

21667

July 2012

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

THIS SUPPLEMENTAL AGREEMENT is made and entered into as of  
July 13, 2012, pursuant to a minute order adopted by the City Council of the City of  
Long Beach at its July 3, 2012 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 for the management and operation of the Long  
Beach Convention and Entertainment Center (City Clerk's Contract No. 21667), as  
amended ("Agreement").

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 Five Million Three Hundred Seventy Five Thousand  
Dollars (\$5,375,000.00). 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 Five  
Million Three Hundred Seventy Five Thousand Dollars (\$5,375,000). 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 Five Million Three Hundred Seventy Five  
Thousand Dollars (\$5,375,000) without further City Council approval. Any failure

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ROBERT E. SHANNON, City Attorney  
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1 to complete all of the Facility Improvements shall not, however, in itself constitute  
2 a breach by SMG of the term of this Supplemental Agreement.

3 1.3 The parties intend by this Supplemental Agreement to set  
4 forth all of their understandings and agreements relative to the purchase,  
5 installation and payment for the Facility Improvements.

6 2. Facility Improvements

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

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

23 2.2 All Facility Improvements to be constructed, acquired and  
24 installed hereunder as specified in Exhibit "A" hereto, shall be constructed  
25 substantially in accordance with the approved Plans by a licensed general  
26 contractor by or under the direct supervision of SMG. SMG shall perform all of its  
27 obligations hereunder and shall monitor the performance of any applicable general  
28 contractor to confirm that all operations with respect to the construction of Facility

1 Improvements are conducted in a good and workmanlike manner, with the  
2 standard of diligence and care normally employed by duly qualified persons  
3 utilizing their best efforts in the performance of comparable work and in  
4 accordance with generally accepted practices appropriate to the activities  
5 undertaken. SMG shall require that each general contractor performing work in  
6 connection with the Facility Improvements employ at all times adequate staff or  
7 consultants with the requisite experience and applicable licenses and registrations  
8 necessary to administer and coordinate all work related to the design, engineering,  
9 acquisition, construction, testing, installation and inspection of the Facility  
10 Improvements. SMG shall at all times employ adequate staff or consultants with  
11 the requisite experience and licenses to discharge its obligations under this  
12 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  
19 three independent written bids, SMG or SMG's contractor shall document its  
20 attempts to secure the required bids and SMG shall submit said documentation to  
21 City. SMG 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  
28 contractors relating to the Facility Improvements, in the ordinary course of

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

12 2.4 Performance and Payment Bonds. SMG agrees to comply  
13 with 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  
17 additional insured. SMG will not be required to provide Performance and Payment  
18 Bonds as 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  
28 denial to be in writing, stating the reasons for denial and the actions, if any, that

1 can be taken to obtain later approval), or (ii) notify SMG that it needs additional  
2 time (not to exceed an additional five (5) business days) to approve or deny the  
3 contract or change order. The City will use a good faith effort to grant approvals or  
4 provide denials on a more expeditious basis in the event that SMG identifies in  
5 writing that the subject contract or change order is needed to address an  
6 emergency or critical 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  
15 all inspection, permit and other similar fees of the City applicable to construction of  
16 the 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  
20 the City, its officers and employees and SMG and its officers, directors, agents  
21 and 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  
10 manner described below, not to exceed Five Million Three Hundred Seventy Five  
11 Thousand Dollars (\$5,375,000.00), and at the charges described in Exhibit "A",  
12 attached to this Agreement and incorporated by this reference. The City will pay  
13 no more per Facility Improvement, than the amount associated with that Facility  
14 Improvement identified on Exhibit "A". If SMG anticipates that SMG will exceed  
15 any amount associated with the Facility Improvement on Exhibit "A", then SMG  
16 shall immediately give notice to City. SMG's failure to notify City shall be deemed  
17 a waiver of all of SMG's claims for additional compensation relating to that Facility  
18 Improvement. After receipt of this notice, City will notify SMG whether or not to  
19 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  
22 City of invoices showing the services or tasks performed, the time expended (if  
23 billing is hourly), and the name of the Facility Improvement. City shall pay all  
24 undisputed portions of SMG's invoice. SMG shall certify on the invoices that SMG  
25 or SMG's contractor has performed the services in full conformance with this  
26 Agreement and is entitled to receive payment. Where billing is done and payment  
27 is made on an hourly basis, the parties acknowledge that this arrangement is  
28 either customary practice for SMG's profession, industry, or business, or is

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

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

11  
12 To City: City Manager  
13 13<sup>th</sup> Floor, City Hall  
14 333 West Ocean Boulevard  
15 Long Beach, California 90802

16  
17 To City: Director, Department of Public Works, 3<sup>rd</sup> Floor, City Hall  
18 333 West Ocean Boulevard  
19 Long Beach, California 90802

20  
21 To SMG: General Manager, SMG  
22 300 East Ocean Boulevard  
23 Long Beach, California 90802

24  
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

1 or permit any act to be done in, upon or to the property or the Facility Improvements in  
2 material violation of any law, ordinance, rule, regulation or order of any governmental  
3 authority or any covenant, condition or restriction now or hereafter affecting the property  
4 or the Facility Improvements.

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

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

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



1 payroll for all work for which payment has been or is then being requested under this  
2 Supplemental Agreement.

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

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

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

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

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

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

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

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

27 19. 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           20. 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           21. 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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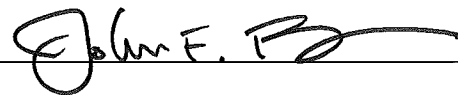
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22. This Supplemental Agreement may be amended, from time to time,  
by written agreement hereto and executed by both the City and SMG.

SMG, a Pennsylvania joint venture


7.13.12, 2012

By 

"SMG"

CITY OF LONG BEACH, a municipal corporation

9.6, 2012

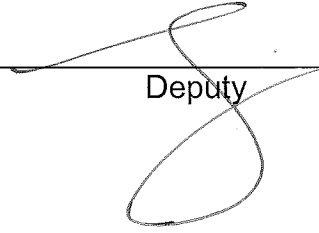
By  Assistant City Manager  
City Manager

"City"

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

The foregoing Supplemental Agreement is hereby approved this 14<sup>th</sup> day  
of August, 2012.

ROBERT E. SHANNON, City Attorney

By   
Deputy

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

## EXHIBIT "A"

### Sports Arena Upgrade/Improvements (Approx. \$5,000,000)

The City's Sports Arena will be improved in phases so that it can be used as a "Loft Style Ballroom", and aging equipment will be replaced and modernized to maximize the facility's use for special events. The improvements to the Sports Arena will provide attractive modernized event space needed to accommodate larger functions at the Center, and update the appearance and usefulness of the Long Beach Sports Arena.

### International City Theater Improvements (Approx. \$375,000)

The International City Theater facility will be improved to create a safer and more inviting entryway and improve the facility's street visibility. Upgrading this facility will help ensure its continued viability and provide service growth opportunities.