

**AGREEMENT FOR
PROGRAMMING, MANAGEMENT AND OPERATIONS
OF THE PEMBROKE PINES CIVIC FACILITY**

THIS IS AN AGREEMENT (“Agreement”), dated as of the 17th day of February, 2016 (“Effective Date”), by and between:

THE CITY OF PEMBROKE PINES, a municipal corporation of the State of Florida with a business address of 10100 Pines Boulevard, Pembroke Pines, Florida 33026 hereinafter referred to as "CITY",

and

SMG, a Pennsylvania general partnership authorized to do business in the State of Florida, with a business address of 300 Conshohocken State Road, Suite 770, West Conshohocken, Pennsylvania, 19428, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and CONTRACTOR agree as follows:

ARTICLE 1 – PREAMBLE

1.1 In order to establish the background, context and frame of reference for this Agreement, and to generally express the objectives and intentions of the respective parties herein, the following statements, representations, and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow, and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

1.2 On April 17, 2015, the CITY advertised its Request for Qualifications #AD-15-01-A “Programming, Management and Operations of Pembroke Pines Civic Center” to receive and review the qualifications of firms for the purpose of hiring a CONTRACTOR to provide Programming, Management and Operation Services for the City’s Civic Center as more particularly described in Exhibit “A” attached hereto and by this reference made a part hereof;

1.3 The CONTRACTOR submitted a response to RFQ# AD-15-01-A and was subsequently selected by the Evaluation Committee, along with the other three proposers, to continue in the selection process and receive part two of the solicitation; RFP# AD-15-01-B “Programming, Management and Operations of Pembroke Pines Civic Center”.

1.4 On June 18, 2015, the CITY advertised its Request for Proposals #AD-15-01-B “Programming, Management and Operations of Pembroke Pines Civic Center”, more particularly described in Exhibit “B” attached hereto and by this reference made a part hereof, for the purpose

of selecting one of the previously selected four firms to contract with to provide Programming, Management, and Operation Services for the City's Civic Center.

1.5 The CONTRACTOR submitted a response to RFP#AD-15-01-B, herein referenced to as Exhibit "C", and on August 19, 2015, the CITY awarded the bid to CONTRACTOR and authorized the proper CITY officials to negotiate and enter into an agreement with CONTRACTOR to render the services more particularly described herein below.

1.5 Negotiations pertaining to the services to be performed by the CONTRACTOR were undertaken and this Agreement incorporates the results of such negotiation.

ARTICLE 2 - PURPOSE AND GOALS

2.1 The City of Pembroke Pines Civic Center is dedicated to benefit the CITY for educational, family entertainment, cultural and other events which are appropriate to the CITY's objective.

2.2 The CITY through this Agreement contracts with CONTRACTOR to operate; manage, and arrange programming for the Facility. Such services shall extend to the scheduling of family shows, concerts, festivals, events, banquets, trade shows and such other events normally found in a performing arts facility and convention facility of the Facility's size and nature, subject to all terms and conditions herein.

2.3 In managing the Facility, CONTRACTOR shall seek to achieve the following goals:

(A) To contribute to the success of the CITY by advancing the cultural, artistic, educational, economic development, and family entertainment by:

(1) Contributing to the quality of life within the CITY and the surrounding communities by accommodating a variety of suitable educational, cultural and entertainment events of interest and value to the various groups, and enhancing the quality and stature of the CITY.

(2) Providing the CITY with a viable, nationally-recognized venue which can attract to the community high quality, national productions and touring performing cultural events, trade shows, and conferences;

(3) Encouraging the use of the Facility by local, regional, and national cultural, educational community groups and organizations.

(B) To enable the CITY to realize the potential of the Facility to provide for community needs, by:

(1) Maintaining open communication with the CITY on a continuing basis to assist in meeting these objectives;

(2) Maintaining a positive public relations climate to engender loyalty among audiences and all constituencies served by the Facility;

(3) Planning, developing and supporting programs that extend community art and education resources to school age youth;

(4) To operate the Facility as a business enterprise consistent with generally accepted industry practices and in an open and responsive manner;

ARTICLE 3 - DEFINITIONS

Wherever used in this Agreement the following terms shall have the meanings indicated which are applicable to both the singular and plural thereof:

“Affiliate”: A person or company that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified person or company.

“Agreement”: The “Agreement” shall mean this Management Agreement, together with all exhibits attached hereto (each of which are incorporated herein as an integral part of this Agreement).

“Approved Budget” As defined in Section 8.1.1

“Base Management Fee”: The fixed monthly fee the CITY shall pay to CONTRACTOR under this Agreement, as more fully described in Section 6.1.1 of this Agreement.

“Business Day” shall mean a day when the CITY’s administration offices are open for the regular conduct of business. Where a time period on “one (1) Business Day” is established, it shall mean a twenty-four (24) hour period beginning on a Business Day and ending at the same time on the next Business Day.

"Capital Expenditures" means capital expenditures that are planned, non-routine and budgeted as separate capital expenditures by CITY.

"CITY" means the City of Pembroke Pines, the City of Pembroke Pines City Commission, the City Manager, or the City’s Representative, as may be applicable.

“Commercial Rights”: Naming rights, pouring rights, advertising, sponsorships, the branding of food and beverage products for resale, premium seating (including suites, club seats and party suites) and memorial gifts at or with respect to the Facility and owned or controlled by the CITY.

"Contract Documents" means the documents outlined in Article 18 of the agreement.

“Effective Date”: “Effective Date” shall have the meaning ascribed to such term in the opening paragraph of this Agreement.

“Facility”: The “Facility” shall include all four floors of the Civic Center and City Hall building, the Plaza, the City Commission Chambers building, the Art Gallery building, all parking lots associated with the Civic Center and City Hall, as more particularly described in Exhibit C, and any and all equipment and fixtures that are contained within said buildings.

“Fiscal Year”: The CITY’s Fiscal Year, which commences on October 1 and ends on September 30 of the following year.

“General Manager”: The employee of CONTRACTOR acting as the full-time on-site general manager of the Facility.

“Incentive Fee”: The contingent fee the CITY shall pay to CONTRACTOR under this Agreement, if earned, as more fully described in Section 6.1.3 below.

“Opening Date”: The date on which the Facility is first opened to the public for a paid and/or ticketed event. Once the Opening Date is established, it shall be acknowledged by both parties in writing.

“Operating Budget”: A line item budget for the Facility that includes a projection of Operating Revenues and Operating and Programming Expenses, presented on a monthly and annual basis.

“Operating Expenses”: shall include but not be limited to all expenses incurred by the parties in providing the services under this Agreement and/or incurred in generating income for the Facility, including, but not limited to, management, administration, general custodial care, security, maintenance, cleaning, utilities, life safety, and the hiring, training, retention, supervision and evaluation of various personnel.

“Operating Revenue”: any and all revenues of every kind or nature derived, directly or indirectly, from operating, managing or promoting the Facility, all as determined in accordance with generally accepted accounting principles, consistently applied. Operating Revenue shall not include any grants received by the City. Operating Revenue may also be referenced as “Total Gross Revenue” in the Contractor’s income statements.

“Pre-Opening Period”: Period of time beginning on the Effective Date and ending on the Opening Date.

“Taxes” shall mean any and all taxes related to the Facility including, but not limited to, ad valorem tax and sales tax.

“Term”: The term “Term” shall have the meaning ascribed to such term in Article 5 of this Agreement.

“Unforeseen Circumstance(s)” shall mean any event or condition which has an effect on the rights or obligations of the parties under this Agreement, or upon the Project, which is beyond the reasonable control of the party relying thereon and constitutes a justification for a delay in or non-performance of action required by this Agreement, including but not

limited to; (i) an act of God, lightning, tornado, fire, explosion, earthquake, hurricane, flood, storm, washout acts of terrorism; (ii) preliminary or final order of any local, state or federal court, administrative agency or governmental body of competent jurisdiction; ; (iii) any order of any public or military authority stemming from the existence of economic or energy controls, hostilities or war (iv) any change in any Applicable Laws as defined herein; (v) labor disputes, strikes, work slowdowns or work stoppages, but excluding labor disputes, strikes, work slowdowns or work stoppages by employees of CONTRACTOR; (vi) loss of or inability to obtain service from a utility necessary to furnish power for the operation, maintenance, management and repair of the Project where backup power generation is not available; and (vii) failure of Facility's design or technology; excluding:

- i. General economic conditions, interest or inflation rate fluctuations, commodity prices or changes in process, or currency or exchange rate fluctuations;
- ii. Changes in the financial condition of the CITY, the CONTRACTOR, or any of their affiliates or Subcontractors;
- iii. Any impact of prevailing wage laws on Operating Expenses;
- iv. The consequence of CONTRACTOR error, including any errors of CONTRACTOR affiliates or Subcontractors; and/or
- v. Litigation against the CITY and/or CONTRACTOR.

ARTICLE 4 – SERVICES TO BE PROVIDED BY CONTRACTOR

4.1 Personnel for Operation

(A) CONTRACTOR shall determine staffing needs for operation and management of the Facility, shall be responsible for providing personnel (i.e., CONTRACTOR employees or Subcontractors) to fulfill such positions, shall determine the terms and conditions of their employment/engagement, and shall be responsible for paying as Operating Expenses all compensation and benefits due, worker's compensation insurance and assume all employer/employee liability for such individuals, which staffing shall include but not be limited to the following:

- (1) All management and administrative staffing necessary for the use and operation of the Facility on a day-to-day basis as contemplated by this Agreement.
- (2) General Manager – CONTRACTOR shall assign a fulltime general manager to oversee CONTRACTOR's responsibilities under this Agreement, who shall be based at the Facility. Prior to CONTRACTOR's appointment or replacement of general manager, CONTRACTOR shall consult with the City Manager with respect to the qualifications and salary of any proposed candidate(s). The CONTRACTOR shall obtain the written approval of the City Manager regarding the salary and benefits to be paid to a General

Manager. CONTRACTOR shall also have written approval of any General Manager to be hired by CONTRACTOR (prior to CONTRACTOR finalizing any such hiring).

- (3) Staffing for all "front of house labor" including, but not necessarily limited to, ushers, ticket takers, door guards and house managers, for all Events.
- (4) Staffing all "back of house labor," including, but not necessarily limited to, stage manager(s), stage hands, sound system and lighting system operators, and other necessary labor for house set-up and conversion, for all Events.
- (5) All safety and security staffing, but not necessarily limited to non-uniformed (e.g. "T-shirt") security for all Events.
- (6) Coordinate and manage a volunteer program for the Facility.

(B) CONTRACTOR shall comply with Section 435.04, Florida Statutes, and to the extent otherwise directed by CITY, shall fingerprint and complete a level 2 screening of all employees, representatives, agents, Subcontractors, or suppliers who are permitted access the Facility.

(C) CONTRACTOR shall when engaging safety and security personnel for the Facility give preference to sworn officers of the CITY, provided that CONTRACTOR can obtain services from such officers that would be comparable to those services offered by similarly qualified commercial contractors upon terms and conditions (including rates) that are competitive with such commercial contractors.

(D) During the period commencing on the date hereof and ending one (1) year after the expiration or termination of this Agreement, except with CONTRACTOR's prior written consent, the CITY will not, for any reason, solicit for employment, or hire, any of the senior management personnel employed by CONTRACTOR at the Facility, including, without limitation, the general manager, director-level employees and department heads. In addition to any other remedies which CONTRACTOR may have, specific performance in the form of injunctive relief shall be available for the enforcement of this provision.

4.2 Programming/Marketing.

(A) CONTRACTOR shall have the right to determine, and be responsible for determining, all programming and Events to be presented at the Facility. CONTRACTOR will also have exclusive authority over the marketing of all Events, and will be solely responsible for all contracts for such programming, marketing, promotion and presentation of all Events. In providing Events for the Facility, CONTRACTOR agrees to use its commercially reasonable efforts, consistent with prevailing industry practices, the objectives of the CITY and the physical aspects of the Facility, to provide a blend of entertainment and events at the Facility. CONTRACTOR shall also be responsible for coordinating with the CITY for the scheduling of Art Gallery events. If there are any conflicts with the schedule of the Facility, the City Manager in his sole discretion shall resolve the conflict.

(B) Prior to each January 1st of each fiscal year, the CITY shall provide CONTRACTOR with a list of up to twenty (20) days for the succeeding contract year that the CITY wishes to reserve for CITY Events, and CONTRACTOR shall set aside the Facility for use by the CITY on such days (the CITY will provide CONTRACTOR with such list for the first contract year not later than 10 days after the Effective Date). The City's list shall not include any dates already designated for an event by either a letter of intent or executed license agreement. CONTRACTOR and the CITY may agree in their discretion for use of the Facility by the CITY for additional days each year.

4.3 Operational Maintenance.

(A) CONTRACTOR shall provide all janitorial, custodial and ordinary maintenance services required to maintain the interior of the Facility (but excluding the Structure) in good and safe order and condition, and in a clean and sanitary condition throughout the term of this Agreement. Examples of ordinary custodial work include cleaning of restrooms, floors, dusting, carpet cleaning, and maintenance including replacement of light bulbs, emergency lighting, and exit lighting. CONTRACTOR shall be responsible for carpet shampooing of the entire facility at a minimum of twice per annum. CONTRACTOR shall be responsible for touch up painting of the building interior walls as needed or at a minimum on a quarterly basis. CONTRACTOR shall be responsible for pressure cleaning all walkways and including the courtyard paver brick.

(B) CONTRACTOR shall develop and implement a preventive Maintenance program, a copy of which shall be delivered to the CITY for review and comment no later than ninety (90) days after commencement of this Agreement. Such program shall include all inspections, monitoring, adjustments, and repairs as necessary to maintain the Facilities throughout the term of this Agreement. The maintenance program must include documentation of corrective and preventive maintenance and a spare parts inventory. CONTRACTOR shall provide the CITY with full documentation as part the monthly operating report per Section 4.3(E) that preventive maintenance is being performed on all CITY-owned equipment in accordance with manufacturers' recommendations at intervals and in sufficient detail as may be determined by the CITY

(C) CONTRACTOR shall develop and/or supply and utilize a Computerized Maintenance Management System (CMMS) for asset management and protection and to provide real time preventive maintenance and work order tracking. The CMMS shall be functional within thirty (30) days the Opening Date. However, the program must be fully populated and operational within ninety (90) days from Opening Date, provided timely production of populating data by CITY and its contractors. CONTRACTOR shall provide the CITY with access to the CMMS system. The cost of the CMMS will be an Operating Expense of the City.

(D) CONTRACTOR will promptly notify the City's Representative of any need, known to CONTRACTOR, for the repair of any defect malfunction or material defect in the Facility, including the Structure, Exterior and any capital improvements (regardless of whether such repair will be undertaken as an Operating Expense or direct expense of the City).

(E) CONTRACTOR will keep in force maintenance contracts for the Box Office

Computer and peripherals (if used), telephones, fire extinguishers, elevators, air conditioners, simplex clocks, the fire alarm system, the sprinkler system, and other maintenance contracts required to operate the Facility. All maintenance contracts shall be subject to approval by the CITY, and costs thereof will be operating expenses of the Facility.

(F) CONTRACTOR shall not terminate existing service contracts originally entered into by the CITY without the CITY's consent. All new service contracts entered into by CONTRACTOR to maintain CITY owned equipment or property must be approved by the CITY prior to CONTRACTOR entering into such service contract. CITY reserves the right to withhold approval and/or cancel the service contract, and assign its own contractor if the terms, conditions, insurance requirements and scope of work do not meet the minimum standards imposed on other CITY contracts.

(G) CONTRACTOR shall complete a monthly safety inspection of the Facility, and submit a monthly safety inspection report to the CITY per Section 4.4(G)4. The safety inspection will be conducted following a checklist prepared by the CITY in conjunction with CONTRACTOR. The CITY and CONTRACTOR shall work jointly in correcting the safety hazards prior to the next safety inspection. The CITY and CONTRACTOR shall, throughout the term of this Agreement, conduct joint, quarterly general facility inspections of the Facility. CITY and CONTRACTOR will conduct a quarterly walk-throughs of the facility to identify any safety hazards, maintenance defects, and assess the overall condition of the facility. The CITY shall prepare an inspection report listing the results of each joint, quarterly inspection, and shall provide a copy of the same to CONTRACTOR. CONTRACTOR shall, prior to the next joint facility inspection, provide documentation to the CITY describing the correction and proposed resolution and timing of any deficiencies noted on the prior report. The responsibility for any deficiencies described in this Section 4.3(G) shall be governed by the provisions Sections 4.3(A)(B) and (D), as stated above. CONTRACTOR will provide a copy of all accident or employee injury reports occurring on the CITY property to the CITY's Risk Management office by 5:00 p.m. of the next Business Day following the accident or injury, or as soon thereafter as reasonably possible.

(H) CONTRACTOR shall insure that all building related work performed, contracted, or directed solely by CONTRACTOR shall be performed in accordance with the Florida Building Code, and any applicable amendments. Any such work found not to be in compliance shall be corrected and paid for by CONTRACTOR and shall not be counted as an operating expense for the CITY. All outdoor events must be approved by the CITY's Representative. The CITY shall be provided copies of all permit documents, inspection results, certificate(s) of occupancy, and as-built drawings if applicable for outdoor events.

4.4 Contractor Responsibilities.

As part of its obligations hereunder, CONTRACTOR shall be responsible for all of the following:

(A) CONTRACTOR shall establish, operate and manage a ticket outlet at the Facility Box Office, and such off-site ticket outlets as may be deemed appropriate by CONTRACTOR. CONTRACTOR shall also establish procedures and facilities for phone sales as CONTRACTOR deems appropriate. While the operation and management of the ticket outlets

and other ticket selling procedures described above shall be CONTRACTOR's responsibility, and shall be undertaken as CONTRACTOR deems appropriate, CONTRACTOR shall use its commercially reasonable efforts to ensure that the Box Office hours of operation and staffing are of sufficient quantity to ensure reasonable accessibility to all potential Facility patrons.

(B) CONTRACTOR shall be responsible for the promotion and marketing of the Facilities and supporting the promotion of all Events, including; but not limited to, general marketing; news media relations and advertising.

(C) CONTRACTOR shall be responsible for all audience services, including, but not limited to, providing printed programs; Concession Services (both food and beverages, and gifts and souvenirs); ticket takers and ushers; provisions for handicapped patrons; parking; valet parking; security and safety services. Contractor, with full cooperation of CITY, shall be responsible for obtaining all necessary licenses and permits, including, but not limited to, food service and liquor licenses.

(D) CONTRACTOR shall be responsible for the operation and maintenance of the Facility except, as otherwise provided in this Agreement in relation to capital improvements and the Structure which shall be the responsibility of the CITY; including but not limited to, interior equipment and supplies related to all Events; all telephone and telephone services; and technical stage review normally associated with operating facility such as the Facility, including, but not limited to, the sound system and other associated services. CONTRACTOR is responsible for conducting all services necessary to maintain existing warranties and obtain all manufacturer's warranties on equipment purchased by the CITY and shall assist the CITY in enforcing manufacturer's warranties and guarantees

(E) CONTRACTOR shall be responsible for all financial affairs in connection with the Facility (except as otherwise provided in the Agreement), including, but not limited to, all services related to the management, use and operation of the Facility; taxes (including taxes pursuant to Section 10.3) and licenses; costs of all Events; refunds necessitated by canceled or postponed Events; any expenses normally paid or generated by Events, if and to the extent the same are not paid or generated by the Event because of the type of rental arrangement utilized; professional services involving Facility operations; and all budgeting, accounting and reporting systems required by this Agreement and the generation of all required financial reports detailing revenues and expenses.

(F) CONTRACTOR shall have sole responsibility for, and the sole right to control and supervision of, its personnel and Subcontractors, as well as for all of the means, methods, details and other aspects of the management, use and operation of the Facility.

(G) Records and Reporting.

(1) CONTRACTOR shall maintain separate accounting and bookkeeping records for facility income and facility expenses, and shall utilize generally accepted accounting principles and practices in connection with the maintenance of all such accounting records. CONTRACTOR shall utilize the accrual method of accounting in connection with the Facility, based on a fiscal year, which runs from October 1 through September 30.

(2) CONTRACTOR shall permit the City's Representative, at all reasonable times and upon reasonable notice, to audit, inspect, examine and copy any and all of CONTRACTOR's books, journals, ledgers, computer printouts and records, papers, reports, correspondence, memoranda, cash register records and all other documents and records of CONTRACTOR which are in anyway pertinent to the performance of CONTRACTOR's services under this Agreement. The City's Representative shall also have the right to make physical inventories of equipment, furnishings and materials to assure that actual inventories agree with records.

(3) CONTRACTOR shall comply with Florida's Public Records Law, to the extent applicable. In accordance with Section 119.0701, F.S., the CONTRACTOR shall:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the service;
- (b) Provide the public with access to such public records on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed that provided in chapter 119, Fla. Stat., or as otherwise provided by Law;
- (c) Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by Law; and
- (d) Meet all requirements for retaining public records and transfer to the CITY, at no cost, all public records in possession of the CONTRACTOR upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the CONTRACTOR in a format that is compatible with the information technology systems of the CITY.

If the CITY receives a public records request related to this Agreement, the CITY and CONTRACTOR shall cooperate to respond to the request and to take whatever action deemed appropriate to legally protect any claim of exemption from the public records law.

(4) By the twenty fifth (25th) day of each month during the Term of this Agreement, CONTRACTOR shall provide to the CITY a written monthly report, in a form approved by the City Manager, setting forth each Facility's anticipated activities and financial condition for the upcoming month, and reporting on the prior month's activities and finances. Such monthly report shall include without limitation the following:

(a) A balance sheet, aging report on accounts receivable, and statement of revenues and expenditures (budget to actual) for such month, and year to date, in accordance with generally accepted accounting principles and bank statements to support the financial statements. Such records and reports shall also include a line-item detail of all revenues and expenditures for each month, as well as a comparison of Operating Revenues and Expenses for the corresponding months in the prior two (2) Fiscal Years; if applicable;

(b) Summary of Events held and future bookings scheduled for such month, and separate cash receipts and disbursements reports for each Event held at a Facility during such month. In addition, a summary of all exit conferences for Events

and General Manager reports following each event at the Facility; completed customer satisfaction surveys; and sales and marketing reports.

(c) Details of the Facility's operating parameters, maintenance plans and activities, improvement activities, equipment and parts inventories, manpower utilization and other relevant information in accordance with all Applicable Laws to include specifying all maintenance work performed at each Facility during such period. The report shall include a work order number which shall include a description of the work performed, the number of man hours performed, and material costs associated with the work performed. Records of invoices shall be kept for audit by the CITY.

(d) Reports and all other information required by, and in accordance with the manufacturers' warranties which are presented by the CITY to CONTRACTOR at the commencement of this Agreement.

(e) CONTRACTOR shall maintain safety records, to include relevant details regarding any accidents or injuries occurring at the Facility, in connection with its operation of the Facility and performance of Services under this Agreement and report any and all incidents to the CITY per Section 4.3(G) and include the information in the monthly report.

(f) CONTRACTOR shall prepare and maintain accurate reports of incidents of loss, theft or vandalism of the Facility and shall provide these reports to the CITY immediately and include the information in the monthly report.

(g) A listing of any incentives given, or fees waived, by Events at the Facility; and

(h) Disclosure of any Facility-specific third party commissions (whether paid or exchanged for in-kind services) and report of any trades and/or barterers.

(5) During the term of this Agreement, CONTRACTOR shall furnish to the City's Representative, not later than sixty (60) calendar days following the close of the CITY's fiscal year, a financial statement audited by a Certified Public Accountant that represents the results of the management, use and operations of the Facility with respect to this Agreement during the preceding fiscal year (the "Audited Statement"). Said audit will be budgeted as an Operating Expense of the Facility. CONTRACTOR shall provide such an audited statement to the CITY for each fiscal year during which this Agreement is in effect and, in the event this Agreement is otherwise terminated for any reason, CONTRACTOR shall similarly provide to the CITY, within sixty (60) calendar days following the effective date of such termination, an Audited Statement for the period from the preceding October 1st through the effective date of the termination.

(6) CONTRACTOR shall annually coordinate with the CITY to complete an inventory during the month of September. Upon completion of the inventory, CONTRACTOR shall furnish to City's Representative, not later than thirty (30) calendar days following the close of the CITY's fiscal year, an inventory reconciliation report of all CITY owned property to include but not limited to, descriptions, locations, and

disposition.

(7) Ownership of all documents, including but not limited to drawings, as-builts, plans and specifications and related computerized documents utilized or prepared by the CONTRACTOR in the performance of the Services shall remain with the CITY. Ownership of all documents relating to the CONTRACTOR and its employees shall remain with the CONTRACTOR, except as required by applicable law.

(8) CITY reserves the right to audit, at the CITY's expense, the records (pertaining to this project) of CONTRACTOR at any time during the performance and term of the Agreement and for a period of three (3) years after termination or expiration of this Agreement. If required by CITY, CONTRACTOR agrees to submit to an audit by an independent certified public accountant selected by CITY. CONTRACTOR shall allow CITY to inspect, examine and review the records of CONTRACTOR at any and all times during normal business hours during the term of the Contract. .

(H) Naming Rights shall be done in accordance with and subject to Chapter 100 of CITY's Code on Naming and Recognition Procedures.

(I) CONTRACTOR shall operate and conduct all operations of the Facility with the objective that all persons who patronize the Facility will be treated in an orderly, safe and courteous manner.

(J) CONTRACTOR shall act in accordance with prevailing industry norms (taking into account the nature of the Event and other relevant factors) to prevent any nuisance or hazardous activity to occur at, on or about the Facility, and to prevent CONTRACTOR employees, subcontractors or any other utilizing or patronizing the Facility to engage, in any CONTRACTOR activity which may cause damage to the Facility.

(K) CONTRACTOR shall be solely responsible for safety, security and the maintaining of good order within the Facility at all times. CONTRACTOR agrees that it shall take, and shall cause all CONTRACTOR Subcontractors to take, every precaution at all times for the protection of persons and property within the Facility, including, but not limited to, instructing, maintaining and supervising safety precautions and programs in connection with the management, use and operation of the Facility.

(L) CONTRACTOR shall ensure that its personnel and all CONTRACTOR Subcontractors observe and obey laws in connection with all of their work at or about, or otherwise involving the Facility.

(M) CONTRACTOR will post, observe and enforce the requirement of NO SMOKING, VAPING, OR E-CIGARETTES allowed in the Facility.

(N) CONTRACTOR shall not sell or distribute, or permit to be sold or distributed, tickets or passes in excess of the capacity of the Facility, not admit to the Facility a larger number of persons than can safely move about therein and, in no event, allow more persons into the Facility under any circumstances than are allowed by law.

(O) Subject to the provisions of section 4.5(E) below, CONTRACTOR shall have sole

responsibility for and control over distribution, posting, exhibition and removal of signs, advertisements, show bills, lithographs, posters or cards of any description at, in, about or pertaining to the Facility and Events.

(P) The CITY shall entrust CONTRACTOR with duplicate keys or access devices to the Facility. CONTRACTOR shall have sole control of the entrances and exits of the Facility and will assure that the same are locked and unlocked at such times as will accommodate all uses of the Facility and otherwise maintain the Facility's security. The City's Representative will have the right to enter the Facility and all parts thereof at all times. If the CITY decides to change any of the locks or access devices on any of the doors in or about the Facility, it shall provide duplicate keys for such new locks, if applicable, to CONTRACTOR. CONTRACTOR shall not change the locks or access devices on any doors without the CITY's advance written consent, and then only upon CONTRACTOR providing the City's Representative with duplicate keys for any such locks that are changed, if applicable. If CONTRACTOR loses any of the keys that are entrusted to it, CONTRACTOR shall be responsible for the cost of changing any and all locks such keys would operate.

(Q) CONTRACTOR shall use commercially reasonable efforts to ensure that nothing contained in any Event, nor the promotion, marketing, advertisement or presentation of any Event, nor any concession Activities, violates or infringes any copyright, patent, right of privacy or other statutory or common law right of any person or entity, and that all copyrighted material to be performed (or marketed, promoted or presented) in connection with any Event has been duly licensed or authorized. The City shall have the sole discretion to permit or not permit an event to be conducted at the Facility.

(R) Without the prior written consent of the City's Representative, CONTRACTOR shall not do, or permit to be done, anything which will interfere with the effectiveness or accessibility of any utility connections or service in, at or about the Facility, including, but not limited to, water, electricity, telephones, waste and sewerage disposal, heating, ventilation and air conditioning, and fire and security monitoring systems, or any portions of the foregoing, nor will CONTRACTOR do or permit to be done anything which may interfere with free access and passage in the Facility and the adjacent and adjoining public areas, streets, parking lots and sidewalks.

(S) CONTRACTOR shall not use any property provided by or belonging to the CITY other than for the intended purpose of the same.

(T) CONTRACTOR shall not, without the advance written approval of the City's Representative, remove from the Facility, or permit the removal of, any property provided by or belonging to the CITY.

(U) CONTRACTOR shall not install or remove, or allow the installation or removal of, any fixtures, partitions, equipment, furnishings or other property where to do so will unreasonably deface, injure or damage the floors, walls or ceilings of the Facility, and CONTRACTOR shall not cause or allow any structural alterations or other substantial physical changes in the Facility without in each and every instance having obtained the advance written approval of the City's Representative, which approval may be conditioned upon CONTRACTOR's express, written agreement to return the same to its original condition immediately following the use or purpose for which any such change or alteration has been

made. Any such approval by the City's Representative to a particular alteration or change will not be deemed a consent to any other or additional alteration or change at that time or thereafter unless specifically so stated in the advance written approval executed by the City's Representative.

(V) CONTRACTOR shall procure, pay for (unless and to the extent issued by the CITY) and maintain all permits and licenses that are required or necessary for the management, use and operation of the Facility. Upon request, the CITY shall execute all documents and instruments, and take such actions, as may be reasonably necessary to assist CONTRACTOR in obtaining such permits and licenses. CITY shall require CONTRACTOR to obtain a full liquor license for the facility.

4.5 CONTRACTOR's Rights.

(A) CONTRACTOR shall have the exclusive right during the term of this Agreement to provide all services required for the management, use and operation of the Facility, including, but not necessarily limited to, all of those services and matters specifically identified in this Agreement, and excluding only those matters specifically identified in this agreement as being the responsibilities of the CITY.

(B) CONTRACTOR shall have the exclusive right to promote and operate the Facility in connection with all Events, and shall cooperate with CITY regarding the appropriate standards for such EVENTS. CONTRACTOR shall work with the CITY to establish and maintain booking policies which shall reflect community standards and goals, and which may be subject to change from time to time at the sole discretion of the CITY. The booking policies shall be submitted to the CITY by the CONTRACTOR for approval prior to CONTRACTOR entering into the first agreement for an event at the Facility.

(C) CONTRACTOR shall have the exclusive right in and about the Facility to control and supervise all concession items, including, but not limited to, refreshments, beverages (alcoholic and non-alcoholic), candies, food, snacks, souvenirs, advertisements (whether in the form of T-shirts, buttons, brochures, or otherwise), programs, and all other merchandise, catering and concessions (the "Concession Activities") in connection with all Events. All Concession Activities will be restricted to the interior of the Facility and the immediate exterior premises that are considered to be part of the Facility. Any request by CONTRACTOR to use any other CITY facilities will be handled on a case-by-case basis and, solely at the CITY's discretion.

(D) CONTRACTOR shall have the exclusive right to charge admission to patrons of all Events and to charge for use of the Facility (including its grounds and parking facilities). CONTRACTOR shall also have the exclusive right to operate the Facility Box Office and all ticket outlet operations for all Events on behalf of the Facility.

(E) CONTRACTOR shall have the non-exclusive, royalty free, worldwide revocable right to use the Facility's name and other trademarks or service marks of the Facility in connection with the marketing and promotion pursuant to this Agreement; provided, however, that: (a) in any and all such usages of the Facility's name, the Facility shall be referred to as the designated by the CITY; and (b) the CITY shall have the right, but not the obligation, to

disapprove of any advertisement, marketing or promotional activity, or other use of the Facility's name, if the CITY, in good faith, reasonably believes that the same will adversely affect the reputation of the CITY or its relationship with the surrounding community. If the CITY notifies CONTRACTOR that the CITY so disapproves of any advertisement, marketing or promotional item or activity, or other use of the Facility's name, CONTRACTOR shall promptly "pull" or discontinue such item or activity as soon after receipt of the CITY's notice as possible. The CITY's failure to so disapprove shall not relieve CONTRACTOR of responsibility and liability for all such advertising, marketing and promotional activities.

4.6 Facility Agreements

4.6.1 Except as otherwise provided herein CONTRACTOR shall negotiate, execute, deliver, administer, manage, and assure compliance with any and all leases, license agreements, occupancy agreements, rental agreements, booking commitments, concession agreements, supplier agreements, service contracts (including, without limitation, contracts for cleaning, decorating, set-up, emergency services, general maintenance, maintenance and inspection of HVAC systems, elevators, stage equipment, fire control panels and other safety equipment, staffing and personnel needs, telephone, extermination, and other services which are necessary or appropriate), and any and all other contracts and agreements in connection with the management, operation, promotion, and marketing of the Facilities. The preceding agreements shall be referred to as the "Facility Agreements".

4.6.1.1 Provided that (A) if any such Facility Agreement (other than those involving the license, lease, or rental of the Facility for Events) has a term that extends beyond the remaining Term, and/or is of a non-traditional nature, such Facility Agreements must be approved and executed by the City Manager; and (B) if any Facility Agreements (other than those involving the license, lease, or rental of the Facility for Events) is to be renewed or entered into at the commencement of a Fiscal Year, such Facility Agreements shall be reviewed in conjunction with the annual budget review process as described in Section 8.1 hereof.

4.6.1.2 Provided further, that any contract entered into between CONTRACTOR and an Affiliate of CONTRACTOR, and/or a subsidiary, parent company, and/or sister company of CONTRACTOR shall be (A) subject to the prior written approval of the City Manager; (B) shall be at terms and for prices customarily within the industry, subject to submittal of documentation evidencing the competitive nature of the goods and/or services submitted.

4.6.1.3 Bond Financing. CONTRACTOR acknowledges that the Facility is financed in part with the proceeds of one or more series of tax-exempt bonds, and that, during the Term hereof, the City may choose, at its option, to finance additional improvements with tax-exempt bonds. In order for the CITY to ensure that it is preserving the tax exempt nature of the Bonds and complying with applicable Treasury regulations promulgated under the Internal Revenue Code of 1986, as amended from time to time, CONTRACTOR agrees that in addition to any other contracts requiring the approval of the City Manager, each of the following described contracts must be approved by the City Manager, in writing, before execution thereof by CONTRACTOR:

(1) Any contract relating to the Facilities which grants a leasehold interest or other real estate interest in the Facility (other than a short term lease, license or rental for an

Event at the Facility), or grants a right to use the Facility on a basis different from that of the general public, unless such use satisfies a short-term use exception as described in Section 1.141-3(d)(3) of the Treasury Regulations.

(2) Any contract for the use of the Facility for Events where the term of such use exceeds fifty (50) days in the aggregate, including all renewal options.

(3) Any other contract relating to the Facility which grants special legal entitlement to beneficial use of the Facilities or special economic benefits, within the meaning of Section 1.141(3)(b)(7) of the Treasury Regulations, unless such contract satisfies an exception set forth in the Treasury Regulations.

4.6.2 To the extent the Facility Agreements, and such other licenses, agreements, commitments, and/or contracts, as contemplated in Section 4.6.1 hereof, are not already procured, or if such existing contracts expire or are terminated, CONTRACTOR shall procure, negotiate, execute (as an agent of the City), administer, and assure compliance with all subsequent new licenses, agreements, commitments, and/or contracts with respect to the Facilities.

4.6.3 Notwithstanding Sections 4.6.1 and 4.6.2, hereof, or any other provision of the Agreement, CONTRACTOR shall obtain the prior written approval of the City Manager before entering into any contract that is a Material Contract. For purposes of this Agreement, a "Material Contract" is defined as the following

(1) Any contract that requires payments in excess of Twenty Five Thousand Dollars (\$25,000) in any Fiscal Year;

(2) Any contract that permits or grants to any vendor or other party any right to:

(A) Exclusively provide goods or services to the Facility

(B) Advertise or market its role as an exclusive or official provider of goods or services for a Facility

(3) Any contract that has a term that expires after the end of the Term

(4) Contracts for Events that are owned, operated, promoted, or co-promoted by CONTRACTOR or any of its Affiliates or subsidiaries, its parent company, or a sister company, or wherein the revenues generated by an Event are otherwise shared with CONTRACTOR or any of its Affiliates or subsidiaries, its parent company, or a sister company;

(5) Any contracts between CONTRACTOR and any of its Affiliates or subsidiaries, its parent company, or a sister company

(6) A Contract for the use, rental or occupancy of space in a Facility that is not substantially in the form of the City's standard form agreement for the Facility

(7) A contract pursuant to which CONTRACTOR is sub-contracting with a third party for goods or services which CONTRACTOR is charged with supplying and/or performing under

this Agreement.

4.7 Pre-Opening Services: See Exhibit "D" for Scope of Work.

ARTICLE 5 - TERM

5.1.1 The pre-opening term of this agreement shall commence on the Effective Date.

5.1.2 The Operating Term of this Agreement shall commence on the first day the Facility opens for use, and remain in effect through September 30, 2021 unless sooner terminated as permitted hereunder. The continuation of this Agreement beyond any fiscal year shall be subject to the availability of funds from CITY in accordance with Section 166.241 Florida Statutes.

5.2 The Term shall be extended for an additional five (5) years by CITY, in its sole discretion, upon providing CONTRACTOR 180 days notice prior to the expiration of the Term, subject to mutual consent and the execution of a written amendment to this Agreement.

ARTICLE 6 - COMPENSATION

6.1 FEES. CITY agrees to pay CONTRACTOR as follows for work actually performed and completed pursuant to this Agreement, which amount shall be accepted by CONTRACTOR as full compensation for all such work.

6.1.1 Pre-opening Fee. CITY agrees to pay CONTRACTOR a Pre-Opening Fee of \$2,500.00 per month commencing in the month in which the Effective Date falls (pro rated for the first month, if necessary) and on or before the fifteenth (15th) day of each month thereafter until the Operating Term commences.

6.1.2 Base Management Fee. CITY agrees to pay CONTRACTOR a Base Management Fee of \$110,000 annually in twelve equal monthly payments of \$9,167.00 commencing in the month that is one month prior to the month that includes Opening Day, and on or before the fifteenth (15th) day of each month thereafter during each year of the Term of this Agreement, subject to Section 6.1.2 herein. The parties agree that the Base Management Fee covers and includes staffing expenses associated with CONTRACTOR'S corporate support (off site) necessary to assist in managing the Facility, except any budgeted and approved out-of-pocket expenses including travel.

6.1.3 CPI Adjustment. The Base Management Fee amount shall be adjusted on the first day of each Fiscal Year, starting with the Fiscal Year beginning October 1, 2017, during the term hereof by the percentage change in the Consumer Price Index – All Urban Consumers (CPI-U) - Miami-Fort Lauderdale - All Items for the month of April, as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or of any revised or successor index hereafter published by the Bureau of Labor Statistics or other agency of the United States Government succeeding to its functions. Notwithstanding the foregoing, the adjustment to the Base Management Fee shall not be subject to a downward adjustment and shall never exceed

more than three percent (3%) in any annual period.

6.1.4 Incentive Fee. In addition to the Base Management Fee, CITY agrees to pay CONTRACTOR an annual Incentive Fee based on Quantitative elements. In no event shall the Incentive Fee payable under this Section exceed the amount of the applicable Base Management Fee. CONTRACTOR will deduct, on a dollar for dollar basis, from its **Incentive Fee as outlined herein**, any shortfall realized against the Approved Budget for a fiscal year, such deduction being capped at the full amount of CONTRACTOR's Quantitative Incentive Fee payable for such Fiscal Year.

6.1.4.1 Quantitative Incentive Fee. CITY shall pay to SMG a Quantitative Incentive Fee in the amount of three percent (3%) of Operating Revenue. The Quantitative Incentive Fee shall be due within thirty (30) days after receipt of the audit performed by an independent audit firm pursuant to Section 4.4(G) of this Agreement.

6.2 SALES TAX. CITY and CONTRACTOR agree that upon request of CITY, contracts for materials, supplies, and other goods and tangible personal property shall be executed or assigned in a manner requested by CITY to minimize sales tax expenses incurred in the operation of the Facility. An equitable adjustment to the operating budget shall be made in those instances when a procedure is utilized in order to minimize sales tax expenses.

6.3 METHOD OF BILLING AND PAYMENT.

6.3.1 CONTRACTOR may submit invoices for the Base Management Fee as set forth in Section 6.1.1 and operating budget referred to in Article 8, no more often than on a monthly basis, an amount equal to one eleventh (1/11th) of the Approved Budget referenced in Section 8.1. An original invoice plus one copy is due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires.

6.3.2 The CITY shall pay the CONTRACTOR for all proper invoices, in a manner consistent with the Florida Prompt Payment Act, Chapter 218, and Florida Statutes). To be deemed proper, all invoices must be in accordance with the terms of this Agreement, and on the form and pursuant to instructions prescribed by Contract Representative. Payment may be withheld for failure of CONTRACTOR to comply with a term, condition, or requirement of this Agreement.

6.4 Payment shall be made to CONTRACTOR at the address specified in the invoice.

ARTICLE 7 – FINANCIAL CONTRIBUTION

7.1 CONTRACTOR shall pay CITY the amount of One hundred thousand dollars (\$100,000.00) (the "CONTRACTOR Capital Contribution") to be used as determined by the CITY at its sole discretion. This contribution shall be paid to the CITY within ten (10) days of the Effective Date. The amount of the CONTRACTOR Capital Contribution shall be amortized over a period of ten (10) years during the Term and the extension period, if any, on a straight-

line, non-interest bearing basis. In the event of the expiration or termination of this Agreement for any reason, CITY shall pay, or cause any successor management company to pay, to CONTRACTOR unconditionally and without set-off the unamortized amount of the CONTRACTOR Capital Contribution existing as of such expiration or termination. The payment of any such unamortized amounts shall be made to CONTRACTOR no later than thirty (30) days following the effective date of such expiration or termination.

ARTICLE 8 – OPERATING BUDGET AND FUNDS

8.1 OPERATING BUDGET.

8.1.1 CONTRACTOR shall prepare and present, on January 1st of each year, a line item budget for the Facility, to meet the scope of services required under this Agreement, for CITY'S review and approval, which budget shall follow and comply with the existing CITY budget process or such other procedures which CITY may require. During the Term of this Agreement, the City Manager shall notify CONTRACTOR of any changes to the proposed annual operating budget and the proposed cash flow funding budget of the Facility made by the CITY for the succeeding Fiscal Year. The proposed budget shall be considered the "Approved Budget" upon final approval by the City Commission.

8.1.2 Proposed budget shall include, at a minimum, a detailed projected income and expense statement and projected year-end balance sheet and statement of projected sources and applications of funds. Additionally, the budget shall include but not be limited to the following detailed projections:

(i) Revenues

(a) Gross revenues based on categories of income

(b) Revenue Projections

(ii) Expenditures

(a) Operating expenses and allocations by department directly attributed and associated with the Facility (including, but not limited to, the cost of its general manager and all staff personnel, benefit packages, and the cost of travel directly associated with management of Facility)

(b) Administrative and general expenses relating to Facility operations

(c) Marketing, advertising, and promotion expenses

(d) Energy costs

(e) Repairs and maintenance

(iii) Quantitative goals for meeting the budget goals including but not limited to number of performances, meetings, or special events, projected number of tickets sold, and catering benchmarks.

8.1.3 The CONTRACTOR may submit to the CITY, for review and approval by the City Manager and the City Commission, respectively, at any time prior to the close of a fiscal year, a revised annual operating budget for such fiscal year. Upon approval by the City Commission of such supplemental or revised budget, the Approved Budget for such Fiscal Year shall be deemed amended to incorporate such supplemental or revised budget. The Approved Budget may only be amended as set forth in this section, except CONTRACTOR shall have the right to amend the Approved Budget as may be necessary or appropriate as the result of the CITY's scheduling of events at the Facility under Section 4.2 or the scheduling by CONTRACTOR of additional Events at the Facility (and the incurrence of additional Operating Expenses arising from, the scheduling of such Event(s) at the Facility) as long as, prior to scheduling such Event(s), CONTRACTOR obtains written approval from the City Manager.

8.1.4 In the event that it appears reasonably likely, in any Fiscal Year during the Term hereof, that the actual Net Operating Loss for such Fiscal Year will be larger than projected in the annual operating budget for such Fiscal Year, or that the actual net Operating Profit for such Fiscal Year will be less than projected in the annual operating budget for such Fiscal year, the City Manager may request from CONTRACTOR a corrective action plan for reduction of Operating Expenses to a level consistent with the budgeted Net Operating Loss/Profit amounts. CONTRACTOR shall forthwith comply with any such expense reduction requested by the City Manager, and the Approved Budget for such Fiscal Year shall be modified accordingly; provided that if the annual operating budget or annual cash flow budget is modified in a manner which, in CONTRACTOR's reasonable business judgement and discretion, would materially impair CONTRACTOR's ability to manage the Facility, CONTRACTOR shall have the right to terminate this Agreement pursuant to Article 15.

8.1.5 It is understood that CONTRACTOR shall be given a budget effective October 1 of each fiscal year. It is the intention of CITY to adequately fund the operation of the Facility in accordance with the Approved Budget subject to the availability of funds. The CONTRACTOR'S responsibility to manage, operate, maintain, and perform its obligations shall be dependent upon CITY's responsibility to provide sufficient operating funds in accordance with the Approved Budget. It is understood that CONTRACTOR will not exceed, commit, or contract to expend any sums in excess of those amounts allowed in the approved budget of CITY.

8.1.6 Notwithstanding any provision herein to the contrary and except for CONTRACTOR's express indemnification undertakings in Article 13 CONTRACTOR shall have no obligation to fund any cost, expense or liability with respect to the operation, management or promotion of the Facility. Notwithstanding anything to the contrary set forth in this Agreement with the exception of Section 8.2.1, the City recognizes and agrees that performance by CONTRACTOR of its responsibilities under this Agreement is in all respects subject to and conditioned upon the timely provision of funds to CONTRACTOR for such purposes as hereinafter provided.

8.2 OPERATING FUNDS.

8.2.1 The Contract Representative, shall advance to CONTRACTOR, on or before each October 15, but in no event later than thirty (30) days past October 1, an amount equal to one-sixth (1/6) of the approved annual operating budget for the Facility. Thereafter, CITY shall advance to CONTRACTOR, on a monthly basis, as invoiced by CONTRACTOR to the Contract Representative, an amount equal to one eleventh (1/11) of the annual budgeted balance as necessary to operate the Facility. Any funds unexpended, improperly expended or unaccounted for at the end of each fiscal year shall be returned to CITY within forty-five (45) days.

8.2.2 Expendable Supplies. CONTRACTOR will be responsible for purchasing as an Operating Expense all expendable supplies for the operation of the Facility. CONTRACTOR shall exercise prudent judgment in the purchase of said supplies within budget guidelines provided to CONTRACTOR.

8.2.3 All operating funds paid to CONTRACTOR by the CITY pursuant to this Agreement shall be applied towards the actual expenses for the operation of the Facility. There shall be no additional mark-ups, costs or administrative fees applied by the CONTRACTOR for any component of the Facility operation.

8.3 PROCEDURES FOR HANDLING INCOME.

8.3.1 All revenue from operations in any month will be deposited no later than the first Business Day of each month immediately following its receipt in a Revenue Account from which CITY alone can withdraw funds.

8.3.2 Cash control for building operation shall be accomplished through a combination of rigid accounting procedures and internal audit tests and an annual audit by an independent public accounting firm. Separate bank accounts shall be utilized for operating funds and box office receipts. The box office account shall be an escrow system that is zero balanced for each event. All disbursements shall be by dual signature checks supported by requisition-purchase order procedures. Payrolls shall be processed through a separate impressed bank account, reconciled monthly, and tested via internal audit procedures. Reimbursable expenses for each event shall be coded for accurate accumulation to ensure all applicable costs shall be paid by the client for such event. Advance deposits covering rentals and estimated costs shall be generally required to minimize collection programs. Credit references shall be checked on any new or questionable clients.

8.4 CONTRACTOR agrees to carry, as an Operating Expense, a Fidelity Bond in an amount not less than One Million Dollars (\$1,000,000.00) on all officers, employees, and agents of CONTRACTOR who have custody of or access to any revenues, monies, or securities of CITY in connection with the overall operation of the Facility. In addition, CONTRACTOR agrees to carry, as an operating expense, a Fidelity Bond in an amount not less than One Million Dollars (\$1,000,000.00) on all officers, employees, and agents of CONTRACTOR who have custody of or access to any revenues, monies, or securities of CITY in connection with any events which result in a cash payment to CONTRACTOR.

ARTICLE 9 - CAPITAL IMPROVEMENTS

9.1 The obligation to pay for, and authority to perform, direct and supervise, Capital Improvements and Capital Equipment purchase shall remain with the CITY, and will not be considered Operating Expenses. CONTRACTOR agrees to provide to the CITY on January 1 of each year, a proposed annual capital budget of items that can be reasonably anticipated as necessary capital expenditures. The purpose of such a schedule is to allow the CITY to include such projects in its proposed budget for the ensuing year and to prepare and update a long range (five years) capital expenditure budget. Each year the capital improvements budget is subject to and contingent upon funds being appropriated by the City Commission for each fiscal year covered by the Agreement. If such appropriations are not sufficient to fully fund a new annual Capital Improvements Budget, such annual Capital Improvements Budget shall be equal to the amount appropriated by the City Commission. Unfunded projects may be presented in the subsequent fiscal year budget proposals.

ARTICLE 10 - CITY'S RIGHTS and RESPONSIBILITIES

10.1 The CITY's responsibilities under this Agreement are as specifically described in this Agreement and as set forth below and shall be at the CITY's sole cost and expense:

(A) The CITY agrees that, as part of this Agreement, it will provide to CONTRACTOR a full and complete equipment inventory and certifications of warranties governing all equipment to be installed in the Facility. CITY further agrees that, as part of this Agreement, it shall allow CONTRACTOR to enforce the warranties and such other relief available to CITY on CITY's behalf with prior approval of the City Manager.

(B) The CITY is responsible for the repair, maintenance and upkeep of the structure and the exterior (including, without limitation, capital improvements and repairs as specified in Article 9 of this Agreement);

(C) The CITY is responsible for ensuring the continuation of utility services to the Facility;

(D) The CITY shall establish and implement a regular and timely program to make certain capital improvements to the Center.

(E) The CITY shall provide CONTRACTOR with necessary office space at the Facility.

10.2 The CITY shall retain the use and operation of the third and fourth floor of the Civic Center Building, the City Commission Chambers, and the Art Gallery. The CITY shall also retain the use of the parking spaces that are adjacent to the Civic Center Building for use by CITY.

10.3 The CITY shall retain ownership of the real and personal property in use at the Facility. The CITY is a tax exempt entity. It is the intent of the CITY and CONTRACTOR that the

property shall remain exempt from ad valorem taxation in accordance with Chapter 196, Fla. Stat. as amended from time to time.

10.4 Limitations on CITY'S Responsibilities: CITY shall not supervise, direct, or have control or authority over, nor be responsible for, CONTRACTOR'S means, methods, techniques, sequences, or procedures, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Applicable Laws applicable to the performance of the Services.

ARTICLE 11 – SUBCONTRACTOR’S RIGHTS and RESPONSIBILITIES

11.1 CONTRACTOR shall be fully responsible to CITY for all acts and omissions of the Subcontractors, Suppliers and other persons directly or indirectly employed by Subcontractors, suppliers and of persons for whose acts any of them may be liable and any other persons and organizations performing or furnishing of the Services under a direct or indirect contract with CONTRACTOR to the same extent that CONTRACTOR is responsible for the acts and omissions of persons directly employed by CONTRACTOR. Nothing in the Contract Documents shall create any contractual relationship between the CITY and any such Subcontractor, supplier or other person or organization, nor shall it create any obligation (in addition to the CITY's general obligation to fund the operations of the Facility) on the part of CITY to pay or to see to the payment of any moneys due any such Subcontractor, supplier or other person or organization except as may otherwise be required by Applicable Laws.

11.2 CONTRACTOR shall not employ any Subcontractor, Supplier, or other individual or entity (including those not acceptable to CITY), whether initially or as a replacement, against whom CITY may have reasonable objection. CONTRACTOR shall submit names, addresses and contact information of any and all Subcontractors to CITY in writing prior to commencement of services and during project progress if Subcontractors change or are added.

11.3 CONTRACTOR shall be solely responsible for scheduling and coordinating Subcontractors, Suppliers and other individuals and entities performing or furnishing any of the Services under a direct or indirect contract with CONTRACTOR. CONTRACTOR shall require all Subcontractors, Suppliers and such other individuals and entities performing or furnishing any of the Services to comply with the requirements imposed on CONTRACTOR under this Agreement. All Subcontractors, Suppliers and such other individuals and entities performing or furnishing any of the Services shall communicate with the CITY through CONTRACTOR.

11.4 All Services performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor, which specifically binds the Subcontractor to the applicable terms and conditions of the Agreement for the benefit of CITY.

ARTICLE 12 - INSURANCE

12.1 CONTRACTOR shall not commence performance hereunder until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the CITY nor shall the CONTRACTOR allow any subcontractor to commence work on his subcontract until all similar such insurance required of the subcontractor has been obtained and similarly approved.

12.2 Certificates of Insurance reflecting evidence of the required insurance shall be filed with the City's Risk Manager prior to the commencement of this Agreement. CONTRACTOR will provide the CITY with at least thirty (30) days' notice of a cancellation of any required insurance (except ten (10) days for cancellation due to non-payment of premium). Policies shall be issued by companies authorized to do business under the laws of the State of Florida. Financial Ratings must be not less than "A-VI" in the latest edition of "Best Key Rating Guide", published by A.M. Best Guide. CONTRACTOR shall notify the CITY of any cancellation or reduction in coverage within seven (7) days of receipt of insurer's notification of cancellation or reduction in coverage.

12.3 Insurance shall be in force for no less than five (5) years following the termination or expiration of this Agreement or CONTRACTOR must show proof that any claims made during CONTRACTOR's operation of the Facility will be covered by a new insurance policy and/or tail coverage (extended reporting). CONTRACTOR will provide CITY with new certificates of insurance, or in the event that certificates of insurance are not yet available, a memorandum of insurance as interim proof, within ten (10) days of after the renewal date. The CONTRACTOR shall not commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. CONTRACTOR shall be liable to CITY for any lapses in service resulting from a gap in insurance coverage. The insurance requirements specified in this Agreement are minimum requirements and in no way reduce any liability the CONTRACTOR has assumed in the indemnification/hold harmless section(s) of this Agreement.

12.4 REQUIRED INSURANCE

12.4.1 **Commercial General Liability Insurance** including, but not limited to: coverage for premises and operations , personal & advertising injury, products & completed operations, liability assumed under an Insured Contract (including tort liability of another assumed in a business contract), and independent contractors. Coverage must be written on an occurrence basis, with limits of liability no less than:

- A. Each Occurrence Limit - \$1,000,000
- B. Fire Damage Limit (Damage to rented premises) - \$1,000,000
- C. Personal & Advertising Injury Limit - \$1,000,000
- D. General Aggregate Limit - \$2,000,000
- E. Products & Completed Operations Aggregate Limit - \$2,000,000

Products & Completed Operations Coverage shall be maintained for three (3) years after the termination of this Agreement.

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. City's Additional Insured status shall extend to any coverage beyond the minimum requirements for limits of liability found herein.

12.4.2 Workers' Compensation and Employers Liability Insurance covering all employees, and/or volunteers of the CONTRACTOR, engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, the CONTRACTOR shall require the subcontractors similarly to provide Workers' Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. Coverage for the CONTRACTOR and his subcontractors shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability of no less than:

12.4.2.1

- | | | |
|----|-----------------------|--|
| A. | Worker's Compensation | Statutory |
| B. | Employer's Liability | \$500,000 each accident
\$500,000 Disease-policy limit
\$500,000 Disease-each employee |

If CONTRACTOR claims to be exempt from this requirement, CONTRACTOR shall provide CITY proof of such exemption along with a written request for CITY to exempt CONTRACTOR, written on CONTRACTOR letterhead.

12.4.3 Comprehensive Auto Liability/Equipment covering all owned, hired and non-owned vehicles used in connection with the performance of work under this Agreement with a combined single limit of liability for bodily injury and property damage of no less than \$1,000,000 each accident. In addition, the CONTRACTOR shall provide Physical Damage Coverage for all City Vehicles/equipment used by the CONTRACTOR in connection with this Agreement. The City of Pembroke Pines shall be named as Loss Payee as respects the CITY Vehicles. (Should include a list of CITY Vehicles for which the CONTRACTOR will be responsible as part of the Agreement)

If CONTRACTOR is responsible for removing any pollutants from the site, the Auto Policy shall include pollution liability coverage equivalent to that provided by ISO pollution liability-broadened coverage for auto endorsement CA9948 and the Motor Carrier Act endorsement MCS90.

Garage Keepers Liability Insurance in an amount of no less than \$1,000,000 each location. Per vehicle cap, if applicable, should be no less than \$50,000 per vehicle. **The City of Pembroke Pines must be shown as an additional insured with respect to this coverage.** City's Additional Insured status shall extend to any coverage beyond the minimum requirements for limits of liability found herein.

12.4.4 Contractor's Pollution Liability Insurance in an amount of no less than \$2,000,000 Each Incident and \$2,000,000 Annual Aggregate. If written on a Claims Made basis, this coverage shall be maintained for a period of no less than three (3) years after

termination of the Agreement. **The City of Pembroke Pines must be shown as an additional insured with respect to this coverage.** City's Additional Insured status shall extend to any coverage beyond the minimum requirements for limits of liability found herein.

12.4.5 **Excess Liability Insurance (Umbrella)** shall be maintained in an amount of no less than \$5,000,000 per Occurrence and \$5,000,000 Annual Aggregate. **The City of Pembroke Pines must be shown as an additional insured with respect to this coverage.**

12.4.6 **Crime Insurance** including employee dishonesty, forgery or alteration, and computer fraud in an amount of no less than \$ \$1,000,000 per loss.

12.4.7 **Property/Inland Marine Insurance** covering property damage to CITY mobile equipment to be used and maintained by the CONTRACTOR. The City of Pembroke Pines shall be named as Loss Payee as respects the CITY Equipment. (CITY shall include a list of Equipment for which the CONTRACTOR will be responsible as part of the Agreement, subject to additions, deletions, and/or substitutions throughout the term of the Agreement)

12.4.8 **Professional Liability Insurance** in an amount of no less than \$1,000,000 Each Occurrence/Claim and \$2,000,000 Annual Aggregate must be included for all security operations at the Civic Center. If written on a Claims Made basis, this coverage shall be maintained for a period of no less than three (3) years after termination of the Agreement. **The City of Pembroke Pines must be shown as an additional insured with respect to this coverage.** City's Additional Insured status shall extend to any coverage beyond the minimum requirements for limits of liability found herein.

12.4.9 **CYBER LIABILITY including Network Security and Privacy Liability** when applicable, with a limit of liability no less than \$1,000,000 per loss. Coverage shall include liability arising from: theft, dissemination and/or use of confidential information stored or transmitted in electronic form, unauthorized access to, use of, or tampering with computer systems, including hacker attacks or inability of an authorized third party to gain access to your services, including denial of service, and the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network, or similar computer-related property and the data, software and programs thereon. This coverage shall be maintained for a period of no less than three (3) years after final payment of the contract. **The City of Pembroke Pines must be shown as an additional insured with respect to this coverage.** Furthermore, the CITY'S Additional Insured status shall extend to any coverage beyond the minimum requirements for limits of liability found herein

12.4.10 **LIQUOR LIABILITY** in an amount of no less than \$1,000,000 per occurrence. **The City of Pembroke Pines must be shown as an additional insured with respect to this coverage.** City's Additional Insured status shall extend to any coverage beyond the minimum requirements for limits of liability found herein.

12.4.11 CONTRACTOR shall provide **SPECIAL EVENT INSURANCE** as required by contract.

12.5 Each policy (except for Crime) shall contain a Waiver of All Rights of Subrogation against the CITY. CONTRACTOR'S policies shall be Primary & Non-Contributory. All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the CITY.

12.6 CONTRACTOR shall name the CITY, as an additional insured on each of the liability policies (except Workers Compensation/Employee Liability Policies) required herein and shall hold the CITY, its agents, officers and employees harmless on account of claims for damages to persons, property or premises arising out of the services provided hereunder.

12.7 Any insurance required of CONTRACTOR pursuant to this Agreement must also be required by any subcontractor, if applicable, in the same limits and with all requirements as provided herein, including naming the CITY as an additional insured, in any work that is subcontracted unless such subcontractor is covered by the protection afforded by the CONTRACTOR and provided proof of such coverage is provided to CITY. The CONTRACTOR and any subcontractors shall maintain such policies during the term of this Agreement.

12.8 The CITY reserves the right to require any other insurance coverage it deems necessary based on the nature of work being performed under this Contract. If the CITY exercises this right, the cost of such insurance shall be an Operating Expense. The coverage and cost must be preapproved by the CITY and such coverage may only increase the cost if it is directly related to the Facility and not the CONTRACTOR.

12.9 CONTRACTOR agrees to perform the work under the Agreement as an independent contractor, and not as a Subcontractor or employee of CITY.

12.10 Violation of the terms of this Article and its sub-parts shall constitute a breach of the Agreement and CITY, at its sole discretion, may cancel the Agreement pursuant to Article 14 and 15 hereof and all rights, title and interest of the CONTRACTOR shall thereupon cease and terminate.

12.11 CITY'S Liability and Insurance.

12.11.1 CITY shall not be responsible for purchasing and maintaining any insurance to protect the interests of CONTRACTOR, Subcontractors or others on the Project. CITY specifically reserves all statutory and common law rights and immunities and nothing herein is intended to limit or waive same including, but not limited to, the procedural and substantive provisions of Florida Statutes Sections 768.28 and 95.11.

ARTICLE 13 - INDEMNIFICATION

In consideration of the sum of ten (\$10.00) dollars CONTRACTOR agrees to the following indemnities, which indemnities shall survive termination or expiration of this Agreement.

13.1 CONTRACTOR shall indemnify, save and hold harmless the CITY, its officers, agents and employees, from or on account of all claims, damages, losses, obligations, penalties, fines, liabilities and expenses, direct or indirect, including, but not limited to, reasonable fees and charges of engineers, architects, attorneys, CONTRACTOR and other professionals, all settlements, liens or judgments of any nature, and trial and appellate court and arbitration costs (the "Damages") arising out of or relating to or resulting from the performance of the Services by CONTRACTOR, CONTRACTOR'S errors and omissions, or CONTRACTOR'S compliance or failure to comply with its obligations under the Agreement, excluding claims arising from the sole or gross negligence of CITY. Such indemnification shall specifically include but not be limited to claims, damages, losses and expenses arising out of or resulting from (a) any and all bodily injuries, sickness, death, disease; (b) injury to or destruction of tangible personal property, including the loss of use resulting there from or which arise from negligent acts or omissions or environmental damage of the CONTRACTOR performing Services at the Facilities; (c) other such damages, liabilities or losses received or sustained by any person or persons during or on account of any operations connected with the operation, management, Maintenance and Repair, including the warranty period; (d) CONTRACTOR'S or CONTRACTOR'S Subcontractors use of any improper materials; (e) any construction defect including patent defects relating solely to Facilities constructed by CONTRACTOR or Subcontractors; (f) any act or omission of CONTRACTOR or Subcontractors, agents, servants or employees; (g) the violation of any Applicable Law or any federal, state, CITY or CITY laws, ordinances or regulations by CONTRACTOR, its Subcontractors, agents, servants or employees; (h) any patent or copyright infringement; and (i) the breach or alleged breach by CONTRACTOR of any term of the Agreement, including the breach or alleged breach of any warranty or guarantee.

13.2 In the event that any claims are brought or actions are filed against the CITY which arise out of or with respect to the duties and obligations of the CONTRACTOR as more fully set forth in Article 4 of this Agreement for the programming, management and operations of the Pembroke Pines Civic Facility by SMG, then said CONTRACTOR agrees to defend and indemnify the CITY for any such claims or actions regardless of whether such claims or actions are rightfully or wrongfully brought or filed against the CITY. The CITY reserves the right to select its own legal counsel to conduct its defense in any such proceedings and all costs and fees associated therewith including any costs or fees of an appeal shall be the responsibility of and shall be paid by the CONTRACTOR.

13.3 Such CONTRACTOR'S indemnification shall not be limited to the amount of comprehensive general liability insurance which CONTRACTOR is required to obtain under the Agreement. Nothing contained herein is intended nor shall it be construed to waive CITY'S rights and immunities under the common law or Florida Statute 768.28 as amended from time to time. This obligation shall not be construed to negate, abridge, or otherwise reduce any other

right or obligation of indemnity which would otherwise exist as to any party described in this Paragraph and its subparts.

ARTICLE 14- CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

In order to induce CITY to enter into this Agreement, CONTRACTOR makes the following representations:

14.1 CONTRACTOR has examined and carefully studied the Contract Documents.

14.2 CONTRACTOR has visited the site, and has become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of Services for the Agreement.

14.3 CONTRACTOR is familiar with and is satisfied as to all Applicable Laws, and all other federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Agreement.

14.4 CONTRACTOR is aware of the general nature of the Services to be performed by CITY and others at the Facility as indicated in the Agreement.

14.5 CONTRACTOR agrees to exert its best efforts in managing and operating the Facility so as to minimize operating costs and maximize revenues;

14.6 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reviews of the Facility construction documents, reports and drawings identified in the Agreement and all additional examinations, investigations, and data with the Agreement.

14.7 CONTRACTOR has given the Contract Representative written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by the Contract Representative is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Services.

14.8 CONTRACTOR warrants the following:

14.8.1 Anti-Discrimination: The CONTRACTOR agrees that it will not discriminate against any employees or applicants for employment or against persons for any other benefit or service under this Agreement because of race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and to abide by all federal and state laws regarding non-discrimination.

14.8.2 Anti-Kickback: The CONTRACTOR warrants that no person has been

employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the CITY, has any interest, financially or otherwise, in the Project. For breach or violation of this warranty, the CITY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

14.8.3 Licensing, Bonds and Permits: The CONTRACTOR warrants that it shall have, prior to commencement of work under this Agreement and at all times during said work, all required licenses, Bonds and permits whether federal, state, CITY or CITY.

14.8.4 Public Entity Crime Statement: The CONTRACTOR warrants that it has not been placed on the convicted vendor list following a conviction for a public entity crime.

14.9 The CONTRACTOR represents and warrants to the CITY that:

14.9.1 It is financially solvent and has sufficient working capital to perform the obligations under this Agreement;

14.9.2 It is experienced and skilled in the specialized type of Services described in the Agreement;

14.9.3 It is able to provide the labor, materials, equipment and machinery necessary to perform the Services for the agreed upon fees;

14.9.4 It is fully licensed under all Applicable Laws and authorized to do business in the State of Florida in the name of the entity identified as the "CONTRACTOR" in the Agreement; and

14.9.5 It will comply with all Applicable Laws, and other federal, state and local governmental laws, rules and regulations relating to its responsibilities as set forth in the Contract Documents.

14.10 Truth in Negotiation:

14.10.1 CONTRACTOR warrants that all cost and pricing data provided to the CITY during the term of the Agreement shall be complete, accurate and current when provided. Should there be any changes in the Cost and Pricing Data previously submitted, the CONTRACTOR shall notify and provide the new information to the CITY immediately.

14.10.2 Despite any provisions in the Contract Documents to the contrary, any amounts paid by CITY to CONTRACTOR in excess of that to which CONTRACTOR is entitled under the Agreement shall be reimbursed by CONTRACTOR to CITY. The making of Final Payment to CONTRACTOR shall not be a waiver of CITY'S right to reimbursement from CONTRACTOR nor shall it discharge CONTRACTOR'S obligation to refund the overpayment. The terms of this Article shall survive the CITY'S making final payment.

14.10.3 CONTRACTOR shall insert a provision containing all the requirements of this Article, in all Subcontracts between CONTRACTOR and Subcontractors, Suppliers or other persons, altering the section only as necessary to identify properly the contracting parties.

14.11 CONTRACTOR warrants and represents that its management-level employees have received sexual harassment training and that CONTRACTOR maintains appropriate sexual harassment and anti-discrimination policies.

14.12 CONTRACTOR warrants and represents that its employees will abide by the Code of Ethics for Public Officers and Employees, Chapter 112, Florida Statutes.

14.13 CONTRACTOR shall maintain a Drug-Free workplace as that term is defined in Florida Statutes.

ARTICLE 15 - TERMINATION AND DEFAULT

15.1 This Agreement may be terminated for cause by action of the City Commission or by CONTRACTOR if the party in default has not corrected the default within thirty (30) days, or as such shorter time as provided in 14.2, after written notice from the aggrieved party identifying the breach.

This Agreement may also be terminated by the Contract Representative upon such notice as Contract Representative deems appropriate under the circumstances in the event the Contract Representative determines that termination is necessary to protect the public health, safety or welfare.

15.2 Termination of this Agreement for cause shall mean,

(i) Failure to pay any sum, including gross revenues, payable herein within five (5) Business Days after service of notice that such sum is past due and payable to CITY or CONTRACTOR as the case may be; or

(ii) Failure to perform or comply with any other term, covenant or condition hereof and such failure shall continue for more than thirty (30) days after written notice thereof is sent to the defaulting party. In the event such a default (other than a default in the payment of money as described in 14.2(i)) is not reasonably susceptible to being cured within the thirty (30) day period, the defaulting party shall not be considered in default if it shall, within thirty (30) day period have commenced with due diligence to cure such default and thereafter completed with due diligence the curing of such default; provided, however, that in no event shall a cure period pursuant to this Section 14.2(ii) exceed a maximum total of ninety (90) days after the initial notice of default therefore.

(iii) The occurrence of any act or commission on the part of CONTRACTOR that deprives it of the rights, powers, licenses, permits, and authorizations necessary for the lawful and proper

conduct and operation of the services and activities authorized; or

(iv) The filing by or against CONTRACTOR or CITY of any petitions in bankruptcy either voluntary or involuntary, or the making by which the actions shall automatically be basis for termination and bar the passing of any benefits to creditors, assignees, or transferees of CONTRACTOR; or

(v) The abandonment or discontinuance by CONTRACTOR, without written consent of CITY, of any or all of the operations and services permitted or required; or

(vi) Two (2) or more documented material breaches in any 12 consecutive month period, of the provisions of this Agreement, notwithstanding whether any such breach was previously waived or cured; A documented breach shall consist of CITY's written notice of default to CONTRACTOR; or

(vii) The cessation of services for a period that in the reasonable opinion of CITY, materially and adversely affects the operation of the services required to be performed by CONTRACTOR.

15.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement.

15.4 In the event this Agreement is terminated for any reason, CONTRACTOR shall be paid its Base Management Fee for any services performed to the date the Agreement is terminated, subject to proration, less the cost to CITY of making good any deficiencies, correcting all work improperly performed. If the Agreement is terminated for cause, the CONTRACTOR shall not be paid an Incentive Fee for the year in which the termination occurs.

15.5 Upon the effective date of a termination notice pursuant to Section 15.1 above, CONTRACTOR shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. CONTRACTOR shall surrender and vacate the Facility. Furthermore, in the event of termination, any compensation payable by CITY shall be withheld until the Facility, all equipment, facility access equipment, inventory and furnishings therein shall be returned to the CITY in good repair, reasonable wear and tear expected; all reports, records, including financial records, and documents maintained by CONTRACTOR relating to this Agreement shall immediately be surrendered to the CITY. Equipment and other personal property purchased by CONTRACTOR for use in the operation or maintenance of the Services shall remain the property of CONTRACTOR upon termination of this Agreement unless the property was directly paid for by CITY or CITY specifically reimbursed CONTRACTOR for the cost incurred to purchase the equipment or personal property or this Agreement provides to the contrary.

15.6 In the event of termination for any reason provided for herein, CITY may, in its discretion, assume the work and see that the same is completed by agreement with another party, including subcontractors of CONTRACTOR, or otherwise, all without liability to CONTRACTOR.

15.7 The exercise by CITY or CONTRACTOR of remedies and rights provided herein shall in no way affect any other right or remedy available to CITY or CONTRACTOR.

15.8. Upon termination or expiration, the CITY shall not be liable to CONTRACTOR for any additional compensation, consequential or incidental damages, lost profits, or any other compensation, beyond the compensation structure specifically provided for in this Agreement.

ARTICLE 16 - TRANSITION/PHASE-OUT PERIOD

16.1 In the event of termination or expiration, CONTRACTOR and the CITY shall cooperate in good faith in order to effectuate a smooth and harmonious transition from CONTRACTOR to the CITY, or to any other person or entity the CITY may contract with during such period of transition the same scope of Services provided to the CITY pursuant to the terms of the Agreement.

ARTICLE 17 - BUSINESS OF THE CONTRACTOR; CONFLICTS OF INTEREST

17.1 CONTRACTOR shall not submit a proposal or enter into any similar management agreement for the operation of a similar type and size facility, not previously managed by CONTRACTOR, within a fifty (50) mile radius of Pembroke Pines unless the agreement is (a) with the CITY; or (b) agreed to by CITY, such agreement not to be unreasonably withheld.

17.2 CONTRACTOR agrees it shall not materially alter the nature of the services that its company offers in a manner that might impact on the operation at the Facility without prior written approval of the Contract Representative.

17.3 In the event CONTRACTOR enters into a management agreement for the operation of a facility other than a facility, as defined in Section 17.1 above, within a one hundred (100) mile radius of Pembroke Pines, CONTRACTOR agrees and represents to CITY that its corporate office shall perform such services in a manner so as to show no preference for any facility(ies) with regard to the management, booking and operation of said facility(ies).

17.4 CONTRACTOR is familiar with the provisions of the Pembroke Pines Charter and Code, and Florida Statutes, and hereby certifies that it will make a complete disclosure to CITY of all facts bearing upon any possible conflict, direct or indirect, with its performance that it believes any officer or employee of CITY now has or will have. Said disclosure shall be made by the CONTRACTOR contemporaneously with the execution of this Agreement and at any time thereafter that such facts become known to the CONTRACTOR.

17.5 CITY recognizes that the CONTRACTOR, or its affiliates, may enjoy indirect economic benefits from the operation of the Facility. However, the CONTRACTOR agrees that it will perform its obligation under this Agreement in a manner consistent with the best interest of CITY. Additionally, the CONTRACTOR shall to the extent practical, prior to execution and

approval of this Agreement, provide to CITY a listing of such known or anticipated ancillary income/revenue sources and their estimated annual amount. Said listing shall be updated on an annual basis no later than March 1 of each fiscal year subsequent to the opening of the Facility.

ARTICLE 18 - CONTRACT DOCUMENTS

The Contract Documents listed below, which are listed in their order of precedence for the purpose of resolving conflicts, errors and discrepancies, by this reference shall become a part of the Agreement as though physically attached as a part thereof:

18.1 Amendments

18.2 This Agreement for Programming, Operations and Management

18.3 Exhibits to this Agreement

18.4 The documents listed above shall be incorporated into this Agreement (except as expressly noted otherwise above).

18.5 There are no Contract Documents other than those listed above in this Article.

ARTICLE 19 - EMERGENCIES AND HURRICANE PREPAREDNESS

19.1 CONTRACTOR shall prepare and update an Emergency Preparedness Plan for the Facility to be submitted to the Contractor Representative within ninety (90) days of execution of the agreement. CONTRACTOR shall provide resources for responding to emergency situations on a 24-hour basis and in accordance with the CONTRACTOR'S Emergency Preparedness Plan, if applicable.

19.2 In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR is obligated to act in a timely manner and to use CONTRACTOR'S best efforts to prevent threatened damage, injury or loss. CONTRACTOR shall give CITY prompt written notice if CONTRACTOR believes that any significant changes in the Facilities or variations from the Contract Documents have been caused thereby or are required as a result thereof. CONTRACTOR shall be responsible for acting in an emergency situation in accordance with applicable laws and regulations.

19.3 CONTRACTOR shall use best efforts to secure or remove from the Facilities, prior to a storm event, any materials or equipment which could cause bodily injury, damage to the CITY'S installations and/or public or private property or that may result in a loss of equipment or supplies. In the event of the issuance of a storm warning, the CITY will attempt to notify the CONTRACTOR, however, the CONTRACTOR is responsible for preparing for a storm event. The CONTRACTOR shall take the necessary precautions to protect the walking and motoring public from harm due to CONTRACTOR'S work activity.

19.4 CITY'S REPRESENTATIVE may, but is not required to, order the Services to be stopped if a condition of imminent danger exists. Nothing shall be constructed to shift responsibility or risk of loss for injuries and/or damages, cost of stoppage or delay of work, from the CONTRACTOR to the CITY. The CONTRACTOR shall remain solely and exclusively responsible for compliance with all safety requirements and the safety of all persons and property at the Facilities.

19.5 In any emergency threatening the safety of persons or property, CONTRACTOR may act upon verbal approval by CITY REPRESENTATIVE, at CONTRACTOR's reasonable discretion, to prevent threatened damage, injury or loss, CITY shall compensate CONTRACTOR for any such emergency work notwithstanding the lack of a written amendment. Such compensation includes CONTRACTOR's expenses and direct costs for the emergency work plus a reasonable mark-up of 15% for overhead and profit.

19.6 CONTRACTOR shall be responsible for any hazardous environmental conditions created by the CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible. If CONTRACTOR encounters a hazardous environmental condition or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a hazardous environmental condition, CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all performance of Services in connection with such condition and in any area affected thereby; and (iii) notify CITY and immediately thereafter confirm such notice in writing.

19.7 In the event of any emergency condition involving the Facilities which is found by the CITY to present a significant, immediate danger to public health, whether the cause of CONTRACTOR or otherwise, and CONTRACTOR is either unable or unwilling to correct such condition, CITY may replace CONTRACTOR without notice during the emergency condition, provided that at the conclusion of any condition, CONTRACTOR shall be reinstated by CITY. Provided further, however, that CITY shall not be obligated to reinstate CONTRACTOR at the conclusion of the emergency condition and may terminate this Agreement if CONTRACTOR'S inability or unwillingness to correct such condition itself constitutes grounds for termination of this Agreement as provided under Article ____ CONTRACTOR shall not be entitled to any compensation for the time in which it was removed.

19.8 If the emergency condition is found to have been caused by the fault, action, inaction, omission or negligence of CONTRACTOR, CONTRACTOR shall be liable for the costs incurred by CITY in replacing CONTRACTOR, remedying the emergency condition, and repairing any damage caused thereby.

ARTICLE 20 - ASSIGNMENT/SUBCONTRACTS

21.1 No assignment by a party hereto of any rights under or interests in the Agreement will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due

may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Agreement.

21.2 The obligations undertaken by CONTRACTOR pursuant to the Agreement shall not be delegated or assigned to any other person or CONTRACTOR unless CITY shall first consent in writing to the assignment. Violation of the terms of this Paragraph shall constitute a breach of the Agreement by CONTRACTOR and the CITY may, at its discretion, terminate the Agreement and all rights, title and interest of CONTRACTOR without any further notice.

21.3 CITY and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Agreement.

ARTICLE 21 - SEVERABILITY

21.1 If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

ARTICLE 22 - REMEDIES

22.1 If and when any default of this Agreement occurs, the CITY or CONTRACTOR may avail itself of any legal or equitable remedies that may apply, including, but not limited to, actual damages and specific performance. Such remedies may be exercised in the sole discretion of the CITY or CONTRACTOR. Nothing contained in this Agreement shall limit the CITY or CONTRACTOR from pursuing any legal or equitable remedies that may apply.

ARTICLE 23 - COUNTERPARTS

23.1 This Agreement may be signed in one or more counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.

ARTICLE 24 - NOTICES

24.1 Whenever any party is required to give or deliver any notice to any other party under this Agreement, or desires to do so, such notices shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, sent via registered or certified mail with postage prepaid return receipt requested, or by private postal service, addressed to the parties below:

FOR CONTRACTOR: SMG

300 Conshohocken State Road, Suite 700
West Conshohocken, Pennsylvania 19428
Attention: Mr. Harold Westley, President and CEO
Telephone No. (610) 729-1590

FOR CITY:

Charles F. Dodge, City Manager
City of Pembroke Pines
10100 Pines Boulevard
Pembroke Pines, Florida 33025
Telephone No. (954) 450-1040
Facsimile No. (954) 571-8400
Email Address: cdodge@ppines.com

COPY TO:

Samuel S. Goren, City Attorney
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308
Telephone No. (954) 771-4500
Facsimile No. (954) 771-4923
Email Address: sgoren@cityatty.com

ARTICLE 25 - INDEPENDENT CONTRACTOR

25.1 CONTRACTOR is and shall remain an independent contractor and is not an employee or agent of the CITY, except as otherwise specified in this Agreement. Services provided by CONTRACTOR shall be by employees of CONTRACTOR working under the supervision and direction of CONTRACTOR and nothing in this Agreement shall in any way be interpreted or construed to deem said employees to be agents, employees, or representatives of the CITY. CONTRACTOR agrees that it is a separate and independent enterprise from the CITY.

25.2. CONTRACTOR shall be responsible for all compensation, tax responsibilities, insurance benefits, other employee benefits, and any other status or rights of its employees during the course of their employment with CONTRACTOR. This Agreement shall not be construed as creating any joint employment relationship between CONTRACTOR and the CITY, and the CITY will not be liable for any obligation incurred by CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime payments.

ARTICLE 26 - JURISDICTION AND VENUE

26.1 This Agreement shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this agreement shall be in Broward County, Florida.

ARTICLE 27 - ATTORNEYS' FEES

27.1 If either the CITY or CONTRACTOR is required to enforce the terms of the Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses,

including, but not limited to, court costs, and reasonable attorneys' fees through both the trial and appellate level.

ARTICLE 28 - ENTIRE AGREEMENT/MODIFICATION/AMENDMENT

28.1 This Agreement contains the entire Agreement between the CITY and the CONTRACTOR and supersedes all prior or contemporaneous communications, representations, understandings or agreements. This Agreement may only be amended or modified by the prior written approval of the parties or by execution of a Change Order.

ARTICLE 29 - CUMULATIVE REMEDIES

29.1 The duties and obligations imposed by this Agreement and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Applicable Laws or by special warranty or guarantee, or by other provisions of the Agreement, and the provisions of this paragraph will be as effective as if repeated specifically in the Agreement in connection with each particular duty, obligation, right, and remedy to which they apply.

ARTICLE 30 - SURVIVAL OF OBLIGATIONS

30.1 All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive expiration or termination of the Agreement.

ARTICLE 31 - BINDING AUTHORITY AND ADVICE OF COUNSEL

31.1 Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement. The CITY and CONTRACTOR agree that each party has had an opportunity review this document with legal counsel and been fully advised in the premise set forth herein.

ARTICLE 32 - HEADINGS

32.1 Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

ARTICLE 33 - EXHIBITS


33.1 Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits if not physically attached should be treated as part of this Agreement and are incorporated herein by reference.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

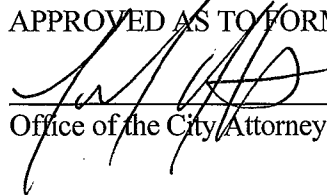
ATTEST:

 2/17/16
MARLENE GRAHAM,
City Clerk

CITY

BY: 
CHARLES F. DODGE
City Manager

APPROVED AS TO FORM.


Office of the City Attorney

CONTRACTOR

Witnesses:

[Signature]

Bruce Hansen
Printed Name

Carlene B Balickie

Carlene B. Balickie
Printed Name

SMG

BY:

[Signature]

JOHN F. BURNS
Printed Name

CFO
Title

STATE OF Pennsylvania
CITY OF Montgomery

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared JOHN F. BURNS, a company authorized to conduct business in the State of Florida, and acknowledged execution of the foregoing Agreement as the proper official of SMG for the use and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and CITY aforesaid on this 3rd day of February, 2016.

[Signature]
NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL
(Name of Notary Public, Printed or Stamped)
Sarah Dimech, JPM
Notary Public
CONSHOHOCKEN BORO, MONTGOMERY COUNTY
My Commission Expires Jul 28, 2018