AGREEMENT FOR DESIGN AND CONSTRUCTION AND DONATION OF AN OUTFIELD FENCE

This Agreement for design, construction and donation of outfield fence at Peace Park ("Agreement") is entered into and is effective as of this ___ day of __________, 2015 ("Effective Date"), among CLARK COUNTY, a political subdivision of the State of Nevada ("County"), and SANDY MESQUITE VALLEY DEVELOPMENT ASSOCIATION ("Donor") (individually a "Party" and collectively the "Parties").

RECITALS:

WHEREAS, the Parties desire to cooperate in the design and construction of an outfield fence consisting of a design stamped by a design professional licensed in the State of Nevada, permits, excavation, concrete, fencing & site preparation; and

WHEREAS, Donor desires to fund the labor, equipment, materials and construction to install an outfield fence, ("Project") as generally depicted in the plans attached hereto and incorporated herein by reference as ("Project Plans"); and

WHEREAS, the Donor desires to take responsibility for the Project and to supervise the work as further provided herein; and

WHEREAS, County is authorized to accept donations of property as provided in NRS 244.270;

NOW, THEREFORE, it is agreed as follows:

A. TERMS & CONDITIONS:

1. County. County agrees to cooperate with and give permission to the Donor for the construction of the Project according to the approved Project Plans. Before commencing any work on the Project, Donor shall submit detailed plans to the Director of Real Property Management ("Director") for approval no later than two (2) weeks prior to commencement of work. The Director shall, within five (5) business days after receipt of such plans, approve, deny or request changes to the plans, at his sole discretion. Upon completion and acceptance of the Project, Clark County shall be responsible for the maintenance of the completed Project. Clark County shall supply reasonable access to Donor to the work site for construction of the Project.

2. Donor. Donor agrees to apply for and obtain all required approvals, permits and inspections for project. Donor agrees to construct the Project according to the structural engineering calculations, drawings, specifications and details as shown in the approved project plans. Donor agrees to provide the evaluation of drawings and design, consultation, inspection, construction oversight, coordination and supervision of
the Project as necessary to complete the Project according to all applicable state and local codes, law and regulations.

The Donor agrees to provide funding for the purchase of materials equipment, labor, permits, inspection, and third-party fees, and payment for any professional or other services, necessary for completion of the Project. The Donor agrees to promptly pay any invoices for all paid services and purchased materials necessary for the Project, including for services performed by engineers, architects, inspectors and third-party quality assurance personnel, but in any event, within thirty (30) days of any invoice. The Donor agrees to provide all equipment, labor, and material to install the Project as shown in Exhibit A. The Donor agrees to indemnify the County and hold harmless the County against any mechanic liens, personal injury claims, or similar claims levied against the County filed by third parties arising out of the construction of the project.

3. **Project Coordination and Completion Deadline.** The Parties agree to coordinate, in cooperation with the County, the scheduling and the work necessary to construct the Project to ensure the efficient and orderly sequence of installation of interdependent Project elements. Donor agrees to complete the Project within sixty (60) days of the Effective Date.

4. **Project Meetings.** Participation by the Parties in project meetings scheduled from time to time shall be required as scheduled by the Director or his designee.

5. **Donation.** The labor, material and services performed and materials supplied hereunder and the completed fence are being donated by the Donor. The Parties acknowledge that this Agreement does not require the County to pay for any services, material or labor to complete the Project.

6. **Insurance.** During the term of this Agreement, the Donor agrees to maintain insurance coverage as follows:

   a) Commercial General Liability insurance and Commercial Automobile Liability insurance protecting such party in an amount not less than One Million Dollars ($1,000,000) per occurrence (combined single limit), including bodily injury and property damage, and in an amount not less than Two Million Dollars ($2,000,000) annual aggregate for each personal injury liability. The Commercial General Liability insurance policies shall name the County, its commission members, officers, and employees as additional insureds for any covered liability arising out of such party’s performance of work under this Agreement. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Such insurance shall not be canceled, nor shall the occurrence or aggregate limits set forth above be reduced, until the County has received at least 30 days’ advance written notice of such cancellation or change. Each of the Parties shall be responsible for notifying the County of such change or cancellation. All
deductibles and self-insured retentions shall be fully disclosed in the Certificates of Insurance and may not exceed $25,000.

b) Workers compensation insurance in the State of Nevada, in accordance with NRS Chapters 616A-616D, inclusive; provided, however, a Party that is a sole proprietor shall be required to submit an affidavit in a form provided by Clark County indicating that the party has elected not to be included in the coverage under Chapters 616A-616D, inclusive, and is otherwise in compliance with those provisions.

c) If the Donor subcontracts any of the work described, the Donor shall be responsible for ensuring that the subcontractor(s) carries the insurance outlined in Section 6(a-b) above.

7. **Permits and Governmental Approval.** The Donor shall at all times comply with all regulations, rules, laws, codes, ordinances, and conditions applicable to the Donor's performance under this Agreement as imposed by any regulatory body.

8. **Term.** This Agreement shall not be effective until approved and fully executed by the Clark County Board of County Commissioners and shall be effective until completion and approval of the project.

9. **Termination.** This Agreement may be terminated by any Party upon five (5) days written notice to the other Parties without liability to the terminating Party. However, if Donor terminates the agreement after construction has commenced, or if Donor fails to complete the project within the term specified in Section 3, Donor shall, at its sole cost and expense, remove any and all structures or materials at Peace Park within thirty (30) days of the notice of termination, and restore the area to its prior condition as determined by the Director or his designee in his sole discretion. If Donor does not timely complete the necessary restoration and/or removal, County or its contracted vendors may remove and/or restore the area and invoice Donor for the County's cost and expenses. Donor agrees to pay the invoice within thirty (30) days of receipt of notice.

10. **Notices.** All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person by hand delivery, or sent via certified mail, and addressed to the other parties at the address set forth below until notice of change of address is provided:
B. MISCELLANEOUS PROVISIONS:

1. **Severability.** The illegality or invalidity of any provision or portion of this Agreement shall not affect the validity of the remainder of the Agreement and this Agreement shall be construed as if such provision did not exist. The unenforceability of such provision or provisions shall not be held to render any other provision or provisions of this Agreement unenforceable. The Parties further agree to replace any such invalid, illegal, or unenforceable portion with a valid and enforceable provision which will achieve, to the extent possible, the economic, business and other purposes of the invalid, illegal or unenforceable portion.

2. **Warranty of Capacity to Execute Agreement.** Each of the undersigned parties hereto represents and warrants that each has the right and full authority to execute this Agreement.

3. **No Assignments.** The Parties shall not assign or transfer any rights under this Agreement without the prior written consent of the other Parties. Any attempted assignment shall be void.

4. **Governing Law and Venue.** This Agreement and the rights and obligations of the Parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The parties consent to the jurisdiction and venue for any action for enforcement of this Agreement exclusively in the Eighth Judicial District Court, Clark County, Nevada.

5. **Third Party Beneficiary.** It is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third-party beneficiary status hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.
6. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties and as such is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless otherwise expressly authorized by the terms of this Agreement, no modification or amendment to this Agreement shall be binding upon the Parties unless the same is in writing and signed by the respective Parties hereto.

7. **Counterparts.** This Agreement may be executed in counterparts, each of which will constitute an original, and all of which taken together will constitute one and the same instrument.

8. **Captions and Headings.** Captions and headings are used for reference only and shall not be used in construing or interpreting this Agreement. All recitals set forth at the beginning of the Agreement are, by this reference, fully incorporated into this Agreement. All exhibits, if any, referred to in this Agreement are deemed fully incorporated herein. As used herein (i) the singular shall include the plural (and vice versa) and the masculine or neuter gender shall include the feminine gender (and vice versa) as the context may require; (ii) locative adverbs such as “herein,” “hereto,” and “hereunder” shall refer to this Agreement in its entirety and not to any specific section or paragraph; (iii) the terms “include,” “including,” and similar terms shall be construed as though following immediately by the phrase “but not limited to”; and (iv) the terms “party” and “parties” refer only to a named party or parties to this Agreement unless the context expressly requires otherwise.

9. **Waiver.** Neither the failure of any party to insist upon the timely or full performance of any of the terms and conditions of this Agreement, nor the waiver of any breach of any of the terms and conditions of this Agreement, shall be construed as thereafter waiving any such terms and conditions, but these shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

10. **Further Assurances and Documents.** Each party shall promptly do any act or execute and deliver any documents reasonably necessary to comply with their respective obligations under this Agreement in order to carry out the intent of the Parties in consummating this transaction.

11. **Mutually Drafted.** The Parties stipulate and agree that all parties have jointly participated in the negotiation and drafting of this Agreement upon advice of their own independent counsel or that they have had the opportunity to do so, and this Agreement shall be construed fairly and equally as to all parties as if drafted jointly by them. The Parties hereby irrevocably waive the benefit of any rule of contract construction which disfavors the drafter of any agreement.

12. **No Discrimination.** In connection with the performance of work under this Agreement, the contractor agrees not to discriminate against any employee or
applicant for employment because of race, creed, color, national origin, sex, sexual orientation, gender identity or expression, or age, including, without limitation, with regard to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including, without limitation, apprenticeship. The Parties further agree to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

[SIGNATURES APPEAR ON FOLLOWING PAGES]
IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year shown below.

CLARK COUNTY
BOARD OF COMMISSIONERS

By: _____________________________________________
   STEVE SISOLAK, Chair         Date

ATTEST:

______________________________________________
   LYNN GOYA, Clerk               Date

DONOR
SANDY MESQUITE VALLEY DEVELOPMENT ASSOCIATION

By: ________________________________  3-27-15
   KEN DERSCHAN, PRESIDENT        Date

Approved as to Form:

______________________________________________  3-31-15
   Deputy District Attorney        Date
Sandy Valley Peace Park
APN 200-36-401-003