

**SECOND AMENDMENT
TO
CATERING SERVICES AGREEMENT
(SMG – PARDINI’S, INC.)**

THIS SECOND AMENDMENT TO CATERING SERVICES AGREEMENT (the “Second Amendment”) is entered into as of the 1st day of July, 2017, (the “Effective Date”), by and between SMG, a Pennsylvania general partnership (“SMG”), and Pardini’s, Inc., a California corporation (“Pardini’s”), consented to by the City of Fresno, a California municipal corporation (the “City”).

RECITALS

A. SMG and City entered into a Management Agreement, effective January 1, 2004 (the “Original Management Agreement”), whereby SMG served as an independent contractor to operate the facilities of the “Fresno Convention & Entertainment Center,” comprised of the Saroyan Theatre, Selland Arena, Exhibit Hall, and Ernie Valdez Exhibit Hall (formerly known as Exhibit Hall South) (collectively, “FCEC”).

B. Subsequently, SMG and City entered into the Amended and Restate Management Agreement effective January 1, 2014 (the “Management Agreement”), which replaced and superseded the Original Management Agreement and is currently in effect, as amended.

C. On July 1, 2005, SMG and Pardini’s entered into a Catering Services Agreement (the “Original Catering Agreement”), whereby SMG granted to Pardini’s the sole and exclusive right to provide catering services at FCEC, and in return, Pardini’s agreed to pay SMG a percentage of its gross receipts each year.

D. On July 1, 2007, SMG and Pardini’s, entered into a new Catering Services Agreement (the “Catering Agreement”) which became effective upon the expiration of the Original Catering Agreement.

E. In June 2012, SMG and Pardini’s entered into the First Amendment to Catering Services Agreement, in part, extending the term of the Catering Agreement to June 30, 2017 (the “First Amendment”).

F. Through mutual agreement and via a letter extension, the parties extended the Term of the Catering Agreement through October 26, 2017.

G. SMG and Pardini's now desire to further amend the Catering Agreement, as amended, to provide for (i) the exercise of the existing Extension Period to extend the Catering Agreement for an additional five (5) years from the expiration of the First Amendment subject to the terms contained herein; (ii) the option of an additional extension period, upon mutual agreement, to allow for an additional five (5) year period commencing on the Termination Date; and (iii) the advancement by Pardini's of a catering commission to FCEC.

H. All capitalized terms used in this Second Amendment shall have the meanings provided in the Catering Agreement, as amended, unless otherwise specified.

NOW, THEREFORE, in consideration of the recitals set forth above, which are herein incorporated by this reference, and the mutual covenants and undertakings set forth herein, the mutual receipt and sufficiency of which is hereby acknowledged, SMG and Pardini's agree as follows:

1. **Amendment to Section 2.1.** As of the Effective Date of this Second Amendment, Section 2.1 of the Catering Agreement shall be deleted in its entirety and replaced with the following:

“2.1 **Term.** The term of this Agreement (as the same may be renewed or extended upon the mutual agreement of the parties hereto, the “**Term**”) shall commence at 12:00 a.m. on October 27, 2017, and shall continue in effect, unless earlier terminated as provided herein, until 11:59 p.m. on June 30, 2022 (the “**Termination Date**”). In the event that during the Term, the Management Agreement is terminated at any time for any reason, then this Agreement shall be immediately terminated unless the City consents to an assignment/assumption pursuant to Section 7.4. The parties may, as mutually agreeable, extend the Term of this Agreement for an additional period of five (5) years commencing on the Termination Date and ending on June 30, 2027 (the “**Extension Period**”), unless sooner terminated pursuant to the terms of this Agreement, or unless Contractor is in default. At any time after July 1, 2018, and based on Contractor's performance, the parties may mutually agree to exercise the Extension Period. Within one hundred eighty (180) days of the Termination Date, the parties shall begin to negotiate any revision to the terms of this Agreement for the Extension Period. In the event that the parties have not agreed upon the terms for an extension of this Agreement within ninety (90) days of the Termination Date, Operator shall have the right to initiate a process to identify, and then negotiate with, a vendor to provide Catering Services at the Facility. Any extension or modification of this Agreement shall require the consent of the City. “

2. **Addition of Section 2.8.** As of the Effective Date of this Second Amendment, a new Section 2.8 shall be added to the Catering Agreement and shall state the following:

"2.8 **Policies and Procedures.** From time-to-time, Operator may produce various operational policies and procedures for the Facility (the "**Policies**"), which shall be applicable to all contractors and users of the Facility, including Contractor, as applicable. Policies impacting contractors shall be subject to prior approval by City."

3. **Addition of Section 2.9.** As of the Effective Date of this Second Amendment, a new Section 2.9 shall be added to the Catering Agreement and shall state the following:

"2.9 **Complimentary Services.** Contractor shall not "comp" or provide complimentary Services in the form of free food or beverages ("**Complimentary Services**") to any client or prospective client in relation to this Agreement without prior written approval by the City. Any Complimentary Services provided in relation to this Agreement shall be subject to the reporting and audit provisions of Section 3.2 herein and shall be duly included in any written report."

4. **Amendment to Section 3.1.** As of the Effective Date of this Second Amendment, Section 3.1 of the Catering Agreement shall be deleted in its entirety and replaced with the following:

"3.1 **Fees.**

a) As consideration for the rights granted by Operator to Contractor herein, beginning on the Effective Date, Contractor will pay the Operator the following fees based on Modified Net Receipts per Fiscal Year (or any portion thereof), all as calculated in accordance with generally accepted accounting principles, consistently applied:

i. 27.5% of Modified Net Receipts of zero to 1.3 million dollars from Catering Sales for all Events serviced;

ii. 30% of Modified Net Receipts of 1.3 million dollars and greater from Catering Sales for all Events serviced;

iii. 30% of Modified Net Receipts from sales of alcohol spirits and non-alcoholic beverages;

iv. 35% of Modified Net Receipts from sales of all beer and wine;

v. 5% of Modified Net Receipts from Catering Sales service for foodstuff and non-alcoholic beverages for backstage catering;

vi. 10% of Modified Net Receipts from Catering Sales service for alcohol beverage for backstage catering; and

vii. The percentage of Modified Net Receipts from outside Catering Sales as mutually agreed upon in writing by Contractor and Operator prior to Contractor's provision of any such Outside Catering Services."

5. **Effect of Amendment.** Except as otherwise specifically set forth in this Second Amendment, each and every provision of the Catering Agreement, as amended, shall remain in full force and effect.

6. **Counterparts.** This Second Amendment (either a duplicate copy or a copy of a facsimile thereof) may be executed in any number of counterparts and each such counterpart shall be deemed to be an original instrument, all of which together shall constitute one and the same instrument.

7. **Ratification.** The parties acknowledge and agree that except as expressly set forth herein the Catering Agreement has not been modified, amended or supplemented. This Second Amendment is intended to be construed as consistent with the terms of the Catering Agreement wherever possible, but in the event of any inconsistency between the terms of this Second Amendment and the Catering Agreement, the terms of this Second Amendment shall govern.

8. **Further Assurances.** Each party agrees to execute such instruments or documents or take such further action as the other parties may reasonably request to carry out the intent and purpose of this Second Amendment.

9. **Time.** Time is expressly declared to be of the essence of this Second Amendment.

10. **Attorney's Fees.** In any action or proceeding relating to the interpretation or enforcement of this Second Amendment, or any documents relating to this Second

Amendment, or with respect to any collateral, the prevailing party shall be entitled to recover from the other party reasonable expenses, attorneys' fees and costs.

11. **Headings.** The paragraph headings contained herein are for the purpose of convenience only and shall not be considered in construing this Second Amendment.

12. **Governing Law.** This Second Amendment and all documents provided for herein and the rights and obligations of the parties hereto shall be governed by and construed under the laws of the State of California.

IN WITNESS WHEREOF, the undersigned have executed this Second Amendment as of the day and year first above written.

PARDINI'S, INC., a California corporation

By: 

Name: JAMES PARDINI

Title: Pres.

SMG

a Pennsylvania general partnership

By: 

Name: WILLIAM C. OVERFELT

Title: GENERAL MGR.

CONSENTED TO BY:

CITY OF FRESNO,
a California municipal corporation

By: _____

Name: _____

Title: _____

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____

Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:  9.25.17

Raj Singh Badhesha
Deputy City Attorney

Date