

February 2012

SUPPLEMENTAL AGREEMENT TO CONVENTION CENTER MANAGEMENT
AGREEMENT 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
November 16, 2012, pursuant to a minute order adopted by the City Council of the City of
Long Beach at its November 15, 2011 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 Dollars (\$5,000,000.00). 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 Dollars
(\$5,000,000). 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 Five Million Dollars 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
3 forth all of their understandings and agreements relative to the purchase,
4 installation and 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
9 Agreement, the City standards for construction incorporate those set forth in the
10 Green Book, Standard Specifications for Public Works Construction (current
11 edition), of the Southern California Chapter of the American Public Works
12 Association, as modified by the City of Long Beach, California Amendments to
13 Standard Specifications for Public Works Construction, together with the City of
14 Long Beach Standard Plans.

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

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

1 standard of diligence and care normally employed by duly qualified persons
2 utilizing their best efforts in the performance of comparable work and in
3 accordance with generally accepted practices appropriate to the activities
4 undertaken. SMG shall require that each general contractor performing work in
5 connection with the Facility Improvements employ at all times adequate staff or
6 consultants with the requisite experience and applicable licenses and registrations
7 necessary to administer and coordinate all work related to the design, engineering,
8 acquisition, construction, testing, installation and inspection of the Facility
9 Improvements. SMG shall at all times employ adequate staff or consultants with
10 the requisite experience and licenses to discharge its obligations under this
11 Supplemental Agreement.

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

21 From time to time at the request of the City and given reasonable
22 notice thereof, SMG shall meet and confer with the City regarding matters arising
23 hereunder with respect to the Facility Improvements and the progress in the
24 construction and acquisition of the same, and as to any other matter related to the
25 Facility Improvements or this Supplemental Agreement. SMG shall advise the City
26 in advance of any coordination and scheduling meetings to be held with
27 contractors relating to the Facility Improvements, in the ordinary course of
28 performance of an individual contract. City's designated representative shall have

1 the right to be present at such meetings, and to meet and confer with individual
2 contractors if deemed advisable by the City to assist in resolving disputes and/or
3 ensure the proper completion of the Facility Improvements; provided that any
4 assistance or instruction by City is provided to SMG and not directly to any
5 contractors engaged by SMG.

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

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

18 2.5 Contracts and Change Orders. SMG shall be responsible for
19 entering into all contracts and any amendments (commonly referred to as "change
20 orders") required for the construction and installation of the Facility Improvements
21 listed in Exhibit "A" hereto, and all such contracts and change orders shall be
22 submitted to the City. Prior approval of change orders by the City shall only be
23 required for such change orders, which in any way materially alter the quality or
24 character of the Facility Improvements. Within five (5) business days of receipt by
25 the City of a contract or change order that needs the prior approval of the City, the
26 City shall either (i) approve or deny such contract or change order (any such
27 denial to be in writing, stating the reasons for denial and the actions, if any, that
28 can be taken to obtain later approval), or (ii) notify SMG that it needs additional

1 time (not to exceed an additional five (5) business days) to approve or deny the
2 contract or change order. The City will use a good faith effort to grant approvals or
3 provide denials on a more expeditious basis in the event that SMG identifies in
4 writing that the subject contract or change order is needed to address an
5 emergency or critical path situation.

6 2.6 Intentionally left blank.

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

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

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

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

26 3.3 Promptly following the execution of this Supplemental
27 Agreement, SMG shall deliver to City certificates of insurance and required
28 endorsements (or other evidence acceptable to the Risk Manager in the Risk

1 Manager's discretion) evidencing the insurance coverage required by this
2 Supplemental Agreement for approval as to sufficiency and form of SMG's
3 contractors.

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

7 4. Payment.

8 4.1 City shall pay SMG for the Facility Improvements in the
9 manner described below, not to exceed Five Million Dollars (\$5,000,000.00), and
10 at the charges described in Exhibit "A", attached to this Agreement and
11 incorporated by this reference. The City will pay no more per Facility
12 Improvement, than the amount associated with that Facility Improvement identified
13 on Exhibit "A". If SMG anticipates that SMG will exceed any amount associated
14 with the Facility Improvement on Exhibit "A", then SMG shall immediately give
15 notice to City. SMG's failure to notify City shall be deemed a waiver of all of
16 SMG's claims for additional compensation relating to that Facility Improvement.
17 After receipt of this notice, City will notify SMG whether or not to proceed.

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

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

9
10 To City: City Manager
11 13th Floor, City Hall
12 333 West Ocean Boulevard
13 Long Beach, California 90802

14 To City: Director, Department of Public Works
15 3rd Floor, City Hall
16 333 West Ocean Boulevard
17 Long Beach, California 90802

18 To SMG: General Manager, SMG
19 300 East Ocean Boulevard
20 Long Beach, California 90802

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

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

 8. Requests for Payment. SMG represents and warrants that (i) it will
not request payment from the City pursuant to this Supplemental Agreement for the

1 acquisition of any improvements that are not part of the Facility Improvements identified
2 in Exhibit A.

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

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

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

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

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

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

1 compliance by the other party with any of the covenants, conditions or agreements of this
2 Supplemental Agreement be construed as in any manner changing the terms hereof or to
3 prevent either party from enforcing any provision hereof.

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

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

16
17 SMG, a Pennsylvania joint venture
18 By H. W. [Signature], 2012
19 "SMG"
20 CITY OF LONG BEACH, a municipal
21 corporation.
22 By 3. 14 [Signature], 2012
23 "City" Assistant City Manager
24 City Manager
25 EXECUTED PURSUANT
26 TO SECTION 301 OF
27 THE CITY CHARTER.
28

The foregoing Supplemental Agreement is hereby approved this 15th day
of March, 2012.

ROBERT E. SHANNON, City Attorney
By Charles Parker [Signature]
Assistant City Attorney

Facility Furniture, Fixtures and Equipment (Approximately \$530,000):

The Convention Center was expanded in 1994 and subsequent to that date, there has been a need to obtain items to properly service clients and guests of the facility. Some of the items that need to be obtained are...

- Meeting Room Chairs
- Banquet and Classroom Tables
- Podiums
- Trash Compactors

Mechanical Upgrades (Approximately \$2,000,000):

Mechanical equipment in the facility that has exceeded its useful life or is no longer working efficiently is in need of either replacement or upgrading. Many of the items that are noted below have a direct impact on clients and guests of the facility and therefore are needed in order to ensure that their experiences are positive. Items to be obtained include...

- Replace Hot and Cold Water Pipes/Insulation (Arena)
- Replace heating, cooling and ventilation control systems (Arena)
- Replace Domestic Hot and Cold Water System Pipes (Arena)
- Replace Honeywell Control Systems (Central Plant)
- Install Fire Life Safety System (Arena)
- Replace motor controls (Arena)
- Replace exhaust fans (Arena)
- Replace and modify sewer piping (Arena)

Terrace Theater Window Blinds (Approximately \$410,000):

The existing window blinds in the Terrace Theater are over 35 years old and have deteriorated over time. Due to the fact that the window blinds assist with lowering the temperature in the venue, which decrease energy consumption, and help make the venue aesthetically unique they should be replaced.

Improvements to Seaside Meeting Room and Adjoining Areas (Approximately \$460,000):

The appearance of the Seaside Meeting Rooms and adjoining areas appears dated and as a result, to attract new clients and retain current clients, they are in need of improvement. The improvements that would be made are for example, replacement of carpeting, installation of wall covering, painting and other aesthetic adjustments to make the area more appealing.

Lighting Upgrades (Approximately \$150,000):

Upgrades to lighting around the facility are needed for purposes of safety and to enhance/complement the other improvements that have been made around the facility.

Installation and Modification of Way Finding Signage (Approximately \$250,000):

To assist clients and guests of the facility, we have identified certain areas around the facility that the installation of way finding signage would be extremely beneficial to have. This signage that would be obtained would also act as a great opportunity to communicate additional information about the City of Long Beach and all that there is to offer for individuals to experience.

Replacement Kitchen Equipment (Approximately \$300,000):

Various pieces of kitchen equipment have been identified as being in need of replacement, since they are no longer functioning as efficiently as possible and are consistently in need of repair and service. By replacing these items, we will increase efficiency and better serve guests of the facility.

Security Cameras (Approximately \$300,000):

In an effort to better serve and protect individuals that visit the facility, security cameras need to be installed around the facility. The installation of security cameras will help to deter improper activity and assist law enforcement to address matters that might occur.

Structural Upgrades (Approximately \$600,000):

As a result of the passing of time, use and exposure, there are various areas of the facility that are in need of upgrade. Items that are needed are...

- Repair concrete in exhibit halls and loading docks
- Renovate dining areas for guests
- Replace drapes in Grand Ballroom
- Paint areas, such as the Grand Ballroom and Promenade Lobby
- Enhance underutilized areas through aesthetic improvements (e.g. art work, mirrors, wall covering, etc.)
- Replace doors in Arena