



City Council Staff Report

DATE: October 2, 2013 NEW BUSINESS

SUBJECT: APPROVE AGREEMENT FOR TOURISM AND MANAGEMENT SERVICES BY AND BETWEEN THE CITY OF PALM SPRINGS, A MUNICIPAL CORPORATION, AND SMG, A PENNSYLVANIA GENERAL PARTNERSHIP FOR THE MANAGEMENT OF THE PALM SPRINGS CONVENTION CENTER AND THE PALM SPRINGS BUREAU OF TOURISM, FOR A PERIOD ENDING JUNE 30, 2018

FROM: David H. Ready, City Manager

BY: Community & Economic Development Department

SUMMARY:

The City of Palm Springs contracts with SMG for management of the Palm Springs Convention Center and Bureau of Tourism. SMG has served in this capacity since 2000. The most recent contract renewal was effective in 2008 is now expiring.

SMG has been effective in their management of the convention center, maintaining high standards of service and maintenance of the facility while producing strong event levels and hotel room-nights. The Bureau of Tourism has maintained a high profile for Palm Springs as a desirable destination for visitors and has been a strong partner with hospitality industry stakeholders and the City in attracting visitors to Palm Springs. The City has received positive feedback from stakeholders regarding SMG's performance and staff believes there is strong support to continue with SMG in their current role.

This request seeks to enter into a new five-year agreement with SMG for these services, and provide for two additional five-year extensions at the City's option. Terms and conditions that have been modified are outlined below in the staff report.

RECOMMENDATION:

1. Approve a five-year agreement for Tourism and Convention Center Management Services, with two five-year City optional extensions, by and between the City of Palm Springs, a Municipal Corporation, and SMG, a Pennsylvania General Partnership.
2. Authorize the City Manager to execute all necessary documents.

BACKGROUND:

The City's Management Agreement for the Palm Springs Convention Center and the Palm Springs Bureau of Tourism is due to renew in October 2013. As part of the negotiation of a new Agreement, staff reviewed the previous 2008-SMG Convention Center Management Agreement, as well as the Savoury's (catering) agreement, an analysis of the Center's historical performance, and a matrix comparing the Palm Springs Convention Center's agreement with other similar-sized convention centers, as well as a number of those center's management agreements.

The proposed new agreement with SMG shall run until June 30, 2018, unless terminated prior pursuant to the provisions of the agreement. The term may be extended for two additional five-year periods at the City Council's sole option, by giving SMG written notice of City's election to extend the agreement at least one hundred and eighty (180) days prior to the date of termination of the then current term.

The annual base fee for fiscal year 2013-2014 shall be \$210,000, which represents a negotiated 10.6% reduction (\$24,972 savings) from the expiring contract. As in the current agreement, for each subsequent fiscal year during the term of the agreement, the base fee is subject to a CPI (cost of living) increase not to exceed five percent (5%) in any fiscal year

Additionally, Tourism management services are included in this agreement. While the City funds the operational costs of the Tourism budget, SMG receives no remuneration for providing tourism services.

In addition to the base fee, SMG shall be eligible for an annual incentive fee. The incentive fee will be based on SMG's performance in three (3) categories: Achievement of Room Night Goal; Financial Performance; and Customer Satisfaction. Achievement of Room Night Goal shall constitute fifty percent (50%) of the base fee, Financial Performance shall constitute thirty percent (30%) of the base fee, and Customer Satisfaction shall constitute twenty percent (20%) of the base fee. The total incentive fees, if earned, would not exceed the total of the base fee.

For the room night incentive, SMG must meet or exceed a specified number of room nights per each applicable fiscal year, referred to as the Room Night Goal, in order to earn the incentive fee (the room goal number for the initial year of this agreement is 70,000 room nights). The goal for each subsequent year of the Agreement will be established on an annual basis by the City Council with stakeholder recommendation and input as part of the City's annual budget process.

For the Financial Performance portion of the Incentive Fee, SMG must manage the Convention Center such that the "net loss before operating transfer" as identified by the audited financial statements for the most recently completed fiscal year period is less than \$1 million. For the most recent past fiscal year, the net operating loss (not including debt service) was \$1,627,000.

To obtain the Customer Satisfaction Incentive, SMG must achieve an average of eighty-five percent (85%) or better approval on the meeting planner surveys. Any such incentive earned by SMG shall be used by SMG to fund performance-based incentive bonuses payable to Convention Center employees pursuant to a plan developed and approved by SMG and the City Manager. The meeting planner surveys shall be a survey of meeting planners that have contracted to use the Convention Center during the prior 12-month period and includes areas such as (i) site selection and sales process; (ii) event coordination; (iii) food and beverage; (iv) audio visual; (v) quality of facilities; and (vi) responsiveness of staff.

Another provision of the Agreement is that SMG will make an "investment" to the Convention Center in the amount of \$500,000, to be used for capital improvements. Based on a priority of need, those improvements to be completed are tentatively identified as follows:

CAPITAL PROJECTS


Lobby Tile Removal / Carpet Replacement	\$178,000	(Aesthetic and Safety Issues)
Separate A/C for Admin Offices	\$175,000	(Energy Efficiency / Savings)
Cooling Tower #2 Replacement	\$100,000	(Prevent System Failure)
Air Wall Rehabilitation	<u>\$ 47,000</u>	(Original Walls from 1987)
Total	\$500,000	

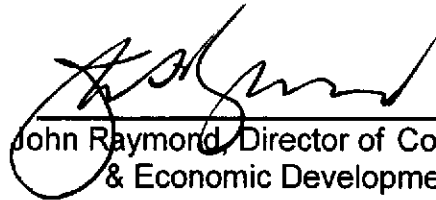
In terms of understanding long-term capital needs of the Convention Center, this agreement provides that SMG will undertake at its sole expense a facility capital study identifying existing capital and operating equipment, systems, technology, building components, aesthetics and facility finishes to catalog and determine current condition, remaining useful life and an appropriate action plan for each item or area. SMG will also review current facility technology and services to determine any recommended upgrades in order to meet expected industry standards for the facilities. SMG would then provide a prioritized long-term capital plan with recommended annual budget allocations for the completion of those projects.

FISCAL IMPACT:

The annual impact of the SMG Agreement on the General Fund will be reduced initially by \$25,000 due to the negotiated reduction in management fees.

Capital funding requirements for the Convention Center will be reduced by \$500,000 due to the SMG investment.



David H. Ready, City Manager

John Raymond, Director of Community
& Economic Development

Attachments:

1. Agreement for Tourism and Management Services by and between the City of Palm Springs, a Municipal Corporation, and SMG, a Pennsylvania General Partnership

AGREEMENT FOR TOURISM AND MANAGEMENT SERVICES

BY AND BETWEEN

**The City of Palm Springs,
A municipal corporation**

AND

**SMG,
A Pennsylvania General Partnership**

October 1, 2013

THIS AGREEMENT ("Agreement") is made effective as of the October 1, 2013 ("Effective Date"), by and between SMG, a Pennsylvania general partnership ("SMG"), and the CITY OF PALM SPRINGS, a municipal corporation of the state of California ("City").

RECITALS

A. The City is the owner of the Palm Springs Convention Center, The Jackie Lee Houston Plaza and the East Lot (also known as the 10 acre parcel located at Avenida Caballeros and Amado road)("Facilities") and SMG is an organization with substantial experience and expertise in the management, operation, and marketing of public assembly facilities such as the Facilities (collectively referred to as "Management Services").

B. City and SMG previously entered into an Agreement for Tourism and Management Services for the Palm Springs Convention Center, and Palm Springs Bureau of Tourism effective on July 1, 2008. ("2008 Management Agreement").

C. City and SMG now desire to enter into a new Management Agreement, whereby the City will engage SMG, and SMG accepts such engagement, to provide Tourism and Management Services on such terms and conditions as set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual benefits which will result to the Parties in carrying out the terms of this Agreement, it is mutually agreed as follows:

AGREEMENT

1. **Expiration of the 2008 Management Agreement.** The parties agree and acknowledge that the 2008 Management Agreement, as described in the Recitals has now expired and of no legal force or effect as of the effective date of this Agreement.

2. **Definitions.** In addition to the terms which are defined elsewhere in this Agreement, the following terms have the meanings set forth in this Section:

"Agreement" shall mean this Agreement for Tourism and Management Services.

"Business Day" shall mean a day in the week in which the City's City hall is open to the public for governmental purposes.

"Capital Expenditures" shall mean all expenditures for building additions, alterations or improvements, and for purchases of additional or replacement furniture, machinery or equipment, the depreciable life of which, according to accepted accounting principles, is in excess of one (1) year and expenditures for repairs (normal wear and tear excepted) or replacements which extend the useful life of the assets being repaired or replaced for a period in excess of one (1) year with a minimum purchase price of \$5,000.00.

"Capital Improvements" shall mean all improvements paid for by Capital Expenditures.

"City" shall mean the City of Palm Springs.

"City Council" means the City Council of the City

"City Manager" means the City Manager of the City or the City Manager's designee or designees.

"Expenses" shall mean and include all expenditures or obligations of whatever kind or nature incurred (directly or indirectly) or accrued by SMG in any specified period during the Term of this Agreement, within (or reasonably believed by SMG to be within) the scope of SMG's authority or responsibility under this Agreement and the Budget as approved and reviewed by the City under Section 18 of this Agreement, including but not limited to, all payments made or costs incurred to obtain revenues; salaries, wages, applicable taxes, benefits, costs and expenses of personnel working at the Facilities or Visitor Center or otherwise related to the Facilities or Visitor Center; contract labor; maintenance and repairs (whether ordinary or extraordinary, and whether foreseen or unforeseen); utilities; telephone; telescreen and/or marquee operations; telecommunications and broadcast facilities; dues, memberships and subscriptions; security; audit and accounting fees; legal fees except those fees provided for in Sections 22 and 26(n); fees payable to concessionaires or other subcontractors; refuse removal; cleaning; sales and other applicable taxes; building supplies; ticket commissions; premiums for insurance; data processing; advertising; marketing and market research; pest control; office supplies; employment fees; freight and delivery; lease of equipment; Master Card, VISA and other credit card fees and charges and telecheck fees and expenses; travel (economy class), lodging and related out-of-pocket expenses of officers, directors and corporate personnel of SMG properly allocable to the performance of SMG's obligations under this Agreement not to exceed \$25,000 each Fiscal Year without City Council's prior written consent; travel (economy class only), ticket/box office expenses; charges for fidelity bonds; and all other costs and expenses incurred in accordance with the terms of this Agreement by or for the account of City reasonably related to SMG's performance of this Agreement.

(1) Meal and lodging expenses should be reasonable. Expenses for food and lodging must be based upon actual, reasonable expenses incurred. Original cash register or credit card receipts for all meals and lodging expenses greater than \$50 must

be maintained and listed in the reports to City as provided in sections 14 and 15 herein. Charges for meals or services on hotel bills should be entered separately from the room charge.

(2) SMG and its employees may rent automobiles when other transportation is not available, or when such use is considered the most reasonable and economical mode of travel under the circumstances. Any long-term car lease (one week or more) by SMG or its employees shall not be considered an Operating Expense of SMG. Whenever possible, SMG should use rental companies which provide the lowest rates. In order to minimize costs, travelers should choose economy-class cars whenever possible.

(3) In no event shall the total annual expenditures exceed the total expenditures provided and allowed under the approved Budget.

"Facilities" shall mean any and all portions or parts of the Palm Springs Convention Center, The Jackie Lee Houston Plaza and the East Lot (also known as the 10 acre parcel located at Avenida Caballeros and Amado road), all furniture, fixtures and equipment, all appurtenances and all parking ancillary to and in connection therewith. The Facilities shall be operated as a public facility.

"Fiscal Year" shall mean the year beginning July 1 and ending June 30.

"Incentive Fee" shall mean and include each of the three compensation incentive programs identified in Section 20 a (2) of this Agreement.

"Revenues" means any and all revenues of every kind or nature derived, directly or indirectly, from owning, operating, managing, or promoting the Facilities or Visitor Center, all as determined in accordance with generally accepted accounting principles, consistently applied.

"Visitor Center" shall mean any and all portions or parts of the Palm Springs Visitor Center, and all furniture, fixtures and equipment contained therein. At the time of execution of this Agreement, the Visitor Center is located at: 2901 N. Palm Canyon Drive. The Visitor Center is owned by the City and operated by SMG on behalf of the City. The Visitor Center shall be operated as a public facility. The net cost to operate the Visitor Center is paid from the Tourism Budget as herein defined.

3. Scope of Work.

a. Management Services. Subject to the terms and conditions set forth in this Agreement, City hereby engages SMG on an exclusive basis to provide Management Services including the management, operation, use, possession, occupation and promotion of the Facilities, during the Term of this Agreement. SMG hereby accepts such engagement. The Management Services to be provided by SMG

shall include those described on Exhibit "A" attached hereto and by reference made a part of this Agreement.

b. Tourism Services. Subject to the terms and conditions set forth in this Agreement, City hereby engages SMG to provide Tourism Services during the Term of this Agreement. SMG hereby accepts such engagement. Without limiting the generality of the foregoing, the Tourism Services to be provided by SMG shall include those described on Exhibit "B" attached hereto and by reference made a part of this Agreement.

4. Term and Renewal Term. This Agreement shall commence upon the effective date of this Agreement, and shall expire at 5:00 p.m. (PST) on June 30, 2018, unless terminated prior to this date pursuant to the provisions of this Agreement. The Term may be extended twice for an additional five (5) years each time, at the City Council's sole option, by giving SMG written notice of City's election to extend this Agreement at least one hundred eighty (180) days prior to the date of termination of the then current term.

5. Investment.

a. As a condition of entering into this Agreement, SMG will make an "Investment" to the City in the amount of Five Hundred Thousand Dollars (\$500,000), to be used for capital improvements to the Convention Center. This Investment shall be paid to the City within ten (10) days of the City Council's approval of this Agreement. The Investment will be secured by a promissory note ("Note") amortized (on a straight line basis) over the initial term and the first Extension term of this Agreement. City and SMG agree that if this Agreement remains operational for the entirety of its term and the first Extension. City has no obligation to reimburse SMG for the Investment.

b. Where (i) SMG has failed to perform a material obligation of this Agreement, (ii) SMG does not correct such failure pursuant to the meet and confer process set forth in Section 25, and (iii) the City has terminated this Agreement pursuant to Section 25, the outstanding balance on the Note shall be forgiven.

c. In the event of termination of this Agreement on grounds other than those set forth in Sub-Section (b) prior to 5:00 p.m. (PST) on June 30, 2028, and where City selects a successor management company within twelve (12) months ("Twelve Month Period") of such termination, the City or a successor management company, (the City agrees to cause any such successor manager to take on such obligation), shall pay the remaining un-amortized portion of the note within ninety (90) days following the selection of a successor management company. However, if the City does not retain a successor management company during the Twelve (12) Month Period following such termination, the City shall pay the un-amortized portion of the note in three equal annual installments beginning at the expiration of the Twelve (12) Month Period.

6. Independent Contractor. Neither the City nor any of its employees shall have any control over the manner, mode or means by which SMG, its agents or

employees perform the services required herein, except as otherwise set forth herein. SMG shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Employees or contractors of SMG are not City employees. SMG shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. SMG shall be solely responsible for compliance with State and Federal Law with respect to the wages, hours, benefits, and working conditions of its employees, including requirement for payroll deductions for taxes.

7. Assignment and Subcontracting.

a. Assignment. Neither party to this Agreement may transfer, assign, convey, hypothecate or encumber this Agreement, or any interest therein, whether voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without prior written approval of the other party to this Agreement.

b. Subcontracting. If SMG subcontracts any part of this Agreement, SMG shall be responsible to City for the acts and omissions of its subcontractor(s) in the same manner as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationships between any subcontractor and City. All persons engaged in the work will be considered employees of SMG. City will deal directly with and will make all payments to SMG.

8. Master Lease. SMG acknowledges that the Convention Center is located on a portion of a parcel of land which is leased from certain allottees ("Lessors") who are members of the Agua Caliente Band of Cahuilla Indians, and that the City is the "Master Lessee" for the land underlying the Convention Center. The "Master Lease" is administered by the Bureau of Indian Affairs ("BIA"). The parties hereto agree to comply with the Master Lease, specifically with regard to inspection of documents and reporting requirements. A copy of the Master Lease has previously been provided to SMG and is on file in the Office of the City Clerk.

9. Use of the Facilities By City. SMG agrees to provide the Convention Center to City rent-free for City's use for its governmental purposes. Use of the Convention Center by the City for governmental purposes shall include, but is not limited to, (1) events sponsored by the City, and (2) events co-sponsored by the City. All requests by City for such use shall be subject to availability due to prior confirmed event scheduling for the Convention Center. The City shall reimburse the center for labor, equipment and other customary expenses of using the Facilities. For purposes of calculating the amount of expenses incurred in connection with the City's use of the Facilities, the rates shall be equal to SMG's non-profit rate-sheet minus ten percent (10%).

10. Books of Account. SMG shall maintain, in accordance with generally accepted accounting principles (GAAP), adequate books of account with respect to its Management Services and Tourism Services. City shall have the right to obtain at any

time from SMG any information relevant to the Management Services or Tourism Services provided by SMG under this Agreement, and to inspect such books and records, during normal business hours.

11. **Records.** SMG shall keep and preserve for at least three (3) years following each Fiscal Year all sales slips, rental agreements, purchase orders, sales books, credit card invoices, bank books or duplicate deposit slips, and other evidence of revenues and expenses for such period.

12. **Audit by Lessors.** SMG shall fully and timely cooperate with the preparation of any audit required by Lessors.

13. **Audit by City.** SMG shall be subject to a financial audit, at City's sole cost and expense, at any time during SMG's normal business hours of the books and records of SMG that specifically relate to the Tourism and Management Services provided under this Agreement. SMG shall make the records available relating to the handling and expenditure of funds under this Agreement available to the City or the City Manager, but not SMG's competitors or potential competitors.

14. **Annual Reports.** As soon as practicable at the close of each Fiscal Year but no later than ninety (90) days after the close of each Fiscal Year, SMG shall furnish to City a balance sheet, a statement of profit or loss, and a statement of cash flow prepared in accordance with GAAP for both the Management and Tourism Services provided by SMG during the preceding fiscal year. The specified documents shall be accompanied by an independent auditor's report regarding the specified documents. The independent auditor, an independent certified public accountant, shall be a reputable firm selected by SMG. SMG shall promptly inform City of its selection of the independent auditor. If City notifies SMG that it objects to SMG's selection, SMG shall select a different independent auditor.

15. **Monthly Reports.** Within twenty (20) days after the end of each month, SMG shall furnish to City a report in the general form and with content as approved by the City Manager. The reports shall, at a minimum, provide information in the following categories:

a. **Management Services.** (1) Financial, including without limitation a rolling forecast of revenue and expenses, an income statement, a balance sheet, and a statement of cash flow; (2) Sales, including without limitation the number of groups booked for the Convention Center during the preceding month and a year-to-date comparison with the previous year; and (3) Activities, including without limitation public relations efforts during the preceding month.

b. **Tourism Services** (1) Financial, including without limitation an income statement, a balance sheet, and a statement of cash flow; (2) Budget, including without limitation a comparison of actual operating expenses to the applicable Tourism Budget, and (3) Activities, including without limitation public relations and marketing efforts during the preceding month.

16. **Other Reports.** The City Manager, in the City Manager's sole discretion, may request that SMG prepare any reports other than those specifically required by this Agreement. The City Manager shall provide SMG a reasonable amount of time to prepare any report requested pursuant to this Section.

17. **Performance Review.** SMG shall be subject to a performance review at the close of each fiscal year. The performance review shall include those components as identified by the City and communicated to SMG no later than thirty (30) days prior to the close of each fiscal year during the term of this Agreement.

18. **Budget.**

a. **Management Services.** Each fiscal year, SMG shall make a presentation to the City Council regarding the proposed Management Services Budget for the Convention Center for the upcoming fiscal year, and the total Management Services Budget will be established by resolution of the City Council. Each new annual Management Services Budget is subject to and contingent upon funds being appropriated therefore by the City Council for each fiscal year covered by the Agreement and shall be in the amount appropriated by the City Council for any such fiscal year. City shall pay the Management Services Budget funds in monthly installments to SMG, except as otherwise expressly provided in this Agreement.

(1) **Proposed Budget.** No later than ninety days before the beginning of each fiscal year, SMG shall submit to City a proposed Management Services Budget for the Convention Center listing all projected revenues and expenses for the Convention Center, including without limitation any anticipated Incentive Fee. SMG shall have the discretionary authority to modify individual line items of this Management Services Budget (excluding amounts attributed to the Incentive Fee) provided that SMG shall provide the City Manager with three (3) Business Days prior written notice of such modifications. Such modifications shall not in the aggregate result in an increase in the total approved Management Services Budget.

(2) **Working Capital.** In order to provide the working capital necessary for SMG to perform its obligations hereunder, City shall advance to SMG a minimum amount equal to budgeted operating expenses for three (3) months of the then-applicable Management Services Budget, no later than the first day of each Fiscal Year during the Term. SMG may use working capital to pay expenses when revenues are insufficient to cover such expenses. The City shall reimburse any working capital used by SMG to pay expenses no later than thirty (30) days after an expenditure of working capital by SMG.

(3) **Operating Fund.** SMG shall collect all Revenues from the Facilities and deposit them in an operating fund. 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 other operating expenses then accrued. The balance shall be retained in the operating fund as reserve for payment of future operating expenses. If at the end of any fiscal year there shall be a balance in

the operating fund in an amount in excess of the anticipated working capital and operating expenses for the first month of the ensuing year, SMG shall disburse such excess to City on or before the fifteenth (15th) of such month.

b. Tourism Services. Each fiscal year, SMG shall make a presentation to the City Council regarding the proposed Tourism Services Budget for the upcoming fiscal year, and the total Tourism Budget will be established by resolution of the City Council. The Tourism Budget for the 2013-2014 fiscal year shall be \$1,950,000. Each subsequent fiscal year during the term of this Agreement, the new annual budget for the promotion of tourism to Palm Springs and operation of the Visitor Center (the "Tourism Budget") shall be determined by resolution of the City Council. Each new annual Tourism Services Budget is subject to and contingent upon funds being appropriated therefore by the City Council for each fiscal year covered by the Agreement and such annual Tourism Services Budget shall be in the amount appropriated by the City Council for the then current fiscal year. City shall pay the the Tourism Services Budget in monthly installments to SMG.

(1) Line Item Budget. No later than ninety days before the beginning of each fiscal year, SMG shall provide the City with a proposed Line Item Budget for the Tourism Services Budget for the upcoming fiscal year. The Line Item Budget shall be prepared in accordance with the City's budgetary practices and applicable laws and regulations. The Line Item Budget will be considered by the City Council prior to award and implementation of the Tourism Services Budget for the ensuing year. SMG shall adhere to the Line Item Budget, provided SMG may reallocate funds between budget categories when, in SMG's good faith judgment, such reallocation is prudent, provided that a written justification shall be prepared prior to any reallocation of fifteen percent (15%) or more of any line or budgeted item, and that written justification shall be approved by the City Manager in advance of the reallocation.

(2) All funds earned by the Facilities and the Visitor Center are revenue to the City and should be accounted for as such and reinvested in the promotion of tourism to the City.

c. Expenditures in Excess of the Budget. SMG shall not, without written authorization by City, knowingly incur in any Fiscal Year obligations in excess of the total then applicable Management Services or Tourism Services Budget approved by City. In the event SMG becomes aware of any such obligations, SMG shall immediately inform City in writing of the nature, amount and due date for such obligations, and request written instructions as to how to proceed.

d. Reduction / Elimination of Revenue Source. In the event of any significant reduction or elimination of City revenue sources, the parties shall meet to discuss a proportionate reduction in the then-applicable Tourism Services or Management Services Budget. If the parties fail to reach an agreement on any such reduction, the City may terminate the Agreement within thirty (30) days of the date on which the parties fail to reach an Agreement.

e. Capital Expenditures Budget / Emergency Capital Expenditures.

(1) The City desires to provide quality convention facilities in order to attract valuable meeting and convention business to the City of Palm Springs to generate positive economic impact through the generation of room-nights and increased visitor traffic to the City's shopping, dining and attraction stakeholders. The City and SMG agree that the Facilities must be consistently maintained and upgraded to meet and exceed the expectations of current and future users of the facility and provide competitive "state of the art", facilities and services to attract and retain valuable meeting and convention business.

(2) Upon request of the City Manager and to the extent so requested, SMG will undertake at its sole cost and expense a facility capital study identifying existing capital and operating equipment, systems, technology, building components, aesthetics and facility finishes to catalog and determine current condition, remaining useful life and an appropriate action plan for each item or area. SMG will also review current facility technology and services to determine any recommended upgrades in order to meet expected industry standards for the Facilities. SMG will provide the City Manager, if so requested by the City Manager, with a prioritized long-term capital plan with recommended annual budget allocations for the completion of recommended projects. City acknowledges and agrees that SMG shall have no obligation hereunder to make any capital expenditures and, therefore, City shall be responsible for and shall repair, provide and maintain, at its own expense, all capital improvements as set forth in this Section, including, without limitation, the exterior and structural portions of the Facilities and Visitor Center, together with all mechanical, HVAC and electrical systems contained therein. Notwithstanding the foregoing, capital improvements may be performed by SMG upon written agreement between City and SMG, utilizing those funds as agreed upon by City and SMG.

(3) Each fiscal year SMG will present a proposed annual capital project budget for the upcoming fiscal year to the City Council and the annual Capital Improvements Budget will be established by resolution of the City Council. Each new annual Capital Improvements Budget is subject to and contingent upon funds being appropriated therefore by the City Council for each fiscal year covered by the Agreement. If such appropriations are not sufficient to fully fund a new annual Capital Improvements Budget, such annual Capital improvements Budget shall be equal to the amount appropriated by the City Council for any such fiscal year. SMG and the City shall mutually agree on the actual projects to be funded each fiscal year based upon the amount appropriated by the City Council. Unfunded projects will be carried over to subsequent fiscal year budget proposals.

(4) In addition, if SMG at any time becomes aware of any condition that jeopardizes the structural soundness or operational capability of the Facilities or Visitor Center, the public safety, or the ability of SMG to perform its obligations under this Agreement, SMG shall provide notice of such condition to the City Manager and have such condition examined by such engineer as City may from time to

time designate, and to the extent allowable by law, City shall make available the funds necessary to correct such condition, within such time as is reasonable under the circumstances or shall indemnify, defend, and hold SMG harmless for any loss sustained by SMG as a result of City's failure to approve or provide such funds.

19. Bank Accounts. SMG shall deposit all Revenues in an account maintained by SMG in the name of City, with SMG as an agent with signatory authority, in a bank or branch located within the City. SMG shall require that all funds held in this account shall be secured to such an extent and in such a manner as is required by applicable law regarding the deposit of City funds. Any monies in this account, 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 other Operating Expenses then accrued. The balance shall be retained in the Operating Fund as reserve for payment of future Operating Expenses. If, at the end of any Fiscal Year, there shall be a balance in this account in excess of the anticipated working capital required for, and Operating Expenses projected for, the first month of the ensuing year, SMG shall disburse such excess to City on or before the fifteenth (15th) day of such month.

20. Compensation.

a. Management Services. SMG shall receive compensation for the Management Services rendered under this Agreement based upon the agreed upon Base Fee plus an incentive fee, if so earned by SMG.

(1) Base Fee. For services performed by SMG during each fiscal year of this Agreement, the City shall pay SMG the annual Base Fee set forth in this section, payable at the rate of one-twelfth (1/12) of the per annum per month, within thirty (30) days of the monthly billing provided by SMG for such services. For fiscal year 2013-2014 the Base Fee shall be \$210,000.00. Each subsequent fiscal year during the term of this Agreement, the Base Fee shall be determined by increasing the then current Base Fee by an amount equivalent to the annual percentage increase recorded in the Consumer Price Index ("CPI") – All Urban Consumers for Los-Angeles-Riverside-Orange County, California for the prior twelve month period ending January 31st, not to exceed five percent (5%) in any fiscal year. Each new annual Base Fee is subject to and contingent upon funds being appropriated therefore by the City Council for each fiscal year covered by this Agreement. If such appropriations are not sufficient to fully fund a higher annual Base Fee, such Base Fee shall be equal to the amount appropriated by the City Council for the then current fiscal year.

(2) Incentive Fee. In addition to the Base Fee payable to SMG, SMG shall be eligible for an Incentive Fee, which, if earned, shall be payable to SMG annually in arrears on or before the thirtieth (30th) day following the date on which SMG has given the Annual Report to the City. The Incentive Fee will be based on SMG's performance in three (3) categories: Achievement of Room Night Goal; Financial Performance; and Customer Satisfaction. Achievement of Room Night Goal shall constitute fifty percent (50%), Financial Performance shall constitute thirty percent (30%), and Customer Satisfaction shall constitute twenty percent (20%) of the Incentive

Fee calculation. The maximum incentive fee shall be equivalent to the amount of the Base Fee for the then current fiscal year. In each Fiscal Year that SMG achieves the Minimum Room Night Goal, SMG shall receive the Room Night Goal Incentive Fee for that Year. In each fiscal year that SMG achieves the Financial Performance Goal, SMG shall receive the Financial Performance Incentive Fee for that year. In each Fiscal Year that SMG achieves the Customer Satisfaction Goal, SMG shall receive the Customer Satisfaction incentive fee. The right to receive these incentive fees are independent of each other. Notwithstanding the foregoing, the Incentive Fees payable to SMG shall not exceed an amount equal to the Base Fee payable to SMG.

(a) Room Night Goal (50%). SMG must meet or exceed a specified number of Room Nights per each applicable fiscal year, referred to as the Room Night Goal, in order to earn the Incentive Fee. For purposes of this Agreement, Room Night Goal Achievement shall be based on the confirmed written contracts entered into by SMG during the preceding fiscal year for use of the Convention Center. Specifically, Room Night Goal Achievement shall be measured by the number of rooms reserved at hotels paying Transient Occupancy Tax to the City as directly generated by confirmed written contracts entered into by SMG during the preceding fiscal year for utilization of the Convention Center. The goal for Fiscal Year 2013 – 2014 shall be 70,000 room nights and the goal for each subsequent year of the Agreement shall be established on an annual basis by the City Council with stakeholder recommendation and input in a manner acceptable to the City City Council and included as part of the City's annual budget process.

(b) Financial Performance. The Financial Performance portion of the Incentive Fee shall be equal to thirty percent (30%) of the maximum Incentive Fee for such fiscal year. To earn the financial performance portion of the Incentive Fee, SMG must manage the Convention Center such that the "Net Loss Before Operating Transfer from the City of Palm Springs" as identified by the audited financial statements for the most recently completed fiscal year period is less than \$1,000,000.00

(c) Customer Satisfaction (20%). To achieve the customer satisfaction goal, SMG must achieve an average of eighty-five percent (85%) or better, approval on the meeting planner surveys described herein. Any such incentive earned by SMG shall be used by SMG to fund performance-based incentive bonuses payable to Convention Center employees pursuant to a plan developed and approved by SMG and the City Manager. The meeting planner surveys shall be a survey of meeting planners that have contracted to use the Convention Center during the prior twelve (12) month period. Within thirty (30) days of the conclusion of any such event, SMG shall contact clients of the Convention Center to conduct a meeting planner survey. The goal is to measure the client's satisfaction with each aspect of the client's use of the Convention Center. SMG shall obtain City's approval of the survey content and format prior to its distribution. Areas for measurement of quality and service as mutually agreed upon by both parties, may include, but shall not be limited to (i) site selection and sales process; (ii) event coordination; (iii) food and beverage; (iv) audio

visual; (v) quality of facilities; and (vi) responsiveness of staff. The parties shall mutually agree to determine how the scoring will be evaluated.

b. Tourism Services. SMG shall receive no remuneration for providing Tourism Services under this Agreement.

21. Insurance.

a. Insurance To Be Maintained By SMG. During the entire term of this Agreement, including any extension thereof, SMG shall procure and maintain the following insurance policies in a form and content consistent with the commercial insurance market offerings inclusive of policy conditions and exclusions of similar facility insurance. The insurance required by this Agreement shall be with insurers which are Best A-rated or better. The City shall be included as an additional insured on each of the policies and policy endorsements required to be maintained by SMG, except as expressly provided below. SMG shall obtain the written consent of the City's Risk Manager SMG prior to changing insurers providing insurance under this Agreement, which consent shall not be withheld unreasonably. The insurance required by this section shall be procured and maintained by SMG and shall be an operating expense as described under Section 2 above. Notwithstanding the provisions of this Section 2, the parties hereto acknowledge that the above insurance may contain exclusions from coverage which are reasonable and customary for insurance of such type.

(1) Workers' Compensation. Such workers' compensation insurance coverage as may be required by law.

(2) Crime Fidelity Coverage. At least \$100,000.00 per occurrence of coverage for (i) SMG employee dishonesty; (ii) forgery or alteration; (iii) theft, disappearance and destruction inside and outside the Visitor Center; and (iv) robbery and safe burglary inside and outside the Visitor Center.

(3) Comprehensive General Liability. An amount not less than either a combined single limit of \$5,000,000.00 for bodily injury, death, products and completed operations and property damage.

(4) Employment Practices Liability Coverage. A policy of employment practices liability insurance coverage with limits of at least \$1,000,000.00.

(5) Professional Liability Insurance. A policy of professional liability insurance coverage with limits of at least \$1,000,000.00 combined single limit coverage per claim or per occurrence.

(6) The following language will be made a part of all insurance policies required by this section:

(a) The City of Palm Springs, its elected officials, both current and prior, employees, agents, franchisees, contractors, and officers are hereby

added as additional insureds with respect to liability arising out of activities performed by or on behalf of SMG except for professional liability, employment practices liability, and crime fidelity coverages.

(b) This policy shall be considered primary insurance with respect to any other valid and collectible insurance the City of Palm Springs may possess including any self-insured retention the City of Palm Springs may have, and any other insurance the City does possess shall be considered excess insurance and shall not contribute with it.

(c) This policy shall act for each insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company.

(d) Thirty (30) days' prior written notice by certified mail, return receipt requested, shall be given to the City of Palm Springs in the event of suspension, cancellation, reduction in coverage or in limits or non-renewal of this policy for whatever reason. Such notice shall be sent to the City Manager, City Attorney, and City Clerk.

b. Insurance To Be Maintained By City. During the entire term of this Agreement, and any extension thereof, the City shall at all times maintain in effect the following policies of insurance:

(1) Property Insurance. An "All Risk of Physical Loss" form of policy (with Replacement Costs Endorsement), insuring all movable and immovable property constituting the Primary Visitor Center and Convention Center, respectively, excluding the foundation (including the expense of the removal of debris of such property as a result of damage by an insured peril), subject to the terms and conditions of the insuring agreements, The Primary Visitor Center and the Facility, and their respective contents, shall be insured to full replacement value.

(2) Comprehensive General Liability. The City will maintain excess public liability and property damage insurance with a combined single limit of at least \$10,000,000.00 insuring against all liability of the City arising out of, and in connection with, the use or occupancy of the Visitor Center or Facilities.

c. Insurance Policies. Upon request, the party acquiring insurance as specified in this section shall deliver to the other party copies of policies of such insurance, along with applicable additional insured endorsements or certificates evidencing the existence and amounts of such insurance as required to be maintained hereunder. The parties specifically acknowledge that obtaining such insurance policies will not limit their liability hereunder for amounts in excess of such policies or diminish their respective duties to indemnify each other as specifically set forth in this Agreement.

22. Indemnification. SMG shall defend, indemnify, and hold harmless the City, its elected officials, officers, employees, and agents from and against any tort or other claims made directly to the City, or lawsuits or judgments arising from the negligent or intentional misconduct of SMG or its officers, managers, employees, agents, or contractors unless such losses or liabilities:

(a) arise from the sole negligence or willful acts of the City, its elected officials, officers, employees, agents or contractors; or

(b) arise from any breach or default by the City of its obligations under this Agreement or under any agreement between the City and a third party; or

(c) arise out of the services provided by architects, contractors, engineers and other agents (other than SMG) retained by the City or SMG on City's behalf in connection with capital improvements or capital equipment purchases or other work at the facilities/premises within the scope of this Agreement; or

(d) arise out of any act or omission carried out by SMG or SMG employees at or pursuant to the direction or instruction of the City.

(e) are of the type that are or would normally be covered by commercial insurance covering 1) the Visitor's Center and its premises and the Convention Center and its premises, and the City's personal property located therein, for physical damage or other loss and 2) business interruption and extra expenses, irrespective of the decision of the City to carry or not to carry such insurance; or

(f) arise out of any act or omission carried out by SMG or SMG employees in conjunction with the oversight of the Palm Canyon Theater or the Plaza Theater as provided under this Agreement.

The provisions of this section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to expiration or termination of this Agreement. In no event shall either party be liable or responsible for any consequential, indirect, incidental, punitive or special damages (including, without limitation, lost profits), whether based upon breach of contract or warranty, negligence, strict tort liability or otherwise, and each party's liability for damages or losses hereunder shall be strictly limited to direct damages that are actually incurred by the other party to this Agreement.

23. Service Materials Belong to City. All data, reports, documents, brochures, survey materials, and other computerized, written, printed, or photographic materials developed by City or SMG in connection with the services which are the subject of this Agreement, whether developed directly or indirectly by City or SMG, shall be and shall remain the property of City without limitation or restriction on the use of such materials by City. SMG shall not use such materials in connection with any project not connected with this Agreement without the prior written consent of City. All equipment, materials and supplies purchased by SMG under this Agreement shall be

property of the City. SMG shall make all purchases of equipment, materials and supplies at the best available price.

24. Public Meeting Requirements. SMG shall hold up to two (2) meetings per year with the City Council and the City's invitees to: (a) discuss any new sales programs proposed by SMG or identified by SMG as being of interest to the City or City stakeholders; and (b) to discuss any other upcoming programs or events identified by SMG as being of interest to the City or City stakeholders. SMG must provide a corporate representative to attend the entirety of each such meeting.

25. Termination.

a. Termination of the Master Lease. This Agreement shall immediately terminate and be null and void upon termination of the Master Lease.

b. Expiration of Term. This Agreement shall immediately terminate and be null and void upon expiration of its term if this Agreement has not been extended prior to such expiration.

c. Default. Further, either party may terminate this Agreement if the other party to this Agreement is in default under this Agreement. A party shall be in default if: (a) such party fails to pay any sum payable under this Agreement within thirty (30) days after the same is due and payable; or (b) such party fails in any material respect to perform or comply with any of the other terms, covenants, agreements, or conditions of this Agreement and such failure continues for more than sixty (60) days after written notice from the other party. In the event that such a default (other than a default in the payment of money is not reasonably susceptible to being cured within the sixty (60) day period, the defaulting party shall not be considered in default if it shall within such sixty (60) day period have commenced with due diligence to cure such default and thereafter completed with due diligence the curing of such default.

d. Payment of Fees to SMG Upon Termination. In the event of termination of this Agreement prior to the expiration of the Term, City shall pay SMG all fees earned to the date of City's termination. "Fee earned to date" shall be limited to the pro rata portion of the Base Fee earned for that Fiscal Year. SMG shall not be entitled to any portion of an Incentive Fee for any Fiscal Year in which the Agreement is terminated due to SMG's breach or default of this Agreement, otherwise, the parties shall in good faith determine the portion of the Incentive Fee earned by SMG and the City shall pay SMG such Incentive Fee.

e. Surrender of Premises. Upon termination or expiration of this Agreement, SMG shall surrender and vacate the Facility and Visitor Center. The Facility, Visitor Center, and all equipment and furnishings therein shall be returned to the City in good repair, reasonable wear and tear excepted. All reports, records, including financial records, and documents maintained by SMG at the Facility and Visitor Center relating to this Agreement, other than materials containing SMG's

proprietary information or property shall be immediately surrendered to City upon termination or expiration of this Agreement.

26. Miscellaneous.

a. Construction of Terms. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof. SMG acknowledges that it determined to participate in the procurement of this Agreement upon its choice and initiative with full knowledge of the terms, conditions and risks of participation.

b. Headings and Formatting. The headings and formatting in this Agreement are inserted for convenience only. They do not constitute part of this Agreement and shall not be used in its construction.

c. Governing Law and Venue. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. Venue for any litigation concerning this Agreement shall be in the Superior Court for the County of Riverside, California, Indio Division, or, if jurisdiction is otherwise appropriate, in the Federal District Court for the Central District of California.

d. Entire Agreement. This Agreement, including the attached exhibits, contains the entire agreement of the parties and supersedes all prior and contemporaneous agreements and understandings, oral or otherwise, among the parties with respect to the matters contained in this Agreement and may not be modified or amended except as set forth in this Agreement.

e. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be invalid under the applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of that provision, or the remaining provisions of this Agreement.

f. Amendments. This Agreement shall not be altered, modified, or amended in whole or in part, except in a writing executed by both the City and SMG.

g. Successors. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, successors and assigns as permitted herein.

h. Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be personally delivered, sent by registered or certified mail, postage prepaid, return receipt requested, or delivered or sent by electronic transmission, and shall be deemed received upon the earlier of: (a) the date

of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (b) five (5) business days after the date of posting by the United States Postal Service if by mail; or (c) when sent if given by electronic transmission. Any notice, request, demand, direction, or other communication sent by electronic transmission must be confirmed within forty-eight (48) hours by letter mailed or delivered. Notices or other communications shall be addressed as follows:

To City:	City Manager City of Palm Springs 3200 East Tahquitz Canyon Way Palm Springs, CA 92262 Fax: (760) 323-7701
With a copy to:	Douglas C. Holland City Attorney, City of Palm Springs 555 Anton Blvd., Ste. 1200 Costa Mesa, CA 92626 Fax: (714) 835-7787
To SMG:	SMG Attn: General Manager Palm Springs Convention Center 277 North Avenida Caballeros Palm Springs, CA 92262 Fax: (760) 778-4102
With a copy to:	SMG 300 Conshohocken State Road Suite 770 West Conshohocken, PA 19428 Attention: President Fax: (610) 729-1590

i. 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 but one and the same instrument, binding upon the parties, notwithstanding that all of the parties may not have executed the same counterpart.

j. Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. Any waiver by the Parties of any default or breach of any covenant, condition, or term contained in this Agreement, shall not be construed to be a waiver of any subsequent or other default or breach, nor shall

failure by the Parties to require exact, full, and complete compliance with any of the covenants, conditions, or terms contained in this Agreement be construed as changing the terms of this Agreement in any manner or preventing the Parties from enforcing the full provisions hereof.

k. No Partnership or Joint Venture. Nothing herein contained is intended or shall be construed in any way to create or establish the relationship of partners or a joint venture between City and SMG.

l. Force Majeure. The time period(s) for performance of the Services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of SMG (financial inability excepted), including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, and/or acts of any governmental agency, including the City, if SMG, within ten (10) days of the commencement of such delay, notifies the City Manager in writing of the causes of the delay. The City Manager shall ascertain the facts and the extent of delay, and extend the time for performing the Services for the period of the enforced delay when and if in the judgment of the City Manager such delay is justified. The City Manager's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall SMG be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, SMG's sole remedy being extension of the Agreement pursuant to this Section.

m. Federal, State and Local Laws. SMG shall comply with all applicable federal, State and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated thereunder in effect at the time services are rendered.

n. Attorney Fees. If either Party to this Agreement commences an action against the other Party arising out of or in connection with this Agreement or its subject matter, each party shall bear its own costs and attorneys fees.

o. Independent Legal Counsel. Each Party acknowledges that it has been represented by independent legal counsel of its own choice throughout all of the negotiations that preceded the execution of this Agreement or has knowingly and voluntarily declined to consult legal counsel, and that each Party has executed this Agreement with the consent and on the advice of such independent legal counsel.

p. No Third Party Beneficiaries. It is expressly agreed that this Agreement is not for the benefit of any person or entity not a Party hereto. This Agreement is not intended to constitute a third-party beneficiary contract.

q. Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

r. Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

s. Responsibilities of the Parties. Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless specified herein, neither party shall be responsible for the service of the other.

t. Authority to Execute. Each of the undersigned represents and warrants that he or she is duly authorized to execute and deliver this Agreement and that such execution is binding upon the entity for which he or she is executing this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed in the name of City, by its officers thereunto duly authorized, and SMG as of the day and year first above written.

SMG

CITY OF PALM SPRINGS

By: _____

By: _____

By: _____

ATTEST:

By: _____

APPROVED AS TO FORM:

Douglas C. Holland, City Attorney

EXHIBIT A
SCOPE OF MANAGEMENT SERVICES

The Management Services to be provided by SMG, include, but are not necessarily limited to the following:

1. Manage, operate, maintain and promote the Convention Center in a manner that is consistent with other comparable facilities providing similar services throughout the United States;
2. Plan, coordinate and administer operation of the Facilities;
3. Negotiate, execute and perform contracts, use agreements, licenses and other agreements: (a) with persons who desire to schedule events, performances, telecasts, broadcasts or other transmissions in, from or to the Facilities or who desire otherwise to use the Facilities or any part thereof; or (b) that otherwise pertain to the use, operation, marketing, promotion and occupancy of the Facilities or any part thereof;
4. Negotiate, execute and perform contracts, use agreements, licenses and other agreements: (a) for all sponsorships, including, but not limited to, the use of advertising space in or about the Facilities and all advertising rights of whatever kind or nature related to the Facilities, and (b) for the sale, promotion, marketing and use of all names, trademarks, trade names, logos and similar intangible property relating solely to the Facilities;
5. Operate, procure or cause to be operated: (a) concessions within the Facilities for the sale of food, beverages, souvenirs, novelties and programs, and (b) clubs and restaurants within the Facilities. SMG shall cooperate with City and keep City Manager informed regarding the selection of concessionaire(s). Should SMG desire to employ a caterer other than Savoury's, SMG shall submit its choice of caterer (but not other concessionaires) to the City Manager. City Manager shall within thirty (30) days of receipt of SMG's notice of its selection notify SMG of the City Manager's approval or disapproval of SMG's choice;
6. Furnish all services, personnel, materials, tools, machinery, equipment and other items necessary to accomplish the foregoing requirements;
7. Devise and implement procedures reasonably designed to keep the Facilities in good order and condition, subject to ordinary wear and tear, and maintain the Facilities in such order and condition;
8. Coordinate all advertising, licensing, promotional activities, marketing, and public relations for the Facilities in coordination with the Tourism Services to be provided under this Agreement;
9. Submit a written business/sales plan (henceforth referred to as the "Plan") for the year commencing on or before June 1 of each year of the term of this

agreement for approval by City, which approval shall be exclusive to the City and shall not be unreasonably withheld or delayed. The sales plans shall be consistent with the policy that the primary role of SMG's convention sales division is to sell space in the Facilities. The 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 Facilities and quantifiable goals against which success may be measured.

10. Establish and maintain consistent procedures for cost estimating and reporting, maintenance and payment of invoices;
11. Monitor actual and projected expenses;
12. Within six (6) months of the approval by the City Council of this Agreement, SMG shall compile an inventory of all furniture, fixtures and equipment which are part of the Facilities or have been otherwise paid for by or on behalf of the City with a minimum initial purchase of \$1,000. SMG shall be required to update the inventory on the third anniversary of the Effective Date, in accordance with generally accepted accounting principles (GAAP) for fixed assets. The updated inventory may capitalize the assets and shall be presented to the City concurrent with the Annual Audit required pursuant to Section 14.
13. Meet monthly with primary hotel partners to discuss cooperative sales efforts, the status of current sales prospects, and to report on business currently booked at the Facilities.
14. Manage and operate the Facilities so as to minimize expenses and maximize revenues; provided, however, that SMG, 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 SMG's good faith judgment, generate either a significant economic, cultural or other benefit to City or otherwise serve the public interest;
15. Not permit the use of the Facilities without charge for such use, absent City Manager's prior written consent;
16. Maintain the Facilities in good condition, reasonable wear and tear excepted and continue maintenance procedures which will keep the Facilities in good condition and working order, reasonable wear and tear excepted. Without limiting the foregoing, the parties acknowledge that the overall appearance and maintenance of the Facilities are important to client relations, promotions and marketing of the Facilities. Consistent therewith, SMG shall perform general routine maintenance of the entire Facilities consistent with a first-class facility comparable to other facilities providing similar services throughout the United States, and, in particular, SMG shall provide specialized maintenance for the air conditioning

chiller units in accordance with the recommendations and/or schedules of the manufacturer, using competent, properly trained personnel; and

17. Require that all persons using the Facilities or attending events therein comply with all legal requirements of all governmental authorities having jurisdiction over the Facilities, and that the use of the Facilities complies with all applicable laws including, but not limited to, civil rights statutes and the Americans With Disabilities Act.
18. Select a Facility Manager. The current Facility Manager is James Canfield.. Should the need arise to replace the Facility Manager, SMG shall coordinate with the City Manager regarding the selection of the next Facility Manager.

EXHIBIT B
SCOPE OF TOURISM SERVICES

The Tourism Services to be provided by SMG, include, but are not necessarily limited to the following:

1. Manage and operate the Palm Springs Visitor Center.
2. Advertise and otherwise promote tourism to the City of Palm Springs, including, but not limited to:
 - a. Generating positive awareness of the City as a destination choice for leisure travelers;
 - b. Stimulating interest and desire on the part of domestic and international customers to take action and visit;
 - c. Planning special events as the City Council may from time to time request;
 - d. Creating positive awareness, support and participation in the City's tourism marketing programs.
3. Prepare an annual business marketing plan as follows:
 - a. Each year during the Term, except during the initial year of the Agreement, on or before June 1st, SMG shall submit to the City the "Annual Business Plan," which is a proactive business marketing plan which includes a detailed list of each of the programs and duties SMG shall perform pursuant to this Agreement for the next Fiscal Year. In the initial year of this Agreement, SMG shall be required to submit its Annual Business Plan no later than December 1, 2013. SMG shall perform its obligations under this Agreement as authorized pursuant to the approved Annual Business Plan.
 - b. Each Annual Business Plan shall include the following:
 - 1) An Executive Summary;
 - 2) A statement, restatement or update of SMG's marketing mission as applicable;

- 3) A discussion of the prior Annual Business Plan, if any, the extent to which the objectives were achieved, and an explanation thereof including, but not limited to, the challenges of the prior year;
- 4) A list of all major objectives for the upcoming year;
- 5) Planned events and activities for the new year;
- 6) An analysis of the challenges projected for the upcoming year including, but not necessarily limited to, marketplace complications which act as or are perceived to be impediments to success, which include major challenges, such as competitive city hotel inventories, other marketing budgets, economic conditions, and other conditions which may unfavorably impact SMG's ability to create customer share of mind and market;
- 7) An explanation of the results expected to be achieved in the upcoming year including projected goals in firm numbers;
- 8) An update on any additional research gathered in the previous year;
- 9) A market analysis of travel trends and visitor trends for the upcoming year, including, but not limited to, relevant national trends;
- 10) An analysis of the market segments to be targeted in the upcoming year;
- 11) Major strategies to be undertaken including, but not necessarily limited to:
 - a. Advertising;
 - b. Public relations;
 - c. Direct marketing;
 - d. Direct sales; and
 - e. Promotional and cooperative opportunities, including, but not limited to, trade shows and sales forums;
- 12) A comprehensive marketing calendar indicating the implementation of all major strategies by month;
- 13) A detailed budget; and

- 14) Strategies to modify and improve the operation of the Visitor Center aimed at making it more efficient, accessible and informative to international, national and regional visitors.
 - c. Any significant change in the Annual Business Plan shall first be approved by the City.
4. In conjunction with the City and community stakeholders, provide public relations and promotional support for special events as requested by the City.
5. Maximize marketing funds and results by leveraging increased marketing support and synergism with other principal partners, including the Convention Center and the Greater Palm Springs Convention and Visitors Bureau.
6. Establish a tracking system that identifies and measures key activities performed by SMG including productivity and return on investment.
7. Maintain a community relations plan that encourages stakeholder input and consensus.
8. Negotiate, execute and perform contracts, use agreements, licenses and other agreements that pertain to the operation, marketing or promotion of the Visitor Center and/or tourism within Palm Springs subject to those restrictions set forth in this Agreement.
9. Establish and maintain consistent procedures for cost estimating and reporting, maintenance and payment of invoices, including preparation of the Tourism Budget, a line item budget and reports as described herein.
10. Monitor actual and projected operating expenses incurred by SMG in the performance of its duties under this Agreement. Make prompt payment of all expenses from funds made available for that purpose.
11. Maintain a website designed to promote the City as a tourist destination. All City owned and/or operated amenities shall appear first on any listing or categorization of such amenities on said webpage.
12. Maintain the Visitor Center in good condition, reasonable wear and tear excepted and continue maintenance procedures which will keep the Facilities in good condition and working order, reasonable wear and tear excepted.

13. Select a Director of Tourism. The current Director of Tourism is Mary Jo Ginther. Should the need arise to replace the Director of Tourism, SMG shall coordinate with the City Manager regarding the selection of the next Director of Tourism.

14. The Director of Tourism shall outreach to and involve the broad spectrum of tourism within the City, including representatives of large hoteliers, medium hoteliers, small hoteliers, vacation rentals, gay tourism, the Uptown Design District merchants association, the Mainstreet association, restaurateurs, the Convention Center, significant attraction venues, and other similar groups or persons as identified by the City Manager. Such outreach and involvement may include the formation of an advisory committee consisting of representatives of this broad spectrum of tourism. The Director may refer issues to this advisory committee for comment and advice relating to the promotion of Palm Springs as a tourist destination, including, but not limited to, marketing, coordination of activities with Palm Springs businesses, the Annual Performance Review, and other responsibilities of SMG provided in the Agreement. In the event the City Council by ordinance or resolution establishes a committee, commission, or board to advise the City and/or the Director on tourism matters, the Director shall serve as Secretary, and shall provide all necessary or appropriate staff support, to such body.