

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

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JANUARY 2016

SUPPLEMENTAL AGREEMENT TO CONVENTION CENTER MANAGEMENT  
AGREEMENT NO. 21667 FOR COMPLETION OF CERTAIN CAPITAL IMPROVEMENT  
PROJECTS AT THE LONG BEACH CONVENTION AND ENTERTAINMENT CENTER  
**21667**

THIS SUPPLEMENTAL AGREEMENT is made and entered into as of  
January 7, 2016, pursuant to a minute order adopted by the City Council of the City of Long  
Beach at its January 5, 2016 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 Three Hundred Thousand Dollars (\$300,000). 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 Three Hundred Thousand Dollars (\$300,000).  
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 Three Hundred Thousand Dollars (\$300,000)  
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

1 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

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

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

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

2.5 Contracts and Change Orders. SMG shall be responsible for entering into all contracts and any amendments (commonly referred to as "change orders") required for the construction and installation of the Facility Improvements listed in Exhibit "A" hereto, and all such contracts and change orders shall be submitted to the City. Prior approval of change orders by the City shall only be required for such change orders, which in any way materially alter the quality or character of the Facility Improvements. Within five (5) business days of receipt by the City of a contract or change order that needs the prior approval of the City, the City shall either (i) approve or deny such contract or change order (any such denial to be in writing, stating the reasons for denial and the actions, if any, that can be taken to obtain later approval), or (ii) notify SMG that it needs additional time (not to exceed an additional five (5) business days) to approve or deny the contract or 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

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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 Three Hundred Thousand Dollars (\$300,000), 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,

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.

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

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12 To City: Manager, Economic & Property Development, 3rd Floor, City Hall  
13 333 West Ocean Boulevard  
14 Long Beach, California 90802

15  
16 To SMG: General Manager, SMG  
17 300 East Ocean Boulevard  
18 Long Beach, California 90802

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

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

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

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

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

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

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



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

4           14. SMG shall not assign or transfer this Supplemental Agreement or any  
5 interest herein.

6           15. Time is of the essence of each and all of the terms and provisions of  
7 this Supplemental Agreement.

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

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

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

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

23           20. Any waiver by either party of any breach by the other party of any one  
24 or more of the covenants, conditions or agreements of this Supplemental Agreement shall  
25 not be nor be construed to be a waiver of any subsequent or other breach of the same or  
26 any other covenant, condition or agreement of this Supplemental Agreement, nor shall any  
27 failure on the part of either party to require or exact full and complete compliance by the  
28 other party with any of the covenants, conditions or agreements of this Supplemental

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1 Agreement be construed as in any manner changing the terms hereof or to prevent either  
2 party from enforcing any provision hereof.

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

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

14 SMG, a Pennsylvania joint venture  
15 JAN 20, 2016 By John F. Burns  
16 Name John F. Burns  
17 Title Chief Financial Officer

18 "SMG"  
19 CITY OF LONG BEACH, a municipal  
20 corporation  
21 March 1, 2016 By TR Bell  
22 City Manager

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

Assistant City Manager

23 "City"  
24 The foregoing Supplemental Agreement is hereby approved this 28<sup>th</sup> day  
25 of January, 2016.

26 CHARLES PARKIN, City Attorney  
27 By [Signature]  
28 Deputy

## EXHIBIT "A"

### **Seaside Way Lighting Project (Approximately \$300,000):**

This lighting enhancement project will provide lighting and visual improvements on Seaside Way between Hart & Collins Avenue directly below the Terrace Theater Plaza. The project will include important safety improvements as well as delineating the area as a new streetscape and special event location. The area outside the Seaside Meeting rooms will have the ability to be activated as additional rentable event space for outdoor performances, vending/exhibit space, and table setup.