

**SECOND AMENDMENT TO THIRD AMENDED AND RESTATED AGREEMENT TO
DESIGN, CONSTRUCT AND LEASE A PERFORMING ARTS CENTER**

This Second Amendment To Third Amended And Restated Agreement To Design, Construct And Lease A Performing Arts Center ("Second Amendment") is made as of the 2ND day of November 2011 (the "Second Amendment Execution Date"), by and among The Smith Center for the Performing Arts, a Nevada nonprofit corporation (formerly known as the Las Vegas Performing Arts Center Foundation) ("PAC"), City Parkway V, Inc. ("CP"), a Nevada nonprofit corporation, and the City of Las Vegas, Nevada, a political subdivision of the State of Nevada ("City" and, together with CP, the "City Parties") (the City Parties and PAC are individually and collectively herein referred as the "Party(ies)").

RECITALS

WHEREAS, the Parties entered into that certain Third Amended And Restated Agreement To Design, Construct And Lease A Performing Arts Center ("Original Agreement") dated December 1, 2009 as amended on December 1, 2010 ("First Amendment") (collectively, the "Existing Agreement" and "First Amendment" are referred to herein as "Existing Agreement"); and

WHEREAS, the Parties desire to amend the Existing Agreement on the term and conditions set forth herein as follows:

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to amend the Existing Agreement as follows:

ARTICLE 1
DEFINITIONS

Section 1.1 Effect of Amendment; Definitions. The Parties hereby agree that this Second Amendment shall amend the Existing Agreement. Except as otherwise provided in this Second Amendment, the Existing Amended Agreement is unmodified and remains in full force and effect. In the event of any conflict, ambiguity or inconsistency between the terms and conditions of this Second Amendment and the terms and conditions of the Existing Agreement, the terms and conditions of this Second Amendment shall govern and control. All capitalized terms used herein without definition shall have the meanings given such terms in the Existing Agreement. The Parties hereby agree that any relevant provisions of this Second Amendment will be incorporated into the LOA prior to execution of the LOA. Unless otherwise defined herein, the capitalized terms used herein shall have meaning ascribed in this Section 1.1:

"Symphony Park Pedestrian Bridge" means the structure and related appurtenances, including elevator facilities, that connects the New City Hall Parking Garage to Symphony Park by crossing over the Union Pacific Railroad right-of-way.

"FFE" means the furniture, fixtures and equipment purchased by PAC to operate the Primary Theater Project.

ARTICLE 2 GENERAL INTENT

Section 2.1 General. The Parties agree that the overall purpose of this Second Amendment is to govern the expenditure and allocation of the PAC Contingency Amount, to determine how unanticipated Primary Theater Project costs are funded and to detail parking obligations related to construction issues.

ARTICLE 3 FUNDING

Section 3.1 Construction Contingency Fund Expenditure. The Parties hereby agree to withdraw Five Hundred Thousand Dollars (\$500,000) from the City Contingency Amount to be distributed to City ("City Distribution"). Due to the under run of the expenditure of the Construction Contingency Fund for the Primary Theater Project, the City, through its Redevelopment Agency, agrees to allocate the City Distribution to the PAC to fund the purchase of FFE. The Parties hereby agree to execute a separate agreement related to the allocation of the City Distribution and the purchase of FFE. The City acknowledges that the City Distribution is not to be reimbursed with Excess Fees as a City Contingency Amount expenditure pursuant to Section 6.3 Compliance with Budget Law and Excess Fees in the *Lease and Operating Agreement*.

Section 3.2 Construction Contingency Fund Distribution. The Parties hereby agree to withdraw an additional One Million Five Hundred Thousand Dollars (\$1,500,000) of the remaining Four Million Five Hundred Thousand Dollars (\$4,500,000) (after the withdrawal of the City Distribution) in the City Contingency Amount to be distributed to City.

The Parties also hereby agree to withdraw One Million Dollars (\$1,000,000) of the Rental Car Contingency in the Construction Contingency Fund to be distributed to the PAC. In addition, the Parties agree to withdraw Five Hundred Thousand Dollars (\$500,000) of the Rental Car Contingency in the Construction Contingency Fund to be distributed to the PAC for the construction of the Museum Garage to provide additional parking for the Primary Theater Project.

Section 3.3 Remaining Construction Contingency Fund. Expenditures of the remaining Construction Contingency Fund for additional Project Costs shall be disbursed in the following order: (i) PAC Contingency Amount; (ii) Rental Car Contingency Amount until such funds are exhausted; (iii) City Contingency Amount.

Upon (a) Final Completion, (b) joint execution by the Parties of the LOA and (c) City's payment of all remaining Project Costs, the then remaining Construction Contingency Fund shall be distributed to the Parties consistent with the intent of the DDA.

Section 3.4 GCGMP Trailers. The Parties hereby agree that any Project Costs or other costs incurred by the GCGMP associated with the extended placement of construction trailers on Symphony Park Parcel M4 due to the construction of the Museum Project shall be paid for solely by the PAC. The not to exceed amount shall be Eighty Four Thousand Seven Hundred Eighty Dollars (\$84,780). The Construction Contingency Fund shall not be used to pay for any costs related to the extended placement of the construction trailers on Parcel M4.

Section 3.5 Pledged Rental Car Fee Shortfall. The Parties hereby agree that in the event that at any time the Pledged Rental Car Fees are inadequate to make required Bond payments, and the City pays the Bond shortfall with City general fund revenue or other source(s), that thereafter any future Pledged Rental Car Fees that are in excess of the amount needed to pay future Bond payments shall first be paid to the City to reimburse the City for the aforementioned Bond payment shortfall.

Section 3.6 Previous Construction Expenditures. The Parties hereby agree that the following costs are valid Primary Theater Project costs funded by the Rental Car Contingency Amount: 1) Nevada Energy charges related to the Nevada Energy Line Extension Agreement to supply power for the Primary Theater Project for Two Hundred Sixty Seven Thousand Three Hundred Fifty Six Dollars (\$267,356); and 2) extension of Builder's Risk Insurance through February 28, 2012 at a cost of Twenty Two Thousand and Thirty Dollars (\$22,030) are valid and reimbursable Project Costs.

Section 3.7 Bonds Issuance Cost. The Parties hereby acknowledge that the cost of issuance of the Bonds of Three Hundred Ninety One Thousand Four Hundred Forty Seven Dollars (\$391,447) is a valid Primary Theater Project cost funded with interest earnings from the Bonds.

Section 3.8 Excess Fees. The Parties hereby agree that the City shall be permitted to annually reserve Excess Fees to pay the anticipated subsequent annual debt service for the Bonds. Any Excess Fees remaining after the requirements herein and in Section 6.3 Compliance with Budget Law and Excess Fees in the *Lease and Operating Agreement* are satisfied, City will pay PAC any excess Fees on an annual basis.

ARTICLE 4 PARKING

Section 4.1 Temporary Parking Due to Construction Trailers. The Parties hereby agree that through October 31, 2012, Seventy (70) parking spaces in the Museum Parking Garage shall compensate for seventy (70) parking spaces that are unavailable due to construction trailer staging on Symphony Park Parcel M4.

Section 4.2 Temporary Parking Due to Delayed Completion of Symphony Park Pedestrian Bridge. The Parties hereby agree in the event the Symphony Park Pedestrian Bridge is not complete for the opening of the Primary Theater Project, One-Hundred Thirty (130) additional parking spaces in the Museum Parking Garage shall be credited towards the City Parking obligation until the completion of the Symphony Park Pedestrian Bridge, but no later than October 31, 2012.

ARTICLE 5 PRIMARY THEATER PROJECT CONSTRUCTION

Section 5.1 Sidewalks. The Parties hereby agree that Section 7.1(a) of the Original Agreement shall be amended to remove "sidewalk" from the listing of City Work to be installed on the Primary Theater Project.

Section 5.2 Sidewalk Funding. The Parties hereby agree that Section 7.1(a) of the Original Agreement shall be amended to include the following:

PAC is solely responsible for the cost and installation of the private sidewalks in and around the Campus Site. Funds to pay for the cost of installing the private sidewalks in and around the Campus Site must come solely from PAC's fund raising efforts. The Construction Fund or the Construction Contingency Fund shall not be used to fund the private sidewalks in and around the Campus Site.

ARTICLE 6 MISCELLANEOUS

Article 6.1 Notice. The following change of address is hereby noted for future communications between the Parties:

The Smith Center for the Performing Arts
241 W. Charleston Blvd. Ste. 111
Las Vegas, NV 89102

Article 6.2 Counterparts. This Second Amendment 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.

Article 6.3 Governing Law. The law of the State of Nevada shall govern the validity, construction, performance and effect of this Second Amendment, without giving effect to its conflict of law provisions.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY OF LAS VEGAS

By: Carolyn G. Goodman
Carolyn G. Goodman, Mayor

Attest:

By: Vicky Skelbred
~~Beverly K. Bridges, MMC, City Clerk~~
Vicky Skelbred, MMC
Acting City Clerk

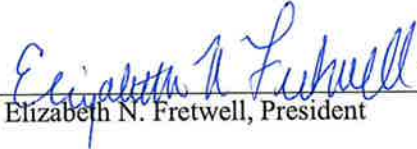
Approved as to Form:

By: John S. Ridilla 10/18/11
Deputy City Attorney Date
John S. Ridilla
Deputy City Attorney

Signatures Continued on Next Page

**SECOND AMENDMENT TO THIRD AMENDED AND RESTATED
AGREEMENT TO DESIGN, CONSTRUCT AND
LEASE A PERFORMING ARTS CENTER**
Signature Page Continued

CITY PARKWAY V, INC.

By: 
Elizabeth N. Fretwell, President

Attest:


By: _____
Scott Adams, Secretary

THE SMITH CENTER FOR THE PERFORMING ARTS

By: 
Myron G. Martin
President and Chief Executive Officer