



**PROPOSED MANAGEMENT AGREEMENT
RENEWAL TERMS
for
SMG'S ONGOING MANAGEMENT
of
THE IDAHO CENTER**

December 7, 2009 February 26, 2010

Management Services:

Scope of Services: SMG will provide full facility management services for the Idaho Center.

Term: 5 years, October 1, 2010 through September 30, 2015

Base Management Fee: \$144,000 per year beginning October 1, 2010; subject to annual adjustment by the increase in CPI ≤ 3%

Incentive Fee: SMG proposes the establishment of a new Incentive Fee structure as follows:

SMG would be entitled to an annual Incentive Fee equal to 20% of new revenues generated at the Idaho Center during each fiscal year period, as measured against a benchmark comprised of the average of the gross revenues generated in the last three fiscal years. This amount will recalculate each year based on a rolling three year average. 2008, 2009 and 2010.

To qualify for this incentive, SMG must meet or exceed the approved annual budgeted Idaho Center operating subsidy.

decreasing
Total Incentive Fees cannot exceed the Base Management Fee for the year in which they may be earned.

Other Consideration:

SMG will not charge any additional fees for computerized ticketing services in the event that IC Tickets is no longer utilized, naming rights and/or advertising & sponsorship sales, thereby allowing the maximum benefits for such services to accrue to the City of Nampa and the Idaho Center facilities.

**AMENDMENT NO. 2 TO
MANAGEMENT AGREEMENT**

THIS AMENDMENT NO. 2 TO MANAGEMENT AGREEMENT (this "**Amendment**") is dated as of the ____ day of March, 2010, by and between THE CITY OF NAMPA, IDAHO, a political subdivision organized and existing pursuant to the laws of the State of Idaho (the "**City**"), and SMG, a Pennsylvania general partnership ("**SMG**").

BACKGROUND

The City and SMG are parties to that certain Management Agreement dated as of May 25, 2005, as amended by an Amendment to Management Agreement dated as of July 5, 2006 (collectively, the "**Management Agreement**"), whereby SMG has been retained by the City to manage, operate and promote the Facility on the terms provided therein.

Pursuant to Section 3.2(b) of the Management Agreement, the City desires to exercise its rights to extend the term of the Management Agreement for the Renewal Term, on the terms and conditions contained in this Amendment. Unless otherwise defined in this Amendment, capitalized terms used in this Amendment shall have the meanings ascribed to them in the Management Agreement.

NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

1. **Amendments to Management Agreement.** In connection with the commencement of the Renewal Term on October 1, 2010, the following amendments shall be effective for the entire term of the Renewal Term:

(a) Section 4.2 (Fixed Fee) shall be amended and restated in its entirety as follows:

As base compensation to SMG for providing the services herein specified during the Renewal Term, the City shall pay SMG during the Renewal Term an annual fixed fee of One Hundred Forty-Four Thousand Dollars (\$144,000), which amount shall be adjusted upward on the first day of each Fiscal Year during the Renewal Term, beginning with the Fiscal Year thereof commencing on October 1, 2011, by the percentage change in the Consumer Price Index -- All Urban Consumers (CPI-U) -- U.S. City Average -- All Items, during the one year period ending in August immediately preceding each such Fiscal Year, as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or of any revised or successor index hereafter published by the Bureau of Labor Statistics or other agency of the United States Government succeeding to its functions ("CPI"). The foregoing annual fixed compensation shall be payable in equal monthly installments due on or before the last day of each month during such Fiscal Year, and SMG shall be entitled to draw such amounts from the account described in Section 5.6.

(b) Section 4.3(a) shall be amended and restated in its entirety as follows:

(a) **Amount.** SMG shall be entitled to an annual incentive fee with respect to each Fiscal Year during the Renewal Term which shall be equal to an amount calculated as follows: twenty percent (20%) of the Operating Revenues during

each such year which are in excess of the Revenue Benchmark (as herein defined). The "Revenue Benchmark" for any such Fiscal Year is the amount which is the average of the Operating Revenues for the three (3) Fiscal Years immediately preceding the applicable Fiscal Year. Notwithstanding anything to the contrary contained herein, in any such Fiscal Year, (i) the incentive fee hereunder shall not exceed an amount equal to 100% of the fixed fee for such Fiscal Year and (ii) SMG shall not be entitled to the calculation of the incentive fee hereunder if the Net Operating Loss/Profit for such year does not meet or is not an improvement over the Net Operating Loss/Profit contained in the Approved Budget for such year.

(c) The fifth (5th) sentence in Section 4.4 (relating to the payment of 7.5% fee to SMG for its sponsorship solicitation activities described in such section) is hereby deleted.

2. Effect of Amendment. Except as amended in paragraph 1 hereof, the Management Agreement and all terms and conditions thereof shall remain unaltered and in full force and effect and are hereby ratified and confirmed in all respects, as hereinabove amended. Any reference in the Management Agreement or in any instrument, document or consideration executed or delivered pursuant to the Management Agreement to "this Agreement", "hereof", "hereto", and "hereunder" and similar references thereto shall be deemed and construed to be a reference to the Management Agreement, as amended by this Amendment.

3. Governing Law. This Amendment will be governed by and construed in accordance with the internal laws of the State of Idaho, without giving effect to otherwise applicable principles of conflicts of law.

4. Counterparts. This Amendment may be executed in any number of counterparts, each of which will be deemed to be an original and all of which, when taken together, will be deemed to constitute but one and the same agreement.

5. Power and Authority. Each party hereby represents and warrants to the other that each has full legal right, power and authority to enter into this Amendment and to perform its respective obligations hereunder.

IN WITNESS WHEREOF, this Amendment has been duly executed by the parties hereto as of the day and year first above written.

Attest:

CITY OF NAMPA, IDAHO

By: _____

By: _____

Name: _____

Name: _____

Title: City Clerk

Title: Mayor

SMG

By: _____

Name: _____

Title: _____

AMENDMENT NO. 2 TO MANAGEMENT AGREEMENT

THIS AMENDMENT NO. 2 TO MANAGEMENT AGREEMENT (this "Amendment") is dated as of the 3rd day of May, 2010, by and between THE CITY OF NAMPA, IDAHO, a political subdivision organized and existing pursuant to the laws of the State of Idaho (the "City"), and SMG, a Pennsylvania general partnership ("SMG").

BACKGROUND

The City and SMG are parties to that certain Management Agreement dated as of May 25, 2005, as amended by an Amendment to Management Agreement dated as of July 5, 2006 (collectively, the "**Management Agreement**"), whereby SMG has been retained by the City to manage, operate and promote the Facility on the terms provided therein.

Pursuant to Section 3.2(b) of the Management Agreement, the City desires to exercise its rights to extend the term of the Management Agreement for the Renewal Term, on the terms and conditions contained in this Amendment. Unless otherwise defined in this Amendment, capitalized terms used in this Amendment shall have the meanings ascribed to them in the Management Agreement.

NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Amendments to Management Agreement. In connection with the commencement of the Renewal Term on October 1, 2010, the following amendments shall be effective for the entire term of the Renewal Term:

(a) Section 4.2 (Fixed Fee) shall be amended and restated in its entirety as follows:

As base compensation to SMG for providing the services herein specified during the Renewal Term, the City shall pay SMG during the Renewal Term an annual fixed fee of One Hundred Forty-Four Thousand Dollars (\$144,000), which amount shall be adjusted upward on the first day of each Fiscal Year during the Renewal Term, beginning with the Fiscal Year thereof commencing on October 1, 2011, by the percentage change in the Consumer Price Index -- All Urban Consumers (CPI-U) -- U.S. City Average -- All Items, during the one year period ending in August immediately preceding each such Fiscal Year, as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or of any revised or successor index hereafter published by the Bureau of Labor Statistics or other agency of the United States Government succeeding to its functions ("CPI"). The foregoing annual fixed compensation shall be payable in equal monthly installments due on or before the last day of each month during such Fiscal Year, and SMG shall be entitled to draw such amounts from the account described in Section 5.6.

(b) Section 4.3(a) shall be amended and restated in its entirety as follows:

(a) Amount. SMG shall be entitled to an annual incentive fee with respect to each Fiscal Year during the Renewal Term which shall be equal to an amount calculated as follows: twenty percent (20%) of the Operating Revenues during

each such year which are in excess of the Revenue Benchmark (as herein defined). The "Revenue Benchmark" for any such Fiscal Year is the amount which is the average of the Operating Revenues for the three (3) Fiscal Years immediately preceding the applicable Fiscal Year. Notwithstanding anything to the contrary contained herein, in any such Fiscal Year, (i) the incentive fee hereunder shall not exceed an amount equal to 100% of the fixed fee for such Fiscal Year and (ii) SMG shall not be entitled to the calculation of the incentive fee hereunder if the Net Operating Loss/Profit for such year does not meet or is not an improvement over the Net Operating Loss/Profit contained in the Approved Budget for such year.

(c) The fifth (5th) sentence in Section 4.4 (relating to the payment of 7.5% fee to SMG for its sponsorship solicitation activities described in such section) is hereby deleted.

2. Effect of Amendment. Except as amended in paragraph 1 hereof, the Management Agreement and all terms and conditions thereof shall remain unaltered and in full force and effect and are hereby ratified and confirmed in all respects, as hereinabove amended. Any reference in the Management Agreement or in any instrument, document or consideration executed or delivered pursuant to the Management Agreement to "this Agreement", "hereof", "hereto", and "hereunder" and similar references thereto shall be deemed and construed to be a reference to the Management Agreement, as amended by this Amendment.

3. Governing Law. This Amendment will be governed by and construed in accordance with the internal laws of the State of Idaho, without giving effect to otherwise applicable principles of conflicts of law.

4. Counterparts. This Amendment may be executed in any number of counterparts, each of which will be deemed to be an original and all of which, when taken together, will be deemed to constitute but one and the same agreement.

5. Power and Authority. Each party hereby represents and warrants to the other that each has full legal right, power and authority to enter into this Amendment and to perform its respective obligations hereunder.

IN WITNESS WHEREOF, this Amendment has been duly executed by the parties hereto as of the day and year first above written.

Attest:

By: *Diana Lambing*
Name: DIANA LAMBLING
Title: City Clerk

CITY OF NAMPA, IDAHO

By: *Tom Dale* 7/22/10
Name: Tom Dale
Title: Mayor

SMG

By: *John F. Burns*
Name: John F. Burns
Title: Chief Financial Officer

EXECUTION COPY

MANAGEMENT AGREEMENT
BETWEEN
THE CITY OF NAMPA, IDAHO,
URBAN RENEWAL AGENCY OF THE CITY OF NAMPA, IDAHO,
AND
SMG

Dated as of May __, 2005

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT (this "Agreement") dated as of the ____ day of May, 2005 by and between The City of Nampa, Idaho, a political subdivision organized and existing pursuant to laws of the State of Idaho and Urban Renewal Agency of the City of Nampa, Idaho (collectively the "City"), and SMG, a Pennsylvania general partnership, whose current address is 701 Market Street, 4th Floor, Philadelphia, PA, 19106 ("SMG").

BACKGROUND

The City is the owner and current operator and manager of the Idaho Center, comprised of a 12,279 seat arena ("Arena"), a 11,500 seat outdoor amphitheater, a 100,000 square foot sports complex, a horse park and stalls, a 4,032 square foot tourism building, and a proposed English riding center (collectively, the "Facility"), located on approximately 100 acres in the City of Nampa, Idaho, and, as mutually agreed, other facilities as the City may from time to time add or expand to become part of the Facility.

Whereas, SMG is engaged in the business of providing management services, including operations and marketing services for public assembly facilities and,

Whereas, the City desires to engage SMG, and SMG desires to accept such engagement, to provide management services for the Facility on the terms and conditions set forth herein and,

Whereas, the City intends to work in mutual accord with SMG in order to ensure provision of high quality management services, thereby enhancing the use and enjoyment of the Facility and,

Whereas, with the sunset of the Urban Renewal Agency of the City of Nampa, Idaho (URACN) on or about September 30, 2005, all ownership of the Idaho Center assets shall transfer to the City of Nampa, which transfer shall in no way be changed by execution of this agreement, and

Whereas, the City has stated its principal objectives of the engagement are, and SMG shall use its commercially reasonable efforts, to manage the Facility to be self-supporting in operations and maintenance and to generate retained earnings for operational and capital improvements by:

- a) Operating a quality nationally competitive facility with high levels of client and customer satisfaction to realize optimal potential for venue.
- b) Managing Facility revenues and expenses to cover all operational costs to include, without limitation, increasing

©1995-2003. SMG. All rights reserved.

number and margins on events, increasing marketing and promotions, implementing efficiencies for expense reduction, enhancing sponsorship, and introducing new creative events.

- c) Managing Facility revenue and expenses to cover an identified amount for annual maintenance and repair to protect the assets of the Facility as provided for in the annual budget process.
- d) Managing Facility to generate retained earnings beyond operations and maintenance for capital equipment and improvements as may from time to time be approved by the City.
- e) Assist the City in its efforts to create an auditorium district to support the marketing and capital enhancement of the venue.

NOW, THEREFORE, in consideration of the mutual premises, covenants, agreements and recitals herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Definitions

For purposes of this Agreement, the following terms have the meanings referred to in this Section 1:

"Affiliate" -- a person or entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified person or entity. For purposes of this definition, "control" means ownership of equity securities or other ownership interests that represent more than forty percent 40% of the voting power in the controlled person.

"Approved Budget" -- any budget submitted by SMG as approved by the City pursuant to Section 5 hereof.

"Auditorium District Tax" -- the City's tax on hotel/motel and private campground space.

"Capital Equipment" -- any and all furniture, fixtures, machinery or equipment, either additional or replacement, having a per item original cost of \$5,000 or more and an expected useful life of more than one year.

"Capital Improvements" -- any and all building additions, alterations, renovations, repairs or improvements that have an initial dollar cost of not less than \$5,000 per project.

"City" -- the City of Nampa, Idaho as defined in the first paragraph of this Agreement and, when appropriate, the Urban Renewal Agency of the City of Nampa, Idaho.

"Consulting Period" -- the period commencing on the date hereof and ending on September 30, 2005.

"Contract Administrator" -- the Finance Director of the City as from time to time appointed by the City, or such person as may from time to time be authorized in writing by such administrative official to act for him/her with respect to any or all matters pertaining to this Agreement.

"Contract Deliverables" -- an extracted listing of activities and reports with associated dates for key matters as contained in this Agreement and listed in Exhibit "A" for convenient reference.

"Employment Transition Period" -- the period beginning on the date hereof and ending on September 30, 2005.

"Event Expenses" -- any and all expenses incurred or payments made by SMG in connection with the occurrence of events at the Facility, including but not limited to costs for event staffing including ushers, ticket takers, security and other event staff, and costs relating to setup and cleanup.

"Facility" -- as defined in the first paragraph of the Background section of this Agreement

"Fiscal Year" -- a one (1) year period beginning October 1 and ending September 30.

"Idaho Center Advisory Commission" -- as defined by city ordinance, which commission has been created for the purpose of advising the Mayor and Council in directing and overseeing the affairs of the Facility. The Commission will meet regularly, and may hold special meetings, as necessary, with representatives of SMG's management team for briefings on the activities of the Facility. Commission will provide manager with input relating to local community assessment of the contractor's operations and to provide a sounding board for the contractor's conceptual development of future operations.

"Independent Contractor" -- this Agreement calls for the performance of the services of the manager as an independent contractor. Manager is not an agent or employee of the City for any purpose. This Agreement shall not be construed as forming any type of legal partnership or association other than that of an independent contractor.

"Management Term" -- the five (5) year period beginning on October 1, 2005 and ending on September 30, 2010 unless earlier terminated in accordance with this Agreement.

"Net Operating Loss/Profit -- with respect to a Fiscal Year, the excess, if any, of Operating Expenses for such Fiscal Year over Operating Revenues for such Fiscal Year in the case of a loss; and the excess, if any, of Operating Revenues for such Fiscal Year over Operating Expenses for such Fiscal Year in the case of a profit.

"Operating Budget" -- a complete budget of operating revenues and operating expenses as defined herein, and including summary level revenue and expense functional groupings together for a given year, together with both historical actual expense and projected expense comparisons for like groupings in a format consistent with the industry standards and acceptable to the City.

"Operating Expenses" -- (a) any and all expenses and expenditures of whatever kind or nature incurred by SMG as an independent contractor for the City in promoting, operating, maintaining and managing the Facility including, but not limited to, employee compensation and related expenses (e.g., base salaries, incentives, severance and car allowances), employee benefits and related costs (e.g., relocation and other related expenses pursuant to SMG's relocation policy (a copy of which will be provided to the City and the City notified when changed), parking and other fringe benefits), all Facility maintenance, supplies, material and parts cost, costs of any interns and independent contractors, advertising, marketing and public relations costs and commissions, janitorial and cleaning expenses, data processing costs, dues, Facility subscriptions and membership costs, the costs of procuring (premiums) as approved in the annual budget, administering and maintaining (deductibles) the insurance referred to in Section 8 herein, amounts expended to procure and maintain permits and licenses, charges, taxes, excises, penalties and fees, professional fees, printing and stationery costs, Event Expenses including costs for staging and Event staffing, postage and freight costs, equipment rental costs, computer equipment leases and line charges, repairs and maintenance costs (e.g., elevators and HVAC), security expenses, utility and telephone charges, travel and entertainment expenses in accordance with SMG's policies and as approved by the City, the cost of employee uniforms, safety and medical expenses, exterminator and waste disposal costs, costs relating to the maintenance of signage inventory and systems, the cost of annual independent audits of the Facility, the cost of compliance with laws and regulations, other start-up expenses associated with the opening of a new facility, costs incurred under agreements, commitments, licenses and contracts executed in SMG's name as provided in Section 2.3(c) hereof, and the fixed management fees payable to SMG pursuant to Section 4.1 below, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis; provided that Operating Expenses shall not include expenses or expenditures in connection with, any naming rights agreements, the Patron Ticket Program, Capital Improvements and Capital Equipment purchases and depreciation, the incentive fee payable pursuant to Section 4.2 below, and any expenses relating to SMG personnel based at SMG's corporate headquarters in Philadelphia, Pennsylvania or its regional field locations (other than the reasonable costs of travel by such corporate or regional personnel in connection with SMG's management of the Facility, which costs shall be Operating Expenses).

"Operations Manual" -- a comprehensive document which contains the various systems-descriptions-programs, operational policies and procedures, personnel policies and procedures, standard operating practices, standards and methods for operation, maintenance, modification and safekeeping of the Facility. As of the beginning of the Management Term, the City will take a complete inventory of all plant and equipment, together with an assessment of the condition of such plant and equipment, and an inventory of on-hand materials (excepting consumable operating supplies) and provide such inventory report to SMG. For purposes of this Agreement, equipment subject to inventory shall be defined as any equipment with an initial purchase price of \$2,000 or greater, or (b) a current replacement price of \$2,000 or greater. This

©1995-2003. SMG. All rights reserved.

Operations Manual is to be prepared and submitted to the City for review and approval within the first ninety (90) calendar days after execution of this Agreement. The Operations Manual is to be updated or revised on a regular basis to reflect the current status of items addressed therein.

"Operating Revenues" -- (a) any and all revenues of every kind or nature derived from operating, managing or promoting the Facility including, but not limited to: license, lease and concession fees and rentals, revenues from merchandise sales, advertising and sponsorship sales, equipment rentals, utility revenues, box office revenues, parking revenues, food service and concession revenues (however, if such revenues are collected in the first instance by and retained by the concessionaire, the amount of such revenues paid by the concessionaire to the Facility shall be included as Operating Revenues), commissions or other revenues from decoration and set-up, security and other subcontractors (however, if such revenues are collected in the first instance by and retained by such subcontractors, the amount of such revenues paid by such contractors to the Facility shall be included as Operating Revenues), miscellaneous operating revenues, revenues generated from separate agreements with SMG Affiliates pertaining to the Facility, and interest revenues, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis. For the sake of clarity, the parties acknowledge that (i) revenues from the sale of tickets for events at the Facility are not Operating Revenues, but are, instead, revenues of the promoter and/or performer of each such event and (ii) naming rights revenues, any Patron Ticket Program revenue and the Auditorium District Tax shall be excluded from the definition of Operating Revenues. To the extent that SMG collects such ticket sale revenue on behalf of such promoter and/or performer, such ticket sale revenue shall be the source of funds from which SMG collects the rental charges and other event reimbursements due by such promoter and/or performer for use of the Facility, which such charges and reimbursements are Operating Revenues hereunder.

"Patron Ticket Program" -- a program available to individuals and businesses that want to have the opportunity to purchase tickets to Idaho Center events before the tickets are available to the general public. This program allows the patron the opportunity for first right of refusal to purchase tickets to all ticketed events for a defined period of time. Each Patron Ticket holder is notified in advance of all ticketed events and is allowed to purchase tickets for their seats before the event goes on sale to the general public. Patron Ticket Program donations are used for major improvements to the Idaho Center.

"Pre-existing Agreement" -- Exhibit "C" sets forth each contract, license, agreement, option, lease and commitment existing as of the date of this Agreement that grants any person or entity any right (i) to license, use, occupy or rent all or any portion of the Facility, or (ii) to provide services to be used in the management, operation, use, possession, occupation, maintenance, promotion or marketing of all or any portion of the Facility.

"Renewal Term" -- the five (5) year period from October 1, 2010 to September 30, 2015 unless earlier terminated in accordance with this Agreement.

"SMG" -- as defined in the first paragraph of this Agreement.

2. Engagement of SMG; Scope of Services.

2.1 Engagement.

(a) General Scope. The City hereby engages SMG to promote, operate and manage the Facility during the Management Term and the Renewal Term, if any, upon the terms and conditions hereinafter set forth, and SMG hereby accepts such engagement.

(b) Manager of the Facility. Subject to the terms of this Agreement, SMG shall be the sole and exclusive manager, as an independent operator contractually empowered and obligated by the City, to manage, operate and promote the Facility during the Management Term and the Renewal Term, if any. In such capacity, SMG shall have exclusive authority over the day-to-day operation of the Facility and all activities therein; provided that SMG shall follow all policies and guidelines of the City hereafter established or modified by the City that the City notifies SMG, in writing, are applicable to the Facility, provided that to the extent that such policies or guidelines hereafter established or modified by the City materially adversely affect the incentive calculations hereunder then the parties shall, in good faith, meet and attempt to agree in writing upon a corresponding adjustment to such incentive formula.

2.2 Scope of Services -- Generally.

SMG shall perform and furnish such management services and systems as are appropriate or necessary to operate, manage and promote the Facility in a manner consistent with SMG's policies and procedures and the operations of other similar first-class facilities consistent with the direction and advice of the City while in regular communications with the Idaho Center Advisory Commission and with consideration for the general standards of the community regarding events, products, and services procured or provided.

2.3 Specific Services.

Without limiting the generality of the foregoing, SMG shall have, without (except as otherwise expressly noted below) any prior approval by the City, sole right and authority to:

(a) employ (subject to Section 7.2), supervise and direct employees and personnel consistent with the provisions of this Agreement;

(b) administer relationships with all subcontractors, concessionaires and all other contracting parties to the Pre-Existing Agreements, assume responsibility for any and all negotiations, renewals and extensions (to the extent SMG deems any of the foregoing to be necessary or desirable) relating to such Pre-Existing Agreements, and enforce the Pre-Existing Agreements;

(c) negotiate, execute, deliver and administer any and all licenses, occupancy agreements, rental agreements, booking commitments, advertising agreements (including naming rights (however, such rights may be sold by the City exclusive of SMG) and sponsorships), concession agreements, supplier agreements, service contracts (including, without limitation, contracts for cleaning, decorating and set-up, snow removal, general maintenance and maintenance and inspection of HVAC systems, elevators, stage equipment, fire control panel and other safety equipment, staffing and personnel needs, including guards and ushers, and other services as necessary or appropriate) and all other subordinate contracts and agreements in

©1995-2003. SMG. All rights reserved.

connection with the management, promotion and operation of the Facility; provided that if any such license, agreement, commitment or contract other than those involving the license, lease or rental of the Facility in the ordinary course has a term that extends beyond the remaining Management Term or Renewal Term, as the case may be, such license, agreement, commitment or contract shall be approved and executed by the City (which approval shall not be unreasonably withheld); and further provided, that in the event the City desires to issue tax exempt bonds and the City obtains a bond counsel opinion regarding an existing contract and such opinion requires the modification to certain contract terms, then SMG and the City, if appropriate, agree to take all commercially reasonable steps to modify such contract so that it is in conformity with any tax exempt financing requirements of the Facility and, in the event that such modification adversely affects the compensation of SMG hereunder, a credit shall be applied as appropriate in each annual calculation of SMG's incentive fees hereunder to compensate for any such adverse affect.

(d) provide right of first refusal at current market prices for renewals of current local signage sponsors and holders of seats under the Patron Ticket Program;

(e) to the extent that Operating Revenues or funds supplied by the City are made available therefor, maintain the Facility in no less than the condition received, reasonable wear and tear excepted; provided that the City shall be responsible for undertaking all Capital Improvements and Capital Equipment purchases as provided in Section 5.8;

(f) to the extent that Operating Revenues or funds supplied by the City are made available therefor, rent, lease or purchase all equipment and maintenance supplies necessary or appropriate for the operation and maintenance of the Facility, provided that the City shall be responsible for undertaking all Capital Improvements and Capital Equipment purchases pursuant to Section 5.8;

(g) establish a rate schedule for general use and allow General Manager to adjust prices, rates and rate schedules for the aforesaid licenses, agreements and contracts and subcontracts and any other commitments relating to the Facility to be negotiated by SMG in the course of its management, operation and promotion of the Facility. In determining such prices and rate schedules, SMG shall evaluate comparable charges for similar goods and services at similar and/or competing facilities;

(h) to the extent that Operating Revenues or funds supplied by the City are made available therefore, pay, when due, on behalf of the City, all Operating Expenses from accounts established pursuant to Sections 5.6 and 5.7 of this Agreement;

(i) keep City Attorney and Contract Administrator apprised of any and all claims filed or lawsuits filed and, after consultation with the City Attorney or his designee, cause their respective legal counsels to coordinate the disposition and settlement thereof. SMG, with the City's consent, may institute proceedings as SMG shall deem necessary or appropriate in connection with the operation of the Facility including, without limitation, to defend against third party suits brought against the Facility, collect charges, rents or other revenues due to the City, or to cancel, terminate or sue for damages, under any license, use, advertisement or concession

agreement for the breach thereof or default thereunder by any licensee, user, advertiser, or concessionaire at the Facility;

(j) maintain a master set of all booking records and schedules for the Facility;

(k) provide day-to-day administrative services in support of its management activities pursuant to Approved Budgets and annual plans described herein including, but not limited to, the acquisition of services, equipment, supplies and facilities; internal budgeting and accounting; maintenance and property management; all personnel management including annual performance evaluations; record-keeping; collections and billing; and similar services;

(l) engage in such advertising, solicitation, and promotional activities as SMG deems necessary or appropriate to develop the potential of the Facility and the cultivation of broad community support (including without limitation selling advertising inventory and securing product rights for the Facility). SMG shall work with the City Convention Bureau, as may be established, the Boise Convention and Visitor's Center, and the hospitality industry, to market the Facility for conventions, trade shows and public entertainment shows. In connection with its activities under this Agreement including, without limitation, advertising relating to the Facility, SMG shall be permitted to use the terms "Idaho Center", "At the Crossroads of the Northwest", and such other names and logos used in connection with the Facility in its advertising, subject to the approval of the Contract Administrator.

(m) consult with the Contract Administrator in determining whether to grant or withhold any approval of any contract or subcontract agreement as allowed under this Agreement to allow the City to consider the effect of such contract for federal tax purposes on the exclusion of interest on any current or planned bonds for federal income tax purposes and may consult bond counsel to determine if a proposed contract would be considered a qualified management contract for purposes of Revenue Procedure 97-13 promulgated by the Internal Revenue Service. City approval is specifically required on any and all contracts which grant a leasehold interest, term for years, or other real estate interest in the Facility (other than a revocable license), or grants a long term right to the use of the Facility on a basis different from that of the general public.

(n) engage in contracts or subcontracts only as limited by the formal approvals and authority stated in this agreement within approved budgets and not to exceed the term of this agreement without written approval by the Contract Administrator.

2.4 Right of Entry Reserved.

Representatives of the City designated in writing by the Contract Administrator shall have the right to enter all portions of the Facility at any time and for any purpose whatsoever without notice, to inspect same, to observe the performance of SMG of its obligations under this Agreement, to install, remove, adjust, repair, replace or otherwise handle any equipment, utility lines, or other matters in, on, or about the premises, or to do any act or thing which the City may be obligated or have the right to do under this Agreement or otherwise. Nothing contained in this Section is intended or shall be construed to limit any other rights of the City under this Agreement. The City shall make efforts not to interfere with the activities of

SMG hereunder, and the City's actions shall be conducted such that disruption of SMG's work shall be kept to a minimum. Nothing in this Section shall impose or be construed to impose upon the City any independent obligation to construct or maintain or make repairs, replacements, alterations, additions or improvements or create any independent liability for any failure to do so.

2.5 Confidentiality/Nondisclosure.

(a) Confidentiality/Nondisclosure. In connection with the performance of SMG's services hereunder, the City acknowledges that SMG may provide the City and its employees, agents and subcontractors (including without limitation the architectural and engineering firm retained for the Facility) with Confidential Information (as defined below). In addition, in connection with the performance of the services hereunder, SMG may provide to the City and its employees, agents and subcontractors with materials that are protected by copyright of SMG.

(i) The City agrees that they shall keep secret and confidential any and all Confidential Information already disclosed and/or to be disclosed to it by SMG, and the City shall not divulge any such information, in whole or in part, to any third party except as is expressly permitted below in Section 2.5. Any information considered by SMG to be confidential must be clearly marked and identified as same prior to delivery to the City.

(ii) The City shall not use any such information, except for the express purpose of utilizing it in connection with the management of the Facility. The City shall not directly or indirectly disclose or discuss any such information with any person or entity, other than employees, agents and subcontractors of the City who are directly concerned with the management of the Facility, provided, however, that in the event of any such disclosure to its employees, agents and subcontractors, the City (i) shall first inform SMG of its desire to make such disclosure, (ii) if requested by SMG, shall require such employees, agents or subcontractors to execute and deliver to SMG prior to any disclosure by the City to him/her/it, an agreement acknowledging a receipt of a copy of the provisions of Section 2.5 and agreeing to be bound by such provisions to the same extent as the City, and (iii) in any event, shall advise in writing all such persons or entities of the existence of the provisions of Section 2.5 and of their responsibility to comply with such provisions.

(iii) "Confidential Information" means any and all information disclosed (orally, in writing, by inspection or otherwise) to the City by SMG and marked as confidential as per the requirement of this section. The restrictions upon confidentiality and use of Confidential Information set forth in this Section 2.5 do not apply to information which the City can demonstrate was publicly available or lawfully in its possession at the time of its disclosure to the City by SMG; however, Confidential Information shall not be deemed in the City's possession or publicly known simply because it is embraced by more general information in the City's possession.

(iv) With respect to any information or material which is protected by copyright of SMG, no part of such materials may be used or transmitted in any form or by any means - graphic, electronic, photocopying, recording, mechanical or otherwise - without the prior

permission of SMG provided, however, that any and all advertising media and collateral marketing materials produced for the Idaho Center shall be and remain the property of the City.

(b) Specific Performance. The City agrees that the provisions of this Section 2.5 are reasonable and necessary to protect the interests of SMG and that SMG's remedies of law for a breach of any of the provisions of this Section 2.5 will be inadequate and that, in connection with any such breach, SMG will be entitled, in addition to any other remedies (whether at law or in equity), to temporary and permanent injunctive relief without the necessity of proving actual damage or immediate or irreparable harm, or of the posting of a bond. Notwithstanding the foregoing, if a court of competent jurisdiction shall determine any of the provisions of this Section 2.5 to be unreasonable, SMG agrees to a reaffirmation of such provisions by such court to any limits which such court finds to be reasonable and the City will not assert that such provision shall be eliminated in their entirety by such court.

(c) Idaho Public Records Act. Notwithstanding any other provision of this Agreement, SMG acknowledges that City is subject to the provisions of the Idaho Public Records Act, Idaho Code §9-337, et seq. Requests for information made to City pursuant to said Act will be processed in accordance with Idaho law and City procedures. To the extent that the provisions of Section 2.5 conflict with Idaho law, Idaho law takes precedence. So long as City complies with the Idaho Public Records Act, any disclosure of information made pursuant thereto shall not constitute a breach of this Section 2.5.

3. Term and Renewal.

3.1 Consulting Period.

(a) During the Consulting Period, SMG will provide consulting and transition services to the City with respect to the Facility and will work to effect an orderly transition of the management of the Facility from the City to SMG.

(b) Not later than 30 days from the signing of this Agreement, SMG will present a transition plan for the Facility to the Contract Administrator which will provide initial direction on such areas as corporate philosophy, all corporate policies (wages, salaries, travel, relocation, overhead, etc.), human resources, General Manager, finance, marketing-events-booking, concessions, and general operations.

3.2 Management Term and Renewal Term.

(a) This Agreement shall extend for the Management Term, unless earlier terminated pursuant to the provisions of this Agreement. The City may terminate this Agreement at the end of the third year and at the end of the fourth year of the Management Term by giving not less than one hundred twenty (120) days prior written notice of such termination to SMG without further obligation except to make such payments as required under Section 12.3.

(b) The City may, in its sole discretion, extend the term hereof for the Renewal Term by giving not less than one hundred twenty (120) days prior written notice of such extension to SMG. The City may terminate this Agreement at the end of the third year and at the end of the fourth year of the Renewal Term by giving not less than one hundred twenty

(120) days prior written notice of such termination to SMG without further obligation except to make such payments as required under Section 12.3.

4. SMG's Compensation.

4.1 Consulting Period.

As total compensation to SMG for its services during the Consulting Period, the City shall (i) pay SMG a fixed fee of Ten Thousand Four Hundred Sixteen Dollars and Sixty-Seven Cents (\$10,416.67) per month, pro rated with respect to partial months during the Consulting Period ("**Consulting Period Fees**") plus reimbursement for all documented out of pocket expenses in furtherance of such services within thirty (30) days of SMG's presentation of its invoice therefore along with such documentation. A budget for such Consulting Period expenses has been provided by SMG to the City.

4.2 Fixed Fee.

As base compensation to SMG for providing the services herein specified during the Management Term and any Renewal Term, the City shall pay SMG during the Management Term and the Renewal Term, if any, an annual fixed fee of \$125,000, which amount shall be adjusted upward by Three Percent per Annum (3.0%) commencing on the first day of each Fiscal Year, other than the first Fiscal Year ending September 30, 2006, during the term hereof. The foregoing annual fixed compensation shall be payable in equal monthly installments due on or before the last day of each month during such Fiscal Year, and SMG shall be entitled to draw such amounts from the account described in Section 5.6.

4.3 Incentive Fee.

(a) **Amount.** SMG shall be entitled to an annual incentive fee with respect to each Fiscal Year during the Management Term or Renewal Term which shall be equal to the amount calculated in accordance with Exhibit "B" attached hereto and made a part hereof; provided, however, that in no event shall the incentive fee for any Fiscal Year exceed one hundred percent (100%) of the fixed fee payable pursuant to Section 4.2 for such Fiscal Year ("**Incentive Fee Cap**"). For purposes of clarification of the formula set forth on Exhibit "B," SMG shall be entitled to the greater of: (i) twenty-five percent (25%) of the improvement of Operating Revenues or (ii) twenty-five percent (25%) of the reduction of Operating Expenses; provided, however, that in order for SMG to be eligible for such incentive (or a portion thereof) it must meet certain "Operating Benchmark Goals" for each Fiscal Year as set forth on Exhibit "B." In the event that SMG does not meet one hundred percent of such Operating Benchmark Goals, then the Incentive Fee Cap shall be reduced proportionally for such Fiscal Year.

(b) **Payment.** The incentive fee determined pursuant to Section 4.3(a) above shall be payable to SMG within 30 days after the City's receipt of an invoice from SMG accompanied by an annual statement certified by one of its officers setting forth the Operating Revenues and Operating Expenses for the previous Fiscal Year and showing the calculation of the incentive fee payable with respect to such Fiscal Year. The City will pay SMG the amount of such fee from the account described in Section 5.6. Promptly following the availability of the

audited annual financial statements described in Section 6.1 hereof for a Fiscal Year, SMG shall recalculate the incentive fee payable for that Fiscal Year; in the event that the amount of the incentive fee which was paid based on SMG's invoice differs from such recalculated amount, SMG shall promptly remit to the City any excess amount which was paid, or the City shall promptly pay the shortfall, as the case may be.

4.4 Naming Rights and Sponsorship.

SMG will assist the City and utilize SMG's corporate resources to sell, on behalf of the City, certain naming and sponsorship rights for the Facility. City shall retain the sole authority and discretion to either authorize or reject any such transaction or the terms and conditions of such transaction including, without limitation, the actual name of facilities of any naming right or sponsorship solicited. City shall have the right to review and approve or reject any naming rights or sponsorship contract prior to its execution. The City shall retain all income generated from any transaction and shall separately account for the revenue received and the expenses associated with each transaction, both of which will be excluded from revenue/expense for purposes of calculating the incentive fee payments pursuant to Sections 4.2 and 4.3 of this Agreement. On a quarterly basis, the City shall pay SMG a fee equal to seven and one-half percent (7.5%) of the net income actually received by the City for each separate naming rights transaction over the life of such naming rights agreement (i.e., the monies actually received by the City exclusive of all expenses associated with the transaction). SMG's ability to market these rights are limited exclusively to, and will not exceed, the term of this Agreement. To the extent the City sells naming rights without assistance from SMG, then City shall be entitled to retain all resulting revenues that shall, likewise, be excluded from incentive fee calculations and payments. SMG shall have the exclusive right to market the naming rights and sponsorships for a period of one-year from the effective date of this Agreement; thereafter the City shall be entitled to market such naming rights and sponsorships and accept proposals outside SMG. The City agrees that it will not take any action to engage in a naming rights transaction with a prospect that SMG first identified, contacted and gave notice thereof to the City.

5. Funding; Budgets; Bank Accounts; Marketing Fund.

5.1 Budgeted Operating Funds.

Subject to Section 5.2, following the approval of the annual plan and operating budget for a Fiscal Year (including, without limitation, any annual operating budget applicable to the first Fiscal Year during the term hereof), the City shall make available to SMG all funds necessary to pay all budgeted Operating Expenses incurred or accrued in such Fiscal Year. The City will advance funds to SMG as follows: Thirty (30) days prior to the beginning of each calendar quarter during the Management Term and any Renewal Term, SMG will submit to the City an invoice for the projected Cash Flow Shortfall for such quarter and the City will transfer such funds, in an amount which will not cause expenses to exceed the total annual approved budget, to SMG within five (5) days after the start of such calendar quarter. Such funds shall be deposited by SMG in the operating or payroll account(s) established pursuant to Section 5.6 and used to pay Operating Expenses.

5.2 Non-Funding.

(a) This Agreement is subject to annual appropriations by the City and the City shall have no obligation to provide funds for the payment of Operating Expenses incurred or committed for after the date SMG receives written notice (an "Appropriation Deficiency Notice") of the fact that insufficient funds or no funds have been appropriated for the Facility.

(b) If the Appropriation Deficiency Notice is of insufficient funds, the City shall pay all Operating Expenses incurred or committed for after such date that are within the aggregate level of appropriated funds specified in the Appropriations Deficiency Notice. The City shall pay all budgeted Operating Expenses incurred or committed for prior to the date SMG receives the Appropriation Deficiency Notice. Any failure by the City to provide funds (beyond the aggregate level of appropriated funds) for the payment of Operating Expenses incurred or committed for after SMG receives an Appropriations Deficiency Notice shall not be a breach of or default under this Agreement by the City. Any failure by SMG to perform its obligations under this Agreement shall not be a breach of or default under this Agreement if such breach or default results from the City's failure to appropriate sufficient funds for the management, operation and promotion of the Facility and occurs subsequent to the receipt of an Appropriation Deficiency Notice.

(c) If the City appropriates funds at a level that, in SMG's judgment, renders effective management of the Facility practically unfeasible or untenable, SMG may, at its option, either (i) continue management of the Facility at a reduced level consistent with anticipated Operating Revenues and available funding or (ii) terminate this Agreement pursuant to Section 12.2 (with the effect set forth in Section 12.3).

5.3 Annual Budget; Cash Flow Budget.

(a) On or before March 31st of each year for all Fiscal Years after the Fiscal Year ended September 30, 2006, SMG will prepare and submit an annual operating budget for the next Fiscal Year to meet the scope of services and objectives under this Agreement. Such budget shall contain appropriate line items for revenues and expenses and the projected net operating deficit or surplus. For purposes of Fiscal Year ending September 30, 2006, SMG will submit to the City a preliminary annual operating budget as described above within thirty (30) days from the date hereof and will submit to the City an actual operating budget on or before August 1, 2005.

(b) SMG shall prepare and submit to the Contract Administrator by March 31st of each year for all Fiscal Years after the Fiscal Year ended September 30, 2006, an annual cash flow budget for the succeeding Fiscal Year. For purposes of Fiscal Year ending September 30, 2006, SMG will submit to the City a preliminary annual cash flow budget as described above within thirty (30) days from the date hereof and will submit to the City an actual cash flow budget on or before August 1, 2005.

(c) The annual budgets referred to in subparagraphs (a) and (b) above shall be reviewed and are subject to approval by the City. By June 30 of each Fiscal Year hereunder (beginning June 30, 2006), the Contract Administrator shall notify SMG of any changes to the annual operating budget and the cash flow funding budget for the succeeding Fiscal Year proposed by SMG and with such changes, if any, as are made by the City. Such budgets shall be

the Preliminary Approved Budgets for the following Fiscal Year for general planning purposes. The Approved Budget will then be adopted by the City Council in September of each fiscal year and shall become the effective budget.

5.4 Budget Modifications Initiated by SMG.

SMG may submit to the City at any time prior to the close of a Fiscal Year a supplemental or revised annual operating budget or cash flow budget for such Fiscal Year. Upon the approval of the City of such supplemental or revised budget by the City, the Approved Budgets for such Fiscal Year shall be deemed amended to incorporate the revised budget. The Approved Budgets may only be amended as set forth in Section 5.5 below or in the two preceding sentences, except that SMG shall have the right to amend the Approved Budgets as may be necessary or appropriate as the result of the scheduling by SMG of additional events or activities at the Facility (and the incurrence of additional Operating Revenues and Expenses arising from the scheduling of additional events or activities at the Facility) as long as, prior to the scheduling of such events or activities, SMG had a good faith belief that the projected Net Operating Loss for the Fiscal Year as set forth in the Approved Budgets would not be increased or that the projected Net Operating Profit would not be decreased as a result of such additional events or activities.

5.5 Budget Modifications Initiated by the City.

In the event that it appears reasonably likely, in any year during the term hereof, that the actual Net Operating Loss for such Fiscal Year will be larger than projected in the annual operating budget for such Fiscal Year, the City may request from SMG a plan for reduction of Operating Expenses to a level consistent with the budgeted Net Operating Loss amount. SMG shall forthwith comply with any such expense reduction requested by the City and the approved budgets for such Fiscal Year shall be modified accordingly; provided that if the annual operating budget or annual cash flow budget is modified in a manner which, in SMG's reasonable judgment, could materially interfere, impede or impair the ability of SMG to manage, operate or promote the Facility in a manner where patrons of the Facility could assemble without foreseeable safety risks (e.g. unsafe physical conditions or insufficient security personnel), SMG shall have the right to terminate this Agreement pursuant to Section 12.2 (with the effect set forth in Section 12.3) and provided further that SMG shall not be construed to have breached its obligations under this Agreement if such alleged breach has been caused by the limitations in the Fiscal Year's budget.

5.6 Receipts and Disbursements.

SMG shall establish and maintain in one or more depositories designated by the Contract Administrator one or more operating, payroll and other bank accounts for the promotion, operation and management of the Facility, in the name of the City, with SMG as independent operator and with signature authority in such employees of SMG as SMG's financial policy provides. All revenues collected by SMG from the operation of the Facility shall be deposited into such accounts and Operating Expenses shall be paid by SMG from such accounts. All revenues collected by SMG arising from operation of the Facility, including revenues from box office sales, Facility or equipment rentals, utility rental agreements, food and

beverage concessions, or any other source, are the sole property of the City, held in trust by SMG for the City for application as provided herein. Any amounts remaining in such accounts upon termination of this Agreement for any reason, after payment of all outstanding Operating Expenses, shall be promptly paid by SMG to the City.

5.7 Ticket Sales Revenues and Event Settlement Report.

SMG shall hold in a separate interest-bearing account in a banking institution depository in Nampa, Idaho any ticket sale revenues that it receives with respect to an event to be held at the Facility pending the completion of the event. Such monies are to be held for the protection of ticket purchasers, the City and SMG, and to provide a source of funds, as required for such payments to performers and promoters and for such payments of Operating Expenses in connection with the presentation of events as may be required to be paid contemporaneously with the event. Following the satisfactory completion of the events, SMG shall make a deposit into the operating account(s) established pursuant to Section 5.6 above of the amount in such account and shall pay from the operating account Event Expenses and provide the City with a full event settlement report within thirty (30) calendar days of each event, if requested. Interest that accrues on amounts deposited in the operating account(s) referred to in Section 5.6 and the ticket account referred to above shall be considered Operating Revenues. Bank service charges, if any, on such account(s) shall be considered Operating Expenses.

5.8 Capital Improvements; Capital Equipment.

The obligation to pay for, and authority to perform, direct and supervise Capital Improvements and Capital Equipment purchases shall remain with the City and will not be considered Operating Expenses. The manager shall have no authority to make any alterations or any capital improvements to the Facility without the written approval of the City, except those approved and line-item funded in the annual budget as adopted by the City. The annual plan submitted pursuant to Section 6.2 shall include SMG's recommendation for Capital Improvements and Capital Equipment purchases to be accomplished during the year and shall be accompanied by an estimate of the cost of all such items and projects and a request that the City budget funds therefor. Such plan will further categorize and prioritize recommendations by safety and code compliance, return on investment, and Facility enhancement types of improvements and purchases. The City shall retain the discretion to determine whether and to what level to fund Capital Improvements and Capital Equipment purchases to the Facility.

5.9 Limitation of SMG Liability.

Notwithstanding any provision herein to the contrary and except for SMG's express indemnification undertakings in Section 8.1 and its express reimbursement undertakings in Section 6.1(b), and commitments under Sections 5.11, SMG shall have no obligation to fund any cost, expense or liability with respect to the operation, management or promotion of the Facility. Notwithstanding anything to the contrary set forth in this Agreement, the City recognizes and agrees that performance by SMG of its responsibilities under this Agreement is in all respects subject to and conditioned upon the timely provision of funds to SMG for such purposes as hereinafter provided.

5.10 Funds for Emergency Repairs.

SMG shall have the right to act, without prior consent of the City, in situations which SMG determines to be an emergency exclusively with respect to the safety, welfare and protection of the general public, including spending and committing funds held in the operating account(s) of the Facility, even if such expenses are not budgeted; provided, however, SMG shall have no obligation under any circumstance to spend or commit funds other than funds then available in such accounts for any such purpose. Immediately following such action, SMG shall inform the City of the situation and the action(s) taken, and the City shall pay into such account(s) the amount of funds, if any, spent or committed by SMG pursuant to this Section 5.10.

5.11 Marketing Fund; Sponsorship of Annual Horse Park Gala.

(a) **Marketing Fund.** On or before October 31, 2005, SMG shall make a Fifty Thousand Dollar (\$50,000) contribution to a segregated account established in accordance with Section 5.6 for the purposes of promoting and developing new event activity at the Facility ("At Risk Event Fund"). SMG shall, subject to periodic consultation with the City, manage and control the At Risk Event Fund. Each party may make requests/recommendations in respect of potential events, or concepts for potential events, which may be funded, in whole or in part, through the At Risk Event Fund. The At Risk Event Fund will be replenished from Facility profits, if any, from events up to a maximum of \$50,000. Losses, if any, shall be deducted from said Fund without recourse. Any events developed with any contributions from said Fund shall pay rent (and reimburse expenses) to the Facility consistent with that paid by third party users of the Facility on a "most favored client" basis for similar types of shows. A separate accounting of activities will be maintained for the At Risk Event Fund that shall be set out prior to base and incentive fee calculations. Upon termination or expiration of this Agreement, SMG shall be entitled to withdraw all funds from the At Risk Event Fund unconditionally and without any set-off rights afforded to the City.

(b) **Annual Horse Park Gala.** During the Management Term and any Renewal Term, SMG agrees to sponsor the Idaho Annual Horse Park Gala ("Gala") by donating its food and beverage (non-alcohol only) and labor services for the Gala dinner regardless of whether SMG is the food/beverage concessionaire. The parties agree that for purposes of SMG performing under this Section 5.11(b), SMG shall provide food and beverage and labor services consistent with that which was provided at the Gala held in 2004 and for not more than the number of attendees at the 2004 Gala. Additionally, the City represents and warrants that it has provided to SMG a complete copy of the contractual agreement (i.e., including any and all amendments and any other operative documents related thereto) between the City and the current food and beverage provider at the Facility.

6. Records, Audits and Reports.

6.1 Records and Audits.

(a) SMG shall keep full and accurate accounting records relating to its activities at the Facility in accordance with generally accepted United States accounting

principles. SMG shall maintain a system of bookkeeping adequate for its operations hereunder. SMG shall give the City's authorized representatives access to such books and records maintained at the Facility during reasonable business hours and upon reasonable advance notice. SMG shall keep and preserve for at least three (3) years following each Fiscal Year all sales slips, rental agreements, purchase order, sales books, credit card invoices, bank books or duplicate deposit slips, and other evidence of Operating Revenues and Operating Expenses for such period. In addition, on or before December 31 following each Fiscal Year for which SMG is managing the Facility hereunder (beginning December 31, 2006), SMG shall, to the fullest extent within its control, furnish to the City a balance sheet, a statement of profit or loss, a statement of cash flows, and statement of changes in financial condition for the Facility for the preceding Fiscal Year, prepared in accordance with generally accepted United States accounting principles and accompanied by an independent auditor's report prepared by an independent certified public accountant licensed in the State of Idaho. The audit shall contain an opinion expressed by the independent auditor of the accuracy of financial records kept by SMG and of amounts due to the City. The audit shall also provide a certification of Operating Revenues and Operating Expenses as defined in this Agreement for such Fiscal Year. The audit shall be conducted by a reputable firm selected by the City with consent by SMG which consent shall not be withheld or delayed unreasonably. Notwithstanding anything to the contrary herein, the costs of such audit shall be deemed Operating Expenses. The audit, when complete, shall be submitted to the city. All accounting records shall be maintained on site at the Idaho Center location.

(b) The City shall have the right at any time, and from time to time, to cause qualified independent auditors to audit all of the books of SMG relating to Operating Revenues and Operating Expenses, including, without limitation, cash register tapes, credit card invoices, duplicate deposit tapes, and invoices. No costs incurred by the City in conducting such audit shall be considered an Operating Expense. If any such audit demonstrates that the Operating Revenues or Operating Expenditures reflected in any financial statements prepared by SMG and audited as specified in the foregoing subparagraph (a) are understated (in the case of Operating Expenses) or overstated (in the case of Operating Revenues), in either case by more than five percent (5%), SMG shall pay to the City the reasonable cost of such audit and shall promptly refund to the City any portion of the incentive fee paid for such Fiscal Year which is attributable to the overstatement or understatement, as the case may be. The City's right to have such an audit made with respect to any Fiscal Year and SMG's obligation to retain the above records shall expire three (3) years after SMG's statement for such Fiscal Year has been delivered to the City.

6.2 Annual Plan.

(a) SMG shall provide to the City on or before August 1st of each year, an annual management plan which shall include (i) a budget benchmark, (ii) the specific goals and actions to be taken to accomplish the budget, and (iii) the specific marketing plans to be taken to accomplish the budget and which shall further include the annual operating budget described in Section 5.3 for the next Fiscal Year. The annual plan shall include information regarding SMG's anticipated operations for such Fiscal Year, including planned operating maintenance activities by SMG, requested Capital Improvements and Capital Equipment purchases and an anticipated budget therefor, anticipated events at the Facility, anticipated marketing, advertising and

promotional activities, and planned equipment and furnishings purchases. The annual plan shall be subject to review, reasonable revision and approval by the City. Following review and reasonable revision by the City, SMG shall have thirty (30) calendar days to incorporate such revisions into its plan. Upon approval by the City, such annual plan shall constitute the operating program for SMG for the following Fiscal Year.

(b) SMG shall provide to the Contract Administrator on or before March 1st of each year, a report on the prior fiscal year which reviews section by section compliance with the provisions of this agreement and which sets out any exceptions of non-compliance together with a proposed corrective action plan for each exception for consideration by the City.

6.3 Monthly Progress Reports.

(a) The General Manager, or his/her designee if unavailable, will present to the Idaho Center Advisory Commission and Contract Administrator complete written monthly progress reports on the Annual Plan, which reports shall include the activities, events, operations, and finances of the Facility in a format and fashion acceptable to the Contract Administrator.

(b) By the twenty-fifth day of each month, SMG shall provide to the City a written monthly report in a form approved by the Contract Administrator, and similar to that used in other SMG-managed facilities, setting out the Facility's anticipated activities for the upcoming month and reporting on the prior month's activities and finances together with a year-to-date comparison of budget to actual financials and monthly projections for the balance of the budget year.

7. Employees.

7.1 SMG Employees.

(a) Subject to Section 7.2 SMG shall select, train and employ at the Facility such number of employees as SMG deems necessary or appropriate to satisfy its responsibilities hereunder; SMG shall use its commercially reasonable efforts to recruit employees who will be proficient, productive, and courteous to patrons, and, subject to Section 7.2, SMG shall have authority to hire, terminate and discipline any and all personnel working at the Facility.

(b) SMG shall assign to the Facility a competent, full-time General Manager with demonstrated managerial experience in similar facilities. From time to time, the General Manager may provide assistance in connection with the consulting and/or management services provided by SMG or any of its Affiliates at other facilities managed, owned or leased by SMG or any of its Affiliates, provided that (i) such assistance does not affect in any material respect the responsibilities and duties of the General Manager to the Facility and (ii) the cost of the salary and benefits of the General Manager and other SMG employees at the Idaho Center for the time spent in connection with providing such assistance shall be reimbursed by SMG to the operating account of the Facility. Prior to SMG's appointment of such General Manager, SMG shall consult with the City with respect to the qualifications of the General Manager proposed by SMG and obtain the City's approval for the hiring of the General Manager, which may include

interviews of finalist candidates. Additionally, SMG shall consult with the City regarding the SMG regional manager assigned to provide corporate management oversight of the Facility. In the event that the City is dissatisfied with the performance of the General Manager, the City shall have the right to present in writing to SMG specific performance related issues to be remedied. SMG and the General Manager shall have forty-five (45) days to remedy the specific issues to the City's reasonable satisfaction. If the City remains dissatisfied upon the expiration of such forty-five (45) day period, the General Manager shall be removed at the City's discretion within thirty (30) days of the date of written request of the City Council. During the first two years of the Management Term, SMG shall not re-assign the General Manager of the Facility without the prior written consent of the City (unless the General Manager has been removed by SMG at the request of the City and then such consent shall not be required).

(c) SMG employees at the Facility shall not for any purpose be considered to be employees of the City, and SMG shall be solely responsible for their supervision and daily direction and control and for setting, and paying as an Operating Expense, their compensation (and federal income tax withholding) and any employee benefits, and all costs related to their employment shall be an Operating Expense.

(d) SMG will establish employee policies for relocation, travel, and any general administrative home office expenses to include the Regional Manager and SMG corporate travel to the Facility included in operating expenses of this contract, which policies shall be acceptable to the Contract Administrator.

(e) To the extent permissible under applicable law, SMG will adhere to the request of the City to conduct drug testing and background checks for full-time employees assigned to the Facility in a manner consistent with City policy.

7.2 URACN (Urban Renewal Agency of the City of Nampa, Idaho) Employees.

(a) As of the date hereof, there are twenty-six (26) full-time URACN employees at the Facility, all of whom are non-union employees (the "Non-Union Employees"). At the end of the Employment Transition Period, all such URACN employees who remain employed at the Facility (collectively, the "Remaining URACN Employees") shall be entitled to continue working at the Facility. During the Employment Transition Period, the remaining URACN Employees shall retain their status and benefits as URACN employees. During such period, and with respect to the Remaining URACN Employees, SMG, which shall supervise and direct the activities of the Remaining URACN Employees, shall comply with applicable personnel rules and procedures regarding salary changes, disciplinary action and discharge of which SMG has notice from the URACN.

(b) At or prior to the end of the applicable Employment Transition Period, SMG shall have the right, in its sole discretion, to offer employment to any Remaining URACN Employee. Any such offer shall be on such terms as SMG, in its sole discretion, shall determine. Any Remaining URACN Employee who chooses to accept any such offer of employment by SMG shall thereupon cease to be an employee of the URACN, shall become an employee of SMG upon such terms and conditions as determined by SMG, and shall no longer be deemed a Remaining URACN Employee for purposes of subparagraph (a) above.

(c) At the end of the applicable Employment Transition Period, no further employment opportunity will exist with the URACN, and SMG shall cause all Remaining URACN Employees in the applicable group who have not accepted an offer of employment by SMG to cease working at the Facility.

(d) The City represents, warrants and covenants that nothing in this Agreement or otherwise shall require SMG to employ employees subject to a collective bargaining agreement covering employees at the Facility such that SMG would be required to make contributions to multiemployer plans (as that term is defined in Section 4001(a)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended), on behalf of or for the benefit of such employees during the term of this Agreement, which contribution obligation may or at anytime may expose SMG to withdrawal liability for a share of any unfunded vested benefits under such plans. This contract makes no provision for any collective bargaining arrangement for employees at the Facility.

7.3 Independent Contractor – Assignment of Contracts. All contracts relating to the Facility (including all contracts approved by the Agency and all license, lease or rental contracts pertaining to the Facility) where SMG executed in its own name shall be automatically assigned to, and deemed to be assumed by, the City (without further action by any party) upon termination or expiration of this Agreement and the City shall indemnify, defend and hold harmless SMG from and against any Losses (as defined in Section 8.1(a) below) in respect of any liability under such contracts arising from any act or omission by any party to such contracts occurring on or after the effective date of termination or expiration of this Agreement. The obligation of the City under this Section 7.4 shall survive the termination or expiration of this Agreement.

7.4 No Solicitation or Employment by City. During the period commencing on the date hereof and ending one (1) year after the termination of this Agreement, except with SMG's prior written consent or in the event that SMG is terminated for cause hereunder, the City will not, for any reason, solicit for employment, or hire, the general manager and director-level employees of SMG at the Facility. In addition to any other remedies that SMG may have, specific performance in the form of injunctive relief shall be available for the enforcement of this provision.

8. Indemnification and Insurance.

8.1 Indemnification.

(a) SMG shall indemnify, defend and hold harmless the City, its officers, agents and employees from and against any and all losses, liabilities, claims, damages and expenses (including reasonable attorneys fees) (collectively, "Losses") arising from any material default or breach by SMG of its obligations specified herein; provided, however, that the foregoing indemnification shall not extend to Losses to the extent such Losses (i) arise from any breach or default by the City of its obligations under Section 8.1(b) below, (ii) are of the type that are or would normally be covered by commercial insurance covering (A) the Facility and its premises for physical damage or other Loss and (B) business interruption and extra expenses, irrespective of the decision of the City to carry or not to carry such insurance, or (iii) are caused by or arise out of the services provided by the architects, engineers and other agents (other than

SMG) retained by the City in connection with Capital Improvements or Capital Equipment purchases at the Facility.

(b) The City shall indemnify, defend and hold harmless SMG, its partners, officers, agents and employees from and against any and all Losses arising from (i) any material default or breach by the City of its obligations specified herein, (ii) the fact that at any time prior to, as of, or after the commencement of the Management Term hereunder the Facility has not been operated, or the Facility and its premises are not or have not been, in compliance with all Laws (as defined in Section 11.2 hereof), including, but not limited to, the Americans with Disabilities Act, 42 U.S.C. Sections 12101-12213 as amended by the Civil Rights Act of 1991 (42 U.S.C. Section 1981(a)), as it now exists and as it may be amended in the future by statute or judicial interpretation (collectively, the "ADA"), (iii) the fact that prior to, as of, or after the commencement of the Management Term hereunder there is any condition on, above, beneath or arising from the premises occupied by the Facility which might, under any Law, give rise to liability or which would or may require any "response," "removal" or "remedial action" (as such terms are defined under the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act), (iv) any structural defect or unsound operating condition with respect to the Facility or the premises occupied by the Facility prior to, as of or after the commencement of the Management Term hereunder, (v) any obligation or liability under or in respect of any contract, agreement or other instrument executed by SMG as authorized herein, (vi) any obligation or liability for physical damage or other Loss to any real property and personal property assets located at the Facility or intended to be incorporated therein, whether such assets are insured by the City or whether the City decides not to insure for such damage and Losses (including without limitation damages or Losses falling within any policy deductible), (vii) any non-compliance with any Pre-Existing Agreement on or prior to the commencement of the Management Term, or (viii) any act or omission carried out by SMG at or pursuant to the direction or instruction of the City, its agents or employees; provided, however, that the foregoing indemnification under clauses (i) and (ii) above shall not extend to Losses to the extent such Losses arise from any default or breach by SMG of its obligations specified herein.

(c) The provisions set forth in subparagraphs (a) and (b) above shall survive termination of this Agreement; provided, however, that except for indemnification based upon Section 8.1(b) (ii), (iii), (iv), (v), (vi), (vii), or (viii) above, a claim for indemnification pursuant to Section 8.1 shall be valid only if the party entitled to such indemnification provides written notice thereof to the other party prior to three (3) years following the date of termination of this Agreement. No party hereunder shall be entitled under any circumstances for any consequential, special or punitive damages from the other party.

(d) The terms of all insurance policies referred to in Section 8, including without limitation (i) the property insurance policies of the City, and (ii) the policies of any independent contractors retained by the City or hired by SMG (such as, the food and beverage concessionaire retained by the City and emergency medical technicians who are not employed by SMG), shall preclude subrogation claims against SMG, its partners, the City and their respective officers, directors, employees and agents.

(e) The foregoing indemnification rights shall be the exclusive remedies of each party hereto (other than any right to terminate this Agreement pursuant to Section 12) arising from any breach of, default under or performance pursuant to this Agreement.

8.2 Liability Insurance.

(a) SMG shall secure and deliver to the Contract Administrator prior to the commencement of the Management Term hereunder and shall keep in force at all times during the term of this Agreement, a commercial liability insurance policy, including public liability and property damage, covering the premises, the operations hereunder, in the amount of One Million Dollars (\$1,000,000.00) for bodily injury and One Million Dollars (\$1,000,000.00) for property damage, including products and completed operations and independent contractors. SMG shall also maintain Umbrella liability insurance with a limit of Five Million Dollars (\$5,000,000).

(b) SMG shall also maintain Comprehensive Automotive Bodily Injury and Property Damage Insurance for business use covering all vehicles operated by SMG officers, agents and employees in connection with the Facility, whether owned by SMG, the City, or otherwise, with a combined single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence (including an extension of hired and non-owned coverage).

(c) SMG shall be the named insured under all such policies. The City shall be an additional insured under the foregoing insurance policies, as its interests may appear, and said policies shall contain a provision covering the parties' indemnification liabilities to each other.

(d) Certificates evidencing the existence of the above policy, or policies, all in such form as the Contract Administrator may reasonably require, shall be delivered to the Contract Administrator prior to the commencement of the Management Term. Notwithstanding the provisions of this Section 8.2, the parties hereto acknowledge that the above policies may contain exclusions from coverage that are reasonable and customary for policies of such type. Each such policy or certificate shall contain a valid provision or endorsement stating, "This policy will not be canceled or materially changed or altered without first giving thirty (30) days' written notice thereof to the Contract Administrator, City of Nampa, City Hall, 411 3rd Street South Nampa, Idaho 83651, sent by certified mail, return receipt requested."

(e) With respect to policies procured by it, SMG shall deliver to the Contract Administrator satisfactory evidence of such renewal of such policies at least twenty (20) days after a policy's expiration date except for any policy expiring on the termination date of this Agreement or thereafter.

(f) Except as provided in Sections 8.4(b) and 8.5, all insurance procured by SMG in accordance with the requirements of this Agreement shall be primary over any insurance carried by the City and not require contribution by the City.

8.3 Workers Compensation Insurance.

SMG shall at all times maintain worker's compensation insurance (including occupational disease hazards) with an authorized insurance company or through the Idaho State Compensation Insurance Fund or through an authorized self-insurance plan approved by the

©1995-2003. SMG. All rights reserved.

State of Idaho insuring its employees at the Facility in amounts equal to or greater than required under law.

8.4 Property Insurance.

(a) The City shall, subject to Section 5.2, maintain its current property insurance covering the premises of the Facility. The City shall cause SMG to be named as an additional insured under all of the City's property and hazard insurance policies covering or relating to the Facility. In addition, the City shall, with respect to the Losses covered by such property and hazard insurance and business interruption and extra expenses insurance, waive any subrogation rights that it may have against SMG, its partners and their respective officers, employees and agents, whether or not the City self-insures for the Losses covered by such insurance. Nothing in this Agreement is intended to require SMG to maintain property and hazard insurance covering the premises at the Facility or business interruption insurance covering the interruption of operations by or for whatever cause at the Facility.

(b) Certificates evidencing the existence of the policies, referred to in Section 8.4(b), all in such form as SMG may reasonably require, shall be delivered to SMG prior to the commencement of the Management Term. Notwithstanding the provisions of this Section 8.4(b), the parties hereto acknowledge that the above policies may contain exclusions from coverage that are reasonable and customary for policies of such type. Each such policy or certificate shall contain a valid provision or endorsement stating, "This policy will not be canceled or materially changed or altered without first giving thirty (30) days' written notice thereof to "SMG, Risk Management Director, 701 Market Street, 4th Floor, Philadelphia, PA, 19106, sent by certified mail, return receipt requested."

(c) With respect to policies procured by it relative to the Facility, Contract Administrator shall deliver to SMG satisfactory evidence of such renewal of such policies at least twenty (20) days after a policy's expiration date except for any policy expiring on the termination date of this Agreement or thereafter.

8.5 Certain Other Insurance.

If any of the Pre-Existing Agreements consist of agreements with independent contractors to provide services in respect of the Facility, the City shall use its best efforts to cause such contractors to name SMG as an additional insured under any insurance maintained by such contractors pursuant to the terms of such Pre-Existing Agreements and in such event to deliver to SMG promptly after request therefor a certified copy of such policy and a certificate evidencing the existence thereof. In addition, if SMG enters into any agreements during the Management Term and any Renewal Term with any independent contractors for the provision of services hereunder, SMG shall have the right to require such contractors to name SMG as an additional insured under any insurance required by SMG thereunder and to deliver to SMG prior to the performance of such services a certified copy of such policy, plus a certificate evidencing the existence thereof, which policy contains the same type of endorsements and provisions as provided in Section 8.4(c).

9. Ownership of Assets.

9.1 Ownership.

The ownership of buildings and real estate, technical and office equipment and facilities, furniture, displays, fixtures, vehicles and similar tangible property located at the Facility shall remain with the City. Ownership of and title to all intellectual property rights of whatsoever value held in the City's name shall remain in the name of the City. Ownership of any brands, slogans, trademarks, marketing materials developed, will be held in the City's name. The ownership of consumable assets (such as office supplies and cleaning materials) purchased with Operating Revenues or City funds shall remain with the City, but such assets may be utilized and consumed by SMG in the performance of services under this Agreement. The ownership of data processing programs and software owned by the City shall remain with the City, and the ownership of data processing programs and Software owned by SMG shall remain with SMG. SMG shall not take or use, for its own purposes, customer or exhibitor lists or similar materials developed by the City for the use of the Facility, unless written consent is granted by the Contract Administrator. Ownership of equipment, furnishings, materials, licenses, or fixtures not considered to be real property and other personal property purchased by SMG with City funds for use at and for the Facility shall vest in the City automatically and immediately upon purchase or acquisition. The assets of the City as described herein shall not be pledged, liened, encumbered or otherwise alienated or assigned other than in the ordinary course of business of the Facility without the prior approval of the City.

SMG acknowledges that the City has disclosed that it has previously entered into various sponsorship and use agreements with individuals and entities to use the Facility on certain dates or to use the Facility in a sponsorship role, each of which prior agreement is defined herein as a pre-existing agreement, and some or all of which may be in effect during the term of this Agreement; the City specifically includes in this disclosure, (1) that certain Reformed and Restated Use Agreement with the Nampa Harvest Festival dated June 6, 2004, which is the contract whereby the Nampa Harvest Festival, doing business as the Snake River Stampede, administers, manages, operates and directs the annual Snake River Stampede Rodeo and (2) the Memorandum of Understanding and Agreement with Boise State University for the Use and Operation of an Indoor Track Facility dated April 19, 2002.

SMG acknowledges and agrees that, although these pre-existing agreements are not being assigned to SMG, SMG will honor the spirit of each agreement and will facilitate the successful completion of each and every agreement, specifically the above-described agreements with the Nampa Harvest Festival and Boise State University. SMG agrees that it will not seek to renegotiate the terms of either the Nampa Harvest Festival or Boise State University agreements, unless such renegotiated terms are agreed to by, and would be more favorable to, the Nampa Harvest Festival or Boise State University.

9.2 City Obligations.

Except as herein otherwise set forth, throughout the term of this Agreement, the City will maintain full beneficial use and ownership of the Facility and will pay, keep, observe and perform all payments, terms, covenants, conditions and obligations under any bonds, debentures or other security agreements or contracts relating to the Facility to which the City may be bound.

10. Assignment; Affiliates.

10.1 Assignment.

Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either party hereto without the prior written consent of the other party hereto. Notwithstanding the foregoing, SMG may assign all or any part of its rights hereunder to an Affiliate, provided that (i) such Affiliate possesses substantially the same degree of expertise and quality of personnel as originally provided under this Agreement, and (ii) such assignment shall be at no increased cost to the City. Any assignment made without mutual consent shall provide cause for termination of agreement and shall be considered a default of this agreement in accordance with the terms of this Agreement. For sake of clarity, the parties acknowledge that the foregoing does not preclude the assignment by SMG of its rights to receive its management and incentive fees hereunder to its lender(s) as collateral security for SMG's obligations under any credit facilities provided to it by such lender(s), provided that such collateral assignment shall not in any event cover SMG's rights to manage, promote or operate the Facility hereunder.

10.2 SMG Affiliates/Non-competition Covenant.

(a) Transactions with Affiliates. In connection with its management responsibilities hereunder relating to the purchase and/or procurement of equipment, materials, supplies, inventories, and services for the Facility, SMG shall have the right, but not the obligation, to purchase and/or procure from, or otherwise transact business with, an Affiliate of SMG. In the event SMG purchases and/or procures from, or otherwise transacts business with, an Affiliate of SMG as contemplated by the foregoing sentence, the prices charged and services rendered shall be competitive with those obtainable from others rendering comparable goods and/or services of like kind. To ensure compliance in this respect, SMG agrees to obtain at least two (2) other competitive bids from persons other than SMG's Affiliates whenever SMG proposes to transact business with an Affiliate for the provision of such goods or services hereunder. In addition, SMG may license the use of the Facility or any part thereof to itself in connection with any event in the promotion of which SMG is involved, so long as the license fee charged is on prevailing rates and terms or such other rates and terms as the Contract Administrator approves. Copies of all financial terms of contractual agreements, licenses and event settlements (if applicable) with affiliates and competitive bids received shall be provided to the Contract Administrator not later than the effective date of the contract. The City further reserves the right of review and approval of any contracts, subcontracts, or agreements by or between SMG and any Affiliate and such approval shall not be unreasonably withheld.

(b) Conflicts of Interest. The City acknowledges that SMG manages other public assembly facilities that may, from time to time, be in competition with the Facility. The management of competing facilities will not, in and of itself, be deemed a conflict of interest or breach of SMG's duties hereunder; provided, however, in all instances in which the Facility is in competition with other public assembly facilities managed by SMG for the solicitation of certain events, SMG shall not involve its principal office (currently in Philadelphia, Pennsylvania) or regional officers or their employees on behalf of any such other facility in an attempt to influence the decision-making process regarding the selection of a site by such events.

(c) Non-competition Covenant. SMG agrees that during the term of this agreement, neither the Facility General Manager nor SMG will provide management services for any multipurpose arena or similar public assembly facility within a fifty (50) mile radius of the Nampa Facility without the written consent of the City, which consent shall not be unreasonably withheld.

11. Laws and Permits.

11.1 Permits, Licenses, Taxes and Liens.

The City shall cooperate with SMG in its application for any permits and licenses required for the business to be conducted by it hereunder. SMG shall deliver copies of all such permits and licenses to the Contract Administrator. SMG shall pay promptly, out of the accounts specified in Section 5.6, all taxes, excises, license fees and permit fees of whatever nature arising from its operation, promotion and management of the Facility. SMG shall use reasonable efforts to prevent mechanic's or materialman's or any other lien from becoming attached to the premises or improvements at the Facility, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any mechanic or materialman, so long as the work, labor or material was provided at SMG's direction and the City has supplied funds for the payment of charges therefor in accordance with this Agreement. The City may withhold funds due to SMG for any outstanding liens remaining upon non-renewal or termination of this Agreement.

In the event it becomes necessary for the City to retake possession of the Facility or of any or all permits and licenses required for the business to be conducted at the Facility, to the greatest extent permissible by applicable law, SMG hereby assigns its interest in such permits and licenses to the City and does hereby grant to the City SMG's power of attorney to execute on its behalf any and all applications, assignments, or other documents which are required by the issuing authority to reissue all permits and licenses to the City.

11.2 Governmental Compliance (Compliance with Law).

SMG, its officers, agents and employees shall comply with all federal, state, local and municipal regulations, ordinances, statutes, rules, laws and constitutional provisions (collectively, "Laws") applicable to SMG's operational (as opposed to structural) management of the Facility hereunder, including without limitation Title III of the ADA and the provision of such auxiliary aids or alternate services as may be required by the ADA. Nothing in this Section 11.2 or elsewhere in this Agreement shall, however, require SMG to undertake any of the foregoing compliance activity, nor shall SMG have any liability under this Agreement therefor, if (a) such activity requires any Capital Improvements or Capital Equipment purchases, unless the City provides funds for such Capital Improvements and Capital Equipment purchases pursuant to Section 5.8 hereof, or (b) any Pre-Existing Agreement fails to require any licensee, lessee, tenant, promoter or user of any portion of the Facilities to comply, and to be financially responsible for compliance, with Title III of the ADA in connection with any activities of such licensee, lessee, tenant, promoter or user at the Facilities. Furthermore, SMG shall have the right to require any licensee, lessee, tenant, promoter or user of any portion of the Facility to comply, and to be financially responsible for compliance, with Title III of the ADA in connection with any activities of such licensee, lessee, tenant, promoter or user at the Facility.

11.3 No Discrimination in Employment (Equal Opportunity Employer).

In connection with the performance of work under this Agreement, SMG shall not refuse to hire, discharge, refuse to promote or demote, or to discriminate in matters of compensation against, any person otherwise qualified, solely because of race, color, religion, gender, age, national origin, military status, sexual orientation, marital status or physical or mental disability.

11.4 Legal Expenses.

Legal expenses and costs, including attorney fees of outside counsel, incurred by SMG in connection with any claim or proceeding concerning the Facility shall be a Direct Operating Cost if, prior to incurring any legal expenses and costs, SMG consults with the City and the City and SMG jointly agree on the course of action to be taken in regard to the claim or proceeding made against SMG or the City concerning the Facility or the claim or proceeding made by SMG or the City concerning the Facility.

11.5 Relationship of Parties.

SMG is an independent contractor of the City and shall not be deemed to be an employee, agent, joint venturer, or partner of the City. Nothing in this Agreement shall be deemed to create a lease, trust or other fiduciary relationship between the parties hereto. The authority of SMG shall be limited to those matters which are specifically addressed in this Agreement.

12. **Termination.**

12.1 Termination Upon Default.

Either party may terminate this Agreement upon a default by the other party hereunder. A party shall be in default hereunder if (i) such party fails to pay any sum payable hereunder within forty-five (45) days after same is due and payable, or (ii) such party fails in any material respect to perform or comply with any of the other terms, covenants, agreements or conditions hereof and such failure continues for more than sixty (60) days after written notice thereof from the other party. In the event that 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 and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default.

12.2 Termination Other than Upon Default.

(a) SMG shall have the right to terminate this Agreement upon one hundred twenty (120) days written notice to the City under the circumstances described in Sections 5.2 hereof (ii) or if the City fails to make Capital Improvements or Capital Equipment purchases at the Facility to the extent that such omission, in SMG's reasonable judgment, materially interferes with, impedes or impairs the ability of SMG to manage the Facility in a manner where patrons of

the Facility could assemble without foreseeable safety risks (e.g. unsafe physical conditions or insufficient security personnel).

(b) Either party shall have the right to terminate this Agreement under the circumstances specified in Section 13.5(d).

12.3 Effect of Termination.

In the event this Agreement expires or is terminated, (i) all Operating Expenses incurred or committed for prior to the date of expiration or termination shall be paid using funds on deposit in the account(s) described in Sections 5.6 and to the extent such funds are not sufficient, the City shall pay all such Operating Expenses and shall indemnify and hold SMG harmless therefrom, and (ii) the City shall promptly pay SMG all fees earned to the date of expiration or termination (the fixed and incentive fees described in Section 4 hereof being subject to proration), provided that the City shall be entitled to offset against such unpaid fees any damages directly incurred by the City in remedying any default by SMG hereunder which resulted in such termination (other than the fees or expenses of any replacement manager for the Facility). Upon the expiration of this Agreement or a termination pursuant to Section 12.1 or 12.2, all further obligations of the parties hereunder shall terminate except for the obligations in this Section 12.3 and in Sections 5.11, 7.2(d), 7.3, 8.1 and 12.4; provided, however, that if such termination is the result of a willful default, the non-defaulting party exercising its right to terminate this Agreement shall be entitled to recover damages for breach arising from such willful default.

12.4 Surrender of Premises.

Upon termination of this Agreement (termination shall, for all purposes in this Agreement, include termination pursuant to the terms of this Section 12 and any expiration of the term hereof), SMG shall surrender and vacate the Facility upon the effective date of such termination. The Facility and all equipment and furnishings shall be returned to the City in good repair, reasonable wear and tear excepted, to the extent funds were made available therefor by the City. All reports, records, including financial records, and documents maintained by SMG at the Facility relating to this Agreement other than materials containing SMG's proprietary information shall be immediately surrendered to the City by SMG upon termination.

13. Miscellaneous.

13.1 Use of Facility at Direction of City.

(a) Upon reasonable advance notice and subject to availability, SMG shall provide use of the Facility or any part thereof to civic and nonprofit organizations located in the Nampa, Idaho area and city-sponsored events at reduced rates which shall be determined by a discounted rate policy for this category of events. A list of anticipated events meeting these criteria will be prepared annually for general planning and is intended to account for the majority of event activity under this category. In general, all event-related direct expenses, including but not limited to ushers, ticket-takers, security and other expenses incurred in connection with the

use of the Facility by such organizations shall be reimbursed to SMG by the organization using the Facility.

(b) The City shall have the right to use the Facility or any part thereof, upon reasonable advance notice and subject to availability, for such purposes as meetings, seminars, training classes or other uses without the payment of any rental or use fee (or at a reduced fee), except that direct out-of-pocket expenses incurred in connection with such uses shall be paid by the City.

(c) The City shall not schedule use of the Facility pursuant to subparagraphs (a) and (b) above if such use will conflict with paying events booked by SMG and shall in all instances be subordinate thereto, except for the following condition, in terms of priority of use of the Facility. That the City may exercise bumping rights for a special event it deems to be significant where the associated costs of displacing or rescheduling said event are borne by the City. In all instances when the Facility, or part thereof, is to be used at the City's request or by the City pursuant to subparagraph (a) or (b) above, a rent or use fee which otherwise would be chargeable for such event shall be deemed to have been paid and such deemed payment shall constitute Operating Revenues for the purpose of calculating SMG's incentive fees pursuant to Section 4.3 above.

(d) The City retains the right to prescribe higher event security levels for events which present special public safety security issues. Such circumstances are anticipated to be occasional, shall be included as operating expenses, and shall not be separately reimbursed by the City.

(e) SMG and the General Manager will coordinate all public policy positions, news releases, media interviews, testimony at public hearings, and public comments with the Office of the Mayor designee, currently designated as the public information officer of the City of Nampa, and the City shall retain all rights to stipulate the final disposition of these public communications.

13.2 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 the City and SMG. None of the officers, agents or employees of SMG shall be or be deemed to be employees of the City for any purpose whatsoever.

13.3 Entire Agreement.

This Agreement and any attachments hereto contain the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings with respect thereto. No other agreements, representations, warranties or other matters, whether oral or written, will be deemed to bind the parties hereto with respect to the subject matter hereof.

13.4 Written Amendments.

This Agreement shall not be altered, modified or amended in whole or in part, except in a writing executed by each of the parties hereto.

13.5 Force Majeure.

(a) No party will be liable or responsible to the other party for any delay, damage, loss, failure, or inability to perform caused by "Force Majeure" if notice is provided to the other party within ten (10) days of date on which such party gains actual knowledge of the event of "Force Majeure" that such party is unable to perform. The term "Force Majeure" as used in this Agreement means the following: an act of God, strike, war, public rioting, lightning, fire, storm, flood, explosions, inability to obtain materials, supplies, epidemics, landslides, lightening storms, earthquakes, floods, storms, washouts, civil disturbances, explosions, breakage or accident to machinery or lines of equipment, temporary failure of equipment, freezing of equipment, terrorist acts, and any other cause whether of the kinds specifically enumerated above or otherwise which is not reasonably within the control of the party whose performance is to be excused and which by the exercise of due diligence could not be reasonably prevented or overcome (it being acknowledged that under no circumstances shall a failure to pay amounts due and payable hereunder be excusable due to a Force Majeure).

(b) Neither party hereto shall be under any obligation to supply any service or services if and to the extent and during any period that the supplying of any such service or services or the provision of any component necessary therefor shall be prohibited or rationed by any Law.

(c) Except as otherwise expressly provided in this Agreement, no abatement, diminution or reduction of the payments payable to SMG shall be claimed by the City or charged against SMG, nor shall SMG be entitled to additional payments beyond those provided for in this Agreement for any inconvenience, interruption, cessation, or loss of business or other loss caused, directly or indirectly, by any present or future Laws, or by priorities, rationing, or curtailment of labor or materials, or by war or any matter or thing.

(d) In the event of damage to or destruction of the Facility by reason of fire, storm or other casualty or occurrence of any nature or any regulatory action or requirements that, in either case, is expected to render the Facility materially untenable, notwithstanding the City's reasonable efforts to remedy such situation, for a period estimated by an Architect selected by the City at the request of SMG of at least one hundred eighty (180) days from the happening of the fire, other casualty or any other such event, either party may terminate this Agreement upon written notice to the other. In the event that the Facility becomes either wholly or partially untenable as a result of any of the foregoing, appropriate adjustments to the Expense and Revenue Benchmarks shall be made.

(e) SMG may suspend performance required under this Agreement, without any further liability, in the event of any act of God or other occurrence, which act or occurrence is of such effect and duration as to effectively curtail the use of the Facility so as effect a substantial reduction in the need for the services provided by SMG for a period in excess of ninety (90) days; provided, however, that for the purposes of this subsection, SMG shall have the right to suspend performance retroactively effective as of the date of the use of the Facility was

effectively curtailed. "Substantial reduction in the need for these services provided by SMG" shall mean such a reduction as shall make the provision of any services by SMG economically impractical. No payments of the management fees otherwise due and payable to SMG shall be made by the City during the period of suspension. In lieu thereof, the Contract Administrator and SMG may agree to a reduced management fee payment for the period of reduction in services required.

(f) In the event of a material increase in any Operating Expense or a material decrease in the Operating Revenues not reasonably within the control of either party (including, by way of example and not by limitation, an increase in the cost of insurance or utilities), the parties may mutually negotiate and agree upon, in good faith, an adjustment to the incentive fee formulas set forth herein to take into account such increased cost.

13.6 Binding Upon Successors and Assigns; No Third-Party Beneficiaries.

(a) This Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon, the parties hereto and each of their respective successors and permitted assigns.

(b) This Agreement shall not be construed as giving any person, other than the parties hereto and their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any of the provisions herein contained, this Agreement and all provisions and conditions hereof being intended to be, and being, for the sole and exclusive benefit of such parties and their successors and permitted assigns and for the benefit of no other person or entity.

13.7 Notices.

Any notice, consent or other communication, and specifically including notices or correspondence to the Idaho Center Advisory Commission, given pursuant to this Agreement will be in writing and will be effective either (a) when delivered personally to the party for whom intended, (b) on the second business day following mailing by an overnight courier service that is generally recognized as reliable, (c) on the fifth day following mailing by certified or registered mail, return receipt requested, postage prepaid, or (d) on the date transmitted by telecopy as shown on the telecopy confirmation therefor as long as such telecopy transmission is followed by mailing of such notice by certified or registered mail, return receipt requested, postage prepaid, in any case addressed to such party as set forth below or as a party may designate by written notice given to the other party in accordance herewith.

To the City:

City Hall
411 3rd Street South
Nampa, ID 83651
Attention: Mayor
Telecopy: 208 465 2227

With a copy to:

City Hall
411 3rd Street South
Nampa, ID 83651
Attention: Finance Director
Telecopy: 208 468 4429

With a copy to:

Terrence R. White
White Peterson, P.A.
Nampa City Attorney
5700 E. Franklin Rd., Ste. 200
Nampa, ID 83687 7901
Telecopy: 208 466 4405

To SMG:

SMG
701 Market Street, 4th Floor
Philadelphia, PA 19106
Attention: President and CEO
Telecopy: 215 592 6699

With a copy to:

Stradley, Ronon, Stevens & Young
2600 One Commerce Square
Philadelphia, PA 19103
Attention: William R. Sasso, Esq. Or
Steven A. Scolari, Esq.
Telecopy: 215 564 8120

13.8 Section Headings and Defined Terms.

The section headings contained herein are for reference purposes only and shall not in any way affect the meaning and interpretation of this Agreement. The terms defined herein and in any agreement executed in connection herewith include the plural as well as the singular and the singular as well as the plural, and the use of masculine pronouns shall include the feminine and neuter. Except as otherwise indicated, all agreements defined herein refer to the same as from time to time amended or supplemented or the terms thereof waived or modified in accordance herewith and therewith.

13.9 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original copy of this Agreement, and all of which, when taken together, shall be deemed to constitute but one and the same agreement.

13.10 Severability.

The invalidity or unenforceability of any particular provision, or part of any provision, of this Agreement shall not affect the other provisions or parts hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions or parts were omitted.

13.11 Non-Waiver.

A failure by either party to take any action with respect to any default or violation by the other of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of such party to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default.

13.12 Certain Representations and Warranties.

(a) The City represents and warrants to SMG the following: (i) all required approvals have been obtained, and the City has full legal right, power and authority to enter into and perform its obligations hereunder, and (ii) this Agreement has been duly executed and delivered by the City and constitutes a valid and binding obligation of the City, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

(b) SMG represents and warrants to the City the following: (i) all required approvals have been obtained, and SMG has full legal right, power and authority to enter into and perform its obligations hereunder, and (ii) this Agreement has been duly executed and delivered by SMG and constitutes a valid and binding obligation of SMG, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

13.13 Governing Law.

This Agreement will be governed by and construed in accordance with the internal laws of the State of Idaho without giving effect to otherwise applicable principles of conflicts of law.

IN WITNESS WHEREOF, this Management Agreement has been duly executed by the parties hereto as of the day and year first above written.

ATTEST:

Liana Lanning
City Clerk

CITY OF NAMPA, IDAHO

By: PomDah
Mayor

URBAN RENEWAL AGENCY OF
THE CITY OF NAMPA, IDAHO

By: [Signature]
Name:
Title: Chairman

Approved as to form by legal counsel
for the City of Nampa, Idaho.

[Signature]
Name:
Title:

SMG

By: H. Westley
Harold Westley, President and CEO

EXHIBIT "A"

CONTRACT DELIVERABLES

<u>CONTRACT REFERENCE</u>	<u>DELIVERABLE ITEM</u>	<u>FREQUENCY</u>	<u>DUE DATE</u>
<u>Section 1</u>	<u>Operations Manual</u>	<u>One time update as required</u>	<u>90 Calendar days after contract award</u>
<u>Section 2, Article 2.3, Para. (h)</u>	<u>Claims and lawsuits, (notice of)</u>	<u>As required</u>	<u>Immediately upon service</u>
<u>Section 5, Article 5.3, Para. (a) & (b)</u>	<u>Annual budget Cash flow budget</u>	<u>Annually Annually</u>	<u>On or before August 1</u> <u>On or before August 1</u>
<u>Section 5, Article 5.7</u>	<u>Event settlement Report</u>	<u>One time per event</u>	<u>Within 30 calendar days of event close</u>
<u>Section 5, Article 5.1</u>	<u>Emergency repair(s) report</u>	<u>One time per event</u>	<u>Immediately following event</u>
<u>Section 6, Article 6.1</u>	<u>Balance sheet and audited financial statement</u>	<u>Annually</u>	<u>December 31 for following fiscal year</u>
<u>Section 6, Article 6.2</u>	<u>Annual plan</u>	<u>Annually</u>	<u>On or before August 1</u>
<u>Section 6, Article 6.3</u>	<u>Monthly progress report</u>	<u>Monthly</u>	<u>25th day of each month for preceding month</u>
<u>Section 8, Article 8.2</u>	<u>Certificate of Insurance</u>	<u>As required</u>	<u>Commencement of management term</u>

EXHIBIT “B”

See attached Incentive Fee formula.

**IDAHO CENTER
INCENTIVE FEE ANALYSIS
Exhibit B**

Benchmark for Revenue & Expense

HISTORICAL RESULTS

<u>Revenue</u>	<u>Expense</u>
2,138,590	2,888,590

Historical Subsidy (750,000)

Revenues	Expenses	Operating Deficit	Operating Benchmark	Improvement Target	Improvement	% Eligible	Maximum Incentive Possible	Adjusted Maximum Incentive	Calculated Incentive Fee	Incentive Payable to SMG
2,245,520	2,888,590	(843,071)	(\$562,500)	(\$187,500)	(3)	(4)	(5)	(6)	(7)	(8)
					(\$108,930)	57%	(125,000)	(71,286)	(26,732)	(26,732)

(1) Operating Benchmark- Amount derived by reducing historical subsidy of \$750,000 by 25%. For each subsequent year of the Management Term, amount will be further reduced by 75,000 per year. In order for SMG to be eligible for Incentive fee in Year 1, the Operating Deficit must fall between the Historical Subsidy and the Operating Benchmark. For each subsequent year, the Operating Deficit must fall between the Prior Year Operating Benchmark and the current year Operating Benchmark. If the Operating Deficit is higher than the Prior Year Benchmark, SMG will not be eligible for Incentive. If the Operating Deficit is lower than the Operating Benchmark, SMG will be eligible for 100% of Incentive. If the Operating Deficit falls within these ranges a pro-rata calculation will be performed to determine SMG's maximum incentive fee.

Operating Benchmark's	Year 1	(562,500)
	Year 2	(487,500)
	Year 3	(412,500) ←
	Year 4	(337,500)
	Year 5	(262,500)

(2) Improvement Target- For year 1, difference Between Historical Subsidy and the Operating Benchmark. For each subsequent year this amount will be \$75,000.

(3) Difference between operating deficit and historical subsidy
For each subsequent year this amount will be the difference between the operating deficit and the prior year operating benchmark.

(4) Improvement divided by the Improvement Target

(5) 100% of Base Management Fee

(6) Eligibility % multiplied by base management fee

(7) 25 % of the operating revenue improvement over benchmark OR 25 % of the expense reduction over benchmark

	<u>\$ Imp.</u>	<u>Incentive</u>	
Revenue Improvement	106,930	26,732	25%
Expense Savings	-	-	25%

(8) This amount is the lesser of the calculated Incentive fee or the Vs. the percentage eligible

EXHIBIT "C"

List of Pre-Existing Agreements

Listed below are confirmed events:

God & Country Rally
High School graduations
NNU graduations
PBR
Monster Trucks
Champions on Ice
Boys State Basketball through 2010
Girls State Basketball through 2010
State Wrestling 2008
Three tradeshow
Cheerleading Competition
Easter Service 2006
Reined Cow Horse
ICHA (two events in 2006)
Arabian National Sports Show - 2006 & 2008

Also attached is a list of all current contracts/agreements etc.

Also attached is a list of all arena signage agreements.

IDAHO CENTER AGREEMENTS

- **Arena Lease Agreement - Idaho Stampede CBA (terminated)**
- **Reformed and Restated Use Agreement – Nampa Harvest Festival Association**
- **Restated Agency Agreement for the Sale of Beer, Wine and Liquor by the Drink - Idaho Vending**
- **Memorandum of Understanding & Agreement – Boise State University for the Use and Operation of an Indoor Track Facility**
- **Thomas Management Corporation dba Thomas Cuisine Management (“T.C.M”) Agreement – Food Service**
- **Source Code Escrow Agreement – MAXtix, Inc., Licensing System**
- **Telecomlabs Inc. Agreement, - Technical Equipment Maintenance**
- **Hobson-Schindler Elevator Corporation Agreement – Elevator Maintenance**
- **Yamas Controls Intermountain Inc. Agreement - Facilities HVAC Maintenance Agreement**
- **Fiberpipe Agreement – Telecommunications**
- **Daktronics Inc. Annual Maintenance Agreement – Equipment Maintenance**
- **Kronos Service Agreement – Hardware/Software Support**
- **Verizon – Telephone Service**
- **Time Warner Telecom - Frame Relay Acknowledgment**
- **Qwest Corporation - Frame Relay Acknowledgment**
- **Swire Pacific Holdings Inc. - Advertising and Soft Drink Sales Agreement**
- **Arena Network – Group of venues for booking events, etc.**
- **Idaho Statesman – Advertising/ICtickets**
- **CableOne – Advertising/ICtickets**
- **Boise Office Equipment – Equipment Trade**
- **Idaho Pacific & Northern Railroad – Easement for Participate Parking**
- **Clear Channel Entertainment – Advertising/ICtickets**

AMENDMENT TO MANAGEMENT AGREEMENT

THIS AMENDMENT TO MANAGEMENT AGREEMENT ("Amendment") is dated as of the 5th day of July, 2006 by and between The City of Nampa, Idaho, a political subdivision organized and existing pursuant to laws of the State of Idaho and Urban Renewal Agency of the City of Nampa, Idaho (collectively the "City"), and SMG, a Pennsylvania general partnership, whose current address is 701 Market Street, 4th Floor, Philadelphia, PA, 19106 ("SMG").

WHEREAS, on or about May 25, 2005, the City and SMG entered into a Management Agreement; and

WHEREAS, the parties have agreed to expand the definition of "Capital Equipment" as used in the Management Agreement.

NOW, THEREFORE, the City and SMG do hereby amend the Management Agreement by expanding the definition for "Capital Equipment" as follows:

"Capital Equipment" -- any and all furniture, fixtures, machinery or equipment, either additional or replacement, having a per item original cost of \$5,000 or more and an expected useful life of more than one year. City Council may, at its discretion, approve funding for capital equipment that is under the \$5,000 threshold.

In all other respects, the Management Agreement shall remain as originally written and is not otherwise modified or amended by this Amendment. The parties ratify and confirm the remaining portions of the Management Agreement not affected by this Amendment.

IN WITNESS WHEREOF, this Amendment has been duly executed by the parties hereto as of the day and year first above written.

Attest:

Liana Lambing
City Clerk

CITY OF NAMPA, IDAHO
URBAN RENEWAL AGENCY OF THE
CITY OF NAMPA, IDAHO

By: [Signature]
Mayor
"CITY"

SMG

By: [Signature]
Name: John F. Burrus
Title: CFO
"SMG"