

LAKEVIEW AMPHITHEATER – VENUE MANAGEMENT  
SERVICES AGREEMENT

THIS MANAGEMENT AGREEMENT (“Agreement”), by and between the County of Onondaga, a municipal corporation duly organized and existing under the laws of the State of New York (“County”), by its County Executive, and SMG, a Pennsylvania general partnership (“SMG”).

WITNESSETH:

The County is the owner of the Lakeview Amphitheater, an outdoor event complex located on the western shore of Onondaga Lake and constructed as part of a wider community revitalization project.

The Lakeview Amphitheater is intended to build upon the significant public investment in the lake to generate regional economic opportunities by drawing tourists and local residents to enjoy various cultural events.

Further, as the facility is located within land held by the County and operated as a park, it is necessary to maintain and enhance public access to the lakeshore.

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

This Agreement sets out the terms and conditions by which the County engages SMG to provide high quality venue management services at the Lakeview Amphitheater for concerts and other live events, as well as for certain events other than concerts and live events.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises, covenants and agreements herein contained, the parties hereby agree as follows:

**1. USE OF COUNTY PROPERTY, OWNERSHIP OF ASSETS**

- a. Premises. The Lakeview Amphitheater is an outdoor event complex located on the western shore of Onondaga Lake. The complex is comprised of the amphitheater (covered seats, stage, backstage, dressing rooms), lawn seating area, restrooms, vendor areas, and an Event Space, collectively known as the “Premises” and/or “Lakeview Amphitheater” herein. The Premises and the Event Space included therein are as described on the diagram, attached hereto and incorporated herein as “Attachment A.”
- b. Other Assets. An inventory of the County’s furniture, fixtures, and equipment made available for use by SMG in providing its Venue Management Services at the Lakeview Amphitheater will be submitted to SMG prior to April 30, 2016.
- c. Permission to Use the County’s Assets. The County grants SMG permission to enter upon the Premises and to use such Premises, furniture, fixtures, and equipment, as described herein above, for the purposes of providing the services under this Agreement. SMG is permitted to exercise control over such Premises, furniture, fixtures, and equipment as may be needed for the provision of such services.

SMG accepts use of the Premises and the furniture, fixtures, and equipment “as-is” and has had an opportunity to walk through the Premises and note its condition.

- d. Ownership Retained. At all times the County remains the owner of the Lakeview Amphitheater, including the furniture, fixtures, and equipment contained therein, and of the real property on which the facility is situated. No real property interest is conveyed to SMG under this Agreement, as this is a contract for services.

The Lakeview Amphitheater is located within land operated by the County as a park, and as such, the property surrounding the Lakeview Amphitheater, including the trail running between the lawn seating area and the theater area, is to remain available for use by the public; provided, however, that during preparation, occurrence, and clean-up/tear down of any concert or live event at the Lakeview Amphitheater, SMG may reasonably restrict access to such property to patrons and other persons authorized by SMG.

SMG shall not permit the Lakeview Amphitheater to be used for Private Business Use, as such is defined by the Internal Revenue Code.

- e. Right of Entry & Notice.

Representatives of the County shall have the right to enter all portions of the Lakeview Amphitheater to conduct inspections, to observe the performance of SMG in 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 County may be obligated or have the right to do under this Agreement or otherwise.

In connection with the exercise of such rights, the County will endeavor to provide (but is not obligated to provide) advance notice to SMG for security purposes and to minimize any interference with or disruption of SMG's work under this Agreement. Nothing contained in this Section (i) is intended or shall be construed to limit any other rights of the County under this Agreement nor (ii) shall impose or be construed to impose upon the County 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. **TERM & EARLY TERMINATION**

- a. Term. Unless terminated earlier pursuant to the terms and conditions of this Agreement, there will be two classes of management periods comprising the Term of this Agreement, defined as follows below.

- i. *Management Period.* A management period to be known as the "Management Period" shall commence on January 1, 2016, and end at midnight on December 31, 2018, unless earlier terminated pursuant to the provisions of this Agreement.
- ii. *Renewal Period.* The parties may agree to extend the term of this Agreement for not more than two additional 3-year periods, where such management periods are to be known collectively as "Renewal Periods". The first such renewal period may commence on or about January 1, 2019, and end December 31, 2021, (the "First Renewal Period") and the second such renewal period may commence on or about January 1, 2022, and end December 31, 2024 (the "Second Renewal Period"), unless either such renewal period is earlier terminated pursuant to the provisions of this Agreement.

The parties may negotiate the terms and conditions for venue management services to be provided during such renewal periods and agreement is to be reached on such terms and

conditions no later than six months prior to the end of the then current term. Said another way, the parties may elect to renew this Agreement under the First Renewal Period no later than June 1, 2018, and the parties may elect to renew this Agreement under the Second Renewal Period no later than June 1, 2021. Time is of the Essence for such six month notice period; provided, however, that the County may waive the benefit of such notice in writing if such waiver is deemed to be in the County's best interest. This notice period shall not affect the parties' ability to terminate this Agreement early, as provided herein below.

- b. Early Termination. This Agreement may be terminated early, consistent with the provisions listed below.
  - i. *Lack of Appropriations and/or Operating Funds.* This Agreement is executory only to the extent of the monies appropriated and available to support the purposes of this Agreement. In the event that the County, in its sole discretion, determines that sufficient appropriations and/or operating funds are not available to continue the Venue Management Agreement, the County may terminate this Agreement, and such early termination shall be without penalty to the County. Following such termination, SMG shall have the right to resume management of the Premises under the terms of this Agreement at such time as the County shall first restore appropriated funds to reasonable levels.
  - ii. *For Cause.* SMG may terminate this Agreement for cause effective upon thirty (30) days' prior written notice to the County, unless another time is specified within Section 3, "Events of Default/Breach & Remedies". Cause shall include, but not be limited to, material breaches and events of default, as described herein below.
- c. Surrender. Upon termination of this Agreement, whether by expiration of a management period or by early termination, permission to use the County's premises, furniture, fixtures, and equipment shall be revoked. Thereafter, SMG shall promptly vacate and surrender to the County the Lakeview Amphitheater and any and all furniture, fixtures, and equipment contained therein. SMG shall be responsible for making any repairs or replacements to the Lakeview Amphitheater and the furniture, fixtures, and equipment as may be necessary to restore the premises to the condition in which it was received, reasonable wear and tear excepted. In any event, such surrender shall be complete not later than ninety (90) days after receipt of written notice of the intent to terminate.

All reports, records, including financial records, and documents maintained by SMG relating to this Agreement, other than materials containing SMG's proprietary information or property, shall be immediately surrendered to the County by SMG.

### 3. **EVENTS OF DEFAULT/BREACH & REMEDIES**

- a. Termination for Cause – Events of Default & Breach.
  - i. *SMG.*

SMG may terminate this Agreement upon the occurrence of an event of default caused by one or more of the County's actions or inactions, as follows below:

- (1) the County fails to pay any sum payable hereunder within thirty (30) days after same is due and payable; or
- (2) the County fails in any material respect to perform or comply with any of the other terms, covenants, agreements or conditions of this Agreement, and such failure continues without cure for more than sixty (60) days after written notice thereof from the party claiming the occurrence of an event of default. Upon receipt of such written notice, such party shall promptly undertake such actions as may be necessary to cure the claimed default.

ii. *County.*

The County shall have the right to terminate this Agreement immediately upon written notice upon the occurrence of an event of default caused by one or more of SMG's actions or inactions, as follows below:

- (1) admit in writing its inability to pay its debts as they become due;
- (2) file a petition for Bankruptcy or for reorganization or arrangement under the Bankruptcy code as now or in the future amended, or file a pleading asking for such relief, or have or suffer to be filed an involuntary petition in Bankruptcy against it which is not contested and discharged within sixty (60) days;
- (3) make an assignment for the benefit of creditors;
- (4) consent to an appointment of a trustee or receiver for all or a major portion of its property;
- (5) be adjudicated a Bankrupt or insolvent under any Federal or State law;
- (6) suffer the entry of a Court Order under any Federal or State Law appointing a receiver or trustee for all or a major portion of its property or ordering the winding up or liquidation of its affairs or approving a petition filed against it under the Bankruptcy code, as now or in the future amended, which order, if not consented to by it shall not be vacated, denied, set aside or stayed within 60 days of its entry; or
- (7) discovery of misappropriation by SMG or its employees of any funds belonging to the County that are in SMG's possession or control, including without limitation monies from any operating fund or capital fund. SMG agrees to carry Fidelity Insurance in the County's favor to make it whole in the event of such an event of default or material breach.

b. Remedies.

- i. The parties shall have the right to pursue all remedies available at law or in equity.
- ii. In the event this Agreement expires or is terminated, all allowable 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 within this Agreement and to the extent such funds are not sufficient, the County shall pay all such Operating Expenses in the first instance, subject to the hold harmless provisions of this Agreement, and the

County shall promptly pay SMG all fees earned to the date of expiration or termination, prorated.

- iii. Upon termination or expiration, all further obligations of the parties hereunder shall terminate except for the obligations that are intended to survive the termination or expiration of this Agreement, including, without limitation, obligations to make payments for amounts due and owing, to defend, indemnify, and hold harmless the County, and to maintain and disclose records, audits, and reports.

#### 4. SCOPE OF SERVICES TO BE PROVIDED BY SMG

- a. Request for Proposals. The County requested the submission of proposals from firms qualified to manage, operate, and promote the Lakeview Amphitheater at Onondaga Lake for concerts and other live events, and such request for proposals (RFP No. 15-7500-006) and SMG's proposal (dated September 18, 2015) are attached hereto and incorporated herein collectively as "Attachment B".

In the event of a conflict between Attachment B and the terms and conditions of this Agreement, this Agreement shall control. Specifically, the following sections of SMG's proposal are to be excluded from this Agreement, as the terms contained therein are not accepted in whole by the County:

- Section 7.3.6, entitled "BUSINESS MODEL", page 106 (except with respect to the management term stated therein);
- "Venue Naming Rights" under Marketing Initiatives in Appendix A;
- "Weddings/Bar mitzvahs/Showers/Religious Events" under "Sales – Weddings" within Appendix B;
- "Local Social – not for profits/fraternal" under "Sales – Local Social/Private Events" within Appendix B;
- "Local and Regional Meeting corporate/pharms/educational" under "Sales – Meetings/Conferences/Corporate" within Appendix B.

The foregoing notwithstanding, the County and SMG may mutually agree in an advance writing on the booking of and policies and procedures governing individual events otherwise included in the categories above.

- b. Venue Management Services.

- i. *Engagement.* The County engages SMG, as an agent for the County, to manage, operate, and promote the Lakeview Amphitheater at Onondaga Lake for concerts and other live events (collectively "Venue Management Services"), consistent with the terms and conditions of this Agreement. SMG accepts such engagement and agrees to provide such Venue Management Services in a manner consistent with similar services provided to other first-class facilities by SMG during the term of this Agreement.
- ii. *Concert Season.* The Lakeview Amphitheater shall be available for booking concerts and other live events for a period between the second Friday of May through the fourth Sunday of September in each calendar year, unless the County directs otherwise in writing, and such period shall be known as the "Concert Season".
- iii. *Control.* SMG shall have control and authority over the day-to-day operations of the Lakeview Amphitheater with respect to concerts and other live events during the Concert

Season, consistent with the terms and conditions of this Agreement. Provided, however, that SMG shall follow all policies and guidelines of the County as are applicable to the Lakeview Amphitheater, including such policies and guidelines that are established or modified after the execution of this Agreement, where such policies and guidelines may include, but are not limited to, methodology pertaining to the allocation of any costs and expenses by the County to the Lakeview Amphitheater. In the event that such policies or guidelines established or modified after the execution of this Agreement adversely affect revenues or expenses at the Lakeview Amphitheater, the relevant benchmark associated with the Performance Rewards shall be appropriate adjusted in a way to reflect the additional cost or reduced revenue resulting from the policies and guidelines. The County shall notify SMG in writing of such policies and guidelines, including any modifications thereto.

- iv. *Services to be Provided.* SMG shall provide Venue Management Services, consistent with the terms and conditions of this Agreement, where such services include, but are not limited to, the following responsibilities:
- (1) maintain, on behalf of the County, an event booking calendar containing relevant information about future events scheduled to occur at the Lakeview Amphitheater;
  - (2) employ, supervise, and direct all of SMG's employees and personnel, as more specifically provided within Section 9 "Employees";
  - (3) provide adequate and qualified staffing during concerts and other events at the Lakeview Amphitheater, where such may include any periods of loading-in, loading-out, and event-related cleaning;
  - (4) provide day-to-day administrative services in support of the Venue Management Services, including the maintenance of records, as more specifically provided within Section 11 "Records and Reports";
  - (5) collect and remit to the proper governmental authorities any taxes, including, but not limited to, sales tax, where such taxes arise out of goods or services sold by SMG as part of its Venue Management Services;
  - (6) consistent with the terms of this Agreement, and to the extent of funding provided by the County, cause the Lakeview Amphitheater to be in compliance with applicable law, including, but not limited to, providing access for persons with disabilities consistent with the Americans with Disabilities Act (as amended) to the extent that such access can reasonably be provided utilizing such Capital Improvements and Capital Equipment as has been provided by the County;
  - (7) establish reasonable rules for the use of the Lakeview Amphitheater, including applicable law and policies and guidelines established by the County, where such rules address issues of health, safety, welfare, and decorum;
  - (8) provide within the Premises adequate wayfinding signage for patrons, as more specifically provided within Section 7 "Sponsorships";

- (9) impose such Facility Use Fees on admissions as may directed by the County, with the amounts collected from the imposition of such Facility Use Fees to be used in making capital repairs and improvements at the Lakeview Amphitheater;
- (10) negotiate, administer, and execute in SMG's name, as agent for the County, agreements reasonably necessary for the provision of Venue Management Services, where such agreements may include licenses, occupancy agreements, sponsorship agreements (including but not limited to all naming rights, advertising and pouring rights agreements), rental agreements, booking commitments, supplier agreements, and service contracts, and may include license agreements with concert promoters, where such license agreements may be directed by the County; provided, however, that in the event that any such agreements extend beyond the then-current term of this Agreement, advance written approval is obtained from the County and provided, further, that such agreements are otherwise consistent with the terms of this Agreement, specifically including Section 23 "Transactions and Contracts";
- (11) perform event related facility maintenance as may be reasonably needed to maintain the Lakeview Amphitheater and the furniture, fixtures, and equipment in good repair and a clean condition, reasonable wear and tear excepted, and in compliance with all applicable law, where such law includes federal, state, and local laws, rules, and regulations, and such maintenance obligations are more specifically provided within Section 10 "Maintenance and Improvements";
- (12) establish and adjust prices, rates and rate schedules, subject to the approval of the Contract Administrator, for any licenses, agreements and contracts and any other commitments relating to the Lakeview Amphitheater to be negotiated by SMG in the course of its management, operation and promotion of the Lakeview Amphitheater. In recommending such prices, rates and rate schedules, SMG shall evaluate comparable charges for similar goods and services at similar and/or competing facilities and shall consult with the Contract Administrator about any adjustments to the rate schedules at the Lakeview Amphitheater to be made by SMG;
- (13) to the extent that Operating Revenues or funds supplied by the County are made available therefor, (i) maintain the Lakeview Amphitheater in the condition received, reasonable wear and tear excepted, and (ii) rent, lease or purchase all furniture, fixtures, equipment and maintenance supplies necessary or appropriate for the operation and maintenance of the Lakeview Amphitheater;
- (14) maintain a complete inventory of all existing capital assets (exclusive of food and beverage-related capital assets);
- (15) pay, when due, on behalf of the County, all Operating Expenses from accounts established pursuant to Section 6(b) of this Agreement;
- (16) after consultation with the County Attorney or his/her designee, institute as agent for the County and at the reasonable expense of the County, with counsel selected by SMG and the County, such legal actions or proceedings as SMG shall deem necessary or appropriate in connection with the operation of the Facilities, including, without limitation, to collect charges, rents or other revenues due to the County or to cancel, terminate or sue for damages under, any license, use, advertisement or concession agreement for the breach thereof or default there under by any licensee, user, advertiser,

or concessionaire at the Facilities. The County reserves the right, at its sole option, to use the services of the County Attorney rather than jointly selected counsel;

- (17) collaborate with New York State as directed by the County, as the Lakeview Amphitheater is located in close proximity to the New York State Fair and property owned by New York State;
- (18) engage in such advertising, solicitation, and promotional activities as SMG deems necessary or appropriate to develop the potential of the Facilities and the cultivation of broad community support, consistent with the scope of services under this Agreement;
- (19) collaborate with Visit Syracuse (Syracuse Convention and Visitor's Bureau) to market the Lakeview Amphitheater for concerts and live events;
- (20) establish a security plan and program for the Facilities, and cooperate as necessary with local Fire and Police Departments and other responding agencies in public safety emergencies;
- (21) take action as may otherwise be reasonably necessary to provide Venue Management Services under this Agreement;
- (22) manage and coordinate the activities of the food and beverage services concessionaire; and
- (23) perform such other reasonable tasks and actions related to Venue Management Services at the Lakeview Amphitheater as may be directed by the County from time to time.

- v. *Contract Administration.* All references to determinations to be made by the County shall mean the County Executive, and the County Executive may designate a senior administrative official to act on behalf of the County with respect to any or all matters pertaining to this Agreement, unless express reference is made to another official. Such senior administrative official shall be known as the "Contract Administrator".
- vi. *Non-Exclusive Use.* The County shall retain the right to issue licenses to other entities to enter the Lakeview Amphitheater to conduct events, including, but not limited to, concerts. SMG shall have no responsibility for the terms or financial performance of events negotiated directly by the County and contracted by SMG. Such events shall not adversely impact the incentive fee otherwise payable to SMG under Article 6 of this Agreement.

c. Event Space.

- i. The Lakeview Amphitheater is to be used primarily for the purpose of hosting concerts and live events. The Event Space is to be used as an ancillary space to support gatherings of people and events reasonably related to the concerts.
- ii. A market may exist for using the Event Space to host events that are independent of the concerts. The County reserves to itself the right to control the use of the Event Space. If SMG would like to book events in this space, SMG may request the County to approve licenses and/or rental agreements.



- iii. During Concert Season, the use of the Event Space for purposes other than as a space to host events ancillary to concerts and other live events at the Lakeview Amphitheater must be approved in advance by the Contract Administrator.

## 5. COMPENSATION

- a. Definitions. For the purposes of this section, the terms listed below have the following definitions:
  - i. "Fiscal Year" means the calendar year, commencing on January 1.
  - ii. "CPI" means the Consumer Price Index -- All Urban Consumers (CPI-U) -- U.S. City Average -- All Items, as published by the Bureau of Labor Statistics of the U.S. Department of Labor.
- b. Annual adjustment. The compensation to be earned herein (base compensation and incentive fees) shall be adjusted upward on January 1, 2017, and thereafter on the first day of each Fiscal Year during the Management Period and Renewal Period, respectively, by the percentage change in the CPI.
- c. Venue Management Services.

- i. *Base Compensation.* As base compensation to SMG for providing the Venue Management Services hereunder, the County shall pay SMG during the Management Period a fixed fee of EIGHTY-FIVE THOUSAND DOLLARS (\$85,000.00) per year, commencing January 1, 2016. No additional compensation shall be paid for services rendered prior to January 1, 2016.

Payment of the Base Compensation shall be made in equal monthly installments, due on or before the last day of each month during the Fiscal Year, in an amount equal to one-twelfth of such annual amount. SMG shall be entitled to draw such compensation and obtain such payment from the account described in Section 6(b).

During the First Renewal Period, if any, the base compensation paid to SMG by the County shall be FIFTY THOUSAND DOLLARS (\$50,000.00) per year, commencing January 1, 2019. During the Second Renewal Period, if any, the base compensation paid to SMG by the County for Venue Management Services shall be renegotiated by the parties.

- ii. *Performance Awards.* In addition to the base compensation amount for Venue Management Services, as described above, SMG shall be entitled to incentive fees in a total amount not to exceed FORTY-FIVE THOUSAND DOLLARS (\$45,000.00) (as subsequently adjusted pursuant to subsection d herein below) with respect to performance standards achieved each Fiscal Year during the Management Period, and the performance standards and associated incentive amounts are to be based upon achieving measurable goals as agreed upon by SMG and the County, where such goals are not based upon SMG's participation in the risk of profit or loss in the venue's operations.

The performance standards and associated incentive amounts shall be agreed upon in writing by SMG and the County promptly after execution of this Agreement, and

thereafter, prior to the commencement of the Fiscal Year in which such incentive fees are to be earned.

During the First Renewal Period, if any, the compensation amount to be earned as incentive fees paid to SMG by the County shall be TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) per year, commencing January 1, 2019. During the Second Renewal Period, if any, the compensation amount to be earned as incentive fees paid to SMG by the County shall be renegotiated by the parties.

Payment of the annual incentive fees is to be made once annually. SMG shall be entitled to draw such compensation and obtain such payment from the account described in Section 6(b).

- d. Reconciliation. In the event that the compensation paid/withdrawn is determined to be incorrect by the County's Chief Fiscal Officer after review, SMG shall promptly remit to the County any excess amount which was paid, or the County shall promptly pay the shortfall, as the case may be. Obligations of the parties to pay amounts owed herein and in any other provisions of this Agreement shall survive the termination of this Agreement.
- e. Annual Adjustment. The compensation to be earned herein (base compensation and incentive fees) shall be adjusted upward on January 1, 2017, and thereafter on the first day of each Fiscal Year during the Management Period and Renewal Period, respectively, by the percentage change in the CPI.

**6. BUDGETS; BANK ACCOUNTS**

- a. Budgets.

SMG will prepare and submit to the Contract Administrator an annual operating budget and annual cash flow projections for each Fiscal Year needed to support the services to be provided under this Agreement. Such annual budgets shall be reviewed and are subject to approval by the County. SMG will use its best efforts to submit the Fiscal Year 2016 budgets by May 20, 2016, and to submit such annual budgets for subsequent Fiscal Years by October 31 of each year during the term hereof.

Once approved, the Approved Budgets may be amended by the parties pursuant to procedures mutually agreed upon the parties.

- b. Receipts and Disbursements.

SMG shall establish and maintain in one or more depositories one or more operating, payroll and other bank accounts for the services to be provided to the Lakeview Amphitheater, in the name of the County, with SMG as agent, and vesting signature authority in such employees of SMG as SMG shall determine.

Prior to April 30, 2016, the County's Chief Fiscal Officer (CFO) shall disburse County funds in an amount not to exceed NINE HUNDRED FIFTY THOUSAND DOLLARS (\$950,000.00) to SMG, as agent for the County, and SMG shall receive and deposit such funds in the account(s) described within this Section 6. Such funds shall then be available for spending on Operating Expenses and Capital Expenditures under this Agreement. At his/her sole discretion, the County's

CFO may cause additional disbursement of County funds, as may be appropriated within the County Budget and available for spending on Operating Expenses under this Agreement.

Notwithstanding any provision herein to the contrary and except for SMG's express indemnification undertakings in Section 12, SMG shall have no obligation to fund any cost, expense or liability with respect to the operation, management or promotion of the Premises. Notwithstanding anything to the contrary set forth in this Agreement, the County 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 herein provided.

All Operating Revenues collected by SMG shall be deposited into such accounts, and Operating Expenses shall be paid by SMG as agent for the County from such accounts. The funding of all of the foregoing accounts shall be made by the County to cover all projected Operating Expenses at the Facilities to the extent not covered by the Operating Revenues.

"Operating Expenses" shall mean any and all expenses and expenditures of whatever kind or nature incurred, directly or indirectly, in providing services under this Agreement, all as determined in accordance with generally accepted accounting principles, consistently applied; provided that Operating Expenses shall not include expenses or expenditures in connection with Capital Equipment and Capital Improvements purchases nor expenses or expenditures by the County as provided under this Agreement. In addition, Operating Expenses shall exclude all emergency expenses, extraordinary expenses as determined by the County in consultation with SMG, and all interest, income tax, depreciation and amortization expenses.

"Operating Revenues" shall mean any and all revenues of every kind or nature derived, directly or indirectly, from owning, operating, managing or promoting the Lakeview Amphitheater, all as determined in accordance with generally accepted accounting principles, consistently applied.

The County CFO, or his/her designee, shall have access to the bank statements and account(s) records as established by SMG as from time to time may be requested by the County and/or the County's CFO and SMG agrees to cooperate with such reasonable requests.

Operating Revenues and Operating Expenses for services provided to the Lakeview Amphitheater shall be accounted for separately and maintained by SMG in accounts separate from those relating to other venues managed by SMG for the County.

SMG, as agent for the County, shall at all times use the funds in the several accounts described within this section 6b to provide Venue Management Services, as stated within this Agreement. SMG shall be permitted to withdraw from such accounts as compensation for the Venue Management Services under section 5 of this Agreement (base compensation and incentive fees). Upon expiration or early termination of this Agreement, SMG shall promptly provide the County's CFO with a statement of such funds, containing a listing of known/anticipated receivables and existing liabilities, and shall remit all such funds as remain in the accounts to the County's CFO. From time to time, the County's CFO may request SMG to return a portion of the funds to the County, where such portion is determined not to be needed by SMG for payment of Operating Expenses at such time, and SMG shall promptly return any such funds.

c. Budget Review.

The Contract Administrator shall review and approve the annual budget estimate submitted by SMG and shall personally or through the County's CFO make any recommendations for additions, deletions or modifications to revenues and specific line items of expense.

SMG recognizes that the County is a public corporation created pursuant to the laws of the State of New York, and that it is bound by general and special statutes pertaining to the budget process and the appropriation and expenditure of funds.

d. Capital Equipment; Capital Improvements.

The terms "Capital Equipment" and "Capital Improvements" shall mean any and all furniture, fixtures, machinery or equipment, either additional or replacement, and any and all building additions, alterations, renovations, repairs or improvements.

The obligation to pay for, and authority to perform, direct and supervise Capital Equipment and Capital Improvements purchases, including repairs and maintenance of such Capital Equipment and Capital Improvements, shall remain with the County and will not be considered Operating Expenses. SMG shall make an annual recommendation to the County for Capital Equipment and Capital Improvements 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 County budget funds therefor. The County shall retain the discretion to determine whether and to what level to fund Capital Equipment and Capital Improvements purchases to the Lakeview Amphitheater.

e. SMG Contribution.

SMG shall, within thirty (30) days of the execution of this Agreement, make available TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) (the "SMG Contribution") by depositing said amount into an account as designated by the County. The purpose of this contribution is to offset the costs of transitioning the Lakeview Amphitheater to SMG's management and/or to market and promote the Lakeview Amphitheater. The funds shall be used at the County's discretion for the following purposes:

- i. to fund the purchase of any capital equipment (including concessions);
- ii. to assist with any potential cash flow needs throughout the term of this Agreement; or
- iii. to be used as a fund for any marketing and/or promotion purpose that would benefit the Lakeview Amphitheater, such as additional bookings and/or promotion of events as desired by the County.

The amount of the SMG Contribution shall be amortized over a period of six (6) years during the Term, on a straight-line, non-interest bearing basis. In the event of the expiration or termination of this Agreement for any reason, the County shall pay, or cause any successor management company to pay, to SMG unconditionally and without set-off the unamortized amount of the SMG Contribution existing as of such expiration or termination. The payment of any such unamortized amounts shall be made to SMG no later than thirty (30) days following the effective date of such expiration or termination.

f. Limitation of SMG Responsibility.

Except for as explicitly provided herein, SMG shall have no obligation to fund any cost, expense or liability with respect to the design, development, construction, operation, management or promotion of the Lakeview Amphitheater.

**7. SPONSORSHIPS**

SMG, as agent for the County, shall pursue sponsorship revenue opportunities, consistent with the terms of this Agreement and with the terms of such agreements as may be held by the County, where such opportunities may include agreements for naming rights for the Lakeview Amphitheater, including Name in Title or Name over Title rights.

All signage (interior, exterior, permanent, temporary), including signage provided under the terms of sponsorship agreements, shall comply with applicable law and shall be maintained in good and clean condition, reasonable wear and tear excepted.

The County shall take steps as may be reasonable to provide SMG with required advance written permission to execute any proposed agreements that would change the name of the Lakeview Amphitheater, including corporate sponsorship agreements, consistent with applicable law.

**8. USE OF COUNTY NAME AND LOGO**

In connection with its activities under this Agreement, including without limitation advertising relating to the Premises, SMG shall be permitted to use the terms "Onondaga County" and "the Lakeview Amphitheater" and associated logos for such names in its advertising. However, the County shall retain the right to disallow such activities and advertising and the use of its name at any time.

**9. EMPLOYEES**

SMG shall select, train and employ such number of employee(s) as SMG deems necessary or appropriate to satisfy its responsibilities hereunder, and SMG shall have exclusive authority to hire, terminate and discipline any and all personnel working in connection with the provision of services under this Agreement, including without limitation, such personnel as may be involved in ancillary food and/or beverage services, not otherwise provided by the food and beverage concessionaire. SMG shall assign to the Lakeview Amphitheater a competent general manager, and prior to SMG's appointment of such general manager, SMG shall consult with the County with respect to the qualifications of the general manager proposed by SMG. The general manager, department heads, and such other personnel and assets as the parties may agree may be shared with the Oncenter and the associated costs shall be allocated between the Oncenter and Lakeview Amphitheater as agreed by the parties based on usage.

SMG employees shall not for any purpose be considered to be employees of the County. SMG shall be solely responsible for their supervision and daily direction and control and for setting and paying such employees' compensation (including federal, state and local income tax withholding) and any employee benefits. All costs related to such employment shall be an Operating Expense.

During the period of time commencing on October 1, 2015, and ending one (1) year after the expiration or termination of this Agreement, except with SMG's prior written consent, the County will not, for any reason, solicit for employment, or hire, any of the senior management personnel employed by SMG at the Lakeview Amphitheater, including, without limitation, the general manager, director-level employees and

department heads. In addition to any other remedies which SMG may have, specific performance in the form of injunctive relief shall be available for the enforcement of this provision.

With respect to any food and beverage services at the Lakeview Amphitheater directly provided by SMG, excluding the food and beverage concessions program, SMG shall at all times bear sole responsibility for and execute all management activities related to food and beverage sales and operations at the Lakeview Amphitheater, including, but not limited to, the acquisition and distribution of alcohol and supervision of serving and sales staff. SMG shall be responsible for the hiring, firing, and supervision of any personnel, specifically including those who handle food and beverage sales and operations at the Lakeview Amphitheater. SMG shall be responsible for obtaining any licenses or permits as may be required by applicable law, rule, or regulation, including, but not limited to, food operating permits and liquor licenses. The County shall not bear responsibility with respect to such food and beverage sales and operations.

## **10. MAINTENANCE AND IMPROVEMENTS**

### **a. SMG's responsibilities.**

- i. *Event-related Maintenance and Repair.* SMG shall perform maintenance and repairs relating to events held at the Lakeview Amphitheater. Such improvements shall be made in a manner consistent with applicable law, including, but not limited to, laws governing procurement and public works on municipally owned property.
- ii. *Plans.* SMG shall cooperate fully with the County's Parks Department in developing a plan for the maintenance and repairs to be made within the Facilities.
- iii. *Utilities.* SMG shall, as an Operating Expense, pay the charges for any light and power usage to the vendor(s) providing such services.
- iv. *Capital Improvements and Repairs.* Capital improvements and physical repairs or replacements are prohibited without prior written consent of the County. Further, any such improvements shall be made in a manner consistent with applicable law, including, but not limited to laws governing procurement and public works on municipally owned property.

### **b. County's responsibilities.**

- i. *Routine Maintenance and Repair.* The County shall perform or otherwise cause to be performed such facility maintenance services and furnish such systems as are appropriate or necessary to maintain and operate the Facility in a manner consistent with County's policies and procedures and the operations of other similar first-class facilities. The County shall be responsible for the routine maintenance and repair of the Premises. The County retains the right to determine whether any improvements are to be made and the nature and/or level of any services to be provided at the Premises. Notwithstanding the foregoing, SMG shall perform such maintenance and repairs relating to events held at the Premises, as described above.
- ii. *Utilities.* The County shall provide connections to all necessary utilities, including electric power, and pay all charges therefor.

- iii. *Cooperation.* The County agrees to cooperate with SMG in its performance of the services under this Agreement.
- (1) *Purchasing Services.* The County agrees to provide Purchasing assistance to SMG through the County's Division of Purchase upon SMG's request and provided that the County determines that such Purchasing assistance provided by the County to SMG is in the County's interest for the efficient procurement of goods and services in the furtherance of the efficient operations at the Lakeview Amphitheater and to the extent that such procurement involves the use of public resources.
- (2) *Legal Services.* The County agrees to provide legal assistance to SMG through the County's Law Department upon SMG's request and provided that the County determines that such Legal assistance provided by the County to SMG is in the County's interest for the efficient handling of routine legal matters in furtherance of the efficient operations at the Facilities and the Lakeview Amphitheater.

## 11. RECORDS AND REPORTS

### a. Records.

SMG shall keep full and accurate accounting records relating to any and all event activities at the Lakeview Amphitheater and shall provide to the Contract Administrator and County's CFO monthly financial statements in a format specified by the County's CFO. SMG shall give the County's CFO, or his/her designee, access to such books and records during reasonable business hours and upon reasonable advance notice. SMG shall keep and preserve for at least three (3) years 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. Additionally, SMG shall deliver to the County Administrator and County's CFO annual financial statements within ninety (90) days after the close of each Fiscal Year with a statement that they were prepared in accordance with generally accepted accounting principles.

The County's CFO shall have the right to conduct a review of any statement or report delivered in connection with this Agreement. In the event additional costs and expenses relating to field visits are incurred due to errors and/or omissions in the financial statements prepared and delivered by SMG hereunder, SMG shall be liable for such additional costs and expenses.

### b. Annual Plan.

SMG shall provide to the County CFO and Contract Administrator an annual management plan, which shall include the annual operating budget and annual cash flow budget for the next Fiscal Year. The annual plan shall include information regarding SMG's anticipated operations for such Fiscal Year and requested Capital Equipment and Capital Improvements purchases, and anticipated budgets therefor. The annual plan shall be subject to review, revision and approval by the County.

### c. Annual Reports.

Within ninety (90) days after the end of a Fiscal Year, SMG shall provide an annual report to the Contract Administrator and County's CFO in a form satisfactory to the County's CFO.

d. Quarterly Reports.

SMG shall submit quarterly reports to the Contract Administrator and the County's CFO, no later than thirty (30) days after the end of the quarter in a format approved by the County's CFO. The quarterly reports shall show revenues and expenses for the Lakeview Amphitheater events held in the quarter just ended and for the fiscal year to date, shall explain any variances to SMG's annual budget estimate of revenues and expenses, shall make year-end projections of revenues and expenses, and with respect to revenues shall show the banks or accounts into which specific amounts received have been deposited.

e. Monthly Reports.

By the twenty-fifth (25th) day of each month during the Management Term, and Renewal Term, if any, SMG shall provide to the Contract Administrator and County's CFO a written monthly report in a form approved by the County and similar to that used in other SMG-managed facilities setting out the Premises' anticipated activities and financial condition for the upcoming month and reporting on the prior month's activities and finances. SMG shall include in such report a balance sheet, income statement, and other financial reports (such as cost center accounting and event accounting reports) as may be reasonably requested by the Contract Administrator and/or County's CFO.

f. Schedule of Use. SMG shall maintain a master set of booking records and schedules for events to be held at the Lakeview Amphitheater.

g. Disclosure of Records. Records created and maintained by SMG in connection with the services under this Agreement shall be disclosed in a manner consistent with applicable law, including the Freedom of Information Law ("FOIL"), established within Public Officers Law.

**12. DEFENSE, INDEMNIFICATION AND HOLD HARMLESS**

a. SMG covenants and agrees to indemnify, defend and hold harmless, to the fullest extent permitted by law, the County of Onondaga, its officers, agents and employees and representatives in connection with this Agreement, from and against any and all loss or expense that may arise by reason of liability for damage, injury or death, or for invasion of personal or property rights, of every name and nature including but not limited to: (i) claims of property damage; (ii) claims of personal injury to SMG, SMG's employees, agents, or subcontractors; (iii) claims of personal injury to third parties; and (iv) reasonable attorneys' fees, whether incurred as the result of a third party claim or to enforce this contract: arising out of or resulting directly or indirectly from the misfeasance, omission of duty, negligence or wrongful act on the part of SMG in its performance of the work or the enforcement of this Contract, irrespective of whether there is a breach of a statutory obligation or rule of apportioned liability; and whether casual or continuing trespass or nuisance, and any other claim for damages arising at law and equity alleged to have been caused or sustained in whole or in part by or because of misfeasance, omission of duty, negligence or wrongful act on the part of SMG.

b. Without otherwise limiting the scope of the indemnity provisions set forth in paragraph (A) herein, if SMG serves upon the County, within ten (10) calendar days of being notified by County of a claim a duly executed copy of a letter from SMG to SMG's various insurers, providing notice of the Claim requesting that the Insurer provide defense therefore, and if within sixty (60) days thereafter, SMG provides to the County a duly certified letter from SMG's insurer(s): (i) Giving notice to SMG that the claim is not within the scope of coverage of



insurance contracts that SMG is obligated to obtain and maintain in force pursuant to the terms of this AGREEMENT or; (ii) A Reservation of rights Letter; Together with SMG's duly signed consent to joinder in any pending action and to participation in settlement of the claim, the County shall assume the cost of defending the claim. Provided, however, that the County reserves All rights pursuant to applicable law and Paragraph A of this Section to seek recovery of all costs incurred by the county in defending the claim to the fullest extent allowed by applicable law. The County's reservation of rights as set forth herein is without prejudice to SMG's right to seek to limit the obligation to indemnify the County for defense costs incurred by the County to the percentage of the claim or damages caused by the negligence or other fault of SMG.

SMG further covenants and agrees to obtain the necessary insurance as required by the General Obligations Law of the State of New York and this contract to effectuate this Hold Harmless clause, and shall name the County of Onondaga as an additional insured on all applicable insurance and indemnification. (See also insurance provision).

- c. County covenants and agrees to indemnify, defend and hold harmless, to the fullest extent permitted by law, SMG, its affiliates, owners, officers, agents and employees and representatives in connection with this Agreement, from and against any and all loss or expense that may arise by reason of liability for damage, injury or death, or for invasion of personal or property rights, of every name and nature including but not limited to: (i) claims of property damage; (ii) claims of personal injury to County, County's employees, agents, or subcontractors; (iii) claims of personal injury to third parties; and (iv) reasonable attorneys' fees, whether incurred as the result of a third party claim or to enforce this contract: arising out of or resulting directly or indirectly from the misfeasance, omission of duty, negligence or wrongful act on the part of the County, irrespective of whether there is a breach of a statutory obligation or rule of apportioned liability; and whether casual or continuing trespass or nuisance, and any other claim for damages arising at law and equity alleged to have been caused or sustained in whole or in part by or because of misfeasance, omission of duty, negligence or wrongful act on the part of County.

### 13. INSURANCE

SMG shall purchase and maintain insurance of the types and coverages set forth below, with General Liability, Automobile, and Umbrella Policies to be written on an occurrence basis, reasonably acceptable to the County of Onondaga and which will provide primary liability coverage to **SMG AND WITH THE COUNTY NAMED AS AN ADDITIONAL INSURED ON A PRIMARY AND NON-CONTRIBUTING BASIS** (except for Crime, Professional Liability, and Workers' Compensation, which policies do not accommodate additional insureds) for claims which may arise out of or result from SMG's operations under the Contract, including without limitation (i) claims because of bodily injury, occupational sickness or disease, or death, whether to SMG, SMG's employees or others and whether or not under a workers' compensation or other similar act or law for the benefit of employees; and (ii) claims because of injury to or destruction of tangible property, including loss of use resulting therefrom. As the sole exception to the foregoing, SMG shall not be required to name the County as an additional insured on policies issued to it for the professional liability of SMG.

All policies shall be written so that the County of Onondaga will be notified of cancellation or restrictive amendment at least thirty (30) days prior to the effective date of such cancellation or amendment. Certificates or insurance from the carrier, or their authorized agent, with the appropriate additional insured endorsement attached showing the County of Onondaga as an additional insured and stating the limits of liability, expiration date which are acceptable to the County of Onondaga shall be filed with and accepted by the County of Onondaga before operations are begun. The intent is that this insurance, with

the County of Onondaga being named as an additional insured, is to be primary over and above the County of Onondaga's own general liability coverage.

Prior to the commencement of the term of this Agreement, SMG shall secure and deliver to the County and shall keep in force at all times during the term of this Agreement the following types, coverages, and amounts of insurance:

- a. SMG agrees to obtain and maintain General Liability Insurance including Comprehensive Form, Premises-Operations, Products/Completed Operations, Blanket Broad Form Contractual, Independent Contractors, Liquor Liability, and Broad Form Property Damage Coverage with minimum limits of not less than one million dollars (\$1,000,000.00) Combined Single Limit for Bodily Injury and Property Damage.
- b. SMG agrees to obtain and maintain Automobile Liability Insurance for owned, hired and non-owned vehicles for business use covering all vehicles operated by SMG officers, employees in connection with the Lakeview Amphitheater and the services under this Agreement, whether such vehicles are owned by the County, 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) for Bodily Injury and Property Damage;
- c. SMG agrees to obtain and maintain claims-made Professional Liability Insurance with minimum limits of not less than one million dollars (\$1,000,000.00).
- d. SMG agrees to obtain and maintain Umbrella Insurance with a limit of five million dollars (\$5,000,000.00) in the aggregate.
- e. SMG agrees to obtain and maintain claims-made fidelity/crime insurance covering SMG's employees for services in connection with this Agreement.

SMG further agrees to comply with the requirements of the New York State Workers' Compensation Board regarding proof of compliance with the New York State Workers' Compensation Law. The New York State Workers' Compensation Board requires the County to obtain from Contractors proof of Workers' Compensation insurance coverage, Self Insurance or exemption from the requirement of obtaining Workers' Compensation insurance coverage. Proof must be submitted to the County on forms specified by the Workers' Compensation Board and that are stamped as received by the Workers' Compensation Board.

The terms of all insurance policies referred within this Agreement shall preclude subrogation claims against SMG, the County and their respective partners, members, officers, directors, employees and agents.

#### **14. WORKERS' COMPENSATION AND DISABILITY BENEFITS**

This Agreement shall be void and of no effect unless SMG and other person or entity making or performing this agreement shall secure compensation for the benefit of, and keep insured during the life of this Agreement, the employees engaged thereon, in compliance with the provisions of the New York State workers' compensation law.

SMG shall show, before this Agreement may be made or performed, and at all times during the life of this Agreement, that SMG, and other person or entity performing this Agreement, is in compliance with the

provisions of the New York State workers' compensation law, by SMG's delivering to County's Department of Law that New York State Workers' Compensation Board (Board) form or State Insurance Fund (Fund) form described in one of the following subparagraphs numbered 1, 2, 3, or 4, and that Board form described in one of the following subparagraphs numbered 5, 6, or 7:

1. Board form C-105.2 (Fund form U-26.3, if the insurer is the State Insurance Fund), subscribed by the insurer, showing that SMG, and other person or entity making or performing this Agreement, has secured compensation, as workers' compensation insurance, for the benefit of all employees, in compliance with the provisions of the New York State workers' compensation law.
2. Board form SI-12, completed by Board's self-insurance office and approved by Board's secretary, showing that SMG, and other person or entity making or performing this Agreement, has secured compensation, as Board approved workers' compensation self-insurance, for the benefit of all employees, in compliance with the provisions of the New York State workers' compensation law.
3. Board form GSI-105.2, completed by the group self-insurance administrator, showing that SMG, and other person or entity making or performing this Agreement, has secured compensation, by being a participant in a workers' compensation group self-insurance plan, for the benefit of all employees, in compliance with the provisions of the New York State workers' compensation law.
4. Board form CE-200 bearing an exemption certificate number issued by Board, showing that SMG, and other person or entity making or performing this Agreement or the Work is not required to secure compensation for the benefit of all employees, in compliance with the provisions of the New York State workers' compensation law.
5. Board form DB-120.1, subscribed by the insurer, showing that SMG, and other person or entity making or performing this Agreement has secured the payment of disability benefits, as disability benefits insurance, for the benefit of all employees, in compliance with the provisions of the New York State workers' compensation law.
6. Board form DB-155, completed by Board's self-insurance office and approved by Board, showing that SMG, and other person or entity making or performing this Agreement, has secured disability benefits, as Board approved disability benefits self-insurance, for the benefit of all employees, in compliance with the provisions of the New York State workers' compensation law.
7. Board form CE-200 bearing an exemption certificate number issued by Board, showing that SMG, and other person or entity making or performing this Agreement is not required to secure disability benefits for the benefit of all employees, in compliance with the provisions of the New York State workers' compensation law.

## **15. ASSIGNMENT**

SMG is prohibited from assigning, transferring, conveying, subletting, or otherwise disposing of this Agreement, or SMG's right, title, or interest in this Agreement, or SMG's power to execute this Agreement, to any other person or entity without the previous consent in writing of County.

**16. INDEPENDENT CONTRACTOR**

SMG is an independent contractor, except as otherwise provided herein. Neither SMG, nor SMG's officers, employees, agents, or servants shall hold themselves out as, or claim to be, officers or employees of County.

**17. 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 County and SMG.

**18. GOVERNMENTAL COMPLIANCE**

SMG shall comply with all applicable law in providing services under this Agreement, where such law includes federal, state, and local laws, rules, and regulations.

**19. LICENSES AND PERMITS**

SMG shall obtain at SMG's own expense all licenses or permits required for SMG's services or work under this Agreement, prior to the commencement of SMG's services or work.

**20. TAXES**

SMG shall collect and remit to the proper governmental authority all taxes arising out of services performed under this Agreement. Such taxes include, but are not limited to, sales tax and special assessments.

**21. USE OF MATERIALS AND WORKS OF THIRD PARTIES**

SMG shall comply fully with all applicable law governing the rights to use materials and works by third parties, where such law includes federal, state, and local laws, rules, and regulations and where such rights may include reproduction or performance of proprietary or copyrighted materials and other intellectual property rights associated with the use of such materials and works. SMG agrees to pay or cause to be paid all costs associated with making royalty, copyright or other payments, where such may be payable on behalf of third party owners of such intellectual property rights. SMG agrees to make or cause to be made any and all such payments to third parties and/or clearinghouse agencies as may be necessary to lawfully perform, publish, or reproduce any materials and works. SMG specifically agrees to make or cause to be made any and all reports to such agencies and/or parties, including specifically ASCAP, BMI, SAG, SESAC, and other similar agencies, where such are listed by way of example and not by way of limitation. SMG agrees to obtain documentation of such compliance as may be necessary from third parties using the Lakeview Amphitheater to produce concerts and other live events. SMG agrees to produce evidence of such reports and payments to the County upon request. This provision is material, and failure to comply with this provision shall constitute an event of default.

**22. NO LIENS**

SMG shall not permit any liens or encumbrances to be made on the Lakeview Amphitheater or on any furniture, fixtures, and equipment contained therein.

### **23. TRANSACTIONS AND CONTRACTS**

Any contract entered into between SMG and a subsidiary and/or affiliate company shall be at terms and for prices customarily charged by such subsidiary and/or affiliate company for comparable goods and services elsewhere at rates that are competitive within the industry. All goods and services shall be procured in a manner consistent with applicable law, including, but not limited to, relevant provisions of General Municipal Law (public contracts) and Labor Law (public works projects and prevailing wages).

### **24. CONFLICT OF INTEREST**

Prior to performing any services under this Agreement, SMG shall deliver to County's Department of Law, the attached affidavit certifying that SMG has no interest and will not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services to County. The affidavit shall further state that in rendering services to County no persons having any such interest shall be employed by SMG. SMG assumes full responsibility for knowing whether SMG's officers, employees, agents, or servants have any such interest and for certifying the absence of such conflict to County.

During the course of performing services for County, SMG shall disclose immediately to County, by affidavit, every known or apparent conflict of interest and every ostensible or potential conflict of interest of SMG, SMG's officers, SMG's employees, SMG's agents, and SMG's servants. The duty to disclose is a continuing duty. Such disclosure is a material obligation of this Agreement and SMG's failure to comply with these provisions affords County the right to pursue any and all remedies for breach of agreement. In the event of an apparent or actual conflict of interest during the course of performance, SMG shall suspend all work and services, and County's payments to SMG shall be suspended pending final approval by County or County's Board of Ethics. If the conflict cannot be resolved to the satisfaction of County, County may terminate this Agreement by written notice. Nothing herein shall be construed as limiting or waiving County's right to pursue damages or other remedies.

A conflict of interest includes any circumstance which might influence or appear to influence the judgment of SMG, and SMG shall disclose the same. SMG shall disclose further the acceptance of compensation, monetary or otherwise, from more than one (1) payor or party for services on the same project or related project. SMG shall disclose further the direct or indirect solicitation or acceptance of financial or other consideration from parties other than County for work on the project to which this Agreement pertains. If applicable, SMG shall disclose further the direct or indirect acquisition of any interest in the real estate which is the subject of the project, or in the immediate vicinity thereof. A conflict of interest of SMG's officers, SMG's employees, SMG's agents, or SMG's servants shall be deemed a conflict of interest of SMG, giving rise to the duty to disclose.

SMG shall not disclose any data, facts or information concerning services performed for County or obtained while performing such services, except as authorized by County in writing or as may be required by law.

### **25. SUSPENSION AND DEBARMENT**

SMG certifies that, except as noted, SMG and any person associated with SMG in the capacity of owner, partner, director, officer, or major stockholder is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency, and has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years.

**26. APPROPRIATIONS**

This Agreement is executory only to the extent of the monies appropriated and available for the purpose of this Agreement and no liability on account thereof shall be incurred by County beyond monies appropriated and available for the purpose thereof.

**27. FORCE MAJEURE**

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, lightning storms, earthquakes, floods, storms, washouts, civil disturbances, explosions, acts of terrorism, breakage or accident to machinery or lines of equipment, temporary failure of equipment, freezing of equipment 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.

**28. AGREEMENT MODIFICATIONS**

This Agreement represents the entire and integrated agreement between County and SMG and supersedes all prior negotiations, representations or agreements either written or oral. This Agreement may be amended only by a writing signed by County and SMG.

**29. SEVERABILITY**

If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and every other term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

**30. CLAUSES REQUIRED BY LAW**

Each and every provision of law and clause required by law to be part of this Agreement shall be deemed to be part of this Agreement and to have been inserted in this Agreement, and shall have the full force and effect of law.

**31. REPRESENTATIONS & WARRANTIES**

The County represents and warrants to SMG the following: (i) all required approvals have been obtained, and the County has full legal right, power and authority to enter into and perform its obligations hereunder, (ii) this Agreement has been duly executed and delivered by the County and constitutes a valid and binding obligation of the County, 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, and (iii) the execution and delivery of this Agreement will not violate or cause a breach (with or without notice or the passage of time) under any agreement to which the County is a party, including, without limitation, this Agreement.

SMG represents and warrants to the County 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.

**32. GOVERNING LAW**

This Agreement will be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to otherwise applicable principles of conflicts of law. For legal disputes, venue will be a court of competent jurisdiction in Onondaga County, and SMG consents to such jurisdiction.

**33. 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.

**34. 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.

**35. LIST OF EXHIBITS**

The several attachments listed below are incorporated within and made a part of this Agreement.

Attachment A: Premises - Lakeview Amphitheater

Attachment B: Request for Proposals (RFP No. 15-7500-006) and  
SMG proposal (dated September 18, 2015)

**36. NOTICES**

Any notice, consent or other communication 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.

If to the County, to:

Office of the County Executive  
John H. Mulroy Civic Center, 14th Floor  
421 Montgomery Street  
Syracuse, New York 13202

With a copy to:

Office of the County Attorney  
John H. Mulroy Civic Center, 10th Floor  
421 Montgomery Street  
Syracuse, New York 13202

If to SMG, to:

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

With a copy to:

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

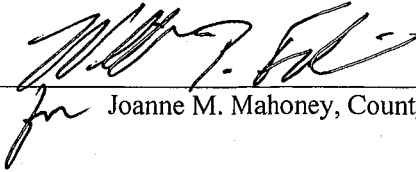
*(signature page follows)*



IN WITNESS WHEREOF, the parties hereto have executed this Amendment the date and year hereinafter written.

COUNTY OF ONONDAGA

Dated: \_\_\_\_\_ 2016

By:  \_\_\_\_\_  
for Joanne M. Mahoney, County Executive KMB

SMG

Dated: \_\_\_\_\_ 2016

By: \_\_\_\_\_  
John F. Burns  
Chief Financial Officer

State of Pennsylvania)  
County of Montgomery) ss.:

On the \_\_\_\_th day of \_\_\_\_\_ in the year 2016 before me personally came John Burns, who, being by me duly sworn, did depose and say that he resides in Montgomery County, Pennsylvania; that he is the Executive Vice President of SMG, the partnership described in and which executed the above instrument; and that he signed his name(s) thereto by authority of the board of directors of said corporation.

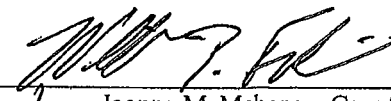
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IN WITNESS WHEREOF, the parties hereto have executed this Amendment the date and year hereinafter written.

COUNTY OF ONONDAGA

Dated: \_\_\_\_\_ 2016

By: \_\_\_\_\_

  
for

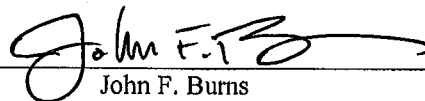
Joanne M. Mahoney, County Executive

KMB

SMG

Dated: April 25 2016

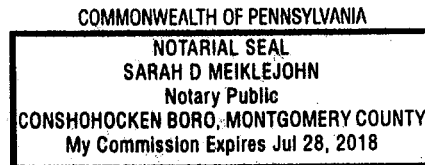
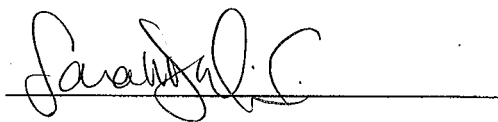
By: \_\_\_\_\_



John F. Burns  
Chief Financial Officer

State of Pennsylvania)  
County of Montgomery) ss.:

On the 25<sup>th</sup> day of April in the year 2016 before me personally came John Burns, who, being by me duly sworn, did depose and say that he resides in Montgomery County, Pennsylvania; that he is the Executive Vice President of SMG, the partnership described in and which executed the above instrument; and that he signed his name(s) thereto by authority of the board of directors of said corporation.



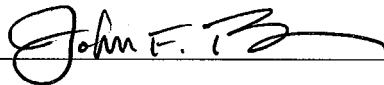
Conflict Interest Affidavit

State of Pennsylvania )  
County of Montgomery ) ss.:

, being duly sworn, deposes and says:

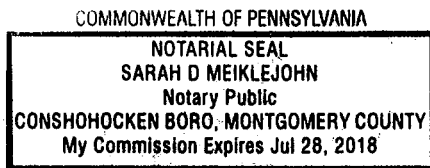
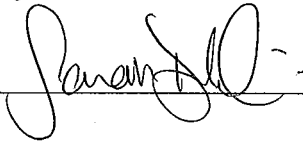
(SMG) agrees that SMG has no interest and will not acquire any interest, direct or indirect that would conflict in any manner or degree with the performance of the services to be rendered to the County of Onondaga (County).

SMG further agrees that, in the rendering of services to County, no person having any such interest shall knowingly be employed by SMG.



**John F. Burns**  
Chief Financial Officer

Sworn to before me on this  
25<sup>th</sup> day of April 2018



Attachment A: Premises - Lakeview Amphitheater

Attachment B: Request for Proposals (RFP No. 15-7500-006) and  
SMG proposal (dated September 18, 2015)