RESOLUTION NO. R-32-2009

RESOLUTION APPROVING THE GRANT AGREEMENT WITH DONALD W. REYNOLDS FOUNDATION FOR $75 MILLION IN GRANT FUNDS FOR THE CONSTRUCTION OF THE SMITH CENTER FOR THE PERFORMING ARTS LOCATED IN UNION PARK, AUTHORIZING THE EXECUTION OF THE GRANT AGREEMENT AND PROVIDING FOR ALL MATTERS PROPERLY RELATED THERETO

WHEREAS, the City will be constructing a performing arts center which will be located in Union Park in downtown Las Vegas to be known as the Smith Center for the Performing Arts ("Smith Center"); and

WHEREAS, the City has issued certain bonds, from which approximately $170 million in bond proceeds will be used to fund acquisition, construction and equipment of the Smith Center; and

WHEREAS, the Donald W. Reynolds Foundation ("Reynolds Foundation") has approved an unrestricted grant to the City in the amount of $75 million which the Reynolds Foundation understands will be used by the Grantee for capital construction purposes.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Las Vegas has considered the Grant Agreement between the Reynolds Foundation and the City, the form of which is attached hereto as Exhibit A, for grant funds in the amount of $75 million to be used for construction purposes of the Smith Center, all as more specifically set forth in the Grant Agreement; and

RESOLVED FURTHER, that the City Council of the City of Las Vegas hereby approves the Grant Agreement and authorizes the execution and delivery of the same and any documents related thereto by the Mayor and the City Clerk; and

RESOLVED FURTHER, that the City Manager or designees are authorized to take all necessary action to effectuate this Resolution, including the performance of all necessary acts to comply with the terms and conditions of the Grant Agreement.

THE FOREGOING RESOLUTION was passed, adopted and approved by the City Council of the City of Las Vegas on May 6, 2009.

CITY OF LAS VEGAS

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, CMC
CITY CLERK

APPROVED AS TO FORM:

J. Parkicella 4/22/09
Date

EXHIBIT A

GRANT AGREEMENT

by and between

DONALD W. REYNOLDS FOUNDATION,
a Nevada non-profit corporation

and

The City of Las Vegas,
a political subdivision of the State of Nevada

GRANT AGREEMENT

THIS GRANT AGREEMENT (the "Grant Agreement"), is made and entered into as of the _____ day of May, 2009, by and between the CITY OF LAS VEGAS, a political subdivision of the State of Nevada (the "Grantee"), and the Donald W. REYNOLDS FOUNDATION, a Nevada non-profit corporation (the "Foundation").

RECITALS

WHEREAS, the Grantee intends to construct a performing arts center to be known as The Fred W. and Mary B. Smith Center for the Performing Arts (the "Smith Center");

WHEREAS, the Grantee has issued certain bonds, from which $170 million in bond proceeds will be used to fund acquisition, construction, and equipment of the Smith Center (the "Bond Construction Account");

WHEREAS, the Foundation has approved an unrestricted grant to the Grantee in the amount of $75 million which the Foundation understands will be used by the Grantee for capital construction purposes;

NOW THEREFORE, in consideration of the mutual promises and the representations and warranties of the Grantee contained in this Grant Agreement, Foundation and the Grantee do hereby agree as follows:

Section 1.

GRANT: TERMS AND FUNDING SCHEDULE

1.1 Grant. Foundation hereby agrees to pay a grant in the amount of $75,000,000 to the Grantee, in installments as hereinafter provided (the "Grant").

1.2 Funding Schedule. Grantee will have substantially expended the $170,000,000 balance in the Bond Construction Account before the Foundation begins paying installments of the Grant to the Grantee.

(a) Grantee will transmit a written notice requesting payment of the Grant ("Request for Grant Payment Notice") to the Foundation at least 45 days prior to the date on which Grantee requests the Foundation to make the first Grant installment payment to the Grantee (the "First Grant Payment Date"). Grantee will provide a schedule to the Foundation with such Request for Grant Payment Notice in which Grantee's authorized representative shall provide a schedule showing the Foundation (i) the amount of the balance of the Bond Construction Account on a date not less than seven days before the date of the Request for Grant Payment Notice and (ii) the projected amount of expenditures from the Bond Construction Account. Grantee's authorized representative will attach to the Request for Grant Payment Notice a representation on behalf of the Grantee that such projected expenditures are expected to reduce the balance of the Bond Construction Account to $50,000,000 or less on the First Grant Payment Date. Upon receipt of the

Request for Grant Payment Notice with the requested schedule and representation, the Foundation will disburse $10,000,000 to the Grantee on the First Grant Payment Date.

(b) The Foundation shall disburse the balance of the Grant in six additional installments of $10,000,000 each and a final installment of $5,000,000. The second installment shall be paid to the Grantee 30 days following the First Grant Payment Date, and each subsequent installment shall be paid to the Grantee 30 days following payment of the prior installment until the full amount of the Grant has been disbursed to the Grantee.

(c) The funding schedule may be accelerated by mutual written consent of the Foundation and the Grantee.

Section 2.

REPRESENTATIONS AND WARRANTIES

The following representations and warranties are true and correct as of the signing of this Grant Agreement and each request for payment by the Grantee shall constitute an affirmation that the following representations and warranties remain true and correct as of the date of such request and, unless Foundation is notified to the contrary prior to the disbursement of the requested payment, will be true and correct on the date of such payment. The Grantee hereby represents and warrants that:

2.1 Tax Status. The Grantee is a political subdivision of the State of Nevada and is an organization described in section 170(c)(1) of the Internal Revenue Code of 1986, as amended (the "Code"). If at any time the Grantee's status changes, the Grantee shall immediately notify Foundation of any change or changes thereof.

2.2 Authority. Grantee has taken all action necessary to authorize the execution and delivery by Grantee of this Grant Agreement and the consummation of the transactions contemplated in this Grant Agreement. A copy of Grantee's City Council resolution authorizing this Grant Agreement shall be delivered to Foundation at the time of execution of this Grant Agreement.

2.3 Bond Construction Fund. On the date of execution of this Grant Agreement, Grantee will furnish the Foundation with a statement certified by Grantee to be correct and complete showing the balance of the Bond Construction Fund and all expenditures made therefrom.

2.4 Impermissible Use of Funds. The Grantee will not use the Grant funds for any of the following purposes: (a) to carry on propaganda or otherwise to attempt to influence legislation, (b) to influence the outcome of any specific public election or to carry on any voter registration drive, (c) to make any grant to an individual for travel, study, or other similar purposes unless otherwise permitted by section 4945(g) of the Code, (d) to make any grant to an organization unless such organization is a public charity described in sections 501(c)(3) and 509(a)(1), (2), or (3) of the Code (other than an organization described in section 4942(g)(4)(A)(i) or (ii) of the Code) or unless the Grantee exercises "expenditure responsibility" as defined in section 4945(h) of the Code and the

regulations thereunder with respect to such grant, (e) for any noncharitable purpose within the meaning of section 170(c)(2)(B) of the Code, or (f) for purposes other than capital construction.

2.5 No Untrue Statements. The representations, warranties and statements made by Grantee to Foundation do not contain any untrue statement. When taken together, the representations, warranties and statements made by Grantee to Foundation are not misleading, and they do not omit to state any material fact necessary to make such representations, warranties and statements in light of the circumstances in which they are made.

2.6 No Modification. No specific warranty or representation contained herein shall be deemed to modify or limit any general warranty or representation.

2.7 Reliance on Warranties. Grantee acknowledges that all of the representations, warranties and covenants made by Grantee in this Agreement were a material inducement to Foundation to approve the Grant and to enter into this Grant Agreement and Grantee further acknowledges that all of the representations, warranties and covenants contained herein are made with the knowledge and expectation that Foundation is relying thereon.

Section 3.

TERMINATION

Notwithstanding any other provision of this Grant Agreement, Foundation shall have the absolute right to terminate this Grant Agreement if (a) the Grantee ceases to be an organization described in section 170(c)(1) of the Code; or (b) the Grantee permits any of the Grant funds to be used for the following: (i) to carry on propaganda or otherwise to attempt to influence legislation, (ii) to influence the outcome of any specific public election or to carry on any voter registration drive, (iii) to make any grant to an individual for travel, study, or other similar purposes unless otherwise permitted by section 4945(g) of the Code, (iv) to make any grant to an organization unless such organization is a public charity described in sections 501(c)(3) and 509(a)(1), (2), or (3) of the Code (other than an organization described in section 4942(g)(4)(A)(i) or (ii) of the Code) or unless the Grantee exercises "expenditure responsibility" as defined in section 4945(h) of the Code and the regulations thereunder with respect to such grant, (v) for any noncharitable purpose within the meaning of section 170(c)(2)(B) of the Code, or (vi) for purposes other than capital construction.

If any of the foregoing occurs, the Foundation may, at its sole discretion, cease making payment of any undistributed Grant funds and may recover any Grant funds disbursed to Grantee together with interest and reasonable attorneys fees.

Section 4.

GENERAL TERMS

4.1 No Agency. Grantee understands and agrees that the Foundation is not the

agent or representative of Grantee for any purposes whatsoever.

4.2 No Third-Party Beneficiaries. Notwithstanding any other provision of this Agreement to the contrary, the terms, covenants and conditions contained in this Agreement are for the sole benefit of the parties hereto, and no reliance or benefit is intended to be granted to any person or company not a party to this Agreement.

4.3 Notices. All notices shall be in writing and shall be sent to the respective addressees of the parties as follows:

Grantee: CITY OF LASVEGAS
400 Stewart Ave., 8th Fl.
Las Vegas, NV 89101
Attn: Elizabeth N. Fretwell, City Manager

Foundation: DONALD W. REYNOLDS FOUNDATION
1701 Village Center Circle
Las Vegas, NV 89134-6303
Attn: Steven L. Anderson, President

A notice may be hand delivered or mailed, postage prepaid, first class, registered or certified mail, return receipt requested. Any notice sent by mail shall be deemed to have been received on the third business day following the date of mailing.

4.4 Applicable Law. This Grant Agreement has been delivered and accepted in, and shall be a contract made under and shall be entered into and governed by the laws of the State of Nevada. Any action or proceeding against Grantee or Foundation arising out of or relating to this Agreement shall be instituted only in federal or state court in Clark County, Nevada having jurisdiction, and each party waives any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding, and each party hereby irrevocably submits to the jurisdiction of any such court in any suit, action or proceeding.

4.5 Severability. Whenever possible, each provision of this Grant Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Grant Agreement.

4.6 Section Headings. The section headings and title headings contained herein are for convenience only and do not define, limit, construe or amplify the contents of such sections.

4.7 Drafting. This Grant Agreement shall not be construed either for or against Grantee or Foundation, but shall be interpreted in accordance with the general tenor of its language.

As of the date above first written, this Grant Agreement has been executed in multiple

original counterparts, each of which constitutes the original agreement, and an executed counterpart delivered to each signatory as of the day and year first above written.

FOUNDATION:

DONALD W. REYNOLDS FOUNDATION,
a Nevada non-profit corporation

By: _____
Name: Steven L. Anderson
Its: President

GRANTEE:

CITY OF LAS VEGAS,
a political subdivision of the State of Nevada

By: _____
Name: Oscar B. Goodman
Its: Mayor

ATTEST:

By:_____
Beverly Bridges, CMC, City Clerk

APPROVED AS TO FORM:

_____
Date