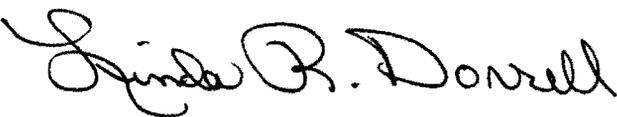

TULSA COUNTY

**PURCHASING
DEPARTMENT**

MEMO

DATE: JULY 10, 2013

FROM: LINDA R. DORRELL
PURCHASING DIRECTOR 

TO: BOARD OF COUNTY COMMISSIONERS

SUBJECT: AGREEMENT-SMG (TULSA CONVENTION CENTER)

SUBMITTED FOR YOUR APPROVAL AND EXECUTION IS THE ATTACHED USE LICENSE AGREEMENT BETWEEN THE BOARD OF COUNTY COMMISSIONERS ON BEHALF OF THE TULSA COUNTY TREASURER'S OFFICE AND SMG (A/K/A TULSA CONVENTION CENTER) FOR THE 2014 TULSA COUNTY TREASURER'S AUCTION TO BE HELD ON JUNE 9-12, 2014.

RESPECTFULLY SUBMITTED FOR YOUR APPROVAL AND EXECUTION.

LRD/arh

ORIGINAL: PAT KEY, COUNTY CLERK, FOR THE JULY 15, 2013 AGENDA.

COPIES: COMMISSIONER JOHN M. SMALIGO
COMMISSIONER KAREN KEITH
MARK LIOTTA, ACTING COMMISSIONER
DENNIS SEMLER, TREASURER
MICHAEL WILLIS, CHIEF DEPUTY

USE LICENSE AGREEMENT

BY AND BETWEEN

**SMG AND Board of County Commissioners
on behalf of the Tulsa County Treasurer's Office**

DATED: June 25, 2013



Worldwide Entertainment and
Convention Venue Management

USE LICENSE AGREEMENT

THIS USE LICENSE AGREEMENT (together with the Exhibits attached hereto, the "Agreement") is dated as of the 25th day of June, 2013, by and between SMG, a Pennsylvania general partnership, with an address at 100 Civic Center, Tulsa, OK 74103 ("SMG"), and Board of County Commissioners on behalf of Tulsa County Treasurer's Office, whose current address is 500 S. Denver, Tulsa, OK 74103, (the "Licensee") and whose contact information is Sandy Cedar at 918-596-5055 and scedar@tulsacounty.org.

BACKGROUND

SMG is a party to a certain management agreement (the "Management Agreement") with the City of Tulsa (the "City"), with an effective date of March 10, 2006, as amended on March 1, 2007 and as assigned to the City of Tulsa and the Tulsa Public Facilities Authority (the "TPFA") effective July 1, 2007, whereby SMG has been retained to act as managing agent in respect of a facility commonly known as SMG-Tulsa Convention Center (the "Facility"), located at 100 Civic Center, Tulsa, OK 74103, which is owned by City and leased to TPFA effective July 1, 2007. Licensee desires to use all or a portion of the Facility, as set forth below, for the purposes stated herein. Pursuant to the Management Agreement, SMG has the express authority to enter into agreements on behalf of City and TPFA relating to the use of the Facility. Accordingly, SMG grants to Licensee, and Licensee hereby accepts from SMG, a license to use certain areas of the Facility in accordance with the terms and conditions set forth herein.

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

1. Use of the Facility.

(a) SMG hereby grants Licensee, upon the terms and conditions hereinafter expressed, a license to use those areas of the Facility described on **Exhibit A** attached hereto (the "Authorized Areas"), including all improvements, furniture, fixtures, easements, rights of ingress and egress, and appurtenances thereto, during the dates and times set forth on **Exhibit A** (each such date and time, an "Event"). It is expressly understood by the parties hereto that the Facility shall be vacated by Licensee and all persons participating in or attending an Event hereunder on or prior to the end-time of the last Event listed on Exhibit A hereto (the "Expiration Time") and, as such, Licensee shall arrange to have all Events and activities related thereto cease within a reasonable time prior to the Expiration Time to allow ample time for the Facility to be completely vacated on or prior to the Expiration Time.

(b) In the event Licensee desires to use the Authorized Areas or any other portion of the Facility at any time other than during the dates and times delineated on **Exhibit A**, Licensee shall request from SMG prior written permission to use such areas of the Facility. In the event such permission is granted, Licensee shall pay as additional rent an amount equal to the sum of SMG's actual costs for performing its obligations under this Agreement during the

date(s) and time(s) requested, and a fee in an amount determined by SMG to represent a fair value for use of such additional areas of the Facility during such date(s) and time(s).

(c) Licensee acknowledges that, in connection with SMG's management and operation of the Facility, SMG utilizes the services of certain third-party independent contractors (the "Third-Party Contractors"). Licensee hereby agrees that SMG shall not be responsible in any way for the acts and/or omissions of any one or all of the Third-Party Contractors.

(d) Licensee acknowledges that the Facility is one component of a planned complex that includes, without limitation, Tulsa Convention Center (such other non-Facility areas are collectively referred to herein as the "Complex"). Licensee further acknowledges that SMG will use reasonable efforts to minimize for Licensee any inconvenience or disturbance which may result from the operation, construction, expansion, renovation, and/or other use of the Complex, to the extent that the foregoing activities are within SMG's reasonable control.

2. Purpose.

(a) The Facility is to be used solely for the purpose of **Tulsa County Treasurer's Auction**. Licensee shall not use the Facility, or permit the Facility to be used by any of its officers, directors, agents, employees, licensees, or invitees, for any unlawful or immoral purpose or in any manner so as to injure persons or property in, on, or near the Facility.

(b) SMG shall have the continuing obligation and responsibility to maintain and keep the facility in good order and repair, normal wear and tear excepted; provided, however, that (i) the failure by SMG to accomplish the foregoing, said failure resulting from circumstances beyond control of SMG, shall not be considered a breach of this Agreement by SMG, and (ii) any damages to the facility and its appurtenances caused by Licensee or its officers, directors, agents, employees, subcontractors, licensees, or invitees shall be paid for by Licensee at the actual or estimated cost of repair, as elected by SMG.

(c) Licensee shall conduct business in the Facility in a dignified and orderly manner with full regard for public safety and in conformity with SMG's General Rules and Regulations, including fire and safety rules as required by SMG and/or local fire regulations, as such may exist from time to time. Without limiting the foregoing, Licensee shall obtain prior written approval from SMG's General Manager at the Facility for any pyrotechnic displays which Licensee anticipates may be performed at the Facility during the term of this Agreement. Licensee agrees that it will not allow any officer, agent, employee, licensee or invitee at, in or about the Facility who shall, upon reasonable grounds, be objected to by SMG and such person's right to use the Facility may be revoked immediately by SMG.

3. Condition of Facility.

(a) Licensee acknowledges that Licensee has inspected the Facility and that Licensee is satisfied with and has accepted the Facility in its present condition.

(b) SMG shall have the continuing obligation and responsibility to maintain and keep the Facility in good order and repair, normal wear and tear excepted; provided, however, that (i) the failure by SMG to accomplish the foregoing, said failure resulting from circumstances beyond the control of SMG, shall not be considered a breach of this Agreement by SMG, and (ii) any damages to the Facility and its appurtenances caused by Licensee or its officers, directors, agents, employees, subcontractors, licensees, or invitees shall be paid for by Licensee at the actual or estimated cost of repair, as elected by SMG.

(c) Licensee shall not make any alterations or improvements to the Facility without the prior written consent of SMG. Any alterations or improvements of whatever nature made or placed by Licensee to or on the Facility, except movable trade fixtures, shall, at the option of SMG, (i) be removed by Licensee, at Licensee's expense, immediately upon the conclusion of the Event, or (ii) become the property of City. SMG assumes no responsibility whatsoever for any property placed in the facility. Notwithstanding anything to the contrary set forth herein, Licensee shall be solely responsible and liable for any and all Losses arising out of any and all rigging from or to the physical structure of the facility or any fixture thereto, set-up, alterations, and/or improvements at or to the facility necessitated by and/or performed with respect to the Event and completed by Licensee for the event.

(d) Licensee agrees that if any floors must be marked only chalk may be used. Licensee agrees to remove all exhibit materials, decorations, cartons, containers, pallets and associated trash in the exhibit area and will leave the leased area in a "broom-clean" condition. Removal of large amounts of trash by the Facility will result in additional cleaning charges. Licensee will be billed for damages to the floor, walls and any other surfaces.

4. Term of License. The license granted in Section 1 above will be effective as of the date and time set forth on Exhibit A and will continue in effect, unless earlier terminated as set forth in Section 11, until the date and time set forth on Exhibit A.

5. License Fee and Reimbursable Service Expenses In consideration of the grant of the license in Section 1 above, Licensee shall pay to SMG a license fee and shall reimburse SMG for certain service expenditures, all as calculated in accordance with the provisions set forth below and in accordance with generally accepted accounting principles, consistently applied:

(a) License Fee Licensee shall pay a license fee (the "License Fee") equal to the total rental amount shown in Exhibit A. **Full license fee is due no later than ten (10) business days prior to event. The final amount due will be calculated after the event.**

(b) Reimbursable Service Expenses.

(i) SMG shall provide, as required for each Event, the following services (collectively, the "Services"), the expenditures for which are reimbursable by Licensee to SMG ("Reimbursable Service Expenses"): ticket takers, box office services, ticket seller labor, ushers, supervisors, and receptionists; medical services for Event attendees, which services shall include ambulances, doctors, nurses, operations, supervisors, and paramedics; food and beverage services; security personnel; utilities in excess of reasonable and customary usage,

including electricity, gas, lighting, water, heating, ventilating, air conditioning, hot and cold water facilities, and waste removal services; electricians and mechanical plant staff; custodial services; scoreboard operations; audio services; and special facilities, equipment and materials, or extra services furnished by SMG at the request of Licensee.

(ii) SMG shall determine the level of staffing for such Services at each Event after consultation with, and input from, Licensee. Licensee acknowledges and understands that many of the Services are contracted services, the costs of which are subject to change. Licensee shall reimburse SMG for actual costs incurred by SMG in connection with the Services as provided in Section 6 below.

6. Payment Terms.

(a) License Fee The License Fee set forth in Exhibit A of this Agreement shall be paid by Licensee as provided in Exhibit B attached hereto.

(b) On or about 7 days after the conclusion of an Event, SMG shall deliver to Licensee an expense report setting forth the expenses actually incurred by SMG for the Services (“Actual Expense Report”).

(c) Security for Payment. In order to ensure the payment to SMG of the License Fee, the Reimbursable Service Expenses, and any other amounts as may accrue from time to time under this Agreement, Licensee shall deliver into the custody of SMG deposits as provided in Exhibit B attached hereto. The Grand Total indicated must be delivered into the custody of SMG at least ten (10) days prior to the event.

(d) All deposits made are non-refundable.

7. Revenues and Costs. SMG shall retain one hundred percent (100%) of all revenues generated in connection with the sale of food and beverages at the Facility. In addition to payment of the Reimbursable Service Expenses above, Licensee shall bear all expenses incurred by Licensee in connection with the holding of an Event at the Facility, including, but not limited to, all costs arising from the use of patented, trademarked or copyrighted materials, equipment, devices, processes or dramatic rights used on or incorporated in the conduct of an Event.

8. Taxes. SMG shall not be liable for the payment of taxes, late charges, or penalties of any nature relating to any Event or any revenue received by, or payments made to, Licensee in respect of any Event, except as otherwise provided by law. Licensee shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, damages, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extraordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against this Agreement or any other improvements now or hereafter owned by Licensee.

9. Insurance.

(a) Licensee shall, at its own expense, secure and deliver to SMG not less than ten (10) business days prior to the first Event set forth on **Exhibit A** and shall keep in force at all times during the term of this Agreement:

(i) a comprehensive general liability insurance policy in form acceptable to SMG, including public liability and property damage, covering its activities hereunder, in an amount not less than One Million Dollars (\$1,000,000) for bodily injury and One Million Dollars (\$1,000,000) for property damage, including blanket contractual liability, independent contractors, and products and completed operations. The foregoing general liability insurance policy shall not contain exclusions from coverage relating to the following participants, legal liability activities or issues related to the Event hereunder: sporting events, high risk events (including, without limitation, rap concerts), performers, volunteers, animals, off-premise activities, and fireworks or other pyrotechnical devices;

(ii) comprehensive automotive bodily injury and property damage insurance in form acceptable to SMG for business use covering all vehicles operated by Licensee, its officers, directors, agents and employees in connection with its activities hereunder, whether owned by Licensee, SMG, or otherwise, with a combined single limit of not less than One Million Dollars (\$1,000,000) (including an extension of hired and non-owned coverage); and

(iii) applicable workers compensation insurance for Licensee's employees, as required by applicable law.

(b) The following shall apply to the insurance policies described in clauses (i) and (ii) above:

(i) Tulsa Convention Center, SMG, City of Tulsa and TPFA shall be named as additional insured thereunder. Not less than ten (10) business days prior to the first Event set forth on **Exhibit A**, Licensee shall deliver to SMG certificates of insurance evidencing the existence thereof, all in such form as SMG may reasonably require. Each such policy or certificate shall contain a valid provision or endorsement stating, "This policy will not be canceled or materially changed or altered without first giving thirty (30) days' written notice thereof to each of SMG, Risk Management Director, 701 Market Street, 4th Floor, Philadelphia, PA, 19106, and City of Tulsa, 175 East 2nd Street, Suite 690, Tulsa, OK 74103." If any of the insurance policies covered by the foregoing certificates of insurance will expire prior to or during the time of an Event, Licensee shall deliver to SMG at least ten (10) business days prior to such expiration a certificate of insurance evidencing the renewal of such policy or policies.

(ii) The coverage provided under such policies shall be occurrence-based, not claims made.

(iii) The coverage limits contained on such policies shall be on a per-occurrence basis only.

(iv) Licensee hereby acknowledges that the coverage limits contained in any policy, whether such limits are per occurrence or in the aggregate, shall in no way limit the liabilities or obligations of Licensee under this Agreement, including, without limitation, Licensee's indemnification obligations under Section 10 below.

(c) The terms of all insurance policies referred to in this Section 9 shall preclude subrogation claims against SMG, Tulsa Convention Center, City of Tulsa and TPFA and their respective officers, directors, employees, and agents.

(d) The failure of the Licensee to provide insurance in accordance with this Section 9 shall be a breach of this Agreement and shall, notwithstanding any cure period set forth in Section 11 below, preclude the Event from taking place.

10. Indemnification.

(a) BOCC, its agents, employees or independent contractors, shall not in any event be required to indemnify, defend, or hold harmless, SMG, The City of Tulsa, or The Tulsa Public Facilities Authority, or its elected officials, servants, and/or employees with respect to any claims, actions, lawsuits, damages, judgments or liabilities of any kind whatsoever caused by, based upon or arising out of any act, conduct, misconduct or omission of SMG, The City of Tulsa, or The Tulsa Public Facilities Authority or its elected officials, agents, services and/or employees.

11. Default, Termination and Other Remedies.

(a) Default. Licensee shall be in default under this Agreement if any of the following occur: (i) Licensee fails (A) to pay any amount due hereunder (including, without limitation, the Licensee Fee or the Reimbursable Service Expenses) when the same are required to be paid hereunder or (B) to provide the security required under Section 6(d) hereof by the date when due, (ii) Licensee or any of its officers, directors, employees or agents fails to perform or fulfill any other term, covenant, or condition contained in this Agreement and Licensee fails to commence a cure thereof within five (5) business days after Licensee has been served with written notice of such default, or (iii) Licensee makes a general assignment for the benefit of creditors. SMG shall be in default under this Agreement if SMG fails to perform or fulfill any term, covenant, or condition contained in this Agreement and SMG fails to commence a cure thereof within five (5) business days after SMG has been served with written notice of such default. Nothing herein shall be construed as excusing either party from diligently commencing and pursuing a cure within a lesser time if reasonably possible. Notwithstanding clause (ii) above, if the breach by Licensee or any of its officers, directors, employees, or agents of such other term, covenant, or condition is such that it threatens the health, welfare, or safety of any person or property, then SMG may, in its discretion, require that such breach be cured in less than five (5) business days or immediately.

(b) Termination by Reason of Default. Upon a default pursuant to Section 11(a) hereof, the nonbreaching party may, at its option, upon written notice or demand upon the other party, cancel and terminate the license granted in Section 1 hereof and the obligations of

the parties with respect thereto. In addition to the foregoing, if Licensee fails to comply with any of the provisions of this Agreement, SMG may, in its sole discretion, delay and/or withhold payment and/or settlement of all accounts and funds related to monies collected or received by SMG for the benefit of Licensee hereunder until the completion of an investigation relating to such violation.

(c) Termination by Reason of Labor Dispute. In addition to the remedies provided elsewhere in this Agreement, SMG shall have the right to terminate this Agreement in the event that a dispute occurs between Licensee and its employees or between Licensee and any union or group of employees by reason of the union affiliation or lack of union affiliation of persons employed by Licensee or any one with whom Licensee contracts.

(d) Injunctive Relief. In addition to any other remedy available at law, equity, or otherwise, SMG shall have the right to seek to enjoin any breach or threatened breach and/or obtain specific performance of this Agreement by Licensee upon meeting its burden of proof of such breach or threatened breach as required by applicable statute or rule of law.

(e) Unique Qualities. The parties agree and acknowledge that the Licensee is a unique entity and, therefore, the rights and benefits that will accrue to SMG by reason of this Agreement are unique and that SMG may not be adequately compensated in money damages for Licensee's failure to comply with the material obligations of Licensee under this Agreement and that therefore SMG, at its option, shall have the right to pursue any remedy available at law, equity, or otherwise, including the recovery of money damages and/or the right to seek equitable relief (whether it be injunctive relief, specific performance or otherwise) in the event that Licensee violates its obligation to hold an Event at the Facility, or to provide evidence of fulfillment of its obligations of this Agreement.

12. Representations and Warranties. Each party hereby represents and warrants to the other party, and agrees as follows:

(a) It has the full power and authority to enter into this Agreement and perform each of its obligations hereunder;

(b) It is legally authorized and has obtained all necessary regulatory approvals for the execution, delivery, and performance of this Agreement; and

(c) No litigation or pending or threatened claims of litigation exist which do or might adversely affect its ability to fully perform its obligations hereunder or the rights granted by it to the other party under this Agreement.

13. Covenants. Licensee hereby covenants as follows:

(a) Licensee shall not occupy or use the Facility except as provided in this Agreement.

(b) Licensee shall comply with all legal requirements which arise in respect of the Facility and the use and occupation thereof.

(c) Licensee shall not cause or permit any Hazardous Material to be used, stored, or generated on, or transported to and from the Facility. "Hazardous Material" shall mean, without limitation, those substances included within the definitions of "hazardous substances", "hazardous materials", "toxic substances", or "solid waste" in any applicable state or federal environmental law. Licensee is prohibited from bringing in helium tanks or balloons of any kind without prior written consent of Facility management. If consent is given Licensee is responsible for any costs related to the removal of remaining balloons. Removal of balloons from artwork in Galleries will result in additional equipment charges.

(d) Licensee shall not advertise, paint, post, or exhibit, nor allow to be advertised, painted, posted, or exhibited, signs, advertisements, show bills, lithographs, posters, or cards of any description inside or outside or on any part of the Facility except upon written permission of SMG.

(e) Licensee shall not broadcast by television or radio any Event scheduled to be presented in the Facility under the terms of this Agreement without the prior written approval of SMG. If approval is granted by SMG, then all monies received from such broadcast will be considered as broadcast revenues for the purpose of determining the Broadcast Fee due to SMG.

(f) Licensee shall not cause or permit beer, wine, or liquors of any kind to be sold, given away, or used upon the Facility except upon prior written permission of SMG.

(g) Licensee shall not operate any equipment or materials belonging to SMG without the prior written approval of SMG.

(h) Licensee, its officers, directors, employees, agents, members, or other representatives shall not "scalp" tickets for an Event, to the extent applicable. Licensee and its representatives shall provide assistance to SMG in its efforts to control and prevent such ticket "scalping".

(i) No portion of any passageway or exit shall be blocked or obstructed in any manner whatsoever, and no exit door or any exit shall be locked, blocked, or bolted while the Facility is in use. Moreover, all designated exitways shall be maintained in such manner as to be visible at all times.

(j) Licensee shall not encumber, hypothecate, or otherwise use as security its interests in this Agreement for any purpose whatsoever without the express written consent of SMG.

(k) With respect to any Event at the Facility, Licensee shall comply fully with any and all local, state, and federal laws, regulations, rules, constitutional provisions, common laws, and rights of others applicable to the reproduction, display, or performance of proprietary or copyrighted materials and works of third parties (the "Works"), and to the protection of the intellectual property rights associated with such Works. The fees payable by Licensee under this

Agreement do not include royalty, copyright or other payments which may be payable on behalf of third party owners of such Works, and Licensee agrees hereby to make any and all such payments to third parties and/or clearinghouse agencies as may be necessary to lawfully perform, publish, display or reproduce any such Works. Licensee specifically agrees, undertakes, and assumes the responsibility to make any and all reports to such agencies and/or parties, including specifically by way of example only (and not by way of limitation) ASCAP, BMI, SAG, SESAC, Copyright Clearance Center, and other similar agencies. Licensee agrees hereby to obtain and maintain evidence of such reports and any necessary payments, including evidence of compliance with the requirements of this paragraph. Licensee further agrees hereby to provide to SMG any such compliance evidence as may be requested by SMG in advance of or after any such Event. Licensee agrees that the obtaining and maintaining of such evidence by Licensee is a material condition of this Agreement.

(l) Licensee shall not engage in the sale and/or distribution of food and/or beverages at the Facility.

(m) The Licensee grants the Facility permission to use photographs and/or videos of the event(s) for its promotional needs. Promotion includes advertising, news releases, publications, videos, collateral and the Tulsa Convention Center website.

14. Food and Beverage. *Savor...Tulsa Catering* by SMG is the exclusive food and beverage provider for the Tulsa Convention Center. No food or beverage of any kind will be permitted to be brought into the facilities by the Licensee or any of the Licensee's guests or invitees. Food items may not be taken off the premises; however, excess prepared food may be donated under regulated conditions to agencies feeding the underprivileged as requested by Licensee.

(a) **Responsibility of Licensee.** Licensee shall abide by and conform to all terms, conditions and pricing outlined in the Facility's menu packet which has been provided to Licensee and which is incorporated by reference into this Use License Agreement.

(b) **Banquet Event Orders (BEO).** The Catering Sales Manager will prepare a Banquet Event Order which will outline the complete menu, expected attendance, beverage services, special services and associate pricing at a later date when Licensee provides initial catering requirements. Licensee must sign off on all Banquet Event Orders, which are then incorporated as a binding addendum to the Use License Agreement. No food and beverage services will be ordered, scheduled, prepared or provided by SMG until contracted with a signed Banquet Event Order.

(c) **Pricing.** Menu pricing, equipment rentals, specialty linen and other food and beverage special services are not guaranteed until the execution of a signed Banquet Event Order for services requested.

(d) **Minimum Guarantee.** Charges are determined on a per person basis. *Guaranteed Attendance* must be provided to the Catering Sales Manager no later than three (3) business days prior to your function. In the event Licensee does not provide the

Guaranteed Attendance, in writing, by the required date for that service SMG will use the *Attendance Expected* listed in the Banquet Event Order for that function as the *Guaranteed Attendance*. Licensee agrees to pay the greater of actual or guaranteed attendance. We will do our best to accommodate an increase in attendance within 72 hours of the beginning of the function, however there is no guarantee of product. An additional charge will be calculated at 1.5 times the original agreed upon per person price for the added guests above the final guaranteed number. A minimum guarantee of (25) people is required for all meal functions; otherwise a \$150.00 service fee shall apply.

(e) **Bar Service.** A bartender fee per each bar shall apply for bar services requested. The bartender fee will be waived if the minimum per bar sales is met. An additional bartender labor fee will be charged for any services over six hours. SMG requires (1) bar per 150 people expected. Additionally, SMG requires bar security for each bar requested, the cost of which is borne by Licensee. All bar service charges are subject to Oklahoma Sales and Liquor Taxes and/or service fee. SMG practices responsible alcohol service and therefore reserves the right to refuse alcohol service to anyone, including the right to terminate the service of alcoholic beverages of your event if deemed necessary by SMG.

(f) **Concessions.** It is the discretion of Savor...Tulsa Catering by SMG to offer concessions services based on event information and history. Should Savor... Tulsa Catering by SMG decides not to offer concessions due to past event history or anticipated low traffic flow, it will be the clients option to "guarantee" minimal revenue of concession services. Minimal guarantees are based upon menu selections. The guarantee must be put in place no less than ten days prior to the event date.

(g) **Service Fee & Taxes.** A taxable 20% service charge will be applied to all food and beverage sales (including alcohol). A Sales Tax (currently 8.517%) will be added to all items to include food, non-alcoholic beverages, alcoholic beverages (low-point and high-point alcohol products), labor, rental, floral and service charges. An additional Mixed Beverage Gross Receipts Tax (currently 13.50%) will be applied to any alcoholic beverages purchased (high point alcohol only). Guaranteed prices will be confirmed with a signed contract and specified deposit.

(h) **Payments.** A deposit equal to 25% of the total amount catering service based on signed Banquet Event Orders is due when you book or hold space for a food and beverage event. A deposit of 50% of the remaining balance is due thirty days prior to the event. The remaining balance is due along with the signed BEO contract, by the date specified in the catering contract to guarantee services 72 hours prior to event. Any on-site adjustments, additions or replenishments of the contracted catering services will be reflected on the Catering Summary provided at the conclusion of the Event. The catering department does not extend direct billing. As such, a guarantee payment is required for all functions. The Catering Department will process/pre-approve credit card payments for any balance due three (3) business days prior to Event move-in.

(i) **Cancellation.** All deposits made are non-refundable.

15. Civil Rights Act. During the performance of this Agreement, Licensee shall comply fully with Title VI and Title VII of the Civil Rights Act of 1964, as amended, and all other regulations promulgated thereunder, in addition to all applicable state and local ordinances concerning Civil Rights.

16. Americans With Disabilities Act. With respect to any Event at the Facility, Licensee recognizes that it is subject to the provisions of Title III of the Americans With Disabilities Act, as amended, and all similar applicable state and local laws (collectively, the "ADA"). Licensee represents that it has viewed or otherwise apprised itself of the access into the Facility, together with the common areas inside, and accepts such access, common areas, and other conditions of the Facility as adequate for Licensee's responsibilities under the ADA. Licensee shall be responsible for ensuring that the Facility complies and continues to comply in all respects with the ADA, including accessibility, usability, and configuration insofar as Licensee modifies, rearranges or sets up in the Facility in order to accommodate Licensee's usage. Licensee shall be responsible for any violations of the ADA, including, without limitation, those that arise from Licensee's reconfiguration of the seating areas or modification of other portions of the Facility in order to accommodate Licensee's usage. Licensee shall be responsible for providing auxiliary aids and services that are ancillary to its usage and for ensuring that the policies, practices, and procedures it applies in connection with an Event are in compliance with the ADA.

17. Use of Information. Licensee hereby acknowledges and agrees that SMG shall have the right to disclose to recognized industry sources that track event activity information relating to any Event, including, without limitation, the identity of performers or other participants of the Event, attendance figures, and gross ticket revenue for the Event.

18. Construction of this Agreement

(a) Choice of Law. This Agreement shall be deemed to be made, governed by, and construed in accordance with the laws of the State of Oklahoma without giving effect to the conflict of law principles thereof. The parties agree that venue of any action arising out of this Agreement or incident thereto shall be proper in a court of competent jurisdiction in Tulsa County, Oklahoma and each party waives any objection to such venue.

(b) Paragraph Headings. The paragraph headings are inserted herein only as a matter of convenience and do not affect the terms of this agreement.

(c) Entire Agreement; Amendments. This Agreement (including all Exhibits and other documents and matters annexed hereto or made a part hereof by reference) contains all of the representations, warranties, covenants, agreements, terms, provisions, and conditions relating to the rights and obligations of SMG and Licensee with respect to the Facility and the Event. No alterations, amendments, or modifications hereof shall be valid unless executed by an instrument in writing by the parties hereto. Without limiting the generality of the foregoing, it is expressly understood and agreed by the parties hereto that no officer, director, employee, agent, representative, or sales person of either party hereto, or of the city, TPFA or any third party has

the authority to make, has made, or will be deemed to have made, any representation, warranty, covenant, agreement, guarantee, or promise with respect to the financial success or performance, and/or other success, of the Event. The Licensee hereby acknowledges and agrees that any assessment of the financial success or performance, and/or other success, of the Event is solely that of the Licensee's own determination and judgment.

(d) Severability. If any provision or a portion of any provision of this Agreement is held to be unenforceable or invalid by a court of competent jurisdiction, the validity and enforceability of the enforceable portion of any such provision and/or the remaining provisions shall not be affected thereby.

(e) Time. Time is of the essence hereof, and every term, covenant, and condition shall be deemed to be of the essence hereof.

(f) Successors. This Agreement shall be binding upon, and shall inure to, the benefit of the successors and assigns of SMG, and to such successors and assigns of Licensee as are permitted to succeed to the Licensee's right upon and subject to the terms hereof.

(g) Independent Contractor; No Partnership. SMG and Licensee shall each be and remain an independent contractor with respect to all rights and obligations arising under this Agreement. Nothing herein contained shall make, or be construed to make, SMG or Licensee a partner of one another, nor shall this Agreement be construed to create a partnership or joint venture between and of the parties hereto or referred to herein.

(h) Singular and Plural. Whenever the context shall so require, the singular shall include the plural, and the plural shall include the singular.

19. Miscellaneous.

(a) Waiver. The failure of any party to enforce any of the provisions of this Agreement, or any rights with respect hereto, or the failure to exercise any election provided for herein, will in no way be considered a waiver of such provisions, rights, or elections, or in any way affect the validity of this Agreement. The failure of any party to enforce any of such provisions, rights, or elections will not prejudice such party from later enforcing or exercising the same or any other provisions, rights, or elections which it may have under this Agreement.

(b) Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned or transferred in any manner whatsoever by Licensee without the prior written consent of SMG to the extent City and/or TPFA retains another management company to manage the Facility or undertakes to manage the Facility, any references to SMG herein shall be deemed changed to reference such management company, as agent for City and/or TPFA, or to City and/or TPFA, as the manager of the Facility.

(c) Notices. Any notice, consent, or other communication given pursuant to this Agreement shall be in writing and shall be effective either (i) when delivered personally to the party for whom intended, (ii) upon delivery by an overnight courier services that is generally

recognized as reliable, and the written records maintained by the courier shall be prima facie evidence of delivery, or (iii) on delivery (or attempted delivery) by certified or registered mail, return receipt requested, postage prepaid, as of the date shown by the return receipt; 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.

If to SMG: SMG-Tulsa Convention Center
100 Civic Center
Tulsa, OK 74103
Attention: Deedy Johnson

If to Licensee: Sandy Cedar
Board of County Commissioners
on behalf of Tulsa County Treasurer's Office
500 S. Denver
Tulsa, OK 74103

(d) Non-Exclusive Use. SMG shall have the right, in its sole discretion, to use or permit the use of any portion of the Facility other than the Authorized Areas to any person, firm or other entity regardless of the nature of the use of such other space.

(e) Force Majeure. If the Facility is damaged from any cause whatsoever or if any other casualty or unforeseeable cause beyond the control of SMG, including, without limitation, acts of God, fires, floods, epidemics, quarantine restrictions, terrorist acts, strikes, labor disputes, failure of public utilities, or unusually severe weather, prevents occupancy and use, or either, as granted in this Agreement, SMG is hereby released by Licensee from any damage so caused thereby.

(f) Acts and Omissions of Third Parties. SMG shall not be liable in any way for any acts and/or omissions of any third party to this Agreement, including, without limitation, any ticket agency used by SMG in connection with the sale of tickets for any Event.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first written above.

SMG -Tulsa Convention Center,
100 Civic Center
Tulsa, OK 74103

By: _____ Date: _____

Name: Janet L. Rockefeller
Title: Assistant General Manager

By signing below Client asserts that this Use License Agreement has been accepted as presented by SMG-Tulsa Convention Center; without any alteration or amendment to its content.

**Board of County Commissioners
On behalf of Tulsa County Treasurer's Office**

By: _____ Date: _____

Name: **Karen Keith**
Title: **Chairperson**

Only Summer McKerrell, Sandy Cedar and Steve Blue have authority to make changes to event details including, but not limited to: event dates, set up, additional equipment/labor, and food & beverage, all of which may incur additional charges. Requests by any other parties must be approved by Karen Keith in writing.

Initials: _____


APPROVED AS TO FORM
ASSISTANT DISTRICT ATTORNEY

EXHIBIT A TO USE LICENSE AGREEMENT

<u>Authorized Area/Cost Per Day</u>	<u>Day</u>	<u>Date</u>	<u>Time of Use</u>	<u>Purpose</u>
Conference Hall AB	Sunday	June 8, 2014	12:00 pm - 8:00 pm	Move-In
Conference Hall AB	Monday-Thursday	June 9-12, 2014	7:00 am - 11:00 pm	Auction and Move-Out

Event Hours:
8:00 am - 4:00 pm Daily

Conference Hall AB at \$200/day (discounted from \$500) for 1 day of move-in = \$200
 Conference Hall AB at \$400/day (discounted from \$500) for 4 days = \$1,600

Discounted rates apply to the 2014 event only. Future events will be at published rates.

TOTAL RENTAL AMOUNT: \$1,800

REIMBURSABLE EXPENSES ESTIMATE FOR THIS EVENT:

<u>Quantity</u>	<u>Equipment</u>	<u>Cost Per Item</u>	<u>Total for Event</u>
2	2 mics	\$50.00	\$100.00
1	Public IP & 6.0 mbps	\$750.00	\$750.00
12	stanchions	\$5.00	\$60.00
32	Tables	\$25.00	\$800.00
10	20 amps	\$25.00	\$250.00
2	2-6x8 screens	\$75.00	\$150.00
400	chairs	\$1.00	\$400.00
6	Staging	\$8.00	\$48.00
400	chairs	\$1.00	\$400.00

* Additional ancillary charges will be determined by the Event Services Department and will be billed at published rates.

TOTAL REIMBURSABLE EXPENSES DEPOSIT AMOUNT: \$2,958

Full license fee is due no later than ten (10) business days prior to event .

EXHIBIT B TO USE LICENSE AGREEMENT
SMG TULSA CONVENTION CENTER

1. **Additional Reimbursable Service Expenses.** At the request of Licensee, the following special facilities, equipment, materials, and extra services will be furnished by SMG for the Event. An ancillary charge list is attached for Licensee and is made a part of this agreement.

- **See Reimbursable Services and Expenses estimate on Exhibit A for quoted pricing. Any additional items not included on the estimate will be billed at published rates.**
- All tables, chairs and black or white lap-length linens will be complimentary for the purpose of serving SAVOR food and beverage.
- All staffing is priced according to attached list of services and equipment rates. All staffing is a 4 hour minimum charge.
- Security is based on the type of event. Police Security is required during all events at which alcohol is served. Number and type of facility security is determined by and arranged through the Facility's Event Services Manager and Security Manager.
- Additional security will be required for any hours outside the Facility's normal business hours of 8 am-11 pm and charges will be billed to the Client.
- Additional ancillary charges will be determined by the Event Services Department and will be billed at published rates.

2. **Payment of License Fee, and Reimbursable Services Expenses.**

(a) **Fixed License Fee:** The fixed License Fee (Total Rental. Amount) set forth in Exhibit A above shall be paid in accordance with the following schedule:

- (i) A deposit in the amount of 25% of the Total Rental Amount shown in Exhibit A is due thirty (30) days after the date of this contract.
- (ii) The remaining 75% of the Total Rental Balance shall be paid no later than Ten (10) business days prior to the event
- (iii) Reimbursable Services Expenses Deposit shall be paid no later than ten (10) Business days prior to the event.

Use License Agreement and 25% Rental Deposit due July 25, 2013:	\$ 450
Certificate of Insurance or letter of Self-Insurance due May 23, 2014.	
Total Rental Amount Balance due May 23, 2014:	\$1,350
Reimbursable Services Expenses Deposit due May 23, 2014:	\$2,958

Grand Total:	\$4.758
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A deposit equal to 25% of the total amount catering service based on signed Banquet Event Orders is due when you book or hold space for a food and beverage event. A deposit of 50% of the remaining balance is due thirty days prior to the event. The remaining balance is due along with the signed BEO contract, by the date specified in the catering contract to guarantee services 72 hours prior to event.

Please initial below after having read the list of services and equipment rates. Ancillary charges will be determined by Facility's Event Services Department and will be billed according to list below.

Initials _____

SMG Tulsa Equipment Rates

All equipment rentals/purchases are subject to Oklahoma Sales Tax.

All prices are based on current inventory. Prices subject to change when orders exceed current inventory.

Equipment Rates

Chairs	\$1.00	each/daily
Chairs on Portable Risers	\$2.00	each/daily
Tables - Bare	\$5.00	each/daily
Tables - Draped	\$25.00	each/daily
8 ft. Pipe and Drape	\$2.00	linear ft.
Easels	\$2.00	each/daily
Pallet Jack	\$50.00	each/daily
Forklift	\$100.00	each/daily
Genie Man Lift	\$150.00	each/daily
Scissor Lift	\$150.00	each/daily

Risers and Staging

4' x 8' sections of staging	\$8.00	each/daily
6' x 8' sections of staging	\$10.00	each/daily
8' x 8' sections of staging	\$15.00	each/daily
Dance Floor	\$0.25	sq. ft.
Bicycle Rack	\$5.00	each/daily
Rope & Stanchions	\$5.00	each/daily

Electric

20AMP 120volt 1 Phase	\$25.00	each/daily
Fused Power Strip	\$10.00	each/daily
Spider Box	10 - 20AMP 120volt	\$150.00 each/daily

Ballroom Lighting and Truss

Equipment is included complimentary with rental of the ballroom. Staffing to adjust or operate equipment will be billed at hourly rate.

Telephone & Internet

Telephone Line w/instrument & Long Distance	\$175.00	each
1.5Mbps (T-1) w/1 Public IP	\$250.00	each
6.0Mbps w/1 Public IP	\$750.00	each
Additional Public IP Address	\$15.00	each

Audio Visual Rates

Overhead Projector	\$50.00	each/event
Meeting Room Projector	\$250.00	each/event
42" Television	\$75.00	each/event
Blu-Ray, DVD, VHS Player	\$50.00	each/event
TV/Blu-Ray,DVD, VHS Combo	\$100.00	each/event
Wired Microphone	\$15.00	each/event
Wired Lavalier Microphone	\$15.00	each/event
Wireless Microphone	\$50.00	each/event
Cassette Deck	\$50.00	each/event
Compact Disk Player	\$50.00	each/event
Small Portable Sound System	\$100.00	each/event
includes 2 speakers, CD Player, Mixer and Wired Microphone		
Page Microphone	\$75.00	each/event
Flipchart stand, Pad and Markers	\$30.00	each/event
Dry Erase Board & Markers	\$30.00	each/event
Flipchart stand, Pad and Markers	\$30.00	each/event
Dry Erase Board & Markers	\$30.00	each/event
Red, Blue, Green and Black Colors Provided		
Audio Patch Fee	\$36.00	each/event

Screens

4' Traveller Screen	\$25.00	each/event
7' Traveller Screen	\$40.00	each/event
6'x8' Rear or Front Projection	\$75.00	each/event
10'6"x14' Rear or Front Projection	\$150.00	each/event

Ground setup for all screens is included in price

Expendables - Purchase

Flip Chart Pads	\$20.00	each/daily
Flip Chart Markers	4 Colors	\$3.50 each/daily
Overhead Markers	4 Colors	\$3.00 each/daily
Dry Erase Markers	4 Colors	\$5.00 each/daily
Audio Blank Tapes	\$5.00	each/daily
Batteries: AAA, AA, C, D	\$2.00	each/daily
Battery: 9v	\$2.50	each/daily
Masking Tape Roll	\$5.00	each/daily
Gaff Tape Roll	\$25.00	each/daily

All rates are subject to change

SMG Tulsa has a complete Audio & Video Department that can assist you with your needs. If you need anything that is not listed, please contact your Event Coordinator to assist you.

There will be a 20% surcharge for all equipment rented on the day of show

Price schedule as of 2/1/2012

PERSONNEL (hourly, 4 hour minimum guaranteed):

A/V Technician hourly rate (in-house):	\$25.00 per hour
Light Board Operator (in-house):	\$25.00 per hour
Sound Board Operator (in-house):	\$25.00 per hour
I.A.T.S.E:	Please call for rates.
Off-duty officers:	\$25.00 per hour for TPD officer
	\$30.00 per hour for TPD supervisor
Event Security:	Please call for rates.

FOOD & BEVERAGE

General Concession Stand:

SMG will charge a \$250.00 deposit for 4 hours. This deposit is ONLY refundable if the sales are over \$550.00. If the \$250.00 is not paid SMG will not offer concessions.

Insurance in the amount of \$1 million for general liability is required for all events and can be provided by a private carrier or through SMG for a nominal fee. Please contact sales for more information.