

# CITY OF NORTH LAS VEGAS

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## EARLY GRADING AGREEMENT

THIS AGREEMENT is made and entered into effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between \_\_\_\_\_ whose mailing address is \_\_\_\_\_ (hereinafter referred to as "Developer"), and the CITY OF NORTH LAS VEGAS, a political subdivision of the State of Nevada (hereinafter referred to as "City"):

WHEREAS, Developer is in the process of obtaining approval for civil improvement plans, surety, and agreements for development of a vacant parcel of land. The vacant parcel is identified as APN(s) \_\_\_\_\_ and the subdivision is known as \_\_\_\_\_ (hereinafter referred to as "Development"); and

WHEREAS, Developer intends to grade the Development prior to final approval of civil improvement plans, surety and agreements;

WHEREAS, Developer has agreed to furnish an early grading surety to the City as set forth herein; and

WHEREAS, City will permit Developer to perform certain grading on the Development upon the terms and conditions set forth below.

NOW, THEREFORE, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, the parties do hereby agree as follows:

1. Early Grading Requirements. Developer shall not perform any grading on a vacant parcel of land without fully approved civil improvement plans, unless all of the following requirements are met to the satisfaction of the Director of Public Works, or her designee: (a) drainage and traffic studies approved, (b) civil improvement plans have been submitted for the second review by City staff, (c) stormwater and tortoise fees are paid for the entire Development, (d) inclusion under the State NPDES permit and (e) Development must be at least ten (10) acres in size.

2. Early Grading Procedure. Developer will provide the following three items to the City prior to the commencement of any early grading work:

(a) a notarized at risk letter from Developer that acknowledges: (1) the civil improvement plans are not approved and therefore any grading is at Developer's sole cost and expense, (2) changes to the grading may be required as a result of the final approval of the civil improvement plans, (3) changes to the grading may increase the costs to Developer and may result in re-grading of the Development at the sole cost and expense of Developer, (4) no further permits beyond early grading will be requested until civil improvement plans are fully approved and (5) Developer certifies that all grading being completed prior to final civil improvement plan approval will conform to the plans ultimately approved by the City.

(b) Developer posts an Early Grading Surety in the amount of Two Thousand Dollars (\$2,000) per acre of the Development, and

(c) Stamped letter from the engineer of record for the civil drawings that: (1) states the early/at risk grading request has merit and warrants consideration by the Public Works Director and (2) provides a schedule indicating the present status of the civil improvement plans and the estimated date of approval by the City, allotting a minimum number of fourteen (14) days for the City's review of submittals.

3. Repair Obligation. Developer, at its own cost, shall provide permanent dust mitigation and repair any damage to existing public improvements adjacent to or within the Development caused by Developer or its parent, subsidiaries, or affiliates, or their respective employees, representatives, subcontractors or agents arising directly or indirectly out of or in connection with the requested early grading, in accordance with currently applicable ordinances, regulations, standards and specifications, or other requirements of the City in the particular circumstances of the Development herein specified ("Developer's Repair Obligations").

4. Security. Developer shall furnish, without cost to the City, a surety bond, cash deposit with cash in lieu of bond agreement, or other form of security or surety established by City ordinance to be a proper form of security or surety. The security or surety furnished shall be in favor of the City in the amount of .(the "Early Grading Surety"). In the event Developer fails to perform Developer's Repair Obligations within thirty (30) days after written notice from City to do so, said security or surety shall be used by the City for the payment of the costs of completion of repairs to the Improvements. The security or surety shall be released and returned to Developer in an amount equal to \$2,000.00 per acre, upon final approval of civil improvement plans for the Development.

5. Penalty. If Developer performs work outside the scope of the grading permit prior to final approval of civil improvement plans for the Development, the Developer will be required to pay double the inspection fees for each occurrence as calculated by the City's Bond and Fee Estimate.

6. Nevada and City Law. The laws of the State of Nevada and the North Las Vegas Municipal Code shall govern the validity, construction, performance and effect of this Agreement, without regard to conflicts of law.

7. Successors. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

8. Assignment. Any attempt to assign this Agreement by the Services Provider without the prior written consent of the City shall be void.

9. Non-Waiver. The failure to enforce or the delay in enforcement of any provision of this Agreement by a party hereto or the failure of a party to exercise any right hereunder shall in no way be

construed to be a waiver of such provision or right (or of any other provision or right) unless such party expressly waives such provision or right in writing.

10. Partial Invalidity. If any term, provision, covenant or condition of this Agreement, or any application thereof, should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all provisions, covenants, and conditions of this Agreement, and all applications thereof, not held invalid, void or unenforceable, shall continue in full force and effect.

11. Attorneys Fees. In the event any action is commenced by either party against the other in connection herewith (including any action to lift a stay or other bankruptcy proceeding), the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees, including, without limitation, fees from the North Las Vegas City Attorney's Office, as determined by the court. This Section 11 shall survive the completion of the Project and the Services until the applicable statutes of limitation expire.

12. Entire Agreement. This Agreement constitutes the entire Agreement between the parties pertaining to the subject matter contained herein and supersedes all prior representations, agreements and understandings of the parties. No addition to or modification of this Agreement shall be binding unless executed in writing by the parties hereto.

13. Time of Essence. Time is of the essence in the performance of this Agreement and all terms, provisions, covenants and conditions hereof.

*[Remainder of this page intentionally left blank.]*

