

21667

JUNE 2022

1
2 SUPPLEMENTAL AGREEMENT TO CONVENTION CENTER MANAGEMENT
3 AGREEMENT NO. 21667 FOR COMPLETION OF CERTAIN CAPITAL IMPROVEMENT
4 PROJECTS AT THE LONG BEACH CONVENTION AND ENTERTAINMENT CENTER
5

6 THIS SUPPLEMENTAL AGREEMENT is made and entered into as of June
7 21, 2022, pursuant to a minute order adopted by the City Council of the City of Long Beach
8 at its June 21, 2022 meeting, by and between the CITY OF LONG BEACH, a municipal
9 corporation ("City") and SMG, a Pennsylvania joint venture, a wholly-owned subsidiary of
10 ASM Global, a Pennsylvania joint venture ("SMG").

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

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

17 1.2 Pursuant to the provisions this Agreement, SMG has
18 recommended to City that certain Capital Improvements be made at an estimated
19 cost not to exceed One Million Four Hundred Twenty-Nine Thousand Nine Hundred
20 Sixty-Two Dollars (\$1,429,962). The recommended improvements are more
21 particularly described on Exhibit "A" attached hereto and by this reference made a
22 part hereof ("Facility Improvements"). City and SMG agree to use their best efforts
23 to complete the Facility Improvements identified in Exhibit "A" for less than One
24 Million Four Hundred Twenty-Nine Thousand Nine Hundred Sixty-Two Dollars
25 (\$1,429,962). City and SMG recognize that certain Facility Improvements may
26 exceed the current estimates and prevent completion of the entire list of projects.
27 City in its sole discretion shall determine the priority of Facility Improvements. In no
28 event shall City be obligated to spend more than One Million Four Hundred Twenty-

1 Nine Thousand Nine Hundred Sixty-Two Dollars (\$1,429,962) without further City
2 Council approval. Any failure to complete all of the Facility Improvements shall not,
3 however, in itself constitute a breach by SMG of the term of this Supplemental
4 Agreement.

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

8 2. Facility Improvements.

9 2.1 "Plans" shall mean the plans, specifications, schedules and
10 related construction contracts for the Facility Improvements approved pursuant to
11 the applicable standards of the City. As of the date of this Supplemental Agreement,
12 the City standards for construction incorporate those set forth in the Green Book,
13 Standard Specifications for Public Works Construction (current edition), of the
14 Southern California Chapter of the American Public Works Association, as modified
15 by the City of Long Beach, California Amendments to Standard Specifications for
16 Public Works Construction, together with the City of 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 approval
19 of the Plans in accordance with applicable ordinances and regulations of the City.
20 Copies of all Plans shall be provided by SMG to the City (in both printed format and
21 in an electronic format approved by the City) upon request therefore, and, in any
22 event, as built drawings (in both printed format and in an electronic format approved
23 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

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

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

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

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

7 2.3 Independent Contractor. In performing this Supplemental
8 Agreement, SMG is an independent contractor and not the agent or employee of
9 the City. The City shall not be responsible for making any payments to any officer
10 or employee of SMG or any contractor, subcontractor, agent, consultant, employee
11 or supplier selected by SMG.

12 2.4 Performance and Payment Bonds. SMG agrees to comply with
13 all applicable performance and payment bonding requirements of the City with
14 respect to the construction of the Facility Improvements. All contractors providing
15 work in connection with the construction of the Facility Improvements shall provide
16 a labor and materials and performance bonds which name the City as an additional
17 insured. SMG will not be required to provide Performance and Payment Bonds as
18 part of SMG's supervision of the Facility Improvements.

19 2.5 Contracts and Change Orders. SMG shall be responsible for
20 entering into all contracts and any amendments (commonly referred to as "change
21 orders") required for the construction and installation of the Facility Improvements
22 listed in Exhibit "A" hereto, and all such contracts and change orders shall be
23 submitted to the City. Prior approval of change orders by the City shall only be
24 required for such change orders, which in any way materially alter the quality or
25 character of the Facility Improvements. Within five (5) business days of receipt by
26 the City of a contract or change order that needs the prior approval of the City, the
27 City shall either (i) approve or deny such contract or change order (any such denial
28 to be in writing, stating the reasons for denial and the actions, if any, that can be

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

7 2.6 Intentionally left blank.

8 2.7 Inspection. SMG shall obtain all permits (including but not
9 limited to City construction, electrical, plumbing and/or mechanical permits),
10 approvals and consents required by law for the installation of the Facility
11 Improvements. The applicable departments of the City shall make or cause to be
12 made periodic site inspections of the Facility Improvements to be constructed,
13 acquired and or installed hereunder in accordance with customary inspection
14 practices of public agencies for similar public improvements. SMG agrees to pay all
15 inspection, permit and other similar fees of the City applicable to construction of the
16 Facility Improvements from the allocated Capital Improvement Funds.

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

19 3.1 The requirement for the contractor to defend and indemnify the
20 City, its officers and employees and SMG and its officers, directors, agents and
21 employees from all claims arising from contractor's acts or omissions.

22 3.2 The requirement that every contractor obtain and furnish SMG
23 with evidence of workers' compensation, automobile and commercial general
24 liability insurance of Sections 7.3 and 7.4 of the Standard Specifications for Public
25 Works Construction as amended by City. Such insurances shall name City and
26 SMG and their officers, directors, agents and employees as additional insureds.

27 3.3 Promptly following the execution of this Supplemental
28 Agreement, SMG shall deliver to City certificates of insurance and required

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

5 3.4 The requirement that all materials, products, parts and
6 equipment furnished shall be free from defects and imperfections and that all
7 workmanship shall be in accord with the best practices.

8 4. Payment.

9 4.1 City shall pay SMG for the Facility Improvements in the manner
10 described below, not to exceed One Million Four Hundred Twenty-Nine Thousand
11 Nine Hundred Sixty-Two Dollars (\$1,429,962), and at the charges described in
12 Exhibit "A", attached to this Agreement and incorporated by this reference. The City
13 will pay no more per Facility Improvement, than the amount associated with that
14 Facility Improvement identified on Exhibit "A". If SMG anticipates that SMG will
15 exceed any amount associated with the Facility Improvement on Exhibit "A", then
16 SMG shall immediately give notice to City. SMG's failure to notify City shall be
17 deemed a waiver of all of SMG's claims for additional compensation relating to that
18 Facility Improvement. After receipt of this notice, City will notify SMG whether or not
19 to proceed.

20 4.2 SMG has requested to receive regular payments. City shall
21 pay SMG in due course payments following receipt from SMG and approval by City
22 of invoices showing the services or tasks performed, the time expended (if billing is
23 hourly), and the name of the Facility Improvement. City shall pay all undisputed
24 portions of SMG's invoice. SMG shall certify on the invoices that SMG or SMG's
25 contractor has performed the services in full conformance with this Agreement and
26 is entitled to receive payment. Where billing is done and payment is made on an
27 hourly basis, the parties acknowledge that this arrangement is either customary
28 practice for SMG's profession, industry, or business, or is necessary to satisfy audit

1 and legal requirements which may arise due to the fact that City is a municipality.

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

- 10 To City: City Manager
11 10th Floor, City Hall
12 411 West Ocean Boulevard
13 Long Beach, California 90802
- 14 To City: Manager, Economic Development, 10th Floor, City Hall
15 411 West Ocean Boulevard
16 Long Beach, California 90802
- 17 To SMG: General Manager, SMG
18 300 East Ocean Boulevard
19 Long Beach, California 90802

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

23 7. Compliance With Laws. SMG shall not with knowledge commit, suffer
24 or permit any act to be done in, upon or to the property or the Facility Improvements in
25 material violation of any law, ordinance, rule, regulation or order of any governmental
26 authority or any covenant, condition or restriction now or hereafter affecting the property or
27 the Facility Improvements.

28 8. Requests For Payment. SMG represents and warrants that (i) it will

1 not request payment from the City pursuant to this Supplemental Agreement for the
2 acquisition of any improvements that are not part of the Facility Improvements identified in
3 Exhibit "A".

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

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

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

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

1 13. If either party commences an action against the other party arising out
2 of or in connection with this Supplemental Agreement, the prevailing party shall be entitled
3 to recover reasonable costs of suit from the losing party.

4 14. SMG shall not assign or transfer this Supplemental Agreement or any
5 interest herein.

6 15. Time is of the essence of each and all of the terms and provisions of
7 this Supplemental Agreement.

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

11 17. Nothing in this Supplemental Agreement, expressed or implied, is
12 intended to or shall be construed to confer upon or to give to any person or entity other
13 than the City and SMG any rights, remedies or claims under or by reason of this
14 Supplemental Agreement or any covenants, conditions or stipulations hereof; and all
15 covenants, conditions, promises, and agreements in this Supplemental Agreement
16 contained by or on behalf of the City or SMG shall be for the sole and exclusive benefit of
17 the City and SMG.

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

20 19. If any part of this Supplemental Agreement is held to be illegal or
21 unenforceable by a court of competent jurisdiction, the remainder of this Supplemental
22 Agreement shall be given effect to the fullest extent possible.

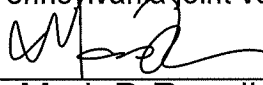
23 20. Any waiver by either party of any breach by the other party of any one
24 or more of the covenants, conditions or agreements of this Supplemental Agreement shall
25 not be nor be construed to be a waiver of any subsequent or other breach of the same or
26 any other covenant, condition or agreement of this Supplemental Agreement, nor shall any
27 failure on the part of either party to require or exact full and complete compliance by the
28 other party with any of the covenants, conditions or agreements of this Supplemental


OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802

1 Agreement be construed as in any manner changing the terms hereof or to prevent either
2 party from enforcing any provision hereof.

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

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

14 SMG, a Pennsylvania joint venture
15 _____, 2022 By 
16 Name Mark D Rozells
17 Title CEO

18 "SMG"
19 CITY OF LONG BEACH, a municipal
20 corporation
21 _____, 2022 By 

22 City Manager
23 "City" EXECUTED PURSUANT
24 TO SECTION 301 OF
25 THE CITY CHARTER.

26 This Supplemental Agreement is approved as to form on
27 _____, 2022.

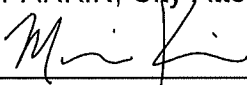
28 CHARLES PARKIN, City Attorney
By 
Deputy

EXHIBIT “A”

Exhibit "A"

Beverly O'Neill Theater - Elevator Repair and Renovations

Estimated \$185,000

Repair and renovations are proposed to the existing elevator at the Plaza in an ongoing effort to improve the safety and guest experience at the facility, and to maintain multiple options for safe and equitable public access to the facility. The modernization of this elevator will also provide aesthetic improvements, helping ensure a world class facility.

Terrace Theater - Renovations to Dressing Rooms and Restrooms

Estimated \$255,000

Renovations and upgrades to the dressing rooms and restrooms are proposed to improve the guest experience and overall operations at the facility and make the LBCEC an attractive venue for a variety of events. In addition, modernizations to the restrooms are anticipated to reduce utility expenses with more energy efficient fixtures.

Terrace Plaza Area - Engineering and Electrical Panel Replacement

Estimated \$110,000

To improve the safety of the operators/vendors in Terrace Plaza, and ensure that electrical panels perform at optimal levels, while reducing utility expenses for the City, the improvement will replace all electrical panels in Terrace Plaza area which support a number of fixtures and facilities throughout the Plaza.

Entertainment and Community Gathering Space - FF&E Lifecycle Enhancements

Estimated \$600,000

The improvement to the entertainment and communal gathering places will improve guest satisfaction and experience by replacing and enhancing the lights/furnishings and decorations on the Terrace Plaza/Theater. Current inventory is over five (5) years old and in disrepair, with the revitalization improving the Annual Tree Lighting Ceremony for the residents of Long Beach and Holiday Events, ensuring the Convention Center remains a premier destination for our guests and vendors.

Promenade- Repair and Replace Deteriorated Promenade Wall Panels

Estimated \$30,000

To ensure public safety, the proposed improvement will replace aged panel walls along the Convention Center promenade wall with wooden panels and provide an aesthetic carpet screening.

LBCEC - Water Filling Stations

Estimated \$80,000

To reduce waste and ensure LBCEC guests and vendors have access to filtered water, the improvement is aimed at providing 36 new bottle filling stations across the campus. The removal of the dated water fountains and installation of the filling stations will require plumbing reconfiguration and installation of the new equipment.

Terrace Theater - Renovations to Chorus Rooms and Restrooms

Estimated \$169,962

To improve guest experience at the facility, while also reducing utility expenses for the City, this improvement will begin to renovate the chorus rooms and restrooms within the Terrace Theater. The renovated restrooms will reduce utility expenditures through installation of more energy efficient fixtures, while the dressing room renovations will improve operations for vendors, making the LBCEC an attractive venue for future events.