

SECOND AMENDATORY AGREEMENT

THIS SECOND AMENDATORY AGREEMENT (“Second Amendment”) is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **SMG**, a Pennsylvania general partnership, whose address is 300 Conshohocken State Rd, Suite 450, West Conshohocken, PA 19428 (“SMG” and, together with the City, the “Parties”).

RECITALS

A. The City and SMG entered into an Agreement dated November 18, 2008, as amended by an Amendatory Agreement dated March 7, 2011 (collectively, the “Agreement”) for SMG to provide management services at the Colorado Convention Center (“CCC”).

B. The Parties have determined to extend the contract as already provided by Section 4 for the third of an allowed additional three (3) year period through December 31, 2020, to provide additional compensation for the extension, and to provide a capital contribution from SMG to the CCC;

C. The City and SMG wish to amend the Agreement to extend the term, increase the maximum compensation, and to add a capital contribution from SMG to the CCC.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Section 4 of the Agreement, entitled “**TERM AND RENEWAL**,” is hereby amended to insert the following:

“The City and SMG agree to extend the Management Term of this Agreement for one (1) additional three (3) year period.

In no event shall this Agreement extended any later than midnight on December 31, 2023.”

2. Section 5.1 of the Agreement, entitled “**Fixed Fee**,” is hereby amended to read as follows:

“5.1 **Fixed Fee**. As base compensation to SMG for providing the services herein specified during the Management Term and any Renewal Term, the City shall pay SMG an annual fixed fee, as follows:

\$325,000	Period January 1 through December 31, 2009
\$325,000 plus increment*	Period January 1 through December 31, 2010
2010 fixed fee plus increment*	Period January 1 through December 31, 2011
Prior year's fixed fee plus increment*	Subsequent calendar years**
\$445,000	Period January 1, 2018 through December 31, 2020
\$445,000 plus increment***	Subsequent calendar years

*The increment shall be the greater of: (1) four percent (4%); or (2) the increase in the Consumer Price Index from the midpoint of the calendar year just completed over the

prior year. The Consumer Price Index used herein shall be the Index for the midpoint of the Contract Year for all urban Consumers (for all items, Denver, Colorado) - published by the Bureau of Labor Statistics, US Department of Labor, 1967 = 100. In the event that the US Department of Labor, Bureau of Labor Statistics ceases to publish the said Index, the parties shall substitute another equally authoritative measure of change in the purchasing power of the US dollar as may be then available so as to carry out the intent of this provision.

** (If option exercised by City)

***The increment shall be the increase in the Consumer Price Index from the midpoint of the calendar year just completed over the prior year, which shall not exceed 4%.

The foregoing annual fixed compensation ("Fixed Fee") shall be payable in equal monthly installments due on or before the last day of each month during such Fiscal Year, and SMG shall be entitled to draw such amounts from the account described in Section 6.1A."

3. Section 6.2.B. of the Agreement is hereby amended to read as follows:

"Terminate the Agreement pursuant to Section 8.4."

4. The last sentence of Section 6.7 of the Agreement, entitled "**Capital Improvements; Fixed Assets**," is hereby amended to read as follows:

"The provisions of this section 6.7 shall not apply to the acquisition and installation of the Marquees and Security Improvements as provided in section 6.9 below."

5. Section 6.9 of the Agreement, is hereby amended to read as follows:

"A. Marquees and Sound Equipment Acquisition and Installation: SMG will expend up to \$1.5 million to acquire and install two programmable LED marquees, on 14th Street and on Speer Boulevard, and sound equipment, each meeting the specifications set forth on Exhibit H attached hereto and incorporated herein (the "Marquees and Sound Equipment"). The Marquees and Sound Equipment will be located and installed pursuant to plans approved by the Director and subject to all applicable City permitting requirements, on or before a date one hundred eighty (180) days following the commencement of the Management Term hereunder (the "Marquees and Sound Equipment Installation Date"). SMG shall retain ownership of the Marquees and Sound Equipment, provided that the City shall have an option to purchase the Marquees and Sound Equipment at the following prices: if purchased within one year after the Marquees and Sound Equipment Installation Date-the lesser of \$1.5 million, or the amount actually expended by SMG; if purchased more than one year, but less than two years after the Marquees and Sound Equipment Installation Date-the lesser of \$1.25 million or 83% of the amount actually expended by SMG; if purchased more than two years, but less than three years after the Marquees and Sound Equipment Installation Date-the lesser of \$1

million, or 67% of the amount actually expended by SMG; if purchased more than three years, but less than four years after the Marquees and Sound Equipment Installation Date-the lesser of \$750,000.00 or 50% of the amount actually expended by SMG; if purchased more than four years, but less than five years after the Marquees and Sound Equipment Installation Date-the lesser of \$500,000.00 or 33% of the amount actually expended by SMG; if purchased more than five years, but less than six years after the Marquees and Sound Equipment Installation Date-the lesser of \$250,000.00 or 17% of the amount actually expended by SMG; if purchased more than six years after the Marquees and Sound Equipment Installation Date-\$10.00. SMG and the City agree that the purchase option prices described above represent their best collective estimates of the fair market values of the Marquees and Sound Equipment on the potential dates. Any acquisition of the Marquees and Sound Equipment by the City shall be subject to appropriation of sufficient funds for such purpose. If this Agreement should expire or terminate prior to acquisition of the Marquees and Sound Equipment, SMG shall be entitled to remove the Marquees and Sound Equipment (or the programmable LED portions thereof) at its expense. The cost of SMG obtaining and maintaining property and hazard insurance on the Marquees and Sound Equipment at full replacement cost thereof shall be an Operating Expense.

B. Security Improvements Acquisition and Installation: SMG will expend up to \$1.3 million to acquire and install security system equipment and software upgrades and lighting system equipment upgrades throughout the CCC (the “Security Improvements”). The Improvements will be located and installed pursuant to plans approved by the Director and subject to all applicable City permitting requirements, on or before December 31, 2021 (the “Security Improvements Installation Date”). SMG shall acquire and install \$325,000 of Security Improvements during the 2018 calendar year and shall acquire and install \$325,000 of Security improvements in each calendar year thereafter through December 31, 2021.

SMG shall retain ownership of the Security Improvements, provided that if this Agreement should expire or terminate the City shall purchase the Security Improvements at the following prices:

if purchased between January and December 2018	\$270,000
if purchased between January and December 2019	\$475,000
if purchased between January and December 2020	\$600,000
if purchased between January and December 2021	\$615,000
if purchased between January and December 2022	\$305,000
if purchased between January and December 2023	\$-0-

If the City purchases the Security Improvements, the City shall deliver the amounts described above to SMG within ninety (90) days of the

termination date. Any acquisition of the Security Improvements by the City shall be subject to appropriation of sufficient funds for such purpose.

If this Agreement should expire or terminate prior to installation of the Security Improvements or if the City should fail to exercise its option to purchase the Security Improvements, SMG shall be entitled to remove at its own expense any approved improvements as coded 'approved project invoice/option to purchase item'. The cost of SMG obtaining and maintaining property and hazard insurance on the Security Improvements at full replacement cost thereof shall be an Operating Expense."

6. SMG consents to the use of electronic signatures by the City. This Second Amendment, and any other documents requiring a signature under the Second Amendment, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Second Amendment solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Second Amendment in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

7. Except as amended in this Second Amendment, the Agreement is affirmed, and ratified in each and every particular.

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Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at
Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By_____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By_____

By_____

By_____



Contract Control Number: THTRS-CE93003-02

Contractor Name: SMG

By: John F. Burns

Name: John F. Burns
(please print)

Title: CFO
(please print)

ATTEST: [if required]

By: [Signature]

Name: Jack C. Sellers
(please print)

Title: Executive Assistant
(please print)

