

Master Contract Number: C2019-0239

Office Use Only

SUB-CONTRACT NUMBER:  
C2023-0055

## AMENDMENT AND RENEWAL OF CONTRACT FOR MANAGEMENT SERVICES

THIS RENEWAL made and entered into this date, February 14, 2023, by and between the City of Branson, Missouri (the "City") and ASM Global, formerly known as SMG ("Service Provider") for renewal period One from January 1, 2024 to December 31, 2026.

WHEREAS, the parties desire to amend the Contract for Management Services, Master Contract Number C2019-0239 (the "Contract"), to revise the language in Article II, D, 5 and Article V, A; and

WHEREAS, the parties desire to extend the term of the Contract by entering into renewal period One as authorized under Article IV of the Contract.

NOW, THEREFORE, for the considerations herein expressed, it is agreed by and between the City and the Service Provider as follows:

### 1. Amendment.

A. Article II, D, 5 is amended to include the following:

Article II, D, 5, F. A second Capital Contribution of Two Hundred Fifty Thousand Dollars And Zero Cents (\$250,000.00) ("Second Capital Contribution") to be utilized as mutually agreed upon by the City and Service Provider, whether for service and facility enhancements, opportunity for revenue growth, or other creative means. This Second Capital Contribution will be amortized over a straight-line basis for a six-year period beginning January 1, 2024. If Service Provider is no longer the manager of the Branson Convention Center, the City must repay any remaining unamortized balance of this capital investment.

B. Article V, A is amended to read as follows:

The City shall, in each Operating year of the Management Term, pay SMG a fee each month equal to 1/12 of the annual fixed fee listed below for each such Operating Year (the "Fixed Management Fee"). The Fixed Management Fee shall be pro-rated for any partial Operating Year at the end of the Term of the Contract. The annual Fixed Fee for the period January 1, 2024 through December 31, 2024 shall be One Hundred Fifty-Nine Thousand Eighty-Four Dollars and Zero Cents (\$159,084.00) per annum (payable in equal monthly installments), and thereafter (i.e., commencing January 1, 2025) the fixed fee shall be subject to annual CPI adjustments, capped at 3% per year, all of which is dependent upon budget appropriations.

2. **Renewal.** The City agrees to engage the work of the Service Provider and the Service Provider agrees to provide the services and assume the responsibilities as referenced in the original contract attached as **Exhibit 1**. The Parties agree that the Term of the Contract is extended for renewal period One, through December 31, 2026, as authorized under Article IV of the Contract.

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3. **Bonds and Insurance.** The Service Provider shall procure and maintain all insurance and bonds (if applicable) to satisfy statutory bonding requirements, and to protect the City from any liability exposure resulting from the Service Provider's activities as outlined in the original contract and provide the City the most up-to-date insurance certificates and to keep them current.

4. **Missouri Immigration Law Affidavit.** After January 1, 2009, the service provider takes note that Section 285.530.2 of the Missouri Revised Statutes requires a political subdivision as a condition of a contract or grant in excess of \$5,000 awarded after January 1, 2009, to require the business entity to affirm by sworn affidavit and provision of documentation the business entity has enrolled and participated in a federal work authorization program with respect to its employees who work in connection with the contracted services. To that end, the services provider will provide a signed affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contract. The service provider will provide with their bid specifications and bonding information a statement that the company has such a program, documentation for the program, and that it will not employ unauthorized aliens in connection with the work.

☐ If this box is checked, then the requirement for an Immigration Law Affidavit does not apply because the dollar value of the contract is less than the \$5,000 minimum.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year herein stated.

SERVICE PROVIDER:

DocuSigned by:  
By: Mark Rozells 1/4/2023  
AB004DFC87C143F...  
Mark Rozells, CFO Date

CITY OF BRANSON, MISSOURI

Larry D. Milton 2/15/23  
Larry D. Milton Date  
Mayor



ATTEST:

Hillary Briand 2/15/23  
Hillary Briand Date  
City Clerk

Acting

APPROVED AS TO FORM:

DocuSigned by:  
Bridget M. Findley #7257 1/4/2023  
441B44D1323C4C3  
Interim City Attorney Date



Exhibit 1

CONTRACT NO. 2019-0239

CONTRACT FOR MANAGEMENT SERVICES  
BETWEEN CITY OF  
BRANSON, MISSOURI

and

SMG

This Contract ("Contract") is made and entered into by and between the City of Branson, Missouri ("CITY"), and SMG, a Pennsylvania general partnership ("SMG"), with headquarters at 300 Conshohocken State Road, Suite 770, West Conshohocken, PA 19428. In consideration of the mutual promises herein contained, the parties agree to all of the provisions contained in this Contract, made the 22<sup>nd</sup> day of ~~September~~<sup>October</sup>, 2019.

RECITALS

1. CITY is a municipal corporation of the State of Missouri that owns the Branson Convention Center (hereafter the "BCC") on real property located in the CITY.
2. SMG is to perform certain management services pursuant to this Contract and subject to other existing agreements in place related to the operation and maintenance of the BCC.
3. SMG has represented to CITY that it has substantial experience and expertise in supervising and operating convention facilities similar to the BCC.

NOW, THEREFORE, in consideration of the covenants, terms and conditions set forth herein, CITY and SMG agree as follows:

**I. PURPOSE**

The purpose of this Contract is to provide for the operation, marketing and promotion of the BCC consistent with the goals of the CITY. The BCC shall be operated in the public interest. The BCC was developed by the CITY to create positive economic impact and stimulate economic growth for the region, and SMG recognizes this goal in programming for the BCC. SMG shall optimize usage of the BCC, serving the public needs of the community as well as attracting convention and conference events that will attract out of town visitors and attendees. The CITY seeks to protect their investment in the BCC, and requires SMG to support this objective through high quality maintenance and supervision of major repairs and capital re-investment. The CITY further seeks to encourage SMG to operate the BCC in such a manner that projected Net Operating Losses decrease over the Term of the Contract.

## **II. SCOPE OF WORK**

SMG shall provide services and staff, and otherwise do all things necessary for, or incidental to, the performance of work. The CITY shall review and approve marketing plans, operation plans, and any other documents that support SMG's services, staff and performance of work pertaining to the operation of the BCC. The CITY shall have the right to establish reasonable annual goals and objectives for SMG and to evaluate SMG'S performance in accomplishing those annual goals and objectives. It is the desire of the CITY to establish these annual operating goals and objectives collaboratively with SMG in a timely and business-like manner. The CITY reserves the right, however, to make final decisions on the content of these annual goals and objectives.

If in its good faith reasonable judgment SMG determines that the content of the annual goals and objectives shall cause SMG to be unable to perform the obligations under this contract or that the content of the annual goals and objectives will significantly limit its ability to earn the Incentive Fees as contemplated in this contract, then SMG shall have ten (10) days after the CITY establishes the annual goals and objectives to give notice of its intent to terminate this contract in writing. The CITY shall have thirty (30) days to respond to the written request either accepting SMG's position or to re-examine the annual goals and objectives. Any such termination notice must be given one hundred twenty (120) days prior to the date of termination.

The CITY shall have the right to review the qualifications of each individual to be designated as the General Manager of the BCC by SMG and to approve or disapprove the use of such person in such position prior to the commencement of any work by such individual, provided such approval shall not be unreasonably withheld, but the decision of the CITY in this matter shall be the CITY's own, and not subject to review of SMG.

An outline of the scope of services is set forth below:

### **A. Sales and Marketing Services**

Consistent with goals and objectives approved by the CITY, and as found in section II of this agreement, SMG shall provide, or cause to be provided, sales and marketing services for conventions, trade shows, conferences, community events and other events as may be appropriate for the BCC. Such services shall include but are not limited to the following:

1. Scheduling events, negotiating contracts and confirming event bookings in accordance with rate, booking policies and guidelines that shall be mutually agreed to in writing. Rates, booking policies and guidelines shall be reviewed annually and agreed to in writing no later than thirty (30) days prior to the submission of the Operating Budget by SMG.

2. Providing read-only electronic access to the BCC calendar, booking policies and guidelines to the CITY, the Convention Center Hotel Operator, and the Branson/Lakes Area Chamber of Commerce and Convention and Visitors Bureau Inc. The BCC calendar provided electronically shall contain all scheduled events, confirmed event bookings, and potential bookings



and events. Scheduled events, confirmed event bookings, and potential bookings and events shall be designated as such on the BCC calendar provided electronically. SMG shall have the right to rescind access if one of the aforementioned parties contacts BCC clients directly to change dates or space without involving SMG in such discussions, or otherwise misuses the right of access.

3. Creation of an annual sales and marketing plan. The purpose of the sales and marketing plan is the promotion of the BCC to national, regional and local conventions and conferences, commercial trade shows and other events that will benefit the economic vitality of the Branson community, increase hotel occupancy, promote additional retail sales, and maximize net operating income.

4. Develop and implement a customer service program to provide exceptional customer service to all visitors and guests of the BCC.

5. Secure market research by a third party acceptable to the CITY, to include customer satisfaction surveys of patrons and clients. Such customer satisfaction surveys shall be returned simultaneously to the CITY and to SMG.

6. Manage all on site ticket sales with Facilities staff or through contract.

7. Create convention and tradeshow promotional materials, floor plans, maps and other materials used to market the BCC.

8. Develop rate and booking forms, guidelines and policies, subject to the approval of the CITY, to contract for all BCC rentals, decorating, electrical, A/V, telecommunication, supplies, and other event services for conventions, conferences, trade shows and other events as required.

9. Develop as a part of the annual budget for the BCC, Operating Revenue projections related to rental/charge structures for the BCC's facilities and rooms, equipment and services provided by the center and outside contractors, all subject to the approval of the CITY.

10. Marketing the BCC through the internet, including the continued development and maintenance of a web site and the use of a database designed to increase the exposure of the BCC.

11. The CITY shall retain the rights to any Intellectual Property developed on behalf of the CITY (including, without limitation, BCC operating and procedure manuals, advertising materials, and the web page and the contents thereof developed for the BCC and the CITY), in addition to any other information or data relating to the BCC, except for those items (such as SMG's mainframe and software programs and copyrighted materials) that are proprietary to SMG.

#### **B. Operating Services**

Within budgets approved by the CITY, SMG shall ensure that the BCC is maintained to a superior standard in good order and repair and in clean, safe and sanitary condition, which shall include, but not be limited to:

1. Provide operation, maintenance and repair by competent and qualified employees or

contractors, of all HVAC, mechanical, telephone, electrical and plumbing systems as well as seating, elevator, sound, lighting, security, fire and life safety monitoring systems as well as furniture, fixtures and equipment.

2. Provide major capital repairs/improvements, which shall be made from capital funds supplied from the Capital Renewals Reserve account as described in section D5, or from the CITY (at the CITY's discretion).

3. Provide, or cause to be provided, all incidental services required in conjunction with convention, conference and other events, including food and beverage (including alcoholic beverage) services, concessions, A/V services, telecommunications/data services, and other related or required services.

4. Maintain and provide superior service levels for all grounds keeping, housekeeping, custodial and maintenance services required including grounds keeping and custodial services in public areas, yards, walkways and parking lots of the BCC as shown in the attached site map. (Attached hereto as Exhibit B).

5. The CITY retains the right to coordinate and/or combine BCC services with those of the adjacent Hotels if it is the CITY's determination that such a combination is useful to the operation of the BCC. Any added expenses (including, but not limited to, Operating Expenses) to the Facilities resulting from the foregoing will be mutually agreed upon by CITY and SMG.

6. Establish a schedule of preventative maintenance, renovation and long-term maintenance to maintain the BCC in superior condition.

7. Carry out painting and structural maintenance and repair work on the BCC, including maintenance and repair of roofs, ceiling, doors, windows, floors and walls (both interior and exterior) either through competent and qualified employees or contractors.

#### **C. Administrative Services**

SMG shall provide the following administrative services required in the operation of the BCC:

1. SMG will administer all contracts required in the ordinary course of business for but not limited to services, events, concessions, catering, novelties/merchandise, advertising, and equipment. SMG warrants that any national discounts or credits procured by SMG from vendors or service providers are credited to the BCC as Operating Revenue. SMG will insure that insurance requirements of CITY (as notified by the CITY to SMG in writing) are met by rental clients. SMG will manage claims as required to contain risk to the CITY.

2. SMG will annually inform the CITY as to the proposed establishment of prices and policies, rates and rate schedules for space rental, lease and booking agreements, advertising contracts, concession agreements and other conference/convention center commitments which the General Manager will be responsible for negotiating. Rates and fees



are subject to approval by the CITY.

3. SMG will participate in monthly administrative review meetings with the CITY, the Branson Chamber of Commerce, the Convention Center Hotel Operator, the Convention Center Hotel Owner, and the Branson/Lakes Area Chamber of Commerce and Convention and Visitors Bureau Inc. The monthly administrative review meetings will be to review performance and compliance with the terms of this contract as well as to discuss upcoming proposals and booking challenges.

4. SMG will advise the CITY on new or potential changes to sources of Operating Revenue, partnerships, prices and other factors that will add to the financial success of the BCC.

5. SMG will provide or cause to be provided all security services required by the BCC and by events, and will cooperate with the Branson Police Department. Security services include maintaining a sufficient number of well-trained, courteous and qualified security personnel in and about the center Facilities and other additional personnel as may be required to effectively manage events within the lawful requirements of the CITY.

6. SMG will maintain an adequate staff of courteous employees on duty at the BCC and provide appropriate supervision and training of such employees. Employees hired by SMG will be employees of SMG and not of the CITY. SMG will employ or otherwise contract for its operations only those persons who by training, appearance and habits are judged to be suitable workers appropriate to the environment of the BCC. SMG will be responsible for all personnel related matters to include compensation, labor relations with any union or association, employee training and development, contract negotiation, dispute resolution, provision of employee uniforms and equipment, employee hiring, job assignment and performance evaluation and compliance with equal employment opportunity requirements.

7. During the period commencing on the date hereof and ending one (1) year after the termination of this Agreement, except with SMG's prior written consent, the City will not, for any reason, solicit for employment, or hire the General Manager. In addition to any other remedies which SMG may have, specific performance in the form of injunctive relief shall be available for the enforcement of this provision.

8. SMG agrees that it will not allow key positions in the staff, herein defined as the General Manager, Director of Sales and Marketing, Director of Food Service and Director of Finance, to become vacant for a period of more than one month without SMG supplying temporary replacements for these positions from within its corporate structure, until suitable fulltime employees can be hired and actively employed.

9. SMG shall collect all Operating Revenues generated through the operation of the BCC. All Operating Revenues collected by SMG from operation of the BCC shall be the sole property of the CITY and will be held in trust by SMG for the CITY for application as provided for in the budget and cash flow provisions herein. All Operating Revenues derived from operation

of the BCC shall be deposited by SMG into an interest-bearing account in a qualified public depository to be designated by the CITY in writing ("BCC Operating Account") as soon as practicable upon receipt (but not less often than once each business day). Revenues that are not defined as Operating Revenues that are received by SMG shall be disbursed immediately to such accounts as the CITY may designate from time to time. The BCC Operating Account shall be established in the name of SMG, bearing SMG's identification number. SMG shall have access to such accounts in order to perform its duties under this Agreement. SMG shall have the authority to draw upon the BCC Operating Account only pursuant to the terms of this Agreement. SMG acknowledges that it has fiduciary duty to the CITY concerning the use of the BCC Operating Account. SMG shall submit to the CITY, on a monthly basis, copies of all bank statements concerning the BCC Operating Account.

10. All Operating Expenses necessary for the proper management, operation, maintenance and supervision of the BCC, including Operating Expenses as required to operate the BCC as described in the Purpose and Scope of Work of the established annual budget will be paid by SMG with funds from the BCC Operating Account. SMG shall be responsible to develop short and long term strategies to enhance financial success of the BCC. SMG shall develop purchasing and cash handling procedures consistent with CITY policies and state and federal law.

11. SMG shall assist the CITY in developing and implementing rules, regulations, policies and procedures, which may impact the use of the BCC.

12. Subject to CITY approval, solicit, as necessary, competitive bids or proposals for those services, which may become necessary, to undertake the functions required to manage and operate the BCC and service events. This may include but not be limited to such services as maintenance activities, A/V services, ticketing and other services as may be mutually determined by SMG and the CITY.

13. SMG on behalf of the City shall work closely with the Hotel. In this regard SMG shall not enter into any agreements or arrangements that address the relationship among the City, SMG and/or the Hotel without the City's express written authorization. All matters that relate to shared services between the Hotel and BCC require written approval by the City.

14. SMG shall be required to submit to the CITY on an annual basis a report as to all furniture, fixtures, office equipment, technology equipment, supplies, tools and vehicles owned by the BCC. SMG shall document all major damage to, or loss in, such inventory during the Term of this Agreement as soon as such damage or loss is discovered by SMG. SMG shall promptly notify the CITY of such damage or loss. Upon the request of the CITY SMG shall cause additional inventory reports to be prepared.

15. SMG shall provide insurance coverage as specifically defined herein.

16. SMG shall provide the CITY with such financial reports using the reporting methods, language, format, and timeframe as directed by the CITY, to keep the CITY current



and knowledgeable as to the financial and operating performance of SMG.

17. SMG shall not engage in the management of any other convention center within a 50-mile radius of the BCC that is comparable to, or directly competitive with, the BCC during the term of this agreement, without the express written consent of the CITY. It shall be the determination of the CITY if the other convention center is competitive with the BCC. Such consent shall not be unreasonably withheld by the CITY, but may be withheld if the CITY considers the arraignment as not being consistent with the goals and objectives of the BCC. Further, SMG shall not undertake any management activity that shall cause a conflict of interest with the obligations of SMG under this agreement.

**D. Operating Budgets**

**1. Establishment of Operating Budgets**

A. SMG agrees that ninety (90) days prior to the commencement of each subsequent Operating Year in respect of such year, it will prepare and submit to the CITY a line item budget (in form specified by the CITY) for the BCC (the "Operating Budget"). Each annual Operating Budget shall include, at a minimum a projected income and expense statement and projected year-end balance sheet and statement of projected sources and application of funds and projected pricing levels and pricing policies. Additionally, each annual Operating Budget shall include but shall not be limited to the following projections, presented on a monthly and annual basis: (a) gross revenues, (b) operating expenses, and (c) cash flow budget. The Operating Budget shall serve as an estimate of expected Operating Revenues and Operating Expenses for the BCC. The CITY agrees to take reasonable commercial steps to provide SMG, subject to any limitations of applicable law, with all information in its possession which the CITY reasonably believes is necessary to enable SMG to prepare the Operating Budgets. The Operating Budget supplied by SMG will utilize language, reporting methods, and format specified by the CITY.

B. The Operating Expenses in each annual Operating Budget shall be payable by SMG with funds from the BCC Operating Account, or from funds otherwise provided by the CITY, pursuant to the terms hereof.

**2. Approval of Operating Budget and Amendments.**

A. The CITY and SMG will use reasonable commercial efforts to cooperate with each other in the preparation of the annual Operating Budgets, including any amendments thereto. In the event of any disagreement regarding a line item expense or the aggregate amounts included in a proposed Operating Budget, or any proposed amendment thereto, the CITY and SMG shall engage in discussions and use reasonable commercial efforts to attempt to resolve such matter to the mutual satisfaction of the parties, provided, that such discussions shall not obligate the parties to resolve such matter, nor affect the CITY's right to approve the Operating Budgets or any amendments thereto in its sole discretion, as provided below.

B. Notwithstanding the terms of paragraph (a) above, each annual Operating Budget

shall be subject to the final review and approval of the CITY, which approval may be withheld or granted in its sole discretion. In the event a proposed Operating Budget has not been approved prior to the first day of the period to which it relates, the Operating Budget shall be the budget designated by the CITY, provided that SMG shall have ten (10) days after the CITY designates such Operating Budget to notify the CITY of its intent to terminate this Contract if in a good faith reasonable judgment, SMG determines that the monies allocated to such Operating Budget will be insufficient for SMG to perform its obligations under this Contract or will significantly limit its ability to earn the Incentive Fees as contemplated in this Contract. Any such termination notice must be given one hundred twenty (120) days prior to the date of termination. A failure by SMG to perform its obligations under this Contract shall not be a breach of or default under this Contract if such breach or default is directly caused by the CITY's failure to appropriate sufficient funds for the management, operation and promotion of the BCC. In order for the CITY to fully evaluate and analyze such budget or any other request by SMG relating to income and expense, SMG agrees to provide to the CITY financial information relating to the BCC in such form as may be requested by the CITY from time to time.

C. If extraordinary events occur during any Operating Year which could not reasonably be contemplated at the time the corresponding Operating Budget was prepared SMG may submit an amendment to such budget for review and approval by the CITY, which approval may be withheld or granted in its sole discretion. In the event the CITY does not approve the amendment to such Operating Budget within a reasonable time after the submission of such amendment, both parties will meet for a period of fourteen (14) days to resolve in good faith any differences. If SMG is not satisfied with the outcome of such discussions, SMG shall have ten (10) days to notify the CITY of its intent to terminate this Contract if, in its good faith reasonable judgment, it determines that the denial of such amendment will significantly limit SMG's ability to perform its obligations under this Contract or its ability to earn the Incentive Fees as contemplated in this Contract. Any such termination notice must be given one hundred twenty (120) days prior to the date of termination.

D. In the event that it appears reasonably likely, in any Operating Year during the Term, that the actual Net Operating Loss/Profit for an Operating Year will be materially different than projected in the Operating Budget for that Operating Year, the CITY may either prepare an amended Operating Budget that will be adopted and adhered to by SMG or request that SMG prepare a plan for reducing Operating Expenses to a level specified by the CITY. SMG shall forthwith comply with any such expense reduction requested by the CITY and the approved budgets for such Operating Year shall be modified accordingly, provided that SMG shall have ten (10) days after the CITY modifies such Operating Budget to notify the CITY of its intent to terminate this Contract if, in its good faith reasonable judgment, it determines that the monies allocated to such Operating Budget will be insufficient for SMG to perform its obligations under this Contract or will significantly limit its ability to earn the Incentive Fees as contemplated in this Contract. Any such termination notice must be given one hundred and twenty (120) days prior to the date of termination. SMG shall not be construed to have breached its obligations under this Contract if the alleged breach is directly caused by the limitations of an amended Operating Budget as set forth in this paragraph.



E. If required by bond counsel to the CITY or counsel to any underwriter, SMG agrees to make modifications to this Contract so that the same is, in the opinion of such counsel, a qualified management contract for purposes of Revenue Procedure 97-13 promulgated by the Internal Revenue Service. In the event such modifications shall materially increase SMG's obligations hereunder or materially decrease SMG's rights or economic benefits hereunder, SMG and the CITY will cooperate with each other in good faith for a period of forty-five (45) days in an effort to amend the Contract and preserve the economic benefits of both parties hereunder in a manner that is satisfactory to SMG, CITY and the CITY's bond counsel, each acting in their sole discretion. To the extent the parties do not amend this Contract within such forty-five (45) day period, SMG shall have the right to terminate this Contract upon not less than one hundred and twenty (120) days prior written notice to the CITY, which right may be exercised by SMG providing such termination notice to the CITY within ten (10) business days after expiration of the forty-five (45) day negotiation period. If SMG timely exercises its right of termination under this paragraph, SMG shall continue to perform its obligations hereunder through the date of termination and the CITY shall continue to pay SMG its Fixed Management Fees and Incentive Fees, if any, pro-rated through the date of termination in accordance with this Contract.

### 3. Adherence to Operating Budget.

A. SMG shall manage and operate the BCC in accordance with the Operating Budget. Without the prior consent of the CITY, SMG shall not exceed, commit or contract to expend any sums in excess of the amounts allowed in the Operating Budget or otherwise approved by the CITY, except (i) for Operating Expenses for services provided to the BCC by third parties, the cost of which is not within the reasonable control of SMG, such as the costs of utilities and insurance; (ii) Emergency Repairs; (iii) increased cost resulting from the scheduling by SMG of additional revenue producing events or activities at the Facilities, so long as SMG can document a good faith belief that the projected net operating loss or profit for the operating year as set forth in the applicable operating budget would be improved as a result of such additional events or activities.

B. SMG shall immediately report in writing to the CITY any anticipated expenditures that may exceed the applicable line item or aggregate budgeted Operating Expenses in the Operating Budget.

C. In the event Operating Expenses for a particular budget category exceed ten (10%) percent of budgeted expenses for such category or five percent (5%) of the aggregate budgeted Operating Expenses in the Operating Budget (including any amendments thereto, if any), at the end of the budget year, without the prior written approval of the CITY, SMG shall be responsible for such excess expenditures from its own funds.

### 4. Operating Budget Cash Flow

A. Source of Funding SMG shall pay all Operating Expenses for the operation, maintenance, supervision and management of the BCC from the funds in the BCC Operating Account. The BCC Operating Account shall be funded with amounts generated by operation of

the BCC (including Operating Revenues), or otherwise made available by the CITY, subject to annual appropriations. To ensure sufficient funds are available in the BCC Operating Account, upon reasonable request of SMG the CITY, subject to annual appropriation, will transfer to and/or retain in the BCC Operating Account, by the first (1st) business day of each month, the budgeted or otherwise approved Operating Expenses for such month unless the BCC Operating Account has uncommitted funds equal to such budgeted amount on such date. To the extent the uncommitted funds in the BCC Operating Account exceed the budgeted Operating Expenses for a given year; SMG shall disburse such excess amounts to the CITY on or before the fifteenth day of the following month. Except as otherwise set forth in this Contract, SMG shall have no liability to the CITY or any third party in the event SMG is unable to perform its obligations hereunder, or under any third party contract entered into pursuant to the terms hereof, due to the fact that sufficient funds are not generated from the operation of the Facilities or otherwise made available by the CITY in a timely manner.

#### 5. Capital Expenditures

A. Capital Expenditures Budget. As discussed above, SMG shall identify capital needs. SMG shall annually, at the time of submission of the annual Operating Budget to the CITY, provide to the CITY for its approval, which may be granted or withheld in its sole discretion, a budget of anticipated capital improvements necessary at the Facilities and requiring a Capital Expenditure (as defined below) in the coming Operating Year. Such budget shall also contain an annual five (5) and ten (10) year Capital Expenditure forecast for the purpose of allowing the CITY to consider for inclusion of such forecasts in its future Capital Expenditures budgets.

B. Capital Renewals Reserve Account. From the revenues from the operation of the Branson Convention Center, SMG will establish and maintain a reserve (the Capital Renewals Reserve) for Capital Renewals. The amount of the required additions to the Capital Renewals reserve shall be calculated monthly concurrently with the delivery of the reports required under Section D of this Agreement, and shall be an amount equal to 4% of the Convention Center Revenue

The additions to the Capital Renewals Reserve will be deposited in an interest-bearing account (the Capital Renewals Account) at a qualified public depository to be designated by the City (Branson Convention Center Capital Renewals Reserve) as soon as practicable upon receipt. The Capital Renewals Reserve shall be used solely for the purpose of paying for Capital renewals. Any amounts remaining in the Capital Renewals Reserve at the end of each Operating Year will be carried forward until fully expended, but shall not be credited against required contributions to the Capital Renewals Reserve for any subsequent Operating Year. Any funds remaining in the Capital Renewals Account at the expiration or termination of this Agreement will be disbursed to the City.

C. Compliance with Capital Budget. SMG shall at all times comply with the applicable Capital Budget and shall not deviate in any substantial respect therefrom; provided, however that SMG shall be entitled to reallocate the amount budgeted with respect to any item in the Capital Budget to another item budgeted therein, so long as the total amount of expenditures authorized

thereunder shall not be exceeded.

Emergency Repairs. Notwithstanding the above provisions, SMG shall have the right to make Capital Expenditures at the Facilities for Emergency Repairs (defined as the repair of a condition which, if not performed immediately, creates an imminent danger to persons or property and/or an unsafe condition at the Facilities threatening persons or property), provided, however, that in the event that any such Emergency Repairs will exceed \$10,000 in one occurrence or \$25,000 in the aggregate during any given Operating Year, SMG must first obtain the written approval of the CITY before proceeding with such work, unless it would be unreasonable to obtain such approval due to the circumstances of such emergency, in which case SMG must at least notify via telephone the CITY's Chief Administrative Officer. SMG shall have the right to terminate this Contract upon one hundred twenty (120) days written notice to the CITY if the CITY fails to make Capital Expenditures to the extent that such omission, in SMG's judgment, materially interferes with, impedes or impairs the ability of SMG to manage the Facilities effectively.

E. SMG Capital Contribution.

- (a) SMG Capital Contribution. SMG shall provide to the Facility the sum of One Hundred Thousand Dollars (\$100,000) for Capital Improvements and Capital Equipment purchases relating to the Facility.
- (b) Amortization of SMG Capital Contribution. The amount of the SMG Capital Contribution shall be amortized on a non-cash basis over a period of sixty (60) months commencing with the Commencement Date on a straight-line, non-interest bearing basis. In the event of the expiration or termination of this Agreement for any reason, the Owner shall pay, or cause any successor management company to pay, to SMG unconditionally and without set-off the unamortized amount of the SMG Capital Contribution existing as of such expiration or termination; provided, however, the Owner, at its sole option, shall have the right to (a) pay any such unamortized amount within thirty (30) days following the termination or expiration of the Management Agreement or (b) pay such unamortized amount on a straight line basis over the remaining period commencing on the date of termination or expiration of this Agreement and ending on the fifth anniversary of commencement of the Management Term (as if this Agreement had not been terminated).

6. Non-Funding

A. Payment of any funds under this agreement by the CITY is subject to annual appropriation by the CITY.

B. Notwithstanding anything contained herein to the contrary, the CITY shall have no obligation to provide funds for the payment of any expenses under this agreement beyond funds that have been appropriated for that purpose.

C. The CITY shall pay all Operating Expenses incurred or committed for after the



date of delivery of an "Appropriation Deficiency Notice" that are within the aggregate level of funds appropriated by the CITY. Any failure by the CITY to provide funds (beyond the aggregate level of appropriated funds) for the payment of Operating Expenses or any other expenses shall not be a breach of or default under this Contract by the CITY. Except for Operating Expenses that are incurred or committed for after the date SMG receives the Appropriations Deficiency Notice, any failure by SMG to perform its obligations under this Contract shall not be a breach of or default under this Contract if such breach or default is directly caused by the CITY's failure to appropriate sufficient funds for the management, operation and promotion of the BCC.

D. If the CITY appropriates funds at (or reduces appropriated funds to) a level that, in SMG's good faith reasonable judgment, renders the management of the BCC as contemplated in the Contract not feasible, SMG and the CITY shall meet as necessary to formulate a plan to continue management of the Facilities at a reduced level of services consistent with anticipated Operating Revenues and available funding. If the parties are unable to agree on such plan within thirty (30) days after commencing such discussions, either party may terminate this Contract without liability or penalty.

#### 7. Reporting/Audit Requirements

SMG shall carry out the following reporting and audit activities:

1. Prepare such monthly reports regarding the use and operation of the BCC as the CITY may request and using the language, form and reporting methods as the CITY shall stipulate. These reports must include information on the activities associated with the operation, management, supervision and maintenance of the BCC as well as financial analysis of how the center is operating, a list of upcoming events, a discussion of operating and maintenance issues/concerns, anticipated changes in management, operations or maintenance activities and other information as appropriate or as requested by the CITY. All reports shall be due to the City by the 7<sup>th</sup> day of the succeeding month.
2. Upon the conclusion of the Operating Year, and within the first three (3) months of the following Operating Year, SMG shall, as an Operating Expense, cause a certified public accounting firm to develop audited financial reports and to certify compliance with generally accepted accounting principles. The CITY reserves the right to conduct its own audit of the BCC by a certified public accounting firm.

### III. GENERAL TERMS AND CONDITIONS

Exhibit A, incorporated herein by reference, contains the General Terms and Conditions governing work to be performed under this Contract, the nature of the working relationship between the CITY and SMG, and specific obligations of both parties.

### IV. PERIOD OF PERFORMANCE/TERMINATION

Subject to other contract provisions herein, the period of performance under this Contract will be from December 1, 2019 through December 31, 2023. The term shall be

extended on the same terms and conditions for two additional three-year periods commencing January 1, 2024 and ending December 31, 2026 and commencing January 1, 2027 and ending December 31, 2029, unless the City, in its sole discretion, provides notice of non-extension not less than one hundred eighty (180) days prior to January 1, 2024 and January 1, 2027.

## V. COMPENSATION AND PAYMENT

### A. Fixed Management Fees

The CITY shall, in each Operating Year of the Management Term, pay SMG a fee each month equal to 1/12 of the annual fixed fee listed below for each such Operating Year (the "Fixed Management Fee"). The Fixed Management Fee shall be pro-rated for any partial Operating Year at the end of the Term of the Contract. The annual Fixed Fee shall be \$144,000 per year or \$12,000 per month through December 31, 2020. Thereafter the fixed fee shall be subject to annual CPI adjustment of no more than 3%. The City shall reasonably select the CPI index to be used for the purpose of this adjustment.

### B. Incentive Fee

In addition to the Fixed Management Fees described above, SMG shall be eligible, in each Operating Year of the Management Term, for an annual incentive fee ("Incentive Fee") of up to a maximum of the Fixed Management Fee payable for such year. The Incentive Fee shall be composed as follows:

1. Twenty percent (20%) of the Incentive fee will be based on Customer and Client satisfaction. The level of Customer and Client satisfaction shall be determined by survey conducted by an independent third party selected by the CITY. In order to achieve this portion of the incentive fee the survey results must show that SMG has achieved an average Customer/Client satisfaction rating of at least 90% or greater over the course of the Operating year. SMG shall report quarterly to the CITY on progress to attain goals and objectives. The content, questions, language used, reporting methods and rating system of the survey instrument will be developed in collaboration with SMG and the CITY, however the CITY reserves the right to make final determination as to the content, questions, language used, reporting methods and rating system of the survey instrument. Such Customer and Client satisfaction survey results shall be returned simultaneously to the CITY and to SMG.

2. Twenty percent (20%) of the Incentive fee will be based on completion of specific operating goals and objectives which shall be assigned annually to SMG by the CITY. In order to achieve this portion of the Incentive payment SMG must have completely and successfully completed those goals and objectives which are assigned by the CITY. SMG shall report quarterly to the CITY on progress to attain goals and objectives. Determination of successful completion shall be at the sole discretion of the CITY.

3. Twenty (20%) of the Incentive fee shall be based on SMG either increasing

Gross Revenues or Reducing Gross Expenses so that the operating loss of the BCC is lower than the average operating loss from the previous three operating years. SMG shall earn 25% of this component for reductions between 3% and 5%, 50% of this component for reductions over 5% up to 7%, 75% of this component if the reduction is between 7% and 10%, and SMG may earn 100% of this component for reductions of over 10%. All such reductions must take place without degradation in service or a reduction in maintenance expenditures unless SMG can demonstrate that such cost reductions will not adversely impact the condition or operation of the BCC, the determination of which will be in the sole discretion of the CITY.

4. Ten percent (10%) of the Incentive payment shall be based on the responsiveness of SMG to the CITY. In order to achieve this portion of the Incentive payment, SMG shall demonstrate adherence to the terms and policies contained in or referenced in this agreement. The determination of SMG's performance under this paragraph shall be made at the sole discretion of the CITY.

5. Twenty percent (20%) of the Incentive payment shall be based on the performance of SMG in providing an increase in unique and independently generated convention center bookings and events over the previous year and a reduction of over the previous year of where the convention center is not booked for an event. The determination of SMG's performance under this paragraph shall be made in the sole discretion of the CITY.

6. Ten percent (10%) of the Incentive payment shall be based on feedback from the Branson Chamber of Commerce, the Convention Center Hotel Operator, the Convention Center Hotel Owner, and the Branson/Lakes Area Chamber of Commerce and Convention and Visitors Bureau Inc. as to the operation of BCC. The content, questions, language used, reporting methods and rating system of the survey instrument used for feedback will be developed by the CITY. Determination of SMG's performance under this Paragraph shall be at the sole discretion of the CITY.

C. Expenses

Operating Expenses shall be paid and/or reimbursed as set forth in the Scope of Work-Administrative Services section above. SMG has provided the City with a copy of SMG's Travel and Expense Policy, which is attached as Exhibit D. The City agrees to allow as a reimbursable operating expense SMG travel and expense in accordance with SMG's policy.

D. Overhead

General home office administrative overhead expenses of SMG'S offices, including non-approved, corporate-initiated expenses such as home office personnel travel, long-distance telephone calls, courier fees, parking fees and similar items shall be paid by SMG out of its own funds and shall not be reimbursable.



## VI. CONTRACT MANAGEMENT

The Contract Manager for the CITY shall be the contact person for all communications and billings regarding the ordinary performance of this Contract. All notices required hereunder shall be provided as follows:

For the City:

Stan Dobbins  
City Administrator  
110 W. Maddux St.  
Branson, MO 65616  
(417)-337-8521

CC: Contract Management  
City Clerk's Office  
Suite 205  
110 West Maddux Street  
Branson, MO 65616

For SMG:

SMG  
300 Conshohocken State Rd., Suite 770  
Conshohocken PA 19428  
Attn: President

CC: SMG  
300 Conshohocken State Rd., Suite 770  
West Conshohocken, PA 19428  
Attn: Counsel

## VII. REPRESENTATION AND WARRANTIES

SMG represents and warrants to CITY that:

1. There are no actions, suits or proceedings pending, or to the knowledge of SMG threatened against or affecting SMG which could have a material adverse effect on the ability of SMG to honor its obligations under the Contract or involving the validity or enforceability of this Contract at law or in equity.
2. SMG is not in default or in violation with respect to, or operating under or subject to, any order, writ, injunction, decree or demand of any court or any governmental authority.
3. This consummation of the transactions hereby contemplated and performance of this Contract will not result in any breach of, or constitute a default under, any mortgage, deed

of trust, lease, bank loan or credit agreement, partnership agreement, corporate charter, bylaws or other agreement or instrument to which SMG is a party or by which it or any of its assets may be bound or affected.

4. SMG is not insolvent (as such term is defined in the Bankruptcy Code of 1978, 11 U.S.C. Section 101, et seq., as amended) and will not be rendered insolvent by execution of this Contract or the consummation of the transactions contemplated hereby.

#### VIII. INSURANCE

SMG is to furnish the CITY with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below. SMG shall obtain and keep in force insurance coverage, which shall be maintained in full force and effect during the Term of the Contract. SMG shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy shall be forwarded to the CITY within fifteen (15) days of the contract effective date.

##### A. Liability Insurance

###### 1. Commercial General Liability Insurance

SMG shall maintain general liability (CGL) insurance with a limit of not less than \$1,000,000 per occurrence and commercial umbrella insurance with a limit of not less than \$10,000,000 per each occurrence and in the aggregate. CGL insurance shall be written on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability assumed under an insured contract (including contract liability), and contain separation of insured (cross liability) condition.

Additionally, SMG is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

###### 2. Business Auto Policy

As applicable, SMG shall maintain business auto liability with a limit not less than \$1,000,000 per accident and commercial umbrella insurance with a limit of not less than \$10,000,000 per each occurrence and in the aggregate. Such insurance shall cover liability arising out of "Any Auto." Business auto coverage shall be written on ISO form CA 00 01, 1990 or later edition, or substitute liability form providing equivalent coverage.

##### B. Employers Liability ("Stop Gap") Insurance

In addition, SMG shall buy employers liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

##### C. Additional Provisions

Above insurance policy shall include the following:

1. Additional Insured. The CITY, and its appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies as their interests may appear. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the CITY.

2. Additionally, SMG is responsible for ensuring that any Subcontractor or vendor provide adequate insurance coverage for the activities arising out of such subcontract or vending agreement, and provide evidence of no less than \$1,000,000 General Liability Limits for such subcontract or agreement and CITY is to be added as Additional Insured.

3. Cancellation. The CITY shall be provided written notice before cancellation or non--renewal of any insurance referred to therein, in accord with the following specifications: The insurer shall give the CITY 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the CITY shall be given 10 days advance notice of cancellation.

4. Identification. Policy must reference the CITY contract number and the CITY name.

5. All insurance and bonds should be issued by companies admitted to do business within the State of Missouri and have a rating of A, Class X or better in the most recently published edition of AM Best's Reports. Any exception shall be reviewed and approved by the CITY before the contract is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Missouri State law. The CITY shall have the right to demand replacement insurance if the rating of SMG's insurance rating falls below A in the most recently published edition of AM Best's Reports.

6. Excess Coverage. By requiring insurance herein, the CITY does not represent that coverage and limits will be adequate to protect SMG, and such coverage and limits shall not limit SMG's liability under the indemnities and reimbursements granted to the CITY in this Contract.

7. Insurance. The limits of liability for each policy coverage amount stated above shall be automatically adjusted upward as necessary to remain at all times not less than the maximum amount of liability set forth in Chapter 537.610 RSMO, as applicable to political subdivisions pursuant to 537.600 RSMO; provided that nothing herein or in any such policy shall be deemed to waive the City's sovereign immunity.

D. Worker's Compensation Coverage

SMG will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent



applicable. The CITY will not be held responsible in any way for claims filed by SMG or their employees for services performed under the terms of this Contract.

**E. Insurance Specifications**

Insurance specifications will be developed by the CITY and SMG and implemented by SMG for certain classes of renters or users per industry standards. It will be the responsibility of SMG to obtain appropriate Certificates of Insurance before any event is allowed to start or set up (i.e. public shows, exhibitions, political conventions, etc.). SMG shall submit to CITY within 15 days of the contract effective date, a certificate of insurance which outlines the coverage and limits defined in the Insurance section. SMG shall submit renewal certificates as appropriate during the term of the Contract.

**F. Fidelity Bond**

SMG shall maintain fidelity insurance covering all of SMG's personnel under this Contract in the amount of Five Hundred Thousand Dollars (\$500,000.00) for each loss, to reimburse the CITY for losses experienced due to the dishonest acts of SMG's employees.

**G. Property Insurance**

CITY shall carry and maintain (or self-insure) real property insurance covering the Facilities-and CITY owned personal property. SMG shall insure their owned personal property.

**X. ASSURANCES**

CITY and SMG agree that all activity pursuant to this Contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

**XI. ORDER OF PRECEDENCE**

Each of the Exhibits listed below is by this reference hereby incorporated into this Contract. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

1. Terms and Conditions as contained in this basic contract
2. Exhibit A - General Terms and Conditions.
3. Exhibit B – Map of BCC
4. Exhibit C - Request for Proposals
5. Exhibit D - SMG Travel and Expense Policy
6. Any other provision, term or material incorporated herein by reference or otherwise incorporated.

**XII. ENTIRE CONTRACT**

This Contract including referenced exhibits represents all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise,

regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

Nothing contained in this Contract shall be deemed to give any third party any claim or right of action against the CITY or SMG, which does not otherwise exist without regard to this Contract.

**XII. CONFORMANCE**

If any provision of this Contract violates any statute or rule of law of the State of Missouri, it is considered modified to conform to that statute or rule of law.

**XIV. APPROVAL**

This Contract shall be subject to the written approval of the CITY'S authorized representative and shall not be binding until so approved. The Contract may be altered, amended, or waived only by a written amendment executed by both parties.

[Signatures on Following Page]

THIS CONTRACT, consisting of 19 pages and Exhibits A through D, is executed by the persons signing below who warrant that they have the authority to execute the Contract.

SMG:

By: H. Westley  
(Signature)

Name: Harold Westley, President

300 Conshohocken State Rd., Suite 770  
West Conshohocken, PA 19428  
Ph: (610) 729-7900  
Fax: (610) 729-1590  
FEIN: 23-2511871

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CITY OF BRANSON, MISSOURI:

E. Edd Akers  
E. Edd Akers  
Mayor

ATTEST:



Lisa K. Westfall  
Lisa K. Westfall  
City Clerk

APPROVED AS TO FORM:

CW #51831  
Christopher W. Lebeck #51831  
City Attorney



## **EXHIBIT A**

### **GENERAL TERMS AND CONDITIONS**

A. **DEFINITIONS** - As used throughout this Contract, the following terms shall have the meaning set forth below:

1. "Agent" shall mean the CITY Administrator of the CITY, and/or the delegate authorized in writing to act on the CITY's behalf.
2. "Annual Plan" shall mean a contract deliverable that includes information regarding SMG's anticipated operations for the upcoming Operating Year, including planned operating maintenance activities (including a preventive maintenance schedule), expense control initiatives, requested capital improvements and capital equipment purchases, anticipated events at the facilities, anticipated advertising and promotional activities, and planned equipment and furnishings purchases. The Annual Plan shall be subject to review, revision and approval by the CITY. Following review and revision by the CITY, SMG shall have thirty (30) days to incorporate the CITY's revisions into the Annual Plan and present same to the CITY for final approval. Upon final approval, the Annual Plan shall constitute the operating program for SMG for the coming Operating Year.
3. "Appropriation Deficiency Notice" shall a notice given to SMG notifying them of the fact that insufficient funds or no funds have been appropriated for the Facilities.
4. "Capital Expenditures" shall mean all expenditures for building additions, alterations, or improvements and for purchases of additional or replacement furniture, machinery, or equipment, where the cost of such expenditure is greater than \$5,000.
5. "SMG" shall mean that firm, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of SMG.
6. "City" or "CITY" shall mean the City of Branson, any division, section, office, unit or other entity of the City, or any of the officers or other officials lawfully representing that City.
7. "Convention Center Hotel Owner" shall mean Branson Landing Hotel, LLC, a Missouri limited liability company, or its successors or assigns in interest.
8. "Convention Center Hotel Operator" shall mean Hilton Hotels Corporation or another entity selected by the Convention Center Hotel Owner to serve as the manager/operator of the Hotel.
9. "Hotel" shall mean the lodging establishment located at 200 E Main Street, Branson, MO 65616.

10. "Laws" shall mean all federal, state, local and municipal regulations, ordinances, statutes, rules, laws and constitutional provisions.
11. "Net Operating Loss/Profit" shall mean, with respect to an Operating Year, the excess, if any, of operating expenses for such operating year over operating revenues for such operating year, in the case of a loss and the excess, if any, of operating revenues for such operating year over operating expenses for such operating year, in the case of a profit.
12. "Operating Expenses" shall mean any and all expenses and expenditures of whatever kind or nature incurred, directly or indirectly, by SMG in promoting, operating, maintaining and managing the Facilities, including, but not limited to: employee compensation and related expenses (e.g., base salaries, severance and car allowances), employee benefits and related costs (e.g., relocation and other related expenses pursuant to SMG's relocation policy (a copy of which will be provided upon request), parking and other fringe benefits), supplies, material and parts costs, costs of any interns and independent SMGs, advertising, marketing and public relations costs and commissions, janitorial and cleaning expenses, data processing costs, dues, subscriptions and membership costs, the costs of procuring and maintaining the insurance and fidelity bond referred to in Section IX above, amounts expended to procure and maintain permits and licenses, charges, taxes, excises, penalties and fees, professional fees, printing and stationery costs, event expenses, postage and freight costs, equipment rental costs, computer equipment leases and line charges, repairs and maintenance costs (e.g., elevators and HVAC), security expenses, utility and telephone charges, travel and entertainment expenses in accordance with SMG's policies, the cost of employee uniforms, safety and medical expenses, exterminator and waste disposal costs, costs relating to the maintenance of signage inventory and systems, the cost of annual independent audits of the Facilities, the cost of compliance with laws and regulations, costs incurred under agreements, commitments, licenses and contracts executed in SMG's name, and the Fixed Management Fees payable to SMG pursuant to this Contract, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis; provided that Operating Expenses shall not include Capital Expenditures, and any expenses relating to SMG's personnel based in SMG's corporate headquarters or its regional field locations (other than pre-approved and reasonable costs of travel by such corporate or regional personnel in connection with SMG's management of the Facilities, which costs shall be Operating Expenses). Solely for purposes of (i) calculating Net Operating Loss/Profit and the Incentive Fee and (ii) identifying Operating Expenses which will be budgeted in approved budgets, Operating Expenses shall exclude (A) event expenses which are deducted from the gross receipts of all event activities at the Facilities (in accordance with the last sentence in the definition of Operating Revenues), (B) all extraordinary expenses and all interest, income tax,

depreciation and amortization expenses, and (C) contributions made to the Capital Reserve Fund.

13. "Operating Revenue" shall mean any and all revenues of every kind or nature derived from owning, operating, managing or promoting the Facilities, including, but not limited to: license, lease and concession fees and rentals, revenues from merchandise sales, advertising sales, equipment rentals, utility revenues, box office revenues, parking revenues, food service and concession revenues (however, if such revenues are collected in the first instance by and retained by the concessionaire, the amount of such revenues paid by the concessionaire to the Facilities shall be included as Operating Revenues), commissions or other revenues from decoration and set-up, security and other subcontractors (however, if such revenues are collected in the first instance by and retained by such subcontractors, the amount of such revenues paid by such SMGs to the Facilities shall be included as Operating Revenues), miscellaneous operating revenues, revenues generated from separate agreements with SMG Affiliates pertaining to the Facilities, and interest revenues, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis.
14. "Operating Year" shall mean one full fiscal year period beginning January 1<sup>st</sup> and ending December 31.
15. "SMG Capital Contribution" shall mean the sum of \$100,000 to be contributed by SMG to the Facility to be utilized for capital improvements at the BCC.
16. "Subcontractor" shall mean one not in the employment of SMG, who is performing all or part of those services under this contract under a separate contract with SMG. The terms "Subcontractor" and "Subcontractors" means Subcontractor(s) in any tier.

B. ACCESS TO DATA

Upon reasonable advance notice and during business hours, SMG shall provide access to data generated under this Contract to CITY. This includes access to all information that supports the findings, conclusions, and recommendations of SMG's reports, including computer models and methodology for those models.

C. ADVANCE PAYMENTS PROHIBITED

Unless otherwise provided in this Contract, no payments in advance of or in anticipation of goods or services to be provided under this Contract shall be made by the CITY.

D. AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each



of the parties.

E. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990. PUBLIC LAW 101-336  
ALSO REFERRED TO AS THE "ADA" 28 CFR Part 35

SMG must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications. Nothing in this Section or elsewhere in this Contract shall, however, require SMG to undertake the foregoing compliance activity, nor shall SMG have any liability under this Contract therefore, if such activity requires any capital improvements or capital equipment purchases, unless the CITY provides funds for such capital improvements and capital equipment purchases or unless such liability is the result of the negligence of SMG. Furthermore, SMG shall have the right to require any licensee, lessee, tenant, promoter or user of any portion of the Facilities to comply, and to be financially responsible for compliance, with Title III of the ADA in connection with any activities of such licensee, lessee, tenant, promoter or user at the Facilities.

F. ASSIGNMENT

Neither party shall assign or transfer any interest, obligation, or right in this Contract without the prior written consent of the other party, which consent may be withheld or granted on conditions in such other party's sole and absolute discretion.

G. ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney's fees and costs.

H. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

Neither party shall use or disclose any information concerning the other party, or information which may be classified as confidential, for any purpose not directly connected with the administration of this Contract, except with prior written consent of the other party, or as may be required by law.

I. CONFLICT OF INTEREST

The CITY may, in its sole discretion, by written notice to SMG terminate this contract if it is found after due notice and examination by the CITY and a failure to cure by SMG that there is a violation of any Ethics laws or policies of the CITY, County or the State of Missouri or any similar statute involving SMG in the procurement of, or services under this Contract. In the event this Contract is terminated as provided above, the CITY shall be entitled to pursue the same remedies against SMG as it could pursue in the event of a breach of the Contract by SMG. The rights and remedies of the CITY provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Agent makes any determination under this clause shall be an issue and may

be reviewed as provided in the "Disputes" clause of this contract.

J. COPYRIGHT PROVISIONS -

1. Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the CITY. The CITY shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, SMG hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to the CITY effective from the moment of creation of such Materials.

2. Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

3. For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, SMG hereby grants to the CITY a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. SMG warrants and represents that SMG has all rights and permissions, including intellectual property rights of publicity, necessary to grant such a license to the CITY

4. SMG shall exert all reasonable effort to advise the CITY, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this contract. The CITY shall receive prompt written notice of each notice or claim of copyright infringement received by SMG with respect to any data delivered under this contract. The CITY shall have the right to modify or remove any restrictive markings placed upon the data by SMG.

5. Notwithstanding anything to the contrary contained in this Contract, all information proprietary to SMG will remain with SMG.

J. COVENANT AGAINST CONTINGENT FEES

SMG warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by SMG for the purpose of securing business. The CITY shall have the right, in the event of breach of this clause by SMG, to annul this contract without liability or, in its discretion, to deduct from the Contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee. SMG warrants that any group or national discounts it receives from vendors will be credited to the CITY.

## L. DISPUTES

1. The parties desire to cooperate with each other in the management and operation of the BCC pursuant to the terms hereof. In keeping with this cooperative spirit and intent, any dispute arising hereunder will first be referred to the parties' respective agents or representatives prior to either party initiating a legal suit, who will endeavor in good faith to resolve any such disputes within the limits of their authority and within forty-five (45) days after the commencement of such discussions. If and only if any dispute remains unresolved after the parties have followed the dispute resolution procedure set forth above, the matter will be submitted to mediation. Within ten (10) business days from the date that the parties cease direct negotiations, the CITY shall select a neutral third party mediator, who shall be subject to the reasonable approval of SMG. Each party will bear its own cost of mediation; provided, however, the cost charged by any independent third party mediator will be borne equally by the parties.

2. The parties agree that any mediation proceeding will constitute settlement negotiations for purposes of the federal and state rules of evidence and will be treated as non-discoverable, confidential and privileged communication by the parties and the mediator. No stenographic, visual or audio record will be made of any mediation proceedings or such discussions. All conduct, statements, promises, offers and opinions made in the course of the mediation or such discussion by any party, its agents, employees, representatives or other invitees and by the mediator will not be discoverable nor admissible for any purposes in any litigation or other proceeding involving the parties and will not be disclosed to any third party.

3. The parties agree that this mediation procedure will be obligatory and participation therein legally binding upon each of them. In the event that either party refuses to adhere to the mediation procedure, the other party may bring an action to seek enforcement of such obligation in any court of competent jurisdiction.

4. CITY and SMG agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this contract which are not affected by the dispute. Both parties agree to exercise good faith in the dispute resolution and to settle disputes prior to using the dispute resolution panel whenever possible.

## M. GOVERNING LAW

This Contract shall be construed and interpreted in accordance with the laws of the State of Missouri, and the venue of any action brought hereunder shall be in the Circuit Court for Taney County, without regard to the conflicts of law's provisions thereof.

## N. INDEMNIFICATION

1. Indemnification by SMG. To the extent allowed by law SMG agrees to defend, indemnify and hold harmless the CITY, and its respective successors and permitted assigns, and all agents, servants, officials, directors, consultants and employees of the foregoing (collectively, the "CITY Indemnitees") against any claims, causes of action, costs, expenses

(including reasonable attorneys' fees) liabilities, or damages (collectively, "Losses"), in law or in equity, for bodily injury, death or damage to property, or other Losses, suffered by any of the CITY Indemnitees, arising out of or in connection with (a) any negligent act or omission, or intentional misconduct, on the part of SMG, (b) breach by SMG of any of its representations, covenants or agreements made herein, (c) any violation of any copyright, patent, service mark, trade name or trademark by SMG, (d) failure by SMG to perform any obligations of the CITY or SMG under any third party contracts as required in this Contract, unless such failure was caused by any negligence or other fault on the part of the CITY or (e) injury to or death of any person or damage to or destruction of property caused by the conduct of SMG or SMG's management or operation of the Facilities (or any portion thereof) in violation of this Contract.

2. Indemnification by the CITY. To the extent allowed by law, the CITY agrees to defend, indemnify and hold harmless SMG, its parents, subsidiaries and affiliates, and their respective successors and permitted assigns, and all partners, agents, employees, directors and officers of the foregoing, against any Losses, in law or in equity for bodily injury, death or damage to property, or other Losses, arising out of or in connection with (a) any negligent act or omission, or intentional misconduct, on the part of the CITY, (b) a breach by the CITY of any of its representations, covenants or agreements made herein, including without limitation the CITY's obligation, if any, to fund any budgeted or otherwise approved expenses in a timely manner, (c) injury to or death of any person or damage to or destruction of property caused by the CITY's use or occupancy of the Facilities (or any portion thereof) in violation of this Contract, (d) the fact that at any time prior to, as of, or after the commencement of this Contract, the Facilities have not been operated, or the Facilities and its premises are not or have not been, in compliance with all Laws, including, but limited to, the Americans with Disabilities Act, 42 U.S.C. Sections 2101-12213 as amended by the Civil Rights Act of 1991 (42 U.S.C. Section 1981(a)), as it now exists and as it may be amended in the future by statute or judicial interpretation (collectively, the "ADA"), (e) the fact that prior to, as of, or after the commencement of this Contract there is any condition on, above, beneath or arising from the premises occupied by the Facilities which might, under any Law, give rise to liability or which would or may require any "response," "removal" or "remedial action" (as such terms are defined under the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act), (t) any structural defect or unsound operating condition with respect to the Facilities or the premises occupied by the Facilities prior to, as of or after the commencement of the Contract hereunder, (g) any obligation or liability for physical damage or other Loss to any real property located at the Facilities, whether such assets are insured by the CITY or whether the CITY decides not to insure for such damage and Losses (including without limitation damages or Losses falling within any policy deductible), (h) any non-- compliance with any pre-existing agreement on or prior to the commencement of this Contract, or (i) any act or omission carried out by SMG at or pursuant to the direction or instruction of the CITY, its agents or employees; provided, however, that the foregoing indemnification under this Section N.2 shall not apply to the extent of any breach by SMG of its obligations hereunder.



3. Conditions to Indemnification. With respect to each separate matter brought by any third party against which a party hereto ("Indemnitee") is indemnified by the other party ("Indemnitor"), the Indemnitor shall be responsible, at its sole cost and expense, for controlling, litigating, defending and/or otherwise attempting to resolve any proceeding, claim, or cause of action underlying such matter, except that (a) the Indemnitee may, at its option, participate in such defense or resolution at its expense and through counsel of its choice; (b) the Indemnitee may, at its option, assume control of such defense or resolution if the Indemnitor does not promptly and diligently pursue such defense or resolution, provided that the Indemnitor shall continue to be obligated to indemnify the Indemnitee hereunder in connection therewith; and (c) neither Indemnitor nor Indemnitee shall agree to any settlement without the other's prior written consent (which shall not be unreasonably withheld or delayed). In any event, Indemnitor and Indemnitee shall in good faith cooperate with each other and their respective counsel with respect to all such actions or proceedings, at the Indemnitor's expense. With respect to each and every matter with respect to which any indemnification may be sought hereunder, upon receiving notice pertaining to such matter, Indemnitee shall promptly (and in no event more than twenty (20) days after any third party litigation is commenced asserting such claim) give reasonably detailed written notice to the Indemnitor of the nature of such matter and the amount demanded or claimed in connection therewith.

4. Negligence Claims. Notwithstanding any other provision of the contract to the contrary, no insurance procured by the Service Provider shall be construed to constitute a waiver of any sovereign immunity as set forth in section 537.600 through 537.650 of the Missouri Revised Statutes, or any other governmental or official immunity, which is barred under said doctrines of sovereign, governmental or official immunity available to the City, its Board of Aldermen, salaried officers or employees, nor constitute waiver of any available defense. The Service Provider shall cause all policies of insurance related to the contract to be endorsed in accord to this subparagraph.

5. Applicability of Insurance. The parties acknowledge and agree that they (and their respective indemnities) shall look first to the proceeds of any insurance policies carried pursuant to this Contract for recovery in respect of the obligations of the other party. Any party that has primary insurance coverage hereunder shall indemnify any other named or additional insured as to such coverage to the full extent of such coverage. Each insurance policy obtained pursuant to this Contract shall confirm, by way of endorsement or in any other written form, that the insurer agrees to be bound by the terms of this Section, and will not raise any defense to its primary obligations to reimburse the parties under its policy as a result of the indemnification provisions of this Contract.

6. The indemnification obligations of the parties contained in this Contract shall survive the termination or expiration of this Contract.

O. INDEPENDENT CAPACITY OF SMG

The parties intend that an independent SMG relationship will be created by this Contract.

SMG and his or her employees or agents performing under this Contract are not employees or agents of the CITY. SMG will not hold himself/herself out as or claim to be an officer or employee of the CITY by reason hereof, nor will SMG make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with SMG. In the event of the termination or expiration of this Contract, without any further action on the part of either party, the CITY shall, or shall cause another management company retained by it to, accept the assignment of SMG's rights, and assume and perform all of SMG's obligations, arising after the date of expiration or termination of this Contract, under any licenses, occupancy agreements, rental agreements, booking commitments, advertising agreements, concession agreements, and any other contracts relating to the Facilities which have been executed by SMG hereunder PROVIDED any obligation entered into by SMG that extends beyond the Term must be approved by the CITY in writing.

P. WORKERS COMPENSATION INSURANCE COVERAGE

SMG will at all times comply with all applicable workers' compensation requirements of the Chapter 287 of the revised statutes of the State of Missouri, as well as all occupational health and safety laws, statutes, and regulations to the full extent applicable. The CITY will not be held responsible in any way for claims filed by SMG or their employees for services performed under the terms of this contract. Prior to performing work under this contract, SMG shall provide or purchase industrial insurance coverage for SMG's employees, as may be required of an "employer" as defined by Missouri State law, and shall maintain full compliance with Missouri State law during the course of this Contract.. Workers' Compensation Insurance with a company authorized to do business in the State of Missouri having limits not less than one million dollars (\$1,000,000.00), including occupational disease provisions for all employees of the Service Provider(s) and Sub-Service Provider(s).

Q. LICENSING ACCREDITATION AND REGISTRATION

SMG shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this Contract. SMG must comply with all CITY, County and State laws, ordinances, regulations and rules including all health regulations.

R. LIMITATION OF AUTHORITY

Only the Agent or Agent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this Contract is not effective or binding unless made in writing and signed by the Agent.

S. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

In the event of SMG's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Contract may be rescinded, canceled or terminated in whole or in part,

and SMG may be declared ineligible for further contracts with the CITY. SMG shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

T. NONDISCRIMINATION

During the performance of this contract, SMG shall comply with all federal and state nondiscrimination laws, regulations and policies.

U. NOTICES

Any and all notices or other communications required or permitted by this contract or by law to be delivered to, served on or given to either party to this Contract by the other party to this contract, shall be in writing and shall be deemed properly delivered, given or served when personally delivered to such party, or in lieu of personal services, when telecopied or when mailed by United States mail, express, certified or registered, postage prepaid (or other overnight delivery services, charges prepaid), to the contact person and addresses set forth in the Contract. All notices so telecopied shall be deemed delivered upon transmission thereof and all notices so mailed shall be deemed received on the date which is twenty-four (24) hours after delivery to the overnight delivery service by the sender, or if placed in the United States mails, on the date of the return receipt or, if delivery of such United States mail is refused or cannot be accomplished, forty-eight (48) hours after deposit in the United States mails. Either party may change its address for the purpose of the Section by giving ten (10) days' advance written notice of such change to the other party in the manner provided herein

V. PRIVACY

1. Personal information collected, used or acquired in connection with this contract shall be used solely for the purposes of this contract. SMG and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the CITY or as provided by law. SMG agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

2. The CITY reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by SMG through this contract. The monitoring, auditing or investigating may include but is not limited to "salting" by the CITY. SMG shall certify return or destruction of all personal information upon expiration of this contract. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

3. Any breach of this provision may result in termination of the contract and the demand for return of all personal information. SMG agrees to indemnify and hold harmless the CITY for any damages related to SMG's unauthorized use of personal information.

4. For purposes of this provision, personal information includes, but is not limited to, information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and other identifying numbers.

W. PUBLICITY

SMG agrees to submit to the CITY all advertising and public CITY matters relating to this Contract which, in the CITY's judgment, CITY's name can be implied or is specifically mentioned. SMG agrees not to publish or use such advertising and public CITY matters without the prior written consent of the CITY.

X. RECORDS MAINTENANCE

SMG shall maintain complete financial records relating to this contract and the services rendered including all books, records, documents, magnetic media, receipts, invoices and other evidence relating to this contract and performance of the services described herein, including but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. SMG, at CITY's expense, shall retain such records for a period of six years following the date of final payment. If SMG anticipates charging CITY a charge for the maintenance of records, CITY shall have the option of receiving and maintaining said records at its own expense. At no additional cost, these records including materials generated under the Contract shall be subject at all reasonable times upon reasonable advance notice to inspection, review, or audit by the CITY, the Office of the State Auditor, and federal and state officials so authorized by law, rule, regulation, or agreement. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

Y. REGISTRATION WITH DEPARTMENT OF REVENUE

SMG shall complete registration with the State Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

Z. RIGHT OF INSPECTION

SMG shall provide right of access to its Facilities to the CITY, or any of its officers, or to any other authorized agent or official of the State of Missouri, or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

AA. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or



limited in any way after the effective date of this Contract and prior to normal completion, either party may terminate this Contract, subject to renegotiation upon mutual written agreement under those new funding limitations and conditions.

BB. SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provisions illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

CC. SITE SECURITY

While on CITY premises, SMG, its agents, employees, or Subcontractors shall conform in all respects with physical, fire or other security regulations.

DD. SUBCONTRACTING

Except for subcontracts in the ordinary course, neither SMG nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this Contract without obtaining prior written approval of the CITY.

EE. TAXES

All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for SMG or its staff shall be the sole responsibility of SMG.

FF. TERMINATION FOR CAUSE -

1. In the event the either party determines that the other party has failed to comply with the conditions of this Contract in a timely manner, the non-defaulting party has the right to suspend or terminate this Contract as set forth in this paragraph. The non-defaulting party shall notify the defaulting party in writing of the need to take corrective action. If corrective action is not taken within 30 days, this Contract may be terminated. The non-defaulting party reserves the right to suspend all or part of this Contract, withhold further payments, or prohibit the defaulting party from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the defaulting party or a decision by the non-defaulting party to terminate this Contract.

2. In the event of termination, the defaulting party shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g. cost of the competitive bidding, mailing, advertising and staff time. The rights and remedies provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

GG. TERMINATION PROCEDURES -

1. Upon termination of this Contract, the CITY, in addition to any other rights provided in this Contract, may require SMG to deliver to the CITY any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

2. The CITY shall pay to SMG the agreed upon price, if separately stated, for completed work and services accepted by the CITY, and the amount agreed upon by SMG and the CITY for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services which are accepted by the CITY, and (iv) the protection and preservation of property, unless the termination is for default, in which case the CITY shall determine the extent of the liability of the CITY. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The CITY may withhold from any amounts due SMG such sum as the CITY determines to be necessary to protect the CITY against potential loss or liability.

3. The rights and remedies of the CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

4. After receipt of a notice of termination, and except as otherwise directed by the Agent, SMG shall:

- a. Stop work under the Contract on the date, and to the extent specified, in the notice;
- b. Place no further orders or subcontracts for materials, services, or Facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- c. Assign to the CITY, in the manner, at the times, and to the extent directed by the Agent, all of the rights, title, and interest of SMG under the orders and subcontracts so terminated, in which case the CITY has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the CITY to the extent CITY may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to the CITY and deliver in the manner, at the times, and to the extent directed by the CITY any property which, if the contract had been completed, would have been required to be furnished to the CITY;
- f. Complete performance of such part of the work as shall not have been

terminated by the CITY; and

- g. Take such action as may be necessary, or as the CITY may direct, for the protection and preservation of the property related to this contract which is in the possession of SMG and in which the CITY has or may acquire an interest.

Notwithstanding the foregoing, upon any termination or expiration of this Contract, SMG and the CITY may mutually agree upon a period of time after such termination or expiration (not to exceed ninety (90) days) (the "Transition Period") during which SMG will remain at the Facilities and continue to provide its services hereunder for purposes of transitioning the management of the Facilities to the CITY or a successor management company. During the Transition Period, SMG will continue to earn all fees to be earned by SMG hereunder for providing its services. During the Transition Period, the application of the provisions of clauses 1 through 4 of this Section GG shall be suspended until such time as the end of the Transition Period occurs.

#### HH. TREATMENT OF ASSETS

1. Title to all property furnished by the CITY shall remain in the CITY. Title to all property furnished by SMG, for the cost of which SMG is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the CITY upon delivery of such property by SMG. Title to other property, the cost of which is reimbursable to SMG under this contract, shall pass to and vest in the CITY upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the CITY in whole or in part, whichever first occurs. Any property of the CITY furnished to SMG shall, unless otherwise provided herein or approved by the CITY, be used only for the performance of this contract. SMG shall be responsible for any loss or damage to property of the CITY which results from the negligence of SMG or which results from the failure on the part of SMG to maintain and administer that property in accordance with sound management practices.

2. If any CITY property is lost, destroyed or damaged, SMG shall immediately notify the CITY and shall take all reasonable steps to protect the property from further damage.

3. SMG shall surrender to the CITY all property of the CITY prior to settlement upon completion, termination or cancellation of this contract.

4. All reference to SMG under this clause shall also include SMG's employees, agents or Subcontractors.

5. Notwithstanding anything to the contrary set forth herein, all information proprietary to SMG will remain with SMG.

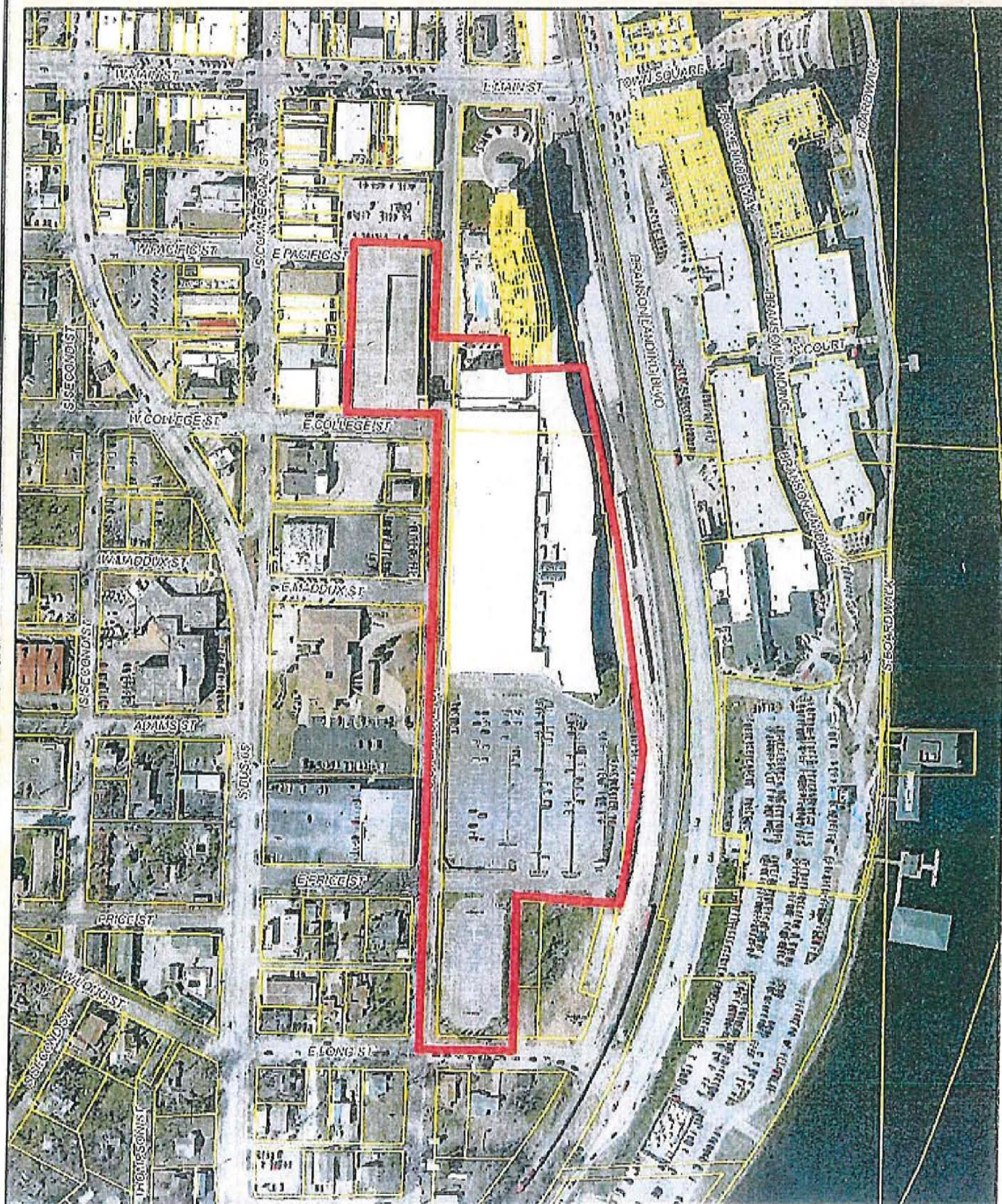
#### II. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent

default or breach. Any waiver shall not be construed to be a modification of the terms of this contract unless stated to be such in writing and signed by the CITY.



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## PROPOSAL NUMBER 2480-29

**FROM:** City of Branson  
Purchasing Office  
110 W. Maddux St., Suite 200  
Branson, MO 65616  
Telephone: (417) 334-3345

Date: March 1, 2019  
**Date and Time Returnable:**  
3:00 p.m., March 29, 2019  
Buyer: David D. Rockhill, C.P.M.  
Facsimile: (417) 335-6042

**TO:**

*Copy*

*David D. Rockhill*

SEALED PROPOSALS MUST BE PHYSICALLY RECEIVED IN THE CITY CLERK'S OFFICE PRIOR TO 3:00 P.M. ON FRIDAY, MARCH 29, 2019. Proposals will be opened by the buyer in the Municipal Courtroom, which is located on the second floor of city hall, next to the city clerk's office.

- Proposals shall be submitted on the forms provided and must be manually signed by the individual authorized to legally bind the company.
- Proposals shall be submitted with the RFP number clearly indicated on the outside of the package(s).
- Proposals received after the opening date and time will be rejected.
- **FAXED/EMAILED PROPOSALS WILL NOT BE ACCEPTED.**

You are invited to submit your proposal to furnish the materials and/or services described herein. Please submit your prices/fees net of all discounts.

### DESCRIPTION

#### CONVENTION CENTER MANAGEMENT

*See attached Instructions, General Conditions, Specifications, and Bid Form for detailed information.*

It is the intent of the City that this Request for Proposal promotes competition. It shall be the Proposer's responsibility to advise the Purchasing Department if any language, requirements, etc. any combination thereof, inadvertently restricts or limits the requirements stated in this Request for Proposal to a single source. Such notification must be submitted in writing and must be received by the Purchasing Department not later than five (5) days prior to the opening date.

**STANDARD INSTRUCTIONS TO PROPOSERS  
AND CONDITIONS OF REQUEST FOR PROPOSAL**

**1. PREPARATION OF PROPOSALS**

- A. Proposers are expected to examine the scope of services, requirements and all instructions of the Request for Proposal. Failure to do so will be at Proposer's risk.
- B. Any manufacturer's name, trade names, brand names, information listed are for information and are not intended to limit competition.

**2. SUBMISSION OF PROPOSALS**

- A. A proposal submitted by a Proposer must (1) be manually signed by the Proposer on the Pricing Page of the Request For Proposal; (2) contain all information required by the Request For Proposal; (3) be priced as required; (4) be sealed in an envelope or container; (5) be attached to a security deposit if required; and (6) be delivered to the City Clerk's Office, 110 W. Maddux, Suite 205, Branson, MO 65616 and officially clocked in no later than the exact time and date specified on the Request For Proposal.
- B. The sealed envelope or container containing a proposal should be clearly marked on the outside with (1) the official Request for Proposal number and (2) the official closing date and time.
- C. Do not submit proposals in response to other solicitations in the same sealed envelope. If more than one proposal is submitted in the same container, your proposal may be rejected as non-responsive.
- D. The proposer is requested to submit one (1) original signature proposal and four (4) complete copies (marked copies) of the original signature proposal, for a total of five (5) complete proposals.

**3. MODIFICATION OR WITHDRAWAL OF PROPOSALS**

- A. Proposals may be modified or withdrawn by written or telegraphic notice received prior to the official closing date and time specified. A proposal may also be withdrawn or modified in person by the Proposer or his authorized representative provided proper identification is presented before the official closing date and time. Verbal phone requests to withdraw or modify a proposal will not be considered.
- B. After the official closing date and time, no proposal may be modified or withdrawn.

**4. PROPOSAL OPENING**

- A. Proposal openings shall be public on the date and at the time specified on the proposal form. It is the Proposer's responsibility to assure that his proposal is delivered at the proper time and place of the proposal opening. Proposals which for any reason are not so delivered will not be considered. Offers by telegram, telephone, or facsimile will not be accepted, unless specifically authorized by the Request for Proposal. Proposal files may be examined during normal working hours by appointment.

## 5. AWARDS

- A. As the best interest of the City may require, the right is reserved to make awards; to reject any and all proposals or waive any minor irregularity of technicality in proposals received.
- B. Awards will be made to the Proposer whose proposal (1) meets the specifications and all other requirements of the Request for Proposal and (2) is the best proposal, considering price, responsibility of the Proposer and all other relevant factors in the criteria for award.
- C. Each proposal is received with the understanding that the acceptance in writing by the City of the offer to furnish any or all services described therein shall constitute a contract between the Proposer and the City; and shall bind the Proposer to furnish ~~and deliver at the price, and in accordance with the conditions of said accepted~~ proposal and detailed specifications.

## 6. OPEN COMPETITION

It is the intent and purpose of the Purchasing Department that the Request for Proposal permits free and open competition. However, it shall be the Proposer's responsibility to advise the Purchasing Department if any language, requirements, etc., or any combination thereof, inadvertently restricts or limits the requirement to a single source or otherwise prohibits the submission of a proposal. The notification should be received by the Purchasing Department at least five days prior to the Request for Proposal closing date and time. The Proposer may submit a notification after the proposal closing provided sufficient time is permitted for a thorough review by the Purchasing Department and/or Evaluation Committee and its decision will be final.



### PROPOSAL REQUIREMENTS

1. **PROPOSAL TERMS AND CONDITIONS:** The following terms and conditions apply to submitting proposals in response to this Request for Proposal:

- 1.1 **Incurred Expenses:** This City is not responsible for any expenses which proposers may incur in preparing and submitting proposals called for in this Request for Proposals.
- 1.2 **Interviews:** The City reserves the right to conduct personal interviews or require presentations of any or all proposers prior to selection. The City will not be liable for any costs incurred by the proposer in connection with such interviews/presentations (i.e. travel, accommodations, etc.)
- 1.3 **Request for Additional Information:** The proposer shall furnish such additional information as the City of Branson may reasonably require. This includes information which indicates financial resources as well as ability to provide and maintain the system and/or services. The City reserves the right to make investigations of the qualifications of the proposer as it deems appropriate.
- 1.4 **Acceptance/Rejection/Modification to Proposals:** The City reserves the right to negotiate modifications to proposals that it deems acceptable, reject any and all proposals, and to waive minor irregularities in the procedures.
- 1.5 **Proposals Binding:** All proposals submitted shall be binding for ninety (90) calendar days following the opening.
- 1.6 **Proprietary Information:** In accordance with Public Records Law, and except as may be provided by other applicable State and Federal law, all proposers should be aware that Requests for Proposals and the responses thereto are in the public domain. However, the proposers are requested to identify specifically any information contained in their proposals which they consider confidential and/or proprietary and which they believe to be exempt from disclosure, citing specifically the applicable exempting law.

All proposals received from proposers in response to this Request for Proposal will become the property of the City of Branson and will not be returned to the proposers. In the event of contract award, all documentation produced as part of the contract will become the exclusive property of the City.

- 1.7 **Proposer's Certification:** By submitting a proposal, the proposer certifies that he has fully read and understands the proposal method and has full knowledge of the scope and nature and quality of work to be performed. The proposer further certifies that no employee of the City has any direct or indirect financial interest in any resultant contract, and that no gratuities will be offered or provided to City of Branson employees or their family members.

- 1.8 **Information required to be submitted by Proposer:** Each Proposer shall submit the information outlined in the Scope of Work in order for its proposal to be adequately evaluated and considered.
- 1.9 **Exceptions:** If the Proposer desires to take exception to any terms, conditions and requirements of the RFP, the Proposer must clearly state those exceptions on the Affidavit of Compliance. Exceptions taken by the Proposer may be considered in the evaluation of proposals.
- 1.10 **Late proposals:** Proposals received by the City after the time specified for receipt will not be considered. Proposers shall assume full responsibility for timely delivery of the proposals to the location designated for receipt of proposals. The City of Branson is not responsible for the U.S. Mail or private couriers in regards to mail being delivered by the specified time so that a proposal can be considered. All proposals will be received at the time and place specified and made available for public inspection when an award decision is made.
- 1.11 **Completeness:** All information required by the Request for Proposal must be supplied to constitute a legitimate proposal. The City of Branson reserves the right to use any and all information presented in any response to the Request for Proposal. Acceptance or rejection of the RFP does not affect this right.

## SCOPE OF WORK

BACKGROUND INFORMATION: The Branson Convention Center (BCC) has been in operation since 2007. The convention center facility consists of approximately 220,000 gross square feet of convention center space, with approximately 56,000 gross square feet of exhibition space, approximately 23,000 gross square feet of ballroom/banquet space and approximately 15,000 gross square feet of meeting space and business center space, together with all related entrances, grounds, sidewalks, meeting rooms, common areas, lobby areas, executive offices, storage utility facilities, kitchen, a full service laundry and a 5 level, 500 space parking garage as well as related spaces on-site and off-site.

The convention center is adjacent to the Hilton Branson Convention Center Hotel that contains 204 hotel rooms and an additional 90 condominium hotel rooms for a total of 294 hotel rooms.

1. PURPOSE: It is the goal of the City of Branson to advance this high quality, state of the art multi-purpose meeting facility to meet the needs of conventions, trade shows, concerts, sporting events, select consumer shows, corporate meetings and community events. The City of Branson will oversee and manage the contract of the selected operations management firm.

The City invites submittals from qualified organizations, firms, and individuals that have proven experience in providing comprehensive management and full-service operations at convention or exhibition facilities in similar markets.

This Request for Proposal (RFP) is for consolidated services. That is, proposers should be prepared to provide all management and operations services. However, the City will consider a proposer's use of affiliated companies, joint ventures, or subcontractors, including utilization of City employees or resources, to provide consolidated services.

At the conclusion of the RFP process described herein, and upon execution of an Operations Management Agreement (Agreement), a selected Proposer will be selected for the comprehensive management and operation of the Branson Convention Center (BCC) consistent with generally accepted operations of a first-class convention center. As will be described hereafter, it is preferred that the selected Proposer serve as an independent proposer. The management firm must function as the single point of responsibility for the City, under no circumstances shall the work or services covered by this agreement be subcontracted without prior approval of the City. The selected Proposer shall be responsible for but not limited to: budgeting; hiring and training of staff; the maintenance of the land, building, furniture, fixtures and equipment; local sales and marketing of the BCC as well as coordinating with the City, management of various product and service providers; coordination of BCC utilization, scheduling, negotiating and licensing of events, and management of event parking, as well as any other responsibilities that may be required in the Agreement. The selected Operations Manager will communicate with the City Administrator and Board of Aldermen as well as the City's management group as directed.

**Non-Mandatory Pre-proposal Conference:** A pre-proposal conference will be held on March 12, 2019 at 10:00 a.m. at the City of Branson, Council Chambers Room, 110 W. Maddux St., Branson MO. All Proposers are strongly encouraged to attend for clarification of the requirements. In the event you are unable to attend at the scheduled time, contact the following person(s) to make other arrangements. The City in its discretion and time permitting may allow site visits at a time other than scheduled. Contact person is Traci Henderson at 417-337-8573.

2. GOALS AND OBJECTIVES:

In considering alternative management structures, the City has identified the following operational goals for the BCC. The intent is to achieve these goals in the timeliest and most cost effective manner. Proposers should consider these goals an important part of the RFP process, as their ability to meet them will be carefully evaluated in the selection process. Goals that have been identified at this point are summarized below.

- 2.a. Manage day-to-day operations of the BCC in a cost efficient, high quality and efficient manner;
- 2.b. Maximize the generation of city and Branson hotel and motel room occupancy and occupancy taxes;
- 2.c. Develop and market products and services associated with the BCC;
- 2.d. Promote the business of existing local restaurant and retail establishments and help maximize sales tax revenue.
- 2.e. Provide high quality food and beverage services.
- 2.f. Work to ensure that events, exhibitions, trade shows, and other meetings are attractive to and retained at the BCC by producing an exhibitor-friendly and cost effective environment.
- 2.g. Properly maintain and safeguard the City's capital investment in the BCC through the exercise of the highest standards of maintenance and preservation, and, as the need arises, recommend capital improvements. Including meeting all City required levels of insurance.
- 2.h. Provide superior services to users of the BCC and patrons and visitors attending events, thereby maximizing customer satisfaction as exhibited by an industry-wide positive image of the BCC, and maximizing re-bookings.
- 2.i. Develop and oversee a customer friendly, cost efficient labor workforce.
- 2.j. Maximize the economic impact to the community, region, and state (via the accommodation of non-local events, trade shows, conferences and meetings) and



overall utilization of the facility, while focusing on minimizing the annual operating cost for the BCC.

- 2.k. Achieve the greatest possible profitability, establishing guidelines and rules relevant to our economic market to be consistent with other City objectives including the primary business goal of the facility which is to increase incremental room nights and thus City revenues.
- 2.l. Develop and implement initiatives to penetrate new markets, attract new events and promote the BCC to enhance usage of the Convention Center and to increase local and nearby hotel and motel occupancy. Create on-going prospecting goals to be maintained throughout the entire term of the contract.
- 2.m. Work cooperatively with local organizations to attract citywide events including national/international events, tradeshow and meetings to the BCC.
- 2.n. With the assistance of the City, procure and negotiate various contracts and agreements involving facilities, products and services related to the BCC.
- 2.o. Respond to the ever-changing needs of the community and users of the facility with recommendations for expansion, renovations and upgrades of services.
- 2.p. Achieve all objectives in a professional manner, consistent with best industry practices and all applicable laws and ordinances.
- 2.q. Develop and implement an Equal Employment Opportunity and workforce diversity plan.
- 2.r. Develop and implement Emergency Preparedness procedures.
- 2.s. Develop and maintain working relationships with Hilton Branson Convention Center Hotel management and the Branson Convention and Visitors Bureau.
- 2.t. Develop guidelines to direct conferences with other facilities within the City in the event there are conflicts with the BCC.

### 3. City's Intent

Proposers are asked to submit a response to the RFP documenting the experience of their company and its assigned personnel. The City intends to award a contract to one provider to provide these services.

The City will enter into an agreement, which it determines, after evaluation of all proposals, to be most favorable for the City. Contract award will be based on evaluation of the selection criteria set forth later in this RFP. The City reserves the right to select a provider and make an award to the provider determined to be the most advantageous to the City based on the City's evaluation criteria, or to make no award at all. The City anticipates

that negotiations will be necessary; however, the City reserves the right to make an award without negotiations. If negotiations are initiated, they may be conducted with the providers still in the competitive range at the time negotiations are deemed necessary.

#### 4. RFP Procedures

##### 4.1. Contacts & Queries

For additional information or questions regarding this RFP please contact the Purchasing Department- Phone: (417) 337-8556 or Fax: (417) 335-6042 or e-mail: [drockhill@bransonmo.gov](mailto:drockhill@bransonmo.gov).

##### 4.2. Amendment and Clarification Procedures

Inquiries about this RFP must be received in writing by the Purchasing Agent mentioned above. Any questions or clarifications deemed to be of a significant nature will be answered by amendment to the RFP and will be available on the internet, and mailed to only those providers who were provided a copy in person or by mail. The City may delay the proposal receipt date if it deems necessary.

Any verbal clarifications provided by the City representatives shall not be binding on the City and shall in no way excuse the respondent from obligations as set forth in this RFP, or in any way amend the provisions of this RFP.

##### 4.3. Submission Requirements

Proposers should submit an original plus four (4) copies of their proposal. Proposals shall be complete and address all the information listed in Section II of this document. Proposals and all conditions therein shall remain in effect for at least 90 days after the submittal deadline. The City reserves the right to request further proposal extensions after the initial 90 days. The City reserves the right to reject any proposal as nonresponsive if it does not provide all data required for evaluation.

##### 4.4. Preparation of Proposals

Responses to this RFP must be completed as mentioned above. Elaborate qualifications and brochures are not desired. Clear, concise, and orderly information is important. All pages shall be numbered consecutively. Proposals shall be included in binders with tabs to separate the information requested.

The provider is expected to respond to all items in Section II in as much detail as necessary for the City to make a fair evaluation of the provider's proposal.

Responses which do not address the evaluation criteria, are not properly signed, or otherwise contrary to the guidelines of this RFP, may be deemed as non-responsive and rejected.

##### 4.5. Disposition of Proposals

All proposals become the property of the city and will be returned only at the provider's expense. In any event, one copy of each proposal will be retained for the City's official files.

#### 4.6. Proprietary Data

All documents submitted with any proposal shall become public documents and subject to Missouri State Statute Chapter 610 RSMo., which is otherwise known as the "Missouri Sunshine Law". By submitting any document to the City of Branson in connection with a bid or proposal, the submitting party recognizes this and waives any claim against the City of Branson and any of its officers and employees relating to the release of any document or information submitted. Each submitting party shall hold the City of Branson and its officers and employees harmless from any claims arising from the release of any document or information made available to the City of Branson arising from any bid opportunity.

#### 4.7. Modification or Withdrawal of Proposals

Any proposal may be withdrawn or modified by written request of the provider provided such request is received by the City prior to the submittal deadline. Modifications received after the deadline will not be considered.

#### 4.8. Cost of Response Preparation

The cost of preparing a response to this RFP will not be reimbursed to the proposers.

#### 4.9. General Contract Requirements

##### a. Licenses

All successful providers shall be licensed to do business in the State of Missouri and possess a current City of Branson business license as well as a liquor license.

##### b. Choice of Law

Any contract resulting from this RFP shall be governed in all respects by the laws of the State of Missouri, Taney County, and the City of Branson.

##### c. Negotiations

The City reserves the right to negotiate with the successful provider any terms and conditions which may be necessary or appropriate to accomplish the purpose and scope of the RFP; however, the City reserves the right to make an award without conducting negotiations.

##### d. Non-appropriation of funds

Any agreement entered into shall have a clause that addresses the non-appropriation of funds for any fiscal year following the initial fiscal year contract term similar to: In the event no funds or insufficient funds are appropriated and budgeted in any fiscal year for service charges under this Agreement, then the City shall immediately notify provider or

its assignee of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the City of any kind whatsoever, except as to service charges or portions of service charges herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available. In the event of such termination, the City agrees to peaceably surrender use of the services to provider or its assignee on the date of such termination.

Notwithstanding the foregoing, the City agrees (I) that it will not cancel this Agreement under the provisions of this Addendum if any funds are appropriated to it, or by it, for the fiscal period in which such termination occurs or the next succeeding fiscal period thereafter, and (II) that the City shall not, during the term of this Agreement, give priority in the application of funds to any other functionally similar services. This paragraph shall not be construed so as to permit the City to terminate this Agreement to acquire any other service or to allow funds directly or indirectly to perform essentially the same application for which the provided services are intended.

e. Early Termination

The City reserves the right to cancel the contract with one hundred eighty (180) days written notice and seek new bids/proposals at any time for cause. Cause may be defined as, but not limited to, failure to satisfactorily continue to meet the minimum qualification requirements/capabilities outlined in this document. Cancellation for cause will result in the provider being deemed non-responsible and may result in the rejection of any future bids/proposals by the provider.

f. Assignment

Successful provider shall not assign this contract to any other party without prior written approval of the City of Branson.

#### 4.10. Evaluation and Selection Procedures

The City may use some or all of the following criteria in its evaluation and comparison of proposals submitted. The criteria listed are not necessarily an all-inclusive list. The City reserves the right to assign weighting to the criteria. The order in which they appear is not intended to indicate their relative importance:

- Experience of supplier with services required by the City of Branson
- Capacity to assume new business
- Perceived ability to meet the City of Branson requirements
- Total cost competitiveness
- Availability (timetable) for providing goods and/or services
- Breadth of services available
- Company's financial stability
- Ongoing support
- Reporting capability
- Quality control process
- Training



- Management Company must have five (5) years of convention center management experience. If Proposer is working or partnering with other organizations or businesses, the team must have five (5) years' experience of working together as well.

In your experience please state how you would approach the following:

- Identify and implement initiatives to enhance revenues to ensure that the BCC remains economically competitive with other event and conference center venues.
- Management and creation of systems and policies to eliminate unnecessary operating expenses.
- The existing telephone and IT system infrastructure is shared with the Hilton Branson Convention Center Hotel, the proposer selected will be required to address all hardware and software requirements to create a standalone system.
- The BCC is financed with tax-exempt bonds. Additional tax-exempt bonds may be issued in the future to finance additions and/or improvements on the BCC. Thus, the final agreement between the Authority and a selected Proposer of management and operational services must comply with federal tax laws that apply to the use of facilities financed with tax-exempt bonds. Proposers will be required to ensure that their proposals are in full compliance with IRS guidelines and federal tax laws governing private business use of facilities financed with tax-exempt bonds. Proposers are expected to adhere to requirements found in Revenue Procedure 97-13, and proposals should include an opinion from Bond Counsel that the proposal adheres to IRS Revenue Procedure 97-13.
- Provide a summary of components of a sales and marketing plan that you would consider for use at the BCC. Discuss elements that address proposer's innovative and creative approach to the unique conditions with respect to the BCC. Focus your discussion on your strategy for selling and marketing short-term events that are the proposer's responsibility as well as how you envision supporting the sales and marketing efforts of the BCC. Provide specific approaches for working with the BCC on improving short and long-term bookings.
- Provide a brief description of the proposer's experience in working with Destination Marketing Organizations (DMO's), including details as to programs, goals and results for selected projects that distinguish the proposer's ability to work in conjunction with these organizations.
- Food and Beverage Management experience
- Convention Center Management experience
- Parking Garage experience
- Examples of management performance in:
  - Website Development and related equipment
  - Telephone System / equipment
  - Sign Systems
  - Security Camera Systems
  - Computer Systems for internet and e-mail/equipment
  - Point of Sale Systems / equipment
  - Payroll System / equipment
  - Key Control System / equipment

All proposals will be evaluated by an evaluation team consisting of several members of the City of Branson's administrative staff with input from the Board of Aldermen and members

of the community hospitality businesses. The provider or providers deemed to have proposals within the competitive range may be contacted for negotiations, if negotiations are deemed necessary. Once negotiations are completed, the evaluation team will make a recommendation to the City Administrator.

## 5. Selection Criteria

### 1. Development of Short List

Selected providers will be placed on a short list by the evaluation team according to the quality and responsiveness of their proposals. Proposals, which are not placed on the short list, will receive no further consideration. The City reserves the right to shortlist any number of providers based on the merits of their proposals. Each provider's proposal may be selected for the short list after being reviewed for completeness. A proposal will be considered complete if all requested sections as outlined in Section II Vendor Proposal Guidelines below are addressed.

### 2. Formal Evaluation of Short Listed Proposers

a. The evaluation team will grade each short listed provider's proposal based on its' merits. Responses will be evaluated in light of the material actually provided and not on the basis of what is inferred. The evaluation process may include verification of references, verification of project team resumes, confirmation of financial information, and may also include site visits or other information as directed by the City.

#### b. Notification

The City will make a public notice as per the law and notify all the short listed firms of the eventual notice of the award.

## Section II Proposer Proposal Guidelines

### A. Table of Contents

### B. Executive Summary

### C. Provider's Qualifications

#### 1. Profile Data

##### a. Provider's Name and Address

##### b. Name, Title, Phone and Fax Number of Two Contact People

##### c. Type of Entity

Discuss the type of entity your company represents (i.e., corporation, partnership, etc.), and whether your company is the parent company, a division, subsidiary, or branch office of another entity.

##### d. Provider's Philosophy

Discuss what you believe distinguishes your company in the industry.

e. Federal Employee Identification Number

f. Statement of Provider's Compliance with this RFP

Provide a signed statement from an authorized officer of the firm stating that any related contracts with the City will comply with criteria defined in this RFP, and that all material, dates and conditions contained in the provider's proposal to this RFP shall remain in effect for at least 90 days.

g. References. Provide a list of at least three (3) clients where you have demonstrated your experience, qualifications, performance and experience in managing and operating convention centers and/or exhibition facilities that are similar in scope, complexity and size similar to the City. Provide contact information (including name, title, e-mail and phone number) to enable the City to contact those clients as references.

6. Contract Renewal

The original contract period shall be for three (3) years. The contract shall not bind, nor purport to bind, the City for any contractual commitment in excess of the original contract period. The City shall have the right, at its sole option, to renew the contract for two (2) additional three-year periods, or part thereof. In the event the contract is renewed, all terms, conditions, and provisions of the original contract shall remain the same and apply during the renewal period.

7. Missouri Immigration Law Affidavit. The proposer is informed pursuant to Section 285.530, of the Missouri Revised Statutes as a condition of the award of any contract in excess of five thousand dollars (\$5,000.00) the successful bidder shall by sworn affidavit and provision of documentation, affirm the business entity is enrolled and participating in a federal work authorization program with respect to its employees who work in connection with the contracted services. To that end, the proposer will furnish a signed affidavit (attached) affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. If you are an Individual/Proprietorship, then you must return the attached Certification of Individual Proposer.

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March 1, 2019

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STATE OF MISSOURI     )  
                                  ) ss  
COUNTY OF TANEY     )

**AFFIDAVIT**

(as required by Section 285.530, Revised Statutes of Missouri)

As used in this Affidavit, the following terms shall have the following meanings:

**EMPLOYEE:**

Any person performing work or service of any kind or character for hire within the State of Missouri.

**FEDERAL WORK AUTHORIZATION PROGRAM:**

Any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603.

**KNOWINGLY:**

A person acts knowingly or with knowledge,

- (a) with respect to the person's conduct or to attendant circumstances when the person is aware of the nature of the person's conduct or that those circumstances exist; or
- (b) with respect to a result of the person's conduct when the person is aware that the person's conduct is practically certain to cause that result.

**UNAUTHORIZED ALIEN:**

An alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. 1324a(h)(3).

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_, who, being duly sworn, states on his oath or affirmation as follows:

1. My name is \_\_\_\_\_ and I am currently the President of \_\_\_\_\_ (hereinafter "Contractor"), whose business address is \_\_\_\_\_, and I am authorized to make this Affidavit.

2. I am of sound mind and capable of making this Affidavit, and am personally



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acquainted with the facts stated herein.

3. Contractor is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the following services contracted between Contractor and \_\_\_\_\_:
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
4. Contractor does not knowingly employ any person who is an unauthorized alien in connection with the contracted services set forth above.
5. Attached hereto is documentation affirming Contractor's enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services.

Further, Affiant saith not.

\_\_\_\_\_  
[printed name], Affiant

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public  
State of Missouri

My Commission Expires:  
Commissioned in \_\_\_\_\_ County  
Commission # \_\_\_\_\_

**PLEASE NOTE:**

Acceptable enrollment and participation documentation consists of the following 2 pages of the E-Verify Memorandum of Understanding:

1. A valid, completed copy of the first page identifying the Contractor; and
2. A valid copy of the signature page completed and signed by the Contractor, and the Department of Homeland Security - Verification Division

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**CONTRACT AWARD**

1. This Request for Proposal does not commit the City of Branson to award a contract, pay any costs incurred in preparation for travel to Branson to present a proposal to this request, or to procure or contract for services.
2. The City reserves the right to reject any or all proposals and to waive any minor informality or irregularity in an proposer's response if deemed in the best interests of the City.
3. All proposals submitted in response to this Request for Proposal become the property of the City of Branson. The City of Branson reserves the right to accept or reject any or all proposals received or to cancel this Request for Proposal in part or in its entirety. After proposals are reviewed, the City will select the proposal in the best interest of the City.

Award of a contract resulting from this RFP will be made only by written authorization from the City's Purchasing Office.

The above pricing information is hereby provided in accordance with the terms and conditions of this Request for Proposal.

**SIGNATURE AND IDENTITY OF PROPOSER:** The undersigned states that the correct **LEGAL NAME** and **ADDRESS** of (1) the individual proposer, (2) each partner or joint venture (whether individuals or corporations, and whether doing business under a fictitious name), or (3) the corporation (with the state in which it is incorporated) are shown below; that (if not signing the intention of binding himself to become the responsible and sole contractor) he is the agent of, and duly authorized in writing to sign for the proposer or proposers; and that he is signing and executing this (as indicated in the proper spaces below) as the proposal of a (check one):

☐ sole individual      ☐ partnership      ☐ joint venture

☐ corporation, incorporated under laws of State of Missouri if other than Missouri please indicate State of incorporation \_\_\_\_\_

Respectfully submitted,

Signed \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

**CONTACT PERSON FOR BID:**

Printed Name \_\_\_\_\_

Email \_\_\_\_\_ Phone (\_\_\_\_) \_\_\_\_\_

Address \_\_\_\_\_

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Specific exceptions are as follows:

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

## ADDENDA

Proposer acknowledges receipt of the following addendum:

Addendum No. \_\_\_\_\_

Addendum No. \_\_\_\_\_

Addendum No. \_\_\_\_\_

Addendum No. \_\_\_\_\_

Addendum No. \_\_\_\_\_

Email \_\_\_\_\_

Federal Tax ID No. \_\_\_\_\_

Date \_\_\_\_\_



Worldwide Entertainment and  
Conference Venue Management

## Travel & Entertainment Policy

### For Field Personnel

#### A. Introduction

1. Reimbursement of Travel, Entertainment and Business Expenses Incurred

SMG will reimburse employees for all necessary and reasonable expenses incurred by employees performing business activities for the Company. Such expenses should fall within applicable Company guidelines and should be properly approved and reported with adequate information documenting the business purpose. An employee is not to incur personal financial hardship in transaction SMG business. SMG will reimburse employees for all legitimate business expenses incurred; however, any unnecessary or excessive expenditure will not be reimbursed.

2. Applicability of Policy

- a. All employees of SMG who are authorized to incur travel, entertainment, and business expenses on behalf of SMG and the client.
- b. In all cases, any contractual provisions between SMG and the client, regarding travel and entertainment reimbursement and limitations supersede. It is the responsibility of the General Manager of the facility to comply with the contract.
- c. This policy statement should be followed unless changes are authorized and communicated by the CEO or CFO of Corporate SMG.

3. Purpose of Policy

It is SMG's policy to reimburse employees for actual expenses incurred on SMG's behalf while employees are engaged in authorized business. Expenses must be reasonable under the circumstances, and it is always important that every employee exert his / her best efforts to minimize expenses and to use discretion and good judgment in incurring business expenditures.

#### B. General Provisions

1. Timely Submission

SMG employees will be reimbursed for actual allowable expenses upon submission of a properly completed and approved Expense Report, accompanied by required supporting documents. All expenses must be submitted for reimbursement within 30 days and where practical prior to month end.

2. Travel Agency Use

Airline tickets will be purchased through the authorized travel agent using agent-provided centralized billing or through centrally billed corporate credit card. The facility should make the necessary arrangements with the authorized travel agent. Airline tickets should not be purchased using an employee's Corporate or personal credit card. Purchasing tickets for others is not allowed, except for those infrequent SMG traveler, job applicants, or client, in which case they should be approved in advance by the Regional Vice President and fully documented on the expense report.





Worldwide Entertainment and  
Conference Venue Management

## Travel & Entertainment Policy

### For Field Personnel

#### B. General Provisions

##### 3. Charge Cards

- a. SMG employees who regularly incur business related expenses may choose to apply for a corporate charge card if approved by the General Manager. The corporate card account uses an individual billing system where by the employee is required make payments directly to the card issuer. The employee is completely responsible for timely payment of these card charges. SMG has absolutely no responsibility with regard to any employee's account balance or related delinquency charges. The annual fee for this account is billed directly to SMG by the card issuer.
- b. All business travel expenses, for which the provider will accept credit cards, are to be for paid by using the corporate charge card or personal credit card, if a corporate card has not been issued.
- c. The corporate card shall only be used for legitimate business purposes of the company, and shall not be used to obtain credit for personal, family or household purposes.

##### 4. Designated Travel Agencies

Designated travel agency services should be used by all employees in order to ensure quality of travel and control of travel costs. All employees are required to use the Facility's designated travel agent for air travel, hotel reservations and car rentals unless preferred rates or trade deals prevail.

##### 5. Expense Report Forms

All expense reports must conform to this policy with respect to content.

##### 6. Responsibility For Administration of Policy

The Chief Financial Officer of SMG is responsible for the implementation and on-going administration of this policy. All questions concerning policy matter should be directed to the Chief Financial Officer.

#### C. Certification and Approval Policy

##### 1. Requirements for Reimbursement

An expense report will be honored for pay when it has been reviewed, approved, and signed by the employee's immediate supervisor, and such others as may be required by senior management.

##### 2. Authority for Approval

Approval for the General Manager is the Regional Vice President. Approval for all other facility personnel is the General Manager, Department Head and Director of Finance.

##### 3. Certification By Employee

All employees are required to certify and sign their expense reports verifying that they have incurred the expenses set forth on the report on behalf of the company, they are reasonable and that they are directly related to the conduct of SMG business. Purposeful or negligent violations of the reporting and documentation requirements shall be the basis for disciplinary action (which may include termination). *Intentional misrepresentation is a violation of the SMG Business Conduct Policy.*

##### 4. Responsibilities of Approvers

Prior to approving the expense report, the approver is responsible to ensure that all expenditures are business related, that the amounts are not excessive and that detailed explanations have been included, where required.



Worldwide Entertainment and  
Conference Venue Management

## Travel & Entertainment Policy

### For Field Personnel

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#### **C. Certification and Approval Policy (Continued)**

##### **5. Responsibilities of Check Signatory**

Once approved and processed by Finance, a check is generated for payment of the expense reports. Under no circumstance is Petty Cash to be used for the payment of expense reports. The signatory of the check is responsible to ensure that:

- a. Original receipts (i.e., hotel statement, passenger coupons for airline tickets and car rental contracts) and other supporting documents have been attached and the amounts on the receipts agree with those reported.
- b. Travel arrangements have been made using the designated travel agent.
- c. Expenditures have been charged in accordance with General Policy requirements.
- d. The report is arithmetically accurate.
- e. Each expense is charged to the proper account number.
- f. The report has been submitted on a timely basis, at least monthly.
- g. International expenses, incurred in local currencies, are properly converted to U.S. dollars.

#### **D. Supporting Documentation and Retention Policy**

1. As required for tax purposes, all expenses must be supported by a receipt indicating the date, purpose, name and titles of people involved. Only original copies of receipts are acceptable - **Photocopies are not acceptable.**
2. All expense reports for senior management shall be reviewed by the Audit Department at least annually and the findings of such review shall be reported to the CFO and the Audit Committee.

#### **F. Expense Report Exclusions**

The following types of expenditures will not be paid through the expense report process:

1. Payments to SMG employees for expenses in connection with relocation. A separate payment process for such expenses is included in the relocation policy.
2. Company expenditures for partisan political activities are absolutely prohibited by Company policy. All decisions regarding expenditures for non-partisan political activities should be made after consulting with the Chief Financial Officer.
3. Expenditures to trade associations for membership dues and convention fees should be approved through the budget process.



Worldwide Entertainment and  
Conference Venue Management

## Travel & Entertainment Policy

### For Field Personnel

#### G. Travel Expense Policy

##### 1. Air Travel

- a. The designated travel agent is responsible to ensure that the most economical form of air travel is offered to an employee. As such, SMG's policy is to seek the lowest coach fare between origination and destination by requesting the travel agent to:

Review all fare classes including bulk, excursion and promotional. Where appropriate, issue the ticket but wait list the employee for the lower fare in the event that it becomes available.

Review all departures to the desired destination one hour before and one hour after desired departure time.

Airline reservations should be booked in advance whenever feasible to take advantage of discount airfares.

- b. **Lowest Airfare Policy** – An employee is required to travel using the lowest fare. It is expected that an employee will use the lowest fare if the airline makes one-stop and no change of airlines is required, the total time does not add more than one and one-half hours to an employee's air travel time and the next most costly alternative is more than \$100 round trip higher at the time the reservation is made.
  - c. **Class of Service** – All employees are required to fly coach class unless prior approval has been obtained from the CEO or CFO.
  - d. **Frequent Flyer Program** – Frequent flyer or other credits earned while traveling on company business should be retained for personal use only. However, employees enrolled in frequent flyer programs, may not decline the lowest fare offered in order to earn frequent flyer program credits or otherwise arrange their travel to maximize such credits to the detriment of the Company. Company policy also requires that frequent flyer credits be used only for personal or vacation travel and the Company will not reimburse the employee for use of such credits for any reason.
- ##### 2. Railroad or Bus Fares
- For short trips (those less than 150 miles), train, bus service or personal car should be used whenever practicable. Train, bus or car should always be used where the cost of these services does not exceed comparable air coach travel.
- ##### 3. Travel Insurance
- The company provides accidental death and disability insurance to full time field personnel. The cost of additional travel insurance purchased by an employee will not be reimbursed.
- ##### 4. Airport Transportation
- Ground transportation to and from airports is a reimbursable expense. Employees should attempt to use the least expensive and most practical transportation whenever possible. Circumstances such as the number of persons in a party or the urgency of arrival at the employee's destination should be evaluated in choosing the appropriate transportation.



Worldwide Entertainment and  
Conference Venue Management

## Travel & Entertainment Policy

### For Field Personnel

#### G. Travel Expense Policy (Continued)

##### 5. Auto Rental

- a. An automobile may be rented when other public transportation is not practical.
- b. SMG has negotiated discount auto rental rates. The recommended carrier and rates are to be used when travel reservations are made. The designated travel agent should be used to make auto rental reservations. This will ensure that the auto rental is made with the proper company discounts and insurance coverage.
- c. Employees using a rental car for business purposes are covered when using the Corporate carrier. Please contact Corporate to obtain information on the current carrier. Therefore, the collision damage coverage and personal accident insurance offered by car rental companies at additional cost should be declined. SMG will not reimburse for such coverage.
- d. If there is more than one person traveling in the same area, employees should share the same rental car, and compact or intermediate sized automobiles should be selected whenever practical.

##### 6. Automobile Expenses

- a. Reimbursable miles – Employees are reimbursed for use of their personal car for business purposes on a mileage basis. Company gas credit cards will not be issued.
- b. Reimbursable Rates – Mileage for personally owned cars is reimbursable at the current Federal rate and for employees with leased, trade or car allowances, the reimbursement is ½ of the current Federal rate. Local travel i.e. to and from the airport is not reimbursed for employees with leased, trade or car allowances. However, in any case these reimbursement rates cannot exceed those allowed under Federal guidelines.
- c. Liability Insurance Certification – If an employee's auto is used for business purposes, they are required to have a minimum dollar amount of \$100,000 / \$300,000 bodily injury and \$25,000 property damage in insurance coverage. On an annual basis, the employee shall certify that the required coverage is maintained.
- d. Car Telephone – CFO or Senior VP of Human Resources shall determine the policy regarding reimbursement of these expenses. Senior management will determine those employees who are eligible for company paid car telephones. SMG does not advocate the use of telephones in rental cars. The facility should determine the most cost effective method of car and cellular phone billing. A group "company" rate may be obtained from the local carrier, and this should be used. All phone charges are to be individually invoiced and all personal calls reimbursed by the individual. Supervisory management will evaluate whether a specific expenditure is reasonable.





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#### G. Travel Expense Policy (Continued)

##### 7. Lodging

- a. Preferred Hotels – Whenever practicable, employees should utilize the hotels or motels where the company has preferred rates. Typically these preferred rates have been negotiated by local company personnel with specific properties based on volume of travel to certain cities or geographic areas. In some cases, the designated travel agency may also have preferred rates which are available to the company. If these preferred rates cannot be used, then the travel agent will suggest a hotel / motel with comparable accommodations at corporate rates.
- b. Employees who expect to be away from their assigned offices for extended periods of time should arrange lodging at reduced weekly or monthly rates, if possible.
- c. Hotel reservations made by the designated travel agent will be guaranteed for late arrival. A “no-show” charge will be made for any reservation not canceled. SMG employees are responsible for notifying the travel agent to cancel reservations if their plans change.

##### 8. Meals

- a. The actual amount spent for meals (including gratuities) when the employee is away from home on company business will be reimbursed. The costs of these meals should be reasonable. Supervisory management will evaluate whether a specific expenditure is reasonable.
- b. Accountability – Receipts for all meals must be obtained.

##### 9. Other Travel Expenses

The employee will also be reimbursed for the actual amount spent for any of the following travel expenses when away from home on company business:

- Highway and bridge tolls (but not parking fines or traffic violations)
- Taxi and airport limousine fares
- Gratuities (porters, skycaps)
- Essential laundry and dry cleaning service when away from home for at least one week.
- Airport parking – Long term parking should be used in lieu of expensive terminal parking wherever practicable.
- Telephone Calls – Business and personal calls while traveling must be made with an approved calling card or credit card. Reasonable charges for personal telephone calls are allowed when an employee is away from home or when business or transportation problem make then necessary.

##### 10. Telephone and Telegraph

An employee will be reimbursed for the actual amount incurred on business related telephone and telegraph. SMG employees who meet certain travel frequency guidelines will be issued a corporate telephone credit card, for which the employee is personally responsible. All business calls made when out of the office should be charged to this card as this result in lower costs to the company versus other payment methods (i.e. hotel charges). If an employee is not issued a corporate telephone credit card, the employee is encouraged to use a personal telephone credit card. All business related telephone expenses will be reimbursed by SMG.



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#### **G. Travel Expense Policy (Continued)**

##### **11. Travel Advances**

- a. Permanent Travel Advances – Permanent travel advances will not be allowed under any circumstances. Any facilities which have granted permanent travel advances in the past must have them repaid immediately.
- b. Temporary travel advances – In certain cases temporary travel advances of up to \$300 can be made to employees prior to business trips when approved by the employee's supervisor. These advances must be cleared when the next expense report is submitted.

##### **12. Expense of Spouse**

- a. Expenses incurred by an employee's spouse while traveling on business trips are not allowable, unless it is deemed essential or beneficial to SMG. Such a determination is an exception to the general rule and requires advance approval from the CEO.
- b. Approval should be required in advance for a spouse to accompany the employee on a business trip.

#### **H. Entertainment Expense Policy**

##### **1. General Guidelines on Permissible Entertainment**

- a. The reasonable cost of entertaining clients, prospective clients, and applicants will be reimbursed provided it is "directly related to the active conduct of business", or it is "associated with the active conduct of business", a company representative is present and provided it is properly reported and substantiated. Lavish or extravagant expenditures will not be allowed.
- b. Entertainment of government client and prospects. No entertainment of a government employee, agent, or official will be provided except routine meals occurring during the conduct of regular business, and then only to the extent this does not violate the policy of the particular government agency involved.
- c. Expenses of entertaining the spouses of clients or prospective clients are allowable when related to or associated with the conduct of business.
- d. Reporting of Entertainment Expense – A detailed explanation of allowable entertainment shall be set forth on the expense report. This explanation shall include:
  - Date and place of entertainment
  - Name and business affiliation of persons entertained
  - Description of the entertainment and business purpose



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#### I. Gifts

1. **General Guidelines** – All gifts must confirm to the policy set forth in the SMG Personnel Policy Manual. All gifts to clients, prospective clients and suppliers are an allowable expense provided there is a business purpose and the annual cumulative total for any one person is limited to \$50, at cost. (US Tax Guidelines limit deductibility of gifts to \$25 per person per year)
2. **Documentation** – Employees will be reimbursed for the cost of allowable gifts through the expense report, provided:
  - A Receipt is required and must be attached to the Expense Report.
  - The following information at a minimum is required for reimbursement: Date, a description of the gift, and the name and business affiliation of the recipient.
  - In addition to normal expense report approvals, gift expenses should have such prior approvals as are required by the policies and procedures of the company.
3. **Gifts to Government Clients and Prospects** – All gifts to government clients and prospects are governed by the SMG personnel policy manual. *Except for a nominal holiday remembrance, no gifts may be given to a public official or public client employee.* Such holiday remembrances are limited to once a year to any individual.
4. **Gifts to Non-Government Clients, Prospects and Suppliers** – The amount of gifts to any individual cannot exceed \$50 per year, without prior written approval of the CEO, and another member of the Board of Directors evidenced by memo attached to the expense report.
5. **Gifts (Employer to Employee)** – Gifts to employees are not allowed except for those which are given under sanctioned SMG programs, such as Service Awards, Recognition Awards, and gifts of remembrance in the case of major illness, family tragedy, retirement and death.

#### J. Conventions, Trade Shows and Seminars

1. Attendance at conventions, trade shows, meeting of business organizations and the like are items which should be established by the annual budget.
2. The costs related to individual attendance at these conventions and meetings, which expenses fall within the limits set by the budgets of the department, requires that same approval as any expense report. However, the control attendance at national conventions, etc. and to avoid attendance by an excessive number of SMG personnel, the departments should establish approval procedures for such events.
3. **Convention Fees** – Subject to approval of individual attendance requirements in Sections (1) and (2) above, payment of convention fees may be authorized. However, if the organization is classified as a Trade Association, the fee may not be paid by the expense report process. Approved convention fees for professional (non-trade) association conventions may be entered and reimbursed by expense report if an invoice is attached.

#### 12. Management Meetings

Management meetings held at other than company business locations, must be approved in advance, including estimated expenses by the next level management.



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#### **L. Club Memberships**

1. Initial membership fees and dues in organizations, clubs, etc. in which active participation is valuable for both the employee and the company, must have the approval of appropriate management pursuant to policies established by the company. When such fees or dues are in excess of \$150, see item L (2). Subsequent annual assessments for such organizations may be considered as usual expenses on the expense report and should be budgeted.
2. Membership fees or dues in organizations, clubs, etc. in which active participation is valuable for both the employee and the company and such initial or unusual fees or dues are \$150 or more, must be approved by the CEO.
3. Membership dues in organizations, associations, and clubs which are primarily of a social nature such as athletic, yacht, or country club will not be paid by the company unless authorized by the CEO.

#### **M. Meals with Colleagues**

1. Occasional meals with employees for the purpose of business discussions or morale building are permissible. These expenses should be entered as entertainment expenses on the report form and appropriately documented (purpose, location, etc.). Whenever practicable, the most senior management present at such an occasion should pay for these expenses.
2. Such meals should not be in lieu of a meeting if the meeting can be conveniently and mutually arranged without such an expense.
3. "Parties" for employees at the company's expense are not permitted except when approved pursuant to the company's personnel policy manual and permissible in accordance with the SMG/Client contract.
4. Entertainment of another employee where there is no significant and necessary business purpose is not reimbursable.

#### **N. Normal Commutation – Parking Fees (Driving to Work)**

1. Normal commutation expenses, including the cost of fuel and parking are not reimbursable. The General Manager may provide for parking, etc. for irregular weekend or evening situations with appropriate levels of approval.
2. Locations with high density or prior existing situations may deviate from this general rule, with respect to parking, with the written approval of the CEO or CFO.

#### **O. Meal Allowances**

Meal allowances incurred by employees are reimbursable only when the employee is required to work overtime. Meal allowances for overtime work may be set by the General Manager.





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#### P. Miscellaneous Expenses

1. Miscellaneous expenses incurred for the benefit of the company will be reimbursed by expense reports. For example:
  - Dues for professional (non-trade) association
  - Magazine subscriptions
  - Stationary, supplies, and postage
2. As a general rule, any miscellaneous expenses under \$75 should be processed through the expense report in lieu of the costs associated with processing payment through the accounts payable system.

#### Q. Expense Report Preparation Procedure

1. Frequency
  - a. One report is to be submitted for each trip. If a particular trip includes several destinations, you only need to prepare one report. Employees are encouraged to prepare reports within five days after returning from a trip.
  - b. All expense reports for a month must be submitted within 30 days and by the end of the month, whenever practical.
2. Explanation of SMG Expense Report Form:

##### Section I - Travel

Date:	Enter date(s) on which expenses were incurred.
Location / Purpose:	Name of city and / or facility for which expenses were incurred, and brief description of purpose of the trip.
Taxi / Car Rental:	Cost of taxi should include tip to driver. Cost of car rental should include fuel purchased to refill tank if necessary.
Hotel:	Should include only the cost of the room and any room taxes. Other costs associated with the hotel such as room service, movies, and telephone should not be included in this category.
Meals:	Cost (including tip) of breakfast, lunch, or dinner when you dine alone while away from home on business. If the cost of a meal includes anyone other than a colleague from the same facility while away from home on business, the cost should be recorded in the entertainment column and appropriately documented. If cost a meal includes anyone other than you, it should be entered in the Entertainment column.
Tips:	Should include tips for services such as porters and bellhops. Tips for cabs and meals should be included as part of the cost of those items.



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#### Q. Expense Report Preparation Procedure (Continued)

##### 2. Explanation of SMG Expense Report Form:

###### Section 1 - Travel

Automobile:	This section is for use of your company provided or personal vehicle. If you receive an allowance or a company provided vehicle, the reimbursement rate is one-half the Federal rate, for travel outside the metropolitan area. The cost of local travel (i.e. driving to the airport) is considered part of the allowance or value of the company provided vehicle. Employees using their personal vehicle for business reasons at the Federal rate.
Parking / Toll:	Includes charges for parking and / or tolls for personal or rented vehicles.
Entertainment:	Any entry in this category requires the completion of the additional information in Section 2 – Entertainment Information. Entertainment includes any activity generally considered to constitute entertainment, amusement, or recreation. It can include meals, drinks, or tickets to a theater or sporting event, but in all cases, it must be directly related to the active conduct of business. Entertainment includes the cost of a meal, while away from home on business, if the cost includes a colleague not from the same facility, or another business associate.
Miscellaneous:	This section is for all other expenses not covered elsewhere on the report. Examples are air or train phone charges, hotel room movies, telephone, laundry and fax.
Reimbursed Expenses:	This column is for the total of all cash expenses and items charged on your SMG charge card. It should equal the total of all items entered in the categories explained above. At the bottom of this column, enter the amount of any cash advance you received and compute the net amount due to you or due to SMG. Any balance due to SMG should be repaid by check, and the check should be attached to the report.
Charged Airfare:	Enter here the amount of the airfare or train fare that was arranged through the travel agency, and accordingly, will be billed directly to SMG.
Total Expenses:	Enter here the total of the entries in columns for reimbursed expenses and charged airfare.
Billing Reference:	Enter the letter which will be referenced in Section 3. All amounts in the Total Expenses column must have a corresponding entry in this column.



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### **Q. Expense Report Preparation Procedure (Continued)**

#### **2. Explanation of SMG Expense Report Form:**

##### **Section 2 – Entertainment Information**

This section must be completed in full for each item for entertainment expense entered in the entertainment column of Section 1.

- Amount: Enter here the amount which is referenced in Section 1.
- Company: Affiliation of persons entertained.
- Type of Entertainment: Examples are breakfast, lunch, dinner, drinks, or tickets.
- Place of Entertainment: Place in which expense was incurred.
- Business Reason: Include the nature of any business discussions or the nature of the business benefit derived as a result of the expense. Maintaining or developing a business relationship is not acceptable. There must be a specific topic or benefit involved.

##### **Section 3 – Billing References**

- References: This column corresponds to the Billing Reference column in Section 1.
- Customer: Enter the names of the customer, facility, or department on whose behalf the referenced expenses were incurred.
- Amount: The total of the expenses from Section 1 to be billed or allocated to the party listed in the customer column.

#### **3. Supporting Documentation:**

Receipts for expenses should be obtained wherever possible regardless of the amount of the expense. In many cases, SMG can bill expenses to a third party, and documentation requirements for third parties may vary, so to enhance the billing procedure, SMG requires support for all expenses wherever possible.

All original receipts and other documents obtained as support for expenses should be attached to an 8 ½ by 11 size sheet of paper, and all such sheets of paper must be attached to the expense report. Any document which in itself is not a clear definition of an expense should have a further explanation written next to it.

#### **4. Example of Expense Report and Supporting Documentation:**

The following pages contain an example of a correctly prepared expense report with all appropriate supporting documentation.