



AGENDA ITEM NO. 9:00am #1

COUNCIL MEETING 11/04/08

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

Andrew T. Souza

November 4, 2008

FROM: ANDREW T. SOUZA, CITY MANAGER
Office of the City Manager

SUBJECT: AWARD CONTRACT TO SMG FOR THE OPERATION AND MARKETING OF THE
FRESNO CONVENTION AND ENTERTAINMENT CENTER

KEY RESULT AREA

Economic Development

RECOMMENDATIONS

Staff recommends approval of a ten year Agreement with SMG for the continued operation and marketing of the Fresno Convention and Entertainment Center (FCEC).

EXECUTIVE SUMMARY

In November 2003, the City Council approved a contract with SMG for the operation and marketing of FCEC which will expire in December 2008. The contract resulted in over \$5 million of General Fund savings that have been used to provide funding for the significant capital improvements that have been made to the FCEC facilities. Staff from the City Manager's and City Attorney's Offices have worked with SMG to negotiate an agreement for the continued operating and marketing services for the FCEC for the next 10 years. The annual fee to be paid to SMG has remained constant, and provides the City with the right to terminate the agreement if the actual Net Operating Loss/Profit for any year is not equal to or better than the Net Operating Loss/Profit set forth in the Approved Budget for that year. The agreement also calls for the City to make annual payments of \$100,000 during each of the 10 years as a settlement of approximately \$2 million of payments made by SMG for the operation of FCEC during the term of the previous contract that had not been previously approved by the City (see Employee Benefit Cost Payment section below).

SMG continues to be the dominant leader in the facilities management industry, currently operating 215 venues compared to 70 operated by Global Spectrum. This difference in the number of venues operated by SMG has increased during the last five years. Additionally, SMG continues to maintain a significantly larger national marketing operation, and has annual operations which exceed Global Spectrum by more than \$156 million (\$168.8 million compared to \$12.6 million). The strength of SMG marketing efforts has

SUBJECT TO MAYOR'S VETO

Presented to City Council
Date 11/4/08
Disposition Awarded as recommended

resulted in Pollstar magazine ranking the Selland Arena and Saroyan Theater in the top 100 venues worldwide based on ticket sales.

BACKGROUND

On November 18, 2003, the City Council awarded the operating and marketing of the Fresno Convention and Entertainment Center (FCEC) to SMG for the period of January 1, 2004 through December 31, 2006, with the option of two one year extensions. SMG has successfully operated the facilities and has booked a multitude of top performers ranging from the Red Hot Chili Peppers to Placido Domingo as well as top Broadway shows. Under the management of SMG, the facility was awarded the "Prime Facilities and Destinations Award" for years 2006 and 2007. During 2007, Pollstar magazine ranked the Selland Arena and Saroyan Theater in the top 100 venues worldwide based on ticket sales.

Since assuming the operating and marketing efforts in 1993, SMG has made significant contributions to the operations and management of the facilities. For example, the Fresno Sports Council, which has been operating since 2005 with SMG, has brought in 108 new events, booked an estimated 65,000 room nights for 2006-2012, and generated an estimated \$787,000 in room tax. SMG has also assisted with the reorganization of the structure of the Fresno Convention and Visitors Bureau and governing Board of Directors. In 2005, SMG leveraged its nationwide relationship with Ticketmaster and worked on behalf of the City of Fresno to renegotiate a contract that includes facility fees on all ticketed events.

Over the last two years SMG has effectively managed the facilities during major renovation efforts which began in June of 2006. During this time, 245 event days could not be booked due to the construction. Impressively the facilities were recognized during this time with the Prime Facilities Destination award and ranked in the top 100 facilities worldwide as referenced above. Phase I of the renovations were completed at a cost of \$18.1 million. Renovation work at the Saroyan Theater included a remodeling of the main lobby, theater back of house, plaza area and the replacement of the roof. The Selland Arena remodel entailed remodeling the back of house, locker rooms, new seats, and a new roof. A new complex chiller was also installed to accommodate all facilities. Currently phase II and III are underway including a roof for Selland Arena, boiler system, air handler, domestic hot water, HVAC, stage rigging, ice floor, scoreboard, sound system, hockey equipment and VIP seating. The total cost for both phases is \$9.9 million.

KEY CONTRACT PROVISIONS:

Length of Agreement:

The term of the agreement is ten years, which is consistent with the length of the agreements for other venues operated by SMG including the Save Mart Center, the Gardens in Bakersfield, and The Long Beach Convention Center. The agreement provides the City with the option of terminating the agreement if the actual Net Operating Loss/Profit for any year is not equal to or better than the Net Operating Loss/Profit set forth in the Approved Budget for that year. The right to terminate for failing to meet the financial budget is a new provision which was not included in the previous agreement.

Base Compensation:

The base compensation to SMG for services is based upon the current fee of an annual fixed fee of \$177,300.00, which amount shall be adjusted upward on the first day of each Fiscal Year following the first complete Fiscal Year starting July 1, 2009 and ending June 30, 2010 ("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.

Incentive Fee:

In addition to the fees described above, SMG shall be entitled to an annual incentive fee with respect to each Fiscal Year hereunder during the Management Term or Renewal Term based upon its performance with respect to the qualitative criteria set forth within the contract. In no event shall the qualitative incentive fee exceed an amount equal to twenty percent (20%) of the total compensation payable to SMG in such Fiscal Year taking the Base Fee for such year and dividing it by .8, and then subtracting the Base Fee from the result with such resulting number being hereinafter referred to as the "Qualitative Fee Cap"):

Client Satisfaction. SMG shall demonstrate quality service to clients of the Facility by above average ratings on exit surveys, the form and procedure of which will be mutually agreed upon by SMG and the Contract Administrator. (up to 5 points)

Community Involvement. SMG personnel will actively participate in programs and organizations within the community on a volunteer basis. (up to 5 points)

Maintenance and Operation. SMG shall demonstrate quality maintenance and operation of the Facility based upon a review by the Owner on a quarterly basis of the condition of the Facility and the equipment therein. (up to 5 points)

Contract Compliance. SMG shall demonstrate compliance with the provisions of this Agreement based upon an annual review by the Owner to be completed no later than the end of each Fiscal Year of a mutually agreed upon checklist of compliance items. (up to 5 points)

Marketing. SMG shall demonstrate compliance with the marketing objectives of the Owner through effective utilization of available resources and shall establish a continuing and cooperative relationship with the Fresno Convention and Visitor's Bureau as described in Paragraph 1(h) of Exhibit "B". (up to 5 points)

At the end of each Fiscal Year, the Contract Administrator will, in its sole and absolute discretion, evaluate and assign a point value, up to the maximum values set forth above, to SMG's performance under each of the criteria above. The amount of the points assigned for such Fiscal Year will be used to calculate the qualitative incentive fee payable to SMG for such year as described below. The qualitative incentive fee for any Fiscal Year shall be an amount equal to the product of (A) the Qualitative Fee Cap for such year, and (B) a ratio whose denominator is 25 and whose numerator equals the number of points earned by SMG for such year in the Owner's discretion as provided above. The parties will meet periodically, as the Owner determines to be reasonably necessary, during the course of each Fiscal Year to provide performance updates and to discuss performance issues.

SMG shall not be entitled to be paid an incentive fee in any Fiscal Year as provided above, if the actual Net Operating Loss/Profit for such year is not equal to or better than the Net Operating Loss/Profit set forth in the Approved Budget for such year.

Annual Budget:

The agreement establishes the budget adopted by the City Council for fiscal Year 2008-2009 as the base budget for the agreement. The following annual budgets that are submitted by SMG each year shall only contain increases in the Operating Expenses to the extent consistent with Actual Cost Increases or 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 Operating Budget showing increases

in Operating Revenue shall be substantiated with sufficient documentation. The City Manager shall require all relevant data and documentation at his sole discretion to substantiate Revenue or Actual Costs Increases in any submitted budget showing Operating Revenues or Expenses in excess of the Base Budget. All Budgets submitted are subject to approval by the City Manager before their submission to the City Council for its 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.

Within thirty days after 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.

Employee Benefit Cost Payments:

During the current contract term, the City presented the annual budget for FCEC based upon the benchmarks contained in the agreement. Beginning with the second year of operations, SMG submitted to the City Manager's Office a draft budget which exceeded the benchmarks contained in the agreement. After discussing the proposal with SMG, City staff informed SMG that the budget being presented to the City Council, and the cash funding provided to SMG, would be based upon the benchmark amounts which were ultimately adopted by the City Council as per the agreement. During the following three years, SMG operated the facilities consistent with the budget they presented, which resulted in SMG incurring employee benefit costs of approximately \$2 million which were not budgeted by the City, nor were reimbursements from the City requested by SMG during the years that they were incurred.

SMG believes that the City has an obligation to reimburse SMG for these expenses as the funds were spent on the operations of FCEC, that the agreement identifies that SMG is operating FCEC on behalf of the City, and as the expenses were included in financial reports SMG presented to the City, although without direct or indirect concurrence from the City they would be paid. City staff believes that SMG had a specific obligation to operate FCEC within the amounts of the budget adopted by the City Council, and that they were required to request approval from the City prior to spending any funds beyond that which was budgeted.

Staff from the City Manager's and City Attorney's Offices have met numerous times with staff and legal counsel from SMG attempting to resolve this matter without litigation and in such a manner as to retain the services of SMG for the operations of FCEC. The result of these negotiations is a staff recommendation that the City reimburse SMG \$1 million of the amount at the rate of \$100,000 per year during each of the 10 years of the proposed agreement. The reimbursements will be in monthly payments, and will be in addition to the annual operating fee paid to SMG over the life of the agreement. Staff believes this settlement is in the best interest of the City, and the most cost effective way to maintain consistency and the quality services provided over the term of the previous contract. The net present value of the payments is estimated to be \$781,000.

In the event this Agreement terminates due to City's breach, the City shall pay, or cause any successor management company to pay, to SMG the outstanding unpaid amount of the Employee Benefit Cost Payments existing as of such termination. In the event that the City terminates this Agreement due to SMG's failure to perform or comply with any terms of the agreement, the City will continue paying to SMG the Employee Benefit Cost Payments over the remainder of the Amortized Period.

Attachments: Contract
Support Letters

MANAGEMENT AGREEMENT

BETWEEN

CITY OF FRESNO

AND

SMG

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT (this "Agreement") is dated as of this 1st day of December, 2008, to be effective on the 1st day of January, 2009, 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 five (5) facilities comprising the Fresno Convention & Entertainment Center (Saroyan Theatre, Selland Arena, Robert A. Schoettler Conference Center, Exhibit Hall and Ernie Valdez Exhibit Hall (formerly known as Exhibit Hall South)), located downtown in the City of Fresno (individually and collectively, the "Facility"). 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 are parties to 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 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. It is understood that 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.

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.

"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).

"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.

"Continuing Contracts" -- the contracts involving the Owner that pertain to the Facility as described in Paragraph 2(j) on Exhibit "B" hereto and specifically in Exhibit "A" hereto.

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

"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 hereof.

"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 Operating Budget.

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

“Parking Areas” -- The multi-level parking structure located on the southwest corner of “M” Street and Inyo Street 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 “B” 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 Management Term of this Agreement shall commence on January 1, 2009, and end at midnight on June 30, 2019, unless earlier terminated pursuant to the provisions of this Agreement.

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

4. SMG's Compensation.

4.1 Management Fee. As base compensation to SMG for providing the services hereunder, Owner shall pay SMG during the Management Term an annual fixed fee of One Hundred Seventy Seven Thousand Three Hundred Dollars (\$177,300.00), which amount shall be adjusted upward on the first day of each Fiscal Year following the first complete Fiscal Year starting July 1, 2009, and ending June 30, 2010 ("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 month period (including the initial short Fiscal Year of January 1, 2009, to the end of June 30, 2009), such fee shall be pro rated using the initial fixed fee of \$177,300.00 or the last fixed 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.

4.2 Incentive Fee.

(a) In addition to the fees described in Section 4.1 above, SMG shall be entitled to an annual incentive fee with respect to each Fiscal Year hereunder during the Management Term or Renewal Term based upon its performance with respect to the qualitative criteria set forth in (i) through (v) below during such year; provided, however, that in no event shall the qualitative incentive fee under this Section 4.2(a) for any Fiscal Year exceed an amount equal to twenty percent (20%) of the total compensation payable to SMG in such Fiscal Year pursuant to Sections 4.1 and 4.2 hereof (such amount being calculated by (1) taking the Base Fee for such year and dividing it by .8; and then (2) subtracting the Base Fee from the result in clause (1) above, with such resulting number being hereinafter referred to as the "Qualitative Fee Cap"):

(i) Client Satisfaction. SMG shall demonstrate quality service to clients of the Facility by above average ratings on exit surveys, the form and procedure

of which will be mutually agreed upon by SMG and the Contract Administrator (up to 5 points).

(ii) Community Involvement. SMG personnel will actively participate in programs and organizations within the community on a volunteer basis (up to 5 points).

(iii) Maintenance and Operation. SMG shall demonstrate quality maintenance and operation of the Facility based upon a review by the Owner on a quarterly basis of the condition of the Facility and the equipment therein (up to 5 points).

(iv) Contract Compliance. SMG shall demonstrate compliance with the provisions of this Agreement based upon an annual review by the Owner to be completed no later than the end of each Fiscal Year of a mutually agreed upon checklist of compliance items (up to 5 points).

(v) Marketing. SMG shall demonstrate compliance with the marketing objectives of the Owner through effective utilization of available resources and shall establish a continuing and cooperative relationship with the Fresno Convention and Visitor's Bureau as described in Paragraph 1(h) of Exhibit "B" (up to 5 points).

At the end of each Fiscal Year, the Contract Administrator will, in its sole and absolute discretion, evaluate and assign a point value, up to the maximum values set forth above, to SMG's performance under each of the criteria in (i) through (v) above. The amount of the points assigned for such Fiscal Year will be used to calculate the qualitative incentive fee payable to SMG for such year as described below. The qualitative incentive fee for any Fiscal Year shall be an amount equal to the product of (A) the Qualitative Fee Cap for such year, and (B) a ratio whose denominator is 25 and whose numerator equals the number of points earned by SMG for such year in the Owner's discretion as provided above. The parties will meet periodically, as the Owner determines to be reasonably necessary, during the course of each Fiscal Year to provide performance updates and to discuss performance issues.

Notwithstanding anything to the contrary contained in this Section 4.2, SMG shall not be entitled to be paid an incentive fee in any Fiscal Year as provided above, if the actual Net Operating Loss/Profit for such year is not equal to or better than the Net Operating Loss/Profit set forth in the Approved Budget for such year.

(b) The incentive fee determined pursuant to Section 4.2(a) above shall be payable to SMG within sixty (60) days after the end of the applicable Fiscal Year, based upon the Owner's determination of SMG's satisfaction with the qualitative incentive fee criteria as set forth in Section 4.2(a)(i) through (v) above. Said incentive fee, if applicable, shall commence and Owner shall have the obligation to pay in accordance with this section after the

First Complete Fiscal Year and every Fiscal Year thereafter until the end of the Management Term. SMG shall be entitled to an incentive fee for the first six months of operation under this Agreement equivalent to one half of any incentive fee earned in the First Complete Fiscal Year which shall be paid at the same time as any earned incentive fee for the First Complete Fiscal Year.

5. Budgets; Bank Accounts.

5.1 Budgets.

(a) The parties acknowledge that the annual operating budget and annual cash flow budget for the Fiscal Year hereunder (July 1, 2008, through June 30, 2009), ("the Base Budget") 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 Base Budget 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, 2009. 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 Base Fee;
- (H) The Incentive Fee;
- (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) Accounting and legal fees;
- (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) Ticket Sundays; Restoration Fees;
- (B) Advertising;
- (C) Telephone and fax;

- (D) Parking;
- (E) Rentals;
- (F) Equipment charges;
- (G) Food and beverage;
- (H) Retail sales;
- (I) Electrical;
- (J) Catering;
- (K) Box Office fees;
- (L) Utilities reimbursement (Schoettler Conference Center only);
- (M) Interest;
- (N) Leases; and
- (O) Other miscellaneous forms of revenue.

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; (ii) parking income from the Parking Areas, unless City requests, and SMG consents, to operate such parking areas, or (iii) rent paid due to any sublease related to the Schoettler Conference Center.

(b) 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 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 Revenue or Actual Cost Increases in any submitted budget showing Operating Revenues or Expenses in excess of the Base Budget. All Budgets submitted are subject to approval by the City Manager before their submission to the

City Council for its 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 after 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.

(d) 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 Legacy Project 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 11.2 (c). Any amended budget that is so approved by the City Council shall be considered the Approved Budget for such year.

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.

The parties agree that \$1,000,000.00 of the Employee Benefit Cost Payments shall be paid over a period of one hundred twenty (120) months ("Amortized Period") during the Management Term on a straight-line basis in equal monthly payments of \$8,333.33 on or before the end of each month during the Amortized Period, commencing January 31, 2009. 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 "B" 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 10.2 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. 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 8.1; and (ii) as provided in the last sentence of Section 5.4 and in Section 10.2 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. The Owner shall have the right to conduct, at its expense, an audit of any annual report delivered in connection with this Section 6.1 and/or any monthly report delivered hereunder. 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.

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.

6.3 Monthly Reports and Meetings.

By the twenty-fifth (25th) day of each month during the Management Term and the Renewal Term, if any, SMG shall provide to Owner a written monthly report in a form approved by Owner setting out the Facility's anticipated activities and financial condition for the upcoming month and reporting on the prior month's activities and finances. These reports must include information on the activities associated with the operation, management, supervision and maintenance of the Facility; the financial analysis of how the Facility is operating; 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. 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.

7. **SMG Employees.**

7.1 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).

7.2 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.

7.3 During the period commencing on the date hereof and ending one (1) 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.

8. **Indemnification and Insurance.**

8.1 Indemnification.

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 or 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.

8.2. 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 8.

8.3. Operating 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 8.1 and 8.5 hereof includes that such cost and expense will not be paid from funds in the Operating 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).

8.4. 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; (ii) or 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 8.3 above, such cost and expense will not be paid from funds in the Operating Budget.

8.5. 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.

8.6. 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 "C" hereto.

9. **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.

10. **Termination.**

10.1 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.

10.2 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.

10.3 Effect of Termination or Expiration.

(a) In the event this Agreement expires or is terminated, (i) all Operating Expenses defined and approved by 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 Sections 4.1 and 4.2 hereof (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, 7.3, 10.2, 10.3 and 10.4.

10.4 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.

11. **Miscellaneous.**

11.1 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.

11.2 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 Property: Indian 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, who 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, lightening 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: Andrew T. Souza, City Manager
2600 Fresno Street, Room 2064
Fresno, California 93721
Telecopy: (559) 621-7776

To SMG:

SMG
701 Market Street, Suite 4400
Philadelphia, Pennsylvania 19106
Attention: President
Telecopy: (215) 592-6699

With a copy to:

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

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 agree 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.

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")
a municipal corporation

By: Andrew T. Souza
Name: Andrew T. Souza
Title: city Manager
Date: 12-17-2008

SMG
a Pennsylvania general partnership

By: H. Westley
Name: Harold L. Westley
Title: President and CEO
Date: 12-19-08

ATTEST:
REBECCA E. KLISCH/DEPUTY
CITY CLERK

By: *Elvira Sommerville*

Title: Deputy City Clerk
Date: 12/22/08

APPROVED AS TO FORM
JAMES C. SANCHEZ
CITY ATTORNEY

By: *David P. Hale*

Name: David P. Hale
Title: Chief Assistant City Attorney
Date: 12-17-08

Addresses:
City:

City of Fresno
Attention: Andrew T. Souza,
City Manager
2600 Fresno Street, Room 2064
Fresno, CA 93721
Phone: 559-621-7782
FAX: 559-621-7776

Operator:
SMG

Attention: Wes Westley, President & CEO
701 Market Street, 4th Floor
Philadelphia, PA 19106
Phone: 215-592-6604
FAX: 215-592-0361

Copy:

Baker, Manock & Jensen
Attention: Kenneth J. Price, Esq.
5260 N. Palm, Suite 421
Fresno, CA 93704
Phone: 559-432-5400
FAX: 559-432-5620

EXHIBIT "A"

Continuing Contracts

1. The License Agreement between SMG, the City of Fresno, and Fresno Hockey Club, LLC, dated November 30, 2007, in which, among other things, SMG and the City grant Fresno Hockey Club, LLC, a license to play Fresno Falcon's hockey games at Selland Arena.

Additionally, SMG's duties to perform, discharge and comply with the obligations set forth in the following Continuing Contracts shall be limited as follows:

2. "Sublease Agreement relating to Convention Facilities" between City and Uniwell Fresno Hotel, successor-in-interest to John Q. Hammons Hotels, L.P., successor-in-interest to John Q. Hammons, d/b/a John Q. Hammons Industries, dated September 15, 1982, shall be limited to performing, discharging and complying with such agreement to the extent it pertains to (i) the tenant's (Uniwell Fresno Hotel) use of the Facility, including, without limitation, tenant's payment of their share of utilities and tenant's booking of events at the Facility; or (ii) either City's or such tenant's use or operation of any portion of the "Parking Areas" as defined in the Agreement with Operator. Notwithstanding anything to the contrary in the preceding sentence, Operator's responsibilities hereunder shall not include collection of rent payments which shall be paid directly to City and not included in Revenues except to the extent that such rent payment is increased solely for leasing of additional space within the Robert A. Schoettler Conference Center of the Facility.

EXHIBIT "B"

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; however, with respect to the Robert A. Schoettler Conference Center, the parties acknowledge that (1) SMG's duties will only encompass the obligations as set forth in Item 2 of Exhibit A; and (2) upon ninety (90) days prior written notice by the Owner to SMG, the Owner can elect to remove the Robert A. Schoettler Conference Center from the definition of the Facility hereunder and upon the effective date of such election, SMG shall have no further obligations or duties with respect to such 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 10.3(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 Areas for use as a pay parking lot for automobiles and for no other use unless approved by the Owner. Parking Areas 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;

(j) Except as expressly limited on Exhibit "A" hereto, perform, discharge and comply with the obligations of the Owner expressly set forth on the contracts existing as of the date hereof relating to the Facility listed on Exhibit "A" hereto (collectively, the

"Continuing Contracts"). The Owner shall provide SMG with copies of or access to any of such Continuing Contracts.

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 "C"

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 C, 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.

C-2

November 4, 2008

"NO RETURN"

Council Adoption: 11/4/08

Mayor Approval:

Mayor Veto:

Override Request:

TO: MAYOR ALAN AUTRY
FROM: REBECCA E. KLISCH, CMC
City Clerk

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 11/4/08, Council took legislative action entitled **Awd contract to SMG for the operation/ marketing of the Fresno Convention and Entertainment Center**, Item No. **9:00 A.M. #1**, by the following vote:

Ayes : Calhoun, Caprioglio, Dages, Duncan, Sterling, Xiong
Noes : None
Absent : Perea
Abstain : None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before November 14, 2008. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

APPROVED:

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)

Alan Autry, Mayor

Date: _____

COUNCIL OVERRIDE ACTION:

Date: _____

Ayes :
Noes :
Absent :
Abstain :

Andrew T. Souza

City Manager
City of Fresno
2600 Fresno Street
Fresno, CA 93721

September 15, 2008

Dear Mr. Souza,

Thank you for meeting with me on January 7, 2008 at Fresno City Hall. This letter is a follow up to that meeting.

The purpose of that meeting was to discuss two key topics:

- 1) The option to purchase Parcel B as per the ground lease.
- 2) The possible purchase of the Robert Schottler Conference Center listed as Parcel A on the lease agreement.

The owners of the Radisson Hotel, Uniwell Corporation, are interested in continuing the dialogue concerning these purchases. As such, I would like to discuss this further with you. I look forward to hearing from you soon.

Sincerely



Steve Klein
General Manager

cc/file



Larry L. Powell
Superintendent

fresno county office of education

RECEIVED

SEP 1 2008

CITY OF FRESNO
City Manager's Office

September 16, 2008

Andy Souza
City Manager, Fresno
2600 Fresno Street
Fresno, California 93721

Dear Andy Souza,

The Fresno County Office of Education has been a long-term client of the Fresno Convention and Entertainment Center. We have had the opportunity to showcase several outstanding events which featured student performances in the various venues.

We are very pleased with the management of the facilities, the working relationships that we have developed, and the overall performance of SMG over the past 4 years. They have been a good partner in helping to bring these events to Fresno and in their commitment to our community.

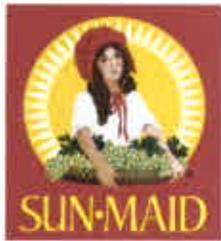
The word on the street from the educational community is very simple, if you want a well-run, topnotch event, bring it to Fresno. I have personally shared this information with my colleagues up and down the state.

I ask you to support a renewal of the management agreement with SMG. They have become indispensable community partners.

If you have any questions, I would be happy to respond.

Sincerely,

Larry L. Powell



The World's Favorite

Sun-Maid Growers of California

Headquarters: 13525 South Bethel Avenue • Kingsburg, CA, U.S.A. 93631-9232

Ph: 559/896-8000 • Fax: 559/897-2362

E-mail: smaid@sunmaid.com • www.sunmaid.com

RECEIVED

October 16, 2008

EX-100
CITY OF FRESNO
City Manager's Office

City Manager Andrew Souza
City of Fresno
2600 Fresno Street
Fresno, CA 93721

Dear City Manager Souza:

We are writing this letter for your consideration in evaluating the possible renewal of the SMG Management Agreement between the City of Fresno and Fresno Convention and Entertainment Center.

Sun-Maid Growers of California representing 1000 raisin growers and employing 700 employees in the Fresno area has held its Annual Meeting and Grower Luncheon at the Saroyan Theatre and Valdez Hall for the past 30 years.

During the past four years we have developed a positive working relationship with the Fresno Convention & Entertainment Center (SMG) staff and its General Manager, William C. Overfelt. Their responsiveness and overall performance has enabled us to have successful events at your facilities.

Sincerely,

Barry F. Kriebel
President

BFK:gm





October 6, 2008

Mr. Andy Souza
City Manager
The City of Fresno
2600 Fresno Street, 2nd Floor
Fresno, CA 93721

Dear Mr. Souza:

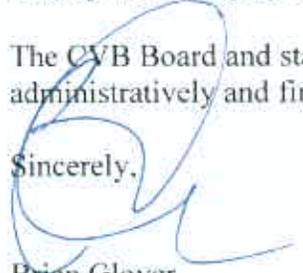
This letter is in reference to the relationship the Board and staff of the Fresno Convention and Visitors Bureau (CVB) have with Bill Overfelt and SMG.

During the past year Bill Overfelt, General Manager of SMG, has provided much needed support and oversight to the CVB. His guidance during the transition between Chief Executive Officers was critical in helping this organization to become a more fiscally sound and well run non-profit. Bill stepped up to the plate and took financial responsibility for the CVB by having all of the finances run through SMG during this time. He reviewed every invoice to make sure that the transition ran smoothly. In addition he never waivered on his insistence that the CVB follow the audit recommendations contained in the Marshall Murdaugh Report.

Bill has also been pivotal in the increase in the new conventions that the CVB has recently booked. Through frequent meetings with the CVB CEO and Director of Sales Bill has adjusted facility costs when necessary in order to finalize contracts. In addition, SMG underwrote both the CVB's Annual Luncheon as well as their Destination Fresno County Marketing Symposium.

The CVB Board and staff have a very positive working relationship with SMG both administratively and financially.

Sincerely,



Brian Glover
Chairman of the Board

SAN JOAQUIN VALLEY
TOWN HALL, INC.

October 1, 2008

2008-2009 Officers

Georgia Murach
President

Jolene Talles
Vice President

Marilyn Brown
Vice President - Program

Eleanor Beil
Vice President - Marketing

Amy Roberts
Secretary

Wilda Moller
Chief Financial Officer

Board of Directors

Larry Bolakian

Julie Beecher

Linley Brinker Harding

Raymond Ensher

Murray Farber

Hennetta Hagopian

Charlene Heuer

Paul Kaser

Lydia Kuhn

Jayne Perotti

Marnie Powell

Alice Powell

Walter H. Stammer, Jr.

Jenny and Robert
Tookian

Andrew Souza, City Manager
City of Fresno
2600 Fresno Street
Fresno, CA 93721

Dear Mr. Souza:

On behalf of the Board of Directors of the San Joaquin Valley Town Hall lecture series, I'd like to ask you to support the renewal of the management agreement with SMG.

Our Board has been extremely pleased with the cooperation and facilitation of our lecture events by the gracious SMG staff. We're a non-profit organization that for 72 years has presented a series of lectures that brings to Fresno renowned speakers like Thomas Friedman, Jon Meachum, and, this year, Jeff Greenfield. Each lecture is followed by a luncheon event with the speaker in the lobby of the Saroyan...a challenging venue in itself; but the SMG staff has served us with professionalism in every way possible.

We've received a lot of praise for the facilities of our lecture series and we'd like to give SMG their share of credit. Their leadership and direction has certainly put us in the ranks of national entertainment. And they definitely win the praise of our constituency.

We hope you will renew with them.

Best regards,

Georgia Murach
President
San Joaquin Valley Town Hall, Inc.

fASHIONfAIR

RECEIVED

SEP 2008

CITY OF FRESNO
City Manager's Office

September 26, 2008

Mr. Andrew Souza
City Manager
City of Fresno
2600 Fresno Street
Fresno, California 93721

Re: Support for Renewed SMG Management Agreement

Dear Andy:

We as long-term clients of the Fresno Convention & Entertainment Center (FCEC) are pleased with the management of the facilities, our working relationship and overall performance of SMG over the past 4 years.

The leadership provided by SMG has raised Fresno City's profile in the entertainment and meeting industry, both regionally and nationally.

We would like you to support a renewal of the management agreement with SMG. Their continued service to our City and local industry is very important.

Sincerely yours,



Morel C. Bagunu, CSM
Senior Manager

RECEIVED



10 1 2008
CITY OF FRESNO
City Manager's Office

MISS CALIFORNIA ORGANIZATION

5173 Waring Road, #343
San Diego, CA 92120
TEL: 858.613.1776
FAX: 858.674.9678

October 1, 2008

Andrew Souza
City Manager
City of Fresno
2600 Fresno Street
Fresno, CA 93721

In re: Support for Renewed SMG Management Agreement

Dear Mr. Souza,

As clients of the Fresno Convention & Entertainment Center since 1993, we are pleased with the management of the facilities and the overall performance of SMG. We enjoy an excellent working relationship with SMG management and staff.

We wish to support the renewal of the current management agreement with SMG.

Very Truly Yours,

Robert W. Arnheim
President & Chief Executive Officer
The Miss California Organization

cc: Members of the Fresno City Council
Andrew Souza, City Manager

RECEIVED

OCT 2 2008
CITY OF FRESNO
City Manager's Office

October 2, 2008

Mr. Anderw Souza
City Manager
City of Fresno
2600 Fresno Street
Fresno, CA 93721

RE: SMG Lease Renewal

Dear Mr. Souza,

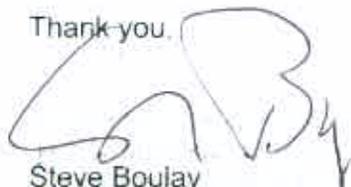
I am writing to express my support for the pending SMG contract renewal proposal to the City of Fresno for management of the Fresno Convention and Entertainment Center.

By way of background we have worked in the Center for over 20 years presenting shows as part of our Broadway in Fresno series as well as a number of additional concerts and theatricals. Some highlights include Mamma Mia, Riverdance, Beauty and the Beast, The Producers and, looking forward, dates with Wicked we hope to have in the market for the 2010-2011 season.

Our experience with the SMG management team, particularly Bill Overfelt, Lynn Higginson and Alan Emerian has been uniformly positive. More specifically all three of these individuals have gone out of their way to help make it possible to present shows that otherwise would not have played the market. They have done this by helping to clear dates for large productions such as Mamma Mia and Riverdance, by providing extra marketing support for challenging dates and going out of the way to help us do the market research necessary for some shows to convince them that Fresno is a market they want to play. SMG has made a difference in our ability to do business in Fresno.

I suspect you are receiving similar comments from other users of the Fresno Convention and Entertainment Center and stand willing to answer any questions you may have about our business in the marketplace.

Thank you.



Steve Boulay

COO Tix Productions, Inc. DBA NewSpace Entertainment



RECEIVED

2008
CITY OF FRESNO
City Manager's Office

September 30, 2008

Andrew Souza
City Manager
City of Fresno
2600 Fresno Street
Fresno, CA 93721

Dear Mr. Souza:

We as long-term clients of the Fresno Convention & Entertainment Center (FCEC) are pleased with the management of the facilities, our working relationship and the overall performance of SMG over the past 4 years.

The leadership provided by SMG has raised the City's profile in the entertainment and meeting industry, both regionally and nationally.

We would like you to support a renewal of the management agreement with SMG. Their continued service to our City and local industry is very important.

Sincerely,

Mary Stabelfeld
Conference Coordinator