

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

**Sixth Amendment to the Management Agreement for
George R. Moscone Convention Center, Brooks Hall, and Civic Auditorium**

THIS SIXTH AMENDMENT (this "Amendment") is made as of July 1, 2009, 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, 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, On November 30, 2005, the City notified Contractor of its intent to partially terminate the Agreement for convenience as it relates to Bill Graham Civic Auditorium, effective upon the completion of a Request for Proposal ("RFP") process to select a new developer/operator for the facility; and,

WHEREAS, The City issued an RFP for the management of Bill Graham Civic Auditorium on February 22, 2006; and,

WHEREAS, The City commenced negotiations with the sole proposer under the RFP in September 2006; and,

WHEREAS, During the City's negotiations with the sole proposer, Contractor agreed to and has operated the Bill Graham Civic Auditorium on a month-to-month basis during the negotiation period in anticipation that a separate management agreement between the City and the sole proposer would be effective by July 1, 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 to the Agreement, dated January 14, 2009, the City and Contractor agreed to (i) extend the term of the Agreement for the management of the George R. Moscone Convention Center 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; and (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, The City's negotiations with the sole proposer under the RFP are ongoing and, until a new agreement is in place for the management of Bill Graham Civic Auditorium, it is necessary to continue day-to-day operations, maintenance and event management for the facility; and,

WHEREAS, The City anticipates that a new agreement between the City and the sole proposer for the management of Bill Graham Civic Auditorium will be in place by December 31, 2009; and,

WHEREAS, The City and Contractor desire to amend the Agreement on the terms and conditions set forth herein to authorize Contractor to continue to manage Bill Graham Civic Auditorium on a month-to-month basis commencing July 1, 2009, for a period not to exceed six months;

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.

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. Contractor shall continue to manage the Bill Graham Civic Auditorium in accordance with the terms and conditions of the Agreement on a month-to-month basis commencing July 1, 2009, for a period not-to-exceed six months or December 31, 2009 ("Six Month Period"). Should a separate agreement between the City and the sole proposer for the management of Bill Graham Civic Auditorium become effective prior to December 31, 2009, the City may terminate this Agreement for its convenience as it relates to Bill Graham Civic Auditorium before the expiration of the Six Month Period and consistent with the City's obligations under the separate agreement. The City will provide Contractor with at least 30 days' written notice of any termination that will be effective prior to expiration of the Six Month Period.

Upon the expiration of the Six Month Period or the effective date of any termination notice, whichever occurs sooner, Contractor shall promptly discontinue all services affected and shall deliver or otherwise make available to the City all data, documents, procedures, reports, estimates, summaries, and such other information and materials as may have been accumulated by Contractor in performing this Agreement as it relates to Bill Graham Civic Auditorium, whether completed or in process.

The provisions of Article 26(D) of the Agreement regarding City's obligation to reimburse Contractor upon termination for convenience for any unamortized balance of Contractor's Capital Contributions as provided in Article 26.G.5, and for any unearned portion of the annual advance payment of fees provided in Article 9.D.1.a, shall not apply to the termination of the Agreement with respect to Bill Graham Civic Auditorium.

C. Effective Date. Each of the modifications set forth in this Amendment shall be effective on and after July 1, 2009.

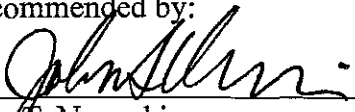
D. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

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

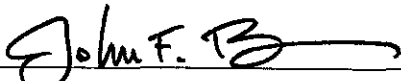
CITY

CONTRACTOR

Recommended by:



John T. Noguchi
Director, Convention Facilities Dept.

By: 

John F. Burns
Title: Chief Financial Officer

Approved:




Edwin M. Lee, City Administrator

Moscone Center Joint Venture

Approved as to Form:

Dennis J. Herrera
City Attorney

By: 

Deputy City Attorney