



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

THIS IS AN AMENDMENT (“First Amendment”), dated this ____ day of _____ 2019, by and between:

CITY OF PEMBROKE PINES, a municipal corporation organized and operating under the laws of the State of Florida, with an address of 601 City Center Way, Pembroke Pines, Florida 33025, 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”. CITY and CONTRACTOR are each a “Party” and may hereinafter be referred to collectively as “the Parties.”

WHEREAS, on February 17, 2016, the Parties entered into the Original Agreement (“Original Agreement”) for the programming, management, and operation of the Charles. F. Dodge City Center; and,

WHEREAS, to date the Parties have been satisfied with the performance and execution of the Original Agreement, and desire to further amend the Original Agreement to incorporate the management and operation of the Club 19 Restaurant at the Pembroke Lakes Golf Course (“Restaurant”); and,

WHEREAS, CONTRACTOR has represented and warrants to CITY that it has the necessary experience and qualifications to manage, operate, market, advertise, staff, clean, keep secure, and provide routine maintenance of the Restaurant, its bar, and its patio area, for daily service and for special events as needed; and

WHEREAS, Parties agree that CONTRACTOR shall use reasonable efforts to generate revenues sufficient to cover expenses of the Restaurant and produce quality food and beverage products; and

WHEREAS, the Parties desire to also amend the Original Agreement, to include certain provisions required by statutory amendments imposed since the Parties entered into the Original Agreement.



WITNESSETH

NOW THEREFORE, for and in consideration of the sum of the mutual covenants and other good and valuable consideration, the receipt of which are hereby acknowledged, the Parties hereto agree as follows:

SECTION 1. The recitations set forth in the above "WHEREAS" clauses are true and correct and incorporated herein by this reference.

SECTION 2. Article 3 entitled "**Definitions**" is hereby amended with the following additions to the language:

"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. The "Facility" shall also include "Restaurant" as defined herein.

"Restaurant": The "Restaurant" is located at 10500 Taft Street, Pembroke Pines, FL 33026 and is referred to as "Club 19". The Restaurant is adjacent to the Pembroke Lakes Golf Course. The Restaurant includes a full service kitchen, a bar, banquets and restaurant space and on-course beverage and snack cart service.

SECTION 3. Article 4 entitled "**Services to be Provided by Contractor**" is hereby amended with the following additions to the language:

4.8 Additional Services to be provided by the Contractor for Restaurant

(A) Personnel for Operations

- a. In addition to the requirements included in Section 4.1 of the Original Agreement, CONTRACTOR shall provide staff to manage and operate the Restaurant, banquet hall and beverage cart service.

(B) Programming/Marketing

- a. In addition to the requirements includes in Section 4.2 of the Original Agreement, CONTRACTOR shall promote and market the Restaurant to include both banquet and restaurant services. The CONTRACTOR shall also be responsible for programming the hours of operation for the Restaurant and special events for the venue.

(C) Operational Maintenance

- a. In addition to the requirements included in Section 4.3 of the Original Agreement, CONTRACTOR shall also be responsible for routine maintenance of all kitchen equipment at the Restaurant to include all cooking production equipment, fixtures, bar equipment and furniture within the Restaurant.



(D) Contractor's Responsibilities

- a. In addition to the requirements included in Section 4.4 of the Original Agreement, CONTRACTOR shall be responsible for the following:
 - i. Operate the Restaurant, seven (7) days a week. The space will be available to the CONTRACTOR from 6:00 A.M. to midnight.
 - ii. CONTRACTOR shall operate a beverage cart on the golf course on Friday, Saturday, and Sunday or as volume dictates during the months of May through October, and Monday through Sunday or as volume dictates during the months of November through April.
 - iii. CONTRACTOR shall be responsible for maintaining a consistent menu offering for the Restaurant.
 - iv. CONTRACTOR agrees to honor all pending contracts for events and functions booked after December 1, 2019. The City will assist CONTRACTOR in obtaining all deposits for events booked after December 1, 2019, from current Lessee.

(E) Contractor's Rights

- a. In addition to the requirements included in Section 4.5 of the Original Agreement, CONTRACTOR understands that the Restaurant has non-exclusive use of the parking lot, which much be shared among golfers, diners, the Pembroke Lakes Tennis and Aquatic Center, and the Golf Pro Shop.

SECTION 4. Article 5 entitled "**Term**" is hereby amended with the following additions to the language:

5.1.3 The Operating Term of the Restaurant shall commence on December 1, 2019 and shall run concurrent with the other terms in Section 5.1.2 of the Original Agreement.

SECTION 5. Article 6 entitled "**Compensation**" is hereby amended with the following additions to the language:

6.1.2.1 Base Management Fee for Restaurant. CITY agrees to pay CONTRACTOR an additional Base Management Fee of FIVE THOUSAND DOLLARS (\$5,000) annually in monthly installments of FOUR HUNDRED SIXTEEN DOLLARS AND SIXTY SEVEN CENTS (\$416.67) commencing on December 1, 2019 and paid on or before the fifteenth (15th) day of each month thereafter during each year of the Term of this Agreement.

6.1.5 Incentive Fee for Restaurant. In addition to the Base Management Fee for Restaurant, 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 for Restaurant. CONTRACTOR will deduct, on a dollar for dollar basis, from its Incentive Fee as outlined herein, any shortfall realized against the Approved Budget for Operating Revenues for the Restaurant for a fiscal year, such deduction being capped at the full amount of CONTRACTOR's Quantitative Incentive Fee payable for such Fiscal Year.



6.1.5.1 Quantitative Incentive Fee for Restaurant. CITY shall pay CONTRACTOR a Quantitative Incentive Fee in the amount of FIVE THOUSAND DOLLARS (\$5,000). The Quantitative Incentive Fee for Restaurant shall be due within thirty (30) days after receipt of audit performed by an independent audit firm pursuant to Section 4.4(G) of the Original Agreement.

SECTION 6. Article 15 entitled “**Termination and Default**” is hereby amended with the following additions to the language:

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~~ 15.2, 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.

The services provided under this Agreement, as amended, for the Restaurant portion only may be terminated for convenience with a ninety (90) day notice. The services rendered pursuant to this First Amendment are severable and this termination provision may be executed without affecting the remaining services provided at the Facilities covered by this Agreement.

SECTION 7. Article 24 entitled “**Notices**” is hereby amended as follows:

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 Westly, President and CEP
Telephone No. (610) 729-1590

FOR CITY Charles F. Dodge, City Manager
City of Pembroke Pines
601 City Center Way
Pembroke Pines, FL 33025
~~40100 Pines Boulevard~~
~~Pembroke Pines, Florida 33025~~
Telephone No. (954) ~~431-4884~~450-1040



Facsimile No. _____ (954) 437-1149

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) 771-4900
Facsimile No. (954) 771-4923

SECTION 8. Article 34 entitled “**Miscellaneous**” is hereby added as follows:

34.1 **Non-Discrimination and Equal Opportunity Employment.** During the performance of this Agreement, neither the CONTRACTOR nor any subcontractors shall discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability, if qualified. CONTRACTOR will take affirmative action to ensure that employees are treated during employment, without regard to their race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability, if qualified. Such actions must include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. CONTRACTOR further agrees that he/she/it will ensure that subcontractors, if any, will be made aware of and will comply with this non-discrimination clause.

34.2 **Scrutinized Companies.** CONTRACTOR, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or is engaged in business operations with Syria. In accordance with Florida Statute 287.135, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services if:

34.2.1 Any amount of, at the time bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 or is engaged in a boycott of Israel; or

34.2.2 One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:



34.2.2.1 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473; or

34.2.2.2 Is engaged in business operations in Syria.

SECTION 9. In the event of any conflict or ambiguity by and between the terms and provisions of this First Amendment, and the Original Agreement, the terms and provisions of this First Amendment shall control to the extent of any such conflict or ambiguity.

SECTION 10. The Parties agree that in all other respects the Original Agreement, as amended by this First Amendment, shall remain in full force and effect, except as specifically modified herein.

SECTION 11. Each Exhibit referred to in the Original Agreement, and in the First Amendment, except as repealed herein, 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.

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

CITY OF PEMBROKE PINES

ATTEST:

MARLENE D. GRAHAM, CITY CLERK

BY: _____
CHARLES F. DODGE, CITY MANAGER

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

CONTRACTOR: SMG

WITNESSES:

BY: _____

(Print Name)

(Print Name)

STATE OF FLORIDA)
)SS:
COUNTY OF BROWARD)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared as _____, of SMG, an organization, authorized to do 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. He/she is personally known to me or has produced _____ as identification.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this _____ day of _____, 2019.

NOTARY PUBLIC



My Commission Expires: