CITY OF FRESNO
City Clerk's Office (Original)

FIRST AMENDMENT TO MANAGEMENT AGREEMENT

THIS FIRST AMENDMENT TO MANAGEMENT AGREEMENT (this "First Amendment") is dated as of this 1st day of November, 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 The parties thereafter entered into that certain Management Agreement dated as of December 17, 2008, which superseded the Original Management Agreement (the "Management Agreement"). On or about December 18, 2013, the parties entered into that certain Amended and Restated Management Agreement (the "Amended Management Agreement"), whereby City and SMG agreed to certain revisions 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.

C. By this First Amendment, the parties agree that SMG shall conduct certain promotional activities related to the parking structure located at the southwest corner of "O" and Inyo Streets (the "City Lot").

D. This First Amendment hereby incorporates those definitions used in the Amended Management Agreement.

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

1. **Parking Promotion**. Exhibit "A" Section 1(i) is hereby amended to provide for the following:

> 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. Additionally, SMG shall implement various programs in consultation with the City and the City Lot

third-party parking operator, if any, to package events with parking at the City Lot and implement other programs in an effort to increase revenues for the Facility and the City Lot. The City shall reasonably cooperate with SMG regarding such efforts. Any revenues directly attributable to SMG's marketing of the City Lot shall be factored in as Operating Revenues for the purposes of calculating the Facility's operating budget.

2. **Effect of Amendment.** Except as otherwise specifically set forth in this First Amendment, each and every provision of the Amended Management Agreement, shall remain in full force and effect.

3. **Counterparts.** This First Amendment (either a duplicate copy or a copy of a facsimile thereof) may be executed in any number of counterparts and each such counterpart shall be deemed to be an original instrument, all of which together shall constitute one and the same instrument.

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: Bruce Rudd
Name: Bruce Rudd
Title: City Manager

APPROVED AS TO FORM:

By: 11·6·14
Name: RAJV SINGH BADHESHA
Title: DEPUTY CITY ATTORNEY

SMG

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

ATTEST:
YVONNE SPENCE, CMC
CITY CLERK
By Cindy Bruer
Deputy

RECEIVED

2014 NOV 6 AM 8 42

CITY CLERK, FRESNO CA

FRESNO CONVENTION & ENTERTAINMENT CENTER, OPERATIONS AS MANAGED BY SMG

FINANCIAL STATEMENTS

FOR THE FISCAL YEAR ENDED JUNE 30, 2014

FRESNO CONVENTION & ENTERTAINMENT CENTER,
OPERATIONS AS MANAGED BY SMG

JUNE 30, 2014

TABLE OF CONTENTS

Page

Independent Auditor's Report 1

Financial Statements:

Statement of Net Position 3

Statement of Revenues, Expenses and Changes in Net Position 4

Statement of Cash Flows 5

Notes to the Financial Statements 6

PRICE PAIGE & COMPANY
Accountancy Corporation

The Place to Be

INDEPENDENT AUDITOR'S REPORT

To the Management of
Fresno Convention & Entertainment Center
848 M Street, 2nd Floor
Fresno, California 93721

We have audited the accompanying financial statements of Fresno Convention & Entertainment Center, operations as managed by SMG (the "Center"), as of and for the year ended June 30, 2014, and the related notes to the financial statements, as listed in the table of contents.

Management's Responsibility for the Financial Statements

SMG Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Center's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Center's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

677 Scott Avenue
Clovis, CA 93612

tel 559.299.9540
fax 559.299.2344

www.ppcpas.com

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Fresno Convention & Entertainment Center, operations as managed by SMG, as of June 30, 2014, and the changes in financial position and cash flows thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Emphasis of Matter

These financial statements do not purport to present the financial position of the Fresno Convention & Entertainment Center as a whole. These statements only reflect those transactions and activities under the management of SMG. Accordingly, certain assets and liabilities associated with the Center, such as capital assets, long-term debt and other activities are not presented.

Price Paige & Company

Clovis, California
October 31, 2014

FRESNO CONVENTION & ENTERTAINMENT CENTER,
OPERATIONS AS MANAGED BY SMG
STATEMENT OF NET POSITION
JUNE 30, 2014

ASSETS	
Current assets:	
Cash and cash equivalents	$ 688,252
Restricted cash and cash equivalents	1,217,913
Accounts receivable	107,504
Due from the City of Fresno	1,988
Inventories	55,208
Prepaid expenses	54,244
Total current assets	2,125,109
Total assets	2,125,109
LIABILITIES	
Current liabilities:	
Accounts payable	363,660
Due to the City of Fresno	25,803
Accrued payroll	114,445
Compensated absences	58,196
Advance ticket sales and deposits	1,242,026
Event liability	131,190
Other accrued expenses	99,538
Other unearned revenue	15,178
Total current liabilities	2,050,036
NET POSITION	
Unrestricted	75,073
Total net position	$ 75,073

The accompanying notes are an integral part of this statement.

FRESNO CONVENTION & ENTERTAINMENT CENTER,
OPERATIONS AS MANAGED BY SMG
STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION
FOR THE YEAR ENDED JUNE 30, 2014

Operating Revenue	
Direct event income:	
Rental income	$ 1,362,159
Net services event income (loss), net of service event expense of $1,744,301	(111,471)
Total direct event income	1,250,688
Ancillary income:	
Food and beverage, net	275,158
Catering, net	228,592
Facility fees	400,928
Parking	242,998
Other ancillary	184,450
Total ancillary income	1,332,126
Other revenue	42,606
Total operating revenue	2,625,420
Operating Expenses	
Employee wages and benefits	1,640,065
Contracted services	23,360
General and administrative expenses	141,240
Advertising	26,510
Insurance	103,754
Operations expense	15,581
Repairs and maintenance	307,846
Supplies	119,846
Utilities	1,038,696
Special events	25,500
SMG management fee	168,010
Total operating expenses	3,610,408
Operating loss before contributions	(984,988)
Contributions from City of Fresno	2,194,389
Change in net position	1,209,401
Total net position, July 1, 2013	(748,299)
Prior period adjustment	(236,053)
Theatre assets transferred to the City of Fresno	(149,976)
Net position, July 1, 2013, as restated	(1,134,328)
Total net position, June 30, 2014	$ 75,073

The accompanying notes are an integral part of this statement.

FRESNO CONVENTION & ENTERTAINMENT CENTER,
OPERATIONS AS MANAGED BY SMG
STATEMENT OF CASH FLOWS
FOR THE YEAR ENDED JUNE 30, 2014

Cash flows from operating activities:	
Cash receipts from customers	$ 5,147,736
Other operating cash receipts	42,606
Payments to suppliers of goods or services	(5,077,270)
Payments to employees for services	(1,540,474)
Net cash provided by (used in) operating activities	(1,427,402)
Cash flows from non-capital financing activities:	
Contributions from the City of Fresno	2,194,389
Net cash provided by (used in) non-capital financing activities	2,194,389
Net increase in cash	766,987
Cash, beginning of year	1,139,178
Cash, end of year	$ 1,906,165
Reconciliation of operating income (loss) to net cash provided by (used in) operating activities:	
Operating loss before contributions	$ (984,988)
Adjustments to reconcile operating income (loss) to net cash provided by (used in) operating activities:	
Changes in operating assets and liabilities:	
Decrease in accounts receivable	160,403
(Increase) in due from City of Fresno	(1,988)
(Increase) in inventories	(2,207)
(Increase) in prepaid expenses	(21,382)
(Decrease) in accounts payable	(627,748)
(Decrease) in due to City of Fresno	(495,206)
Increase in accrued payroll	99,013
Increase in compensated absences	578
Increase in advance ticket sales	373,076
Increase in event liability	84,798
(Decrease) in other accrued expenses	(7,210)
(Decrease) in other unearned revenue	(4,541)
Net cash provided by (used in) operating activities	$ (1,427,402)
Cash and cash equivalents	$ 688,252
Restricted cash	1,217,913
Total cash and cash equivalents	$ 1,906,165

The accompanying notes are an integral part of this statement.

NOTE 1 – ORGANIZATION AND OPERATIONS

The Fresno Convention & Entertainment Center (the "Center") is the premier performing arts and convention center site in California's Central Valley. Located in downtown Fresno, the Fresno Convention Center, Saroyan Theatre, Selland Arena and Valdez Hall are owned and subsidized by the City of Fresno (the "City"), a municipal corporation organized and existing under the laws of the State of California. Activities at the Center include a wide variety of events including concerts, weddings, conventions, shows, professional sporting events, and various community events.

The City entered into a management agreement (the "Agreement") with SMG, a Pennsylvania general partnership in January 2004, to provide business management services, including operations, management and promotion for the Center. The Agreement was subsequently amended first in December 2008 and then again in December 2013, taking effect January 1, 2014. The Agreement provides for an annual management fee with potential increases if SMG meets certain performance criteria. The Agreement expires June 30, 2019, unless otherwise mutually agreed-to by extension in writing prior to expiration.

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Accounting

The Center is part of a proprietary entity; it uses an enterprise fund format to report its activities for financial statement purposes. Proprietary Fund Financial Statements include a Statement of Net Position, a Statement of Revenues, Expenses and Changes in Fund Net Position, and a Statement of Cash Flows.

Enterprise funds are used to account for operations that are financed and operated in a manner similar to private business enterprises, where the intent of the governing body is that the cost and expenses of providing goods or services to its customers be financed or recovered primarily through users charges; or where the governing body has decided that periodic determination of revenue earned, expenses incurred, and net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes.

Enterprise funds are accounted for using the "economic resources" measurement focus and the accrual basis of accounting. Accordingly, all assets and liabilities (whether current or noncurrent) are included on the Statement of Net Position. The Statement of Revenues, Expenses and Changes in Fund Net Position presents increases (revenues) and decreases (expenses) in total net position. Under the accrual basis of accounting, revenues are recognized in the period in which they are earned while expenses are recognized in the period in which the liability is incurred.

Operating revenues in the proprietary funds are those revenues that are generated from the primary operations of the fund. All other revenues are reported as non-operating revenues. Operating expenses are those expenses that are essential to the primary operations of the fund. All other expenses are reported as non-operating expenses.

Cash and Cash Equivalents

Cash and cash equivalents consist of various demand and interest bearing accounts on deposit with insured financial institutions. The Center considers all investments with an original maturity of three months or less to be cash equivalents; however, the Center did not have any cash equivalents for the year ended June 30, 2014.

Cash from ticket sales and contract deposits held in escrow are designated as restricted (see Note 3).

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Accounts Receivable

Accounts receivable are stated at the amount SMG management expects to collect from outstanding balances. Accounts receivable are written-off when deemed uncollectible. Recoveries of accounts receivables previously written-off are recognized as income when received. SMG management believes that all accounts receivable are collectible and therefore an allowance for doubtful accounts is not deemed necessary.

Inventories

Inventories consist of food and beverage items for the Center's concession stands and are stated at the lower-of-cost (determined on the first-in, first out basis) or, when appropriate, market (net realizable value).

Property and Equipment

The City provides SMG with certain funding for capital expenditures on an annual basis. All assets purchased by SMG with a cost below $5,000 are expensed when incurred. The City retains all ownership and title of all assets purchased that are capitalized. SMG utilizes the City's funds to purchase these assets and transfers title to the City for inclusion in its financial statements. As such, no depreciation is recorded for the operating activities of SMG – Fresno Convention & Entertainment Center. Routine repairs and maintenance, including planned major maintenance activities are expensed when incurred.

Compensated Absences

The Center provides its employees with vacation, sick and other benefits in accordance with its policies. The Center's costs for these benefits are expensed as they are vested in the employees.

Advanced Ticket Sales and Deposits

Event tickets sold prior to an event date are recorded and recognized as a liability under advanced ticket sales until the event takes place. The Center does not recognize ticket sales revenue for events since these funds are held on behalf of the event promoters. Advanced deposits are funds received from customers for deposit on facility rentals for events that have not yet occurred.

Net Position

Net position is reported in three categories as follows:

Net investment in capital assets – This amount consists of capital assets, including infrastructure, net of accumulated depreciation. The Center did not have net position in this category.

Restricted – This amount consists of net position restricted by external creditors, grantors, contributors, or laws or regulations of other governments and restrictions imposed by law through constitutional provisions or enabled legislature. The Center did not have restricted net position.

Unrestricted – This amount consists of all net position that does not meet the definition of "net investment in capital assets" or "restricted net position."

When both restricted and unrestricted net position are available, restricted resources are depleted first before unrestricted resources are used.

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Fair Value of Financial Instruments

The Center considers its cash, accounts receivables, prepaid expenses, accounts payable, and accrued expenses to be short-term in nature and, therefore, fair values approximate carrying values.

Revenue Recognition

Revenues from the Center's events such as facilities rental, direct event expense reimbursement, concession commissions, and merchandise are recognized at the time the event occurs.

Contributions from the City of Fresno

Each year, the City of Fresno makes budgeted cash transfers to the Fresno Convention & Entertainment Center to supplement operations. In Fiscal Year 2014 these transfers totaled $2,194,389. Much of these funds are used to provide funding for repairs and maintenance on the various Convention facilities, most of which were built in the early 1960's. Some of the moneys are derived from the Arts, Parks, Entertainment and Sports (APES) surcharge. This surcharge is applied to all City-owned entertainment facilities with the purpose of providing a revenue stream for the facilities collecting the fee to fund much needed repairs, capital improvements and upgrades. SMG collects the fees on all tickets sold for attendance at Convention Center facilities. The current fee is $1.00 and relates to all tickets sold regardless of the ticket price. The City has the discretion to determine when and how much of these fees will be returned to the facility and to which repairs and maintenance expenditures they may be applied.

Advertising and Promotion

The Center expenses all advertising and promotion costs as incurred. Total advertising and promotion expense for the year ended June 30, 2014 was $26,510.

Income Taxes

A provision for income taxes is not reflected in the accompanying financial statements. The operations under the management of SMG – Fresno Convention & Entertainment Center are reported to the City, a municipal corporation organized and existing under the laws of the State of California and exempt from income taxes.

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires SMG management to make estimates and assumptions that affect the reported amount of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

NOTE 3 – CASH AND CASH EQUIVALENTS

SMG is required to maintain separate bank accounts for various purposes. Cash consists of the following at June 30, 2014:

	Unrestricted	Restricted
Cash in bank, City of Fresno - operations	$ 490,205	$ -
Cash in bank, City of Fresno - ticket sales escrow	-	1,057,326
Cash in bank, City of Fresno - contract deposit escrow	-	160,587
Cash in bank - concessions	105,082	-
Cash in bank - concessions credit card	34,631	-
Cash in bank - payroll account	11,863	-
Cash - box office vault	10,000	-
Cash - parking vault	6,000	-
Petty cash - admin	250	-
Petty cash - operations	500	-
Petty cash - concessions	300	-
Petty cash - event services	300	-
Change fund - box office	9,121	-
Change fund - concessions	20,000	-
	$ 688,252	$ 1,217,913

Custodial Credit Risk

Custodial credit risk for *deposits* is the risk that, in the event of failure of a depository financial institution, an entity will not be able to recover its deposits. The California Government Code does not contain legal or policy requirements that would limit the exposure to custodial credit risk for deposits or investments, other than the following provision for deposits: The California Government Code requires that a financial institution secure deposits made by state or local governmental units by pledging securities in an undivided collateral pool held by a depository regulated under state law (unless so waived by the governmental unit). The market value of the pledged securities in the collateral pool must equal at least 110% of the total amount deposited by the public agencies.

As of June 30, 2014, the Center's cash deposits held by the City that were in excess of federal depository insurance limits were held in accounts collateralized in accordance with State law as described above.

The Center's payroll and concessions cash deposits are held by SMG in a financial banking institution insured by the Federal Depository Insurance Corporation (FDIC). At June 30, 2014, these cash balances held in the financial banking institution did not exceed FDIC insurance amounts.

NOTE 4 – CONTRACTUAL AGREEMENTS

Management Agreement

SMG and the City entered into an amended and restated Management Agreement (the "Agreement") effective on January 1, 2014, which will terminate June 30, 2019, unless mutually agreed to extension in writing prior to expiration. Provisions of the Agreement allow for the City to terminate the Agreement prior to the expiration date for various reasons, including default of payments or failure to achieve target budget goals. Under the Agreement, SMG agreed to reduce the annual management fee payable by the City to SMG for the operation of the Center from $195,656 to $145,656. The management fee may be adjusted annually if SMG meets certain qualitative and quantitative performance criteria.

For the year ended June 30, 2014, total management fee expense consists of the following:

Management fee, July 1 - December 31, 2013	$ 95,192
Management fee, January 1 - June 30, 2014	72,818
Total management fee expense	$ 168,010

Ticket Sales

The Center has entered into an amended licensed user agreement with Ticketmaster to be the exclusive provider for ticket sales for events held by the Center. Under the agreement, Ticketmaster has the authority to act as an agent for the Center for ticket sales to the general public by any and all means including, but not limited to, direct box office sales, telephone, internet, and secondary outlet locations. Ticketmaster earns fees from the ticket sales, which also include ticket charges, customer convenience charges and handling fees. Ticketmaster collects these fees as tickets are sold and the net amount is remitted to the Center. The amended licensed user agreement remains in effect until December 31, 2018.

Concession

The Center entered into an amended and restated agreement with Pardini's Catering, Inc. (the "Concessioner") in February 2009 for the continued exclusive rights to provide catering and beverage sales for all events at the Center. Terms of the agreement provide for the Concessioner to remit payment to SMG in accordance with the agreement. The agreement was effective as of January 1, 2009 and terminates December 31, 2019.

Stagehands

During 2008, the Center entered into an agreement with Local 158, International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada (Local 158) to be the sole and exclusive bargaining agent for all stagehands at the Center's facilities. Rates for services are charged as outlined by the contract. Total costs per event can vary depending on the amount of employees needed and the type of services to be provided. This agreement expired on November 30, 2013. The Center is currently functioning under terms of the expired agreement. The Center is actively negotiating with Local 158 in good faith to enter into a new contract.

NOTE 4 – CONTRACTUAL AGREEMENTS (Continued)

Equipment Maintenance

The Center has entered into various equipment long-term service agreements with Trane for all buildings. The agreements call for Trane to provide scheduled inspections and maintenance on air conditioning units and certain other equipment as outlined by the individual agreements. The Center is required to make quarterly payments for all service agreements.

Amounts due by the Center for service agreements for the years ending June 30 are as follows:

2015	$ 63,084
2016	40,362
2017	28,232
2018	29,455
2019	23,569
	$ 184,702

NOTE 5 – 401(K) PLAN

All employees of SMG – Fresno Convention & Entertainment Center who have completed more than three months of service (full-time) or one year and at least 1,000 hours during a 12-month period (part-time), are over 21 years of age, are not leased employees, and are not part of a facility subject to a collective bargaining agreement or union contract which does not require the employer to allow participation in the plan, are eligible for participation in the plan. Employees can elect to contribute between 1% and 60% of eligible pay, up to the annual IRS dollar limit. Employer contributions are on a discretionary basis and equal to a percentage determined annually by SMG Board of Director's Resolution. SMG has indefinitely suspended all matching contributions for the plan until the Center's revenues support the increased expenses.

NOTE 6 – PRIOR PERIOD ADJUSTMENT

The Fresno Convention & Entertainment Center, as managed by SMC, had in previous years reflected various expenditures on its internal Balance Sheet as Other Assets. Upon analysis of these transactions under audit, it was determined that these expenditures were more appropriately reflected as repairs and maintenance expenditures incurred in years prior to Fiscal Year 2014. As a result, a prior period adjustment of $236,053 has been made to the beginning balance of net position to properly reflect these expenditures.

NOTE 7 – TRANSFER OF THEATRE ASSETS TO THE CITY OF FRESNO

In addition to various repair and maintenance expenses incurred in prior years being reflected as other assets on its internal Balance Sheet, major renovations and improvements to the Saroyan Theatre in a prior year were not properly transferred to the City of Fresno upon completion. These costs were also noted as being captured in Other Assets. An adjustment in the amount of $149,976 has been made to the beginning balance of net position to properly reflect the transfer of these assets to the City.

NOTE 8 – SUBSEQUENT EVENTS

Management of SMG has evaluated and concluded that there are no subsequent events that have occurred since June 30, 2014, through the date the financial statements were available to be issued on October 31, 2014, that would require disclosure or adjustment.