

NEW
MANAGEMENT AGREEMENT

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MANAGEMENT AGREEMENT

GEORGE R. MOSCONE CONVENTION CENTER

BROOKS HALL

CIVIC AUDITORIUM

This Agreement is made this 6th day of November, 1990, by and between the City and County of San Francisco, a municipal corporation hereinafter referred to as the "City," and Facility Management Incorporated of California, hereinafter referred to as "FMI".

Whereas, the City is the lessee of the George R. Moscone Convention Center and the owner of Brooks Hall and Civic Auditorium, located in San Francisco, California, which facilities are used for conventions, trade shows, and events of all kinds open to the public and private events; and

Whereas, FMI has the necessary expertise and experience to manage, operate and maintain the George R. Moscone Convention Center, Brooks Hall, and Civic Auditorium in regard to attracting and booking events and conventions of all kinds necessary to utilize said facilities to their fullest extent; and

Whereas, the City is desirous of utilizing to the fullest extent the capacity of George R. Moscone Convention Center, Brooks Hall, and Civic Auditorium; and

Whereas, the City has requested FMI to manage, operate and maintain the George R. Moscone Center, Brooks Hall, and Civic Auditorium in accordance with the terms set forth in this Agreement; and

Whereas, FMI has agreed to so manage, operate and maintain said convention facilities.

Now, therefore, in consideration of the mutual promises and covenants stated herein, this Agreement witnesseth:

ARTICLE 1

DEFINITIONS

As used in this Agreement, the following terms are understood to have the following meanings:

- A. CITY shall mean the City and County of San Francisco, a municipal corporation.
- B. CAO shall mean the Chief Administrative Officer of the City and County of San Francisco.
- C. REDEVELOPMENT AGENCY shall mean the Redevelopment Agency of the City and County of San Francisco.
- D. CITY REPRESENTATIVE shall mean the Convention Facilities Director of the City, appointed by the Chief Administrative Officer.

- E. CONVENTION FACILITIES shall mean Brooks Hall, Civic Auditorium and Moscone Center.
- F. FMI shall mean Facility Management Incorporated of California.
- G. SMG shall mean Spectacor Management Group, (parent of FMI).
- H. BUREAU shall mean San Francisco Convention Visitors Bureau.
- I. FINANCIAL STATEMENTS, BOOKS, RECORDS AND REPORTS shall mean those financial and operating reports required of FMI by the City. They shall be developed by FMI and approved by the City through the City representative and shall be, from time to time, revised as deemed necessary by the City. Financial statements and other reports shall be developed, maintained and presented in accordance with generally accepted accounting principles.
- J. MOSCONE CENTER NORTH AND SOUTH AND ESPLANADE BALLROOM shall mean the convention center structure, service areas and public areas, together with all other works property or structures necessary for public assembly and convention purposes, and does not include the surface area located on the top of the Moscone Center North or South.
- K. BROOKS HALL, CIVIC AUDITORIUM shall mean the structure, service areas and public areas together with all other works, property or structures necessary for public assembly and convention purposes and does not include the surface area located on the top of Brooks Hall.
- L. THE TERM "Trustee" means the Trustee appointed by San Francisco Redevelopment Agency under the provisions of the Bond Resolution authorizing the issuance of \$97 million dollars for the George R. Moscone Convention Center. That Trustee is the Security Pacific National Bank.

- M. PROJECT LEASE means the lease, dated for convenience as of April 1, 1979, by and between the Redevelopment Agency of the City and County of San Francisco and the City and County of San Francisco, whereby the Redevelopment Agency leased to the City the site and facilities necessary for a community center for public assembly and convention purposes.

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 8.300-1 and based on operating budget(s) submitted by FMI ('Proposition J Certification'), the term of this agreement shall be for a period of five (5) years commencing at 12:01 a.m., July 1, 1990, and terminating at 12 midnight, June 30, 1995, 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 FMI continues, with the City's concurrence, to manage, operate and maintain the facilities, then:

1. If the budget is thereafter certified under Proposition J, FMI 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, FMI 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 FMI upon submission of invoices in accordance with Article 6, and notwithstanding the provisions of Article 21, FMI 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, no one of which will exceed five years, if, in the reasonable opinion of the CAO, FMI'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 FMI will promptly agree in writing to the extension.

ARTICLE 3

MANAGEMENT FEE

A. Fee

For the period from July 1, 1990 through June 30, 1991, the fee is

For each additional year from 1991/92 through 1994/95,

the fee shall be increased by _____ per year. FMI shall invoice the City for the fee on a monthly basis. The City will make a reasonable effort to pay the fee within 30 days of billing.

B. Level and Quality of Service

The level and quality of service provided in the operation of the facilities and in the sale of food, beverages and merchandise will be first class.

If the City becomes dissatisfied with the level of such service, the City shall be obligated to give adequate notice of same to FMI.

If the City and FMI disagree over whether that level has been provided, the disagreement will be settled by a group of three people, one designated by the CAO, one by FMI and the third by the two so designated; if those two cannot agree on the third, then he or she will be designated by the Superior Court of the City and County of San Francisco.

The determination of such group will be conclusive and binding on the parties.

If first class service is not maintained, the City's remedies may include making an appropriate reduction of the fee identified in Article 3.A.

ARTICLE 4

RESPONSIBILITY AND AUTHORITY OF FMI

A. Responsibility

FMI shall have the full responsibility for managing, operating and maintaining the Convention Facilities subject to the provision of Articles 5 and 10(B) and any other limitations contained in this agreement. FMI's responsibilities shall include:

1. Contracting with others for their use of the Convention Facilities.
2. Promoting the use of the Convention Facilities in conjunction with the Bureau.
3. Operating and maintaining the Convention Facilities, including fire prevention, security, routine repairs, contracting for major repairs, janitorial services and energy conservation.
4. Food and beverage sales and concessions, catering and merchandising in accordance with Article 10.
5. Recruiting, employing, supervising and paying employees.
6. Event management, including crowd control, security, admissions procedures, supervision of box office and coordination with contracting users of the Facilities.
7. Maintaining the Convention Facilities and the equipment contained therein in the condition received, reasonable wear and tear excepted, and where possible and with budget permitting, through improved maintenance, upgrading the condition of Brooks Hall and Civic Auditorium.

Each year at the time of submission of the annual budget to the City Representative, FMI will prepare an inspection report citing the condition of all Convention Facilities. At the same time, FMI shall submit to the City Representative an inventory of all City-owned equipment, stating quantities, and recommendations for major maintenance or replacement. All losses in inventory shall be documented as soon as such losses occur and the proper authorities promptly notified. FMI shall prepare and submit to the City Representative a quarterly report on maintenance and breakdowns of all major pieces of installed and portable equipment. FMI shall prepare, or have prepared, on an annual basis, a Capital Asset Management Plan which details immediate capital equipment needs and projected replacements and improvements for the succeeding 5-year period.

8. Purchasing materials, equipment and supplies to accomplish the above.
9. All other matters reasonably incidental to the above. In connection with the above responsibilities, it is anticipated that FMI may meet its responsibilities in part by directly providing services, in part by the use of independent contractors. In all events, however, FMI will have the final responsibility for the management, operation and maintenance of the Facilities.

B. Authority

FMI 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.

C. Expense of Management Maintenance and Operation

FMI, except as provided below in this subparagraph, will not be personally responsible for any expense for managing, operating and maintaining the Convention Facilities unless it acts in violation of this agreement.

FMI shall provide a Vice President/General Manager whose primary responsibility is the management of the Convention Facilities; provided that, if CAO in his/her sole discretion determines that it is necessary for FMI to have a full-time General Manager to manage the Convention Facilities, CAO shall notify FMI, and FMI will be obligated to return the Vice President/General Manager to full-time status in San Francisco within sixty days at no additional cost to City.

The parties understand that from time to time questions may arise as to whether an expense is a proper expense of managing, operating and maintaining the Convention Facilities. The following are standards of certain of these items but this enumeration is not meant to be exclusive and if questions arise as to whether an expense should be borne by FMI or City it will be decided in accordance with Article 25 of this Agreement. The following expenses are proper expenses of the management, maintenance and operation of the Convention Facilities:

1. Annual auditing expense;
2. Promotion, travel and entertainment for the general benefit of the operation and utilization of the Convention Facilities;
3. Legal expenses and related costs incurred in negotiating licenses with users, negotiating and drafting contracts (other than with respect to this Management Contract) and resolving disputes (other than with the City under this Agreement) including litigation, arbitration and settlement. In the case of litigation, arbitration and settlement, the City shall not be obligated to pay for such attorney's fees if the loss is covered by insurance covering FMI and the City or if the loss is adjudged to have been caused by FMI's gross negligence, unless the City directed the allegedly negligent acts or omissions.
4. Expenses incurred in preparing the annual Capital Asset Management Plan.

ARTICLE 5**AUTHORITY OF CAO**

The CAO shall have the following powers:

1. To set the operations policy for the Convention Facilities, so that at all times the best interests of the entire San Francisco community and to the extent possible, the entire convention and tourism industry in San Francisco will be represented.
2. Together with FMI, to review annually the performance of the previous year to determine if the goals and criteria jointly established by FMI and the CAO on an annual basis, are being met and to promulgate such policy as they shall deem necessary.
3. To monitor the activities and expenditures of FMI on behalf of the Convention Facilities to ensure that such activities and expenditures conform to the policies set forth pursuant to Paragraph 1 above and to the budget approved by the City.
4. To set the schedule of license rates, commodities, food service, and all revenue producing items.
5. To review and approve, disapprove or change the annual budget submitted to the City by FMI on behalf of the Convention Facilities.
6. Before approval of the budget, to conduct an annual inspection of the Convention Facilities, all installed and portable furniture and equipment and capitalized supplies and any other such item that is the property of the City to determine the condition of the same, to

assess damage and file insurance claims or seek reimbursement from appropriate parties.

ARTICLE 6

FINANCIAL

A. Financial Statements

FMI 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 FMI and the CAO. FMI 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. In addition, FMI shall, on or before September 30th of each year, submit annual financial statements audited by a public accounting firm of the CAO's choice. The audit report shall be accompanied by a management letter covering the effectiveness of the internal accounting controls and any related matters.

B. Books and Records

1. FMI shall maintain, at its offices in the Convention Facilities, a set of books devoted exclusively to the operations of the Convention Facilities. FMI shall use forms, accounting methods, internal controls, and procedures mutually agreeable to FMI 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.

2. FMI shall furnish additional financial or statistical reports, analyses, or data as reasonably requested by the CAO.
3. FMI 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 FMI shall at no cost to it have a license to use such software for all SMG operations.

C. Procedure for Handling Income

FMI 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 day of the following month.

2. Box Office Account - for the direct deposit of box office receipts controlled by FMI.
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.

FMI 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 FMI

1. Working Capital - At the beginning of each fiscal year, the City shall furnish FMI 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 - FMI shall use the working capital to pay expenses incurred in operating, managing and maintaining the Convention Facilities. FMI 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 FMI only up to the amount of the approved annual budget as provided in Article 10.

If the City does not advance funds as provided, FMI 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.

ARTICLE 7

EXPENDABLE SUPPLIES

FMI will be responsible for purchasing all expendable supplies for the operation of Moscone Convention Center, Brooks Hall, and Civic Auditorium from funds provided in the City approved budget. FMI will exercise prudent judgement in the purchase of said supplies, and may utilize City "price contracts." The City shall not be responsible for any delays or damages incurred by FMI in utilizing the City purchasing system.

Whenever feasible, FMI shall purchase such supplies from bona fide small businesses or minority businesses with residency in San Francisco.

FMI may purchase supplies from its subsidiaries and affiliates, but in no event shall the purchase price exceed prevailing competitive prices.

The City shall be credited with the full amount of any discounts or commissions obtained by FMI on any of such purchases.

ARTICLE 8

ENERGY CONSERVATION

FMI shall use its best efforts to conserve and not to waste energy and shall act in a manner consistent with industry standards in its operation of the Convention Facilities. To this end, FMI shall annually develop and present to the CAO for approval, with the submittal of the annual budget, an Energy Conservation Program. Notwithstanding the foregoing, FMI shall not in any way jeopardize the security and safe operation of the Convention Facilities in achieving the energy conservation goals.

ARTICLE 9

FOOD, BEVERAGE, MERCHANDISE AND SERVICES

A. Basic Responsibility

The City hereby grants to FMI the right to sell the following food, beverage, merchandise and services at the Convention Facilities and, within limits set forth below, FMI 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, cigarettes, toiletries, and other merchandise described as "novelties."
4. Services: Including but not limited to telecommunications, booth cleaning, business center and other services initiated by FMIC 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 FMI to provide all items in each category. FMI will use its best efforts to maintain efficient and high-quality food, beverage, merchandise and services operations.

B. Books and Records

FMI shall maintain books and records in accordance with generally accepted accounting principles. FMI shall submit to the City an operating report showing gross sales receipts for the previous month by fee category 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. "Services:" are services provided by FMI including but not limited to telecommunications, booth cleaning, business center and any other services initiated by FMI and approved by the City.
5. "Gross revenues" means all receipts by FMI or its subcontractors resulting from food, beverage, merchandise, and services carried on by FMI or its subcontractors, but does not include receipts for food, beverage, merchandise or services which are made at FMI's or its subcontractors's cost, or sales tax, tips or gratuities.

D. Calculation and Payment of Fees

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

1. Alcoholic Beverages, Food and Beverage Concessions -
Thirty percent (30%) of gross revenues.
2. Other Sales -
Twelve percent (12%) of gross revenues.
3. Services -
Twenty percent (20%) of the first two million dollars per annum in gross sales and twenty-five percent (25%) of all gross sales over two million dollars per annum.

E. Miscellaneous Provisions

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

FMI 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.

FMI 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 FMI elects to subcontract, the subcontractor will be subject to the prior written approval of the City which shall not be unreasonably withheld.

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

If FMI 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 FMI, provide such services, provided that outside caterer shall:

1. Enter into a written contract with FMI, satisfactory in form and substance to the City, to provide such services; and
2. Pay to the City a "user's fee" equal to twelve and one-half percent (12.5%) 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 FMI a fee equal to twenty percent (20%) of the caterer's gross receipts from alcoholic beverage sales and twelve and one-half percent (12.5%) from 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 FMI's gross revenues for purposes of Paragraph C above. Neither FMI 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 FMI to waive or reduce the amount of its fee charged to any outside caterer, the City will pay to FMI the amount of such waiver or reduction.

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

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

FMI 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.

ARTICLE 10

OPERATING BUDGET-RESPONSIBILITIES OF PARTIES

A. Procedure for Budget Submission

FMI will be responsible for preparing and submitting to the City Representative a proposed budget. The proposed budget will be submitted by December 31 of each year for the ensuing fiscal year (July 1 - June 30). The proposed budget shall include projected income for the fiscal year and an estimate of expenses broken down into the following six

categories for each of the City's convention facilities (Moscone Center and Brooks Hall/Civic Auditorium):

- (1) Personal Services
- (2) Materials and Supplies
- (3) Contractual Services
- (4) Management Fee
- (5) Insurance
- (6) Utilities

The proposed projected income shall be broken down into the following three categories for each of the City's convention facilities (Moscone Center and Brooks Hall/Civic Auditorium):

- (1) Concessions
- (2) Rental
- (3) Other

In addition, FMI will supply reasonable backup detail to the expense categories at the time it presents such budget. Upon receipt of such proposed budget, the City will promptly take all steps reasonably necessary to present the budget for certification in accordance with Article 2 of this contract. FMI shall promptly provide such other reasonable material and information as may be requested by the City in order to accomplish the certification promptly and efficiently.

B. Effect of Budget When Certified

FMI shall be given an interim budget pending adoption of the budget by the City before July 1 of each fiscal year to be used for July and August of that year. The City Representative will use his best efforts to give FMI an interim budget by June 1. FMI shall be given a final

budget no later than September 1 of each fiscal year. The CAO will keep FMI advised of any potential major changes or problems with respect to the budget that could affect FMI.

The City intends to adequately fund the operation of the Convention Facilities as defined in Article 10 in accordance with the level of activities generated and FMI is not expected to fund the operations from the Management Fee. FMI's obligation to manage, operate and maintain the Facilities and perform its other obligations hereunder shall be dependent upon the City's obligation to approve sufficient operating funds to permit FMI to operate, manage and maintain the Convention Facilities in accordance with the terms of this agreement. FMI shall, except as provided in Article 10, paragraph C, operate, maintain and manage the Convention Facilities and perform its other obligations under this agreement within the total expenses set forth in the Budget as approved by the City, on a bottom-line expense basis and not on a net operating basis. Subject to the limitations of Article 14, and except as provided in Paragraph C, if FMI does expend more monies in any fiscal year than have been budgeted for that fiscal year, it shall be responsible for the difference and shall reimburse the City for that difference within 30 days after finalization of the financial statements for the contract year or the City may withhold that difference from the fees due FMI.

Nothing contained in this requirement, however, shall impose any liability on FMI so long as it meets its obligation to operate within the overall bottom-line expense budget.

The City represents and warrants that all funds appropriated will be available for expenditure in connection with the management, operation and maintenance of any of the Convention Facilities.

C. Budget Supplements

The parties understand it may be necessary to supplement the approved budget, as mutually agreed upon. Therefore, FMI shall have the right to seek budget supplements when it becomes appropriate to do so. The City Representative will use his best efforts to obtain for FMI such budget supplements as the City Representative and FMI agree are reasonable. FMI will advise the City as soon as reasonably practical of the need for such additional budget increases but FMI understands that budget increases shall be effective only upon approval by the City.

ARTICLE 11

CAPITAL IMPROVEMENTS

The City agrees that it will make all necessary capital expenditures for repairs and replacements subject to the City's ability to do so for the Convention Facilities. FMI shall provide to the City Representative on December 31 of each year, a prioritized schedule of items that can be reasonably anticipated as necessary capital expenditures together with

written justifications for each item. The purpose of such a schedule is to allow the City to include such projects in its budget for the ensuing year.

Capital expenditures" means all expenditures for building additions, alterations or improvements, and for purchases of additional or replacement furniture, machinery or equipment, the depreciable life of which, according to accepted accounting principles, is in excess of one (1) year, and expenditures for maintenance or repairs that extend the useful life of the assets being maintained or repaired for a period in excess of one (1) year.

ARTICLE 12

INSURANCE AND BONDS

FMI shall maintain in force as reimbursable expense under the annual budget provision of Article 11, throughout the term of the Agreement, the following insurance and bond coverages:

- A. Worker's Compensation Insurance in statutory amounts, including Employers Liability with a Limit not less than \$1 million each accident.
- B. Fidelity bond providing faithful performance coverage for FMI officers and employees, in an amount of \$100,000 each loss, naming the City as Loss Payee as its interest may appear.

Said insurance policies and bonds shall provide thirty (30) days prior written notice to City of cancellation or reduction in coverage. FMI shall deliver to City prior to commencing any activities under this Agreement, certificates of each required policy and bond acceptable to

City as to form and insurer, with a certified copy of each policy and bond promptly upon written City request.

The City at its expense, shall maintain in force throughout the term of the Agreement, the following insurance coverage on behalf of FMI:

- C. Comprehensive General Liability Insurance, with limits of \$35 million each occurrence for Bodily Injury and Property Damage, including coverages for personal injury (excl. C deleted), independent contractors, incidental malpractice, contractual, liquor liability, employees as additional insureds, elevators and escalators, products and completed operations.
- D. Comprehensive Automobile Liability Insurance, with limits of \$25 million each occurrence for Bodily Injury and Property Damage, including coverages for owned, hired and non-owned automobiles, and employers' non-ownership liability.
- E. Crime insurance against loss of money and securities from robbery or burglary on and off premises, in an amount of \$100,000 each loss, including FMI as named insured and naming City as Loss Payee as its interest may appear.

General Liability and Automobile Liability policies shall include as named insureds FMI, the City, the San Francisco Redevelopment Agency, the Trustees of the Moscone Center Project, and all of the members, officers, agents and employees of each of them.

The City, at its expense, shall maintain property insurance for amounts and coverages it deems proper. With respect to loss or damage covered by such property insurance, City hereby waives its right of subrogation against FMI, but only to the extent such loss or damage is covered by said property insurance.

Said insurance policies shall provide thirty (30) days prior written notice to FMI of cancellation or reduction in coverage.

City shall deliver to FMI prior to commencing any activities under this Agreement by FMI, certificates of each required policy with a certified copy of each policy promptly upon written FMI request.

City's failure to maintain insurance as provided in this Article shall not subject the City to liability to FMI, nor shall the City's failure to maintain insurance as provided in this Article affect any other right or duty of the parties under this contract, if such insurance becomes unavailable at a commercially reasonable rate, as determined by the Chief Administrative Officer.

All insurance policies required to be maintained hereunder by FMI shall be procured under the supervision, and with the approval of the City's Risk Manager.

ARTICLE 13**NON-DISCRIMINATION IN EMPLOYMENT/DIVESTMENT**

A. FMI will comply, as a condition of this Agreement, with the provisions of Chapters 12B and 12D of the Administrative Code of the City and County of San Francisco, as amended, and any provisions of state or federal law regarding non-discrimination in employment and affirmative hiring policies which are applicable to FMI.

B. Compliance with South African Divestment Ordinance. The following is a requirement of this Agreement as a result of the South African Divestment Ordinance No. 36-86.

1. Incorporation by Reference

Chapter 10, Article XIX of the San Francisco Administrative Code, as amended, is incorporated by reference and made a part hereof.
(Appendix A)

2. Liquidated Damages

In the event FMI fails to comply in good faith with any of the provisions of Article XIX of the San Francisco Administrative Code, applicable to it, FMI shall be liable for liquidated damages for each violation in an amount equal to FMI's net profit on this Agreement, or ten percent (10%) of the total amount of the contract, or One Thousand Dollars (\$1,000), whichever is greatest. FMI acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and

may be offset against any monies due to FMI from any agreement with the City and County of San Francisco.

Affidavit.

An Affidavit of Compliance with South African Divestment Ordinance has been executed by FMI and is attached hereto.

ARTICLE 14

LIMITATION OF LIABILITY

The aggregate amount of liability which FMI shall incur to the City, under Article 15, under or for breach of other provisions to this agreement, and to third parties, shall not exceed Five Hundred Thousand Dollars (\$500,000) during the term of this Agreement and extensions thereto. This limitation on liability is acceptable to the City as long as FMI maintains in effect the insurance and bonding coverage required in Article 12.

ARTICLE 15

HOLD HARMLESS

FMI shall keep, defend, indemnify and hold harmless the City, the San Francisco Redevelopment Agency, the Trustees of the Moscone Center Project, and all of the members, officers, agents, and employees of each of them from and against any and all costs, liability, damage or expense (including costs of suit and reasonable expenses of legal services) claimed by anyone by reason of injury or damage to person or property directly arising out of FMI's performance of services under this Agreement

or as a proximate result of the acts or omissions of FMI or its agents, servants, or employees, except for the sole negligence or willful misconduct of the City.

FMI shall also assume the defense of, and indemnify and hold harmless the City, the San Francisco Redevelopment Agency, the Trustees of the Moscone Center Project, and all of the members, officers, agents, and employees of each of them against and from, any and all liens and charges of every nature and kind that may at any time be established against said demised facilities and improvements, or any part thereof, as a consequence of any act or omission of FMI or as a consequence of the existence of FMI's interest under this Agreement. Each party hereto shall give to the other prompt and timely written notice of any claim made or suit instituted within its knowledge that in any way, directly or indirectly, contingently or otherwise, affects or might affect the other party; and both the City and FMI shall have the right to participate in the defense of the same to the extent of their own interest.

ARTICLE 16

BOOKING POLICY

FMI agrees to use its best efforts in operating the Convention Facilities so as to minimize costs and maximize revenues. The parties recognize and acknowledge that the interest of the City requires a booking policy that takes into account not only those events which generate substantial direct revenues for the Convention Facilities, but as well those which produce less direct revenue, but generate significant transient

occupancy tax and peripheral economic benefits in the form of increased tourist revenues and stimulate the general economy of San Francisco.

The Bureau will have primary responsibility for marketing the Convention Facilities for conventions and trade shows, and to carry out this responsibility, will have control over all bookings more than eighteen (18) months in advance; however, all such bookings shall be coordinated with FMI before commitment. FMI will assist the Bureau on an as-needed basis by providing resource people to work with the Bureau and, when requested, accompany them in their solicitation efforts. The Bureau will also book conventions and trade shows into the Convention Facilities with less than eighteen (18) months lead time if the dates have not been confirmed to other users and with the approval of FMI, which approval shall not be unreasonably withheld. Additionally, FMI may also book non-convention and trade show events with more than eighteen (18) months lead time if the dates have not been confirmed to other users and with the approval of the Bureau. Dates booked in this manner shall be considered tentative until formally approved by the Bureau.

FMI will have primary responsibility for marketing the Convention Facilities for all 'near-term' dates (18 months or less in advance) not utilized by the bookings generated by the Bureau in order to utilize fully the facilities and to generate additional income, and will have experienced personnel who will diligently promote the use of these dates.

These additional markets for 'near-term' dates will include locally and regionally oriented events such as consumer shows, spectator sports

and entertainment, area meetings and social functions, and other special activities that can be properly carried on in the Convention Facilities.

With the prior approval of the City Representative, FMI shall have the right to promote events within the Convention Facilities and shall be entitled to the profits therefrom. FMI shall pay the regular approved license rates and utilize the facilities under the terms and conditions provided in the standard License Agreement.

FMI shall aggressively promote and market Brooks Hall and Civic Auditorium for local and regional events.

ARTICLE 17

CONFLICT OF INTEREST

FMI hereby states that it is familiar with the provision of Section 8.105 of the San Francisco Charter and Section 87100, et seq. of the California Government Code and certifies that it knows of no facts that constitute a violation of such sections.

FMI further certifies that it will make a complete disclosure to the CAO of all facts bearing upon any possible conflict, direct or indirect, with this agreement or in the performance hereof that it believes any member of the Convention Facilities Management Department or any other officer or employee of the City now has or will have. Such disclosure shall be made by FMI contemporaneously with the execution of this Agreement and at any time thereafter that such facts become known to FMI.

The City recognizes that FMI, or its affiliates, may enjoy indirect economic benefits from the operation of the Convention Facilities. However, FMI agrees that it will perform its obligations under this agreement in a manner consistent with the best interests of the City. It is understood, for example, that FMI may enter into certain activities or contractual arrangements which, although related to the Convention Facilities, are not part of its responsibilities set forth in this agreement and therefore are not covered by the Management Fee, and for which FMI may receive remuneration from others. The parties understand that it is not feasible to list all of such potential areas of activity in this document. However, these areas could include, but are not limited to, advertising agency services, booth cleaning services, business center services, parking lot operations, food service operations, telecommunications services and merchandise services. Before entering into any such activity, FMI will obtain the approval of the City in writing on such terms and conditions as the parties may agree to, including remuneration.

ARTICLE 18

COMPLIANCE WITH LAWS, REDEVELOPMENT

PLAN AND PROJECT LEASE

FMI will comply with all local, state, and federal ordinances, statutes, rules and regulations, and the redevelopment plan for the use of the Yerba Buena Center Redevelopment Project approved by the Board of Supervisors of the City by its Ordinance No. 98-66, adopted April 25, 1966,

and amended; provided that the City will cooperate to the extent possible to enable compliance by FMI.

FMI shall be responsible for obtaining any and all local, state or national licenses and permits to do business in California and the City.

This Agreement is subject to that certain Project Lease by and between the Redevelopment Agency of the City and County of San Francisco and the City and County of San Francisco.

ARTICLE 19

APPLICABILITY OF CHARTER PROVISIONS

This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization by the City's Controller, and any amount of the City's obligation hereunder shall not at any time exceed that amount certified for the purpose and period stated in such advance written authorization. This Article shall control against any and all of the provisions of this Agreement.

ARTICLE 20

BUSINESS OF FMI

FMI agrees that it will not enter into any similar management agreement for the operation of a public assembly facility within a one hundred (100) mile radius of San Francisco unless the agreement is (a) with the City or (b) agreed to by the City.

FMI agrees that it shall not materially alter the nature of the services that its company offers without prior written approval of the CAO.

FMI agrees that in all instances when San Francisco is in convention solicitation competition with other cities in which FMI has convention center operations, FMI will not become corporately involved in attempts to influence the decision-making process regarding selection of a convention site. Conversely, the FMI facility executive in San Francisco will use best efforts in supporting the Bureau in all attempts to obtain exhibition and convention bookings for the Convention Facilities.

ARTICLE 21

RELATIONSHIP OF PARTIES

The City and FMI agree that the only relationship created hereby is one for supplying management services and that FMI is an independent contractor and not an agent, employee or partner of the City.

FMI shall have complete control over its employees in the method of performing their work under this agreement. FMI retains the right to exercise full control and supervision of the services and full control of the employment, direction, compensation and discharge of all its employees. Subject to provisions for reimbursement, FMI agrees to be solely responsible for all matters relating to payment for its employees, including compliance with social security and withholding requirements and all the regulations governing such matters.

ARTICLE 22**NON-INTERFERENCE**

If and as long as FMI keeps and performs each and every covenant, agreement, term, provision and condition on the part and on behalf of FMI to be kept and performed, City will not interfere with FMI's rights and performance under this Agreement.

Notwithstanding the above, FMI understands that it is expected that the surface area located on top of the Moscone Center will be developed.

ARTICLE 23**RIGHT OF ENTRY**

The City and the Redevelopment Agency, through a reasonable number of its agents, shall at all reasonable times, have the right to enter into and upon any and all parts of the Moscone Center for the purpose of examining the same for any reason relating to the obligations of the parties to this agreement. The City shall enjoy the same right as to all of the Convention Facilities.

ARTICLE 24**WAIVER OF RIGHTS**

In the event of any breach of any representation, covenant, warranty, or provision herein by either party, failure by the non-breaching party to

assert or exercise any right, remedy or privilege hereunder, within one year after the date that actual or constructive notice or knowledge of the breach is received or obtained, shall constitute a waiver of such right, remedy or privilege. No other waiver shall be effective, unless in writing, and then it shall be effective only in the specific instance for which given. In no event shall any waiver constitute a waiver of future right, remedies, or privileges to which a party may be entitled hereunder by virtue of any breach.

ARTICLE 25

LIAISON AND RESOLUTION OF DISPUTES

The Vice-President, General Manager, shall be the initial point of contact for FMI, its agents and employees, in connection with issues arising under this Agreement. The City Representative will serve this function with respect to the City.

Any issues requiring resolution that arise in connection with this Agreement shall first be addressed by the Vice-President, General Manager and City Representative, who shall attempt to resolve them.

If satisfactory resolution is not possible as hereinabove described, the issue shall be submitted by the City Representative and Vice-President, General Manager, in writing, to a joint conference committee composed of two (2) representatives of the City and two (2) representatives of FMI. The President of SMG and the CAO shall be ex-officio members of the committee, with vote. Subject to applicable principles of law regarding the City's delegation of authority, the committee shall have authority to settle and

resolve all issues with respect to the performance or interpretation of this agreement. The joint conference committee shall also have the right to recommend policy to the CAO with respect to the Convention Facilities with respect to such matters as:

1. Additions, deletions or changes to programs undertaken at the Convention Facilities pursuant to this Agreement; and
2. Additions, deletions and changes to the terms and conditions of this Agreement; and
3. Any other matters affecting this Agreement.

ARTICLE 26

TERMINATION

- A. If either party defaults in any term, condition, agreement, covenant or provision set forth in this Agreement applicable to such party and such default continues unremedied for sixty days after written notice of default to such defaulting party from the other party, the non-defaulting party may, at its option, terminate this Agreement; provided, however, that if the default is of a nature that cannot be reasonably expected to be cured within sixty days, then this Agreement shall not be terminated as long as the party allegedly in default undertakes with such sixty day period reasonable steps to cure the alleged default, diligently attempts to cure and remedy the default and in fact cures the default within 120 days after such notice is given.
- B. This agreement may be terminated in writing by the City in whole or in part for its convenience; provided FMI is given not less than one

hundred eighty (180) days written notice (delivered by certified mail, return receipt requested) of intent to terminate. In the event of notice of termination, FMI shall take all necessary measures to mitigate termination expenses. If the City terminates the agreement in part and the fee it proposes to pay FMI is not acceptable to FMI, then FMI may terminate the agreement with such termination to be concurrent with the City's termination set forth above.

- C. This Agreement may be immediately terminated in writing by the City upon termination by the Redevelopment Agency of the Project Lease under Section 11 of such lease but the City shall remain financially responsible for all obligations incurred by FMI before receipt of such notice or which are reasonably necessary to terminate operations. FMI may terminate this Agreement if such Project Lease is terminated unless the Redevelopment Agency agrees in writing to assume the City's obligations under this Agreement.
- D. If termination pursuant to Paragraph A above is effected by the City, FMI will be paid for work actually performed to the date of termination plus any fee earned to date of termination, less the cost to the City for making good any deficiencies, correcting all work improperly performed, and any additional cost to the City for removing or replacing FMI, exclusive of fees paid to firm(s) hired to replace FMI.
- E. If termination pursuant to paragraph B above is effected by the City, FMI will be paid for work actually performed to the date of termination plus:
 - 1. Any fee earned to date of termination;
 - 2. Any costs for lease cancellations;

3. Any obligations of FMI resulting from termination;
 4. Any reasonable demobilization charges.
- F. Upon the effective date of a termination notice pursuant to Paragraph A or B above, FMI shall (unless the notice directs otherwise) (i) promptly discontinue all services affected and (ii) deliver or otherwise make available to the City all data, documents, procedures, reports, estimates, summaries, and such other information and materials ('documents and materials') as may have been accumulated by FMI in performing this agreement, whether completed or in process. FMI may, however, keep copies of such documents and materials for its record.
- G. Upon termination pursuant to Paragraph A or B above, the City may take over the work and see that the same is completed by agreement with another party or otherwise, all without liability to FMI.
- H. If, after termination for failure of FMI to fulfill contractual obligations, it is determined by a court of competent jurisdiction that FMI had not so failed, the termination shall be deemed to have been effected for the convenience of the City. In such event, adjustment for the compensation provided for in this agreement shall be made as provided in Paragraph E above.

Termination under the provisions of Paragraph A above shall be deemed effective as a result of, but not limited to, the following actions:

1. The occurrence of any act or omission on the part of FMI that deprives it of the rights, powers, licenses, permits and

authorizations necessary for the lawful and proper conduct and operation of the services and activities authorized herein;

2. The filing by or against FMI of any petition in bankruptcy - either voluntary or involuntary - or the making by FMI of any assignment for the benefit of creditors, either of which actions shall automatically terminate this agreement and bar the passing thereunder of any benefits to creditors, assignees, or transferees of FMI;
3. The abandonment, discontinuance, or assignment by FMI, without written consent of the CAO, of any or all of the operations and services permitted or required herein;
4. The failure of FMI to account for, and pay to the City, as provided in Article 6 hereof, any and all amounts of gross revenue due and owing to the City from FMI;
5. The cessation or deterioration of services for a period that, in the reasonable opinion of the CAO, materially and adversely affects the operation of the public service required to be performed by FMI under this Agreement.

The exercise by the City of the remedies and rights provided in this Agreement shall in no way affect any other right or remedy available to the City.

ARTICLE 27**FORCE MAJEURE**

Except as otherwise provided herein, neither party shall be obligated to perform hereunder, and neither shall be deemed to be in default of its performance, if prevented by (a) fire, earthquake, flood, act of God, riot, civil commotion, or other matter or condition of like nature, including the unavailability of sufficient fuel or energy to operate the facilities, or (b) any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic controls, riot, hostilities, war, or governmental law and regulations. Withholding of service (e.g., a strike), whether lawful or unlawful, by employees of FMI shall not excuse performance by FMI under this Agreement.

Notwithstanding the above, in the event of an emergency threatening damage to persons or property as determined by FMI, FMI shall act in an expeditious manner to protect said persons or property.

ARTICLE 28**NON-ASSIGNABILITY**

The City has entered into this Agreement in recognition of and in reliance on the expertise, reliability and competence of FMI in matters pertinent hereto. The performance of the obligations imposed upon FMI under this Agreement shall not be assignable by it to any other party without the

written consent of the City as expressed in writing by the CAO. Any purported assignment in contravention of this Article shall be void.

ARTICLE 29

PERSONNEL

The FMI Vice-President/General Manager shall be responsible for the total operation by FMI of the Convention Facilities, and shall devote his/her primary efforts to the work pertaining to this Agreement, subject to the rights of the CAO set forth in Article 4 of this Agreement to require FMI to provide a full-time Vice-President/General Manager relative to the operation of the Convention Facilities.

The position of the Vice-President, General Manager is considered key to the successful operation of the Convention Facilities. FMI shall seek and receive approval by the CAO of the individual to serve in this position and the CAO reserves the right to approve all replacements for this position. The CAO reserves the right to direct removal, for cause, of any FMI personnel, but in such case City will hold FMI harmless from all liability, claims and expenses arising from such termination, provided the hiring of such personnel was in accordance with City guidelines set forth elsewhere in this Agreement.

All personnel employed by the Convention Facilities shall be employees of FMI and shall not be deemed employees of the City. FMI will make every reasonable effort to recruit employees who reside in San Francisco and will recruit all employees in accordance with the Affirmative Action Guidelines of the Human Rights Commission of the City.

FMI shall be responsible for the hiring and direct remuneration of all permanent personnel necessary for the operation of the Convention Facilities, as well as other temporary personnel such as gatemen, cashiers, ticket takers, ticket sellers, ushers, restroom attendants, scoreboard operators, electricians, first-aid attendants and any other persons required to perform the services undertaken herein.

ARTICLE 30

LICENSE AGREEMENT

FMI shall have the right to sign all license agreements pertaining to the Convention Facilities for or on behalf of the City, provided such license agreements are in accordance with the CAO-approved Operations Policy and License Rates. License Agreements not in accordance with CAO-approved Operations Policy and License Rates shall require the approval of the CAO or the City Representative. Failure of the CAO or the City Representative to respond to such requests for approval in a timely manner as required by the circumstances shall obviate the necessity for such approval. Nothing contained herein shall prevent FMI from agreeing to modifications to standard License Agreements so long as such modifications are consistent with the CAO-approved Operations Policy and License Rates.

All such license agreements shall reflect the non-discrimination provisions of the City and County of San Francisco, including Chapters 12.B.1, 12.B.2 and 12.B.4, as amended, Chapter 12.C of the San Francisco Administrative Code, and Section 24 of the Project Lease.

FMI shall have the right, with the concurrence of the City Representative, to settle bona fide disputes with any licensee, including reduction in any standard license fees. The City Representative may direct FMI in writing to reduce or waive any license fees or revenues otherwise due to the City under the CAO-approved Operations Policy and Rental Rates and FMI will comply with such request and will not be financially responsible in any manner as a result of such compliance.

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: Rudolf Nothenberg
City and County of San Francisco
Chief Administrative Office
Room 289, City Hall
San Francisco, California 94102

Jack Moerschbaecher
City and County of San Francisco
Convention Facilities Department
Room 271, City Hall
San Francisco, California 94102

With copy to:

Robert Kenealey, Esq.
Office of City Attorney
1390 Market Street
Fox Plaza, 6th Floor
San Francisco, California 94102

To FMI: Tony Tavares
President
Spectacor Management Group
701 Market Street, 4th Floor
Philadelphia, PA 19106

With copies to:

Richard H. Shaff
FMI
747 Howard Street
San Francisco, California 94103

David H. Melnick, Esq.
Leland, Parachini, Steinberg,
Flinn, Matzger & Melnick
333 Market Street, Suite 2700
San Francisco, California 94105

ARTICLE 32**SEVERABILITY**

In the event any term, covenant, condition, or provision herein contained is held by any court of competent jurisdiction to be invalid, such invalidity shall in no way affect any other term, covenant, condition, or provision herein contained, provided, however, that the invalidity of such term, covenant, condition, or provision does not in the opinion of the City and FMI materially prejudice either the City or FMI as they shall mutually agree in its rights and obligations contained in the valid terms, covenants, conditions, or provisions of this Agreement. If the validity of any such term, covenant, condition, or provision should be determined materially to prejudice FMI in its rights or obligations contained in the valid terms, covenants, conditions, or provisions herein, or if the consequence or effect of the invalidity of any term, covenant, condition, or provision herein contained will be or may be to reduce any of the areas, spaces, facilities, benefits, or privileges that FMI otherwise would or might enjoy or be entitled to, FMI may, consequently, at its option, elect either to terminate this Agreement in its entirety or to continue it in full force and effect with only said invalid terms, covenants, conditions, or provisions eliminated herefrom.

ARTICLE 33**ENTIRE AGREEMENT; GOVERNING LAW**

This Agreement: (a) comprises the entire understanding between the parties; (b) supersedes all prior agreements; and (c) shall be governed by the laws of the State of California.

ARTICLE 34**AMENDMENTS TO AGREEMENT**

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

ARTICLE 35**APPROVALS AND CONSENT**

Whenever a party to this agreement is given the right to approve of, concur in or consent to the actions or omissions of the other party, such approval, concurrence or consent shall not be unreasonably withheld.

IN WITNESS WHEREOF, the parties have executed this Second Amendment to Management Agreement this 6th day of November, 1990.

DESCRIPTION APPROVED:

BY: *Jack Marshall*
Convention Facilities Director
Convention Facilities Department

APPROVED AS TO FORM:

LOUISE H. RENNE, City Attorney

BY: /S/ *Robert A. Kenealey*
Deputy City Attorney

CITY AND COUNTY OF SAN FRANCISCO FACILITY MANAGEMENT INC. OF CALIFORNIA

RUDOLF NOTHENBERG, CAO

BY: /S/ *RM*
Chief Administrative Officer

BY: /S/ *R. B. Sharp*