

21667

AUGUST 2019

SUPPLEMENTAL AGREEMENT TO CONVENTION CENTER MANAGEMENT AGREEMENT NO. 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 August 28, 2019, pursuant to a minute order adopted by the City Council of the City of Long Beach at its August 20, 2019 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 (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 One Million Dollars (\$1,000,000). 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 One Million Dollars (\$1,000,000). 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 One Million Dollars (\$1,000,000) 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.

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

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

2. Facility Improvements.

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

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

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

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

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

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

1 instruction by City is provided to SMG and not directly to any contractors engaged
2 by SMG.

3 2.3 Independent Contractor. In performing this Supplemental
4 Agreement, SMG is an independent contractor and not the agent or employee of
5 the City. The City shall not be responsible for making any payments to any officer
6 or employee of SMG or any contractor, subcontractor, agent, consultant, employee
7 or supplier selected by SMG.

8 2.4 Performance and Payment Bonds. SMG agrees to comply with
9 all applicable performance and payment bonding requirements of the City with
10 respect to the construction of the Facility Improvements. All contractors providing
11 work in connection with the construction of the Facility Improvements shall provide
12 a labor and materials and performance bonds which name the City as an additional
13 insured. SMG will not be required to provide Performance and Payment Bonds as
14 part of SMG's supervision of the Facility Improvements.

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 denial
24 to be in writing, stating the reasons for denial and the actions, if any, that can be
25 taken to obtain later approval), or (ii) notify SMG that it needs additional time (not to
26 exceed an additional five (5) business days) to approve or deny the contract or
27 change order. The City will use a good faith effort to grant approvals or provide
28 denials on a more expeditious basis in the event that SMG identifies in writing that

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

3 2.6 Intentionally left blank.

4 2.7 Inspection. SMG shall obtain all permits (including but not
5 limited to City construction, electrical, plumbing and/or mechanical permits),
6 approvals and consents required by law for the installation of the Facility
7 Improvements. The applicable departments of the City shall make or cause to be
8 made periodic site inspections of the Facility Improvements to be constructed,
9 acquired and or installed hereunder in accordance with customary inspection
10 practices of public agencies for similar public improvements. SMG agrees to pay all
11 inspection, permit and other similar fees of the City applicable to construction of the
12 Facility Improvements from the allocated Capital Improvement Funds.

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

15 3.1 The requirement for the contractor to defend and indemnify the
16 City, its officers and employees and SMG and its officers, directors, agents and
17 employees from all claims arising from contractor's acts or omissions.

18 3.2 The requirement that every contractor obtain and furnish SMG
19 with evidence of workers' compensation, automobile and commercial general
20 liability insurance of Sections 7.3 and 7.4 of the Standard Specifications for Public
21 Works Construction as amended by City. Such insurances shall name City and
22 SMG and their officers, directors, agents and employees as additional insureds.

23 3.3 Promptly following the execution of this Supplemental
24 Agreement, SMG shall deliver to City certificates of insurance and required
25 endorsements (or other evidence acceptable to the Risk Manager in the Risk
26 Manager's discretion) evidencing the insurance coverage required by this
27 Supplemental Agreement for approval as to sufficiency and form of SMG's
28 contractors.

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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 One Million Dollars (\$1,000,000), 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 is made on an hourly basis, the parties acknowledge that this arrangement is either customary practice for SMG's profession, industry, or business, or is necessary to satisfy audit and legal requirements which may arise due to the fact that City is a municipality.

5. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid first-class mail. Any notice, demand, request, consent, approval, or communication that either party desires or is

1 required to give to the other party shall be addressed to the other party at the address set
2 forth below. Either party may change its address by notifying the other party of the change
3 of address. Notice shall be deemed communicated upon personal service or forty-eight
4 (48) hours from the time of mailing if mailed as provided in this paragraph.

5 To City: City Manager
6 10th Floor, City Hall
7 411 West Ocean Boulevard
8 Long Beach, California 90802

9 To City: Manager, Economic Development, 10th Floor, City Hall
10 411 West Ocean Boulevard
11 Long Beach, California 90802

12 To SMG: General Manager, SMG
13 300 East Ocean Boulevard
14 Long Beach, California 90802

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

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

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

27 9. Financial Records. SMG covenants to maintain proper books of record
28 and account for the construction and installation of the Facility Improvements and all costs

1 related thereto. Such accounting books shall be maintained in accordance with generally
2 accepted accounting principles or other accounting basis consistently applied, and shall be
3 available for inspection by the City or its agent at any reasonable time during regular
4 business hours on reasonable notice.

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

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

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

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

27 14. SMG shall not assign or transfer this Supplemental Agreement or any
28 interest herein.

1 15. Time is of the essence of each and all of the terms and provisions of
2 this Supplemental Agreement.

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

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

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

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

18 20. Any waiver by either party of any breach by the other party of any one
19 or more of the covenants, conditions or agreements of this Supplemental Agreement shall
20 not be nor be construed to be a waiver of any subsequent or other breach of the same or
21 any other covenant, condition or agreement of this Supplemental Agreement, nor shall any
22 failure on the part of either party to require or exact full and complete compliance by the
23 other party with any of the covenants, conditions or agreements of this Supplemental
24 Agreement be construed as in any manner changing the terms hereof or to prevent either
25 party from enforcing any provision hereof.

26 21. In the performance of this Supplemental Agreement, SMG shall not
27 discriminate against any employee or applicant for employment because of race, religion,
28 national origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV status,

1 handicap or disability. Consultant shall ensure that applicants are employed, and that
2 employees are treated during their employment, without regard to these bases. These
3 actions shall include, but not be limited to, the following: employment, upgrading, demotion
4 or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or
5 other forms of compensation; and selection for training, including apprenticeship. SMG
6 shall post in conspicuous places notices setting forth the provision of this paragraph.

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

9
10 Sept 3, 2019
11 Tom Modica
12 Assistant City Manager

13 EXECUTED PURSUANT
14 TO SECTION 301 OF
15 THE CITY CHARTER

16 September 19, 2019

SMG, a Pennsylvania joint venture

By [Signature]
Name John F. Burns
Title Chief Financial Officer

“SMG”

CITY OF LONG BEACH, a municipal
corporation

By [Signature]
City Manager

“City”

18 This Supplemental Agreement is approved as to form on
19 9.12, 2019.

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CHARLES PARKIN, City Attorney
By [Signature]
Deputy

EXHIBIT "A"

Exhibit A - Project Description

DESCRIPTION	AMOUNT
<p>1 PAR "Parabolic Aluminized Reflector" Cans - light fixtures & bulb replacements</p> <p>The Par Cans light fixtures used in the Grand Ballroom, Terrace Theater and Beverly O'Neill Theater are in need of replacement. The current Par Cans are 20+ years old and have been used past its useful life. The replacement parts and bulbs are no longer being manufactured and the cost of constantly repairing the fixtures/bulbs far outweigh the cost of replacement. By replacing the Par Cans with new fixtures, we will be able to continue and service our banquets, assemblies, performing arts, concerts, entertainment, meetings and special events held in these facilities.</p>	60,000
<p>2 Arena Air handlers Work Platforms - Additional Funds</p> <p>The Arena Air handlers replacement project was partially completed in 2018 to provide heating/cooling inside the Arena. In order to finalize this project and be CAL/OSHA compliant, we are in need of additional funds to install work platforms for our Engineers to access the control panels and provide the necessary routine maintenance & repairs. Currently, we are renting equipment in order to access these control panels to provide the maintenance needed.</p>	55,000
<p>3 Long Beach Convention Center Concierge Desk - Replacement</p> <p>The current Concierge Desk located in the Promenade is over 18 years old and is in disrepair. The Concierge Desk is used to direct over 1.4 million conventioners/visitors who visit the Center annually to restaurants, attractions and other businesses in Long Beach.</p>	35,000
<p>4 Sound Replacement - Terrace Theater, Beverly O'Neill Theater, & "The Cove"</p> <p>As part of the continuing efforts to further enhance the appearance and marketability of the Terrace Theater, Beverly O'Neill Theater and "The Cove." Sound equipment is needed in the Beverly O'Neill Theater and Terrace Theater since those have been used past its useful life. New sound equipment is needed in "The Cove" to complete the project as a special events turn-key space. By doing so, the facility will be able to improve guest experience and activate more areas for use by clients and further increase the capabilities of the venues.</p>	200,000
<p>5 Terrace Theater Sign - Replacement</p> <p>Replace the non-energy efficient sign and upgrade to LED lights the "Long Beach Performing Arts Center" sign located on the Terrace Theater. The new signage is needed which will enhance the visibility and marketability of the facility and save money on utilities. The "Performing Arts Center" sign is 25+ years old and the light bulbs constantly needs replacement. The new signage will say "Long Beach Terrace Theater" and light bulbs will be upgraded to LED.</p>	150,000
<p>6 Safety & Architectural Lights - Terrace Theater & Hart Ave Façade</p> <p>In an ongoing effort to improve the overall safety, appearance and aesthetics of the facility, installation of light fixtures along the Terrace Theater & Hart Façade will accommodate this goal. The Terrace Theater Façade connects to the Beverly O'Neill Center and is in need of additional lighting for safety.</p>	300,000
<p>7 Replacement Furniture & Reupholster Existing Furniture</p> <p>In an ongoing effort to maintain a Class "A" facility & a competitive market in the Convention marketplace, we need to reupholster furniture that has been used past its useful life. Social seating pods that promotes networking has helped the Center win multiple awards and be recognized as pioneers in the Convention marketplace. Commercial furniture that gets frequently used as much as the Center's last on average about 5 years. There is also a need to purchase new banquet tables to replace inventory, which is 20+ years old that have been used past its useful life. In addition, there is a cost-effective solution to reupholster existing furniture inventory which is 20+ years old. This would extend the useful life of this furniture by 5+ years.</p>	200,000
GRAND TOTAL	\$ 1,000,000