

MANAGEMENT AGREEMENT  
BETWEEN  
THE CITY OF BATON ROUGE AND PARISH OF EAST BATON ROUGE  
AND  
SMG

Effective as of January 1, 2017

## MANAGEMENT AGREEMENT

**THIS MANAGEMENT AGREEMENT** (this "Agreement"), effective as of the 1<sup>st</sup> day of January, 2017, by and between THE CITY OF BATON ROUGE AND PARISH OF EAST BATON ROUGE, a political subdivision organized and existing under the laws of the State of Louisiana (the "City-Parish"), and SMG, a Pennsylvania general partnership, whose current address is 300 Conshohocken State Rd., Suite 770, West Conshohocken, PA 19428 ("SMG").

### BACKGROUND

The City-Parish is the owner of the Baton Rouge River Center, a five-venue complex consisting of an arena, a ballroom, a convention center, a performing arts theatre, and a Galleria of meeting rooms and event spaces (collectively, the "Facility") located in the City of Baton Rouge, Louisiana at 275 South River Road. The City-Parish provides operational/fiscal oversight of the activities at the Facility.

SMG is engaged in the business of providing management services, including operations and marketing services, for public assembly facilities.

The City-Parish and SMG were parties to a certain Management Agreement dated as of March 16, 1996, which, as amended, expired as of December 31, 2006. Thereafter, the City-Parish and SMG entered into the Management Agreement dated as of January 1, 2007, which, as amended, will expire as of December 31, 2016. The City-Parish and SMG now desire to enter into this Agreement to provide for the continued provision of management services by SMG for the Facility, on the terms and conditions set forth in this Agreement.

The City-Parish intends to work in mutual accord with SMG in order to ensure provision of high quality management services, thereby enhancing the use and enjoyment of the Facility.

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

#### **Section 1. Definitions.**

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

**"Affiliate"** -- a person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified person. For purposes of this definition, "control" means ownership of equity securities or other ownership interests which represent more than 20% of the voting power in the controlled person.

**"Agreement"** -- as defined in the first paragraph of this Agreement.

**“Appropriation Deficiency Notice”** -- as defined in Section 5.2(a).

**“Approved Budget”** -- any budget submitted by SMG, as approved by the City-Parish pursuant to Section 5 hereof.

**“Base Management Fee”** -- as defined in Section 4.1(a).

**“Capital Equipment”** -- any and all furniture, fixtures, machinery or equipment, either additional or replacement, having a per item original cost of \$2,500 or more and an expected useful life of more than one year.

**“Capital Improvements”** -- any and all building additions, alterations, renovations, or improvements that have an initial dollar cost of not less than \$5,000 per project and may or may not extend the useful life of the building, as more specifically defined in paragraphs 1 through 4 of Exhibit A.

**“Cash Flow Shortfall”** -- as defined in Section 5.1.

**“Central Services Support”** -- the services to be provided by the City-Parish relating to the maintenance and administration of the Facility which are described on Exhibit “A” attached hereto.

**“City-Parish”** -- as defined in the first paragraph of this Agreement.

**“CPI Adjustment”** -- means an adjustment on the first day of each Fiscal Year (other than the first Fiscal Year beginning January 1, 2017) by the percentage change in the Consumer Price Index -- All Urban Consumers (CPI-U) -- U.S. City Average -- All Items, during the one year period ending on December 31 immediately preceding such current Fiscal Year, as published by the Bureau of Labor Statistics of the U.S. 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; provided, however, that such adjustment shall not exceed a total of four percent (4%) annually.

**“DDD”** -- the Downtown Development District.

**“Extraordinary Event”** -- any non-budgeted event, which is scheduled by the City-Parish, outside of the ordinary course of SMG operations and exceeding ten (10) consecutive days, to the extent such event is mutually-agreed by the parties to be an Extraordinary Event. The parties shall mutually agree on the accounting of revenues and expenses associated with these events. Extraordinary Events shall not include any event subject to rental waiver pursuant to the Baton Rouge Waiver Agreement (as such is defined in paragraph 13.1(c)).

**"F&B Gross Revenue"** -- all revenue, net of applicable taxes, generated in connection with the F&B Services, as calculated in accordance with generally accepted accounting principles, consistently applied.

**"F&B Management Fee"** -- as defined in Section 4.1(b).

**"F&B Services"** -- as defined in Section 2.3(n).

**"Facility"** -- as defined in the first paragraph of the Background section of this Agreement.

**"Fiscal Year"** -- a one year period beginning January 1 and ending December 31.

**"Laws"** -- as defined in Section 11.2.

**"Losses"** -- as defined in Section 8.1(a).

**"Management Term"** -- the period commencing on January 1, 2017 and ending five (5) years thereafter on December 31, 2021.

**"Mayor-President"** -- the chief executive officer of the City-Parish, or such person as may from time to time be authorized in writing by such official to act for him/her with respect to any or all matters pertaining to this Agreement.

**"Metropolitan Council"** -- the governing authority of the City-Parish.

**"Net Operating Loss/Gain"** -- with respect to a Fiscal Year, the excess, if any, of Operating Expenses for such Fiscal Year over Operating Revenues for such Fiscal Year being a Net Operating Loss and, the excess, if any, of Operating Revenues for such Fiscal Year over Operating Expenses for such Fiscal Year being a Net Operating Gain.

**"NOI Benchmark"** -- The average of the difference between Operating Revenues and Operating Expenses for the Fiscal Years 2014 and 2015, not to exceed \$1,066,000. The NOI Benchmark shall annually be adjusted by the CPI Adjustment amount.

**"Operating Expenses"** -- any and all expenses and expenditures of whatever kind or nature incurred directly by SMG in promoting, operating, maintaining and managing the Facility, including, but not limited to:

- employee compensation and related expenses (e.g., base salaries, bonuses, severance and car allowances),
- 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 the City-Parish), parking and other fringe benefits),
- supplies, material and parts costs,

- costs of any interns and independent contractors,
- advertising, marketing and public relations costs and commissions,
- janitorial and cleaning expenses,
- data processing/information technology costs,
- dues, subscriptions and membership costs,
- costs incurred under the in-house food and beverage operation,
- the costs of SMG procuring and maintaining the insurance and fidelity bond referred to in Section 8 below,
- amounts expended to procure and maintain permits and licenses,
- charges, taxes, excises, penalties and fees,
- professional fees, printing and stationery costs,
- all event-related expenses (e.g., fees payable to promoters and performers, costs for event staffing and costs relating to set-up and clean-up), postage and freight costs, equipment rental costs,
- computer equipment leases and line charges,
- repairs and maintenance costs (e.g., elevators, escalators and painting) not included in the Central Services Support,
- security expenses,
- telephone charges,
- utility charges reflected by the actual usage which is recorded by the metering system for the Facility,
- travel and entertainment expenses in accordance with SMG's policies (a copy of which has been provided to the City-Parish),
- the cost of employee uniforms,
- event-related safety and medical expenses,
- exterminator and waste disposal costs,
- the cost of dumpster/compactor trash removal services for the Facility,
- costs relating to the maintenance of signage inventory and systems,
- the cost of compliance with laws and regulations,
- costs incurred under agreements, commitments, licenses and contracts executed in SMG's name (or in SMG's name as agent of the City) as provided in Section 2.3 (c) hereof,
- the cost of Other City-Parish Services, if any, which is mutually agreed in advance by SMG and the City-Parish, and
- legal costs and expenses relating to legal work not performed by the City-Parish attorneys,

all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis; provided that Operating Expenses shall not include (i) expenses or expenditures in connection with Capital Improvements and Capital Equipment purchases, (ii) any fees payable pursuant to Section 4 below, (iii) any indirect fees, charges or expenses passed through by the SMG Corporate headquarters in West Conshohocken, Pennsylvania, or its regional field locations not approved in advance by the City-Parish (other than (x) the reasonable costs of travel by such corporate or regional personnel in connection with SMG's management of the Facility, and (y) the costs of shared advertising for SMG managed facilities where the Facility benefits from such advertising, all of which costs shall be included as Operating Expenses), and (iv) the cost of any Central Services Support. The Operating Expenses shall also include the Operating Expenses, if any, paid by the City-Parish pursuant to Section 2.3(g) hereof. Notwithstanding anything to the contrary contained herein, solely for purposes of calculating Net Operating Loss/Gain, Operating Expenses shall exclude the cost of annual independent audits of the Facility. Solely for purposes of (A) calculating Net Operating Loss/Gain and (B) identifying Operating Expenses which will be budgeted in Approved Budgets. As agreed by the parties, Operating Expenses may exclude all expenses from Extraordinary Events and all interest, income tax, depreciation and amortization expenses.

**"Operating Revenues"** -- any and all revenues of every kind or nature derived from owning, operating, managing or promoting the Facility, including, but not limited to: license, lease and concession fees and rentals, revenues from merchandise sales, advertising sales, equipment rentals, utility revenues, box office revenues (including without limitation ticket surcharge revenue), commissions or other revenues from decoration and set-up and security subcontractors, miscellaneous operating revenues, revenues generated from separate agreements with SMG Affiliates pertaining to the Facility, and interest revenues, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis. Solely for purposes of calculating Net Operating Loss/Gain and SMG's fees hereunder, Operating Revenues will include the imputed value of any rental waivers granted pursuant to Sections 13.1 (a), (b), and (c). As agreed by the parties, Operating Revenues may exclude all interest and all revenues from Extraordinary Events, except to the extent that revenue from an Extraordinary Event exceeds the expenses for the Extraordinary Event (i.e., the net profit derived from an Extraordinary Event shall be Operating Revenue).

**"Original Agreement"** -- as defined in the third paragraph of the Background section of this Agreement.

**"Other City-Parish Services"** -- the additional City-Parish services relating to the Facility (which specifically exclude the Central Services Support) that SMG may, at any time after the commencement of the Management Term, request the City-Parish to provide, subject to SMG and the City-Parish mutually agreeing in advance upon the scope and cost of such additional services.

**"Renewal Term"** -- the five-year period immediately following the end of Management Term, for which this Agreement may be renewed in accordance with Section 3.1.

**"SMG"** -- as defined in the first paragraph of this Agreement.

**"Unanticipated Operating Expenses"** – To the extent mutually agreed, expenses that may be unusually under or over the budgeted Operating Expenses due to circumstances not within SMG's reasonable control (such as, for example, utility and insurance costs).

**"VBR"** – Visit Baton Rouge. Formerly the Baton Rouge Area Convention and Visitor's Bureau (CVB).

**"WBEs/MBEs"** – as defined in Section 13.15.

## **Section 2. Engagement of SMG; Scope of Services.**

### **2.1 Engagement.**

(a) **General Scope.** The City-Parish hereby engages SMG to promote, operate and manage the Facility during the Management Term and the Renewal Term, if any, upon the terms and conditions hereinafter set forth, and SMG hereby accepts such engagement.

(b) **Managing Agent for the Facility.** Subject to the terms of this Agreement, SMG shall be the sole and exclusive managing agent of the City-Parish to manage, operate and promote the Facility during the Management Term and the Renewal Term, if any. SMG shall have exclusive authority over the day-to-day operation of the Facility and all activities therein as provided in this Agreement.

**2.2 Scope of Services – Generally.** SMG shall perform and furnish such management services and systems as are appropriate or necessary to operate, manage and promote the Facility in a manner consistent with SMG's policies and procedures and the operations of other similar first-class facilities.

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

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

(b) administer relationships with all subcontractors, concessionaires;

(c) negotiate, execute in its own name or, in SMG's sole discretion, in its name as agent for the City-Parish, deliver and administer any and all licenses, occupancy agreements, rental agreements, booking commitments, sponsorship agreements, Facility service agreements, beverage pouring agreements and Facility serving agreements, advertising agreements, concession agreements, supplier agreements, service contracts (including, without limitation, contracts for cleaning, decorating and set-up, snow removal, general maintenance and maintenance and inspection of elevators, stage equipment, fire control panel and other safety equipment, staffing and personnel needs, including guards and ushers, and other services which are necessary or appropriate) and all other contracts and agreements in connection with the

management, promotion and operation of the Facility, provided that if any such license, agreement, commitment or contract other than those involving the license, lease or rental of the Facility in the ordinary course has a term that extends beyond the remaining Management Term or Renewal Term, as the case may be, such license, agreement, commitment or contract shall be approved and executed by the City-Parish;

(d) to the extent that Operating Revenues or funds supplied by the City-Parish are made available therefor, maintain the Facility in the condition received, reasonable wear and tear excepted; provided that the City-Parish shall be responsible for undertaking all Capital Improvements and Capital Equipment purchases as provided in Section 5.8;

(e) to the extent that Operating Revenues or funds supplied by the City-Parish are made available therefor, rent, lease or purchase all equipment and maintenance supplies necessary or appropriate for the operation and maintenance of the Facility, provided that the City-Parish shall be responsible for undertaking all Capital Improvements and Capital Equipment purchases pursuant to Section 5.8;

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

(g) pay, when due, on behalf of the City-Parish, all Operating Expenses from accounts established pursuant to Sections 5.6 and 5.7 of this Agreement, unless the parties otherwise mutually agree in writing that the City-Parish pay certain Operating Expenses directly;

(h) after consultation with the City-Parish Attorney or his designee, institute as agent for the City-Parish and at the reasonable expense of the Facility, with City-Parish attorneys or if such action or proceeding will in SMG's opinion directly affect SMG or if the City-Parish attorneys decide not to take such representation because such representation would not be cost efficient for the Facility, with counsel selected by SMG, such legal actions or proceedings as SMG shall deem necessary or appropriate in connection with the operation of the Facility, including, without limitation, to collect charges, rents or other revenues due to the City-Parish or to cancel, terminate or sue for damages under, any license, use, advertisement or concession agreement for the breach thereof or default thereunder by any licensee, user, advertiser, or concessionaire at the Facility;

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

(j) provide day-to-day administrative services in support of its management activities pursuant to Approved Budgets and annual plans described herein, including, but not limited to, the acquisition of services, equipment, supplies and facilities; internal budgeting and accounting; maintenance and property management; personnel management; record-keeping; collections and billing; and similar services;

(k) engage in such advertising, solicitation, and promotional activities as SMG deems necessary or appropriate to develop the potential of the Facility and the cultivation of broad community support (including without limitation selling advertising inventory, and securing product rights for the Facility). SMG shall work with the VBR and the City Parish (i) to maximize the economic mission of the Facility while recognizing the needs of the lodging and business community and the current users of the Facility in accordance with the booking policy that has been developed for the Facility, and (ii) to market the Facility for conventions, trade shows, corporate events, live entertainment, concerts, and family shows, non-profit events, meetings, receptions, consumer shows and local events in a manner which is consistent with such booking policy. In advertising relating to the Facility, SMG shall maintain a website with current information pertaining to the Facility, and is permitted to use the term "Baton Rouge River Center" and any derivation thereof and logos for such names in its advertising, subject to the approval of the Mayor-President;

(l) continue to maintain the tagging system that is in place as of the date hereof for the City-Parish's personal property located at the Facility;

(m) to request the City-Parish attorneys to handle routine legal matters relating to the operation of the Facility at no charge to the Facility;

(n) manage exclusively all in-house food and beverage operations and services at the Facility including catering, concessions, menu development, staffing, and liquor license procurement and maintenance in accordance with the guidelines and policies described in Exhibit "B" attached hereto (collectively, the "F&B Services"). SMG shall notify and obtain the prior approval of the City-Parish for any offsite catering performed by SMG that is not directly related to the activities at the Facility and requires the use of the equipment and kitchen facilities of the Facility, in which event the City-Parish and SMG shall agree upon an appropriate fee that will be paid by SMG for any use by SMG of such equipment and kitchen facilities. Furthermore, the City-Parish shall have the right to utilize its own caterer and/or donated food and beverage supplies in connection with City-Parish sponsored or organized events at no charge to the City-Parish, provided that SMG shall retain the right to pour, serve, and sell all alcoholic beverages and any expenses incurred by SMG in connection with providing F&B Services at such events shall be deemed an Operating Expense hereunder. In the event the City-Parish desires to use its own caterer and/or food and beverage supplies as provided above, the City-Parish shall: (i) provide sufficient advance written notice to SMG of the same; (ii) follow and shall cause the caterer to follow all Laws, policies and guidelines, including without limitation those set forth on Exhibit "B" (specifically including SMG's operational responsibilities described therein); and (iii) be solely responsible for all Losses in connection with any such arrangement; and

(o) maintain all financial records and perform all financial accounting for the Facility.

**2.4 Right of Entry Reserved.** Representatives of the City-Parish designated in writing by the Mayor-President shall have the right, upon reasonable advance notice to SMG and at appropriate times (except in the event of any emergency repairs), to enter all portions of the Facility to inspect same, to observe, the performance of SMG of its obligations under this

Agreement, to install, remove, adjust, repair, replace or otherwise handle any equipment, utility lines, or other matters in, on, or about the premises, or to do any act or thing which the City-Parish may be obligated, or have the right to do under this Agreement or otherwise. Nothing contained in this Section is intended or shall be construed to limit any other rights of the City-Parish under this Agreement. The City-Parish shall not interfere with the activities of SMG hereunder, and the City-Parish's actions shall be conducted such that disruption of SMG's work shall be kept to a minimum. Nothing in this Section shall impose or be construed to impose upon the City-Parish any independent obligation to construct or maintain or make repairs, replacements, alterations, additions or improvements or create any independent liability for any failure to do so, except as otherwise provided herein (i) with respect to the Central Services Support and the Other City-Parish Services, if any, and (ii) under Section 5.8 hereof.

2.5 Central Services Support. During the Management Term and the Renewal Term, if any, the City-Parish shall provide the Central Services Support as more specifically described on Exhibit "A." The cost of Central Services Support shall not be an Operating Expense. In addition, SMG may, at any time after the commencement of the Management Term, request the City-Parish to provide Other City-Parish Services, subject to SMG and the City-Parish mutually agreeing in advance upon the scope and cost of such additional services, and such agreed upon cost of the Other City-Parish Services shall be an Operating Expense.

### Section 3. Term and Renewal.

3.1 Management Term and Renewal Term. This Agreement shall be in effect for the Management Term, unless earlier terminated pursuant to the provisions of this Agreement. The City-Parish may renew for an additional five (5)-year management term by providing SMG with one hundred eighty (180) days' notice prior to the conclusion of the Management Term.

3.2 New Contract. If (i) the City-Parish intends, upon termination of the Renewal Term to continue to provide management at the Facility through a private provider and (ii) this Agreement has not been terminated upon a default by SMG, then the City-Parish will during the final year of the Renewal Term negotiate and discuss in good faith a new contract or arrangement with SMG for the provision of such services following the completion of the Renewal Term. The obligation to negotiate with SMG is not intended to guarantee any contract rights for a future contract with SMG or any specific terms of a new contract.

### Section 4. SMG's Compensation.

#### 4.1 Base Fees.

(a) As base compensation to SMG for providing the services herein specified during the Management Term and any Renewal Term, the City-Parish shall pay SMG during the Management Term and the Renewal Term, if any, an annual base fee equal to Two Hundred Fifty Thousand Dollars (\$250,000) ("Base Management Fee"), as adjusted each Fiscal Year (other than the Fiscal Year beginning January 1, 2017) by the CPI Adjustment.

(b) In consideration of the provision of the F&B Services, SMG shall receive, as additional compensation therefor, four percent (4%) of the F&B Gross Revenue ("F&B Management Fee").

(c) Payment. The Base Management Fee shall be payable by the City-Parish in equal quarterly installments due on or before the last day of each calendar quarter during such Fiscal Year, commencing March 31, 2017. SMG shall be permitted to deduct the applicable F&B Management Fee from the account described in Section 5.6 below (which for the sake of clarity shall not be deemed an Operating Expense hereunder) in each month during the Management Term and any Renewal Term with agreed upon supporting documentation. In the event that the Base Management Fee is not so paid, SMG shall be entitled to draw such amounts from the account described in Section 5.6.

#### 4.2 Incentive Fee.

(a) Amount. SMG shall be entitled to an annual incentive fee with respect to each Fiscal Year during the Management Term and Renewal Term, if any, equal to twenty-five percent (25%) of the improvement in the NOI Benchmark, as adjusted each Fiscal Year (other than the Fiscal Year beginning January 1, 2017) by the CPI Adjustment.

(b) Adjustment. The Incentive Fee as calculated pursuant to Section 4.2(a) shall be adjusted on the basis of SMG's achievement of the quantitative and qualitative operating components described and weighted as follows:

(1) Customer Satisfaction Survey Score (50%): Failure to achieve a minimum Customer Satisfaction Survey Score of 8.0 (on a scale of 1 to 10) in the applicable categories within SMG's scope of services will result in a reduction of the Fiscal Year's Incentive Fee by up to 50%. The Customer Satisfaction Survey Scores shall be the combined results of (i) a customer service satisfaction survey system, and (ii) a client event evaluation survey system. The client event evaluation survey average for the period equal to the fiscal year will be converted to a ten point scale. The converted average will be combined with the customer service satisfaction survey average for the same period to determine an overall average. Averages will be rounded to the nearest hundredth (0.01).

(2) Achievement of Annual Operating Budget (50%). Failure by SMG to achieve a minimum of ninety-five percent (95%) of the annual operating budget will result in a reduction of the Fiscal Year's Incentive Fee by up to 50%. As mutually agreed, the revenues and expenses attributed to hosting Extraordinary Events (e.g., Miss USA Pageant) that result in a per-event loss may be excluded from this calculation.

For purposes of calculating the annual incentive fee, adjustments to the Approved Budget for such Fiscal Year shall be made in respect of: (i) certain Unanticipated Operating Expenses that exceed the budgeted Operating Expenses due to circumstances not within SMG's reasonable control (such as, for example, utility and insurance costs), in which case the parties shall determine a mutually acceptable adjustment for such budgeted Operating Expenses; and (ii) budgeted Operating Revenues, as provided in Section 13.1(d) below.

(c) Payment. The incentive fee determined pursuant to Section 4.2(a) above shall be payable to SMG within 30 days after the City-Parish's receipt of an invoice from SMG accompanied by 1) an annual statement certified by one of its officers setting forth the Operating Revenues and Operating Expenses for the previous Fiscal Year and showing the calculation of the incentive fee payable with respect to such Fiscal Year and 2) support for determining the averages for the client event evaluation survey and the customer service satisfaction survey. The City-Parish shall have the right to review and approve the amount so calculated. Objections will be communicated to SMG for resolution. SMG will thereupon be entitled to deduct the amount of such fee (or the amount not in dispute) from the account described in Section 5.6 below, provided that to the extent that SMG projects that such a deduction would leave insufficient funds in such account to cover Operating Expenses for the remainder of the then-current calendar quarter, SMG shall be entitled not to deduct all or a portion of such fee from such account, and, upon notice thereof from SMG, the City-Parish shall promptly pay SMG the amount of the fee that has not been deducted from such account. Promptly following the availability of the audited annual financial statements described in Section 6.1 hereof for a Fiscal Year, SMG shall recalculate the incentive fee payable for that Fiscal Year; in the event that the amount of the incentive fee which was paid based on SMG's invoice differs from such recalculated amount, SMG shall promptly remit to the City-Parish any excess amount which was paid, or the City-Parish shall promptly pay (or SMG shall be entitled to deduct from any account specified in Section 5.6) the shortfall, as the case may be.

(d) To the extent that this Agreement terminates in the middle of any Fiscal Year, the Operating Revenue threshold referenced in Section 4.2(a) above shall be prorated for such partial Fiscal Year based upon the number of days elapsed during the then current Fiscal Year up to and including the date of such expiration or termination, in relation to the total number of days in such Fiscal Year, in order to calculate the incentive fee payable hereunder.

## **Section 5. Budgets; Bank Accounts.**

5.1 Operating Funds. Subject to Section 5.2, following the approval of the annual operating budget for a Fiscal Year, the City-Parish shall make available to SMG all funds necessary to pay all Operating Expenses incurred or accrued in such Fiscal Year on a quarterly basis as provided herein. To the extent that Operating Revenues during a calendar quarter are insufficient, or expected to be insufficient, to cover Operating Expenses for such quarter plus, with respect to the first quarter of a Fiscal Year, the amount of the projected balance of the fees payable pursuant to Sections 4.1 and 4.2 for the prior Fiscal Year ("Cash Flow Shortfall") for such period, the City-Parish shall advance funds to SMG as follows: Thirty (30) days prior to the beginning of each calendar quarter during the Management Term and any Renewal Term, SMG will submit to the City-Parish an invoice for the projected Cash Flow Shortfall for such quarter and the City-Parish will transfer such funds to SMG within five (5) days after the start of such quarter. Such funds shall be deposited by SMG in the operating or payroll account(s) established pursuant to Section 5.6 and used to pay Operating Expenses.

## 5.2 Non-Funding.

(a) The City-Parish shall have no obligation to provide funds for the payment of Operating Expenses incurred or committed for after the date SMG receives written notice (an "Appropriation Deficiency Notice") of the fact that insufficient funds or no funds have been appropriated for the Facility.

(b) If the Appropriation Deficiency Notice is of insufficient funds, the City-Parish shall pay all Operating Expenses incurred or committed for after such date which are within the aggregate level of appropriated funds specified in the Appropriations Deficiency Notice. The City-Parish shall pay all Operating Expenses incurred or committed for prior to the date SMG receives the Appropriation Deficiency Notice. Any failure by the City-Parish to provide funds (beyond the aggregate level of appropriated funds) for the payment of Operating Expenses incurred or committed for after SMG receives an Appropriations Deficiency Notice shall not be a breach of or default under this Agreement by the City-Parish. Any failure by SMG to perform its obligations under this Agreement shall not be a breach of or default under this Agreement if such breach or default results from the City-Parish's failure to appropriate sufficient funds for the management, operation and promotion of the Facility.

(c) If the City-Parish appropriates funds at (or reduces appropriated funds to) a level that, in SMG's judgment, renders the management of the Facility not feasible, SMG may, at its option, either (i) continue management of the Facility at a reduced level consistent with anticipated Operating Revenues and available funding or (ii) terminate this Agreement pursuant to Section 12.2 (with the effect set forth in Section 12.3). Following such termination, SMG shall have the right to resume management of the Facility at such time as the City-Parish shall first restore appropriated funds to reasonable levels.

## 5.3 Annual Budget; Cash Flow Budget.

(a) As part of the annual plan described in Section 6.2 herein, on or before August 1 of each year, SMG will prepare an annual operating budget for the next Fiscal Year to meet the scope of services and objectives under this Agreement. Such budget shall contain appropriate line items for revenues and expenses and the projected net operating loss or gain for such Fiscal Year.

(b) SMG shall prepare and submit to the Mayor-President by August 1 of each year during the term hereof an annual cash flow budget for the succeeding Fiscal Year.

(c) The annual budgets referred to in subparagraphs (a) and (b) above shall be reviewed and are subject to approval by the Mayor-President and the Metropolitan Council as described below. By November 5 of each year, SMG will be notified of the proposed annual budgets approved by the Mayor-President (along with the changes, if any, suggested by the Mayor-President to the annual operating budget and the cash flow funding budget proposed by SMG), which proposed budgets will in any event require approval by the Metropolitan Council. By December 15 of each year during the term of this Agreement, the Mayor-President or the Metropolitan Council shall notify SMG of any changes to the annual operating budget and the cash flow funding budget for the succeeding Fiscal Year, proposed by SMG and with such

changes, if any, as are made by the City-Parish prior to December 31, such budgets shall be the Approved Budgets for the following Fiscal Year, provided that if the annual operating budget or the annual cash flow budget as proposed by SMG are modified by the City-Parish in a manner which, in SMG's judgment, could materially interfere, impede or impair the ability of SMG to manage, operate or promote the Facility, SMG shall have the right to terminate this Agreement pursuant to Section 12.2 (with the effect set forth in Section 12.3), and provided further that if the approved annual operating budget or annual cash flow budget departs from the budgets proposed by SMG, SMG shall not be construed to have breached its obligations under this Agreement if the alleged breach has been caused by the limitations in the Fiscal Year's budgets.

(d) The City-Parish will make available to SMG on an annual basis the City-Parish's contract prices for supplies and services and if requested by SMG, will use its reasonable best efforts to obtain the same pricing of any such supplies and services for the Facility.

5.4 Budget Modifications Initiated by SMG. SMG may submit to the Mayor-President and/or the Metropolitan Council at any time prior to the close of a Fiscal Year a supplemental or revised annual operating budget or cash flow budget for such Fiscal Year. Upon the approval of the Mayor-President and/or the Metropolitan Council of such supplemental or revised budget, the Approved Budgets for such Fiscal Year shall be deemed amended to incorporate such supplemental or revised budget. The Approved Budgets may only be amended as set forth in Section 5.3 above, in Section 5.5 below or in the two preceding sentences except that SMG shall have the right to amend the Approved Budgets as may be necessary or appropriate as the result of the scheduling by SMG of additional events or activities at the Facility (and the incurrence of additional Operating Expenses arising from the scheduling of additional events or activities at the Facility) as long as prior to the scheduling of such events or activities, SMG had a good faith belief that any projected Net Operating Loss for the Fiscal Year as set forth in the Approved Budgets would not be increased as a result of such additional events or activities.

5.5 Budget Modifications Initiated by the City-Parish. In the event that it appears reasonably likely, in any year during the term hereof, that any actual Net Operating Loss for such Fiscal Year will be larger than projected in the annual operating budget for such Fiscal Year, the Mayor-President and/or the Metropolitan Council may request from SMG a plan for reduction of Operating Expenses to a level consistent with any budgeted Net Operating Loss amount. SMG shall forthwith comply with any such expense reduction requested by the City-Parish and the approved budgets for such Fiscal Year shall be modified accordingly, provided that if the annual operating budget or annual cash flow budget is modified in a manner which, in SMG's judgment, could materially interfere, impede or impair the ability of SMG to manage, operate or promote the Facility, SMG shall have the right to terminate this Agreement pursuant to Section 12.2 (with the effect set forth in Section 12.3) and provided further that SMG shall not be construed to have breached its obligations under this Agreement if such alleged breach has been caused by the limitations in the Fiscal Year's budgets.

5.6 Receipts and Disbursements. SMG shall establish and maintain in one or more depositories designated by the City-Parish's Treasurer one or more operating, payroll and other bank accounts for the promotion, operation and management of the Facility, in the name of

SMG, as agent for the City-Parish, and with signature authority in such employees of SMG as SMG shall determine. Except as provided in Section 5.7 below, all revenues collected by SMG from the operation of the Facility shall be deposited into such accounts and Operating Expenses (other than Operating Expenses to be paid from an account described in Section 5.7) shall be paid by SMG as agent for the City-Parish from such accounts. The federal taxpayer identification number on such account shall be SMG's number, and SMG shall direct such bank to send duplicate monthly account statements to the City-Parish. All revenues collected by SMG arising from operation of the Facility, including revenues from box office sales, facility or equipment rentals, utility rental agreements, food and beverage concessions, or any other source, are the sole property of the City-Parish, held in trust by SMG for the City-Parish for application as provided herein. Any amounts remaining in such accounts upon termination of this Agreement for any reason, after payment of all outstanding Operating Expenses, shall be promptly paid by SMG to the City-Parish.

5.7 Ticket Sales Revenues. SMG shall hold in a separate interest-bearing account in a banking institution depository in the State of Louisiana any ticket sale revenues which it receives with respect to an event to be held at the Facility pending the completion of the event. Such monies are to be held for the protection of ticket purchasers, the City-Parish and SMG, and to provide a source of funds, as required for such payments to performers and promoters and for such payments of Operating Expenses in connection with the presentation of events as may be required to be paid contemporaneously with the event. Following the satisfactory completion of the events, SMG shall make a deposit into the operating account(s) established pursuant to Section 5.6 above of the balance remaining in such separate account after payment of event-related expenses and provide the City-Parish with a full event settlement report. Such interest-bearing account shall be in the name of SMG, as agent for the City-Parish, with signature authority in such employees of SMG as SMG shall determine. The federal taxpayer identification number on such account shall be SMG's number, and SMG shall direct such bank to send duplicate monthly account statements to the City-Parish. Interest which accrues on amounts deposited in the operating account(s) referred to in Section 5.6 and the ticket account referred to above shall be considered Operating Revenues. Bank service charges, if any, on such account(s) shall be considered Operating Expenses.

5.8 Capital Improvements; Capital Equipment.

(a) The obligation to pay for, and authority to perform, direct and supervise Capital Improvements and Capital Equipment purchases shall remain with the City-Parish. The amounts of all Capital Improvements and Capital Equipment purchases will not be considered Operating Expenses. The annual plan submitted pursuant to Section 6.2 shall include SMG's recommendation for Capital Improvements and Capital Equipment purchases to be accomplished during the year and shall be accompanied by an estimate of the cost of all such items and projects and a request that the City-Parish budget funds therefor. The City-Parish shall retain the discretion to determine what level to fund Capital Improvements and Capital Equipment purchases to the Facility. In addition to the foregoing, the annual plan shall include a five (5) year "look ahead" schedule of capital needs. The City-Parish and SMG acknowledge that Capital Improvements are designed with the intention to improve the facility and/or its marketability. With the understanding that Capital Improvements may adversely affect the

Facility's budgeted expenses or revenues in any Fiscal Year, a timeline of the project and any adjustments that may be needed to the Facility's budget will be tendered as needed and mutually agreed upon by both parties.

(b) For the sake of clarity, the City-Parish and SMG agree that their respective responsibilities at the Facility for maintenance, repair, and replacements shall be as set forth on Exhibit "A".

(c) A designee of the City-Parish shall act as the single point of contact with the Department of Buildings and Grounds for purposes of communicating maintenance, repair, and replacement activities in respect of the Facility.

5.9 Limitation of SMG Liability. Notwithstanding any provision herein to the contrary and except for SMG's express indemnification undertakings in Section 8.1, and its express reimbursement undertakings in Section 6.1(b), SMG shall have no obligation to fund any cost, expense or liability with respect to the operation, management or promotion of the Facility.

## Section 6. Records, Audits and Reports.

### 6.1 Records and Audits.

(a) SMG shall keep full and accurate accounting records relating to its activities at the Facility in accordance with generally accepted United States accounting principles. SMG shall maintain a system of bookkeeping adequate for its operations hereunder. SMG shall give the City-Parish's authorized internal audit representatives access to such books and records maintained at the Facility (as well as to copies of SMG's internal audit reports) during reasonable business hours. In addition, SMG shall give the City-Parish's authorized representatives reasonable access to SMG's employees in connection with routine questions related to the results of events without the formality of prior notice. SMG shall keep and preserve for at least five (5) years following each Fiscal Year all sales slips, rental agreements, purchase order, sales books, credit card invoices, bank books or duplicate deposit slips, and other evidence of Operating Revenues and Operating Expenses for such period.

(i) In addition, on or before March 31 following each Fiscal Year for which SMG is managing the Facility hereunder, the City-Parish shall cause to be furnished to the City-Parish and SMG an audited balance sheet, a statement of profit or loss and a statement of cash flows for the Facility for the preceding Fiscal Year, prepared in accordance with generally accepted United States accounting principles and accompanied by an independent auditor's report as described below.

(ii) The audit shall contain an opinion expressed by the independent auditor of the accuracy of financial statements kept by SMG and of amounts due to or from the City-Parish. The audit shall also provide a certification of Operating Revenues and Operating Expenses as defined in this Agreement for such Fiscal Year. The audit shall be conducted by a reputable independent accounting firm retained by the City-Parish.

(b) The Mayor-President shall have the right at any time, and from time to time, to cause nationally recognized independent auditors and/or the City-Parish's Auditing Division to audit all of the books of SMG relating to Operating Revenues and Operating Expenses, including, without limitation, cash register tapes, credit card invoices, duplicate deposit tapes, and invoices. In addition, if the independent accounting firm which is on retainer with the City-Parish is selected to perform the audits as provided in Section 6.1(a) hereof, SMG shall have the right at any time, and from time to time, to cause nationally recognized independent auditors to audit all of the books of SMG relating to Operating Revenues and Operating Expenses. No costs incurred by the City-Parish or SMG, as the case may be, in conducting such audit shall be considered an Operating Expense.

(i) If any such audit by the City-Parish demonstrates that the Operating Revenues or Operating Expenses reflected in any financial statements prepared by SMG and audited as specified in the foregoing subparagraph (a) are understated (in the case of Operating Expenses) or overstated (in the case of Operating Revenues), in either case by more than five percent (5%), SMG shall pay to the City-Parish the reasonable cost of such audit, and in the event of any discrepancy, SMG shall promptly refund to the City-Parish any portion of the incentive fee and/or F&B Management Fee paid for such Fiscal Year which is attributable to the overstatement or understatement, as the case may be.

(ii) If any such audit by SMG demonstrates that the Operating Revenues or Operating Expenses reflected in any financial statements prepared by SMG and audited by the City-Parish's accounting firm as specified in the foregoing subparagraph (a) are understated (in the case of Operating Revenues) or overstated (in the case of Operating Expenses), in either case by more than five percent (5%), the City-Parish shall pay to SMG the reasonable cost of such audit, and in the event of any discrepancy, the City shall promptly pay to SMG any portion of the incentive fee and/or F&B Management Fee not paid for such Fiscal Year which is attributable to the overstatement or understatement, as the case may be.

(iii) The right of the City-Parish and SMG, as the case may be, to have such an audit made with respect to any Fiscal Year and SMG's obligation to retain the above records shall expire five (5) years after SMG's statement for such Fiscal Year has been delivered to the City-Parish.

6.2 Annual Plan. SMG shall provide to the City-Parish on or before August 1 of each year, an annual management plan, which shall include the annual operating budget described in Section 5.3 for the next Fiscal Year. The annual plan shall include information regarding SMG's anticipated operations for such Fiscal Year, requested Capital Improvements and Capital Equipment purchases and an anticipated budget therefor, anticipated events at the Facility, anticipated advertising and promotional activities, and planned equipment and furnishings purchases. The annual plan shall be subject to review, revision and approval by the Mayor-President or the Metropolitan Council. Following review and revision by the Mayor-President or Metropolitan Council, SMG shall have thirty (30) days to incorporate the City-Parish's revisions into its plan. Upon approval by the City-Parish, such annual plan shall constitute the operating program for SMG for the following Fiscal Year.

6.3 Monthly Reports. By the twenty-fifth day of each month, SMG shall provide to the City-Parish a written monthly report in a form approved by the City-Parish and similar to that used in other SMG-managed facilities setting out the Facility's anticipated activities and financial condition for the upcoming month and reporting on the prior month's activities and finances. Such report shall set forth bookings, receipts, expenditures, variances against the Approved Budget, and such other additional information as the City-Parish may reasonably require or request.

6.4 Quarterly Reports. On or prior to ten (10) days before the start of a calendar quarter, SMG shall provide to the City-Parish a written report detailing events and activities scheduled at the Facility for such calendar quarter.

## **Section 7. Employees.**

### **7.1 SMG Employees.**

(a) SMG shall select, train and employ at the Facility such number of employees as SMG deems necessary or appropriate to satisfy its responsibilities hereunder; SMG shall use its best efforts to recruit employees who will be proficient, productive, and courteous to patrons, and SMG shall have authority to hire, terminate and discipline any and all personnel working at the Facility.

(b) SMG shall assign to the Facility a competent, full-time general manager who shall have no duties other than the day-to-day operation and management of the Facility. Prior to SMG's appointment of such general manager, SMG shall consult with the Mayor-President with respect to the qualifications of the general manager proposed by SMG.

(c) SMG employees at the Facility shall not for any purpose be considered to be employees of the City-Parish, and SMG shall be solely responsible for their supervision, daily direction and control, compensation (and applicable federal income tax withholding and reporting) and any employee benefits.

7.2 No Solicitation or Employment by City-Parish. During the period commencing on the date hereof and ending one (1) year after the termination or expiration of this Agreement, except with SMG's prior written consent, the City-Parish will not, for any reason, solicit for employment, or hire, any of the senior management personnel employed by SMG at the Facility, including, without limitation, the general manager, director-level employees and department heads. In addition to any other remedies which SMG may have, specific performance in the form of injunctive relief shall be available for the enforcement of this provision.

7.3 Termination. Upon any termination or expiration of this Agreement, the City-Parish shall require that any successor management contractor offer employment for a period of six months following such termination, subject to dismissal for cause, in similar positions at the Facility and with similar compensation and benefits, to all those employees of SMG that (i) are employed at the Facility at the time of such termination or expiration of this Agreement, and (ii) SMG has not notified the City-Parish that SMG wishes to continue to

employ elsewhere. This Section shall not apply to senior management personnel, as defined in Section 7.2 above.

## **Section 8. Indemnification and Insurance.**

### **8.1 Indemnification.**

(a) SMG shall indemnify, defend and hold harmless the City-Parish, their respective officers, agents and employees from and against any and all losses, liabilities, claims, damages and expenses (including reasonable attorney's fees) (collectively, "Losses") arising from any material default or breach by SMG of its obligations specified herein; provided, however, that the foregoing indemnification shall not extend to Losses to the extent such Losses arise from any breach or default by the City-Parish of its obligations specified herein or from any of the matters described in Section 8.1(b), irrespective of the ability of the City-Parish to indemnify SMG under Louisiana law.

(b) To the extent allowed by Louisiana law, the City-Parish shall indemnify, defend and hold harmless SMG, its partners, officers, agents and employees from and against any and all Losses arising from (i) any material default or breach by the City-Parish of its obligations specified herein, (ii) the fact that at any time prior to, as of, or after the date hereof the Facility has not been operated, and the Facility and its premises are not or have not been, in compliance with all Laws (as defined in Section 11.2 hereof), including, but limited to, the Americans with Disabilities Act, 42 U.S.C. Sections 12101-12213 as amended by the Civil Rights Act of 1991 (42 U.S.C. Section 1981(a)), as it now exists and as it may be amended in the future by statute or judicial interpretation, (iii) that fact that prior to, as of, or after the date hereof there is any condition on, above, beneath or arising from the premises occupied by the Facility which might, under any Law, give rise to liability or which would or may require any "response," "removal" or "remedial action" (as such terms are defined under the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act), (iv) any structural defect or unsound operating condition with respect to the Facility or the premises occupied by the Facility prior to, as of or after the date hereof, (v) any obligation or liability under or in respect of any contract, agreement or other instrument executed by SMG as agent for the City-Parish as authorized herein, or (vi) any obligation or liability pertaining to any employee's employment with the City-Parish on or prior to the date that such employee ceases to be an employee of the City-Parish; provided, however, that the foregoing indemnification shall not extend to Losses to the extent such Losses arise from any default or breach by SMG of its obligations specified herein.

(c) The provisions set forth in subparagraphs (a) and (b) above shall survive termination of this Agreement; provided, however, that except for indemnification based upon Section 8.1(b) (ii), (iii), (iv), (v) or (vi) above, a claim for indemnification pursuant to Section 8.1 shall be valid only if the party entitled to such indemnification provides written notice thereof to the other party prior to six months following the date of termination of this Agreement.

(d) The terms of all insurance policies of any independent contractors shall preclude subrogation claims against SMG (and its partners), the City-Parish, their respective officers, employees and agents.

(e) The foregoing indemnification rights shall be the exclusive remedies of each party hereto (other than any right to terminate this Agreement pursuant to Section 12) arising from any breach of, default under or performance pursuant to this Agreement.

## 8.2 Liability Insurance.

(a) SMG shall secure prior to the commencement of this Agreement, and keep in force at all times during the term of this Agreement, a Comprehensive General Liability insurance policy, including public liability, property damage, premises-operations, personal injury, host liquor liability, products/completed operations and contractual liability in such form and from such company as is reasonably acceptable to the Mayor-President or Metropolitan Council, covering the premises, operations hereunder, in the amount of One Million Dollars (\$1,000,000.00) for bodily injury and One Million Dollars (\$1,000,000.00) for property damage and One Hundred Thousand Dollars (\$100,000.00) fire legal liability.

(b) SMG shall also maintain Comprehensive Automotive Bodily Injury and Property Damage Insurance for business use covering all vehicles owned, Hired and Non-Owned operated by SMG officers, agents and employees in connection with the Facility, whether owned by SMG, the City-Parish, or otherwise, with a combined single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence.

(c) SMG shall be the named insured under all such policies. The City-Parish shall be additional insureds under the foregoing insurance policies in accordance with endorsement CG 20 09 (form B), as its interests may appear, and said policies shall contain a provision covering indemnification agreements.

(d) The certificates evidencing the existence of the above policies, all in such form as the Mayor-President or Metropolitan Council may reasonably require, shall be delivered to the Mayor-President or Metropolitan Council prior to the commencement of this Agreement. Each such policy or certificate shall contain a valid provision or endorsement stating, "This policy will not be canceled or materially changed or altered without first giving thirty (30) days' written notice thereof to the Mayor-President, City-Parish, 222 St. Louis Street, Room 300, Baton Rouge, LA 70801, sent by certified mail, return receipt requested."

(e) An insurance certificate for a renewal policy shall be delivered to the Mayor-President at least thirty (30) days after a policy's expiration date except for any policy expiring on the termination date of this Agreement or thereafter.

(f) SMG shall also maintain umbrella liability insurance to a minimum limit of Ten Million Dollars (\$10,000,000) of coverage for the commercial and employers liability matters covered by the policies described in Sections 8.2(a) and 8.3 hereof. The City-Parish shall be additional insureds under the umbrella liability policies in accordance with endorsement CG 20 09 (form B), as its interests may appear, and said policy shall contain a provision covering indemnification agreements.

(g) Except as provided in Sections 8.5(a) and 8.6, all insurance procured by SMG in accordance with the requirements of this Agreement shall be primary over any insurance carried by the City-Parish and not require contribution by the City-Parish.

(h) The insurance policies obtained by SMG under this Agreement shall be written by good and solvent companies authorized by law to carry on business in the State of Louisiana, but in no event shall such insurance companies have a rating of less than "A+ VT" in the current annual edition of Best's Insurance Report.

**8.3 Workers Compensation Insurance.** SMG shall at all times maintain worker's compensation insurance (including occupational disease hazards) and Employer's Liability in the amount of One Million Dollars (\$1,000,000.00) with a company authorized to do business in the State of Louisiana or through the Louisiana Worker's Compensation Corporation or through an authorized self-insurance plan approved by the State of Louisiana, insuring its employees at the Facility in amounts equal to or greater than required under law.

**8.4 Fidelity and Performance Bonds.**

(a) SMG shall provide to the City-Parish a Fidelity Bond (which includes inside and outside burglary and robbery coverage) covering all of SMG's personnel under this Agreement in the amount of Five Hundred Thousand Dollars (\$500,000.00) for each loss, to reimburse the City-Parish for losses experienced due to the dishonest acts of SMG's employees.

(b) SMG shall purchase and keep in force a performance bond in the amount of at least One Hundred Thousand Dollars (\$100,000.00). The cost of the performance bond shall be paid by SMG and shall not be an Operating Expense.

**8.5 Property Insurance.** The City-Parish shall be solely responsible for maintaining a property insurance program, and SMG shall have no obligation to procure or carry such insurance.

**8.6 Certain Other Insurance.**

If SMG enters into any agreements during the term of this Agreement with any independent contractors for the provision of services hereunder, SMG shall have the right to require such contractors (i) to indemnify, defend and hold harmless SMG and the City-Parish from any such contractor's breach of such agreements in such manner as SMG may require and (ii) to name SMG and the City-Parish as additional insureds under any insurance required by SMG thereunder and to deliver to SMG prior to the performance of such services a certified copy of such policy, plus a certificate evidencing the existence thereof, which policy contains the same type of endorsements and provisions as provided in Section 8.5(a)(i) and (ii).

**Section 9. Ownership of Assets.**

**9.1 Ownership.** The ownership of buildings and real estate, technical and office equipment and facilities, furniture, displays, fixtures, vehicles and similar tangible property

located at the Facility shall remain with the City-Parish. Ownership of and title to all intellectual property rights of whatsoever value, held in the City-Parish's name shall remain in the name of the City-Parish. The ownership of consumable assets (such as office supplies and cleaning materials) purchased with Operating Revenues or City-Parish funds shall remain with the City-Parish, but such assets may be utilized and consumed by SMG in the performance of services under this Agreement. The ownership of data processing programs and software owned by the City-Parish shall remain with the City-Parish, and the ownership of data processing programs and Software owned by SMG shall remain with SMG. SMG shall not take or use, for its own purposes, customer or exhibitor lists or, similar materials developed by the City-Parish for the use of the Facility, unless written consent is granted by the Mayor-President. Ownership of equipment, furnishings, materials, or fixtures not considered to be real property and other personal property purchased by SMG with City-Parish funds for use at and for the Facility shall vest in the City-Parish automatically and immediately upon purchase or acquisition. The assets of the City-Parish as described herein shall not be pledged, held by lien, encumbered or otherwise alienated or assigned other than in the ordinary course of business of the Facility without the prior approval of the City-Parish.

9.2 City-Parish Obligations. Except as herein otherwise set forth, throughout the term of this Agreement, the City-Parish will maintain full beneficial use and ownership of the Facility and will pay, keep, observe and perform all payments, terms, covenants, conditions and obligations under any bonds, debentures or other security agreements or contracts relating to the Facility to which the City-Parish may be bound.

#### Section 10. Assignment; Affiliates.

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

#### 10.2 SMG Affiliates.

(a) Transactions with Affiliates. Any contract entered into between SMG and an Affiliate of SMG relating to the Facility shall be on terms and for prices customarily charged in the industry for comparable goods and services. For example, SMG may retain Network International, an Affiliate of SMG, to solicit advertising and signage for sports and other events at the Facility and may allow Network International to receive commissions for such services which are comparable to commissions charged by others in such industry. In addition, SMG, as agent for the City-Parish, may rent the Facility or any part thereof to itself in connection with any event in the promotion of which SMG is involved, so long as such rental is on prevailing rates and terms or such other rates and terms as the Mayor-President or the Metropolitan Council approves.

(b) Conflicts of Interest. The City-Parish acknowledges that SMG manages other public assembly facilities which may, from time to time, be in competition with the Facility. The management of competing facilities will not, in and of itself, be deemed a conflict of interest or breach of SMG's duties hereunder; provided, however, in all instances in which the Facility is in competition with other public assembly facilities managed by SMG for the

solicitation of certain events, SMG shall not involve its principal office (currently in Philadelphia, Pennsylvania) on behalf of any such other facility in an attempt to influence the decision-making process regarding the selection of a site by such events. The foregoing shall not apply with respect to certain events or acts that may perform at the Facility based upon the reasonable discretion of SMG.

#### **Section 11. Laws and Permits.**

11.1 Permits, Licenses, Taxes and Liens. SMG shall procure all material permits and licenses required for the business to be conducted by it hereunder. The City-Parish shall cooperate with SMG in applying for such permits and licenses. SMG shall deliver copies of all such permits and licenses to the Mayor-President. SMG shall pay promptly, out of the accounts specified in Section 5.6 (unless the payment is for penalties and interest arising out of SMG's failure to pay in a timely fashion, which failure is not the result of the City-Parish's delay or breach), all taxes, excises, license fees and permit fees of whatever nature arising from its operation, promotion and management of the Facility. SMG shall use reasonable efforts to prevent mechanic's or materialman's or any other lien from becoming attached to the premises or improvements at the Facility, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any mechanic or materialman, so long as the work, labor or material was provided at SMG's direction and the City-Parish has supplied funds for the payment of charges therefor in accordance with this Agreement.

11.2 Governmental Compliance. SMG, its officers, agents and employees shall comply with all federal, state, local and municipal regulations, ordinances, statutes, rules, laws and constitutional provisions (collectively, "Laws") applicable to SMG's management of the Facility hereunder.

11.3 No Discrimination in Employment: Affirmative Action. In connection with the performance of work under this Agreement, SMG shall not refuse to hire, discharge, refuse to promote or demote, or to discriminate in matters of compensation against, any person otherwise qualified, solely because of race, color, religion, gender, age, national origin, military status, sexual orientation, marital status or physical or mental disability.

#### **Section 12. Termination.**

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

### 12.2 Termination Other than Upon Default.

(a) SMG shall have the right to terminate this Agreement upon sixty (60) days written notice to the City-Parish (i) under the circumstances described in Sections 5.2, 5.3 or 5.5 hereof, or (ii) if the City-Parish fails to make Capital Improvements or Capital Equipment purchases at the Facility to the extent that such omission, in SMG's judgment, materially interferes with, impedes or impairs the ability of SMG to manage the Facility effectively.

(b) Either party shall have the right to terminate this Agreement under the circumstances specified in Section 13.6(d).

(c) SMG shall have the right to terminate this Agreement in the event that SMG has to hire union employees at the Facility and as a result thereof SMG would be required to make contributions, as a participating employer, to a multiemployer pension plan on behalf of such employees, which plan contains as of its most recent actuarial valuation unfunded vested benefits. In the event of the foregoing, SMG may terminate this Agreement as provided herein by giving the City-Parish sixty,(60) days prior written notice of its intention to terminate hereunder.

12.3 Effect of Termination. In the event this Agreement is terminated, (i) all Operating Expenses incurred or committed for prior to the date of termination shall be paid using funds on deposit in the account(s) described in Sections 5.6 and 5.7 and to the extent such funds are not sufficient, the City-Parish shall pay all such Operating Expenses and shall indemnify and hold SMG harmless therefrom, and (ii) the City-Parish shall promptly pay SMG all fees earned to the date of termination (the fees described in Section 4 hereof being subject to proration), provided that the City-Parish shall be entitled to offset against such unpaid fees any damages (actual, not consequential) directly incurred by the City-Parish in remedying any default by SMG hereunder which resulted in such termination (other than the fees or expenses of any replacement manager for the Facility). Upon a termination pursuant to Section 12.1 or 12.2, all further obligations of the parties hereunder shall terminate except for the obligations in this Section 12.3 and in Sections 7.2, 7.3, 8.1 and 12.4; provided, however, that if such termination is the result of a willful default, the nondefaulting party exercising its right to terminate this Agreement shall be entitled to recover damages for breach arising from such willful default.

12.4 Surrender of Premises. Upon termination of this Agreement (termination shall, for all purposes in this Agreement, include termination pursuant to the terms of this Section 12 and any expiration of the term hereof), SMG shall surrender and vacate the Facility upon the effective date of such termination. The Facility and all equipment and furnishings shall be returned to the City-Parish in good repair, reasonable wear and tear excepted, to the extent funds were made available therefor by the City-Parish. All reports, records, including financial records, and documents maintained by SMG at the Facility relating to this Agreement other than materials containing SMG's proprietary information shall be immediately surrendered to the City-Parish by SMG upon termination.

## **Section 13. Miscellaneous.**

### **13.1 Use of Facility at Direction of City-Parish.**

(a) At the direction of the Mayor-President, upon reasonable advance notice and subject to availability, SMG shall provide use of the Facility or any part thereof to civic and nonprofit organizations located in the Baton Rouge area at reduced rates. All event-related expenses, including but not limited to ushers, ticket-takers, security and other expenses incurred in connection with the use of the Facility by such organizations, if not reimbursed to SMG by the organization using the Facility, shall be reimbursed by the City-Parish to SMG for deposit into the operating account(s) specified in Section 5.6.

(b) The City-Parish shall have the right to use the Facility or any part thereof, upon reasonable advance notice and subject to availability, for such purposes as meetings, seminars, training classes or other uses without the payment of any rental or use fee (or at a reduced fee) except that direct out-of-pocket expenses incurred in connection with such uses shall be paid by the City-Parish.

(c) Pursuant to the authority granted to the Mayor-President under resolutions, adopted by the Metropolitan Council, that certain Baton Rouge River Center Waiver Agreement ("Baton Rouge Waiver Agreement") was or will be executed, pursuant to which certain rental waivers may be granted for certain conventions or meetings, all as specifically set forth in the Baton Rouge Waiver Agreement. All event-related expenses incurred in connection with the use of the Facility for such conventions or meetings, if not reimbursed to SMG by the organization using the Facility, shall be reimbursed by the City-Parish to SMG for deposit into the operating account(s) specified in Section 5.6.

(d) The City-Parish shall not schedule use of the Facility pursuant to subparagraphs (a) and (b) above if such use will conflict with paying events booked by SMG and shall in all instances be subordinate thereto in terms of priority of use of the Facility, subject to the booking policy referenced in Section 2.3(k) hereof. If a conflict arises, SMG will use its reasonable best efforts to work with the City-Parish to resolve such conflict. In all instances when the Facility, or part thereof, is to be used at the City-Parish's request or by the City-Parish pursuant to subparagraph (a) or (b) above, or by another organization pursuant to the Baton Rouge Waiver Agreement as described in Section 13.1(c) above, a rent or use fee which otherwise would be chargeable for such event shall be deemed to have been paid and such deemed payment shall constitute Operating Revenues for the purpose of calculating SMG's fees pursuant to Section 4 above; provided, however, that in the event of a use exceeding ten (10) consecutive days, the parties shall mutually agree in writing as to the rent or use fee which will be deemed to have been paid for purposes of this Section 13.1(d).

### **13.2 Cooperation/Arbitration.**

(a) The parties desire to cooperate with each other in the management and operation of the Facility pursuant to the terms hereof. In keeping with this cooperative spirit and intent, the parties shall use reasonable efforts (for a minimum of sixty (60) days) to settle

amicably any dispute or disagreement between them or any grievance that one party may have with the other through direct communication between the parties hereto (through their respective agents and representatives). In order to facilitate the settlement of such matters, unless the parties hereto expressly agree otherwise in a particular case, these direct communications shall not be preceded or accompanied by any public announcements or statements by or on behalf of either party hereto with respect to the existence or the nature of such dispute, disagreement or grievance.

(b) With respect to any dispute or disagreement arising out of or relating to this Agreement or the breach thereof which is not settled pursuant to subparagraph (a) above, with the exception of any controversy or claims brought by or involving third parties, the parties hereto agree to submit such controversy or claim to arbitration by a panel of three independent and unbiased arbitrators, in the City of Baton Rouge, Louisiana. The decision of the arbitrators shall not be final and binding among the parties. The arbitrators shall conduct their proceeding in accordance with the rules of the American Arbitration Association, or such other rules with respect to fees, procedural and other matters as the arbitrators shall agree upon. Within thirty (30) days of a notice for arbitration given by either party, each party shall give written notice to the other party of their choice of an independent arbitrator. Such person need not be an attorney. The failure of any party to select an independent arbitrator within such thirty day period shall allow the other party who has selected an independent arbitrator to select another independent arbitrator. Within thirty (30) days after the selection of both arbitrators, the two arbitrators so chosen shall determine a third arbitrator who shall act as chairman of the arbitration panel.

13.3 No Partnership or Joint Venture. Nothing herein contained is intended or shall be construed in any way to create or establish the relationship of partners or a joint venture between the City-Parish and SMG. None of the officers, agents or employees of SMG shall be or be deemed to be employees of the City-Parish for any purpose whatsoever.

13.4 Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings with respect thereto. No other agreements, representations, warranties or other matters, whether oral or written, will be deemed to bind the parties hereto with respect to the subject matter hereof.

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

#### 13.6 Force Majeure.

(a) No party will be liable or responsible to the other party for any delay, damage, loss, failure, or inability to perform caused by "Force Majeure" if notice is provided to the other party within ten (10) days of date on which such party gains actual knowledge of the event of "Force Majeure" that such party is unable to perform. The term "Force Majeure" as used in this Agreement means the following: an act of God, strike, war, public rioting, lightning, fire, storm, flood, explosions, inability to obtain materials, supplies, epidemics, landslides, lightning storms, earthquakes, floods, storms, washouts, civil disturbances, breakage or accident to machinery or

lines of equipment, temporary failure of equipment, freezing of equipment and any other cause whether of the kinds specifically enumerated above or otherwise which is not reasonably within the control of the party whose performance is to be excused and which by the exercise of due diligence could not be reasonably prevented or overcome (it being acknowledged that under no circumstances shall a failure to pay amounts due and payable hereunder be excusable due to a Force Majeure).

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

(c) Except as otherwise expressly provided in this Agreement, no abatement, diminution or reduction of the payments payable to SMG shall be claimed by the City-Parish or charged against SMG, nor shall SMG be entitled to additional payments beyond those provided for in this Agreement for any inconvenience, interruption, cessation, or loss of business or other loss caused, directly or indirectly, by any present or future Laws, or by priorities, rationing, or curtailment of labor or materials, or by war or any matter or thing.

(d) In the event of damage to or destruction of the Facility by reason of fire, storm or other casualty or occurrence of any nature or any regulatory action or requirements that, in either case, is expected to render the Facility materially untenable, notwithstanding the City-Parish's reasonable efforts to remedy such situation, for a period estimated by an Architect selected by the City-Parish at the request of SMG of at least one hundred eighty (180) days from the happening of the fire, other casualty or any other such event, either party may terminate this Agreement upon written notice to the other. In the event that the Facility becomes either wholly or partially untenable as a result of any of the foregoing, appropriate adjustments to the Approved Budget and the Operating Revenue benchmark as provided in Section 4.2(a) shall be made.

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

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

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

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

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

**To the City-Parish:**

The City of Baton Rouge and Parish of East Baton Rouge 222 St. Louis Street  
Room 300  
Baton Rouge, LA 70801  
Attention: Mayor-President

With a copy to:

Office of Parish Attorney  
Governmental Building  
222 St. Louis Street Room 902  
Baton Rouge, LA 70821  
Attention: Robert H. Abbott

**To SMG:**

SMG  
1500 Sugar Bowl Drive  
New Orleans, LA 70112  
Attention: Executive Vice President

And:

SMG  
300 Conshohocken State Rd., Suite 770  
West Conshohocken, PA 19428  
Attention: President  
Telecopy: (215) 592-6699

With a copy to:  
SMG  
300 Conshohocken State Rd., Suite 770  
West Conshohocken, PA 19428  
Attention: Counsel

13.9 Section Headings and Defined Terms. The section headings contained herein are for reference purposes only and shall not in any way affect the meaning and interpretation of this Agreement. The terms defined herein and in any agreement executed in connection herewith include the plural as well as the singular and the singular as well as the plural, and the use of masculine pronouns shall include the feminine and neuter. Except as otherwise indicated, all agreements defined herein refer to the same as from time to time amended or supplemented or the terms thereof waived or modified in accordance herewith and therewith.

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

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

13.12 Non-Waiver. A failure by either party to take any action with respect to any default or violation by the other of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of such party to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default.

13.13 City-Parish Approvals. The City-Parish represents and warrants that all required approvals have been obtained, and the City-Parish has full legal right, power and authority to enter into and perform its obligations hereunder.

13.14 Governing Law. This Agreement will be governed by and construed in accordance with the internal laws of the State of Louisiana, without giving effect to otherwise applicable principles of conflicts of law.

13.15 MBE/WBE Compliance. SMG shall utilize qualified and available Women Business Enterprises and Minority Business Enterprises ("WBEs/MBEs") as subcontractors and suppliers to the fullest extent reasonably possible. In the event that City-Parish implements a formal WBR/MBE program, SMG shall use reasonable good faith efforts to utilize the businesses participating in such WBE/MBE program. SMG shall provide a semi-annual report to the City-Parish that indicates all WBE/MBE participation in discretionary spending categories.

13.16 Communications. The Mayor-President, or its designee, shall be the person to whom SMG shall direct all communications with the City with respect to any or all matters pertaining to this Agreement.

13.17 Theft. SMG shall notify the City-Parish immediately when a theft has been discovered.

#### **Section 14. Purchasing Procedures**

14.1 Direct payments or reimbursements by City-Parish. For any purchases, other than routine operating expenses included within the operating budget, that will be directly paid or reimbursed by the City-Parish, SMG will utilize the City-Parish Purchasing Department to procure material or equipment purchases as defined by Section 14.1(a) and public works projects as defined in Section 14.1(b). SMG should take advantage of the City-Parish sales tax exemption when practical by using the Purchasing Department for procurement resulting in a direct payment by the City-Parish to the vendor. Purchases that are not procured in compliance with this section may not be paid or reimbursed by the City-Parish. Additionally, to the extent prices are competitive and it is cost-effective, SMG shall, whenever feasible, set similar goals for purchasing such supplies as set forth in Section 13.15 of this agreement.

(a) SMG will be responsible for purchasing all expendable supplies for the operation of the Center in accordance with the Approved Budget and the City-Parish's procurement procedures. SMG shall exercise prudent judgment in the purchase of said supplies.

(i) Purchases of materials and supplies made by informal quotation are currently limited to \$30,000 by state statute and ordinance. SMG should contact the City-Parish Purchasing Department for current thresholds. (L.R.S. 38:2212.1 (A) and City of Baton Rouge, East Baton Rouge Parish, Louisiana, Code of Ordinances Sec. 1:701)

(ii) Purchases of materials and supplies currently over \$30,000 must be made by formal, sealed bids with advertisement in the official city journal and online bidding through Bid Express, as required by state statute and ordinance. SMG must contact the City-Parish's Purchasing Department. (L.R.S. 38:2212.1 (A) and City of Baton Rouge, East Baton Rouge Parish, Louisiana, Code of Ordinances Sec. 1:701)

(b) A public works project as defined in L.R.S. 38:2211 (A) (12), includes any contract for the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity. This also includes labor and

materials. For public works projects in excess of \$10,000, SMG must contact the City-Parish's Purchasing Department.

**SIGNATURES APPEAR ON THE IMMEDIATELY FOLLOWING PAGE.**

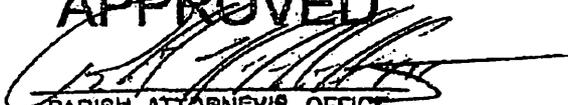
IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first above written.

THE CITY OF BATON ROUGE AND PARISH  
OF EAST BATON ROUGE

By: Melvin L. "Kip" Holden  
Melvin L. "Kip" Holden, Mayor-President

SMG

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

**APPROVED**  
  
PARISH ATTORNEY'S OFFICE

**EXHIBIT A**  
**TO MANAGEMENT AGREEMENT BETWEEN**  
**THE CITY OF BATON ROUGE AND PARISH OF EAST BATON ROUGE AND SMG**

**OVERVIEW** The City-Parish will assign responsibility to the appropriate City-Parish Department and assume the cost for the following service and maintenance tasks. Routine service calls made by SMG will be responded to promptly. City-Parish personnel will be available to respond to emergency situations on evenings, weekends, and holidays.

SMG will email service requests for maintenance and repair projects. The dated work orders will be issued by SMG and will indicate the nature of the work to be performed and a date by which the work needs to be completed. If the requested work has not been performed by the date indicated, SMG will contact the City-Parish Buildings and Grounds Director or the Maintenance Director requesting assistance securing completion of the work order. Delays due to replacement parts are not applicable.

1. Central Mechanical Plant and Facility HVAC – City-Parish will operate the central mechanical plant which provides the Facility with cooled-heated air and water, and limited backup generator power at all times. The Central Mechanical Plant staff shall provide training to SMG employees in the command and control of the remote station functions connected to the Johnson Controls building automated system, including without limitation identification of controllable equipment within the Facility. Also, City-Parish staff will assist in limited diagnostic work, when needed.

2. General Maintenance – City-Parish will provide labor for electrical, plumbing, a/c & heating, carpentry, mason work, roofing, and locksmithing services related to Facility. Material costs (i.e. parts) will be charged to the Facility, either through direct billing from material vendor or re-billed by the City-Parish. SMG will advise the City-Parish when parts are onsite/available and labor can be scheduled. Any cost, other than routine operating expenses included within the operating budget, to be directly paid or reimbursed by the City-Parish must be in compliance with Section 14 of the Management Agreement. Specific City-Parish general maintenance responsibilities at the Facility include:

(1) Electrical: Light ballasts, receptacles, breakers, emergency circuitry testing, and small (non-capital) project work.

(2) Plumbing: Commode and urinal leaks, pipe drainage and pipe sewerage clog removal, fittings and gasket repair or replacement, faucet and shower repairs, hot water heater maintenance, and small (non-capital) project work.

(3) A/C and Heating: Filter rotation, blower maintenance and repair, thermostat repair or replacement, VAV maintenance, chilled and hot water line maintenance, control programming maintenance, and small (non-capital) project work.

(4) Carpentry-Mason Work: Sheet rock repairs, masonry repairs, ceiling tile replacement due to leaks, and small (non-capital) project work.

(5) Roofing: Roof and gutter repairs

(6) Locksmith: Door hardware repairs and general locksmith services

Elevator and escalator maintenance, and labor costs related to set-up and production of events are specifically excluded from City-Parish responsibility.

3. Landscape and Grounds – City-Parish will provide plants, decorative and protective materials, and irrigation and maintenance of all common areas comprising the RiverCenter campus. Specific responsibilities include weed control, tree trimming, mowing (weekly March - October, monthly November

- February), sprinkler and irrigation systems, banner replacement, graffiti removal, pole light replacement, daily litter removal (SMG will remove litter in proximity of Facility entrances), waste water (storm drain) maintenance, and ice removal and disposal. City-Parish will promptly address cleaning and maintenance of public areas and streets surrounding the Facility following public gatherings and parades.

4. General – City-Parish will provide building improvement/renovation design work as well as provide labor to seal/patch/repair any exterior driveway/pavement or concrete ramps and steps, including without limitation ancillary parking surfaces and loading docks. Service and repair all vehicles, including forklifts, assigned to the Facility will be performed by City-Parish and charged back to the Facility.

**EXHIBIT "B"**

**TO  
MANAGEMENT AGREEMENT**

**Food and Beverage Operating Policies, Standards, and Guidelines**

1. **REPORTING OBLIGATIONS.** Within thirty (30) days following the end of each calendar month during the Management Term and Renewal Term, if any, SMG shall provide the City-Parish with a statement of F&B Gross Revenue for such calendar month.

2. **F&B EMPLOYEES.** SMG shall maintain industry-standard service standards. All SMG employees involved in the sale, service, and distribution of alcoholic beverages shall be trained by SMG in effective alcohol awareness, which includes training based on any applicable laws of East Baton Rouge Parish and/or the State of Louisiana. The City-Parish shall have reasonable review and approval rights over SMG training, including, without limitation, frequency, content and evaluation of the effectiveness of such training.

3. **SMG OPERATIONAL RESPONSIBILITIES.**

(A) **Periods of Operations.** SMG shall provide the F&B Services at such times as shall be reasonably necessary to serve guests of the Facility.

(B) **Quality.** All food and beverage items offered for sale by SMG shall be of high quality. SMG shall not offer for sale any food or beverage items which are spoiled, of poor quality, or otherwise unfit for consumption and any such items shall immediately be removed by SMG from any food preparation or service area. SMG shall maintain a level of service which will provide an effective and convenient operation of food and beverage service. All food, drinks, beverages, confections and other items sold or kept for sale at the concessions will conform in all respects to applicable federal, state and city regulations.

(C) **Notice of Health Code Violations.** SMG will provide the City-Parish, immediately upon SMG's receipt, copies of any reports, citations, or notices that appear from the local health department, as well as copies of any SMG field inspection reports in response thereto. SMG shall promptly correct any such violations and pay any applicable fines, the costs of which shall be deemed an Operating Expense.

(D) **Cleaning.** SMG shall maintain all food service equipment in a clean and sanitary condition.

(E) **Guidelines.** SMG shall adhere to the guidelines set forth in its banquet server guidelines and concession point of service ratio guidelines, copies of which are available for review by the City-Parish.

(F) Menus and Pricing. The City-Parish reserves the right to review and approve all menu items and prices relating to food and beverage services.

(G) Liquor License. SMG shall maintain a liquor license (unless hereinafter prohibited by law) and all other licenses or permits required by law in order to provide the F&B Services. SMG shall pay all federal, state and local license and permit fees and collect, withhold, remit, and/or pay for all sales, use and excise taxes and compensation taxes relating to the provision of the F&B Services. The costs of the foregoing shall be an Operating Expense.

#### 4. CITY-PARISH RESPONSIBILITIES

(A) Space; Access; Use of Facility. The City-Parish shall provide adequate space within the Facility for the performance of the F&B Services. The City-Parish shall also make available to SMG and its employees and agents such common areas, fixtures, equipment and storage facilities within the Facility necessary for SMG to provide the F&B Services as contemplated herein.

(B) Removal of Trash and Garbage. SMG shall be responsible for the removal of all trash, refuse and garbage produced by the F&B Services. Removal of such trash, refuse and garbage will be treated as an Operating Expense of the Facility.

(C) Capital Improvements. The City Parish shall, during the Management Term and any Renewal Term, make capital improvement purchases designed to improve the foodservice operation at the Facility, in such amounts as SMG and the City-Parish may mutually agree. Such purchases are may include items such as, portable kiosk enhancements, concession stand upgrades, new menu signage, a point-of-service credit card system, small wares and service ware upgrades, uniforms and a sports bar buildout.

5. Corkage Fees. SMG acknowledges that certain users of the Facility such as, Mardi Gras clubs and charity organizations, have historically been granted permission to utilize their own caterer from time-to-time. SMG and the City-Parish agree to regularly review this practice to determine whether it should be continued. In all cases where such permission has been granted to a non-profit organization, the licensee for the event will be charged a fee ("Corkage Fee") as determined by mutually agreed upon by SMG and the City-Parish. Such corkage fees shall be included as part of the F&B Gross Revenue. In addition, the licensee shall be required to secure all necessary licenses for such service and will be required to provide the appropriate insurance coverages, naming SMG, and City-Parish as additional insureds.

By Loewis  
Introduced 1-13-16  
P.H. 1-27-16

**ADOPTED**  
METROPOLITAN COUNCIL

JAN 27 2016

028

RESOLUTION

51921

*Cassey Cash*  
COUNCIL ADMINISTRATOR TREASURER

AUTHORIZING THE MAYOR-PRESIDENT TO ENTER INTO A MANAGEMENT AGREEMENT WITH SMG TO PROMOTE, OPERATE, AND MANAGE THE BATON ROUGE RIVER CENTER FOR A PERIOD OF FIVE YEARS BEGINNING JANUARY 1, 2017, WITH ONE OPTIONAL FIVE-YEAR RENEWAL.

BE IT RESOLVED by the Metropolitan Council of the Parish of East Baton Rouge and City of Baton Rouge that:

Section 1. The Mayor-President is hereby authorized to enter into a management agreement with SMG to promote, operate, and manage the Baton Rouge River Center for a period of five years beginning January 1, 2017, with one optional five-year renewal.

Section 2. Said agreement shall be approved by the Office of the Parish Attorney as to form and legality.