

**AMENDMENT AND ADDENDUM TO THE  
“CONVENTION CENTER MANAGEMENT AGREEMENT  
FOR  
SALEM CONVENTION CENTER”**

THIS ADDENDUM is made by and between the Urban Renewal Agency of the City of Salem (the “Agency”), an Oregon quasi-municipal corporation, and The Salem Group, LLC, an Oregon limited liability company (the “Manager”), (collectively the “Parties”) to the Convention Center Management Agreement for Salem Convention Center, dated July 18, 2003 (the “Management Agreement”). The purpose of this Amendment and Addendum is to set out the Parties’ responsibilities and obligations for marketing activities for the Salem Convention Center, which marketing activities are funded in part by Transient Occupancy Tax (“TOT”) revenues.

**RECITALS**

The Agency has proposed a temporary change in the funding of Salem Convention Center marketing activities by setting its annual TOT revenue contribution to a fixed amount of \$300,090 (three hundred thousand and ninety dollars) for Fiscal Year 2019-20. The balance of the \$354,420 (three hundred fifty four thousand four hundred and twenty dollars) Marketing Budget for Fiscal Year 2019-2020 is to be funded by Salem Convention Center income.

NOW, THEREFORE, IN CONSIDERATION of the rights and obligations of the Parties, the Parties agree as follows:

**ARTICLE 1  
MANAGER’S OBLIGATIONS**

1.1 Marketing Plan and Budget. The Manager shall prepare and deliver to the Agency a detailed annual Marketing Plan and a Marketing Budget that corresponds to the Marketing Plan for the Agency’s review. Notwithstanding Article 5.1 of the Management Agreement, in the future the Manager will submit the recommended Marketing Plan and Marketing Budget to the Agency no later than the January 6 preceding the Fiscal Year covered by the Marketing Plan and Marketing Budget.

1.1.1 The Parties shall approve the Marketing Plan and Marketing Budget by the June 30 preceding the Fiscal Year covered by the Marketing Plan and Marketing Budget, which approvals shall not be unreasonably withheld. Upon mutual approval of the Marketing Plan and the Marketing Budget, the Manager will undertake marketing efforts, as set out in the Marketing

Plan, to market the use of the Salem Convention Center for conventions, conferences, meetings, and seminars, including local business, civic, and social events.

1.1.2 The Marketing Plan will describe the Manager's approach to marketing and promoting the Salem Convention Center including, but not limited to, the Manager's marketing strategy, target markets, and expected results. The Marketing Plan will include the following activities and will satisfy the following particulars:

(a) Web Site. The Marketing Plan will include design and display of a web site that promotes the Salem Convention Center and is attractive to visitors, professionally designed, user-friendly, easy to navigate, and linked to related sites as practicable.

(b) Promotion Materials and Advertising. The Marketing Plan will include preparation, publication, and distribution of accurate and easy-to-read promotion materials that encourage the use of the Salem Convention Center for conventions, conferences, meetings, and seminars, including local business, civic, and social events. Any promotion materials prepared by the Manager funded in whole or in part under this Addendum shall be representative of the Salem Convention Center and shall include a statement that the promotion materials were made possible in part by funding from the City of Salem Transient Occupancy Tax. The Manager shall supply promotion materials to appropriate venues for display and distribution.

(c) Convention and Meeting Sales. The Marketing Plan will demonstrate how the Manager will market convention and meeting sales in a manner designed to maximize the use of the Salem Convention Center.

(d) Meeting Planner Events and Trade Shows. The Marketing Plan will include attendance at meeting planner events and trade shows. The purpose of attending is to market the Salem Convention Center. The Manager will take into account and coordinate with the City of Salem's, or its contractor's, tourism and promotion efforts when determining which meeting planner events and trade shows to attend.

(e) Performance Measures. The Manager will establish in the Marketing Plan performance measures to gauge the Marketing Plan's success.

1.1.3 The Marketing Budget will conform to the following particulars:

(a) Line Item Budget. The Marketing Budget will be in line-item form and will specify salary costs by employee, employee benefits, and direct expenses for marketing. The Marketing Budget will show direct marketing expenses, including, but not limited to, the following categories: memberships, tradeshow, special events, advertising/publications, mailings, Internet/website services, promotional and travel, marketing campaigns, strategic marketing, audit, and stationary/supplies.

(b) Subcontractors. If the Manager contracts for services, the Manager will identify those services and costs in the Marketing Budget.

(c) Compliance with Charter. The Marketing Budget will provide sufficient detail to show the TOT revenues are being used exclusively for promotion of the Salem Convention Center in accordance with the requirement in Section 56 of the City of Salem Charter.

(d) Joint Marketing Efforts. The Marketing Budget will show proportional cost sharing if the purpose of an ad or marketing activity is designed to also benefit specific businesses or agencies other than, or in addition to, the Salem Convention Center.

1.2 Plan and Budget Adjustments. The Manager will not adjust the Marketing Plan without the Agency's written consent. The Manager may make adjustments to the Marketing Budget without the Agency's written consent so long as those changes are consistent with the Marketing Plan and do not result in an expenditure of funds in excess of the approved Marketing Budget. The Manager will not make any other changes to the Marketing Budget without the Agency's written consent.

## **ARTICLE 2 REPORTING AND ACCOUNTABILITY**

2.1 Availability of Information. The Manager shall, upon request by the Agency Board or Executive Director, make knowledgeable personnel available to report to and discuss with the Board, Executive Director, or designee, the Manager's activities, plans, and performance under this Addendum. All marketing records shall be open to inspection by the Agency's authorized representative upon reasonable written notice to the Manager.

2.2 Non-discrimination. The Manager warrants it will not discriminate against or accord different or unequal treatment to any person, firm, or organization in employment or provision of services under this Addendum on the basis of such person's, firm's, or organization's racial or ethnic background, sex, handicap, or religious or political beliefs or affiliation.

2.3 Restraint of Trade. The Manager will not enter into, be part of, or act to further any contract, combination, or conspiracy in restraint of trade or commerce with respect to its activities in furtherance of its performance under this Addendum.

2.4 Indemnity. The activities performed under this Addendum are added to the list of activities covered under the indemnification provisions of Article 14 of the Management Agreement.

2.5 Ethics Provisions. In the performance of this Addendum, the Manager shall follow the ethics provisions stated below:

2.5.1 The employees, officers, and directors of the Manager and the Manager's affiliates shall be held to the highest ethical standards. Any potential conflicts of interest shall be promptly disclosed to the Agency.

2.5.2 No officer or director of the Manager or the Manager's affiliates concurrently will be a member of a permanently established advisory body to either the City of Salem or the Agency having the authority to recommend or approve funding for the Manager.

## 2.6 Reporting/Audit.

2.6.1 Marketing Statements. The Manager shall deliver to the Agency within 20 (twenty) days after the end of each month a Marketing Statement outlining all marketing activities, including the receipt of TOT revenues, the Salem Convention Center income contribution, and marketing expenses for the preceding month and for the Fiscal Year-to-date certified to be accurate by the Salem Convention Center's General Manager. The Marketing Statements shall be in line-item form, include a comparison of results for the month and Fiscal Year-to-date to such periods for the prior Fiscal Year (and when requested by the Agency, to such periods in the Marketing Budget), and be accompanied by a Marketing Balance Sheet as of the close of the accounting period.

2.6.2 Quarterly Reports. The Manager shall deliver to the Agency within 30 (thirty) days after the end of each calendar quarter a Quarterly Report of activities, results, marketing expenses, TOT and other related revenue receipts, and required standards and performance measures in a format acceptable to the Agency. When requested by the Agency, the Manager will meet with the Agency after submission of each Quarterly Report to provide feedback on performance and results and to determine any adjustments to the standards, performance measures, Marketing Plan, or the scope of work required by the Agency. Should the Manager not provide finalized and accurate Quarterly Reports that correspond to the approved Marketing Plan and Marketing Budget, the Agency may assess the Manager, and if so assessed the Manager will pay, a penalty of \$500 (five hundred dollars) per week for each week or partial week a Quarterly Report is late. The Quarterly Reports will include the following information:

(a) Number of events held at the Salem Convention Center, estimated number of participants, and comparisons to monthly and quarterly data from the previous year.

(b) Financial performance of the Salem Convention Center, including operating revenues and expenses, TOT revenue appropriations for Salem Convention Center marketing and marketing expenses, and comparisons to quarterly revenues and expenses from the previous year.

(c) Number of ad/promotional placements and the Salem Convention Center's proportional share of those costs.

(d) Number of meeting planner events and trade shows attended and results.

(e) Number of web site visits and submitted on-line Requests for Proposal.

2.6.3 Audit. Within 150 (one hundred fifty) days after the end of the Fiscal Year, the Manager shall deliver to the Agency an annual Marketing Statement and Marketing Balance Sheet, audited and certified by an independent Certified Public Accountant. The cost and expense of such audited statements shall be a marketing expense. If such audit is requested by the Agency prior to the end of the Fiscal Year, then the Agency shall pay for the cost thereof and not as a marketing expense.

2.7 Books and Records. The Manager shall keep and maintain accurate and complete books of account and other records detailing receipts and expenditures related to marketing the Salem Convention Center on an accrual basis in accordance with generally accepted accounting practices. Such books of account and other records shall be kept separate and identifiable from all other books of account and records. The books of account and all other records relating to or reflecting marketing of the Salem Convention Center shall be kept either at the Salem Convention Center or at the Hotel Facility, and shall be available to the Agency, its agents and representatives, including but not limited to its auditors and accountants, at all reasonable times for examination, audit, inspection, and transcription. All such books and records pertaining to marketing the Salem Convention Center at all times shall be the property of the Agency and shall not be removed from the Salem Convention Center or the Hotel Facility by the Manager without the Agency's approval.

### **ARTICLE 3 MARKETING FUNDING**

3.1 Level of Funding. The Agency recognizes the success of the Salem Convention Center depends, in part, on funding marketing activities. The Agency also recognizes that the Manager's operating performance guarantee in the Management Agreement depends, in part, on the Agency adequately funding marketing activities.

3.2 Appropriation of TOT Revenue. For Fiscal Year 2019-20, the Agency will provide TOT revenues of \$300,090 (three hundred thousand and ninety dollars) to market the Salem Convention Center.

3.3 Schedule of TOT Payments. Upon mutual approval of the Marketing Plan and the Marketing Budget in accordance with Article 1.1 of this Addendum, the Agency shall pay the Manager the first month's appropriation of TOT revenues within 15 (fifteen) days of the execution of this Addendum or by July 1 of the Fiscal Year, whichever is later, and the second month's appropriation of TOT revenues within 15 (fifteen) days of the execution of this

Addendum or by August 1 of the Fiscal Year, whichever is later. The Agency will, unless it disputes the monthly Marketing Statements or Marketing Balance Sheets or has not received accurate and finalized Marketing Statements or Marketing Balance Sheets by the established time frames, make subsequent monthly TOT revenue payments in advance by the first day of each month. These monthly appropriations shall be equal to one-twelfth (1/12) of the total Fiscal Year TOT revenue appropriation of \$300,090 (three hundred thousand and ninety dollars).

3.5 Effect of Shortfall in TOT Revenues. Should TOT revenues received by the Agency be less than \$300,090 (three hundred thousand and ninety dollars) for Fiscal Year 2019-20, the Agency may adjust payments to the Manager. Prior to adjusting payments, should this occur, the Agency and the Manager will meet to determine which elements of the Marketing Plan and Marketing Budget shall be adjusted, based on the results of the marketing and promotion efforts, and the Agency's marketing obligation as outlined in the Management Agreement. Should the Agency reduce TOT revenue payments to the Manager for Salem Convention Center marketing, the Manager may reduce any amounts owed to the Gain-Loss Reserve Account by a proportionate percentage amount.

#### **ARTICLE 4 ADMINISTRATION**

Contract Administration. Administration of this Addendum shall be provided by the Urban Development Director or the Urban Development Director's designee.

#### **ARTICLE 5 TERM AND TERMINATION**

Unless sooner terminated as herein provided, this Addendum shall be in effect on the date of the last signature below and shall terminate on June 30, 2020. Upon the expiration or termination of this Addendum, for whatever reason, the Manager shall present to the Agency any unexpended TOT revenues.

#### **ARTICLE 6 USE OF TOT REVENUES**

Eligible Expenditures. The Manager will use TOT revenues only to market the Salem Convention Center and will ensure TOT revenues are used efficiently and effectively and in accordance with Section 56 of the City of Salem Charter, all other applicable laws, this Addendum, and the public purpose for which this Addendum is entered. The Manager assumes financial responsibility for any expenditure not authorized by law. Alcohol products are not an eligible expense under this Addendum.

#### **ARTICLE 7 MISCELLANEOUS**

7.1 Entire Agreement. This Addendum shall constitute the entire agreement by and between the Parties with respect to the subject matter hereof, and no other warranties, inducements, considerations, promises, or interpretations shall be implied or impressed upon this Addendum that are not expressly addressed herein and therein.

7.2 Agency. Neither Party to this Addendum nor the officers, employees, or agents of either Party are agents of the other. Each Party shall be separately and exclusively responsible for acts, errors, and omissions of its own officers, employees, and agents except to the extent provided under the indemnity provisions of this Addendum.

7.3 Amendment. No changes or modifications of this Addendum shall be binding unless made in writing and executed by the duly authorized representatives of both Parties.

7.4 Compliance with All Laws/Governmental Orders. The Parties shall at all times observe and comply with all applicable laws, ordinances, rules, regulations, and executive orders of the federal, state, and local government now existing or hereinafter in effect, which may in any manner affect the performance of this Addendum, including, without limitation, the provisions of ORS 279B.220, 279B.235, and 279B.230, which by this reference are made a part hereof.

7.5 Waiver. Whenever under this Addendum either party, by a proper authority, waives either party's performance in any respect or waives a requirement or condition of either party's performance, the waiver so granted, whether express or implied, shall only apply to the particular instance and shall not be deemed a waiver forever of subsequent instances of the performance, requirement, or condition. No such waiver shall be construed as a modification of this Addendum regardless of the number of times that either party may have waived performance, requirement, or condition.

7.6 Authority. The persons signing this Addendum on behalf of the Manager represent and warrant that such persons and the Manager have the requisite power and authority to enter into, execute, and deliver this Addendum and that this Addendum is a valid and legally binding obligation of the Manager enforceable against the Manager in accordance with its terms.

7.7 Termination. The Agency may terminate its obligations under this Addendum upon delivery of written notice to the Manager if:

(a) The Manager fails to provide services or fulfill obligations required by this Addendum.

(b) Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the work under this Addendum is prohibited or the Agency is prohibited from paying for such work.

7.8 Communication Between the Parties. All verbal and written communication, including required reports and submissions under this Addendum, shall be between the Agency

and the Manager, except as provided below under Notices.

7.9 Notices. Any notices sent to the Agency shall be mailed by ordinary First Class mail, postage prepaid, to:

Director, Urban Development Department  
350 Commercial Street NE  
Salem, OR 97301

With a copy to:

City Attorney  
Legal Department  
555 Liberty Street SE, Rm 205  
Salem, OR 97301

Any notices sent to the Manager shall be mailed by ordinary First Class mail, postage prepaid, to:

Steven V. Johnson, President  
The Salem Group, LLC  
201 Liberty Street SE  
Salem, OR 97301

7.10 Severability. The invalidity or unenforceability of any term or provision of this Addendum to any person or circumstances shall not affect or impair the validity or enforceability of any other term or provision contained herein to persons or circumstances other than those to which it is held invalid or unenforceable.

7.11 Rule of Construction. Any rule of construction interpreting this instrument against its drafter shall be inapplicable.

7.12 Assignment. The Manager may not assign or transfer its rights or obligations under this Addendum without the prior written consent of the Agency. The Agency's right to consent to assignment shall not be subject to the provisions of ORS 105.190.

7.13 Attorneys Fees. If litigation is instituted with respect to this Addendum, the prevailing party shall be entitled to recover from the losing party, in addition to all other sums and allowable costs, its reasonable attorney fees, both in preparation for and at trial and any appeal or review, such amount to be set by the court before which the matter is heard.

7.14 No Third Party Beneficiaries. Each party intends that this Addendum does not benefit, or create any right or cause of action in or on behalf of, any person or entity other than, to the extent provided for in this Addendum, the Agency or the Manager.

