

RESOLUTION NO. RA-1-98

RESOLUTION OF THE CITY OF LAS VEGAS REDEVELOPMENT AGENCY FINDING THE PROJECT PROPOSED BY THE SUPPLEMENTAL FREMONT STREET EXPERIENCE DEVELOPMENT AGREEMENT (THE "SUPPLEMENTAL AGREEMENT") BY AND AMONGST THE AGENCY, THE CITY OF LAS VEGAS AND THE FREMONT STREET EXPERIENCE LIMITED LIABILITY COMPANY AS BEING IN COMPLIANCE WITH AND IN FURTHERANCE OF THE GOALS AND OBJECTIVES OF THE REDEVELOPMENT PLAN FOR THE DOWNTOWN LAS VEGAS REDEVELOPMENT AREA AND APPROVING THE EXECUTION OF THE SUPPLEMENTAL AGREEMENT BY THE AGENCY.

WHEREAS, the City Council for the City of Las Vegas (the "City") on March 5, 1986, pursuant to Ordinance 3218, adopted that plan of redevelopment entitled to-wit: The Redevelopment Plan for the Downtown Las Vegas Redevelopment Area (this plan and subsequent amendments thereto are hereinafter referred to as the "Redevelopment Plan") for implementation by the City of Las Vegas Redevelopment Agency (the "Agency") in the area identified in the Redevelopment Plan as in need of redevelopment (the "Redevelopment Area") in order to eliminate the environmental deficiencies and blight existing therein; and

WHEREAS, pursuant to Ordinance 3747 adopted on October 20, 1993, the City Council did establish a pedestrian mall in the downtown area of Las Vegas located primarily along a portion of what was previously Fremont Street between Main Street and Las Vegas Boulevard South (the "Pedestrian Mall") as authorized under the provisions of NRS 268.810 through 268.823.

WHEREAS, in connection with the creation of the Pedestrian Mall and in furtherance of the goals and objectives of the Redevelopment Plan, the Agency, along with the City, The Fremont Street Experience Limited Liability Company (the "Company") and the Fremont Street Experience Parking Corporation executed the Fremont Street Experience Project Development Agreement dated October 20, 1993, and the Amended and Restated Fremont Street Experience Project Development Agreement dated September 27, 1995, which, amongst other things, provided for various landscape and streetscape improvements within the Pedestrian Mall; and

WHEREAS, there continues to be a need to halt the economic decline and to promote the economic growth of the businesses located in the downtown area of Las Vegas; and

WHEREAS, the City has introduced an Ordinance (Bill No. 97-98) which would expand the boundaries of the Pedestrian Mall as part of its redevelopment effort to halt the economic decline and

1 to promote the economic growth of the businesses in the downtown area of Las Vegas; and

2 WHEREAS, in the implementation of the Redevelopment Plan, the Agency is proposing to
3 enter into that certain agreement entitled, to-wit: Supplemental Fremont Street Experience
4 Development Agreement (the "Supplemental Development Agreement") by and between the Agency,
5 City and the Company which provides for the construction of the improvements (the "Improvements")
6 set forth in Exhibits "A" and "B" to the Development Agreement to accommodate the expansion and
7 use of the Pedestrian Mall, including landscape and streetscape improvements thereon, which are all
8 for the benefit of the public in general and users of the Pedestrian Mall; and

9 WHEREAS, under the provisions of the Supplemental Development Agreement, the Agency
10 will pay a portion of the costs of constructing the Improvements to the expanded Pedestrian Mall; and

11 WHEREAS, Section 279.486 of the NRS, and Section 470.1.3 of the Redevelopment Plan
12 authorizes the Agency, with the consent of the City Council, to pay all or part of the value of the land
13 for and the cost of the construction of any building, facility, structure or other improvement which is
14 publicly or privately owned and located within or without the Redevelopment Area; and

15 WHEREAS, pursuant to Section 279.486 of the NRS, the City Council has consented to the
16 payment of all or part of the value of the land for and the cost of the construction of any buildings
17 facility, structure or other improvement and the installation of any improvement which is publicly or
18 privately owned after determining that:

19 (a) the buildings, facilities, structures or other improvements are of benefit to the
20 Redevelopment Area or the immediate neighborhood in which the Redevelopment Area is located;
21 and

22 (b) No other reasonable means of financing those buildings, facilities, structures or other
23 improvements are available.

24 WHEREAS, the Office of Business Development for the City of Las Vegas has prepared a
25 report entitled, to-wit: Staff Report on the Project Proposed by the Fremont Street Experience
26 Development Agreement Concerning Improvements to the Expansion of the Pedestrian Mall, which
27 discusses the benefit to the Redevelopment Area of the Agency entering into the Supplemental
28 Development Agreement and the need for Agency financing in part of the Improvements; and

1 ...

2 NOW, THEREFORE, THE GOVERNING BOARD OF THE AGENCY DOES HEREBY
3 RESOLVE THE FOLLOWING:

4 SECTION 1: Based upon the Staff Report referenced above, the Agency hereby determines
5 that:

6 (a) The Improvements are of benefit to the Redevelopment Area and the immediate
7 neighborhood in which the Redevelopment area is located; and

8 (b) No other reasonable means of financing the Improvements are available.

9 (c) The Supplemental Development Agreement attached hereto as Exhibit "A" is in
10 compliance with and in furtherance of the goals and objectives of the Redevelopment Plan.

11 SECTION 2. The Governing Board hereby consents to the Agency paying for a portion of
12 the cost to construct the Improvements as set forth in the Supplemental Development Agreement.

13 SECTION 3. Subject to the City Council adopting the Ordinance (Bill No. 97-98), the
14 Chairperson of the Governing Board of the Agency is hereby authorized and directed to execute the
15 Supplemental Development Agreement for and on behalf of the Agency, and to execute any and all
16 additional documents (including any applicable Attachments to the Supplemental Development
17 Agreement) and to perform any additional acts necessary to carry out the intent and purpose of the
18 Supplemental Development Agreement.

19 THE FOREGOING RESOLUTION was approved this 12th day of
20 January, 1998, by the following vote:

21 VOTING "AYE": Councilmen Adamsen, McDonald, Reese and Brown

22 VOTING "NAY": NONE

23 ABSENT: Mayor Jones

CITY OF LAS VEGAS
REDEVELOPMENT AGENCY

By

JAN LAVERTY JONES, Chairperson

27 ATTEST:

28 BARBARA JO RONEMUS, Secretary

**SUPPLEMENTAL FREMONT STREET EXPERIENCE
DEVELOPMENT AGREEMENT**

This Supplemental Development Agreement ("**Agreement**") is made and executed as of the 12th day of January, 1998, among the City of Las Vegas, Nevada (the "**City**"), a municipal corporation of the State of Nevada, City of Las Vegas Redevelopment Agency, formerly known as the City of Las Vegas Downtown Redevelopment Agency (the "**Agency**") and The Fremont Street Experience Limited Liability Company, a Nevada limited liability company (the "**Company**").

W I T N E S S E T H:

○ **WHEREAS**, the undersigned and the Fremont Street Experience Parking Corporation are parties to the Amended and Restated Fremont Street Experience Project Development Agreement, dated as of September 27, 1995 ("**Development Agreement**"); and

WHEREAS, the parties now desire to extend the Right-of-Way Improvements Project, as described in the Development Agreement, to include the Third Street Project and the First Street Project as described on Exhibits A and B attached hereto and incorporated herein by reference, respectively.

○ **NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. The Right-of-Way Improvements Project is hereby extended to include the Third Street Project and the First Street Project. For the purpose of developing the Third Street Project and the First Street Project, except as otherwise provided herein and for those provisions clearly not applicable, the parties hereby adopt all of the terms, covenants and conditions of the Development Agreement as if the Third Street Project and the First Street Project were part of the original Right-of-Way Improvements Project and incorporate the same herein by reference as fully as if they were

fully set forth herein. For such purpose, all references in the Development Agreement to the "Agreement" shall be read as references to this Agreement.

2. With reference to Section 2.1 of the Development Agreement as incorporated herein, the Company may, but shall not be obligated to, engage whomever it deems appropriate for architectural services on such terms as the Company, in its sole discretion, deems satisfactory. Any such architect must be approved by the City and the Agency, which approval shall not be unreasonably withheld or delayed. The failure to object to any proposed architect and to state the reasons therefor within ten (10) days after request for such approval shall be deemed approval.

3. With respect to Section 2.2 of the Development Agreement as incorporated herein, the review by the City and Agency of Plans is only to assure that the Plans substantially conform to the project descriptions in Exhibit A and B hereto, and to the renderings on Exhibit C attached hereto and incorporated herein by reference, as the case may be. Should there be any dispute as to whether the Plans so conform, the decision of the Company's consulting engineer, made in good faith with respect to all the parties, shall be binding on all the parties. A determination of whether a change is "substantial" within the meaning of Section 2.2 shall also be made by the Company's consulting engineer instead of JPI. Such consulting engineer shall be subject to the approval of the City and the Agency, which approval shall not be unreasonably withheld or delayed. The failure to object to any proposed consulting engineer and to state the reasons therefor within ten (10) days after request for such approval shall be deemed approval.

4. With respect to Section 3.2A of the Development Agreement as incorporated herein, the prevailing wage rates in effect for the period October 1, 1997 - September 30, 1998 is attached hereto as Exhibit D.

5. With respect to Section 3.2B of the Development Agreement as incorporated herein, the Employment Plan is attached hereto as Exhibit E.

6. With respect of Section 3.3 of the Development Agreement as incorporated herein, the construction schedule for the Third Street Project shall be submitted to the City and Agency on or before March 31, 1998. The initial construction schedule for the First Street Project shall be submitted to the City and Agency concurrently with the Company's notice to the City and Agency of substantial completion of the Third Street Project as provided in Paragraph 11 hereof. The Company will begin construction of the Third Street Project promptly after the City and Agency have approved the Plans therefor and the Agency has made the deposit with respect thereto required pursuant to Paragraph 11 hereof. The Third Street Project shall be completed substantially in accordance with the most recent construction schedule submitted pursuant to Sections 3.3 of the Development Agreement as incorporated herein and this Paragraph 6. The Company will begin construction of the First Street Project promptly after the City and County has approved the Plans therefor and the Agency has made the deposit with respect thereto required pursuant to Paragraph 11 hereof. The First Street Project shall be completed substantially in accordance with the most recent construction schedule submitted pursuant to Section 3.3 of the Development Agreement as incorporated herein and this Paragraph 6.

7. With respect to Section 3.5A of the Development Agreement as incorporated herein, the amount of liability insurance required shall be Five Million Dollars (\$5,000,000) instead of Twenty-five Million Dollars (\$25,000,000). With respect of Section 3.5B of the Development Agreement as incorporated herein, the required insurance shall be based solely on the Third Street Project or the First Street Project, as the case may be.

8. With respect of Section 3.11 of the Development Agreement as incorporated herein, the Company may request Certificates of Completion for the Third Street Project and First Street Project jointly or separately.

9. With respect to Section 4.1 of the Development Agreement as incorporated herein, provided the deposit with respect to the Third Street Project required pursuant to Paragraph 11 hereof has been made, on or before January 31, 1998, the Company agrees to deposit Three Hundred Thousand Dollars (\$300,000) into a trust account at a bank to be mutually agreed upon by the parties hereto to pay a portion of the cost of the Third Street Project. Within one (1) business day after the Company has been notified that the deposit with respect to the First Street Project has been made pursuant to Paragraph 10, the Company agrees to deposit an additional Two Hundred Fifty Thousand Dollars (\$250,000) into such account to pay a portion of the cost of the First Street Project. Any damages sought by the City or the Agency for breach of this provision shall only include costs and expenses related to the Third Street Project or the First Street Project, respectively. No other deposits need be made by the Company.

10. With respect to Section 4.2 of the development Agreement as incorporated herein, the City shall make no deposits.

11. With respect to Section 4.3 of the Development Agreement as incorporated herein, on or before January 31, 1998, the Agency agrees to deposit into a separate trust account at a bank to be mutually agreed upon by the parties hereto the sum of Three Hundred Thousand Dollars (\$300,000) to pay a portion of the cost of the Third Street Project. Upon substantial completion of the Third Street Project, the Company shall so notify the City and the Agency. Within ten (10) days of receipt of such notice, the Agency agrees to deposit an additional Three Hundred Thousand

Dollars (\$300,000) into such account to pay a portion of the cost of the First Street Project.

12. With respect to Section 4.4A of the Development Agreement as incorporated herein, if any Company Funds for the Third Street Project remain unspent after a Certificate of Completion is issued for the Third Street Project, such funds shall be returned to the Company.

13. With respect to Section 4.4D of the Development Agreement as incorporated herein, the Agency Funds shall be used for the purposes set forth in Paragraph 11. If any Agency Funds for the Third Street Project remain unspent after a Certificate of Completion is issued for the Third Street Project, such funds shall be returned to the Agency. If any Agency Funds for the First Street Project remain unspent after a Certificate of Completion is issued for the First Street Project, such funds shall be returned to the Agency.

14. With respect to Section 4.5 of the Development Agreement as incorporated herein, at no time shall Agency Funds expended for the Third Street Project or the First Street Project exceed the amount of Company Funds expended for each such Project.

15. With respect to Section 6.2A of the Development Agreement as incorporated herein, if an event of default has occurred under this Agreement, the remedies of the City and the Agency shall be solely to bring any suit, action or proceeding at law or in equity to enforce their rights under the provisions of this Agreement and to require that the Company carry out the agreements that it has made hereunder. This suit may be for specific performance, for damages, or for both, and the City and Agency may also, by action in equity, enjoin any acts or things which are unlawful or in violation of the City's or Agency's rights under this Agreement.

16. Notices to the Company will be sent to the address established by the most recent notice of change of address given by the Company pursuant to the Development Agreement.

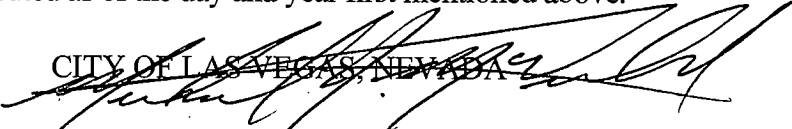
17. The Company's authorized representative is as established by the Company's most recent designation pursuant to Section 7.12 of the Development Agreement..

IN WITNESS WHEREOF the City, the Agency and the Company have caused this Supplemental Development Agreement to be executed as of the day and year first mentioned above.

ATTEST:


BARBARA JO RONEMUS, City Clerk

CITY OF LAS VEGAS, NEVADA

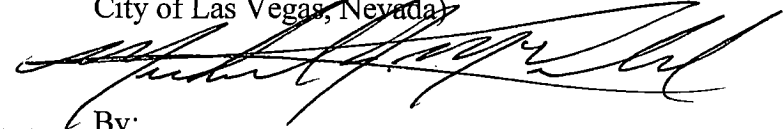
By: 

MICHAEL J. MCDONALD, MAYOR PRO-TEM

ATTEST:


BARBARA JO RONEMUS, Secretary

CITY OF LAS VEGAS REDEVELOPMENT
AGENCY f/k/a DOWNTOWN
REDEVELOPMENT AGENCY (of the
City of Las Vegas, Nevada)

By: 

MICHAEL J. MCDONALD, MAYOR PRO-TEM

THE FREMONT STREET EXPERIENCE
LIMITED LIABILITY COMPANY

By: 

MARK PARIS, President

Secretary

APPROVED AS TO FORM AND CONTENT:


Robert S. Sylva, Deputy City Attorney

REDEVELOPMENT AGENCY

MEETING OF

January 12, 1998

AGENDA DOCUMENTATION

TO:
Agency Board

FROM: Larry K. Barton
 Executive Director

SUBJECT: RA-1-98 - Discussion and Possible Action Adopting Resolution of the City of Las Vegas Redevelopment Agency Finding the Project Proposed by the Supplemental Fremont Street Experience Development Agreement (the "Supplemental Agreement") by and amongst the Agency, the City of Las Vegas and the Fremont Street Experience Limited Liability Company as Being in Compliance with and in Furtherance of the Goals and Objectives of the Redevelopment Plan for the Downtown Las Vegas Redevelopment Area and Approving the Execution of the Supplemental Agreement by the Agency.

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The First Street Project, unlike the Third Street Project, will have unequal initial deposits from the Agency (\$300,000) and the Company (\$250,000). The reason for the disparity is that the current preliminary estimate of the cost of constructing the First Street Project is \$500,000. Because the Agency cannot make additional deposits in the event the actual costs exceed the preliminary estimate without amending the Agreement, the Agreement builds in a \$50,000 contingency from the Agency. Upon payment of \$500,000 in expenditures against this account, the Company must match on a dollar-for-dollar basis any further withdrawals from this account (Section 14 of the Supplemental Development Agreement).

9. The Company is responsible for all cost overruns in connection with the First Street Project and the Third Street Project (Section 4.7 of the Amended and Restated Fremont Street Experience Project Development Agreement incorporated by Section 1 of the Supplemental Development Agreement).

A report prepared by the Office of Business Development is attached hereto addressing not only the need for the Agency's contribution to the project, but how the First Street and Third Street Projects further the goals and objectives of the Redevelopment Plan and are of benefit to the Redevelopment Area. Before the Agency can enter into the Supplemental Development Agreement, the City must find pursuant to NRS 279.486 that these Projects are of benefit to the Redevelopment Area and that there is no other reasonable means to finance these Projects. The Resolution attached hereto sets forth this finding, and authorizes the City to execute the Supplemental Development Agreement attached as Exhibit "A" thereto.