
**MANAGEMENT AGREEMENT
FOR THE
AMERICAN BANK CENTER
BETWEEN
CITY OF CORPUS CHRISTI
AND
SMG**

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT ("Agreement") is made and entered into effective as of _____, 2012 by and between SMG, a Pennsylvania general partnership ("Operator" or "SMG") and the CITY OF CORPUS CHRISTI, a Texas home rule municipal corporation ("City").

RECITALS

I. The City, acting through its duly authorized City Manager ("City Manager"), owns and has constructed a Multi-purpose Arena ("Arena"), the Bayfront Plaza Convention Center and the Selena Auditorium ("the latter two collectively defined in this Agreement as "the Convention Center") located in the City of Corpus Christi, Texas, at 1901 North Shoreline Boulevard, which, together with all facilities, machinery, attachments and appurtenances now or hereafter attaching thereto, is hereafter referred to as the "Facility" and also known as the "American Bank Center."

II. The Operator is an organization whose principals have substantial experience and expertise in the management, operation, and marketing of public assembly facilities.

III. The City and Operator are parties to that certain Pre-Opening Services and Management Agreement dated December 18, 2001, as amended by (i) that certain First Amendment to the Pre-Opening Services and Management Agreement, authorized October 14, 2003 by City Council; and as further amended by (ii) that certain Second Amendment dated May 18, 2004; (iii) that certain Third Amendment, dated August 17, 2004; (iv) and that certain Fourth Amendment, dated August 1, 2006 (collectively, the "Original Agreement"), pursuant to which SMG provides management services for the Facility on the terms and conditions set forth therein. The Convention Center portion of the Original Agreement expires July 31, 2009, and the Arena portion expires November 30, 2009.

IV. On February 24, 2009, the City Council authorized the City Manager or his designee to negotiate a five year agreement with SMG to operate and manage the American Bank Center under new fees, terms, and conditions, and with the negotiated agreement to include but not be limited to a term: (i) adding to SMG's duties the duty to manage all food and beverage services at the Facility, including management of all alcoholic beverage services; (ii) acknowledging that SMG shall be assigned both the Food and Beverage Services Agreement with Centerplate and the Alcohol Service Management Agreement with the Corpus Christi International Seamen's Center; (iii) stating that, immediately following the third year of the Agreement, the City shall solicit and entertain proposals from private venue management firms to operate and manage the American Bank Center; and (iv) giving the City the right, immediately following the third year, to terminate the agreement, with or without cause, by providing no more than ninety (90) days' notice to SMG, without the payment of any penalty, fee or premium.

V. The City and Operator are parties to that certain Management Agreement effective August 1, 2009, authorized July 21, 2009 by City Council by Motion #2009-207 ("The Management Agreement"), pursuant to which SMG provides management services for the

Arena, the Convention Center and the Selena Auditorium (collectively, the "Facility") the terms and conditions of which included: (i) SMG's duty and exclusive right to manage all food and beverage services at the Facility, including management of all alcoholic beverage services as well as the Food and Beverage Services Agreement with Operator and the Alcohol Service Management Agreement with the Corpus Christi International Seamen's Center; (ii) stating that, immediately following the third year of the Agreement, the City shall solicit and entertain proposals from private venue management firms to operate and manage the American Bank Center; and (iii) giving the City the right, immediately following the third year, to terminate the agreement, with or without cause, by providing no more than ninety (90) days' notice to SMG, without the payment of any penalty, fee or premium. The Management Agreement expires September 30, 2014 unless sooner terminated under the provisions of the Management Agreement.

VI. Pursuant to The Management Agreement, on or about May 4, 2012, the City solicited and entertained proposals from private venue management firms to operate and manage the American Bank Center, of which the Operator was the successful bidder. As a result, the City and the Operator desire to enter into this Agreement to: (i) grant SMG the exclusive right to manage all food, beverage and alcoholic beverage services at the Facility using the vendor(s) of their choice; (ii) provide for a five (5) year term; (iii) give the City the right, immediately following the third year of the Agreement, to terminate the agreement, with or without cause, by providing no more than ninety (90) days' notice to SMG, without the payment of any penalty, fee or premium; (iv) state a management fee to be paid to the Operator; (v) state a performance-based incentive fee to be paid to the Operator upon performance; (vi) other terms and conditions as stated herein.

VII. Pursuant to the Management Agreement, the City terminated the Management Agreement that was effective August 1, 2009 and authorized July 21, 2009 by City Council, with said termination effective _____, 2013.

VIII. The Operator is a party to that certain Food and Beverage Services Agreement with Service America Corporation, d/b/a/ Centerplate ("Centerplate"), effective August 1, 2009 (the "Food & Beverage Contract"), pursuant to which Centerplate provides food and beverage services at the Facility. The Food and Beverage Contract expires July 31, 2014 unless sooner terminated as a result of the termination of the Management Agreement under the provisions of the Management Agreement by providing no more than ninety (90) days' notice to Operator.

IX. It is the City's intention that the Facility be operated in a First-Class and fiscally responsible manner with the objectives of offering diverse event activity (e.g., cultural, educational, entertainment, sporting, social and other activities) to area residents and visitors; attracting events (e.g., conventions and tradeshow) that generate economic and fiscal activity thereby stimulating the economy; minimizing financial operating requirements required from public funds; and, in general, maximizing the utilization of the Facility for the benefit of the City, while minimizing, to the extent practical, the net cost to the City. The parties accordingly agree as follows:

AGREEMENT

ARTICLE 1 DEFINITIONS

The following words, unless the context otherwise requires, have the meanings ascribed to them below.

"Affiliate" means, with respect to any corporation, partnership or other entity, any other such entity which is and at all times remains Controlled (as hereinafter defined) by, under common Control with or which Controls the first such entity, and (ii) "Control" means direct or indirect ownership of not less than 10% of all the voting stock of a corporation or not less than 10% of the legal and equitable interest in a partnership or other entity or the ability to direct management, operations or policy decisions of such corporation, partnership or other entity.

"Agreement" has the meaning ascribed above, as amended from time to time.

"Architects" means the architects of record, whether one or more, engaged by the City to prepare the plans and specifications for the Facility with regard to any future improvements/renovations.

"Arena" means the approximate 9,500 seat (8,000 fixed and 1,500 movable/ portable), multi-purpose arena, together with all facilities, machinery, attachments and appurtenances now or hereafter attaching thereto.

"Bonds" mean and refer collectively to the City bonds used to finance the Facility or the Bonds that will further finance the Facility, the interest on which is or will be excludable from the bondholder's gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended.

"Budget" means any budget to be prepared by Operator under the provisions of Article 4 of this Agreement. An "Approved Budget" means any Budget submitted by Operator to and approved in writing by the City (including any amendment thereto approved in writing by the City). With respect to each Budget referenced in this Agreement, a separate Budget shall be established for the Arena and the Convention Center and Operator shall operate each of the Arena and the Convention Center in accordance with such separate Approved Budgets, as provided by Article 4 and more specifically by Section 4.8 of this Agreement.

"Capital Expenditures" means all expenditures for building additions, alterations, renovations, repairs or improvements, and for purchases of additional or replacement furniture, fixtures, machinery or equipment, the depreciable life of which, according to generally accepted accounting principles, is in excess of one (1) year and the value of which is equal to or greater than \$5,000.

"Catering" means functions where payment is received in advance from one party for prearranged Foodservices, including but not limited to, dinners, banquets, and receptions and hosted bars.

"City" shall have the meaning assigned to it in the opening paragraph above. **"Code"** means the Texas Alcoholic Beverage Code.

"Concessionaire" shall mean the party or parties selected by Operator to manage any or all of the Foodservices on site, excluding Outside Catering.

"Concessions" means Foodservices where payment is made at the time that food and beverage services and products are served or delivered. An example of this includes an individual purchasing items at a concession stand or from a cash bar.

"Contract Administrator" means any officer, agent, employee of, or independent contractor retained or employed by either party, acting within the scope of authority given such person by such party.

"Contractor" means, whether one or more, the general contractor(s) selected by the City to repair, replace, improve, remove, renovate or modify the Facility.

"Convention Center" means and refers collectively to the Bayfront Plaza Convention Center and the Selena Auditorium.

"Customer Satisfaction Goals" means the mutually agreed to customer satisfaction rating as measured by the results of a combination of "secret shopper surveys" and customer satisfaction surveys that shall be conducted by Operator and the City (or, in the case of the City, their designee), The rating shall be the average of the customer satisfaction ratings for the following categories of customers: (i) attendees of Events held at the Facility; (ii) suite holders and premium suite clients; and (iii) the Major Users of the American Bank Center. The City and Operator shall agree on forms of survey/questionnaire, survey content, and the events at which the surveys shall be issued. The City (or designee) shall be responsible for initiating the secret shopper surveys and Operator and the City (or designee) shall be responsible for distributing and collecting the customer satisfaction surveys following designated Events, and providing to the City copies of the surveys, together with a summary tabulation of the ratings of each survey. Operator shall be considered to have met the incentive eligibility criteria if, based on all responses received during the Fiscal Year from the customers, the aggregate average customer satisfaction score is better than "7.5" on a scale of "0" to "10."

"Depository" means the place selected by the City in which the bank accounts for the funds required to be maintained under this Agreement are to be deposited.

"Emergency Expenditure" means any expenditure to the extent not included within an Approved Budget and not expected by the Operator to be incurred but which is necessary to correct any condition that poses an imminent threat to public safety or material damage to the Facility.

"Event" refers to all events held at the Facility including, but not limited to, concerts, sporting events, family shows, tradeshow, consumer shows, banquets, receptions, meetings, seminars, and any other functions held at the Facility consistent with this Agreement.

"Event Expenses" means any and all expenses incurred or payments made by Operator in connection with the occurrence of events at the Facility, including but not limited to costs for event staffing including ticket takers, security and other event staff, and costs relating to setup and cleanup.

"Facility" means, collectively, the Arena, the Convention Center, and the Selena Auditorium.

"First-Class" means quality of the best; the finest; the highest class, grade, or rank; and highest distinction with respect to the operation, management, marketing, and promotion of the Facility, including but not limited to:

- professional promotion and marketing efforts;
- service-oriented guest and tenant services;
- premium food and beverage services;
- timely repairs, maintenance, and cleaning of building, equipment, and grounds;
- positive, safe and secure Facility for patrons and employees;
- state-of-the-art technology to patrons; and
- parking services

"Fiscal Year" means, at the time of this Agreement's execution, a period of time beginning on August 1 and ending on the immediately following July 31, inclusive. The City may change its Fiscal Year, in which case the City must notify Operator of the change in writing at least 120 days before the end of the Fiscal Year in which the change will occur, and the definition of Fiscal Year in this Agreement shall automatically change to reflect the new definition of the City's Fiscal Year.

"Foodservices" means planning, preparation, service, accounting and management of food and beverage services to be provided hereunder, including without limitation, Catering and Concessions, vending machines, staffing and liquor license procurement and maintenance in accordance with the laws of the Texas Alcoholic Beverage Code and regulations promulgated by the Texas Alcoholic Beverage Commission.

"Foodservice Premises" means all areas, improvements, fixtures, and trade fixtures on the Facility's premises that are or may in the future be used in connection with the operation of the Foodservices, including adequate storage and office space, as described in **Exhibit "B"** hereto. The Foodservice Premises may not be changed without the prior written approval of the City, which shall not be unreasonably withheld or delayed.

"Food Products" means all food and beverages, and shall include without limitation, alcoholic beverages, candy, tobacco, and confections, except that as long as the Anticipated Arrangement remains in effect, "Food Products" will not include alcoholic beverages, except where sold pursuant to a catering permit.

"General Manager" means the chief operating officer of the Operator at the Facility.

"Licensee" means a person or entity entering into a written agreement to host an Event at the Facility.

"Maintenance/Capital Goals" means the mutually agreed to building quality and safety rating as measured by a (frequency) performance assessment conducted by the City. The City and Operator shall agree on the performance assessment form, the assessment content, and the frequency at which the assessment shall be conducted. Operator shall be considered to have met the incentive eligibility criteria if, based on all assessments conducted during the Fiscal Year, the aggregate average score is better than "8.0" on a scale of "0" to "10."

"Major User" means any professional sports team, franchise or university using the Facility as the site of its home games, as well as any event traditionally held at the Facility whose use thereof consists of more than thirty (30) days during any Fiscal Year.

"Management Fees" means those fees payable to the Operator under Article 7.

"Net Operating Income" means with respect to a Fiscal year, the excess, if any, Operating Revenues for such Fiscal Year over Operating Expenses, as set forth on the year end audited financial statements, for such Fiscal Year.

"Net Operating Loss" means with respect to a Fiscal Year, the excess, if any, of Operating Expenses for such Fiscal Year over Operating Revenues as set forth in the year end audited financial statements, for such Fiscal Year.

"Net Operating Income/Loss Benchmark" is equal to the average of the actual combined Net Operating Income /Loss for the rolling three (3) year period immediately preceding the current contract year.

"Operating Expenses" means all expenditures or obligations of whatever kind or nature made or incurred by SMG in promoting, operating, maintaining, marketing and managing the Facility, and providing food and beverage services, during any specified period during the term of this Agreement, all contract labor; all Reimbursable Expenses; all fees paid to Operator under this Agreement; maintenance and repairs; utilities; deposits for utilities; telephone; telescreen and/or scoreboard operations; security; fees payable to subcontractors; refuse removal; cleaning; sales use, or any other taxes or impositions applicable to the operation of the Facility; building supplies; ticket commissions; premiums for insurance maintained under Article 8; data processing; advertising; marketing; public relations; pest control; travel, lodging and related out-of-pocket expenses; audit fees; legal fees and other professional fees; professional development and training expenses for the benefit of the Facility, and Facility related entertainment; office supplies; employment fees; freight and delivery; lease of equipment; Master Card, VISA and other credit and debit facilities and telecheck fees and expenses; bank fees, all damages, losses or expenses suffered or paid by the City (or, at the City's written direction, by Operator) as the result of any and all claims, demands, suits, causes of action, proceedings, judgments and liabilities, including reasonable attorneys' fees incurred in litigation or otherwise, assessed, incurred or sustained; and fees and commissions paid to any third party engaged by the City (or, upon the City's written request, by Operator) to provide services with respect to advertising, naming rights, pouring rights, the marketing and sale of luxury boxes or the sale of personal seat licenses; but excludes any SMG Capital Contributions and Capital Expenditures, costs for corporate overhead, indemnity obligations and damage payments owed to the City, amortization (including the SMG Capital Contribution), depreciation and other non-cash charges and any debt service on the Bonds. Expenses shall be calculated separately for the Arena and the Convention Center. Solely for purposes of the submission of the budgets hereunder and the calculation of Net Operating Income and Loss, the Net Operating Income/Loss Benchmark, and SMG's incentive fees hereunder, the fees payable to SMG under this Agreement shall not be included therein.

"Operating Fund" means a fund maintained under Section 5.1.

"Operating Revenue Account" has the meaning ascribed by Section 5.1.

"Operating Revenues" means all receipts (including, without limitation, seat license fees and surcharges, rental revenues, use license fees, merchandise sales revenue, advertising sales revenues, box office income, suite sales, sponsorship revenues, promotional fees, and equipment rental fees), revenues, income, and cash received or collected (1) for the use of, operation, or admission to, the Facility or any portion thereof, (2) for the right to sell, or in respect of the sale of, any product or advertisement in the Facility including all rents, royalties, and concessions from tenants, concessionaires, and licensees (but specifically excluding the gross receipts of such concessionaires, tenants, and licensees); (3) for rental or use of the Facility equipment; or (4) as fees for services rendered at the Facility. Excluding from Operating Revenues in all events are, any portion of ticket sales payable to the performers in or promoters of any event in the Facility or the portion of such ticket sales, if any, payable as a commission to any entity or person providing ticket distribution services, for and on behalf of and actually paid to a user of the Facility; applicable excise, sales occupancy and use taxes, or similar government taxes, duties, levies, or charges collected directly from patrons or guests, or as a part of the sales price of any goods, services or displays, such as gross receipts, admission, cabaret, or similar or equivalent taxes; receipts from financing, receipts from the sale or other disposition of capital assets and other items not in the ordinary course of the Facility's operations and income derived from securities and other property acquired and held for investment; receipts from awards or sales in connection with any taking, from other transfers in lieu of and under the threat of any taking, and other receipts in connection with any taking; proceeds of any insurance, including the proceeds of any business income insurance (provided that the proceeds of business income insurance shall be included to the extent the same reimburse the City for revenues actually lost); proceeds of advances made by the City to fund net operating deficits from the operation of the Facility and funds advanced for capital expenditure; rebates (including tax rebates from the City, State of Texas or other governmental authorities and any interdepartmental funding from other departments of the City in the nature of reimbursements or otherwise), discounts or credits of a similar nature (not including charge or credit card discounts, which shall not constitute a deduction from revenues in determining Operating Revenues, but shall constitute Operating Expenses in determining Operating Income or Operating Loss). Operating Revenues shall be calculated separately for the Arena and the Convention Center and, in no event, shall Operating Revenue ever be deemed to include the proceeds of any hotel occupancy taxes.

"Operator" has the meaning assigned to it in the opening paragraph above.

"Operations Manual" means a document developed by Operator which contains terms regarding the management and operation of the Facilities, including detailed policies and procedures to be implemented in operating the Facilities, as agreed upon by both the City and the Operator. The parties acknowledge that to the extent that such manual contains any proprietary information of SMG (e.g., SMG-wide (not Facility-specific) operating policies, procedures and/or software), such information shall remain the property of SMG and shall not be kept at the Facility after the expiration or termination of this Agreement.

"Outside Caterers" means any caterer, other than Operator or a Concessionaire for all Foodservices at the Facilities with whom Operator may contract, entering into an Outside Catering Agreement provide Catering services at the Facilities for a single event. The Operator will establish minimum Commissions and/or fees, insurance and security deposits required in order for an Outside Caterer to operate at the Facilities. Outside Caterer will pay Operator immediately following their Catering event based on the Outside Catering Agreement with that Outside Caterer and the Operator.

"Outside Catering Agreement" means the written agreement between the Operator and an Outside Caterer for a single Event to be held at the Facilities.

"Parking Lots" means any and all existing and future parking facilities that serve the Facilities, as shown in Exhibit "C" which the parties may amend from time to time.

"Prompt Payment Act" means Chapter 2251 of the Government Code in force in the State of Texas.

"Reimbursable Expenses" means all of the following expenses incurred by the Operator in performing its services under this Agreement to the extent (but no further) the same are provided for in an Approved Budget or are incurred as part of an Emergency Expenditure, salaries, wages, and benefits of Operator's personnel working at the Facility; payments made by Operator to unrelated parties from its own funds or liabilities incurred by Operator for actual and direct expenses under contracts related to the operation of the Facility but then only if entered into by Operator in accordance with this Agreement; travel, lodging, and entertainment expenses.

"Renovations" means any renovations of the Facility that may be undertaken by the City.

"Revenue Benchmark" means the projected operating revenues in the Approved Budget for the Facility and excludes the sale of naming rights for the Facility.

"TABC" means the Texas Alcoholic Beverage Commission.

"Utilities" means electrical, water, and gas services. Operator is responsible for utilities. For the electricity invoices that the City pays directly, the City will make every effort to submit the invoices to Operator for reimbursement in a timely manner, but in no case later than ten (10) calendar days after City makes the direct payment to electricity provider. Operator shall pay all invoices within fifteen (15) calendar days from the date of the invoice, in accordance with Section 5.3 of this Agreement.

ARTICLE 2 INTRODUCTION

2.1 Grant of Authority. To enable Operator to perform its obligations under this Agreement, the City hereby grants to the Operator, and the Operator hereby accepts, the exclusive right and obligation subject to the provisions of Section 3.7 and the other terms and provisions of this Agreement, in its own name, as an independent contractor and not as an agent of the City, to manage and operate the Facility.

2.2 Exclusive Rights Granted. The City hereby grants to Operator, subject to the terms and conditions of this Agreement, the "Exclusive Right" to operate themselves or to contract with outside concessionaires for vending machines and for the provision of the Foodservices, to oversee the provision of those services by such concessionaires, and to allow such concessionaires the exclusive use of the Foodservice Premises at the Facilities, subject to any limitations contained in this Agreement concerning Catering at the Convention Center. The City grants Operator the exclusive rights to sell novelties, souvenirs, programs, records, tapes, clothing and gifts (collectively, "Novelties") at all Events held at the Facility.

2.3 Exclusion from Exclusive Rights. The following shall be excluded from the Exclusive Right to provide Foodservices:

(a)Fairs or Festivals. Foodservices provided at fair or festival-type Events at the Facility may be excluded if, in the opinion of the City, the selling of the items from booths is an important part of the Event. Additionally, the Exclusive Right to provide Food and Beverage Services shall not prevent or prohibit an exhibitor from distributing without charge a sample portion of the type of food or merchandise manufactured and distributed in the normal course of the exhibitor's business, or from selling food items intended for consumption off the premises.

2.4 Nature of Relationship. The parties agree that the only relationship created by this Agreement is that between the City, as owner, and the Operator, as an independent contractor, for management and operating services and that the Operator is an independent contractor, not an agent, employee, joint venturer or partner of the City.

2.5 Term. The term of the Agreement begins on _____, 2013, which is the date following the effective date of termination of the previous Management Agreement that was effective August 1, 2009 and authorized July 21, 2009 by City Council, (the "Effective Date") and ends on the last day of the fifth (5th) full year following the Effective Date unless sooner terminated under the provisions of this Agreement. The City may, effective the last day of the third year and anytime thereafter, terminate this Agreement with or without cause and without payment of any penalty, fee or premium in accordance with Article 10 of this Agreement.

2.6 Contract Administrator. Each party must appoint a contract administrator who shall monitor such party's compliance with the terms of this Agreement. Operator's contract administrator shall be its General Manager at the Facility, unless Operator notifies City of a substitute contract administrator in writing. City shall notify Operator of the name of its contract administrator within thirty (30) days of execution hereof. Any and all references in this Agreement requiring Operator or City participation or approval shall mean the participation or approval of such party's contract administrator.

ARTICLE 3 RESPONSIBILITIES OF OPERATOR

3.1 Standard of Care

(a) Subject to the limitations on Operator's authority set forth in this Agreement and subject to the Approved Budget, the Operator shall exercise its diligent, good faith efforts in managing and operating the Facilities so as to minimize Operating Expenses and maximize Operating Revenues. In this connection, the parties agree that the Operator, in recommending and implementing booking policies approved by the City, may schedule not only those events that generate substantial direct revenue to the Facilities, but also those events that produce less direct revenue but, in the Operator's good faith judgment, generate either a significant economic, cultural, or other benefit to the City or otherwise serve the public interest; provided that, except where provided under Sections 3.8 and 3.9, no use of the Facilities shall be permitted without a reasonable charge or reimbursement of costs of operation of the Facilities, as may be prudent

under the circumstances, for such use with respect to the Arena and/or Convention Center, as applicable.

(b) Subject to the limitations set forth in this Agreement, the Operator shall do the following (or cause the same to be performed):

- (i) Manage and operate the Facilities and contract for its use in a manner that will promote and maximize the use to further the purposes for which the Facilities is to be constructed, as set forth in the Recitals to this Agreement;
- (ii) Manage all aspects of the Facilities in accordance with the Operations Manual and the terms of this Agreement, including but not limited to cost containment, revenue generation, profit maximization, promotions, advertising, energy conservation, security, box office admission procedures and general user services;
- (iii) Maintain the Facility in accordance with the Operations Manual and the terms of this Agreement, including but not limited to routine repairs, preventive maintenance, janitorial services, grounds keeping services, maintenance of all interior and exterior walls of the Facility, maintenance of the landscaping around the Facility; walking inspections of the Facility on a daily basis, and maintenance of all the Parking Lots to city codes and standards;
- (iv) Update, and further develop as necessary, the Operations Manual for the Facility for the City's review and approval no later than December 31, 2012, and regularly thereafter as appropriate;
- (v) Manage the Foodservices, including alcoholic beverage services, at the Facility. Negotiate and enter into contracts, if any, at and for the Facility for the sale of food, beverages, souvenirs, novelties and programs, as provided by Article 2 and Article 6B, as applicable (including without limitation the execution and delivery of such contracts in Operator's name as an independent contractor);
- (vi) Negotiate, execute, and perform contracts, use agreements, licenses and other agreements (A) with persons who desire to schedule events, performances, telecasts, broadcasts or other transmissions in, from or to the Facility or who desire otherwise to use the Facility or any part thereof or (B) that otherwise pertain to the use, operation and occupancy of the Facility or any part thereof, as provided in Sections 6.4, 6.6, 6.8, and 6.13, as applicable (including without limitation the execution and delivery of such contracts in Operator's name as an independent contractor);
- (vii) Market the sale of luxury suites or boxes and personal seat licenses, as

provided in Sections 6.4, 6.6, 6.8, and 6.13, as applicable (including, without limitation the execution and delivery of such contracts in Operator's name as an independent contractor);

- (viii) Coordinate and negotiate contracts for all advertising, licensing, promotional activities, marketing, and public relations for the Facility, as provided in Sections 6.4, 6.6, 6.8, and 6.13, as applicable (including, without limitation the execution and delivery of such contracts in Operator's name as an independent contractor);
- (ix) Coordinate the efforts of advertising, promotional activities, marketing, and public relations at the Facility of City activities and efforts, as requested by the City, from time to time.
- (x) Manage other facilities and projects at the request of the City, as these opportunities arise, and coordinate such new efforts by meeting with the City to agree to the scope of and other terms related to such management.
- (xi) Coordinate the efforts of all parties involved in the operation of the Facility and establish and maintain consistent procedures for cost estimating and reporting, maintenance and payment of invoices, including preparation of Budgets and reports as contemplated by Article 4;
- (xii) Plan, coordinate, and administer operation of the Facility and continue to identify, select, and train the Facility's staff;
- (xiii) Retain legal counsel in connection with the discharge of its duties hereunder and cause such counsel to coordinate with the City's legal department where necessary or appropriate. Operator acknowledges that the City's legal department shall at all times represent the interests of the City;
- (xiv) Coordinate the work of all parties performing work in connection with the operating of the Facility;
- (xv) Monitor actual and projected Operating Expenses and Operating Revenues and advise the City, in a timely fashion as part of its Monthly Report, if projected costs exceed the amounts set forth in the Approved Budgets, as provided in Section 6.12, as well as the reasons for the discrepancy;
- (xvi) Furnish all services, personnel, materials, tools, machinery, equipment and other items necessary to accomplish the foregoing requirements of this Paragraph, Article 3, and other provisions of this Agreement;
- (xvii) Devise and implement procedures (including preventive and predictive maintenance procedures) reasonably designed to keep the Facility in good

order and condition, subject to ordinary wear and tear, and maintain the Facility in such order and condition; and

- (xviii) Require that all persons using the Facility or attending events therein comply with all legal requirements of all governmental authorities having jurisdiction over the Facility;
- (xix) Not create, assume or suffer to exist any mortgage, pledge, lien, charge or security interest or other encumbrance of any nature whatsoever relating to this Agreement or its rights and obligations under this Agreement, except any pledge or other encumbrance of the fees due Operator pursuant to this Agreement;
- (xx) Promptly and fully discharge and pay all of its obligations under this Agreement at or prior to the time specified for performance or payment thereof, including without limitation, the payment of all Operating Expenses from the funds available for that purpose under Article 5. Operator shall have the right to contest its obligations to make payments to third parties so long as (x) Operator does so in good faith, diligently and by appropriate proceedings, and (y) such contest does not subject the City to any potential civil or criminal liability or constitute a breach of any law, rule, code or regulation applicable to the City;
- (xxi) Develop a comprehensive marketing plan and brochure, a booking policy, and a complimentary sales responsibilities plan with the Convention and Visitors Bureau of the City and begin implementation thereof as soon thereafter as the same is approved by the City;
- (xxii) Manage the current Naming Rights Agreement between Operator and the American Bank Center, and seek, negotiate and enter into contracts with future naming rights partners subject to the terms of this Agreement, for the naming rights of the Facility, and maximize additional naming rights revenue at the Facility to the extent not under the scope of the current Naming Rights Agreement to the maximum extent possible, not in conflict with the current Naming Rights Agreement; and
- (xxiii) Operator will be required to use its best efforts to implement energy efficiency and conservation measures, consistent with those established by the City of Corpus Christi, in an effort to meet and achieve a 5% annual reduction in electricity consumption. In order to meet these goals, Operator will propose capital improvement projects to increase energy efficiency at the Facility. The goal of this requirement is to achieve sustainability and to reduce the operating costs at the Facility. Operator must facilitate the City's energy audits of the Facility, review the results of the energy audit and make recommendations to City to improve the energy performance of the Facility.

(c) Section 3.1 and each provision in the above subsection "b" shall be subject to the Approved Budget.

3.2 Compliance with the Law; Duty. The Operator shall comply with all applicable laws, rules, regulations, ordinances ("Laws") relating to the use and operation of the Facility and the employment of its employees. The Operator shall perform its obligations hereunder in good faith and in conformity with the standard to which a good operator would operate in similar circumstances. If compliance with applicable Laws with regard to the condition of the Facility requires funds not provided for in an Approved Budget and the City refuses to consent to amendment to the Approved Budget providing for the expenditure of funds necessary to cause the Facility to comply with such applicable Laws, then the Operator may terminate this Agreement upon ninety (90) days prior written notice to the City (which notice shall described with specificity the applicable Laws violated and the actions needed to remedy the same) if (x) the failure to comply with such applicable Laws subjects the Operator to potential civil or criminal liability, and (y) the City fails, within such ninety (90) day period, to make provision for the funds necessary to correct such violation, in accordance with Section 5.3 of this Agreement.

3.3 No Construction or Design Responsibilities. Notwithstanding Operator's review of and recommendations, upon request by the City, in respect to any Facility's design, improvements or renovations, the Operator will not have responsibility to the City or any other person for or authority concerning any final plans and specifications for the Facility's design, improvements or renovations, and will not supervise or be responsible in any manner for construction, if any, of said improvements or renovations. The City acknowledges that Operator's recommendations are based solely upon Operator's practical experiences in the operation of public assembly facilities similar to the Facility. The City agrees to look to the Contractor, subcontractors, Architects, engineers and other design professionals for all matters related to design and construction of any work and not to Operator.

3.4 Duty and Liability. The Operator shall owe to the City a duty to perform its obligations under this Agreement and to conduct the management and operating of the Facility at all times with integrity and good faith and in a manner which is in the best interests of the Facility and the City and consistent with the terms of this Agreement.

3.5 Funding Limitations. The City recognizes and agrees that performance by Operator of its responsibilities under Article 3 and otherwise under this Agreement is subject to the City's provision of funds to Operator for such purposes as hereinafter provided, and is limited by the Approved Budgets.

3.6 Financial Statements. At the City's request, Operator shall provide the City with the opportunity to review certain financial statements of Operator (the "Financial Statements"). In connection with such financial statement review, Operator shall represent and warrant to the City that (i) such Financial Statements were prepared in accordance with generally accepted accounting principles consistently applied and are true and correct in all material respects and present fairly the Operator's financial position as of the date thereof; and that (ii) to the best of Operator's knowledge there has been no material adverse change in Operator's financial position from that reflected in the Financial Statements.

3.7 Certain Excluded Services. Notwithstanding the foregoing, the City reserves the right to have parties other than Operator negotiate contracts for naming rights related to the Facility. Operator shall,

however, after execution of a contract for naming rights be responsible for insuring that all obligations of the City and the other parties thereto are duly and timely performed; provided, however, in so doing Operator shall not have to accept any liability or obligation therefor not already provided for in this Agreement.

3.8 Use of Facility at Direction of City.

(a) At the direction of the City Manager, upon reasonable advance notice and subject to availability, Operator shall provide use of the Facility or any part thereof to civic, special interest groups and nonprofit organizations located in Corpus Christi area at reduced rates below the published rate schedule.

(b) Subject to the Policies and Guidelines established by Operator and approved or modified by the City, the City shall not schedule use of the Facility pursuant to subsection (a) and Section 3.9, below, if such use will conflict with paying events booked by Operator and shall in all instances be subordinate thereto in terms of priority of use of the Facility. In instances when the Facility, or part thereof, is to be used at the City's request or by the City pursuant to subsections (a) and Section 3.9, below, 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 Operator's incentive fee pursuant to Article 7 hereof.

3.9 Use of Facility by City. Subject to availability, the City shall have the right to use the Facility or any part thereof rent-free for meetings, seminars, training classes or other noncommercial uses, provided that the City shall promptly reimburse Operator, for deposit into the Operating Revenue Account, for any incremental out-of-pocket expenses incurred by Operator (such as the cost of ushers, ticket-takers, set-up and take-down personnel, security expenses and other expenses) not included in the Approved Budget in connection with such use. Such non-commercial use of the Facility by the City shall

- (i) not compete with or conflict with the dates previously booked by Operator for paying events;
- (ii) not consist of normally touring attractions (such as concerts and family shows); and
- (iii) be booked in advance upon reasonable notice to Operator pursuant to the Facility's Policies and Guidelines as approved or modified by the City. Upon request of the City, Operator shall provide to the City a list of available dates for City's use of the Facility. To the extent that Operator has an opportunity to book a revenue-producing event on a date which is otherwise reserved for use by the City, Operator may propose alternative dates for the City's event, and the City shall use commercially reasonable efforts to reschedule its event to allow Operator to book the revenue-producing event. For purposes of calculating Operator's Incentive Fee, Operator shall receive a "paper" credit for an amount equal to the difference between the published Facility rate and the rate (if any) charged to the City for such use of the Facility only in the event that the Manager had a bona fide opportunity to book a revenue-producing event.

ARTICLE 4
RECORDS, ACCOUNTS AND REPORTS

4.1 Books. The Operator shall maintain at the Facility books of account with respect to its management and operation of the Facility in accordance with generally accepted accounting principles and industry standards. Operator shall maintain such books and records for a period of three (3) years following the expiration or sooner termination of this Agreement. Separate books of account shall be maintained for the Arena and the Convention Center.

4.2 Access to Information. The City shall have the unqualified right to obtain from the Operator (and/or from any of Operator's subcontractors), at any reasonable time upon request, such information and to inspect and audit such books and records concerning the management and operation of the Facility as may be deemed necessary or desirable by the City. It is the City's intent to conduct a performance audit during the Term of the Agreement.

4.3 Annual Audit. As soon as practicable at the close of each Fiscal Year, but not later than 90 calendar days after the end of the Fiscal Year, the Operator shall furnish to the City a balance sheet, a Schedule of Revenues, Expenditures and Changes in Fund Balance, prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an opinion of the independent certified public accountant preparing the report, which shall be a firm selected by the City, paid directly by the Operator.

4.4 Monthly Reports. Not later than thirty (30) days after the end of each month during the Period, the Operator shall furnish to the City a report in the same format as SMG has provided under the Original Agreement.

4.5 Daily Event Flash and Other Reports. At City's request, from time to time, Operator shall furnish to the City other reports, including but not limited to a daily event "flash" report.

4.6 Capital Improvements Budget. Not later than 120 days before the beginning of each Fiscal Year (after the first year of the Agreement), the Operator shall submit a Budget for projected Capital Expenditures for such Fiscal Year. This Budget shall be subject to the procedures customarily employed in connection with the development, approval, and implementation of capital budgets for the City and shall in all cases be subject to the approval of the City.

4.7 Annual Budget. Not later than 120 days prior to the beginning of each Fiscal Year after the first Fiscal Year, the Operator shall submit an annual Budget for such upcoming Fiscal Year, listing all projected Operating Revenues and Operating Expenses (including Reimbursable Expenses) by category. The Operator may at any time submit to the City for its consideration amendments to a Budget to reflect unanticipated revenues or expenses or other changes. The Annual Budget must be consistent with City policy. Separate Budgets shall be submitted for the Arena and the Convention Center.

4.8 Budget Approval. The City shall promptly review all proposed Budgets and amendments thereto and promptly communicate to the Operator any comments or suggested revisions thereto. The City shall, in any event, complete its Budget review and deliver its comments in accordance with the City's budget calendar. Final approval of any Budget shall, except for amendments thereto that are not material, be completed in accordance with

procedures applicable to the general City budget which is to be adopted by the end of each immediately preceding Fiscal Year. In the event a proposed Budget has not been approved in a manner which permits its incorporation into the general City budget for approval on or before the end of each immediately preceding Fiscal Year, the Budget for the previous period shall continue to control except that the portions thereof relating to salaries, wages, and benefits included as part of Reimbursable Expenses shall be deemed increased by an amount equal to the increase in the Index (defined below) on the first day of such period over the Index in effect as of the same day of the immediately preceding year. Each Budget shall be considered approved only upon written approval thereof by the City. Each Budget, once approved in writing by the City, and each capital Budget, once approved in writing by the City, shall constitute an "Approved Budget." Operator shall operate and manage the Facilities in accordance with the Approved Budget and in no event (other than in connection with an Emergency Expenditure) may Operator incur costs or expenses in excess of the amounts budgeted therefor, except as otherwise provided for in Article 6, below. Not later than sixty (60) days after the Effective Date of the Agreement, Operator shall submit an Amended Budget to reflect any changes required by the new terms of this Agreement.

Operator recognizes that approval of the Budgets shall be made or withheld by the City in the City's sole and absolute discretion.

The base for computing the adjustment described in the opening paragraph of this Section is the Consumer Price Index for the Houston-Galveston-Brazoria, TX area, all Urban Consumers (base year 1984 = 100), published by the United States Department of Labor, Bureau of Labor Statistics ("Index"). The Index published most immediately preceding the adjustment date in question ("Interim Index") is to be used in determining the amount of the adjustment. If the Interim Index has increased over the Index as of the date the previous Approved Budget was approved (the "Initial Index"), the portion of the Budget to be adjusted as provided for in the opening paragraph of this Section shall be set by multiplying the then applicable base by a fraction, the numerator of which is the Interim Index and the denominator of which is the Initial Index.

If the Index is changed so that the base year differs from that in effect as provided above, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

4.9 Estimated Budgets. The City recognizes that each Approved Budget shall reflect Operating Revenues and Operating Expenses based upon the Operator's best, good faith judgment and may also be predicated upon the assumptions set forth therein with regard to the matters described below in this Section. In the event that Operating Revenues and Operating Expenses assumptions are, for any reason other than Operator's default under this Agreement, overstated, the parties agree to promptly meet and attempt to agree upon revisions to the Budgets.

ARTICLE 5

FUNDS AND ACCOUNTS

5.1 Operating Revenue Account. After the Effective Date the Operator shall collect all Operating Revenues and deposit them in separate accounts (one for each of the Arena and Convention Center) maintained in the Depository in the name of the City (each, an "Operating Fund"). The Operator shall have authority to withdraw proceeds from the Operating Fund. Moneys in the Operating Fund and any interest thereon shall be applied first to the payment of Operating Expenses. Any balance shall be retained in the Operating Fund as reserve for payment of future Operating Expenses. If, at the end of any Fiscal Year, there shall be a balance in the Operating Fund in an amount in excess of the anticipated Operating Expenses for the first month of the ensuing year, the Operator shall, at the request of the City, disburse such excess to the City on or before the fifteenth (15) day of such month.

- (a) Operating Account for Convention Center. To the extent that the City subsidizes the operations of the Convention Center, and in order to provide the funding necessary to afford Operator to perform its obligations hereunder with respect to Expenses not funded by the Operating Revenues deposited in the Operating Revenue Account for the Convention Center, the City shall deposit into the Operating Revenue Account an amount equal to 1/12th the amount of the subsidy in the Approved Annual Budget to the Operator for the operations of the Convention Center no later than the fifth (5th) working day of each month of the Fiscal Year in which a subsidy has been included in the Approved Annual Budget.
- (b) Advancing of Funds for Convention Center. If at any time during a particular month, the amount of monies on deposit in the Operating Fund and available for that purpose shall be insufficient for the payment of Expenses then due or budgeted to become due during such month, the Operator may request that the City advance the amount of such insufficiency from the approved budgeted subsidy scheduled to be paid in the succeeding month. This advanced amount will then be subtracted from the scheduled deposit for the succeeding month.
- (c) Application to Emergency Needs. If at any time or from time to time, by reason of any occurrence of an Emergency Expenditure, moneys on deposit in the Operating Fund are insufficient to pay an Emergency Expenditure the Operator may request the City to provide monies to the Operator to make such Emergency Expenditure or, at the City's option, the City may elect to pay for the Emergency Expenditure directly from City moneys. If the Emergency Expenditure is in an amount which will require the City to seek either City Council or Board approval prior to the outlay of such expenditure, the City will take such action, and reimburse the Operator for such expenditure within five (5) days of receipt of formal approval.

5.2 Security for and Investment of Funds. All funds and accounts required to be maintained by the Operator under this Article 5 are and shall be the property of the City and shall be maintained in the Depository, which shall be a bank or branch located in Corpus Christi, Texas. The Operator shall require of the Depository that all funds held in any account maintained under this Article 5 be secured to such an extent and in such a manner as is required by applicable law in connection with the deposit of funds of the City. Money on deposit in the Operating Fund may be retained un-invested and on deposit in fully secured demand deposit accounts or may be invested in accordance with guidelines provided by

the City from time to time.

5.3 No Obligation of Operator to Advance Funds. The City is solely responsible for and shall promptly pay, or provide funds to the Operator to enable the Operator to pay, all Operating Expenses, Emergency Expenditures, and Capital Expenditures, and to otherwise to comply with its obligations under this Agreement. The Operator shall not be obligated to make any advance of its own funds to or for the account of the City or to pay any sums incurred for the performance of services or goods delivered to the Facilities. Nothing in this Section shall, however, limit, modify, or impair Operator's indemnification obligations hereunder or Operator's liability to the City for Operator's breach of this Agreement.

5.4 Capital Contribution. SMG shall pay to the City, no later than December 31, 2012, the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) ("SMG Capital Contribution"), which may be used at the City's discretion for improvements to the Facilities, including for cosmetic improvements to the exterior of the Facilities. If the City terminates the Agreement early, the City would owe SMG \$50,000 for each of the unrealized years of the Agreement. Without affecting the foregoing, the parties understand and agree, however, that SMG's Capital Contribution of \$250,000.00 is not a loan to the City, and the terms of this Agreement shall not be interpreted to construe or treat the Capital Contribution as a loan to the City to be repaid to SMG by the City. The payment of any such unamortized amounts shall be made to SMG no later than thirty (30) days following the effective date of such expiration or termination.

ARTICLE 6 POWER AND FUNCTIONS

6.1 Authority of Operator. The Operator shall have the right and authority to exercise all rights, powers and duties conferred or imposed on the Operator in this Agreement.

6.2 No Sale of Property. Although the Operator shall have authority to sell or otherwise dispose of all movable property that is surplus to the needs of the Facilities (so long as the same is accomplished in accordance with procedures established by the City of which Operator has been advised in writing and that apply generally to the sale of property by the City), the Operator shall otherwise have no authority to sell or otherwise alienate any portion of the Facilities or any equipment therein. All proceeds from the sale of property shall be deposited into the Operating Revenue Account.

6.3 No Capital Improvements. The Operator shall have no authority to make any alterations or any capital improvements to the Facilities without the prior written consent of the City (capital improvements reflected in an Approved Budget shall be deemed approved by the City).

6.4 Contracts. The Operator shall have no authority, without the prior written consent of the City, to enter into any contract for the provision of goods and services to the Facilities at any time beyond the date for the expiration of the term of this Agreement, including the City's unilateral early termination rights under Section 10.4 hereof. Operator shall have the right to enter into, execute, and deliver contracts with users of the Facilities which extend beyond or relate to dates falling after the expiration of the term of this Agreement, subject to the written approval thereof by the City. The Operator's authority with regard to contracts with Major Users shall, however, be as set forth in Section 6.13 below. All contracts entered into by Operator requiring the consent of the City under this Agreement shall contain an express

provision acknowledging that the same is subject to the City's approval. All contracts entered into by Operator shall provide that the same are assignable to the City and, notwithstanding any contrary provision hereof, upon termination or expiration of this Agreement for any reason, Operator shall assign to the City and the City shall assume in writing, all then outstanding contracts affecting the Facilities entered into by Operator in accordance with the authority granted Operator hereunder; provided, however, the City shall not be obligated to assume any contracts or agreements entered into by Operator in violation of this Agreement. Furthermore, notwithstanding the foregoing, the City shall not assume and shall not have responsibility for any acts or omissions of Operator with regard to such contracts or agreements prior to the termination of this Agreement except as a consequence to the City's failure to provide funds under this Agreement.

6.5 Rights Retained by the City. City retains the following rights which must be cited in Operator's new Food & Beverage Contract with the Concessionaire:

- (i) Final approval of menu items, portions and pricing, that is competitive in the marketplace.
- (ii) Require Operator and Concessionaire to manage Foodservices in a First Class manner in terms of service levels as well as the quality and variety of the offerings.
- (iii) Require Operator and Concessionaire to comply with all governmental rules and regulations, including City recycling and sustainability issues, as well as City approved MBE/WBE/DBE directives and goals.
- (iv) Require Operator to ensure that all of their employees and employees of any of their agents or subcontractors such as the Concessionaire, represent the City in a respectful and First Class manner.
- (v) To establish minimum acceptable insurance levels that Operator and all of the subcontractors, including the Concessionaire must carry, naming the City as an additional insured and indemnifying the City from Operator, its contractors' or subcontractors' actions or inactions.

6.6 Execution of Contracts. Subject to the paragraph above, and under terms consistent with terms of this Agreement, Operator shall enter into service contracts, Foodservice Agreements and other contracts related to the Facilities, on behalf of the City, acting as independent contractor. Any material agreements relating to the Facilities shall contain the standard indemnification and insurance obligations on the part of each vendor, licensee, or service provider. Additionally, with respect to any contract relating to the Facilities for which the City's approval is required hereunder (i.e., contracts with any Major User, and any contract described in the last sentence of this section), the City will determine with its bond counsel if any such contract needs to be compliant with Revenue Procedure 97-13 and will so advise Operator of such requirement in connection with its response to such approval request. Operator shall also obtain the prior approval of the City (which approval shall not be unreasonably withheld or delayed) before entering into any such contract with a term that expires after the Term of this Agreement, unless such contract, by its express terms, can be terminated by Operator or City following expiration of the Term without any penalty.

6.7 Transactions with Affiliates. Subject to this Article 6, transactions with Affiliates in connection with its obligations hereunder relating to the purchase or procurement of services (other than Foodservices) for the Facilities (including ticketing services, Commercial Rights sales, web design services and graphic design services), Operator may purchase or procure such services, or otherwise transact business with, an Affiliate of Operator, provided that the prices charged and services rendered by such Affiliate are competitive with those obtainable from any unrelated parties rendering comparable services. Operator shall, at the request of the City, provide reasonable evidence establishing the competitive nature of such prices and services. Without limiting the foregoing but subject to the terms under this Agreement, the parties specifically agree that Operator may engage its Affiliate(s) to provide ticketing services for the Facilities, to provide Commercial Rights marketing services for the Facilities, on terms to be approved by the City, such approval not to be unreasonably withheld. Prior to Operator engaging any other of its Affiliates, Operator shall notify the City, and the City may require Operator to obtain at least two other competitive bids from unrelated parties to ensure that such services are being provided on competitive terms.

6.8 Employees.

- (i) All employees needed to operate and manage the Facilities shall be hired by Operator. Employees hired by the Operator shall be employees of the Operator and not of the City, although the employment costs of such employees (including, without limitation, wages, salary, benefits, and the costs of complying with local, state, and federal employment laws) shall be part of the Reimbursable Expenses. The Operator shall have complete and absolute discretion and authority with respect to the number, functions, qualifications, compensation and other terms and conditions relating to its employees.
- (ii) City shall have the right (but not the obligation) of reasonable approval of the individuals (and their successors) proposed by the Operator for the following Facilities positions: General Manager, assistant general manager, director of sales and marketing, controller, director of operations, human resources director and chief engineer. The Operator will not, in any year, re-assign more than two of such personnel to other properties owned, managed, or operated by Operator without the prior consent of City.
- (iii) The City covenants and agrees that neither it nor its Contract Administrator shall during the term hereof or for a period of 18 months following termination of this Agreement hire, employ, solicit for hire, or engage in any manner or for any purpose of any person who has served as General Manager or Contract Administrator during the term of this Agreement or any other of Operator's "senior personnel." "Senior personnel" means and refer to the personnel of Operator who report directly to the General Manager, but shall not include the chief engineer.

6.9 Purchase of Supplies and Services. The Operator shall have full authority and discretion as to the purchase of all equipment, materials, supplies and inventories reasonably required by it but shall endeavor to make all such purchases at the best price available as known to the Operator, considering the quantities required and the quality desired, at the time available for the delivery

and the sources of supply whenever possible as part of a volume purchase by the Operator. Operator shall, for the purchase of all equipment, materials, supplies, services, and inventories in excess of \$10,000 for any single item or more than \$50,000 in the aggregate in any one purchase order, utilize a competitive bidding process similar to that used by the City in the purchase of its supplies and services common to the market in which Operator shall seek the same. Under such circumstances, Operator shall, to the extent practicable and feasible, solicit three (3) competitive bids. Notwithstanding such procedures, Operator shall not be obligated to accept the lowest bid but shall be entitled to take into account, in the award of any such contract, the quality of the service or product and award the contract accordingly. The Operator may acquire property or services from or otherwise transact business with its Affiliates for any of the goods to be purchased or services to be performed by it under this Agreement but only if the prices charged and services rendered are competitive with those obtainable from others rendering comparable services in the field. To ensure compliance in this respect, Operator agrees to obtain at least two (2) other competitive bids from persons other than the Operator's Affiliates, whenever the Operator considers transacting business with an Affiliate for providing goods or services under this Agreement.

All purchases by Operator of furniture, fixtures, and equipment and all capital improvements shall be made in the name of the City. Operator shall establish an inventory control system to account for all such purchases. The City shall have the right to inspect the books and records of Operator to verify Operator's compliance with the provisions of this section.

6.10 No Expenditures in Excess of Budget. The Operator shall not, without advance written authorization by the City, incur in any Fiscal Year obligations for Expenses at either the Facilities aggregating in excess of the amount of total Expenses set forth in the Approved Budget for the Facilities, as the case may be, except for (i) Emergency Expenditures, and (ii) expenses for services provided to the Facilities by third parties the costs of which is not within the reasonable control of Operator such as, by way of illustration but not limitation, costs of utilities, costs of insurance and necessary and reasonable expenses which vary with increases in revenue generation and usage. Operator shall have the right, however, to expend savings achieved in any line item of the Approved Budget (but not more than an amount not less than 10% and not more than 15% of such line item, the percentage, within such range, is to be agreed upon between the City and the Operator) to offset any overruns in other line items of the same Approved Budget. If Operator incurs any expense not provided for in the Approved Budget, excluding Emergency Expenditures and those expenses not within the reasonable control of Operator as aforesaid, and the same is not approved by the City, Operator shall be responsible for such excess expenditure from Operator's own funds.

With respect to Emergency Expenditures, Operator shall have the right to make the same, up to an amount agreed upon by the parties (but in no event less than \$15,000 nor more than \$50,000) per item, without prior approval from the City. If any Emergency Expenditure will exceed the agreed upon maximum, Operator shall submit the same to the City for the City's prior written approval. The City agrees to respond to any request of Operator for an Emergency Expenditure within 24 hours from the receipt of the request therefor, or within such lesser time as is appropriate under the circumstances.

For those expenditures in Excess of Budget that have been approved by the City, if those amounts will cause the Operator to exceed the total Approved Budget amount for the year, then the Operator shall present a proposed budget amendment to the City for consideration and further

approval by City Council prior to the end of the Fiscal Year.

6.11 Major Users. Operator shall negotiate contracts with Major Users. Operator shall submit any such contract, after negotiation thereof, to the City for the City's approval or disapproval of the same. The City agrees to respond to such request within ten (10) business days following receipt of such request, failing which the City shall be deemed to have disapproved the same. The City shall have the right to participate in all negotiations with Major Users including, without limitation, attending all meetings and participating in all other negotiations. To that end, Operator shall provide the City's Contract Administrator reasonable advance notice of the time and date of any such negotiations.

6.12 Settlement of Claims. Operator has been advised by the City (and the City shall continue to keep Operator apprised of) the City's procedures and requirements with respect to settlement of third party claims filed against Operator (to the extent related to the Facilities), the City, or with respect to the Facilities. Operator agrees to comply with such settlement claims and procedures as it has been advised in writing by the City. All costs and expenses thereof, including the settlement thereof, penalties, and interest thereon, shall be deemed an Operating Expense in accordance with the terms and provisions of this Agreement unless the cause therefor is Operator's (or its employees) negligence or willful misconduct or is the result of Operator's breach of this Agreement, in which event Operator shall bear all such costs, penalties and settlement.

6.13 Bond Financing. Operator acknowledges that the Facilities is to be financed in large part with the proceeds of one or more series of City bonds ("Bonds") the interest on which is intended to be excluded from gross income for federal income tax purposes. In order to assist the City in preserving the tax-exempt nature of the Bonds (the City hereby agreeing that Operator shall have no responsibility to the City or any other party if the tax treatment of the Bonds should be different than that intended by the City), Operator acknowledges and agrees as follows:

- (a) In determining whether to grant or withhold any approval of a contract for which approval of the City is required under this Agreement, the City may consider the effect of such contract for federal tax purposes on the exclusion of interest on the Bonds for federal income tax purposes.
- (b) Each of the following described contracts must be approved by bond counsel to the City before execution thereof by Operator:
 - (i) Any contract relating to the Facilities which grants a leasehold interest, term for years, or other real estate interest in the Facilities (other than a revocable license), or grants a long term right to use the Facilities on a basis different from that of the general public.
 - (ii) Any contract for the provision of services related to the Facilities must, to the extent applicable, comply with the provisions of Revenue Procedure 97-13 and the interpretations thereof.
 - (iii) Any contract for the use of the Facilities for shows, programs, conventions and other

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

- (c) Any approval of a contract by the City required under this Section shall be given within ten (10) business days following receipt by the City of a request for approval, failing which the City shall be deemed to have disapproved the same.
- (d) If required by bond counsel to the City or counsel to the underwriters, Operator agrees to make modifications to this Agreement so that the same is, in the opinion of such counsel, a qualified management contract for purposes of Revenue Procedure 97-13 promulgated by the Internal Revenue Service. In the event such modifications shall materially increase Operator's obligations hereunder or materially decrease Operator's rights hereunder, then Operator shall have the right to terminate this Agreement upon not less than ninety (90) days prior written notice to the City which notice must be provided to the City within ten (10) business days after Operator is requested by the City in writing to enter into an amendment or modification hereof pursuant to this paragraph. If Operator timely exercises its right of termination under this paragraph, Operator shall continue to perform its obligations hereunder through the date of termination and the City shall continue to pay Operator therefor in accordance with this Agreement; upon termination, neither party shall have any obligations accruing thereafter hereunder.

ARTICLE 6B FOOD AND BEVERAGE SERVICES

6B.1 Foodservices Operation and Management. Operator shall operate themselves or shall contract with Concessionaires (which may include affiliates of Operator) other than Operator to operate and provide the Foodservices and oversee the provision of those services by such Concessionaires, if any. Any agreement with a Concessionaire other than Operator must comply with the provisions of Revenue Procedure 97-13 and the interpretations thereof.

6B.2 Operator, upon request, shall provide the City a copy of all agreements, if any, entered into between Operator and Concessionaires other than Operator, and each of these agreements shall provide that in the event the City terminates this Agreement with Operator, the agreements between Operator and Concessionaires other than Operator are likewise terminated or, at the City's request, assigned to a party designated by the City. The City may contact the Concessionaires other than Operator directly with respect to matters associated with the services subject to the agreement between Operator and said Concessionaire.

6B.3 Alcoholic Beverages.

a. The sale of alcoholic beverages will be permitted and conducted in accordance with regulations established by the City and the Texas Alcoholic Beverage Code ("Code") and the Texas Alcoholic Beverage Commission's regulations under the Code, as such regulations may be amended from time to time.

b. Operator and/or its designated Concessionaire shall work expeditiously to apply for, obtain and maintain all appropriate licenses and permits under the TABC Regulations and any other applicable law in order to store, sell and serve alcoholic beverages at event at the Facilities. The costs of obtaining and maintaining such licenses and permits shall be an Operating Expense.

c. Alcoholic beverages may not be served at any Event;

(i) If the Licensee desires that no alcoholic beverages be served at the Event;
or

(ii) If the General Manager determines that it is not appropriate for alcoholic beverages to be served at a particular Event; or

(iii) If any service of alcoholic beverages at the Event would result in violation of any law or regulation.

d. All employees of Operator or a Concessionaire other than Operator who are involved in the serving of alcoholic beverages must be certified through a TAM or ABC-approved program.

6B.4 Catering. Operator is hereby granted the Exclusive Right to provide Catering services at the Facilities; however, Catering services provided for Events held at the Convention Center may be provided by any Outside Caterer approved by Operator, provided that the Licensee has requested the Outside Caterer's services and that the Outside Caterer enters into an Outside Catering Agreement. Operator agrees to facilitate the use of the Convention Center with any Outside Caterer and to require Outside Caterer to provide proof of any and all licenses, permits and insurance required for Outside Catering services.

a. Catering by Outside Caterers at the Convention Center shall be on a single event basis, and Outside Caterers servicing multiple Events will enter into an Outside Catering Agreement for each Event. Outside Caterers will be allowed to use the old catering kitchen located in the Convention Center, so long as it is available for use, and their use of any equipment belonging to the City is to be addressed in the Outside Catering Agreement.

b. Operator will facilitate the use of Outside Caterers at the Convention Center, which may include, but is not limited to the following:

(i) the preparation of a standard Outside Catering Agreement to be used by Operator;

(ii) obtaining of certificate(s) of insurance from Outside Caterers;

(iii) arranging for use of City-owned equipment if desired by an Outside Caterer and addressed in the Outside Catering Agreement;

(iv) inspecting the old catering kitchen before and after an Event when it is used by an Outside Caterer; and

(v) collecting and accounting for equipment rental and catering fees, which will be turned over to Operator after each Event.

c. With regard to Catered Events at the Facilities, Operator will be the “default” caterer.

6B.5 Duties of Operator.

d. Operator shall conduct the Foodservices so that all persons at the Facilities shall have a reasonable opportunity to purchase the Food Products sold at all Events held at the Facilities. It is understood and agreed by the Parties that it is not always feasible to operate all of the Concession facilities for each and every Event held at the Facilities, and Operator shall have the right not to operate one or more of the Concession facilities at any Event held at the Facilities, as Operator reasonably determines to be appropriate for the efficient and cost-effective performance of Foodservices hereunder.

e. Operator shall use its reasonable best efforts to operate the Concessions services so that all customers at the Facilities shall be promptly and satisfactorily served the Food Products sold by way of Concessions. All Food Products sold by Operator in providing the Foodservices shall be of the highest standard of quality and purity, and shall be appropriately prepared and appropriately served. All Food Products and Foodservices shall conform to all requirements of applicable federal, state, county, and municipal laws and ordinances.

f. Unless otherwise agreed between the parties, Operator, as an Operating Expense, shall procure and maintain during the Term of this Agreement all appropriate licenses and permits which may be required for the operation of the Foodservices; provided, however, that the City shall provide Operator with the assistance as it shall reasonably request in connection with any application by Operator for any license or permit, or the renewal thereof.

g. Operator shall not take, and shall use its reasonable best efforts not to permit any other person, firm or entity to take any action that is inconsistent with, or would constitute a violation of, any of the terms and conditions of Operator’s on-site liquor license for the Facilities, or any other license or permit obtained by Operator in connection with the operation of the Concessions hereunder.

h. Operator shall pay and discharge when due all sales, use, excise and other taxes imposed on Operator’s sales of all Food Products and Foodservices at the Facilities.

i. Operator, as an Operating Expense, shall hire all employees reasonably necessary to conduct the Foodservices. On being hired, the employees shall be subject to any and all legal requirements in connection with the employment by Operator. All persons hired by Operator shall be employees of Operator and not employees of the City. Operator shall comply with all applicable federal, state, county, and municipal laws and ordinances pertaining to wages and hours of employment for all its employees at the Facilities. Operator shall not discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, age, or disability in violation of any applicable federal, state, county, or municipal law or ordinance; provided, however, that the City hereby acknowledges and agrees that a successful

claim by any employee or applicant under any law or ordinance specified in this Article shall not be considered a breach or default by Operator under this Agreement.

j. Operator, as an Operating Expense, shall at all times maintain the Foodservice Premises in a neat, clean, and sanitary condition. Employees of Operator shall deposit trash and garbage resulting from the Foodservices into suitable containers provided by Operator for waste removal. Operator shall make all arrangements for the collection of waste products from the Facilities.

k. Operator, as an Operating Expense, shall be responsible for repairing and maintaining all Foodservice equipment, including cleaning supplies, used in the operation of the Foodservices as well as interior areas the Foodservice Premises. Operator, as an Operating Expense, shall provide all uniforms for its employees.

l. Operator, as an Operating Expense, shall provide sufficient managerial and customer service personnel to provide first class Foodservices at the Facilities.

m. Operator shall keep all records relating to the Foodservices on file for a period of three (3) years following the end of the Fiscal Year to which they apply, including the last Fiscal Year of the Term. Operator shall maintain suitable books of account, showing Gross Receipts, Operating Expenses, with respect to Foodservices at the Facilities, and the books shall be available for inspection by the City during regular business hours, upon reasonable advance notice to Operator. The City shall make reasonable efforts to ensure that the inspection shall not interfere with Operator's operation of the Food Services.

n. Operator agrees that its employees and agents will comply with and observe all rules concerning conduct of its employees at the Facilities which the City may from time to time impose on SMG's employees and agents at the Facilities, subject to restrictions imposed on Operator by any federal, state or local statute, law, code or regulation, or by any collective bargaining agreement or other contract affecting the employee or agent.

o. At all times during the Term of this Agreement, Operator shall maintain its practices of employment and services to the patrons of the Facilities in full compliance with all applicable federal, state and local laws, regulations and governmental orders.

p. Subject to the limitations on Operator's authority under this Agreement, and subject to the limits of any Approved Budget, Operator shall exercise its diligent, good faith efforts in managing and operating the Foodservices at the Facilities so as to minimize Operating Expenses and to maximize Gross Receipts, while maintaining a level of service that is satisfactory to the City.

q. As an Operating Expenses, Operator will advertise, promote activities, market, and conduct public relations for the Foodservices. Operator covenants and agrees, subject to the reasonable consent of the City, to develop all intellectual property rights required for the advertisement, promotional activities, marketing, and public relations for the Foodservices, the cost of all of which shall be an Operating Cost.

r. Subject to the limitations set forth in this Agreement, Operator shall do the following (or cause the following to be performed) throughout the Term:

(i) Manage and operate the Foodservices at the Facilities in a manner that will promote and further the purposes for which the Facilities exists, as set forth in the Recitals to this Agreement;

(ii) Negotiate, execute, and perform contracts, use agreements, licenses and other agreements for food and beverage services with persons who desire to schedule Events at the Facilities (“Licensees”);

(iii) Negotiate contracts for and operate at and for the Facilities, concerning the sale of Food Products and Novelties, as allowed under this Agreement;

(iv) Plan, coordinate, and administer the Foodservice operation at the Facilities and continue to identify, select, and train the Foodservice staff;

(v) Retain legal counsel in connection with the discharge of its duties hereunder (to the extent, and no further, Operator considers it appropriate in its sole discretion) and cause the counsel to coordinate with legal counsel for the City where necessary or appropriate. Operator acknowledges that the legal department or outside legal counsel of the City shall at all times represent the respective interests of SMG and the City;

(vi) Coordinate the work of all parties performing work in connection with the Foodservices. This includes facilitating services provided by Outside Caterers and collecting the Catering fees from Outside Caterers.

(vii) Monitor actual and projected Operating Expenses and advise the City if projected Operating Expenses exceed the amounts set forth in the Approved Budgets;

(viii) Furnish all Foodservices, personnel, materials, tools, machinery, equipment and other items necessary to accomplish the foregoing requirements of this Agreement;

(ix) Devise and implement procedures (including preventive and predictive maintenance procedures) reasonably designed to keep the Foodservice equipment at the Facilities in reasonably good order and condition, subject to ordinary wear and tear, and maintain the Foodservice Premises at the Facilities in the same order and condition; and

(x) Not create, assume or suffer to exist any mortgage, pledge, lien, charge or security interest or other encumbrance of any nature whatsoever relating to this Agreement, or its right and obligations under this Agreement, except any pledge or other encumbrance of the Management Fees due Operator under this Agreement; and

(xi) Promptly and fully discharge and pay all of its obligations under this Agreement at or before the time specified for performance or payment thereof, including without limitation, the payment of all Operating Expenses. Operator shall have the right

to contest its obligations to make payments to third parties so long as (a) Operator does so in good faith, diligently and by appropriate proceedings, and (b) the contest does not subject the City to any potential civil or criminal liability or constitute a breach of any law, rule, code, or regulation applicable to the City.

6B.6 Compliance with the Law. Operator shall comply with all applicable laws, rules, regulations, ordinances relating to the use and operation of the Foodservices and the employment of persons in providing the services. Operator shall perform its obligations hereunder in good faith. If compliance with applicable laws, rules, regulations, or ordinances with regard to the condition of the Facilities requires funds not provided for in an Approved Budget and SMG refuses to consent to amendment of the Approved Budget providing for expenditure of funds necessary to cause the Facilities to comply with the applicable laws, rules, regulations, or ordinances, then Operator may terminate this Agreement on ninety (90) days' prior written notice to SMG (which notice shall describe with specificity the applicable laws, rules, regulations, or ordinances violated and the actions needed to remedy the violations) if (a) the failure to comply with the applicable laws, rules, regulations, or ordinances subjects Operator to potential civil or criminal liability, and (b) SMG fails, within the ninety (90) day period, to provide the funds necessary to correct the violation.

6B.7 Funding Limitations. The City recognizes and agrees that performance by Operator of its responsibilities under this Agreement is limited by the Approved Budgets and approved Emergency Expenditures.

ARTICLE 7 FEES AND EXPENSES

7.1 Facilities Base Management Fee. As base compensation to Operator for providing the services herein specified during the Term with regard to the Facilities, the City shall pay Operator during the Term, an annual fixed fee of One Hundred Twenty Five Thousand (\$125,000) which amount shall be adjusted upward on the first day of each Fiscal Year, other than the Fiscal Year ending July 31, 2013, during the term hereof by the percentage change in the Consumer Price Index — All Urban Consumers (CPI-U) for the Houston-Galveston-Brazoria, TX area — All Items, during the one year period immediately preceding such 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 City of the United States Government succeeding to its functions (as adjusted, the "Fixed Fee"). In consideration of its services with regard to the Facilities, the Operator will be paid a monthly management fee which shall be deemed earned as of the first day of each month of the term following the Effective Date but which shall be due and payable in arrears following receipt by the City of Operator's monthly report reflecting results from operations at the Facilities for the prior month, such payment to be made within the time periods prescribed by the Prompt Payment Act. The amount of monthly management fee is fixed and shall be 1/12th of the Fixed Fee.

7.2 Facilities Incentive Fee. In addition to the Base Management Fee, Operator shall be entitled to an annual Incentive Fee with respect to each Fiscal Year during the Term if in any such Fiscal Year (i) the Net Operating Income is an improvement over the Net Operating Income/Loss Benchmark; and (ii) the food and beverage operating profit margin is 34.5% or greater; and (iii) Operator meets mutually agreed upon Customer Satisfaction Goals (defined herein); and (iv) Operator meets mutually agreed upon

Maintenance and Capital Goals (defined herein) The Net Operating Income/Loss Benchmark is equal to the average of the actual combined Net Operating Income for the rolling three (3) year period immediately preceding the current contract year. The Incentive Fee shall be equal to 18.8% of the amount by which the Operating Revenues for such Fiscal Year exceed the Revenue Benchmark (which is the projected revenue in the Approved Budget for the Facilities); and in no event shall the annual Incentive Fee for any Fiscal Year under this Section 7.2(a) exceed 100% of the Base Management Fee payable pursuant to Section 7.1(a) for such Fiscal Year. In the event that the Net Operating Income in a Fiscal Year does not surpass the Net Operating Income/Loss Benchmark, Operator shall not be entitled to receive the Incentive Fee described in this Section 7.2(a). Additionally, but solely for purposes of calculating such Incentive Fee, Operating Revenues shall not include the revenues related to the sale of naming rights for the Facilities. The Incentive Fee shall be paid to Operator no later than thirty (30) days following the completion of the annual audit by the City.

ARTICLE 8 INSURANCE

8.1 Insurance to be Maintained by the City. The City shall provide property insurance for the Facilities and for City-owned contents.

8.2 Insurance to be Maintained by Operator. The Operator shall obtain and maintain (or cause to be obtained and maintained) in effect the following policies of insurance, the cost of which shall be a Reimbursable Expense:

- (a) Workers' Compensation. Such workers' compensation insurance coverage as may be required by law, including employer's liability coverage of at least \$500,000 per person per occurrence and \$500,000 per person per disease, and \$500,000 aggregate disease;
- (b) Commercial General Liability. Commercial general liability and property damage insurance with a combined single limit of at least \$5,000,000 per occurrence and \$5,000,000 aggregate insuring against all liability of the Operator and its General Managers and/or Contract Administrators arising out of and in connection with the Operator's use or occupancy of the Facilities, and premises liability;
- (c) Liquor Liability. Contingent Liquor liability insurance with a combined single limit of \$1,000,000 and \$5,000,000 in the aggregate;
- (d) Business Automobile Policy. At least \$1,000,000 of coverage, including bodily injury and property damage, arising out of the operations, maintenance or use of owned and non-owned automobiles, hired, or other vehicles;
- (e) Excess Liability Insurance. At least \$9,000,000 of excess liability on a per occurrence basis and \$9,000,000 aggregate basis;

- (f) Crime and Fidelity Coverage. At least \$500,000 per occurrence of coverage for (i) employee dishonesty, (ii) forgery or alteration, (iii) theft, disappearance and destruction inside and outside the Facilities; and (iv) robbery and safe burglary inside and outside the Facilities;
- (g) Operator and any subcontractors are responsible for all damage to their own equipment or property.

8.3 Insurance Requirements. All insurance required under this Agreement shall be issued by insurance companies licensed to do business in the State of Texas with the financial rating of at least A-vii status as rated in the most recent edition of Best's Insurance Reports, shall be issued as a primary policy, shall contain an endorsement requiring sixty (30) days written notice from the insurance companies to the City and the Operator before cancellation, non-renewal, termination, or change in the coverage, scope or amount of any policy, and shall, in the case of the Commercial General Liability Insurance, name the City as an additional insured.

8.4 American Bank, N.A. Operator must name American Bank, N.A. (as naming rights sponsor) as an additional insured on all insurance required hereunder, excluding any worker's compensation insurance coverage or crime and fidelity coverage.

8.5 Waiver of Subrogation. The parties release each other from any claims for damage caused by or resulting from risks insured against under any insurance policies carried by the parties under this Agreement. The parties agree to cause the issuers of the insurance policies maintained by them hereunder to include waivers of the rights of recovery and subrogation.

8.6 Proceeds of Casualty Insurance. If either the Facilities or any part is damaged or destroyed by fire or other casualty, the City will determine whether or not repairs and restoration are practicable and feasible and will inform Operator in writing of its election to make or not make any such repairs and restoration within one hundred twenty (120) days following the date of such damage or destruction. All proceeds of any casualty insurance paid for by the City shall be the exclusive property of the City and Operator shall have no rights to receive any sums therefrom. If the City elects not to repair or restore, the City shall have the right to terminate this Agreement with respect to the Facilities (whichever has been damaged), without penalty, premium or fee, by notice to Operator. If the City elects not to restore the Facilities (whichever has been damaged) but within one (1) year following termination of this Agreement decides to restore the same, the City shall give written notice thereof to Operator whereupon Operator shall have a period of thirty (30) days in which to elect to enter into, and actually enter into, a new contract with the City for operation of the same following its restoration which contract shall be on the same terms and conditions described herein except that the term shall be only for the portion of the term hereof lost due to termination under this Section. If, on the other hand, the City elects to repair and restore, payments of the base management fee attributable to the Facilities, as the case may be, shall be equitably reduced (taking into account the volume of services provided by Operator during reconstruction) until the Facilities, as the case may be, is reopened to the public; however, the City shall continue to reimburse Operator for Reimbursable Expenses until the Facilities (whichever has been damaged) is re-opened to the public.

8.7 INDEMNIFICATION AND HOLD HARMLESS. *Operator, its officers, agents, and employees ("Indemnitor") shall indemnify and hold the City of Corpus Christi,*

its officers, agents, employees and representatives ("Indemnitees"), harmless and defend with counsel retained by Operator, from and against any third-party action, cause of action, suit, debt, cost, directly-related reasonable expense (including reasonable attorneys' fees, court costs or investigation costs), claim, or demand brought or asserted by any third-party whomsoever (collectively, "Claims"), including but not limited to claims on account of personal injuries or death or damage to property, at law or in equity, which any Indemnitees may suffer or sustain or which may be asserted or instituted against any of Indemnitees resulting from or in connection with (I) the negligence or willful misconduct of Operator or its agents, contractors or employees; (ii) any breach or default by Operator of any of its warranties, representations, covenants, or obligations made in this Agreement; or (iii) the violation of any copyright, patent, service mark, trade name or trademark by the Operator; provided, however, that the foregoing indemnification shall not extend to Claims to the extent such Claims (A) arise from any breach or default by the City of any of its warranties, representations, covenants or obligations made in this Agreement, as determined by a court of competent jurisdiction, (B) are caused by or arise out of the services provided by the architects, engineers and other agents (other than Operator) retained by the City in connection with capital improvements or capital equipment purchases at the Facilities, (C) arise from the fact that at any time prior to, as of, or after the commencement of the term hereof the Facilities and its premises are not or have not been, in compliance with all federal, state, local and municipal regulations, ordinances, statutes, rules, laws and constitutional provisions including, but not limited to, all handicap accessibility laws, rules and regulations, (D) arise from any obligation or liability under or in respect of any contract, agreement or other instrument executed by Operator as authorized herein unless Operator's acts or omissions in administration thereof are the basis for such liability, as determined by a court of competent jurisdiction, or (E) arise from any act or omission carried out by Operator at or pursuant to the express direction or instruction of the City's Contract Administrator (but only if Operator advises the City's Contract Administrator in writing, promptly following such direction, that Operator believes such direction to be imprudent). City agrees to promptly notify Operator of any Claim received by the City. This indemnity specifically includes any Claims brought by Operator's officers, agents, contractors, or direct employees. This indemnity specifically includes any Claims brought relating to the sale or service of alcoholic beverages. This indemnity shall continue notwithstanding the termination of this Agreement with respect to any act or occurrence preceding the termination.

ARTICLE 9

EQUAL EMPLOYMENT OPPORTUNITY

9.1 Discrimination Prohibited. Neither the Operator, nor any Affiliate of the Operator performing services under this Agreement, shall knowingly discriminate against any employee or applicant for employment because of age, race, creed, sex, color, disability, or national origin, and the Operator and its Affiliates shall take affirmative action to ensure that any employee or applicant for employment is afforded equal employment opportunities without discrimination because of age, race, creed, sex, color or national origin. Such action shall be taken with reference, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation in selection for training or retraining, including apprenticeship and on the job training. Subject to

compliance with such obligations, the Operator shall have plenary power with respect to the hiring and discharge of its employees.

9.2 MWDBE. The Operator and its subcontractors shall comply with applicable City minority, women and disadvantaged business enterprise policies in performing Operator's services hereunder, which policy consists of an obligation on the part of Operator to use its commercially reasonable efforts to achieve a level of at least twenty-five percent (25%) minority participation in Operator's employment practices and in respect to contractual relations for the provision of goods and services for the Facilities designated by the City.

ARTICLE 10 CERTAIN MATTERS REGARDING TERMINATION

10.1 Surrender of Improvements. Upon expiration or sooner termination of this Agreement, Operator shall promptly surrender the Facilities to the City, leaving to the City all equipment, supplies, manuals, books, records, and inventories that are the property of the City or that have been purchased from Operating Revenues or from funds made available by the City, and Operator hereby quitclaims, transfers, sells, assigns, and conveys to the City, without recourse, representation, or warranty, all right, title, and interest that Operator may have to all improvements made to the Facilities and all equipment, materials, supplies, inventories and all other property so purchased. All such items including equipment shall be returned in their original condition less only normal wear and tear. Operator agrees to execute any and all documents necessary to evidence such transfer promptly upon request therefore by the City. Operator shall also deliver all documents, records, and other work product generated by Operator for the City during the term of this Agreement.

10.2 Continuation of Performance. In the event of termination of this Agreement, Operator, at the City's option, shall continue to perform under the provisions of this Agreement for a reasonable time as determined by the parties to enable the City to make arrangements for a successor as operator of the Facilities; provided, however, that Operator shall not be required to perform for a period of time during which the Operator's actual Expenses and the management fees payable under this Agreement are not promptly and timely funded and paid by the City and in no event for more than six (6) months following such termination.

10.3 Termination by the City for Lack of Funding. Should the City elect to terminate funding for the operation and maintenance of the Facilities, the City shall have the right to terminate this Agreement with regard to the Facilities, upon written notice to Operator, such termination to be effective on the ninetieth (90th) day after such election to terminate. In such event, the City shall pay to Operator all fees and other sums due to Operator hereunder through and including the date of termination with respect to the Facilities; otherwise, such termination by the City shall be without penalty or liability.

In the event in lieu of termination of all funding for operation and maintenance of the Arena or Convention Center the City's annual budget or other budget process results in a reduction of the funds available to be paid to Operator hereunder, Operator shall have the right to either accept such reduced funding or, at Operator's election, to terminate this Agreement as to the affected Facilities by written notice to the City given within sixty (60) days following Operator's receipt of notice of the reduction in funding.

Should funding be restored by the City for operation and maintenance of the Facilities, after this Agreement has been terminated due to termination or reduction in funding, the City shall provide written notice thereof to Operator whereupon Operator shall have the first right to enter into a new contract on the same terms and conditions set forth herein. In the event Operator elects to exercise such right and option, Operator and the City shall promptly thereafter execute and enter into an amendment to this Agreement as to the Facilities, reinstating the same to its original terms and conditions.

10.4 Termination at Will. The City may, effective the last day of the third year and anytime thereafter, terminate this Agreement with or without cause upon providing ninety (90) days prior written notice to that effect to Operator, such termination to be without the payment of any penalty, fee or premium. In the event of termination, however, the City shall pay Operator any base management fees accrued but unpaid as of the date of termination and any earned but unpaid portion of the incentive fees described in Section 7.3 above.

10.5 Termination by the City: The parties have agreed that a material condition to SMG's engagement under this agreement is the improved financial performance of the American Bank Center. As such, SMG's incentive compensation is based on SMG surpassing the Net Income/Loss Benchmark for each contract year. In addition, notwithstanding anything to the contrary contained in this Agreement, if SMG's performance under this Agreement results in the increase of Actual Operating Expenses over the Budgeted Operating Expenses (i) in any Contract Year, then within fifteen (15) days of SMG's submission of the Annual Report, SMG shall provide to the City an explanation of the reasons for such failure and a plan to address such failure for the next Contract Year (but in no event shall such explanation and plan be delivered later than seventy-five (75) days following the end of such Contract Year); and (ii) in any two (2) consecutive years, then the City shall have the right to terminate this Agreement upon ninety (90) days written notice to SMG. However, if Actual Operating Expenses have increased over the approved budgeted expenses and there are corresponding revenues to offset such increase then it will not trigger this provision.

ARTICLE 11 BREACH

11.1 Breach. Each of the following shall constitute a breach under this Agreement:

- (i) Failure to pay when due any amount required to be paid under this Agreement, if the failure continues for, in respect to any regularly scheduled payment due hereunder, ten (10) days after notice has been given to the breaching party, or in respect to any payment due hereunder which is not a regularly scheduled payment, thirty (30) days after notice has been given to the breaching party;
- (ii) Failure to perform any other obligation under this Agreement (including Operator's failure to meet the standards of performance hereunder), if the failure to perform is not cured within thirty (30) days after notice has been given to the breaching party, except that if the breach cannot reasonably be cured within thirty days, a breach shall not be deemed to have occurred if the breaching party begins to cure the breach within the thirty (30) day period and diligently and in good faith

continues to pursue the cure of the breach and actually cures the same within sixty (60) days following such notice.

- (iii) Interest on Delinquent Payments. Interest shall accrue on any sums not paid when due in accordance with the Prompt Payment Act.
- (iv) Non-Curable Material Breach by Operator. Each of the following shall constitute a non-curable breach of Operator under this Agreement:
 - (v) Any representation or warranty of Operator contained herein which shall be knowingly false or misleading in any material respect as of the date made or deemed to have been made; or
 - (vi) The Operator shall (A) admit in writing its inability to pay its debts as they become due or (B) file a petition in bankruptcy or for the reorganization or for the adoption of an arrangement under the Bankruptcy Code as now or in the future amended, or file a pleading asking for such relief, or have or suffer to be filed an involuntary petition in bankruptcy against it which is not contested and discharged within sixty (60) days, or (C) make an assignment for the benefit of creditors, or (D) consent to an appointment of a trustee or receiver for all or a major portion of its property, or (E) be finally adjudicated a bankrupt or insolvent under any federal or state law, or (F) suffer the entry of a court order, any federal or state law appointing a receiver or trustee for all or a major part of its property or ordering the winding up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, as now or in the future amended, which order, if not consented to by it shall not be vacated, denied, set aside or stayed within sixty (60) days after the date of its entry, or (G) suffer the entry of a final judgment for the payment of money and the same shall not be discharged or a provision made for its discharge within thirty (30) days from the date of entry thereof or an appeal or other appropriate proceeding for review thereof shall not be taken within said period and a stay of execution pending such appeal shall not be obtained, or (H) suffer a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property and such writ or warrant of attachment or similar process is not stayed or is not released within forty-five (45) days after its entry or levy or after any stay is vacated or set aside, or (I) suffer the placing of a judgment lien on its property and failure to cause such lien to be released and discharged within forty-five (45) days from the date such lien took effect; or
 - (vii) Operator shall conceal, remove or permit to be concealed or removed, any part of its property with the intent to hinder, delay or defraud its creditors or shall make any transfer of any of its property to, or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or suffer or permit while insolvent any creditor to obtain a lien upon its property through legal proceedings, which lien is not vacated within thirty (30) days from the date thereof; or

- (viii) Operator breaches the provisions of Section 6.10 (ii) above or the provisions of Article 14 below.

11.2 Breach Notices. Each party shall promptly notify the other of any acts or omissions believed to be a breach by the other under this Agreement. In order to be effective for purposes of Section 11.1 or 11.2, a notice of a breach must be timely given, must state that it is a notice of breach and must specify in reasonable detail the acts or omissions alleged to constitute a breach of this Agreement.

11.3 Rights of Non-Breaching Party. If a breach occurs and is not waived in writing by the non-breaching party, then the non-breaching party shall have the following remedies which are not exclusive but cumulative in addition to any other remedies now or later allowed by law:

- (i) The right to cure, at the breaching party's cost and expense, any breach; \
- (ii) The right to sue to collect any sums not paid when due, together with interest accrued thereon as provided in Section 11.2;
- (iii) The right to sue to collect damages suffered by the non-breaching party by reason of the occurrence of a willful breach other than breach in the payment of money;
- (iv) The right to terminate this Agreement; or
- (v) The right to seek specific performance of the breached obligation.

ARTICLE 12 MISCELLANEOUS

12.1 Notices. Unless expressly otherwise provided elsewhere in this Agreement, any election, notice or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged) or otherwise actually received by the intended recipient, or three (3) days after mailing the same (by certified mail, return receipt requested) with proper postage prepaid, or when sent by a national commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery, to be confirmed in writing by such courier, or when telecopied, telegraphed or telexed to a party, at such party's address set forth below or at such other address as a party may designate by notice given to the other in accordance with the foregoing.

To the City:

Mr. Ronald L. Olson
City Manager
City of Corpus Christi
1201 Leopard
P.O. Box 9277
Corpus Christi, Texas 78469-9277
Phone: 361-880-3220
Fax: 361-880-3839

With copy to:

Mr. Armando Chapa

City Secretary
City of Corpus Christi
1201 Leopard
P.O. Box 9277
Corpus Christi, Texas 78469-9277
Telephone: 361-880-3105
Fax: 361-880-3113

Mr. Carlos Valdez
City Attorney
1201 Leopard
P.O. Box 9277
Corpus Christi, Texas 78469-9277
Telephone: 361-880-3361
Fax: 361-880-3239

If to Operator:

Mr. Wes Westley
SMG
300 Four Falls Corporate Center
300 Conshohocken State Road
West Conshohocken, Pennsylvania 19428
Telephone: 610-729-7900
Fax: 610-729-1590

With copy to:

Mr. Steven A. Scolari, Esq.
Stradley, Ronon, Stevens & Young, LLP
30 Valley Stream Parkway
Malvern, PA 19355-1481
Telephone: 610-640-8005
Fax: 610-640-1965

Notice shall, in all events, be effective upon receipt by the addressee except that notice by facsimile electronic transmission shall, if received after 5:00 p.m. or any day which is not a business day, be deemed received on the next following business day. Notwithstanding the foregoing, for purposes of approval of Budgets and contracts requiring the approval of the City, the City shall be deemed to have received the same only upon the City's actual receipt thereof.

12.2 Amendments. This Agreement may be amended only in a written instrument signed by both parties.

12.3 Title and Captions. All articles or section titles or captions in this Agreement are for convenience of reference only. They should not be deemed to be part of this Agreement or to in any way define, limit, extend, or describe the scope or intent of any provisions of this Agreement. Except as specifically otherwise provided, reference to "Articles," "Sections," and

"Schedules" are to Articles and Sections of and Schedules to this Agreement.

12.4 Pronouns and Plurals. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

12.5 Right of Ingress and Egress. Operator acknowledges that the City shall have the right to enter the Facilities and grant to others the right of ingress and egress to and from the Facilities for the purpose of inspection thereof or the conduct of capital improvements and for other purposes. The City agrees to coordinate such entry with Operator so as to minimize interference with scheduled activities at the Facilities.

12.6 Intellectual Property Rights.

(i) Pursuant to the terms of this Agreement, the Operator has agreed to advertise, promote activities, market and conduct public relations for the Facilities. Operator covenants and agrees, subject to the reasonable consent of the City, to develop all intellectual property rights required for the advertisement, promotional activities, marketing and public relations for the Facilities, the cost of all of which shall be an Expense. Any and all intellectual property rights including, without limitation, all names and logos for the Facilities, shall be the sole and exclusive property of the City, subject to paragraph (ii) below. Operator hereby conveys to the City, without recourse, representation or warranty, any right, title and interest that Operator may have in and to any such intellectual property rights, including, without limitation, all rights of common law, copyrights, rights of copyright renewal, trademarks and trademark rights, and Operator agrees to execute any documentation reasonably required by the City to evidence such transfer.

(ii) The City hereby grants to Operator a license during the term of this Agreement to use and to grant to others the right to use the intellectual property rights in connection with the advertising, promotional activities, marketing and public relations for the Facilities.

12.7 Severability. Each provision of this Agreement shall be considered to be severable and, if, for any reason, any such provision or any part thereof, is determined to be invalid and contrary to any existing or future applicable law, such invalidity shall not impair the operation of or affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part thereof had been omitted.

12.8 Successors. This Agreement shall be binding upon and insure to the benefit of the parties and their respective heirs, executors, successors, and assigns but this provision shall not be deemed to permit any assignment by a party of any of its rights or obligations under this Agreement except as expressly provided herein.

12.9 Assignment. Operator shall not voluntarily assign or encumber its interest in this Agreement without first obtaining the City's consent. Any assignment or encumbrance without the City's consent shall be voidable and, at the City's election within thirty (30) days of actual knowledge of an assignment or encumbrance, shall constitute a breach which shall be a breach unless the assignment or encumbrance is rescinded within thirty (30) days after the City has given the Operator notice of the City's

election to treat the assignment or encumbrance as a breach. The Operator shall, however, have the right without the City's consent but upon prior notice to the City, to assign this Agreement (i) to any Affiliate of Operator if such Affiliate executes an agreement in form reasonably acceptable to the City assuming the Operator's obligations hereunder, whether arising prior to or after the date of such assignment; or (ii) to any entity with which the Operator has merged or consolidated or to a purchaser of all or substantially all of the Operator's assets, if the assignee executes an in form reasonably acceptable to the City assuming the Operator's obligations hereunder, whether arising prior to or after the date of such assignment. No such assignment shall release or relieve Operator from any of the obligations of the Operator hereunder, whether arising prior to or after the date of such assignment.

12.10 Further Action. Each party, within ten (10) days after notice from the other party, shall execute and deliver to the party a certificate stating that this Agreement is unmodified and in full force and effect, or in full force and effect as modified, and stating the modifications, and the other party is not, to the best of the party's knowledge, in breach under this Agreement or stating the exact nature of any breach alleged to have occurred.

12.11 Gratuities. It shall be a breach of Operator's obligations hereunder to offer, give, or agree to give any employee or former employee of the City a gratuity or offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of any purchase request, influence in the consent of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to or solicitation of any contract or proposal therefor by Operator from the City.

12.12 No Solicitations. Operator shall not accept any solicitations, requests for services, contributions, gifts, favors, tickets, gratuities or other benefits from any party or any person on behalf of the City who seeks to do or is doing business with the Facilities.

12.13 Entire Agreement; Attorneys' Fees. This Agreement, including the attached exhibits, contains the entire agreement of the parties and supersedes all prior and contemporaneous agreements and understandings, oral or otherwise, among the parties with respect to the matters contained in this Agreement and may not be modified or amended except as set forth in this Agreement. The prevailing party in any litigation arising out of this Agreement or relating hereto shall be entitled to recover, in addition to any award made in such dispute, reasonable attorneys' fees and costs incurred by such party in preparing for and participating in such litigation.

12.14 Counterparts. This Agreement may be executed in one or more counterparts and each of such counterparts, for all purposes, shall be deemed to be an original, but all of such counterparts together shall constitute but one and the same instrument, binding upon the parties, notwithstanding that all of the parties may not have executed the same counterpart.

12.15 Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of Texas. The district courts of Nueces County, Texas shall be the exclusive place of venue for any disputes arising under or with respect to this Agreement.

12.16 Limitation of Liability. Notwithstanding any contrary provision hereof, the City agrees

that no partner, co-venturer, employer, agent, director, officer, shareholder, or Affiliate of the Operator shall be personally liable to the City or anyone claiming by, through or under the City, by reason of any default by the Operator under this Agreement, any obligation of Operator to the City, or for any amount that may become due to the City by the Operator under the terms of this Agreement or otherwise.

12.17 No Representation as to Operations Results. The City recognizes that Operating Revenues for the Facilities are incapable of being estimated with reasonable certainty given that the entertainment industry as a whole fluctuates based upon general economic conditions, current trends in entertainment, available income of patrons, competitive facilities, and a variety of rapidly changing factors beyond the control of Operator. Operator has made no and disclaims any purported or actual representation or warranty as to the results which can be expected from the ownership and operation of the Facilities including, without limitation, the Operating Revenues, or Operating Expenses or the accuracy of its projections and estimates thereof. The City recognizes and accepts that all Budgets and projections represent Operator's estimate of the expected expenditures and revenues and that Operator is in no way responsible or liable if the actual expenditures and revenues are more or less than that projected (unless such situation is the results of a breach of this Agreement by Operator).

12.18 Force Majeure. Neither party shall be in default hereunder or liable to the other for failure to perform where such default or failure is the result of acts of God, war, or any other similar cause outside of the reasonable control of the party who asserts that default or failure to perform is excused under this Section; provided, that in no event shall the provisions of this Section extend to any default or failure to perform due to labor shortages or strikes or economic hardship. In the event of a delay in performance excused by the operation of this Section, such delay shall only be for the period which the party claiming the delay was actually delayed in the performance of its obligation by the event outside of its reasonable control.

ARTICLE 13 CONSULTING SERVICES

13.1 General Consulting Services. The City owns, in addition to the proposed Facilities, certain other public facilities. The Operator, for the consideration and other fees recited hereinabove, agrees to provide certain consulting services to the City with regard to such facilities upon request therefor by the City.

ARTICLE 14 NON-COMPETITION

During the term hereof, Operator agrees that it shall not, directly or indirectly, own, manage or provide consulting or other management, consulting, marketing or promotions services, whether as a principal, partner, joint venturer, officer, director, member, employee, consultant, agent, independent contractor, or stockholder of any company or business engaged in operating, managing, marketing, promoting or providing consulting services with respect to, public assembly or other arena-type Facilities located within a 100-mile radius of the Facilities which competes with the Facilities. The foregoing restriction and covenant shall not, however, (x) apply to facilities which are within the restricted area which Operator is managing under a contract in effect as of the date hereof, such facilities being listed on Schedule 14 attached

hereto and made part hereof for all purposes, or (y) be deemed breached by Operator's participation as a promoter, sponsor, or co-promoter of events at any facilities if either (a) the same event has been scheduled to appear at the Facilities within 12 months of its occurrence at such other Facilities or (b) the same has not been scheduled to appear at the Facilities because the participants (i.e., the promoter of the event in question or the principal performer of the event in question) in such event refuse or decline to appear at the Facilities (upon request, Operator shall provide the City's Contract Administrator reasonable evidence thereof).

In addition to its rights to terminate this Agreement should Operator breach the provisions of this Article 14, the City may collect from the Operator, as liquidated damages and not as a penalty (a) reimbursement of all actual costs incurred by the City to replace Operator's management team plus (b) all fees paid to Operator hereunder during the 12-month period immediately preceding such termination.

Operator hereby stipulates and agrees that the foregoing restrictions on Operator are reasonable in light of the services which Operator will render hereunder both in terms of geography and duration. Operator further agrees that the stipulated, liquidated damages set forth in the preceding paragraph hereof are reasonable due to the uncertainty to Owner of the amount of damages Owner will actually incur should Operator breach such provisions, Operator hereby stipulating and agreeing the Owner will actually incur damages in such event. The undersigned have executed this Agreement as of the date first set forth above.

CITY OF CORPUS CHRISTI, TEXAS

ATTEST:

City of Corpus Christi, Texas

Armando Chapa
City Secretary

Ronald L. Olson
City Manager

EXECUTED IN DUPLICATE ORIGINALS this ____ day of _____, 2012.

SMG, a Pennsylvania general partnership

By: _____

Name:

Title:

EXECUTED IN DUPLICATE ORIGINALS this ____ day of _____, 2012.

EXHIBIT

INSURANCE REQUIREMENTS

I. SUCCESSFUL OPERATOR’S LIABILITY INSURANCE

- A. Successful Operator shall not commence work under this agreement until all insurance required herein has been obtained and approved by the City's Risk Manager or designee. Successful Operator must not allow any subcontractor to commence work until all similar insurance required of the subcontractor has been so obtained.

- B. Successful Operator shall furnish to the Risk Manager or designee two (2) copies of Certificates of Insurance and applicable policy endorsement(s), showing the following minimum coverage by an insurance company(s) acceptable to the Risk Manager or designee. The City must be named as an additional insured for the General Liability policy, and a waiver of subrogation is required on all applicable policies.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-Day Notice of Cancellation required on all certificates or by policy endorsement(s)	Bodily injury and Property Damage Per Occurrence / aggregate
COMMERCIAL GENERAL LIABILITY including: 1. Broad Form 2. Premises – Operations 3. Products/Completed Operations Hazard 4. Contractual Liability 5. Broad Form Property Damage 6. Independent Contractors	\$5,000,000 per occurrence \$10,000,000 aggregate
EXCESS LIABILITY (To follow form)	\$10,000,000 per occurrence
LIQUOR LIABILITY	\$1,000,000 per occurrence \$5,000,000 aggregate
CRIME POLICY (including) 1. Employee Dishonesty 2. Computer Fraud 3. Forgery or Alteration 4. Theft 5. Robbery and Safe Burglary	\$500,000 per occurrence
BUSINESS AUTOMOBILE LIABILITY 1. Owned 2. Hired & Non-owned	\$1,000,000 Combined Single Limit
WORKERS’ COMPENSATION	Which complies with the Texas Workers’ Compensation Act and paragraph Iii of this exhibit.

EMPLOYER'S LIABILITY	\$500,000 / \$500,000 / \$500,000
PROPERTY INSURANCE	Operator shall purchase property insurance to cover damage to Operator owned contents.

- C. In the event of accidents of any kind, Successful Operator shall furnish the Risk Manager with copies of all reports of such accidents within ten (10) days of the accident.

ARTICLE 2II. ADDITIONAL REQUIREMENTS

- A. Successful Operator must obtain workers' compensation coverage through a licensed insurance company in accordance with Texas law. The contract for coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The coverage provided must be in amounts sufficient to assure that all workers' compensation obligations incurred will be promptly met. If workers' compensation coverage is not written in accordance with Texas law, "All Other States" endorsement must be indicated on the certificate of insurance.
- B. Successful Operator's financial integrity is of interest to the City, therefore, subject to Successful Operator's right to maintain reasonable deductibles in such amounts as are approved by the City, Successful Operator shall obtain and maintain in full force and effect for the duration of this agreement and any extension hereof, at Successful Operator's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.
- C. The City shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Successful Operator shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Successful Operator shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Corpus Christi
 Attn: Risk Management
 P.O. Box 9277
 Corpus Christi, TX 78469-9277
 Fax: (361) 826-4555

- D. Successful Operator agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**
- **Name the City and its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation policy;**
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
 - **Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and**
 - Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- E. Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, Successful Operator shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Successful Operator's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this agreement.
- F. In addition to any other remedies the City may have upon Successful Operator's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Successful Operator to stop work hereunder, and/or withhold any payment(s) which become due to Successful Operator hereunder until Successful Operator demonstrates compliance with the requirements hereof.
- G. Nothing herein contained shall be construed as limiting in any way the extent to which Successful Operator may be held responsible for payments of damages to persons or property resulting from Successful Operator's or its subcontractor's performance of the work covered under this agreement.
- H. It is agreed that Successful Operator's insurance shall be deemed primary and non-contributory with respect to any insurance or self- insurance carried by the City of Corpus Christi for liability arising out of operations under this agreement.
- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.