

ITEM #68

ADDITIONAL MATERIAL

Regular Meeting


JUNE 11, 2019

SUBMITTED AT THE REQUEST OF

OFFICE OF THE COUNTY ATTORNEY

MEMORANDUM

TO: Board of County Commissioners

FROM: Andrew J. Meyers, County Attorney 

DATE: June 7, 2019

RE: **Item 68, June 11, 2019, Commission Meeting (SMG Amended and Restated Agreement)**

This memorandum summarizes the modifications to the proposed agreement with SMG that have been developed since the Board approved an earlier form of the agreement during its October 9, 2018, meeting (the Board's prior approval was subject to resolution of some known open issues, and additional issues requiring resolution have resulted from new developments regarding the Convention Center renovation project). The material updates to the Amended and Restated Agreement (updated Exhibit 1) and the proposed First Amendment (new Exhibit 2) are as follows:

- 1) Inclusion of two ten-year extension options (one on the same terms and one on negotiated terms) (as directed by the Board on October 9, 2018);
- 2) Modification of the Incentive Fee factors (SMG earns base and incentive fees) to protect the tax-exempt nature of future County bond issuances;
- 3) Inclusion of the labor peace requirement (as directed by the Board on October 9, 2018); and
- 4) Several modifications resulting from construction activities that will materially impact operation of the Convention Center for a specified period during Fiscal Years 2020 and 2021 ("Construction Term"): (a) a deferral of SMG's \$3 million Capital Investment (with a required interest payment) until the end of the Construction Term; (b) during the Construction Term, a reduction of SMG's base management fee by 50% and elimination of SMG's incentive fee; and (c) an extension of the agreement's term equal to the duration of the Construction Term.

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An updated motion statement as well as the updated Exhibit 1 and the new Exhibit 2 are attached to this memorandum.

Please contact Deputy County Attorney Rene Harrod (ext. 7618, but up in Tallahassee today arguing the firearms case), Deputy County Attorney Mike Kerr (ext. 7566), or me with any questions or concerns.

AJM/RDH/gf
Attachments

c: Bertha Henry, County Administrator
Bob Melton, County Auditor
Rene D. Harrod, Deputy County Attorney
Michael J. Kerr, Deputy County Attorney

Item 68 is amended as follows, including the replacement of Exhibit 1 and the addition of Exhibit 2 (both attached hereto):

Currently reads:

A. MOTION TO APPROVE Amended and Restated Agreement for professional management services for the Broward County Convention Center (“Convention Center”) between Broward County and SMG (“Amended and Restated Agreement”); and authorizing the Mayor and the Clerk to execute same.

B. MOTION TO AUTHORIZE County Administrator to negotiate an amendment to the Amended and Restated Agreement, at no additional cost to the County, subject to review and approval by the County Attorney’s Office as to legal sufficiency, to address the expected impact of certain construction activities on SMG’s operation of the Convention Center during Fiscal Years 2020 and 2021 relating to the County’s anticipated construction work on the Convention Center.

Amended to read:

A. MOTION TO RETROACTIVELY APPROVE the Amended and Restated Agreement for professional management services for the Broward County Convention Center (“Convention Center”) between Broward County and SMG (“Amended and Restated Agreement”) attached as Exhibit 1, commencing on October 1, 2018; and authorizing the Mayor and the Clerk to execute same.

B. MOTION TO AUTHORIZE the County Administrator to execute the First Amendment to the Amended and Restated Agreement attached as Exhibit 2 to address the expected impact of certain construction activities on SMG’s operation of the Convention Center during Fiscal Years 2020 and 2021 relating to the County’s anticipated construction work on the Convention Center.

Exhibit 1 – Amended and Restated Agreement

Exhibit 2 – First Amendment to the Amended and Restated Agreement



**AMENDED AND RESTATED AGREEMENT BETWEEN BROWARD COUNTY
AND SMG FOR PROFESSIONAL MANAGEMENT SERVICES
FOR THE BROWARD COUNTY CONVENTION CENTER**

This Amended and Restated Agreement (“Amended Agreement”) is made and entered into by and between Broward County (“County”), a political subdivision of the State of Florida, and SMG (“SMG”), a Pennsylvania general partnership, authorized to do business in the state of Florida (County and SMG are collectively referred to as the “Parties”).

RECITALS

A. County requires the services of a management company to operate the Broward County Convention Center in all of its activities and operations, including, but not limited to, the rental of space, advertising, promotion, marketing, sales, events management, security, custodial, and support services including, but not limited to, food and beverage requirements for conferences, conventions, exhibitions, performances, special events, and any and all convention events and support services related thereto as deemed necessary by SMG and County.

B. SMG, by reason of its expertise in facilities management, has been managing the Convention Center for County pursuant to a September 22, 2009, Agreement for Professional Management Services for the Broward County Convention Center (“Agreement”) in accordance with County policies and procedures.

C. The existing term of the Agreement for management services will expire on December 31, 2019 (the “Existing Term”), and the Parties desire to enter into this Amended Agreement for management of the Convention Center with new terms and conditions, which includes certain changes.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1 DEFINITIONS AND IDENTIFICATIONS

1.1 **Amended Agreement** means this document, Articles 1 through 20, inclusive, including the exhibits and documents that are expressly incorporated by reference.

1.2 **Board** means the Board of County Commissioners of Broward County, Florida.

1.3 **Capital Equipment** means furniture, fixtures, machinery, or equipment, either additional or replacement, with a value in excess of One Thousand Dollars (\$1,000) or an expected life of more than one year.

1.4 **Capital Improvements** means any and all building additions, alterations, renovations, repairs, or improvements that have a minimum useful life in excess of one year.

1.5 **Capital Projects** means a project that maintains, improves, renovates, repairs, expands, acquires, or constructs a Center facility, infrastructure at the Center, or other fixed asset at or inside the Center, that has a minimum useful life in excess of one year.

1.6 **Capital Program** means all capital expenditures for the Center planned to commence or occur at any point within the next five (5) years.

1.7 **Center** means the Broward County Convention Center facility, existing and expanded, and such other lands included in the County Convention District as defined by the Development of Regional Impact (DRI) order issued by the City of Fort Lauderdale on February 7, 1989, and last amended on August 3, 2006 (excepting those lands leased to the Center's headquarters hotel for its exclusive use, located at Port Everglades, in Broward County, Florida), and such other facilities or locations as listed on Exhibit A. The Parties acknowledge that County may from time to time modify Exhibit A by written notice to SMG, including without limitation, to add the Northport Garage, which modified list of locations or facilities will automatically update and amend the definition of "Center" as of the effective date stated in the written notice by County.

1.8 **Contract Administrator** means the President of the Greater Fort Lauderdale Convention & Visitors Bureau ("CVB") or such other person(s) designated in writing by CVB President. The primary responsibilities of the Contract Administrator are to coordinate and communicate with SMG and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Amended Agreement. In the administration of this Amended Agreement, as contrasted with matters of policy, all Parties may rely on the instructions or determinations made by the Contract Administrator, provided, however, that such instructions and determinations do not change the Scope of Services unless expressly authorized herein.

1.9 **County Attorney** means the chief legal counsel for County appointed by the Board.

1.10 **County Administrator** means the administrative head of County appointed by the Board.

1.11 **Fiscal Year** means the annual period from October 1 through and including September 30.

1.12 **Incentive Fee** means the incentive fee awarded for any Fiscal Year by County pursuant to Section 4.1.3.

1.13 **Net Operating Profit/Loss** means, with respect to each Fiscal Year, the difference, if any, between (i) the Operating Revenues for the Fiscal Year and (ii) the County allowable Operating Expenses for the same Fiscal Year. The Parties agree that these components (i.e. Operating Revenues and Operating Expenses) have been adjusted for this Amended Agreement, and the Contract Administrator may further adjust such components used to recognize revenues and expenses by written notice in accordance with Section 20.5.

1.14 **Operating Budget** means the SMG operating budget, determined on an accrual basis, for each Fiscal Year as approved in writing by County pursuant to Section 7.1.1.

1.15 **Operating Expenses** means any and all allowable expenses and expenditures (as more fully enumerated in Section 4.3 and excluding expenses related to corporate operations), determined on an accrual basis, of whatever kind or nature incurred, directly or indirectly, by SMG in performance of the Services required under this Agreement in promoting, operating, maintaining, and managing the Center, including, but not limited to:

- employee compensation and related expenses (e.g., base salaries, bonuses, severance and car allowances) in proportion to the percentage of the employee's working time expended in Services to the Center;
- employee benefits and related costs (e.g., relocation and other related expenses pursuant to SMG's relocation policy (a copy of which has been provided to County), employee vacation accruals, parking, health insurance, and other fringe benefits), in proportion to the portion of the employee's working time expended in Services to the Center, and reviewed as part of the annual County budget process;
- supplies, materials, and parts actual costs;
- costs of any interns (subject to prior written approval by County) and independent contractors;
- advertising, marketing, and public relations costs and commissions;
- janitorial, housekeeping, and cleaning expenses;
- costs incurred to provide services with respect to a hotel management agreement or parking agreement(s) as may be entered into between County and third parties, including common area maintenance for same;
- dues, subscriptions, and membership costs;
- the costs of procuring and maintaining the insurance required under Article 16;
- amounts expended to procure and maintain any required permits and licenses;
- taxes, excises, penalties, and fees, except for those resulting from SMG's negligence or intentional acts;
- professional fees;
- printing and stationery costs;
- all event-related expenses (e.g., costs for event staffing and security and costs relating to set-up and clean-up);
- postage and freight costs;
- equipment purchase or rental costs;
- facility technology costs (e.g., computer equipment leases, line charges, ballroom and lighting maintenance and operation, and interactive art);
- repairs and maintenance costs (e.g., elevators and HVAC systems), except for those resulting from SMG's negligence or intentional acts;
- security expenses;
- food and beverage operating costs;
- utility and telephone charges;

- travel and entertainment expenses in accordance with SMG's and County's policies, provided that expenses are limited to the uses permitted under Florida Statutes Sections 112.061 and 125.0104;
- the cost of employee uniforms;
- safety and medical expenses;
- exterminator and waste disposal costs;
- costs relating to the maintenance of signage inventory and systems;
- the cost of annual independent audits of the Center;
- the cost of compliance with laws and regulations;
- customer survey costs;
- employee training costs (subject to prior written approval by County);
- direct travel expenses incurred by SMG corporate personnel providing support to the Center's operations, based on an annually budgeted number of trips, but specifically excluding all personnel costs such as wages and benefits, and subject to Florida Statutes Section 112.061;
- costs incurred under agreements, commitments, licenses, and contracts executed in SMG's name (or in SMG's name as agent of County);
- expenses relating to the operation and maintenance of parking facilities including without limitation parking facilities shown in Exhibit A;
- the Base Management Fee payable to SMG pursuant to Sections 4.1.1 and 4.1.3; and
- actual annual Incentive Fee to the extent awarded pursuant to the terms of this Amended Agreement.

1.16 **Operating Revenues** means any and all revenues of every kind or nature received, accrued, or otherwise derived from owning, operating, managing, or promoting the Center, including, but not limited to:

- license, lease, and concession fees and rentals (except revenues that are underwritten by County sponsorship dollars);
- revenues from merchandise sales, advertising sales, and equipment rentals;
- utility revenues;
- parking revenues;
- commissions or other revenues from decoration, set-up, audio-visual, security, and other Subcontractors;
- miscellaneous operating revenues;
- revenues generated from food and beverage operations;
- revenues generated from separate agreements with Subcontractors or other SMG affiliates pertaining to the Center;
- sponsorship revenues; and
- interest revenues.

1.17 **Operations Manual** means the manual, prepared by SMG and approved in writing by County, relating to the overall operation of the Center. The manual will be provided to County in electronic format pursuant to Section 9.2.1 and thereafter may be conveyed in hard copy or electronic format as directed by the Contract Administrator.

1.18 **Services** means all work required by SMG under this Amended Agreement, including without limitation all deliverables, consulting, training, project management, emergency management logistical support or other services specified in Exhibit B.

1.19 **Subcontractor** shall mean an entity or individual providing services to County through SMG for all or any portion of the work under this Amended Agreement. The term "Subcontractor" shall include all subconsultants.

ARTICLE 2 SCOPE OF SERVICES

2.1 SMG shall perform all work identified in this Amended Agreement including, without limitation, Exhibit B (the "Services") at the Center. The Scope of Services is a description of SMG'S obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks, that are such an inseparable part of the work described that exclusion would render performance by SMG impractical, illogical, or unconscionable ("Scope of Services").

2.2 SMG acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Amended Agreement, except as expressly set forth in this Amended Agreement or, to the extent applicable, the Broward County Procurement Code. The primary responsibilities of the Contract Administrator are to coordinate and communicate with SMG and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Amended Agreement as set forth herein. In the administration of this Amended Agreement, as contrasted with matters of policy, SMG may rely on the instructions or determinations made by the Contract Administrator.

ARTICLE 3 TERM AND TIME OF PERFORMANCE

3.1 The term of this Amended Agreement shall begin on October 1, 2018 ("Effective Date"), and shall end on September 30, 2029, unless sooner terminated as permitted hereunder ("Amended Term"). The continuation of this Amended Agreement beyond the end of any Fiscal Year shall be subject to the availability of funds from County in accordance with Chapter 129, Florida Statutes.

3.2 County, in its sole discretion, shall have the option to renew this Amended Agreement for an additional ten (10) year term ("Extension Term") on the same terms and conditions set forth herein unless otherwise expressly stated, including without limitation the amount of the Capital Investment as stated in Section 5.1. Alternatively, the County, in its sole discretion, may renew this Amended Agreement for the Extension Term on any other terms and conditions negotiated

by the Parties, including as to the required Capital Investment. Any election by County for an Extension Term shall be exercised by providing SMG written notice at least ninety (90) days before expiration of the Amended Term.

3.3 Time shall be deemed to be of the essence in performing the duties, obligations, and responsibilities required by this Amended Agreement.

ARTICLE 4 COMPENSATION

4.1 **Fees.** County agrees to pay SMG as set forth in this Article 4 for Services actually performed and completed pursuant to this Amended Agreement, which amount shall be accepted by SMG as full compensation for all such Services.

4.1.1. **Base Management Fee.** The Base Management Fee shall be paid in twelve (12) equal monthly payments pursuant to the invoice process in Section 4.3. Effective October 1, 2018, the Base Management Fee shall be Four Hundred Eight Thousand Two Hundred and Ten Dollars (\$408,210) annually. Commencing October 1, 2019, the Base Management Fee will be increased annually pursuant to Section 4.1.2, CPI Adjustment, but in no event shall the Base Management Fee be less than Four Hundred Fifteen Thousand Dollars (\$415,000) annually. The Base Management Fee will continue until the expiration of the Amended Agreement. The Base Management Fee payments will be paid to SMG out of the Center’s Operating Account.

4.1.2. **CPI Adjustment.** The Base Management Fee amount shall be adjusted annually on the first day of each Fiscal Year, starting with the Fiscal Year beginning October 1, 2019. The adjustment shall be based on the percentage change in the Consumer Price Index - All Urban Consumers (CPI-U) – U.S. City Average – All Items less food and energy, during the one year period ending in July immediately preceding such Fiscal Year, as published by the Bureau of Labor Statistics of the United States Department of Labor (or of any revised or successor index hereafter published by the Bureau of Labor Statistics or other agency of the United States Government succeeding to its functions). Notwithstanding the foregoing, the annual CPI adjustment shall not affect a downward adjustment to the Base Management Fee and shall never exceed an adjusted increase of more than three percent (3%) for any Fiscal Year.

4.1.3. **Incentive Fee.** In addition to the Base Management Fee, County agrees to pay SMG an annual Incentive Fee in an amount not to exceed a total of twenty-five percent (25%) of the Base Management Fee due for that Fiscal Year (“Maximum Incentive Fee”). The Incentive Fee shall be due within thirty (30) days after receipt of the audit performed by an independent audit firm pursuant to Section 6.1.3 of this Amended Agreement and shall be paid to SMG out of the Center’s Operating Account as defined in Section 7.2.

Unless otherwise modified by the Contract Administrator in writing, pursuant to this section, the Incentive Fee for each Fiscal Year shall be comprised of the following components, which shall be used by County to determine the amount of the Incentive Fee, in the sole and reasonable discretion of the Contract Administrator, at the end of each Fiscal Year:

(i) Quantitative Components: The total quantitative components of the annual incentive fee shall equal up to fifty percent (50%) of the Maximum Incentive Fee.

(A) The first quantitative component will be determined by the extent that Operating Revenues are in excess of the "Operating Revenues Benchmark," defined as budgeted revenues or other mutually agreed benchmark based on Operating Revenues. For every percentage point that Operating Revenues exceed the Operating Revenues Benchmark, SMG will be eligible for a percentage point of the Maximum Incentive Fee, up to and no greater than 25% of the Maximum Incentive Fee. In the event Operating Revenues do not exceed the Operating Revenue Benchmark, SMG will be eligible for up to 15% of the Maximum Incentive Fee based upon Operating Expense Savings for such fiscal year as follows: For every percentage point that Operating Expense Savings exceed the Operating Expense Benchmark, SMG will be eligible for a percentage point of Maximum Incentive Fee, up to and no greater than 15% of the Maximum Incentive Fee. Operating Expense Savings means the amount, if any, by which Operating Expenses are less than the Operating Expense Benchmark. The Operating Expense Benchmark shall be defined as budgeted Operating Expenses. When determining excess operating revenues or reduced operating expenses, all percentages below .5% will be rounded down and all percentages at or above .5% will be rounded up;

(B) The second quantitative component will be determined by the extent that the Exhibition Hall Occupancy goal is met or exceeded. County shall in writing set the Exhibit Hall Occupancy goal for the applicable fiscal year before the beginning of that fiscal year; if a goal is not timely set for any fiscal year, the Exhibit Hall Occupancy goal shall be the prior fiscal year's goal or the prior year's actual occupancy, whichever is higher. If the annual Exhibition Hall Occupancy goal is met, SMG will be eligible for 15% of the Maximum Incentive Fee. For every percentage point that Exhibition Hall Occupancy exceeds the Exhibition Hall Occupancy goal, SMG will be eligible for an additional percentage point of Quantitative Incentive Fee, up to and no greater than an additional 10% of the Maximum Incentive Fee (combined total of up to 25% of the Maximum Incentive Fee). Exhibition Hall Occupancy will be determined by actual square footage of the Center rented to clients as a percentage of total exhibition floor square footage of the Center, and verified by the revenues generated for said rentals as dictated by the established rental fees in the Operations Manual. Extra exhibition hall space provided to clients at no cost will not count towards Exhibition Hall Occupancy levels, but exhibition hall space provided to clients that is subsidized by the CVB will be counted towards total Exhibition Hall Occupancy levels. When determining excess occupancy levels, all percentages below .5% will be rounded down and all percentages at or above .5% will be rounded up;

(ii) Operational Compliance: Up to thirty percent (30%) of the Maximum Incentive Fee may be awarded based on key performance indicators, including without limitation:

(A) The extent to which SMG has complied with this Amended Agreement and the Operations Manual, including maintenance and operation of the Center;

(B) The extent to which SMG has made good faith efforts to meet the CBE participation goals set forth in this Amended Agreement;

(C) The extent to which SMG utilizes County's tax exempt status for purchase of qualifying goods, materials, and equipment, and other goals and objectives as established by the Contract Administrator pursuant to Section 9.2.2 of this Amended Agreement;

(D) To assist in the evaluation of SMG's performance the County may utilize a KPI Calculation Worksheet, a sample of which is attached as Exhibit C.

(iii) Sales Performance: Up to twenty percent (20%) of the Maximum Incentive Fee may be awarded based on SMG meeting or exceeding the annual sales objectives established during the budget process. Such annual sales objectives shall not be based in whole or in part on Net Operating Profit or Net Operating Loss.

The components and respective benchmarks against which SMG's performance is measured shall be reviewed prior to the beginning of each Fiscal Year during the term of this Amended Agreement, and shall be adjusted by the Contract Administrator, in his/her sole discretion, with the intent that the benchmarks be set at a level to encourage SMG to operate the Center in the most profitable, efficient, and service-oriented manner possible. County may, in the reasonable discretion of the Contract Administrator, modify the components and respective benchmarks set forth above at any point during any Fiscal Year, which modification shall be effective upon written notice to SMG, provided however that any such modification shall not impact the established financial benchmarks for that Fiscal Year but will only impact the financial benchmarks for the following Fiscal Year, except as provided in Section 4.1.4.

4.1.4 Adjustments to Net Operating Profit/Loss. After the commencement of each Fiscal Year, if the Parties know or become aware of any event, activity, required change in operation of the Center, or other occurrence not contemplated during the budget process that will materially affect operations at the Center or materially impact the Operating Revenues for such Fiscal Year (each a "Material Change"), the Contract Administrator, after conferring with SMG, may, in its reasonable discretion, adjust the Operating Revenues Benchmark for the Incentive Fee for such Fiscal Year.

As used herein, a "Material Change" may include, without limitation, construction activities in and around the Center of a substantial nature resulting in interruptions of usual business activities; upgrades and additions to the Center resulting in a material increase of Operating

Expenses or Operating Revenues for operation and maintenance of additional space, facilities and/or amenities; other alterations to or modifications of the Center resulting in a material increase of Operating Expenses and/or a material reduction of Operating Revenues; any material change in Operating Expenses or Operating Revenues resulting from agreements approved and authorized or entered into by the County affecting operations of the Center; and damage to or destruction of the Center causing a suspension or substantial interruption of operations.

4.2 **Sales Tax.** County and SMG agree that upon request of County, SMG shall execute and/or assign any contracts for materials, supplies, and other goods and tangible personal property in a manner requested by County to minimize sales tax expenses incurred in the operation of the Center.

4.3 **Method of Billing and Payment – Operating Expenses**

4.3.1 SMG shall submit invoices only for all allowable Operating Expenses in the Operating Budget and shall submit such invoices no more often than on a monthly basis, in a form that has been approved in writing by the Contract Administrator, which shall include, at a minimum, an original master invoice with original individual invoices, within thirty (30) days after the end of the month, except the final month's invoices must be received no later than sixty (60) days after expiration or earlier termination of this Amended Agreement. Invoices will be reviewed to ensure all expenses are consistent with those approved in the annual Operating Budget. Expenses that County deems are inconsistent with those approved in the annual Operating Budget, and otherwise not allowable under this Agreement, will first be discussed with SMG. County shall have, after consultation with SMG the right to reject reimbursement for such expenses, such rejection to be in keeping with generally accepted practices at Center. Any reimbursement rejected pursuant to the above shall be reimbursed to the Operating Account by SMG. Invoices must designate the nature of the Services performed and, as applicable, the personnel, hours, tasks, or other details requested by the Contract Administrator. Documentation for travel and entertainment expenses must comply with Florida Statutes Sections 112.061 and 125.0104, as amended.

4.3.2 County shall not reimburse the Operating Account as established in Section 7.2 until County has received a proper invoice from SMG. All invoices must include documentation consisting of payroll records and copies of invoices stamped "paid," indicating date and check numbers, and signed and certified by the Center's Director of Finance.

4.3.3 County shall reimburse the Operating Account, as provided for in Section 7.2 of this Amended Agreement, within thirty (30) calendar days after receipt of SMG's proper invoice, as required by the "Broward County Prompt Payment Ordinance" (Broward County Ordinance No. 89-49, as may be amended from time to time). To be deemed proper, all invoices must comply with the requirements set forth in this Amended Agreement and must be submitted on the form and pursuant to instructions prescribed by the Contract Administrator. Payment may be withheld for failure of SMG to comply with a term, condition, or requirement of this Amended Agreement.

4.4 Any payments due to SMG (i.e., Base Management Fees or Incentive Fees) under this Amended Agreement shall be made to the following address:

SMG
Broward County Convention Center
1950 Eisenhower Boulevard
Fort Lauderdale, FL 33316

4.5 County anticipates that certain construction activities, estimated to occur during portions of fiscal years 2020 and 2021 (collectively, "Construction Activities"), will have a substantial impact on the operations of the Center during those time periods. At least six (6) months prior to the commencement of the Construction Activities, the Parties will enter into a formal amendment addressing all implications, including, but not limited to, documenting any agreed modifications to Scope of Services, the Base Management Fee, the Incentive Fee, and the Capital Investment during the time period of the Construction Activities.

ARTICLE 5 CAPITAL INVESTMENT OBLIGATION

5.1 SMG shall pay County a capital investment ("Capital Investment") as calculated and stated in this section. For the Amended Term, SMG shall pay directly to County, or as otherwise directed by the Contract Administrator, the amount of Three Million Dollars (\$3,000,000) no later than January 2, 2020 (unless a later date is stated in the formal amendment referenced in Section 4.5, in which event the deadline for payment shall be the date stated in that amendment), to be used by County toward the funding of projects that County deems will maintain or enhance revenues to the Center. For any Extension Term on the same terms and conditions and except as otherwise negotiated by the Parties consistent with the terms stated in Section 3.2 above, the Capital Investment shall be paid no later than thirty (30) days after the commencement of the Extension Term, and shall be in the amount of Three Million Dollars (\$3,000,000).

5.2 If this Amended Agreement is terminated by County for any reason other than as provided in Section 17.3 at any time after payment of the Capital Investment, then County shall pay SMG the applicable "Unamortized Balance" based upon amortization over a one hundred and twenty (120) month period on a straight-line, non-interest bearing basis, commencing on the date of payment of the Capital Investment (examples set forth in Exhibit D), as of the effective date of termination by County. Notwithstanding any other provision of this Amended Agreement, the Parties agree that in the event of a termination under Section 20.1.2 of this Amended Agreement or for failure to comply with the Broward County Business Opportunity Act of 2012 (or any successor ordinance), the Unamortized Balance of the Capital Investment shall be paid by County to SMG as set forth in the first sentence of this section. Any payment obligation under this section will be reduced by the amount of any reimbursement of the Capital Investment to SMG by County, if any, pursuant to Section 7.1.2.

5.3 County shall have no obligation to pay SMG any amount pursuant to Section 5.2 or otherwise set forth in Exhibit D if this Amended Agreement is terminated for Cause as defined in Article 17 at any time.

ARTICLE 6 FINANCIAL REPORTS; AUDITS; RETENTION OF RECORDS

6.1 Financial Reports on the Center.

6.1.1 SMG agrees to keep and maintain, at its offices in Fort Lauderdale, Florida, separate and independent records in a separate set of books, in accordance with generally accepted accounting principles, devoted exclusively to its Services relating to the Center. Said books, ledgers, journals, accounts, and records shall contain all entries reflecting the business operations, revenues, expenses, and payments to or by SMG under this Amended Agreement. All of the foregoing shall be open for examination and audit by County during SMG's ordinary business hours.

SMG shall provide to County, within thirty (30) days after the end of each month, financial reports for the Center, including a balance sheet and statement of revenues and expenditures (budget to actual) for the prior month and year to date in accordance with generally accepted accounting principles. In addition, SMG shall provide a separate cash receipt and disbursements report for each event held at the Center during the month. Further, SMG agrees to use forms, accounting methods, internal controls, and procedures for its reports that are approved in writing by the Contract Administrator. SMG shall also include in its monthly reports any information requested by County.

6.1.2 SMG shall promptly provide to County any additional financial or statistical reports with respect to the Center that County may request. Any and all actual costs for compiling such reports shall be included as an Operating Expense.

6.1.3 SMG shall engage a qualified accounting firm (which may be a County CBE firm), acceptable to County's Chief Financial Officer, to conduct an annual audit on the accounts and records of the Center in accordance with generally accepted auditing standards. The cost of the audit report shall be paid from appropriate funds set aside in the Operating Budget for the Center. SMG agrees to provide to County, within ninety (90) days following each Fiscal Year, the certified audit report on the Center's accounts and records as kept by SMG, in addition to a letter from said accounting firm expressing its opinion as to whether the financial statements are presented in accordance with generally accepted accounting principles and the effectiveness of internal controls and a management letter. SMG agrees to be responsible for obtaining those forms, summaries, schedules, and reports that it must use as part of its accounting methods and procedure. At County's option and expense, County may require that additional audits be performed.

6.1.4 SMG agrees to provide full, complete, and prompt responses to any questions posed by the County relating to the operation of the Center or any financial report.

6.2 Audit Rights and Retention of Records. County has the right to audit the books, records, and accounts of SMG and its Subcontractors that are related to this Amended Agreement. SMG and Subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Amended Agreement and the performance under this Amended Agreement. All books, records, and accounts shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, SMG or its Subcontractors shall make same available at no cost to County in written form. SMG shall keep such books, records, and accounts as may be necessary in order to record complete, and correct entries related to the Services, including, without limitation, complete and correct records of payments to each of its Subcontractors, including the cumulative total of the payments made the Subcontractors.

6.3 Subject to Section 6.4, SMG and its Subcontractors shall preserve and make available, at reasonable times for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Amended Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Amended Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by County to be applicable to SMG's records, SMG shall comply with all requirements thereof; however, no confidentiality or nondisclosure requirement of either federal or state law shall be violated by SMG. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment upon such entry. Any audit or inspection pursuant to this section may be performed by any County representative (including any outside representative engaged by County). County reserves the right to conduct such audit or review at SMG's place of business, if deemed appropriate by County, with seventy-two hours' advance notice.

If an audit or inspection in accordance with this section discloses overpricing or overcharges to County of any nature by SMG in excess of two percent (2%) of total expenses reviewed in that audit or inspection, the reasonable actual cost of County's audit shall be reimbursed to County by SMG along with full reimbursement of the overpricing or overcharges. Any adjustments and/or payments due as a result of such audit or inspection shall be made within thirty (30) days from presentation of County's findings to SMG.

SMG shall ensure that the requirements of this section are included in all agreements with its Subcontractors entered into after October 9, 2018.

6.4 Rights in Documents and Work. Any and all reports, booking data, contract documents, and other data and documents provided or created by SMG or its Subcontractors in connection with performing Services under this Amended Agreement shall be owned by County and shall be deemed works for hire by SMG and its agents. In the event the Services are determined not to be

work for hire or such works determined not to be owned by County, SMG hereby assigns all right, title, and interest, including copyright or other intellectual property rights, in or to the work to County. In the event of termination of this Amended Agreement, any reports, booking data, contract documents, and other data and documents prepared by SMG, whether finished or unfinished, other than trade secrets (as defined in Florida Statutes Section 812.081), shall become the property of County and shall be delivered by SMG to the Contract Administrator within seven (7) days after termination of this Amended Agreement. In the event County retains any document that is a trade secret as defined above, County shall not make such document available to any non-County person or entity unless required to do so by law, and in such event County shall provide SMG with advance notice of such disclosure. Any amounts due to SMG shall be withheld until all documents are received by County as provided in this Amended Agreement. SMG shall ensure that the requirements of this section are included in all newly-signed agreements with its Subcontractors entered into after October 9, 2018.

ARTICLE 7 OPERATING AND CAPITAL BUDGET AND FUNDS

7.1 Operating and Capital Budget

7.1.1 **Generally.** By March 1 of each year, SMG shall prepare and present a line item Operating Budget proposal for the Center for County’s review and approval, which budget shall follow and comply with the County budget process or such other procedures that County may require. The proposed Operating Budget shall include, at a minimum, a projected revenue and expense statement and projected year-end balance sheet and statement of projected sources and applications of funds. Additionally, the proposed Operating Budget shall include but not be limited to the following detailed projections:

- (i) All projected gross revenues based on categories of income.
- (ii) All projected Operating Expenses (listed by department) directly attributed and associated with Services or the Center (including, but not limited to, the cost of its general manager and all staff personnel and the cost of travel directly associated with management of the Center).
- (iii) Operating Revenue projections.
- (iv) Administrative and general expenses relating to Center operations.
- (v) Marketing, advertising, and promotion expenses (including for events occurring within eighteen (18) months).
- (vi) Energy costs.
- (vii) Repairs and maintenance.
- (viii) Any other projected Operating Expenses.

As part of its annual budget submission, SMG shall provide County, for County’s review and approval, documentation and information demonstrating SMG’s employee compensation policies, including information pertaining to bonuses, severances, car allowances, travel and entertainment expenses, and staff development costs. SMG shall include in its line item budget financial data showing the amount projected to be paid to SMG employees for fringe and other

benefits in sufficient detail to allow County to evaluate whether these amounts are generally consistent with County's fringe and other benefits for similarly-situated persons and other County policies and procedures. SMG shall promptly notify County of any changes to its benefits or compensation policies that may impact the cost of providing Services under this Amended Agreement.

7.1.2 Procurement. SMG shall, in accordance with its normal business practices, have general authority and discretion as to purchasing all services, concession, equipment, materials, supplies and inventory reasonably required by SMG hereunder. SMG shall use competitive procurement methods to make all such purchases at the best available price, terms, and conditions, and, in cases where SMG is providing products and or services related to emergency management, compliant with Federal Emergency Management Agency (FEMA) requirements. County shall have the right to review any modifications or audit SMG's competitive procurement policies and determine whether SMG is effectively utilizing competitive procurement policies required by this Amended Agreement. At County's option for any or all procurements, as elected by the County, SMG shall be required to use County's procurement procedures.

In the event that SMG enters into any agreement with any third party that is an affiliate or other related entity of SMG to purchase or lease any such equipment, materials, supplies or inventory or to perform any services, SMG additionally agrees that the price or consideration for such goods or services shall be fair and reasonable and no more favorable to such affiliate or other related entity that it could obtain in a comparable arm's length transaction with an entity or person other than an affiliate or other related entity. SMG shall disclose in writing to the County the nature of the relationship between SMG and such affiliate or other related entity, and, to the extent elected by County, SMG shall comply with all County legal requirements with respect to competitive procurement policies. Any such contract shall be subject to the prior written approval of County and submittal of documentation evidencing the competitive nature for the services submitted. County affirms that SMG has disclosed, and County has approved, the new contract between SMG and SMG Food and Beverage, LLC d/b/a SAVOR dated June 11, 2019 ("SAVOR Agreement") for the provision by SAVOR of food and beverage Services at the Center during the Amended Term.

In connection with SMG's management and concession services responsibilities hereunder relating to the purchase or procurement of equipment, materials, supplies and inventories, and services for the Center, SMG shall have the right, but not the obligation, to purchase or procure from, or otherwise transact business with, an affiliate of SMG. In the event SMG purchases or procures from, or otherwise transact business with, an affiliate of SMG as contemplated by the foregoing sentence, the prices charged, and services rendered shall be competitive with those obtainable from others rendering comparable goods or services of like kind. To ensure compliance in this respect, SMG agrees to obtain at least two (2) other competitive bids for like goods or services from persons or entities other than SMG's affiliates whenever SMG proposes to transact business with an affiliate for the provision of such goods or services hereunder, and the prices actually charged by the SMG affiliate must be less than or equal the competitive bids; County may, at its option, require SMG to obtain additional

competitive bids. In addition, SMG, as agent for the County, may license the use of the Center or any part thereof to itself in connection with any event in the promotion of which SMG is involved, so long as the license fee charged is on prevailing rates and terms or such other rates and terms as the County approves. County has approved the subcontract for the provision of food and beverage services at the Center by SAVOR for the Amended Term; any future changes to the subcontract are subject to approval by the Contract Administrator.

County and SMG further agree that at any time after the opening of the headquarters hotel at the Center, County may elect to continue its contractual relation under this Amended Agreement with SMG but have the hotel provide food and beverage services at the Center; in that instance, SMG shall take any steps necessary to terminate provision of food and beverage services at the Center by SMG or its affiliates, and County shall reimburse SMG fifty percent (50%) of the unamortized amount of SMG's required Capital Investment under Exhibit D as of that time.

SMG shall endeavor to obtain contracts with terms that do not extend beyond this Amended Agreement. If SMG demonstrates to County's sole satisfaction that an extension beyond the Amended Term is in County's interest, any such contract may extend beyond the term of this Amended Agreement only if approved in writing in advance by County.

SMG shall coordinate, at no additional cost, with County to enable to the greatest possible extent that purchases qualify as exempt under County's tax-exempt status, including but not limited to such criteria as may be established by the Florida Department of Revenue from time to time. SMG will be solely responsible for purchasing all expendable supplies necessary for provision of the Services or operation of the Center from funds provided in the Operating Budget. SMG shall exercise prudent judgment in the purchase of said supplies within budget guidelines provided to SMG. To the extent the prices are competitive and it is cost effective, SMG shall, whenever feasible, set similar goals for purchasing such supplies from CBEs similar to those that would apply if purchased by County.

7.1.3. County Budget Review. County shall review SMG's proposed Operating Budget and shall determine SMG's annual Operating Budget effective October 1 of each Fiscal Year. The Operating Budget as approved by County for the applicable Fiscal Year shall be the operative budget under this Amended Agreement. It is the intention of County to adequately fund the operation of the Center subject to the availability of funds as referenced in Section 3.1 of this Amended Agreement. SMG's responsibility to manage, operate, maintain, and perform its obligations shall be dependent upon County's responsibility to provide operating funds in accordance with the approved Operating Budget (as may be modified as specified herein). It is understood that SMG will not exceed, commit, or contract to expend any sums in excess of the amounts allowed in the Operating Budget approved by the County. SMG may transfer from line items to other line items within the Operating Budget and spend accordingly without incurring responsibility or liability, so long as the transfer is approved in writing in advance by the Contract Administrator and SMG does not overspend the overall Operating Budget for the Fiscal Year. Further, SMG may from time to time submit to the Contract Administrator a proposed amendment to the Operating Budget to account for increased or decreased expenses relating to

events or other unforeseen occurrences at the time of the approval of the Operating Budget. The Contract Administrator shall have the authority to review and approve in writing any such amendment that, when combined with all other CVB expenses, including this Amended Agreement, does not cause CVB to exceed the Board-approved CVB budget for that Fiscal Year; any other budget amendment requires Board approval. In the event that SMG overspends the Operating Budget without the prior approval of the Contract Administrator, SMG shall be solely responsible for said sums and shall reimburse County for any such sum required to be paid by County within thirty (30) days after the end of each Fiscal Year, or County may withhold said sum from any amounts due SMG, as County may elect.

7.2. Operating Funds. SMG shall open an interest bearing Operating Account at a financial institution of the County's choice ("Operating Account"). Once this Operating Account and other accounts required by this Amended Agreement are established and funded, SMG shall close all other bank accounts related to the operation of the Center and remit to County all remaining funds from those accounts. County shall provide SMG with operating funds in the Fiscal Year beginning October 1, 2019 equivalent to one-third (1/3) of the approved Fiscal Year 2019/2020 Operating Budget, which shall be used by SMG solely to fund Operating Expenses authorized by this Amended Agreement. The Operating Account shall be controlled by SMG for the duration of this Amended Agreement. SMG will notify County each year after its budget is approved by County if there is a need to increase the Operating Account. Any remaining funds in the Operating Account shall be returned to the County upon expiration or termination of this Amended Agreement.

7.3. Procedures for Handling Revenue.

7.3.1. Upon execution of this Amended Agreement, County will open a new revenue account into which SMG shall deposit all revenues received from the performance of Services or the Center operations, and a new escrow account into which SMG shall deposit all event deposits. SMG must deposit all revenue immediately following their receipt in the revenue account; SMG must deposit all event deposits immediately following their receipt in the escrow account. The revenue account shall be established and maintained so that County alone can withdraw funds or otherwise pledge, encumber, or utilize that account.

7.3.2. SMG shall maintain cash control for Services and the Center operations through a combination of rigid accounting procedures as detailed in this section and internal audit tests and an annual audit by an independent public accounting firm. Separate bank accounts shall be utilized for operating funds and event deposits. The event deposit escrow account shall be an escrow system that is zero balanced for each event. All disbursements by SMG shall be by dual-signature checks supported by requisition-purchase order procedures. Payrolls shall be processed through a separate impressed bank account, reconciled monthly, and tested via internal audit procedures. Reimbursable expenses for each event shall be coded for accurate accumulation to ensure all applicable costs shall be paid by the client. Advance deposits covering rentals and estimated costs shall be generally required to minimize collection programs. Credit references shall be checked by SMG for any new clients.

7.4. **Capital Program Budget.** SMG shall submit annually a Capital Program budget for the following Fiscal Year along with a definitive and detailed five (5) year Capital Program budget and a ten plus (10+) year capital outlook. The Capital Program budget for the following Fiscal Year shall follow the schedule format provided by County in writing and shall include all necessary detail as defined by the Contract Administrator. The five (5) year Capital Program budget and the ten plus (10+) year capital outlook will identify major anticipated projects and their projected costs. These will include capital projects such as roof and HVAC systems that will be required at the Center beyond a ten (10) year period.

7.5. **Management Plan.** On March 1 of each year, SMG shall also submit a management plan. The management plan shall include information regarding SMG's operations for such Fiscal Year, including planned maintenance activities, anticipated events at the Center, anticipated advertising and promotional activities and planned equipment and furnishings purchases. The annual plan shall be subject to review, revision and approval by the Contract Administrator. SMG shall have thirty (30) days to incorporate any revisions into its plan, which will then constitute the management plan for SMG for the following fiscal year.

ARTICLE 8 REPRESENTATIONS AND RIGHTS OF SMG

8.1. Representations of SMG.

8.1.1. SMG represents and warrants that it will exert its commercially-reasonable efforts in managing and operating the Center so as to minimize operating expenses and maximize revenues; subject, however, to the limitations of the Operating Budget. All management and administrative services provided by SMG pursuant to this Amended Agreement shall be of first-class quality and of a nature to provide first-class service in making available the Center to clients, patrons, and exhibitors. Management services shall comport with the annual management plan and budget regarding management operations. The County reserves the right to review the actual management and administrative operations in the Center to ensure they are in keeping with the provisions of this Amended Agreement and with SMG's annual management plan and Operating Budget.

8.1.2. SMG agrees to be responsible for the administration of all agreements for use of the Center, and shall exert its best efforts to collect all sums due from users and the general public for the rental and use of the Center. All contacts between County and SMG regarding the administration of this Amended Agreement shall be directed through the Contract Administrator.

8.2. Personnel.

8.2.1. SMG's General Manager shall be responsible for the total operation by SMG of the Center. SMG shall ensure that the General Manager devotes his/her full efforts to the Services and the operation of the Center, as shall all other SMG staff employed at the Center, unless otherwise indicated in the annual budget.

8.2.2. The position of SMG's General Manager is considered key to the successful operation of the Center. SMG shall seek and receive input from the Contract Administrator regarding the individual to serve in this position. Prior to any relocation or replacement of the General Manager, SMG shall consult with the Contract Administrator regarding the relocation or replacement. SMG shall not hire, relocate, reassign, terminate, or replace the General Manager without County's prior written consent and approval, which shall not be unreasonably withheld or delayed.

8.2.3. In the event SMG determines it is necessary to terminate the employment of any Senior Management position (defined as positions carrying the title of Director or above), SMG shall promptly notify the Contract Administrator and outline the steps to be taken to replace the position. SMG shall seek and receive approval from the Contract Administrator regarding the hiring, relocation, or replacement of all Senior Management positions at the Center.

8.2.4. All personnel employed at the Center shall be employees of SMG and shall not be deemed employees of County. The employees and agents of SMG shall attain no rights or benefits under the Civil Service or Pension Ordinances of County, nor the rights generally afforded classified or unclassified employees of County, nor shall SMG or its employees be entitled to Florida Worker's Compensation benefits as employees of County. SMG agrees to make every reasonable effort to recruit employees who reside in Broward County. SMG agrees to be responsible for the hiring and direct remuneration of all permanent personnel necessary for the operation of the Center, as well as other temporary personnel such as gatekeepers, cashiers, ticket takers, ticket sellers, ushers, rest room attendants, electricians, first-aid attendants, and any other persons required to perform the Services required hereunder. SMG shall provide County monthly with a complete roster of all of its employees.

SMG shall make reasonable and good faith efforts to recruit employees to achieve a representative workforce at each level of employment that mirrors the demographics of Broward County. Each level of employment as used in the preceding sentence includes management, supervisory, permanent, and temporary personnel. SMG shall provide County with an annual report, in a form to be determined by the County, on its efforts to employ a representative workforce.

8.3. **Rental Agreements.** SMG's General Manager shall have the authority to execute user rental agreements for the use of the Center in accordance with the Operations Manual and rental rates. County has the right to review the user rental agreements for compliance with said Operations Manual and rental rates.

ARTICLE 9 REPRESENTATIONS AND RIGHTS OF COUNTY

9.1. Inventory; Equipment Warranties; Taxes.

9.1.1. Within ninety (90) days after the Effective Date of this Amended Agreement, County and SMG shall jointly prepare a comprehensive inventory of equipment installed in the

Center (“Inventory List”) and certifications of all existing warranties on such equipment. The Parties shall update the Inventory List on at least an annual basis. County further agrees that, as part of this Amended Agreement, it shall allow SMG to enforce the warranties and seek such other relief available to County on County’s behalf, subject to prior approval of such action by the Contract Administrator.

9.1.2. County agrees that if, and to the extent, any tax or taxes are imposed or levied upon SMG in connection with this Amended Agreement (other than income tax or other taxes generated from revenue of SMG), said taxes shall be reimbursable to the Operating Account as an Operating Expense to the extent permitted by law.

9.2. Authority of Contract Administrator. The Contract Administrator is authorized to coordinate and communicate with SMG to manage and supervise the performance of this Agreement. Unless otherwise expressly stated in this Amended Agreement or in the applicable Broward County Procurement Code, Code of County Ordinances, or Code of Administrative Procedures, the Contract Administrator may act on behalf of the County in connection with the day-to-day management of this Agreement. The Contract Administrator shall have and may exercise, subject to the direction of County Administrator, the following authority:

9.2.1. To establish in conjunction with SMG, on a continuing basis, an operations policy in the form of an Operations Manual for the Center, which is to be prepared by SMG and approved in writing by the Contract Administrator. Recommendations for changes to the Operations Manual may be made by either the Contract Administrator or SMG. Any revisions shall only become effective if approved in writing by the Contract Administrator. The Operations Manual shall be provided electronically to the Contract Administrator within sixty (60) days after the signing of this Amended Agreement. Any future proposed revisions to the Operations Manual shall be provided in writing to the County. After approval in writing by the Contract Administrator, SMG shall have fifteen (15) days to memorialize those revisions in the Operations Manual and provide County with an updated electronic copy.

9.2.2. To establish and provide to SMG a list of goals and objectives, many of which will serve as the basis for determining the Incentive Fee, and amend same from time to time. Contract Administrator and SMG shall jointly review the annual performance of SMG at the end of each Fiscal Year to determine if the goals and objectives established by the Contract Administrator are being met. The Contract Administrator will then make adjustments to the goals and objectives for the following Fiscal Year in accordance with this Amended Agreement.

9.2.3. To manage the activities and expenditures of SMG on behalf of the Center to ensure that said activities and expenditures conform to County policies and the budget set forth and approved by County.

9.2.4. To set, in conjunction with SMG, a schedule of rents, rates, fees, and charges for the use or occupancy of and for furnishing services in connection with the Center, and incorporate appropriate recommendations from SMG regarding same.

9.2.5. To review the annual operating budget proposed by SMG to County and submit for County consideration any proposed modification or amendment to same along with the SMG proposal.

9.2.6. Prior to approval of the Operating Budget, to cause an annual inspection of the Center to be conducted of all installed and portable furniture and equipment and capitalized supplies, and any other such items that are the property of County, to determine the condition of the same, to assess damages, if any, and to ensure insurance claims are filed or efforts undertaken to seek reimbursement from appropriate parties.

9.2.7. To ensure the establishment at the Center of a master reservation control of all meeting, exhibit, and function spaces.

9.3. Right of Entry and Use of Premises. County may, at its discretion, place one or more of its employees at the Center on a full or part-time basis. Additionally, County has, at all reasonable times, the right to enter into and upon any and all parts of the Center for the purpose of examining the same for any reason relating to the obligations of the Parties to this Amended Agreement; provided, however, that said visits by agents of County be authorized and coordinated through the Contract Administrator or his/her designee. County shall have the right to use the Center or any part thereof, subject to availability, for the benefit of County government for such purposes including, but not limited to, meetings, hearings, seminars and training classes, subject to time limitations and costs exceptions as delineated in Broward County Resolution No. 91-1943, as amended from time to time. SMG will bill the appropriate County department, other governmental entities, or not-for-profit agencies, for the direct costs associated with the event. When the County is a principal sponsor of the event, food may be brought into the Center from outside sources. SMG will not be subject to any liability for food brought in from outside. County staff may also bring in and operate County owned audio/visual equipment at its discretion for County sponsored events at the Center, provided however that such activity shall not interfere with any existing Collective Bargaining Agreements that cover such work.

9.4. Ownership of Assets. The ownership of building and real estate, technical and office equipment, facilities, furniture, displays, fixtures, vehicles, and similar property located at the Center shall remain with the County. Ownership of and title to all intellectual property rights of whatsoever value, held in County's name, shall remain in the name of County and any intellectual property rights acquired by SMG pursuant to its management operations shall be placed in the name of County. SMG shall not take or use for its own purposes customer or exhibitor lists or similar materials developed by SMG or County for the use of the Center. Ownership of equipment furnishings, materials or fixtures not considered to be real property and other personal property purchased by SMG for use at and for the Center shall vest in County automatically and immediately upon purchase or acquisition. SMG shall only use the Center property and assets of County solely and exclusively for the performance of Services under this Amended Agreement and not for any other purpose of SMG or any third party. SMG agrees that

the assets of County shall not be pledged, liened, encumbered or otherwise alienated or assigned for any purpose.

ARTICLE 10 BOOKING POLICIES

10.1 General. The Parties recognize and acknowledge that the interest of County requires a booking policy that takes into account not only events that generate substantial direct revenues for the Center, but also events that produce less direct revenue but generate significant transient occupancy tax and peripheral economic benefits in the form of increased tourist revenues and stimulate the general economy of County. Over time, County expects SMG to reduce the number of business-to-consumer events due to an increase in bookings by the County and SMG for business-to-business and professional association events. The interests and expectations of County, including as set forth in this Article 10, will be set forth in a formal “Booking Policy Guidelines” that County will establish in conjunction with input from SMG. SMG will perform the Services under this Amended Agreement consistent with the Booking Policy Guidelines, unless the Contract Administrator otherwise approves in writing.

10.2 County’s Responsibility. CVB has the primary responsibility for marketing the Center for conventions and trade shows in accordance with the Booking Policy Guidelines. SMG will assist CVB by providing resource people to work with CVB and, when budget appropriations permit, accompany them in their solicitation efforts. CVB may book conventions and trade show events with less than eighteen (18) months’ lead time if the dates have not been confirmed for other users and in coordination with SMG as per the Booking Policy Guidelines. Prior to committing any dates booked by CVB pursuant to this section, CVB will confirm with SMG that the space can be properly converted, set up, equipped, and furnished on the proposed dates and times. In the event that a planned CVB booking adversely impacts SMG’s approved Operating Budget, then SMG shall notify the Contract Administrator in writing of the extent of such financial impact and the Contract Administrator must approve or disapprove in writing the proposed CVB booking. SMG may also book non-convention and trade show events with more than eighteen (18) months’ lead time if dates have not been confirmed in writing by CVB to other users. Approval of the dates booked in this manner shall be considered tentative until formally released in writing by CVB.

10.3 SMG’s Responsibility.

10.3.1 SMG has primary responsibility to market and schedule the Center for all “near-term” dates (18 months or less in advance) not utilized by the bookings generated by CVB, and SMG will ensure experienced personnel diligently promote the use of the Center for these dates. Markets for “near-term” dates will include locally and regionally oriented events such as consumer shows (subject to expected reductions as cited in Section 10.1), spectator sports and entertainment, meetings and social functions, and other special activities that can be properly carried on in the Center. SMG shall have the right to promote its own events within the Center at the established rate structure provided no County funds are used for such promotions unless County elects in writing to participate in said events and authorizes SMG to proceed.

10.3.2 Simultaneously with SMG's annual budget request, SMG shall provide County with goals projecting the number of events SMG plans to host and the anticipated number of attendees each of those events will attract.

10.3.3 In marketing and scheduling events, SMG shall take into consideration any potential negative externalities that might increase County's costs and expenses, including, but not limited to, the cost of additional security, insurance, and potential property damage. In the event SMG or County determines that an event poses any such material risks, SMG will notify and coordinate with the Contract Administrator to develop cost estimates of additional fees to be charged to the entity seeking to rent space at the Center in addition to the rental fee set forth in the Operations Manual.

10.3.4 SMG shall have the authority to negotiate and enter into booking agreements pertaining to the Center, in accordance with the Booking Policy Guidelines, the Operations Manual, and this Amended Agreement.

ARTICLE 11 SUBCONTRACTS

11.1 SMG shall have the authority to negotiate and contract for services and products pertaining to the Center, in accordance with this Amended Agreement, the Operations Manual and approved Operating Budget.

11.2 SMG shall obtain prior written consent from the Contract Administrator, which will not be unreasonably withheld or delayed, for all service contracts, agreements, amendments, and assignments of contracts between SMG and any entity providing Services to the Center that exceed a contract value of Ten Thousand Dollars (\$10,000) annually or that have the effect (including in conjunction with any other contract or renewal) of engaging the services of any Subcontractor for a period greater than one (1) year. SMG will provide County annually with a list of such contracts and their termination dates.

11.3 SMG shall include a provision in all subcontracts entered into to provide Services or otherwise relating to the Center or this Amended Agreement that SMG may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of County's withholding funds to SMG due to inadequate or defective work that has not been remedied or resolved in a manner satisfactory to the Contract Administrator.

11.4 SMG shall promptly disclose, in writing to County, any ownership or legal relationship that SMG has with any of SMG's current or potential Subcontractors or other service providers. The Parties acknowledge that SMG has previously provided County with written notice of its ownership of SMG Food and Beverage LLC d/b/a SAVOR.

11.5 SMG shall include a provision in all subcontracts entered into to provide Services relating to the Center or this Amended Agreement prohibiting the assignment by the Subcontractor of its performance to any other party unless County, within its sole discretion, consents to said assignment in writing.

11.6 SMG shall include a provision in all subcontracts entered into to provide Services or otherwise relating to the Center or this Amended Agreement that all Subcontractors must comply with the terms of this Amended Agreement, Broward County Code requirements, and Florida Statutes.

ARTICLE 12 EMERGENCY OPERATIONS SERVICES PROVIDED BY SMG

Emergency Operations Center Food Services. To the extent requested by County, SMG shall work with County on a variety of emergency management response services as described Exhibit B.

ARTICLE 13 CAPITAL IMPROVEMENTS AND REPAIRS

13.1 **Capital Improvements.** SMG shall provide to the Contract Administrator on or before March 1 of each year a Capital Program budget for the following Fiscal Year as described in Section 7.4. The purpose of such a schedule is to allow the Contract Administrator to include such projects in its budget for the ensuing Fiscal Year and to prepare and update long range five (5) and ten (10) year capital expenditure budgets. SMG's inclusion or failure to list particular items or projects shall not be binding on County. "Capital Expenditures" means all expenditures for building additions, alterations, or improvements, and for purchases of additional or replacement furniture, machinery, or equipment, the depreciable life of which, according to accepted accounting principles, is in excess of one (1) year. SMG shall advise County, through the Contract Administrator, of all repairs and improvements which are made to the Center through a monthly report submitted to the Contract Administrator. SMG shall further cause all necessary repairs and improvements to be made to the Center from those monies available in the annual operating budget.

13.2 **Responsibility for Repairs.** SMG shall be responsible for all routine and minor repairs, maintenance, and equipment servicing, and such expenses shall be an Operating Expense in accordance with the approved budget and paid out of the SMG's Operating Budget. Additionally, SMG is responsible for ensuring that all repairs, replacements, and maintenance are performed in a professional manner by knowledgeable and qualified personnel and have the effect of maintaining the equipment in or restoring the equipment to a safe and reliable operating condition at least equal to the state of the equipment prior to the event or condition giving rise to the need for the repair, replacement, or maintenance work. Any substitute item replacing an item listed on the Inventory List shall be deemed the property of County. In the event the necessary repairs exceed the available budgeted funds, SMG shall seek approval from the Contract Administrator before making the repairs. If the equipment poses a threat to health, safety, and welfare, SMG may proceed to make the needed repairs immediately and promptly following such action, SMG shall inform the Contract Administrator of the situation and the actions taken.

13.3 As part of its annual budget submission, SMG shall prepare for the approval of the Contract Administrator a schedule of operational repairs and maintenance to be accomplished each year. The schedule shall set out the estimated annual operational expenditures in areas of HVAC, electrical, plumbing, janitorial, security, elevator, escalator, parking facilities, grounds

maintenance, and other projects plus a contingency not to exceed seven percent (7%) of the estimated expenditures to cover emergencies and other unexpected requirements.

13.4 SMG shall maintain a capital reserve account and shall ensure the Food Service Capital Reserve Payment (as defined in the SAVOR Agreement) is promptly deposited in that capital reserve account on monthly basis. The funds in that account, including interest, shall be utilized solely for food-service related capital equipment or repair expenses approved in advance in writing by County Contract Administrator. Any remaining funds in the account at the expiration or termination of this Agreement shall belong to County.

ARTICLE 14 REPRESENTATIONS AND WARRANTIES

14.1 **Representation of Authority.** SMG represents and warrants that this Amended Agreement constitutes the legal, valid, binding, and enforceable obligation of SMG, and that neither the execution nor the performance of this Amended Agreement constitutes a breach of any agreement that SMG has with any third party or violates any law, rule, regulation, or duty arising in law or equity applicable to SMG. SMG further represents and warrants that execution of this Amended Agreement is within SMG's legal powers, and each individual executing this Amended Agreement on behalf of SMG is duly authorized by all necessary and appropriate action to do so on behalf of SMG and does so with full legal authority.

14.2 **Representations.** SMG represents and warrants that all statements and representations made by SMG or other supporting documents submitted to County in connection with the negotiation or award of this Amended Agreement, were true and correct when made and are true and correct as of the Effective Date of this Amended Agreement, unless otherwise expressly disclosed by SMG.

14.3 **Contingency Fee.** SMG represents that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for SMG, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Amended Agreement.

14.4 **Truth-In-Negotiation Representation.** SMG's compensation under this Amended Agreement is based upon its representations to County, and SMG certifies that the wage rates, factual unit costs, and other information supplied to substantiate SMG's compensation, including without limitation in the negotiation of this Amended Agreement, are accurate, complete, and current at the time of contracting. SMG's compensation will be adjusted to exclude any significant sums by which the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

14.5 **Public Entity Crime Act; Discriminatory Vendor List; Scrutinized Companies List.** SMG represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. SMG represents that it has not been placed on the discriminatory vendor list as

provided in Section 287.134, Florida Statutes. SMG further represents that it is not ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes.

14.6 Warranty of Performance. SMG represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide the Services under this Amended Agreement, and that each person and entity that will provide Services under this Amended Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render Services. SMG represents and warrants that the Services under this Amended Agreement shall be performed in a skillful and professional manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such services.

14.7 Domestic Partnership Requirement. Unless this Amended Agreement is exempt from the provisions of the Broward County Domestic Partnership Act, Section 16½-157, Broward County Code of Ordinances, SMG certifies and represents that it will comply with the provisions of Section 16½-157 for the duration of this Amended Agreement, and the contract language referenced in Section 16½-157 is deemed incorporated in this Amended Agreement as though fully set forth in this section.

14.8 Breach of Representation. County materially relies on the representations and warranties of SMG stated in this article in entering into this Amended Agreement. County shall be entitled to recover any damages it incurs to the extent any such representation or warranty is untrue. In addition, if any such representation or warranty is false, County shall have the right, at its sole discretion, to terminate this Amended Agreement without any further liability to SMG, to deduct from the compensation due SMG under this Amended Agreement the full amount of any value paid in violation of a representation or warranty, or to recover all sums paid to SMG under this Amended Agreement. Furthermore, a false representation may result in debarment from County's competitive procurement activities.

ARTICLE 15 INDEMNIFICATION

SMG shall indemnify, hold harmless, and defend County and all of County's officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Amended Agreement, and caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of SMG, its officers, employees, agents, or servants, arising from, relating to, or in connection with this Amended Agreement (collectively, a "Claim"). In the event any Claim is brought against an Indemnified Party, SMG shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County, approval of counsel not to be unreasonably withheld. The obligations of this section shall survive the expiration or earlier termination of this Amended Agreement. To the extent considered necessary by the Contract Administrator and the County Attorney, any management fees due SMG under this

Amended Agreement may be retained by County until all Claims for indemnification pursuant to this Amended Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

ARTICLE 16 INSURANCE

16.1 For the duration of the Amended Agreement, SMG shall, as an Operating Expense, maintain the minimum insurance coverages stated in Exhibit E in accordance with the terms and conditions of this article. SMG shall maintain insurance coverage stated in Exhibit E against claims relating to any act or omission by SMG, its agents, representatives, employees, or Subcontractors in connection with this Agreement.

16.2 SMG shall ensure that "Broward County" is listed as an additional insured and entitled to notice on all liability policies required under this article, except for automobile liability coverage.

16.3 Within fifteen (15) days after the Effective Date or at least fifteen (15) days prior to commencement of Services, whichever is later, SMG shall provide County with a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the insurance coverage required in this article. If and to the extent requested by County, SMG shall provide complete, certified copies of all required insurance policies and all required endorsements within thirty (30) days after County's request.

16.4 SMG shall ensure that all insurance coverages required by this article shall remain in full force and effect for the duration of this Amended Agreement and until all performance required by SMG has been completed, as determined by Contract Administrator. SMG shall provide notice to County of any cancellation or modification of any required policy at least thirty (30) days prior to the effective date of cancellation or modification, and at least ten (10) days prior to the effective date of any cancellation due to nonpayment, and shall concurrently provide County with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s). SMG shall ensure that there is no lapse of coverage at any time during the time period for which coverage is required by this article.

16.5 SMG shall ensure that all required insurance policies are issued by insurers: (1) assigned an A.M. Best rating of at least "A-" with a Financial Size Category of at least Class VII; (2) authorized to transact insurance in the State of Florida; or (3) a qualified eligible surplus lines insurer pursuant to Sections 626.917 or 626.918, Florida Statutes, with approval by County's Risk Management Division. If SMG maintains broader coverage or higher limits than the minimum insurance requirements stated in Exhibit E, County shall be entitled to any such broader coverage and higher limits maintained by SMG. All required insurance coverages under this article shall provide primary coverage and shall not require contribution from any County insurance, self-insurance or otherwise, which shall be in excess of and shall not contribute to the insurance required and provided by SMG.

16.6 SMG shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in Exhibit E and submit to County's Risk Management Division for approval. SMG shall

be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against County out of its own funds and not out of the Operating Account. County may require SMG to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. SMG agrees that any deductible or self-insured retention may be satisfied by either the named insured or County, if so elected by County, and SMG agrees to obtain same in endorsements to the required policies.

16.7 Unless prohibited by the applicable policy, SMG waives any right to subrogation that any of SMG's insurers may acquire against County, and agrees to obtain same in an endorsement of SMG's insurance policies.

16.8 SMG shall require that each Subcontractor is adequately insured for the Services provided by that Subcontractor on substantially the same insurance terms and conditions required of SMG under this article. SMG shall also require that all such Subcontractors comply with these requirements and list "Broward County" as an additional insured under the applicable insurance policies.

16.9 In the event SMG or any Subcontractor fails to maintain the insurance required by this Agreement, County may pay any costs of premiums necessary to maintain the required coverage and either deduct such costs from any payment otherwise due to SMG or require payment by SMG to County within thirty (30) days after written demand, as County may elect.

16.10 Any required workers' compensation or employer's liability insurance shall include any applicable federal or state employer's liability laws including, but not limited to, the Federal Employer's Liability Act, the Jones Act, and the Longshoreman and Harbor Workers' Compensation Act. Any required professional liability insurance must include coverage for all claims that are reported within at least three (3) years following the expiration or termination of this Agreement, unless a longer period is indicated in Exhibit E.

16.11 The County's Risk Management Division reserves the right to review and revise any insurance requirements at the time of renewal or amendment of this Amended Agreement, including, but not limited to, deductibles, limits, coverage, and endorsements based on insurance market conditions affecting the availability or affordability of coverage, or changes in the scope of work or specifications that affect the applicability of coverage. If SMG uses a Subcontractor, SMG shall ensure that Subcontractor names the County as an additional insured.

ARTICLE 17 TERMINATION

17.1 This Amended Agreement may be terminated for convenience by action of the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by County, which termination date shall be not less than thirty (30) days after the date of such written notice. If County erroneously, improperly, or unjustifiably terminates for cause, then County may either withdraw the termination for cause or upon

approval by the Board, it shall be deemed a termination for convenience and shall be effective thirty (30) days after such notice of termination for cause is provided.

17.2 This Amended Agreement may be terminated or suspended by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination or suspension is necessary to protect the public health, safety, or welfare. In the event of suspension due to a health, safety, or welfare issue, the Amended Agreement shall only be suspended for a period of time determined, in the County Administrator's sole discretion, to be the shortest practicable time necessary to remedy the problems. Thereafter, the Amended Agreement shall be (i) reinstated by the County Administrator if the health, safety, or welfare issue is resolved in a manner and time frame satisfactory to the County Administrator in his or her sole discretion, or (ii) terminated by the County Administrator by verbal notice which shall be promptly confirmed in writing in accordance with the "Notices" section of this Amended Agreement. The County Administrator shall have the automatic right to terminate this Amended Agreement under this Section for any recurring or subsequent public health, safety, or welfare issues that arise at the Center.

17.3 This Amended Agreement may be terminated for cause by the aggrieved party on the grounds set forth in this section if the party in breach has not corrected the breach within forty-five (45) days after receipt of written notice from the aggrieved party identifying the breach. This Amended Agreement may be terminated for cause ("Cause") upon the occurrence of any of the following:

- (i) Failure to perform or comply with any other term, covenant, or condition of this Amended Agreement and such failure continues for more than forty-five (45) days after written notice of such failure is sent to the breaching party; provided, however, in the event that the nonbreaching party reasonably determines that an event of default is not susceptible to being cured within the forty-five (45) day period, the breaching party shall not be considered in default if the breaching party, within such forty-five (45) day period, commences with due diligence and dispatch to cure such default and diligently continues such cure through completion; or
- (ii) The occurrence of any act or omission on the part of either party that deprives it of the rights, powers, licenses, permits, and authorizations necessary for the lawful and proper conduct and operation of the services and activities authorized; or
- (iii) The filing by or against SMG of any colorable petition in bankruptcy, whether voluntary or involuntary, or any action that has the effect of passing of any benefits of this Amended Agreements to creditors, assignees, or transferees of SMG without prior County written approval; or
- (iv) The abandonment or discontinuance by SMG, without written consent of County, of any or all of the operations and services required under this Amended Agreement; or

(v) More than five breaches by the other party, in any twelve (12) consecutive month period, of the provisions of this Amended Agreement, notwithstanding whether any such breach was previously waived or cured; or

(vi) The cessation of services by election of SMG for a period that, in the reasonable opinion of County, materially and adversely affects the operation of the public services required to be performed by SMG.

17.4 Notice of termination shall be provided in accordance with the “Notices” section of this Amended Agreement except that notice of termination by the Contract Administrator which the Contract Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with the “Notices” section of this Amended Agreement. In the event this Amended Agreement is terminated for convenience or for cause, SMG shall be paid its Base Management Fee and Incentive Fee for any services performed to the date this Amended Agreement is terminated, prorated for the applicable portion to the Fiscal Year, less the cost to County of making good any deficiencies, correcting all work improperly performed, and any additional cost incurred by County for removing or replacing SMG (excluding fees to entities hired to replace SMG to perform the management services hereunder).

17.5 In the event this Agreement is terminated by County for any reason, with or without cause as defined in this Section, SMG shall be paid for any Services properly performed under this Agreement through the termination date specified in the written notice of termination as well as any amount due under Section 5.2 subject to any right of County to retain any sums otherwise due and payable. Additionally, SMG acknowledges that it has received good, valuable, and sufficient consideration from County, the receipt and adequacy of which are acknowledged by SMG, for County’s right to terminate this Agreement for convenience.

17.6 In addition to any right of termination stated in this Agreement, County shall be entitled to seek any and all available remedies, whether stated in this Agreement or otherwise available at law or in equity.

17.7 Upon the effective date of a termination notice pursuant to this article, SMG shall refrain from performing further Services or incurring additional expenses under the terms of this Amended Agreement. Furthermore, in the event of termination, any compensation payable by County shall be withheld until all documents are provided to County pursuant to Article 6 of this Agreement.

17.8 In the event this Amended Agreement is terminated or expires, County may, in its discretion, assume the work or engage another vendor to provide the services, including Subcontractors of SMG or otherwise, all without liability to SMG. SMG commits to provide a smooth and orderly transition and shall provide County with all requested financial records, reports and invoices, including historical financial records.

17.9 The exercise by County or SMG of any remedy and right provided herein shall in no way affect any other right or remedy available to County or SMG.

ARTICLE 18 BUSINESS OF SMG; CONFLICTS OF INTEREST

18.1 SMG shall not submit a proposal or enter into any similar management agreement for the operation of a similar type facility, broadly defined as a facility possessing greater than 47,500 square feet of exhibit space, 20,000 square feet of ballroom space, or 10,000 square feet of meeting space, located within a one hundred (100) mile radius of the Center, unless the agreement is (a) with County, or (b) approved in advance in writing by County.

18.2 SMG agrees it shall not, without prior written approval of the Contract Administrator, materially alter the nature of the services that its company offers in a manner that might impact on the operation at the Center.

18.3 SMG agrees in all instances when County is in convention solicitation competition with other areas where SMG has convention center operations, not to become corporately involved on behalf of another destination in attempts to influence the decision making process regarding selection of a convention site. Conversely, SMG's manager will use best efforts to support CVB in all attempts to obtain exhibition and convention bookings for the Center.

18.4 In the event SMG is permitted by County to enter into a management agreement for the operation of a facility other than a similar type facility, as defined in Section 18.1 above, within a one hundred (100) mile radius of the Center, SMG agrees and represents to County that (a) it shall perform such services in a manner so as to show no preference for any facility(ies) with regard to the management, booking, and operation of said facility(ies) and (b) no SMG employee shall provide Services under this Agreement and for the similar type facility within the same Fiscal Year. Further, SMG agrees that it shall incorporate the obligations of this section in its entirety, without modification, in any management agreement with the facility. SMG is familiar with the provisions of the Broward County Charter, Administrative Code, and Code of Ordinances, and the applicable Florida Statutes, and hereby certifies that it will make a complete disclosure to County of all facts bearing upon any possible conflict, direct or indirect, with its performance that it believes any officer or employee of County now has or will have. Said disclosure shall be made by SMG contemporaneously with the execution of this Amended Agreement and at any time thereafter that such facts become known to SMG.

18.5 County recognizes that SMG or its affiliates may enjoy indirect economic benefits from the operation of the Center. However, SMG agrees that it will perform its obligation under this Amended Agreement in a manner consistent with the best interest of County. Additionally, SMG shall, to the extent practical, prior to execution and approval of this Amended Agreement, provide to County a listing of such known or anticipated ancillary income/revenue sources that may be affected by the operation of the Center and their estimated annual amount. SMG will provide an updated listing on an annual basis no later than March 31 of each Fiscal Year.

18.6 Neither SMG nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with SMG's loyal and conscientious exercise of judgment and care related to its performance under this Amended Agreement. During the terms of this Amended Agreement, none of SMG's officers or employees shall serve as an expert witness against County in any legal or administrative proceeding in which he, she, or SMG is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing as an expression of his or her expert opinion that is adverse or prejudicial to the interest of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude SMG or any persons in any way from representing themselves, including giving expert testimony in support of such representation, in any action or in any administrative or legal proceeding. In the event SMG is permitted pursuant to this Amended Agreement to utilize Subcontractors to perform any Services required under this Amended Agreement, SMG shall require such Subcontractors, by written contract, to comply with the provisions of this section to the same extent as SMG.

ARTICLE 19 CONSTRUCTION AND INTERPRETATION

19.1 County and SMG agree that it is fundamental to the operation of the Center that interest on County's Tourist Development Tax Special Revenue Bonds (Convention Center Project), Series 1988 (including any and all bonds that refund or refinance those bonds), as well as any future bonds, notes, or other indebtedness issued to finance construction or other activity at the Center, remains excludable from gross income for federal income tax purposes. Accordingly, the provisions of this Amended Agreement shall be construed so as not to adversely affect the excludability from gross income for federal income tax purposes of the interest on those bonds, notes, or other indebtedness and any provision of this Amended Agreement that may not be so construed shall be disregarded entirely.

19.2 The language of this Amended Agreement has been agreed to by both Parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings contained in this Amended Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Amended Agreement. All personal pronouns used in this Amended Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Amended Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Amended Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article.

ARTICLE 20 MISCELLANEOUS

20.1 Equal Employment Opportunity and CBE Compliance.

20.1.1 No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. SMG shall include the foregoing or similar language in its contracts with any Subcontractors, except that any project assisted by the U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

20.1.2 SMG shall comply with all applicable requirements of Section 1-81, Broward County Code of Ordinances, in the award and administration of this Agreement. Except as otherwise expressly stated in Sections 20.1.6 and 5.2, failure by SMG to carry out any of the requirements of this article shall constitute a material breach of this Agreement, which shall permit County to terminate this Agreement for cause or exercise any other remedy provided under this Agreement, the Broward County Code of Ordinances, the Broward County Administrative Code, or under other applicable law, all such remedies being cumulative.

20.1.3 SMG will meet the required CBE goal (the "Commitment") as established by the Office of Economic and Small Business Development ("OESBD") Program Director in Exhibit F. SMG will meet the Commitment by utilizing CBE firms on the "CBE List" that SMG will provide to the OESBD Program Director within sixty (60) days after the Effective Date of this Amended Agreement. SMG may utilize a CBE firm substituted for a listed firm, if approved in writing by the OESBD Program Director. The CBE List will identify the CBE firms SMG intends to utilize, the scope of work, and the anticipated value of services and/or products provided by each CBE firm.

20.1.4 In performing the Services, SMG shall utilize the firms on the CBE List for the scope of work and the anticipated value of services and/or products identified in the CBE List. SMG shall enter into formal contracts with the CBE firms listed on the CBE List and, upon request, shall provide copies of the contracts to the Contract Administrator and OESBD.

20.1.5 Each CBE firm utilized by SMG to meet the CBE goal must be certified by OESBD. SMG shall inform County immediately when a CBE firm is not able to perform or if SMG believes the CBE firm should be replaced for any other reason, so that OESBD may review and verify the good faith efforts of SMG to substitute the CBE firm with another CBE firm. Whenever a CBE firm is terminated for any reason, SMG shall provide written notice to OESBD and, upon written approval of the Director of OESBD, shall substitute another CBE firm in order to meet the CBE goal, unless otherwise provided in this Agreement or agreed in writing by the Parties. Such substitution shall not be required in the event the termination results from modification of the Scope of Services and no CBE firm is available to perform the modified Scope of Services; in which event, SMG shall notify County, and OESBD may adjust the CBE goal by written notice to SMG. SMG shall not terminate a CBE firm for convenience without County's prior written consent, which consent shall not be unreasonably withheld.

20.1.6 The Parties stipulate that if SMG fails to meet the Commitment, the damages to County arising from such failure are not readily ascertainable at the time of contracting. If SMG fails to meet the Commitment and County determines, in the sole discretion of the OESBD Program Director, that SMG failed to make Good Faith Efforts (as defined in Section 1-81, Broward County Code of Ordinances) to meet the Commitment, SMG shall pay County liquidated damages in an amount equal to fifty percent (50%) of the actual dollar amount by which SMG failed to achieve the Commitment, up to a maximum amount of ten percent (10%) of the total contract amount excluding costs and reimbursable expenses. An example of this calculation is stated in Section 1-81.7, Broward County Code of Ordinances. As elected by County, such liquidated damages amount shall be either credited against any amounts due from County, or must be paid to County within thirty (30) days after written demand. These liquidated damages shall be County's sole contractual remedy for SMG's breach of the Commitment, but shall not affect the availability of administrative remedies under Section 1-81. Any failure to meet the Commitment attributable solely to force majeure, changes to the scope of work by County, or inability to substitute a CBE Subcontractor where the OESBD Program Director has determined that such inability is due to no fault of SMG, shall not be deemed a failure by SMG to meet the Commitment. The Parties further agree that at the conclusion of the second Fiscal Year of this Amended Agreement, and again every second Fiscal Year thereafter, SMG will meet with the Director of OESBD, who will review SMG's performance under County's CBE program and make recommendations, if any, to the Board regarding the Commitment. County will work with SMG to ensure its success in achieving the Commitment. In the event, that SMG is unable to meet the Commitment after good faith efforts, County will reevaluate the Commitment.

20.1.7 SMG acknowledges that the Board, acting through OESBD, may make minor administrative modifications to Section 1-81, Broward County Code of Ordinances, which shall become applicable to this Amended Agreement if the administrative modifications are not unreasonable. Written notice of any such modification shall be provided to SMG and shall include a deadline for SMG to notify County in writing if SMG concludes that the modification exceeds the authority under this section. Failure of SMG to timely notify County of its conclusion that the modification exceeds such authority shall be deemed acceptance of the modification by SMG.

20.1.8 SMG shall make a good faith effort to include CBE firms in work resulting from any amendments, extensions, or modifications, and shall report such efforts, along with evidence thereof, to OESBD.

20.1.9 SMG shall provide written monthly reports to the Contract Administrator attesting to SMG's compliance with the CBE goal stated in this article. In addition, SMG shall allow County to engage in onsite reviews to monitor SMG's progress in achieving and maintaining SMG's contractual and CBE obligations. The Contract Administrator in conjunction with OESBD shall perform such review and monitoring, unless otherwise determined by the County Administrator.

20.1.10 The Contract Administrator may increase allowable retainage or withhold progress payments if SMG fails to demonstrate timely payments of sums due to all Subcontractors and suppliers. The presence of a "pay when paid" provision in a SMG's contract

with a CBE firm shall not preclude County or its representatives from inquiring into allegations of nonpayment.

20.2 Public Records. To the extent SMG is acting on behalf of County as stated in Section 119.0701, Florida Statutes, SMG shall:

- (a) Keep and maintain public records required by County to perform the Services under this Amended Agreement;
- (b) Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- (c) Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Amended Agreement and following completion or termination of this Amended Agreement if the records are not transferred to County; and
- (d) Upon completion or termination of this Amended Agreement, transfer to County, at no cost, all public records in possession of SMG or keep and maintain public records required by County to perform the services. If SMG transfers the records to County, SMG shall destroy any duplicate public records that are exempt or confidential. If SMG keeps and maintains public records, SMG shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

The failure of SMG to comply with the provisions of this section shall constitute a material breach of this Amended Agreement entitling County to exercise any remedy provided in this Amended Agreement or under applicable law.

A request for public records regarding this Amended Agreement must be made directly to County, which will be responsible for responding to any such public records requests. SMG will provide any requested records to County to enable County to respond to the public records request.

Any material submitted to County that SMG contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Florida Statutes Chapter 119) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCTION - TRADE SECRET." In addition, SMG must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Florida Statutes Section 812.081 and stating the factual basis for same. In the event that a third party submits a request to County for records designated by SMG as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by SMG. SMG shall

indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the non-disclosure of any Trade Secret Materials in response to a records request by a third party.

IF SMG HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO SMG'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AMENDED AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 765-8999, SRITTER@BROWARD.ORG, 102 NE 3RD AVE., NO. 100, FORT LAUDERDALE, FLORIDA 33301.

20.3 Independent Contractor. SMG is an independent contractor under this Amended Agreement, and nothing in this Amended Agreement shall constitute or create a partnership, joint venture, or any other relationship between the parties. In providing Services under this Amended Agreement, neither SMG nor its agents shall act as officers, employees, or agents of County. SMG shall not have the right to bind County to any obligation not expressly undertaken by County under this Amended Agreement.

All Services provided by SMG or its Subcontractors pursuant to this Amended Agreement shall be subject to the supervision of SMG.

SMG shall have complete control over its employees in the method of performing their work in accordance with the employee manual prepared and developed by SMG. SMG shall provide to the Contract Administrator a copy of said employee manual. SMG may retain the right to exercise full control of the employment, direction, compensation, and discharge of all its employees. SMG agrees to be solely responsible for all matters relating to payment of its employees, including compliance with social security and withholding requirements, subject to funding by County as an operating expense provided in this Amended Agreement. SMG agrees to be solely responsible for its own acts and those of its subordinates and employees.

20.4 Third-Party Beneficiaries. Neither SMG nor County intends to directly or substantially benefit a third party by this Amended Agreement. Therefore, the Parties agree that there are no third-party beneficiaries to this Amended Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Amended Agreement.

20.5 Notices. In order for a notice to a party to be effective under this Amended Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via email, to the addresses listed below and shall be effective upon mailing or hand delivery. The addresses for notice shall remain as set forth in this section unless and until changed by providing notice of such change in accordance with the provisions of this section.

FOR BROWARD COUNTY:

Greater Fort Lauderdale Convention & Visitor's Bureau, President
101 NE 3rd Ave., No. 100
Fort Lauderdale, Florida 33301
Email: sritter@broward.org

With copies to:

Broward County Administrator
115 South Andrews Avenue, Suite 409
Fort Lauderdale, Florida 33301
Email: bhenry@broward.org

Broward County Attorney
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301
Email: ameyers@broward.org

FOR SMG:

SMG
300 Conshohocken State Road, Suite 700
West Conshohocken, Pennsylvania 19428
Attention: Mr. Harold Westley, President and CEO
Email: wwestley@smgworld.com

With copies to:

SMG
Bruce Hanson, General Counsel
300 Conshohocken State Road, Suite 700
West Conshohocken, PA 19428
Email: bhanson@smgworld.com

Mitchell Berger
Berger Singerman
350 East Las Olas Blvd., 10th Floor
Fort Lauderdale, Florida 33301
Email: mberger@bergersingerman.com

SMG General Manager
Broward County Convention Center
1950 Eisenhower Boulevard
Fort Lauderdale, Florida 33316
Email: mgatley@ftlauderdalecc.com

20.6 Assignment. County is entering into this Amended Agreement in recognition of and in reliance on the expertise, reliability, and competence of SMG in matters pertinent thereto. The performance of the obligations imposed upon SMG under the Amended Agreement will not be assignable by it to any other party unless County, within its sole discretion, consents to said assignment in writing in advance. Any purported assignment in contravention of this section shall be void. In the event of an assignment by SMG to an affiliate, parent, or subsidiary that is substantially owned or controlled by SMG and which retains substantially similar management and directors which assignment is intended to accomplish an internal corporate purpose of SMG as opposed to materially and substantially altering the method of delivery of services to County, County may not unreasonably withhold its consent for such assignment.

20.7 Force Majeure. Except as otherwise provided herein, neither party shall be obligated to perform, and neither party shall be deemed to be in default of its performance, if prevented by (a) fire, earthquake, hurricane, wind, flood, act of God, riot, civil commotion, nor other matter or conditions of like nature, including the unavailability of sufficient fuel or energy to operate the Center, or (b) any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic controls, riots, hostilities, war, or governmental law and regulations. In the event of a strike and work stoppage other than those occurring as a result of an act or omission of SMG, SMG shall not be deemed to be in default or to have breached any part of this Amended Agreement.

Notwithstanding the above, in the event of an emergency threatening damage to persons or property as determined by SMG, then SMG shall act in an expeditious manner to protect said persons or property.

20.8 Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Amended Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Amended Agreement is substantial and important to the formation of this Amended Agreement, and each is, therefore, a material term of this Amended Agreement. Either party's failure to enforce any provision of this Amended Agreement shall not be deemed a waiver of such provision or modification of this Amended Agreement. A waiver of any breach of a provision of this Amended Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Amended Agreement. Any waiver must be in writing signed by an authorized signatory of the Party.

20.9 Compliance with Laws. SMG and its Subcontractors, and the Services they provide under this Amended Agreement shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations, including without limitation, the American with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state or local laws, rules, and regulations, including without limitation the County's living wage ordinance. SMG shall, with the assistance and cooperation of County, be responsible for obtaining any local, state, or national licenses and permits in the name of the Center to enable it to do business.

20.10 **Severability.** In the event a portion of this Amended Agreement is found to be unenforceable by a court of competent jurisdiction, that part shall be deemed severed from this Amended Agreement and the balance of this Amended Agreement shall remain in full force and effect.

20.11 **Joint Preparation.** This Amended Agreement has been jointly prepared by the Parties, and shall not be construed more strictly against either Party.

20.12 **Drug-Free Workplace.** To the extent required under Section 21.31(a)(2), Broward County Administrative Code, or Section 287.087, Florida Statutes, SMG certifies that it has a drug-free workplace program that it will maintain such drug-free workplace program for the duration of this Amended Agreement.

20.13 **Priority of Provisions.** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Amended Agreement and any provisions of Articles 1 through 20 of this Amended Agreement, the provisions contained in Articles 1 through 20 shall prevail and be given effect.

20.14 **Law, Jurisdiction, Venue, Waiver of Jury Trial.** This Amended Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Amended Agreement shall be in the state courts of the of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Amended Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AMENDED AGREEMENT, SMG AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AMENDED AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AMENDED AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

20.15 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained in this Amended Agreement shall be effective unless contained in a written document prepared with the same or similar formality as this Amended Agreement and executed by duly authorized representatives of County and SMG.

20.16 **Prior Agreements.** This document represents the final and complete understanding of the Parties regarding the subject matter and supersedes all prior and contemporaneous negotiations and discussions regarding the subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Amended Agreement that is not contained in this written document.

20.17 Public Art And Design. SMG acknowledges that County has established a Public Art and Design Program to integrate artists' design concepts into the overall project design. Artist(s) are selected by County through an independent process and artist(s) will be funded by the Public Art and Design Program administered by the Broward County Cultural Affairs Division at the direction of the Broward Cultural Affairs Council through its Public Art and Design Committee. To the extent such ordinance applies to any work performed by SMG in connection with the Center, SMG covenants that it will comply with same.

20.18 Payable Interest.

20.18.1 Payment of Interest. County shall not be liable to pay any interest to SMG for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof SMG waives, rejects, disclaims, and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with this Amended Agreement. This subsection shall not apply to any claim for interest, including for post-judgment interest, if such application would be contrary to applicable law.

20.18.2 Rate of Interest. If the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Amended Agreement, whether a prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, one quarter of one percent (0.25%) simple interest (uncompounded).

20.19 Incorporation By Reference. Any and all Recital clauses stated above are true and correct and are incorporated in this Amended Agreement by reference. The attached Exhibits are incorporated into and made a part of this Amended Agreement.

20.20 Counterparts And Multiple Originals. This Amended Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

20.21 Federally Funded Contracting Provisions. The Federally Funded Contracts Requirements attached hereto as Exhibit G are fully incorporated herein this Amended Agreement.

20.22 Labor Peace. County derives significant revenue from the Center, and a well-functioning convention center is a necessary and a central component of County's tourism industry. In addition to current efforts and expenditures to dramatically improve and expand the Center, County is currently completing a process that will result in it expending substantial sums to develop a convention center hotel to provide lodging primarily to attendees of conventions. Accordingly, County has compelling proprietary interests in ensuring that, prior to the opening of the convention center hotel, and continuing throughout the remainder of this Amended Agreement's Amended Term, SMG has taken all appropriate and required measures to assure

that food and beverage services and janitorial services are available at the Center on a continuous and uninterrupted basis. In furtherance thereof, SMG hereby commits that, at least ninety (90) days before the scheduled opening of the convention center hotel, and thereafter as an ongoing, material term of this Amended Agreement throughout the Amended Term, SMG agrees to the following:

a. Unless SMG is already a party to a collective bargaining agreement that covers the employees and prohibits the activities referenced in this section, SMG must enter into and maintain a written labor peace agreement with any labor organization that seeks to represent SMG's full-time, overtime eligible janitorial employees performing work at the Center. The labor peace agreement must have in its terms provisions that prohibit the labor organization or its members from picketing, work stoppages, boycotts, or other economic interference with the business of SMG at the Center.

b. SMG agrees it will include a requirement in any subcontract or agreement for the provision of food and beverage services at the Center, including but not limited to its wholly-owned subsidiary SMG Food and Beverage LLC ("SAVOR"), to be party to and maintain a labor peace agreement with any labor organization that represents or seeks to represent food and beverage services at the Center, if the hotel operator and a labor organization are also covered by a labor peace agreement. The labor peace agreement must have in its terms provisions that prohibit employees from picketing, work stoppages, boycotts, or other economic interference with such SAVOR-provided food and beverage services at the Center, if the hotel operator and labor organization are also covered by a labor peace agreement.

Nothing in this section requires SMG, SAVOR, or any Subcontractor of SMG to enter into a collective bargaining agreement establishing any specific substantive terms and conditions of employment. For purposes of this section, "labor organization" means a labor organization as defined in 29 U.S.C. § 152(5).

In the event that employees of SAVOR become represented subsequent to the execution of a labor peace agreement as outlined above, and if a collective bargaining agreement were to impose a Material Change as described in Section 4.1.4 of this Amended Agreement, SMG may renegotiate the financial terms and conditions of SAVOR's agreement, subject to County's review and approval and in County's sole discretion.

[Signatures on following page.]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Amended Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ____ day of _____, 2019, and SMG, signing by and through its _____ duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

Broward County Administrator, as ex officio Clerk of the Broward County Board of County Commissioners

By _____
Mayor
____ day of _____, 2019

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By  6/6/19
René D. Harrod (Date)
Deputy County Attorney

MAJ/RDH/mm
05/21/2019
2019-05-21 SMG Amended Agreement
#383339.9

AMENDED AGREEMENT BETWEEN BROWARD COUNTY AND SMG FOR PROFESSIONAL
MANAGEMENT SERVICES FOR THE BROWARD COUNTY CONVENTION CENTER

SMG, a Pennsylvania General Partnership

By H. Westley
Harold L. Westley
Chief Executive Officer

Dated: JUNE 6, 2019

WITNESSES:

John F. [Signature]
[Signature]

EXHIBIT A



EXHIBIT B
SCOPE OF SERVICES

1.1 SMG shall have full responsibility for management, operation, and maintenance of the Center on behalf of County, and including such other space as County may designate in writing (e.g., any future expansion space, the existing and expanding parking garage), as provided in this Amended Agreement and more specifically set forth in the Operations Manual, and, where applicable, in accordance with County's policies and procedures related to the Center. SMG's local office shall be located within the Center. By written notice, the Contract Administrator may add additional tasks to properly manage, operate, and maintain the Center, including tasks that might not have been contemplated by this Amended Agreement or the Operations Manual. In the event that these additional tasks impact the Operating Budget for the Fiscal Year, County shall amend the Operating Budget pursuant to Section 7.1.3. Any modification of the Center, as provided herein, shall not impact the Base Management Fee or Incentive Fee. SMG's obligations shall include, but not be limited to, the performance of the following obligations, subject to controls and restrictions as stated in the Amended Agreement or in the Operations Manual:

1.1.1 Establish temporary rentals of assembly spaces within the Center on behalf of County and maintain a reservation control system.

1.1.2 Establish a relationship with and work in concert with CVB including the advertising, marketing and public relations firms retained by County to assist CVB in its promotion, development, implementation, and coordination of advertising, marketing, and public relations efforts. SMG shall utilize the advertising, marketing, and public relations firms retained by County for any advertising, marketing and public relations related to the Center. SMG shall obtain prior approval from the Contract Administrator for all content, strategy and cost related to advertising, marketing and public relations campaigns. SMG shall obtain approval from the Contract Administrator prior to issuing public statements or press releases related to the Center. SMG shall obtain approval from the Contract Administrator prior to selling advertising in or on the premises.

1.1.3 Coordinate with CVB and its advertising and public relations firms all communications with news and entertainment media of all types, including all negotiations and agreements.

1.1.4 Building and grounds operations and maintenance in accordance with the Operations Manual, including, but not limited to, purchasing, payroll, fire prevention program, security program, routine repairs, janitorial services, and energy conservation.

1.1.5 Event management, including, but not limited to, crowd control, security, admission procedures, supervision of box office, and servicing of users such as conventions and entertainment.

1.1.6 Matters that may be requested by the Contract Administrator to properly merchandise, utilize, and promote the use of the Center.

1.1.7 SMG shall have responsibility for sales and marketing of the Center, in coordination with CVB. The Parties shall cooperatively develop sales and marketing plans and strategies such that the utilization of the Center provides County with the maximum benefits and economic impact. All final marketing and advertising strategies and products shall be approved in writing by the Contract Administrator prior to implementation by SMG.

1.2 SMG shall maintain the Center, including the equipment contained therein and any improvements made during the term of this Amended Agreement, in a manner consistent with similar convention center type, location, and the Center's Operations Manual. SMG shall maintain and, at the termination of this Amended Agreement, return the Center, including all equipment contained therein and any improvements made during the term of this Amended Agreement, in the condition received (normal wear and tear excepted).

1.2.1. Maintenance Standards

(a) Maintenance and Repair. To the extent operating funds are budgeted and available, SMG shall take good care of, and keep and maintain, the Center in good and safe order and condition, and shall make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary to keep the Center in good and safe order and condition, so that the Center is maintained in prime working condition as a first class Center pursuant to the requirements of this Amended Agreement and the standards set forth in the Operations Manual.

(i) SMG shall not commit, and shall use all reasonable efforts to prevent, waste, damage, or injury to the Center or its customers.

(ii) All repairs made by SMG shall be substantially equal in quality and class to the original quality of the improvements being repaired and shall be made in compliance with the Operations Manual.

(iii) SMG shall maintain the Center in a condition that will allow County to retain or improve upon its LEED certification, seeking to maintain a Gold level for Existing Buildings Operations & Maintenance, provided the impact of any future expansion does not materially affect the ability of SMG to re-certify the Center in the Existing Building LEED category; and that any future expansion of the Center will be LEED certified as New Construction to the extent allowed by the US Green Building Council; and that County shall fund the operation in a manner sufficient to maintain such certification.

1.3 At the time of submission of the annual operating and capital budget to County, SMG and the Contract Administrator jointly shall prepare and submit to County an inventory of County-owned equipment and supplies, stating quantities, capacities, operational status, useful life, appearance, and recommendations for major maintenance or replacement. All losses in inventory of County-owned equipment and supplies shall be documented by SMG as soon as such losses are discovered by SMG and the proper authorities shall be promptly notified. SMG shall prepare and submit to the Contract Administrator a quarterly report on maintenance and breakdowns of all major pieces of installed and portable equipment.

1.4 SMG shall be responsible for the administration of all agreements for the use of the Center, including, but not limited to, the collection of all sums due from users and the general public for the rental and use of the Center. Subject to the prior written approval on a case-by-case basis by County, SMG may be authorized and empowered and may be required to pursue all appropriate legal remedies available for such purposes, subject to the provisions of County Charter. In the event such authorization is given by County, County agrees that the responsibility of SMG herein provided, shall be pursued in the name and on behalf of County. In the event that the Office of County Attorney elects not to represent County's interest in these matters, selection of and expense for legal counsel shall be approved in writing in advance by County.

1.5 In performing its obligations and meeting its responsibilities under this Amended Agreement, SMG agrees and acknowledges that County may in the future be obligated under certain agreements relating to the development of a headquarters hotel that may impact the operation of the Center. SMG agrees to, upon written notification from the Contract Administrator, meet and discuss with the Contract Administrator to identify what modifications to its operations and budget may be necessary to ensure that County is in compliance with its obligations under any other agreement.

1.6 SMG shall be responsible for all concessions operated in the Center and shall submit a food and beverage activities report to the Contract Administrator periodically but not less than monthly. This report shall contain all information which the Contract Administrator or County requests including, but not limited to, the quality of the products, and adequacy of the services provided. SMG shall investigate and report promptly to the Contract Administrator all complaints involving the concessions.

1.7 This Amended Agreement establishes the duty and responsibility of SMG as to the management, operation, and maintenance of the Center. Any person dealing with SMG has the right to rely on SMG's power and authority with regard to the use and occupancy of the Center to the extent prescribed in this Amended Agreement. SMG shall not have authority to encumber any real or personal property owned by County.

OPTIONAL SCOPE OF SERVICES: The following services, which may be amended by the County at its discretion, shall be included in the Scope of Services under the Amended Agreement when and to the extent requested by County upon written Notice to Proceed, with no effect on the Base Management Fee or the Incentive Fee.

I. **Northport Parking Garage:** It is the intent of the County that the Parking Garage, which services important cultural and tourist attractions and public facilities, be managed and maintained so as to ensure the utmost in courteous and prompt service to the general public.

All gross receipts from the operations hereunder and all interest accruing on such gross receipts shall be the property of the County. For the purposes of this Amended Agreement, "gross receipts" shall include, without limitation, all revenues generated at the Northport Parking Garage ("Garage") from any source, including, but not limited to, fees from all parking operations at the Garage, parking space leases, parking violations, penalties and vending.

SMG shall operate the Garage 24 hours a day, providing personnel and incidental supplies and equipment. All operating expenses will be reimbursed to a separate Operating Account to the garage. Operating Expenses of the Center shall include, but not be limited to: payroll, payroll taxes (including workers' compensation), taxes, stationery and supplies, uniforms, tickets, advertising, bookkeeping expense, insurance and bond costs, security, losses due to robbery or armed robbery, telephone charges related to the Garage, maintenance and cleaning (including sweeping and debris pickup), armored car service and other reasonable costs approved in writing by the County. SMG will work with the County to establish a separate operating and capital budget for the Garage.

Additional duties and responsibilities include:

A. OPERATIONAL DUTIES - SMG shall, subject to the Operating Budget and availability of funds from County:

1. Maintain all equipment to operate the Garage.
2. Provide qualified personnel to perform all required operational and maintenance duties at the Garage.
3. Supply neat and appropriate uniforms as approved in writing by County for parking personnel. All personnel will be in appropriate uniforms while onsite.
4. Provide a parking validation program option to parkers with approval of the Contract Administrator.
5. Provide complete operational control of the Garage.
6. Purchase and pay for maintenance supplies approved in writing by County for the parking operation as Operating Expenses of the Center.
7. Designate an SMG staff person to supervise all aspects of this Amended Agreement related to the Garage. This staff person shall have the overall responsibility and authority to assure compliance with this Amended Agreement.

8. SMG staff shall meet as needed with County and other personnel, including but limited to, from CVB, Port Everglades, Broward County Sheriff's Office and the City of Fort Lauderdale to coordinate event planning.

9. All parking revenue shall be deposited by SMG daily unless otherwise directed by the Contract Administrator. Failure to comply with this requirement shall result in the imposition of a fee of 15% of the amount deposited. Documented violations of any other of the aforementioned duties and requirements of SMG listed in this Exhibit will be assessed a Fifty Dollar (\$50.00) penalty which will be deducted from SMG's management fee.

B. MAINTENANCE DUTIES

1. SMG shall maintain and service all parking control equipment.

2. All Garage signage shall be cleaned at least once per month and as often as necessary. Graffiti will be removed daily.

3. All garbage cans shall be emptied at least once per week, and as often as necessary. SMG shall contract for trash pick-up and disposal.

4. The Garage, including all parking spaces, entrances, sidewalks and other related areas, must be kept free of dirt, graffiti, debris, and other conditions that negatively impact the aesthetics and/or operations of the Garage.

5. SMG shall maintain parking space striping.

6. All interior and exterior Garage signage shall be maintained in working order. Any needed directional, promotional, or informational signage will be provided by SMG.

7. It is the responsibility of SMG to maintain all lighting on the Garage and to replace all burned out bulbs as necessary and within 24-hours of being reported to be non-functional.

8. SMG shall report to the Contract Administrator any identified repair or maintenance needs of the Garage that are beyond the day-to-day maintenance responsibilities of SMG, and shall include in its annual budget and management plan submissions longer term capital and other items that will require the County's attention.

C. REVENUE CONTROL AND AUDITING:

SMG will be required to provide continual attention to established revenue control and auditing procedures. The following records will be maintained:

1. All parking tickets issued. Lost tickets or mutilated tickets will be explained in detail on the cashier settlement sheet. Any discounted or free parking must be reported monthly.

2. Daily settlement (close out) sheets. To include each kiosk's cash total. Explanation of all errors, imbalances, or irregularities detected must be written on the cashier settlement sheet. Explanation of voided tickets must be included.

3. Accurate records of validation parking.

4. Report of any equipment malfunctions.

D. OPERATING EXPENSES:

1. As specified in the Amended Agreement, the County will reimburse SMG for County approved operating expenses detailed in the approved annual operating budget. Expenses to be reimbursed will include but not be limited to:

a. Equipment for operating the Garage.

b. On-site personnel wages.

c. Payroll taxes and benefits including Social Security, unemployment and worker's compensation insurance, retirement and health insurance for related staff.

d. Uniforms

e. Cleaning and office supplies

f. Equipment maintenance costs

g. Register tapes and ribbons (if applicable)

1. Maintenance of signs

J. On-site local telephone service

k. Other expenses approved by the County in writing

2. Requisitions for wages must be supported by payroll records and time cards. Payroll records must be expressed on a calendar month basis to coincide with monthly budget, and kept on file.

3. Refunds to Garage patrons not covered by County authorization must be approved in advance in writing by the Contract Administrator prior to reimbursement of such patrons. SMG will include a copy of the refund letter; along with a copy of the refund.

E. GARAGE USE AND REVENUE

1. The following daily or continuous records will be maintained and available for inspection by the County:

- a. Daily total sales receipts, broken down by:
 - (1) Transient parkers.
 - (2) Validation by account.
- b. Daily cash to be deposited into a separate Operating Account managed by SMG on behalf of the County.
- c. Daily combined recap of all parking kiosk activity including: ticket numbers and sequences used; deposit; and cashier variances.
- d. Daily account of all ticket validations and miscellaneous revenue received.
- e. Daily log of vehicle inventory at closing and opening.
- f. Daily report of all security incidents.
- 2. Monthly records and procedures. The following information will be reported monthly:
 - a. Monthly total of all vehicles entering the Garage listed by classification of parkers.
 - b. Monthly revenue report of all categories of parkers and deposits.
 - c. Monthly recap of daily and weekly deposits and validations.
 - d. Monthly expenditure report by budget item.
 - e. Monthly validation report, including number of vehicles by length of stay, in increments to be determined by County.
- F. USE OF GARAGE: The Garage, excluding the ground floor, shall be operated for the principal purpose of supplying off-street parking for motor vehicles and the charging of a fee therefore. SMG may, as determined solely by the County, supply off-street parking for motor vehicles to employees of SMG during the hours such employees are engaged in performing duties hereunder for SMG. SMG may be permitted the use of office space in the Garage, as determined solely by County, for administrative use of SMG in connection with operation of the Garage at no additional cost.

G. GARAGE PARKING RATES AND HOURS OF OPERATION:

SMG agrees to charge fees as set in consultation with the Contract Administrator and adjusted from time to time with the approval of the Contract Administrator:

Any proposed changes in such Schedule of fees, rates and the required hours of operation shall be requested in writing by SMG to the Contract Administrator. Said fees, rates, or hours of operation may be changed only following the review and approval by the Contract

Administrator in his/her sole discretion. SMG will review all rates quarterly and provide recommendations to the Contract Administrator for any proposed changes to rates.

H. **COUNTY'S RIGHT TO INSPECT AND MAKE REPAIRS OR ALTERATIONS:** The County shall have the right (but not the obligation), as determined solely by the County, to: inspect the Garage at any time to determine whether SMG has complied and is complying with the terms and conditions of this Amended Agreement; perform the required maintenance services and make all necessary repairs and replacements to the Garage that are the County's responsibility; and perform maintenance and make repairs and replacements in any case where the County solely determines, after actual notice, that it is necessary or desirable to do so in order to preserve the safety or integrity of the Garage or to correct any condition likely to cause injuries or damages to persons or property.

I. **SMG'S AWARENESS OF ALL REPAIRS OR ALTERATIONS:** It is understood that actions undertaken by the County may have the effect of temporarily or permanently restricting, altering or modifying access to or use of portions of the Garage during the hours of operations by SMG. It is also understood that such operations may alter or modify the necessary requirements for safe and efficient utilization of the Garage by SMG or by those persons in the Garage by authorization of SMG. SMG shall make itself aware of all such actions of the County and their effect on the Garage, and shall take all necessary steps to modify its operation in response to such activities, so as to maintain the safe and efficient operations of the Garage.

II. **EMERGENCY MANAGEMENT SERVICES:**

a. SMG shall provide all management, supervision, labor, supplies, and equipment in connection with providing food services at the Broward County Emergency Operations Center ("EOC"). SMG's duties pertaining to providing food services and dispensing non-alcoholic beverages during emergencies shall include janitorial, trash removal and cleaning of the County-owned cooking, cooking preparation, and serving surfaces equipment at the EOC. The variety, menu, and appearance of food shall be of a high quality. Service shall be prompt, efficient and courteous, avoiding undue interference with the operation of the EOC. The assignment of work under this section will be on an as-needed basis whenever it is necessary to activate the EOC to a level where food service is required.

b. The extended work hours during an emergency are likely to require twenty-four (24) hours per day coverage for several days. For planning purposes, SMG will provide for a minimum of five (5) days of uninterrupted twenty-four (24) service should an EOC lockdown be required unless otherwise notified by County of the need for a shorter or longer term activation. The County will make every effort to provide as much notice of an activation as possible. Where feasible, ninety-six (96) hours' notice will be given for a partial activation and forty-eight (48) hours' notice for a lockdown activation, after which SMG shall mobilize, stage and provide the required services. To help ensure adequate food and supplies during the Hurricane Season, the vendor shall deliver five to ten days of freezer stable food and shelf stable supplies prior to June

1st of each calendar year. The vendor shall monitor the freshness of these items from June 1st to November 30th of each calendar year and replace as necessary to ensure that adequate food supplies are available in the event of an activation.

c. Depending upon the disaster circumstances, SMG may be required to stage equipment at a pre-determined location other than the EOC if the EOC is unavailable. Under those circumstances, SMG is primarily responsible for ensuring the proper set-up, relocation, maintenance, protection and removal of such equipment including periodic and final clean-up of the staging site(s) upon request by the Emergency Management Division (EMD). Use of County facilities will be at no charge to SMG. However, if any damages occur at any area directly resulting from SMG's staging activities, SMG will be responsible for the repair of such damage to its pre-damaged conditions. If the damage was caused by SMG's negligence or willful acts or omissions, SMG shall be responsible for the costs to repair. In such event, the cost of such repairs shall come out of the Operating Budget.

d. SMG staff will meet with EOC staff each year one month before hurricane season begins (which at present is June 1) to go over food service operational issues. SMG staff will visit both the EOC and the designated backup facility with EMD staff to determine what if any issues exist that need to be addressed by either party.

e. SMG shall comply with all applicable state and county health and safety codes related to food preparation. All areas that SMG operates shall be cleaned and sanitized on a regular basis per standard operating procedures. SMG shall provide staff to supervise the daily cleaning and sanitation of the assigned areas and oversee maintenance of kitchen equipment during activation(s). SMG shall provide trained and competent culinary experts to manage and supervise the preparation of all meals. All SMG employees involved with food preparation will have food handler's training and the appropriate certification.

f. When the EOC is activated, a lockdown requiring a twenty-four (24) hours-per-day food service coverage will be expected. EOC staff will assign five (5) cots within the billeting areas for SMG staff to use as dedicated sleeping quarters for the duration of an activation requiring lockdown.

g. Hours of Operation: Food services shall be provided on an as-needed basis. Food service is generally expected to be provided at the following times unless otherwise indicated by the EOC staff: Breakfast 6:00 am-8:00 am; Lunch 11:00 am-1:00pm; Dinner 6:00 pm - 8:00 pm; Late Shift Meal 11:00pm-1:00am. Additionally, hot and cold beverages and snacks will be made available twenty-four (24) hours each day during activation. This service shall continue to serve four (4) meals per day, per employee, during the hours of operation until the disaster is deemed concluded by the Mayor or a designee.

h. All provided meals shall include but are not limited to: Condiments relevant to the meal provided; serving items such as disposable plates, utensils, and napkins; a selection of beverages that are iced-down if required and cups; and other meal related items.

i. Ice Production: If an 'Ice Factory' is included in the Convention Center Expansion project, it may be utilized by the County as a back-up ice production and bagging facility before, during and after declared emergencies as long as the immediate needs of the Center and its contracted clients are first met. In the event that the Center's ice production capacity is utilized, Center personnel will be responsible for bagging, storing and transporting ice within the Center to the loading dock for loading onto transport vehicles.

j. Emergency Sheltering: In the event that the County needs to use the Center during an emergency for sheltering, it is understood that while the Center has commercial kitchens and bathrooms to serve large groups of people, it does not have shower facilities and other amenities for sheltering purposes. SMG staff will work with County staff to develop a sheltering plan for the Center that allocates space for sheltering people and law enforcement and emergency management functions. That plan will include determining the number of individuals the Center is able to accommodate and identifying the operational and other deficiencies that would need to be addressed in order for the Center to appropriately function as an emergency shelter.

k. Recording Keeping/Invoices: To comply with 2 CFR 200, all transactions must be recorded in accordance with the Federal Emergency Management Agency (FEMA) guidelines for reimbursement to the County. SMG will maintain and provide all required documentation deemed necessary by the County for this purpose. Additionally, SMG will provide invoices to the Broward County Emergency Management Division ("EMD") after the provision of services cited in this Scope of Services. Invoices will only include actual cost of labor and product, and will not include profit. All costs related to the provision of these services shall be included in the monthly operating expense of the Center. The reimbursement received from the EMD will be deposited in the Operating Account. Should the time frame between incurring expenses and the receipt of reimbursement from the EMD span more than one (1) Fiscal Year, expenses and reimbursement for those expenses, will not be included in the final calculations for the Incentive Fee.

**EXHIBIT C
BROWARD COUNTY CONVENTION CENTER
SAMPLE KPI CALCULATION WORKSHEET**

(To be used as part of the determination of Incentive Fee paid to SMG under Section 4.1.3(ii))

		<i>Sample for Illustration Only</i>	
QUALITATIVE INCENTIVE FEE CALCULATION FOR SMG		Rating	
		2=Strongly Agree 1=Agree 0=Disagree	2=Strongly Agree, 1=Agree, 0=Disagree
1)	SMG has improved Customer Satisfaction Scores		2
2)	SMG has complied with Management Amended Agreement Deliverables including, but not limited, to the deliverables in Article 6, "Reports, Audits and Reports" and has SMG maintained effective communication with the recipients of these reports		1
3)	SMG has complied with County diversity goals including, but not limited to, County's Anti-Discrimination Policy and Economic Opportunity Plan		2
4)	SMG has provided value added to the Center and CVB from its corporate and regional resources		1
5)	SMG has fostered positive employee relations that will foster increased client satisfaction at the venue		2
6)	SMG has maintained effective communication with County		1
7)	SMG has smoothly managed operations through construction		2
8)	SMG has fostered strong working relationships with the Center's primary tenants, including annual clients		1
9)	SMG has provided value outside of areas of primary responsibility (e.g., capital planning, expansion planning &/or maintenance)		2
10)	SMG has added value to the sales and marketing efforts of the Center, either directly		1

	with regard to short term bookings and/or through its support of CVB's efforts		
	SUB-TOTAL	0	15
	(multiplier)	5	5
	TOTAL SCORE	0%	75%
		x	x
	Maximum Qualitative Incentive Pool	\$ -	\$ 37,500.00
	QUALITATIVE INCENTIVE DUE	\$ -	\$ 28,125.00

EXHIBIT D
BROWARD COUNTY CONVENTION CENTER
EXAMPLES OF REPAYMENT PER SECTION 5.2 — INVESTMENT OF \$3,000,000

<u>Amount</u>	<u>Termination Date</u>	<u>Unamortized Balance</u>
\$300,000	December 31, Year 1	\$2,700,000
\$300,000	December 31, Year 2	\$2,400,000
\$300,000	December 31, Year 3	\$2,100,000
\$300,000	December 31, Year 4	\$1,800,000
\$300,000	December 31, Year 5	\$1,500,000
\$300,000	December 31, Year 6	\$1,200,000
\$300,000	December 31, Year 7	\$ 900,000
\$300,000	December 31, Year 8	\$ 600,000
\$300,000	December 31, Year 9	\$ 300,000
\$300,000	December 31, Year 10 or later	\$ 0

* For purposes of the above examples, the Capital Investment is assumed paid on January 1, Year 1; actual repayment amounts will be determined based on the date on which the Capital Investment is paid.

During any Extension Term, the Unamortized Balance shall be determined in accordance with the same schedule (i.e., 120 month straight-line, non-interest bearing amortization) based upon the total Capital Investment required for the Extension Term and the date upon which that amount is paid.

EXHIBIT E


INSURANCE REQUIREMENTS

Project: Professional Management for the Broward County Convention Center

TYPE OF INSURANCE	ADDL INSD	SUBR WVD	MINIMUM LIABILITY LIMITS		
				Each Occurrence	Aggregate
GENERAL LIABILITY - Broad form <input checked="" type="checkbox"/> Commercial General Liability <input checked="" type="checkbox"/> Premises-Operations <input type="checkbox"/> XCU Explosion/Collapse/Underground <input checked="" type="checkbox"/> Products/Completed Operations Hazard <input checked="" type="checkbox"/> Contractual Insurance <input checked="" type="checkbox"/> Broad Form Property Damage <input checked="" type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Personal Injury <input checked="" type="checkbox"/> Liquor Liability Per Occurrence or Claims-Made: <input checked="" type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made Gen'l Aggregate Limit Applies per: <input type="checkbox"/> Project <input type="checkbox"/> Policy <input type="checkbox"/> Loc. <input type="checkbox"/> Other _____	☑	☑	Bodily Injury		
			Property Damage		
			Combined Bodily Injury and Property Damage	\$5,000,000	\$5,000,000
			Personal Injury		
			Products & Completed Operations		
AUTO LIABILITY <input checked="" type="checkbox"/> Comprehensive Form <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-owned <input checked="" type="checkbox"/> Any Auto, If applicable <i>Note: May be waived if no driving will be done in performance of services/project.</i>	☑	☑	Bodily Injury (each person)		
			Bodily Injury (each accident)		
			Property Damage		
			Combined Bodily Injury and Property Damage	\$1,000,000	
<input checked="" type="checkbox"/> EXCESS LIABILITY / UMBRELLA Per Occurrence or Claims-Made: <input type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made <i>Note: May be used to supplement minimum liability coverage requirements.</i>	☑	☑		\$5,000,000	\$5,000,000
<input checked="" type="checkbox"/> WORKER'S COMPENSATION <i>Note: U.S. Longshoremen & Harbor Workers' Act & Jones Act is required for any activities on or about navigable water.</i>	N/A	☑	Each Accident	STATUTORY LIMITS	
<input checked="" type="checkbox"/> EMPLOYER'S LIABILITY			Each Accident	\$1,000,000	
<input type="checkbox"/> POLLUTION / ENVIRONMENTAL LIABILITY	☑	☑	If claims-made form:		
			Extended Reporting Period of:	years	
			*Maximum Deductible:	\$10 k	
<input checked="" type="checkbox"/> PROFESSIONAL LIABILITY (ERRORS & OMISSIONS)	N/A	☑	If claims-made form:	\$2,000,000	
			Extended Reporting Period of:	3 years	
			*Maximum Deductible:	\$10 k	
<input type="checkbox"/> Installation floater is required if Builder's Risk or Property are not carried. <i>Note: Coverage must be "All Risk", Completed Value.</i>			*Maximum Deductible (Wind and/or Flood):	Not to exceed 5% of completed value	Completed Value
			*Maximum Deductible:	\$10 k	
Description of Operations: "Broward County" shall be listed as Certificate Holder and endorsed as an additional insured for liability. Policies shall be endorsed to provide 30 days written notice of cancellation to Certificate Holder, 10 days' notice of cancellation for non-payment. Contractors insurance shall provide primary coverage and shall not require contribution from Certificate Holder. *Contractor is responsible for <u>all</u> Deductibles.					

CERTIFICATE HOLDER:

Broward County
 115 South Andrews Avenue
 Fort Lauderdale, Florida 33301


Digitally signed by
 Ronald
 DN: cn=ronald@broward.org
 Date: 2018.02.06 15:16:45
 +0700

Risk Management Division

EXHIBIT F



OFFICE OF ECONOMIC AND SMALL BUSINESS DEVELOPMENT

Governmental Center Annex
115 S. Andrews Avenue, Room A680 • Fort Lauderdale, Florida 33301
954-357-6400 • FAX 954-357-5674 • TTY 954-357-5664

MEMORANDUM

DATE: October 8, 2018

TO: Stacy Ritter, President/CEO
Greater Fort Lauderdale Convention & Visitors Bureau

THRU: Sandy- Michael McDonald, Director *SMC*
Office of Economic and Small Business Development

FROM: Freddy Castillo, Small Business Development Manager *FC*
Office of Economic and Small Business Development

SUBJECT: CBE Goal for Professional Management Services for Broward County Convention Center

This memorandum supersedes previous memorandum dated September 27, 2018

The CBE Goal assigned to the above-mentioned project is as follows:

CBE GOAL: 40%

Please note that the recommended goal is based on the total CBE eligible contracted services and the procured products and services as itemized below relating to the referenced agreement.

NAICS Codes: 221310, 237120, 237310, 238110, 238160, 238190, 238210, 238220, 238290, 238320, 238990, 313210, 313240, 321999, 322230, 323111, 327120, 327331, 331110, 331222, 332913, 333318, 335129, 335999, 339950, 423440, 423610, 423730, 423820, 423830, 423840, 423850, 423990, 424120, 424210, 424320, 424330, 424340, 424720, 424930, 441228, 493190, 511191, 517110, 517210, 518210, 519190, 532120, 532291, 532412, 532420, 541110, 541211, 541219, 541310, 541330, 541490, 541512, 541519, 541618, 541690, 541820, 541922, 541990, 561320, 561612, 561613, 561621, 561710, 561720, 561730, 561740, 561790, 811212, 811213, 811310, 812320, 812331, and other codes as applicable.

Scope of Services: 24-Hour Security, Accounting & Audit Services, Ahu Coil Cleaner (Chemical Tabs), Architecture Consulting, Armored Car Service, Backflow Certification, Building & Housekeeping Supplies, Building Carpet Cleaning Service, Building Smoke Exhaust Annual Test, Cable TV, CCTV Camera Service, Cellphones, Chiller Maintenance, Cleaning Equipment Service, Computer Equipment/Software, Computer Supplies (Printers/Toners), Computers and Printers, Concrete Repairs, Copier Leases, Copier Supplies (Toner), Diesel Fuel and Veeder-Root Testing, Dimmable Lighting System Repair,

Door Hardware, Dry Cleaning Service, Electrical Fuses and Breakers, Electrical Repairs, Electronic Interior Building Signage, Electronic Signage (Marquee), Elevator & Escalator R&M, Engineering Consulting, Exterior Landscape and Irrigation Maintenance, Exterior Window Cleaning Service, Fencing, Fire Alarm Maintenance and Certification, Fire Alarm Monitoring, Fire Extinguishers, Fire Sprinkler Maintenance and Certification, First Aid Supplies, Flowers, Forklift R&M, Fountain Maintenance, Front Entry Sail Canopy Service, Generator Service and Repair, Golf Cart Repairs, Greeting Cards, Heavy Equipment Rental, HVAC PM Maintenance, Interior Bird Removal, Interior Plant Maintenance, Irrigation System Monitoring, IT Services, Law Firm, Linen Rental Service, Metasys System Maintenance and Bas Controls, Office Supplies, Offsite File Storage, Overhead Roll-Up Dcor Service, Oxygen & Acetylene Tank Rental, Painting, Parking Lot Security, Paver Repairs, Paving Repairs and Striping, Pest Control, Phone Long Distance Service, Phone On-Hold Service, Photography, Plants, Plumbing Services, Portside Landscape Cleanup, Printing, Propane, Public Relations Firm, Recycling - Electronics, Lamps, Batteries, Recycling and Trash Removal, Roof Repairs, Signage, Stage Equipment, Storm Drain Cleaning, Table Skirts and Clips, Temporary Labor, Tier 2 Phone Management, Trailer Lease, Two-Way Radio Service, Uniforms, Water Treatment, Waterproofing and Roofing Consulting, Website Management, White Cleaning Towels, Work Boots/Shoes, and other services as applicable.

Historical data indicates that some procurements pursuant to this contract may be equal to or exceed \$500,000 annually and the Workforce Investment Program (WIP) may apply. OESBD must review any procurements pursuant to this contract equal to or exceeding \$500,000, to determine WIP applicability, prior to procurement.

Eligibility for the CBE program is based on economic/size standards; the program does not utilize race or gender criteria for either certification or goal methodology purposes. The above assigned goal for County Business Enterprises is based on our examination of the scope of work and cost estimate as submitted to the Office of Economic and Small Business Development by the using agency. If you have any concerns regarding available subcontracting opportunities, please contact our office at (954) 357-6400.

cc: Kevin T. Kowalik, Regional Human Resource Manager – SMG
Oswaldo Casco, Small Business Development Specialist, OESBD

EXHIBIT G
ADDITIONAL TERMS FOR FEDERALLY FUNDED CONTRACTS

SMG shall comply with the following additional obligations to the extent applicable:

1. For all federally assisted construction contracts (as defined in 41 C.F.R. Part 60-1.3):

a. SMG will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. SMG will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. SMG agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. SMG will, in all solicitations or advertisements for employees placed by or on behalf of SMG, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

c. SMG will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of SMG's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. SMG will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

e. SMG will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor for purpose of investigation to ascertain compliance with such rules, regulations, and orders.

f. In the event of SMG's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the SMG may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g. SMG will include the provisions of Sections (1)(a) through (1)(f) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. SMG will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event SMG becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, SMG may request the United States to enter into such litigation to protect the interest of the United States.

2. For all construction contracts in excess of \$2,000:

a. SMG shall to comply with 40 U.S.C. 3141-3144, 3146-3148 as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federal Financed and Assisted Construction"), and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract.

b. SMG is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. SMG shall pay wages not less than once a week.

c. SMG shall comply with the Copeland "Anti-Kickback" Act, 18 U.S.C. § 874, 40 U.S.C. § 3145, and 29 C.F.R. Part 3, "SMGs and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States," as may be applicable, which are incorporated by reference into this contract. SMG shall not induce by any means any person employed in construction, completion or repair of work, to give up any part of the compensation to which he or she is otherwise entitled.

d. SMG shall insert in any subcontracts the clause above and such other clauses as the federal funding agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. SMG shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

e. A breach of the contract clause above may be grounds for termination of the Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

3. All contracts in excess of \$100,000 that involve the employment of mechanics or laborers:

a. SMG shall comply with 40 U.S.C. §§ 3702 and 3704, as supplemented by the Department of Labor regulations (29 CFR Part 5).

b. SMG shall, among other things, compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. SMG shall compensate work in excess of the

standard work week at a rate of not less than one and half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. SMG shall not require laborers or mechanics to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

4. All federally funded contracts:

a. SMG shall comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements" and any implementing regulations issued by the federal funding agency.

b. SMG agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

c. SMG shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).

d. This Agreement is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. SMG affirms and verifies that neither the SMG, nor any of its principals (defined at 2 C.F.R. § 180.995) or affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

e. SMG shall comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and shall include there requirements to comply in any lower tier covered transaction it enters into relating to this Agreement.

f. The foregoing subsections are material representations of fact relied upon by Broward County. If it is later determined that SMG did not comply with 2 C.F.R. Part 180, subpart C or 2 C.F.R. Part 3000, subpart C, in addition to remedies available to Broward County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

g. SMG agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C until the termination or expiration of this Agreement. SMG further agrees to include a provision requiring such compliance in its lower tier covered transactions relating to this Agreement.

h. SMG shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Among other things, SMG shall procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recover materials practicable, consistent with maintaining

a satisfactory level of competition, where the purchase price of the item exceeds \$10,000.00; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

5. By execution of this Agreement, SMG certifies that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. SMG shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

d. This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. SMG certifies or affirms the truthfulness and accuracy of each statement of the foregoing certification and disclosure, if any. In addition, the SMG understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.



**FIRST AMENDMENT TO THE AMENDED AND RESTATED AGREEMENT
BETWEEN BROWARD COUNTY AND SMG FOR PROFESSIONAL MANAGEMENT SERVICES
FOR THE BROWARD COUNTY CONVENTION CENTER**

This First Amendment (“First Amendment”) is entered into by and between Broward County, a political subdivision of the State of Florida (“County”), and SMG, a Pennsylvania general partnership authorized to transact business in the State of Florida (“SMG”) (collectively County and SMG are referenced as the “Parties”).

RECITALS

A. The Parties entered into an Amended and Restated Agreement between Broward County and SMG for Professional Management Services for the Broward County Convention Center, dated June 11, 2019 (“Amended Agreement”).

B. County anticipates certain planned construction activities will have a substantial impact on the operation of the Broward County Convention Center between approximately March 2020 and October 2021.

C. The Parties desire to further amend the Amended Agreement to address the impact and effect of these activities on the Agreement and the Parties’ obligations thereunder.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and SMG agree as follows:

1. The above Recitals are true and correct and are incorporated herein by reference. All capitalized terms not expressly defined within this First Amendment shall retain the meaning ascribed to such terms in the Amended Agreement.
2. Except as modified herein, all terms and conditions of the Amended Agreement remain in full force and effect. Amendments are indicated herein by use of strikethroughs to indicate deletions and bold/underlining to indicate additions.
3. This First Amendment provides alternate financial compensation terms that will apply only during the “Construction Term,” which is defined as the period of time during which the Center is closed to business or construction activities substantially impact the operation of the Center and materially impair the ability of SMG to provide Services at the Center, and which, unless otherwise approved in writing by the Contract Administrator and SMG, shall commence on February 16, 2020, and conclude on October 15, 2021 (or the date of the first public event at the Center after reopening of the Center, if other than October 15, 2021).
4. The Parties agree and acknowledge that the some or all of the Center will not be available during some or all of the Construction Term. To the extent requested by the Contract Administrator, SMG shall continue to perform the Scope of Services stated on Exhibit B during

the Construction Term. The Parties will cooperate to facilitate the functioning and operation of the Center, and marketing and sales of the Center, to the greatest extent reasonably possible during the Construction Term.

5. The payment obligations of County relating to time periods wholly or partially within the Construction Term shall be modified as set forth in this Paragraph 5. Payment obligations for which only a portion of the time period at issue is within the Construction Term shall be modified as stated herein only for those portions of the period within the Construction Term, and the payment obligation otherwise applicable under the Amended Agreement for time periods outside the Construction Term shall be adjusted pro rata. For example, an annual payment obligation for which nine (9) months are within the Construction Term shall be subject to this paragraph for those nine (9) months, and the remaining three (3) months shall be paid pro rata and therefore at twenty-five percent (25%) of the annual amount set forth in the Amended Agreement.

a) The Base Management Fee shall be reduced by fifty percent (50%) for the Construction Term.

b) No Incentive Fee shall be earned or paid for the Construction Term. The calculation of Maximum Incentive Fee for annual periods partially within the Construction Term shall be calculated based upon the Base Management Fee due for the annual period at issue, as amended by this First Amendment.

6. Section 5.1 of the Amended Agreement is amended to modify the date on which the Capital Investment is due for the Amended Term. SMG shall pay County the Capital Investment for the Amended Term on the later of (a) October 1, 2021, and (b) the last day of the Construction Term. In addition, on the same day on which the Capital Investment for the Amended Term is due, SMG shall pay County an additional amount of One Hundred Seven Thousand Eight Hundred Fifty Dollars (\$107,850), which amount shall not be subject to amortization under the terms of the Amended Agreement.

7. A number of calendar days equal to the number of calendar days comprising the Construction Term shall be added to the Amended Term as defined in Section 3.1 of the Amended Agreement, with any annual fees prorated for any partial year. Thus, for example, if the Construction Term is six hundred and seven (607) days, then the Amended Term is extended an additional six hundred and seven (607) days.

8. The effective date of this First Amendment shall be the date of complete execution by the Parties.

9. This First Amendment may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

(The remainder of this page is blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this First Amendment: Broward County through its Board of County Commissioners, signing by and through its County Administrator, authorized to execute same by the Broward County Procurement Code, and SMG, signing by and through its _____, duly authorized to execute same.

COUNTY

WITNESS:

Broward County, by and through
its County Administrator

(Signature)

By _____
County Administrator

(Print Name of Witness)

____ day of _____, 2019

(Signature)

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

(Print Name of Witness)

By  _____ 6/6/19
René D. Harrod (Date)
Deputy County Attorney

RH
06/06/2019
2019-06-06 SMG First Amendment
#425713.6

FIRST AMENDMENT TO THE AMENDED AND RESTATED AGREEMENT
BETWEEN BROWARD COUNTY AND SMG FOR PROFESSIONAL MANAGEMENT SERVICES
FOR THE BROWARD COUNTY CONVENTION CENTER

SMG

WITNESSES:


Signature

JOHN F. BURNS
Print Name of Witness


Signature

William E. Helwig
Print Name of Witness

SMG

By 
Authorized Signor

HAROLD WESTLEY, CEO
Print Name and Title

6th day of JUNE, 2019

ATTEST:


Corporate Secretary or authorized agent

(CORPORATE SEAL)