

September 2008

SUPPLEMENTAL AGREEMENT

**21667**

THIS SUPPLEMENTAL AGREEMENT is made and entered into as of September 1, 2008, pursuant to a minute order adopted by the City Council of the City of Long Beach at its September 2, 2008 meeting by and between the CITY OF LONG BEACH, a municipal corporation ("City") and SMG, a Pennsylvania joint venture ("SMG").

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

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

1.2 Pursuant to the provisions of paragraph 5.3 of the Agreement, SMG has recommended to City that certain Capital Improvements be made at an estimated cost not to exceed Six Million Dollars (\$6,000,000.00). The recommended improvements are more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof ("Facility Improvements"). City and SMG agree to use their best efforts to complete the Facility Improvements identified in Exhibit "A" for less than Six Million Dollars (\$6,000,000). City and SMG recognize that certain Facility Improvements may exceed the current estimates and prevent completion of the entire list of projects. City in its sole discretion shall determine the priority of Facility Improvements. In no event shall City be obligated to spend more than Six Million Dollars without further City Council approval. Any failure to complete all of the Facility Improvements shall not, however, in itself constitute a breach by SMG of the term of this Supplemental Agreement.

1.3 The parties intend by this Supplemental Agreement to set

1       forth all of their understandings and agreements relative to the purchase,  
2       installation and payment for the Facility Improvements.

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 Supplemental  
5 Agreement, SMG is an independent contractor and not the agent or employee of  
6 the City. The City shall not be responsible for making any payments to any officer  
7 or employee of SMG or any contractor, subcontractor, agent, consultant,  
8 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 Supplemental  
4 Agreement is for the benefit of the City and SMG and, therefore, SMG represents  
5 that it expects to complete the Facility Improvements under this Supplemental  
6 Agreement no later than February 1, 2009. SMG agrees to use its good faith  
7 efforts to complete all Facility Improvements listed in Exhibit "A" by February 1,  
8 2009. Any failure to complete the Facility Improvements within said time period  
9 shall not, however, in itself, constitute a breach by SMG of the terms of this  
10 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 3. In addition to the foregoing, SMG shall include in any contract for the  
21 Facility Improvements the following provisions:

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

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

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SMG and their officers, directors, agents and employees as additional insureds.

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

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

4. Payment.

4.1 City shall pay SMG for the Facility Improvements in the manner described below, not to exceed Six Million Dollars (\$6,000,000.00), and at the charges described in Exhibit "A", attached to this Agreement and incorporated by this reference. The City will pay no more per Facility Improvement, than the amount associated with that Facility Improvement identified on Exhibit "A". If SMG anticipates that SMG will exceed any amount associated with the Facility Improvement on Exhibit "A", then SMG shall immediately give notice to City. SMG's failure to notify City shall be deemed a waiver of all of SMG's claims for additional compensation relating to that Facility Improvement. After receipt of this notice, City will notify SMG whether or not to proceed.

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

1 is made on an hourly basis, the parties acknowledge that this arrangement is  
2 either customary practice for SMG's profession, industry, or business, or is  
3 necessary to satisfy audit and legal requirements which may arise due to the fact  
4 that City is a municipality.

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

13  
14 To City: City Manager  
15 13<sup>th</sup> Floor, City Hall  
16 333 West Ocean Boulevard  
17 Long Beach, California 90802

18 To City: Director, Department of Community Development  
19 3<sup>rd</sup> Floor, City Hall  
20 333 West Ocean Boulevard  
21 Long Beach, California 90802

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

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

28 7. Compliance with Laws. SMG shall not with knowledge commit, suffer  
or permit any act to be done in, upon or to the property or the Facility Improvements in  
material violation of any law, ordinance, rule, regulation or order of any governmental

1 authority or any covenant, condition or restriction now or hereafter affecting the property  
2 or the Facility Improvements.

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

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

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



- 1           11. All provisions, whether covenants or conditions, on the part of SMG  
2 and City shall be deemed to be both covenants and conditions.
- 3           12. When required by the context of this Supplemental Agreement, the  
4 singular shall include the plural.
- 5           13. If either party commences an action against the other party arising  
6 out of or in connection with this Supplemental Agreement, the prevailing party shall be  
7 entitled to recover reasonable attorney's fees and costs of suit from the losing party.
- 8           14. SMG shall not assign or transfer this Supplemental Agreement or  
9 any interest herein.
- 10          15. Time is of the essence of each and all of the terms and provisions of  
11 this Supplemental Agreement.
- 12          16. No other agreement, statement or promise made by any party or any  
13 employee, officer or agent of any party with respect to any matters covered hereby that is  
14 not in writing and signed by all the parties to this Supplemental Agreement shall be  
15 binding.
- 16          17. Nothing in this Supplemental Agreement, expressed or implied, is  
17 intended to or shall be construed to confer upon or to give to any person or entity other  
18 than the City and SMG any rights, remedies or claims under or by reason of this  
19 Supplemental Agreement or any covenants, conditions or stipulations hereof; and all  
20 covenants, conditions, promises, and agreements in this Supplemental Agreement  
21 contained by or on behalf of the City or SMG shall be for the sole and exclusive benefit of  
22 the City and SMG.
- 23          18. This Supplemental Agreement may be amended, from time to time,  
24 by written agreement hereto and executed by both the City and SMG.
- 25          19. This Supplemental Agreement may be executed in counterparts,  
26 each of which shall be deemed an original.
- 27          20. If any part of this Supplemental Agreement is held to be illegal or  
28 unenforceable by a court of competent jurisdiction, the remainder of this Supplemental

1 Agreement shall be given effect to the fullest extent possible.

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

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

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COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Jacqueline J. Mimless, Notary Public  
City Of Philadelphia, Philadelphia County  
My Commission Expires July 6, 2010  
Member, Pennsylvania Association of Notaries

*Jacqueline J. Mimless*  
Notary

SMG, a Pennsylvania joint venture

By *John F. B*

"SMG"

CITY OF LONG BEACH, a municipal corporation

By *[Signature]* Assistant City Manager

City Manager  
EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

"City"

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Sept 30, 2008

October 20, 2008

The foregoing Supplemental Agreement is hereby approved this 7 day  
of October, 2008.

ROBERT E. SHANNON, City Attorney

By *Charles Parker*  
Principal Deputy

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Los Angeles }

On October 20, 2008 before me, Kathleen M. Brown  
Date Here Insert Name and Title of the Officer

personally appeared Suzanne Frick  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Kathleen M. Brown  
Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

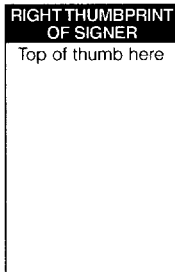
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

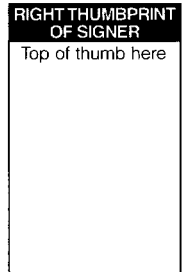
Signer Is Representing: \_\_\_\_\_



Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



## EXHIBIT "A"

- 1) Terrace Theater Interior Elevator Upgrade (4) (\$1,020,000): Work to be completed will include upgrade of mechanical equipment (e.g. motors, control panels, etc.) and renovation of appearance of the elevator cabs (e.g. replacement of control panel, overhead lighting, etc.).
- 2) Restroom Remodel – Terrace Theater (\$600,000): Work to be completed will result in complete renovation of restrooms on all levels, which will include, but not be limited to replacing partitions, repainting of walls and installation of more efficient lighting and plumbing fixtures (e.g. waterless urinals).
- 3) Exterior Elevators for Terrace and Center Theater (2) (\$160,000): Work to be completed will include upgrade of mechanical equipment (e.g. motors, control panels, etc.) and renovation of appearance of the cab (e.g. replacement of control panel, overhead lighting, etc.) in one elevator and renovation of the appearance of the cab only in the other.
- 4) Restroom Remodel – Arena (\$800,000): Work to be completed will result in complete renovation of restrooms on all levels, which will include, but not be limited to replacing partitions, repainting of walls and installation of more efficient lighting and plumbing fixtures (e.g. waterless urinals).
- 5) Design Consultation Fees (\$125,000): a design consultation firm will provide architectural design and renderings as well as guidance regarding materials to be used and assistance with bid process.
- 6) Terrace Theater Draperies (\$80,000): Due to the drapes in the Terrace Theater being over 20 years old and made of cotton fabric that has deteriorated, we will be obtaining replacement drapes for the side, top drapes and back that are utilized to mask the backstage areas. All of the drapes except for one will be black and the one that isn't black will be white, since it is used for theatrical lighting effects.
- 7) Elevators for Terrace Theater Parking Garage (2) (\$250,000): Work to be completed will include upgrade of mechanical equipment (e.g. motors, control panels, etc.) and renovation of appearance of the elevator cabs (e.g. replacement of control panel, overhead lighting, etc.).
- 8) Terrace and Center Theater Furniture (\$100,000): Due to other work to be performed within these venues, the furniture for the public areas needs to be updated and made more modern.
- 9) Terrace Theater Amps and Speakers (\$300,000): In order to further assist clients that utilize the Terrace Theater, upgraded sound equipment including amps and speakers will be obtained.

## EXHIBIT "A"

- 10) Terrace Theater Freight Elevator (\$127,000): Work to be completed will include upgrade of mechanical equipment (e.g. motors, control panels, etc.) and renovation of appearance of the elevator cabs (e.g. replacement of control panel, overhead lighting, etc.).
- 11) Restroom Remodel – Center Theater (\$100,000): Work to be completed will result in complete renovation of restrooms on all levels, which will include, but not be limited to replacing partitions, repainting of walls and installation of more efficient lighting and plumbing fixtures (e.g. waterless urinals).
- 12) Center Theater Lighting Replacement (\$283,000): In order to further assist clients that utilize the Center Theater, new lighting equipment will be obtained to replace those items that are in need of replacement.
- 13) 4,000 Meeting Room Chairs (\$405,000): In order to accommodate the requirements of clients, 4,000 additional meeting room chairs will be obtained that can be utilized around the facility.
- 14) Exhibit Hall Roof Repair (\$275,000): Due to issues related to the roof of the exhibit hall leaking, repairing the drains that are located on it as well as the air handler units should resolve this issue.
- 15) Painting of Arena Interior and Lobby Ceiling (\$125,000): In order to enhance the appearance of the Arena Lobby walls and ceiling as well as the interior corridors, the areas will be painted with new colors.
- 16) Arena Lobby Lighting Upgrade (\$100,000): In order to enhance the appearance of the Arena Lobby, additional lighting and accent materials will be obtained and installed.
- 17) Arena Column Reskin (\$150,000): In order to enhance the appearance of the Arena Lobby, the columns in it will have a treatment applied to them.
- 18) Partial Lighting Retrofit (\$200,000): In order to increase energy efficiency and safety, we will be obtaining new light fixtures and bulbs and associated materials that will installed the Promenade Parking Garage.
- 19) Parking Equipment (\$150,000): In order to increase control our parking space inventory and associated revenues, equipment that would assist with monitoring the flow of traffic into the parking areas would be obtained and installed at the various entry points.
- 20) Ballroom Carpet (\$130,000): In order to enhance the appearance of the Grand Ballroom, which has deteriorated in certain areas due to extensive use, we will obtain and install replacement carpeting.

## EXHIBIT "A"

- 21) Promenade Lobby Carpet (\$135,000): In order to enhance the appearance of the Promenade Lobby, which has deteriorated in certain areas due to extensive use, we will obtain and install replacement carpeting.
- 22) Center Theater Lighting Replacement - Additional (\$53,000): In order to further assist clients that utilize the Center Theater, new lighting equipment will be obtained to replace those items that are in need of replacement. (This amount is in addition to the amount that was previously noted and was reflected separately due to uncertainty regarding availability of funding).