

1 August 2013

2 SUPPLEMENTAL AGREEMENT TO CONVENTION CENTER MANAGEMENT
3 AGREEMENT 21667 FOR COMPLETION OF CERTAIN CAPITAL IMPROVEMENT
4 PROJECTS AT THE LONG BEACH CONVENTION AND ENTERTAINMENT CENTER
5 **21667**

6 THIS SUPPLEMENTAL AGREEMENT is made and entered into as of
7 August 7, 2013, pursuant to a minute order adopted by the City Council of the City of
8 Long Beach at its August 6, 2013 meeting by and between the CITY OF LONG BEACH,
9 a municipal corporation ("City") and SMG, a Pennsylvania joint venture ("SMG").

10 1. This Supplemental Agreement is made and entered into with
11 reference to the following facts and objectives:

12 1.1 City and SMG entered into a written Management Agreement
13 dated as of February 12, 1991 for the management and operation of the Long
14 Beach Convention and Entertainment Center (City Clerk's Contract No. 21667), as
15 amended ("Agreement").

16 1.2 Pursuant to the provisions of paragraph 5.3 of the Agreement,
17 SMG has recommended to City that certain Capital Improvements be made at an
18 estimated cost not to exceed Three Million Eight Hundred Thirty-One Thousand
19 Five Hundred Dollars (\$3,831,500.00). The recommended improvements are
20 more particularly described on Exhibit "A" attached hereto and by this reference
21 made a part hereof ("Facility Improvements"). City and SMG agree to use their
22 best efforts to complete the Facility Improvements identified in Exhibit "A" for less
23 than Three Million Eight Hundred Thirty-One Thousand Five Hundred Dollars
24 (\$3,831,500.00). City and SMG recognize that certain Facility Improvements may
25 exceed the current estimates and prevent completion of the entire list of projects.
26 City in its sole discretion shall determine the priority of Facility Improvements. In
27 no event shall City be obligated to spend more than Three Million Eight Hundred
28 Thirty-One Thousand Five Hundred Dollars (\$3,831,500.00) without further City

1 Council approval. Any failure to complete all of the Facility Improvements shall
2 not, however, in itself constitute a breach by SMG of the term of this Supplemental
3 Agreement.

4 1.3 The parties intend by this Supplemental Agreement to set
5 forth all of their understandings and agreements relative to the purchase,
6 installation and payment for the Facility Improvements.

7 2. Facility Improvements

8 2.1 "Plans" shall mean the plans, specifications, schedules and
9 related construction contracts for the Facility Improvements approved pursuant to
10 the applicable standards of the City. As of the date of this Supplemental
11 Agreement, the City standards for construction incorporate those set forth in the
12 Green Book, Standard Specifications for Public Works Construction (current
13 edition), of the Southern California Chapter of the American Public Works
14 Association, as modified by the City of Long Beach, California Amendments to
15 Standard Specifications for Public Works Construction, together with the City of
16 Long Beach Standard Plans.

17 To the extent that it has not already done so, SMG shall cause Plans
18 to be prepared for the Facility Improvements. SMG shall obtain the written
19 approval of the Plans in accordance with applicable ordinances and regulations of
20 the City. Copies of all Plans shall be provided by SMG to the City (in both printed
21 format and in an electronic format approved by the City) upon request therefor,
22 and, in any event, as built drawings (in both printed format and in an electronic
23 format approved by the City).

24 2.2 All Facility Improvements to be constructed, acquired and
25 installed hereunder as specified in Exhibit "A" hereto, shall be constructed
26 substantially in accordance with the approved Plans by a licensed general
27 contractor by or under the direct supervision of SMG. SMG shall perform all of its
28 obligations hereunder and shall monitor the performance of any applicable general

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1 contractor to confirm that all operations with respect to the construction of Facility
2 Improvements are conducted in a good and workmanlike manner, with the
3 standard of diligence and care normally employed by duly qualified persons
4 utilizing their best efforts in the performance of comparable work and in
5 accordance with generally accepted practices appropriate to the activities
6 undertaken. SMG shall require that each general contractor performing work in
7 connection with the Facility Improvements employ at all times adequate staff or
8 consultants with the requisite experience and applicable licenses and registrations
9 necessary to administer and coordinate all work related to the design, engineering,
10 acquisition, construction, testing, installation and inspection of the Facility
11 Improvements. SMG shall at all times employ adequate staff or consultants with
12 the requisite experience and licenses to discharge its obligations under this
13 Supplemental Agreement.

14 SMG shall, use its best efforts to obtain at least three independent
15 written bids for each of the Facility Improvements and that the contract is awarded
16 to the lowest responsible qualified bidder. City shall be entitled to be represented
17 at the time and place for the opening of the bids, but SMG shall not be delayed by
18 the absence of the City so long as the City was provided reasonable notice of the
19 opening of the bids. In the event SMG or SMG's contractor is unable to obtain
20 three independent written bids, SMG or SMG's contractor shall document its
21 attempts to secure the required bids and SMG shall submit said documentation to
22 City. SMG shall meet and confer with City regarding the awarding of contract.

23 From time to time at the request of the City and given reasonable
24 notice thereof, SMG shall meet and confer with the City regarding matters arising
25 hereunder with respect to the Facility Improvements and the progress in the
26 construction and acquisition of the same, and as to any other matter related to the
27 Facility Improvements or this Supplemental Agreement. SMG shall advise the City
28 in advance of any coordination and scheduling meetings to be held with

1 contractors relating to the Facility Improvements, in the ordinary course of
2 performance of an individual contract. City's designated representative shall have
3 the right to be present at such meetings, and to meet and confer with individual
4 contractors if deemed advisable by the City to assist in resolving disputes and/or
5 ensure the proper completion of the Facility Improvements; provided that any
6 assistance or instruction by City is provided to SMG and not directly to any
7 contractors engaged by SMG.

8 2.3 Independent Contractor. In performing this Supplemental
9 Agreement, SMG is an independent contractor and not the agent or employee of
10 the City. The City shall not be responsible for making any payments to any officer
11 or employee of SMG or any contractor, subcontractor, agent, consultant,
12 employee or supplier selected by SMG.

13 2.4 Performance and Payment Bonds. SMG agrees to comply
14 with all applicable performance and payment bonding requirements of the City with
15 respect to the construction of the Facility Improvements. All contractors providing
16 work in connection with the construction of the Facility Improvements shall provide
17 a labor and materials and performance bonds which name the City as an
18 additional insured. SMG will not be required to provide Performance and Payment
19 Bonds as part of SMG's supervision of the Facility Improvements.

20 2.5 Contracts and Change Orders. SMG shall be responsible for
21 entering into all contracts and any amendments (commonly referred to as "change
22 orders") required for the construction and installation of the Facility Improvements
23 listed in Exhibit "A" hereto, and all such contracts and change orders shall be
24 submitted to the City. Prior approval of change orders by the City shall only be
25 required for such change orders, which in any way materially alter the quality or
26 character of the Facility Improvements. Within five (5) business days of receipt by
27 the City of a contract or change order that needs the prior approval of the City, the
28 City shall either (i) approve or deny such contract or change order (any such

1 denial to be in writing, stating the reasons for denial and the actions, if any, that
2 can be taken to obtain later approval), or (ii) notify SMG that it needs additional
3 time (not to exceed an additional five (5) business days) to approve or deny the
4 contract or change order. The City will use a good faith effort to grant approvals or
5 provide denials on a more expeditious basis in the event that SMG identifies in
6 writing that the subject contract or change order is needed to address an
7 emergency or critical path situation.

8 2.6 Intentionally left blank.

9 2.7 Inspection. SMG shall obtain all permits (including but not
10 limited to City construction, electrical, plumbing and/or mechanical permits),
11 approvals and consents required by law for the installation of the Facility
12 Improvements. The applicable departments of the City shall make or cause to be
13 made periodic site inspections of the Facility Improvements to be constructed,
14 acquired and or installed hereunder in accordance with customary inspection
15 practices of public agencies for similar public improvements. SMG agrees to pay
16 all inspection, permit and other similar fees of the City applicable to construction of
17 the Facility Improvements from the allocated Capital Improvement Funds.

18 3. In addition to the foregoing, SMG shall include in any contract for the
19 Facility Improvements the following provisions:

20 3.1 The requirement for the contractor to defend and indemnify
21 the City, its officers and employees and SMG and its officers, directors, agents
22 and employees from all claims arising from contractor's acts or omissions.

23 3.2 The requirement that every contractor obtain and furnish SMG
24 with evidence of workers' compensation, automobile and commercial general
25 liability insurance of Sections 7.3 and 7.4 of the Standard Specifications for Public
26 Works Construction as amended by City. Such insurances shall name City and
27 SMG and their officers, directors, agents and employees as additional insureds.

28 3.3 Promptly following the execution of this Supplemental

1 Agreement, SMG shall deliver to City certificates of insurance and required
2 endorsements (or other evidence acceptable to the Risk Manager in the Risk
3 Manager's discretion) evidencing the insurance coverage required by this
4 Supplemental Agreement for approval as to sufficiency and form of SMG's
5 contractors.

6 3.4 The requirement that all materials, products, parts and
7 equipment furnished shall be free from defects and imperfections and that all
8 workmanship shall be in accord with the best practices.

9 4. Payment.

10 4.1 City shall pay SMG for the Facility Improvements in the
11 manner described below, not to exceed Three Million Eight Hundred Thirty-One
12 Thousand Five Hundred Dollars (\$3,831,500.00), and at the charges described in
13 Exhibit "A", attached to this Agreement and incorporated by this reference. The
14 City will pay no more per Facility Improvement, than the amount associated with
15 that Facility Improvement identified on Exhibit "A". If SMG anticipates that SMG
16 will exceed any amount associated with the Facility Improvement on Exhibit "A",
17 then SMG shall immediately give notice to City. SMG's failure to notify City shall
18 be deemed a waiver of all of SMG's claims for additional compensation relating to
19 that Facility Improvement. After receipt of this notice, City will notify SMG whether
20 or not to proceed.

21 4.2 SMG has requested to receive regular payments. City shall
22 pay SMG in due course payments following receipt from SMG and approval by
23 City of invoices showing the services or tasks performed, the time expended (if
24 billing is hourly), and the name of the Facility Improvement. City shall pay all
25 undisputed portions of SMG's invoice. SMG shall certify on the invoices that SMG
26 or SMG's contractor has performed the services in full conformance with this
27 Agreement and is entitled to receive payment. Where billing is done and payment
28 is made on an hourly basis, the parties acknowledge that this arrangement is

1 either customary practice for SMG's profession, industry, or business, or is
2 necessary to satisfy audit and legal requirements which may arise due to the fact
3 that City is a municipality.

4 5. Any notice, demand, request, consent, approval, or communication
5 that either party desires or is required to give to the other party or any other person shall
6 be in writing and either served personally or sent by prepaid first-class mail. Any notice,
7 demand, request, consent, approval, or communication that either party desires or is
8 required to give to the other party shall be addressed to the other party at the address set
9 forth below. Either party may change its address by notifying the other party of the
10 change of address. Notice shall be deemed communicated upon personal service or
11 forty-eight (48) hours from the time of mailing if mailed as provided in this paragraph.

12
13 To City: City Manager
14 13th Floor, City Hall
15 333 West Ocean Boulevard
16 Long Beach, California 90802

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18 To City: Director, Department of Public Works, 3rd Floor, City Hall
19 333 West Ocean Boulevard
20 Long Beach, California 90802

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22 To SMG: General Manager, SMG
23 300 East Ocean Boulevard
24 Long Beach, California 90802

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26 6. This Supplemental Agreement contains or refers to all the
27 agreements of the parties with respect to the Facility Improvements and cannot be
28 amended or modified except by written agreement.

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1 7. Compliance with Laws. SMG shall not with knowledge commit, suffer
2 or permit any act to be done in, upon or to the property or the Facility Improvements in
3 material violation of any law, ordinance, rule, regulation or order of any governmental
4 authority or any covenant, condition or restriction now or hereafter affecting the property
5 or the Facility Improvements.

6 8. Requests for Payment. SMG represents and warrants that (i) it will
7 not request payment from the City pursuant to this Supplemental Agreement for the
8 acquisition of any improvements that are not part of the Facility Improvements identified
9 in Exhibit A.

10 9. Financial Records. SMG covenants to maintain proper books of
11 record and account for the construction and installation of the Facility Improvements and
12 all costs related thereto. Such accounting books shall be maintained in accordance with
13 generally accepted accounting principles or other accounting basis consistently applied,
14 and shall be available for inspection by the City or its agent at any reasonable time during
15 regular business hours on reasonable notice.

16 10. Prevailing Wages. SMG covenants that, with respect to any
17 contracts or subcontracts for the construction of the Facility Improvements hereunder, it
18 will assure complete compliance with any applicable law or regulation for the payment of
19 prevailing wages for such construction, including but not limited to all applicable
20 requirements of the City's charter and municipal code. SMG acknowledges that
21 compliance includes, but is not limited to, the duty of each contractor and subcontractor
22 to keep an accurate payroll record in accordance with Division 2, Part 7, Article 2 of the
23 California Labor Code, and to furnish such records in a timely manner upon request by
24 SMG, the City or the California Department of Industrial Relations. Such compliance also
25 includes the duty of SMG to investigate, and, if substantiated, cause to be corrected, any
26 alleged violation of applicable prevailing wage rules, regulations of statutes, or if not
27 corrected to cooperate with the City to identify and impose such penalties as allowed by
28 applicable State or City law or regulation In furtherance of the foregoing, SMG agrees to

1 provide City, promptly following receipt of a written request therefor, with a certified
2 payroll for all work for which payment has been or is then being requested under this
3 Supplemental Agreement.

4 11. All provisions, whether covenants or conditions, on the part of SMG
5 and City shall be deemed to be both covenants and conditions.

6 12. When required by the context of this Supplemental Agreement, the
7 singular shall include the plural.

8 13. If either party commences an action against the other party arising
9 out of or in connection with this Supplemental Agreement, the prevailing party shall be
10 entitled to recover reasonable attorney's fees and costs of suit from the losing party.

11 14. SMG shall not assign or transfer this Supplemental Agreement or
12 any interest herein.

13 15. Time is of the essence of each and all of the terms and provisions of
14 this Supplemental Agreement.

15 16. No other agreement, statement or promise made by any party or any
16 employee, officer or agent of any party with respect to any matters covered hereby that is
17 not in writing and signed by all the parties to this Supplemental Agreement shall be
18 binding.

19 17. Nothing in this Supplemental Agreement, expressed or implied, is
20 intended to or shall be construed to confer upon or to give to any person or entity other
21 than the City and SMG any rights, remedies or claims under or by reason of this
22 Supplemental Agreement or any covenants, conditions or stipulations hereof; and all
23 covenants, conditions, promises, and agreements in this Supplemental Agreement
24 contained by or on behalf of the City or SMG shall be for the sole and exclusive benefit of
25 the City and SMG.

26 18. This Supplemental Agreement may be executed in counterparts,
27 each of which shall be deemed an original.

28 19. If any part of this Supplemental Agreement is held to be illegal or

1 unenforceable by a court of competent jurisdiction, the remainder of this Supplemental
2 Agreement shall be given effect to the fullest extent possible.

3 20. Any waiver by either party of any breach by the other party of any
4 one or more of the covenants, conditions or agreements of this Supplemental Agreement
5 shall not be nor be construed to be a waiver of any subsequent or other breach of the
6 same or any other covenant, condition or agreement of this Supplemental Agreement,
7 nor shall any failure on the part of either party to require or exact full and complete
8 compliance by the other party with any of the covenants, conditions or agreements of this
9 Supplemental Agreement be construed as in any manner changing the terms hereof or to
10 prevent either party from enforcing any provision hereof.

11 21. In the performance of this Supplemental Agreement, SMG shall not
12 discriminate against any employee or applicant for employment because of race, religion,
13 national origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV status,
14 handicap or disability. Consultant shall ensure that applicants are employed, and that
15 employees are treated during their employment, without regard to these bases. These
16 actions shall include, but not be limited to, the following: employment, upgrading,
17 demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of
18 pay or other forms of compensation; and selection for training, including apprenticeship.
19 SMG shall post in conspicuous places notices setting forth the provision of this
20 paragraph.

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1 22. This Supplemental Agreement may be amended, from time to time,
2 by written agreement hereto and executed by both the City and SMG.

3
4 SMG, a Pennsylvania joint venture

5 Aug. 13, 2013

By John F. Burns
John F. Burns
"SMG" Chief Financial Officer

7 CITY OF LONG BEACH, a municipal
8 corporation

9 9.10, 2013

By SM Assistant City Manager
City Manager

"City"

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

11 The foregoing Supplemental Agreement is hereby approved this 15th day
12 of August, 2013.

13 CHARLES PARKIN, City Attorney

14 By [Signature]
15 Deputy

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EXHIBIT “A”

Arena Air Handlers #1-10 Replacement (Approximately \$1,500,000):

The eighteen (18) air handler units, which are used to condition and circulate air, in the Arena are the original units that had been installed as part of the construction of the Arena in 1962.

The units that we propose to be replaced represent half of the total number of units that exist and they are considered to be in need of replacement due to various reasons including 1) they are no longer functioning in the most energy efficient manner and 2) the replacement of these air handlers will benefit the comfort of attendees inside the facility that can now be utilized as a ballroom.

Complete Arena Ballroom Improvements & Renovate Seaside Restrooms (Approximately \$1,350,000):

To further increase the functionality and flexibility of the Arena that can be utilized by clients as a ballroom, the purchase of additional items is needed. Potential items to be obtained include, but are not limited to...

- Lighting and supporting electrical upgrades
- Drapes that will allow the venue to be divided into different segment sizes
- Speakers and related supporting equipment

In an effort to further support the overall functionality of the facility, the restrooms that are located in the Seaside Meeting Room area are in need of renovation. To start a single pair of restrooms would be renovated and the improvements to be done would include, but not be are not limited to...

- Lighting and supporting electrical upgrades
- Replacing toilets, faucets and soap dispensers so that they are automated
- Upgrading existing restroom stall walls and doors
- Upgrading countertop areas

Arena Lobby Renovation (Approximately \$600,000):

To further complement the experience of guests of the facility...

- Additional renovation work to the Arena Lobby, such as lighting and sound improvement would be made.

Facility Furniture (Approximately \$381,500):

- Furniture that has been in service for several years and is showing significant signs of wear and tear would be replaced around the facility as deemed necessary.