

OFFICE OF THE CITY ATTORNEY
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1 FIRST AMENDMENT TO THE OCTOBER 2010
2 SUPPLEMENTAL AGREEMENT TO MANAGEMENT AGREEMENT NUMBER 21667
3 **21667**

4 THIS FIRST AMENDMENT TO THE OCTOBER 2010 SUPPLEMENTAL
5 AGREEMENT is made and entered into as of December 15, 2010, pursuant to a minute
6 order adopted by the City Council of the City of Long Beach at its December 14, 2010
7 meeting by and between the CITY OF LONG BEACH, a municipal corporation ("City")
8 and SMG, a Pennsylvania joint venture ("SMG").

9 WHEREAS, City and SMG entered into a written Management Agreement
10 dated as of February 12, 1991 ("Agreement") for the management and operation of the
11 Long Beach Convention and Entertainment Center (City Clerk's Contract No. 21667); and

12 WHEREAS, the parties entered into the October 2010 Supplemental
13 Agreement to Contract No. 21667 on November 16, 2010 to provide for the replacement
14 of 3,021 seats in the Terrace Theatre at the Long Beach Convention and Entertainment
15 Center ("Center"); and

16 WHEREAS, the parties desire to amend the October 2010
17 SUPPLEMENTAL AGREEMENT TO MANAGEMENT AGREEMENT NUMBER 21667 to
18 add other items remaining on the current five-year Capital Improvement Project ("CIP")
19 list for the Center including equipment and fixtures that have reached the end of their
20 useful life and are in need of significant repair or replacement; and

21 WHEREAS, these additional items comprise the remainder of the Center's
22 approximately \$3.5 million dollar CIP list for Fiscal Year 2011 which was previous
23 adopted by the Long Beach City Council.

24 NOW, THEREFORE, in consideration of the mutual terms and conditions
25 herein contained, the parties agree as follows:

26 Section 1. Section 1 of the October 2010 SUPPLEMENTAL
27 AGREEMENT TO MANAGEMENT AGREEMENT NUMBER 21667 is amended in its
28 entirety to read as follows:

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

3 1.1 City and SMG entered into a written Management Agreement
4 dated as of February 12, 1991 (“Agreement”) for the management and operation
5 of the Long Beach Convention and Entertainment Center (City Clerk’s Contract
6 No. 21667).

7 1.2 Pursuant to the provisions of paragraph 5.3 of the Agreement,
8 in addition to the replacement of 3,021 seats in the Terrace Theatre at a estimated
9 cost of \$850,000, SMG has recommended to City that certain other Capital
10 Improvements be made at an estimated additional cost of Two Million Six Hundred
11 Fifty Thousand Dollars (\$2,650,000.00). The additional recommended
12 improvements are more particularly described on Exhibit “A” attached hereto and
13 by this reference made a part hereof (“Facility Improvements”). City and SMG
14 agree to use their best efforts to complete the Facility Improvements identified in
15 Exhibit “A” for less than Two Million Six Hundred Fifty Thousand Dollars
16 (\$2,650,000.00). City and SMG recognize that certain Facility Improvements may
17 exceed the current estimates and prevent completion of the entire list of projects.
18 City in its sole discretion shall determine the priority of Facility Improvements. In
19 no event shall City be obligated to spend more than Three Million Five Hundred
20 Thousand Dollars (Exhibit A to this First Amendment plus the expense of the
21 Terrace Theatre seat replacement) without further City Council approval. Any
22 failure to complete all of the Facility Improvements shall not, however, in itself
23 constitute a breach by SMG of the term of this First Amendment to the
24 Supplemental Agreement.

25 1.3 The parties intend by this Amendment to the Supplemental
26 Agreement to set forth all of their understandings and agreements relative to the
27 purchase, installation and payment for the Facility Improvements.”

28 Section. 2. Section 2 of the October 2010 SUPPLEMENTAL

1 AGREEMENT TO MANAGEMENT AGREEMENT NUMBER 21667 is amended in its
2 entirety to read as follows:

3 "2. Facility Improvements

4 2.1 "Plans" shall mean the plans, specifications, schedules and
5 related construction contracts for the Facility Improvements approved pursuant to
6 the applicable standards of the City. As of the date of this Supplemental
7 Agreement, the City standards for construction incorporate those set forth in the
8 Green Book, Standard Specifications for Public Works Construction (2003 edition),
9 of the Southern California Chapter of the American Public Works Association, as
10 modified by the City of Long Beach, California Amendments to Standard
11 Specifications for Public Works Construction (2003 edition), together with the City
12 of Long Beach Standard Plans (2003 edition).

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

20 2.2 All Facility Improvements to be constructed, acquired and
21 installed hereunder as specified in Exhibit "A" hereto, shall be constructed
22 substantially in accordance with the approved Plans by a licensed general
23 contractor by or under the direct supervision of SMG. SMG shall perform all of its
24 obligations hereunder and shall monitor the performance of any applicable general
25 contractor to confirm that all operations with respect to the construction of Facility
26 Improvements are conducted in a good and workmanlike manner, with the
27 standard of diligence and care normally employed by duly qualified persons
28 utilizing their best efforts in the performance of comparable work and in

1 accordance with generally accepted practices appropriate to the activities
2 undertaken. SMG shall require that each general contractor performing work in
3 connection with the Facility Improvements employ at all times adequate staff or
4 consultants with the requisite experience and applicable licenses and registrations
5 necessary to administer and coordinate all work related to the design, engineering,
6 acquisition, construction, testing, installation and inspection of the Facility
7 Improvements. SMG shall at all times employ adequate staff or consultants with
8 the requisite experience and licenses to discharge its obligations under this
9 Supplemental Agreement.

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

19 From time to time at the request of the City and given reasonable
20 notice thereof, SMG shall meet and confer with the City regarding matters arising
21 hereunder with respect to the Facility Improvements and the progress in the
22 construction and acquisition of the same, and as to any other matter related to the
23 Facility Improvements or this Supplemental Agreement. SMG shall advise the City
24 in advance of any coordination and scheduling meetings to be held with
25 contractors relating to the Facility Improvements, in the ordinary course of
26 performance of an individual contract. City's designated representative shall have
27 the right to be present at such meetings, and to meet and confer with individual
28 contractors if deemed advisable by the City to assist in resolving disputes and/or

1 ensure the proper completion of the Facility Improvements; provided that any
2 assistance or instruction by City is provided to SMG and not directly to any
3 contractors engaged by SMG.

4 2.3 Independent Contractor. In performing this First Amendment
5 to the Supplemental Agreement, SMG is an independent contractor and not the
6 agent or employee of the City. The City shall not be responsible for making any
7 payments to any officer or employee of SMG or any contractor, subcontractor,
8 agent, consultant, employee or supplier selected by SMG.

9 2.4 Performance and Payment Bonds. SMG agrees to comply
10 with all applicable performance and payment bonding requirements of the City with
11 respect to the construction of the Facility Improvements. All contractors providing
12 work in connection with the construction of the Facility Improvements shall provide
13 a labor and materials and performance bonds which name the City as an
14 additional insured.

15 2.5 Contracts and Change Orders. SMG shall be responsible for
16 entering into all contracts and any amendments (commonly referred to as "change
17 orders") required for the construction and installation of the Facility Improvements
18 listed in Exhibit "A" hereto, and all such contracts and change orders shall be
19 submitted to the City. Prior approval of change orders by the City shall only be
20 required for such change orders, which in any way materially alter the quality or
21 character of the Facility Improvements. Within five (5) business days of receipt by
22 the City of a contract or change order that needs the prior approval of the City, the
23 City shall either (i) approve or deny such contract or change order (any such
24 denial to be in writing, stating the reasons for denial and the actions, if any, that
25 can be taken to obtain later approval), or (ii) notify SMG that it needs additional
26 time (not to exceed an additional five (5) business days) to approve or deny the
27 contract or change order. The City will use a good faith effort to grant approvals or
28 provide denials on a more expeditious basis in the event that SMG identifies in

1 writing that the subject contract or change order is needed to address an
2 emergency or critical path situation.

3 2.6 Time for Completion. SMG agrees that this First Amendment
4 to the Supplemental Agreement is for the benefit of the City and SMG and,
5 therefore, SMG represents that it expects to complete the Facility Improvements
6 no later than September 30, 2011. SMG agrees to use its good faith efforts to
7 complete all Facility Improvements listed in Exhibit "A" by September 30, 2011.
8 Any failure to complete the Facility Improvements within said time period shall not,
9 however, in itself, constitute a breach by SMG of the terms of this First
10 Amendment to the Supplemental Agreement.

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

20 Section. 3. Section 4 of the October 2010 SUPPLEMENTAL
21 AGREEMENT TO MANAGEMENT AGREEMENT NUMBER 21667 is amended in its
22 entirety to read as follows:

23 "4. Payment.

24 4.1 City shall pay SMG for the replacement of the Terrace
25 Theatre Seats and Facility Improvements described in Exhibit "A", in the manner
26 described below, not to exceed Three Million Five Hundred Thousand Dollars
27 (\$3,500,000.00),. The City will pay no more per Facility Improvement, than the
28 amount associated with that Facility Improvement identified on Exhibit "A". If SMG

1 anticipates that SMG will exceed any amount associated with the Facility
2 Improvement on Exhibit "A", then SMG shall immediately give notice to City.
3 SMG's failure to notify City shall be deemed a waiver of all of SMG's claims for
4 additional compensation relating to that Facility Improvement. After receipt of this
5 notice, City will notify SMG whether or not to proceed.

6 4.2 SMG has requested to receive regular payments. City shall
7 pay SMG in due course payments following receipt from SMG and approval by
8 City of invoices showing the services or tasks performed, the time expended (if
9 billing is hourly), and the name of the Facility Improvement. City shall pay all
10 undisputed portions of SMG's invoice. SMG shall certify on the invoices that SMG
11 or SMG's contractor has performed the services in full conformance with this
12 Agreement and is entitled to receive payment. Where billing is done and payment
13 is made on an hourly basis, the parties acknowledge that this arrangement is
14 either customary practice for SMG's profession, industry, or business, or is
15 necessary to satisfy audit and legal requirements which may arise due to the fact
16 that City is a municipality."

17 Section. 4. Except as expressly modified herein, all of the terms and
18 conditions contained in the October 2010 SUPPLEMENTAL AGREEMENT TO
19 MANAGEMENT AGREEMENT NUMBER 21667 are ratified and confirmed and shall
20 remain in full force and effect.

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Long Beach, CA 90802-4664

JAN 4, 2011

SMG, a Pennsylvania joint venture

By John F. TB

"SMG"

CITY OF LONG BEACH, a municipal corporation

January 19, 2011

By [Signature] Assistant City Manager

City Manager

"City"

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

The foregoing First Amendment to the October 2010 SUPPLEMENTAL AGREEMENT TO MANAGEMENT AGREEMENT NUMBER 21667 is hereby approved this 12 day of January, 2011.

ROBERT E. SHANNON, City Attorney

By Charles Partin
Principal Deputy

EXHIBIT "A"

- 1) Promenade Meeting Room Chairs (6,500) (Approx. \$539,000): As a result of several years of usage, 6,500 new stacking chairs are needed for the meeting rooms that are located within the Convention Center on the Promenade side of the facility.
- 2) Wireless Microphones (Approx. \$60,000): Changes in federal laws that regulate the bandwidths that wireless microphones are allowed to operate in have rendered the wireless microphones that the facility has obsolete. The purchase of new wireless microphones and associated supporting accessories will allow the facility to have this equipment available for use by clients that are in need of such items.
- 3) Grand Ballroom Chairs (400) (Approx. \$30,000): Due to several years of use, 400 new chairs that would be utilized in the Grand Ballroom of the facility are needed. The fabric and style of these chairs would be similar to the ones that the facility currently so that they could be easily used with any existing chairs.
- 4) Exhibit Hall B and C Concrete Floor Repair (Approx. \$30,000): The concrete floor in the Exhibit Halls B and C are in need of repair due some areas cracking and settling as a result of activity occurring both above (e.g. forklifts, trucks, etc.) and below (e.g. earthquakes, settling, etc.) it.
- 5) Arena Plant – Replace Air Conditioning Compressors (Approx. \$180,000): The air conditioning compressors in the Arena have been in operation beyond the time that they should be and as a result are in need of replacement in order to restore efficiency and reduce operating costs.
- 6) Terrace Theater Freight Elevator (Approx. \$127,500): Replacing various computerized and mechanical parts will repair the freight elevator that services the backstage area of the Terrace. By making these repairs, the elevator will operate more efficiently and have fewer calls for service and adjustment.
- 7) Exhibit Hall C Freight Elevator (Approx. \$95,000): The freight elevator that is utilized for transport items below and above Exhibit Hall C will be repaired by replacing various computerized and mechanical parts. By making these repairs, the elevator will operate more efficiently and have fewer calls for service and adjustment.

EXHIBIT "A"

- 8) Podiums (40) (Approx. \$90,000): By obtaining 40 podiums, we will be able to properly service clients that utilize the exhibit halls, meeting rooms and other areas of the facility whenever there is a need for such equipment.
- 9) Trash Containers (Approx. \$65,100): There are currently an insufficient amount of trash cans to properly service the various areas of the facility that are utilized and by purchasing additional trash containers that could be placed in the exhibit halls, lobby areas and outside, we will be able to better serve clients and guests.
- 10) Trash and Recycle Containers (Approx. \$100,000): In an effort to enhance the appearance of the facility and also promote the reduction of waste, the purchase of trash and recycling containers is needed. These containers would be placed primarily within the facility and particularly in meeting rooms.
- 11) Arena Breaker Replacements (10) (Approx. \$17,000): The electrical systems within the Arena were installed several decades ago and as a result various components are in need of replacement, such as the breakers that regulate the flow of electricity within the facility.
- 12) Parking Truck (Approx. \$30,000): In order to transport personnel and equipment, a replacement vehicle for the one that is currently being utilized is needed.
- 13) Seaside Meeting Room Chairs (400) (Approx. \$33,000): Due to several years of use, 400 new chairs that would be utilized in the Seaside Meeting Rooms of the facility are needed. The fabric and style of these chairs would be similar to the ones that the facility currently so that they could be easily used with any existing chairs.
- 14) Central Plant – Retrofit Chillers #1 and #2 (Approx. \$65,000): The chillers that are located in the Central Plant of the facility and provide the chilled water for both the facility and the Hyatt Hotel next door, need to be retrofitted with upgraded equipment to both sustain their useful life and increase their efficiency.
- 15) Palm Tree Lights (24) –Pine Ave. South of Grand Staircase (\$35,000): The light fixtures that provide lighting of the palm trees that are located along Pine Avenue south of the Grand Staircase of the facility are no longer manufactured and are in need of replacement due to deterioration and vandalism.
- 16) Parking Booths (10) and Landscaping at Shoreline Drive and Linden (\$100,000): The booths located at various entry points to the parking lots of the facility have been in service for several years and show their appearance and functionality have decreased and they are in need of replacement. In addition, it has been noted that the landscaping at Shoreline Drive and Linden, which also is a heavily utilized and highly visible entry point to the largest parking lot of the facility is need of enhancement so that guests of the facility receive a positive first impression.

EXHIBIT "A"

- 17) Furniture for Promenade Lobby and VIP Rooms (Approx. \$170,100): To enhance the appearance and functionality of the Promenade Lobby and VIP Rooms of the Convention Center, furniture that would include chairs, tables and sofas would be obtained.
- 18) Exhibit Hall Breaker Replacements (6) (Approx. \$3,000): To prevent the malfunction of lighting and electrical equipment that is often utilized in the exhibit halls, six of the breakers are in need of replacement.
- 19) Changeable Message Sign ("CMS") Boards (3) (Approx. \$50,500): In order to properly direct patron vehicle traffic around the facility to available and convenient event parking areas, three changeable message sign ("CMS") boards would be obtained.
- 20) Electric Carts (5) (Approx. \$41,500): Due to the size of the facility and the amount of area that is spread out over, obtaining an additional five (5) electric carts would be beneficial for the purpose of transportation of personnel, materials and equipment.
- 21) 6' & 8' Classroom Tables (100 Each) (Approx. \$25,000): In order to properly service the needs of clients that utilize the facility, one hundred six foot tables and one hundred eight foot tables would be purchased.
- 22) Scrubber (Approx \$41,000): In a continuing effort to maintain the cleanliness and appearance of the facility, a scrubber that is capable of removing stubborn stains (e.g. tire marks, water stains, etc.) from various areas around the facility (e.g. exhibit halls, walkways, etc.) would be obtained.
- 23) Sweeper (Approx. \$39,000): In a continuing effort to maintain the cleanliness and appearance of the facility, a sweeper that is capable of sweeping up debris (e.g. leaves, paper, etc.) from various areas around the facility (e.g. exhibit halls, walkways, etc.) would be obtained.
- 24) Compactors (3) (Approx. \$78,500): The trash compactors that have serviced the facility for several years are deteriorating and they cannot be easily patched and/or repaired. As a result, they are in need of replacement and three units would be able to properly service the facility.
- 25) Composting Unit (Approx. \$12,500): As part of an effort to reduce waste and promote recycling efforts, a unit that would allow turn materials (e.g. food, compostable materials, etc.) that are compostable into compost would be purchased.
- 26) Outdoor Furniture for Terrace Theater Plaza (Approx. \$30,050): To enhance the appearance, utilization and functionality of the Terrace Theater Plaza, furniture that would include chairs, tables and sofas would be obtained.

EXHIBIT "A"

- 27) Directional Signage (Approx. \$30,000): In an effort to assist pedestrian traffic to properly and quickly reach their destination, additional and improved directional signage would be obtained and installed around the facility.
- 28) Carpet Cleaning Equipment (Approx. \$35,000): As a result of new carpet that has been and is planning on being installed at the facility, there is a need to obtain equipment so that it can be properly cleaned as necessary.
- 29) Upgrade of Restroom Fixtures and Stalls in Convention Center (Approx. \$200,000): In order to improve the functionality and appearance of the restrooms that are located in the Convention Center, new fixtures, partitions and floor and wall tile would be installed.
- 30) Replacement Dishwasher (Approx. \$115,000): The dishwasher that the facility is currently utilizing has been in service longer than the expected life that is normally obtained and is in need of replacement in order to assist with the food service operations that are provided at the facility.
- 31) Enhancement of Terrace Theater Lobby, Plaza and Fountain (Approx. \$69,250): To complement the enhancement items that had been installed previously on the Terrace Theater Plaza (e.g. LED lighting, painting, etc.), additional enhancements such as LED lighting and a permanent sound system would be obtained and installed.
- 32) City of Long Beach Overhead Charges (Approx. \$35,000): In order to compensate the City of Long Beach for the processing of payments that were made to vendors that provided services for the various projects that were performed at the facility, a overhead fee is to be charged against the total amount of funds that are actually expended.
- 33) Design Consultation Fees (Approx. \$78,000): A design consultation firm will provide architectural design and renderings as well as guidance regarding materials to be used and assistance with bid process.

Alternative projects should any of the above projects be partially or entirely funded via other sources:

- 1) Sand, Prime and Paint Exterior of Convention Center (Approx. \$150,000): By sanding, priming and painting the exterior of the Convention Center, the appearance will be enhanced and the materials that were utilized will be protected from the natural elements that have deteriorated the paint that currently on the facility.

EXHIBIT "A"

- 2) Paint Terrace/Center Theater Plaza (Approx. \$200,000): The Terrace Theater and Center Theater Plaza is in need of being painted in order to improve its overall appearance and encourage the further utilization of the area, which represents a primary entry point to the grounds of the facility.
- 3) Refinish Wood Walls of Terrace Theater (Approx. \$103,000): The wood walls of the Terrace Theater are made of materials that had been specially imported for the venue and after over thirty years appeared worn and by refinishing them, they will be restored to a similar appearance level as when they were originally installed.