

FIRST AMENDMENT TO THE SEPTEMBER 2008
SUPPLEMENTAL AGREEMENT TO CONTRACT NUMBER 21667
21667

THIS FIRST AMENDMENT TO THE SEPTEMBER 2008 SUPPLEMENTAL AGREEMENT TO CONTRACT 21667 is made and entered into as of February 18, 2009 pursuant to a minute order adopted by the City Council of the City of Long Beach at its February 17, 2009 meeting by and between the CITY OF LONG BEACH, a municipal corporation ("City") and SMG, a Pennsylvania joint venture ("SMG").

WHEREAS, 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); and

WHEREAS, the parties entered into the September 2008 Supplemental Agreement to Contract No. 21667 on September 1, 2008 to provide for the construction of certain capital improvement projects at the Long Beach Convention and Entertainment Center; and

WHEREAS, during the course of the construction, it was discovered that further work is necessary to complete certain items on the original project list and that new repairs are required to address life safety issues identified by the Long Beach Fire Department; and

WHEREAS, the parties desire to amend the September 2008 SUPPLEMENTAL AGREEMENT TO CONTRACT 21667 to add additional funds necessary to complete certain items on the original project list and to perform additional work including those items identified by the Long Beach Fire Department;

NOW, THEREFORE, in consideration of the mutual terms and conditions herein contained, the parties agree as follows:

Section 1. Section 1 of the September 2008 SUPPLEMENTAL AGREEMENT TO CONTRACT 21667 is amended in its entirety to read as follows:

"1. This Supplemental Agreement is made and entered into with

1 reference to the following facts and objectives:

2 1.1 City and SMG entered into a written Management Agreement
3 dated as of February 12, 1991 ("Agreement") for the management and operation
4 of the Long Beach Convention and Entertainment Center (City Clerk's Contract
5 No. 21667).

6 1.2 Pursuant to the provisions of paragraph 5.3 of the Agreement,
7 SMG has recommended to City that certain Capital Improvements be made at an
8 estimated cost not to exceed Seven Million Dollars (\$7,000,000.00). The
9 recommended improvements are more particularly described on Exhibit "A-1"
10 attached hereto and by this reference made a part hereof ("Facility
11 Improvements"). City and SMG agree to use their best efforts to complete the
12 Facility Improvements identified in Exhibit "A-1" for less than \$7,000,000.00. City
13 and SMG recognize that certain Facility Improvements may exceed the current
14 estimates and prevent completion of the entire list of projects. City in its sole
15 discretion shall determine the priority of Facility Improvements. In no event shall
16 City be obligated to spend more than \$7,000,000.00 without further City Council
17 approval. Any failure to complete all of the Facility Improvements shall not,
18 however, in itself constitute a breach by SMG of the term of this Supplemental
19 Agreement.

20 1.3 The parties intend by this Supplemental Agreement to set
21 forth all of their understandings and agreements relative to the purchase,
22 installation and payment for the Facility Improvements."

23 Sec. 2. Section 2 of the September 2008 SUPPLEMENTAL
24 AGREEMENT TO CONTRACT 21667 is amended in its entirety to read as follows:

25 "2. Facility Improvements

26 2.1 "Plans" shall mean the plans, specifications, schedules and
27 related construction contracts for the Facility Improvements approved pursuant to
28 the applicable standards of the City. As of the date of this Supplemental

1 Agreement, the City standards for construction incorporate those set forth in the
2 Green Book, Standard Specifications for Public Works Construction (2003 edition),
3 of the Southern California Chapter of the American Public Works Association, as
4 modified by the City of Long Beach, California Amendments to Standard
5 Specifications for Public Works Construction (2003 edition), together with the City
6 of Long Beach Standard Plans (2003 edition).

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

14 2.2 All Facility Improvements to be constructed, acquired and
15 installed hereunder as specified in Exhibit "A-1" hereto, shall be constructed
16 substantially in accordance with the approved Plans by a licensed general
17 contractor by or under the direct supervision of SMG. SMG shall perform all of its
18 obligations hereunder and shall monitor the performance of any applicable general
19 contractor to confirm that all operations with respect to the construction of Facility
20 Improvements are conducted in a good and workmanlike manner, with the
21 standard of diligence and care normally employed by duly qualified persons
22 utilizing their best efforts in the performance of comparable work and in
23 accordance with generally accepted practices appropriate to the activities
24 undertaken. SMG shall require that each general contractor performing work in
25 connection with the Facility Improvements employ at all times adequate staff or
26 consultants with the requisite experience and applicable licenses and registrations
27 necessary to administer and coordinate all work related to the design, engineering,
28 acquisition, construction, testing, installation and inspection of the Facility

1 Improvements. SMG shall at all times employ adequate staff or consultants with
2 the requisite experience and licenses to discharge its obligations under this
3 Supplemental Agreement.

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

13 From time to time at the request of the City and given reasonable
14 notice thereof, SMG shall meet and confer with the City regarding matters arising
15 hereunder with respect to the Facility Improvements and the progress in the
16 construction and acquisition of the same, and as to any other matter related to the
17 Facility Improvements or this Supplemental Agreement. SMG shall advise the City
18 in advance of any coordination and scheduling meetings to be held with
19 contractors relating to the Facility Improvements, in the ordinary course of
20 performance of an individual contract. City's designated representative shall have
21 the right to be present at such meetings, and to meet and confer with individual
22 contractors if deemed advisable by the City to assist in resolving disputes and/or
23 ensure the proper completion of the Facility Improvements; provided that any
24 assistance or instruction by City is provided to SMG and not directly to any
25 contractors engaged by SMG.

26 2.3 Independent Contractor. In performing this Supplemental
27 Agreement, SMG is an independent contractor and not the agent or employee of
28 the City. The City shall not be responsible for making any payments to any officer

1 or employee of SMG or any contractor, subcontractor, agent, consultant,
2 employee or supplier selected by SMG.

3 2.4 Performance and Payment Bonds. SMG agrees to comply
4 with all applicable performance and payment bonding requirements of the City with
5 respect to the construction of the Facility Improvements. All contractors providing
6 work in connection with the construction of the Facility Improvements shall provide
7 a labor and materials and performance bonds which name the City as an
8 additional insured.

9 2.5 Contracts and Change Orders. SMG shall be responsible for
10 entering into all contracts and any amendments (commonly referred to as "change
11 orders") required for the construction and installation of the Facility Improvements
12 listed in Exhibit "A-1" hereto, and all such contracts and change orders shall be
13 submitted to the City. Prior approval of change orders by the City shall only be
14 required for such change orders, which in any way materially alter the quality or
15 character of the Facility Improvements. Within five (5) business days of receipt by
16 the City of a contract or change order that needs the prior approval of the City, the
17 City shall either (i) approve or deny such contract or change order (any such
18 denial to be in writing, stating the reasons for denial and the actions, if any, that
19 can be taken to obtain later approval), or (ii) notify SMG that it needs additional
20 time (not to exceed an additional five (5) business days) to approve or deny the
21 contract or change order. The City will use a good faith effort to grant approvals or
22 provide denials on a more expeditious basis in the event that SMG identifies in
23 writing that the subject contract or change order is needed to address an
24 emergency or critical path situation.

25 2.6 Time for Completion. SMG agrees that this Supplemental
26 Agreement is for the benefit of the City and SMG and, therefore, SMG represents
27 that it expects to complete the Facility Improvements under this Supplemental
28 Agreement no later than September 30, 2009. SMG agrees to use its good faith

1 efforts to complete all Facility Improvements listed in Exhibit "A-1" by September
2 30, 2009. Any failure to complete the Facility Improvements within said time
3 period shall not, however, in itself, constitute a breach by SMG of the terms of this
4 Supplemental Agreement.

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
12 all inspection, permit and other similar fees of the City applicable to construction of
13 the Facility Improvements."

14 Sec. 3. Section 4 of the September 2008 SUPPLEMENTAL
15 AGREEMENT TO CONTRACT 21667 is amended in its entirety to read as follows:

16 "4. Payment.

17 4.1 City shall pay SMG for the Facility Improvements in the
18 manner described below, not to exceed Seven Million Dollars (\$7,000,000.00),
19 and at the charges described in Exhibit "A-1", attached to this Agreement and
20 incorporated by this reference. The City shall not be obligated to pay more per
21 Facility Improvement, than the amount associated with that Facility Improvement
22 identified on Exhibit "A-1". If SMG anticipates that SMG will exceed any amount
23 associated with the Facility Improvement on Exhibit "A-1", then SMG shall
24 immediately give notice to City. SMG's failure to notify City shall be deemed a
25 waiver of all of SMG's claims for additional compensation relating to that Facility
26 Improvement. After receipt of this notice, City will notify SMG whether or not to
27 proceed.

28 4.2 SMG has requested to receive regular payments. City shall

1 pay SMG in due course payments following receipt from SMG and approval by
2 City of invoices showing the services or tasks performed, the time expended (if
3 billing is hourly), and the name of the Facility Improvement. City shall pay all
4 undisputed portions of SMG's invoice. SMG shall certify on the invoices that SMG
5 or SMG's contractor has performed the services in full conformance with this
6 Agreement and is entitled to receive payment. Where billing is done and payment
7 is made on an hourly basis, the parties acknowledge that this arrangement is
8 either customary practice for SMG's profession, industry, or business, or is
9 necessary to satisfy audit and legal requirements which may arise due to the fact
10 that City is a municipality."

11 Sec. 4. Section 8 of the September 2008 SUPPLEMENTAL
12 AGREEMENT TO CONTRACT 21667 is amended in its entirety to read as follows:

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

17 Sec. 5. Except as expressly modified herein, all of the terms and
18 conditions contained in the September 2008 SUPPLEMENTAL AGREEMENT TO
19 CONTRACT 21667 are ratified and confirmed and shall remain in full force and effect.

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

1 IN WITNESS WHEREOF, the parties hereto have caused this document to
2 be duly executed with all formalities required by law as of the date first stated herein.

3
4 SMG, a Pennsylvania joint venture

5 April 17, 2009 By John F. [Signature]
6 "SMG"

7 CITY OF LONG BEACH, a municipal
8 corporation

9 April 27, 2009 By [Signature] Assistant City Manager
10 City Manager
11 "City"

APPROVED
TO SECTION 361 OF
THE CITY CHARTER.

12 The foregoing FIRST AMENDMENT TO THE SEPTEMBER 2008
13 SUPPLEMENTAL AGREEMENT TO CONTRACT NO. 21667 is hereby approved this
14 22nd day of April, 2009.

15 ROBERT E. SHANNON, City Attorney
16 By Charles [Signature]
17 Principal Deputy

EXHIBIT "A-1"

- 1) Terrace Theater Interior Elevator Upgrade (4) (Approx. \$979,000): 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 (Approx. \$997,000): 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) (Approx. \$166,000): 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 (Approx. \$1,110,000): 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 (Approx. \$119,000): 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 (Approx. \$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) (Approx. \$257,000): Work to be completed will include upgrade of mechanical equipment (e.g. motors, control panels, etc.) and renovation of the elevator cabs (e.g. replacement of control panel, overhead lighting, etc.).
- 8) Terrace and Center Theater Furniture (Approx. \$179,000): 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 (Approx. \$293,000): In order to further assist clients that utilize the Terrace Theater, upgraded sound equipment including amps and speakers will be obtained.

EXHIBIT "A-1"

- 10) Restroom Remodel – Center Theater (Approx. \$300,000): 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).
- 11) Center Theater Lighting Replacement (Approx. \$297,000): 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.
- 12) 4,000 Meeting Room Chairs (Approx. \$404,000): In order to accommodate the requirements of clients, 4,000 additional meeting room chairs will be obtained that can be utilized around the facility.
- 13) Exhibit Hall Roof Repair (Approx. \$130,000): 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.
- 14) Painting of Arena Interior and Lobby Ceiling (Approx. \$279,000): 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.
- 15) Arena Lobby Lighting Upgrade (Approx. \$332,000): In order to enhance the appearance of the Arena Lobby, additional lighting and accent materials will be obtained and installed.
- 16) Arena Column Reskin (Approx. \$87,000): In order to enhance the appearance of the Arena Lobby, the columns in it will have a treatment applied to them.
- 17) Replacement/Upgrade of Facility Doors (Approximately 60) (Approx. \$232,000): In order mitigate any potential safety hazards, approximately 60 entry/exit doors will be replaced or upgraded around the facility.
- 18) Promenade Lobby Passenger Elevator (One) (Approx. \$55,000): Work to be completed will include upgrade of mechanical equipment (e.g. motors, control panels, etc.) and renovation of the cab (e.g. replacement of control panel, overhead lighting, etc.).
- 19) Replacement of Rusted and Corroded Elevator Door Sills (Elevator #11) (Approx. \$26,000): Due to weather and time, the door sills of this elevator have rusted and corroded to the point that it must be replaced in order to pass inspection by the State of California to be considered operable.

EXHIBIT "A-1"

- 20) Facility Lighting Upgrades and LED Enhancements (Approx. \$316,000): In order to increase the overall safety and appearance of the facility, additional and replacement light fixtures will be installed at various locations around the facility. The areas that these fixtures will be installed include the Center Theater, the Terrace Theater Plaza, Outdoor Corridors, and the Promenade Lobby of the Convention Center as well as outside of the main entrance of the Convention Center located on Pine Avenue.
- 21) Exhibit Hall A Freight Elevator (One) (Approx. \$92,000): Work to be completed will include the upgrade of mechanical equipment (e.g. motors, control panels, etc.) and renovation of the elevator cab (e.g. replacement of control panel, overhead lighting, etc.).
- 22) Convention Center Restroom Renovation (Approx. \$64,000): The restrooms in the Exhibit Halls of the Convention Center will be renovated so that they include waterless urinals, automatic equipment (e.g. towel dispensers, faucets and soap dispensers) and other modifications to update their overall appearance and functionality.
- 23) Center Theater Lobby Improvements (Approx. \$20,000): To further enhance the appearance of the Center Theater Lobby, improvements including accent framing and fixtures will be installed.
- 24) Arena Lobby Banners (Approx. \$8,000): To accent the appearance of the Arena Lobby, banners will be obtained and placed on the poles that have been installed on the columns.
- 25) Center Theater Lobby Sheers (Approx. \$56,000): To complement the other improvements that have been done in the Center Theater Lobby, sheer draperies will be obtained.
- 26) Additional Design Consultation Fees (e.g. Terrace and Center Theaters, etc.) (Approx. \$51,000): Due to the expanded scope of work to be done in around the facility, the design consultation firm will be providing additional guidance regarding the materials that should be use used and assistance with the bid process.
- 27) Painting of Terrace Theater Box Office & Columns (Approx. \$21,000): To enhance and complement the appearance of the Terrace Theater, the Box Office and columns will be painted.
- 28) Additional Terrace Theater Plaza Landscaping (Approx. \$15,000): To enhance and complement the other improvements that have been made to the Terrace Theater, additional landscaping will be obtained for the Terrace Theater Plaza.

EXHIBIT "A-1"

- 29) Permanent Refreshment Stands for Terrace Theater (Two Stands) (Approx. \$35,000): To complement the appearance and functionality of the Terrace Theater Lobby, 2 permanent refreshment stands will be obtained.