foundation or the construction of

the Project is not in compliance with the plans and specifications of the Project.

2. Rights and Remedies Upon Default.

- a. If any Event of Default occurs, Foundation may, at its option and in addition to any and all other rights or remedies provided Foundation in this Agreement or at law or equity, terminate this Agreement if such Event of Default is not cured within fifteen (15) days following notice by Foundation to Grantee of such default. During such fifteen (15) day period, Foundation will suspend any payment(s) to Grantee, pending Grantee's cure, provided that, if Grantee fails to cure, Foundation's obligation under this Agreement shall cease pursuant to Section 7.3. If the Event of Default is not curable within fifteen (15) days, or at all, no notice of default is required, and Foundation may terminate this Agreement by notice as provided in Section 10.4.

3. Effect of Termination. In the event of termination of this Agreement, Foundation shall have the right to require the balance of funds in the Account paid by the Foundation prior to termination and to refrain from making any further advance or payments hereunder. Further, in the event of any such termination, any and all of Foundation's obligations hereunder shall cease and neither Grantee nor any other person shall have any rights whatsoever against Foundation.

4. Effective Date of Termination. Termination pursuant to this Section 7 shall be effective upon the expiration of the fifteen (15) day cure period if Grantee has not cured the Event of Default. If the Event of Default is not cured or curable within fifteen (15) days, termination shall be effective when notice is given.

5. Foundation's Right of Termination. Notwithstanding any other provision of this Agreement, Foundation shall have the absolute right, if there is any Event of Default not timely cured or a Use Restriction breach as provided in Section 8.1, to recover from Grantee, its successor or assigns, all sums paid by Foundation hereunder, together with interest and reasonable attorneys' fees.

6. Use of Foundation and William N. Pennington Names. Notwithstanding any other provision of this Agreement, Foundation may, in its sole absolute discretion, declare that its name and the name of William N. Pennington may no longer be used in any way by, or in connection with, the Project or Grantee. In such event, all evidence at the Project, or elsewhere, which refers to Foundation or William N. Pennington shall be returned forthwith to Foundation and any future reference to Foundation and William N. Pennington by, or in connection with, the Project or Grantee shall be unauthorized and illegal.

SECTION 8

USE RESTRICTION

1. Use Restriction. It is expressly agreed by Grantee, that the Project building shall be used solely for the use of community Aquatics, Fitness, and Meeting/Gathering purposes. Any use of the Project which is inconsistent shall be considered a willful and material breach of this Agreement.

SECTION 9

FURTHER COMMITMENTS BY GRANTEE

1. Further Commitments. Grantee does further agree as follows:
 - a. To maintain records of receipts and expenditures and to make Grantee's books and records available to Foundation at reasonable times.
 - b. Grantee shall not use the Grant Amount or any portion thereof to undertake any activity for any purpose other than those set forth in Section 1.1 of this Agreement and the Grant Request.
2. Project Reporting and Evaluation.
 - a. Between the time of award notification and building dedication, Grantee shall provide Foundation annually with:
 1. Full and complete annual reports on the manner in which the funds are spent and the progress made in accomplishing the purposes of this grant.
 - b. After completion of the Project, Foundation may, at its option, send representatives to make physical site visits to the Project from time to time. Grantee shall submit a written report up to five (5) pages annually within ninety (90) days of Grantee's fiscal year end that shall:
 1. Describe the utilization of the building over the past fiscal year,

2. show the contribution the Project has made to the achievement of Grantee's purpose as described in the Grant Request,
3. enclose a current copy of Grantee's annual certified audited Financial Statements.

SECTION 10

GENERAL TERMS AND CONDITIONS

1. No Agency. Grantee understands and agrees that neither Foundation nor Foundation Representative is the agent or representative of Grantee for any purpose whatsoever.
2. No Liability. This Agreement shall not be construed to make Foundation liable to materialmen, contractors, subcontractors, craftsmen, laborers, engineers, architects, or others for goods or services delivered or provided by such persons to the construction site or the Project.
3. No Third-Party Beneficiaries. Notwithstanding any other provision of this Agreement to the contrary, the terms, covenants and conditions contained in this Agreement are for the sole benefit of the parties hereto, and no reliance or benefit as intended to be granted to any person or company not a party to this Agreement.
4. Notices. All notices shall be in writing and shall be sent to the respective addresses of the parties as follows:

Grantee: City of Reno
 P.O. Box 1900
 Reno, Nevada 89505

Foundation: William N. Pennington Foundation
 P.O. Box 7290
 Reno, Nevada 89510-7290

A notice may be hand delivered or mailed, postage prepaid, first class, registered or certified mail, return receipt requested. Any notice sent by mail shall be deemed to have been received on the third business day following the date of mailing.

5. Applicable law. This Agreement has been delivered and accepted in and shall be a contract

made under and shall be entered into and governed by the laws of the State of Nevada. Any action or proceeding against Grantee or Foundation arising out of or relating to this Agreement shall be instituted only in a federal or state court in Washoe County, Nevada having jurisdiction, and each party waives any objection which it may now or hereafter have to the paying of venue of any such suit, action or proceeding, and each party hereby irrevocably submits to the jurisdiction of any such court in any suit, action or proceeding.

6. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.
7. Section Headings. The section headings and title headings contained herein are for convenience only and do not define, limit, construe or amplify the contents of such sections.
8. Drafting. This Agreement shall not be construed either for or against Grantee or Foundation, but, shall be interpreted in accordance with the general tenor of its language.

As of the date above first written, this Agreement has been executed in multiple original counterparts, each of which constitutes the original agreement, and an executed counterpart delivered to each signatory as of the day and year first above written.

WILLIAM N. PENNINGTON FOUNDATION:

CITY OF RENO:

By:  Co-Director

By: _____

 Co-Director

Its: _____

LIST OF EXHIBITS:

EXHIBIT "A" – Preliminary Site Plan

EXHIBIT "B" – List of Furnishings and Equipment

Exhibit A



Exhibit “B”

Amenities

- Indoor 50M by 25Y competitive swimming pool
 - 3.5' to 12' depth
 - 25Y configuration allows for 20-22 lanes
 - 50M configuration allows for 8-10 lanes
 - (2) 1M springboard diving
 - (2) 3M springboard diving
 - Spectator seating for 400 people
- Indoor multi-use pool: +/- 3,200 sq ft
 - Zero depth entry to 5' deep
 - Amenities will include: play slide, spray play features, lazy river, resistance therapy, lap swimming, water walking (3 lanes at 20 yards long)
- Outdoor soaking pool: +/- 900 sq ft
- Lobby, staff offices
- Locker rooms, unisex/family changing rooms
- Community multi-purpose room for up to 60 people
- ADA accessible playground (George Hamilton) relocated from corner to center of parking lot
 - New fenced playground will be ADA accessible
 - Saved 7 mature trees to create natural shade
- Over 200 parking spaces