

21667

DECEMBER 2017

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

6 THIS SUPPLEMENTAL AGREEMENT is made and entered into as of
7 December 11, 2017, pursuant to a minute order adopted by the City Council of the City of
8 Long Beach at its December 5, 2017 meeting by and between the CITY OF LONG BEACH,
9 a municipal corporation ("City") and SMG, a Pennsylvania joint venture ("SMG").

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

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

16 1.2 Pursuant to the provisions of paragraph 5.3 of the Agreement,
17 SMG has recommended to City that certain Capital Improvements be made at an
18 estimated cost not to exceed One Million Four Hundred Thousand Dollars
19 (\$1,400,000). The recommended improvements are more particularly described on
20 Exhibit "A" attached hereto and by this reference made a part hereof ("Facility
21 Improvements"). City and SMG agree to use their best efforts to complete the
22 Facility Improvements identified in Exhibit "A" for less than One Million Four Hundred
23 Thousand Dollars (\$1,400,000). City and SMG recognize that certain Facility
24 Improvements may exceed the current estimates and prevent completion of the
25 entire list of projects. City in its sole discretion shall determine the priority of Facility
26 Improvements. In no event shall City be obligated to spend more than One Million
27 Four Hundred Thousand Dollars (\$1,400,000) without further City Council approval.
28 Any failure to complete all of the Facility Improvements shall not, however, in itself

1 constitute a breach by SMG of the term of this Supplemental Agreement.

2 1.3 The parties intend by this Supplemental Agreement to set forth
3 all of their understandings and agreements relative to the purchase, installation and
4 payment for the Facility Improvements.

5 2. Facility Improvements.

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

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

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

1 efforts in the performance of comparable work and in accordance with generally
2 accepted practices appropriate to the activities undertaken. SMG shall require that
3 each general contractor performing work in connection with the Facility
4 Improvements employ at all times adequate staff or consultants with the requisite
5 experience and applicable licenses and registrations necessary to administer and
6 coordinate all work related to the design, engineering, acquisition, construction,
7 testing, installation and inspection of the Facility Improvements. SMG shall at all
8 times employ adequate staff or consultants with the requisite experience and
9 licenses to discharge its obligations under this 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 three
16 independent written bids, SMG or SMG's contractor shall document its attempts to
17 secure the required bids and SMG shall submit said documentation to City. SMG
18 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 contractors
25 relating to the Facility Improvements, in the ordinary course of performance of an
26 individual contract. City's designated representative shall have the right to be
27 present at such meetings, and to meet and confer with individual contractors if
28 deemed advisable by the City to assist in resolving disputes and/or ensure the

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

9 2.4 Performance and Payment Bonds. SMG agrees to comply with
10 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 additional
14 insured. SMG will not be required to provide Performance and Payment Bonds as
15 part of SMG's supervision of the Facility Improvements.

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

1 denials on a more expeditious basis in the event that SMG identifies in writing that
2 the subject contract or change order is needed to address an emergency or critical
3 path situation.

4 2.6 Intentionally left blank.

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

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

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

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

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

1 contractors.

2 3.4 The requirement that all materials, products, parts and
3 equipment furnished shall be free from defects and imperfections and that all
4 workmanship shall be in accord with the best practices.

5 4. Payment.

6 4.1 City shall pay SMG for the Facility Improvements in the manner
7 described below, not to exceed One Million Four Hundred Thousand Dollars
8 (\$1,400,000), and at the charges described in Exhibit "A", attached to this
9 Agreement and incorporated by this reference. The City will pay no more per Facility
10 Improvement, than the amount associated with that Facility Improvement identified
11 on Exhibit "A". If SMG anticipates that SMG will exceed any amount associated with
12 the Facility Improvement on Exhibit "A", then SMG shall immediately give notice to
13 City. SMG's failure to notify City shall be deemed a waiver of all of SMG's claims
14 for additional compensation relating to that Facility Improvement. After receipt of
15 this notice, City will notify SMG whether or not to proceed.

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

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

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

6 To City: City Manager
7 13th Floor, City Hall
8 333 West Ocean Boulevard
9 Long Beach, California 90802

10 To City: Manager, Economic & Property Development, 3rd Floor, City Hall
11 333 West Ocean Boulevard
12 Long Beach, California 90802

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

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

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

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

28 9. Financial Records. SMG covenants to maintain proper books of record

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

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

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

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

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

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

1 interest herein.

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

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

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

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

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

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

27 21. In the performance of this Supplemental Agreement, SMG shall not
28 discriminate against any employee or applicant for employment because of race, religion,

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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

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

10 SMG, a Pennsylvania joint venture
11 12/27/17, 2017 By [Signature]
12 Name JOHN BURNS
13 Title CFO & EXECUTIVE VP

14 "SMG"
15 CITY OF LONG BEACH, a municipal
16 corporation
17 1/4/18, 2017 By [Signature]
18 City Manager

19 "City"

20 This Supplemental Agreement is approved as to form on
1/3, 2017.⁸

21
22 CHARLES PARKIN, City Attorney
23 By [Signature]
24 Deputy

EXHIBIT "A"

Elevator and Escalator Improvements (Approx. \$330,000):

Modernization of the current elevators will increase efficiency of the cabs while decreasing overall repair & maintenance costs. The current elevators have been in service over 30 years and are not functioning at an optimal level and frequently require repairs. The cabs interior also need updating to improve the overall guest experience.

Sump Pump Replacement (Approx. \$275,000):

Existing sump pumps are beyond their optimal useful life and are in need of replacement. The sump pumps are located in the Central Plant, Terrace & 400 Garage. Replacement pumps would have an estimated useful life of 25 years.

Storm Drain Pipe Repairs & Upgrades (Approx. \$100,000):

The current storm drains throughout the facility are 30+ years old and portions of them are in need of urgent repairs & upgrades. These repairs and upgrades would address water leakage and avoid additional damage to the facility

Exhibit Hall Lighting Enhancements (Approx. \$250,000):

The Exhibit Hall lights have been used well beyond their use life and are an energy drain to the Center. The existing Exhibit Hall lights are 30+ years old and the cost of use, maintenance and repair far exceed the cost of LED replacement. LED replacement lighting are more cost-efficient and would reduce energy consumption.

Marquee Sign Enhancement (Approx. \$120,000):

The Marquee sign located in the Terrace Plaza is need of repair and upgrade. The Marquee sign is dated, and experiences frequent failures and maintenance downtime. The Marquee sign is essential to marketing the Center and events.

Exterior Painting & Repairs (Approx. \$255,000):

Painting of the convention center will enhance the appearance and the marketability of the facility. The painting will also protect and preserve the overall life of the current structure, which will reduce the overall cost associated with repair and maintenance of the structure over time.

Masonry Work & Related Repairs (Approx. \$70,000):

Masonry and hardscape improvements located in the Terrace Plaza are in need of repair and upgrade. This work will address cracks and uneven paths of travel.