

## SPECIAL REFUNDING AGREEMENT

This Special Refunding Agreement (“Agreement”) is made and entered into as of the Effective Date (defined below) by and between the CITY OF HENDERSON, a municipal corporation and political subdivision of the State of Nevada (“City”) and INSPIRADA BUILDERS, LLC, a Delaware limited liability company (“Developer”).

### RECITALS

- A. City is engaged in collection and treatment of wastewater within its corporate boundaries consistent with regulations set forth in the Henderson Municipal Code (“HMC”) and City rules, policies and procedures, as any of the foregoing is amended from time to time; and
- B. Developer, in connection with the construction of its development located near the intersection of Executive Airport Drive and Volunteer Boulevard in Henderson, Nevada and generally referred to as the Inspirada Master Planned Community (the “Development”), has designed and constructed certain Wastewater Backbone Infrastructure to bring City wastewater service from the original point of supply to the development area, including pipelines and manholes, through four (4) segments as more specifically described in Exhibit A attached hereto (collectively, the “Facilities”); and
- C. HMC 14.16.050 provides a refunding mechanism for the orderly development of the POTW (defined below) through the refunding of eligible Wastewater Backbone Infrastructure costs; and
- D. In accordance with HMC 14.16.050, Developer has made application to City’s Director of Utility Services for a special refunding agreement for the repayment of eligible costs;
- E. Developer caused its contractor, VTN Nevada, to prepare the Original Report and Final Refunding Report (each defined below); and
- F. City will provide for the refunding of eligible costs of the Facilities, as further set forth herein.

In consideration of the above recitals, mutual covenants, and terms and conditions contained herein, the parties agree as follows:

### AGREEMENT

1. **DEFINITIONS.** In addition to the terms defined elsewhere in this Agreement, as used in this Agreement, the capitalized terms below will have the following definitions:
  - 1.1 Effective Date: The date the Facilities were completed, tested and accepted by the City, which date is <<insert date>>.

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- 1.2 Equivalent Residential Unit or (“ERU”): Has the meaning ascribed to the term “Equivalent residential unit” in HMC 14.01.010.
- 1.3 Permit: Any applicable approval, permit, consent, waiver, exemption, variance, franchise, authorization, right, action, or license required from any federal, state, or local governmental authority, agency or other governmental body having jurisdiction over the matter in question (including City). Any specific reference to a Permit in this Agreement refers to the Permit as amended unless otherwise specified.
- 1.4 Property Rights: The rights and permissions to use real property, including but not limited to easements, rights of entry, conveyances, deeds, and certain Permits, such as a right-of-way grant issued by the United States of America through the Department of Interior, Bureau of Land Management (a “ROW Grant”).
- 1.5 Publicly Owned Treatment Works or (“POTW”): City-owned wastewater infrastructure, facilities, piping, and appurtenances used to collect, transport, treat and/or discharge wastewater.
- 1.6 Special Refunding Area: The area that will contribute wastewater flow to the Facilities, as generally depicted in Exhibit <<insert number/letter>> to the Final Refunding Report (defined below), which area is subject to change.
- 1.7 Wastewater Backbone Infrastructure: Infrastructure such as lift stations, connecting pipelines, generally 15 inches or larger in diameter, and appurtenant facilities, such as manholes, used to collect and transport wastewater from, to, and within the POTW.

## 2. **REFUNDING; FEES & EXPENSES.**

- 2.1 Refunding Report. On <<insert date>> during its regular meeting through agenda item <<insert item number>>, the Henderson City Council accepted the refunding report entitled “SR-016 Inspirada West Side Sewer Refunding Report” and dated <<insert date>> (“Original Report”) and approved the assessment and collection of the special refunding fees identified in that report based on estimated eligible design and construction costs. That Original Report was further updated to incorporate the final audited costs, is entitled “<<insert title>>” and is attached hereto as Exhibit B and by this reference incorporated herein (“Final Refunding Report”). That Final Refunding Report supersedes and replaces the Original Report as the “refunding report” defined in HMC 14.01.010 and referenced in HMC 14.16.050. A copy of HMC 14.01.010 - Definitions, of HMC Chapter 14.04 - Wastewater Regulations, and of HMC Chapter 14.16 - Refunding Regulations, in effect as of the date Henderson City Council takes action approving this Agreement, as reflected on the signature page below, is attached hereto as Exhibit C.
- 2.2 Basis of Refund. Costs that are eligible to be refunded back to Developer are identified in HMC 14.16.050 and the procedures and methodology for calculating

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and refunding those costs are described in the Final Refunding Report. The Final Refunding Report reflects a total Facilities cost of \$<<insert actual audited final eligible costs of all Facilities>>. Of that amount, \$<<insert actual audited final eligible costs of segment A Facilities>> is attributed to segment A Facilities (the “Segment A Costs”), \$<<insert actual audited final eligible costs of segment B Facilities>> is attributed to segment B Facilities (the “Segment B Costs”), \$<<insert actual audited final eligible costs of segment C Facilities>> is attributed to segment C Facilities (the “Segment C Costs”) and \$<<insert actual audited final eligible costs of segment D Facilities>> is attributed to segment D Facilities (the “Segment D Costs”). Each of the four segments of the Facilities has a maximum ERU amount, based upon the total available capacity of the particular segment, and of that amount a certain number of ERUs has not been attributed to the Development’s use:

- (a) The maximum ERUs for segment A are <<insert ERUs>> (the “Segment A ERUs”); and, of that amount, <<insert segment A ERUs not attributed to the Development’s use>> ERUs are not attributed to the Development’s use (the “Segment A Refundable ERUs”).
- (b) The maximum ERUs for segment B are <<insert ERUs>> (the “Segment B ERUs”); and, of that amount, <<insert segment B ERUs not attributed to the Development’s use>> ERUs are not attributed to the Development’s use (the “Segment B Refundable ERUs”).
- (c) The maximum ERUs for segment C <<insert ERUs>> (the “Segment C ERUs”); and, of that amount, <<insert segment C ERUs not attributed to the Development’s use>> ERUs are not attributed to the Development’s use (the “Segment C Refundable ERUs”).
- (d) The maximum ERUs for segment D <<insert ERUs>> (the “Segment D ERUs”); and, of that amount, <<insert segment D ERUs not attributed to the Development’s use>> ERUs are not attributed to the Development’s use (the “Segment D Refundable ERUs”).

The proportional cost reimbursement for the Facilities is based on the final audited costs of segments A, B, C and D, the maximum ERUs associated with the particular segment and the ERUs not attributed to the Development’s use for the particular segment. For example, the proportional cost reimbursement for segment A Facilities is calculated by dividing the Segment A Costs by the Segment A ERUs and then assessing that amount against Segment A Refundable ERUs. In accordance with HMC 14.16.050.B.3, on July 1<sup>st</sup> of each year during the Refunding Period, City will index and depreciate the final audited costs of the segment A Facilities, segment B Facilities, segment C Facilities and segment D Facilities.

- 2.3 Refund Payments. In accordance with the Original Report, City assessed a special refunding fee(s) on customers who were to obtain direct or indirect service from the Facilities and collected \$<<insert amount collected>> (“SRFs Collected”), which

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amount reduces the amount eligible to be refunded to Developer. By <<insert date>>, City will remit to Developer the SRFs Collected minus the costs identified in Section 2.6 below. In accordance with HMC 14.16.050 and the procedures and methodology described in the Final Refunding Report, City will assess a special refunding fee on each customer who will obtain direct or indirect service from the Facilities (the “Special Refunding Fee”). Subject to the limitations set forth in this Agreement and in HMC Title 14 - Utility Service, City will then remit to Developer on a quarterly basis the Special Refunding Fee(s) collected by City during the Refunding Period. If City returns, or is obligated to return, to a customer a Special Refunding Fee collected from that customer, City will deduct that amount from any future refund to Developer or invoice Developer for such amount. Developer must pay that invoice within thirty (30) days of receipt.

- 2.4 Limits on Refund. Refund payments shall be made by City to Developer only from the SRFs Collected and the Special Refunding Fees assessed during the Refunding Period and received by City from customers in the Special Refunding Area whose properties are served by the Facilities. Under no circumstances will City be required to remit to Developer any amount except out of the foregoing minus any fees and expenses described in Section 2.6 and Section 3.5 below and any fees that City collected and returned or is obligated to return.
- 2.5 Refunding Period. The period during which the fees described in Section 2.3 above will be collected commenced on <<insert the date City first started collecting a special refunding fee or the date the City delivered to Developer a Letter of Acceptance of the final segment of Facilities that Developer completed, whichever date is earlier>> and shall expire twenty (20) years thereafter or the date City remits to Developer the proportional cost reimbursement for the Facilities, whichever date is earlier, (the “Refunding Period”). City will provide Developer written confirmation of the date the Refunding Period commenced. After the Refunding Period expires, City will not assess, collect or remit to Developer any more Special Refunding Fees for any Facilities even if the Developer does not receive the entire proportional cost of the Facilities. If City for any reason does not receive a Special Refunding Fee(s) for the Facilities during the Refunding Period, then – upon the expiration of the Refunding Period – City’s obligation to collect such fees(s) and/or remit them to Developer is extinguished.
- 2.6 City Fees and Expenses. Upon execution of this Agreement, City will deduct from the Developer’s first refund payment the total costs associated with the following fees and expenses presently due and owing to City:
- (a) Initiation fees for City administrative, legal, financial and utility staff services, in connection with the preparation of this Agreement in the amount of \$950.
  - (b) Eligible cost auditing fees (but excluding services covered by plan checking and inspection fees) incurred by City under its agreement with

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<<insert consultant's legal name>> in an amount not to exceed \$<<insert>>.

Thereafter, City will deduct from any future refund to Developer any additional amounts reasonably required to cover City's administrative time to administer this Agreement and any other fees as outlined in HMC Title 14 or the Department Service Rules.

### 3. ACCEPTANCE OF FACILITIES.

- 3.1 Acceptance. Following construction of the Facilities by Developer according to City-approved plans, specifications, and testing, Developer offered the Facilities to City for acceptance. City delivered to Developer a letter dated <<insert date>> for the segment A Facilities, a letter dated <<insert date>> for the segment B Facilities, a letter dated <<insert date>> for the segment C Facilities and a letter dated <<insert date>> for the segment D Facilities; and, therefore the segment A, B, C and D Facilities are property owned, maintained, and controlled by City as of those dates.
- 3.2 On-Going Developer Obligation. Within 30 days of City's written request, Developer shall provide to City, without charge and in a form(s) acceptable to City, "as-built" plans of the Facilities, Property Rights for the Facilities as required by City, a bills(s) of sale for all or a portion of the Facilities further documenting Developer's conveyance of title to the Facilities to City and/or a certification that the Facilities are free of liens and other encumbrances.
- 3.3 Property Rights and Permits. Developer shall, without cost to City, grant and convey – and cause to be granted and conveyed – to City all Property Rights that City determines are required for the Facilities, in a manner that is satisfactory to City as to location and form, and, at City's request, assist City in obtaining a ROW Grant(s) for the Facilities. Developer shall, without cost to City, obtain, or require its contractors/subcontractors to obtain all Permits required for the Facilities. Developer's obligations under this Section survive termination of this Agreement.
- 3.4 Responsibility for Use of City Property Rights. Developer (a) is responsible for any violation or breach of any Property Rights or Permits for the Facilities or of any agreements or instruments creating or evidencing any Property Rights for the Facilities, including any ROW Grant (collectively, "Property Rights Documents") by Developer or any of its contractors or any of their respective subcontractors, employees, representatives or agents ("Responsible Parties"); (b) is responsible for ensuring compliance with any requirement of or obligation imposed by any Permits, Property Rights or Property Rights Documents in connection with any work performed by one or more Responsible Parties on the Facilities ("Project Work"); and (c) is responsible for any violation of applicable law or of a Permit by one or more Responsible Parties in connection with the Project Work and any

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finances or penalties imposed in connection with such a violation. Developer's obligations under this Section survive termination of this Agreement.

- 3.5 **Warranty.** Developer warrants all Facilities against defects in materials and workmanship for a period of one (1) year, which one-year period began on <<insert date>> as to the segment A Facilities, on <<insert date>> as to the segment B Facilities, on <<insert date>> as to the segment C Facilities and on <<insert date>> as to the segment D Facilities. In the event any expense is incurred by City due to such a defect during that one-year period, City will deduct such expense from any refund that is or may become payable to Developer. Before deducting that expense, City will notify Developer of the expense, the segment of Facilities containing the defect, and provide Developer with non-confidential information describing the work performed to correct the particular defect and expense associated with that work. Within 10 days of receiving that notice, Developer may deliver City comments concerning that expense. City may consider those comments but has no obligation to modify the expense(s) it deducts.
- 3.6 **Liens.** Upon City's written request, Developer shall deliver to City a complete release of any lien or claim and receipts covering in full all labor, material, and equipment for which a lien could be filed in relation to the Facilities.
4. **TERM.** This Agreement shall be effective on the Effective Date and terminate on the Refunding Period End Date (the "Term"). City will notify Developer that this Agreement has terminated, identify the event that triggered the termination, and confirm the date of termination. For purposes of this Section, the "Refunding Period End Date" means the date the Refunding Period expires.
5. **INDEMNIFICATION.** Developer agrees to protect, indemnify, defend and hold harmless City, and its officials, officers, employees and agents, from and against any and all claims, losses, expenses, suits, actions, decrees, judgments, awards, attorney's fees, and court costs (collectively, "Losses") which may be suffered, sought against, recovered or obtained from City, or its officials, officers, employees or agents, arising out of or in connection with any alleged act or omission on the part of Developer in performing or failing to perform any of its obligations under this Agreement, except to the extent such Losses are directly caused by the gross negligence or willful misconduct of City. Developer's obligations under this Section survive termination of this Agreement.

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### 6. GENERAL TERMS.

- 6.1 HMC Applicability. Developer acknowledges that this Agreement is subject to the HMC, as adopted on the Effective Date and as amended from time to time by City. The HMC applies to this Agreement, is binding on the parties, and supersedes any portion of this Agreement should a conflict arise.
- 6.2 Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the substantive and procedural laws of the State of Nevada, without giving effect to its choice or conflicts of law provisions.
- 6.3 Venue. All actions shall be initiated in the courts of Clark County, Nevada or the federal district court with jurisdiction over Clark County, Nevada. Developer agrees that it shall not initiate an action against City in any other jurisdiction. Developer irrevocably agrees to submit to the exclusive jurisdiction of the courts located in Clark County, Nevada over any dispute or matter arising under or in connection with this Agreement.
- 6.4 Amendment. This Agreement may be modified or amended only by a written instrument signed by both City and Developer with the same formality as this Agreement.
- 6.5 Entire Agreement. This Agreement constitutes the complete and exclusive statement of the agreement between City and Developer regarding the subject matter of this Agreement and supersedes all prior or contemporaneous agreements, promises, proposals, negotiations, and understandings, whether written or oral, relating to this subject matter.
- 6.6 Other Agreements. Notwithstanding Section 6.5 (Entire Agreement) above, nothing contained in this Agreement shall be construed as affecting City's or Developer's respective duty to perform its respective obligations under other agreements, land use regulations or subdivision requirements relating to Developer's development or operation under existing and future business licenses, which obligations are and shall remain independent of Developer's rights and obligations, and City's rights and obligations, under this Agreement.
- 6.7 Interpretation. Each party acknowledges that it has carefully reviewed this Agreement and that each fully understands and has participated in drafting its provisions, and, accordingly, the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party are not to be employed or used in any interpretation of this Agreement.
- 6.8 Assignment. Developer shall not assign, transfer, convey or otherwise dispose of this Agreement or its right, title, or interest in or to the same, or any part thereof, without prior written consent of City, such consent not to be unreasonably withheld, and any attempted assignment in violation hereof shall be void. No assignment is effective until after Developer's successor or assignee agrees in

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writing to assume all obligations and liabilities under this Agreement, Developer completes performance of any obligations that were to be completed prior to the effective date of the assignment, and City consents in writing to such assignment, such consent not to be unreasonably withheld.

- 6.9 No Third Party Beneficiaries. This Agreement is intended only to benefit the parties hereto and their successors and assigns, shall not be deemed to be for the benefit of any other entity or person other than a party hereto or that party's successor or assign, and does not create any rights, benefits or causes of action for any other person, entity or member of the general public.
- 6.10 Performance of Acts on Business Days. Any reference in this Agreement to time of day refers to local time in Nevada. Unless specifically stated to the contrary, all references to days herein refer to calendar days. Any reference herein to a "business day" refers to a day that is not a Friday, Saturday, Sunday or legal holiday for State of Nevada or City governmental offices. If the final date for payment of any amount due or performance of any act required hereunder falls on a Friday, Saturday, Sunday or legal holiday, that payment may be made or act performed on the next business day.
- 6.11 Severability. If any provision of this Agreement shall be held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain valid and binding on the parties hereto. Any invalid or unenforceable provision will be deemed severed from this Agreement, and the balance of this Agreement will be construed and enforced as if it did not contain the particular invalid or unenforceable provision. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.
- 6.12 Authority. Developer represents that it has taken all actions as may be necessary or advisable and proper to authorize this Agreement, the execution and delivery of it, and the performance contemplated in it. The individual(s) executing this Agreement on behalf of Developer state and acknowledge that she/he/they are authorized and empowered to do so on behalf of Developer. Nothing contained herein shall be construed as creating any personal liability on the part of any officer or agent of City.
- 6.13 Headings; Exhibits; Cross References. The section titles contained in this Agreement are used solely for convenience and do not constitute a part of this Agreement, nor should they be used to aid in any manner in the construction of this Agreement. All references in this Agreement to Sections, Subsections and Exhibits are to Sections, Subsections and Exhibits in this Agreement, unless otherwise specified. All Exhibits, and any attachments to an exhibit, are incorporated into and made a part of this Agreement. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural and the masculine gender includes the feminine gender. Unless otherwise expressly



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stated, words not defined herein shall be given their common and ordinary meaning.

- 6.14 Construction of the Word “Include” and Its Derivatives. When followed by an example, the words “include,” “includes,” and “including” are to be read as if they were followed by the phrase “without limitation.”
- 6.15 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.
- 6.16 Notices. All notices required by this Agreement shall be in writing, reference CMTS # [REDACTED], and shall be delivered by personal delivery, by a nationally recognized overnight courier service, or by certified U.S. mail (postage prepaid, return receipt requested), and addressed to the receiving party at the address below:

If to City:                   City of Henderson  
                                      240 Water Street  
                                      Henderson, Nevada 89015  
                                      Attention: Director, Department of Utility Services

With a copy to:           City of Henderson  
                                      240 Water Street  
                                      Henderson, Nevada 89015  
                                      Attention: City Attorney

If to Developer:          Inspirada Builders, LLC  
                                      4675 West Teco Avenue, Suite 115  
                                      Las Vegas, Nevada 89118  
                                      Attention: <<insert>>

Such notice will be deemed to have been received by the party to whom it was addressed on the date of delivery if delivered personally, on the date officially recorded as delivered (or delivery refused) according to the record of delivery if delivered by courier, or three (3) days after mailing. Either party may change its contact information for purposes of the Agreement by giving written notice to the other party in the manner set forth above.

- 6.17 Attorneys’ Fees. If any action is instituted to interpret or enforce any of the provisions of this Agreement, the party prevailing in such action shall be entitled to recover from the other party thereto reasonable attorney’s fees and costs of such suit (including both prejudgment and post judgment fees and costs) as determined by the court as part of the judgment.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, City and Developer have executed and delivered this Agreement as of the Effective Date:

**DEVELOPER:**

INSPIRADA BUILDERS, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Klif Andrews  
Division President

\_\_\_\_\_  
Date

**CITY:**

CITY OF HENDERSON  
CLARK COUNTY, NEVADA

Date of City Council Action: \_\_\_\_\_

By: \_\_\_\_\_  
RICHARD A. DERRICK  
City Manager/CEO

\_\_\_\_\_  
Date

ATTEST:

APPROVED AS TO FUNDING:

\_\_\_\_\_  
SABRINA MERCADANTE, MMC  
City Clerk

\_\_\_\_\_  
JIM MCINTOSH  
Chief Financial Officer

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

\_\_\_\_\_  
PRISCILLA HOWELL  
Director of Utility Services

\_\_\_\_\_  
NICHOLAS G. VASKOV      CAO  
City Attorney                      Review

**SPECIAL REFUNDING AGREEMENT**

Exhibit A  
Facilities

[ATTACHED]

**SPECIAL REFUNDING AGREEMENT**

Exhibit B  
Special Refunding Report

[ATTACHED]

**SPECIAL REFUNDING AGREEMENT**

Exhibit C

HMC 14.01.010 - DEFINITIONS  
HMC CHAPTER 14.04 - WASTEWATER REGULATIONS  
HMC CHAPTER 14.16 - REFUNDING REGULATIONS

<<insert>>