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CITY OF FRESNO
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AMENDED AND RESTATED MANAGEMENT AGREEMENT

BETWEEN

CITY OF FRESNO

AND

SMG

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AMENDED AND RESTATED
MANAGEMENT AGREEMENT

THIS AMENDED AND RESTATED MANAGEMENT AGREEMENT (this "Agreement") is dated as of this __ day of December, 2013, to be effective on the 1st day of January, 2014 (the "Effective Date"), by and between the CITY OF FRESNO, a municipal corporation organized and existing under the laws of the State of California ("Owner" or "City"), and SMG, a Pennsylvania general partnership ("SMG").

RECITALS

A. The Owner is the owner or lessee of facilities comprising the Fresno Convention & Entertainment Center (Saroyan Theatre, Selland Arena, Fresno Convention Center, and Ernie Valdez Exhibit Hall (formerly known as Exhibit Hall South)), located downtown in the City of Fresno (individually and collectively, the "Facility"). The Facility no longer includes the Robert A. Schoettler Conference Center and the parking garage attached to the Robert A. Schoettler Conference Center. SMG is engaged, among other things, in the business of providing management services, including operations and marketing services for public assembly facilities.

B. The Owner and SMG originally entered into that certain Management Agreement dated as of January 1, 2004, pertaining to SMG's management and operation of the Facility (the "Original Management Agreement"). The parties thereafter entered into that certain Management Agreement dated as of December 17, 2008, which superseded the Original Management Agreement (the "Management Agreement"). The Owner intends to work in mutual accord with SMG in order to ensure provision of high quality management services, thereby enhancing the use and enjoyment of the Facility.

C. The parties acknowledge that, during the term of the Original Management Agreement, SMG expended approximately $1,900,000.00 to pay for certain Operating Expenses (which amounts consisted primarily of benefits for employees of the Facility, workers compensation insurance and liability insurance premiums pertaining to the Facility's operations) in order to ensure the operation of the Facility for which SMG did not receive reimbursement from the Owner. The parties herein disagreed over their respective obligations related to these cost and in furtherance of settling all claims or rights related to these payments of either party herein, Owner agrees to amortize the sum of $1,000,000.00 of these costs, ("Employee Benefit Cost Payments") amortized through the Management Term of this Agreement as provided for in Section 5.4 below.

D. The parties have agreed to certain revisions to the Management Agreement to increase the number of revenue producing events, and to reduce the City's Contribution from its General Fund to the operation of the Facility by a net total of $665,000.00 through the end of Fiscal Year 2015.

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

1. Definitions

In addition to the capitalized terms defined elsewhere in this Agreement, the following terms have the meanings referred to in this Section 1:

"Affiliate" - a person that directly or indirectly 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 that represent more than 50% of the voting power in the controlled person.

"Actual Cost Increases" - any increase in SMG's Operation Expense Budget in excess or of a greater amount than the prior Fiscal Year Budget supported by such documentation as may be reasonably requested by the City Manager.

"Advance Fund" – an annual operating reserve fund created by the City, in accordance with Section 5.1(d).

"Approved Budget" - any budget submitted by SMG that is accepted by the City Manager and approved by the City Council, in accordance with Section 5 hereof.

"Capital Equipment" and "Capital Improvements" - any and all furniture, fixtures, machinery or equipment, either additional or replacement, and any and all building additions, alterations, renovations, repairs or improvements, the depreciable life of which, according to generally accepted accounting principles ("GAAP"), is in excess of three (3) years and any other item of expense that, according to GAAP, is not properly deducted as a current expense on the books of SMG, but rather should be capitalized.

"City Council" - the City Council of the City of Fresno.

"City Manager" - the City Manager of the Owner (defined as the Chief Administrative Officer in the Charter of the City of Fresno).

"City Contribution" – as defined in Section 5.1(d) below.

"Commercial Rights" - naming rights, pouring rights, advertising signage (including event sponsorships), branding of food and beverage products for resale, premium seating (including but not limited to suites and club seats) and memorial gifts, to the extent legally possible.

"Contract Administrator" - the City Manager or his/her designee as designated from time to time in writing by the City Manager.

"Employee Benefit Cost Payments" - as defined in Recital "C" hereinabove.

"Encumbered Cash Accounts" – separate cash accounts maintained and controlled by SMG, which include revenues from advance ticket sales and event deposits.

"Fiscal Year" - a one-year period beginning July 1 and ending June 30.

"Laws" - all federal, state, local and municipal regulations, ordinances, statutes, rules, laws and constitutional provisions.

"Losses" - any and all losses, liabilities, claims (including, without limitation, claims for bodily injury, death or damage to property), damages and expenses (including reasonable attorneys' fees).

"Management Term" - as defined in Section 3.1 herein.

"Management Fee" – as defined in Section 4 herein.

"Net Operating Loss/Profit" - 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.

"Normally Touring Attractions" - the shows or events that customarily tour facilities similar to the Facility in regional or national markets, including without limitation touring family shows (including without limitation, ice shows and the circus), touring Broadway-type shows, professional wrestling, sporting competitions and exhibition games/matches (including amateur, minor league and professional), and touring gospel, motivational and religious shows.

"Operating Expenses" - the Operating Expenses listed in Section 5.1 of this Agreement and approved by the City Council as part of the Approved Budget.

"Operating Revenues" - The revenues listed in Section 5.1 of this Agreement and approved by the City Council as part of the Approved Budget.

"Parking Area" - The parking lot located just east of the Selland Arena"" in the City of Fresno.

"Renewal Term" - the additional period for which this Agreement may be renewed in accordance with Section 3.2 hereof beyond the Management Term.

2. Engagement of SMG.

2.1 Subject to the terms and conditions set forth in this Agreement, Owner hereby engages SMG, on an exclusive basis, as an independent contractor, to manage, operate, and promote

the Facility during the Management Term and the Renewal Term, if any, and SMG hereby accepts such engagement. In no event shall SMG hold itself out as, act as, or be the agent of the Owner, without the Owner's express written authority. In such capacity, SMG shall have exclusive authority over the day-to-day operation of the Facility and all activities therein. The standard for performance of services by SMG will be in accord with the express provisions of this Agreement, and where not expressed, in accord with generally accepted industry standards. Without limiting the generality of the foregoing, the services to be provided by SMG shall include those described on Exhibit "A" attached hereto.

2.2 Representatives of the Owner shall have the right to enter all portions of the Facility 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 or thing which the Owner may be obligated or have the right to do under this Agreement or otherwise. In connection with the exercise of such rights, the Owner will endeavor to provide (but is not obligated to provide) advance notice to SMG for security purposes and to minimize any interference with or disruption of SMG's work under this Agreement. Nothing contained in this Section is intended or shall be construed to limit any other rights of the Owner under this Agreement nor shall impose or be construed to impose upon the Owner 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.

3. Management Term and Renewal Term.

3.1 The remaining term of this Agreement shall end at midnight on June 30, 2019, unless earlier terminated pursuant to the provisions of this Agreement (the "Management Term").

3.2 The parties may agree to extend the term on such terms and conditions as the parties mutually agree in writing prior to the end of the Management Term (the "Renewal Term").

4. SMG's Compensation; Management Fee.

As of the Effective Date, during the Management Term, SMG's compensation for providing the services hereunder shall be an annual fee of One Hundred and Forty-Five Thousand Six Hundred and Thirty-Six Dollars ($145,636.00) (the "Management Fee"). Provided that SMG for the immediately preceding Fiscal Year (1) meets its Approved Budget and (2) increases the number of events held at the Facility by 10 events (excluding professional hockey games), the Management Fee paid in the prior Fiscal Year shall be adjusted upward on the first day of each Fiscal Year following the first complete Fiscal Year starting July 1, 2014, and ending June 30, 2015 ("First Complete Fiscal Year"), by the percentage change in the Consumer Price Index -- All Urban Consumers (CPI-U) -- West Region -- All Items, as published by the Bureau of Labor Statistics of the U.S. Department of Labor (the "Base Fee"), provided that such CPI increase shall not exceed 4.3% in any such Fiscal Year. To the extent that any Fiscal Year hereunder is less than a twelve (12) month period (including the initial short Fiscal Year of January 1, 2014, to the end of June 30, 2014), such fee shall be pro-rated using the initial fixed fee of One Hundred and Forty-Five Thousand Six Hundred and Thirty-Six

Dollars ($145,636.00) or the last fee paid from a complete Fiscal Year as adjusted by this provision which fee will be calculated based upon a fraction, the numerator of which is the number of months in such year and the denominator of which is 12. Such fee shall be payable in equal monthly installments due on or before the last day of each month during such Fiscal Year, and SMG shall be entitled to draw such amounts from the account described in Section 5.2.

5. Budgets; Bank Accounts.

5.1 Budgets.

(a) The parties acknowledge that the annual operating Approved Budget and annual cash flow budget for the Fiscal Year hereunder (July 1, 2013, through June 30, 2014),"" has already been submitted by SMG to the City Manager and accepted and provided to the City Council for its approval, which has also been obtained. As part of the annual plan described in Section 6.2 herein, SMG will prepare a proposed annual operating budget and annual cash flow budget for the First Complete Fiscal Year and each year thereafter using the historical budgetary data and consistent with the budget escalation provisions of this Section. SMG shall submit each Fiscal Year's budget to the City Manager by March 15 of each year, commencing March 15, 2014. The proposed annual operating budget prepared by SMG shall include projected Operating Expenses and Operating Revenues on a line item basis. The line items shall include, but not be limited to, the following categories:

(i) Projected Operating Expenses:

(A) Employee payroll, benefits, 401(k) contribution, relocation costs, bonus and related costs;

(B) Operating supplies (including general office supplies);

(C) Advertising, marketing, group sales, and public relations;

(D) Cleaning;

(E) Data processing and storage and other related information technology;

(F) Dues, subscriptions and memberships;

(G) The Management Fee;

(H) The shortfall, if any, in the Advance Fund from the immediate past Fiscal Year;

(I) Printing and stationary;

(J) Postage and freight;

(K) Equipment and rental;

(L) Repairs, maintenance, and equipment servicing (excluding Capital Equipment or Capital Improvements);

(M) Security;

(N) Telephone and communication;

(O) Travel and entertainment;

(P) Employee uniforms and identification;

(Q) Exterminator and trash removal;

(R) Training;

(S) Parking;

(T) Utilities;

(U) Professional fees, including accounting and legal fees (including audit expenses);

(V) Commissions and other fees payable to third parties;

(W) Insurance, to the extent required in Exhibit "“C"” of this Agreement; and

(X) Taxes, including any possessory interest tax arising from any determination by the Fresno County Assessor that the license granted herein under constitutes a taxable interest, except any possessory use tax as a result of SMG's self-promoting activities (e.g., booking an event for SMG, whereby SMG benefits beyond the consideration provided hereunder for its services).

(ii) Projected Operating Revenues:

(A) Advertising;

(B) Telephone and fax;

(C) Parking;

(D) Rentals;

(E) Equipment charges;

(F) Food and beverage;

(G) Retail sales;

(H) Electrical;

(I) Catering;

(J) Box Office fees;

(K) Advertising and naming rights;

(L) Interest;

(M) Leases; and

(N) Other miscellaneous forms of revenue.

(b) Operating Expenses do not include applicable excise, sales, occupancy and use taxes, or similar governmental taxes, duties, levies or charges collected directly from patrons or guests, or as a part of the sales price of any goods, services, or displays, such as gross receipts, admission, cabaret, or similar or equivalent taxes, nor any gratuities collected (or to be collected) for the benefit of and paid to any of SMG's personnel. Furthermore, Operating Revenues do not include (i) monies collected (or to be collected) for the benefit of and paid to third parties such as event promoters, including the Co-Promoter Fund (as defined in Section 8 below), or (ii) parking income from the Parking Area, unless City requests, and SMG consents, to operate such parking areas.The annual budgets referred to in subparagraph (a) that are submitted each year shall only contain (i) increases in the Operating Expenses to the extent consistent with Actual Cost Increases; or (ii) the percentage increase represented by the percentage change in the Consumer Price Index -- All Urban Consumers (CPI-U) -- West Region -- All Items, as published by the Bureau of Labor Statistics of the U.S. Department of Labor, whichever is less. Any proposed operating budget showing increases in Operating Revenue shall be substantiated with sufficient documentation. City Manager shall require all relevant data and documentation required at his sole discretion to substantiate Operating Revenue or Actual Cost Increases in any submitted budget. All budgets submitted are subject to approval by the City Manager before their submission to the City Council for final approval. If the City Manager elects to modify such budgets submitted by SMG, he or she shall notify SMG in writing of such modifications at least ten (10) days prior to his or her submission of such budgets to the City Council for approval. In the event that SMG disagrees with the City Manager's modifications of the annual budget, SMG shall have the right to notify the City Council of its concerns and request a modification to the annual budget.

(c) Within thirty (30) days before the end of each Fiscal Year, the City Council shall notify SMG of any changes to the annual operating budget and the annual cash flow budget for

the succeeding Fiscal Year proposed by SMG (or provided by the City Manager with his or her changes, as the case may be). The budgets, as finally approved by the City Council, shall be the Approved Budget for the following Fiscal Year.

If (i) the Capital Equipment and Capital Improvements purchases authorized by the Owner or any capital project occurring next to or near any portion of the Facility (e.g., the construction of a proposed restaurant on the parking lot adjacent to and east of the Selland Arena) materially impact the use of any portion of the Facility during any Fiscal Year (such materiality being defined as $10,000.00 or more); or (ii) if there are Extraordinary Circumstances (defined as facts or circumstances that are beyond SMG's control) which adversely affect Operating Revenues or Operating Expenses during any Fiscal Year, SMG shall have the right to submit to the City Manager for submission to the City Council a revised annual operating budget or annual cash flow budget for such Fiscal Year to the Owner to reflect (A) the impact of such Capital Equipment and Capital Improvements purchases or capital projects on the Operating Revenues and/or Operating Expenses; or (B) such other changed Extraordinary Circumstances. If the City Manager elects not to submit such a revised budget to the City Council or proposes to modify it, SMG shall have the right to petition the City Council for an annual operating budget or annual cash flow budget. If the City Council does not approve such proposed amended budget(s) or modifies such proposed amended budget(s) in a manner which SMG disagrees with, then both parties are entitled to mediate the issue consistent with Section 14.2 (c). Any amended budget that is so approved by the City Council shall be considered the Approved Budget for such year.

(d) City Contribution; Advance. By July 1 of each Fiscal Year (beginning Fiscal Year 2014-2015), the City shall advance to SMG the City's entire annual financial contribution to the Facility (the "City Contribution"). For illustrative purposes only, the City Contribution, without additional funding for extraordinary Operating Expenses for the Facility for Fiscal Year 2013-2014, is $1,064,136.00. When determining the annual City Contribution, the City shall not off-set, or otherwise consider, funds contained in Encumbered Cash Accounts. Additionally, the City shall create an operating reserve fund of $500,000 by July 1st of each Fiscal Year to assist with Facility operational cash flows (the "Advance Fund"). SMG, with Facility Operating Revenue, shall replace all funds taken from the Advance Fund by March 15th of that same Fiscal Year and shall provide to the City Manager with an accounting of SMG's use of the Advance Fund in a manner consistent with Section 6.1 below. SMG shall promptly notify the City Manager if SMG anticipates a shortfall in the Advance Fund. Under no circumstance shall SMG be responsible for any shortfall in the Advance Fund. Rather, the shortfall in the Advance Fund shall be considered an Operating Expense.

5.2 Receipts and Disbursements.

With the approval of the City, SMG shall establish and maintain in one or more depositories one or more operating, payroll and other bank accounts for the promotion, operation and management of the Facility, which such accounts shall be in the name of the City and with signature authority in a City-designated officer and in such employees of SMG as SMG shall determine. All Operating Revenues collected by SMG shall be deposited into such accounts and Operating Expenses shall be paid by SMG from such accounts. The funding of all of the foregoing accounts shall be made

by Owner to cover all projected Operating Expenses at the Facility to the extent not covered by the Operating Revenues. As part of the monthly meetings described in Section 6.3, SMG will promptly report to the Contract Administrator any material change or variance from the Approved Budget and any change to the total expenses (as opposed to any particular line item expense) from that provided for in the Approved Budget (unless such change or variance is a result of, or offset by, a corresponding increase in Operating Revenues).

5.3 Capital Equipment; Capital Improvements.

The obligation to pay for, and authority to perform, direct and supervise Capital Equipment and Capital Improvements purchases shall remain with Owner and will not be considered Operating Expenses. The annual plan submitted pursuant to Section 6.2 shall include SMG's recommendation for Capital Equipment and Capital Improvements purchases to be accomplished during the year and shall be accompanied by an estimate of the cost of all such items and projects and a request that Owner budget funds therefor. In connection with the preparation of such recommendations by SMG, SMG may need to engage outside professionals, in which event SMG shall obtain the approval of the City Manager prior to such engagement (which approval shall not be unreasonably withheld) and the costs of such engagement shall be paid by the City and not considered an Operating Expense. Owner shall retain the discretion to determine whether and to what level to fund Capital Equipment and Capital Improvements purchases to the Facility.

5.4 SMG's Employee Benefit Cost Payments.

As of the Effective Date, the parties agree that Five Hundred Thousand Dollars ($500,000.00) of the Employee Benefit Cost Payments remain unpaid. Prior to the Effective Date, the City shall pay SMG, on or before the end of each month, Eight Thousand Three Hundred and Thirty-Three and 33/100 Dollars ($8,333.33). Commencing on January 1, 2014, the City shall pay SMG Two Hundred and Fifty Thousand Dollars ($250,000.00) of the Employee Benefit Cost Payments over a period of sixty (60) months (the "Amortized Period") during the Management Term on a straight-line basis in equal monthly payments of Four Thousand One Hundred and Sixty-Six Dollars and Sixty-Seven Cents ($4,166.67) on or before the end of each month during the Amortized Period, commencing January 31, 2014. The City shall pay the remaining balance of Two Hundred and Fifty Thousand Dollars ($250,000.00) at any time during the Management Term or as otherwise provided in this Agreement. Notwithstanding the foregoing, City may pay off the entire balance of the Employee Benefit Cost Payments at any time without penalty. In the event this Agreement terminates due to City's failure to perform or comply with any terms, covenants, agreements or conditions in any material respect, the City shall pay, or cause any successor management company to pay, unconditionally and without set-off, to SMG the outstanding unpaid amount of the Employee Benefit Cost Payments existing as of such termination. In the event that (i) the City terminates this Agreement due to SMG's failure to perform or comply with any terms, covenants, agreements or conditions in any material respect; or (ii) this Agreement is terminated under the circumstances described in Paragraph 2(c) of Exhibit "A" hereto, the City will continue paying to SMG, unconditionally and without set-off, the Employee Benefit Cost Payments over the remainder of the Amortized Period. Notwithstanding the foregoing, in the event of the termination of this Agreement by the City pursuant to Section 13.2

hereof, the City shall not be obligated to pay to SMG (and SMG shall forfeit the right to receive) the next twelve (12) monthly installments of the Employee Benefit Cost Payment following the effective date of such termination hereunder.

5.5 Emergency Repairs.

If any repairs are of an emergency nature, SMG shall immediately contact the Contract Administrator to inform him/her of the emergency and make such repairs in accordance with the following: the City shall reimburse SMG for the full amount of the emergency repair by depositing the same in the Facility operating account to replenish such amount utilized from such account. City shall make every effort to provide reimbursement within thirty (30) days of invoice. An emergency repair is defined herein as the repair of a condition which, if not performed immediately, creates an imminent danger to persons or property or would, in SMG's reasonable judgment, significantly impact the operational functions of the Facility (including without limitation the holding of any scheduled event at the Facility) and was not the result of lack of preventative maintenance, improper operation, or the negligence or willful misconduct of SMG or any of its officers, employees, or agents.

5.6 Limitation of SMG Liability.

Notwithstanding any provision herein to the contrary, except (i) for SMG's express indemnification undertakings in Section 11.1; (ii) as provided in the last sentence of Section 5.4; (iii) the Energy Audit described in Section 7.1 (subject to the limitations contained therein); (iv) the Convention Consultant described in Section 7.2 (subject to the limitations contained therein); and (v) the provisions contained in Section 13.2 hereof, SMG shall have no obligation to fund any cost, expense or liability with respect to the operation, management or promotion of the Facility, and any costs, expenses or liabilities related to the operation, management or promotion of the Facility shall be Operating Expenses.

6. Records, Audits, and Reports.

6.1 Records and Audits.

SMG shall keep full and accurate accounting records relating to its activities at the Facility and shall provide to the Owner monthly financial statements in a format agreed upon by the Owner. SMG shall give the Owner'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 each Fiscal Year all sales slips, rental agreements, purchase order, sales books, credit card invoices, bank books or duplicate deposit slips, and other evidence of Operating Revenues and Operating Expenses for such period. Additionally, SMG shall deliver to the Owner annual financial statements within ninety (90) days after the close of each Fiscal Year with a statement that they were prepared in accordance with generally accepted accounting principles.

SMG shall also supply to Owner a complete financial audit in compliance with the Government Accounting Standards Board prepared by a reputable Certified Public Accounting firm. The actual cost of such audit shall be paid equally by SMG, as a Facility Operating Expense, and Owner; except that SMG's share of audit expenses shall never exceed Fifteen Thousand Dollars ($15,000.00) per year. SMG must submit such audit to City within one hundred twenty (120) days after the close of the Fiscal Year. In the event additional costs and expenses relating to field visits to the Facility by auditors are incurred due to errors and/or omissions in the financial statements prepared and delivered by SMG hereunder, SMG shall be liable for such additional costs and expenses.

6.2 Annual Plan; Actual to Budget Comparison.

During the Management Term and the Renewal Term, if any, SMG shall provide to Owner an annual management plan, which shall include the annual operating budget and annual cash flow budget described in Section 5.1 for the next Fiscal Year. The annual plan shall include information regarding SMG's anticipated operations for such Fiscal Year and requested Capital Equipment and Capital Improvements purchases, and anticipated budgets therefor. The annual plan shall be subject to review, revision and approval by Owner. As part of the annual plan, but no later than June 1 of each Fiscal Year, SMG shall provide to Owner with a preliminary "projected actual to budget" report estimate for the financial performance of the Facility in a form reasonably acceptable to Owner. By October 1 of each Fiscal Year, SMG shall provide to Owner a final "actual to budget" report in a form reasonably acceptable to Owner. Along with the final "actual to budget" report, SMG shall provide a detailed explanation of any Operating Expense that exceeds the Facility Budget, including any shortfall in the Advance Fund.

6.3 Monthly Reports and Meetings.

By the thirtieth (30th) day of each month during the Management Term and the Renewal Term, if any, SMG shall provide to Owner a written monthly operational report in a format reasonably acceptable to Owner setting out the Facility's anticipated activities and financial condition for the upcoming month and detailed monthly financial, programmatic, and statistical reports for all Facility' activities in the prior month. These reports must include all standard financial reports including those unique to the industry; detailed financial reports on subcontract transactions; information on the activities associated with the operation, management, supervision and maintenance of the Facility; a list of upcoming events; a discussion of operating and maintenance issues and concerns; anticipated changes in management, operations or maintenance activities; and other information as appropriate or as requested by Owner through the Contract Administrator. SMG and Owner shall work together to tailor these reports so that all reviewing parties will understand the information provided. SMG shall provide the Mayor, members of the City Council, and the City Attorney copies of this report along with the other reports provided for in this Section 6. SMG shall promptly notify the City Manager, and copy the Mayor, each member of the City Council and the City Attorney, when SMG determines that a Facility Operating Expense, including a shortfall in the Advance Fund, could cause the Facility not to meet the Approved Budget and may require a budget amendment by the City Council. Additionally, to facilitate communication between SMG and the City, SMG shall have the ability to meet with the City Manager on a monthly basis to present and discuss the monthly reports, and the City Manager shall

make himself or herself available for such meetings. Moreover, on a quarterly basis, the City Manager shall schedule a presentation by the Facility General Manager in front of the City Council to discuss Facility operations and any changes in operating costs caused by forces outside of SMG's control.

6.4 Payable and Receivable; Monitoring and Reporting.

SMG shall make all reasonable efforts to keep accounts payable at ninety (90) days or less. In the event that any account payable exceeds ninety (90) days, SMG will immediately notify the City in writing of such accounts payable, along with an explanation of why this account payable has not been fully satisfied, and a reasonable plan to resolve the matter, which may include a budget amendment approved by the City Council. Accounts receivable aged in excess of ninety (90) days shall be reported to the City and SMG shall use commercially reasonable efforts to collect or write-off the uncollectable balance.

6.5 Advisory Board.

The parties agree to establish and reasonably participate in an advisory board to review Facility operations. The Advisory Board may consist of the City Manager, a City Councilmember, the SMG General Manager, and one representative from each of the following: the Fresno Convention and Visitors Bureau, the Fresno Chamber of Commerce, the Downtown Fresno Partnership, and the Fresno area Hotel/Motel Industry (the "Advisory Board"). SMG will make every reasonable effort to respond to the inquiries of the Advisory Board; however, in the event that the Facility General Manager informs the City Manager that SMG does not have the capacity and resources to provide information to the Advisory Board, City Manager shall promptly intervene to resolve such concern.

7. Facility and Operational Improvements.

7.1 Energy Audit.

Immediately following the Effective Date of this Agreement, SMG shall retain, at its own expense, a qualified and reputable energy management consultant acceptable to Owner to conduct a comprehensive energy audit of the Facility (the "Energy Audit"). Within ninety (90) days of the Effective Date, the consultant shall provide SMG and the City with the Energy Audit, which shall include a report on operational and structural changes that may be made at the Facility to reduce energy costs. SMG will institute all reasonable operational recommendations and the City may elect to make structural improvements to the Facility based upon the Energy Audit and consultation with the Facility General Manager. Under no circumstances, shall SMG be obligated to pay for any structural improvements to the Facility. Within sixty (60) days after SMG's receipt of the Energy Audit, the Facility General Manager shall present the Energy Audit report to the City Council with specific recommendation, if any, for structural improvements to the Facility.

7.2 Convention Consultant.

Within thirty (30) days of the Effective Date, SMG shall spend up to Five Thousand Dollars ($5,000.00) to retain a qualified and reputable consultant, acceptable to the City, to evaluate

the reasons why the Facility has not retained more convention and other room-night business (the "Convention Consultant"). The Convention Consultant shall prepare a report detailing his or her findings. In preparing the report, the Convention Consultant shall interview past Facility clients and promoters, and make reasonable attempts to interview parties that selected other like facilities. The cost relating to the retention of the Convention Consultant shall not be an Operating Expense but rather shall be incurred by SMG so long as such cost does not exceed the $5,000.00 limit provided in this Section 7.2.

7.3 Advertising and Naming Rights.

Within ninety (90) days of the Effective Date, SMG shall make available, to Owner, local industry and legal experts and experts from SMG corporate offices to create a plan for increasing advertising and pursuing naming rights opportunities for the Facility. Such plan will include recommendations for changes to the City's municipal code to allow for outside signage on the Facility, including Selland Arena and Saroyan Theater. SMG preliminarily estimates the cost of such plan to be approximately Five Thousand Dollars ($5,000.00), which shall be a Facility Operating Expense. In the event that it becomes apparent to SMG that professional costs for preparing an advertising and naming rights plan will exceed Five Thousand Dollars ($5,000.00), City will be responsible and SMG will work with the City Manager to prepare a budget amendment for approval by the City Council. In the event that SMG brings a specific, credible, and valid proposal consistent with industry standards for a similar convention complex in California for advertising or naming rights to the attention of the City and the City either does not accept the proposal or does not make sufficient changes to its municipal code to allow for the proposal to proceed, SMG shall annually receive a credit, as Operating Revenue, the amount of lost revenue directly attributable to that specific advertising or naming rights proposal (the "Disallowed Proposal"). The duration of such credit shall last one or more years, consistent with the terms contained in the Disallowed Proposal. Revenue generated from the sale of advertising and naming rights shall be considered Operating Revenue of the Facility. The City, at its sole discretion, may apply net cash from such revenues to capital reserves, Employee Benefit Cost Payments, or for the Co-Promoter Fund (as defined in Section 8).

8. Co-Promoter Fund.

Within sixty (60) days of the Effective Date, SMG shall create a new separate account to be used exclusively to pay promoters to draw events to the Facility (the "Co-Promoter Fund"). Each Fiscal Year, City shall allocate Fifty Thousand Dollars ($50,000.00), at minimum, to the Co-Promoter Fund. SMG will work with City regarding developing a plan for obtaining additional contributions to the Co-Promoter Fund. SMG will regularly update the City Manager on progress to attract events at the Facility and will not disburse any funds from the Co-Promoter Fund without City Manager's approval.

9. Chukchansi Stadium.

9.1 Events at Chukchansi Stadium; Compensation.

As of the Effective Date, SMG shall book and market, on a non-exclusive basis, entertainment events at the Chukchansi Stadium (the "Stadium") on such dates when the Fresno Grizzlies Baseball Club (the "Grizzlies") does not have sole use of the Stadium (each a "Stadium Event"). For each Stadium Event, City shall retain fifty percent (50%) of the net profit and SMG shall retain the remaining fifty percent (50%). The net profit for each Stadium Event shall not be considered Facility Operating Revenue. Accordingly, SMG's share of Stadium Event net profit shall be additional compensation to SMG. Any Operating Expenses incurred for each Stadium Event from the Facility Approved Budget shall be treated as Stadium Event expense and shall be reimbursed to the Facility from Stadium Event gross revenues.

9.2 Management, Operation, and Promotion.

For each Stadium Event, SMG shall have exclusive authority over the operations of the Stadium and all activities during each Stadium Event. SMG shall manage the Stadium for each Stadium Event consistent with the standards for performance of services in this Agreement, and where not expressed herein, in accordance with generally accepted industry standards.

9.3 Communication with Fresno Grizzlies Baseball Club.

SMG shall use reasonable efforts to communicate and work with the Grizzlies or any of its subcontractors, agents, employees, or volunteers, as the case may be. In the event that SMG determines that it is unable to effectively carry out the obligations described in this Agreement due to the lack of cooperation by the Grizzlies, the City shall reasonably intervene to resolve SMG's concerns.

9.4 Right of Owner.

During each Stadium Event, Owner shall have the right to enter all portions of the Stadium 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 or thing which the Owner may be obligated or have the right to do under this Agreement or otherwise. In connection with the exercise of such rights, the Owner will endeavor to provide (but is not obligated to provide) advance notice to SMG for security purposes and to minimize any interference with or disruption of SMG's work under this Agreement. Nothing contained in this Section 9 is intended or shall be construed to limit any other rights of the Owner under this Agreement nor shall impose or be construed to impose upon the Owner any independent obligation to construct or maintain or make repairs, replacements, alterations, additions or improvements to the Stadium or create any independent liability for any failure to do so.

9.5 SMG Access.

For each Stadium Event, SMG shall have access to all areas of the Stadium, except as described in this Subsection 9.5. SMG acknowledges that the Grizzlies shall retain a portion of the Stadium to house their administrative offices and to store equipment (the "Team Areas"). SMG shall only access Team Areas with the prior consent of the City, which shall not be unreasonably withheld, and the prior consent of the Grizzlies. SMG also acknowledges that certain areas of the Stadium are secured from general access due to safety and related concerns (the "Secure Areas"). SMG shall only access Secure Areas with the prior consent of the City, which shall not be unreasonably withheld.

9.6 Sponsorships and Advertisements.

SMG may obtain sponsorships and advertisements for each Stadium Event. All funds obtained from such sponsorships and advertisements shall be treated as operating revenues for that particular Stadium Event. If such sponsorships or advertisements are applicable to multiple Stadium Events, such funds shall be allocated by SMG on a per capita basis as reasonably determined by SMG.

10. SMG Employees.

10.1 SMG Employment.

SMG may during the Management Term and the Renewal Term, if any, select, train and employ at the Facility such number of employee(s) as SMG deems necessary or appropriate to satisfy its responsibilities hereunder, and SMG shall have authority to hire, terminate and discipline any and all personnel working at the Facility. SMG shall assign to the Facility a competent general manager and if SMG elects after the date hereof to replace the general manager who is currently serving as of the commencement of this Agreement, SMG shall consult with the Owner with respect to the qualifications of the replacement general manager proposed by SMG and obtain the approval of the Owner with respect to any such replacement (which approval shall not be unreasonably withheld). Owner shall have the right to direct SMG to remove the Facility's General Manager with ninety (90) days written notice accompanied by a written explanation of the reason for removal. In such an event, SMG shall consult with the Owner with respect to the qualifications of the replacement general manager proposed by SMG and obtain the approval of the Owner with respect to any such replacement, which approval shall not be unreasonably withheld.

10.2 SMG's Employees Not Considered Employees of Owner.

SMG employees at the Facility shall not for any purpose be considered to be employees of Owner, 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 (including federal, state and local income tax withholding) and any employee benefits, and all costs related to their employment shall be an Operating Expense.

10.3 Restriction on Owner's Solicitation or Hiring of SMG's Senior Management.

During the period commencing on the date hereof and ending one (l) year after the expiration or termination of this Agreement, except with SMG's prior written consent, the Owner will not, for any reason, directly or indirectly, solicit for employment, or hire, any of the senior management personnel employed by SMG at the Facility, which encompass the general manager, director-level employees and department heads. In addition to any other remedies which SMG may have, specific performance in the form of injunctive relief shall be available for the enforcement of this provision.

10.4 Reduction in Employee-Related Expenses.

From the Effective Date of this Agreement to the end of Fiscal Year 2014-2015 (the "Employee Expense Reduction Period"), the parties anticipate that the City will realize a total savings of $338,807 (or $18,822 per month). Specifically, during the Employee Expense Reduction Period, SMG shall reduce the total annual employee-related expenses for the Facility by five percent (5%) – as compared to actual employee-related expenses in Fiscal Year 2012-2013. For illustration purposes, for Fiscal Year 2012-2013, actual employee-related expenses were $2,352,990. A five percent (5%) reduction of employee-related expenses during the Employee Expense Reduction Period equates to a total of $117,650, thereby reducing the total budgeted employee-related expenses to $2,235,340. Additionally, the City acknowledges that the Facility will realize an additional reduction of employee-related expenses of $221,157 through the end of the Employee Expense Reduction Period. By forgoing certain employee-related salary and benefit increases that were included in the Fiscal Year 2013-2014 Approved Budget and freezing employee-related salaries and benefits that are proposed to be included in the Fiscal Year 2014-2015 proposed budget, SMG anticipates that the City's subsidy to the Facility will be reduced by an additional $221,157, which, in addition to the five percent reduction in employee-related salaries and benefits ($117,645), is anticipated to result in a total savings to the City of $338,807 during the Employee Expense Reduction Period.

Effective November 22, 2013, SMG has provided written notice to eligible Facility employees of a five percent (5%) reduction in salaries and benefits (the "Employee Notice"). While the Employee Notice occurred prior to the Effective Date, City acknowledges that the Employee Notice is credited towards the obligations contained in this Section 10.4 during the Employee Expense Reduction Period. The City expressly acknowledges that SMG, at its sole discretion, shall determine the means and methods for this reduction in employee-related expenses, including reducing wages and/or benefits. The City also acknowledges that there may be times during the course of a Fiscal Year, including during the Employee Expense Reduction Period, that increases in the number or scope of Facility events necessitate additional hiring for the Facility or additional hours for existing SMG Facility employees. Additionally, during the Employee Expense Reduction Period, external factors (e.g., the Affordable Care Act, any increases in payroll taxes) may cause increases in Facility employee-related expenses. These expense may result in Actual Cost Increases in the Facility's overall budget. Therefore, as part of the report and meeting requirements contained in Section 6.3, SMG shall notify the City Manager of positive or negative variances of the Facility related to employee-related expenses. Pursuant to Section 5.1, SMG shall have the right to request, at any time, that the City Council approve a Facility budget amendment and shall have the sole discretion in using all funds resulting from the budget amendment. SMG's failure to comply with Section 10.4 shall not

constitute a default as provided in Section 13.1, unless, as provided in Section 13.2, the actual Net Operating Loss/Profit for any Fiscal Year hereunder, as set forth in the annual financial statements described in Section 6.1, is greater than (or less than, as the case may be) the Net Operating Loss/Profit set forth in the Approved Budget for such year.

11. Indemnification and Insurance.

11.1 Indemnification.

(a) General. To the fullest extent permitted by law, SMG shall indemnify, defend (at SMG's sole cost and expense), protect and hold harmless City and each of its officers, officials, employees, agents and volunteers, and all of such party's representatives, successors and assigns, and any lender of City with an interest in the Facility (the "Indemnified Party(ies)"), from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, forfeitures, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and any and all other professional, expert or consultants' fees and costs and SMG's and City's general and administrative expenses) of every kind and nature whatsoever (individually, a "Claim;" collectively, "Claims") which may arise from or in any manner relate (directly or indirectly) to, and only to the extent of, the negligent and/or willful acts, errors and/or omissions of SMG, its principals, officers, agents, employees, person(s) under the supervision of SMG, vendors, suppliers, consultants, subconsultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable for any or all of them in performing any work or services to be provided under this Agreement or in the course of conducting SMG's activities at or on behalf of the Facility, provided, however, that the foregoing indemnification shall not extend to Claims to the extent that such Claims relate to (i) any breach or default by the City of its obligations under this Agreement; (ii) the fact that the design or condition of the Facility as of the date hereof is not in compliance with applicable Law, including without limitation the Americans With Disabilities Act, as amended ("ADA"); (iii) changes in the design or condition of the Facility after the date hereof that are not in compliance with applicable Law caused by Capital Improvements to the Facility contracted for by the City; (iv) any structural defect with respect to the Facility; or (v) any act or omission carried out by SMG at or pursuant to the direction or instruction of the City, its agents or employees. For sake of clarity, the following is an example of how the foregoing indemnity provision (including the above proviso) is intended to operate, as between SMG and the City -- Assume that a third party Claim is made against SMG and the City alleging, among other things, negligence against SMG and the City and it is discovered that in connection with such Claim, (A) the City's actions constituted a breach of one of its obligations under the Agreement; and (B) such breach constitutes 10% of the overall liability of SMG and the City with respect to such Claim. In such instance, SMG's indemnification of the City with respect to such Claim would be reduced by 10% of such overall amount (related to the City's 10% contribution to such liability); however, the City's breach of such obligation would not operate to relieve SMG from its indemnity obligations for the remaining 90% of the amount of such Claim.

(b) Stadium Events. In relation to Section 9 of this Agreement only, to the fullest extent permitted by law, City shall indemnify, defend (at City's sole cost and expense), protect and

hold harmless SMG and each of its officers, employees, agents, and volunteers, and all of such party's representatives, successors, and assigns from and against any and all Claims which may arise from or in any manner relate (directly or indirectly) to, and only to the extent of, the negligent and/or willful acts, errors and/or omissions of City, its officers, officials, agents, employees, person(s) under the supervision of City, vendors, suppliers, contractors (including, but not limited to, the Grizzlies, Fresno Baseball, LLC), subcontractors, consultants, subconsultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable for any or all of them in performing any work or services to be provided for each Stadium Event or in the course of conducting City's activities at or on behalf of Stadium Events, provided, however, that the foregoing indemnification shall not extend to Claims to the extent that such Claims relate to any breach or default by SMG of its obligations under this Agreement.

To the fullest extent permitted by law, SMG shall indemnify, defend (at SMG's sole cost and expense), protect and hold harmless the City and each of its officers, employees, agents, and volunteers, and all of such party's representatives, successors, and assigns from and against any and all Claims which may arise from or in any manner relate (directly or indirectly) to, and only to the extent of, the negligent and/or willful acts, errors and/or omissions of SMG, its officers, officials, agents, employees, person(s) under the supervision of SMG, vendors, suppliers, contractors, subcontractors, consultants, subconsultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable for any or all of them in performing any work or services to be provided for each Stadium Event or in the course of conducting SMG's activities at or on behalf of Stadium Events, provided, however, that the foregoing indemnification shall not extend to Claims to the extent that such Claims relate to any breach or default by City of its obligations under this Agreement.

11.2 Subcontractor Indemnification.

If SMG should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, SMG shall require each subcontractor to indemnify, defend, protect and hold harmless the Indemnified Parties in accordance with the provisions of this Section 11.

11.3 Approved Budget.

SMG's duty hereunder to indemnify, defend, protect and hold harmless the Indemnified Parties at SMG's sole cost and expense pursuant to Section 11.1 and 11.5 hereof includes that such cost and expense will not be paid from funds in the Approved Budget; except to the extent that (i) SMG prevails in its action as against claimant; and (ii) such cost and expense is not recovered and recoverable by SMG with reasonable due diligence from claimant or from any insurance proceeds (including, without limitation, proceeds from any policy that SMG is required to maintain hereunder).

11.4 Action to Enjoin or Set Aside Agreement. SMG warrants that SMG has the authority to enter into this Agreement and that there is no existing court order or judgment to either (i) enjoin SMG from entering into this Agreement; or (ii) to set aside this Agreement based upon any prior court order related to SMG directly or indirectly. SMG shall also indemnify, hold harmless,

protect and defend the Indemnified Parties at SMG's sole cost and expense from and against all Claims arising from all suits of law or actions of every nature to enjoin SMG from entering into this Agreement or to set aside this Agreement. Notwithstanding Section 11.3 above, such cost and expense will not be paid from funds in the Approved Budget.

11.5 Warranty and Indemnification Against Infringement.

SMG warrants that the materials, equipment, devices or processes (including, without limitation, any software or components of any database system) provided by SMG are free from trademark, copyright and patent infringements. SMG shall also indemnify, hold harmless, protect and defend the Indemnified Parties at SMG's sole cost and expense from and against all Claims arising from all suits of law or actions of every nature for or on account of the infringement of any patents, trademarks or copyrights by reason of the use of any proprietary materials, equipment, devices or processes, originally incorporated, or provided and used, by SMG in the performance of the work or the services provided under this Agreement.

11.6 Insurance.

SMG shall secure and deliver to the Owner prior to the commencement of the Management Term hereunder and shall keep in force at all times during the Management Term and the Renewal Term, if any, such insurance policies as are described in Exhibit "B" hereto.

12. Assignment; Subcontractors; Procurement.

12.1 Assignment.

Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either party hereto without the prior written consent of the other party hereto. 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 Facility hereunder

12.2 Subcontractors.

As of the Effective Date, with respect to future agreements between Facility contractors and SMG concerning the operations of the Facility (each a "Subcontract"), SMG shall not enter into a Subcontract, without the City Manager's written consent, in which the total compensation under the Subcontract to the subcontractor is between $10,000 and $50,000. Additionally, SMG shall not enter into a Subcontract, without the City Council's consent, in which the total compensation under the Subcontract to the subcontractor is greater than $50,000. Subcontracts requiring such approvals shall not include temporary licenses to use the Facility for events, concerts, or conventions. Unless agreed to by the City in writing prior to its execution, the term of any Subcontract executed after the Effective

Date shall be coterminous with this Agreement. Upon written notice to SMG by City, City and SMG may jointly negotiate concession and catering subcontracts.

12.3 Procurement.

The parties acknowledge that in certain circumstances, it may be beneficial to enter into a Subcontract using a formalized competitive purchasing process. The City has adopted procurement procedures. Likewise, SMG uses its national and international resources to obtain the best prices for goods and services. Therefore, in the event the Facility's General Manager desires to enter into a Subcontract with a value greater than $10,000, he or she shall notify the City Manager to determine whether or not such Subcontract should be subject to a competitive procurement. Accordingly, at the request of the City Manager or City Council, each Subcontract shall be subject to the City's competitive process provisions or SMG's leveraged purchase capabilities.

13. Termination.

13.1 Termination Upon Default.

Either party may terminate this Agreement upon a default by the other party hereunder. A party shall be in default hereunder if (i) such party fails to pay any sum payable hereunder within thirty (30) days after same is due and payable; or (ii) such party 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 sixty (60) days after written notice thereof from the other party. In the event that a default (other than a default in the payment of money) is not reasonably susceptible to being cured within the sixty (60) day period, the defaulting party shall not be considered in default if it shall within such sixty (60) day period have commenced with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default.

13.2 Termination for Failure to Meet the Budget.

The City shall also have the right to terminate this Agreement by giving SMG ninety (90) days written notice, if the actual Net Operating Loss/Profit for any Fiscal Year hereunder, as set forth in the annual financial statements described in Section 6.1, is greater than (or less than, as the case may be) the Net Operating Loss/Profit set forth in the Approved Budget for such year (the "Termination Shortfall"). In the event of such termination, the City shall continue to pay SMG the Employee Benefit Cost Payments over the Amortized Period, unconditionally and without set-off; however, if the amount of the Termination Shortfall is greater than $100,000.00, then the City shall not be obligated to pay to SMG (and SMG shall forfeit the right to receive) the next twelve (12) monthly installments of the Employee Benefit Cost Payment following the effective date of such termination hereunder. SMG shall not be considered to be in breach of this Agreement solely by reason of the existence of a Termination Shortfall.

13.3 Effect of Termination or Expiration.

(a) In the event this Agreement expires or is terminated, (i) all Operating Expenses defined and approved by the City Council within the Approved Budget incurred or committed for prior to the date of expiration or termination shall be paid using funds on deposit in the account(s) described in Sections 5.2 and to the extent such funds are not sufficient, the Owner shall pay the balance of such expenses; and (ii) Owner shall promptly pay SMG all fees earned to the date of expiration or termination subject to rights of set off in the event of a breach of this Agreement by SMG (the fees described in Section 4 (as applicable) being subject to proration).

(b) Upon termination or expiration, without any further action on the part of SMG or the Owner, the Owner shall, or shall cause another management company retained by it to, accept the assignment of SMG's rights, and assume and perform all of SMG's obligations, arising after the date of expiration or termination of this Agreement, under any licenses, occupancy agreements, rental agreements, booking commitments, advertising agreements, concession agreements, and any other contracts relating to the Facility which have been executed by SMG hereunder, except (A) to the extent that any such license, agreement, commitment or contract was executed by SMG in violation of any of the restrictions applicable to SMG's right to execute such licenses, agreements, commitments or contracts contained in this Agreement; and (B) for any such license, agreement, commitment or contract to which the consent of the other party thereto is required for such assignment and assumption unless such consent is obtained (in the case of any such consent, SMG will use commercially reasonable efforts to obtain such consent and the City will cooperate in any reasonable manner with SMG to obtain such consent), and all further obligations of the parties hereunder shall terminate except for the obligations that are expressly intended to survive the termination or expiration of this Agreement, including, without limitation, Sections 5.4, 10.3, 13.2, 13.3 and 13.4.

13.4 Surrender of Premises.

Upon termination or expiration of this Agreement, SMG shall surrender and vacate the Facility upon the effective date of such termination or expiration. The Facility and all equipment and furnishings shall be returned to Owner in good repair, reasonable wear and tear excepted, to the extent funds were made available therefor by Owner. All reports, records, including financial records, and documents maintained by SMG at the Facility relating to this Agreement other than materials containing SMG's proprietary information or property shall be immediately surrendered to Owner by SMG upon termination or expiration.

14. Miscellaneous.

14.1 Certain Representations and Warranties.

(a) Owner represents and warrants to SMG the following: (i) all required approvals have been obtained, and Owner has full legal right, power and authority to enter into and perform its obligations hereunder; (ii) this Agreement has been duly executed and delivered by Owner and constitutes a valid and binding obligation of Owner, 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; and (iii) the execution and delivery of this Agreement will not violate or cause a breach (with or without notice or the passage of time) under any agreement to which Owner is a party, including, without limitation, the City Agreement.

14.2 Certain Other Provisions.

(a) Use by the City. City use of the Facility shall (i) be booked in advance upon reasonable notice to SMG; (ii) not in conflict with dates previously booked by SMG for events; and (iii) not consist of Normally Touring Attractions (other than for occasional fund-raising events coordinated in advance with SMG). The City shall provide SMG credit as Operating Revenue the published rental rate for any City use of the Facility. SMG, however, shall invoice, and the City shall promptly pay, SMG for direct out-of-pocket expenses incurred in connection with the City's use of the Facility. Such direct out-of-pocket expenses shall include, but not be limited to, employee time, utilities, clean-up, food and beverage service, and linens. Upon request of City through the Contract Administrator, SMG shall provide to City a list of available dates for City use of the Facility. To the extent that SMG has an opportunity to book a revenue producing event on a date which is otherwise reserved for use by City, SMG may propose alternative dates and other incentives for City to consider in rescheduling its event, and City shall use reasonable commercial efforts to attempt to reschedule such event; provided, that City shall not be obligated to reschedule its event. The City may from time-to-time direct SMG to book events at the Facility for organizations or entities unaffiliated with the City. The City shall provide SMG with reasonable notice of such events and make, or cause to be made, immediate payment for all expenses, including, but not limited to, rental charges and out-of-pocket expenses, incurred in connection with such use.

(b) Non-Competition. SMG agrees that it shall not, directly or indirectly, participate in or encourage development of, own, manage or provide consulting, or other management, marketing or promotion services, whether as a principal, partner, joint venture, member, consultant, agent, independent contractor, or stockholder of any company or business with respect to the following specific venues:

(i) City of Fresno: Fresno State University's proposed hotel conference center.

(ii) Indian Tribe Property: Tribal gaming centers and future facilities within Kings, Madera and Fresno Counties.

(iii) City of Clovis: Clovis center/theater.

(iv) County of Fresno: Any convention center facility or other facility with exhibition, meeting and banquet space (excluding for sake of clarity, the Savemart Center at Fresno State University).

(c) Cooperation/Mediation/Litigation. The parties desire to cooperate with each other in the management and operation of the Facility pursuant to the terms hereof. In keeping with this cooperative spirit and intent, any dispute arising hereunder will first be referred to the parties' respective agents or representatives prior to either party initiating a legal suit, which will endeavor in good faith to resolve any such disputes within the limits of their authority and within forty-five (45) days after the commencement of such discussions. If any dispute between the parties has not been resolved pursuant to such a good faith resolution, the parties will endeavor to settle the dispute by nonbinding mediation under the then current CPR International Institute for Conflict Prevention and Resolution ("CPR") model procedure for mediation of business disputes or, if such model procedure no longer exists, some other mutually agreeable procedure. The parties agree that any mediation proceeding (as well as any discussion pursuant to paragraph (a) above) will constitute settlement negotiations for purposes of the federal and state rules of evidence and will be treated as non-discoverable, confidential and privileged communication by the parties and the mediator. No stenographic, visual or audio record will be made of any mediation proceedings or such discussions. All conduct, statements, promises, offers and opinions made in the course of the mediation or such discussion by any party, its agents, employees, representatives or other invitees and by the mediator will not be discoverable nor admissible for any purposes in any litigation or other proceeding involving the parties and will not be disclosed to any third party. Participation in such nonbinding mediation shall in no way waive a party's right to pursue any and all available judicial remedies.

(d) Independent Contractor. In the furnishing of the services provided for herein, SMG is acting as an independent contractor. Neither SMG, nor any of its officers, associates, agents or employees shall be deemed an employee, partner, joint venture or agent of Owner for any purpose. However, Owner shall retain the right to verify that SMG is performing its respective obligations in accordance with the terms hereof.

(e) Entire Agreement; Amendments. This Agreement contains 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. This Agreement shall not be altered, modified or amended in whole or in part, except in a writing executed by each of the parties hereto.

(f) Force Majeure. 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 ten (10) days of date on which such party gains actual knowledge of the event of "Force Majeure" that such party is unable to perform. The term "Force Majeure" as used in this Agreement means the following: an act of God, strike, war, public rioting, lightning, fire, storm, flood, explosions, inability to obtain materials, supplies, epidemics, landslides, lightning storms, earthquakes, floods, storms, washouts, civil disturbances, explosions, acts of terrorism, breakage or accident to machinery or lines of equipment, temporary failure of equipment, freezing of equipment 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.

(g) Binding Upon Successors and Assigns. 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.

(h) 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; (c) on the fifth day following mailing by certified or registered mail, return receipt requested, postage prepaid; or (d) on the date transmitted by telecopy as shown on the telecopy confirmation therefor as long as such telecopy transmission is followed by mailing of such notice 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 Owner:

City of Fresno
Attention: Bruce Rudd, City Manager
2600 Fresno Street, Room 2064
Fresno, California 93721
Telecopy: (559) 621-7776

To SMG:

SMG
Attention: John Burns, Senior Vice President
300 Conshohocken State Rd. Suite 450
West Conshohocken, Pennsylvania 19428
Attention: President
Telecopy: (610) 729-1590

With a copy to:

Baker Manock & Jensen, PC
5260 North Palm Avenue, Fourth Floor
Fresno, California 93704
Attention: Kenneth J. Price, Esq.
Telecopy: (559) 432-5620

(i) Governing Law; Counterparts. This Agreement will be governed by and construed in accordance with the internal Laws of the State of California, without giving effect to otherwise applicable principles of conflicts of law. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California. 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.

(j) 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.

(k) Non-Waiver. A failure by either party to take any action with respect to any default 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 default or with respect to any continuation or repetition of the original violation or default.

(l) Attorney's Fees. If either party is required to commence any proceeding, arbitration or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees, costs and legal expenses.

(m) Governmental Compliance. In providing the services required under this Agreement, SMG shall at all times comply with all applicable Laws now in force and as they may be enacted, issued, or amended during the term of this Agreement. However, SMG shall have no liability under this Agreement therefor, if such activity requires any Capital Improvements or Capital Equipment purchases, unless Owner provides funds for such Capital Improvements and Capital Equipment purchases. SMG will promptly provide notice to the City if SMG becomes aware of any condition such non-compliance that requires Capital Improvements or Capital Equipment purchases to remedy the same; provided, however, as soon as practicable after the date hereof (but no later than six (6) months after the date hereof) and on such other basis thereafter as the parties may mutually agree, SMG and the City will cooperate in, and mutually agreed upon, the planning and implementation of an inspection of the Facility for any such non-compliance issues to be performed by a qualified third party(ies) and/or qualified City employees or subcontractors (including without limitation a Phase I environmental analysis of the Facility), the costs of which inspection shall be provided for in the applicable Approved Budget.

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(i) Bond Counsel Approval. The terms of this Agreement shall be subject to the Owner's bond counsel approval to ensure tax law and bond covenant compliance. Upon advice from Owner's counsel, the parties agree to cooperate to revise the Agreement to make the terms contained herein comply with tax law and bond covenants.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first above written.

CITY OF FRESNO ("Owner")

By: _____
Name: Bruce Rudd
Title: City Manager

APPROVED AS TO FORM:

By: _____ 12-18-13
Name: Raj Singh Badhesha
Title: Deputy City Attorney

SMG

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

ATTEST:
YVONNE SPENCE, CMC
CITY CLERK
By: Cindy Bruer 12/19/13
Deputy

EXHIBIT "A"

Services

1. Without limiting the generality of Section 2.1 of this Agreement, SMG shall have, without (except as otherwise expressly noted below) any prior approval by Owner, sole right and authority to:

(a) Provide or cause to be provided, through itself and/or one or more of its Affiliates and/or third party subcontractors, booking services, catering and concession services, decorating services, maintenance services, and all other services in connection with the management, promotion and operation of the Facility. Without limiting the generality of the foregoing, SMG shall (A) conduct daily Facility' inspections by its on-site staff and "Mystery Shopper Program" inspections at least twice in each Fiscal Year and shall provide the Contract Administrator a copy of the Mystery Shopper report(s) within ten (10) days of its receipt by SMG to allow the City to monitor how the Facility is managed and maintained; and (B) subject to the approval of the Owner and the Owner's bond counsel, develop, implement and manage a system for selling Commercial Rights at or in connection with the Facility, either itself or through a subcontracted entity, provided that the Owner approves such subcontractor in advance (which consent will not be unreasonably withheld). Any amounts due to a third party selling the Commercial Rights shall be an Operating Expense.

(b) Negotiate, execute in its own name as an independent contractor, deliver and administer any and all licenses, occupancy agreements, rental agreements, booking commitments, advertising and sponsorship agreements, catering and concession agreements, decorating agreements, supplier agreements, service contracts and all other contracts and agreements in connection with the management, promotion and operation of the Facility, subject to (1) the fact that if any such license, agreement, commitment or contract other than those involving the license, lease or rental of any of the Facility (or any portion thereof) in the ordinary course has a term that extends beyond the remaining Management Term, such license, agreement, commitment or contract shall be approved in advance by Owner (which approval shall not be unreasonably withheld); and (2) the provisions of subsection (h) below. In connection with any licenses, agreements, commitments or contracts for the Facility, SMG will include in such documents the right of SMG to assign all of its rights and obligations under such licenses, agreements, commitments and contracts to the Owner (or to any successor management company retained by the Owner) upon the expiration or termination of this Agreement, and upon such expiration or termination, such assignment and assumption shall automatically occur as provided in Section 13.3(b) hereof.

(c) Establish and adjust prices, rates and rate schedules for the aforesaid licenses, agreements and contracts and any other commitments relating to the Facility to be negotiated by SMG in the course of its management, operation and promotion of the Facility. In determining such prices and rate schedules, SMG shall evaluate comparable charges for similar goods and services at similar and/or competing facilities and shall consult with the Owner about, and shall obtain the approval of the City Council with respect to, any adjustments to the rate schedules at the Facility to be made by SMG;

(d) To the extent that Operating Revenues or funds supplied by Owner are made available therefor, (1) maintain the Facility in the condition received, reasonable wear and tear excepted; and (2) rent, lease or purchase all equipment and maintenance supplies necessary or appropriate for the operation and maintenance of the Facility; provided that Owner shall be responsible for undertaking all Capital Improvements and Capital Equipment purchases as provided in Section 5.3;

(e) To the extent that Operating Revenues or funds supplied by Owner are made available therefor, pay, when due all Operating Expenses from accounts established pursuant to Sections 5.2 of this Agreement;

(f) After consultation with and approval by the Contract Administrator and the City Attorney, institute on behalf of the Facility and the City at the reasonable expense of the City or as an Operating Expense, with counsel selected by SMG, such legal actions or proceedings as SMG shall deem necessary or appropriate in connection with the operation of the Facility, including, without limitation, to collect charges, rents or other revenues due to SMG as manager of the Facility or to cancel, terminate or sue for damages under, any license, use, advertisement or concession agreement for the breach thereof or default thereunder by any licensee, user, advertiser, or concessionaire at the Facility;

(g) Engage in such advertising, solicitation, and promotional activities as SMG deems necessary or appropriate to develop the potential of the Facility and the cultivation of broad community support;

(h) Work with the Fresno Convention and Visitor's Bureau in such manner as requested by the Owner.

(i) Operate or cause to be operated the Parking Area for use as a pay parking lot for automobiles and for no other use unless approved by the Owner. Parking Area shall be operated and maintained as first class parking facilities open to public use, and with established rates approved by the Owner and staffed by sufficient personnel to ensure the prompt and efficient movement ingress and egress of traffic. Overnight parking shall not be permitted by SMG, except as specifically required to accommodate an event on a temporary basis in the course of operations at the Facility;

2. SMG acknowledges that the Facility is financed in large part with the proceeds of one or more series of City bonds ("Bonds"), the interest of which is intended to be excluded from gross income for federal income tax purposes. In order to assist Owner in preserving the tax-exempt nature of the Bonds, SMG acknowledges and agrees to that contained in this section.

(a) In determining whether to grant or withhold any approval of any contract for which approval of Owner is required under this Agreement, Owner may consider the effect of such contract for federal tax purposes on the exclusion of interest on the Bonds for federal income tax purposes.

(b) In addition to any other contracts requiring the approval of Owner, each of the following described contracts must be approved by Owner before execution thereof by SMG.

(i) Any contract relating to the Facility which grants a leasehold interest, term for years, or other real estate interest in the Facility (other than a revocable license), or grants a long-term right to use the Facility on a basis different from that of the general public.

(ii) Any contract for the provision of services related to the Facility must, to the extent applicable, comply with the provisions of Revenue Procedure 97-13 and the interpretations thereof.

(iii) Any contract for the use of the Facility for shows, programs, conventions and other events, unless such contracts provide for use on a fixed fee basis (excluding the sale of merchandise or concessions in respect thereto which may be on a percentage of merchandise or concession revenues), determined on an event by event basis and where the right of the user to the Facility are those of a transient occupant rather than full legal possessory interest in the Facility as a lessee.

(c) If required by bond counsel to Owner or counsel to the underwriters, SMG agrees to make modifications to this Agreement so that the same is, in the opinion of such counsel, a qualified management contract for purposes of Revenue Procedure 97-13 promulgated by the Internal Revenue Service. In the event such modifications shall materially increase SMG's obligations hereunder or materially decrease SMG's right or economic benefits hereunder, SMG and Owner will cooperate with each other in good faith for a period of thirty (30) days in an effort to amend the Agreement and preserve the economic benefits of both parties hereunder in a manner that is satisfactory to SMG, Owner and Owner's bond counsel, each acting in their sole discretion. To the extent the parties do not amend this Agreement within such 30 day period, SMG shall have the right to terminate this Agreement upon not less than ninety (90) days prior written notice to Owner, which right may be exercised by SMG providing such termination notice to Owner is within twenty (20) business days after expiration of the 30 day negotiation period. If SMG timely exercises its right of termination under this Paragraph 2(c), SMG shall continue to perform its obligations hereunder through the date of termination and Owner shall continue to pay SMG all of its management fees, on a prorated basis for the then current Fiscal Year, through the date of termination in accordance with this Agreement.

EXHIBIT "B"

Insurance

(a) Throughout the term of this Agreement, SMG shall acquire and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Bests Insurance Rating Guide; or (ii) authorized by the Owner's Risk Manager. The following policies of insurance are required:

(i) COMMERCIAL GENERAL LIABILITY insurance which shall include blanket contractual, independent contractor's liability, personal injury and advertising liability, products and completed operations coverages, bodily injury and property damage liability insurance with combined single limits of not less than $1,000,000 per occurrence. (This policy shall include a broad form comprehensive general endorsement.)

(ii) LIQUOR LIABILITY insurance of not less than $2,000,000 per occurrence. (Contingent liquor liability is required of SMG and liquor legal liability shall be required by SMG of any concessionaire, vendor, licensee or other host engaged in such activity to which this coverage is applicable.)

(iii) UMBRELLA or EXCESS LIABILITY insurance of not less than $5,000,000 per occurrence and aggregate.

(iv) COMMERCIAL AUTOMOBILE LIABILITY insurance, endorsed for "any auto," with combined single limits of liability of not less than $1,000,000 per occurrence.

(v) PROFESSIONAL LIABILITY insurance (Errors and Omissions) including employment practices, with a limit of liability of not less than $1,000,000 per claim.

(vi) CRIME COVERAGE covering the activities of all of SMG's employees from employee dishonesty, forgery, theft, robbery and safe burglary in an amount not less than $1,000,000.

(vii) WORKERS' COMPENSATION and EMPLOYER'S LIABILITY insurance as required under the California Labor Code.

The above described policies of insurance shall be endorsed to provide an unrestricted 30 day written notice in favor of Owner of policy cancellation of coverage, except for the Workers' Compensation policy which shall provide a 10 day written notice of such cancellation of coverage. In the event any policies are due to expire during the Operating Term or any extension period of this Agreement, SMG shall provide a new certificate evidencing renewal of such policy on or prior to the expiration date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation in coverage, SMG shall file with Owner a new certificate for such policy(ies).

(b) The Commercial General Liability policy, Automobile Liability insurance policy, Liquor Liability policy, and Umbrella or Excess Liability policy shall be written on an occurrence form and shall name Owner, its officers, officials, agents, employees and volunteers as an additional insured. The Workers' Compensation policy shall contain a waiver of all rights of

subrogation against Owner. Such policy(ies) of insurance shall be endorsed so SMG's insurance shall be primary and no contribution shall be required of Owner.

(c) In the event claims made forms are used for any Professional Liability coverage, either (i) the policy(ies) shall be endorsed to provide not less than a 3-year discovery period; or (ii) the coverage shall be maintained for a minimum of 3 years following the termination or expiration of this Agreement.

(d) SMG shall have furnished Owner with the certificate(s) and applicable endorsements for all required insurance prior to Owner's execution of this Agreement. SMG shall furnish Owner with copies of the actual policies upon the request of Owner's Risk Manager at any time during the life of the Agreement or any extension.

(e) SMG will be responsible for payment of any and all deductibles contained in any insurance policies provided hereunder for Crime Coverage and Professional Liability, and SMG will also be responsible for payment of any and all self-insured retentions regarding same; and such deductibles and retentions will be at SMG's sole cost and expense and will not be paid from funds in the Approved Budget. If there are changes in the insurance market after the execution and delivery of this Agreement that cause adverse modifications to the structure of deductibles and/or self-insured retentions applicable to SMG's insurance policies existing as of the date of such execution and delivery, the parties shall meet to discuss such modifications and to mutually agreed upon reasonable changes to the provisions of this subparagraph (e).

(f) If at any time during the life of the Agreement, SMG fails to maintain the required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to SMG shall be withheld until notice is received by Owner that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to Owner. Any failure to maintain the required insurance shall be sufficient cause for Owner to terminate this Agreement.

(g) If SMG should subcontract all or any portion of the services to be performed under this Agreement, SMG shall require each subcontractor to provide insurance protection in favor of Owner, its officers, officials, employees, agents and volunteers in accordance with the terms of this Exhibit B, except that the subcontractors' certificates and endorsements shall be on file with SMG and Owner prior to the commencement of any work by the subcontractor.

(h) The Crime Coverage and Professional Liability insurance will be provided by SMG at its sole cost and expense and will not be paid from funds in the Approved Budget.