

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

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**DEPARTMENT:** City Manager's Office  
**AGENDA DATE:** December 9, 2014  
**CONTACT PERSON:** Mark Sutter, City Manager's Office, 212-1063  
Bruce D. Collins, Purchasing & Strategic Sourcing Department 212-1181  
**DISTRICT (S) AFFECTED:** All

**SUBJECT:**

That the City Manager or his designee be authorized to sign an Eleventh Amendment to the Facilities Management and Tourism Agreement between the City of El Paso and SMG to make available to the City the services of SMG's on-site General Manager to perform Managing Director services for the City's Quality of Life portfolio, at no additional cost to the City; and to revise marketing plan provisions in the Agreement to conform with current practice.

**BACKGROUND / DISCUSSION:**

The attached amendment revised various terms related to the services and marketing plan provided by SMG. The City and SMG desire to amend the Management Agreement between the City and SMG. At the direction of the City Manager, SMG's on-site General Manager will perform Managing Director services for the City's Quality of Life portfolio. The City Manager will determine which departments fall within the Quality of Life Portfolio. These services will be provided at no additional cost to the City. Also, the amendment provides for the written marketing plan of SMG to be presented annually to the City Manager. All terms and conditions of the Agreement and its amendments remain in full force and effect.

**PRIOR COUNCIL ACTION:**

The last amendment was approved by Council on November 3, 2009.

**AMOUNT AND SOURCE OF FUNDING:**

NA

**BOARD / COMMISSION ACTION:**

NA

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

**DEPARTMENT HEAD:**

Name

Signature

Date

*Mark Sutter*

12/5/14

## RESOLUTION

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

That the City Manager or his designee be authorized to sign an Eleventh Amendment to the Facilities Management and Tourism Agreement between the City of El Paso and SMG to make available to the City the services of SMG's on-site General Manager to perform Managing Director services for the City's Quality of Life portfolio, at no additional cost to the City; and to revise marketing plan provisions in the Agreement to conform with current practice.

APPROVED this \_\_\_\_\_ day of December, 2014.

CITY OF EL PASO:

\_\_\_\_\_  
Oscar Lesser  
Mayor

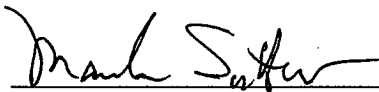
ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Elizabeth Ruhmann  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Mark Sutter  
Chief Financial Officer

<b>STATE OF TEXAS</b>	)	<b>ELEVENTH AMENDMENT TO</b>
	)	<b>FACILITIES MANAGEMENT AND</b>
<b>COUNTY OF EL PASO</b>	)	<b>TOURISM AGREEMENT</b>

This Eleventh Amendment to the Facilities Management and Tourism Agreement (this "Amendment") is made by and between the City of El Paso, a municipal corporation organized and existing under the laws of the State of Texas (the "City" or "Operator"), and SMG, a Pennsylvania general partnership and the successor in interest to LMI/HHI, LTD, d/b/a Leisure Management International ("SMG" or "Manager").

**WHEREAS**, the City and SMG entered into a Facility Management Tourism Agreement regarding the management of the City of El Paso Convention Center and Visitor's Bureau effective as of March 12, 1998;

**WHEREAS**, such Management Agreement has been amended ten times on June 18, 2002, October 24, 2002, October 24, 2003, July 27, 2004, October 19, 2004, July 5, 2005, November 1, 2005, September 19, 2006, December 5, 2006 and November 3, 2009 (the original Management and such amendments are herein collectively referred to as the "Management Agreement");

**WHEREAS**, the City and SMG desire to amend the Management Agreement to make certain additions to and to clarify certain provisions of such agreement; specifically, to make available to the City the services of SMG's on-site General Manager to perform Managing Director services for the City's Quality of Life portfolio, and to revise marketing plan provisions to conform with current practice.

**NOW, THEREFORE**, in consideration of the mutual promises and agreements recited herein, the parties agree to amend the Management Agreement as follows:

1. Section 3.5 Management Duties and Responsibilities, is hereby amended to include subsection (ao), which shall read as follows:
  - (ao) Manager's General Manager, at the request of Operator's City Manager, shall serve as a Managing Director to the Operator's Quality of Life Portfolio. The City Manager shall be responsible for determining, establishing, and modifying as necessary, the departments that fall under the Operator's Quality of Life Portfolio. The Managing Director services provided by the General Manager under this section will be under the direction and control of the City Manager.
  - (i) General Manager will remain at all times an employee of Manager and subject to additional duties and responsibilities as assigned by Manager during the term of this Agreement. Manager will be responsible for compensation, benefits, and payroll deductions required by Federal or state law or authorized by General Manager. For no purposes will the General Manager be considered an employee of Operator; notwithstanding however, the General Manager is to be under the supervision, direction and control of the Operator's City Manager while providing services of a Managing Director as set forth in subsection (ao).

- (ii) Manager agrees that Operator will not pay Manager or General Manager any additional consideration for the services provided in subsection (ao), however it remains the understanding of the parties that the compensation and benefits of Manager's on-site General Manager remain an Operating Expense. Operator will continue to pay Manager according to the terms of the Agreement and the General Manager shall continue to be paid by Manager, as determined solely between Manager and General Manager.
  - (iii) Operator releases Manager from any claims or liability arising from the General Manager's services under subsection (ao). Accordingly, Manager makes no warranties, express or implied, in connection with the performance of services by the General Manager under this subsection.
- 2. Section 5.1 Marketing Plan, is hereby amended and restated in its entirety to read as follows:  
"A written marketing plan shall be submitted by Manager to Operator's City Manager or his/her designee each Fiscal Year on or before the start of said Fiscal Year. "
  - 3. Section 5.2 Marketing Plan Criteria, is hereby amended where "Mayor" shall be replaced with "City Manager".
  - 4. Except as provided herein, all terms and conditions of the Agreement and its amendments remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2014.

*(Signatures to follow on the next page)*

CITY OF EL PASO:

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Mark Sutter  
Chief Financial Officer

ATTEST:

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Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

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Elizabeth Ruhmann  
Assistant City Attorney

SMG, a Pennsylvania general partnership:

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John Burns  
Chief Financial Officer