

**AMENDMENT NO. 1 TO THIRD AMENDED AND RESTATED  
FACILITIES MANAGEMENT AGREEMENT**

This Amendment No. 1 to the Third Amended and Restated Facilities Management Agreement ("Amendment No. 1") entered into this 6th day of December, 2022, by the City of Oklahoma City ("City"), the Oklahoma City Public Property Authority ("OCPPA") and SMG, an operating entity of ASM Global and a Pennsylvania general partnership ("SMG"). For convenience of reference, the City, the OCPPA and SMG are sometimes collectively referred to in this document as the "Parties."

**WITNESSETH:**

**WHEREAS**, the Parties entered into the Third Amended and Restated Facilities Management Agreement ("Agreement") on July 1, 2021, setting forth their respective obligations regarding SMG's management and operation of primarily the Paycom Center and the Cox Convention Center, currently known as Prairie Surf Studios (the "Facilities"); and

**WHEREAS**, the primary term of the Agreement is July 1, 2021 through June 30, 2023 but allows for renewal upon written agreement of the Parties; and

**WHEREAS**, the Arena Use License Agreement between the Professional Basketball Club, LLC (the "Thunder") for use of the Paycom Center has been extended by an additional three (3) years and is set to expire sometime in 2026, therefore, it is the intent of the Parties that SMG will continue to provide the OCPPA and the City services at the Paycom Center until at least June 30, 2026; and

**WHEREAS**, it is possible that the Thunder may wish to extend the Arena Use License Agreement beyond 2026 and in that event, it is the desire of the Parties that the term of this Agreement be extended to run contemporaneously with the Arena Use License Agreement.

**NOW, THEREFORE**, the Parties agree to this Amendment No. 1 to Sections 1 and 2 of the Third Amended and Restated Facilities Management Agreement between the Parties, changing no other terms or conditions of the Agreement except for those identified as follows with additions noted by underlining and deletions with strikethroughs:

1. DEFINITIONS. All terms and phrases not expressly defined herein shall have their ordinary meanings, consistent with local and state law, except where the context clearly indicates a different meaning. For purposes of this Agreement, the following terms and phrases shall have the meanings hereinafter ascribed:

. . .

(F) Facilities.

(1) Only to extent identified under the Lease and Facility Occupancy Agreement dated, December 8, 2020, or any subsequent amendment thereto, those areas of the facility formerly known as the Cox Convention Center not leased to Prairie Surf Media, to include the SMG offices and vestibule area, the kitchen areas and certain designated storage areas, but excluding (i) all underground parking areas in the PSM Studios, and further excluding those parking areas constructed with proceeds of tax exempt revenue bonds and further excluding

those parking areas producing revenues that are pledged to repayment of the Central Oklahoma Transportation and Parking Authority Parking System Revenue and Refunding Bonds, Series, 1996, or any other series of bonds related to the PSM Studios parking areas, and (ii) the main telephone equipment room, except for SMG's use with the consent of the General Manager;

(2) The Paycom Center, formerly known as the Chesapeake Energy Arena.

(3) That certain advertising billboard owned by the City of Oklahoma City on the north side of the Oklahoma City Boulevard near the intersection of Shields Boulevard and the Oklahoma City Boulevard in the City of Oklahoma City, Oklahoma County, Oklahoma, identified by the Oklahoma County Assessor in Quarter Section No. 1612, Account No. R-131748501, along with ingress and egress for purposes of installation, maintenance and utility services unless said billboard is removed by the City of Oklahoma City, which removal is at the City's complete and sole discretion and shall not affect the compensation owed SMG pursuant to this Agreement; and

(4) That certain undeveloped tract of land owned by The City of Oklahoma City immediately east of the railroad tracks parallel to E.K. Gaylord Boulevard and south of the Oklahoma City Boulevard intended for the restricted use of parking buses, trucks and other rolling stock utilized in connection with event set-up and production in the Paycom Center, as depicted on the map attached hereto as Exhibit "A".

- (M) Operating Expenses. Operating Expenses shall include any and all direct expenses and expenditures of whatever kind or nature incurred or approved indirect expenditures by SMG in promoting, operating, maintaining and managing the Facilities, including, but not limited to: employee compensation and related expenses, employee benefits and related costs, including approved relocation expenses, supplies, material and parts costs, costs of any interns and independent contractors, advertising, marketing and public relations costs (including without limitation the service of commissions payable pursuant to Section 20(E) of this Agreement and commissions, janitorial and cleaning expenses, data processing costs, dues, subscriptions and membership costs, the costs of procuring and maintaining insurance and fidelity bonds, amounts expended to procure and maintain permits and licenses, charges, taxes, excises, penalties and fees, professional fees, printing and stationary costs, Facilities event related expenses not otherwise paid by promoters or other entities, postage and freight costs, equipment rental costs, computer equipment leases and line charges, repairs and maintenance costs, security expenses, utilities and telephone charges, approved travel and entertainment expenses in accordance with SMG policies, the cost of employee uniforms, safety and medical expenses, exterminator and waste disposal costs, costs relating to the maintenance of signage inventory and systems, the cost of annual independent audits of the Facilities, the cost of compliance with laws and regulations, approved incidental start-up costs, costs incurred under agreements, commitments, licenses and contracts executed in SMG's name, a budgeted allocation for services (i.e., IT, HR, Finance) currently performed by SMG, and the Base Management Fee payable to SMG pursuant to Section 20 of this Agreement, all as determined in accordance with generally accepted accounting principles and provided, however, that operating Expenses shall not include: (1) any Incentive Fee payments to SMG pursuant to this Agreement or (2) any expenses or allocated costs not expressly allowed in this Agreement

relating to SMG's corporate headquarters or regional field locations other than the reasonable costs of travel in direct connection with SMG's management of the facilities.

Solely for purposes of (i) calculating Net Operating Income or Loss pursuant to Section 20 of the Agreement part and (ii) identifying Operating Expenses which will be budgeted in Approved Budgets, Operating Expenses shall exclude (A) fees paid to promoters and other contractual and similar allowance which are deducted from the gross receipts of all event activities at the Facilities (in accordance with the last sentence in the definition of Operating Revenues), in calculating SMG's Fiscal Performance Incentive Fee, (B) all extraordinary expenses and all interest, income tax, depreciation and extraordinary amortization expenses and (C) the costs paid pursuant to Section 20(D)(9) of this Agreement for quality assessments and evaluations.


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## 2. TERM.

- (a) ~~The primary term of this Agreement (the "Primary Term") shall begin on the Effective Date and expire on June 30, 2023, unless sooner terminated in the manner herein provided. The Agreement may be renewed at the sole option of the City/OCPPA for the Facilities, under mutually agreed terms and written agreement of the parties (the "Renewal Term") began on the Effective Date. Pursuant to Amendment No. 1 to the Agreement, the City/OCPPA have exercised their right to renew this Agreement for a Renewal Term expiring June 30, 2026; provided, however, that in the event that the Thunder extends its Arena Use License Agreement through June 30, 2029, such Renewal Term shall automatically extend for the period of July 1, 2026 through June 30, 2029 so that the terms of the two agreements run contemporaneously.~~
- (b) The rights of the City/OCPPA under Section 22(B) to partially terminate the Agreement as to PSM Studios shall continue to apply through the Renewal Term.
- (c) If (i) the Thunder does extend the Arena Use License Agreement through June 30, 2029, and (ii) a new arena is complete before said date, then during the one-year period prior to opening of the new arena the City/OCPPA will negotiate and discuss in good faith a new contract or arrangement with SMG for management of the new arena. The obligation to negotiate with SMG is not intended to guarantee any contract rights for a future contract with SMG or any specific terms of a new contract.
- (d) If (i) the Thunder does extend the Arena Use License Agreement through June 30, 2029; (ii) a new arena is complete before that date, and (iii) the parties are able to enter into a new agreement for management of the new arena, the City/OCPPA shall owe no obligation to pay SMG any consideration as contemplated in Section 22(C)(2) of the Agreement.

IN WITNESS WHEREOF, the Parties adopt and approve this Amendment No. 1 to Third Amended and Restated Facilities Management Agreement.

SMG, a Pennsylvania general  
Partnership


  
Bruce Hanson, Secretary

State of NEW JERSEY )  
 ) SS.  
County of BURLINGTON )

This instrument was acknowledged before me on the 17<sup>th</sup> day of NOVEMBER, 2022,  
by MICHELE R O'KEEFE WILSON

(seal)

Michele R O'Keefe-Wilson  
NOTARY PUBLIC  
State of New Jersey

  
Notary Public

Commission No.: \_\_\_\_\_

My Commission expires: ID # 2405244  
My Commission Expires 3/4/2026

[Signatures Continue on Following Page]

THE CITY OF OKLAHOMA CITY

David Holt

MAYOR

ATTEST:

Amy K. Simpson  
City Clerk



THE OKLAHOMA CITY PUBLIC  
PROPERTY AUTHORITY

David Holt

CHAIRMAN

ATTEST:

Amy K. Simpson  
Secretary



REVIEWED as to form and legality.

Laura K. McDevitt  
Assistant Municipal Counselor