

AGREEMENT
BETWEEN
CITY OF FRESNO
AND
THE FRESNO/CLOVIS CONVENTION & VISITORS BUREAU
AND
SMG

AGREEMENT

THIS AGREEMENT ("Agreement") is entered into this ____ day of January, 2018, by and between the CITY OF FRESNO, a municipal corporation organized and existing under the laws of the State of California ("City"), the FRESNO/CLOVIS CONVENTION & VISITORS BUREAU, a California nonprofit mutual benefit corporation ("FCCVB"), and SMG, a Pennsylvania general partnership ("SMG"). City, FCCVB, and SMG may be referred to herein collectively as "Parties," or individually as a "Party."

RECITALS

- A. On June 9, 2014, the City held a public hearing regarding the City's budget for the Fresno Convention & Entertainment Center ("FCEC") and directed that funding be set aside in SMG's budget for a "Sales Manager" position which would work as an employee of FCCVB and would focus on increasing bookings and generate hotel room rentals from city-wide conventions and events utilizing FCEC facilities.
- B. Accordingly, the Parties entered into an agreement, dated July 1, 2014, to fund the Sales Manager position, which agreement, as amended, expired on June 30, 2017.
- C. The City and SMG would like to continue to fund and budget the Sales Manager position, with the continued intent that the Sales Manager shall remain an employee of the FCCVB.

NOW, THEREFORE, in consideration of the foregoing recitals, which are hereby incorporated herein, and of the mutual promises, covenants and agreements herein contained, the Parties hereto, intending to be legally bound, agree as follows:

- 1. **Sales Manager Position.** The FCCVB shall employ the FCEC Sales Manager pursuant to the terms and conditions herein contained. The Sales Manager shall work to increase bookings and generate hotel room rentals from city-wide conventions/events utilizing FCEC facilities. Specifically, for each fiscal year of the Agreement, the Sales Manager shall demonstrate, as provided herein, to the City's reasonable satisfaction, that hotel room night rentals have increased by 10% per annum. A copy of the Sales Manager job description is attached hereto as Exhibit "A" and incorporated herein by this reference.
- 2. **Price; Funding.** The City shall fund the Sales Manager position at a level it deems appropriate based upon, but not limited to, the City Council's assessment of the effectiveness of the Sales Manager. A total of One Hundred Thousand Dollars (\$100,000.00) has been appropriated to fund the position for the 2017-2018 Fiscal Year. Any subsequent approved funding shall be made promptly available to SMG to fund the Sales Manager position. City shall not offset any other monetary amounts normally provided under budget to SMG for the management of the FCEC, to fund this Sales Manager position. After any

appropriation for the Sales Manager position, SMG, as manager of the FCEC, shall transmit the funding appropriated by the City to the FCCVB. SMG shall forward the funds to FCCVB within the first month of the beginning of the City's fiscal year and as one installment. FCCVB shall promptly supply all information requested by SMG to successfully transfer such funds. In the event that SMG does not receive any or all of the funding from the City for the Sales Manager position, SMG shall have no obligation to provide any additional funding beyond what is specifically appropriated by the City from the FCEC budget to FCCVB for the Sales Manager position.

3. **Reporting.** On a monthly basis, FCCVB shall prepare and submit to the City and SMG a report evaluating the effectiveness of the Sales Manager position. Such report shall include, but not be limited to, an evaluation of: (1) whether the Sales Manager's duties and goals (as defined in the job description) have been met and to what degree; (2) specific efforts the Sales Manager has taken to reach the goals outlined in this Agreement and in the job description; (3) the number of conventions and events booked by the Sales Manager to be held at the FCEC facilities; (4) all leads generated by the Sales Manager for future conventions and events at FCEC; and (5) the number of overnight hotel room rentals associated with each convention or event. FCCVB shall promptly provide all backup information requested by the City with respect to the efforts described in such reports.
4. **Independent Contractor.** In the furnishing of the services provided for herein, FCCVB is acting as an independent contractor. FCCVB shall be responsible for any Federal, State, or local taxes or fees that apply to payments it receives pursuant to this Agreement. FCCVB and FCCVB's employees are not employees of the City or SMG, and shall not be eligible for any benefits provided through the City or SMG, including, but not limited to, social security, medical insurance, worker's compensation, unemployment compensation, participation in any pension or profit-sharing plan, and retirement benefits. Neither FCCVB, nor any of its officers, employees, agents, volunteers, or subcontractors shall be considered to be agents of the City or SMG in connection with FCCVB's performance at Sales Manager under this Agreement. However, City and SMG shall retain the right to verify that FCCVB is performing its respective obligations in accordance with the terms hereof.
5. **Term; Termination.**
 - a. The term of this Agreement shall be five (5) years, starting on the July 1, 2017, and continue until June 30, 2022. This Agreement shall be renewable for up to two (2) one-year terms at the mutual concurrence of the Parties, provided that funding is appropriated by the City Council.
 - b. Unless shorter notice is otherwise agreed to in writing by the City and FCCVB, either the City or FCCVB may terminate this Agreement at any time by providing sixty (60) days written notice to the other Parties. In the

event that the Agreement is terminated under this provision, a prorated portion of the funding (as of the termination date) shall be refunded to the source of the funding.

- c. This Agreement shall terminate without any liability of City to the other Parties upon the City's non-appropriation of funds sufficient to meet its obligations hereunder during any City fiscal year of this Agreement, or insufficient funding for the City's obligation. In such instance, the Agreement shall automatically terminate as of the last day for which funding is available.
 - d. SMG shall have no right to terminate the Agreement, unless SMG does not receive timely funding from the City. In such an event, SMG may immediately terminate this Agreement by providing written notice to the other Parties. The provisions in Section 6 below shall survive the termination of this Agreement for a period of four (4) years.
6. **Liability; Indemnification.** To the fullest extent permitted by law, FCCVB shall indemnify, defend (at FCCVB's sole cost and expense), protect and hold harmless the City and SMG and each of its officers, officials, employees, agents and volunteers, and all of such Party's representatives, successors and assigns, and any lender of City or SMG with an interest in the FCEC (the "Indemnified Party(ies)"), from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, forfeitures, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and any and all other professional, expert or consultants' fees and costs and SMG's and City's general and administrative expenses) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") that may arise from or in any manner relate (directly or indirectly) to, and only to the extent of, the negligent and/or willful acts, errors and/or omissions of FCCVB, its principals, officers, agents, employees, person(s) under the supervision of FCCVB, vendors, suppliers, consultants, subconsultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable for any or all of them in performing any work or services to be provided under this Agreement.

7. **Insurance.**

- a. Throughout the term of this Agreement, FCCVB shall acquire and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Bests Insurance Rating Guide; or (ii) authorized by the City's Risk Manager. The required policies of insurance as stated shall maintain limits of liability of not less than those amounts stated herein. However, the insurance limits available to the City of

Fresno, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds available to the named insured.

- i. COMMERCIAL GENERAL LIABILITY insurance which shall include blanket contractual, independent contractor's liability, personal injury and advertising liability, products and completed operations coverages, bodily injury and property damage liability insurance with combined single limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. (This policy shall include a broad form comprehensive general endorsement.)
- ii. COMMERCIAL AUTOMOBILE LIABILITY insurance, endorsed for "any auto," with combined single limits of liability of not less than \$1,000,000 per occurrence.
- iii. (iii) WORKERS' COMPENSATION and EMPLOYER'S LIABILITY insurance as required under the California Labor Code. A Waiver of Subrogation shall be obtained in favor of the City.

The above described policies of insurance shall be endorsed to provide an unrestricted 30-day written notice in favor of City and SMG of policy cancellation of coverage, except for the Workers' Compensation policy which shall provide a 10-day written notice of such cancellation of coverage. In the event any policies are due to expire during the Term or any extension period of this Agreement, FCCVB shall provide a new certificate evidencing renewal of such policy on or prior to the expiration date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation in coverage, FCCVB shall file with City and SMG a new certificate for such policy(ies). Each of the above described policies shall name City and SMG, as well as their officers, officials, agents, employees and volunteers as an additional insured.

- b. If at any time during the life of the Agreement, FCCVB fails to maintain the required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to FCCVB shall be withheld until notice is received by City and SMG that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City and SMG. Any failure to maintain the required insurance shall be sufficient cause for City and SMG to terminate this Agreement.

8. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and correctly sets forth the rights, duties, and obligations of all the Parties as of its date. Any prior agreement, promises, negotiations, or

representations not expressly set forth in this Agreement are of no force and effect.

- a. **Relation to Amended and Restated Management Agreement.** SMG manages the FCEC and its facilities, and nothing in this Agreement changes or alters that certain Amended and Restated Management Agreement entered into between the City and SMG, effective January 1, 2014, as amended.

9. **Notices.** Any notice, consent or other communication given pursuant to this Agreement shall 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 City: City of Fresno
Attn: Wilma Quan-Shecter, City Manager
2600 Fresno Street, Room 2064
Fresno, California 93721
Facsimile: (559) 621-7776

To SMG: Bill Overfelt
Fresno Convention & Entertainment Center
858 M Street
Fresno, CA 93721
Facsimile: (559) 445-8110

With copy to: Baker Manock & Jensen, PC
Attn: Kenneth J. Price
5260 N. Palm Avenue, Suite 421
Fresno, California 93704
Facsimile: (559) 432-5620

To FCCVB: Fresno/Clovis Convention & Visitors Bureau
Attn: Layla Forstedt, CEO
1550 E. Shaw Avenue # 101Address:
Fresno, California 93710
Facsimile: (559) 445-0122

10. **Severability**. If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.
11. **Modification or Amendment**. No amendment, change or modification of this Agreement shall be valid unless in writing signed by all Parties hereto.
12. **Headings**. Section headings are not to be considered a part of this Agreement and are not intended to be a full and accurate description of the contents hereof.
13. **Non-Waiver**. A failure by a 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.
14. **Assignment**. No Party shall assign any of its rights under this Agreement, or delegate the performance of any duties hereunder, without the prior written consent of all Parties.
15. **Governing Law**. This Agreement will be governed by and construed in accordance with the laws of the State of California, without giving effect to otherwise applicable principles of conflicts of law. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.
16. **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.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Agreement at Fresno, California on the day and year first above written.

CITY OF FRESNO,
A California municipal corporation

By: _____
Wilma Quan-Schechter
City Manager

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:  _____
Raj Singh Badhesha
Senior Deputy City Attorney

1/24/18
Date

ATTEST:
YVONNE SPENCE, MMC
City Clerk

By: _____
Deputy

SMG,
A Pennsylvania general partnership

By:  _____
Name: Bill Overfelt

Title: _____
(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

FRESNO/CLOVIS CONVENTION &
VISITORS BUREAU (FCCVB),
A California nonprofit mutual benefit
corporation

By:  _____
Name: Layla Forstedt

Title: CEO
(If corporation or LLC., CFO,
Treasurer, Secretary or Assistant
Secretary)

REVIEWED BY:

EXHIBIT "A" - Sales Manager – Job
Description

FRESNO/CLOVIS CONVENTION AND VISITORS BUREAU	
Position Classification	
Job Title: Convention Sales Manager – Fresno Convention & Entertainment Center	FLSA Status: Exempt
Department: As Assigned	Job Group: Management
Reports To: President/CEO or Designee	Salary Range \$56,000 – 65,000

SUMMARY

Under the direction of the President/CEO, is responsible for marketing the Fresno Convention & Entertainment Center for the specific purpose of booking conventions. This position has a major role in the team sales and activity goals as well as overall sales management responsibilities. Further, the position will ensure effective relationships with hotel leadership are in place; is responsible for all destination marketing related needs of the Convention & Entertainment Center. Responsible for promoting, developing, closing and maintaining convention center sales and self-contained sales in conjunction with other sales staff at FC&EC. Responsible for meetings with the individual hotels involved in specific conventions.

This position will perform a variety of responsible duties for the specific market of convention sales strategies to identify, solicit, sell and promote Fresno and the surrounding area in specified market territories and/or particular special interest groups, as a destination of choice for conventions and other events. Market Fresno as a meeting site to state, regional and national accounts via telemarketing and direct client contact; sales lead generation and follow-up; account documentation; execution of special marketing projects, including but not limited to: tradeshow participation, sales blitzes, association meetings/luncheons, familiarization trips and direct mail campaigns.

Prepares and reviews sales leads, proposals related to convention/meeting event sales including; managing city wide accounts; preparing and negotiating contracts, maintaining accounts and developing new short term business and perform other related duties as assigned. An incumbent may not be assigned all duties listed nor do the examples cover all duties which may be assigned.

ESSENTIAL DUTIES AND RESPONSIBILITIES *(include but are not limited to the following)*

Under the direction of the President/CEO continuously promotes the Fresno Convention & Entertainment Center; effectively manages sales accountability for budget issues; understands and supports the areas of Human Resources in carrying out responsibilities; supports a high level of customer satisfaction for all aspects of Bureau operations; acts as a main liaison with convention and area hotels, especially those that rely on our efforts as an extension of their sales efforts. Maintain personal sales goal targets and ensure all are met on a monthly, quarterly, yearly basis as directed; serves as a liaison with FC&EC sales team members; meets and reviews strategies with FC&EC staff in securing Convention business and convention hotel business where

appropriate; maintains a watchful eye on the completion and remain knowledgeable on their price offerings and packages, appropriately incorporates this knowledge into sales strategies and tactics; stays involved in industry events (e.g. road shows, industry trade shows, special events) interact and establish relationships with key clients to promote the FC&EC. Works closely with client and event services staff at SMG in servicing groups, collateral needs and special projects as appropriate; coordinate special events for key clients to influence key decision makers in key feeder markets and industries. Develop strategies and tactics to maximize budget dollars. Maximize convention center space by its appropriate utilization to generate maximum room nights to the City of Fresno which maximizes economic impact.

Knowledge and utilization of the database in maintaining leads; technology upgrades relative to industry trends and other related areas of sales software. Meet goals and performance plan as established by the CEO. Establish positive working relationships with representatives of community-based organizations, other agencies, management, staff and the public.

SUPERVISORY RESPONSIBILITIES

No Supervisory Responsibilities

ESSENTIAL QUALIFICATIONS

Knowledge of:

Both the customer side and hotel side to align customer needs to hotel offerings.
Excellent social and professional skills with good personality.
Effective communicator and listener.
Creative sales professional
Good organizational skills to keep track of multiple clients and their needs.
High self-motivation
A deep passion for the work and for promoting the City of Fresno and the Fresno Convention & Entertainment Center
Ability to travel
Principles and practices in budget development and administration
Principles and practices of fiscal, statistical, and administrative data collection and report preparation.
Convention center operations and bureau/center relationships.
Negotiating and competitive opportunities.
Pertinent Federal, State, and local laws, codes, and regulations.
English usage, spelling, grammar, and punctuation.
Principles and practices of business letter writing.
Principles and procedures of record keeping.
Principles and practices related to current computer technology.
Strong customer service and business etiquette and basic principles and techniques used in dealing with the public.
Automated programs including word processing, spreadsheet, and data base applications.
Safe driving principles and practices.
Operate a motor vehicle safely.

Ability to:

Maintain a pulse on latest trends within hotels and convention centers.

Maintain and manage a large account base and meet deadlines.
Perform responsible and confidential administrative work involving the use of sound independent judgment and personal initiative.
Perform responsible problem solving techniques.
Travel and represent the Bureau both locally, nationally, and internationally.
Be attentive to details and effectively communicate and approach new challenges with a positive attitude and enthusiasm.
Provide good organizational skills, multi-task in a fast paced environment, and have excellent verbal and written communication skills.
Promote strong communication and customer service skills.
Recognize competitive opportunities that will result in sales/bookings and the ability to negotiate terms appropriately.
Research, compile, analyze, interpret, and prepare a variety of fiscal, statistical, and administrative reports.
Interpret, apply, and explain pertinent Federal, State, and local laws, codes, and regulations.
Interpret, apply, and explain FCCVB programs, policies, and procedures.
Work independently in the absence of supervision.
Understand the organization and operation of the FCCVB and of outside agencies as necessary to assume assigned responsibilities.
Respond to questions from the public and FCCVB personnel regarding policies and procedures for the assigned area.
To work evenings, weekends, and holidays based on client and office demands.
Communicate clearly and concisely, both verbally and in writing.
Establish, maintain, and foster positive and harmonious working relationships with co-workers and clients.
Represent the Bureau in a courteous, professional and service oriented manner.
Organize, prioritize, and multi-task.
Operate modern office equipment, including a customized technology, and account management systems.

EXPERIENCE AND EDUCATION GUIDELINES

Experience and/or Education:

Any combination of education and experience that has provided the knowledge, skills, and abilities necessary for a **Convention Sales Manager – Fresno Convention & Entertainment Center Facilities**. A typical way of obtaining the required qualifications is to have hotel sales experience to gain the knowledge of how hotel sales operate. National sales experience in reaching clients at a national level. Experience in selling Conventions and Convention Center space. A Bachelor's Degree from an accredited institution or the equivalent of five years of hotel sales and/or marketing experience. Strong background in communications, marketing and sales. Must be able to work well with the public, media, clients, and staff.

License or Certificate:

Possession of a valid California driver's license and the ability to be insurable under the CVB's automobile insurance plan at the standard rate.

PHYSICAL DEMANDS

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable

accommodations may be made to enable individuals with disabilities to perform the essential functions.

The position requires prolonged sitting, standing, walking, reaching, kneeling, bending, and stooping in the performance of daily activities. Also required are grasping, repetitive hand movement, and fine coordination in preparing reports using a computer keyboard. Additionally, the position requires near and far vision in reading written reports and work related documents. Acute hearing is required when providing phone and personal service. The need to lift, drag, and push files, papers, and documents weighing up to 25 pounds is also required.

WORKING ENVIRONMENT

The work environment characteristics described are high volume and fast paced. Employee must have the ability to work with a diverse population and in a standard office environment. Reasonable accommodation may be made to enable individuals with disabilities to perform essential functions.