

**CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS
TOURISM RECOVERY PROGRAM AGREEMENT**

THIS AGREEMENT (“Agreement”) is entered into this 21st day of June, 2022, between The City of Oklahoma City (“the City”) and SMG, an operating entity of ASM Global and a Pennsylvania general partnership ("SMG") for services related to the City’s Coronavirus State and Local Fiscal Recovery Tourism Recovery Program.

WITNESSETH:

WHEREAS, the United States is experiencing an outbreak of Novel Coronavirus-2019 also known as COVID-19; and

WHEREAS, due to the COVID-19 public health emergency Oklahoma City tourism has been diminished and businesses have sustained economic losses; and

WHEREAS, from April 2019 through March 2020, the average daily number of hotel room nights sold was 11,330 and due to the COVID-19 pandemic, the daily average dropped to 6,680 in the 12 months that followed; and

WHEREAS, hotel room night revenues decreased from \$286,369,218 to \$167,469,364, which is a 42% decline in total revenue; and

WHEREAS, during the COVID-19 outbreak, the Paycom Center had 59 concerts, events and NBA games that were canceled or where fans were not allowed to attend which resulted in an estimated 766,000 fewer guests in the Center during that time; and

WHEREAS, many of those guests would have been from outside Oklahoma City and contributed to the tourism industry while they were in town; and

WHEREAS, the City of Oklahoma City has received \$61,253,795 from the Coronavirus State and Local Fiscal Recovery Funds (Fiscal Recovery Funds) and expects to receive an additional \$61,253,795 in May 2022 for a total federal allocation of \$122,507,590; and

WHEREAS, the Fiscal Recovery Funds have been provided pursuant to American Rescue Plan Act (ARPA) and are intended to provide support to State, local, and Tribal governments in responding to the impact of COVID–19 and in their efforts to contain COVID–19 on their communities, residents, and businesses; and

WHEREAS, on September 14, 2021, City Council approved the Coronavirus State and Local Fiscal Recovery Funds Plan (“the Plan”) and the category allocations contained therein; and

WHEREAS, the Plan provides for the use of Fiscal Recovery Funds for programs and projects to directly address the negative economic impacts caused by COVID-19 in the area of tourism recovery; and

WHEREAS, The City owns property, currently known as the Paycom Center, located at 100 W. Reno, Oklahoma City, Oklahoma 73102, which is a multipurpose event facility and venue for concerts, meetings, sporting events, and other such community and social events; and

WHEREAS, The Oklahoma City Public Property Authority currently leases the Paycom Center and entered into a Facilities Management Agreement with SMG to provide management and operation services at the facility that encourage, promote, and/or foster the development of Oklahoma City; and

WHEREAS, due to economic reductions and losses from COVID-19, SMG had to curtail its promotional activities in support of tourism, concerts and events; and

WHEREAS, it is desired that SMG initiate additional promotional activities to attract events to the Paycom Center in support of tourism, travel, and hospitality in order to respond to the negative economic impacts of the COVID-19 public health emergency on the tourism, travel, and hospitality industries in Oklahoma City.

NOW THEREFORE, for and in consideration of the mutual promises herein expressed, the City and SMG agree to the following terms and conditions:

I. SCOPE OF SERVICES

1.1 Contract Services. SMG is hereby engaged by the City to provide marketing services for the City for tourism recovery at the Paycom Center. SMG shall carry out the marketing and promotion of Paycom events through paid media buys and targeted campaigns outside the city limits of Oklahoma City. All expenditures must be approved in writing by the City Manager or his designee prior to the expenditure of funds. The total amount of Fiscal Recovery Funds that may be used for Paycom tourism recovery shall not exceed Five Hundred Thousand Dollars (\$500,000).

All Services provided under this Agreement shall comply with the legal requirements as set forth in the American Rescue Plan Act and the guidance issued by the United States Department of Treasury.

For any proposed expenditure, SMG shall gather the required information, shall organize the required information, and shall submit the information to the City Manager or his designee for approval or denial. The City Manager or his designee shall have final decision-making authority on the approval of any expenditure.

1.2 Funding Requests. SMG will submit to the City Manager or his designee a Funding Request for consideration which shall include:

- 1) a statement detailing how the funds will be used;
- 2) the amount of Fiscal Recovery Funds;
- 3) any subcontractors to be used; and
- 4) the bidding process used or justification for non-use.

The City Manager or his designee will review the Funding Request and respond in writing whether the request is approved, approved but modified, or denied. Should there be a question or request for additional documentation, or denial of all or a portion of any request, SMG will be notified so that it may provide additional documentation sufficient to demonstrate the request should be funded, in whole or in part. Upon approval of a request, the City will issue payment to SMG for the services proposed. The City will endeavor to review Requests within ten (10) business days of receipt.

1.3 Fiscal Recovery Funds Payments. Fiscal Recovery Funds are only for use on approved requests which have been verified by the City as meeting the requirements as set forth in the American Rescue Plan Act and the guidance issued by the United States Department of Treasury. SMG acknowledges that the funds used under this Agreement are funds from the American Rescue Plan Act. SMG will retain sufficient documentation for any potential audit of this Agreement by the City and/or the federal government.

II. REPORTING, AUDITING AND DOCUMENTATION

2.1 Reporting. SMG is required to provide quarterly update reports detailing the amount of funds used and events promoted, as well as any other information concerning expenditures requested by the City Manager.

2.2 Audit Requirement. SMG agrees that the funds provided pursuant to this Agreement were provided by the federal government to the City pursuant to ARPA and are subject to audit by the City and/or the federal government. SMG agrees it will fully cooperate in any audit of its records at no additional expense to the City.

2.3 Document Retention. SMG agrees to retain records regarding all expenditures of Fiscal Recovery Funds, including, but limited to, all invoices, supporting documents provided, attestation documents, and checks cut.

III. GENERAL TERMS

3.1 Term. This Agreement shall become effective as of the date provided in the first paragraph of this Agreement and shall terminate when all funding available under this Agreement for distribution has been spent or on December 1, 2024, whichever is sooner.

3.2 Discretionary Termination for Convenience. SMG agrees that the City has the authority to terminate this Agreement for cause or for convenience. For purpose of this clause, “cause” shall include, but not be limited to, failure to use the Fiscal Recovery Funds in the manner required in this Agreement or failure to disclose a disbarment, suspension, or exclusion from government contracts per Executive Orders 12549 and 12689 or for being listed on the government-wide exclusions in the System for Award Management (SAM) in accordance with the OMR guidelines at 2 CFR § 180.

3.3 Denial of Disbarment. SMG agrees and herein attests to the fact that neither it nor any of its agents or agencies are currently or have previously been subject to a federal disbarment, suspension or exclusion from federal contracts.

3.4 Anti-Lobbying. SMG agrees that it or any agent or agency thereof, will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352.

3.5 Independent Contractor. The Parties expressly agree that the relationship hereby created is that of an independent contractor and no other relationship is created or deemed to be created between the Parties. This Agreement specifically does not create any partnership or joint venture between the Parties or render any Party liable for any of the debts or obligations of any other Party.

3.6 Indemnification. SMG agrees to release, defend, and indemnify the City, and hold the City harmless against any losses, claims, damages, liabilities, expenses (including all reasonable legal fees and expenses), judgments, fines, audit findings or settlements resulting from the intentional acts or omissions, negligence, and/or misconduct of SMG. Any such indemnification or payment shall be made by SMG within thirty (30) days of an appropriate finding of facts, whether by mutual agreement, a court of law, or audit findings of the federal government. Should the federal government conclude that any Fiscal Recovery Funds were not used by SMG or Subcontractor for purposes approved by the City Manager or his designee out outlined in Section I, or that SMG or Subcontractor failed to retain sufficient documentation to prove that said funding was not misused by SMG, and the federal government requires the City to repay such funds, SMG will indemnify the City for all such amounts. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

3.7 Entire Agreement. The provisions of this Agreement, and the Exhibits attached hereto, shall constitute the complete and exclusive statement of understanding between the Parties, which supersedes all previous agreements, written or oral, and all communications between the Parties relating to the subject matter of this Agreement except as specifically set out in this Agreement.

3.8 Notices. All notices or demands required or permitted to be given or made under this Agreement shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the parties at the following addresses. Addresses may be changed by either Party giving ten (10) days prior written notice thereof to the other Party.

The City:

Craig Freeman, City Manager
The City of Oklahoma City
200 N. Walker, 3rd Floor
Oklahoma City, Oklahoma 73102

With copy to:

Amy Simpson, City Clerk
The City of Oklahoma City
200 N. Walker, 2nd Floor
Oklahoma City, Oklahoma 73102

SMG:

Chris Semrau
SMG
One Myriad Gardens
Oklahoma City, OK 73102

3.9 Applicable Law and Venue. This Agreement shall be governed, construed and enforced in accordance with the laws of the state of Oklahoma. The laws of the state of Oklahoma shall be applied to every interpretation, action, enforcement or other legal or equitable proceeding involving this Agreement, and any duty, right, interest, covenant, obligation and activity under this Agreement. Any dispute, legal proceeding or action which may arise between the City and SMG arising out of or in connection with this Agreement shall be adjudicated before a court located in Oklahoma City, Oklahoma. The City and SMG submit to the exclusive personal jurisdiction of the courts of the State of Oklahoma located in Oklahoma City.

3.10 Compliance with Law. In providing these services, SMG shall comply with all municipal, state, and federal laws and regulations, including but not limited to Federal Clean Air Act and the Federal Water Pollution Control Act.

3.11 Assignment. In as much as this Agreement is a personal service agreement which relies on the personal integrity, financial standing and unique ability and expertise of SMG, it has been agreed by Parties that SMG may not assign its interest or obligations in said Agreements without prior written consent of the City.

3.12 Severability. If any provision of this Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

3.13 Amendment. This Agreement may only be amended in a writing approved by SMG and the City Council of The City of Oklahoma City.

3.14 Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

3.15 Descriptive Headings. The headings of the Sections of this Agreement are inserted or annexed for convenience of reference only and shall not affect the meaning, construction, interpretation or effect of said Section of this Agreement.

4.15 Non-Discrimination. In connection with the performance under the Agreement, SMG agrees as follows:

A. SMG agrees not to discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, ancestry, age or disability, as defined by the Americans with Disabilities Act of 1990, Sec. 3(2). SMG shall take affirmative action to ensure that employees are treated without regard to their race, creed, sex, color, national origin, ancestry, age or disability, as defined by the Americans with Disabilities Act of 1990, Sec. 3(2). Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff or termination, rate of pay or other forms of compensation and selection for training, including apprenticeship. SMG shall agree to post in a conspicuous place, available to employees and applicants for employment, notices to be provided by the City Clerk of The City of Oklahoma City setting forth the provisions of this Section.

B. In the event of SMG's noncompliance with this Section, the Agreement may be canceled, terminated or suspended by the City. SMG may be declared by the City ineligible for further contracts until satisfactory proof of intent to comply shall be made by SMG.

C. SMG agrees to include the requirements of this non-discrimination requirement in any subcontracts connected with the performance of this Agreement.

IN WITNESS WHEREOF, the Parties adopt and approve this Agreement.

Approved this 6th day of June, 2022.

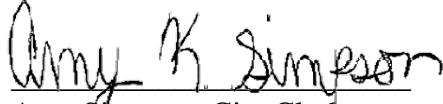
SMG

Chris Semrau

APPROVED BY the Mayor and City Council of the City of Oklahoma City this
21st day of June, 2022.


THE CITY OF OKLAHOMA CITY

ATTEST:



Amy Simpson, City Clerk





~~MAYOR DAVID HOLT~~
Vice Mayor

REVIEWED as to form and legality.



Deputy/Assistant Municipal Counselor