

MANAGEMENT AGREEMENT
BETWEEN
CITY OF TULSA, OKLAHOMA
AND
SMG

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MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT (this “Agreement”) is entered into by and between the CITY OF TULSA, an Oklahoma municipal corporation (the “City”), and SMG, a Pennsylvania general partnership, whose current address is 701 Market Street, 4th Floor, Philadelphia, PA, 19106 (“SMG”), to be effective upon execution by the City as reflected on the signature page hereof (“Effective Date”).

BACKGROUND

The City is (i) the owner and current operator and manager of the Maxwell Convention Center, also known as the Tulsa Convention Center, located in the City of Tulsa, Oklahoma (“Convention Center”), and (ii) the owner of the BOK Center, a multi-purpose events center being constructed upon the four block site from 1st Street South to 3rd Street South and from Frisco Avenue to Denver Avenue in the City of Tulsa, Oklahoma (“BOK Center”) (the Convention Center and the BOK Center are individually, the “Facility” and collectively, the “Facilities”).

The City has issued its Invitation for Bid (TAC 737), as amended by Addenda, setting forth the specifications, terms and conditions for Convention and Event Center Management Services.

SMG, in responding to said Invitation for Bid, offered to provide development and pre-construction services, pre-operating services and management services as set forth in its Response to the Invitation for Bid as amended by Addenda.

The City selected SMG to provide development and pre-construction services, pre-operating services and management services for the Facilities in accordance with the terms and conditions set forth herein and including the terms and conditions set forth in the Invitation for Bid and in the Response submitted by SMG to the Invitation for Bid.

NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Definitions

For purposes of this Agreement, the following terms have the meanings referred to in this Section 1:

1.1 “ADA” – the Americans with Disabilities Act, 42 U.S.C. Sections 12101-12213 as amended by the Civil Rights Act of 1991 (42 U.S.C. Section 1981(a)), as it now exists and as it may be amended in the future by statute or judicial interpretation.

1.2 “Affiliate” – a Person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified Person. For purposes of this definition, “control” means ownership of equity securities or other ownership interests which represent more than 40% of the voting power in the controlled Person.

1.3 “Annual Fixed Fee” – the annual fixed management fee for each Facility as set forth in the IFB Response as provided in Section 4.3 hereof.

1.4 “Approved Budget” – any budget prepared and recommended by SMG, as amended and finally approved by the City pursuant to Section 5 hereof.

1.5 “Attendance” – for the BOK Center shall mean the annual number of tickets scanned or otherwise recorded as attending ticketed events and for the Convention Center shall mean the annual number of attendees at meetings and other events at the Convention Center as recorded by the Event Coordinator.

1.6 “Attendance Benchmark” – shall mean the Attendance level at each Facility at which an Attendance Incentive is due to SMG.

1.7 “Attendance Incentive” - shall equal 33 1/3% of the Annual Fixed Fee for each Facility.

1.8 “Capital Equipment” – any and all furniture, fixtures, machinery or equipment, either additional or replacement, having a per item original cost of \$7,500 or more and an expected useful life of more than one year.

1.9 “Capital Improvements” – any and all building additions, alterations, renovations, repairs or improvements that have an initial dollar cost of not less than \$7,500 per project.

1.10 “Cash Flow Shortfall” – the amount by which Operating Expenses exceed, or are expected to exceed, Operating Revenues.

1.11 “Cash Flow Surplus” – the amount by which Operating Revenues exceed Operating Expenses.

1.12 “City” – the City of Tulsa, an Oklahoma municipal corporation.

1.13 “Consulting Period” – the period beginning on the Effective Date and ending on June 30, 2007.

1.14 “Consulting Services” – collectively, the Development and Pre-Construction Services and the Pre-Operation Services.

1.15 “Contract Manager” – shall mean the employee assigned by the City to manage and monitor this Agreement.

1.16 “Days” – shall mean calendar days unless specified otherwise.

1.17 “Development and Pre-Construction Period” – the period beginning on the Effective Date and ending on June 30, 2006.

1.18 “Development and Pre-Construction Services” – the services described on Exhibits “C” and “D” hereto.

1.19 “Effective Date” – shall mean the date of execution of this Agreement by the City.

1.20 “Event Expenses – any and all expenses incurred or payments made by SMG in connection with the occurrence of events at the Facilities, including but not limited to costs for event staffing including ushers, ticket takers, security and other event staff, and costs relating to setup and cleanup.

1.21 “Facilities” – as defined in the first paragraph of the Background section of this Agreement and more specifically, (i) with respect to the Convention Center, when renovations are complete, will include a 34,000 square foot ballroom, a 102,600 square foot Exhibit Hall, an 8,000 square foot Assembly Hall, meeting rooms, and a conference hall, and (ii) with respect to the BOK Center, when construction is complete, will include an arena with a seating capacity of approximately 18,000 seats in its maximum seating configuration, including club seats, suites and loge boxes.

1.22 “Fiscal Year” – a one year period beginning on July 1 and ending June 30.

1.23 “Force Majeure” – an act of God, strike, war, public rioting, lightning, fire, storm, flood, explosions, inability to obtain materials or supplies, epidemics, landslides, earthquakes, washouts, civil disturbances, breakage or accident to machinery or lines of equipment, temporary failure of equipment, freezing of equipment, terrorist acts, and any other cause whether of the kinds specifically enumerated above or otherwise which is not reasonably within the control of the party whose performance is to be excused and which by the exercise of due diligence could not be reasonably prevented or overcome.

1.24 “Gross Revenue Benchmark” – shall mean the level of gross revenue at each Facility at which a Gross Revenue Incentive is due to SMG.

1.25 “Gross Revenue Incentive” – shall equal 33 1/3% of the Annual Fixed Fee for each Facility (or 66 2/3% of such fee as provided in the last paragraph of Section 4.4(c) hereof, if applicable).

1.26 “IFB” – the Invitation For Bid (TAC 737) issued by the City dated July 15, 2005, as amended by addenda, pertaining to the services provided in this Agreement, including without limitation the Affidavits, Instructions, Terms and Conditions for Bidders, and Specifications contained therein.

1.27 “IFB Response” – SMG’s response to the IFB.

1.28 “Laws” – all federal, and state constitutional provisions, statutes, laws, rules and regulations and all City of Tulsa charter provisions, ordinances, rules, regulations, policies and executive orders.

1.29 “Losses” – any and all losses, liabilities, claims, damages and expenses (including reasonable attorneys’ fees).

1.30 “Initial Operation Term” – July 1, 2007 through June 30, 2008.

1.31 "Material Breach" -- shall mean one of the following: (a) failure by SMG to remit/transfer funds to City as required by this Agreement; (b) bankruptcy filing by SMG; (c) failure by SMG to perform any other contractual obligation, if that failure to perform is not remedied within thirty (30) days after receipt of written notice of the non-performance; however, if such breach is not reasonably susceptible to being cured within such 30-day period, SMG shall not be considered in breach if it shall within such 30-day period have commenced with due diligence and dispatch to cure such breach and thereafter completes with dispatch and due diligence the curing of such breach..

1.32 "Net Operating Profit (Loss) -- with respect to a Fiscal Year, the excess, if any, of Operating Expenses for such Fiscal Year over Operating Revenues for such Fiscal Year, in the case of a loss, and the excess, if any, of Operating Revenues for such Fiscal Year over Operating Expenses for such Fiscal Year, in the case of a profit. For purposes of calculating the Net Operating Profit (Loss) Incentive, no Facility management fees or debt service shall be considered.

1.33 "Net Operating Profit (Loss) Benchmark -- the level of profit (loss) at each Facility at which SMG is entitled to an incentive fee as provided in Section 4.4(b)(iii) hereof.

1.34 "Net Operating Profit (Loss) Incentive -- shall equal 33 1/3% of the Annual Fixed Fee for each Facility.

1.35 "Operating Expenses" -- (a) shall mean annual total on a full accrual basis of any and all direct expenses and expenditures of whatever kind or nature incurred and approved, and the direct expenditures by SMG in promoting, maintaining, and managing the Facilities. Operating expenses include: Capital Equipment purchases, on-the-job payroll costs, including wages, benefits, employers contributions; costs of purchasing, maintaining, renting, and cleaning equipment; cost of uniforms, equipment, materials, supplies, and service contractors; cost of insurance, licenses, fees and taxes directly assessed against the Facilities; cost of marketing, promotions, and advertising; cost of utilities, telephone maintenance and repair; cost of computer hardware, software and maintenance; cost of third-party consultants; box office operating costs (credit card fees, armored car service, etc.); payroll and bank charges; waste removal costs; all other expenses including costs associated with training, travel, and entertainment expenses of direct Facility employees, and the cost of providing insurance with respect to the Facilities as provided in Section 8 hereof. Operating Expenses excludes any depreciation, debt service, Capital Improvements, the incentive fees payable pursuant to Section 4.4 below and any expenses relating to SMG personnel based at SMG's corporate headquarters in Philadelphia, Pennsylvania or its regional field locations (other than the reasonable costs of travel by such corporate or regional personnel in connection with SMG's management of the Facilities and in accordance with SMG's travel and entertainment policy (a copy of which has been provided to the City prior to the date hereof), which costs shall be Operating Expenses if such costs are included in the Approved Budget).

(b) For purposes of (i) calculating Net Operating Profit (Loss) and SMG's incentive fee under Section 4.4(b)(iii) and (ii) identifying Operating Expenses which will be budgeted in Approved Budgets, Operating Expenses shall exclude all interest, income tax, depreciation and amortization expenses.

1.36 "Operating Revenues" -- shall mean annual total on a full accrual basis of any and all revenues of every kind or nature derived by SMG from managing, operating or promoting the

Facilities. Operating Revenues shall include concession fees and rentals, facility use rental fees, merchandise sales, equipment rentals, utility revenues, net box office revenues, food service and concession revenues (however, if such revenues are collected in the first instance by and retained by the concessionaire, the amount of such revenues owed by the concessionaire to the Facilities less any revenue sharing commitments to tenants of the Facilities shall be included as Operating Revenue). Operating Revenues exclude any receipt of Hotel/Motel Tax Convention Revenues, receipt of funds from the City's General Fund, receipt of any funds from the sale of products marketed and sold by the City's Sales and Marketing Consultant and utilized in the financing of the Facilities' Capital Improvements including: naming rights of the Facilities and the revenues associated with such rights, Facility sponsorships (including branding, food and beverage sale rights) and the revenues associated with such rights, and corporate, foundation, and individual donations. Operating Revenues include the funds received from sales by the City's Sales and Marketing Consultant that are not utilized in the financing of the Facilities Capital Improvements which include: Premium Seating revenues and advertising not associated with a naming rights sales or sponsorships. All revenues associated from event activity shall be reduced by any contractual allowances required by the City or SMG, which such allowances include without limitation payments to promoters of such events and event related items associated with such events. For the sake of clarity, the parties acknowledge that revenues from the sale of tickets for events at the Facilities are not Operating Revenues, but are instead revenues of the promoter and/or performer of each such event. To the extent that SMG collects such ticket sale revenue on behalf of such promoter and/or performer, such ticket sale revenue shall be the source of funds from which SMG collects the rental charges and other event reimbursements due by such promoter and/or performer for use of the Facilities, which such charges and reimbursements are Operating Revenues hereunder.

1.37 "Person" – any individual, general partnership, limited partnership, limited liability partnership, partnership, corporation, joint venture, trust, business trust, limited liability company, cooperative, or association, and the successors and assigns of any of the foregoing and, unless the context otherwise requires, the singular shall include the plural, and the masculine gender shall include the feminine and the neuter, and vice versa.

1.38 "Pre-Existing Agreement" – each contract, license, agreement, option, lease and commitment that grants any Person any right after the end of the Consulting Period (i) to license, use, occupy or rent all or any portion of either Facility, or (ii) to provide services to be used in the management, operation, use, possession, occupation, maintenance, promotion or marketing of all or any portion of either Facility. Attached hereto as Exhibit "A" is a list of those Pre-Existing Agreements, if any, existing as of the date of this Agreement.

1.39 "Pre-Operation Period" – the period beginning on July 1, 2006 and ending on June 30, 2007.

1.40 "Pre-Operation Services" – the services described on Exhibit "B" hereto.

1.41 "Premium Seating" – shall mean the various seating products available in the BOK Center to generate revenue for financing of the Capital Improvement costs and/or operations of the Facilities. Seating products anticipated to be available for such financing are suites for naming and/or foundation sponsors or donors, event suites, team suites, loge box seating, club seats, and other premium seating opportunities developed for sale of seat licenses.

1.42 "Pre-Operation Budget" – as defined in Section 2.5(f) hereof.

1.43 "Project" – shall mean the designing, constructing and furnishing of a multi-purpose events center upon the four block area from 1st Street South to 3rd Street South and from Frisco Avenue to Denver Avenue in the City of Tulsa, Oklahoma and the renovation and modernization of the Convention Center as approved by the voters of Tulsa County to be funded with Vision 2025 funds.

1.44 "Renewal Operation Terms" – the additional periods for which this Agreement may be renewed on an annual basis at the option of the City in accordance with Section 3.2 hereof beyond the Initial Operation Term.

1.45 "Sales and Marketing Consultant" -- shall mean the City's consultant under a separate contract to market and sell Facility naming rights, sponsorships, food and beverage sale rights, advertising and signage, Premium Seating licenses, official suppliers, and corporate, foundation and individual sponsors or donors until expiration of such services.

1.46 "SMG" – a Pennsylvania general partnership, whose current address is 701 Market Street, 4th Floor, Philadelphia, PA, 19106.

1.47 "Vision 2025 Funds" – The voters of Tulsa County, Oklahoma approved a sales tax to fund a group of projects collectively referred to as "Vision 2025" to provide community enrichment and educational, healthcare and events facilities for the purpose of promoting economic development within the County. One of the projects funded was the Project. Based on said sales tax revenue, the Tulsa County Industrial Authority, issued and sold Capital Improvements Revenue Bonds and established, from the net proceeds of said bond sales, an account with the Bank of Oklahoma as Trustee to fund the Project, including the Development and Pre-Construction Services being provided under this Agreement.

2. Engagement of SMG; Scope of Services.

2.1 Engagement.

(a) General Scope. The City hereby engages SMG to provide the Development and Pre-Construction Services; the Pre-Operation Services; and the Management Services including, but not limited to, the promotion, operation and management of the Facilities during the Initial Operation Term and the Renewal Operation Terms, if any, upon the terms and conditions hereinafter set forth, and SMG hereby accepts such engagement.

(b) Manager of the Facilities. Subject to the terms of this Agreement, SMG shall be, as agent for the City, the sole and exclusive manager on behalf of the City to manage, operate and promote the Facilities during the Initial Operation Term and the Renewal Operation Terms, if any (collectively, the "Management Services"). In such capacity, SMG shall have exclusive authority over the day-to-day operation of the Facilities and all activities therein; provided that SMG shall follow all policies and guidelines of the City hereafter established or modified by the City that the City notifies SMG in writing are applicable to the Facilities (including without limitation any methodology pertaining to the allocation of any costs and expenses by the City to the Facilities as permitted herein); provided further that to the extent that such policies or guidelines hereafter established or modified by

the City adversely affect revenues or expenses at the Facility, then and in that event, such additional costs or reduced revenues shall not be included in the applicable incentive fee formula set forth in Section 4.3 below.

2.2 Scope of Services – Generally; Standard of Care.

SMG shall perform and furnish such management services and systems as are appropriate or necessary to operate, manage and promote the Facilities in a manner consistent with the policies and procedures developed by SMG for the Facilities and approved by City (collectively, the "Approved Policies and Procedures").

In providing services under this Agreement, SMG shall maintain the standard of care, skill, diligence and professional competency as is customary in the industry. SMG shall contractually require all of its consultants or contractors to provide services at the same standard of care, skill, diligence and professional competence required of SMG. SMG shall exercise all reasonable and customary precaution to prevent any harm or loss to all persons and property related to this Agreement.

2.3 Specific Services.

Without limiting the generality of the foregoing, SMG shall have, without (except as otherwise expressly noted below) any prior approval by the City, sole right and authority to:

(a) employ (subject to Section 7), supervise and direct employees and personnel consistent with the provisions of this Agreement;

(b) administer relationships with all subcontractors, concessionaires and all other contracting parties to the Pre-Existing Agreements, assume responsibility for any and all negotiations, renewals and extensions (to the extent SMG deems any of the foregoing to be necessary or desirable) relating to such Pre-Existing Agreements, and enforce the Pre-Existing Agreements;

(c) negotiate, execute in SMG's name as agent for the City, deliver and administer any and all licenses, occupancy agreements, rental agreements, booking commitments, advertising agreements, concession agreements, supplier agreements, service contracts (including, without limitation, contracts for ticketing services, website development and maintenance, computer support services, utility services, telephone services, contract employees, cleaning, decorating and set-up, snow removal, general maintenance and maintenance and inspection of HVAC systems, escalators, elevators, stage equipment, fire control panel and other safety equipment, staffing and personnel needs, including guards and ushers, and other services which are necessary or appropriate) and all other contracts and agreements in connection with the management, promotion and operation of the Facilities, provided that no such license, agreement, commitment or contract other than those involving the license, lease or rental of the Facilities in the ordinary course shall be negotiated or executed with a term that extends beyond the remaining Initial Operation Term or Renewal Operation Term, as the case may be, without the prior written approval of the City;

(d) maintain the Facilities in good order and repair and in a clean, safe and sanitary condition including, but not limited to, all painting and structural maintenance and repair work for the

Facilities including maintenance and repair of the roof, ceilings, doors, windows, floors and interior and exterior walls;

(e) perform routine cleaning and maintenance in accordance with the Approved Policies and Procedures, including all groundskeeping, housekeeping, custodial and maintenance services for the Facilities including the grounds and pedestrian walkways; rent, lease or purchase all equipment, including Capital Equipment, and maintenance supplies necessary or appropriate for the operation and maintenance of the Facilities, provided that the City shall be responsible for undertaking all Capital Improvements pursuant to Section 5.8; In connection with the foregoing, SMG shall establish and implement a regular maintenance program for the equipment at the Facilities, including, but not limited to, all mechanical, electrical and plumbing systems, seating, elevators, escalators, public address, lighting, and fire and security monitoring systems, which maintenance activities shall meet or exceed the manufacturer's recommendations;

(f) establish and adjust prices, rates and rate schedules for the aforesaid licenses, agreements and contracts and any other commitments relating to the Facilities to be negotiated by SMG in the course of its management, operation and promotion of the Facilities. In determining such prices and rate schedules, SMG shall evaluate comparable charges for similar goods and services at similar and/or competing facilities, shall with respect to the Convention Center comply with the ordinances established for such Facility under Title 39A of the Tulsa Revised Ordinances for policies, rates and rate schedules for events thereat, and shall consult with the City about any adjustments to the rate schedules at the Facility to be made by SMG;

(g) to the extent that funds are budgeted and appropriated for such purpose by the City, pay, when due, on behalf of the City, all Operating Expenses from accounts established pursuant to Sections 5.6 and 5.7 of this Agreement;

(h) after consultation with the City, institute legal actions or proceedings necessary or appropriate in connection with the operation of the Facilities, including, without limitation, to collect charges, rents or other revenues due to the City or to cancel, terminate or sue for damages under, any license, use, advertisement or concession agreement for the breach thereof or breach thereunder by any licensee, user, advertiser, or concessionaire at the Facilities;

(i) maintain a master set of all booking records and schedules for each Facility;

(j) provide day-to-day administrative services in support of its management activities pursuant to Approved Budgets and annual plans described herein, including, but not limited to, the acquisition of services, equipment, supplies and facilities; internal budgeting and accounting; maintenance and property management; personnel management; record-keeping; collections and billing; and similar services. In that connection, SMG shall keep separate records, budgets and accounts for each Facility;

(k) engage in such advertising, solicitation, and promotional activities as SMG deems necessary or appropriate to develop the potential of the Facilities and the cultivation of broad community support. SMG shall work with (1) the City's Sales and Marketing Consultant, as needed, to secure the sale of sponsorship rights for each Facility and (2) the Tulsa Convention and Visitors Bureau ("TCVB") and the local hospitality industry to promote and market each Facility, as applicable,

for conventions, trade shows and public entertainment shows, including with respect to the Convention Center, coordinating the development of a five-year marketing plan with the TCVB;

(l) SMG shall comply with, manage and service contracts entered into by City or City's Sales and Marketing Consultant for naming or foundation sponsorships, pouring rights, suites and other premium products related to the Facilities. City will provide to SMG a copy of each such agreement within ten (10) days of its execution by City. Services shall include, but not be limited to, distributing Premium Seat tickets, parking passes and guest passes; designating "Special Events" for Premium Seat holders; invoicing for additional tickets and "Special Event" tickets; relocating Suite holders due to promoter restrictions; managing food and beverage service; collecting voice and data fees; designating events where sponsorship rights may be limited; collecting advertising material from sponsors; facilitating installation and maintenance of advertisements; and invoicing sponsors for changes to existing advertising;

(m) Upon the expiration or termination of the City's agreement with the Sales and Marketing Consultant, unsold premium products dedicated to Operating Revenues shall be available to SMG to market and sell to provide additional revenue to the Facilities;

(n) In connection with its activities under this Agreement, including without limitation advertising relating to the Facilities, SMG shall be permitted to use the name "BOK Center", the name of the naming sponsor for the Convention Center, if any, the names of the other sponsors in the Facilities and logos for such names in its advertising, subject to the approval of the City; and

(o) On or before the commencement of the Initial Operation Term, SMG shall physically establish and maintain an office in the Facilities for the duration of this Agreement.

2.4 Right of Entry Reserved.

Representatives of the City shall have the right, to enter all portions of the Facilities to inspect same, to observe the performance of SMG of its obligations under this Agreement, to install, remove, adjust, repair, replace or otherwise handle any equipment, utility lines, or other matters in, on, or about the premises, or to do any act which the City may be obligated or have the right to do under this Agreement or otherwise. Nothing contained in this Section is intended or shall be construed to limit any other rights of the City under this Agreement. The City shall not interfere with the activities of SMG hereunder, and the City's actions shall be conducted such that disruption of SMG's work shall be kept to a minimum. Nothing in this Section shall impose or be construed to impose upon the City any independent obligation to construct or maintain or make repairs, replacements, alterations, additions or improvements or create any independent liability for any failure to do so.

2.5 Consulting Services.

(a) During the Consulting Period, SMG will provide to the City, as needed for each Facility: (i) the Pre-Operation Services described in Exhibit "B" hereto, (ii) the Development and Pre-Construction Services described in Exhibit "C" hereto including the consulting services relating to furniture, fixtures and equipment for each Facility described in Exhibit "D" hereto.

(b) In rendering the Consulting Services, SMG will work with representatives, consultants and agents of the City as set forth in Exhibits "B", "C" and "D" hereto (including, without limitation, the architectural and engineering firm selected by the City for the design and construction of the BOK Center and the renovation of the Convention Center). SMG will make appropriate SMG personnel available to such firm as required from time to time to consult with and provide periodic reports regarding the performance of the Consulting Services.

(c) In rendering the Consulting Services, SMG expects to utilize its existing personnel; it is acknowledged that (unless SMG determines otherwise) no SMG personnel will be located full-time at the project site; SMG personnel will from time to time visit the site and participate in meetings with other agents, representatives and consultants of the City as necessary or appropriate in connection with the performance of the Consulting Services.

(d) In performing certain of the Pre-Operation management services referred to in Paragraph B of Exhibit "B" hereto, SMG will have authority to act as the agent of the City. As specified in Exhibit "B" hereto, SMG will, among other things, be authorized to execute in its name as agent for the City booking commitments, tenant/user agreements and licenses for use of the BOK Center following its opening to the public.

(e) The City acknowledges that SMG is neither an architect nor an engineer and its consulting services provided under this Agreement with respect to the Facilities are based on its operational knowledge and should not be construed as a representation of architectural or engineering practices. Neither the City nor any of its respective agents, consultants or representatives will rely upon SMG as having architectural or engineering expertise, and accordingly, SMG shall not be responsible with respect to architectural or engineering matters relating to the foregoing.

(f) The City also acknowledges that SMG is not a legal advisor and its consulting services provided hereunder with respect to the Facilities are based on its operational knowledge and should not be construed as a legal representation or interpretation of any Law, including, but not limited to, the ADA. Neither the City nor any of its agents, consultants, or representatives will rely upon SMG as having legal expertise, and accordingly, SMG shall not be responsible with respect to legal matters relating to the foregoing.

(g) Within thirty (30) days of the Effective Date of this Agreement, SMG will submit to the City, for the City's approval, a Pre-Operation budget (the "Pre-Operation Budget"). The City shall review such proposed Pre-Operation Budget and shall submit any comments to SMG as promptly as possible so that the Pre-Operation Budget can be finalized, and approved by the City as soon as practical. SMG shall be entitled from time to time to revise and update such Pre-Operation Budget to reflect changed circumstances, provided that any revised Pre-Operation Budget shall require the re-approval of the City. During the Consulting Period, SMG's aggregate expenditures (when taken as a whole relative to the total Pre-Operation Budget and not on a per line item basis) shall not exceed the aggregate Pre-Operation Budget, without the prior written consent of the City.

2.6 Confidentiality/Nondisclosure.

(a) SMG acknowledges that City is subject to the Oklahoma Open Records Act (51 O.S. §24A.1 et seq.) and therefore, the City cannot assure the confidentiality of information provided by SMG.

(b) The City agrees that it shall keep secret and confidential any and all Confidential Information to be disclosed to it by SMG, and the City shall not divulge any such information, in whole or in part, to any third party except (i) as is expressly permitted in this Section 2.6 and (ii) to the extent that such information is subject to the Oklahoma Open Records Act (51 O.S. § 24A.1 et seq.) (the "Records Act").

(c) The City shall not use any Confidential Information, except for the express purpose of utilizing it in connection with the management of the Facilities. Except to the extent that such information is subject to the Records Act, the City shall not directly or indirectly disclose or discuss any such information with any Person, other than employees, agents and subcontractors of the City who are directly concerned with the management of the Facilities. To the extent that the City receives a request pursuant to the Records Act to disclose any Confidential Information, the following shall apply:

(i) The City shall promptly give SMG written notice of such request for disclosure, including (A) a description of the documents requested, (B) the identity of the party that has made such request, and (C) the person and office within the City to whom SMG shall address any objection to such request.

(ii) SMG shall have seventy-two (72) hours following receipt of the City's notice in subparagraph (i) above to provide a written objection to the City, specifying its reasons for such objection.

(iii) If the City disagrees with SMG's objection, in whole or in part, and intends to disclose such information, in whole or in part, it shall promptly notify SMG in writing of such disagreement (and the reasons therefor) and of its intention to so disclose such information. The City shall not, however, make such disclosure for at least seventy-two (72) hours after such second notice so that SMG may, if it chooses, file for injunctive relief to stop such disclosure.

(d) "Confidential Information" means any and all information disclosed in writing or by inspection to the City by SMG pursuant to this Agreement which SMG identifies in writing or otherwise marks as "Confidential Information" prior to its disclosure to the City. Such information includes, but is not limited to, plans, proposals, and lists of furniture, fixtures and equipment. The restrictions upon confidentiality and use of Confidential Information set forth in this Section 2.6 do not apply to information which was publicly available to the City or lawfully in its possession at the time of its disclosure to the City by SMG; however, Confidential Information shall not be deemed in the City's possession or publicly known simply because it is embraced by more general information in the City's possession.

(e) With respect to any information or material which is protected by copyright of SMG and which is identified as such by SMG to City in writing prior to disclosure or delivery to City, except as required by the Records Act, no part of such materials may be reproduced, stored in a data

base and retrieval system or transmitted in any form or by any means - graphic, electronic, photocopying, recording, mechanical or otherwise - without the prior written permission of SMG.

(f) SMG shall indemnify, defend and save harmless City and its officers, employees and agents from all fines, penalties, suits and actions of every nature brought against them claiming that the Records Act has been violated by a failure to disclose information which SMG has identified as "Confidential Information" or information or material protected by copyright.

3. Initial Operation Term and Renewal Operation Terms.

3.1 Initial Operation Term.

The Initial Operation Term for the Facilities shall commence on July 1, 2007 and shall continue until June 30, 2008, unless earlier terminated pursuant to the provisions of this Agreement.

3.2 Renewal Operation Terms.

The City may, in its sole discretion, extend the term hereof on the same terms and conditions for an additional four (4) one-year terms as provided below. Renewal of this Agreement is subject to the City's needs and specifically to the City's annual appropriation of sufficient funds in the City's fiscal year (which is the same as the Fiscal Year hereunder). In the event that the City does not appropriate or budget sufficient funds to perform this Agreement, this Agreement will not be renewed by the City; however, the City agrees not to substitute a similar service to fill the same need provided by SMG hereunder for the same Facility during the Initial Operation Term and the first two (2) Renewal Operation Terms hereunder if this Agreement is terminated or not renewed solely due to non-appropriation of funds. For the third and fourth Renewal Operation Terms hereunder, the City shall have the right not to renew this Agreement in its sole discretion, upon giving SMG written notice sixty (60) days prior to the end of the second and third Renewal Operation Terms, as the case may be, without cause or penalty (i.e., the City may substitute a similar service to fill the same need for the same Facility).

4. Compensation.

4.1 Development and Pre-Construction Services.

(a) BOK Center.

Subject to Section 4.1(d) hereof, as total compensation to SMG for its Development and Pre-Construction Services for the BOK Center during the Development and Pre-Construction Period, SMG shall be paid a fixed fee not to exceed TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00). The fee shall be invoiced and paid in monthly installments in the amount of FOUR THOUSAND ONE HUNDRED SIXTY-SEVEN AND 67/100 DOLLARS (\$4,166.67) for each full calendar month of Services.

(b) Convention Center.

Subject to Section 4.1(d) hereof, as total compensation to SMG for its Development and Pre-Construction Services for the Convention Center during the Development and Pre-Construction Period, SMG shall be paid a fixed fee not to exceed EIGHTEEN THOUSAND DOLLARS (\$18,000.00). The fee shall be invoiced and paid in monthly installments in the amount of THREE THOUSAND DOLLARS (\$3,000.00) for each full calendar month of Services.

(c) In the event that the timing of the Effective Date of this Agreement results in the initial Development and Pre-Construction Services to be performed for the Facilities for less than a full month, the fees for said period shall be invoiced and paid on a pro rata basis.

(d) Because the funds for payment of the Development and Pre-Construction Services for the Facilities are being held in trust by said Bank of Oklahoma as Vision 2025 funds, it is understood that payment for said Services shall be made from, and only from, Bank of Oklahoma Account #816421242. SMG shall invoice City for the Development and Pre-Construction Services performed in accordance with this Agreement. City shall review and approve, if proper, said invoices and authorize payment from the Bank of Oklahoma project account listed above as expeditiously as possible upon receipt but, in no event will the total amount of invoices approved for payment to SMG for Development and Pre-Construction Services exceed the sum of FORTY-THREE THOUSAND DOLLARS (\$43,000.00).

4.2 Pre-Operation Services.

(a) BOK Center.

Subject to Section 4.2 (c) hereof, as total compensation to SMG for its Pre-Operation Services for the BOK Center during the Pre-Operation Period, the City shall pay SMG a fixed fee in the amount of SIXTY-FIVE THOUSAND DOLLARS (\$65,000.00) which shall be invoiced and paid in twelve (12) monthly installments in the amount of FIVE THOUSAND FOUR HUNDRED SIXTEEN AND 67/100 DOLLARS (\$5,416.67).

(b) Convention Center.

Subject to Section 4.2 (c) hereof, as total compensation to SMG for its Pre-Operation Services for the Convention Center during the Pre-Operation Period, the City shall pay SMG a fixed fee in the amount of THIRTY THOUSAND DOLLARS (\$30,000.00) which shall be invoiced and paid in twelve (12) monthly installments in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00).

(c) The Pre-Operation Services are subject to City's needs and specifically to City's annual appropriation for each Facility of sufficient funds for such purpose for the Fiscal Year in which the Services are to be performed. In the event that the City does not appropriate or budget sufficient funds to perform the Pre-Operation Services, the portions of this Agreement pertaining to said Services shall be severed from the Agreement and shall be null and void without further action, and neither party will have any further liability or obligation to the other regarding those Pre-Operation Services or the payment therefor.

4.3 Management Services.

(a) Initial Operation Term for BOK Center.

Subject to the budgeting and appropriating of sufficient funds for such purpose, as base compensation to SMG for providing the services herein specified during the Initial Operation Term with respect to the BOK Center, the City shall pay SMG an Annual Fixed Fee of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00). The foregoing annual fixed compensation shall be payable in equal monthly installments of TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$12,500.00) due within sixty (60) days of receipt of an invoice therefor.

(b) Renewal Operation Terms for BOK Center.

In the event that this Agreement is renewed by the City for any Renewal Operation Term, the respective base annual fixed fee and amount of monthly installments of said fee to be paid to SMG for providing the services herein specified with respect to the BOK Center shall be as follows:

	<u>Annual Fee</u>	<u>Monthly Installment</u>
Renewal Year 1	\$153,750.00	\$12,812.50
Renewal Year 2	\$157,594.00	\$13,132.83
Renewal Year 3	\$161,534.00	\$13,461.17
Renewal Year 4	\$165,572.00	\$13,797.67

(c) Initial Operation Term for Convention Center.

Subject to the budgeting and appropriating of sufficient funds for such purpose, as base compensation to SMG for providing the services herein specified during the Initial Operation Term with respect to the Convention Center, the City shall pay SMG an Annual Fixed Fee of FORTY THOUSAND DOLLARS (\$40,000.00). The foregoing annual fixed compensation shall be payable in equal monthly installments of THREE THOUSAND THREE HUNDRED THIRTY-THREE AND 33/100 DOLLARS (\$3,333.33) due within sixty (60) days of receipt of an invoice therefor.

(d) Renewal Operation Terms for Convention Center.

In the event that this Agreement is renewed by the City for any Renewal Operation Term, the respective base annual fixed fee and amount of monthly installments of said fee to be paid to SMG for providing the services herein specified with respect to the BOK Center shall be as follows:

	<u>Annual Fee</u>	<u>Monthly Installment</u>
Renewal Year 1	\$41,000.00	\$3,416.67
Renewal Year 2	\$42,025.00	\$3,502.08
Renewal Year 3	\$43,076.00	\$3,589.67
Renewal Year 4	\$44,153.00	\$3,679.42

4.4 Incentive Fees.

Incentive Fees shall be calculated and paid, if earned, separately for each Facility.

(a) Initial Operation Term for BOK Center. SMG shall not be entitled to be paid annual incentive fees with respect to the BOK Center for the Initial Operation Term.

(b) Initial Operation Term for Convention Center and Renewal Operation Terms. Subject to the sufficient budgeting and appropriation of funds for that purpose by the City, SMG shall be entitled to be paid, if earned, annual incentive fees for the Initial Operation Term for the Convention Center and for each Fiscal Year during the applicable Renewal Operation Term, if any, for each Facility as follows:

(i) A Gross Revenue Incentive which shall be earned if the Operating Revenues meet or exceed the applicable Gross Revenue Benchmark for such Fiscal Year set forth on Exhibit "E" attached hereto.

(ii) An Attendance Incentive which shall be earned if the attendance numbers meet or exceed the applicable Annual Benchmark for such Fiscal Year set forth on Exhibit "E" attached hereto.

(iii) A Net Operating Profit (Loss) Incentive which shall be earned if the Net Operating Profit (Loss) meets or exceeds the applicable Net Operating Profit (Loss) Benchmark for such Fiscal Year set forth on Exhibit "E" attached hereto.

(c) Notwithstanding the foregoing, if in the future the City elects to issue tax-exempt financing for the construction or renovation of either Facility, the City shall notify SMG of such fact and the Incentive Fees payable to SMG in respect of the affected Facility shall be modified so that thereafter (1) there shall be no Net Operating Profit (Loss) Incentive and (2) the amount of the Gross Revenue Incentive that may be earned by SMG shall increase from 33 1/3% of the Annual Fixed Fee for such Facility to 66 2/3% of such Annual Fixed Fee.

(d) Payment. Subject to the sufficient budgeting and appropriation of funds by the City for such purpose, the incentive fees determined pursuant to Section 4.4 above shall be payable to SMG within sixty (60) days after the City's receipt of an invoice from SMG accompanied by an annual statement certified by one of its officers setting forth the Operating Revenues and Operating Expenses and attendance figures for the previous Fiscal Year and showing the calculation of the incentive fees payable with respect to such Fiscal Year for each Facility. Promptly following the availability of the audited annual financial statements described in Section 6.1 hereof for a Fiscal Year, SMG shall recalculate the incentive fees payable for that Fiscal Year; in the event that the amount of the incentive fee which was paid based on SMG's invoice differs from such recalculated amount, SMG shall promptly remit to the City any excess amount which was paid or, subject to the sufficient appropriation of funds for such purpose, the City shall promptly pay the shortfall, as the case may be.

(e) For sake of clarity, any references in Section 4.3 or 4.4 to the City's budgeting and appropriation of sufficient funds for SMG's base or incentive compensation shall not be construed as requiring SMG to perform any Management Services hereunder if SMG is not paid such compensation hereunder due to the failure of the City to budget and/or appropriate funds for such purposes.

Funding; Budgets; Bank Accounts.

5.1 Operating Funds.

Subject to Section 5.2, following the approval of the annual operating budget for a Fiscal Year for each Facility, to the extent that Operating Revenues for a Facility during a calendar quarter period are insufficient, or expected to be insufficient, to cover Operating Expenses for such Facility plus, with respect to the first quarter of a Fiscal Year, the amount of the projected incentive fees with respect to such Facility payable pursuant to Section 4.4 for the prior Fiscal Year ("Cash Flow Shortfall") for such period, the City shall advance funds to SMG as follows. Thirty (30) days prior to the beginning of each calendar quarter during the Initial Operation Term and any Renewal Operation Term, SMG will submit to the City an invoice for the projected Cash Flow Shortfall for such quarter for such Facility and the City will transfer such funds to SMG within five (5) days after the start of such calendar quarter. Such funds shall be deposited by SMG in the operating account(s) for such Facility established pursuant to Section 5.6 and used to pay Operating Expenses. To the extent that there is no shortfall during said calendar quarter SMG shall pay to City the Cash Flow Surplus within thirty (30) days.

5.2 Non-Funding.

(a) The City shall have no obligation to provide funds for the payment of Operating Expenses incurred or committed for in excess of the funds that have been budgeted and appropriated for such purpose for the Facilities.

5.3 Annual Budget; Cash Flow Budget.

(a) As part of the annual plan described in Section 6.2 herein, on or before one hundred eighty (180) days prior to the end of each Fiscal Year (commencing with the first Fiscal Year in the Initial Operation Term for the Facilities), SMG will prepare a proposed annual operating budget for the next Fiscal Year for each Facility to meet the scope of services and objectives under this Agreement. Such budget shall contain appropriate line items for revenues and expenses and the projected net operating deficit or surplus.

(b) SMG shall prepare and submit to the City on or before one hundred eighty (180) days prior to the end of each Fiscal Year (commencing with the first Fiscal Year in the Initial Operation Term for the Facilities) a proposed annual cash flow budget for the succeeding Fiscal Year for each Facility.

(c) The annual budgets referred to in subparagraph (a) above shall be reviewed and are subject to adjustment and approval by the City. On or before seven (7) days prior to the end of each such Fiscal Year, the City shall notify SMG of any changes to the annual operating budget for the succeeding Fiscal Year proposed by SMG and with such changes, if any, made by the City, such budget shall be the Approved Budget for the following Fiscal Year, provided that if the annual operating budget as proposed by SMG is modified by the City in a manner which could materially interfere, impede or impair the ability of SMG to manage, operate or promote either or both Facilities, SMG shall have the right, with ninety (90) days prior written notice to City, to terminate this

Agreement as to the affected Facility or Facilities pursuant to Section 12.2 (with the effect set forth in Section 12.3). In no event will this Agreement be terminated as to the affected Facility or Facilities if the reduction in budgeted or appropriated funds is less than five percent (5%) from the previous final annual Approved Budget for the affected Facility.

5.4 Budget Modifications Initiated by SMG.

SMG may submit to the City at any time prior to the close of a Fiscal Year a supplemental or revised annual operating budget or cash flow budget for such Fiscal Year for either Facility. Upon the approval of the City of such supplemental or revised budget, the Approved Budgets for such Fiscal Year shall be deemed amended to incorporate such supplemental or revised budget. The Approved Budgets may only be amended as set forth in Section 5.5 below or in the two preceding sentences.

5.5 Budget Modifications Initiated by the City.

In the event that it appears reasonably likely, in any year during the term hereof, that the actual Net Operating Profit for such Fiscal Year for either Facility will be less than projected in the annual operating budget for such Fiscal Year or that the actual Net Operating Loss for such Fiscal Year for either Facility will be greater than projected in the annual operating budget for such Fiscal Year, SMG shall alert the City of such likelihood as soon as it becomes evident and SMG shall submit to the City for approval a plan for reduction of Operating Expenses to a level consistent with the revised projection of Net Operating Profit (Loss) for such Facility. SMG shall forthwith comply with the expense reduction plan and the revised budgets approved by the City for such Fiscal Year.

5.6 Receipts and Disbursements.

SMG shall establish and maintain separate accounts for each Facility in a depository designated by the City. One or more accounts will be established in the name of City, with SMG as agent and with signature authority in such employees of SMG as SMG shall determine. One or more accounts will be established for operating, payroll and for the promotion, operation and management of each Facility. In addition, The City Treasurer will have signature authority on each account. Such accounts shall be interest bearing and FDIC insured with funds in excess of \$100,000 being collateralized as required by the City. All revenues collected by SMG from the operation of each Facility shall be deposited into such accounts and Operating Expenses shall be paid by SMG as agent for the City from such accounts. All revenues collected by SMG arising from operation of each Facility, including revenues from box office sales, facility or equipment rentals, utility rental agreements, food and beverage operations, any interest or investment earnings or any other source, are the sole property of the City, held in trust by SMG for the City for application as provided herein. Any amounts remaining in such accounts upon termination of this Agreement for any reason, after payment of all outstanding Operating Expenses, shall be promptly paid by SMG to the City. The funds in such accounts for each Facility shall not be commingled with the funds for the other Facility nor shall they be used to pay the Operating Expenses for the other Facility unless directed in writing by the City.

5.7 Ticket Sales Revenues.

SMG shall hold in a separate interest-bearing Box Office/Ticket Account for each Facility in a depository designated by the City, any ticket sale revenues which it receives with respect to an event to be held at such Facility pending the completion of the event. Such monies are to be held for the protection of ticket purchasers, the City and SMG, and to provide a source of funds, as required for such payments to performers and promoters and for such payments of Operating Expenses in connection with the presentation of events as may be required to be paid contemporaneously with the event. Following the satisfactory completion of the events at each Facility, but not longer than five (5) days following the event settlement, SMG shall make a deposit into the operating account(s) established pursuant to Section 5.6 above for such Facility of the amount in such account and shall pay from the operating account Event Expenses and provide the City with a full event settlement report. Interest which accrues on amounts deposited in the operating account(s) referred to in Section 5.6 and the Box Office/Ticket Account referred to above shall be considered Operating Revenues for the applicable Facility. Bank service charges, if any, on such account(s) shall be considered Operating Expenses for the applicable Facility.

5.8 Capital Improvements.

The obligation to pay for and authority to perform, direct and supervise Capital Improvements shall remain with the City and will not be considered Operating Expenses. The annual plan submitted pursuant to Section 6.2 for each Facility shall include SMG's recommendation for Capital Improvements to be accomplished during the year for such Facility and shall be accompanied by an estimate of the cost of all such items and projects and a request that the City budget funds therefor. The City shall retain the discretion to determine whether and to what level to fund Capital Improvements to the Facilities.

5.9 SMG Responsibility.

Notwithstanding any provision herein to the contrary and except for SMG's express indemnification undertakings in Sections 2.6(f) and 8.1 and its express reimbursement undertakings in Section 6.1(b), the obligation to fund any cost, expense or liability with respect to the operation, management or promotion of the Facilities remains with the City. Notwithstanding anything to the contrary set forth in this Agreement, the City recognizes and agrees that performance by SMG of its responsibilities under this Agreement is in all respects subject to and conditioned upon the timely provision of funds to SMG for such purposes as hereinafter provided.

5.10 Funds for Emergency Repairs.

SMG shall have the right to act, with the prior consent of the City, in situations which SMG reasonably determines to be an emergency with respect to the safety, welfare and protection of the general public, including spending and committing funds held in the operating account(s) of the Facilities, even if such expenses are not budgeted; provided, however, SMG shall have no obligation under any circumstance to spend or commit funds other than funds then available in such accounts for any such purpose. Immediately following such action, SMG shall inform the City of the situation and the action(s) taken, and, subject to the sufficient budgeting and appropriation of funds by the City for said purpose, the City shall pay into such account(s) the amount of approved funds, if any, spent or committed by SMG pursuant to this Section in excess of budgeted amounts.

Records, Audits and Reports.

6.1 Records and Audits.

(a) SMG shall keep full and accurate accounting and attendance records relating to its activities at each Facility. SMG shall maintain a system of recordkeeping adequate for Facility operations hereunder and for the use of auditors. SMG shall give the City's authorized representatives access to such books and records maintained at the Facility during reasonable business hours and upon reasonable advance notice. SMG shall keep and preserve for at least three (3) years following the completion and/or termination of this Agreement all sales slips, rental agreements, purchase orders, sales books, credit card invoices, bank books or duplicate deposit slips, and other evidence of Operating Revenues and Operating Expenses for such period, except that if after three (3) years following any Fiscal Year SMG wishes to destroy any such records, SMG shall first notify the City in writing of its desire to destroy such records and give the City thirty (30) days to elect to take such records from SMG. In addition, on or before September 28 following each Fiscal Year for which SMG is managing the Facilities hereunder, SMG shall furnish to the City a balance sheet, a statement of profit or loss and a statement of cash flows for each Facility for the preceding Fiscal Year, prepared in accordance with generally accepted United States accounting principles and accompanied by an independent auditor's report of a nationally recognized, independent certified public accountant. The audit shall contain an opinion expressed by the independent auditor of the accuracy of financial records kept by SMG, incentive calculations and amounts due to the City. The audit shall also provide a certification and opinion of Operating Revenues and Operating Expenses and attendance figures for such Fiscal Year. The audit shall be conducted by a reputable firm selected by SMG with City approval. The City shall not withhold or delay such consent or approval unreasonably. Notwithstanding anything to the contrary herein, the costs of such audit shall be deemed Operating Expenses. If an audit, litigation or other action involving such records begins before the end of the three year period, the records shall be maintained for three years from the date that all issues arising out of the action are resolved or until the end of the three year retention period, whichever is later, unless prior to the end of such period of time, SMG notifies the City in writing of its desire to destroy such records and gives the City thirty (30) days to elect to take such records from SMG.

(b) The City shall have the right at any time, and from time to time, to audit all of the books of SMG relating to Operating Revenues and Operating Expenses for either or both Facilities, including, without limitation, all sales slips, rental agreements, purchase orders, sales financial records, credit card invoices, bank books, bank statements and duplicate deposit slips, and other evidence of Operating Revenues and Operating Expenses. If any such audit demonstrates that the Operating Revenues or Operating Expenditures reflected in any financial statements prepared by SMG and audited as specified in the foregoing subparagraph (a) are understated (in the case of Operating Expenses) or overstated (in the case of Operating Revenues), by a total of more than two percent (2%), SMG shall pay to the City from separate SMG funds the reasonable cost of such audit and shall promptly refund to the City any portion of the incentive fee paid for each Fiscal Year which is attributable to the overstatement or understatement, as the case may be. The City's right to audit and SMG's obligation to retain the above records shall expire three (3) years after the completion and/or termination of this Agreement. If an audit, litigation or other action involving such records begins before the end of the three year period, the records shall be maintained for three years from the date that all issues arising out of the action are resolved or until the end of the three year retention period,

whichever is later, unless prior to the end of such period of time, SMG notifies the City in writing of its desire to destroy such records and gives the City thirty (30) days to elect to take such records from SMG.

6.2 Annual Plan.

For each Facility SMG shall provide to the City on or before one hundred eighty (180) days prior to the commencement of each Fiscal Year (commencing with the Fiscal Year starting July 1, 2007), an annual management plan, which shall include the annual operating budget described in Section 5.3 for such Fiscal Year. The annual plan shall include information regarding SMG's anticipated operations for such Fiscal Year, including planned operating maintenance activities by SMG, requested Capital Improvements and Capital Equipment purchases and an anticipated budget therefor, anticipated events at the Facility, anticipated advertising and promotional activities, and planned equipment and furnishings purchases. The annual plan shall be subject to review, revision and approval by the City. Following review and revision by the City, SMG shall have thirty (30) days to incorporate the City's revisions into its plan. Upon approval by the City, such annual plan shall constitute the operating program for SMG for the following Fiscal Year for the applicable Facility.

6.3 Monthly Reports.

By the twenty-fifth day of each month, SMG shall provide to the City a written monthly report in a form approved by the City and similar to that used in other SMG-managed facilities setting out each Facility's anticipated activities for the upcoming month and reporting on the prior month's activities and finances. SMG shall include in such report a balance sheet, income statement, and other financial reports (such as a departmental expense report and event accounting).

7. **Employees.**

7.1 SMG Employees.

(a) Subject to Section 7.2, SMG shall select, train and employ at the Facilities during the Initial Operation Term and any Renewal Operation Term such number of employees as SMG deems necessary or appropriate to satisfy its responsibilities hereunder; SMG shall use its best efforts to recruit employees who will be proficient, productive, and courteous to patrons, and subject to Section 7.2, SMG shall have authority to hire, terminate and discipline any and all personnel working at the Facilities except City employees assigned to the Convention Center as set forth in Section 7.2. SMG shall be responsible for all personnel-related matters concerning its employees, including compensation, benefits, labor relations with any trade or union, employee training, development and retention, contract negotiation, dispute resolution, provision of employee uniforms, tools and equipment, employee hiring, job assignment and performance and compliance with equal employment requirements.

(b) SMG shall assign to the Facilities a competent, full-time general manager who shall have no duties other than the operation and management of the Facilities unless approved in writing by the Contract Manager. From time to time, subject to prior approval of City, the general manager may provide assistance in connection with the consulting and/or management services provided by SMG or any of its Affiliates at other facilities managed, owned or leased by SMG or any

of its Affiliates, provided that (i) such assistance does not affect in any material respect the responsibilities and duties of the general manager to the Facilities and (ii) the cost of the salary and benefits of the general manager for the time spent in connection with providing such assistance shall be reimbursed by SMG to the operating account of the Facilities. Prior to SMG's appointment of such general manager, SMG shall consult with the City with respect to the qualifications of the general manager proposed by SMG.

(c) Upon request of the City, SMG shall provide to the City the names and resumes of the senior management personnel SMG proposes to employ at the Facilities (i.e., the general manager, assistant general manager and director-level employees).

(d) If a proposed general manager is not reasonably acceptable to the City, SMG shall resubmit names and resumes until the City reasonably accepts an employee for assignment to the general manager position.

(e) At any time during the term of this Agreement, the City may notify SMG if it believes that there is a performance problem with the general manager or assistant general manager. Within fifteen (15) days of receipt of such notice, SMG's senior management will meet with the Contract Manager to discuss the problem and to propose steps that may be appropriate to address such problem.

(f) Upon the City's request, SMG will provide the names and positions of its employees assigned to each Facility as part of its monthly reporting. The City reserves the right to request the replacement of any SMG employee assigned to the Facilities; however, the City acknowledges that SMG maintains the ultimate right to discipline and terminate SMG's employees.

(g) SMG employees at the Facilities shall not for any purpose be considered to be employees of the City, and SMG shall be solely responsible for their supervision and daily direction and control and for setting, and paying as an Operating Expense, their compensation, income tax withholding and any employee benefits, and all costs related to their employment shall be an Operating Expense.

7.2 City Employees.

(a) No later than January 1, 2007, SMG shall make offers of employment to all fulltime City employees employed at the Convention Center on that date. Such employment offers shall be on such terms as SMG, in its sole discretion, shall determine except that (i) such employees will be given seniority credit for past service with the Convention Center for purposes of benefit accrual calculation and for purposes of their eligibility to participate in any SMG benefit plans, to the extent permitted by law and the terms of the applicable benefit plans; (ii) such employees will be offered a compensation and benefit package that taken as a whole is at least equivalent to their overall compensation and benefit package with the City (provided that the City's compensation and benefit package does not materially change from the information provided to SMG by the City on or about January 13, 2006); (iii) such employees shall have an opportunity to rollover distributions, if any, from the City deferred compensation plan, retirement plan or other qualified plans into SMG's 401K plan, to the extent permitted by law and the terms of the plans; (iv) such employees will be provided with

health insurance coverage effective upon start of employment with SMG; and (v) such employees shall not be discharged from employment by SMG except for cause, as defined in SMG's Personnel Policies and Procedures, for one year from hire date. Employment offers shall require City employees to notify SMG and City in writing of the employee's acceptance or rejection of the employment offer on or before March 1, 2007. Upon request, SMG shall provide to City copies of employees' written acceptance or rejection of SMG's offer of employment. Any City employee who chooses to accept such offer of employment by SMG shall, upon the commencement of their employment by SMG at the end of the Consulting Period (i.e., July 1, 2007), cease to be an employee of the City and shall become an employee of SMG upon such terms and conditions as determined by SMG, and the City shall be solely responsible for paying all outstanding amounts owed to such employees as of their date of final employment with the City in accordance with the City's policies related thereto. At the end of the Consulting Period, the City shall cause City employees who have not accepted an offer of employment by SMG, if any, to cease working at the Convention Center, except for those City employees assigned by the City, with the approval of SMG, to perform duties at the Facilities.

(b) SMG shall approve the City's assignment of fulltime City employees to perform duties at the Facilities if such employees will be, on July 1, 2007 eligible to retire at "Normal Retirement Age" or pursuant to the "Rule of Eighty (80)" within thirty-six (36) months from said date under the City's Municipal Employees' Retirement Plan until such employees reach retirement eligibility at Normal Retirement Age or pursuant to the Rule of Eighty. Upon each such employee reaching eligibility for retirement, that employee's position at the Convention Center as an employee of the City shall be abolished. On or before ninety days prior to such employee reaching retirement eligibility from the City's Municipal Employees' Retirement Plan, SMG shall make offers of employment to each such employee for employment to commence on the day following the employee reaching retirement eligibility. Such employment offers shall be on such terms as SMG, in its sole discretion, shall determine except that (i) such employees will be given seniority credit for past service with the Convention Center for purposes of benefit accrual calculation and for purposes of their eligibility to participate in any SMG benefit plans, to the extent permitted by law and the terms of the applicable benefit plans; (ii) such employees will be offered a compensation and benefit package that taken as a whole is at least equivalent to their overall compensation and benefit package with the City (provided that the City's compensation and benefit package does not materially change from the information provided to SMG by the City on or about January 13, 2006); (iii) such employees shall have an opportunity to rollover distributions, if any, from the City deferred compensation plan, retirement plan or other qualified plans into SMG's 401K plan, to the extent permitted by law and the terms of the plans; (iv) such employees will be provided with health insurance coverage effective upon start of employment with SMG; and (v) such employees shall not be discharged from employment by SMG except for cause, as defined in SMG's Personnel Policies and Procedures, for one year from hire date or until this Agreement terminates whichever shall first occur. Such employment offers shall require City employees to notify SMG and City in writing of the employee's acceptance or rejection of the employment offer on or before thirty days prior to such employee's eligibility for retirement. Upon request, SMG shall provide to City copies of employees' written acceptance or rejection of SMG's offer of employment. The employment by SMG of such employees shall commence on the next business day following the date the employee is eligible for retirement from the City's Municipal Employee's Retirement Plan. "Normal Retirement Age" and "Rule of Eighty (80)" shall have the meanings set forth in the Municipal Employees' Retirement Plan of the City (Title 28 of the Tulsa Revised Ordinances) which is incorporated herein by reference and made a part hereof as if fully set

forth herein. The salaries and cost of all benefits attributable to said City employees shall be considered to be an Operating Expense for the purpose of calculating incentive fees. Prior to the Effective Date hereof, the City has provided SMG with the names and titles of the City employees who are expected to be covered by the provisions of this subparagraph (b). On and after July 1, 2007 and so long as such employee remains a City employee as provided above, each such employee shall continue to be supervised by their City supervisor; however, SMG shall have the right to direct each such employee with respect his services at the Facilities and the opportunity to discuss any performance issues concerning such employee with the Contract Manager to ensure that such employee provides the same standard of performance as SMG's employees at the Facilities (e.g., are proficient, productive, and courteous to patrons).

7.3 No Solicitation or Employment by the City.

During the period commencing on the date hereof and ending one (1) year after the termination of this Agreement, except with SMG's prior written consent, the City will not, for any reason, solicit for employment, or hire any of the senior management personnel employed by SMG at the Facility, which personnel encompass the general manager, the assistant general manager and director level employees. Notwithstanding the foregoing, the provisions of this Section 7.3 shall not apply to any such senior management personnel who were employed by the City at the Facilities prior to the commencement of the Initial Operation Term.

8. Indemnification and Insurance.

8.1 Indemnification.

(a) SMG shall hold the City harmless for any loss, damage or claims arising from or related to SMG's performance of this Agreement. Additionally, SMG shall indemnify and hold the City harmless from all claims, demands, causes of action or suits of whatever nature arising out of the services, labor, and material furnished by SMG or its subcontractors under the scope of this Agreement.

(b) SMG shall indemnify, defend and save harmless the City and its officers, employees and agents from all suits and actions of every nature brought against them due to the use of material protected by trademark or copyright or patented appliances, products or processes provided by SMG under this Agreement. SMG shall pay all royalties and charges incident to such trademarks, copyrights or patents.

8.2 Liability Insurance.

(a) SMG shall secure prior to the Effective Date of this Agreement and shall keep in force at all times during the term of this Agreement, a commercial liability insurance policy, including public liability and property damage, covering the premises, the operations hereunder, in the amount of One Million Dollars (\$1,000,000.00) for bodily injury and for property damage, including products and completed operations and independent contractors.

(b) SMG shall secure prior to the Effective Date of this Agreement and maintain in force at all times during the term of this Agreement Comprehensive Automotive Bodily Injury and

Property Damage Insurance for business use covering all vehicles operated by SMG officers, agents and employees in connection with the Facilities, whether owned by SMG, the City, or otherwise, with a combined single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence (including an extension of hired and non-owned coverage).

(c) SMG shall be the named insured under all such policies. The City shall be an additional insured under the insurance policies described in subparagraphs (a) and (b) above.

(d) SMG shall also secure prior to the Effective Date of this Agreement and maintain in force at all times during the term of this Agreement professional liability insurance with coverage of at least Two Million Dollars (\$2,000,000.00) for claims of negligent errors, acts or omissions by SMG; and

(e) Certificates evidencing the existence of the above policies, as well as the policies required under Sections 8.3 and 8.4 herein, all in such form as the City may require, shall be delivered to the City prior to the Effective Date of this Agreement. Each such policy and certificate shall contain a valid provision or endorsement stating that the insurer cannot cancel coverage without the insurer first giving thirty (30) days written notice to City of such cancellation or termination.

(f) With respect to policies procured by it, SMG shall deliver to the City satisfactory evidence of renewal of such policies within ten (10) days after a policy's expiration date except for any policy expiring on the termination date of this Agreement or thereafter.

(g) All insurance procured by SMG in accordance with the requirements of this Agreement shall be primary over any insurance carried by the City and shall not require contribution by the City.

(h) Prior to the Effective Date of this Agreement, SMG has declared in writing and submitted to City for approval any amount of self-insured coverage or required payment of a deductible in excess of \$5,000.

8.3 Workers' Compensation Insurance.

SMG shall at all times during the term of this Agreement maintain workers' compensation insurance (including occupational disease hazards) with an authorized insurance company licensed to do business in Oklahoma, or through CompSource Oklahoma or through an authorized self-insurance plan approved by the Oklahoma Workers' Compensation Court, insuring its employees at the Facilities in amounts equal to or greater than required under law.

8.4 Fidelity Insurance and Performance Bond.

(a) SMG shall secure prior to the Effective Date of this Agreement and maintain during the term of this Agreement Fidelity Insurance covering all of SMG's personnel under this Agreement in the amount of One Million Dollars (\$1,000,000.00).

(b) SMG shall also provide to the City prior to the Effective Date of this Agreement a surety and performance bond or cash, certified or cashier's check in the amount of Two Hundred

Fifty Thousand Dollars (\$250,000.00) to protect the City against loss due to the inability or refusal of SMG to perform under this Agreement.

8.5 Certain Other Insurance.

(a) Nothing in this Agreement is intended to require SMG to maintain property and hazard insurance covering the personal property of the City or the premises at either Facility or business interruption insurance covering the interruption of operations by or for whatever cause at either Facility.

(b) With respect to any Pre-Existing Agreement existing as of the date hereof, the City shall use its best efforts to cause the counterparty thereunder to name SMG as an additional insured under any insurance maintained by such party pursuant to the terms of such Pre-Existing Agreements and in such event to deliver to SMG promptly after request therefor a certified copy of such policy and a certificate evidencing the existence thereof. If (i) during the Consulting Period the City enters into any other Pre-Existing Agreement involving services for, or the use of, either Facility, or (ii) SMG enters into any agreements during the Initial Operation Term and any Renewal Operation Term with any independent contractors for the provision of services hereunder or with any user of either Facility, the City or SMG, as the case may be, shall require that SMG or the City, as applicable, be named as an additional insured and shall have the right to require such contractors or users to name SMG or the City, as the case may be, as an additional insured under any insurance required by the City or SMG thereunder and to deliver to the City and SMG prior to the performance of such services a certified copy of such policy, plus a certificate evidencing the existence thereof.

9. **Ownership of Assets.**

9.1 Ownership.

The ownership of buildings and real estate, technical and office equipment and facilities, furniture, displays, fixtures, vehicles and similar tangible property located at the Facilities shall remain with the City. Effective upon the commencement of the Initial Operation Term, SMG and City shall mutually agree upon an initial Inventory of such property for each Facility. SMG shall provide to City on a quarterly basis an updated Inventory of property for each Facility. Ownership of and title to all intellectual property rights of whatsoever value, held in the City's name shall remain in the name of the City. The ownership of consumable assets (such as office supplies and cleaning materials) purchased with Operating Revenues or City funds shall remain with the City, but such assets may be utilized and consumed by SMG in the performance of services under this Agreement. The ownership of data processing programs and software owned by the City shall remain with the City, and the ownership of data processing programs and Software owned by SMG shall remain with SMG. SMG shall not take or use, for its own purposes, customer or exhibitor lists or similar materials developed by the City for the use of the Facilities, unless prior written consent is granted by the City. Ownership of equipment, furnishings, materials, or fixtures not considered to be real property and other personal property purchased by SMG with City funds for use at and for the Facilities shall vest in the City automatically and immediately upon purchase or acquisition. Without the prior consent of SMG, the assets of the City as described herein shall not be pledged, liened, encumbered or otherwise alienated or assigned except that an assignment or transfer of one or both Facilities or rights therein may be made by the City, in its sole discretion, to a public authority or trust of which the City is the

sole beneficiary. In the event of such an assignment or transfer, this Agreement and all rights and obligations thereunder may be assigned by City, in its sole discretion, to such authority or trust.

9.2 City Obligations.

Except as herein otherwise set forth, throughout the term of this Agreement, the City will maintain full beneficial use and ownership of the Facilities and, subject to the budgeting and appropriation of sufficient funds for said purpose, will pay, keep, observe and perform all payments, terms, covenants, conditions and obligations under any bonds, debentures or other security agreements or contracts relating to the Facilities to which the City may be bound.

10. **Assignment; Affiliates; Subcontractors.**

10.1 Assignment.

SMG may not assign this Agreement nor any of the rights or obligations hereunder without the prior written consent of the City. For sake of clarity, the parties acknowledge that the foregoing does not preclude the assignment by SMG of its rights to receive its management and incentive fees hereunder to its lender(s) as collateral security for SMG's obligations under any credit facilities provided to it by such lender(s), provided that such collateral assignment shall not in any event cover SMG's rights to manage, promote or operate the Facilities hereunder.

10.2 SMG Affiliates.

(a) Transactions with Affiliates. In connection with its management responsibilities hereunder relating to the purchase and/or procurement of equipment, materials, supplies, inventories, and services for the Facilities, SMG shall have the right, but not the obligation, to purchase and/or procure from, or otherwise transact business with, an Affiliate of SMG. In the event SMG purchases and/or procures from, or otherwise transacts business with, an Affiliate of SMG as contemplated by the foregoing sentence, the prices charged and services rendered shall be competitive with those obtainable from others rendering comparable goods and/or services of like kind. To ensure compliance in this respect, SMG agrees to obtain at least two (2) other competitive bids from Persons other than SMG's Affiliates whenever SMG proposes to transact business with an Affiliate for the provision of such goods or services hereunder. In addition, SMG, as agent for the City, may license the use of the Facilities or any part thereof to itself in connection with any event in the promotion of which SMG is involved, so long as the license fee charged is on prevailing rates and terms or such other rates and terms as the City approves.

(b) Conflicts of Interest. The City acknowledges that SMG manages other public assembly facilities which may, from time to time, be in competition with the Facilities. The management of competing facilities will not, in and of itself, be deemed a conflict of interest or breach of SMG's duties hereunder; provided, however, in all instances in which the Facilities are in competition with other public assembly facilities managed by SMG for the solicitation of certain events, SMG shall not involve its principal office (currently in Philadelphia, Pennsylvania) on behalf of any such other facility in an attempt to influence the decision-making process regarding the selection of a site by such events.

10.3 Subcontractors.

SMG shall provide to the Contract Manager, prior to engagement, the names of all consultants or contractors that SMG intends to engage to perform any of the services related to this Agreement and shall notify the Contract Manager of any additions to, substitutions or changes in said consultants or contractors. The City reserves the right to request (but not direct) the replacement of any of SMG's consultants or contractors.

11. **Laws and Permits.**

11.1 Permits, Licenses, Taxes and Liens.

SMG shall use reasonable efforts to procure any permits and licenses required for the business to be conducted by it hereunder. The City shall cooperate with SMG in applying for such permits and licenses. SMG shall deliver copies of all such permits and licenses to the City. SMG shall pay promptly, out of the accounts specified in Section 5.6, all taxes, excises, license fees and permit fees of whatever nature arising from its operation, promotion and management of the Facilities. Pursuant to the Charter of the City of Tulsa, no lien of any kind shall exist against any property of City. SMG shall indemnify and hold the City harmless from all claims, demands, causes of action or suits of whatever nature arising out services performed in connection with the Facilities by SMG or its subcontractors or by reason of any work or labor performed or materials furnished by any mechanic or materialman.

11.2 Governmental Compliance.

SMG, its officers, agents and employees shall comply with all Laws applicable to SMG's management of the Facilities hereunder to the extent that there are sufficient Operating Revenues or funds from the City to effect such compliance. Without limiting the foregoing, with respect to the ADA, SMG will comply with Title III of the ADA and the provision of such auxiliary aids or alternate services as may be required by the ADA. Nothing in this Section 11.2 or elsewhere in this Agreement shall, however, require SMG to undertake any of the foregoing compliance activity, nor shall SMG have any liability under this Agreement therefor, if (a) such activity requires any Capital Improvements or Capital Equipment purchases, unless the City provides funds for such Capital Improvements pursuant to Section 5.8 hereof or provides funds for such Capital Equipment purchases in the Approved Budget pursuant to Section 5, or (b) any Pre-Existing Agreement fails to require any licensee, lessee, tenant, promoter or user of any portion of the Facilities to comply, and to be financially responsible for compliance, with Title III of the ADA in connection with any activities of such licensee, lessee, tenant, promoter or user at the Facilities. Furthermore, SMG shall require every licensee, lessee, tenant, promoter or user of any portion of the Facilities to comply, and to be financially responsible for compliance, with Title III of the ADA in connection with any activities of such licensee, lessee, tenant, promoter or user at the Facilities.

11.3 No Discrimination in Employment.

In connection with the performance of work under this Agreement, SMG shall comply with the terms of Title 5, Section 110 of the Tulsa Revised Ordinances relating to equal employment opportunity.

12. Termination.

12.1 Termination Upon Breach.

(a) The City may terminate this Agreement upon a Material Breach by SMG.

(b) SMG may terminate this Agreement upon a material breach by the City hereunder. The City shall be in breach hereunder if (i) it fails to pay any sum payable hereunder within sixty (60) days after same is due and payable, or (ii) it fails in any material respect to perform or comply with any of the other terms, covenants, agreements or conditions hereof and such failure continues for more than thirty (30) days after written notice thereof from the other party. In the event that a breach (other than a breach in the payment of money) is not reasonably susceptible to being cured within the 30-day period, the City shall not be considered in breach if it shall within such 30-day period have commenced with due diligence and dispatch to cure such breach and thereafter completes with dispatch and due diligence the curing of such breach.

12.2 Termination Other than Upon Breach.

(a) SMG shall have the right to terminate this Agreement upon sixty (60) days written notice to the City (i) under the circumstances described in Section 5.3 hereof, or (ii) if the City elects not to make Capital Improvements at the Facilities which were approved by City in accordance with the approved annual plan to the extent that the lack of such Capital Improvements materially interferes with, impedes or impairs the ability of SMG to manage the Facilities effectively.

(b) Either party shall have the right to terminate this Agreement as to the affected facility under the circumstances specified in Section 13.6(c) according to the terms of and with the effect set forth in Section 13.6(c).

12.3 Effect of Termination.

In the event this Agreement expires or is terminated, (i) all Operating Expenses incurred or committed to prior to the date of expiration or termination shall be paid using funds on deposit in the account(s) described in Sections 5.6 and 5.7 (ii) the City shall pay SMG all fees earned to the date of expiration or termination (the fixed and incentive fees described in Section 4 hereof being subject to proration) within sixty (60) days of invoicing, provided that the City shall be entitled to offset against such unpaid fees any damages directly incurred by the City in remedying any default by SMG hereunder which resulted in such termination (other than the fees or expenses of any replacement manager for the Facility). Upon the expiration of this Agreement or a termination pursuant to Section 12.1 or 12.2, all further obligations of the parties hereunder shall terminate except for the obligations in this Section and in Sections 2.6(f), 6, 8.1 and 12.4.

12.4 Surrender of Premises.

Upon termination of this Agreement (termination shall, for all purposes in this Agreement, include termination pursuant to the terms of Section 12 and any expiration of the term hereof), SMG shall surrender and vacate the Facilities upon the effective date of such termination. The Facilities and all equipment and furnishings shall be returned to the City in good repair, reasonable

wear and tear excepted, to the extent funds were made available therefor by the City. All reports, records, including financial records, and documents maintained by SMG at the Facilities relating to this Agreement other than materials containing SMG's proprietary information shall be immediately surrendered to the City by SMG upon termination.

13. Miscellaneous.

13.1 Use of Facilities at Direction of City.

(a) At the direction of the City, upon reasonable advance notice and subject to availability, SMG shall provide use of the Facilities or any part thereof to civic and nonprofit organizations located in the Tulsa, Oklahoma area at reduced rates. All event-related expenses, including but not limited to ushers, ticket-takers, technicians, security, preparation, setup, cleanup and other expenses incurred in connection with the use of the Facilities shall be paid by such organizations.

(b) The City shall have the right to use the Facilities or any part thereof, upon reasonable advance notice and subject to availability without the payment of any rental or use fee, except that an adjustment will be made to the Facility's annual operating expenses to reflect the direct out-of-pocket expenses incurred in connection with such uses.

(c) The naming sponsor of the BOK Center and the sponsor of the premium seating level of the BOK Center shall each have the right to use the BOK Center one (1) day per year on dates that are reasonably agreeable to the City and Sponsors when no other event is scheduled (including pre- and post-event activities). Sponsors will pay all costs associated with operating the BOK Center in relation to such use, including but not limited to, ushers, ticket-takers, technicians, security, preparation, setup, and cleanup.

(d) Use of the Facilities shall not be scheduled pursuant to subparagraphs (a), (b) or (c) above if such use will conflict with paying events booked by SMG and shall be subordinate thereto in terms of priority of use of the Facilities. In the event that a client or user requests a Facility for an event on a date more than thirty (30) days prior to an event scheduled pursuant to subparagraphs (a), (b) or (c) above and such event already scheduled cannot be rescheduled, and such prospective event, if scheduled and performed, would have provided SMG rent and other Operating Revenues, SMG shall receive credit toward its Operating Revenues in the then current Fiscal Year for the purpose of calculating its Gross Revenue Incentive as though such prospective event had occurred; provided, however, that such credit shall reflect the actual value of such potential revenue as projected by SMG and approved by the Contract Manager and shall not exceed the published rates for the Facility involved. In the case of such a conflicting use of a Facility with an event scheduled pursuant to subparagraph (a), the credit to SMG shall reflect the amount by which the actual value of such potential revenue as projected by SMG and approved by the Contract Manager exceeds the actual revenue received for the use of the Facility.

13.2 Cooperation.

The parties desire to cooperate with each other in the management and operation of the Facilities pursuant to the terms hereof. In keeping with this cooperative spirit and intent, any dispute arising hereunder will be referred to the parties' respective agents or representatives who will endeavor in good faith to resolve any such disputes within the limits of their authority.

13.3 No Partnership or Joint Venture.

Nothing herein contained is intended or shall be construed in any way to create or establish the relationship of partners or a joint venture between the City and SMG. None of the officers, agents or employees of SMG shall be or be deemed to be employees of the City for any purpose whatsoever.

13.4 Entire Agreement.

This Agreement, the IFB and the IFB Response contain the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings with respect thereto. No other agreements, representations, warranties or other matters, whether oral or written, will be deemed to bind the parties hereto with respect to the subject matter hereof. To the extent that there is any conflict or inconsistency among this Agreement, the IFB and the IFB Response, such conflict or inconsistency shall be resolved by reference to, and governed by, the following priority rules: first, this Agreement; then the IFB and then the IFB Response.

13.5 Written Amendments.

This Agreement shall not be altered, modified or amended in whole or in part, except in writing executed by each of the parties hereto.

13.6 Force Majeure.

(a) No party will be liable or responsible to the other party for any delay, damage, loss, failure, or inability to perform caused by "Force Majeure" if notice is provided to the other party within five (5) days of the date on which such party gains actual knowledge of the event of "Force Majeure" that such party is unable to perform.

(b) Neither party hereto shall be under any obligation to supply any service or services if and to the extent and during any period that the supplying of any such service or services or the provision of any component necessary therefor shall be prohibited or rationed by any Law.

(c) In the event of damage to or destruction of one or both of the Facilities by reason of a Force Majeure event or by any regulatory action or requirements that, in either case, is expected to render one or both of the Facilities materially untenable, notwithstanding the City's reasonable efforts to remedy such situation, for a period estimated by an Architect selected by the City at the request of SMG of at least one hundred eighty (180) days from the happening of the Force Majeure event or the effective date of the regulatory action or requirements, either party may terminate this Agreement as to the affected Facility or Facilities upon written notice to the other. In the event that this Agreement is terminated as to only one Facility, all provisions relating to such Facility shall

be of no further effect including the compensation and incentive payments to be paid to SMG. In the event that one or both of the Facilities becomes either wholly or partially untenable as a result of any of the foregoing, appropriate adjustments to compensation and to the Benchmarks shall be made.

(d) SMG may suspend performance required under this Agreement as to a damaged or destroyed Facility or Facilities, without any further liability, in the event of any Force Majeure event, which event is of such effect and duration as to effectively curtail the use of the damaged or destroyed Facility or Facilities so as to effect a substantial reduction in the need for the services to the affected Facility provided by SMG for a period in excess of ninety (90) days; provided, however, that for the purposes of this subsection, SMG shall have the right to suspend performance retroactively effective as of the date the use of the Facility was effectively curtailed. "Substantial reduction in the need for the services provided by SMG" shall mean such a reduction as shall make the provision of any services by SMG economically impractical. No payments of the management fees otherwise due and payable to SMG for services to the affected Facility shall be made by the City during the period of suspension. In lieu thereof, the City and SMG may agree to a reduced management fee payment for the period of reduction in services required.

13.7 Binding Upon Successors and Assigns; No Third-Party Beneficiaries.

(a) This Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon, the parties hereto and each of their respective successors and permitted assigns.

(b) This Agreement shall not be construed as giving any Person, other than the parties hereto and their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any of the provisions herein contained, this Agreement and all provisions and conditions hereof being intended to be, and being, for the sole and exclusive benefit of such parties and their successors and permitted assigns and for the benefit of no other Person.

13.8 Notices.

Any notice, consent or other communication given pursuant to this Agreement will be in writing and will be effective either (a) when delivered personally to the party for whom intended, (b) on the second business day following mailing by an overnight courier service that is generally recognized as reliable, or (c) on the fifth day following mailing by certified or registered mail, return receipt requested, postage prepaid, in any case addressed to such party as set forth below or as a party may designate by written notice given to the other party in accordance herewith.

To the City:

City of Tulsa
200 Civic Center
Tulsa, OK 74103
Attention: City Clerk

With a copy (which shall not constitute notice) to:

City Attorney
City of Tulsa
200 Civic Center, Suite 316
Tulsa, OK 74103

To SMG:

SMG
701 Market Street, 4th Floor
Philadelphia, PA 19106
Attention: President
Telecopy: (215) 592-0361

With a copy (which shall not constitute notice) to:

Stradley, Ronon, Stevens & Young
2600 One Commerce Square
Philadelphia, PA 19103
Attention: William R. Sasso, Esq. Or
Steven A. Scolari, Esq.
Telecopy: (215) 564-8120

13.9 Table of Contents, Section Headings and Defined Terms.

The Table of Contents and section headings contained herein are for reference purposes only and shall not in any way affect the meaning and interpretation of this Agreement. The terms defined herein and in any agreement executed in connection herewith include the plural as well as the singular and the singular as well as the plural, and the use of masculine pronouns shall include the feminine and neuter.

13.10 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original copy of this Agreement, and all of which, when taken together, shall be deemed to constitute but one and the same agreement.

13.11 Severability.

The invalidity or unenforceability of any particular provision, or part of any provision, of this Agreement shall not affect the other provisions or parts hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions or parts were omitted.

13.12 Non-Waiver.

A failure by either party to take any action with respect to any breach or violation by the other of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of such party to act with respect to any prior,

contemporaneous, or subsequent violation or breach or with respect to any continuation or repetition of the original violation or breach.

13.13 Consent.

Wherever the consent or approval of a party is required under the terms of this Agreement, the party whose consent or approval is required shall not unreasonably withhold or delay such consent or approval.

13.14 Certain Representations and Warranties.

(a) The City represents and warrants to SMG the following: (i) all required approvals have been obtained, and the City has full legal right, power and authority to enter into and perform its obligations hereunder, and (ii) this Agreement has been duly executed and delivered by the City and constitutes a valid and binding obligation of the City, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

(b) SMG represents and warrants to the City the following: (i) all required approvals have been obtained, and SMG has full legal right, power and authority to enter into and perform its obligations hereunder, and (ii) this Agreement has been duly executed and delivered by SMG and constitutes a valid and binding obligation of SMG, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

(c) SMG has been provided prior to the date hereof with true, complete and accurate copies of each of the Pre-Existing Agreements existing as of the date hereof. Each such agreement is in full force and effect, and to the knowledge of the City, no counter party to such agreement is in breach or violation of any such agreement. There exists no event or condition, which with notice, the lapse of time or both, would cause the City or, to the knowledge of the City, any counter party to such agreements to be in breach thereunder.

13.15 Governing Law.

This Agreement will be governed by and construed in accordance with the laws of the State of Oklahoma, without giving effect to otherwise applicable principles of conflicts of law. The parties stipulate that venue is proper in a court of competent jurisdiction in Tulsa County, Oklahoma and each party waives any objection to such venue.

[rest of this page intentionally left blank]

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto to be effective on the date of execution by the City.

ATTEST:

Dana Burks
City Clerk DEPUTY



CITY OF TULSA

By: Ben A.
Mayor

APPROVED:

Date: MAR 10 2006, 2006

Linda C. Redemann
Assistant City Attorney

SMG

By: John F. Burns
Name: JOHN F. BURNS
Title: CFO

Date: March 2, 2006

EXHIBIT "A" - PRE-EXISTING AGREEMENTS

USE PERMIT FOR EVENTS AFTER 7/1/07	TYPE OF EVENT	DATE OF EVENT
Pre-Existing Use Permits - Signed		
Career Tech	Oklahoma Annual Summer Conference	July 28-August 3, 2007
Oklahoma Education Association	2007 OEA State Convention	October 16-18, 2007
Oklahoma Dental Association	State Association Annual Convention	April 23-26, 2008
Oklahoma Dental Association	State Association Annual Convention	April 21 - 25, 2009
Eastern Star	Triennial Fall North American Conference	October 28-November 6, 2009
Oklahoma Dental Association	State Association Annual Convention	April 26 - 30, 2011
Pre-Existing Use Permits - Unsigned		
Oklahoma Municipal League	Annual Conference and Exposition	September 10-13, 2007
State Services System	State Beauty Supply Show	September 20-25, 2007
Dead Sea Scrolls	Exhibit	June 1-30, 2008
National Association of Campus Activities	2008 Central Region Conference	October 15 - 18, 2008
Skills USA	Annual Leadership Conference	May 2-5, 2009
Career Tech	Oklahoma Annual Summer Conference	August 1-5, 2010
Current Proposals with Rate Offers		
Enlisted Association of the National Guard of the United States	National Conference	August 11-15, 2007
National Association for the Education of Homeless Children and Youth	19th Annual Conference	October 12-16, 2007
Grand Slam Club/OVIS	Hunter and Outfitter Convention	February 6-10, 2008
Hospitality Performance Network	Conference	March 3-7, 2008
American Rhododendron Society	National ARS Conference	April 9-12, 2008
National Trust for Historic Preservation	National Conference	October 19-26, 2008
Christian Missionary Alliance	Conference	November 19-24, 2008
Barbershop Harmony Society	Mid-Winter Convention	January 25-February 1, 2009
International School of Hydrocarbon Measurement	2009 Convention	May 18-21, 2009
Forty and Eight	Annual National Meeting	September 20-26, 2009
Barbershop Harmony Society	Mid-Winter Convention	January 24-31, 2010
National Association County Agricultural Agents	Annual Meeting/Professional Improvement	July 7-17, 2010
International Association for Identification	International Convention	July 25-31, 2010
Aglow International	Biennial National Convention	October 18-24, 2010
Adventist-Layman's Services and Industries	International Convention	July 31-August 8, 2011
American Philatelic Society	Summer Convention	August 11-14, 2011

Lease Agreements

Carson Attractions leasing of the ticket office continues "until such time as the arena in the TCC is closed due to the Vision 2025 renovation, such date currently projected to be on or about August 1, 2007."

Service Agreements

Wackenhut Security Services at the Convention Center is through a contract which includes all city departments.

• The Pro Rodeo Cowboy Association (PRCA) is not included on this list, however they have been in talks with the Mayor regarding dates in 2008.

EXHIBIT "B" - PRE-OPERATION SERVICES

- A. As a consultant for the City, SMG will, during the Pre-Operation Period:
1. Utilize the SMG personnel who serve as the BOK Center's Regional Vice President and its General Manager (when retained by SMG as provided in Section 7 hereof) as the channels through which all communications among SMG, the City or the City's architectural and engineering firm and the other consultants, representatives and agents of the City, regarding operational aspects of the Facilities referred to in this Exhibit "B" will be made.
 2. Submit to the City proposals regarding pre-operation marketing, advertising and sponsorship plans.
 3. Submit to the City for approval recommendations regarding appropriate Policies and Procedures, consistent with this Agreement, to be implemented in operating the Facilities including, but not limited to the following:
 - (a) Separate booking and rental rate policies for the BOK Center and the Convention Center.
 - (b) Finance, budgeting and accounting procedures including, but not limited to, accounting, budgeting, cash management and cash control, reporting, records retention and risk management procedures.
 - (c) Box office procedures including, but not limited to, charges, credit card sales and box office services for other City owned facilities.
 - (d) Concessions operations.
 - (e) Catering, including third party catering.
 - (f) Employee policies and procedures including, but not limited to, development of personnel manual, employee standards and responsibilities, job descriptions, training including safety training and ADA compliance training.
 - (g) Exhibitor services including, but not limited to telecommunications, audio visual and security.
 - (h) Conflict of interest. (See Section 10.2 of this Agreement.)
 - (i) Safety program including, but not limited to, policies and procedures regarding first aid, emergency response, evacuation plans, disaster plans, crowd control, and hazardous materials including, but not limited to, matters involving notice, permits, authorizations, procedures, approval and removal.
 - (j) Reporting procedures related to complaints and incidents with respect to the Facilities.

- (k) Inventory control program.
 - 4. Recommend marketing and event booking strategies and relationships with planners, promoters and regional marketing/sales agencies such as the Tulsa Convention and Visitors Bureau and area hotels.
 - 5. Prepare a list of operating supplies to be procured by the City for the start-up of the BOK Center and the renovated Convention Center.
 - 6. Recommend approaches so that potential users will not simply compare rates at the BOK Center and the Convention Center in determining which facility to use.
 - 7. Make recommendations regarding economies of scale and potential fiscal savings at the BOK Center and the Convention Center.
 - 8. Recommend a schedule for opening time frame of BOK Center which gives potential users of the BOK Center the maximum possible flexibility to reschedule events at the Convention Center in the event of construction delays at the BOK Center.
 - 9. Recommend strategies and relationships to solicit primary third-party vendor service programs such as food and beverage, parking, ticketing, etc.
- B. As the managing agent of the City to operate, manage and promote the Facilities during the Pre-Operation Period, SMG will coordinate with the City's employees at the Convention Center, where applicable, to do the following:
- 1. Represent such Facilities' interests, as necessary or appropriate, with City departments.
 - 2. Implement the policies and procedures for the Facilities proposed by SMG and approved by the City including, but not limited to the booking and rental rate policies.
 - 3. Negotiate, execute and deliver, in SMG's name as agent for the City, tenant/user agreements, booking commitments and licenses that have a term extending beyond the Consulting Period, provided that no such agreement, commitment or license will extend beyond the applicable Initial Operation Term or Renewal Operation Term without the prior written approval of the City.
 - 4. Negotiate, execute and deliver, in SMG's name as agent for the City, service contracts and vendor agreements that have a term extending beyond the Consulting Period, provided that no such contract or agreement will extend beyond the applicable Initial Operation Term or Renewal Operation Term without the prior written approval of the City.

5. Implement as managing agent for the City all advertising and sponsorship sales for the applicable Facility consistent with the advertising plan approved by the City.
6. Maintain separate accurate accounting records relating to its activities on behalf of each Facility; however, it is understood that operational accounting records for the Convention Center during this period shall continue to be maintained by the City employees at the Convention Center.
7. Establish necessary bank accounts, payroll services and billing procedures.
8. Issue to the City periodic financial reports reflecting SMG's activities on behalf of each Facility; however, it is understood that operating financial reports for the Convention Center during this period shall continue to be prepared by the City employees at the Convention Center.
9. Develop, recommend for approval by City and implement, as approved, marketing plans for the BOK Center and Convention Center designed (a) to avoid sales efforts that overlap between the Facilities and (b) to promote a clear identity for the BOK Center that is distinct from the identity of the Convention Center so as to lessen confusion surrounding event locations (i.e., use facility names and logos which are dissimilar).
10. Market the BOK Center and the Convention Center jointly to conventions requiring large general session space (religious groups, etc.).
11. Plan, promote and execute, in conjunction with the City, a Grand Opening event for the BOK Center and a Grand Re-Opening event for the Convention Center.
12. Create, install, maintain and update content for the website for each Facility.

EXHIBIT "C" - DEVELOPMENT AND PRE-CONSTRUCTION SERVICES

A. As a consultant for the City, SMG will during the Development and Pre-Construction Period:

1. Designate an SMG employee who will serve as senior design development and construction consulting executive for SMG, through whom all communications among SMG, the City, its architectural and engineering firm, and the other consultants, representatives and agents of the City relating to the consulting responsibilities referred to in this Exhibit "C" will be channeled.
2. Prior to the issuance of construction documents (Final Design Phase) for each Facility, a "Plan Design Review" team consisting of SMG operations executives representing various disciplines from within SMG will review the following components of the overall design and will make recommendations to the City and its other consultants, agents and representatives with respect thereto prior to issuance of construction documents.

The Plan Design Review tasks will encompass the following:

- (a) Utility Review - review electrical lighting and audio/visual plans, with a focus on the adequacy of utility service in light of projected user and facility needs.
- (b) Telecommunications Review - formulate anticipated end user requirements for reference in system design. Develop equipment list in consultation with telecommunications consultant, and develop administrative telecommunications plan in light of Facility needs.
- (c) Keying System Review - review master key and hardware schedules. Develop keying plan for contractor to follow, with emphasis on developing long-term focus on promoting building security/safety needs.
- (d) Interior Finish Review - review interior finish components, including public furniture, carpet, etc. with a focus on desire for cost-efficient long-term care and upkeep; make recommendations regarding the purchase of proper maintenance equipment and initial procurement of durable fixtures.
- (e) Security System/CCTV Review - review of planned security/CCTV system with a focus on desire to identify, with prioritization, security needs.
- (f) Directional Signage Review - review signage specifications in design plans with a focus on desire that signage meet the needs of anticipated event schedule and related vehicle/patron traffic patterns. Assist the graphics designers in the selection of interior graphics communication needs and locational plans.

- (g) Kitchen/Concession Review - review both permanent and portable kitchen specifications and equipment and, together with any proposed concessionaire, recommend layout of facilities and procurement of small wares.
 - (h) HVAC Review - review HVAC specifications with view to control of appropriate zones in the facility that will tend to optimize energy conservation.
 - (i) Load In/Load Out - review ingress and egress with a view to event participation and production, including ceiling heights, storage availability and truck accessibility.
 - (j) Rigging/Hanging Point Analysis -- develop specifications and guidelines together with project designer and structural consultants with a view to safety and load-in and load-out efficiency considerations.
 - (k) Staging and Seating -- recommend seating and staging types and provide specifications with a view to set-up, maintenance, storage and labor efficiency considerations.
3. Review and comment on reports and studies provided by the City's other consultants which are required for the design of the Project and which affect operations (i.e., acoustical study, vertical transportation study etc.).
 4. Make recommendations regarding layout for administrative and box offices and back-of-house areas for incorporation into the design documents.
 5. Review proposed locations, types and sizes of the exterior and interior signage.
 6. Review design documents at predetermined intervals to identify whether comments resulting from previous design reviews have been incorporated. Attend planning construction meetings on an on-going, as needed basis until the general construction commences or the parties otherwise agree.
- B. During this period of time, the City shall obtain input from, and the approval of, SMG for any service contract, vendor agreement, or license or user agreement pertaining to either Facility which has a term extending beyond the Consulting Period.

EXHIBIT "D" - FIXTURE, FURNITURE & EQUIPMENT CONSULTING SERVICES

- A. SMG will provide during the Consulting Period the following Fixture, Furniture and Equipment consulting services:
1. Develop and submit to the City for approval, after having obtained input with respect thereto from the City's consultants, a proposed inventory of fixture, furniture and equipment ("FF&E") as amended from time to time by the City. Such proposed inventory will be based on SMG's judgments about the size and specific needs of the Facilities and SMG's experience as to which equipment is necessary to operate the Facilities effectively.
 2. Be available to recommend to the City modifications to the working budget for the construction and equipping of the Facilities based upon an analysis of all costs for FF&E reflected in the FF&E inventory. These modifications would reflect anticipated cost savings due to SMG's volume buying power, negotiating experience and expertise in purchasing the proper equipment for the application.
 3. Propose modifications to the FF&E inventory based upon programmatic changes to the City's working budget for the construction and equipping of the Facilities.
 4. Provide general parameters and general information to the City to assist in the design of the technical systems for the Facilities, including the telecommunications system and radio communications.

EXHIBIT "E" - INCENTIVE BENCHMARKS

Benchmarks. The benchmarks identified herein shall serve as the basis for determining the provision of incentives to the Contractor at the conclusion of each term. A negative benchmark requires a reduction of the negative value in order to qualify for the Incentive.

I. Events Center Management Incentives

Item	Description	Benchmarks Year 1	Benchmarks Year 2	Benchmarks Year 3	Benchmarks Year 4	Benchmarks Year 5
A.	Gross Revenue Incentive (33 1/3 % of Annual Fixed Fee) *	N/A***	\$ 3,735,000	5% Improvement to Year 2 Actual Gross Revenues	5% Improvement to Year 3 Actual Gross Revenues	5% Improvement to Year 4 Actual Gross Revenues
B.	Attendance Incentive (33 1/3 % of Annual Fixed Fee) *	N/A***	500,000	5% Improvement to Year 2 Actual Attendance	5% Improvement to Year 3 Actual Attendance	5% improvement to Year 4 Actual Attendance
C.	Net Operating Profit(Loss) Incentive (33 1/3 % of Annual Fixed Fee) *	N/A***	\$ 285,000	10% Improvement to Year 2 Actual Net Operating Profit/(Loss)	10% Improvement to Year 3 Actual Net Operating Profit/(Loss)	10% Improvement to Year 4 Actual Net Operating Profit/(Loss)

II. Convention Center Management Incentives

Item	Description	Benchmarks Year 1	Benchmarks Year 2	Benchmarks Year 3	Benchmarks Year 4	Benchmarks Year 5
A.	Gross Revenue Incentive (33 1/3 % of Annual Fixed Fee) *	\$320,000	25% Improvement to Year 1 Actual Gross Revenues	25% Improvement to Year 2 Actual Gross Revenues	15% Improvement to Year 3 Actual Gross Revenues	15% Improvement to Year 4 Actual Gross Revenues
B.	Attendance Incentive (33 1/3 % of Annual Fixed Fee) *	165,000	25% Improvement to Year 1 Actual Attendance	25% Improvement to Year 2 Actual Attendance	15% Improvement to Year 3 Actual Attendance	15% Improvement to Year 4 Actual Attendance
C.	Net Operating Profit(Loss) Incentive (33 1/3 % of Annual Fixed Fee) *	\$(2,000,000)	5% Improvement to Year 1 Actual Net Operating Profit/(Loss)	5% Improvement to Year 2 Actual Net Operating Profit/(Loss)	5% Improvement to Year 3 Actual Net Operating Profit/(Loss)	5% Improvement to Year 4 Actual Net Operating Profit/(Loss)

Notes * and *** descriptions can be found at the end of the pricing page in the IFB.

▶ Gross Revenue Benchmarks exclude any funds from the Hotel/Motel Tax Revenues.

▶ Net Operating Profit/(Loss) Benchmarks exclude any Debt Service or Capital Improvements related to either facility or any Management Fees or Incentives.

FIRST AMENDMENT TO MANAGEMENT AGREEMENT

THIS FIRST AMENDMENT TO MANAGEMENT AGREEMENT ("Amendment") is entered into by and between the CITY OF TULSA, an Oklahoma municipal corporation (the "City"), and SMG, a Pennsylvania general partnership, whose current address is 701 Market Street, 4th Floor, Philadelphia, PA, 19106 ("SMG"), to be effective upon execution by the City as reflected on the signature page hereof ("Effective Date").

WHEREAS, City and SMG entered into a Management Agreement to be effective on March 10, 2006 designated as City Contract number 24650 for development and pre-construction services, pre-operating services and management services for City's Convention Center and BOK Center (the "Agreement"); and

WHEREAS, the scheduled completion date for the BOK Center has been postponed and the parties mutually desire to amend the Agreement to accommodate the new completion date of the BOK Center.

NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree to amend the Agreement as follows:

A. Section 1.13 of the Agreement shall be deleted in its entirety and the following shall be substituted therefor:

1.13 "Consulting Period" – the period beginning on the Effective Date and ending on June 30, 2007 for the Convention Center and the period beginning on March 10, 2006, the Effective Date of the Agreement, and ending on June 30, 2008 for the BOK Center.

B. Section 1.30 of the Agreement shall be deleted in its entirety and the following shall be substituted therefor:

1.30 "Initial Operation Term" – July 1, 2007 through June 30, 2008 for the Convention Center and July 1, 2008 through June 30, 2009 for the BOK Center.

C. Section 1.39 of the Agreement shall be deleted in its entirety and the following shall be substituted therefor:

1.39 "Pre-Operation Period" – the period beginning on July 1, 2006 and ending on June 30, 2007 for the Convention Center and the period beginning on July 1, 2006 and ending on June 30, 2008 for the BOK Center.

D. Section 1.42 of the Agreement shall be deleted in its entirety and the following shall be substituted therefor:

1.42 "Pre-Operation Budget" – as defined in Section 2.5 (g) hereof.

E. Section 2.3 (o) of the Agreement shall be deleted in its entirety and the following shall be substituted therefor:

- (o) On or about March 1, 2007, SMG shall physically establish and maintain an office in the Facilities, assigning and relocating a full-time general manager (the "General Manager") to the Tulsa area to prepare for the transition of the management duties of the Facilities to SMG. SMG shall be solely responsible for the expenses of such relocation. Beginning on said date and continuing up to the commencement of the Initial Operation Term for the Convention Center, the General Manager shall, in addition to the duties set forth on Exhibit B, direct the activities of the City employees assigned to the Convention Center under the supervision of the Contract Manager.

F. Sections 3.1 and 3.2 of the Agreement shall be deleted in their entirety and the following shall be substituted therefor:

3.1 Initial Operation Terms.

The Initial Operation Term for the Convention Center shall commence on July 1, 2007 and shall continue until June 30, 2008, unless earlier terminated pursuant to the provisions of this Agreement. The Initial Operation Term for the BOK Center shall commence on July 1, 2008 and shall continue until June 30, 2009, unless earlier terminated pursuant to the provisions of this Agreement.

3.2 Renewal Operation Terms.

The City may, in its sole discretion, extend the term hereof for the operation of the Convention Center on the same terms and conditions for an additional five (5) one-year terms as provided below. The City may, in its sole discretion, extend the term hereof for the operation of the BOK Center on the same terms and conditions for an additional four (4) one-year terms as provided below. Renewal of this Agreement is subject to the City's needs and specifically to the City's annual appropriation of sufficient funds in the City's fiscal year (which is the same as the Fiscal Year hereunder). In the event that the City does not appropriate or budget sufficient funds to perform this Agreement, this Agreement will not be renewed by the City; however, the City agrees not to substitute a similar service for the same Facility to fill the same need provided by SMG hereunder during the Initial Operation Term and the first two (2) Renewal Operation Terms for the BOK Center and during the Initial Operation Term and the first three (3) Renewal Operation Terms for the Convention Center if this Agreement is terminated or not renewed solely due to non-appropriation of funds. For the third and fourth Renewal Operation Terms hereunder for the BOK Center and for the fourth and fifth Renewal Operation Term for the Convention Center, the City shall have the right not to renew this Agreement in its sole discretion, upon giving SMG written notice sixty (60) days prior to the end of the second and third Renewal Operation Terms for the BOK Center and sixty (60) days prior to the end of the third and fourth Renewal Operation Terms for the Convention Center, as the case may be, without cause or penalty (i.e., the City may substitute a similar service to fill the same need for the same Facility).

G. Section 4.2 (a) of the Agreement shall be deleted in its entirety and the following shall be substituted therefor:

(a) BOK Center.

Subject to Section 4.2 (c) hereof, as total compensation to SMG for its Pre-Operation Services for the BOK Center during the Pre-Operation Period, the City shall pay SMG for each year of the Pre-Operation Period a fixed fee in the amount of SIXTY-FIVE THOUSAND DOLLARS (\$65,000.00) which shall be invoiced and paid in twelve (12) monthly installments in the amount of FIVE THOUSAND FOUR HUNDRED SIXTEEN AND 67/100 DOLLARS (\$5,416.67).

H. Section 4.2 (b) of the Agreement shall be deleted in its entirety and the following shall be substituted therefor:

(b) Convention Center.

(i) Subject to Section 4.2 (c) hereof, as total compensation to SMG for its Pre-Operation Services for the Convention Center during the Pre-Operation Period, the City shall pay SMG a fixed fee in the amount of THIRTY THOUSAND DOLLARS (\$30,000.00) which shall be invoiced and paid in twelve (12) monthly installments in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00).

(ii) Subject to Section 4.2 (c) hereof and, in addition to the compensation set forth in Section 4.2 (b)(i), the City shall pay SMG as compensation for the services to be provided by the General Manager under Section 2.3 (o) SEVENTY THREE THOUSAND SIX HUNDRED AND SEVENTY TWO DOLLARS (\$73,672.00) which shall be invoiced and paid in monthly installments in the amount of EIGHTEEN THOUSAND FOUR HUNDRED AND EIGHTEEN DOLLARS (\$18,418.00). In the event that Services are provided under Section 2.3 (o) for less than a full calendar month, the fees for such period shall be invoiced and paid on a pro rata basis.

I. Section 4.3 (d) of the Agreement shall be deleted in its entirety and the following shall be substituted therefor:

(d) Renewal Operation Terms for Convention Center.

In the event that this Agreement is renewed by the City for any Renewal Operation Term, the respective base annual fixed fee and amount of monthly installments of said fee to be paid to SMG for providing the services herein specified with respect to the Convention Center shall be as follows:

	<u>Annual Fee</u>	<u>Monthly Installment</u>
Renewal Year 1	\$41,000.00	\$3,416.67
Renewal Year 2	\$42,025.00	\$3,502.08
Renewal Year 3	\$43,076.00	\$3,589.67
Renewal Years 4 & 5	\$44,153.00	\$3,679.42

J. Sections 4.4 (a) and 4.4 (b) of the Agreement shall be deleted in their entirety and the following shall be substituted therefor:

(a) Initial Operation Term for Convention Center. SMG shall not be entitled to be paid annual incentive fees for the Initial Operation Term of the Convention Center.

(b) Initial Operation Term for BOK Center and Renewal Operation Terms. Subject to the sufficient budgeting and appropriation of funds for that purpose by the City, SMG shall be entitled to be paid, if earned, annual incentive fees for the Initial Operation Term of the BOK Center and for each Fiscal Year during the applicable Renewal Operation Term, if any, for each Facility as follows:

(i) A Gross Revenue Incentive which shall be earned if the Operating Revenues meet or exceed the applicable Gross Revenue Benchmark for such Fiscal Year set forth on Exhibit "E" attached hereto.

(ii) An Attendance Incentive which shall be earned if the attendance numbers meet or exceed the applicable Annual Benchmark for such Fiscal Year set forth on Exhibit "E" attached hereto.

(iii) A Net Operating Profit (Loss) Incentive which shall be earned if the Net Operating Profit (Loss) meets or exceeds the applicable Net Operating Profit (Loss) Benchmark for such Fiscal Year set forth on Exhibit "E" attached hereto.

K. Section 6.2 of the Agreement shall be deleted in its entirety and the following shall be substituted therefor:

6.2 Annual Plan.

For each Facility SMG shall provide to the City on or before one hundred eighty (180) days prior to the commencement of each Fiscal Year (commencing with the Fiscal Year starting July 1, 2007 for the Convention Center and July 1, 2008 for the BOK Center), an annual management plan, which shall include the annual operating budget described in Section 5.3 for such Fiscal Year. The annual plan shall include information regarding SMG's anticipated operations for such Fiscal Year, including planned operating maintenance activities by SMG, requested Capital Improvements and Capital Equipment purchases and an anticipated budget therefor, anticipated events at the Facility, anticipated advertising and promotional activities, and planned equipment and furnishings purchases. The annual plan shall be subject to review, revision and approval by the City. Following review and revision by the City, SMG shall have thirty (30) days to incorporate the City's revisions into its plan. Upon approval by the City, such annual plan shall constitute the operating program for SMG for the following Fiscal Year for the applicable Facility.


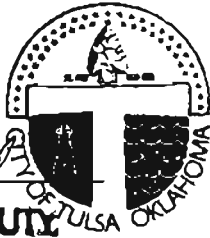
L. Exhibit E to the Agreement shall be deleted in its entirety and the attached Exhibit E shall be substituted therefor.

This Amendment represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements either written or oral. The Agreement may be further amended only by a written instrument signed by each of the parties.

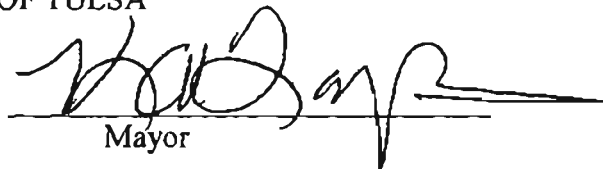
All other terms and conditions of the Agreement remain in full force and effect as if fully set forth herein.

IN WITNESS WHEREOF, this Amendment has been duly executed by the parties hereto to be effective on the date of execution by the City.

ATTEST:

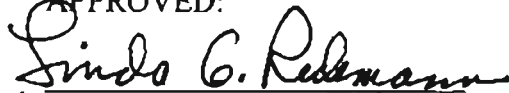

City Clerk

DEPUTY

CITY OF TULSA

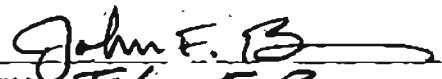
By: 
Mayor

Date: MAR 1 - 2007, 2006

APPROVED:


Assistant City Attorney

SMG

By: 
Name: John F. Burns
Title: Chief Financial Officer

Date: February 28, 2007

EXHIBIT "E" - INCENTIVE BENCHMARKS

Benchmarks. The benchmarks identified herein shall serve as the basis for determining the provision of incentives to the Contractor at the conclusion of each term. A negative benchmark requires a reduction of the negative value in order to qualify for the Incentive.

I. BOK Center Management Incentives

Item	Description	Benchmarks/ Operation Year 1	Benchmarks/ Operation Year 2	Benchmarks/ Operation Year 3	Benchmarks/ Operation Year 4	Benchmarks/ Operation Year 5
A.	Gross Revenue Incentive (33 1/3 % of Annual Fixed Fee) *	\$ 3,735,000	5% Improvement to Year 1 Actual Gross Revenues	5% Improvement to Year 2 Actual Gross Revenues	5% Improvement to Year 3 Actual Gross Revenues	5% Improvement to Year 4 Actual Gross Revenues
B.	Attendance Incentive (33 1/3 % of Annual Fixed Fee) *	500,000	5% Improvement to Year 1 Actual Attendance	5% Improvement to Year 2 Actual Attendance	5% Improvement to Year 3 Actual Attendance	5% Improvement to Year 4 Actual Attendance
C.	Net Operating Profit(Loss) Incentive (33 1/3 % of Annual Fixed Fee) *	\$ 285,000	10% Improvement to Year 1 Actual Net Operating Profit/(Loss)	10% Improvement to Year 2 Actual Net Operating Profit/(Loss)	10% Improvement to Year 3 Actual Net Operating Profit/(Loss)	10% Improvement to Year 4 Actual Net Operating Profit/(Loss)

II. Convention Center Management Incentives

Item	Description	Benchmarks /Operation Year 1	Benchmarks /Operation Year 2	Benchmarks /Operation Year 3	Benchmarks/ Operation Year 4	Benchmarks/ Operation Year 5	Benchmarks/ Operation Year 6
A.	Gross Revenue Incentive (33 1/3 % of Annual Fixed Fee) *	N/A	\$320,000	25% Improvement to Year 1 Actual Gross Revenues	25% Improvement to Year 2 Actual Gross Revenues	15% Improvement to Year 3 Actual Gross Revenues	15% Improvement to Year 4 Actual Gross Revenues
B.	Attendance Incentive (33 1/3 % of Annual Fixed Fee) *	N/A	165,000	25% Improvement to Year 1 Actual Attendance	25% Improvement to Year 2 Actual Attendance	15% Improvement to Year 3 Actual Attendance	15% Improvement to Year 4 Actual Attendance
C.	Net Operating Profit(Loss) Incentive (33 1/3 % of Annual Fixed Fee) *	N/A	\$(2,000,000)	5% Improvement to Year 1 Actual Net Operating Profit/(Loss)	5% Improvement to Year 2 Actual Net Operating Profit/(Loss)	5% Improvement to Year 3 Actual Net Operating Profit/(Loss)	5% Improvement to Year 4 Actual Net Operating Profit/(Loss)

Notes * and *** descriptions can be found at the end of the pricing page in the IFB.

► Gross Revenue Benchmarks exclude any funds from the Hotel/Motel Tax Revenues.

► Net Operating Profit/(Loss) Benchmarks exclude any Debt Service or Capital Improvements related to either facility or any Management Fees or Incentives.

SECOND AMENDMENT TO MANAGEMENT AGREEMENT

THIS SECOND AMENDMENT TO MANAGEMENT AGREEMENT ("Second Amendment") is entered into by and between the CITY OF TULSA, an Oklahoma municipal corporation (the "City"), and SMG, a Pennsylvania general partnership, whose current address is 701 Market Street, 4th Floor, Philadelphia, PA, 19106 ("SMG"), to be effective upon execution by the City as reflected on the signature page hereof ("Effective Date").

WHEREAS, City and SMG entered into a Management Agreement to be effective on March 10, 2006 designated as City Contract number 24650 for development and pre-construction services, pre-operating services and management services for City's Convention Center and BOK Center (the "Agreement"); and

WHEREAS, City and SMG entered into First Amendment to Management Agreement ("First Amendment") to be effective on March 1, 2007 to accommodate the revised completion date of the BOK Center; and

WHEREAS, the Agreement, as amended, was assigned by City to the Tulsa Public Facilities Authority ("TPFA") and to City to be effective on July 1, 2007.

NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree to amend the Agreement as follows:

A. Section 2.3 (c) of the Agreement shall be deleted in its entirety and the following shall be substituted therefor:

(c) (i) negotiate, execute in SMG's name as agent for the City, deliver and administer any and all licenses, occupancy agreements, rental agreements, booking commitments, and advertising agreements and all other contracts and agreements in connection with the management, promotion and operation of the Facilities, provided that no such license, agreement, commitment or contract under (i) or (ii) other than those involving the license, lease or rental of the Facilities in the ordinary course shall be negotiated or executed with a term that extends beyond the remaining Initial Operation Term or Renewal Operation Term, as the case may be, without the prior written approval of the City;

(ii) provide all necessary supplies and services for the Facilities including, without limitation, ticketing services, website development and maintenance, computer support services, cleaning, decorating and set-up, snow removal, general maintenance and maintenance and inspection of HVAC systems, escalators, elevators, stage equipment, fire control panel and other safety equipment, staffing and personnel services, including guards and ushers, and other necessary or appropriate services or negotiate, execute in SMG's name as agent for the City, deliver and administer contracts for such supplies and services including, without limitation, ticketing services, website development and maintenance, computer support services, utility services, telephone services, cleaning, decorating and set-up, snow removal, general maintenance and maintenance and inspection of HVAC systems, escalators, elevators, stage equipment, fire control panel and other safety equipment, contract employees, staffing and personnel needs, including guards and ushers, and other services which are necessary or appropriate for the management and operation of the Facilities;

(iii) for each Initial Operation Term or Renewal Operation Term, if any, commencing on July 1, 2008, provide all labor, supervision, management, supplies, goods to be sold and any equipment, not included as part of the construction and/or renovation of the Facilities, necessary to deliver concessions services, catering services and food and beverage services to the Facilities of a consistent quality and variety substantially equal to or exceeding that offered at like facilities. SMG shall submit for City's approval as part of the approved annual operating budget for the Facilities a separate accounting of the projected revenue and cost of providing the services under this section (iii) including, but not limited to, the cost of the goods to be sold, supplies, labor and other expenses. A schedule of the capital equipment to be provided by SMG for the delivery of concessions, catering and food and beverage services to the Facilities shall be submitted to City for approval within ten (10) days of the Effective Date of this Amendment. The cost of such equipment shall include all design, installation and delivery charges and shall not exceed Five Hundred Thousand Dollars (\$500,000) without the prior written consent of City. SMG shall be reimbursed by City for the approved cost of such capital equipment in thirty-three equal monthly installments, beginning October 1, 2008, within fifteen (15) days of receipt of an invoice; provided, however, all such outstanding monies shall become immediately due if this agreement is terminated prior to June 30, 2011. Notwithstanding any other provision of this Agreement, reimbursement for such capital equipment shall be paid only from the revenue received by City from such concessions, catering and food and beverage services provided to the Facilities and is not otherwise a debt or obligation of the City. In addition, the projected cost of providing concessions, catering and food and beverage services will include an amount for Corporate Services of One Hundred Ninety-Five Thousand Six Hundred Thirty-Two Dollars (\$195,632) for the first year that services are provided and for each year thereafter adjusted annually only by the amount of the increase or decrease in the Consumer Price Index-Urban (CPI-U) from the previous year. The Corporate Services fee shall be invoiced and paid along with the Management Fee in equal monthly installments. Services provided as Corporate Services will include but not be limited to the following:

- National, Regional oversight of Food & Beverage Operations;
- Oversight of Food & Beverage Policies and Procedures;
- Implementation of SMG's Food and Beverage best practices;
- Inclusion of SMG Food & Beverage National Marketing Programs;
- Access to SMG's Purchasing Volume Discounts; and
- Implementation and Oversight of Financial Reporting and Internal Controls.

B. Section 5.8 of the Agreement shall be deleted in its entirety and the following shall be substituted therefor:

5.8 Capital Equipment and Capital Improvements

Except as set forth in Section 2.3(c)(iii), the obligation to provide Capital Equipment and the obligation to pay for and authority to perform, direct and supervise Capital Improvements shall remain with the City and will not be considered Operating Expenses. The annual plan submitted pursuant to Section 6.2 for each Facility shall include SMG's recommendation for Capital Equipment purchases and for Capital Improvements to be accomplished during the year for such Facility and shall be accompanied by an estimate of the cost of all such items and projects and a request that the City budget funds therefor. The City shall retain the discretion to determine whether and to what level to fund Capital Equipment and Capital Improvements to the Facilities.

This Amendment represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements either written or oral. The Agreement may be further amended only by a written instrument signed by each of the parties.

All other terms and conditions of the Agreement remain in full force and effect as if fully set forth herein.

IN WITNESS WHEREOF, this Amendment has been duly executed by the parties hereto to be effective on the date of execution by the City.



ATTEST:

Anthony May
Deputy City Clerk

CITY OF TULSA

By: [Signature]
Mayor

Date: FEB 18 2006, 2008

APPROVED:

Sinda C. Redemann
Assistant City Attorney

TULSA PUBLIC FACILITIES AUTHORITY

By: [Signature]
Chairman

DATED: 1/31/08

ATTEST:

Nancy Martin
Asst. Secretary

SMG

By: [Signature]
Name: John F. Burns
Title: CFO

Date: 2/5, 2008

FIRST RENEWAL OF MANAGEMENT AGREEMENT

THIS FIRST RENEWAL OF MANAGEMENT AGREEMENT is entered into by and among the CITY OF TULSA, an Oklahoma municipal corporation (the "City"), TULSA PUBLIC FACILITIES AUTHORITY, an Oklahoma public trust ("TPFA"), and SMG, a Pennsylvania general partnership, whose current address is 701 Market Street, 4th Floor, Philadelphia, PA, 19106 ("SMG"), to be effective on July 1, 2008.

WHEREAS, City and SMG entered into a Management Agreement to be effective on March 10, 2006 designated as City Contract number 24650 for development and pre-construction services, pre-operating services and management services for City's Convention Center and BOK Center (the "Agreement"); and

WHEREAS, City and SMG entered into First Amendment to Management Agreement ("First Amendment") to be effective on March 1, 2007 to accommodate the revised completion date of the BOK Center; and

WHEREAS, the Agreement, as amended, was assigned by City to TPFA and to City to be effective on July 1, 2007.

WHEREAS, City, TPFA and SMG entered into Second Amendment to Management Agreement ("Second Amendment") to be effective on February 18, 2008 to provide for SMG to supply capital equipment, food and beverage concessions and catering services to the Facilities.

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree to renew and extend the term of the Agreement, as amended, for the period July 1, 2008 to and including June 30, 2009, all according to the terms, covenants and conditions set forth in the Agreement as amended.

IN WITNESS WHEREOF, this First Renewal of Management Agreement has been duly executed by the parties hereto to be effective on July 1, 2008.



Anthony Mays
City Clerk **DEPUTY**

CITY OF TULSA

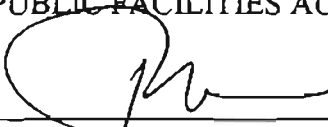
By: *Amey Potuchel*
Mayor **PRO-TEM**

Date: MAY 06 2009 , 2008

APPROVED:


Linda C. Redemann
Assistant City Attorney

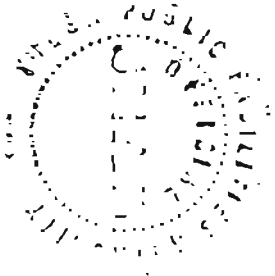
TULSA PUBLIC FACILITIES AUTHORITY

By: 
Chairman

Date: 6/26/08

ATTEST:


Secretary



SMG

By: 
Name: **John F. Burns**
Title: **Chief Financial Officer**

Date: JUNE 30, 2008

**THIRD AMENDMENT TO MANAGEMENT AGREEMENT AND
SECOND RENEWAL OF MANAGEMENT AGREEMENT**

THIS THIRD AMENDMENT TO MANAGEMENT AGREEMENT AND SECOND RENEWAL OF MANAGEMENT AGREEMENT ("Third Amendment and Second Renewal") is entered into by and among the CITY OF TULSA, an Oklahoma municipal corporation ("City"), TULSA PUBLIC FACILITIES AUTHORITY, an Oklahoma public trust ("TPFA"), and SMG, a Pennsylvania general partnership, whose current address is 300 Four Falls Corporate Center, 300 Conshohocken State Road, West Conshohocken, PA, 19428 ("SMG"), to be effective on July 1, 2009.

WHEREAS, City and SMG entered into a Management Agreement to be effective on March 10, 2006 designated as City Contract number 24650 for development and pre-construction services, pre-operating services and management services for City's Convention Center and BOK Center (the "Agreement"); and

WHEREAS, City and SMG entered into First Amendment to Management Agreement ("First Amendment") to be effective on March 1, 2007 to accommodate the revised completion date of the BOK Center; and

WHEREAS, the Agreement, as amended, was assigned by City to TPFA and to City to be effective on July 1, 2007; and

WHEREAS, City, TPFA and SMG entered into Second Amendment to Management Agreement ("Second Amendment") to be effective on February 18, 2008 to provide for SMG to supply capital equipment, food and beverage concessions and catering services to the Facilities; and

WHEREAS, City, TPFA and SMG entered into First Renewal of Management Agreement ("First Renewal") to be effective on July 1, 2008.

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

1. to further amend the Agreement by substituting the following addresses for notice purposes in Section 13.8 of the Agreement:

"To the City:

City of Tulsa
175 East 2nd Street, Suite 260
Tulsa, OK 74103
Attention: City Clerk

With a copy (which shall not constitute notice) to:

City Attorney

City of Tulsa
175 East 2nd Street, Suite 685
Tulsa, OK 74103

To SMG:

SMG
300 Conshohocken State Road, Suite 770
West Conshohocken, PA, 19428

All other terms and conditions of the Agreement remain in full force and effect as if fully set forth herein.

2. to renew and extend the term of the Agreement, as amended, for the period July 1, 2009 to and including June 30, 2010, all according to the terms, covenants and conditions set forth in the Agreement as amended.

This Third Amendment and Second Renewal represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements either written or oral. The Agreement may be further amended only by a written instrument signed by each of the parties.

IN WITNESS WHEREOF, this Third Amendment and Second Renewal has been duly executed by the parties hereto to be effective on July 1, 2009.



Anthony Mays
City Clerk DEPUTY

CITY OF TULSA

By: 

Mayor

Date: JUN 22 2009, 2009

APPROVED:

Linda G. Redemann
Assistant City Attorney

TULSA PUBLIC FACILITIES AUTHORITY

By: 

Chairman

J. Patrick Remick

Date: May 28, 2009, 2009

ATTEST:

Wendy Martin
Asst. Secretary



SMG

By: John F. Burns
Name: John F. Burns
Title: Chief Financial Officer

Date: May 27, 2009