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# RESOLUTION NO. RA-7-2018

**RESOLUTION FINDING THE PROJECT PROPOSED BY THE FUNDING AGREEMENT FOR FREMONT STREET EXPERIENCE PEDESTRIAN MALL IMPROVEMENTS BETWEEN THE CITY OF LAS VEGAS REDEVELOPMENT AGENCY AND THE FREMONT STREET LIMITED LIABILITY COMPANY TO BE IN COMPLIANCE WITH AND IN FURTHERANCE OF THE GOALS AND OBJECTIVES OF THE REDEVELOPMENT PLAN AND AUTHORIZING THE EXECUTION OF THE FUNDING AGREEMENT BY THE AGENCY.**

WHEREAS, the city of Las Vegas Redevelopment Agency (the "Agency") adopted on March 5, 1986, that plan of redevelopment entitled, to-wit, the Redevelopment Plan for the Downtown Las Vegas Redevelopment Area pursuant to Ordinance 3218, which Redevelopment Plan has been subsequently amended on February 3, 1988, by Ordinance 3339; April 11, 1992, by Ordinance 3637, on November 4, 1996, by Ordinance 4036, on December 17, 2003, by Ordinance 5652 and on May 17, 2006, by Ordinance 5830, and on December 16, 2015, by Ordinance 6448 (the "Redevelopment Plan"); and

WHEREAS, the Redevelopment Plan identifies and designates an area within the corporate boundaries of the city of Las Vegas (the "Redevelopment Area") as in need of redevelopment in order to eliminate the environmental deficiencies and blight existing therein; and

WHEREAS, the AGENCY is an incorporated entity of the State of Nevada that was created to revitalize downtown Las Vegas by creating new jobs, maintaining existing employment opportunities, eliminating blight, and diversifying the local economy; and

WHEREAS, FSE is a Nevada limited liability company selected by the city of Las Vegas, pursuant to City Ordinance 3747, to operate and maintain the Pedestrian Mall and related improvements generally located along Fremont Street between Las Vegas Boulevard to the east and Main Street to the west and commonly known as the "Fremont Street Experience"; and

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WHEREAS, the parties desire to provide funding to improve the Fremont Street Experience to further enhance economic growth and vitality of businesses located in the central business district of the city of Las Vegas; and

WHEREAS, the City Council of the city of Las Vegas has considered the findings that the improvements to the facilities, structures or other improvements are of benefit to the Redevelopment Area or the immediate neighborhood in which the Redevelopment Area is located; and

WHEREAS, the City Council of the city of Las Vegas has considered the findings that no other reasonable means of financing the facilities or structures or other improvements on the Site are available; and

WHEREAS, the City Council of the city of Las Vegas has considered the undertakings of the Agency in connection with the Funding Agreement (attached hereto as **Exhibit A**), which provides for the contribution of funds to FSE for making physical, visual improvements to the property located on the Project Site, all as more fully set forth in the Funding Agreement.

WHEREAS, the Agency has considered the findings that no other reasonable means of financing the building, facilities or structures or other improvements on the Project Site are available, all as more fully set forth in the Funding Agreement, is in compliance with and in furtherance of the goals and objectives of the Redevelopment Plan; and

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Governing Board of the Agency that the Agreement is hereby approved and determined to be in compliance with and in furtherance of the goals and objectives of NRS 279 and the Redevelopment Plan, and the Chairperson of the Governing Board of the Agency is hereby authorized and directed to execute the Agreement for and on behalf of the Agency, and to execute any and all additional documents (including any Attachments to the Agreement) and to perform any additional acts necessary to carry out the intent and purpose of the Agreement.

THE FOREGOING RESOLUTION and FUNDING AGREEMENT was passed, adopted and approved this 21st day of March, 2018.

CITY OF LAS VEGAS
REDEVELOPMENT AGENCY

By: C G Goodman
CAROLYN G. GOODMAN, CHAIR

ATTEST:

By: [signature] 3/22/18
SECRETARY DATE

APPROVED AS TO FORM:

By: John S. Ridilla 3/7/18
JOHN S. RIDILLA DATE
DEPUTY CITY ATTORNEY

**FUNDING AGREEMENT FOR**
**FREMONT STREET EXPERIENCE PEDESTRIAN MALL IMPROVEMENTS**

This FUNDING AGREEMENT FOR FREMONT STREET EXPERIENCE PEDESTRIAN MALL IMPROVEMENTS ("**Agreement**") is made and entered into and effective for all purposes as of the _____ day of __________________, 2018 ("**Effective Date**"), by and between the CITY OF LAS VEGAS DOWNTOWN REDEVELOPMENT AGENCY, a Nevada municipal corporation (the "**Agency**"), and THE FREMONT STREET EXPERIENCE LIMITED LIABILITY COMPANY, a Nevada limited liability company ("**FSE**"), The Agency and FSE are sometimes collectively referred to herein as the "**Parties**."

**RECITALS**

WHEREAS, the Agency is an incorporated entity of the State of Nevada that was created to revitalize downtown Las Vegas by creating new jobs, maintaining existing employment opportunities, eliminating blight, and diversifying the local economy;

WHEREAS, FSE is a Nevada limited liability company selected by the city of Las Vegas (the "**City**"), pursuant to City Ordinance 3747, to operate and maintain the Pedestrian Mall and related improvements generally located along Fremont Street between Las Vegas Boulevard to the east and Main Street to the west and commonly known as the Fremont Street Experience Pedestrian Mall (the "**Fremont Street Experience**");

WHEREAS, the Parties desire to provide funding to improve the Fremont Street Experience pursuant to improvements selected by FSE to renovate the screens attached to the canopy at the Fremont Street Experience to further enhance economic growth and vitality of businesses located in the central business district of the City in an effort to create new jobs, maintain existing employment opportunities, and attract new businesses, tourists, and visitors to the central business district of the City (the "**Project**"); and

WHEREAS, the Parties have mutually determined there are no other reasonable means of financing the improvements to the Fremont Street Experience and therefore desire to enter this Agreement subject to the terms and conditions herein.

NOW, THEREFORE, for and in consideration of the mutual covenants, and obligations contained herein, the receipt of which is hereby acknowledged, the Parties hereto agree as follows:

**AGREEMENT**

**ARTICLE I**
**FSE AGREES:**

1. to contribute up to Eleven Million Six Hundred Thousand Dollars ($11,600,000) for the design, fabrication, delivery, and installation of the Project. Agency shall finance such amount together with the interest payments due on such amount as further described in Article I, Section 2 (collectively, the "**FSE Reimbursement Amount**"), and FSE shall reimburse the Agency pursuant to Article I, Section 2 below, for such amount as further detailed herein. The estimated cost of the Project as of the Effective Date is Thirty-Two Million Eight Hundred Thousand Dollars ($32,800,000). The Project Contribution Amount (as defined below) is Thirty-One Million Eight Hundred Thousand Dollars ($31,800,000). FSE shall contribute up to One Million Dollars ($1,000,000) cash from its own funds to the total Project cost.

2. to make timely, and no later than thirty (30) days prior to the payment due date, semi-annual principal and interest payments on any outstanding Agency bond debt used exclusively to fund the FSE Reimbursement Amount. FSE shall not be responsible for any portion of bond debt for amounts in excess of the FSE Reimbursement Amount attributable to bonds packaged with the FSE Reimbursement Amount bond offering. The Agency bond debt used to fund the FSE Reimbursement Amount will be amortized over ten (10) years at the interest rate established at the time of the bond sale. FSE's payments to Agency for the FSE Reimbursement Amount shall be equal to the amounts due from Agency related to such bonds based on the amortization schedule described in this section.

3. to coordinate with the Agency related to the design of the Project.

4. FSE agrees to enhance the area between the SlotZilla Zip Line structure and Main Street at the west end of the Fremont Street Experience (the "**Main Street Improvements**"). The Main Street Improvements shall be approved in writing by the Agency, which shall not be unreasonably withheld, conditioned or delayed, and pursuant to the requirements of Article II Section 5. The Main Street Improvements shall be completed concurrently with the Project and no later than the final completion date of the Project. The cost of the Main Street Improvements are the sole responsibility of FSE and are not included in the estimated cost of the Project.

5. Concurrent with the Project and no later than the final completion date of the Project, FSE shall install and maintain directional signing on Fremont Street Pedestrian Mall to the Mob Museum located at Third Street and Stewart Avenue. The size, design, content, and location shall be consistent with other directional signing installed by FSE on the Fremont Street Pedestrian Mall.

6. to cause its affiliate, Fremont Street Experience Parking Corporation, a Nevada corporation, to pledge its parking revenue to Agency to secure FSE's repayment obligations for the FSE Reimbursement Amount under this Agreement.

7. to secure all necessary permits, including without limitation, City permits, and to pay required permit fees to any governmental authority, to construct the Project.

8. to require the Project contractor to provide FSE a labor and materials payment bond and performance bond in the full amount of the cost of the Project, providing for the payment in the prosecution of the construction work and guaranteeing the timely completion of the Project in accordance with the plans and specifications. The surety countersigning the payment and performance bonds shall be subject to the reasonable review and approval by the Agency and shall be licensed to do business in Nevada. FSE and the Agency shall be co-obligees of the payment and performance bonds.

9. to construct or cause the portions of the Project constituting Prevailing Wage Work (as defined below) to be constructed by qualified Nevada licensed contractors. Prior to execution of a construction contract between FSE and its selected contractor and if the construction bid exceeds the sum of the Project Contribution Amount (as defined below), FSE shall provide proof of additional FSE funds to complete the construction of the Project, with reasonable contingency of a minimum of ten percent (10%) of the canopy installation portion of the construction bid.

10. to ensure that the Project is constructed in a workmanlike manner, consistent with the Project plans and specifications, and applicable local, state, and federal law.

11. to provide monthly invoices to the Agency for payment of deposits due and, following payment of such deposits, invoices based on the actual material ordered, delivery, installation, and construction costs, as applicable, and other related expenses up to the Project Contribution Amount. Following the payment for deposits due, the monthly invoices shall include (i) the contractor's monthly pay estimate request; (ii) a

signed certificate of payment from the Project's design professional (e.g., architect or civil engineer) or construction manager; and (iii) any other reasonable documentation requested by the Agency to ensure compliance with the terms and conditions of this Agreement.

ARTICLE II
AGENCY AGREES:

1. to contribute Ten Million Seven Hundred Thousand Dollars ($10,700,000) to the Project (the "**Agency Contribution**") without reduction for any interest, underwriting or any other fees related to any bond financing related to such amount. FSE is not required to reimburse the Agency Contribution. For purposes of clarity, a net total of $10,700,000 from the Agency Contribution and a net total of $11,600,000 from the FSE Reimbursement Amount shall be available to FSE for Project costs without reduction for interest payments or underwriting fees.

2. to use commercially reasonable efforts to secure bond financing for the FSE Reimbursement Amount, which must be repaid by FSE as set forth in Article I, Section 2 above.

3. to invoice FSE a minimum of sixty (60) days prior to the payment due date, for the semi-annual principal and interest payments on any outstanding Agency debt used to fund the FSE Reimbursement Amount.

4. to contribute via direct payment a share of the Project costs in an amount up to Thirty-One Million Eight Hundred Thousand Dollars ($31,800,000) (collectively, the "**Project Contribution Amount**") without reduction for any bond, interest or any other fees related to any bond financing related to such amount subject to the terms and conditions herein. The Project Contribution Amount is comprised of (x) a Nine Million Five Hundred Thousand Dollar ($9,500,000) grant (the "**LVCVA Contribution**") from the Las Vegas Convention and Visitors Authority (the "**LVCVA**"), (y) the Agency Contribution and (z) the FSE Reimbursement Amount. The LVCVA Contribution shall solely be used to fund improvements to the Fremont Street Pedestrian mall canopy and for no other purpose. The LVCVA's obligation to fund the Project shall not exceed the LVCVA Contribution. The Agency's obligation to fund the Project shall not exceed the Agency Contribution and to obtain financing for the FSE Reimbursement Amount, for which FSE shall reimburse Agency, as set forth in this Agreement. If the LVCVA Contribution is not fully spent to construct improvements to the Fremont Street Pedestrian Mall canopy, the Agency shall not be required to supplement the Project Contribution Amount, provided, however, the Agency Contribution shall not be reduced in such event. Agency shall be responsible for obtaining the LVCVA Contribution from the LVCVA to timely administer payments from the LVCVA Contribution pursuant to this Agreement. All invoices payable hereunder shall be paid as follows:

(i) One-third (1/3) from each of the LVCVA Contribution, Agency Contribution and FSE Reimbursement Amount until the LVCVA Contribution is exhausted; then

(ii) One-half (1/2) from each of the Agency Contribution and FSE Reimbursement Amount until the Agency Contribution is exhausted; then

(iii) One-hundred percent (100%) from the FSE Reimbursement Amount

Upon receipt from FSE of the contractor's monthly invoice, the certification of payment, and other reasonable documentation requested by Agency to ensure compliance with the terms and conditions of this Agreement, the Agency shall pay to FSE the invoice amount, without deduction, no later than thirty (30) days after receipt of said invoice. If the Agency disputes an invoice or any part of such invoice, it shall notify FSE in writing no later than ten (10) calendar days specifying its objection. Its failure to so object within such timeframe shall be deemed approval by the Agency of such invoice. In the event of any such timely objection, the Agency shall nevertheless timely pay all undisputed amounts set forth in the applicable invoice.

5. Agency shall coordinate with FSE related to the design of the Main Street Improvements. The Agency's review and comment on the Main Street Improvements must be made in writing and within fourteen (14) calendar days of receipt from FSE of the Main Street Improvements design concept. If the Agency does not respond within the fourteen (14) calendar days in writing stating its reasons for not approving such concept, the aforementioned shall be deemed approved by the Agency. The Agency's approval of any Main Street Improvements design concept shall not be unreasonably withheld, conditioned, or delayed

6. to provide written authorization to proceed, which shall not be unreasonably withheld, conditioned or delayed, no later than ten (10) calendar days after receipt of the Project construction bid and FSE proof of funds if the construction bid exceeds the sum of the Project Contribution Amount. If Agency fails to object in writing stating its reasons for objection to provide written authorization to proceed within ten (10) days of receipt of the Project construction bid and FSE proof of funds, the authorization to proceed shall be deemed given.

## ARTICLE III
## IT IS MUTUALLY AGREED:

1. in the event Agency is not able to sell the tax increment subordinate lien bonds to the City of Las Vegas to fund the Agency Contribution of the Project Contribution Amount and close on the tax increment subordinate lien bonds on or before June 30, 2018, the Agency shall nevertheless be obligated to fund the Agency Contribution whether by generally appropriated funds or pursuant to alternative financing. Further, in the event the Agency is unable to sell such bonds, (a) the Parties shall amend this Agreement as necessary to reflect any alternative funding sources to be used to finance the amounts hereunder and (b) Agency shall continue to make the LVCVA Contribution available to fund the Project.

2. The Fremont Street Pedestrian Mall canopy shall meet the requirements of the city of Las Vegas Building Department.

3. that Agency's obligation to fund the Project shall not exceed the Project Contribution Amount and any bond underwriting, interest and other fees related to any bond financing related thereto without written amendment to this Agreement.

4. FSE and the Agency agree to jointly redesign Third Street between Fremont Street and Ogden Avenue (the "**Third Street Corridor Improvements**"). The Third Street Corridor Improvements shall be approved in writing by the Agency and FSE and shall include enhanced landscaping, lighting, and other streetscape amenities as determined through the Third Street Corridor Improvements design process. The Third Street Corridor Improvements shall be completed concurrently with the Project and no later than the final completion of the Project. Upon completion, operating responsibility of the Third Street Corridor Improvements shall remain with FSE. FSE covenants to maintain the Third Street Corridor Improvements in a clean and unobstructed manner, permitting free pedestrian passage between Fremont Street and Ogden Avenue except during special events. During special events, FSE shall maintain reasonable pedestrian passage along at least one side of Third Street. At all times, the Third Street Corridor shall be kept free of trash dumpsters and portable toilets and no special event delivery and equipment trucks shall be parked thereon except during loading and unloading.

5. All installation and electrical construction work performed in Nevada by Nevada licensed subcontractors related to the canopy renovation of the Project (the "**Prevailing Wage Work**") or any

portion thereof funded by the Project Contribution Amount shall conform to the prevailing wage requirements of Nevada Revised Statutes 338.020 to NRS 338.090, inclusive, solely as applicable to the payment of prevailing wages and related matters for the Prevailing Wage Work. The Project Contribution Amount shall not be used for any work performed prior to the Effective Date of this Agreement. Reference Exhibit A for additional information. Agency acknowledges and agrees that the portions of the Project that are not performed in Nevada or are performed by the canopy screen provider are not Prevailing Wage Work and, notwithstanding anything to the contrary contained herein, work that does not constitute Prevailing Wage Work is not subject to any prevailing wage requirements.

6. that upon reasonable prior notice and compliance with any safety conditions or requirements of FSE or its contractors, the construction of the Project shall be subject to reasonable inspection by the Agency to ensure compliance with the terms and conditions of this Agreement, provided, however, the Agency shall indemnify, defend, and hold harmless FSE in connection with any such inspection.

7. that in addition to any other inspection rights under this Article, upon fourteen (14) calendar days prior written notice, the Agency shall have the right to inspect, examine, or audit, during normal business hours, all construction agreements and contractor invoices pertaining to the Project and other Project documents that are not subject to privilege or confidentiality requirements reasonably necessary to ensure compliance with the terms and conditions of this Agreement. All such documents shall be made available at the local office of FSE. Any audit conducted by the Agency pursuant to this Article shall be conducted at the sole expense of the Agency and the Agency shall prepare a written report containing its findings, a copy of which shall be provided to FSE.

8. that by entering this Agreement, the Agency is not acting in any regulatory capacity, and the design and construction of the Project is subject to review and approval by, without limitation, the City's Building and Public Works departments.

9. that prior to construction of the Project, FSE shall prepare and submit to the Agency an employment plan for the construction of the Project (the "**Project Employment Plan**") pursuant to the city of Las Vegas Economic Development Projects Employment Plan Policy (the "**Employment Policy**"), as such may be amended from time to time for approval by the Agency and attached hereto as Exhibit B. FSE shall submit the Project Employment Plan to the Agency within thirty (30) days after the Effective Date for Agency review and approval, which approval not be unreasonably withheld, conditioned or delayed and which shall be deemed given if Agency fails to object in writing stating its reasons therefor within such thirty (30) day period. Thereafter, FSE shall conform to the reporting requirements of the approved Project Employment Plan. The Agency shall retain ten percent (10%) of the Agency Contribution specifically apportioned for Prevailing Wage Work if FSE fails to conform to the requirements of the approved Project Employment Plan. FSE may appeal the failure to Agency's decision to withhold the Agency Contribution to the Las Vegas City Council pursuant to the Employment Policy.

## ARTICLE IV
## MISCELLANEOUS

1. INCORPORATION OF RECITALS AND EXHIBITS. The above Recitals and all Exhibits attached hereto are incorporated by this reference and expressly made part of this Agreement.

2. FORCE MAJEURE. No party shall be in breach of this Agreement if it fails to perform as required hereunder due to labor disputes, civil commotion, war, warlike operation, terrorist acts, sabotage, governmental regulations or control, fire or other casualty, inability to obtain any materials, or other causes beyond such party's reasonable control (financial inability excepted).

3. NOTICES. All notices required or permitted under this Agreement shall be given in writing and shall be deemed effectively given (i) upon personal delivery to the party to be notified, (ii) three (3) days after deposit with the United States Post Office, by registered or certified mail, postage prepaid and addressed to the party to be notified at the address for such party, or (iii) one (1) day after deposit with a nationally recognized air courier service such as FedEx. Either party hereto may change its address by giving ten (10) days' advance notice to the other party as provided herein. Phone numbers are listed for information only.

| | |
|---|---|
| If to Agency: | ATTN: Director<br>Office of Economic and Urban Development<br>City of Las Vegas<br>495 S. Main Street, 6th Floor<br>Las Vegas, NV 89101<br>(702) 229-6551 |
| with copy to: | ATTN: City Manager<br>City of Las Vegas, 7th Floor<br>495 South Main Street<br>Las Vegas, NV 89101<br>(702) 229-6501 |
| with copy to: | ATTN: City Attorney<br>City Attorney's Office<br>City of Las Vegas, 6th Floor<br>495 South Main Street<br>Las Vegas, NV 89101<br>(702) 229-6629 |
| If to FSE: | Attention: President & CEO<br>The Fremont Street Experience Limited Liability Company<br>302 East Carson Avenue, Suite 808<br>Las Vegas, NV 89101 |

4. CHOICE OF LAW; VENUE; WAIVER OF JURY TRIAL. The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Agreement, without giving effect to its conflict of law provisions. Each party hereto consents to, and waives any objection to, Clark County, Nevada as the proper and exclusive venue for any disputes arising out of or relating to this Agreement or any alleged breach thereof. The Parties hereto hereby waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other on any matters whatsoever arising out of or in any way connected with this Agreement, the relationship of the Parties hereto, and/or any claim of injury or damage.

5. SEVERABILITY. If any term, covenant, condition, or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction, or rendered by the adoption of a statute invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and hall in no way be affected, impaired or invalidated thereby.

6. RELATIONSHIP OF THE PARTIES. Nothing contained herein shall constitute any party hereto as being the agent or legal representative of the other for any purpose whatsoever, nor shall this Agreement

be deemed to create any form or business organization between the Parties hereto, nor is any party hereto granted the right or authority to assume or create any obligation or responsibility on behalf of the other party, nor shall either party hereto be in any way liable for any debt of the other.

7. NO THIRD PARTY BENEFICIARIES. Nothing expressed or implied in this Agreement is intended, or should be construed, to confer upon or give any person or entity not a party to this Agreement any third-party beneficiary rights, interests, or remedies under or by reason of any term, provision, condition, undertaking, warranty, representation, or agreement contained in this Agreement.

8. ATTORNEY'S FEES. In the event that any party hereto institutes an action or proceeding relating to or arising out of this Agreement, or the transactions contemplated hereby, or in the event any party hereto is in default of its obligations pursuant thereto, whether or not suit is filed or prosecuted to final judgment, the prevailing party shall be entitled to its reasonable attorneys' fees and to all court costs incurred, in addition to any other damages or relief forwarded.

9. ENTIRE AGREEMENT. This Agreement contains the entire agreement between the Parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

10. AUTHORIZATION. All necessary actions shall have been taken under the parties' organizational documents to authorize the individuals signing this Agreement on their respective behalves to do so.

11. INTERPRETATION. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s). Whenever in this Agreement any words of obligations or duty are used in connection with either party, such words shall have the same force and effect as though framed in the form of express covenants on the part of the party obligated. This Agreement shall not be construed either for or against either party hereto, but this Agreement shall be interpreted in accordance with the general tenor of its language.

12. TIME CALCULATIONS. All references to "days" herein shall mean calendar days unless otherwise stated. The terms "business days" shall mean Monday thru Friday, exclusive of holidays observed by the State of Nevada. Should the calculation of any of the various time periods provided for herein result in an obligation becoming due on a Saturday, Sunday, or legal holiday, then the due date of such obligation or scheduled time of occurrence of such event shall be delayed until the next business day.

13. FURTHER ASSURANCES. Each party hereto shall, from time to time after the execution of this Agreement, execute and deliver such instruments, documents, and assurances and take such further acts as the other party may reasonably request to carry out the purpose and intent of this Agreement without undue delay.

14. COUNTERPARTS; ELECTRONIC DELIVERY. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party hereto whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories. Executed copies hereof may be delivered by facsimile or e-mail and upon receipt will be deemed originals and binding upon the Parties, regardless of whether originals are delivered thereafter.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first written above.

**CITY OF LAS VEGAS DOWNTOWN REDEVELOPMENT Agency**

**"Agency"**

By: ______________________________

Carolyn G. Goodman, Chair

Attest:

By: ______________________________

LuAnn D. Holmes, MMC
Secretary

Approved as to Form:

By: John S. Ridilla 3/7/18

Deputy City Attorney Date

John S. Ridilla
Deputy City Attorney

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**THE FREMONT STREET EXPERIENCE**
**LIMITED LIABILITY COMPANY, LLC**

**"FSE"**

By: ______________________________

Printed Name: ______________________________

Title: ______________________________

**EXHIBIT A**

PREVAILING WAGE REQUIREMENTS

All Prevailing Wage Work shall comply with all federal, state and local labor laws with regard to minimum wages, overtime work, hiring and discrimination including, without limitation, NRS Chapter 338.

PREVAILING WAGE RATES.

FSE hereby acknowledges that pursuant to the provisions of NRS 338.040 and 338.050, any person who is employed by the contractor or subcontractor at the work site for Prevailing Wage Work, or who performs Prevailing Wage Work on the Project (regardless of any contractual relationship alleged to exist between the workman and his other employer), is subject to the prevailing wage rate provisions of NRS 338.010 to 338.090, inclusive. FSE's contractor is responsible for ensuring that the aforementioned persons are paid in accordance with the current prevailing wage rates approved by the Nevada State Labor Commissioner.

In accordance with NRS Chapter 338, FSE's contractor shall cause any subcontractor performing Prevailing Wage Work to post the current prevailing wage rates and applicable addenda in a place generally visible to the workmen. The prevailing wage rates and applicable addenda are available from the office of the State Labor Commissioner (www.laborcommissioner.com). FSE's contractor agrees to investigate, or to assist in the investigation of, each claimed violation of the prevailing wage requirements set forth in this Agreement as may be requested by Agency or the State Labor Commissioner.

CERTIFIED PAYROLL REPORTS.

Pursuant to NRS Chapter 338, FSE's contractor and each subcontractor performing Prevailing Wage Work are required to:

1. Keep an accurate record showing the (i) name of worker, (ii) occupation of the worker, (iii) if the worker has a driver's license or identification card, an indication of the state or other jurisdiction that issued the license or card and (4) the actual per diem wages and benefits paid to each such worker employed by them in connection with the Project. These records are referred to as the "certified payroll reports."

2. Keep an additional accurate record showing, for each worker employed by the Contractor or Subcontractor who has a driver's license or identification card (i) the name of the worker, (ii) the driver's license or identification card number of the worker, and (ii) the state or other jurisdiction that issued the license or card.

3. FSE's contractor and each subcontractor through the contractor, is required to submit a copy of the certified payroll reports for each calendar month to FSE no later than fifteen (15) calendar days after the end of the month. FSE's contractor shall be responsible for coordinating the submittal of all the certified payroll reports for the Project, including the reports of each subcontractor who is performing work on the Project. FSE's contractor agrees to contact the Nevada State Labor Commissioner with any question concerning the payment of prevailing wage rates.

PENALTIES.

In accordance with NRS 338.060, FSE's contractor shall forfeit the penalty provided herein to FSE for each calendar day or portion thereof that each workman employed on the Project performing Prevailing Wage Work

1. is paid by the contractor or subcontractor less than the designated wage rate for the work on the Project;

2. the contractor or subcontractor willfully included inaccurate or incomplete information in the monthly certified payroll report submitted to FSE;

3. the contractor or subcontractor did not report to FSE as required pursuant to NRS 338.070, and/or

4. if a violation of more than one provision of subsection 1. through 3. herein involves the same workman, FSE's contractor shall forfeit the penalty set forth in each violated subsection. FSE's Contractor hereby stipulates that FSE may withhold not less than $20.00, nor more than $50.00 for each and every violation of subparagraphs (i) through (iii) herein, the actual amount of which is according to a sliding scale based on the size of the contractor's business which is adopted by the State Labor Commissioner, except that for violation of subparagraph (iii) the maximum penalty is limited to $1,000 for the first violation and $5,000 for each subsequent violation occurring during the term of the Project. In addition to any penalty imposed by the Labor Commissioner, if FSE's contractor or subcontractor is determined by FSE to have violated prevailing wage law, FSE may deduct from any payments due the contractor, the costs of the proceedings associated with the investigation of each wage complaint including, but not limited to, employee salaries, investigator fees and attorney fees. In addition to any monetary penalty imposed by law, the contractor, or its subcontractor, agent, or representative, performing work on the Project who neglects to comply with the prevailing wage rate requirements of NRS Chapter 338 is guilty of a misdemeanor.

**EXHIBIT B**

LAS VEGAS REDEVELOPMENT AGENCY EMPLOYMENT PLAN POLICY

EXHIBIT B

# Las Vegas Redevelopment Agency

# Employment Plan Policy

**Revised**

**June 18, 2014**

## TERMS

"***Community Development Block Grant (CDBG) Eligible Areas***" means an area which is eligible for a community development block grant pursuant to 24 C.F.R. Part 570.

***"Developer"*** means a person or entity that proposes to construct a redevelopment project, which will receive financial assistance from the Agency.

"***Disabled***" means a physical impairment, with respect to an individual, that substantially limits one or more of the major activities of such individual: A record of such impairment; or Being regarded as having such impairment.

"***Disposition and Development Agreement (DDA)***" means an agreement that sets forth requirements for the sale, lease, exchange acquisition, or disposal of real property owned by the Agency, where a specific type of project is developed.

"***Economically Disadvantaged***" means any individual who meets the present poverty guidelines established by the Federal government as a poverty measure. The guidelines are issued each year in the Federal Register by the Department of Health and Human Services (HHS).

"***Las Vegas Redevelopment Agency Resident***" means an individual whose primary place of residence is within the Las Vegas Redevelopment Area boundaries.

***"Las Vegas Redevelopment Area"*** means the 1986 Redevelopment Plan, as amended, and the 2012 Redevelopment Plan identifies two areas within the corporate boundaries of the City of Las Vegas as in need of redevelopment in order to eliminate the environmental deficiencies and blight existing therein.

"***Members of Racial Minorities***" means or describes an individual that is: Black or African-American, Hispanic-American, Native-American, Asian-Pacific American, Subcontinent Asian-American, Native-Hawaiian or other Pacific Islander.

"***Owner Participation Agreement (OPA)***" means any agreements where the Agency is participating with a landowner for the development of a site by providing some form of financial concession.

"***Purchase and Sale Agreement (PSA)***" means any agreements where the Agency is involved in the acquisition or sale of real property.

"***Private Developer***" means any person or entity that is proposing to construct a project and will receive financial assistance from the Agency and includes developers of either speculative or build-to-suit projects.

***"Southern Nevada Enterprise Community (SNEC)***" means the area designated as the Southern Nevada Enterprise Community in section 5 of chapter 407, Statutes of Nevada 2007.

"***Veteran***" means any honorably discharged soldier, sailor, marine, nurse, or army field clerk, as well as reserve components of these services, who have served in military service of the United States.

## Policy

This Employment Plan Policy is prepared in accordance with the Las Vegas Redevelopment Agency Employment Plan Resolution No. RA-4-2011 dated April 6, 2011, and as amended by Resolution No.RA-8-2014 and RD2-2-2014 - Dated June 18, 2014 and prepared in accordance with Nevada Revised Statutes Chapter 279, specifically but not limited to NRS 279.482 (2) and NRS 279.6092 to 279.6099, inclusive. This Employment Plan Policy (hereinafter referred to as the "Policy"), supersedes the amended Las Vegas Redevelopment Agency Employment Plan Policy dated June 18, 2014. In accordance with the Policy, private developers and build-to-suit owners which receive redevelopment project funds are required to hire residents who live within the designated Las Vegas Redevelopment Areas, areas in the city for which the Las Vegas City Council has adopted a plan for neighborhood revitalization or which is eligible for a community development block grant (CDBG), or the Southern Nevada Enterprise Community (SNEC) (hereinafter referred to as the "Area"), and are encouraged to hire economically disadvantaged contractors/residents, members of racial minorities, women, disabled or veterans.

## OBJECTIVE

The immediate purpose of this Policy is to provide developers, contractors and build-to-suit owners/lessees with the guidance necessary to prepare and implement an employment plan when participating in a private redevelopment project funded by the Las Vegas Redevelopment Agency (hereinafter referred to as the "Agency"). The ultimate result of this Policy is to ensure that the persons identified in the statute have the opportunity to benefit from redevelopment projects as fully as the community at large.

The requirements of the Policy shall be included in the Owner Participation Agreement ("OPA"), the Disposition and Development Agreement ("DDA") and/or Purchase and Sale Agreement ("PSA"), (hereinafter collectively referred to as "Agreements"), between the developer and the Agency.

## APPLICABILITY

1) Except as otherwise provided in NRS 279.6094, as appropriate for the particular project, each proposal for a redevelopment project must include an employment plan.

2) The provisions of NRS 279.6092 to 279.6099, inclusive, apply only to a redevelopment project undertaken in a redevelopment area of a city whose population is 500,000 or more.

3) A public agency that uses redevelopment funds for the design or construction of a redevelopment project being built as a public work pursuant to chapter 338 of NRS shall submit an employment plan pursuant to NRS 279.482.

## DEVELOPER/CONTRACTOR AWARD PHASE – REQUIREMENTS

1) EMPLOYMENT PLAN

   a. The minority participation goal is designed for all segments of the local business community to have a reasonable and significant opportunity to participate in Agency contracts with respect to redevelopment projects.

      i) At least 15 % of all of contractors, subcontractors, vendors and suppliers of the developer are bona fide residents of the area.

      ii) 15% participation of Minority Business Enterprise or Woman's Business Enterprise or Disadvantaged Business Enterprise or Veteran Business Enterprise (hereinafter referred to as the "M/W/D/VBE's") will be an ***aspirational goal***. This goal represents the total value of sub-contracts and material agreements awarded to M/W/D/VBE's. Participation shall be inclusive of subcontractors, vendors and suppliers.

      iii) Reporting and demonstration of best efforts is required.

   b. M/W/D/VBE's may participate as a prime contractor, sub-contractor, as a joint venture partner with a prime or sub-contractor, or as a vendor of materials and/or supplies. Only those sub-contractor(s) and suppliers contracting directly with or to be paid by the prime contractor may be credited towards the participation goals.

2) REPORTING REQUIREMENTS

   a. A report to the Agency is due within thirty (30) calendar days after the end of each calendar quarter for the length of the project.

   b. In an effort to provide accountability, accuracy and consistency, a standard Agency reporting template has been developed. The templates may be modified by the Agency at any time, to ensure uniform and accurate reporting.

All exhibit checklists shall be complete with copies of correspondence and advertisements attached to the report.

c. If the minority participation goals are not met, information documenting specific actions taken to achieve the goals must be submitted prior to the contract award to receive credit towards compliance.

## CONSTRUCTION PHASE REQUIREMENTS

1) EMPLOYMENT PLAN

a. For a redevelopment project undertaken in the Las Vegas Redevelopment Area of the city of Las Vegas (whose population is 500,000 or more), the Employment Plan shall include a description of the manner in which:

i) At least 15 % of all of contractors, subcontractors, vendors and suppliers of the developer are bona fide residents of the area.

ii) The developer/contractor will use best efforts for construction jobs and hire at least 15% of employees who are veterans and other persons of both sexes and diverse ethnicities living within the Area; and

iii) Include an agreement by the developer/contractor to offer and conduct training for the residents described in subsection (i) above or make a good faith effort to provide such training through a program of training that is offered by a governmental agency and reasonably available to the developer or employer.

2) REPORTING REQUIREMENTS

a. A developer/contractor that receives incentives from the Agency for a redevelopment project shall, upon completion of the project and upon request of the Agency, report, in a form prescribed by the Agency, information relating to:

i) Outreach efforts that the developer/contractor has utilized including, without limitation, information relating to job fairs, advertisements in publications that reach residents of the areas described in NRS 279.6096 and utilization of employment referral agencies; and

ii) Training conducted for persons hired by the developer and contractors, subcontractors, vendors and suppliers of the developer and the employers within the redevelopment project; and

iii) The execution of the construction of the redevelopment project, including, without limitation, plans and scope of services.

b. If a developer receives incentives from the Agency for a redevelopment project with a value of $100,000 or less, the developer shall use its best efforts to satisfy the reporting requirements described in section (1) above. If a developer receives incentives from the Agency for a redevelopment project with a value of $100,000 or more, the developer must satisfy the reporting requirements described above.

c. A report to the Agency is due within thirty (30) calendar days after the end of each calendar quarter for the length of the project.

d. In an effort to provide accountability, accuracy and consistency, a standard Agency reporting template has been developed. The templates may be modified by the Agency at any time to ensure uniform and accurate reporting. All exhibit checklists shall be complete with copies of correspondence and advertisements attached to the report.

e. If the developer fails to comply with the requirements of this section:

i) The Agency may refuse to pay all or any portion of an incentive; and

ii) The Agency may require the developer to repay any incentive already paid to the developer in accordance with NRS 279.6098.

## LONG-TERM BUSINESS PHASE REQUIREMENTS

1) EMPLOYMENT PLAN

a. The Employment Plan shall include a description of the existing opportunities for employment within the area, including, but not limited to;

i) A projection of the effect that the redevelopment project will have on opportunities for employment in the area;

ii) A description of the individuals employed on the project within the Area who also:

(1) are Economically Disadvantaged;

(2) have a Physical Disability ("Disabled");

(3) are members of Racial Minorities;

(4) are Veterans; or

(5) are Women.

b. At least 15% of all jobs created by employers who relocate to the Redevelopment Area are filled by bona-fide residents of the Area.

2) REPORTING REQUIREMENTS

a. A report to the City is due within thirty (30) calendar days after the end of each calendar quarter. The Employment Plan shall be monitored and tracked for twelve (12) months post construction of the redevelopment project.

b. In an effort to provide accountability, accuracy and consistency, a standard Agency reporting template has been developed. The templates may be modified by the Agency at any time to ensure uniform and accurate reporting. All exhibit checklists shall be complete with copies of correspondence and advertisements attached to the report.

c. If the developer fails to comply with the requirements of this section:

i) The Agency may refuse to pay all or any portion of an incentive; and

ii) The Agency may require the developer to repay any incentive already paid to the developer in accordance with NRS 279.6098

**PARTIAL WITHHOLDING OF INCENTIVE**

1) If the Agency proposes to provide an incentive to a developer for a redevelopment project, an amount equal to 10% of the amount of the proposed incentive must be withheld by the Agency and must not be paid to the developer until the applicable reporting requirements are satisfied above.
2) If the Agency provides incentives in a form other than cash to a developer for a redevelopment project, the developer shall deposit an amount of money with the Agency equal to 10% of the value of such incentive as agreed upon between the Agency and the developer. If the developer satisfies the reporting requirements, the Agency shall return the deposit required by this subsection to the developer in accordance with NRS 279.6096.
3) Prior to the start of construction, failure to adhere to all of the required program elements, as further described below, will constitute grounds for withdrawal of the entire incentive.

**APPEALS**

1) A developer may appeal the refusal of the Agency to pay the amount provided for in NRS 279.6096 to the City of Las Vegas as the legislative body of the community(Agency).
2) In an appeal, the developer has the burden of demonstrating that:
   a. Specific actions were taken to substantially fulfill the requirements of NRS 279.6096;
   b. An insufficient number of significant opportunities for appropriate contractors, subcontractors, vendors or suppliers to perform a commercially useful function in the project existed; and
   c. Use of appropriate contractors, subcontractors, vendors or suppliers as required by NRS 279.6096 would have significantly and adversely affected the overall cost of the project.
3) If the Las Vegas City Council on behalf of the City of Las Vegas finds that the developer's appeal has satisfied the requirements of subsection 2 above, the Agency shall pay the developer the amount provided for in NRS 279.6096.

Procedure for submission and hearing of appeals:

1) Contact the Agency for an appointment to present analysis and to discuss obstacles for meeting the participation requirements or minority participation goals. A staff recommendation will be made and forwarded to the Executive Director of the Agency.
2) The Executive Director will review the analysis and staff recommendation and make a decision on whether a project-specific employment plan modification is warranted. If the decision is in favor of no modification, the developer may appeal to the Las Vegas City Council on behalf of the City of Las Vegas as the legislative body of the of the Agency.
3) Final decisions regarding the developer's ability to meet the Employment Plan Policy requirements in the applicable agreement shall rest with the Las Vegas City Council.

## CERTIFICATE – DISCLOSURE OF OWNERSHIP/PRINCIPALS
## (CONTINUED)

**Block 4: Disclosure of Ownership and Principals**

In the space below, the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one-percent (1%) ownership interest in the Contracting Entity.

| | FULL NAME/TITLE | BUSINESS ADDRESS | BUSINESS PHONE |
|---|---|---|---|
| 1. | Golden Nugget Experience LLC | 129 Fremont St. Las Vegas NV 89101 | (702) 385-7111 |
| 2. | Golden Gate Casino, LLC | 1 Fremont St. Las Vegas NV 89101 | (702) 385-1906 |
| 3. | Four Queens, LLC | 202 Fremont St. Las Vegas NV 89101 | (702) 385-4011 |
| 4. | Sam-Will, Inc | 200 Fremont St. Las Vegas NV 89101 | (702) 385-3232 |
| 5. | Vintage Vegas Gaming, LLC | 128 Fremont St. Las Vegas NV 89101 | (702) 382-1600 |
| 6. | DRock Gaming LLC | 301 Fremont St. Las Vegas NV 89101 | (702) 388-2400 |
| 7. | | | |
| 8. | | | |
| 9. | | | |
| 10. | | | |

The Contracting Entity shall continue the above list on a sheet of paper entitled "Disclosure of Ownership/Principals – Continuation" until full and complete disclosure is made. If continuation sheets are attached, please indicate the number of sheets: _____

**Block 5: Disclosure of Ownership and Principals – Alternate**

If the Contracting Entity, or its principals or partners, are required to provide disclosure (of persons or entities holding an ownership interest) under federal law (such as disclosure required by the Securities and Exchange Commission or the Employee Retirement Income Act), a copy of such disclosure may be attached to this Certificate in lieu of providing the information set forth in Block 4 above. A description of such disclosure documents must be included below.

Name of Attached Document: _____

Date of Attached Document: _____ Number of Pages: ____

I certify under penalty of perjury, that all the information provided in this Certificate is current, complete and accurate. I further certify that I am an individual authorized to contractually bind the above named Contracting Entity.

Patrick Hughes
Name

3/12/18
Date

Subscribed and sworn to before me this 12th day of

March, 2018

Leslie Ziemer
Notary Public

LESLIE ZIEMER
Notary Public, State of Nevada
Appointment No. 83-0390-1
My Appt. Expires Aug. 29, 2020

## ATTACHMENT 1 - CERTIFICATE - DISCLOSURE OF OWNERSHIP/PRINCIPALS

**1. Definitions**

*"City"* means the City of Las Vegas.

*"City Council"* means the governing body of the City of Las Vegas.

*"Contracting Entity,"* means the individual, partnership, or corporation seeking to enter into a contract with the City of Las Vegas.

*"Principal"* means, for each type of business organization, the following: (a) sole proprietorship – the owner of the business; (b) corporation – the directors and officers of the corporation; but not any branch managers of offices which are a part of the corporation; (c) partnership – the general partner and limited partners; (d) limited liability company – the managing member as well as all the other members; (e) trust – the trustee and beneficiaries.

**2. Policy**

In accordance with Resolution 79-99 and 105-99 adopted by the City Council, Contracting Entities seeking to enter into certain contracts with the City of Las Vegas must disclose information regarding ownership interests and principals. Such disclosure generally is required in conjunction with a Request for Proposals (RFP). In other cases, such disclosure must be made prior to the execution of a contract.

**3. Instructions**

The disclosure required by the Resolutions referenced above shall be made through the completion and execution of this Certificate. The Contracting Entity shall complete Block 1, Block 2, and Block 3. The Contracting entity shall complete either Block 4 or its alternate in Block 5. Specific information, which must be provided, is highlighted. An Officer or other official authorized to contractually bind the Contracting Entity shall sign and date the Certificate, and such signing shall be notarized.

**4. Incorporation**

This Certificate shall be incorporated into the resulting contract, if any, between the City and the Contracting entity. Upon execution of such contract, the Contracting Entity is under a continuing obligation to notify the City in writing of any material changes to the information in this Certificate. This notification shall be made within fifteen (15) days of the change. Failure to notify the City of any material change may result, at the option of the City, in a default termination (in whole or in part) of the contract, and/or a withholding of payments due the Contracting Entity.

| **Block 1: Contracting Entity** | **Block 2: Description / Subject Matter of Contract** |
|---|---|
| **Name: Fremont Street Experience Limited Liability Company** | **Services for:** |
| **Address: 425 Fremont St, Suite 250, Las Vegas, NV 89101** | |
| **Telephone: 702-678-5600** | **Project Number:** |
| **EIN or DUNS : 88-0307629** | |

**Block 3: Type of Business**

☐ Individual ☐ Partnership ☒ Limited Liability Company ☐ Corporation ☐ Trust ☐ Other: