

Supporting Document  
October 6, 2014  
Board of Museums and History  
Refers to Agenda item # 4

AGREEMENT  
BETWEEN THE  
LAS VEGAS VALLEY WATER DISTRICT  
ON BEHALF OF THE  
SPRINGS PRESERVE  
AND THE STATE OF NEVADA,  
ON BEHALF OF THE  
DEPARTMENT OF TOURISM AND CULTURAL AFFAIRS,  
DIVISION OF MUSEUMS AND HISTORY,  
NEVADA STATE MUSEUM – LAS VEGAS

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## **AGREEMENT**

This Agreement, made and entered into this \_\_\_ day of \_\_\_\_\_, 2014, by and between the Las Vegas Valley Water District “DISTRICT,” a political subdivision of the State of Nevada, on behalf of the Springs Preserve, hereinafter referred to as “PRESERVE,” and the State of Nevada, on behalf of the Department of Tourism and Cultural Affairs, Division of Museums and History, hereinafter referred to as “STATE.” For convenience, PRESERVE and STATE are referred herein individually as “PARTY” and collectively as “PARTIES”.

## **RECITALS**

### **WITNESSETH:**

**WHEREAS**, NRS 277.180 authorizes any one or more public agencies to contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform; and

**WHEREAS**, DISTRICT is the owner of certain real property located in Clark County, Nevada, known generally as the Springs Preserve; and

**WHEREAS**, PRESERVE has been set aside by DISTRICT in an effort to preserve the cultural and biologic heritage of the Las Vegas Valley; and

**WHEREAS**, DISTRICT and STATE executed a 99 year lease Contract on August 22, 2006, attached hereto as Exhibit “A” and incorporated herein, to allow the future State Museum (“MUSEUM”) to be located at PRESERVE; and

**WHEREAS**, DISTRICT has managed the design and construction of MUSEUM pursuant to an Interlocal Agreement signed August 5<sup>th</sup>, 2003, attached hereto as Exhibit “B” and incorporated herein, and currently manages the entire PRESERVE property, not including MUSEUM; and

**WHEREAS**, in an effort to maximize resources of both STATE and PRESERVE, and in the interest of efficiency and fiscal responsibility, STATE desires, and PRESERVE agrees, to coordinate operation of MUSEUM located at 309 S. Valley View Blvd., Las Vegas, NV, 89107 on PRESERVE property; and

**WHEREAS**, STATE and PRESERVE entered into a Cooperative Agreement on June 1, 2010, attached hereto as Exhibit “C” and incorporated herein, to coordinate operations prior to the opening of MUSEUM; and

**WHEREAS**, STATE and PRESERVE adopted Amendment No. 1 to the Cooperative Agreement on October 11, 2011, attached hereto as Exhibit “D” and incorporated herein, to provide STATE with assistance in opening MUSEUM through June 30, 2013; and

**WHEREAS**, this Agreement will terminate and supersede both the Cooperative Agreement signed June 1, 2010, as well as the Amendment No. 1 signed October 11, 2011, which shall have no further force or effect and the Parties shall have no rights thereunder; and

**WHEREAS**, STATE and PRESERVE agree that long-term coordinated operation can best be achieved through this Agreement.

**NOW THEREFORE**, in consideration of the mutual terms, conditions and covenants, the parties agree as follows:

**1. GENERAL PURPOSE AND INTENT**

The purpose and intent of this Agreement is to combine certain resources of both STATE and PRESERVE for a shared cultural experience for the community while maintaining separate operations. This Agreement terminates and supersedes the Cooperative Agreement entered into by STATE and PRESERVE on June 1, 2010, as well as the Amendment No. 1 signed by the parties on October 11, 2011.

## **2. REQUIRED APPROVAL**

This Agreement shall not become effective until and unless approved by the Las Vegas Valley Water District Board of Directors, the Board of Museum and History and the Board of Examiners.

## **3. DEFINITIONS**

A. "STATE" means the State of Nevada and any state agency identified herein, its officers, employees, authorized designees, and immune contractors, as defined in NRS 41.0307.

B. "MUSEUM" means the Nevada State Museum-Las Vegas, located at 309 S. Valley View Blvd., Las Vegas, Nevada 89107, the Nevada Division of Museums and History, or an authorized designee of this entity.

C. "PRESERVE" means the Springs Preserve, the Las Vegas Valley Water District, or an authorized designee of this entity.

D. "LEASE" means the lease executed on August 22, 2006, for a term of 99 years between the Las Vegas Valley Water District as LESSOR, and the State of Nevada Division of State Lands on behalf of the Department of Cultural Affairs, Division of Museums and History as LESSEE.

## **4. AGREEMENT TERM**

This Agreement shall be effective upon approval, as described in Section 2 of this Agreement, for an initial term, ending on June 30, 2016, and shall be automatically renewed for additional two-year terms thereafter, unless sooner terminated by either PARTY as set forth in Section 5 of this Agreement. In the event this Agreement is not renewed automatically, the terms shall renew on a month to month basis with any pre-payment pro-rated monthly.

## **5. TERMINATION**

This Agreement may be terminated by either PARTY prior to the conclusion of the initial term or any renewal thereof as set forth in Section 4 above, provided termination shall not be effective until 30 days after a PARTY has served written notice upon the other PARTY. This Agreement may be terminated by mutual consent of both PARTIES or unilaterally by either PARTY without cause. The PARTIES expressly agree that this Agreement shall be terminated immediately if for any reason federal, State Legislature, and/or Board funding ability to satisfy this Agreement is withdrawn, limited, or impaired.

## **6. PRESERVE SITE AND OPERATIONS**

PRESERVE is located at a main address of 333 S. Valley View Blvd., Las Vegas, NV 89107, as further described on Exhibit "E," and incorporated herein. PRESERVE site is a non-smoking site. The normal PRESERVE operating hours are from 10 a.m. to 6 p.m. daily, but are subject to special conditions and seasonal adjustments.

## **7. MUSEUM SITE AND OPERATIONS**

A. MUSEUM shall include the building located at 309 S. Valley View Blvd., Las Vegas, NV, 89107, as further described on Exhibit "F," and incorporated herein, including, without limitation, the roof, walls, pipes, heating and air conditioning system, electrical system, plumbing system, window, glass, doors, fixtures, emergency generator and its enclosure, and all other improvements in, on, or affixed to the MUSEUM building.

B. MUSEUM shall operate on a schedule as determined by STATE Board of Museums and History. Except as otherwise provided in Section 10(A)(5), no access by PRESERVE or the public shall be permitted to MUSEUM on days MUSEUM is closed without the express written consent of MUSEUM Director.

C. MUSEUM shall have Permanent and Temporary Exhibits which are to be maintained by STATE staff. PRESERVE shall have no responsibility to maintain the exhibits of STATE.

D. STATE may organize Special Events at MUSEUM. STATE shall be responsible for obtaining and maintaining all applicable State and local permits, licenses, or other approvals which may be necessary for such MUSEUM events.

E. MUSEUM may contain rentable space that will be maintained by STATE. However, for security purposes, STATE must inform PRESERVE staff of any space that will be rented out to any party except for the Department of Tourism and Cultural Affairs and its divisions.

F. STATE may have storage and workshop space available inside MUSEUM and shall allow coordination with PRESERVE for opportunities for storage and usage as specified in this Agreement.

G. STATE shall be exclusively responsible for the operation and maintenance of MUSEUM Store. Both Parties acknowledge that there may be opportunities for coordination of merchandise, staffing or operation for both MUSEUM and PRESERVE, which may be entered into upon agreement of PRESERVE and MUSEUM.

## **8. REPRESENTATIONS AND COVENANTS OF THE STATE**

A. STATE has a need to minimize utility costs as STATE has a limited budget annually for utility bills. Therefore, STATE desires to coordinate efforts with PRESERVE in an effort to minimize those costs, where feasible. STATE is responsible for its share of incurred costs.



B. To the extent possible based on funding and available resources, STATE shall support recognized advertised hours of operation of PRESERVE. STATE and PRESERVE shall coordinate efforts to bring special events to the site.

C. STATE and PRESERVE shall support the visitor experience to the site by offering information for both MUSEUM and for PRESERVE.

D. STATE and PRESERVE shall, within the resources available, cooperate on public outreach efforts and work together to provide these services to the community.

E. STATE personnel on-site shall understand and follow the PRESERVE's Rules and Regulations, attached hereto as Exhibit "G" and incorporated herein, at all times, including the environmental management system.

## **9. REPORTING AND ACCOUNTING**

A. Both STATE and PRESERVE understand the importance of regular communication and reporting. As such, meetings between PRESERVE Manager and MUSEUM Director, or appropriate designees, shall be held not less than bi-monthly. Topics for discussion may include, at a minimum, schedule of operations, special events, third-party events, temporary exhibitions, coordination of education programming and operational concerns.

B. PRESERVE shall make available for inspection by STATE on a quarterly basis the records of attendance and revenues received from adult general admissions to PRESERVE, as recorded in PRESERVE's OMNI ticketing system, or its successor. PRESERVE shall cooperate with STATE in the preparation of such statistical reports that may be required by STATE, with each PARTY bearing its own costs.

## **10. SHARED OPERATIONS**

PRESERVE shall provide the following shared operational and maintenance support to STATE.

### **A. Security/Monitoring**

1. PRESERVE will provide security and monitoring for the areas around the exterior of MUSEUM in conformance with PRESERVE site monitoring schedule at no cost to STATE.

2. PRESERVE will not provide security for special events for MUSEUM. STATE shall be responsible for providing its own security for MUSEUM for these events and shall coordinate these efforts with PRESERVE for security purposes.

3. PRESERVE shall be the first contact on site for emergency response outside the hours of MUSEUM's normal hours of operation, e.g. Fire Alarm System, on site and may enter MUSEUM to verify emergencies.

4. MUSEUM shall be responsible for all aspects of security inside the confines of MUSEUM building. In the event that a MUSEUM special event or third-party event requires additional security, PRESERVE shall allow STATE access to its security service vendor. STATE shall be responsible for payment of all costs for additional security provided through PRESERVE's or other security vendor.

5. Except in cases of emergency, security or necessity, PRESERVE shall have no right of entry into MUSEUM without prior approval from STATE designee. PRESERVE shall document entry and notify MUSEUM personnel of such entry.

### **B. Landscape**

PRESERVE shall maintain all landscaping around the exterior of MUSEUM.

C. Costs for Shared Utility Services

Certain utility services described below shall be shared between PRESERVE and STATE provided it remains logistically and fiscally more efficient to do so. PRESERVE shall invoice STATE for STATE's share of the utility services monthly and STATE shall reimburse PRESERVE for those costs within thirty (30) days. After 45 days of nonpayment from the date of billing, the amount owed shall accrue interest monthly based on the prime interest rate.

1. Electric Power and Water Services:

PRESERVE and STATE shall share costs of electric power and water based on actual submeter readings provided to STATE, and STATE shall be responsible for reimbursing PRESERVE.

2. Telephone Service:

PRESERVE shall provide telephone service to STATE; however, any local service charges and long distance service charges shall be invoiced monthly.

**11. UTILITIES**

STATE shall have the responsibility to obtain and maintain at its sole cost, the following utilities:

A. Natural Gas

Natural Gas shall be separately metered and STATE shall be responsible for obtaining and maintaining natural gas service for MUSEUM.

B. Cable/DSL/Satellite/ Internet Broadband Access/ Television

STATE shall be responsible for obtaining and maintaining television and broadband service for MUSEUM.

C. Garbage Services

STATE shall be responsible for obtaining and maintaining garbage service for MUSEUM.

D. Sanitation / Annual Sewer Service

STATE shall be responsible for obtaining and maintaining sewer service for MUSEUM.

**12. OPERATIONS AND MAINTENANCE**

A. STATE assumes the full and sole responsibility for the operation and maintenance of MUSEUM.

B. STATE shall be solely responsible for all custodial and janitorial services at MUSEUM. There is no requirement for STATE to use PRESERVE staff for these services. STATE is free to choose any method for these services. PRESERVE may make available personnel from Opportunity Village for the performance of custodial services on an as-needed basis during times of peak MUSEUM use. These services may be provided to STATE without cost.

C. Notwithstanding the foregoing, the PARTIES hereby agree to collaborate on an evaluation of the programmatic access to MUSEUM to enhance the experience of persons with disabilities at MUSEUM which may include, without limitation, hiring a consultant to review the programmatic access to MUSEUM. The PARTIES also agree to collaborate on any mutually agreed upon enhancements to the programmatic access of MUSEUM.

D. The PARTIES agree that as of the date of this Agreement, all identified physical barriers at MUSEUM have been resolved, and STATE represents and warrants that as of the date of execution of this Agreement, it is not aware of any defects in the design, excluding HVAC

and the Loading Dock, or construction of MUSEUM that have not been resolved. The PARTIES agree to collaborate on an evaluation of the HVAC and Loading Dock.

E. The PARTIES agree that to the extent there are defects in the design or construction of MUSEUM which remain undiscovered, nothing in this Agreement prevents STATE from exercising any right authorized by Nevada law with respect thereto. The PARTIES agree to enter into mediation and arbitration pursuant to Section 32 of this Agreement should any such design or construction defect be discovered in the future.

### **13. SAFETY**

#### Emergency Response Plan / First Aid Plan

A. STATE shall develop and coordinate with PRESERVE an evacuation plan for emergency situations.

B. STATE shall develop and coordinate with PRESERVE a response plan to injuries sustained by visitors while on the site.

C. MUSEUM staff shall be familiar with PRESERVE'S staff emergency procedures and STATE'S response plan shall be in coordination with PRESERVE'S procedures as described in Exhibit "G."

### **14. TICKETING, MEMBERSHIP AND PAYMENT OBLIGATIONS**

A. PRESERVE shall handle ticketing sales to MUSEUM for STATE.

B. PRESERVE shall sell a joint adult general admission ticket for access to the site, including MUSEUM.

C. No revenue is derived for STATE on days or times that MUSEUM is closed.

D. PRESERVE shall transfer to STATE 15% of revenue from each adult general admission ticket sold, with a guaranteed payment of \$50,000 prepaid to STATE within 30 days

of approval of this Agreement, and by July 31<sup>st</sup> of each fiscal year thereafter during the term. STATE, consistent with NRS 381.0045(2), shall not charge nor receive revenue for visits to MUSEUM by children under the age of 18.

E. Any additional revenue due STATE for adult general admissions exceeding the prepaid amount for the fiscal year ending June 30th, as recorded in PRESERVE'S OMNI ticketing system, or its successor, shall be payable to STATE by PRESERVE not later than August 31st of each year during the term.

F. Both PRESERVE and STATE maintain independent membership programs. During the term of this Agreement, PRESERVE shall offer its members an optional \$10 surcharge to their individual and family memberships that will be donated to STATE to help offset operational costs at MUSEUM. STATE shall provide general admission access to MUSEUM to all members of PRESERVE at no charge for the duration of this Agreement.

G. PRESERVE shall provide a reciprocal general admission visitation benefit to the ORI-GEN Museum and grounds for members of MUSEUM.

H. Revenue derived from the membership surcharge, as recorded in PRESERVE's OMNI ticketing system, or its successor, shall be paid to STATE by August 31st of each year. STATE will deposit these funds into Budget Account 5039 per NRS 381.0031.

I. MUSEUM affords bona fide researchers, officials and vendors access to MUSEUM and collections free-of-charge, at the discretion of MUSEUM Director.

## **15. STAFFING PLAN**

A. STATE shall have sole responsibility to staff MUSEUM as needed to maintain the building and afford adequate, safe, public services and protection and management of collections held in trust by STATE.

B. For the period of this Agreement, PRESERVE agrees to provide STATE, at no cost, the following personnel assistance:

1. Up to two temporary workers who will perform services defined in STATE personnel classification system as “museum attendants.”
2. Up to four volunteers, as needed, from PRESERVE’s volunteer pool.
3. Coordination of educational activities and tours.
4. General ticketing services at the site central ticketing area during normal business hours.

C. Duties assigned to PRESERVE staff and volunteers while assisting MUSEUM will be coordinated by MUSEUM Director after consultation with and approval by PRESERVE Manager.

D. Other Sections of the Agreement define the extent of other additional personnel services, including external security, external landscaping, volunteer management and supplemental custodial services, as needed.

E. For the term of this Agreement, PRESERVE may contract, at actual cost, exhibit design and fabrication services of MUSEUM professionals, if MUSEUM is able to provide such services. Such services shall be documented in advance of any work with a scope of work, timeline and estimate of probable costs. Billing for such services, based on time and materials shall be monthly for the duration of such projects. Payment is due from PRESERVE within 30 days of the billing date.

## **16. SPECIAL EVENTS**

A. STATE shall be solely responsible for third-party events at MUSEUM, including, but not limited to, weddings, meetings, and room rentals. If requested, PRESERVE staff will

assist with set-up and strike for events, with costs of such assistance reimbursed by STATE per Section 10 of this Agreement.

B. Third-party facility rentals for MUSEUM shall be governed by the policy governing same approved by the Board of Museums and History, State of Nevada.

C. MUSEUM may contract with PRESERVE for the use of MUSEUM for special third-party events, such arrangements shall be evidenced by written documentation addressing issues, such as revenue sharing, staffing requirements, catering needs, security, and liability, to ensure neither party suffers an economic loss. Payment for MUSEUM services for third-party events must be timely and in no case shall full payment not be made within 30 days after an event, regardless of cause.

D. Periodically, PRESERVE may choose to conduct a special event at PRESERVE during normal business hours, with a start time before 3:00 p.m. During these events, MUSEUM may enter into a written agreement with PRESERVE to offer a joint ticket price lower than the adult general admission ticket, with an agreed-upon amount going to STATE, in exchange for access to MUSEUM during the event. STATE is not entitled to any revenue from PRESERVE special events with a start time after 3:00 p.m., unless agreed upon in writing by MUSEUM director and PRESERVE manager prior to the event. Should an attendee of such an event wish to visit MUSEUM, PRESERVE shall sell the attendee an adult general admission ticket, or the lower ticket price, if applicable. MUSEUM retains the option of not participating in any special event and receiving only general admission ticket holders during a PRESERVE event.

## **17. STORAGE**

A. STATE will make available, on written request by PRESERVE, climate controlled storage space within MUSEUM on a footprint not to exceed 50' x 50', but no less



than 30' x 30'. STATE shall not collect a fee from PRESERVE for this use, which shall be documented in writing and reviewed periodically. If PRESERVE utilizes the climate controlled storage space described in this Section, the items which will be stored in the climate controlled storage space must be inspected by MUSEUM staff before being placed in the climate controlled storage space. Access by PRESERVE to STATE storage shall be contingent on STATE access to not more than 15 parking spaces in the upper parking lot.

B. While STATE will secure such storage to the standards set for MUSEUM collections, STATE shall bear no liability for the contents stored by PRESERVE.

C. PRESERVE shall be responsible for installation of any shelving required for its storage.

D. Access to storage areas is under the control of MUSEUM and access shall occur only when MUSEUM personnel are present.

## **18. CATERING**

PRESERVE shall notify MUSEUM of its preferred caterer(s), which may change periodically. PRESERVE's preferred caterer(s) will provide catering services to MUSEUM's third-party special events, including, but not limited to, weddings, meetings, and room rentals. MUSEUM will refer any client seeking catering services for third-party special events to PRESERVE's preferred caterer(s). If PRESERVE's preferred caterer(s) do not respond in writing to MUSEUM's client within two business days, MUSEUM's client is free to use any qualified outside catering vendor. PRESERVE's preferred caterer(s) shall notify MUSEUM in advance when catering services have been secured at MUSEUM. This Section does not apply to MUSEUM-funded events, Museum Board meetings, or other STATE sponsored events or meetings.

## **19. EDUCATIONAL PROGRAMMING**

PRESERVE and MUSEUM shall be responsible for development and scheduling of their respective educational programming, but agree to coordinate content and scheduling, as appropriate, for the duration of this Agreement.

## **20. MARKETING AND ADVERTISING**

A. PRESERVE and STATE will jointly market and advertise MUSEUM in accordance with a marketing plan developed by the PARTIES, upon mutual agreement of the designees of the PARTIES.

B. Images of MUSEUM artifacts, exhibits, or MUSEUM staff reproduced by PRESERVE in its marketing and advertising shall show attribution and reference to MUSEUM by name, Nevada State Museum, Las Vegas.

C. In addition, PRESERVE may include stories and mentions of MUSEUM in its television, web, and social media efforts, including the local access programs Water Ways and Springs Elemental.

## **21. GENERAL RULES FOR SITE STAFF**

A. STATE agrees to abide by PRESERVE's written site rules, as identified in Exhibit "G."

B. PRESERVE site rules may change from time to time, and STATE agrees that their staff shall be informed of the rules and the rules shall be followed at all times to ensure a successful visitor experience.

C. STATE and PRESERVE shall endeavor to be good neighbors to the adjacent neighborhoods as well as each other and appreciate that although they are separate entities with

separate functions and missions, the two entities share one site and must work together to provide a safe and rewarding experience to guests.

## **22. PARKING AND ACCESS**

A. A map of the Parking and Access is attached to this Agreement as Exhibit “H”.

### **B. Parking**

1. General Attendance parking during daily operation hours shall be in accordance with Exhibit “H”.

2. Except as otherwise provided in subsection 7, PRESERVE shall provide STATE staff parking in the Lower Lot only, as designated in Exhibit “H”. STATE is required to provide transportation to parking facilities if such transportation is required.

3. Except as otherwise provided in subsection 7, STATE staff shall not park on the upper levels of the parking lot. These areas are reserved for guests only.

4. The Upper Lot has a vehicle load limitation of no more than 5 tons. A height limiter device has been placed across the entrance/exit to the upper lot and shall never be adjusted or removed for any reason whatsoever, for concern of structural damage to the subsurface reservoir structure.

5. Handicap parking spaces will be provided and the appropriate signage shall be installed. STATE staff requiring handicap parking spaces shall be allowed to park in guest parking in the appropriate areas.

6. STATE shall not charge visitors to MUSEUM for parking.

7. Except during specific times when the upper parking lot is being used for event parking, STATE staff shall have access to no more than 15 parking spaces in the upper parking lot.

**C. MUSEUM Access**

Except as otherwise provided in this paragraph, access to MUSEUM shall be through the Ticketing area or the Orientation Plaza. With the exception of appointments with MUSEUM staff and for special evening or after-hours events with advance notification to PRESERVE access by visitors of MUSEUM through the upper parking lot is strictly prohibited. PRESERVE shall install a locking door with a keycode lock at the access point to PRESERVE located in the Upper Lot. MUSEUM agrees that the code for the lock may be changed periodically and PRESERVE agrees to provide MUSEUM with the new code not less than two business days before the code is changed.

**23. DELIVERIES**

Except for mail or small parcel deliveries, all Deliveries shall be in conformance with Exhibit "H". Mail and small parcel deliveries for STATE may be through the locked keycode access point in the Upper Lot described in paragraph (C) of Section 22 of this Agreement and may be through the main PRESERVE site entry. STATE shall coordinate with PRESERVE for deliveries, except for mail and small parcel deliveries. Access for deliveries, except mail and small parcel deliveries, shall be through Meadows Lane, as designated in Exhibit "H."

**24. INSURANCE**

A. STATE is required to maintain All Risk Property Insurance for MUSEUM and all improvements.

B. STATE is required to maintain Comprehensive General Liability, Automobile Liability and Workers' Compensation insurance in accordance with Nevada law.

## **25. MODIFICATION**

Except as otherwise provided in this section, no modification or amendment to this Agreement shall be binding upon the PARTIES unless the same is in writing and signed by the PARTIES or their designees, and approved by the Office of the Attorney General and the Las Vegas Valley Water District Board of Directors. Exhibit G of this Agreement may be amended by the PARTIES as needed and incorporated herein, without the need for a modification of this Agreement.

## **26. ASSIGNMENT AND SUBLETTING**

Neither PARTY will assign this Agreement, directly or indirectly, without the prior written consent of an authorized executive officer of the other PARTY, provided that either PARTY may assign all or any part of this Agreement to its successor in a merger, consolidation or comparable transaction or to the purchaser of all or substantially all of its assets (or the assets associated with a particular line of business) so long as such successor or purchaser agrees in writing to comply with the terms and conditions of this Agreement and, provided further that STATE may assign this Agreement, with written consent from PRESERVE, to an affiliate, including to a parent, subsidiary or sister entity. If an assignment is executed without the prior written consent of PRESERVE, the assignment shall be void, and not merely voidable.

## **27. ENTIRE AGREEMENT**

This Agreement and the Exhibits attached hereto and incorporated herein, contains the entire understanding between the PARTIES relating to the transactions contemplated by this Agreement, notwithstanding any previous negotiations or agreements, oral or written, between the PARTIES with respect to all or any part of the subject matter hereof. With the exception of Exhibits A, E, F, G and H, all prior or contemporaneous agreements, understandings,

representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect.

**28. CAPTIONS**

The captions contained in this Agreement are for reference only and are in no way to be construed as part of this Agreement.

**29. GOOD FAITH AND REASONABLENESS**

The PARTIES agree that they will operate with good faith and reasonableness in carrying out the terms of this Agreement.

**30. SEVERABILITY**

Any provisions or portions of this Agreement prohibited as unlawful or unenforceable under any application of law of any jurisdiction shall, as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding Agreement enforceable in accordance with its terms.

**31. BREACH; REMEDIES**

Failure of either PARTY to perform any obligation of this Agreement shall be deemed a breach. Except as otherwise provided for by law or this Agreement, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including but not limited to actual damages, and to a prevailing PARTY reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation \$155 per hour for State-employed attorneys, and \$155 per hour for DISTRICT attorneys.

## **32. DISPUTE RESOLUTION**

A. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, including any claim relating to the design or construction of MUSEUM, shall be first submitted to mediation pursuant to the process set forth below.

### **B. Mediation**

1. A PARTY shall initiate the mediation process by serving a written request for mediation on the other PARTY. Within 15 calendar days from the date of service of the mediation request, the PARTIES shall agree upon a mediator.

2. The PARTIES shall share the mediator's fee and any facility costs equally.

3. The mediation shall be held in Las Vegas, Nevada, unless another location is mutually agreed upon in writing.

4. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the PARTIES, their agents, employees, experts and attorneys, and by the mediator, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration, litigation, or other proceeding involving the PARTIES, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

5. No statutes of limitation or defenses based upon the passage of time shall be tolled by any mediation conducted under this Agreement. Should the mediation be unsuccessful, 20 calendar days after the final conclusion of the mediation by the mediator, either PARTY may file a claim in arbitration.

### C. Arbitration

All disputes, claims, or questions not resolved by the foregoing mediation will be settled by binding arbitration according to the procedures described in this paragraph, and a judgment may be entered upon the award rendered by the arbitrator in any court of proper jurisdiction. The question as to the arbitrability of any claim shall be determined by the arbitrator.

1. Affirmative Agreement to Arbitrate. By the signing of this Agreement, the PARTIES expressly authorize this Dispute Resolution paragraph of the Agreement and affirmatively agree to settle all disputes, claims or questions by binding arbitration.

2. Commencement of the Arbitration. A PARTY may begin arbitration by serving the other PARTY with a written notice to commence arbitration by certified mail or electronic document transfer at the addresses set forth in the Agreement. The written notice will provide a detailed statement of the nature and subject of the claim and the amount of damages claimed or the type of non-monetary relief sought. Within 30 calendar days of service of the commencing PARTY's claim, the other PARTY shall submit a detailed statement of its counterclaim, if any.

3. Arbitrator. A single arbitrator will be selected by agreement of the PARTIES, or if no agreement is reached by application to a court of competent jurisdiction. The arbitrator shall be an attorney or retired judge that has spent at least thirty percent of the last ten years of the arbitrator's career handling matters that are the subject of the dispute. The arbitrator shall be neutral and have no ex parte communications with any PARTY regarding the arbitration proceeding or the subject of the arbitration. The arbitrator will be fully compensated in accordance with the agreed to hourly or per diem rates for all time spent by the arbitrator in



connection with the arbitration proceeding. All costs of the arbitration will be shared equally among the PARTIES and will be paid not less than quarterly.

4. Location of the Arbitration. The arbitration will be conducted in Clark County, Nevada.

5. Governing Law. Except as stated in this Agreement, the arbitration will be governed by the Nevada Uniform Arbitration Act of 2000; the Federal Arbitration Act shall not be used in accordance with this Agreement. Discovery and other procedural matters may generally follow the Nevada Rules of Civil Procedure, provided that the PARTIES will be free to agree upon, and the arbitrator will be free to prescribe such discovery and other procedures as shall facilitate the fair, impartial and expeditious completion of the arbitration and strict compliance with the Nevada Rules of Civil Procedure will not be required.

6. Interest, Attorney's Fees, Exemplary Damages. The arbitrator may grant pre-award and post-award interest as prescribed by the Agreement or, if the Agreement is silent, at the Nevada statutory rate. Except as otherwise limited by Section 31 of this Agreement, the arbitrator may also award all or part of a PARTY's reasonable attorney's fees, professional fees, and costs expended, including the reimbursement of costs spent on the arbitration, including but not limited to the cost of the arbitrator, expert(s), transcripts, and hearing location, taking into account the final result of the arbitration, the conduct of the PARTIES and their counsel during the course of the arbitration, and other factors that the arbitrator may deem to be relevant. The arbitrator may not award exemplary or punitive damages.

7. Award. Unless otherwise agreed by the PARTIES, the arbitrator will prepare a written, reasoned award within 30 days of the close of the arbitration.

**33. WAIVER**

The failure of either PARTY to enforce at any time, or for any period of time, the provisions hereof shall not be construed as a waiver of such provisions or of the rights of such PARTY to enforce each and every such provision.

**34. WAIVER OF BREACH**

Failure to declare a breach or the actual waiver of any particular breach of the Agreement or its material or nonmaterial terms by either party shall not operate as a waiver by such PARTY of any of its rights or remedies as to any other breach.

**35. NO THIRD PARTY RIGHTS**

This Agreement is not intended by the PARTIES to create any right in or benefit to parties other than PRESERVE and STATE. This Agreement does not create any third party beneficiary rights or causes of action.

**36. LIMITED LIABILITY**

The PARTIES will not waive and intend to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both PARTIES shall not be subject to punitive damages.

**37. FORCE MAJEURE**

Neither PARTY shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the PARTY asserting such an excuse, and the

excused PARTY is obligated to promptly perform in accordance with the terms of the Agreement after the intervening cause ceases.

### **38. INDEMNIFICATION**

A. To the fullest extent of limited liability as set forth in Section 36 of this Agreement, each PARTY shall indemnify, hold harmless and defend, not excluding the other's right to participate, the other from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of the party, its officers, employees and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Section.

B. The indemnification obligation under this Section is conditioned upon receipt of written notice by the indemnifying party within 30 calendar days of the indemnified party's actual notice of any actual or pending claim or cause of action. The indemnifying party shall not be liable to hold harmless any attorneys' fees and costs for the indemnified party's chosen right to participate with legal counsel.

### **39. INDEPENDENT PUBLIC AGENCIES**

The PARTIES are associated with each other only for the purposes and to the extent set forth in this Agreement, and in respect to performance of services pursuant to this Agreement, each party is and shall be a public agency separate and distinct from the other party and, subject only to the terms of this Agreement, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or

joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other party.

**40. OWNERSHIP OF PROPRIETARY INFORMATION**

Unless otherwise provided by law any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under this Agreement), or any other documents or drawings, prepared or in the course of preparation by either PARTY in performance of its obligations under this Agreement shall be the joint property of both PARTIES.

**41. PUBLIC RECORDS**

Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. The PARTIES will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests.

**42. CONFIDENTIALITY**

Each PARTY shall keep confidential all information, in whatever form, produced, prepared, observed or received by that PARTY to the extent that such information is confidential by law or otherwise required by this Agreement.

**43. APPLICABLE LAW**

This Agreement shall be governed by the laws of the State of Nevada.

**44. VENUE**

The PARTIES agree that venue for any dispute arising from the terms of this Agreement shall be Clark County, Nevada.

**45. NOTICES**

Any and all notices, demands or requests required or appropriate under this Agreement shall be given in writing either by personal delivery, via facsimile or by registered or certified mail, return receipt requested, addressed to the following address:

To STATE: Peter Barton, Administrator  
Division of Museums and History  
Department of Tourism and Cultural Affairs  
708 N. Curry Street  
Carson City, NV 89703

MUSEUM Director  
309 S. Valley View Blvd.  
Las Vegas, NV 89107

To PRESERVE: Andrew M. Belanger  
Director of Public Services  
Las Vegas Valley Water District  
1001 South Valley View Boulevard  
Las Vegas, Nevada 89153

PRESERVE Manager  
333 S. Valley View Blvd.  
Las Vegas, NV 89107

When notice shall be given by mail, it shall be deemed served three (3) business days following deposit, postage prepaid, in the United States mail or if such notice is given by facsimile transmission, as provided herein, it shall be deemed served immediately upon receipt of transmission if transmitted during normal business hours or, if not transmitted during normal business hours, on the next business day following facsimile transmission to the following numbers.

To STATE: (775) 687-4333

To PRESERVE: (702) 822-8530

The PARTIES may change the place of notice by notifying the other PARTY set forth herein.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed the day and year first above written.

STATE OF NEVADA

LAS VEGAS VALLEY WATER DISTRICT

By: \_\_\_\_\_  
CLAUDIA VECCHIO, Director  
Department of Tourism & Cultural Affairs

By: \_\_\_\_\_  
JOHN J. ENTSMINGER, General Manager

By: \_\_\_\_\_  
ROBERT STOLDAL, Chairman  
Board of Museums and History

Approved by the Board of Examiners

By: \_\_\_\_\_  
JULIA TESKA, Director of Administration  
Board of Examiners

Approved as to form:

Approved as to form:

\_\_\_\_\_  
COLLEEN L. PLATT  
Deputy Attorney General

\_\_\_\_\_  
MARY E. MADDEN  
Deputy Counsel