

**City and County of San Francisco**  
Office of the City Administrator  
Convention Facilities Department

**Seventh Amendment to the Management Agreement for  
George R. Moscone Convention Center**

THIS SEVENTH AMENDMENT (this "Amendment") is made as of \_\_\_\_\_, 2016, in San Francisco, California, by and between **Moscone Center Joint Venture** ("MCJV" or "Contractor"), and the **City and County of San Francisco**, a municipal corporation ("City").

RECITALS

WHEREAS, Pursuant to Board of Supervisors Resolution No. 895-90, on November 6, 1990, the City and Facility Management Incorporated of California ("FMI") entered into a Management Agreement (the "Agreement") for the management of George R. Moscone Convention Center, Brooks Hall, and Civic Auditorium; and,

WHEREAS, Pursuant to a certain Agreement to Assignment dated March 18, 1991, the City consented to an assignment of the Agreement from FMI to Spectator Management Group ("SMG"); and,

WHEREAS, By the First Amendment to the Agreement, dated December 20, 1993, the City exercised its option to renew the term of the Agreement for an additional five years commencing July 1, 1994, and ending June 30, 1999; and in order to increase the participation of minority owned businesses in the management of the Moscone Convention Center and Civic Auditorium, the City agreed to SMG's assignment of an interest in the Agreement to Thigpen Limited, Incorporated, a certified local woman-owned business, with further assignment by Thigpen and SMG of their interests in the Agreement to Moscone Center Joint Venture; and,

WHEREAS, By the Second Amendment to the Agreement, dated January 14, 1999, the City exercised its option to renew the term of the Agreement for an additional five year term commencing July 1, 1999, and ending June 30, 2004; and,

WHEREAS, By the Third Amendment to the Agreement, dated June 10, 2003, the City exercised its option to renew the term of the Agreement for an additional five year term commencing July 1, 2004, and ending June 30, 2009; and,

WHEREAS, By the Fourth Amendment to the Agreement, dated October 22, 2007, the City and Contractor agreed that Contractor would perform certain public works improvements on behalf of the City through the hiring of contractors pursuant to Section 6.66 of the San Francisco Administrative Code; and,

WHEREAS, by the Fifth Amendment, dated January 14, 2009, the City and Contractor agreed to amend the Agreement to (i) extend the term of the Agreement for an additional eight years commencing July 1, 2009, and ending June 30, 2017; (ii) require Contractor to make certain capital contributions to the City in the amount of \$8,500,000; (iii) revise certain contractual clauses regarding the calculation and payment of fees for food, beverage and merchandise; and,

WHEREAS, approval for the Fifth Amendment was obtained from the Board of Supervisors by Resolution No. 0529-08 on December 16, 2008; and

WHEREAS, by the Sixth Amendment, dated July 1, 2009, the City and Contractor agreed to amend the Agreement to reflect the removal of management of Bill Graham Civic Auditorium from the scope of services; and

WHEREAS, the City and Contractor desire to amend the Agreement on the terms and conditions set forth herein to (i) extend the term of the Agreement for an additional ten years; (ii) update contractual language, (iii) update reporting and audit requirements, (iv) revise clauses regarding the calculation and payment of fees for food, beverage, and merchandise, (v) and update notice to parties clauses; and

WHEREAS, approval for this modification and extension was obtained from the Board of Supervisors by Resolution No. on \_\_\_\_\_

NOW, THEREFORE, the Contractor and the City agree as follows:

**A. Definitions.** The following definitions shall apply to this Amendment:

1. **Agreement.** The term "Agreement" shall mean the Management Agreement for George R. Moscone Convention Center, Brooks Hall and Civic Auditorium between the City and County of San Francisco, a municipal corporation ("City"), and Facility Management Incorporated of California ("FMI"), dated November 6, 1990, as amended by the:

- First Amendment to the Agreement, dated December 20, 1993.
- Second Amendment to the Agreement, dated January 14, 1999.
- Third Amendment to the Agreement, dated June 10, 2003.
- Fourth Amendment to the Agreement, dated October 22, 2007.
- Fifth Amendment to the Agreement, dated January 14, 2009.
- Sixth Amendment to the Agreement, dated July 1, 2009.

2. **Other terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

**B. Modifications to the Agreement.** The Agreement is hereby modified as follows:

**1. “Article 2 – Term” is hereby amended in its entirety to read as follows:**

Article 2 – Term

A. Term: Certification

Subject to annual certification of the Controller of the City and approval by Resolution of the Board of Supervisors of the City in accordance with the terms of San Francisco Charter Section 10.104(15) and based on operating budget(s) submitted by Contractor ('Proposition J Certification'), the term of this agreement shall be for a period of thirty seven (37) years commencing at 12:01 a.m., July 1, 1990, and terminating at 12 midnight, June 30, 2027, unless sooner terminated as provided herein.

Both parties agree to act diligently, cooperatively and in good faith to complete the Proposition J certification before the beginning of the fiscal year. If the certification has not been completed by the beginning of the fiscal year and pending certification Contractor continues, with the City's concurrence, to manage, operate and maintain the facilities, then:

1. If the budget is thereafter certified under Proposition J, Contractor shall have all rights which would otherwise accrue under the agreement from the beginning of the fiscal year;
2. If the budget is not certified under Proposition J, Contractor shall have no right to the Management Fee during the uncertified period in excess of the General Manager's salary, but such salary and all expenses which the City has approved in advance incurred in the operation, management and maintenance of the Convention Facilities shall be reimbursed by City to Contractor upon submission of invoices in accordance with Article 6, and notwithstanding the provisions of Article 21, Contractor shall be deemed an agent for City in obtaining and contracting for services of the Convention Facilities.

B. Additional Terms

The City can renew this agreement for additional terms, if, in the reasonable opinion of the CAO, MCJV's performance hereunder has been adequate, courteous, safe and efficient in every material respect and the public interest has been and is expected to be well served. If the CAO elects to renew a term of this agreement, the City and Contractor will promptly agree in writing to the extension.

**2. “Article 4 - Responsibility and Authority of FMI” is hereby amended partially to alter the title, add paragraph A 10, and amend section B to replace the previous Section B entirely. The changes read as follows:**

Article 4 -Responsibility and Authority of MCJV

A. Responsibility

[...]

10. The City may conduct audits of the operations of the Moscone Center. Contractor agrees to cooperate fully with the City and its audit team, permitting full access to Moscone Center operations and information systems. Upon completion of the audit, Contractor agrees to work with the City, in good faith, to implement the recommendations of the audit.

## B. Authority

MCJV is hereby granted the authority to enter into contracts on behalf of the City to obtain the services, materials and other property on behalf of the City incident to carrying out its responsibilities set forth above. All of such contracts shall be at the expense of the City but shall be consistent with the overall City budget approved for the Convention Facilities. Contractor must receive written approval from the City prior to entering a contract (or contracts) that requires payments in excess of \$50,000 in a Fiscal Year to any one subcontractor.

### **3. "Article 5 – Authority of CAO" is hereby amended to add paragraph 7, which reads as follows:**

7. The City and Contractor agree that the City may perform post-event audits on up to 10 events in each Fiscal Year, which events shall be identified by the City at its discretion. It is understood by the Parties that such post-event audits are intended to ensure accurate reporting of revenues and expenses related to such event as reported by Contractor in the Event Settlement Report (as defined below in Article 6) and to assess financial controls, compliance with policies and procedures and overall delivery of service for such event by Contractor. If any audit results in a determination by the City of an understatement of Operating Revenues or an overstatement of Operating Expenses for any event, Contractor shall be immediately liable for the amount of such difference. Furthermore, if more than three of such audits during any continuous five year period results in significant material findings, the City shall have the right to terminate this Agreement and will not be required to return any portion of the Capital Contribution.

### **4. "Article 6 – Financial" is hereby amended in its entirety to read as follows:**

#### A. Financial Statements

MCJV shall submit, on the last day of the following month, financial statements for the previous month and year-to-date. The financial statements shall be prepared in accordance with generally accepted accounting principles and shall be in a form mutually agreeable to Contractor and the CAO. The monthly financial statements shall include a narrative explanation of performance, including discussion of operational factors that contributed to variance in actual financial results relative to budget. In addition to the monthly financial statements, Contractor shall submit a monthly settlement report in a form approved by The City (the "Event Settlement Report"). The current form in use is attached as Exhibit A. The Event Settlement Report shall include, at a minimum, Operating Revenues and Operating Expenses attributable to each event held at the facility during the preceding month. Contractor shall, at the request of the CAO appear before the CAO and answer questions relating to the operation of the Convention Facilities and/or the financial reports.

Contractor shall submit a year-end reconciliation report, reflecting the difference between (a) accrual of income and expenses on its financial statements and (b) cash received and paid to the City. The reconciliation shall report payables owed to the City, receivables due from the City, deferred revenue, unearned revenue, and any other accounts necessary to reconcile accrual-based accounting with cash-based accounting. The reconciliation report shall be based on the Contractor's financial position as of August 15th. The report is due to the City on August 31 of each fiscal year.

As soon as possible after September 1st and in no event later than September 30th of each Fiscal Year, Contractor shall deliver to the City a Balance Sheet, a Statement of Profit or Loss and a Statement of Cash Flows for the preceding Fiscal Year, all prepared in accordance with generally accepted accounting principles, accompanied by an independent auditor's report prepared by an independent certified public accountant licensed by the State, approved by the City (the "Annual Audit"). Such Annual Audit shall contain an opinion expressed by the independent auditor of the accuracy of Records kept by Contractor and of amounts due to The City under this Agreement and shall also provide a certification of Operating Revenues and Operating Expenses for such Fiscal Year. As part of the Annual Audit, the City also shall require of the independent auditor and Contractor shall deliver to the City an Internal Control Memorandum and Management Letter reporting on accounting controls and procedures of Contractor related to this Agreement at the end of each Fiscal Year.

"Operating Expenses" means any and all expenses and expenditures of whatever kind or nature incurred, directly or indirectly, in promoting, operating, maintaining and managing the Facility, including: Employee compensation, and employment related statutory expenses, Employee benefits and related costs, costs of supplies, marketing and public relations, data processing costs, amounts expended to procure and maintain permits and licenses, event staffing, postage and freight costs, equipment rental costs, computer equipment leases and line charges, repairs and maintenance costs, security expenses, utility and telephone charges, exterminator, recycling and waste disposal costs, costs of insurance and the fixed Management Fees payable to Contractor, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis; provided that Operating Expenses shall not include: non-reimbursable expenses of Contractor under the terms of this Agreement; costs of salaries and benefits of employees of The City; Federal and State income taxes of the Contractor; the costs of procuring and maintaining the insurance required in this Agreement; Capital Expenditures and FF&E purchases; or any expenses relating to Contractor personnel based in Contractor's corporate headquarters or its regional field locations unless such expenses are pre-approved in writing by the City.

"Operating Revenues" means any and all revenues of every kind or nature derived from owning, operating, managing or promoting the Facility and as agreed to by The City and Contractor in the approved budget, including: revenues and fees from licenses, leases and rentals, revenues from advertising sales, utility revenues, and commissions or other revenues from subcontractors, provided that, if such revenues are collected in the first instance by and retained by such subcontractors, only the amount of such revenues paid by such Contractors shall be included as Operating Revenues, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis.

## B. Books and Records

1. Contractor shall maintain, at its offices in the Convention Facilities, a set of books devoted exclusively to the operations of the Convention Facilities. Contractor shall use forms, accounting methods, internal controls, and procedures mutually agreeable to Contractor and the CAO. The books and records shall be maintained in accordance with generally accepted accounting principles. The books shall be available for examination by City-authorized personnel.

Contractor shall keep and preserve for at least five years following each Fiscal Year all Records, including all service orders, work orders, sales slips, rental agreements, purchase orders, sales books, cash register tapes, credit card invoices, duplicate deposit tapes and invoices, bank accounts, cash receipts and cash disbursements, bank books, and other evidence of Operating Revenues and Operating Expenses for such period. Contractor shall cause its vendors, subcontractors and Affiliates to keep and maintain all such Records in accordance with this Article.

2. Contractor shall furnish additional financial or statistical reports, analyses, or data as reasonably requested by the CAO.
3. Contractor shall develop and maintain a cost accounting system acceptable to the City. The system will include financial analyses by event and special projects.
4. All software developed for the operations of the facilities shall remain the property of the City, but Contractor shall at no cost to it have a license to use such software for all SMG operations.
5. Contractor shall give the City and the City's authorized representatives access to Contractor's Records during reasonable business hours and upon reasonable advance notice. Should any of the Records be maintained on a computerized system, Contractor shall provide the City with access, during normal business hours upon reasonable notice, to such Records generated by the computerized system. Contractor shall maintain their Records in the City of San Francisco. Contractor shall give any auditors retained to conduct the Audit the right to review and test any proprietary software and its documentation used by Contractor for bookkeeping and the production of the Reports.
6. Contractor will grant the City electronic view access to bank accounts used for the operations of the Contractor's responsibilities outlined in this agreement. In addition, upon the City's request, Contractor will submit to the City, or will cause the depository institutions holding the Contractor's bank account(s) to submit to the City, monthly bank statements.
7. The City will be permitted to access any software system that Contractor uses for monitoring fixed assets and inventory.

#### C. Procedure for Handling Income

MCJV shall maintain separate bank accounts and remit funds to the City as follows:

1. General Account - for the receipt of license fees, reimbursements for event services, food service concession fees, and reimbursements of operating expenses by the City, as well as payment of all operating expenses.

Income shall be remitted to the City as follows:

- a. Advance deposits on license fees - on Friday of each week.
- b. Additional license fees resulting from alternative fee calculations - on Friday of each week.
- c. Food service concession fees - monthly, by the 15th business day of the following month.

- d. Net income from reimbursement for event services - monthly, by the 15th business day of the following month.
  - e. Telecommunications, Booth Cleaning, Business Center and other services - monthly, by the 15th business day of the following month.
2. Box Office Account - for the direct deposit of box office receipts controlled by MCJV.
  3. Non-Budgetary Income Account - for all other categories of income comprising "Other Income," such as subcontractors' concession fees, coin locker receipts, pay telephone commissions, etc. Such income shall be remitted to the City by the 15th business day of the following month.

MCJV will provide copies of all deposits to the City's bank account together with such accounting documents as required by the City Controller office. Said deposits shall be reconciled monthly with CAO's office.

**D. Operating Funds – Reimbursement of MCJV**

1. Working Capital - At the beginning of each fiscal year, the City shall furnish Contractor with cash equal to ten and one-half percent (10.5%) of the budget for that fiscal year, exclusive of the management fee. Said advance will be charged against the contract for that fiscal year and be used for the expenses thereof. Any excess shall be returned to the City after all expenses attributable to that fiscal year have been paid.
2. Payment of Expenses and Reimbursement - Contractor shall use the working capital to pay expenses incurred in operating, managing and maintaining the Convention Facilities.

Contractor shall submit requests for reimbursement as follows:

- Payroll and benefits - After each pay period.
- Operating expenses - Monthly.
- Management fee - Monthly.
- Insurance or other extraordinary expenses - As paid.

The City shall reimburse Contractor only up to the amount of the approved annual budget as provided in Article 10.

If the City does not advance funds as provided, Contractor may borrow, with the City Representative's concurrence, working capital, at the expense of the City, to the extent necessary or appropriate to provide working capital for the Convention Facilities.

**5. "Article 9 – Food, Beverage, Merchandise, and Services" is hereby amended in its entirety to read as follows:**

Article 9 – Food, Beverage, Merchandise, and Services

**A. Basic Responsibility**

The City hereby grants to Contractor the right to sell the following food, beverage, merchandise and services at the Convention Facilities and, within limits set forth below, Contractor agrees to do so.

1. Food of all kinds, including, but not limited to prepared food, ready-to-serve food, desserts, sweets, and such other food and refreshment items usually sold in public assembly facilities.
2. Beverages of all kinds, including but not limited to alcoholic beverages and non-alcoholic beverages, in accordance with applicable laws, ordinances, rules and regulations.
3. Merchandise of all kinds, including but not limited to printed material, programs, pennants, toiletries, and other merchandise described as "novelties."
4. Services: Including but not limited to telecommunications, booth cleaning, business center and other services initiated by MCJV and approved by the City. Such approval will not be unreasonably withheld and a request for approval shall be acted upon promptly by the City. These categories are descriptive only, not limiting in scope, and shall not obligate Contractor to provide all items in each category. Contractor will use its best efforts to maintain efficient and high-quality food, beverage, merchandise and services operations.

#### B. Books and Records

MCJV shall maintain books and records in accordance with generally accepted accounting principles. Contractor shall submit to the City an operating report showing gross sales receipts for the previous month by fee category, expenses incurred by the Contractor and any affiliates that serve as subcontractors, and the related fees payable to the City, as well as year-to-date results and a comparison with the revenue forecasts both for the previous month and year-to-date as part of its monthly report.

#### C. Definitions

1. "Alcoholic Beverages" are defined as beer, wine and liquor sold in any form at any location within the Convention Facilities.
2. "Food and beverage concessions" are defined as food and beverages sold at any permanent concession stands.
3. "Other sales" are defined as all other sales of food, beverage and merchandise at the San Francisco Convention Facilities.
4. "Non-Internet Services" are services provided by Contractor including but not limited to telecommunications, booth cleaning, business center and any other services initiated by Contractor and approved by the City. Non-Internet Services do not include Internet Services as defined below.
5. "Internet Services" are services provided by Contractor or its subcontractors that facilitate, allow, or provide access to the Internet.
6. "Gross revenues" means all receipts by Contractor or its subcontractors resulting from food, beverage, merchandise, and services carried on by Contractor or its subcontractors, but does not include receipts for food, beverage, merchandise or services which are made at MCJV's or its subcontractor's cost, or sales tax, tips or gratuities.

#### D. Calculation and Payment of Fees

Contractor shall pay to the City the following fees for each category as defined above:

1. Alcoholic Beverages, Food and Beverage Concessions, Other Sales-
  - a. for the period of September 1, 2016 – December 31, 2018, twenty percent (20%) of Gross Revenues, plus an additional five percent (5%) of Gross Revenues or two million dollars (\$2,000,000) guaranteed per annum, whichever is greater.



- b. for the period of January 1, 2019 – December 31, 2020, thirty percent (30%) of Gross Revenues.
  - c. for the period of January 1, 2021 – June 30, 2027, thirty-five percent (35%) of Gross Revenues.
2. Non-Internet Services- Twenty percent (20%) of the first two million dollars per annum in Gross Revenues and twenty-five percent (25%) of all Gross Revenues over two million dollars per annum.
3. Internet Services
- a. For the period of September 1, 2016 – December 31, 2018, twenty five percent (25%) of Gross Revenues.
  - b. For the period of January 1, 2019 - December 31, 2020, thirty percent (30%) of Gross Revenues.
  - c. For the period of January 1, 2021 – June 30, 2027, thirty five percent (35%) of Gross Revenues.

E. Miscellaneous Provisions

If Contractor fails to pay the City the agreed upon fees on a monthly basis, the CAO may terminate MCJV's right to operate the food, beverage and merchandise, and services operations by notice to Contractor giving Contractor a 60-day period during which Contractor may at its option pay to the City the difference between the amounts actually paid and the amounts it should have paid. Termination of MCJV's rights and obligation regarding the food, beverage, merchandise and services operations shall not affect the responsibilities of Contractor as noted in Article 4 hereof and as stated elsewhere in this agreement.

MCJV shall not utilize City equipment to provide any food, beverage, merchandise or services off the premises of the Convention Facilities without the written permission of the City Representative.

MCJV may either provide goods and services covered by this Article itself or may subcontract with others to provide some or all of such operations. If Contractor elects to subcontract, the subcontractor will be subject to the prior written approval of the City which shall not be unreasonably withheld. Notwithstanding, the City will have ongoing authority to cancel a contract with any subcontractor for any legitimate business reason, including substandard quality of service and failing to remit revenue to the Contractor or the City in accordance with this agreement.

MCJV shall have the exclusive right to provide food and beverage concession operations and merchandise operations at the Convention Facilities.

If Contractor or its subcontractor is unable to provide food and alcoholic beverage catering operations required by a licensee, or if a licensee specifically requests another food and alcoholic beverage caterer, that caterer (outside caterer) may with the approval of MCJV, provide such services, provided that outside caterer shall:

- 1. Enter into a written contract with MCJV, satisfactory in form and substance to the City, to provide such services; and
- 2. Pay to the City a "user's fee" equal to seventeen and one half percent (17.5%) of its gross receipts; and

3. Be responsible for any damage to or loss of equipment, supplies or any other material that is the property of the City.

If an outside caterer provides any food or alcoholic beverage catering operations covered by this article, then that caterer will pay to Contractor a fee equal to twenty five percent (25%) of the caterer's gross receipts from alcoholic beverage sales and seventeen and one half percent (17.5%) from non-alcoholic beverage and food sales. These amounts shall be in addition to the amounts required to be paid to the City hereunder; such fee shall not be included in MCJV's gross revenues for purposes of Paragraph C above. Neither Contractor nor its subcontractor shall be required to make available its small wares, freezer or cold storage or any equipment or trade fixtures except cooking appliances to the caterer.

If the City requests Contractor to waive or reduce the amount of its fee charged to any outside caterer, the City will pay to Contractor the amount of such waiver or reduction.

If the City requests Contractor to waive or reduce the fees that Contractor charges to provide food, beverage, merchandise or services, then the City shall pay to Contractor the difference between the amount Contractor would have received, net of any payments due City under Article 9, Section D, if Contractor had charged normal retail rates and the amount that Contractor received as a result of charging the reduced amount requested by the City.

MCJV may collect amounts due from the City by offsetting such amounts against the fees otherwise due to the City under this Article.

MCJV shall coordinate the food and beverage services provided for under the terms of this Article with any licensee conducting a food and beverage show in the Convention Facilities.

**6. "Article 31 – Notice" is hereby amended in its entirety to read as follows:**

Article 31 – Notice

All notices required or permitted to be given pursuant to this Agreement shall be in writing and delivered personally, or sent by registered or certified mail, return receipt requested. All such notices to either party shall be deemed to have been provided when delivered, if delivered personally or five (5) days after depositing the same, postage prepaid with the United States Postal Service, addressed as follows:

TO CITY: Naomi Kelly  
City and County of San Francisco  
Office of the City Administrator  
City Hall, Room 362  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102

John Noguchi  
City and County of San Francisco  
Convention Facilities Department  
City Hall, Room 362  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102

To MCJV:  
Wes Westley  
President  
SMG  
300 Conshohocken State Road  
Suite 770  
West Conshohocken, PA 19428

With copies to:  
General Manager  
SMG  
747 Howard Street  
San Francisco, California 94103

Bruce Hanson  
Corporate Counsel  
SMG  
300 Conshohocken State Road  
Suite 770  
West Conshohocken, PA 19428

### **C. Capital Contribution in this Seventh Amendment**

Under this Agreement, Contractor shall pay the City the amount of fifteen million dollars (\$15,000,000) by December 31, 2018. The payment of the Capital Contribution by Contractor is in addition to payment of all fees, advances, and other amounts specified in the Agreement.

Article 26 is hereby amended partially by adding the following at the end of section G.5.:  
In addition, the reimbursement of any unamortized balance of the Capital Contribution by Contractor made pursuant to this Seventh Amendment to the Agreement shall be amortized over the ten year period, July 1, 2017 through June 30, 2027, regardless of when the Capital Contributions are paid to the City.

**D. Effective Date.** Each of the modifications set forth in this Amendment shall be effective on and after \_\_\_\_\_, 2016.

**E. Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the Contractor and the City have executed this Amendment as of the date first mentioned above.

CITY

CONTRACTOR

Recommended by:

\_\_\_\_\_  
John T. Noguchi  
Director, Convention Facilities Dept.

\_\_\_\_\_  
By:

Title:

Approved:

Moscone Center Joint Venture

\_\_\_\_\_  
Naomi Kelly, City Administrator

Approved as to Form:

Dennis J. Herrera  
City Attorney

By:

\_\_\_\_\_  
Gustin R. Guibert  
Deputy City Attorney