

1 [Management Agreement Amendment - Moscone Center Joint Venture - Moscone Convention
2 Center]

3 **Resolution approving and authorizing the City Administrator to enter into a Seventh**
4 **Amendment to the Management Agreement with Moscone Center Joint Venture**
5 **("Contractor") for the Moscone Convention Center to extend the term of the Agreement**
6 **an additional ten years commencing July 1, 2017, and ending June 30, 2027; require**
7 **Contractor to make certain capital contributions to the City in the amount of**
8 **\$15,000,000; revise certain contractual clauses regarding the calculation and payment**
9 **of fees for food, beverage, and internet services; and revise certain contractual clauses**
10 **regarding financial records and reporting.**

11
12 WHEREAS, Pursuant to Board of Supervisor's Resolution No. 895-90, on
13 November 6, 1990, the City and County of San Francisco ("City") and Facility Management
14 Incorporated of California ("FMI") entered into a Management Agreement (the "Agreement")
15 for the management of George R. Moscone Convention Center, Brooks Hall, and Civic
16 Auditorium; and

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

20 WHEREAS, Under the Agreement, the City has an option to renew the Agreement for a
21 term of five years; and

22 WHEREAS, By the First Amendment to the Agreement, dated December 20, 1993, the
23 City exercised its option to renew the term for the Agreement for an additional five years
24 commencing July 1, 1994, and ending June 30, 1999; and in order to increase the
25 participation of minority owned businesses in the management of the Moscone Convention

1 Center and Civic Auditorium, the City agreed to SMG's assignment of an interest in the
2 Agreement to Thigpen Limited, Incorporated, a certified local women-owned business, with
3 further assignment by Thigpen and SMG of their interests in the Agreement to Moscone
4 Center Joint Venture ("MCJV"); and

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

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

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

15 WHEREAS, By the Fifth Amendment to the Agreement dated January 14, 2009, the
16 City exercised its option to renew the term of the Agreement for an additional eight year term
17 commencing July 1, 2009, and ending June 30, 2017; and

18 WHEREAS, By the Sixth Amendment to the Agreement dated July 1, 2009, the City
19 extended the Contractor's management of Bill Graham Civic Auditorium for a period not to
20 exceed six months or December 31, 2009, so as to allow time to transition the management of
21 the Civic Auditorium ; and

22 WHEREAS, The City Administrator and MCJV have agreed to amend the Agreement
23 to (i) extend the term of the Agreement as to the Moscone Convention Center for an additional
24 ten years commencing July 1, 2017, and ending June 30, 2027; (ii) require Contractor to
25 make certain capital contributions to the City in the amount of \$15,000,000; (iii) revise certain

1 contractual clauses regarding the calculation and payment of fees for food, beverage and
2 internet services; and (iv) revise certain contractual clauses regarding financial records and
3 reporting; and

4 WHEREAS, A copy of the form of the Seventh Amendment is on file with the Clerk of
5 the Board of Supervisors in File No. 160969, which is hereby declared to be part of this
6 resolution as if set forth fully herein, now, therefore, be it

7 RESOLVED, That the Board of Supervisors of the City and County of San Francisco
8 hereby approves and authorizes the City Administrator to enter into the Seventh Amendment
9 to the Agreement; and, be it

10 FURTHER RESOLVED, That within thirty (30) days of the Seventh Amendment being
11 fully executed by all parties, the City Administrator shall provide the final document to the
12 Clerk of the Board for inclusion into the official file.

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<p>Item 5 File 16-0969</p>	<p>Department: General Services Agency - City Administrator's Office (CAO)</p>
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EXECUTIVE SUMMARY

Legislative Objectives

- Resolution approving and authorizing the City Administrator to enter into a Seventh Amendment to the Management Agreement with Moscone Center Joint Venture (MCJV) for the Moscone Convention Center to (a) extend the term for ten years, from July 1, 2017 through June 30, 2027; (b) require MCJV to make a capital contribution of \$15,000,000; (c) revise contractual clauses regarding calculating and paying of fees for food, beverage and internet services; and (d) revise certain financial records and reporting clauses.

Key Points

- In November 1990, following a competitive process, the Board of Supervisors approved an agreement with Facility Management Incorporated for the management, operation, and maintenance of Moscone Convention Center, Civic Auditorium and Brooks Hall for a five-year term through June 30, 1995, which includes pass through of facility rental revenues and percentage of gross revenues from food, beverage and ancillary services to the City.
- To date, this agreement has been amended six times, such that this agreement is currently between the City and the Moscone Center Joint Venture (MCJV).

Fiscal Impact

- Over the past eight fiscal years, the City received total revenues of \$115,865,297 or an average of \$14,483,162 per year. In FY2015-16, the City received \$17,897,959 in revenues.
- Over the next ten-years, the City's revenues would increase to total \$216,505,054, or an average of approximately \$21,650,505 per year.
- The City would also receive a one-time \$15,000,000 capital contribution from MCJV for the Moscone Center Expansion Project.
- However, the City's annual cost to operate Moscone is greater than the total operating revenues generated. Over the past eight fiscal years, the City expended \$33,055,649 or an average of \$4,131,956 more each year than the operating revenues received. Annual operating shortfalls are funded with annual General Fund transfers.

Policy Consideration

- This agreement has not been competitively bid since 1990, or 26 years. However, of the top 25 convention centers in the US, Los Angeles has the only convention center managed by a different private operator than manages Moscone Convention Center.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

City Charter Section 9.118(a) states that contracts entered into by a department, board, or commission that (i) have anticipated revenues of \$1 million or more, or (ii) have anticipated revenues of \$1 million or more and require modifications, are subject to Board of Supervisors approval.

BACKGROUND***Original Agreement***

In November 1990, following a competitive process, the Board of Supervisors retroactively approved the award of a Management Agreement to Facility Management Incorporated for the management, operation, and maintenance of Moscone Convention Center, Civic Auditorium and Brooks Hall for a five-year term from July 1, 1990 through June 30, 1995 (Resolution No. 895-90).

The Management Agreement required Facility Management Incorporated to pay the City (a) 30 percent of gross revenues from the sale of food and beverages, including alcohol, and (b) 20 percent of the first \$2,000,000 of gross revenue from the sale of ancillary services such as internet, telephone, and audio visual services, and (c) 25 percent of gross revenues from the sale of services over \$2,000,000 per year. The Agreement also required Facility Management Incorporated to pass through all facility rental revenues to the City and to receive reimbursement from the City to manage, operate and maintain these City facilities.

In March 1991, the City consented to the assignment of the Management Agreement from Facility Management Incorporated to Spectator Management Group.

Previous Amendments to the Agreement

In February 1994, the Board of Supervisors approved the First Amendment to the Management Agreement to (a) extend the term of the agreement through June 30, 1999; and (b) authorize Spectator Management Group to enter into the Moscone Center Joint Venture (MCJV) with a certified local woman-owned business, Thigpen Limited, Incorporated (Resolution No. 103-94).

In January 1999, the City entered into a Second Amendment to the Management Agreement, which did not require Board of Supervisors approval, extending the term of the agreement by five years from July 1, 1999 through June 30, 2004.

In June 2003, the Board of Supervisors approved the Third Amendment to the Management Agreement, (a) extending the term of the agreement by five years from July 1, 2004 through June 30, 2009 and (b) reducing the City share of food and beverage revenue from 30 percent to 20 percent (Resolution No. 398-09).

In October 2007, the City entered into a Fourth Amendment to the Management Agreement, authorizing MCJV to perform various public works improvements to the Moscone Convention Center.

In December 2008, the Board of Supervisors approved the Fifth Amendment to the Management Agreement, which (a) extended the term of the Management Agreement by eight years from July 1, 2009 through June 30, 2017; (b) required MCJV to make a one-time payment to the City in the amount of \$8,500,000 by July 1, 2009 in consideration for the City extending the agreement by an additional eight years; and (c) required MCJV to make annual increased payments to the City equal to the greater of either (i) 5 percent (in addition to the existing 20 percent for a total of 25 percent) of gross revenues generated by the sale of food, beverage, and alcohol, or (ii) \$2,000,000 (Resolution No. 529-08).

In July 2009, the City entered into a Sixth Amendment to the Management Agreement to extend MCJV's management of Bill Graham Civic Auditorium¹ for a period not-to-exceed six months or December 31, 2009, and subsequently remove the management of the Civic Auditorium from the scope of services. In June 2010, the Board of Supervisors approved the lease of Bill Graham Civic Auditorium to BGCA Management, LLC (Resolution No. 289-10).

Current Food, Beverage and Ancillary Services Revenues from Moscone

Over the past eight fiscal years, the City received a total of \$115,865,297 in revenues, or an average of \$14,483,162 per year, based on the gross revenues generated from food, beverage and ancillary services at Moscone Convention Center, as shown in Table 1 below. In addition, MCJV paid a one-time \$8.5 million to the City by July 1, 2009, for total revenues of \$124,365,297 to the City over the past eight years.

Table 1: Moscone Convention Center Gross Revenues and Payments to City from FY 2008-09 Through FY 2015-16

	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	Total 8 Years
Gross Revenue									
Food and Beverage	\$30,289,655	\$30,189,085	\$30,579,965	\$32,513,865	\$38,230,310	\$44,362,804	\$45,584,856	\$42,208,812	
Ancillary Services	16,161,932	14,850,716	17,590,644	17,749,964	20,940,093	25,425,421	30,560,620	29,783,024	
Total Gross Revenue	46,451,587	45,039,801	48,170,609	50,263,829	59,170,403	69,788,225	76,145,476	71,991,836	\$467,021,766
City Revenue									
Food and Beverage	6,057,931	8,037,817	8,115,993	8,502,773	9,646,062	11,090,701	11,396,214	10,552,203	
Ancillary Services	3,940,483	3,612,679	4,297,661	4,337,491	5,135,023	6,256,355	7,540,155	7,345,756	
Total City Revenue	9,998,414	11,650,496	12,413,654	12,840,264	14,781,085	17,347,056	18,936,369	17,897,959	\$115,865,297

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve and authorize the City Administrator to enter into a Seventh Amendment to the Management Agreement with MCJV for the continued management of the Moscone Convention Center and Brooks Hall, which would:

1. Extend the term of the Management Agreement by ten years from July 1, 2017 through June 30, 2027.

¹ Civic Auditorium was renamed Bill Graham Civic Auditorium in November 1991.

2. Require MCJV to pay the City a capital contribution of \$15,000,000 by December 31, 2018 in consideration for the City extending the agreement by an additional ten years.
3. Require MCJV to pay the City the following fees for food, beverage and alcohol sales:
 - a. For the period of September 1, 2016 through December 31, 2018, 20 percent of gross revenues plus (a) an additional 5 percent of gross revenues for a total of 25 percent, or (b) a guaranteed \$2,000,000 per year, whichever is greater.
 - b. For the period of January 1, 2019 through December 31, 2020, 30 percent of gross revenues.
 - c. For the period of January 1, 2021 through June 30, 2027, 35 percent of gross revenues.
4. Require MCJV to pay the City fees from non-internet services of 20 percent of the first \$2,000,000 in annual gross revenues and 25 percent of gross revenues over \$2,000,000 per year.
5. Require MCJV to pay the City the following fees from the provision of internet access services:
 - a. For the period of September 1, 2016 through December 31, 2018, 25 percent of gross revenues.
 - b. For the period of January 1, 2019 through December 31, 2020, 30 percent of gross revenues.
 - c. For the period of January 1, 2021 through June 30, 2027, 35 percent of gross revenues.
6. Require outside caterers to pay the City a fee of 17.5% of gross receipts from non-alcoholic beverage and food sales, and 25% of gross receipts from alcoholic beverages.
7. Revise certain contractual clauses regarding financial records and reporting to reflect standard clauses in management agreements for other large convention centers, such as post event audits.

FISCAL IMPACT

Moscone Center Expansion Project and Capital Contribution

The Moscone Center Expansion Project includes an increase of 371,000 square feet from 1,043,000 square feet for a total of 1,414,000 square feet, or an increase of 36 percent, and is estimated to cost approximately \$500 million. The Moscone Center Expansion Project is financed primarily by the issuance of the principal amount \$483,695,000 of Certificates of Participation by the City, with interest expenses estimated to be \$512,821,000, for a total of \$996,516,000. Debt service on the Certificates of Participation is paid with a combination of annual Moscone Expansion District Hotel Assessments from 2013 through 2045 (estimated to total \$699,212,000) and annual City General Fund contributions from 2019 through 2047 (estimated to total \$297,304,000).

The \$15,000,000 capital contribution by MCJV to the City will be used to support costs associated with the Moscone Center Expansion Project, which is expected to be completed by the end of 2018. According to Mr. Kenneth Bukowski, Deputy City Administrator, modifications and add-ons to the Moscone Center Expansion Project, such as the children's play area, Howard Street bridge and building façade revisions have required additional funding, such that the \$15,000,000 capital contribution from MCJV will offset part of these additional costs. The funds from the capital contribution will be subject to appropriation approval by the Board of Supervisors in the City Administrator's Office FY 2017-18 budget, and would then be allocated to the Moscone Expansion Project Fund.

If the City terminates the proposed ten-year extension term of the agreement with MCJV early, the City would be required to reimburse the unamortized portion of the capital contribution (e.g., if the City were to terminate the lease one year early, the City would be required to reimburse MCJV for one-tenth of the \$15,000,000 capital contribution, or \$1,500,000).

Projected Revenues to City

As shown in Table 1 above, in FY 2015-16, the Moscone Center had total gross revenues of \$71,991,836 for food and beverage sales and internet and other services² from which the City received \$17,897,959 in revenue based on the existing agreement. Assuming the same amount and composition of gross revenues as realized in FY 2015-16, during the first year the City would receive the same amount of revenue. Over the ten year proposed extension term of the agreement, as the City's share of revenues increases, the City's revenues would increase for a total of approximately \$216,505,054 as shown in Table 2 below, or an average of approximately \$21,650,505 per year.

Table 2: Estimated Revenues to City under the Proposed Amendment

Contract Year	Food & Beverage	Internet	Other Services	Total Revenues
Year 1	\$10,552,203	\$1,956,287	\$5,389,469	\$17,897,959
Year 2	11,607,423	2,151,916	5,389,469	19,148,808
Year 3	12,662,644	2,347,544	5,389,469	20,399,657
Year 4	13,717,864	2,543,173	5,389,469	21,650,506
Year 5	14,773,084	2,738,801	5,389,469	22,901,355
Year 6	14,773,084	2,738,801	5,389,469	22,901,355
Year 7	14,773,084	2,738,801	5,389,469	22,901,355
Year 8	14,773,084	2,738,801	5,389,469	22,901,355
Year 9	14,773,084	2,738,801	5,389,469	22,901,355
Year 10	14,773,084	2,738,801	5,389,469	22,901,355
Total	\$137,178,639	\$25,431,726	\$53,894,693	\$216,505,054

As noted above, in FY 2015-16, the City received \$17,897,959 in revenues. Therefore, the proposed agreement with an average of approximately \$21,650,505 in revenues per year would result in approximately \$3,752,546 or 21 percent increase in revenues. However, these estimates are based on the same level of gross revenues generated in FY 2015-16. The actual amount of gross revenues to be generated each year over the next ten years is likely to vary.

² No outside caterers were used in FY 2015-16.

According to Mr. Michael Burdick, Budget and Planning Analyst in the City Administrator's Office, the City's Administrator's Office cannot provide a precise projection of how gross revenues will change upon completion of the Moscone Center Expansion Project, which is expected at the end of 2018. According to Mr. Burdick, such a revenue forecast depends on the number and types of events held at Moscone Center, number of attendees, and sales of food, beverage and services.

Revenues to the City from the proposed amendment to the Management Agreement would be included in the City Administrator's budget, which will be subject to Board of Supervisors appropriation approval.

Total Operating Revenues and Costs for Moscone

As noted above, the Management Agreement requires MCJV to pay a percentage of the food, beverage and services revenues paid to the City as well as pass through all facility rental revenues to the City. All of these revenues are deposited into a City special fund to support ongoing operations at Moscone Convention Center. The City then reimburses MCJV from this special fund to directly manage, operate and maintain these City facilities, including providing all of the personnel, contracts for technical support, security, maintenance, etc.

However, the City's annual cost to operate Moscone is greater than the total operating revenues generated from the food, beverage and other services and facility rental revenues realized under this agreement. As shown in Table 3 below, over the past eight fiscal years, the City has expended \$33,055,649, or an average of \$4,131,956 more each year than the operating revenues received under this agreement. According to Mr. Burdick, Moscone Convention Center annual operating shortfalls are funded with General Fund transfers, which are appropriated each year in the budget. Mr. Burdick advises that it is industry standard for cities to subsidize the operating deficits incurred from convention centers.

Table 3: Moscone Convention Center Total Operating Revenues to City and Operating Expenditures from FY 2008-09 Through FY 2015-16

	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	Total 8 Years
Revenues to City									
Food/Bev & Services	\$9,998,414	\$11,650,496	\$12,413,654	\$12,840,264	\$14,781,085	\$17,347,056	\$18,936,369	\$17,897,959	\$115,865,297
Facilities Rental	<u>10,223,653</u>	<u>10,773,974</u>	<u>9,236,916</u>	<u>7,658,773</u>	<u>9,156,003</u>	<u>8,457,242</u>	<u>8,198,521</u>	<u>7,577,223</u>	<u>71,282,305</u>
Total Gross Revenue	\$20,222,067	22,424,470	21,650,570	20,499,037	23,937,088	25,804,298	27,134,890	25,475,182	\$187,147,602
City Expenses									
MCJV Expenses	<u>23,788,667</u>	<u>24,869,631</u>	<u>25,238,717</u>	<u>25,223,903</u>	<u>29,892,967</u>	<u>30,032,763</u>	<u>30,519,263</u>	<u>30,637,340</u>	<u>\$220,203,251</u>
Revenue Less Expenses	-\$3,566,600	-\$2,445,161	-\$3,588,147	-\$4,724,866	-\$5,955,879	-\$4,228,465	-\$3,384,373	-\$5,162,158	-\$33,055,649

Mr. Burdick notes that, although the City's annual operating deficits for Moscone Convention Center are anticipated to continue, the proposed agreement will increase the share of revenues paid to the City, such that the annual operating deficits incurred by the City's General Fund should improve relative to the current agreement's terms.

POLICY CONSIDERATION

The subject Management Agreement has not been competitively bid since 1990, or a period of 26 years. According to Mr. Burdick, Spectator Management Group³ is the only private operator with experience managing top-tier convention centers, including Moscone, Chicago's McCormick Place and Houston's NRG Center. Of the top 25 convention centers by size in the US, Los Angeles is the only convention center managed by a private operator other than Spectator Management Group. However, the Los Angeles Convention Center, which is managed by AEG, an international entertainment presenter primarily focused on sports events and venues. AEG also manages LA live (a sports and entertainment complex) which is across the street from the convention center and provides unique synergies in sharing spaces and booking events.

Under the existing Management Agreement, the City can renew the agreement for additional terms if MCJV's performance has been adequate, courteous, safe, and efficient in the reasonable opinion of the City Administrator's Office. According to Mr. Burdick, the City Administrator's Office and Convention Facilities Department are satisfied with the MCJV's performance.

RECOMMENDATION

Approve the proposed resolution.

³ As noted above, in February 1994, the Board of Supervisors approved the First Amendment to the Management Agreement which authorized Spectator Management Group to enter into the Moscone Center Joint Venture (MCJV) with a certified local woman-owned business, Thigpen Limited, Incorporated (Resolution No. 103-94).

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

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.

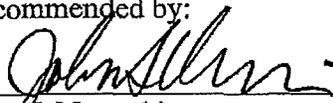
D. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

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

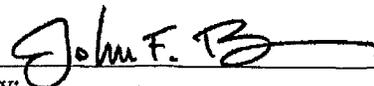
CITY

CONTRACTOR

Recommended by:

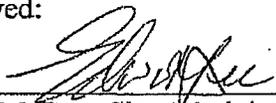


John T. Noguchi
Director, Convention Facilities Dept.

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

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

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

THIS FIFTH AMENDMENT (this "Amendment") is made as of January 14, 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, Under the Agreement, the City has an option to renew the Agreement for a term of five years; 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, 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 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 this Fifth Amendment was obtained from the Board of Supervisors by Resolution No. 0529-08 on December 16, 2008;

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.

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. The term of the Agreement is hereby extended for an additional eight years, commencing July 1, 2009, and ending June 30, 2017. This extension applies only to the management of the George R. Moscone Convention Center; it does not apply to Brooks Hall or the Civic Auditorium.

2. **Capital Contributions.** Contractor shall pay two Capital Contributions to the City, as follows:

- Contractor shall pay the City the lump sum amount of five-hundred thousand dollars (\$500,000) upon final execution and approval of this Fifth Amendment by the City; and
- Contractor shall pay the City the lump sum amount of eight million dollars (\$8,000,000) on July 1, 2009.

The payment of the Capital Contributions by Contractor are in addition to payment of all fees, advances and other amounts specified in the Agreement.

3. Article 9.D of the Agreement currently reads as follows:

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 – Twenty percent (20%) of gross revenues.
2. Other Sales – Twenty percent (20%) of gross sales.
3. Services – Twenty percent (20%) of the first two million dollars (\$2 million) per annum in gross sales and twenty-five percent (25%) of all gross sales over two million dollars (\$2 million) per annum.

Such Article is hereby amended to read as follows:

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 – 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.
 - a. Contractor shall advance the \$2,000,000 per annum guaranteed amount at the beginning of each contract year, payable to the City on July 1. At the City's option, Contractor shall advance the \$2,000,000 guaranteed amount for year eight (otherwise due on July 1, 2016) to year two of the Agreement, payable to the City on July 1, 2010.
2. 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.

4. Article 26 of the Agreement, Termination, currently reads as follows:

- A. If either party defaults in any terms, conditions, 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 transferee 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 services 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.

Such Article is hereby amended to read as follows:

- A. If either party defaults in any terms, conditions, 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 within 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 Contractor 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, Contractor shall take all necessary measures to mitigate termination expenses. If the City terminates the agreement in part and the fee it proposes to pay Contractor is not acceptable to Contractor, then Contractor may terminate the agreement with such termination to be concurrent with the City's termination set forth above. If the City terminates for convenience the City shall reimburse Contractor for any unamortized balance of Contractor's Capital Contributions as provided in Article 26.G.5, below, and for any unearned portion of the annual advance payment of fees provided in Article 9.D.1.a (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 Contractor before receipt of such notice or which are reasonably necessary to terminate operations, and shall reimburse Contractor for any unamortized balance of Contractor's Capital Contributions as provided in Article 26.G.5, below, and for any unearned portion of the annual advance payment of fees provided in Article 9.D.1.a (above).
- D. If termination pursuant to Paragraph A above is effected by the City, Contractor 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 Contractor, exclusive of fees paid to firm(s) hired to replace Contractor.

- E. Upon the effective date of a termination notice pursuant to Paragraph A above, Contractor 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 Contractor in performing this agreement, whether completed or in process. Contractor may, however, keep copies of such documents and materials for its record.
- F. Upon termination pursuant to Paragraph A 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 Contractor.
- G. If, after termination for failure of Contractor to fulfill contractual obligations, it is determined by a court of competent jurisdiction that Contractor had not so failed, Contractor 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 Contractor resulting from termination;
 4. Any reasonable demobilization charges.
 5. The reimbursement of any unamortized balance of Contractor's Capital Contributions as defined in Section B.2 of the Fifth Amendment to the Agreement. Contractor's Capital Contributions shall be amortized over the eight year period, July 1, 2009, through June 30, 2017, regardless of when the Capital Contributions are paid to the City, and for any unearned portion of the annual advance payment of fees provided in Article 9.D.1.a (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 Contractor 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 Contractor of any petition in bankruptcy – either voluntary or involuntary – or the making by Contractor 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, of transferee of Contractor;
3. The abandonment, discontinuance, or assignment by Contractor, without written consent of the CAO, of any or all of the operations and services permitted or required herein;

4. The failure of Contractor 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 Contractor;
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 services required to be performed by Contractor 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.

C. Effective Date. Each of the modifications set forth in this Amendment shall be effective on and after July 1, 2009, except for the modification in the first bullet of paragraph B.2 of this Amendment (i.e., payment of \$500,000 to the City), which shall be effective on and after January 14, 2009.

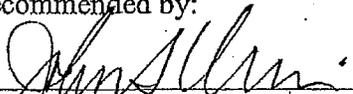
D. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

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

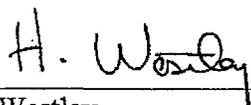
CITY

CONTRACTOR

Recommended by:

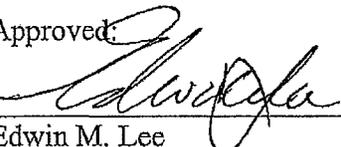


John T. Noguchi
Director, Convention Facilities Dept.



Wes Westley
President and CEO
Moscone Center Joint Venture

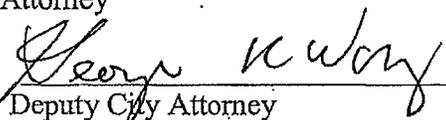
Approved:



Edwin M. Lee
City Administrator

Approved as to Form:

Dennis J. Herrera
City Attorney

By: 

Deputy City Attorney

CITY AND COUNTY OF SAN FRANCISCO
Office of the City Administrator
Convention Facilities Department

FOURTH AMENDMENT

This Amendment (this "Amendment") to Agreement is made as of October 22, 2007, in San Francisco, California, by and between Moscone Center Joint Venture ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City").

WHEREAS, the City, through the Office of the City Administrator, had entered into the Agreement dated November 6, 1990, between Contractor and City, as amended by the First Amendment, dated December 20, 1993, by the Second Amendment, dated January 14, 1999, and by the Third Amendment, dated March 3, 2003;

WHEREAS, the City desires that certain public works improvement be performed by the Contractor on behalf of the City through the hiring of contractors pursuant to San Francisco Administrative Code Section 6.66;

NOW, THEREFORE, the parties agree as follows:

1. The Moscone Center Joint Venture will hire contractors pursuant to Administrative Code Section 6.66 and perform all work at the Moscone Convention Center as described in the attached exhibit.
2. For each contract awarded, the Moscone Center Joint Venture will obtain bids from not fewer than three bidders.
3. The successful bidders will furnish performance and payment bonds, each in an amount equal to 100% of the contract sum, and all required insurance coverage and shall comply with Chapter 12B and C and Chapter 14A and B of the San Francisco Administrative Code. In addition, they shall pay and ensure that all subcontractors pay prevailing wages for labor furnished on the projects.
4. The Moscone Center Joint Venture will submit invoices to the City for work performed, with supporting cost data and with no additional markups.
5. The City will reimburse the Moscone Center Joint Venture for the cost of the work performed up to a maximum amount of three million dollars (\$3,000,000.00).
6. No work shall be performed without the City Controller first certifying the availability of funds for the performance of the work herein.
7. In all other respects, the original agreement, together with all other amendments shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement of the date first mentioned above.

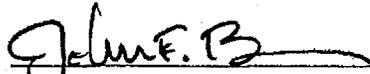
CITY

CONTRACTOR

Recommended by

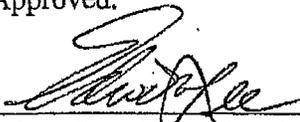


John Noguchi
Director, Convention Facilities Dept.



John Burns
Senior V.P./CFO
Moscone Center Joint Venture

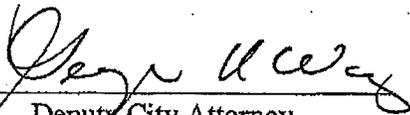
Approved:



Edwin Lee, City Administrator

Approved as to Form

DENNIS J. HERRERA
City Attorney

By: 

Deputy City Attorney

THIRD AMENDMENT TO AGREEMENT
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO
AND THE MOSCONE CENTER JOINT VENTURE TO
RENEW TERM OF AGREEMENT FOR AN ADDITIONAL FIVE YEARS

WHEREAS, the City and County of San Francisco and Facility Management Incorporated of California ("FMI") had entered into an agreement dated November 6, 1990 for the management, operation and maintenance of the George R. Moscone Convention Center, Brooks Hall and the Bill Graham Civic Auditorium for a term terminating on June 30, 1995; and

WHEREAS, the agreement provides an option to the City to renew said agreement for additional terms "...if in the opinion of CAO, FMI's performance there under had been adequate, courteous, safe and efficient in every material respect and the public interest has been and is expected to be well served"; and

WHEREAS, on March 18, 1991, the City had consented to the assignment of the November 6, 1990 agreement by FMI to Spectacor Management Group; and

WHEREAS, by the first amendment dated December 20, 1993 to the November 6, 1990 agreement, the City exercised its option to renew the term of the November 6, 1990 agreement for an additional five-year term commencing July 1, 1994 and ending June 30, 1999; and

WHEREAS, by said amendment, the City had agreed to the assignment by Spectacor Management Group of 25% of its interest in the agreement of Thigpen Limited, Incorporated and a further assignment by Spectacor Management Group and Thigpen of their respective interests to the Moscone Center Joint Venture; and

WHEREAS, by the second amendment dated January 14, 1999 to the November 6, 1990 agreement, the City exercised its right to renew the term of the November 6, 1990 agreement for an additional five-year term commencing July 1, 1999 and ending June 30, 2004; and

WHEREAS, the City after determining that the Moscone Center Joint Venture's performance had been adequate, courteous, safe and efficient in every material respect and the public interest had been and is expected to be well serve, now desires to exercise its option to renew the Agreement for a further five-year term; and

WHEREAS, by Resolution No. 398-03, the Board of Supervisors on June 17, 2003 had approved the extension of the Agreement for an additional five years to June 30, 2009 and the revised calculation and payment of fees as set forth in Article 9, Section D of the Agreement;

NOW, THEREFORE the parties agree as follows:

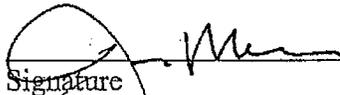
1. The term set forth in the Second Amendment dated January 14, 1999 is hereby extended for an additional five-years, commencing July 1, 2004 and ending June 30, 2009.
2. The calculation and payment of fees set forth in Article 9, Section D of the agreement shall be as follows:
 1. Alcoholic beverages, food and beverage concessions – Twenty percent (20%) of gross revenues.
 2. Other sales – Twenty percent (20%) of gross revenues.
 3. Services – Twenty percent (20%) of the first two million dollars per annum and twenty five percent (25%) of all gross sales over two million dollars per annum.
3. In all other respects, the terms and conditions of the November 6, 1990 agreement and all amendments thereto shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement of the date first mentioned above.

CITY

CONTRACTOR

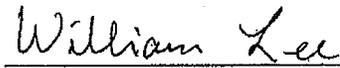
Recommended by:


Signature

Jack Moerschbaecher
Name

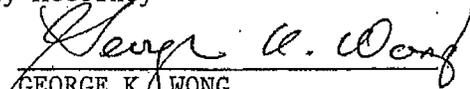
Director, Convention Facilities Dept.
Title and Department

Approved:


William Lee, City Administrator

Approved as to Form:

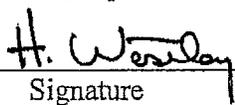
DENNIS HERRERA
City Attorney

By: 
GEORGE K. WONG
Deputy City Attorney

Moscone Center Joint Venture
Name

747 Howard Street
Address

San Francisco, CA 94103
City, State, Zip

By: 
Signature

Wes Westley
Name

President & CEO
Title

LETTER OF AGREEMENT

It is hereby agreed by the Moscone Center Joint Venture that upon the execution of the Third Amendment to the Agreement between the City and County of San Francisco and the Moscone Center Joint Venture extending the agreement for an additional five years, commencing July 1, 2004 and ending June 30, 2009 that the provisions of Paragraph 2 of the amendment will take effect as of July 1, 2003.

Paragraph 2:

The calculation and payment of fees set forth in Article 9, Section D of the Agreement shall be as follows:

1. Alcoholic beverages, food and beverage concessions – Twenty percent (20%) of gross revenues.
2. Other sales – Twenty percent (20%) of gross sales.
3. Services – Twenty percent (20%) of the first two million dollars (\$2 million) per annum and twenty-five percent (25%) of all gross sales over two million dollars (\$2 million) per annum.

CONTRACTOR

Moscone Center Joint Venture
Name

747 Howard Street
Address

San Francisco, CA 94103
City, State, Zip

By: H. Westley
Signature

Wes Westley
Name

President & CEO
Title

COPY

**SECOND AMENDMENT TO AGREEMENT
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO
AND THE MOSCONE CENTER JOINT VENTURE TO
RENEW TERM OF AGREEMENT FOR AN ADDITIONAL FIVE YEARS**

WHEREAS, the City and County of San Francisco and Facility Management Incorporated of California ("FMI") had entered into an agreement dated November 6, 1990 for the management, operation and maintenance of the George R. Moscone Convention Center, Brooks Hall and the Bill Graham Civic Auditorium for a term terminating on June 30, 1995; and

WHEREAS, the agreement provides an option to the City to renew said agreement for additional terms "... if in the opinion of CAO, FMI's performance thereunder had been adequate, courteous, safe and efficient in every material respect and the public interest has been and is expected to be well served"; and

WHEREAS, on March 18, 1991, the City had consented to the assignment of the November 6, 1990 agreement by FMI to Spectacor Management Group; and

WHEREAS, by the first amendment dated December 20 1993 to the November 6, 1990 agreement, the City exercised its option to renew the term of the November 6, 1990 agreement for an additional five-year term commencing July 1, 1994 and ending June 30, 1999; and

WHEREAS, by said amendment, the City had agreed to the assignment by Spectacor Management Group of 25% of its interest in the agreement to Thigpen Limited, Incorporated and a further assignment by Spectacor Management Group and Thigpen of their respective interests to the Moscone Center Joint Venture; and

WHEREAS, the City, after determining that the Moscone Center Joint Venture's performance had been adequate, courteous, safe and efficient in every material respect and the public interest had been and is expected to be well served, now desires to exercise its option to renew the Agreement for a further five-year term;

NOW, THEREFORE the parties agree as follows:

1. The term set forth in the First Amendment dated December 20 1993 is hereby extended for an additional five-years, commencing July 1, 1999 and ending June 30, 2004.
2. Moscone Center Joint Venture will comply with all applicable City laws, including Chapter 12B.2 (the "Equal Benefits Ordinance").
3. When Moscone Center West is built and becomes operational, the Moscone Center Joint Venture will manage it pursuant to the same terms and conditions of the November 6, 1990 agreement and all modifications thereto.
3. In all other respects, the terms and conditions of the November 6, 1990 agreement and all amendments thereto shall remain in full force and effect.

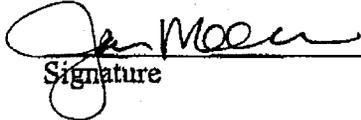
COPY

IN WITNESS WHEREOF, the parties hereto have executed this Agreement of the date first mentioned above.

CITY

CONTRACTOR

Recommended by:


Signature

Jack Moerschbacher
Name

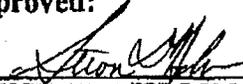
Director, Convention Facilities Dept.
Title and Department

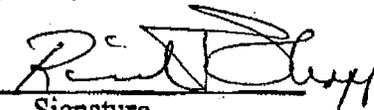
Moscone Center Joint Venture
Name

747 Howard Street
Address

San Francisco, CA 94103
City, State, ZIP

Approved:


STEVEN D. NELSON
Director of Administrative Services

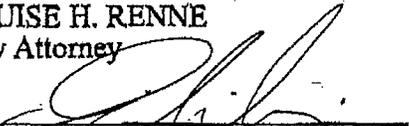
By: 
Signature

Richard H. Shaff
Name

Senior Vice President

Approved as to Form:

LOUISE H. RENNE
City Attorney

By: 
GEORGE K. WONG
Deputy City Attorney

ERIK LIU, DCA FOR GEORGE WONG.

7

SUPPLEMENTARY SECOND AMENDMENT TO AGREEMENT
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO
AND THE MOSCONE CENTER JOINT VENTURE TO
INSERT EXECUTION DATE OF THE SECOND AMENDMENT

This Supplementary Second Amendment to Agreement is entered into on this eighteenth day of February, 1999 between the City and County of San Francisco and the Moscone Center Joint Venture.

WHEREAS, on or about January 14, 1999, the parties to this agreement entered into and executed the Second Amendment to Agreement Between the City and County of San Francisco and the Moscone Center Joint Venture to Renew Term of Agreement for an Additional Five Years; and

WHEREAS, the parties to the Second Amendment inadvertently left out the date which the Second Amendment was executed;

NOW, THEREFORE the parties agree as follows:

The date of execution for the Second Amendment to Agreement between the City and County of San Francisco and the Moscone Center Joint Venture to Renew Term of Agreement for an Additional Five Years is January 14, 1999.

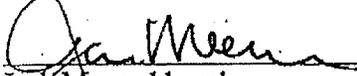
In all other respects, the terms and condition of the November 6, 1990 agreement and all amendments thereto shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

CONTRACTOR

Recommended by:

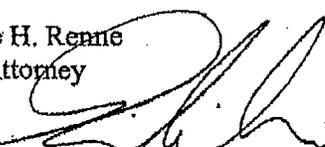


Jack Moerschbaecher
Director, Convention Facilities Dept.



Authorized Signature

Approved as to Form:

Louise H. Rennie
City Attorney

By _____
Deputy City Attorney

Richard H. Shaff

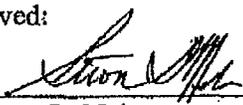
Printed Name
Senior Vice President

Title

Moscone Center Joint Venture

Company Name

Approved:



Steven D. Nelson
Director of Administrative Services

747 Howard Street

Address
San Francisco, CA 94103

City, State, ZIP

COPY

FIRST AMENDMENT TO,
CONSENT TO ASSIGNMENT AND RENEWAL OF
MANAGEMENT AGREEMENT
GEORGE R. MOSCONE CONVENTION CENTER,
BROOKS HALL AND CIVIC AUDITORIUM

THIS FIRST AMENDMENT TO AND CONSENT TO ASSIGNMENT OF MANAGEMENT AGREEMENT (this "Amendment") dated for reference purposes only as of December 20, 1993, is by and between SPECTACOR MANAGEMENT GROUP, a Pennsylvania General Partnership ("SMG") and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City").

RECITALS

WHEREAS, On November 6, 1990, the City and Facility Management Incorporated of California ("FMI"), predecessor in interest to SMG, entered into a Management Agreement (the "Agreement") with respect to the management of Brooks Hall, Civic Auditorium and Moscone Center Convention Center. All Capitalized terms used in this Amendment and not otherwise defined herein shall have the meanings given to them in the Agreement; and

WHEREAS, The term of the Agreement, as originally set forth therein, was for a 5-year period commencing July 1, 1990, and ending June 30, 1995; and

WHEREAS, On March 18, 1991, the City consented to the assignment of the Agreement from FMI to SMG; and

WHEREAS, The City has an option under Article 2 Section B of the Agreement to renew the Agreement for a new term of up to 5 years; and

WHEREAS, The City and SMG now desire to amend the Agreement to provide, among other matters, for the City to exercise its option to provide for a 5 year renewal term commencing July 1, 1994, and ending on June 30, 1999 ("the Renewed Agreement"), unless sooner terminated as provided in the Agreement; and

WHEREAS, SMG would like to assign its interest in the Agreement to Thigpen Limited, Incorporated, a California corporation ("Thigpen") and with Thigpen and SMG further assigning their interests in the Agreement to a joint venture;

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree to the following matters, including amendment of the Agreement as follows:

1. Consent to Assignment of Agreement. By its execution of this Amendment, City hereby consents to the assignment by SMG of a 25% interest in the Agreement to Thigpen and the further assignment by Thigpen and SMG of their respective interests in Moscone Center Joint Venture, a joint venture comprised of SMG and Thigpen. The City hereby further consents to delegation by Moscone Center Joint

Venture of any of its management obligations under the Agreement to SMG, Thigpen or a limited or general partnership whose partnership interest are wholly owned by SMG and Thigpen.

2. Amendments to Agreement and Renewed Agreement.

A. Parties. All references in the Agreement and the Renewed Agreement to FMI shall hereafter be amended to read as references to Manager.

B. Term. The first paragraph of Article 2, Section A of the Renewed Agreement (entitled "Term: Certification") is hereby amended in its entirety to read in full as follows:

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 an operated budget(s) submitted by Manager ("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, 1994 and expiring at midnight June 30, 1999, unless sooner terminated as provided herein.

The provisions of Section B of Article 2 of the

Agreement shall continue to apply to the Renewed Agreement.

C. Fee. Article 3, Section A of the Agreement and the Renewed Agreement (entitled "Fee") is hereby amended in its entirety to read in full as follows:

For the period from July 1, 1990 through June 30, 1991, the fee shall be \$220,000. For each additional year of the term of this Agreement, from 1991/92 through 1998/99, the fee shall be increased by \$10,000 per year. Manager shall deliver an invoice to the City for the fee on a monthly basis. The City shall make a reasonable effort to pay the fee within thirty days of receipt of a monthly invoice.

D. Notice. Article 31 of the Agreement and the Renewed Agreement is hereby amended to provide that notices to Manager shall be delivered to the following address:

SMG
Independence Center
701 Market Street, Fourth Floor
Philadelphia, PA 19106
Attn: Thomas Gibson, C.E.O.

With copies to:

Richard H. Shaff
747 Howard Street
San Francisco, CA 94103

Leland, Parachini, Steinberg, Flinn, Matzger &
Melnick
333 Market Street, Suite 2700
San Francisco, CA 94105
Attn: David H. Melnick

Drinker, Biddle & Reath
Philadelphia National Bank
1345 Chestnut Street, 11th Floor
Philadelphia, PA 19107
Attn: Jack Dougherty

3. Miscellaneous

A. References. No reference to this Amendment is necessary in any instrument or document at any time referring to the Agreement. Any future reference to the Agreement shall be deemed a reference and such document as amended hereby.

B. No Other Amendments. Except as provided herein, the Agreement shall continue unmodified and remain in full force and effect.

C. Applicable Law. This Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

D. Further Instruments. The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this

Amendment.

The parties have duly executed this Amendment as of the respective dates written below.

SMG:

SPECTACOR MANAGEMENT GROUP

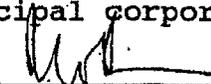
By: 

THOMAS R. GIBSON, PRESIDENT & CEO
[Printed Name and Title]

Date: 2/25/94

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

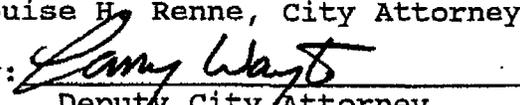
By: 

Rudy Nothenberg
Chief Administrative
Officer

Date: _____

APPROVED AS TO FORM:

Louise H. Renne, City Attorney

By: 

Deputy City Attorney

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 9

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 transferee 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 Moerschbaeher
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. Hoff*

Print Form

Introduction Form

By a Member of the Board of Supervisors or the Mayor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2016 SEP -6 PM 4:59
or meeting date

BY AK

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor inquires"
- 5. City Attorney request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Question(s) submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):

Supervisors Kim and Peskin

Subject:

Approval of Seventh Amendment to the Management Agreement for Moscone Convention Center

The text is listed below or attached:

See attached.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:

