

**CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Quality of Life Portolio  
**AGENDA DATE:** December 15, 2020  
**CONTACT PERSON/PHONE:** Tracey Jerome, Quality of Life, Deputy City Manager, (915) 212-1783  
Bruce D. Collins, Purchasing Director, (915) 212-1181  
**DISTRICT(S) AFFECTED:** All  
**STRATEGIC GOAL:** NO. 4: Enhance El Paso's Quality of Life through Recreational, Cultural and Educational Environments

The linkage to the Strategic Plan is subsection 4.2 Create innovative recreational, educational and cultural programs.

**SUBJECT:**

Discussion and action on the award of solicitation 2020-680R Civic, Convention Center & Tourism Services to SMG, for an initial term of three (3) years for an estimated amount of \$2,250,000.00. The award also includes two (2), two (2) year options for an estimated amount of \$3,600,000.00. The total value of the contract including the initial term plus options is seven (7) years for an estimated \$5,850,000.00. The award of this contract will provide management and operation of the civic, tourism services and convention center portfolio.

**BACKGROUND / DISCUSSION:**

Service agreement executed March 12, 1998. Management Agreement was amended fourteen separate times, last amendment to extend the term of the Management Agreement for an additional 8 months beginning on September 2, 2020, to allow for additional time for the completion of the procurement of a replacement contract for the management services.

**SELECTION SUMMARY**

Solicitation was advertised on September 1, 2020 and September 8, 2020. The solicitation was posted on the City website on September 1, 2020. The email (Purmail) notification was sent out on September 3, 2020. There were a total of fifty (50) viewers online; One (1) proposal was received; none being local. An Inadequate Competition Survey was conducted.

**CONTRACT VARIANCE:**

The difference in cost, based on the comparison from previous contract, is as follows: Annual base fee for the services under this contract increased by 15%. Increase is based on the Operation of Water Parks added service to this contract.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

Amount: \$2,250,000.00  
Funding: 999-2321-99999-521160 - Management Consulting Services

**BOARD / COMMISSION ACTION:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

Tracey Jerome, Quality of Life, Deputy City Manager

**COUNCIL PROJECT FORM  
(RFP)**

\*\*\*\*\***POSTING LANGUAGE BELOW**\*\*\*\*\*

Please place the following item on the **REGULAR AGENDA** for the Council Meeting of **December 15, 2020**.

**STRATEGIC GOAL 4: Enhance El Paso’s Quality of Life through Recreational, Cultural and Educational Environments**

The linkage to the Strategic Plan is subsection 4.2 Create innovative recreational, educational and cultural programs.

**Award Summary:**

Discussion and action on the award of solicitation 2020-680R Civic, Convention Center & Tourism Services to SMG, for an initial term of three (3) years for an estimated amount of \$2,250,000.00. The award also includes two (2), two (2) year options for an estimated amount of \$3,600,000.00. The total value of the contract including the initial term plus options is seven (7) years for an estimated \$5,850,000.00. The award of this contract will provide management and operation of the civic, tourism services and convention center portfolio.

**Contract Variance:**

The difference in cost, based on the comparison from previous contract, is as follows: Annual base fee for the services under this contract increased by 15%. Increase is based on the Operation of Water Parks added service to this contract.

Department:	Quality of Life Portfolio
Award to:	SMG West Conshohocken, PA
Item(s):	ALL
Initial Term:	3 years
Option to Extend:	Two (2), two (2) year terms
Annual Estimated Award:	\$700,000.00 (Year 1) \$750,000.00 (Year 2) \$800,000.00 (Year 3)
Initial Term Estimated Award:	\$2,250,000.00 (3 years)
Option Estimated Amount:	\$1,800,000.00 (Option Term 1, 2 years) \$1,800,000.00 (Option Term 2, 2 years)
Total Estimated Award:	\$5,850,000.00 (7 years)
Account No.:	999-2321-99999-521160
Funding Source:	Management Consulting Services
District(s):	All

This is a Request for Proposal, service contract.

The Purchasing & Strategic Sourcing department and Quality of Life Portfolio recommend award as indicated to SMG, the sole offeror for these services.

In accordance with this award, the City Manager or designee is authorized to exercise future options if needed.

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**RESOLUTION**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City Manager be authorized to sign a Facility Management and Tourism Agreement between the City of El Paso (“City”) and SMG, a Pennsylvania General Partnership, for a three (3) year term from the effective date and two (2) option periods to extend for two (2) years under the same terms to be exercised by the City Manager or his designee, for an estimated cost of \$ 2,250,000.00 for the first term to be compensated on a per services basis and an estimated total cost of \$5,850,000.00 including the two options to extend.

**APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_ 2020.

**THE CITY OF EL PASO:**

\_\_\_\_\_  
Dee Margo  
Mayor

**ATTEST:**

\_\_\_\_\_  
Laura D. Prine  
City Clerk

**APPROVED AS TO FORM:**

*Russell Abeln*  
\_\_\_\_\_  
Russell T. Abeln  
Assistant City Attorney

**APPROVED AS TO CONENT:**

*Tracey Jerome*  
\_\_\_\_\_  
Tracey Jerome, Deputy City Manager  
Quality of Life

## FACILITY MANAGEMENT AND TOURISM AGREEMENT

THIS FACILITY MANAGEMENT AND TOURISM AGREEMENT ("Agreement") is made and entered into effective this \_\_\_\_ day of December 2020 by and between SMG, a Pennsylvania General Partnership ("Manager"), and the City of El Paso, Texas, a municipal corporation and home-rule city of the State of Texas principally situated in El Paso County ("Operator").

### RECITALS

1. **WHEREAS**, Operator owns and operates a multipurpose convention and performing arts center (Judson F. Williams Convention Center, Abraham Chavez Theatre, various parking facilities), Camp Cohen Water Park, Lost Kingdom Water Park, Oasis Water Park, Chapoteo Water Park, Downtown Tourist Information Center, Airport Tourist Information Center, Plaza Theatre Performing Arts Centre, Arts Festival Plaza, Plaza Theatre Annex, Cohen Stadium Site, and the McKelligon Canyon Amphitheatre and Pavilion in El Paso, Texas, with all facilities, machinery, attachments, and appurtenances attaching thereto, shall hereafter be referred to as the "Facilities."
2. **WHEREAS**, Operator operates Visit El Paso, a convention and visitors bureau and destination marketing organization in El Paso, Texas, which shall hereafter be referred to as the "Bureau." For purposes of this Agreement, the Facilities and the Bureau are collectively referred to as "Destination El Paso."
3. **WHEREAS**, on September 1, 2020 Operator issued Solicitation No: 2020-680R; Request for Proposal for Civic, Convention Center, & Tourism Services ("Solicitation").
4. **WHEREAS** Manager provided the sole response to Solicitation and has been awarded the Solicitation.
5. **WHEREAS**, Manager has operated the Facilities for Operator since 1998 for the purpose of providing a vehicle for the presentation of a variety of cultural, educational, entertainment, sporting, social and other activities; providing exhibition and meeting facilities for local and other organizations, and, in general, maximizing the utilization of the Facilities for the benefit of the City of El Paso in El Paso County, Texas. Manager has operated the Bureau for the Operator since 1998 for the purpose of promoting the tourism industry in El Paso, Texas.
6. **WHEREAS**, Operator has now selected Manager to provide such services for the benefit of the City of El Paso, Texas.
7. **WHEREAS** Manager holds itself out as an organization whose principals have substantial experience and expertise in the tourism industry and the management, operation and marketing of public facilities similar to Destination El Paso.
8. **WHEREAS**, Operator has determined to grant to Manager, and Manager has agreed to accept, authority and responsibility to manage, operate and market Destination El Paso in accordance with the terms of this Agreement.

The Parties accordingly agree as follows:

AGREEMENT

ARTICLE I

DEFINITIONS

The following words shall, unless the context otherwise requires, have the meanings ascribed to them below.

“Affiliate” of a specified person means a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the specified person.

“Advertising” shall include, without limitation, all announcements, acknowledgments, banners, signs, showbills, promotional materials, handouts and promotional product sampling giveaways, and other audio or visual commercial messages displayed, announced or otherwise presented in the convention Center including, without limitation, video messages.

“Agreement” shall mean this Facility Management and Tourism Agreement.

“Authorized Representative” shall mean the person or persons named in Section 2.4 or their duly appointed successor, acting within the scope of authority given such person by the Party on whose behalf they act; provided, however, that the Parties acknowledge that the scope of authority of the Operator’s Authorized Representative shall not exceed the specific limited scope of authority expressly set forth in the Resolution adopted by the City Council authorizing this agreement.

“Authorizing Legislation” shall mean Chapter 351 of the Texas Tax Code.

“Budget” shall mean any budget to be prepared by Manager under the provisions of Article 4.

“Bureau” shall have the meaning of Operator’s Visit El Paso, a convention and visitors bureau and destination marketing organization in El Paso, Texas as ascribed in the Recitals.

“Budgeted Operating Expenses” shall mean the sum total of the El Paso Convention and Visitors Bureau and El Paso Convention and Performing Arts Center annual budgeted expenses.

“Capital Expenditure(s)” shall mean all expenditures for building additions, alterations or improvements, to include the purchase and installation of a marquee; and for purchases of additional or replacement furniture, machinery or equipment, the depreciable life of which, according to general accepted accounting principles, is in excess of one (1) year and expenditures for maintenance or repairs which extend the useful life of the assets being maintained or repaired for a period in excess of one (1) year. Each Budget shall set forth the anticipated Capital Expenditures to be made during the Fiscal Year to which the Budget relates and the five (5) and ten (10) year Capital Expenditures forecast.

“City Council” shall mean the City Council of the City of El Paso, Texas.

“City Manager” shall mean the person appointed by the City Council to oversee the administrative functions of the City. The City Manager may designate his authority under this contract.

“Claims and Costs” shall have the meaning set forth in Section 7.10 (d).

“Commencement Date” shall be May 1, 2021.

“Convention Center” shall mean the Judson F. Williams Convention Center, but also includes all of the parking areas and garages appurtenant thereto.

“Days of Activity” are defined as any day that a Facility is contracted to a private party for a particular use. There is no time limit on the amount of time the private party uses the Facility during that day. For purposes of this Agreement, it is possible that more than one private party could contract the same venue on the same day.

“Depository” shall mean the place in which the Manager shall maintain its bank accounts for the funds required to be maintained under this Agreement.

“Destination El Paso” shall mean the Facility or Facilities and Bureau collectively.

“Emergency Expenditure(s)” shall mean any Operating Expenses to the extent but not included within a Budget and not expected by Manger to be incurred but which Manager believes in good faith to be necessary or desirable Operating Expense in the management or operation of Destination El Paso.

“Event(s)” shall mean all revenue or nonrevenue producing entertainment, cultural, religious, governmental, civic and all other activities and events which are conducted at or on behalf of the Facility.

"Facility" or "Facilities" shall mean collectively the Judson F. Williams Convention Center, Convention Center Parking Garage, Abraham Chavez Theatre, the Plaza Theatre Performing Arts Centre, Downtown Visitor Center, Airport Visitor Center, and any other Visitor Center(s) operated by Manager, McKelligon Canyon Amphitheatre and Pavilion, Arts Festival Plaza, Camp Cohen Water Park, Lost Kingdom Water Park, Oasis Water Park, Chapoteo Water Park and any other facilities of the Operator which are managed by the Manager.

"Fiscal Year" shall mean a period of twelve (12) months' time beginning on September 1 and ending on the immediately following August 31, inclusive, or such other fiscal year as shall be established from time to time by Operator for Destination El Paso.

“Food and Beverage Services” shall mean the operation of all food, beverage, and catering services at all Facilities defined in and covered under the Agreement.

"General Manager" shall mean the chief executive officer of Manager at Destination El Paso.

"Governmental Entities" shall mean the federal government, the State of Texas, the City and County of El Paso, or any county, municipality (or any entity created by a municipality), governmental" or quasi-governmental entities having jurisdiction or other authority over Destination El Paso.

"Hotel/Motel Tax Revenue" shall mean the money paid by Operator to Manager from the hotel/motel occupancy tax levied and collected by Operator in accordance with the Authorizing Legislation.

"Incentive Fees" shall mean those fees payable to Manager under Section 8.2.

"Intellectual Property Rights" shall mean any and all rights existing from time to time in a specified jurisdiction under patent law, copyright law, moral rights law, trade-secret law, semiconductor chip protection law, trademark law, unfair competition law, or other similar rights.

"Management Fees" shall mean those fees payable to Manager under Section 8.1.

"Manager" shall have the meaning assigned to it in the opening paragraph of this Agreement.

"Marketing Plan" shall have the meaning assigned to it in Section 3.5.

"Material Breach" shall have the meaning provided in Section 1 1.1.

"Material Contract" shall be those contracts which permit any Person to utilize the Facilities for more than twenty (20) event days in any Fiscal Year; or have a term in excess of three (3) years (including renewal options exercisable by any party) and which may not be cancelled by Manager or Operator without penalty or premium, payable to such Person.

"McKelligon Canyon" shall mean the real property of the Pavilion, Amphitheatre and parking areas west of McKelligon Road located at 1400 McKelligon Road, El Paso, Texas.

"Non-profit Organization" is any organization that qualifies for non-profit status under the IRS and for purposes of Incentive Fees is defined as supporting the mission of non-profits through the use of venues at a discounted rate in which the non-profit is at risk for the success or failure of the event and the proceeds of the event.

"Operating Expenses" shall mean and include all expenditures or obligations of whatever kind or nature made or incurred by Manager in any specified period during the Term of this Agreement, within, or believed by Manager in good faith to be within the scope of Manager's authority or responsibility under this Agreement. Operating Expenses which may be included in an annual operating Budget that has been approved under Article 4, include, but are not limited to, all payments made or liabilities incurred to obtain Operating Revenues, including those related to providing Food and Beverage Services; salaries, wages, bonuses, insurance, benefits, applicable taxes and other expenses related to personnel working at or for Destination El Paso; contract labor; maintenance and repairs; utilities; deposits for utilities; telephone; videoboard; telescreen and/or scoreboard operations; dues, memberships and subscriptions; security; audit fees; legal fees; other professional fees; fees payable to concessionaires or other subcontractors; refuse removal; cleaning; sales and excise taxes; building supplies; office lease payments; ticket commissions; premiums and deductibles for insurance maintained under Sections 9.1 and 9.2; data processing; Advertising; marketing; public relations; pest control; travel, lodging and related out-of-pocket expenses and Destination El Paso related entertainment; office supplies; employment fees; freight and delivery; lease of equipment; Master Card, VISA and other credit and debit facilities and tele check fees and expenses; bad-debt expense; a reasonable allocation of costs for services performed centrally by Manager for the benefit of the

Facilities; travel, lodging and related out-of-pocket expenses of officers and directors of Manager properly allocable to the performance of Manager's obligations under this Agreement; travel, lodging and related out of pocket expenses, car allowance, salary, bonus, insurance, benefits, applicable taxes and other employment related costs of the General Manager; all damages, losses or expenses suffered or paid by Manager or its Authorized Representatives as the result of any and all claims, demands, suits, causes of action, proceedings, judgments and liabilities, including reasonable attorneys' fees incurred in litigation or otherwise, assessed, incurred or sustained by or against any of them; Emergency Expenditures; and any other tasks or projects which Operator has requested that Manager perform with respect to Destination El Paso; but excluding any Capital Expenditures, amortization, depreciation and other non-cash charges and any loss or damage suffered by Manager or its Authorized Representatives as a result of (1) any uninsured negligent act or omission of Manager; (2) any act or omission of Manager not in good faith or involving gross negligence, or intentional misconduct; (3) subject to the provisions of Section 3.4, a knowing violation of law, except that in the case of a strict liability law, any violation thereof; (4) any transaction from which Manager derives an improper personal benefit; or (5) any Material Breach on the part of Manager.

"Operating Fund" shall mean a fund maintained by Manager under Section 6.1.

"Operating Loss" shall mean the amount by which Operating Expenses for any specified fiscal period exceed the Operating Revenues for such fiscal period.

"Operating Revenues" shall mean all receipts (including, without limitation, seat user fees and surcharges), revenues, income, and cash received or collected, as determined on an accrual basis, by Manager ( 1) for the use of, operation, or admission to, the Facilities or the Bureau or any portions thereof; (2) for the right to sell, or in respect of the sale of, any product or advertising in or involving the Facilities or the Bureau including all rents, royalties, and concessions from tenants, Food and Beverage Services revenues, concessionaires, and licensees, as applicable; (3) solely from interest on or proceeds of investment of any accounts required to be maintained under Article 6, and expressly excluding the interest or proceeds from any other funds maintained by Operator in a separate account; (4) for rental or use of any Facility; (5) if applicable, from the lease or rental of any luxury suites located in the Facilities (but excluding any receipts from tickets issued to the users of such luxury suites), the sale of personal seat licenses, and the sale or licensing of naming rights; (6) as fees for services rendered at or by the Facility, including parking; (7) from the Hotel/Motel Tax Revenues; and (8) from marquee advertising revenue; but excluding in all events, sums received or collected by Manager for and on behalf of and actually paid to a user of the Facilities.

"Operator" shall have the meaning assigned to it in the opening paragraph of this Agreement.

"Party" or "Parties" refers to the parties to this Agreement.

"Person" means a natural person, a corporation (for profit or not-for-profit), an association, a partnership (general or limited), a joint venture, a trust, a government or political department, subdivision, or agency, or any other entity.

"Plaza Theatre Performing Arts Centre" shall mean the real property of the Plaza Theatre, Plaza Theatre Annex, and Arts Festival Plaza, and related areas which are located at 125 Pioneer Plaza, El Paso, Texas.



"Prompt Payment" means payment in accordance with prudent business practices, and in compliance with Chapter 2251 of the Texas Government Code, as amended, or successor statute ("Prompt Payment Act").

"Renewal Period" shall have the meaning provided in Section 2.3(b). "Term" shall mean the Initial Term and the Renewal Period.

"Transition Period" shall mean the period commencing upon the Commencement Date and ending no later than sixty (60) days from the Commencement Date.

## ARTICLE 2

### INTRODUCTION

2.1 Grant of Authority. Operator hereby grants to Manager, and Manager hereby accepts, the exclusive right and obligation, in its own name, as an independent contractor and not as an agent of Operator, to provide those management and tourism services to Operator as are set forth in this Agreement in connection with Manager's management, operation, marketing and administration of Destination El Paso and, in connection therewith, to perform or furnish or cause to be performed or furnished, subject to the provisions hereof, and subject to the availability of funds, all of such services upon the terms and subject to the limitations of this Agreement. Manager and Operator acknowledge and agree that Manager shall retain control of Destination El Paso as the manager, administrator and operator thereof pursuant to this Agreement, but, subject to the limitations set forth in this Agreement, that Manager may delegate certain specific and limited responsibilities related to the management, operation, marketing and administration of Destination El Paso to third parties, but shall retain the exclusive authority with respect to the management, operation, marketing and administration of Destination El Paso.

2.2 Nature of Relationship. The parties hereto agree that the only relationship created by this Agreement is that between Operator, as owner of Destination El Paso, and Manager, as an independent contractor, for certain management and tourism assigned to Manager by Operator and that Manager is an independent contractor, not an agent, employee, joint venturer or partner of Operator. Neither Party shall be subject to any obligations or liabilities of the other Party or its employees, or agents, incurred in the performance of this Agreement, unless expressly authorized herein. Manager is an independent contractor, and nothing contained in this Agreement shall constitute or designate Manager or any of its employees as employees of Operator. Neither Manager nor its employees shall be entitled to any of the benefits established for employees of the Operator, nor be covered by the Operator's Workers' Compensation Program.

2.3 Term.

(a) The initial term of this Agreement (the "Initial Term") shall commence as of the Commencement Date and shall expire for any and all purposes, unless terminated earlier under the terms of this Agreement, at twelve o'clock midnight on the last calendar day of the third year following the Commencement Date.

(b) Subject to the terms and conditions hereof, the term of this Agreement shall be automatically renewed and extended without any action on the part of Manager or Operator for

two (2) consecutive two (2) year renewal periods (each renewal period being referred to herein as a "Renewal Period"). Upon the commencement of a Renewal Period, this Agreement shall be deemed to be in full force and effect and the Term hereunder shall continue for each Renewal Period from its then expiration date. Notwithstanding anything contained herein to the contrary, either Party may elect not to renew and extend this Agreement and in such case, the non-renewing Party shall give written notice to the other Party that it intends not to renew and extend this Agreement no less than one hundred and eighty days (180) prior to the expiration date of the Initial Term or the then in effect Renewal Period, in which case, this Agreement shall terminate at the expiration of the Initial Term or the then in effect Renewal Period.

2.4 Contract Administration. Operator hereby appoints its City Manager as Contract Administrator and Authorized Representative and Manager hereby appoints SMG Senior Vice President of Convention Centers as its Authorized Representative. Each Authorized Representative shall act as liaison and contact person between the Parties in matters concerning the administration of this Agreement. Each Party shall have the right to designate a substitute Authorized Representative by providing written notice to the other Party. Except for budget matters, if either Party desires to do any act hereunder which requires the other Party's approval, such request shall be submitted in writing to the other Party's Authorized Representative. The Authorized Representative, or authorized substitute, shall respond to such request within ten (10) days after receipt. Failure to respond shall constitute approval. Manager and any other person dealing with Operator in connection with this Agreement, or any matter governed by this Agreement, may rely and shall be fully protected in relying upon the authority of Operator's Authorized Representative to act for and bind Operator in any such matter, but only to the extent expressly authorized by applicable law and the Resolutions adopted by the City Council.

### ARTICLE 3

#### RESPONSIBILITIES OF MANAGER

3.1 Standard of Care. Subject to the limitations set forth in this Agreement and the Budget, Manager shall exercise its diligent, good faith efforts in managing and operating Destination El Paso so as to optimize Operating Expenses and maximize Operating Revenues, subject, however, to Manager's right to act in light of the objectives stated in the Recitals to this Agreement. In this connection, the parties agree that Manager, in establishing and implementing its booking policies, may schedule not only those events that generate substantial direct revenue to the Facilities, but also those events that produce less direct revenue but, in Manager's good faith judgment, generate either a significant economic, cultural, educational or other benefit to Operator or otherwise serve the public interest; provided that (i) no use of the Facilities shall be permitted without a reasonable charge for such use and (ii) the benefits resulting to the Operator and/or its citizens from the use of the Facilities, as determined by Manager in its sole discretion and good faith judgment, are identified and set forth in the agreements pertaining to such uses.

3.2 Duty and Liability. Manager shall owe to Operator a duty to perform its obligations under this Agreement and to conduct the management and operation of Destination El Paso at all times with integrity and good faith and in a manner which is in the best interests of Destination El Paso and Operator and consistent with the terms of this Agreement. Manager shall not be liable, responsible, or accountable in damages or otherwise to Operator or to any other person for any act or omission that is within the scope of its authority under this Agreement, except for (i) acts or omissions of Manager

constituting negligence which are not covered by insurance; (ii) acts or omissions of Manager not in good faith or involving gross negligence, intentional misconduct; (iii) subject to the provisions of section 3.4, a knowing (i.e., conscious awareness) violation of law, except that in the case of a strict liability law, any violation thereof; (iv) any transaction from which Manager derives an improper personal benefit; or (v) any Material Breach on the part of Manager; provided, however, that the foregoing shall not be interpreted to obligate Operator to indemnify Manager from any third party Claims and Costs.

3.3 Compliance with the Law: Duty. Subject to the Budget and availability of funds provided to Manager therefor, Manager shall comply with all applicable laws, rules, regulations, ordinances relating to the use and operation of Destination El Paso and, in particular, any regulations or ordinances regulating the allocation of the Hotel/Motel Tax Revenues. Manager shall perform its obligations hereunder in conformity with the reasonable standard to which an operator of a comparable destination marketing organization, multi-purpose public entertainment facility and water park facility providing the services described hereunder would operate, given the limitations of the Budget and other limitations herein. Subject to the foregoing, Manager shall promptly and fully discharge all of its obligations under this Agreement.

3.4 Funding Limitations. Notwithstanding anything to the contrary set forth in this Agreement, Operator recognizes and agrees that performance by Manager of its responsibilities under this Article 3 and otherwise under this Agreement is in all respects subject to and expressly conditioned upon Operator's provision of funds to Manager for such purposes as herein provided including, without limitation, funding of adequate Hotel/Motel Tax Revenues necessary to pay all Operating Expenses and Capital Expenditures, in addition to the Management Fees payable to Manager hereunder, to enable Manager to fulfill such responsibilities, and in all respects is limited by the Budgets approved by Operator from time to time.

3.5 Management Duties and Responsibilities. Subject to the limitations set forth in this Agreement and the Budget, Manager, or person or persons designated by Manager, shall perform the following services (or cause the same to be performed) throughout the Term hereof:

(a) Manage and operate the Facilities and the Bureau and any facilities ancillary thereto (such as parking facilities) and contract for their use in a manner that will promote and further the purposes for which the Facilities and the Bureau were constructed, as set forth in the Recitals to this Agreement;

(b) Prepare and present a marketing plan (the "Marketing Plan") to Operator as contemplated in Article 5 setting forth the marketing and tourism services to be performed by Manager including the following:

(i) market, solicit, advertise, and conduct public relations activities for conventions, tourism, and other gatherings to maximize use of the Facilities and Bureau;

(ii) service conventions, music and film events, special events and other meetings in the City of El Paso, Texas;

(iii) develop public awareness of the desirability, benefits and importance of the travel, music and film industries to the El Paso, Texas area economy; and

(iv) market and distribute materials promoting El Paso, Texas as a preferred destination city.

(c) Negotiate, execute, and perform all contracts, use agreements, licenses and other agreements (a) with persons or organizations who/that desire to schedule events, performances, telecasts, broadcasts or other transmissions in, from or to the Facility or who desire otherwise to use the Facility or any part thereof or (b) that otherwise pertain to the use, operation and occupancy of the Facility or any part thereof;

(d) Solicit, prepare, negotiate and execute multi-year use agreements requiring significant advance booking;

(e) Coordinate, solicit and prepare bid packages for presentations for specialty events, exhibitions, and other events to be held on behalf of Destination El Paso;

(f) Negotiate, execute, and perform all contracts, use agreements, licenses and other agreements (a) for the use of Advertising space in or about the Facilities and all Advertising rights of whatever kind or nature related to the Facilities or (b) for the sale, promotion, marketing and use of any Intellectual Property Rights owned by Operator relating to Destination El Paso; provided, however, that (i) the agreements purporting to grant rights in, or otherwise pertaining to, Intellectual Property rights owned by Operator shall require approval of the Operator, which shall not be unreasonably withheld or delayed and (ii) that Manager is hereby authorized to make use of any of the Intellectual Property Rights solely for the purpose of promoting, advertising and marketing Destination El Paso;

(g) Negotiate, execute and perform all contracts, licenses and other agreements with all sub-contractors, including, but not limited to, public relations firms, advertising agencies and concessionaires selected by Manager (and not disapproved by Operator as set forth in Section 7.8) for the provision of services including, but not limited to, public relations, advertising and the sale of food, beverages, souvenirs, novelties and programs;

(h) Select, schedule, and coordinate the efforts of all parties involved in the operation of Destination El Paso and establish and maintain consistent procedures for cost estimating and reporting, maintenance and payment of invoices, including preparation of Budgets and reports as contemplated by Article 4.

(i) Plan, coordinate, and administer operation of Destination El Paso and continue to identify, select, and train the Destination El Paso's staff;

(j) Retain legal counsel in connection with the discharge of its duties hereunder and cause such counsel to coordinate with the City Attorney where necessary or appropriate;

(k) Coordinate the work of all parties performing work in connection with the operation of Destination El Paso;

(l) Monitor actual and projected Operating Expenses, advise Operator if projected costs exceed the amounts set forth in the Budgets, and, upon Operator's request, submit to Operator

proposals for reduction of expenses to within Budget amounts, but only if such reductions are operationally feasible;

(m) Make Prompt Payment of the Operating Expenses from the Hotel/Motel Tax Revenue funds available for that purpose under Article 6, and otherwise make prompt payments of the Operating Expenses from other funds available for that purpose under Article 6;

(n) Devise and implement procedures submitted to the Authorized Representative for review that are reasonably designed to keep the Facility in good order and condition, subject to ordinary wear and tear, and maintain the Facility in such order and condition;

(o) Attend regular meetings with Operator monthly, or as otherwise reasonably requested by Operator, to facilitate communications and coordination of activities relating to Destination El Paso;

(p) Solicit, prepare, negotiate and execute production agreements with international, national and/or local event producers in order to maximize the utilization of the Facility;

(q) Recommend and supervise the implementation of a project reporting system with respect to marketing, finance and operational requirements;

(r) Cooperate with and assist Operator in the procurement of all new furniture, fixtures and equipment for Destination El Paso, if any, subject to the applicable limitations of the Budget;

(s) Prepare, recommend and implement operating policies and procedures, and rules and regulations for the Facilities, as approved by Operator, which shall not be unreasonably withheld or delayed;

(t) Establish rental rate schedules for the use of the Facility, which may be revised or amended from time to time, with the understanding of Operator that the rental rate for particular events may be negotiated by Manager from time to time and thus may differ from the established rental rate schedule, and update the rate schedules as often as is fiscally prudent and maintain a copy of the most current rate schedule on file with the City Clerk at all times;

(u) Design and implement a financial accounting system for Destination El Paso;

(v) Purchase equipment, materials, supplies and inventories necessary for the operation of Destination El Paso through vendors selected by Manager, subject to applicable law;

(w) Provide and coordinate ticketing and box office services for Events at the Facilities through the ticket concessionaire selected by Manager;

(x) Provide and coordinate risk management services for Destination El Paso with respect to the insurance to be provided by Manager under Section 9.2 of this Agreement, and in connection therewith, advise Operator of insurable risks that Operator may choose to insure, in its sole discretion;

(y) Plan, coordinate and administer the operation of security and crowd control services at the Facility;

(z) Conduct a preliminary operations and engineering assessment of the Facility in order to prioritize any items that may require immediate attention, including identifying potential compliance issues with respect to the Americans with Disabilities Act;

(aa) Monitor energy consumption at the Facility and coordinate efforts to minimize such energy consumption and thus maximize energy conservation;

(ab) Review existing and preliminary and final designs (in connection with a planned Facility expansion) of the mechanical, plumbing, and electrical systems for operational cost effectiveness, energy conservation and general efficiency;

(ac) At the reasonable request of Operator, coordinate and participate in meetings of the design professionals involved with an expansion of the Facility, but in no event shall Operator be obligated to act on any advice given by Manager hereunder;

(ad) At the reasonable request of Operator, Manager will work with Operator and the design professionals during presentation of working drawings and other documentation by the design professionals for submission for construction bids and contract awards in the (a) review of the documents comprising the working drawing package for design objectives and potential cost savings, as well as performance specifications and warranty performance criteria and (b) review and recommend changes where appropriate to make the Facility more useful, efficient or functional for its intended purposes, but in no event shall Operator be obligated to act on the advice given by Manager hereunder;

(ae) At the reasonable request of Operator, advise Operator with respect to the identification and selection of a construction manager, trade contractors, and/or trade subcontractors, in the preparation of bid packages, and the negotiation and execution of definitive agreements with such parties in connection with an expansion of the Facility, but in no event shall Operator be obligated to act on the advice given by Manager hereunder;

(af) At the reasonable request of Operator, advise Operator with respect to the enforcement of any agreements with the architect, the construction manager, trade contractors, trade subcontractors and/or design professionals providing services at the Facility, but in no event shall Operator be obligated to act on the advice given by Manager hereunder;

(ag) At the reasonable request of Operator, assist in establishing lines of authority and communications among the Manager, Operator and the design professionals, and all other persons responsible for implementing the construction of an expansion of the Facility;

(ah) At the reasonable request of Operator, consult with Operator regarding the implementation of schedules for the completion of the construction of an expansion of the Facility, but in no event shall Operator be obligated to act on the advice given by Manager hereunder;

(ai) Perform such other consulting, administrative, management and tourism services, as applicable, relating to Destination El Paso as reasonably requested by Operator; and

(aj) Furnish all services necessary to accomplish the foregoing requirements of this Section 3.5.

(ak) Omitted

(al) Manager has agreed to accept the responsibility to manage McKelligon Canyon located at 1400 McKelligon Road, El Paso, Texas, in accordance with the terms of this Agreement.

(am) Manager has agreed to accept responsibility to manage, in full accordance with the terms of this Agreement, the Plaza Theatre Performing Arts Centre which includes but is not limited to the Plaza Theatre, Plaza Theatre Annex, and Arts Festival Plaza, all located at 125 Pioneer Plaza, El Paso, Texas.

(an) Manager shall provide all management, operations, merchandising and concessionaire services, including the sale of souvenirs, novelties and other water park merchandise, at the Camp Cohen, Chapoteo, Oasis, and Lost Kingdom water parks ("Water Parks"), and shall negotiate, execute and perform all contracts, licenses and other agreements with all sub- contractors, including, but not limited to any concessionaires selected by Manager (and not disapproved by Operator) for the provision of such merchandising and concessionaire services at the Water Parks.

## ARTICLE 4

### RECORDS, ACCOUNTS AND REPORTS

4.1 Books. Manager shall maintain adequate books of account with respect to its management and operation of Destination El Paso in accordance with generally accepted accounting principles and industry standards, including any variations required by applicable state law to the extent applicable to Destination El Paso, and as may otherwise be reasonably requested by Operator.

4.2 Access to Information. Operator shall have the right to obtain from Manager, at any time upon reasonable prior notice, such information and to inspect such books and records concerning the management and operation of Destination El Paso as may be reasonably necessary to inform Operator concerning Destination El Paso and its operations.

4.3 Annual Audit of Facility Operations. Not later than one-hundred twenty (120) days after the end / of each Fiscal Year, Manager shall furnish to Operator, a balance sheet, a statement of the profit or loss and a statement of changes in financial condition for Destination El Paso, prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an opinion of the independent certified public accountant preparing the report, which shall be a firm selected by Manager. Manager shall obtain for its records a copy of the accounting firm's work papers after each audit is completed. All costs incurred in complying with this Section shall be Operating Expenses. Manager's obligation to provide such audited reports to Operator shall be contingent upon inclusion of funding in the Budget for same.

4.4 General Audit Right of Destination El Paso Operations. Operator shall have the right to conduct a financial audit, at its sole cost and expense, at any time during Manager's normal business hours, of the books and records of Manager which specifically relate to Destination El Paso and no others. Manager shall account separately for the receipts and expenditures related to each of the following activities: (A) the Manager, (B) the Facilities, (C) Bureau, including tourism, (D) film and music, and (E) other services performed upon Operator's reasonable request. The Manager shall make the records relating to the handling and expenditure of funds under this Agreement available to the Operator's Authorized Representative or a person designated by Operator, excluding Manager's competitors or potential competitors, subject to the provisions of Section 4.9.

4.5 Financial Reports. Within thirty (30) calendar days of the end of each fiscal quarter, Manager shall furnish to Operator a report ("Report") regarding Destination El Paso's financial performance during the prior quarter, including all Operating Expenses and Operating Revenues. The Report shall be substantially in the form mutually agreed to by the parties. Within forty-five (45) days following the end of each fiscal quarter, Manager shall be available to discuss such Report with representatives of Operator in a public forum.

4.6 Capital Improvements Budgets. Manager shall submit to Operator a Budget for projected Capital Expenditures for each Fiscal Year. The budget shall be subject to the procedures customarily employed by Operator in connection with the development, approval, and implementation of capital budgets. In addition, if Manager at any time becomes aware of any condition that jeopardizes the structural soundness or operational capability of the Facility, or the public safety, Manager shall so advise Operator in writing, and shall include recommendations for remedial action to the extent practical in such situation. Operator shall, within such time as is reasonable under the circumstances if same are made available by City Council, make available the funds (each an "Emergency Expenditure") necessary to correct such condition if such funds have not been allocated in the Budget; provided, however, that Manager shall have the right to expend any available funds to prevent or attempt to prevent or mitigate an imminent danger of damage to property or injury or death to persons. Failure of Operator to provide such Emergency Expenditures, if such funds are not otherwise available in the Budget, shall relieve Manager of all liability relating to or arising from such conditions; provided, however, that the foregoing shall not be interpreted to obligate Operator to indemnify Manager from any third-party Claims and Costs.

4.7 Annual Operating Budget. Manager shall submit an annual operating budget for each Fiscal Year. The budget shall be subject to the procedures customarily employed by Operator in connection with the development, approval, and implementation of operating budgets. Manager may at any time submit to Operator for its approval amendments to a Budget to reflect unanticipated revenues or expenses or other changes.

4.8 Budget Approval. Operator shall promptly review all proposed Budgets and any amendments thereto which are submitted by Manager and shall promptly communicate to Manager any comments or suggested revisions thereto. Final approval of any Budget shall, except for amendments thereto that are not material, be completed in accordance with procedures applicable to other comparable Operator budgets. The Parties agree to negotiate all Budget matters in good faith and to meet as often as may be necessary following submission of the outstanding Budget to resolve any outstanding Budget issues. Notwithstanding the Parties' good faith efforts, if a proposed Budget has not



been approved prior to the first day of the period to which it relates, the Budget for the previous period shall continue to control.

4.9 Texas Public Information Act. If any Person requests Operator to disclose any information with respect to Destination El Paso under the Texas Public Information Act (the "Act"), prior to making such disclosure, Operator shall notify Manager of such request in which case Manager shall (i) promptly and timely inform Operator if any of the requested materials may constitute confidential, proprietary or trade secret information of Manager which may be exempted from disclosure under the Act, and, in that event, (ii) cooperate with Operator in preparing appropriate responses and/or filings to any Person with respect to such request, including any appeals involved therein, to prevent the disclosure of such information.

## ARTICLE 5

### MARKETING PLAN

5.1 Marketing Plan. A written marketing plan shall be submitted by Manager to Operator's City Manager or his/her designee each year on or before the start of said year.

5.2 Marketing Plan Criteria. The marketing of Destination El Paso and all marketing plans shall be consistent with the following requirements:

(a) The marketing plans shall have separate work statements for (i) new convention, meeting and sport bookings for the period commencing six (6) months after the Commencement Date, (ii) tourism activities, including a dedicated focus on ecotourism, (iii) music film and other entertainment activities, and (iv) other operations reasonably requested by Operator.

(b) The marketing plans shall be consistent with the required allocation of uses of "Tax Collections" as set forth in the Authorizing Legislation and applicable Operator ordinances.

(c) The marketing plans shall be consistent with the policy that the primary role of the Operator's convention sales division is to market and sell space in the Convention Center and related tourism facilities.

(d) The City Manager shall have authority to approve each marketing plan and shall retain the exclusive right to approve subsequent revisions to the same.

(e) The marketing plan shall include, but not be limited to, a description of the proposed program of action for the upcoming Fiscal Year. It shall contain a specific numerical goal regarding the bookings for the Convention Center and quantifiable goals against which success may be measured. In addition, the annual operating Budget submitted by Manager shall be presented in such a way as to associate direct costs, where applicable, to the programs presented in the marketing plan. The marketing plan shall contain marketing goals and programs relating to the Convention Center and other Facilities. In addition, the marketing plan shall include tourism, music and film marketing goals and programs. Upon approval of the marketing plan by the City Manager, Manager shall implement the plan and allocate funds within budgeted limits without further action on the part of Operator.

## ARTICLE 6

### FUNDS AND ACCOUNTS

6.1 Operating Revenue Account. After the Commencement Date, Manager shall collect all Operating Revenues and all Hotel/Motel Tax Revenue provided by Operator and deposit same in an account maintained by Manager in its name in the Depository (the "Operating Fund"). Manager shall have complete control and authority as to the Operating Fund, subject only to the provisions of this Article 6 and applicable law. Monies in the Operating Fund and any interest thereon shall be applied first to the payment of Management Fees accrued through the end of the prior month and thereafter to any Operating Expenses then accrued. The balance shall be retained in the Operating Fund as reserve for payment of future Operating Expenses.

6.2 Omitted.

6.3 No Obligation of Manager to Advance Funds. Operator is solely responsible for and shall promptly pay or provide funds to Manager to enable Manager to pay, all Operating Expenses, Emergency Expenditures, and Capital Expenditures. Manager shall not be obligated to make any advance of its own funds to or for the account of Operator or to pay any sums incurred for the performance of services or goods delivered to Destination El Paso, nor shall Manager be obligated to incur any liability or obligation for the account of Operator. Operator shall provide to Manager from time to time all such sums as are needed to pay Operating Expenses of Destination El Paso which are not paid from Operating Revenues available for that purpose as contemplated in this Article 6. Operator covenants and agrees to pay all Operating Expenses and to provide to allow for the payment of all liabilities of Manager under any contracts or agreements executed or entered into by Manager in accordance with this Agreement.

6.4 Security for and Investments of Funds. All funds and accounts required to be maintained by Operator under this Article 6 shall be maintained in the Depository and held in trust by Manager on behalf of Operator and shall remain the property of Operator. Manager shall require of the Depository that all funds held in any account maintained under this Article 6 be secured to such an extent and in such manner may be required in connection with the deposit of funds by Operator.

## ARTICLE 7

### POWER AND FUNCTIONS

7.1 Authority of Manager. Manager shall have the exclusive right and authority to exercise, or delegate the exercise of, all rights, powers and duties conferred or imposed on Manager in this Agreement; provided, however, that Manager may not delegate its obligations under this Agreement in such a manner that would effectively assign this entire Agreement to another Person. The powers of Manager with respect to Destination El Paso shall be plenary, subject only to the limitations expressly set forth in this Agreement.

7.2 Sale of Property. Manager shall have no authority to sell or otherwise dispose of, or to encumber or alienate any personal or real property owned by Operator, without the prior written consent of Operator.

7.3 Capital Improvements. Except for the Capital Expenditures approved by Operator and set forth in the Budget and Emergency Expenditures, Manager shall have no authority to make any material alterations or any capital improvements to the Facility without the prior written consent of Operator.

7.4 Contracts. Manager shall have no authority, without the prior written consent of Operator, to enter into Material Contracts; provided, however, that Operator agrees to cooperate with Manager in connection with the execution of Material Contracts that would extend beyond the Term of this Agreement by executing and delivering agreements with the other parties to such contracts whereby Operator agrees to honor and observe such contracts following termination of this Agreement. All contracts entered into by Manager shall provide that the same are for the benefit of Operator and are assignable to Operator without the other contracting party's prior consent and, notwithstanding any contrary provision hereof, upon termination of this Agreement for any reason, Manager agrees that Operator shall have the right to and Operator shall assume in writing any or all then outstanding contracts (i.e., all Material Contracts and all other contracts entered into by Manager to the extent that they are consistent with the then existing Budget) affecting Destination El Paso.

7.5 Employees.

(a) Employees now or hereafter hired by Manager in connection with the management and tourism services provided by Manager shall, subject to Section 7.10, be employees of Manager and not of Operator, although the employment costs of such employees (including, without limitation, wages, salary, benefits, and the costs of complying with local, state, and federal employment laws) shall be part of the Operating Expenses. Manager shall have complete and absolute discretion and authority with respect to the number, functions, qualifications, compensation and other terms and / conditions relating to its employees, subject only to the provisions of Section 4.7 of this Agreement.

(b) Manager shall select the General Manager who will be placed on site at Destination El Paso and shall notify Operator of its selection. The General Manager shall be and remain an employee of Manager. In the event that Operator has concerns related to the General Manager, Operator and Manager shall meet to discuss those concerns and, subject to applicable employment laws with respect to such matter, attempt to reach an agreement as to a plan to address such concerns.

(c) Except to the extent the obligation below may violate Operator's City Charter, Operator covenants and agrees that it shall not during the Term hereof or for a period of twenty-four (24) months following the expiration or early termination of this Agreement hire, employ, solicit for hire, or engage in any manner or for any purpose any person who has served as General Manager during the Term of this Agreement or any other of Manager's "senior personnel." "Senior personnel" shall mean and refer to the personnel of Manager who report directly to the General Manager or who are designated by Manager in writing as "senior personnel" for purposes of this Agreement, excluding any individuals employed by Operator prior to the Commencement Date.

7.6 Purchase of Supplies and Services. Subject to the limitations set forth in this Agreement and applicable law, if any, regulating the purchase of goods and services by municipal or other governmental authorities, Manager shall have full authority and discretion as to the purchase of all

equipment, materials, supplies and inventories reasonably required by it in the management of Destination El Paso but shall endeavor to make all such purchases at the best price available as known to Manager, considering the quantities required and the quality desired, at the time available for the delivery and the sources of supply whenever possible as part of a volume purchase by Manager. Manager may acquire property or services from or otherwise transact business with its Affiliates for any of the goods to be purchased or services to be performed by it under this Agreement but only if the prices charged and services rendered are competitive with those obtainable from others rendering comparable services in the field. To ensure compliance in this respect, Manager agrees to obtain at least two (2) other competitive bids from Persons other than Manager's Affiliates, whenever Manager considers purchasing goods or services under this Agreement from an Affiliate. All contracts for goods and services with a contract price in excess of \$250,000 shall be submitted to Operator's Authorized Representative for review prior to execution by Manager.

Manager has advised Operator that Manager performs facility services similar to those outlined herein for other public assembly facilities. In order to maximize utilization of the Facility, Manager may from time to time book the same event at a number of the facilities it operates. If Manager desires to book events at the Facility while at the same time booking said events under the same contract (or one or more contracts executed concurrently) for other facilities for which Manager is providing services, then before finalizing such contract, Manager shall obtain Operator's approval over the allocation of such contracts' expenses to the Facility. Similarly, if authorized to acquire business services for the Facility, Manager desires to acquire goods or services in bulk for the Facility and one or more of the other facilities for which Manager performs services, Manager shall first obtain Operator's approval over the allocation of the costs thereof to the Facility. Provided, however, Manager shall not allocate or impose any costs or expenses related to its corporate offices or other facilities to the Facility which are not related to Manager's provisions of management services to the Facility. Operator's approval under this Section 7.6 shall not be unreasonably withheld or delayed.

7.7 Settlement of Claims. Manager has been advised by Operator (and Operator shall continually keep Manager apprised of) of Operator's procedures and requirements in respect of settlement of third-party claims filed against Operator or with respect to Destination El Paso. Manager agrees to comply with such settlement claims and procedures as it has been advised of in writing by Operator so long as such settlement procedures do not delay a proposed settlement by Manager which delay may result in the assessment of a civil or criminal penalty against Manager, and Operator shall have the right to participate in any proposed settlement negotiations to the extent of its interest. Manager and Operator agree to cause their respective legal counsels to coordinate with one another in connection with the settlement of claims, and all costs and expenses thereof, including the settlement itself, shall be deemed an Operating Expense in accordance with the terms and provisions of this Agreement.

7.8 Concession Contracts. Manager shall have the right to exclusively manage and operate Food and Beverage Services at the Facilities as defined in this Agreement.

7.9 Operator's Covenant Against Interference. Operator covenants and agrees that neither it nor its Authorized Representatives shall interfere in any manner with Manager's exclusive right and authority under this Agreement and, specifically, that no such person shall initiate or intervene in any manner whatsoever in negotiations with existing or prospective lessees, users, advertisers, service contractors or other persons doing business or seeking to do business with Destination El Paso, nor shall

any person solicit, request or seek any services, contributions, gifts, favors, tickets, gratuities or other benefits from Manager or any person doing business with Destination El Paso.

ARTICLE 8

FEES AND EXPENSES

8.1 Annual Management Fees. For services to be performed by Manager, Operator shall pay to Manager for each year following the Commencement Date an annual base fee (the "Annual Base"), as shown on Exhibit A "Compensation," such sum to be paid, in each year, in twelve (12) equal installments on or before the first business day of the month throughout the Term hereof. The Annual Base shall be prorated for any partial year or month during such period.

8.2 Incentive Fees. Manager shall be entitled to performance-based incentive payments annually for each Fiscal Year during the Term of this Agreement (the "Annual Incentive"), calculated as follows:

- (i) Annual Incentive fee calculation:
  - (a). 35% of the Annual Base in the event that Operating Revenue exceeds the budgeted operating revenue;
  - (b). 20% of the Annual Base if Operating Expenses are less than Budgeted Operating Expenses;
  - (c). 10% of the Annual Base if the Hotel Occupancy Tax Revenue is greater than the previous Fiscal Year; and
  - (d). 10% of the Annual Base if Manager demonstrates quality service to clients based on exit surveys. A minimum average of 3, based on a 5-point scale, demonstrates quality service to clients.
  - (e). The following percentage of the Annual Base based on the combined number of patrons in the Abraham Chavez Theatre and Plaza Theatre Performing Arts Centre as evidenced by ticket manifests, turnstile counts and/or drop counts:

<u>Patrons</u>	<u>Percentage</u>
0-25,000	0%
25,001-55,000	2%
55,001-80,000	4%
80,001-105,000	8%
105,001-130,000	12%
130,001-155,000	16%
155,001+	20%

- (f). The following percentage of the Annual Base if there are the following **Days of Activity** in the Philanthropy Theatre during a fiscal year:

<u>Days</u>	<u>Percentage</u>
0-29	0%
30-59	2%
60-89	4%
90-119	6%
120-149	8%
150+	10%

- (g). The following percentage of the Annual Base if there are the following **Special Consideration for Non-Profit Organization Days of Activity** (to include all Facilities):

<u>Days</u>	<u>Percentage</u>
0-25	0%
26-50	2%
51-75	4%
76-100	6%
101-125	8%
126+	10%

- (h). Individual performance measures (a), (c), and (d), detailed above, shall be pro-rated in the event the performance measure is not achieved fully, so long as a minimum of 80% of the individual performance measure has been achieved.
- (i). In the event Operating Expenses exceed Budgeted Operating Expenses, the amount of incentive fee earned under individual performance measure (b) detailed above shall be reduced on a pro-rata basis, with no incentive fee being earned under (b) if Operating Expenses exceed Budgeted Operating Expenses by more than 5%. (For example, if Operating Expenses exceed Budgeted Operating Expenses by 2.5%, which is  $\frac{1}{2}$  of the 5%, the incentive fee earned under (b) would be 10%, which is  $\frac{1}{2}$  of the maximum 20% available under (b).)

(ii). The Annual Incentive fees determined pursuant to this Section 8.2 shall be payable to Manager within 30 days after Operator's receipt of an invoice from Manager accompanied by the audited fiscal statements.

(iii). No later than one hundred twenty (120) days after the end of each Fiscal Year, Manager shall furnish Operator an external auditor's report regarding the above performance measures. All costs incurred in complying with this audit shall be an Operating Expense and Manager's obligation to provide such audited reports to Operator shall be contingent upon inclusion of funding in Budget for same.

8.3 Cap on Performance Based Incentive Payments. Notwithstanding anything herein to the contrary, (i) the Annual Base fees set forth in Section 8.1 shall comprise at least 50% of all compensation received by the Manager or any of its affiliates from or with respect to the use, operation and/or management of Destination El Paso in any Fiscal Year, and (ii) the aggregate of all of Manager's Annual Incentive payable pursuant to Section 8.2 or otherwise and any other compensation payable to the

Manager or any of its affiliates from or with respect to the use, operation and/or management of Destination El Paso shall not exceed fifty percent (50%) ("Incentive Payment Cap") of the total compensation earned and paid to Manager or its affiliates with respect to the use, operation and/or management of Destination El Paso in any Fiscal Year. In the event such Annual Incentive fees exceed the Incentive Payment Cap, the Annual Incentive fee shall be reduced to an amount equal to the Incentive Payment Cap.

An independent certified public accountant ("CPA"), mutually acceptable to the Manager and the Operator, shall make an annual certification in writing to the Operator that the Manager is in compliance with this Section no later than one hundred twenty (120) days after the end of each Fiscal Year. Such written certification shall be an Operating Expense. The Manager shall cooperate with the CPA and make its and its affiliates books and records reasonably available to the CPA in order for the CPA to conduct the necessary due diligence to make such certification.

## ARTICLE 9

### INSURANCE

9.1 Insurance to be Maintained by Operator. Operator agrees that it shall maintain any property and casualty insurance, and any other insurance, maintained by Operator as of the Commencement Date throughout the Term of the Agreement.

9.2 Insurance to be Maintained by Manager. Manager shall exercise its diligent efforts to obtain and maintain in effect the following policies of insurance, the cost of which shall be an Operating Expense:

- (a) Worker's Compensation. Such workers' compensation insurance coverage as may be required by law or deemed prudent by Manager.
- (b) Commercial General Liability. Public liability and property damage insurance with a combined single limit of at least \$1,000,000.00 per occurrence insuring against all liability of Manager and its Authorized Representatives, including liquor liability, arising out of and in connection with Manager's use or occupancy of the Facility;
- (c) Crime and Fidelity Coverage. At least \$100,000.00 per occurrence of coverage for (i) employee dishonesty; (ii) forgery or alteration, (iii) theft, disappearance and destruction inside and outside the Facility; and (iv) robbery and safe burglary inside and outside the Facility;
- (d) Officer and Director Liability Insurance. At least \$1,000,000 per occurrence liability coverage for acts, errors and omissions of officers and directors of Manager; and
- (e) Commercial Automobile Liability of \$1,000,000.00 bodily injury/\$500,000.00 property damage liability per occurrence.
- (e) Such other coverages as Manager, in its sole discretion, may deem prudent or necessary, except that Manager shall not otherwise be obligated to specifically insure any movable and immovable property constituting the Facility itself.

9.3 Insurance Requirements. All insurance required under this Agreement shall (i) be issued by insurance companies licensed to do business in the State of Texas with the financial rating of at least A+ 3A status, as rated in the most recent edition of Best's Insurance Reports, (ii) be issued as a primary policy, (iii) contain an endorsement requiring sixty (60) days' written notice from the insurance companies to Operator and Manager before cancellation or change in the coverage, scope or amount of any policy, .and (iv) name Manager, Operator and their Authorized Representatives as named insureds or additional insureds, as their interests may appear. The Operator, its officials, employees, agents and contractors shall be named as additional insureds and contain a "blanket waiver of subrogation" clause in favor of the Operator. The Manager and its subcontractors' insurance coverage shall be primary insurance as respects the Operator, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the Operator, its officers, employees, agents and contractors shall be in excess of the Managers insurance and shall not contribute to the Managers insurance. Operator shall be provided with certificates of insurance evidencing the above required insurance prior to the Commencement Date and thereafter with certificates evidencing renewal or replacement of said insurance policies at least fifteen (15) days prior to the expiration of any such policies.

9.4 Indemnity. Manager or its INSURER will INDEMNIFY, DEFEND AND HOLD, the City, its officers, agents and employees, HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF RELATED TO THIS AGREEMENT, even where such damage, injury, loss, illness, physical or mental impairment, loss of service, or death results from or involves NEGLIGENCE, or allegations of negligence on the part OF THE CITY, its officers, agents, or employees. Without modifying the conditions of preserving, asserting or enforcing any legal liability against the city as required by the City Charter or any law, the City will promptly forward to Manager every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. Manager will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as the Manager may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages, Manager will pay all judgements finally establishing liability of the City in actions defended by Manager pursuant to this section along with all attorney's fees and costs incurred by the City including interest accruing to the date of payment by Manager, and premiums on any appeal bonds. The City, at its election, will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss of or damage to the Manager's property from any cause.

9.5 Waiver of Subrogation. The parties release each other and their respective Authorized Representatives from any claims for damage to any person, the Facility or any fixtures, personal property, improvements and alterations of either Party in or about the Facility that are caused by or result from risks insured against under any insurance policies required to be carried by the parties hereto under this Agreement, whether or not the cause thereof results from the negligence (whether ordinary or gross) of any Party to this Agreement. The parties agree to cause the issuers of the insurance policies required to be maintained by them hereunder to include waivers of the rights of recovery and subrogation.

## ARTICLE 10



## TERMINATION

10.1 Termination for Cause. Either Party may terminate this Agreement for cause by written notice upon the occurrence of a Material Breach, as defined in Section 11.1, by the other Party and the failure of the breaching Party to cure the Material Breach in accordance with Section 11.1.

10.2 Omitted.

10.3 Automatic Termination. This Agreement shall terminate automatically, without action or notice by either Party, upon the occurrence of any of the following: Manager files or has filed against it a voluntary or involuntary petition in bankruptcy or a voluntary or involuntary petition or an answer seeking reorganization, an arrangement, readjustment of its debts, or for any other relief under the Bankruptcy Code, as amended, or under any other state or federal insolvency act or law not dismissed within sixty (60) days thereof, or any action by Manager indicating its consent to, approval of, or acquiescence to the appointment of a receiver or trustee for all or a substantial part of its property; the making by such Party of an assignment for the benefit of creditors, the inability of Manager or its admission in writing of its inability to pay its debts as they mature, or the liquidation, dissolution or termination of the corporate or partnership existence of Manager.

10.4 Surrender of Improvements. Upon expiration or termination of this Agreement, Manager shall promptly surrender the Facility to Operator, leaving all equipment, supplies, manuals, books, records, and inventories that are the property of Operator or from funds made available by Operator, and Operator shall immediately make all payments due Manager as set forth in this Agreement. Manager shall also deliver all documents, records, and other non-proprietary work product generated by Manager for Operator during the Term of this Agreement.

## ARTICLE 11

### BREACH

11.1 Material Breach. Each of the following shall constitute a "Material Breach" under this Agreement:

(a) Failure to pay when due any amount required to be paid under this Agreement, if the failure continues for fourteen (14) days after notice has been given to the breaching Party; and

(b) Failure to perform any other obligation under this Agreement, if the failure to perform is not cured within thirty (30) days after written notice has been given to the breaching Party, except that if the breach cannot reasonably be cured within thirty (30) days, a Material Breach shall not be deemed to have occurred if the breaching Party begins to cure the breach within the thirty (30) day period and diligently and in good faith continues to pursue the cure of the breach.

11.2 Interest on Delinquent Payments. Interest shall accrue on any sums not paid when due from the date on which a default notice is given until paid at the rate set forth in the Prompt Payment Act.

11.3 Notice of Breach. Each Party shall promptly notify the other Party of any act or omission believed to be a breach of this Agreement. In order to be effective for purposes of Section 11.1 or 11.2, a notice of a breach must state that it is a notice of breach and must specify in detail the act or omission alleged to constitute a breach of this Agreement.

11.4 Rights of Non-Breaching Party. If a Material Breach occurs and is not waived in writing by the non-breaching Party, then the non-breaching Party shall have the following remedies which are not exclusive but cumulative in addition to any other remedies now or later allowed by law or in equity:

- (a) The right to cure, at the breaching Party's cost and expense, any Material Breach and recover such costs together with interest thereon as provided in Section 11.2, together with reasonable attorney's fees and costs of court;
- (b) The right to sue to collect any sums not paid when due, together with interest accrued thereon as provided in Section 11.2, together with reasonable attorney's fees and costs of court incurred in collecting the same;
- (c) The right to sue to collect damages suffered by the non-breaching Party by reason of the occurrence of a Material Breach other than breach in the payment of money, together with reasonable attorney's fees and costs of court incurred in such proceedings;
- (d) The right to terminate this Agreement; or
- (e) The right to injunctive relief including seeking specific performance of the breached obligation, together with reasonable attorney's fees and costs of court incurred in such proceedings.

## ARTICLE 12

### MISCELLANEOUS

12.1 Notices. Unless expressly otherwise provided elsewhere in this Agreement, any election, notice or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged) or three (3) days after mailing the same (by certified mail, return receipt required) with proper postage prepaid, or when sent by a national commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery, to be confirmed in writing by such courier, or when telecopied, telegraphed or telexed to a Party, at such Party's address set forth below or at such other address as may designate by written notice given to the other in accordance with the foregoing.

To Operator:

City of El Paso, Texas  
Two Civic Center Plaza  
P.O. Box 1919  
El Paso, Texas 79999-1919

Attention: Director of Purchasing

With a copy to:

City of El Paso,  
Texas Two Civic Center Plaza  
P.O. Box 1919  
El Paso, Texas 79999-1919  
Attention: Director of Office of Management and Budget

To Manager:

SMG  
300 Conshohocken State Road, Suite 770  
West Conshohocken, PA 19428  
Attention: President

With a copy to:

SMG  
300 Conshohocken State Road, Suite 770  
West Conshohocken, PA 19428  
Attention: General Counsel

Notice shall, in all events, be effective upon receipt by the addressee except that notice by facsimile electronic transmission shall, if received after 5:00 p.m. on any day which is not a business day, be deemed received on the next following business day.

12.2 Amendments. This Agreement may be amended only by the written consent of the parties.

12.3 Title and Captions. All articles or section titles or captions in this Agreement are for convenience of reference only. They should not be deemed to be part of this Agreement or to in any way define, limit, extend, or describe the scope or intent of any provisions of this Agreement. Except as specifically otherwise provided, reference to "Articles," "Sections," and "Exhibits" are to be Articles and Sections of and Exhibits to this Agreement.

12.4 Pronouns and Plurals. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

12.5 Severability. Each provision of this Agreement shall be considered to be severable and, if, for any reason, any such provision or any part thereof, is determined to be invalid and contrary to any existing or future applicable law, such invalidity shall not impair the operation of or affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part thereof had been omitted.

12.6 Successors. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, but this provision shall not be deemed to permit any assignment by a Party of any of its rights or obligations under this Agreement except as expressly provided herein.

12.7 Assignment. A Party (the "first Party") shall not voluntarily assign or encumber its interest in this Agreement without first obtaining the other Party's (the "second Party") written consent, provided, however, that such consent shall not be withheld or delayed unreasonably. Any assignment or encumbrance without the second Party's consent shall be voidable and, at the second Party's election within thirty (30) days of actual knowledge of an assignment or encumbrance, shall constitute a default which shall be a Material Breach unless the assignment or encumbrance is rescinded within thirty (30) days after the second Party has given the first Party written notice of the second Party's election to treat the assignment or encumbrance as a default. Manager shall, however, have the right without Operator's consent, to assign this Agreement (i) to a general or limited partnership if (A) Manager is a general partner and (B) the partnership executes an agreement required by Operator assuming Manager's obligations; (ii) to a corporation if (A) Manager or its principals own the majority of the outstanding stock of the corporation entitled to vote on the election of directors and (B) the corporation executes an agreement required by Operator assuming Manager's obligations; or (iii) to a corporation with which Manager has merged or consolidated, to any principal of Manager or any parent or subsidiary of any such principal or of Manager, or to a purchaser of all or substantially all of Manager's assets, if the assignee executes an agreement required by Operator assuming Manager's obligations under this Agreement. The provisions of this Section 12.7 shall not prohibit or restrict Manager's entering into subleases, contracts, concessions or licenses for the operation of any portion of the Facility or of the business conducted in the Facility, subject to the terms of Section 7.1 of this Agreement. Furthermore, Manager shall have the right to pledge its rights to receive the fees to be paid Manager hereunder to any bank, insurance company, savings association, federal savings bank or other institutional lender providing credit to Manager or any of its Affiliates.

12.8 Further Action. Whenever one Party to this Agreement in good faith has reason to question the other Party's intent to perform, it may demand in writing that the other Party give written assurance of its intent to perform. In the event that a demand is made, and no assurance is given within ten (10) calendar days of receipt of the written inquiry, the demanding Party may treat this failure as an anticipatory repudiation of this Agreement unless the other Party performs as required by this Agreement.

12.9 Entire Agreement. The Exhibits attached to this Agreement are expressly incorporated into this Agreement and made a part hereof for any and all purposes. In the event of a conflict between the express provisions of Articles One through Twelve of this Agreement and any language contained in any of the Exhibits incorporated herein, the provisions contained in Articles One through Twelve shall prevail. This Agreement, including the incorporated Exhibits is intended by the Parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms of their contract. No course of prior dealings between the Parties and no usage of the trade shall be relevant to supplement or explain any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though accepting or acquiescing Party has knowledge of the performance and opportunity for objection. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved Party.

12.10 Counterparts. This Agreement may be executed in one or more counterparts and each of such counterparts, for all purposes, shall be deemed to be an original, but all of such counterparts together shall constitute one and the same instrument, binding upon the parties, notwithstanding that all of the parties may not have executed the same counterpart.

12.11 Applicable Law: Attorneys' Fees. This Agreement calls for performance and shall be performable in El Paso, Texas and shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas (without giving effect to principles of conflicts of law thereof), along with any applicable provisions of federal law or the City Charter or any ordinance of Operator. Venue for any dispute arising hereunder shall be exclusively in El Paso, Texas. The prevailing Party in any litigation or other similar proceeding relating hereto shall be entitled to recover the reasonable attorneys' fees and other costs incurred by the prevailing Party in such action.

12.12 Force Majeure. If, by reason of Force Majeure, either party hereto will be rendered unable wholly or in part to carry out its obligations under this Contract then such party will give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as is effected by such Force Majeure, will be suspended for only thirty (30) days during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party will try to remove or overcome such inability with all reasonable dispatch. The term Force Majeure as employed herein, will mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemies, orders of any kind of government of the United States or the State of Texas or any civil or military authority, Insurrections, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals. It is understood and agreed that the settlement of strikes and lockouts will be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure will be remedied with all reasonable dispatch will not require the settlement of strikes and lockouts by acceding to the demands or the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty. If a party is unable to comply with the provisions of this contract by reason of Force Majeure for a period beyond thirty days after the event or cause relied upon, then upon written notice after the thirty (30) days, the affected party shall be excused from further performance under this contract.

12.13 No Third-Party Beneficiary. Any agreement to perform any obligation or pay any amount and any assumption of liability herein contained, express or implied, shall be only for the benefit of Manager, Operator and the respective successors and permitted assigns (as expressly permitted in this Agreement), and such agreements and assumptions shall not inure to the benefit of any obligee, whomever, it being the intention of the undersigned that no one shall be or be deemed to be a third-party beneficiary of this Agreement.

12.14 Gratuities and Kickbacks. The Operator may, by written notice to the Manager, cancel this contract without liability to Manager if it is determined by the Operator that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Manager, or any agent or representative of the Manager, to any officer or employee of the City of El Paso with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making or any determinations with respect to the performing of such a contract. In the event this contract is cancelled by the City pursuant to this provision, the City shall be entitled, in addition to any

other rights and remedies, to recover or withhold the amount of the cost incurred by the Manager in providing such gratuities.

12.15 Limitation of Liability. Notwithstanding any contrary provision hereof, Operator agrees that no limited partner, co-venturer, employee, agent, director, officer, or shareholder shall be personally liable to Operator or anyone claiming by, through or under Operator by reason of any default by Manager under this Agreement, any obligation of Manager to Operator, or for any amount that may become due to Operator by Manager under the terms of this Agreement or otherwise.

12.16 No Warranty as to Operations Results. Operator recognizes that Operating Revenues and Operating Expenses for Destination El Paso are incapable of being estimated with reasonable certainty given that the entertainment/convention/tourism industry as a whole fluctuates based upon general economic conditions, current trends in convention, entertainment and tourism, available income of patrons, competitive facilities, and a variety of rapidly changing factors beyond the control of Manager. Manager has made no and disclaims any warranty as to the results which can be expected from the ownership and operation of the Facility including, without limitation, the Operating Revenues, Operating Expenses or the accuracy of its projections and estimates thereof. Operator recognizes and accepts that all Budgets and projections represent Manager's estimate of the expected expenditures and revenues and that Manager is in no way responsible or liable if the actual expenditures and revenues are more or less than that projected.

12.17 No Discrimination. Manager acknowledges and agrees that it will not knowingly discriminate on the basis of race, religion, age, disability, ethnic background, national origin, gender, gender identity, or sexual orientation, in any of its employment practices or procurement practices with respect to the management of Destination El Paso or any services provided therefrom.

12.18 Omitted

12.19 Office Space. Operator hereby grants to Manager the privilege and license to use, at Manager's sole option, the office space on the lower level of the administration building at 1 Civic Center Plaza, El Paso, Texas (the "Office Space") and all furniture and equipment therein (the "F&E"). The Office Space and F&E may be used by Manager from the Commencement Date until the termination of this Agreement. Upon termination of Manager's license to use the Office Space, Manager shall return the Office Space and F&E to Operator in good condition, normal wear and tear excepted, provided that Manager shall have the right to purchase or lease any or all of the F&E at the then fair market value or rental thereof, as applicable. If Manager does not elect to occupy the Office Space, Manager may rent such office space, furniture, and equipment as it may deem necessary to conduct its operations. The cost of such office space, furniture, and equipment (whether the Office Space and F&E or otherwise) shall be included as an "Operating Expense."

12.20 Advertising. Manager shall not advertise or publish, without Operator's prior consent, which shall not be unreasonably withheld or delayed, the fact that Operator has entered into this Agreement, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government, or under the Act, and except that Manager may disclose in its informational material concerning its business that this Facility, among others, is managed by Manager.

12.21 Survival. Each Party shall remain obligated to the other Party under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including, but not limited to, the indemnification provisions hereunder.

12.22 Manager's Intellectual Property. Operator shall not use nor shall it attempt to enter into agreements purporting to grant rights in, or otherwise pertaining to, Intellectual Property rights owned by Manager without the prior written approval of Manager, which shall not be unreasonably withheld or delayed.

12.23 Compliance with Rev. Proc. 2017-13. The parties agree and acknowledge that they intend that this Agreement comply in all respects with Internal Revenue Service Revenue Procedure 2017-13, relating to management agreements for bond-financed property. Notwithstanding anything herein to the contrary, if the Internal Revenue Service makes a final determination that any portion of the Agreement does not meet a safe harbor set forth in Rev. Proc. 2017-13, those provisions that do not comply will be automatically amended retroactively to be in compliance with Rev. Proc. 2017-13.

12.24 Compliance with Non-Discrimination Laws. The Manager agrees that ii, its employees, officers, agents, and subcontractors, will comply with all applicable federal and state laws and regulations and local ordinances of the City of El Paso in the performance of this Contract, including, but not limited to, the American with Disabilities Act, the Occupational Safety and Health Act, or any environmental laws. The Manager further agrees that ii, its employees, officers, agents, and subcontractors will not engage in any employment practices that have the effect of discriminating against employees or prospective employees because of sex, race, religion, age, disability, ethnic background or national origin, or political belief or affiliation of such person, or refuse, deny, or withhold from any person, for any reason directly or indirectly, relating to the race, gender, gender identity, sexual orientation, color, religion, ethnic background or national origin of such person, any of the accommodations, advantages, facilities, or services offered to the general public by place of public.

12.25 Terrorist Organizations & Boycotting of Israel. Manager hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State. Manager further certifies and verifies that neither Manager nor any affiliate, subsidiary, or parent company of Manager, if any (the "Manager Companies"), boycotts Israel, and Manager agrees that Manager and Manager Companies will not boycott Israel during the term of this Purchase Order. For purposes of this Purchase Order the term 'boycott' shall mean and include terminating business activities or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have caused this Facility Management and Tourism Agreement to be executed by their respective duly authorized representatives as of the date first above written.

**CITY OF EL PASO:**


---

Tomás Gonzalez  
City Manager

APPROVED AS TO FORM:

*Russell Abeln*  
\_\_\_\_\_  
Russell T. Abeln  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Tracey Jerome, Deputy City Manager  
Quality of Life

**SMG, a Pennsylvania general partnership:**

---

Robert Newman, President



Exhibit "A"  
COMPENSATION

Initial Term, year one (1), Annual Base management fee:	\$350,000
Initial Term, year two (2), Annual Base management fee:	\$375,000
Initial Term, year three (3), Annual Base management fee:	\$400,000
Renewal Period one (1), year one (1), Annual Base management fee:	\$450,000
Renewal Period one (1), year two (2), Annual Base management fee:	\$450,000
Renewal Period two (2), year one (1), Annual Base management fee:	\$450,000
Renewal Period two (2), year two (2), Annual Base management fee:	\$450,000

## CITY OF EL PASO RFP SCORESHEET

PROJECT: 2020-680R Civic, Convention Center &amp; Tourism Services

*Evaluation of Submittal*

	MAX POINTS	SMG West Conshohocken, PA
Factor A - Extent to which proposer's services meet the City of El Paso's needs	20	17.80
Factor B - Proposal Contents	20	17.60
Factor C - Reputation of the proposer and quality of its services	20	6.67
Factor D - Project and Staffing Plan	15	13.20
Factor E - Proposal Cost	15	15.00
Factor F - References	10	6.67
<b>TOTAL SCORE</b>	<b>100</b>	<b>76.94</b>
		1

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**CITY OF EL PASO  
REQUEST FOR PROPOSALS TABULATION FORM**



**Bid Opening Date: September 30, 2020**

**Solicitation #: 2020-680R**

**Project Name: Civic Convention Center And Tourism Services**

**Department: Destination El Paso**

BIDDER'S NAME:	LOCATION:	AMENDMENT(S) ACKNOWLEDGED:
SMG	West Conshohocken, PA	Yes

**RFPs SOLICITED: 9    LOCAL RFPs SOLICITED: 4    RFPs RECEIVED: 1    LOCAL RFPs RECEIVED: 0    NO BIDS: 0**

**NOTE: The information contained in this RFP tabulation is for information only and does not constitute actual award/execution of contract.**

Approved: \_\_\_\_\_/s/\_\_\_\_\_  
Date: 10/6/2020

2020-680R Civic, Convention Center & Tourism Services

**HMS Host**  
Damien Chaptinel, DO  
El Paso Airport, 6701 Convair Road  
El Paso, TX 79925

**Paradies Lagardère**  
Patrick Wallace, VP Business Development  
2849 Paces Ferry Rd.  
Overlook I, Suite 400  
Atlanta, GA 30339

**Sodexo**  
Saul Chee  
500 W University Ave  
El Paso, TX 79968

**Service Systems Associates (SSA)**  
David Goetz  
4624 Central Park Blvd Suite 100  
Denver, CO 80238

**Spectra**  
John Schow  
1 Ballpark Plaza  
El Paso, TX 79901

**Verlander Enterprises**  
5835 Onix Dr Ste 300  
El Paso TX 79912-5567

**ASM / ASM Global North America**  
Bryan Crowe  
800 West Olympic Boulevard  
3rd Floor  
Los Angeles, California 90015

**VenuWorks**  
4611 Mortensen Road, Suite 111  
Ames, Iowa 50014

**PMI Entertainment Group**  
1901 South Oneida Street  
Green Bay, Wisconsin 54304

**Views  
(BID # 2020-680R)**

	<b>Name</b>	<b>Company</b>	<b>Email</b>	<b>Comments</b>
1		5 CultureSpan Marketin	gabriel.acuna@culturespanmarketing.com	Read email
2	ALVARADO, LUIS	ETEX ALLIANCE,LLC	mngrs@etexalliancellc.com	
3	Apodaca Jr, Victor D	Ask Vic LLC	victorajr@hotmail.com	
4	Austin, Fork	Wayne Enterprises	forkaustin@gmail.com	
5	Balai, Rakesh	i- Sourcing Technolo	rakesh@tender247.com	
6	Banquil, Lovely		lovely@bidocean.biz	
7	Barnes, Angela	ITSQuest, Inc.	barnesa@itsquest.com	Read email
8	Bhatnagar, Vaibhav	Hexaware Technolog	Vbhatnagar@hexaware.com	
9	Bjornsson, Ron	Smartprocure	rbjornsson@smartprocure.us	
10	BTM, SubmitBids	Bound Tree Medical,	submitbids@boundtree.com	
11	Chavez, Jose	BNV Boots	bnvboots@gmail.com	
12	Connor, Matt	construction bid sou	m.connordesign@gmail.com	
13	Crossland, Randal	Jace Contracting Ser	jacecontracting500@gmail.com	
14	<b>Crowe, Bryan</b>	<b>Destination El Paso</b>	<b>bcrowe@destinationelpaso.com</b>	
15	De Anda-Swann, Brenda	KVIA-TV	andkvia@yahoo.com	
16	Deg, Maria	Contractors Register	govbidops@thebluebook.com	
17	Delgado, Rick	NRC Construction And	rdelgado@jcgconst.com	
18	Doe, John	Pacific Inc	r6k6f@vmani.com	
19	Espinoza, Ana	Access Communication	sales@acglp.com	
20	Fassler, Jack	Levy Restaurants	jfassler@levyrestaurants.com	Read email
21	Frame, Chester	Border Business Cons	cframe@bbcintl.com	
22	Garfield, Raymond	Garfield Public/Priv	ray.g@garfieldpublicprivate.com	Read email
23	Harris, Ronald	H And H Dinero Tree,	rharris@hhmailmarketing.com	
24	Hernandez, Cecilia	The PlanIt Room	projects@theplanitroom.com	
25	Hill, Lisa	Miles Partnership, L	rfp@milesmedia.com	
26	Horiuchi, Lyle	SW Nexus Property Mg	swnex.lyle@hotmail.com	
27	Hudson, Brad	Direx Construction,	bradhudson99@aol.com	
28	Interian, Rebecca	Armor Auto Center	armorautocenter@hotmail.com	
29	Jones, Kim	Prime Vendor Inc.	bids1@prime-vendor.com	
30	Kelley, Jessie	IDA Technology	jessie.kelley@idatechnology.com	
31	Kozuback, Rick	International Colise	rkozuback@coliseums.com	
32	Kramme, Noreen	MRWM Landscape Archi	nkramme@mrwmla.com	
33	Kyle, Bellomy	ConstructConnect	content@constructconnect.com	
34	Lopez, Charlee	Hispanic Chamber of	clopez@ephcc.org	
35	Management, Source	Deltek	sourcemanagement@deltek.com	
36	Mercer, Garrett	MERCER TECHNOLOGIES	mercertechnologiesfirm@gmail.com	
37	Mitchell, Anne	Hussmann-Mitchell, L	anne@soelpaso.com	Not interested
38	<b>Monsisvais, Mauro</b>	<b>SMG</b>	<b>mmonsisvais@destinationelpaso.com</b>	
39	Montes, Gabriel	FastRope, LLC	sales@fastrope.it	
40	Ninos, Spiros	Shelby Distributions	sninos@expressop.com	
41	Olivar, Diana	Boost Human, LLC	diana@boost-human.com	Read email
42	Pitzter, Kurt	Bidnet	gbs@bidnet.com	
43	Ponzio, Ronnie	ced	ponzior@ced-elp.com	
44	Stone, David	Stone Planning LLC	david@stoneplanningllc.com	
45	Thompson, Maria	Steel Specialties In	maria@steelspecialtiesinc.net	
46	Vadasz, Ben	Destination Think!	sales@destinationthink.com	
47	Walse, Steve	Seven Outsource	rfpalerts@gmail.com	
48	Watson, Frank		watsonadvancedstarlight@outlook.com	
49	Whitworth, Daryl	Madden Media	dwhitworth@maddenmedia.com	
50	Zingoni, Peter		peter.zingoni@spectrap.com	