

SECOND AMENDED AND RESTATED
INTERLOCAL AGREEMENT REGARDING THE DISTRIBUTION
OF TAXES FOR A PERFORMING ARTS CENTER

THIS SECOND AMENDED AND RESTATED AGREEMENT (this "Agreement"), is entered into as of this 1st day of April, 2008, between the CITY OF LAS VEGAS, NEVADA, (the "City") and CLARK COUNTY, NEVADA, (the "County"; collectively with the City, the "Parties"), both being political subdivisions of the State of Nevada (the "State"):

W I T N E S S E T H:

WHEREAS, the City and the County entered into an agreement (the "Original Agreement") as of March 23, 2005, concerning the financing of the acquisition, improvement, equipment, operation, and maintenance of a performing arts center within the County, which Original Agreement was amended and restated by an Agreement of the Parties dated June 1, 2006 (the "2006 Agreement"); and

WHEREAS, the Parties desire to amend and restate the 2006 Agreement; and

WHEREAS, pursuant to Subsection 1 of NRS 244A.860, as enacted by Section 3 of Chapter 15, Statutes of Nevada of the 20th Special Session (2003) (the "2003 Act") and amended by Section 1 of Chapter 362, Statutes of Nevada, 2005 (the "2005 Act"), the Board of County Commissioners (the "Board") of the County may by ordinance impose a fee upon the lease of a passenger car by a short-term lessor in the County in the amount of not more than 2 percent of the total amount for which the passenger car was leased, excluding any taxes or other fees imposed by a governmental entity (the "Rental Car Fee"); and

WHEREAS, pursuant to Section 13 of the 2003 Act as amended by Section 2 of the 2005 Act (as amended, "Section 13"), the County is required to distribute the initial \$3,000,000 collected from the Rental Car Fee to the Culinary and Hospitality Academy of Las Vegas for the planning, design and construction of a facility for vocational training in Southern Nevada; and

WHEREAS, pursuant to Subsection 3 of NRS 244A.860, all monies derived from the Rental Car Fee imposed pursuant to Subsection 1 of NRS 244A.860 remaining

(i) after the distribution required by Section 13, and

(ii) after reimbursement of the Department of Taxation of the State pursuant to paragraph (a) of subsection 1 of NRS 244A.870 for its expense in collecting and administering the Rental Car Fee imposed pursuant to 244A.860,

which are distributed to the County (all of such remaining monies distributed to the County are herein referred to as the "Pledged Rental Car Fees") must be used to pay the costs to acquire, improve, equip, operate and maintain within the County a performing arts center, or to pay the principal of, interest on or other payments due with respect to bonds issued to pay those costs, including bonds issued to refund bonds issued to pay those costs, or any combination thereof; and

WHEREAS, NRS 277.180(1) provides in part that "Any one or more public agencies may 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, NRS 244A.860(4) provides:

“4. The board of county commissioners of a county that imposes the fee authorized by subsection 1 may enter into a cooperative agreement with another governmental entity in which the other governmental entity agrees to receive the proceeds of the fee from the county if the cooperative agreement includes a provision that requires the other governmental entity to assume all responsibility for the operation of the performing arts center and to use the proceeds of the fee it receives from the county to pay the costs to acquire, improve, equip, operate and maintain within the county a performing arts center, and to pay the principal of, interest on or other payments due with respect to bonds issued to pay those costs, including bonds issued to refund bonds issued to pay those costs, or any combination thereof. A governmental entity that enters into a cooperative agreement with the board of county commissioners pursuant to this subsection may delegate to a nonprofit organization one or more of the responsibilities that the governmental entity assumed pursuant to the cooperative agreement, including, without limitation, the acquisition, design, construction, improvement, equipment, operation and maintenance of the center.”; and

WHEREAS, Section 14 of the 2003 Act provides:

“Sec. 14. The authorization to impose a fee pursuant to section 3 of this act expires by limitation on June 30 of the later of the fiscal year that is 20 years after the fiscal year in which the ordinance imposing the fee is adopted or the fiscal year in which all bonds issued pursuant to section 7 of this act [NRS 244A.0585], including, without limitation, any bonds issued to refund bonds issued pursuant to section 7 of this act [NRS 244A.0585], are fully paid as to all principal, interest and any other amounts due.”

WHEREAS, the County (pursuant to the County Bond Law, NRS 244A 011 through 244A.065) and the City (pursuant to the City Bond Law, NRS 268.672 through 268.740) are each authorized to acquire, improve, equip, operate and maintain a “building project” as defined in NRS 268.676 and 244A.019, respectively, and it is contemplated by the Parties that the performing arts center authorized to be financed in the County by the Act (the “Project”) will be a “building project” as defined in NRS 268.676 and NRS 244A.019; and

WHEREAS, the Parties intend that the City issue notes, bonds or other obligations secured wholly or in part by the Pledged Rental Car Fees (the “Bonds”) pursuant to resolutions and ordinances of the City authorizing the issuance thereof (collectively, the “Bond Ordinance”) in order to fund, in part, the acquisition, establishment, construction or expansion of the Project (which will be located in the County) and otherwise to use all proceeds of the Pledged Rental Car Fees distributed to the City pursuant to this Agreement to pay the costs to acquire, improve, equip, operate and maintain the Project, or to pay the principal of, interest on or other payments due with

respect to the Bonds and other bonds issued to pay such costs, including bonds issued to refund bonds issued to pay such costs, or any combination thereof; and

WHEREAS, the Parties intend that the County provide to the City the proceeds of the Pledged Rental Car Fees to enable the City to accomplish the purposes outlined in the preceding preamble; and

WHEREAS, the Parties intend that the City use all proceeds of the Pledged Rental Car Fees to acquire, improve, equip, operate and maintain the Project within the County, or to pay the principal of, interest on or other payments due with respect to bonds (including the Bonds) issued to pay such costs, including bonds issued to refund bonds issued to pay such costs, or any combination thereof; and

WHEREAS, the Parties intend that the County issue a revenue bond (the "County Revenue Bond") pursuant to NRS 244A.0585, to be held by the trustee for the Bonds (the "Trustee") during the term of the Bonds and any other bonds or other securities issued by the City secured by or payable from the Pledged Rental Car Fees, in order to assure that the authority to levy the Car Rental Fee will not expire under Section 14 of the 2003 Act during the term of the Bonds and any other bonds or other securities issued by the City secured by or payable from the Pledged Rental Car Fees; and

WHEREAS, the City and the County desire to enter into this Agreement pursuant to NRS 277.180(1) and NRS 244A 860(4) in order to cooperate in financing the acquisition, improvement, equipment, operation and maintenance of the Project and to provide for and secure the payment of the principal of and interest on the Bonds with the Pledged Rental Car Fees, and to provide funds to the City for it to otherwise pay the costs to acquire, improve, equip, operate and maintain the Project, to pay the principal of, interest on or other payments due with respect to other bonds issued to pay such costs, including bonds issued to refund the Bonds and such other bonds, or any combination thereof.

NOW, THEREFORE, in consideration of the mutual covenants of good faith and promises by and among the Parties set forth hereinafter, it is agreed as follows:

1. Subject to the provisions of the following sentence, the County shall transfer to the City for deposit into the "Performing Arts Center Rental Car Fee Account" (the "Rental Fee Account," held by the City (which shall be a special account or subaccount maintained by the City and which may be commingled with other City accounts and subaccounts for investment purposes if so permitted by the Bond Ordinance) all Pledged Rental Car Fees received by the County within thirty (30) business days of the receipt thereof by the County. Nothing in this Agreement requires or authorizes the County to ever transfer monies sooner than thirty (30) business days after those monies are received from the State, or to transfer any monies to the City in excess of the Pledged Rental Car Fees received from the State. The Parties acknowledges that the City will secure the payment of principal and interest on the Bonds and possibly other bonds issued for the Project or issued to refund the Bonds or such other bonds issued for that purpose with money on deposit in the Rental Fee Account and the County authorizes the City to pledge all Pledged Rental Car Fees therein for that purpose, and grants the owners of the Bonds a lien on the Pledged Rental Car Fees in that

account. The County further agrees that it will not pledge or hypothecate any of the Pledged Rental Car Fees or permit others to do so, other than as provided in the preceding sentence and Section 5 hereof. The City agrees it will not issue the Bonds or other bonds secured by or payable from the Pledged Rental Car Fees (other than refunding bonds) unless it has received an approval for the issuance of those bonds, including the definition of the project on which the proceeds of those bonds are to be spent and the terms and conditions under which those bonds would be issued, from the Board.

2. The City hereby is required to assume and agrees to assume all responsibility for the operation of the performing arts center and is required to use and agrees to use the proceeds of the Pledged Rental Car Fees it receives from the county to pay the costs to acquire, improve, equip, operate and maintain within the county a performing arts center, and to pay the principal of, interest on or other payments due with respect to bonds issued to pay those costs, including bonds issued to refund bonds issued to pay those costs, or any combination thereof. Pursuant to NRS 244A.860(4), the City may delegate to a nonprofit organization one or more of the responsibilities that the City has assumed pursuant to this Agreement, including, without limitation, the acquisition, design, construction, improvement, equipment, operation and maintenance of the center

3. The City covenants to the County that it will use the monies derived from the Pledged Rental Car Fee only for the purposes permitted in subsection 3 of NRS 244A.860.

4. It is anticipated that all or a portion of the Bonds and other bonds issued under this Agreement will be issued as tax-exempt bonds under the provisions of the Internal Revenue Code of 1986, as amended (the "Tax Code"). Each of the Parties agrees that it will not take any action or omit to take any action with respect to the Bonds and other bonds issued as tax-exempt bonds under authority of this Agreement, the proceeds thereof, any of the funds belonging to or controlled by any Party, or the Project if the act or omission (i) would cause interest on the Bonds or other bonds issued as tax-exempt bonds under authority of this Agreement to finance or refinance the Project to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Tax Code, or (ii) would cause interest on the Bonds or other bonds issued as tax-exempt bonds under authority of this Agreement to finance or refinance the Project to lose its exclusion from alternative minimum taxable income under the Tax Code (except to the extent included in the adjusted earnings adjustment applicable to corporations under Section 56 of the Tax Code, in calculating corporate alternative minimum taxable income). The foregoing agreement of the Parties contained in this paragraph is to remain in force and effect notwithstanding the payment in full or defeasance of the Bonds and other bonds issued as tax-exempt bonds under authority of this Agreement to finance or refinance the Project until the date on which the obligation of the City to fulfill the tax covenant contained in the Bond Ordinance or other document authorizing the issuance of other bonds issued as tax-exempt bonds under authority of this Agreement to finance or refinance the Project has expired.

5. Simultaneous with, and subject to, the issuance of the Bonds by the City, the County agrees to issue the County Revenue Bond, secured by and payable from the Pledged Rental Car Fees. The City shall pay all of the County's costs in issuing the County Revenue Bond. The County Revenue Bond shall be issued in accordance with the following provisions:

A. The County Revenue Bond shall be a single registered bond and shall be held by the Trustee. The County Revenue Bond will not be transferable, except to a successor trustee to the Trustee.

B. The County Revenue Bond will be delivered to the Trustee in exchange for its purchase price, which shall be its par amount of \$10,000. The City shall cause the Trustee to pay the purchase price of the County Bond from a source other than the proceeds of the Bonds.

C. The amount received by the County for the County Revenue Bond shall be transferred by the County to the City to be used to pay a portion of the cost of the Project, and the City agrees to use the proceeds of the County Revenue Bond only for that purpose.

D. The rate of interest on the County Revenue Bond shall be a fixed rate equal to the "Index of Revenue Bonds" most recently published in the Bond Buyer before the Ordinance authorizing the County Revenue Bond is adopted, payable semiannually, on the same dates the interest on the Bonds is paid.

E. The County Revenue Bond shall mature 50 years after its date.

F. Except as provided in H below, the County Revenue Bond will be non-callable and will not be subject to defeasance prior to its maturity; provided that if there are not outstanding any Bonds or any other bonds or other securities issued by the City secured by or payable from the Pledged Rental Car Fees, the County Revenue Bond may be redeemed at a redemption price equal to its principal amount or defeased.

G. The City agrees to make all payments of principal and interest on the County Revenue Bond when due from the Pledged Rental Car Fees on behalf of the County. The County Revenue Bond shall have an exclusive first lien on the Pledged Rental Car Rental Fees, which shall be superior to the lien thereon of the Bonds. No other obligations with such a lien on the Pledged Rental Car Fees may be issued by the County, and no obligations with a first lien on the Pledged Rental Car Fees may be issued by the City without the prior consent of the County.

H. At the end of the fiscal year in which as a result of an amendment to the laws of the State, the foregoing provisions of this section are no longer necessary in order to assure that the authority to impose the Rental Car Fee will exist throughout the term of the Bonds and other then outstanding bonds or other securities issued by the City secured by or payable from the Pledged Rental Car Fees, the City will pay to the Trustee the par amount of the County Revenue Bond and any accrued interest due thereon from Pledged Rental Car Fees and the City will then cause the Trustee to cancel the County Revenue Bond, and provide a certificate of cancellation to the City and to the County. The City will not pay the County Revenue Bond under this subsection H unless it has received and provided to the Trustee an opinion of nationally recognized bond counsel that the conditions described in this subsection H for making such a payment have been met.

I. The City will cause the Trustee to use all payments it receives as principal and interest on the County Revenue Bond only for the purposes for which the Pledged Rental Car Fees are permitted to be used under subsection 3 of NRS 244A.860.

6. Each of the Parties' obligations to make payments under this Agreement is absolute and unconditional after Bonds have been issued. None of the Parties is entitled to any right to set-off of any amount due hereunder against any other obligation, nor to delay making any payment due hereunder for any reason, nor to withhold any payment due hereunder on account of any breach or alleged breach of this or any other agreement by either of the Parties, or on account of any other reason whatsoever.

7. Each of the Parties is a governmental entity and it is recognized that each Party's books and records pertaining to the Project, the Bonds, any other bonds, the funds and accounts established for the payment of the Bonds and any other bonds and evidencing expenditure of receipt of the bond proceeds, and pertaining to the Rental Car Fees described herein, are open to inspection by the other Parties during normal business hours.

8. The Parties agree to cooperate to achieve the objectives hereof by furnishing such information and executing such documents as are reasonably required over the term hereof to effectuate the intent and purposes hereof, including, without limitation, any instruments necessary to perfect the security interest in the Pledged Rental Car Fees described in Section 1 hereof, and any instrument required by Securities Exchange Commission Rule 15c2-12 in connection with the marketing of the Bonds.

9. The Original Agreement was effective on July 1, 2005, and the 2006 Agreement became effective and replaced the Original Agreement on June 1, 2006. The 2006 Agreement shall remain in effect until this Agreement is in effect. This Agreement shall be in effect and replace the 2006 Agreement on April 1, 2008.

10. This Agreement shall remain in full force and effect until the later of: (i) the date on which the Bonds, the County Bond and any other bonds or other securities issued by the City secured by or payable from the Pledged Rental Car Fees have been fully paid and discharged; or (ii) the date the County's authority to impose the Rental Car Fees expires pursuant to Section 14 of the Act or any extension thereof enacted into law by the Nevada State Legislature.

11. This Agreement is for the benefit of the Parties only and for the benefit of the owners of the Bonds or other bonds described above (including the Trustee for the Bonds). No person or entity is intended to ever be a third party beneficiary of this Agreement except the owners of the Bonds and such other bonds (and the Trustee for the Bonds).

12. If either Party fails to make any payment due hereunder at times specified herein, or either Party fails to abide by the provisions of this Agreement, this Agreement may be enforced by the other Party hereto in a court of competent jurisdiction to enforce the provisions of this Agreement, for damages or to obtain any other remedy that may be available in law or in equity, including specific performance of the provisions of this Agreement. The provisions of this Section

are not intended as a limitation on the remedies that may be available in case of breach of this Agreement.

13. No failure or delay on the part of any Party to this Agreement to enforce the provisions hereof shall operate as a waiver thereof, nor shall a single or partial enforcement of any provision hereof preclude any other or further enforcement or exercise of any other right, power or remedy that any party of this Agreement may have.

14. Time is of the essence to this Agreement. Each Party agrees that it shall perform all of its obligations under this Agreement promptly when required.

15. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and their assigns. No assignment of this Agreement or any right or obligation hereunder by any of the Parties shall be valid unless the other Party consent to that assignment in writing.

16. This Agreement may be modified at any time by the Parties, but only by a written instrument signed by each of the Parties.

17. If any provision of this Agreement is deemed to be invalid or unenforceable, the invalidity or unenforceability shall not affect the remaining provisions of this Agreement that can be given effect without the invalid or unenforceable provision, and the Parties agree to replace the invalid or unenforceable provision with a valid provision which has as nearly as possible the same effect.

18. This Agreement may be executed in one or more counterparts, each of which shall be regarded as the original and all of which shall constitute the same agreement.

19. Any notice or other communication hereunder shall be transmitted to the attention of the respective Managers of the Parties at the following addresses:

City of Las Vegas, Nevada
400 Stewart Avenue
Las Vegas, Nevada 89101
Attn: City Manager


Clark County, Nevada
500 South Grand Central Parkway
Las Vegas, Nevada 89106
Attn.: County Manager

A copy of each notice to the other party shall also be sent to the attention of the Finance Director of the City and to the attention of the Chief Financial Officer of the County at the above addresses.

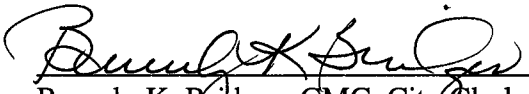
IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals as of the date first written above.

CITY OF LAS VEGAS, NEVADA


(SEAL)

By 
Oscar B. Goodman, Mayor

ATTEST:

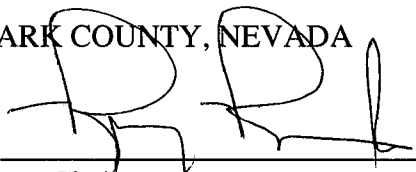

Beverly K. Bridges, CMC, City Clerk

APPROVED AS TO FORM:

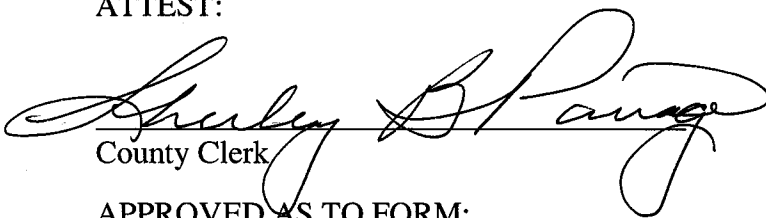
 4/4/08
Deputy City Attorney

CLARK COUNTY, NEVADA

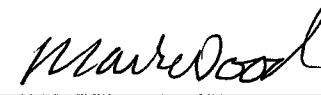
(SEAL)

By 
Chairman

ATTEST:


County Clerk

APPROVED AS TO FORM:


County Counsel or Deputy District Attorney