

FOURTH AMENDED AND RESTATED FACILITIES MANAGEMENT AGREEMENT

THIS FOURTH AMENDED AND RESTATED FACILITIES MANAGEMENT AGREEMENT (“Agreement”), is entered into as of the 1st day of July, 2025, by and among the CITY OF OKLAHOMA CITY (“City”), an Oklahoma municipal corporation, the OKLAHOMA CITY PUBLIC PROPERTY AUTHORITY (“OCPPA”), an Oklahoma public trust, and SMG, an operating entity of ASM Global and a Pennsylvania general partnership (referred to in this Agreement as “SMG”). For convenience of reference, the City, OCPPA and SMG are sometimes collectively referred to in this Agreement as the “Parties”.

WHEREAS, the City is the owner of, and is currently developing a new arena (the “New Arena”) to be located in downtown Oklahoma City on the site of the former Cox Convention Center; and

WHEREAS, the Paycom Center (formerly referred to as the “Downtown Arena”), together with the New Arena herein referred to as the “Facilities,” are owned by the City and, pursuant to a lease between the City and OCPPA, operated and managed under the authority of OCPPA; and

WHEREAS, SMG is in the business of providing and performing consulting services and management services, including operations services, food and beverage services and marketing services, for public assembly facilities such as the New Arena and the Paycom Center; and

WHEREAS, by reason of the response submitted by SMG to a Request for Qualifications issued by the City and OCPPA, an Initial Agreement dated May 11, 1999 (the “Initial Agreement”), was negotiated and entered into with SMG for the provision of pre-opening consulting services with respect to the Paycom Center, and full-service management of the former Cox Convention Center and the Paycom Center; and

WHEREAS, pursuant to the Initial Agreement, the City, OCPPA and SMG thereafter negotiated and entered into a Definitive Agreement dated October 19, 1999 (the “1999 Definitive Agreement”), with an effective date of November 1, 1999, by which OCPPA engaged SMG, and SMG accepted such engagement to provide and perform certain consulting services, food and beverage service, marketing services, and management services for the Cox Convention Center and the Paycom Center; and

WHEREAS, SMG thereafter negotiated and entered into an Amended and Restated Definitive Agreement, Sublease and Management Agreement dated June 26, 2001 (the “2001 Definitive Agreement”),

that clarified certain terms of the 1999 Definitive Agreement, enhanced accountability and improved services and operations; and

WHEREAS, on December 11, 2001, SMG, The City, and OCPPA, determined and agreed that the “Facilities,” as hereinafter defined, should include a certain outdoor advertising billboard owned by the City on the north side of the Oklahoma City Boulevard near Shields Boulevard (more particularly identified as Oklahoma County Assessor Parcel No. 1612-13-174-8501), and that said billboard should be controlled by and subject to the 2001 Definitive Agreement and SMG Operating Policies and Procedures for management and operations of the Cox Convention Center and the Paycom Center as approved by the OCPPA; and

WHEREAS, SMG thereafter negotiated and entered into Facilities Management Agreement dated July 1, 2008 (the “Facilities Management Agreement”), that was consistent with the Paycom Center improvements and various rights and obligations relating to the commencement of agreements with the Professional Basketball Club, LLC (“PBC”) to present National Basketball Association (“NBA”) home games and related events at the Paycom Center; and

WHEREAS, SMG thereafter negotiated and entered into First Amendment and Renewal of the Facilities Management Agreement dated April 2, 2013, that modified certain incentive-based performance benchmarks and created a dedicated Other Events Marketing Fund to secure additional concerts and other events; and

WHEREAS, on November 8, 2018, SMG entered into the Second Amended and Restated Facilities Management Agreement for management of the Cox Convention Center and the Paycom Center; and

WHEREAS, ASM Global operates under the name of SMG in many markets; and

WHEREAS, on July 1, 2021, SMG entered into the Third Amended and Restated Facilities Management Agreement for management of the Paycom Center and Prairie Surf Media Studios (formerly the Cox Convention Center); and

WHEREAS, OCPPA deems it to be in the best interest of the City to incorporate certain amendments into the 2008 Facilities Management Agreement with SMG as therein authorized and provided, by way of this Fourth Amended and Restated Agreement.

NOW, THEREFORE, in consideration of these premises, and for other valuable consideration, the Parties hereto, intending to be legally bound, agree as follows:

1. **DEFINITIONS.** All terms and phrases not expressly defined herein shall have their ordinary meanings, consistent with local and state law, except where the context clearly indicates a different meaning. For purposes of this Agreement, the following terms and phrases shall have the meanings hereinafter ascribed:

- (A) *Adjusted Gross Income.* Any and all Operating Revenues derived, directly or indirectly, from operating, managing or promoting the Facilities, including, but not limited to, proceeds from the licensing or rental of the Facilities, equipment rentals, sales of merchandise, sales of advertising and sponsorships, gross ticket sales (but only to the extent retained for the accounts of the Facilities and not remitted to the event promoter), ticket revenue investment income, gross parking revenue, ticketing convenience fees, labor services commissions, service charges, settlement revenue, security fees, contributed services, and miscellaneous revenues derived from like sources; after deducting for all direct expenses, defined as any and all expenses incurred or payments made by SMG directly in connection with the occurrence of events or sales at the Facilities including, but not limited to, costs for event staffing, including ushers, ticket takers, security and other event staff, and costs related to event setup and post-event cleanup.
- (B) *Approved Policies and Procedures.* The policies and procedures from time to time proposed by SMG and approved by OCPPA for management and operation of the Facilities, as provided in this Agreement, including proposed and approved modifications thereto, if any.
- (C) *Capital Improvements/Equipment.* Any expenditure, or contemplated expenditure, resulting in the acquisition of tangible property as an asset having a durable life in excess of one year and an initial value greater than \$7,500 or an amount that may be designated as a capital expenditure from time to time in accordance with City Procurement Policies and Procedures.
- (D) *The City.* The City of Oklahoma City, an Oklahoma municipal corporation.
- (E) *Effective Date.* The Effective Date of this Agreement is July 1, 2025.
- (F) *Engagement.* The services to be provided and/or performed by SMG with respect to the Facilities, as described in this Agreement.
- (G) *Facilities.* The New Arena, to be located on the site of the facility formerly known as the Cox Convention Center;
 - (1) The Paycom Center, formerly known as the Chesapeake Energy Arena.
 - (2) That certain advertising billboard owned by the City of Oklahoma City on the north side of the Oklahoma City Boulevard near the intersection of Shields Boulevard and the

Oklahoma City Boulevard in the City of Oklahoma City, Oklahoma County, Oklahoma, identified by the Oklahoma County Assessor in Quarter Section No. 1612, Account No. R-131748501, along with ingress and egress for the purposes of installation, maintenance and utility services; unless said billboard is removed by the City of Oklahoma City, which removal is at the City's complete and sole discretion and shall not affect the compensation owed SMG pursuant to this Agreement; and

- (3) That certain undeveloped tract of land owned by The City of Oklahoma City immediately east of the railroad tracks parallel to E.K. Gaylord Boulevard and south of the Oklahoma City Boulevard intended for the restricted use of parking buses, trucks and other rolling stock utilized in connection with event set-up and production in the Paycom Center and the New Arena, as depicted on the map attached hereto as Exhibit "A," until developed or sold by the City.
- (H) *Facilities Manager.* The person from time to time designated by SMG to represent SMG as its general manager of the Facilities, as provided in this Agreement.
- (I) *Fiscal Year.* July 1 through June 30.
- (J) *General Manager.* Except as may be otherwise specified, the General Manager of OCPPA or his/her designee.
- (K) *Material Change.* A change in operating conditions that results in a substantial increase or decrease in SMG expenses or revenues after the annual budget has been approved.
- (L) *Net Operating Loss.* With respect to a Fiscal Year, the excess, if any, of Operating Expenses for such year over Operating Revenues for such Fiscal Year.
- (M) *Net Operating Income.* With respect to a Fiscal Year, the excess, if any, of Operating Revenues for such year over Operating Expenses for such Fiscal Year.
- (N) *Net Operating Surplus.* Net Operating Surplus shall mean the actual, if any, amount of remaining unused annual operating funds provided to ASM by the OCPPA and/or the City.
- (O) *Operating Expenses.* Operating Expenses shall include any and all direct expenses and expenditures of whatever kind or nature incurred or approved indirect expenditures by SMG in promoting, operating, maintaining and managing the Facilities, including, but not limited to: employee compensation and related expenses, employee benefits and related costs, including approved relocation expenses, supplies, material and parts costs, costs of any interns and independent contractors, advertising, marketing and public relations costs and commissions, janitorial and cleaning expenses, data processing costs, dues, subscriptions and membership costs, the costs of procuring and maintaining insurance and fidelity bonds, amounts expended to procure and maintain permits and licenses, charges, taxes, excises, penalties and fees, professional fees, printing and stationary costs, Facilities event related expenses not otherwise paid by promoters or other entities, postage and freight costs, equipment rental costs, computer equipment leases and line charges, repairs and maintenance costs, security expenses, utilities and telephone charges, approved travel and entertainment expenses in accordance with SMG policies, the cost of employee uniforms, safety and medical expenses, exterminator and waste disposal costs, costs relating to the maintenance of signage inventory and systems, the cost of annual independent audits of the Facilities, the cost of compliance with laws and regulations,

approved incidental start-up costs, costs incurred under agreements, commitments, licenses and contracts executed in SMG's name, a budgeted allocation for services (i.e. IT, HR Finance) currently performed by SMG, and the Base Management Fee payable to SMG pursuant to Section 20 of this Agreement, all as determined in accordance with generally accepted accounting principles and provided, however, that Operating Expenses shall not include: (1) any Incentive Fee payments to SMG pursuant to this Agreement; or (2) any expenses or allocated costs not expressly allowed in this Agreement relating to SMG's corporate headquarters or regional field locations other than the reasonable costs of travel in direct connection with SMG's management of the facilities.

Solely for purposes of identifying Operating Expenses which will be budgeted in Approved Budgets, Operating Expenses shall exclude (A) fees paid to promoters and other contractual and similar allowance which are deducted from the gross receipts of all event activities at the Facilities (in accordance with the last sentence in the definition of Operating Revenues), in calculating SMG's Fiscal Performance Incentive Fee, (B) all extraordinary expenses and all interest, income tax, depreciation and extraordinary amortization expenses and (C) the costs paid pursuant to Section 20(E)(9) of this Agreement for quality assessments and evaluations.

- (P) *Operating Revenues.* Operating Revenues shall include any and all revenues of every kind or nature derived from managing, operating or promoting the Facilities including, but not limited to, and provided that the same are operated or controlled by SMG, license, lease and concession fees and rentals, rentals or leases of premium seating, revenues from merchandise sales, gross advertising sales, sponsorship and naming rights, equipment rentals, utility revenues, box office revenues, food service and concession revenues (however, if such revenues are collected in the first instance by and retained by the concessionaire, the amount of such revenues paid by the concessionaire to SMG as Facilities manager shall be included as Operating Revenues), commissions or other revenues from decoration and set-up, security and other subcontractors (however, if such revenues are collected in the first instance by and retained by such subcontractors, the amount of such revenues paid by such subcontractors to SMG as Facilities manager shall be included as Operating Revenues), miscellaneous operating revenues, and interest revenues, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis. Operating Revenues shall not include parking revenues, unless otherwise agreed upon in writing by the General Manager and SMG.

Solely for purposes of (i) identifying Operating Revenues which will be budgeted in Approved Budgets, and (ii) determining amounts of Operating Revenues to be deposited by SMG into the City Treasurer's designated accounts pursuant to Section 13 of the Agreement, Operating Revenues from all event activity at the Facilities will be calculated to encompass the gross receipts from each such event, less allowances for contractual and similar allowances associated with each such event, which such allowances include without limitation payments to promoters of such events and event related (or comparable) items associated with such events.

- (Q) *Other Facilities.* Venues other than those defined in this Agreement as "Facilities" that are managed and/or operated by or otherwise receive services from SMG.
- (R) *PBC.* Professional Basketball Club, LLC, an Oklahoma limited liability company.

- (S) *PBC Agreements.* Those agreements of and among the City, OCPPA, SMG and PBC consisting of (i) that certain Arena Use License Agreement dated June 17, 2025], and (ii) that certain Food and Beverage Agreement dated June 17, 2025, and, during the Primary Term of this Agreement, the Arena Use License Agreement dated April 15, 2008.
 - (T) *SMG.* SMG, a Pennsylvania general partnership.
 - (U) *Systems.* All computer hardware, software (commercial or custom), peripherals, technology products, operational systems, including, without limitation, telephone systems, HVAC systems, elevator and escalator systems, security systems and all other automated systems and equipment, and all components of any of the foregoing.
 - (V) *Term.* The Primary Term of this Agreement, the New Term, and any Renewal Term hereof, as defined in Section 2.
 - (W) *Trust or OCPPA.* The Oklahoma City Public Property Authority, an Oklahoma public trust.
2. TERM. The primary term of this Agreement (the “Primary Term”) shall begin on the Effective Date and expire upon the sooner of the commencement of the New Term or June 30, 2033, unless sooner terminated in the manner herein provided. The New Term shall begin on the date the New Arena receives the certificate of occupancy (estimated to be July 1, 2028) and shall expire five (5) years thereafter, unless sooner terminated in the manner herein provided. For the avoidance of doubt, in the event the New Arena does not receive a certificate of occupancy prior to June 30, 2030 , the Primary Term shall expire June 30, 2033, and there shall not be a New Term. This Agreement may be renewed under mutually agreed terms and written agreement of the parties for an additional five (5) year term (the “Renewal Term”).
3. CERTAIN MATTERS AFFECTING THE AGREEMENT. This Agreement and the Engagement are subject to and limited by (i) OCPPA’s Trust Indenture and outstanding bond indentures, if any; (ii) the City Charter of the City of Oklahoma City; and (iii) the PBC Agreements. The parties agree and understand that nothing in this Agreement shall be construed as preventing the City from entering the Facilities at any time during the Term of this Agreement for the purpose of satisfying the obligations of the City and the OCCPA, and that Engagement rights provided for by this Agreement shall be subject to rights in the Facilities of the public, the OCPPA and the rights of PBC in the Paycom Center and New Arena. The Parties further agree and understand that this

Agreement shall not deprive the City and OCPPA of the right, authority and duty to make and enforce such regulations for protection of the rights of the public, as they may deem necessary.

4. ENGAGEMENT. OCPPA hereby engages, employs and authorizes SMG as manager of the Facilities to perform and provide such management, consulting, marketing, operations and other similar services as are appropriate and necessary to operate and manage the Facilities in a manner consistent with and as required by this Agreement and the Approved Policies and Procedures, in a manner consistent with and required by the PBC Agreements, and in a manner generally consistent with the operations of SMG in other similar facilities managed by SMG, including without limitation the specific marketing, advertising and related services described in Section 4.1 of this Agreement and the specific facilities management services described in Section 4.2 below, (collectively the “Engagement”). As a part of the Engagement, OCPPA and the City hereby grant to SMG exclusive food, beverage and merchandising concession rights with respect to the Facilities, subject to the rights of PBC with respect to the Paycom Center and New Arena pursuant to the PBC Agreements. By executing this Fourth Amended and Restated Facilities Management Agreement, SMG accepts the Engagement.

- 4.1 MARKETING, ADVERTISING AND RELATED SERVICES. Consistent with applicable PBC Agreements, SMG may engage subcontractors to provide the following: marketing, advertising and related services with respect to (i) advertising inventory packaging, pricing and design and (ii) premium seating planning for the Facilities; provided, however, all rights and obligations of SMG to provide such services shall be subject to the rights of PBC in and relating to the Facilities pursuant to the PBC Agreements, as described with more particularity in this Agreement and the PBC Agreements:

- (A) Advertising Inventory Design and Premium Seating Planning (consistent with each Party’s obligations under the PBC Agreements):
- (1) Create current and prospective lists of available advertising inventory at the venue.
 - (2) Consult with General Manager on the design and placement of inventory.
 - (3) Negotiate with signage manufacturers and develop RFP’s.

- (4) Develop proformas for premium seating and advertising.
 - (5) Coordinate the development of materials and displays.
 - (6) Develop premium seating leases and amenities packages.
- (B) Advertising Sales (consistent with each Party's obligations under the PBC Agreements):
- (1) Analyze potential inventory and create marketing packages designed to maximize revenue in a variety of product categories.
 - (2) Provide projected sales and inventory rate card for General Manager.
 - (3) Develop sales plan to solicit prospective venue partners. Utilizing corporate and other business contacts, establish and maintain a potential target list for the region.
 - (4) Provide the development of relevant sales materials and videos.
 - (5) Provide contract forms for advertisers.
 - (6) Handle all accounting services including invoices, collections and reconciliation for advertising and marketing packages provided by or through SMG.
 - (7) Perform all necessary reporting functions including monthly status reports and attend meetings as requested.
- (C) Premium Seating - Suites and Club Seats (consistent with each Party's obligations under the PBC Agreements):
- (1) As appropriate, carry out the approved marketing program, and if appropriate, oversee development of a model suite.
 - (2) Develop pricing strategies based on market conditions and contractual obligations.
 - (3) Develop and maintain a target list of current and potential premium seating clients, which list shall be produced to the General Manager upon request.
 - (4) Implement marketing and sales strategies to coordinate with subcontractors' or PBC's national advertising and sponsorship sales efforts.
 - (5) Negotiate and execute agreements with Premium Seating clients in accordance with the Approved Policies and Procedures.

4.2 SPECIFIC FACILITIES MANAGEMENT SERVICES. Consistent with applicable PBC Agreements, SMG shall perform the following Facilities Management Services:

- (A) Employ, supervise and direct employees and personnel consistent with the provisions of this Agreement.
 - (1) Administer and supervise relationships with all subcontractors, concessionaires and all other contracting parties.
 - (2) Negotiate, execute in its own name, deliver and administer any and all licenses, occupancy agreements, rental agreements, booking commitments, advertising agreements, concession agreements, supplier agreements, service contracts (including, without limitation, contracts for cleaning, decorating and set-up, snow removal, general maintenance of the premises and maintenance and inspection of HVAC systems, elevators, stage equipment, fire control panel and other safety equipment, staffing and personnel needs, including guards and ushers, and other services which are necessary or appropriate) and all other contracts and agreements in connection with the management, promotion and operation of the Facilities, provided that if any such license, agreement, commitment or contract other than those involving the license, lease or rental of the Facilities in the ordinary course has a term that extends beyond the remaining Management Term or Renewal Term, as the case may be, such license, agreement, commitment or contract shall be approved and executed by OCPPA (which approval shall not be unreasonably withheld).
 - (3) To the extent that Operating Revenues or funds supplied by OCPPA are made available therefor, perform routine cleaning and maintenance in accordance with the Approved Policies and Procedures, and otherwise maintain the Facilities in the condition required by this Agreement and by the PBC Agreements, reasonable wear and tear excepted, provided that OCPPA shall be responsible for undertaking

all Capital Improvements and Capital Equipment purchases as provided in Section 10.

- (4) To the extent that Operating Revenues or funds supplied by the City and/or the OCPPA are made available therefor, rent, lease or purchase all equipment and maintenance supplies necessary or appropriate for the operation and maintenance of the Facilities, provided that the City and/or the OCPPA shall be responsible for undertaking all Capital Improvements and Capital Equipment purchases pursuant to Section 10.
- (5) Establish and adjust prices, rates and rate schedules for the aforesaid licenses, agreements and contracts and any other commitments relating to the Facilities to be negotiated by SMG in the course of its management, operation and promotion of the Facilities, consistent with the Approved Policies and Procedures and the PBC Agreements. In determining such prices and rate schedules, SMG shall evaluate comparable charges for similar goods and services at similar and/or, in accordance with approved policies and procedures, competing facilities and shall consult with the General Manager and the designated agents of PBC, as required, about any adjustments to the rate schedules at the Facilities to be made by SMG.
- (6) Pay, when due, all Operating Expenses from accounts established pursuant to this Agreement.
- (7) Institute such legal actions and proceedings as SMG shall deem necessary, as approved by the OCPPA, with the cost of same to be paid by OCPPA as a part of the Facilities' budget, with counsel employed by SMG to be approved by the General Manager, with such proceedings to be as deemed necessary in connection with the operation of the Facilities, including, without limitation, to collect charges, rents or other revenues due to OCPPA or to cancel, terminate or sue for damages under any license use, advertisement or concession agreement for the breach thereof or default thereunder by any licensee, user, advertiser or

concessionaire at the Facilities, subject to supplementation, modification and amendment by the Approved Policies and Procedures.

- (8) Provide day-to-day administrative services in support of its management activities pursuant to Approved Budgets and annual plans described herein, including, but not limited to, the acquisition of services, equipment, supplies and facilities, internal budgeting and accounting; maintenance and property management, personnel management, record-keeping, and collections and billing.
- (9) Subject to the rights of PBC in and relating to the Facilities pursuant to the PBC Agreements, engage in such advertising, solicitation, and promotional activities as SMG deems necessary or appropriate to develop the potential of the Facilities and the cultivation of broad community support, including without limitation selling advertising inventory and securing product rights for the Facilities. SMG shall work with the Oklahoma City Convention and Visitors Bureau and/or a future sports recruitment entity to market the Facilities for sporting events and other events that may require an arena. In connection with its activities under this Agreement, including without limitation advertising relating to the Facilities, SMG shall be permitted to use the names of the Facilities, along with logos for such names in its advertising, subject to the approval of General Manager, all as may be supplemented, modified and amended by the Approved Policies and Procedures.

4.3 PRE-OPENING CONSULTING SERVICES

- (A) SMG shall perform the following pre-opening consulting services in connection with the New Arena:
 - (1) Project pre-construction design review, pre-development advisory, and financial modeling services;
 - (2) Pre-opening, marketing, management and operational readiness services related to opening the New Arena.

- (B) SMG shall work with representatives, consultants and agents of the City and will make appropriate personnel available to such firm(s) from time to time to consult with and provide periodic reports regarding the performance of the pre-opening consulting services.
- (C) In performing the pre-opening consulting services, SMG shall act as agent on behalf of the City and is authorized to execute booking commitments and use agreements for use of the City, subject to the pre-approvals as set forth herein.
- (D) Prior to the opening of the New Arena, OCPPA shall be responsible for the pre-opening expenses and, shall review and approve a pre-opening budget to pay prescribed expenses to be included as an Operating Expense in an Approved Budget.

5. THIRD-PARTY AND SUBCONTRACTOR AGREEMENTS. Third-party and subcontractor agreements entered into by SMG for the purpose of carrying out its obligations under the terms of this Agreement shall be executed and entered into by SMG in its own name in accordance with the Approved Policies and Procedures. SMG shall set forth in each such third-party or subcontractor agreement that said agreement may be assigned, when necessary, to the City and/or OCPPA. SMG shall not enter into any third-party agreements that extend beyond the Term of this Agreement without the approval of the General Manager. Beginning with the effective date of this Agreement, SMG agrees that all service related subcontracts or third-party agreements with a term longer than one (1) year shall contain a clause that allows the General Manager of the OCPPA, in the event that this Agreement with SMG is terminated, to terminate the third-party or subcontractor agreement, with or without cause, upon ninety (90) written notice. The Parties agree that this termination provision is not required in any ticketing, telephone, HVAC maintenance or fire suppression systems agreement.

6. OTHER SMG ENGAGEMENTS. Nothing in this Agreement is intended to prohibit SMG from soliciting and/or accepting an engagement for management, consulting, food and beverage or other services for Other Facilities *provided, however*, with the exception of other engagements for Other Facilities in existence and effect as of July 1, 2018, SMG may not accept an engagement of management, consulting, food and beverage or other services concerning any facility located within

one hundred (100) miles of the corporate limits of the City of Oklahoma City without first having provided advance written notice and request to the General Manager for approval, which shall not be unreasonably conditioned, delayed or withheld. SMG warrants that funds from Other Facilities shall not be commingled with funds from the Facilities, except (i) as may be otherwise permitted with the General Manager's written approval; and (ii) in the case of box office revenues for certain specific events that may be held in escrow and accounted for separately. SMG further warrants that any direct and indirect Facilities resources, including without limitation full and part-time staffing, capital equipment, supplies or commodities, used in support of Other Facilities shall be accounted for and reimbursed by SMG to the appropriate Facilities operating account. OCPPA acknowledges (i) that the engagement of SMG to provide management and other services for the City of Oklahoma City with respect to the MAPS 3 Convention Center is in effect as of July 1, 2018; (ii) that advance notice of such engagement was properly given to and approved by the General Manager; and (iii) that such engagement is not prohibited by this Agreement.

7. EXHIBITS. The exhibits to this Agreement, consisting of Exhibit "A" (more particularly described as follows), are incorporated herein by reference and made a part of this Agreement.

Exhibit "A" Map of Facility Described in Section 1(F)(1) of this Agreement

8. APPROVED POLICIES AND PROCEDURES. The Parties acknowledge that SMG, pursuant to prior definitive agreements among the Parties pertaining to the Facilities, has prepared and OCPPA has approved the Approved Policies and Procedures addressing vital and routine functions associated with management and operation of the Facilities. Such Approved Policies and Procedures shall be kept in the Facility Manager's office and shall include, but not be limited to the following topics:

- (A) *Booking – Paycom Center* bookings and reservations shall be administered by SMG in accordance with the Paycom Center Booking Policy approved by OCPPA and provided to SMG by the General Manager as maintained in the files of the City Clerk. The Approved Policies and Procedures that pertain to and govern bookings and reservations shall address and include, without limitation, general terms, rights of tenants and prospective tenants, establishment of rental rates, rights and terms of City/OCPPA use of the Facilities, rights

and terms of SMG or its affiliates to self-promote or otherwise use the Facilities. The Approved Policies and Procedures shall be updated upon commencement of the New Term.

- (B) *Finance and Accounting Procedures* - including but not limited to: Accounting, Cash Management and Cash Control; Reports; Records Retention; Risk Management Procedures; Market Fund; and restricted CIP fund.
- (C) *Box Office Procedures* - including but not limited to Charges, Credit Card Sales, and Box Office Services for other OCPPA facilities.
- (D) *Concessions Operations*.
- (E) *Catering* - including Third-Party Catering.
- (F) *Employees*.
- (G) *Exhibitor Services* - including telecommunications, audiovisual, and security.
- (H) *Conflicts of Interest* - See Section 43 of this Agreement.
- (I) *Hazardous Materials* - including to but not limited to matters involving notice, permits, authorizations, procedures, approval and removal.
- (J) *Reporting Procedures* - as to complaints and incidents arising with respect to the Facilities.

All changes in, additions to and other modifications of the Approved Policies and Procedures, as from time to time proposed and presented by SMG, shall be subject to review and approval by OCPPA.

9. ANNUAL FACILITIES BUDGETS. By no later than February 15th of each year, SMG shall prepare and submit to the General Manager a proposed annual Facilities operating budget for the ensuing Fiscal Year (a "Proposed Budget") containing line items for Operating Revenues and Operating Expenses and projected Net Operating Loss or Net Operating Income. Prior to final approval and adoption thereof, a Proposed Budget may be modified at the request of either SMG or the General Manager. Upon approval by the General Manager and adoption by The City and OCPPA, which shall occur not later than June 23rd, the Proposed Budget shall become the "Approved Budget" for the Fiscal Year to which it pertains. SMG shall also prepare a cash flow budget to accompany the Approved Budget. The City and OCPPA will provide SMG with an annual memo memorializing the committed subsidy amount.

SMG may, with cause, submit and recommend to the General Manager at any time prior to the close of a Fiscal Year, a supplemental or revised annual Facilities operating budget or cash flow budget. Upon the approval thereof by the General Manager, the Approved Budget(s) for such Fiscal Year may be amended by the OCPPA.

If SMG recommends amendment of the annual Facilities budgets then in effect because proposed additional events or activities may be scheduled and/or conducted at the Facilities and additional Operating Expenses arising from those events or activities may be incurred such events or activities may not be scheduled and booked by SMG without prior consent of the General Manager, unless the projected Net Operating Income or Net Operating Loss for the Fiscal Year, as included in the Approved Budget, will be improved by booking such events and/or conducting such activities.

The Parties have agreed on an Adjusted Gross Income Formula for calculation of the Fiscal Performance Incentive Fee on the basis of fiscal performance, as described with more particularity in Section 20(C) of this Agreement.

10. CAPITAL IMPROVEMENTS. All Capital Improvements/Equipment of or in the Facilities shall be the sole responsibility of the City and/or the OCPPA, unless otherwise agreed to by the Parties, and shall not be considered Operating Expenses. The annual Facilities operating budgets submitted by SMG as Proposed Budgets for approval and adoption shall include the recommendations of SMG for Capital Improvements/Equipment to be accomplished during the year and shall be accompanied by an estimate of the cost of said projects. Subject to the advance written approval of the General Manager, SMG may expend Operating Funds for Capital Improvements/Equipment of or in the Facilities consistent with applicable laws.
- 10.1 FACILITY FEES. All facility fees paid by the PBC for any PBC events shall be treated by SMG as event revenue and transferred into the restricted CIP account. All facility fees collected for any Other Event, as defined in Section [20], shall be added to the Facilities operating budget.

11. OPERATING FUNDS. Operating funds shall be included within the annual operating and management fee budgeted by OCPPA. Within 30 days following the end of each calendar quarter and at the end of each Fiscal Year during the Term of this Agreement, SMG shall provide to the General Manager a cash reconciliation of the Operating Revenues and Operating Expenses including an accounting for any surplus operating funds transferred to other segregated accounts (i.e., net operating surplus transferred to the CIP Fund Account or Other Event Marketing Fund or transferred back to the OCPPA/City. All funds necessary to pay for all Operating Expenses shall be generated by the operation of the Facilities or shall otherwise be made available by the City and/or the OCPPA as provided in this Agreement.

12. FUNDS FOR EMERGENCY REPAIRS.

- (A) SMG may act, with the consent of the General Manager, in a situation which SMG determines to be an “*emergency*” as defined by the provisions of Chapter 2, Article 1, Section 2-35 of the Oklahoma City Municipal Code, 2007, with respect to the safety, welfare and protection of the general public, including spending and committing funds held in the Operating Account(s), even if such expenses are not budgeted, provided funds are available in the accounts for any purpose.
- (B) SMG shall, in the event of such *emergency*, and in a manner generally described in Chapter 2, Article 1, Sections 2-471 through 2-475 of the Oklahoma City Municipal Code, 2020, prepare and retain adequate documentation concerning the circumstances surrounding the emergency and any and all disbursements of funds relating to said *emergency*.
- (C) Immediately following such action, SMG and the General Manager shall by mutual agreement determine if the funds spent or committed by SMG have materially impacted the budget and, if so determined, amend the Approved Budget then in effect, subject to the approval thereof by OCPPA and the City, so as to provide funds equal to the amount spent or committed by SMG. Any such additional amounts budgeted shall be paid at the next scheduled quarterly SMG management fee payment date.

13. BANK ACCOUNTS. The Parties acknowledge SMG has established in one or more accounts designated by the City Treasurer, in the name of SMG, for the operation, promotion and management of the Facilities:

- (A) An “Operating Account,” which shall serve as the “Facilities Operating Account.” All non-payroll disbursements shall be made from this account.
- (B) A “Payroll Account,” which shall function as a zero-balance account to clear all payroll checks.

- (C) A "Box Office Account," which shall be maintained as an interest-bearing account utilized to escrow funds from ticket sales until the event occurs.
- (D) A "Sweep Account," in which the Facilities operating funds shall be held overnight to earn interest.
- (E) A "Marketing Fund Account," as described in Section [].
- (F) A "CIP Fund Account," as described in Section [].

14. RECEIPTS AND DISBURSEMENTS.

- (A) All non-ticket sales revenues collected by SMG from the operations of the Facilities shall be deposited into the Facilities Operating Account and all Operating Expenses shall be paid by SMG from this account.
- (B) All revenues collected by SMG arising from the operation of the Facilities are held in trust by SMG for OCPPA to be applied according to the provisions of this Agreement. Any amounts, including interest, remaining in these accounts upon termination of this Agreement, for any reason, after payment of all outstanding Operating Expenses, shall be promptly paid, but no later than 60 days thereafter, by SMG to the OCPPA.
- (C) All revenues collected by SMG for Other Events Marketing shall be held in a dedicated, non-operating, account held in trust by SMG for OCPPA to be applied according to the provisions of this Agreement. Any amounts, including interest, remaining in these accounts upon termination of this Agreement, for any reason, after payment of all outstanding Other Events Marketing Expenses, shall be promptly paid, but no later than 60 days thereafter, by SMG to the OCPPA.
- (D) SMG shall determine and notify OCPPA as to which of its employees shall have signing authority with respect to the bank accounts maintained pursuant to this Agreement and the extent of their signing authority. The General Manager shall also have signing authority on said bank accounts.
- (E) SMG shall provide adequate bonding and insurance coverages for its employees and operating funds as required in this Agreement.
- (F) SMG shall hold in the Box Office Account all ticket sale revenue it receives with respect to an event to be held at the Facilities pending the completion of the event. Such monies are to be held for the protection of ticket purchasers, OCPPA and SMG, and to provide a source of funds, as required, for payments of Operating Expenses in connection with the presentation of events as may be required to be paid contemporaneously with the event. Following the satisfactory completion of the event settlement, but not longer than five (5) days following the event settlement, SMG shall transfer the remaining balance of ticket sales proceeds associated with the event from the Box Office Account to the Facilities Operating Account and/or the Other Events Marketing Account. Disbursements to promoters and event-related expenses shall be paid out of the Facilities Operating Account and/or the Other Events Marketing Account as appropriate. A full event settlement accounting that reflects all event revenues and expenditures shall be provided to OCPPA by SMG upon the request of the General Manager. Interest accrued on amounts deposited shall be transferred at least monthly to the Facilities Operating Account. Interest accrued

on amounts deposited shall be considered Operating Revenues. Bank service charges, if any, shall be considered Operating Expenses.

15. RECORDS, REPORTS AND AUDITS.

(A) Records.

SMG shall keep full and accurate accounting records relating to its activities at the Facilities in accordance with generally accepted U. S. accounting principles adequate for the operations and acceptable to the General Manager.

SMG shall keep and preserve records pursuant to the Records Retention Schedule or longer if required by law; *provided however*, at the option of SMG, SMG may satisfy its record retention obligations pursuant to this Agreement by the transfer of records to OCPPA or the City. The term for retention of records pursuant to the Records Retention Schedule shall be as follows.

RECORDS RETENTION SCHEDULE

TYPE OF RECORD	RETENTION PERIOD – NUMBER OF YEARS PLUS CURRENT YEA
<i>ACCOUNTING</i>	
Auditor's Reports	Permanent
Bank Deposit Slips	6
Bank Statements	6
Canceled Checks - Accounts Payable	6
Canceled Checks - Payroll	15
Canceled Checks - Payroll or Amusement Taxes	10
Canceled Checks - Income Taxes	Permanent
Check Registers	Permanent
Cash Receipts Journals	Permanent
Contracts - Facility	Permanent
Contracts - Licensing Agreements	6
Contracts - Ticketing Agreements	Permanent
Credit Memos	6
Depreciation Records	6
Employee Expense Reports	6

Employee Payroll Records - W-2's, W-4's	10
Financial Statements - Annual	10
Financial Statements - Interim	3
Journal Entry Printouts	10
General Ledger	10
Inventory Lists	6 for Materials and parts; 10 for Property
Invoices - Purchases	6
Invoices - Fixed Assets	6
Payroll Registers	5
Personnel Files	3 years after termination of employee
Purchase (Invoice Entry) Journals	10
Time Cards - Daily Time Reports	5
TAXES	
Tax Returns and Canceled Checks	Permanent
Sales and Use Tax Returns	Permanent
Payroll Tax Returns	6
INSURANCE	
Accident Reports	6
Fire Inspection Reports	6
Group Disability Records	6
Insurance Policies	6 years after termination of policy
Safety Records	6
Settled Insurance Claims	5 years after settlement of claim

(B) Reports.

SMG shall provide written reports as may be requested by the General Manager. The reports shall set out each Facility's anticipated activities for the upcoming months and report on the prior activities and finances.

(C) Audits.

- (1) Inventories. SMG shall maintain a running inventory of Facilities' equipment, including equipment acquired or disposed of either directly by SMG, the City, OCPPA or any other party. The inventory shall be agreed to biannually in writing and shall be available for inspection at any time by the General Manager. Unless otherwise agreed in writing such assets remain the sole property of the City or the OCPPA. Upon termination of this agreement, an exit inventory shall be mutually conducted by OCPPA and SMG. In the event the exit inventory reveals any discrepancy for which SMG is responsible, SMG shall perform an appropriate adjustment or payment to OCPPA for the replacement value of the asset, less reasonable depreciation, to the satisfaction of the General Manager. Any adjustments and/or payments which may be required by SMG to OCPPA as a result of any discrepancy resulting from such exit inventory shall be made within a reasonable amount of time, not to exceed sixty (60) days.
- (2) Annual Audit. On or before September 30th following each Fiscal Year for which SMG is managing the Facilities, SMG shall furnish OCPPA audited financial statements for the preceding Fiscal Year, prepared in accordance with generally accepted accounting principles and accompanied by an independent auditor's report from a reputable firm of certified public accountants selected by SMG with the approval of the General Manager, such approval not to be unreasonably conditioned, delayed or withheld. The audit report shall contain an opinion expressed by the auditor concerning the fair presentation, in all material respects, the financial position of the Facilities and the accuracy of the financial records kept by SMG and of amounts due and payable by SMG to the OCPPA. The auditor shall attest to the Operating Revenues, Operating Expenses and Incentive Fees as approved for the Fiscal Year and shall include a statement in accordance with generally accepted accounting principles by a certified public accountant attesting all charges and/or payments to the OCPPA observed during the audited period were made in compliance with this Agreement.
- (3) Access to Information. An authorized representative of OCPPA, including the City Auditor or any independent auditor selected by OCPPA, shall have the right to interview any current or former employee and shall have unrestricted access to books and records and any and all information, materials and data of every kind and character that may in the judgment of the OCPPA's authorized representative have any bearing on, or pertain to, any matters, rights, duties or obligations under this Agreement during reasonable business hours to the extent necessary to adequately permit evaluation and verification of SMG's compliance with terms of this Agreement.

SMG shall require all payees to comply with provisions of this article by insertion of the requirements hereof in any written contract agreement between SMG and payee. Requirements to include flow-down right of audit provisions in contracts

with payees shall apply to all contracts, including but not limited to contracts with subcontractors, sub-consultants and material suppliers when working under any type of contract, including but not limited to lump sum payments, unit price agreements, time and material agreements and cost plus agreements. SMG shall cooperate fully and shall cause all payees to cooperate fully in furnishing or in making available to the General Manager from time to time whenever requested within five (5) business days any and all such information, materials and data required by this article of the Agreement.

OCPPA's authorized representative, including the City Auditor, shall be provided adequate and appropriate workspace in order to conduct audits in accordance with this article.

- (4) OCPPA Audit Rights. OCPPA shall have the right at any time, and from time to time, to cause nationally recognized independent auditors to audit all of the books of SMG relating to Operating Revenues and Operating Expenses, including, without limitation, cash register tapes, credit card invoices, duplicate deposit tapes and invoices.
- (5) Cost of OCPPA Audit. If any audit, inspection or examination in accordance with this subsection (C), discloses overpricing, over-billing, overcharges, understatement of Operating Expenses or over-statement of Operating Revenues of any nature by SMG, including its vendors, subcontractors or other SMG payees, to the OCPPA in excess of two (2%) percent of the actual net operating revenues or expenses, as the case may be, SMG shall pay to the OCPPA the reasonable cost of any audit, other than the Annual Audit referred to above in subsection (2), and promptly refund to the OCPPA any portions of the amounts paid for such Fiscal Year which is attributable to overpricing, over-billing or overcharges, understatement of Operating Expenses or over-statement of Operating Revenues, as the case may be. Any adjustments and/or payments, which may be required as a result of any such disclosure, shall be made within a reasonable amount of time, not to exceed sixty (60) days from presentation of the OCPPA's findings to SMG. Such payments or audit cost may not be considered an Operating Expense. In the event adequate documentation in support of amounts paid to SMG by the OCPPA cannot be provided by SMG to the reasonable satisfaction of the General Manager, these amounts shall be considered unsubstantiated and invalidated. Any adjustments and/or payments which may be required as a result shall be made within a reasonable amount of time, not to exceed sixty (60) days from presentation of the OCPPA's findings to SMG.
- (6) Limitation on OCPPA Audit Rights. OCPPA's right to such an audit of any Fiscal Year shall expire five (5) years after the conclusion of said Fiscal Year, or longer if required by law.

16. NO EXTRA WORK. No claims for extra work or services of any kind or nature or character shall be recognized by or be binding upon OCPPA unless such work or service is approved in writing by OCPPA.

17. STANDARD OF CARE. In providing services herein, SMG shall maintain during the course of this Agreement the standard of reasonable care, skill, diligence and professional competency for such services. SMG agrees to require all of its subcontractors and consultants, by the terms of its contracts, to provide services at the same standard of reasonable care, skill, diligence and professional competence required of SMG. Without limitation of the foregoing, and in direct relation to obligations under the PBC Agreements, SMG and its subcontractors and consultants shall perform services hereunder in a manner meeting all standards of performance set forth in the PBC Agreements. The parties acknowledge and expressly agree that SMG shall not be responsible for architectural or engineering matters and that SMG shall have no obligation or liability to the City or OCPPA for or with respect to architectural or engineering matters relating to the Facilities.
18. SMG EMPLOYEES.
- (A) SMG intends to assign to the Facilities a competent, full-time Facility Manager who shall have no duties other than the day-to-day operation and management of the Facilities unless approved in writing by the General Manager.
 - (B) SMG agrees to submit to the General Manager the names and resumes of SMG's employees proposed to be assigned to the Facilities, upon written request from the General Manager.
 - (C) SMG shall physically maintain an office in the Facilities for the duration of this Agreement. SMG's Facility Manager shall be totally responsible for SMG's actions at the field level, making all day-to-day decisions that are required to promote successful management and operations of the Facilities. Prior to SMG's appointment of such Facility Manager and/or Assistant Facility Manager, SMG shall consult with the General Manager with respect to the qualifications of any such individuals proposed by SMG.
 - (D) If at any time during the Term of this Agreement the General Manager believes that there is a performance problem with the Facility Manager or the Assistant Facility Manager, the General Manager shall give written notice to SMG's senior vice president in charge of the Facilities (specifying in reasonable detail the nature and extent of such problem), and SMG's senior vice president shall, within fifteen days of such notice, meet with the General Manager to discuss such problem and any steps that may be appropriate to address such problem.
 - (E) If a proposed Facility Manager is not reasonably acceptable to the General Manager, SMG shall resubmit names and resumes until the General Manager reasonably accepts an employee for assignment. The General Manager reserves the right to request the replacement of any SMG employee assigned to the Facilities.

- (F) SMG employees at the Facilities shall not be considered employees of the City or OCPPA for any purpose. The sole responsibility for supervision, daily direction and control of SMG employees and for setting and paying their compensation and any employee benefits, including all required workers' compensation benefits, shall be the obligation of SMG. All costs related to their employment shall be Operating Expenses.
- (G) SMG shall provide SMG employees at the Facilities appropriate on-site or off-site training opportunities, as requested by the OCPPA General Manager or designee, to ensure the Facilities are managed and operated at or beyond the high standards contemplated in the Agreement and PBC Agreements.
- (H) During the Term of the Agreement and ending one year after its termination, except with SMG's prior consent, OCPPA and the City shall not, for any reason, solicit for employment or hire any of the senior management personnel employed by SMG at the Facilities, i.e., SMG's General Manager and Assistant General Manager(s). This section shall not apply to SMG personnel who were previous City employees.
- (I) Upon termination of this Agreement, OCPPA shall require that any successor management contractor offer employment for six months or until the end of the then current Fiscal Year, whichever is greater, subject to dismissal for cause, in similar positions at the Facilities and with similar compensation and benefits to all those employees of SMG (the "Successor Management Contractor Employee Trial Period") (i) who are employed at the Facilities at the time of such termination, except (ii) in the event SMG and the SMG local employee(s), prior to or at any time during the Successor Management Contractor Employee Trial Period, have notified OCPPA that such employee(s) wish to continue to employment elsewhere. This section shall not apply to SMG's General Manager and Assistant General Manager(s).
- (J) .SMG agrees to focus recruitment, training and hiring of potential candidates for all jobs at the New Arena on areas and peoples of Oklahoma City most affected by unemployment or underemployment through use of workforce intermediary programs. The workforce intermediary programs shall include, but not be limited to, the unhoused as well as those served by organizations addressing reintegration and recovery.
- (K) SMG agrees to compensate all New Arena employees, both full and part-time, with regionally competitive wages commensurate to those wages paid by The City of Oklahoma City, and its Trusts, for comparative knowledge, skills and abilities
- (L) SMG will obtain the General Manager's consent, which shall not be unreasonably withheld, for any relocation or reassignment of the current Facilities Manager and shall submit to the General Manager a strategy to retain the current Facilities Manager.

19. CONSULTANTS AND CONTRACTORS. Upon request of the General Manager, SMG agrees to provide the General Manager with the names of any consultants or contractors that SMG intends to engage to perform any of the services related to this Agreement, and to notify the General Manager of any substitutions or changes in consultants or contractors. The General Manager reserves the right to request the replacement of any of SMG's consultants or contractors.

20. COMPENSATION.

(A) Components of Compensation. In consideration of the Engagement and the services performed by SMG pursuant to this Agreement, OCPPA shall pay to SMG the compensation hereinafter described (collectively, the "Compensation"), consisting of (i) an annual base management fee (the "Base Management Fee"), (ii) an annual fiscal performance based incentive fee (the "Fiscal Performance Incentive Fee"), (iii) an annual qualitative performance based incentive fee (the "Qualitative Performance Incentive Fee"), and (iv) an annual other event incentive fee (the "Other Events Incentive Fee"). Payments of Compensation shall be due and payable within twenty-one (21) business days following presentation of an invoice therefor to OCPPA, unless otherwise agreed to by the General Manager and SMG.

(B) Base Management Fee. The Base Management Fee for each Fiscal Year shall be \$350,000 (subject to annual adjustment as hereinafter provided).

Additionally, the Base Management Fee shall be:

- (1) adjusted annually on the basis of changes in the Consumer Price Index for all Urban Consumers, U.S. City Average, as promulgated by the United States Bureau of Labor Statistics, (or successor index) by an amount not to exceed three percent (3.0%) annually;
- (2) paid on a pro rata basis when applicable to and payable for less than a full Fiscal Year; and
- (3) paid as an Operating Expense in equal monthly installments.

(C) Fiscal Performance Incentive Fee. In addition to the Base Management Fee, SMG shall be entitled to receive an annual Fiscal Performance Incentive Fee, calculated as a percentage of Adjusted Gross Income (as defined below) according to the following tiers:

	Adjusted Gross Income	% Paid to SMG as Incentive Fee
Tier I	\$0 to \$5,000,000	0%
Tier II	\$5,000,001 to \$8,750,000	8%, retroactive to \$0
Tier III	\$8,750,001 to \$11,000,000	0%
Tier IV	> \$11,000,000	8%

For example, if Adjusted Gross Income of \$6,000,000 is realized, the Fiscal Performance Incentive Fee would be \$480,000. If Adjusted Gross Income of \$12,000,000 is realized, the Fiscal Performance Incentive Fee would be \$780,000.

(D) Adjustments to the Adjusted Gross Income Tiers.

If an unforeseen Material Change at any time occurs for which no adjustment had been previously anticipated and made with respect to the Fiscal Year of such occurrence, the General Manager and SMG shall confer in good faith and adjust the Adjusted Gross Income tiers for that Fiscal Year by the amount of the projected or actual (if known) impact of such Material Change on Adjusted Gross Income for such Fiscal Year for purposes of the Fiscal Performance Incentive Fee.

(E) Qualitative Performance Incentive Fee. The Qualitative Performance Incentive Fee may be earned by SMG as a component of its Compensation on the basis of the quality of its performance in the management and operation of the Facilities. The fee shall be determined as a percentage of the annual base management fee on the basis of performance in four categories, allocated as follows:

Customer Service	34% of Annual Base Management Fee
Client Satisfaction	33% of Annual Base Management Fee
Direct Spending Impact	33% of Annual Base Management Fee

(1) Customer Service. The customer service component of the Qualitative Performance Incentive Fee shall be determined by an independent third-party contractor (the "Quality Assessment Contractor") mutually selected by SMG and the General Manager utilizing a "secret shopper" process and a customer survey process to assess and grade general customer service and customer satisfaction therewith during events in the Facilities and at other times, including without limitation the services provided to customers in the Facilities' box offices. Other methods of assessment may also be utilized upon recommendation by the Quality Assessment Contractor, if mutually approved by SMG and the General Manager. The specific criteria from time to time applied for assessment of customer service and customer satisfaction shall be mutually agreed upon by SMG and the General Manager on the basis of recommendations made by the Quality Assessment Contractor. The original of any secret shopper report prepared by the Quality Assessment Contractor shall be delivered directly to the General Manager, with copies provided to SMG. Copies of reports relating to "Team Events," as that term is defined in the PBC Agreements, shall be provided to PBC. Nothing herein shall restrict the parties from consulting with PBC regarding the selection of the Quality Assessment Contractor, but express approval by PBC is not required.

(2) Client Satisfaction. The client satisfaction component of the Qualitative Performance Incentive Fee shall also be determined by the Quality Assessment Contractor utilizing a client survey process and other methods, if any, from time to time recommended by the Quality Assessment Contractor, if mutually approved by SMG and the General Manager, to assess and grade the satisfaction of licensed users with the Facilities and the services provided by SMG. The specific criteria from time to time used for assessment of client satisfaction shall be mutually agreed upon by SMG and the General Manager on the basis of recommendations made by the Quality Assessment Contractor. The client satisfaction assessment must include an assessment of the satisfaction of the PBC.

- (3) PBC Satisfaction. The parties agree that satisfaction of the PBC and where appropriate, the NBA, is an essential element contained in the PBC Agreements. Therefore, in addition to the secret shopper reports provided by the Quality Assessment Contractor the parties will also mutually engage a secret shopper service with experience in grading the performance of operations in other similar facilities having NBA franchises as tenants to provide an independent assessment of the NBA games held at the Paycom Center. The original of any such secret shopper reports shall be delivered directly to the General Manager, with copies provided to SMG. Copies of reports relating to "Team Events," as that term is defined in the PBC Agreements, shall be provided to PBC. Nothing herein shall restrict the parties from consulting with PBC regarding the selection of the Quality Assessment Contractor or secret shopper, but express approval by PBC is not required.
- (4) Direct Spending Impact. The direct spending impact component of the Qualitative Performance Incentive Fee shall be determined on the basis of annual direct spending resulting from SMG events or activities in the Facilities, as calculated on the basis of the direct spending formula utilized by the Oklahoma City Convention and Visitors Bureau ("CVB"). The annual direct spending impact of operations in the Facilities shall be equal to the quotient obtained from dividing the total amount of direct spending dollars for each Fiscal Year, as determined from the direct spending reports prepared by SMG and submitted to CVB for all SMG events during such Fiscal Year in the Facilities, by the total saleable square feet in the Facilities (*annual direct spending dollars divided by total saleable square feet equals annual direct spending impact*). For purposes of such calculation, the saleable square feet in the Paycom Center shall consist of the square feet in the arena floor.

At or before the commencement of each Fiscal Year, SMG and the General Manager shall confer in good faith and mutually determine a reasonable direct spending target for such Fiscal Year (the "Annual Direct Spending Target"). At the close of each Fiscal Year, the percentage of the Qualitative Performance Incentive Fee allocated to direct spending impact shall be multiplied by the percentage of the Annual Direct Spending Target attained for such Fiscal Year to determine the amount payable to SMG for such Fiscal Year as the direct spending impact component of the Qualitative Performance Incentive Fee.

For example, at the close of a Fiscal Year during which SMG attained 95.0% of the Annual Direct Spending Target, the amount payable to SMG as the direct spending component of the Qualitative Performance Incentive Fee would be determined as follows: 33% (percentage allocated to direct spending impact component) multiplied by 95.0% (percentage attained of Annual Direct Spending Target) multiplied by the Base Management Fee (*33% times 95.0% times \$350,000 equals \$109,725*).

- (5) Calculation of Fee. The Qualitative Performance Incentive Fee payable to SMG for each Fiscal Year shall equal the sum of the graded percentages attained in the Customer Service and Client Satisfaction components multiplied by the amount of the annual base management fee for the same Fiscal Year, plus the amount payable for the percentage of the Annual Direct Spending Target attained in such Fiscal

Year. The graded percentage for Customer Service and Client Satisfaction shall be determined as follows (the “Qualitative Grading Scale”):

- (i) if the total score attained in a component for the Fiscal Year is a “Comparable Score” (as hereinafter defined), eighty percent (80.0%) of the fee allocated to such component shall be payable to SMG;
- (ii) if the total score attained in a component for the Fiscal Year is an “Above Comparable Score” (as hereinafter defined), ninety percent (90.0%) of the fee allocated to such component shall be payable to SMG;
- (iii) if the total score attained in a component for the Fiscal Year is a “Superior Score” (as hereinafter defined), one hundred percent (100.0%) of the fee allocated to such component shall be payable to SMG; and
- (iv) if the total score attained in a component for the Fiscal Year is less than a Comparable Score, no fee shall be payable to SMG for such component.

As used herein, a “Comparable Score” means a score equal to the average of the scores attained in other comparable facilities evaluated by the Quality Assessment Contractor for the same category of services; an “Above Comparable Score” means a score greater than the average of the scores attained in other comparable facilities evaluated by the Quality Assessment Contractor for the same category of services; and a “Superior Score” means a score greater than the score attained in any of the other comparable facilities evaluated by the Quality Assessment Contractor for the same category of services. The comparable facilities evaluated by the Quality Assessment Contractor and used for determination of the Qualitative Performance Incentive Fee shall be mutually selected by SMG and the General Manager at or before the commencement of each Fiscal Year after consultation with the Quality Assessment Contractor. To the extent possible, such comparable facilities shall include a number of facilities that have NBA and/or NHL teams as long-term tenants.

- (7) Example of Calculation. For an example of the calculation of the Qualitative Performance Incentive Fee, assume that the following results were attained in the four components for the Fiscal Year:

Customer Service	Comparable
Client Satisfaction	Above Comparable
Direct Spending Impact	90.0% of Annual Direct Spending Target

On the basis of such assumptions, the fee for such Fiscal Year would be calculated as follows:

Customer Service – The potential fee allocated to this component is \$119,000 (\$350,000 x 34%). According to the Qualitative Grading Scale, the Comparable result attained for this component during the Fiscal Year will earn eighty percent (80.0%) of the potential fee, which equals \$95,200.

Client Satisfaction – The potential fee allocated to this component is \$115,500 (\$350,000 x 33%). According to the Qualitative Grading Scale, the Above Comparable result attained for this component during the Fiscal Year will earn ninety percent (90.0%) of the potential fee, which equals \$103,950.

Direct Spending Impact – The potential fee allocated to this component is \$115,500 (\$350,000 x 33%). The percentage of the Annual Direct Spending Target attained in this example will earn ninety percent (90.0%) of the potential fee, which equals \$103,950.

- (8) *Factors Considered in Evaluations.* The Parties intend that the processes and procedures utilized for determination of the annual qualitative performance based incentive fee shall be designed to evaluate and assess only those functions, services, products and other matters within the direct control of SMG as manager of the Facilities pursuant to this Agreement. Matters not within the direct control of SMG shall not be considered in any evaluation of SMG.
- (9) *Costs of Evaluations.* The costs incurred to engage the services of the Quality Assessment Contractor and other costs, if any, incurred to conduct the quality evaluations contemplated by this Agreement shall be paid from the Facilities Operating Account; *provided, however*, the payment of such costs shall not be included as an Operating Expense in the calculation of the Fiscal Performance Incentive Fee.
- (E) *Other Events Incentive Fee.* For each Fiscal Year during the Term, SMG shall be eligible to earn an incentive fee for and relating to Other Events conducted at the Arena (the “Other Events Incentive Fee”). The Other Events Incentive Fee consists of two components, as follows.
- (1) The first component of the Other Events Incentive Fee (“Part 1”) shall be based on the number of Qualifying Other Events conducted in the Facilities during a Fiscal Year. For each Fiscal Year during which twenty-four (24) or more Qualifying Other Events are conducted in the Paycom Center, SMG shall earn a fee in the amount of \$20,000.00 to be paid as a part of the Other Events Incentive Fee. The parties hereto agree that a Qualifying Other Event will not be counted for purposes of the Other Events Incentive Fee unless paid attendance at the event is 4,000 or greater. The number of Qualifying Events needed to earn the Other Events Incentive Fee Part 1 will increase to 28 Events in the first three Fiscal Years of occupancy of the New Arena. In the fourth Fiscal Year of occupancy and thereafter, the number of Qualifying Events needed to earn the Other Events Incentive Fee Part 1 will return to 24 Events.
- (2) The second component of the Other Events Incentive Fee (“Part 2”) shall be based on attendance at Other Events. For each Other Event conducted at the Facilities, SMG shall earn an attendance-based fee according to the following:

Paid Tickets – Single Event	Incentive Fee Per Event
0 – 5,500	\$0
5,501 – 7,500	\$7,500
7,501 – 10,000	\$11,000
10,001+	\$15,000

Average Paid Tickets – Multi-Performance	Incentive Fee Per Event
0 – 2,750	\$0
2,751 – 7,500	\$7,500
7,501 – 10,000	\$11,000
10,001+	\$15,000

Provided, however, as a condition precedent of receiving any payment for Fiscal Year based on Part 2 of the Other Events Incentive Fee, SMG must have earned Part 1 of the Other Events Incentive Fee for the same Fiscal Year.

- (3) The Other Events Incentive Fee shall be calculated, determined and paid after the close of each Fiscal Year.
- (4) As used in this Agreement, “Other Events” shall mean all ticketed non-PBC events at the Facilities. However, in order for an Other Event to be a “Qualified Other Event” and eligible toward the count for the Part 1 component of Other Event Incentive Fee, the Other Event shall be an event of commercial entertainment value such as sporting events, music concerts, or traveling entertainment shows such as the Cirque du Soleil, or a circus, rodeo, etc. Other Events in the nature of general assemblage such as political rallies or business events shall not qualify for the Other Events Incentive Fee.
- (5) For purposes of determining Part 1 of the Other Events Incentive Fee, multi-performance Qualifying Other Events (such as Cirque Du Soleil, NCAA tournament rounds or other college sports events, for example) shall be treated and counted as a single Other Event. For purposes of determining Part 2 of the Other Events Incentive Fee, the attendance at all performances of a multi-performance event shall be aggregated and counted as attendance at a single Other Event. The parties hereto agree that a multi-performance event will not be counted for purposes of Part 2 component of the Other Events Incentive Fee unless the average performance attendance for such event is 2,750 or greater.
- (6) For all purposes of the Other Events Incentive Fee, attendance at Other Events shall mean scanned attendance, according to the ticketing scan report or a comparable report then used by SMG for each Other Event, less complimentary tickets, if any.

- (F) *Cap on Compensation.* The total compensation paid to SMG hereunder for any Fiscal Year shall not exceed Sixteen Percent (16%) of the Facilities' Adjusted Gross Income. If the calculated total compensation exceeds this threshold, SMG's compensation shall be reduced accordingly.

21. OTHER EVENTS MARKETING FUND.

- (A) Upon commencement of the 2013 First Amended Agreement, SMG contributed \$500,000 to establish a marketing fund (the "Other Events Marketing Fund") for the benefit of the Facilities (primarily the Paycom Center) the receipt of which is hereby acknowledged by the Parties. Effective January 1, 2022, the OCPPA agreed to contribute an amount not to exceed \$500,000 into the Other Events Marketing Fund for the sole purpose of improving the effectiveness of the Marketing Fund.
- (B) Upon commencement of this Agreement, the Parties agree that SMG releases any interest in the funds held in the Other Events Marketing Fund and that such funds are the sole property of the OCPPA held in trust by SMG. Further, any and all future deposits or fund transfers to the Other Events Marketing Fund shall be OCPPA funds held in trust by SMG for the sole benefit of the Facilities consistent with this Section 21. The balance of the Other Events Marketing Fund, in addition to future deposits, transfers, interest or other earnings, including but not limited to any portion of SMG Other Events Incentive Fees paid to the Other Events Marketing Fund shall be held and maintained by SMG in a separate, non-operating, account (the "Other Events Marketing Account") and segregated from all Operating Accounts and other accounts maintained by SMG pursuant to this Agreement. The parties acknowledge that references to the use of the Other Events Marketing Fund for all purposes of inducing, developing, marketing, promoting and/or producing Other Events at the Facilities shall be in reference to operating costs expended from the Other Events Marketing Fund for such purposes. These unsubsidized costs shall be paid from Facility operating accounts, provided, however, the payment of such costs shall not be included as an Operating Expense in the calculation of Adjusted Gross Income for purposes of determining the Fiscal Performance Fee earned for each fiscal period. The Other Events Marketing Account shall be subject to all record-keeping requirements, reporting requirements, audit requirements and other obligations of SMG under this Agreement. SMG shall report to the General Manager the activity in this Other Events Marketing Account no less than quarterly.
- (C) The Other Events Marketing Fund shall be available to SMG for all purposes of inducing, developing, marketing, promoting and/or producing Other Events at the Facilities. For example, the Other Events Marketing Fund may be used by SMG to self-promote an event, to jointly promote an event with another promoter, to offer and provide marketing or other financial support and incentives or inducements to another promoter for promotion of an event, or to provide seed capital for the development of an event. Commitment of funds from the Other Event Marketing Account shall be subject to the approval of the General Manager or designee for use of the Other Events Marketing Fund in support of potential or proposed Other Events that are anticipated to generate operating revenue for the Paycom Center, stimulate the Oklahoma City visitor-based economy, create value with respect to Paycom Center assets and marketing inventory and/or enhance the quality of life.

- (D) Promoters of Other Events that are incentivized, induced or supported in any manner by pledges, advances or expenditures from the Other Events Marketing Fund shall pay a license fee or other appropriate rent (together with reimbursable expenses) for use of the Facilities consistent with payments required from other users of such facility on a "most favored client" basis for similar kinds of events.
- (E) Deposits from other SMG segregated accounts, as well as payments from the SMG Other Events Incentive Fees, to the Other Events Marketing Fund shall: (i) reimburse Other Events Marketing Fund expenses and/or to supplement the Other Event Marketing Fund when actual Other Event revenues exceed the SMG budget for such Other Event (said amount is referred to herein as "excess profit"); (ii) supplement the Other Events Marketing Fund from excess profit from an Other Event regardless of whether or not the Other Events Marketing Fund was used to induce, develop, market, promote and/or produce such Other Event. Provided, however, the balance of the Other Events Marketing Fund shall not at any time exceed \$1,250,000 except in the case where SMG's Other Events Fee contribution causes the balance to exceed \$1,250,000 temporarily or unless otherwise agreed in writing by the Parties. Approved Other Events Marketing Fund Expenses shall be reimbursed to the Other Events Marketing Fund on an event-by-event basis when the expenses qualify. Excess profits shall be reimbursed to the Other Events Marketing Fund on a monthly basis up to the Other Events Marketing Fund cap. The Parties acknowledge the source of funding for replenishment of the Other Events Marketing Fund Expenses and Excess Profits to the Other Events Marketing Fund is generated from Facility operating surpluses.

If an Other Event is induced, developed, marketed, promoted and/or produced in any part by the Other Events Marketing Fund and generates an excess profit that exceeds the event budget for the Facilities in any amount, the Other Events Marketing Fund qualifies to be replenished from other SMG segregated accounts for marketing fund expenses in the amount of funds used, not to exceed the City-approved commitment. In addition, a portion, or all, of the remaining excess profit qualifies for replenishment, provided that at no time shall there be more than \$1,250,000 in the Other Events Marketing Fund.

If an Other Event generates a net profit for the Facilities in any amount that was not induced, developed, marketed, promoted and/or produced in any part by the Other Events Marketing Fund, the net profit may be used upon mutual agreement of the parties, in whole or in part, to supplement the Other Events Marketing Fund, and/or be deposited in the SMG Operating Account and/or transferred to the City or OCPPA for purposes of funding operations and/or capital associated with the Facilities, provided that at no time shall there be more than \$1,250,000 in the Other Events Marketing Fund.

- (F) The Other Events Marketing Fund is intended to support Other Events primarily at the Facilities; provided, however, the Parties agree that, when deemed economically worthwhile and appropriate by SMG, the Other Events Marketing Fund may also be used to incent, induce and/or support events at the Oklahoma City Convention Center in the same manner and on the same terms and conditions that are set forth herein for events at the Facilities. In the event of termination of this Agreement, SMG shall pay to the OCPPA the balance of the Other Events

Marketing Fund as well as any deposits pending pursuant to Section 20(G)(7) of this agreement.

21.1 CIP FUND.

- (A) SMG shall establish a fund (the "CIP Fund"), which shall be funded from facility fees and Net Operating Surplus from PBC events.
- (B) The CIP Fund shall be capped at \$1,500,000 for the Paycom Center and \$3,000,000 for the New Arena. Any Net Operating Surplus in excess of such caps shall be remitted to OCPPA. The CIP Fund shall be spent consistent with City Purchasing Policies and Procedures.
- (C) All revenues collected by SMG for the CIP Fund shall be held in a dedicated, non-operating, account held in trust by SMG for OCPPA to be applied according to the provisions of this Agreement. Any amounts, including interest, remaining in these accounts upon termination of this Agreement, for any reason, after payment of all outstanding CIP Expenses, shall be promptly paid, but no later than 60 days thereafter, by SMG to the OCPPA. SMG shall report to the General Manager the activity in this CIP Fund no less than annually.

22. TERMINATION. This Agreement may be terminated as follows:

- (A) Termination for Default. This Agreement may be terminated by either OCPPA or SMG upon sixty (60) days prior written notice should the other party fail substantially to perform when due in accordance with the Agreement any duty or obligation to be performed by such other party through no fault of the party initiating the termination after due notice thereof in writing and thirty (30) days within which to correct the default.
- (B) Termination for Convenience. The OCPPA is hereby authorized to partially terminate this Agreement by issuing notices of termination or suspension for convenience, as to the Paycom Center only, in the sole and absolute discretion of OCPPA or the City, for any reason or no reason (a "Termination for Convenience"). Upon receipt of a notice of Termination for Convenience, SMG shall discontinue all services and activities 120 calendar days following notice of termination unless the notice directs otherwise.

In the event of notification of a partial Termination for Convenience as to the Paycom Center, SMG shall discontinue such services and activities as directed by the General Manager 120 days following notice of partial termination unless the notice directs otherwise. The General Manager shall have the authority to direct SMG as an Operating Expense to retain or subcontract with a third party to provide the terminated SMG services, which services shall be consistent in quality and nature as contemplated in this Agreement and the PBC Agreements, provided that SMG shall not be required to contract with any competitor facility management company in a business similar to SMG's business to provide such services. Any such third party proposed to be retained or subcontracted under this Section 21(C) shall be subject to the advance approval of the General Manager.

(C) Payment upon Termination.

- (1) In the event of the termination or expiration of this Agreement, SMG shall be compensated for all services and costs incurred prorated up to the date of termination, together with approved expenses then due or incurred and Service Commissions earned by SMG to be paid to SMG as they accrue after termination in accordance with Section 20(E) of this Agreement.
- (2) Beginning with the second year of the Term, in the event OCPPA exercises its right to partially terminate this Agreement for convenience solely with respect to all management, operations and other services with respect to the Paycom Center, the OCPPA agrees as consideration to SMG for the value of the remaining Term of this Agreement to pay to SMG an amount equal to sixty-five percent of the then-applicable Base Management Fee, multiplied by a fraction in which (i) the numerator is the number of months otherwise left until the expiration date of the then-applicable contract Term and (ii) the denominator is sixty.

(E) Assignment and Assumption of Certain Contracts Upon Termination. In the event of expiration or early termination of this Agreement, regardless of the reason for said termination, SMG shall immediately assign to OCPPA any unfulfilled contracts and future booking engagements, and OCPPA shall assume the obligation to perform such contracts and booking engagements thereafter.

(F) Survival of Certain Provisions. Termination of this Agreement shall not terminate or suspend any of the payment and indemnity obligations in Sections 20, 21, 22 and 23 of this Agreement.

23. INDEMNITY. To the fullest extent permitted by law, SMG agrees to release, defend, indemnify and save harmless the City and OCPPA, their officers, agents and employees, from and against any and all loss of or damage to property, injuries to or death of any person or persons and/or all claims, damages, suits, costs, expenses, liability, actions or proceedings of any kind or nature whatsoever, including, without limitation, Worker's Compensation claims of or by anyone whomever, collectively "Losses", in any way resulting from or arising out of (A) a default or breach by SMG of its obligations under this Agreement, including without limitation those obligations set forth in Section 4.2 hereof, or (B) SMG's negligent acts, operations, errors and/or omissions under or in connection with this Agreement, or SMG's use and occupancy of the Facilities, including, without limitation, negligent acts, operations, errors and/or omissions of SMG's officers, employees, representatives, invitees, contractors, subcontractors or agents. SMG shall promptly advise the City and OCPPA, in writing, of any action, administrative or legal proceeding or investigation as to

which this indemnification may apply, and SMG, at its expense, shall assume the defense of the City and OCPPA. The City and OCPPA shall have the right to approve the counsel selected for such defense (which approval shall not be unreasonably withheld) if such action, administrative or legal proceeding or investigation (i) is not covered by insurance maintained by SMG under this Agreement, or (ii) may be covered by insurance and the interests of SMG (on the one hand) and of the City and/or OCPPA (on the other hand) are adverse, in which event the selection of such counsel is for the separate and adverse interests of the City and/or OCPPA. If the cost of such additional counsel is not covered by such insurance, then the cost thereof shall be an Operating Expense. This section shall survive the expiration of the Agreement. Provided, however, SMG need not release, defend, indemnify or save harmless the City, and OCPPA, or their officers, agents and employees from Losses: (a) resulting from the negligence of the City and OCPPA, their officers, employees or architects, engineers and other contractors and consultants (excluding SMG); (b) or resulting from the breach or default of this Agreement by the City or OCPPA, or (c) caused by or arising out of services provided by architects, engineers and other contractors and consultants (excluding SMG), retained by the City or OCPPA for the Facilities construction or improvements, or (d) that are of the type that are or would normally be covered by all risk real and personal property insurance covering the Facilities for physical damage and business interruption and extra expenses, irrespective of the decision of the City or the OCPPA to carry or not to carry such insurance. It is understood that this indemnity and hold harmless provision is not limited by the insurance required under the provisions hereof. In addition, none of the Parties shall be liable to the others for punitive damages.

24. INSURANCE. Required insurance shall be carried and maintained throughout the Term of this Agreement, and Certificates of Insurance shall contain a provision by the insurer(s) to the effect that the policy(s) may not be canceled, fail to be renewed, or the limits decreased by endorsement without thirty (30) days prior written notice to the City and/or OCPPA. The City and OCPPA shall maintain all risk real and personal property insurance (which shall include hazard and business interruption coverage) covering the Facilities and the personal property of the City and OCPPA

thereat, with SMG being named as an additional insured. Nothing in this Agreement is intended to require SMG to maintain property and hazard insurance covering the premises at any of the Facilities or business interruption insurance covering the interruption of operations by or for whatever cause at the Facilities. In addition, the terms of all insurance policies described in this Section 23 to be maintained by SMG, the City or OCPPA shall preclude subrogation claims against SMG, its partners, the City, OCPPA and their respective officers, directors, employees and agents.

- (A) During the Term of this Agreement, SMG shall provide, pay for, and maintain with companies satisfactory to the City, the types of insurance described herein. All insurance shall be from responsible insurance companies eligible to do business in the state of Oklahoma. All liability policies (except professional liability and worker's compensation policies) shall provide that the City and OCPPA are named as additional insureds as to the operations of SMG under this Agreement and shall also provide the following Severability of Interest Provision:

“With respect to claims involving any insured hereunder, except with respect to limits of insurance, each such interest shall be deemed separate from any and all other interest herein, and coverage shall apply as though each such interest was separately insured.”

At least five (5) days prior to the start of SMG's service hereunder, the insurance coverage and limits required must be evidenced by properly executed Certificates of Insurance on the forms furnished by the City. The Certificate must be signed by the authorized representative of the insurance company(s) shown in the Certificate with proof that he/she is an authorized representative thereof. In addition, exact copies of all insurance policies required shall be provided to the City and OCPPA on a timely basis if requested by the City and OCPPA. The required policies of insurance shall be performable in Oklahoma City, Oklahoma, and shall be construed in accordance with the laws of Oklahoma.

No less than thirty (30) days prior written notice by registered or certified mail shall be given to the City and/or OCPPA of any cancellation, intent not to renew (except professional liability policies), or reduction in the policies' coverage except in the application of the aggregate limits provisions. In the event of a reduction in any aggregate limit, SMG shall immediately notify the City and the OCPPA and shall make reasonable efforts to have the full amount of the limits appearing on the Certificate reinstated. If at any time the City or the OCPPA requests a written statement from the insurance company(s) as to any impairments to the aggregate limit, SMG hereby agrees to promptly authorize and have delivered to the City and OCPPA such statement. All such insurance coverage of SMG shall be primary to any insurance or self-insurance program carried by the City and the OCPPA.

- (B) No work or occupancy of the Facilities shall commence unless and until the required certificates of insurance are provided and in effect.

- (C) The insurance coverage and limits required of SMG under this Agreement are designed to meet the minimum requirements of the City and OCPPA. Such coverage and limits are not designed as a recommended insurance program for SMG. SMG alone shall be responsible for the sufficiency of its own insurance program. Should SMG have any question concerning its exposures to loss under this Agreement or the possible insurance coverage needed therefor, SMG should seek professional assistance.
- (D) Any deductibles or self-insured retentions or any scheme other than a fully insured program of general liability, automobile liability and/or employer's liability must be declared by SMG for approval in advance by the City and OCPPA. At the option of the City and the OCPPA: (1) SMG shall require the insurer to reduce or eliminate such deductibles or self-insured retentions with respect to the City and/or OCPPA; or (2) SMG shall procure a bond guaranteeing payment of the losses and related investigations, claim administration and defense expenses not otherwise covered by SMG's insurance because of deductibles or self-insurance retentions; or (3) SMG shall provide Owner's Protection Liability coverage with the City and the OCPPA as the named insureds, for the commercial general liability requirement, in a combined single-limit bodily injury and property damage amount of One Million Dollars (\$1,000,000).
- (E) SMG shall provide the following insurance:
- (1) Worker's Compensation and Death Liability. SMG shall maintain, during the term of the Agreement, Worker's Compensation Insurance as prescribed by the laws of the state of Oklahoma and Employer's Liability Insurance in an amount not less than One Hundred Thousand Dollars (\$100,000) each for all its employees employed at the Facilities, and in case any work is subcontracted, SMG shall require the subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all the subcontractor's employees, unless such employees are covered by the protection afforded by SMG. In the event any class of employees engaged in work performed under this Agreement or at the Facilities is not protected under such insurance heretofore mentioned, SMG shall provide and shall cause each subcontractor to provide adequate insurance for the protection of the employees not otherwise protected.
 - (2) Commercial General Liability Insurance. SMG shall maintain during the term of this Agreement sufficient Commercial General Liability Insurance to protect SMG and any additional insured(s) from claims for bodily injury, including death, as well as from claims from property damages or loss, which may arise from activities, omissions and operations under this Agreement. In this regard, SMG further agrees to add and include The City, the OCPPA, and in conformance with the PBC Agreements, PBC, as additional insureds on said policy. SMG further agrees to require its subcontractors or anyone employed by or acting for the benefit of SMG to provide Commercial General Liability Insurance in amounts not less than the City's maximum liability under the Governmental Tort Claims Act cited below, and to require that the City, the OCPPA, and in accordance with the PBC Agreements, PBC, be named additional insureds on said

policies. The amounts of such insurance to be as obtained by SMG hereunder shall be not less than \$1,000,000 per occurrence, combined single limit, for bodily injury, personal injury, property damage liability, product/completed operations and broad form contractual liability coverage, and notwithstanding the foregoing, the amount of such insurance shall not be less than the City's maximum liability under the Governmental Tort Claims Act, 25 O.S. § 151 *et seq.*, as amended from time to time, which Act currently provides for the following levels of coverage:

- (i) Property Damage Liability in an amount not less than Twenty-Five Thousand Dollars (\$25,000) per claimant for loss, damage to or destruction of property, including but not limited to consequential damages arising out of a single accident or occurrence.
- (ii) All Other Liability in an amount not less than One Hundred Seventy-Five Thousand Dollars (\$175,000) per claimant for claims including death, personal injury, and all other claims arising out of a single accident or occurrence.
- (iii) Single Occurrence or Accident Liability in an amount not less than One Million Dollars (\$1,000,000) for any number of claims arising out of a single accident or occurrence.

If Commercial General Liability coverage is written in a "claims-made" form, SMG shall also provide tail coverage that extends a minimum of one year from the expiration of this Agreement.

- (3) Automobile Liability Insurance shall be maintained by SMG as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles, with limits of not less than a combined single limit of one Million Dollars (\$1,000,000).
- (4) Professional Liability Insurance. Before this Agreement may become effective, SMG shall provide the OCPPA with a certificate of insurance evidencing SMG's coverage under a Professional Liability Insurance Policy in an amount not less than \$2,000,000 aggregate annual limit of liability. Such insurance shall be maintained for a period of two (2) years after the termination of this Agreement.
- (5) Liquor Legal Liability (Dram Shop). SMG, as concessionaire, shall provide Liquor Legal Liability for One Million Dollars (\$1,000,000) per occurrence subject to an aggregate policy limit.
- (6) Umbrella/Excess Liability. Umbrella/Excess Liability Insurance in the amount of Five Million Dollars (\$5,000,000) shall be provided above the primary general liability insurance. Such coverage shall be provided on an occurrence basis. Additional insured protection shall be extended to the City of Oklahoma City and OCPPA.

(7) Fidelity and Crime Insurance. Fidelity and Crime Insurance, which includes but is not limited to Burglary, Theft and Employee Dishonesty with a blanket limit of One Million Dollars (\$1,000,000), shall be provided. Such insurance shall also include coverage for money and securities, valuable papers. The City of Oklahoma City and OCPPA shall be named as loss payee.

(F) Any lapse of insurance coverage is declared a breach of this Agreement. The OCPPA may, at its option, suspend this Agreement until there is full compliance with this Paragraph or terminate this Agreement for nonperformance.

25. PERFORMANCE BOND. SMG agrees to provide and maintain a Performance Bond in the amount of \$250,000 in favor of OCPPA and the City.

26. NOTICES. All notices and orders given pursuant to this Agreement shall be in writing, delivered or mailed by United States certified mail, return receipt requested, postage prepaid or faxed (with hard copy follow up by mail or delivery) and addressed as follows:

To the City and OCPPA:
Craig Freeman, City Manager/OCPPA General Manager
200 North Walker
Oklahoma City, Oklahoma 73102

To SMG:
300 Conshohocken State Rd, Ste 770
West Conshohocken, PA 19428 Attn: President

With a copy to:
300 Conshohocken State Rd, Ste 770
West Conshohocken, PA 19428
Attn: General Counsel

The address of any person or party may be changed by notice to the other party, given in the manner described above. All such notices and orders shall be deemed given and effective when delivered or on the third business day after being deposited in the United States mail.

27. OWNERSHIP OF ASSETS. All property, supplies, and improvements associated with the operation and management of the Facilities are solely the property of the OCPPA unless otherwise provided in this Agreement. Notwithstanding the foregoing, the ownership of data processing programs and software owned by SMG shall remain with SMG.

28. COMPLIANCE WITH LAWS, ORDINANCES, SPECIFICATIONS AND REGULATIONS.

SMG shall comply with all existing federal, state and local laws, standards, codes, ordinances, administrative regulations and all amendments and additions thereto, pertaining in any manner to the work and/or services provided by this Agreement.

29. NONDISCRIMINATION. In connection with the performance of work and/or services under this Agreement, SMG agrees as follows:

- A. SMG shall not discriminate against any employee or applicant for employment because of age, race, creed, color, sex, national origin, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3(2). SMG shall take affirmative action to ensure that employees or applicants for employment are treated without regard to their age, race, creed, color, national origin, sex, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3(2). Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff, termination or cancellation, rates of pay or other forms of compensation and selection for training, including apprenticeship. SMG shall agree to post, in a conspicuous place available to employees and applicants for employment, notices to be provided by the City Clerk of the City of Oklahoma City setting forth provisions of § 25-41 of the Oklahoma City Municipal Code, 2020.
- B. In the event of SMG's noncompliance with this nondiscrimination clause, this Agreement may be suspended, canceled or terminated by the OCPPA. SMG may be declared by the OCPPA ineligible for further contracts or agreements until compliance, and/or satisfactory proof of intent to comply shall be made by SMG.
- C. SMG agrees to include a nondiscrimination clause which conforms generally with the language of Paragraph 29(A) above in any subcontracts connected with the performance of this Agreement.

30. COMPLIANCE BY CITY AND OCPPA. Except to the extent that such is caused as a result of a breach by SMG of any provision of this Agreement, the City and OCPPA state and agree that each Facility shall be in compliance with all applicable laws and regulations and that each Facility shall be structurally sound. The foregoing shall be applicable only to the extent that loss or damage is claimed against SMG by third parties.

31. COMPLIANCE WITH PBC AGREEMENTS. SMG shall duly observe and comply with all provisions of the PBC Agreements that constitute duties and/or obligations to be performed by

SMG. To the extent of any inconsistency between the terms of this Agreement and the PBC Agreements, the terms of the PBC Agreements will control and this Agreement shall be deemed amended so as to be consistent therewith. Nothing in this Agreement or in the approval of this Agreement by PBC is intended to amend, limit, or expand any provisions of the PBC Agreements. Without limitation of the foregoing, the parties acknowledge that pursuant to the PBC Agreements PBC is entitled to approve the manager of the Facilities, any agreement to which such manager shall manage and operate the Facilities, the Facilities Manager assigned by SMG to manage and operate Facilities, and any contractor providing Food and Beverage Service (as defined the PBC Agreements). Further, the PBC Agreements provide procedures pursuant to which PBC shall be entitled to (a) require that any agreement be terminated and/or (b) require that any contractor providing Food and Beverage Services be replaced, all as provided in more detail in the PBC Agreements. This Agreement is subject in all respects to the rights of PBC set forth in the PBC Agreements.

32. ASSIGNMENT. This Agreement, and each of the rights, duties and obligations hereunder, including the right to receive the management fees and collect payments, may not be assigned, pledged, transferred, sublet or otherwise disposed of, in whole or in part, by SMG without the prior written approval of the City and OCPPA. Further, the City and OCPPA reserve the right to assign, transfer or otherwise convey all management and operational rights, duties and obligations set forth in this Agreement in accordance with the PBC Agreements.
33. SEVERABILITY. In the event that any provision, clause, portion or section of this Agreement is unenforceable or invalid for any reason, such unenforceability or invalidity may not affect the enforceability or validity of any other paragraph or the remainder of this Agreement.
34. ENTIRE AGREEMENT. This Agreement, including its exhibits and any other documents or certificates incorporated herein by reference, expresses the entire understanding of OCPPA, and SMG concerning this Agreement. Neither the OCPPA nor SMG have made or shall be bound by any agreement or any representation to the other concerning this Agreement which is not expressly set forth herein.

35. AMENDMENT. This Agreement may be modified only by a written amendment of subsequent date hereto, approved by OCPPA and SMG.
36. EXECUTION IN COUNTERPARTS. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
37. DESCRIPTIVE HEADINGS. The descriptive headings of the sections of this Agreement are inserted or annexed for convenience of reference only and shall not affect the meaning, construction, interpretation or effect of this Agreement.
38. SURVIVAL OF REPRESENTATIONS. All representations and covenants of the Parties shall survive the expiration of this Agreement.
39. PARTIES BOUND. This Agreement shall be binding upon and inure to the benefit of all Parties. This Agreement is solely for the benefit of the Parties and their successors in interest, and pursuant to the PBC Agreements, PBC, and none of the provisions hereof are intended to benefit third parties, other than PBC.
40. CONSTRUCTION AND ENFORCEMENT. This Agreement shall be construed and enforced in accordance with the laws of the State of Oklahoma. In the event of ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party on the basis that such party did or did not author the same.
41. VENUE OF ACTIONS. The Parties agree that if any legal action is brought pursuant to this Agreement, such action shall be instituted in the district court of Oklahoma County.
42. CONFLICT OF INTEREST.
- A. The City and OCPPA acknowledge that SMG manages other conventions centers and arenas that may, from time to time, be in competition with the Facilities. The management of competing facilities shall not, in and of itself, be deemed a conflict of interest or breach of SMG's duties hereunder; provided, however, in all instances in which either of the Facilities is in competition with other convention center or arena operations managed by SMG for the solicitation of certain events,
 - B. The Parties acknowledge SMG has provided, in the Approved Policies and Procedures, a process to prevent, disclose and resolve conflicts of interest arising during the term of this Agreement.

- C. SMG represents that to the best of its information and belief that no officer of the City or OCPPA is either directly or indirectly a party to or in any manner interested in this Agreement except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

- 43. IMMIGRATION LAW COMPLIANCE. SMG agrees to comply with all applicable provisions of the "Oklahoma Taxpayer and Citizen Protection Act of 2007," (the "Act") codified in part at 25 O.S. §§ 1312 and 1313.

[Remainder of page is blank. Signature page follows.]

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties hereto as of the
day and year first hereinabove written.

**THE CITY OF OKLAHOMA CITY,
an Oklahoma municipal corporation**

By: _____
MAYOR

ATTEST:

City Clerk

**OKLAHOMA CITY PUBLIC PROPERTY
AUTHORITY, an Oklahoma Public Trust**

By: _____
CHAIRMAN

ATTEST:

Secretary

SMG, a Pennsylvania general partnership

By: _____
Authorized Agent

ATTEST:
Margaret A. Kellenger
Secretary 6/10/25

REVIEWED as to form and legality.



Laura J. Mancini
Deputy Municipal Counselor

EXHIBIT "A"

Parcel identified in Section 1.F(1)

