

Audit of the first Amphitheater Event “Miranda Lambert Concert” of September 3, 2015

By Onondaga County Comptroller Robert E. Antonacci II, CPA, Esq.

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I. Background

On September 3, 2015, the Onondaga County Lakeview Amphitheater held its inaugural concert featuring Miranda Lambert (the “Concert”). The Lakeview Amphitheater was managed pursuant to an amended contract by SMG, who currently operates the OnCenter Complex. During the Onondaga County Legislature’s 2016 budget hearings, Deputy County Executive William Fisher stated the concert performed similar to what was anticipated and referenced a “Proforma P&L” presented to the Legislature a year earlier. Nearly three months after the Concert, an “Event Income Statement” was released showing the County made a \$2,313.00 profit on the concert.

II. Executive Summary

An “Event Income Statement” was released claiming Onondaga County (the “County”) made a profit of \$2,313.00. Subsequent investigation by the Department of Audit and Control has found this to be false. In addition, the “Event Income Statement” presented by SMG was not prepared by SMG, but was instead prepared by Deputy County Executive William Fisher. The “Event Income Statement” failed to disclose a subsidy from the New York State Department of Agriculture & Markets anticipated for \$119,035.88. Without this subsidy, the Concert would have lost in excess of \$100,000.00. As of the writing of this report, the subsidy has not been received by SMG or the County, leaving the taxpayers of Onondaga County responsible for the purported subsidy of \$119,035.88. Additional findings reveal material misstatements, inconsistency and lack of internal control over the financial operations of the Concert.

III. Scope and Objectives

The purpose of this audit was to review the Financial Statement presented to the Comptroller’s office and to examine the policies, procedures and Internal Controls over the financial operations of the Miranda Lambert Concert that was held on September 3, 2015.

Our objective was to perform a risk assessment to identify any potential risk of material misstatement in the financial statements and to review the financial operations according to the written policies and procedures. During the course of the investigation, additional questions and concerns were raised:

- 1) Why SMG, the County’s agent for purposes of the Concert, did not prepare the provided “Event Income Statement”;
- 2) Irregularities in the contract procedures; and
- 3) Failure to document which entities (County, SMG, Live Nation, or New York State) were responsible for certain costs.

IV. Methodology

In order to complete our objective we:

- 1) Reviewed publicly available material and material provided by SMG;
- 2) Interviewed and requested documents from relevant County officers;
- 3) Analyzed and compared expected, required, and best practices to the operation of the Concert;
- 4) Discussed draft recommendations with the County Executive's Office and SMG for their input and practicality evaluation; and
- 5) Finalized recommendations and included them in this report.

V. Findings

- 1) The initial "Event Income Statement" provided by SMG and released November 20, 2015 (see attached Exhibit "A") for the Concert was not presented in accordance with Generally Accepted Accounting Principles ("GAAP"). The statement was not complete as it did not recognize revenue from ticket sales and did not disclose all the expenses associated with the concert thus failing to report the concert had a loss in excess of \$100,000. The expenses that were disclosed were not in compliance with the SMG/Onondaga Management and Operations contract. When this was questioned by the Comptroller's office, a second statement was presented.

Recommendation: Preparation of financial statements for SMG-handled events should be completed by SMG's Department of Finance and in accordance with GAAP.

- 2) The second "Event Income Statement" was provided to the Department of Audit and Control on January 7, 2016 (see attached Exhibit "B"). The second statement still failed to address the exceptions mentioned in the initial statement as well as failing to disclose the loss in excess of \$100,000 and a subsidy in the amount of \$119,035.88 from NYS Department of Agriculture & Markets. The letter of acknowledgement from the NYS Department of Agriculture & Markets was received by email on December 30, 2015 (see attached Exhibit (C)).

Recommendation: Preparation of financial statements for SMG-handled events should be completed by SMG's Department of Finance and in accordance with GAAP. Any and all agreements should be completed and signed prior to the occurrence of the subject matter of the agreement.

- 3) The Department of Audit and Control requested a meeting with the SMG staff to discuss the issuance of the second statement. It was revealed that the statements were not prepared by SMG; they were prepared by Deputy County Executive William Fisher, despite previously being lead to believe SMG prepared the statement.

Recommendation: Preparation of financial statements for SMG-handled events should be completed by SMG's Department of Finance and in accordance with GAAP.

- 4) The concert promoter was originally established by a contract between Live Nation and SMG, as the County's Agent (see attached Exhibit "D"). The contract called for, among other things, "i) SMG shall retain 100% of all revenues generated in connection with parking lot fees and sale of food and beverages at the facility"; and "ii) Per ticket Facility Fees and applicable city, state and federal taxes will be deducted from box office receipts and remitted by SMG or SMG's ticketing agent prior to remittance of box office receipts to Licensee". These items were apparently modified by an unsigned "deal sheet" (see attached Exhibit "E") which granted Live Nation:
 - a) 100% of the Facility Fee collected;
 - b) 100% of the Ticketmaster Rebates;
 - c) 100% of the Merchandise Sales;
 - d) 100% of the net Concession; and
 - e) Pay Onondaga County 10% of VIP Box Seats sold by County and Agent, SMG.

Recommendation: Any and all agreements should be completed and signed prior to the occurrence of the subject matter of the agreement.

- 5) The lack of cooperation between the Department of Audit and Control and SMG was unexpected. Routine requests for documents were referred to the County Executive's Office for approval prior to release. Even when the Department of Audit and Control was informed by the County Executive's office that all available information was to be provided, SMG staff again referred Audit and Control staff to seek permission from the County Executive's Office. In addition, SMG staff failed to disclose the "Event Income Statement" was prepared by Deputy County Executive William Fisher, a third party. Email requests were sent to Mr. Fisher on February 11, 2016 to seek additional information; however Mr. Fisher failed to reply.

Recommendation: Going forward there must be a clear understanding that all financial operations should answer to the Chief Accountant of the County, the Comptroller, and comply with routine requests for information, as required under paragraph 6.1, et seq, of the June 2012 Facility Management Agreement and subsequent amendments.

- 6) Interviews with SMG staff revealed SMG did not have significant control over the contract negotiations or “day to day operations”, despite the fact SMG was the County’s agent for the Concert.

Recommendation: Follow contractual agreements in the future or pursue contractual language which clearly defines the desired rights and obligations of each party.

VI. Exhibits

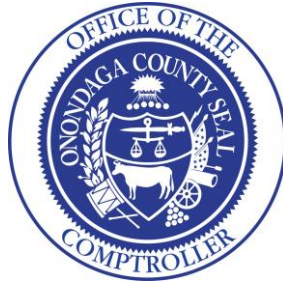


EXHIBIT "A"

Event Income Statement - 09/03/15 Lakeview Amphitheater
 Miranda Lambert Concert

Direct Event Net Income

Rental Income **39,750**

Service Expenses

Event Labor

Stagehands (17,752)

Ticket Takers (263)

Operations (9,448)

Payroll Taxes and Benefits 20.00% (5,493)

Total Event Labor (32,955)

Other Event Expense (2,710)

Total Direct Event Net Income **\$ 4,085**

Ancillary Income

Concession Sales (net of NYS sales tax) **119,763**

Concession Expense

Food Cost (17,744)

Labor (18,086)

Event Supplies (29,265)

Total Concession Expense (65,095)

Net Concession Income 54,668

Net Concession Income, paid to Promoter (51,953)

Merchandise Income

Net Merchandise Income 6,139

Net Merchandise Income, paid to Promoter (6,139)

Total Ancillary Income **\$ 2,715**

Other Event Income

Other Income

Sponsorship Income 35,660

Sales Commissions 6,074

Other Expense

Payment to Promoter (Final Settlement) (39,147)

Onondaga County Sheriff (5,250)

Onondaga County Fire Marshall (1,824)

Total Other Event Income **(4,487)**

Total Net Income / (Loss) **\$ 2,313**

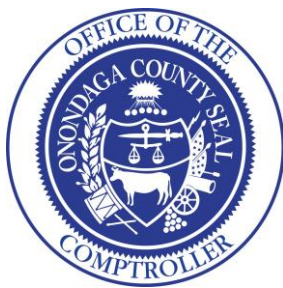


EXHIBIT “B”

**Event Income Statement - 09/03/15 Lakeview Amphitheater
Miranda Lambert Concert**

Direct Event Net Income	
Rental Income	39,750
Service Expenses	
<i>Event Labor</i>	
Stagehands	(17,752)
Ticket Takers	(263)
Operations	(9,448)
Payroll Taxes and Benefits	20.00% (5,493)
Total Event Labor	<u>(32,955)</u>
Other Event Expense	(2,710)
Total Direct Event Net Income	<u>\$ 4,085</u>
Ancillary Income	
Concession Sales (net of NYS sales tax)	119,763
Concession Expense	
Food Cost	(17,744)
Labor	(18,086)
Event Supplies	(29,265)
Total Concession Expense	<u>(65,095)</u>
Net Concession Income	54,668
Net Concession Income, paid to Promoter	(51,953)
Merchandise Income	
Net Merchandise Income	6,139
Net Merchandise Income, paid to Promoter	<u>(6,139)</u>
Total Ancillary Income	<u>\$ 2,715</u>
Other Event Income	
Other Income	
Sponsorship Income	35,660
Sales Commissions	6,074
Other Expense	
Payment to Promoter (Final Settlement)	(39,147)
Onondaga County Sheriff	(5,250)
Onondaga County Fire Marshall	(1,824)
Cash Advance night of show	(1,396)
Total Other Event Income	<u>(5,883)</u>
Total Net Income / (Loss)	<u>\$ 917</u>

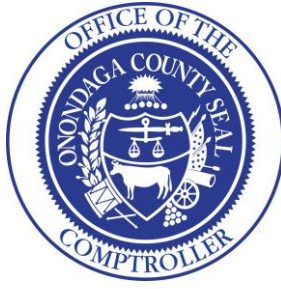


EXHIBIT "C"



Agriculture and Markets

ANDREW M. CUOMO
Governor

RICHARD A. BALL
Commissioner

Onondaga County OnCenter
Attn: Steven P Morgan, Onondaga County CFO
421 Montgomery Street, 14th Floor
Syracuse, NY 13202

Dear Mr. Morgan,

This is to acknowledge receipt by the NYS Department of Agriculture & Markets of a statement of reimbursable expenses in the amount of \$119,035.88 for the concert event on September 3, 2015 during this year's Great New York State Fair.

We agreed to share some of the costs of bringing the Miranda Lambert concert to Onondaga County's new amphitheater during this year's NYS Fair. Such costs could be from a range of expenditures in categories of advertising, AV/Audio, emergency medical services, equipment, event supplies, information technology, and security.

The NYS Department of Agriculture & Markets looks forward to working with you to bring many more concerts to the amphitheater during future years of the Great New York State Fair.

I have initiated processing of this claim and hope to complete the payment review process prior to the end of your fiscal year, with disbursement to you following thereafter.

Sincerely,

Jen McCormick
First Deputy Commissioner
NYS Department of Agriculture & Markets

PO Number	Date	Vendor Name	Description	Ordered	Unit Cost	Ext Price
ER02668	8/25/2015	Admar Supply Co. Inc.	Generator Light Towers	6.00	200.00	1,200.00
ER02674		Ansun Graphics Inc.		1.00	44.00	44.00
		Ansun Graphics Inc.	Flyers			732.33
		Ansun Graphics Inc.	Signs			689.00
ER02667	8/25/2015	City Electric Co Inc	P&S 5745-AN ANG Plug-A	9.00	58.50	528.50
	9/3/2015	Dollar General				20.41
		Dollar Tree Stores				39.86
ER02682		Dunk & Bright		1.00	243.00	243.00
ER02682		Dunk & Bright		1.00	1,200.00	1,200.00
ER02692		Dunk & Bright		1.00	1,500.00	1,500.00
ER02711		Enterprise	Van Rental	1.00	200.00	200.00
ER02676		Facebook		1.00	288.00	288.00
	9/3/2015	Family Dollar				12.96
		Five Below				28.05
		Gladd Security Inc.				9.75
		Home Depot				388.84
ER02709	8/28/2015	Johnston Food Svc & Cleaning		1.00	155.00	155.00
ER02706	8/28/2015	Johnston Food Svc & Cleaning		1.00	180.00	180.00
	9/10/2015	K&S Security			758.71	776.00
ER02676		Lamar Advertising		1.00	1,700.00	1,700.00
ER02618	8/17/2015	Landmark Graphics NY, Inc	Hats	100.00	7.75	775.00
ER02699		Landmark Graphics NY, Inc	Labels	1.00	968.76	968.76
ER02712		Lowe's	supplies	1.00	300.00	300.00
ER02712		Lowe's	supplies	1.00	30.00	30.00
ER02712		Lowe's	supplies	1.00	21.00	21.00
ER02712		Lowe's	supplies	1.00	15.00	15.00
ER02712		Lowe's	supplies	1.00	5.00	5.00
		Lowe's				44.36
ER02695		Lowe's	supplies	1.00	45.00	45.00
ER02695		Lowe's	supplies	1.00	45.00	45.00
ER02707		Lowe's	supplies	1.00	239.94	239.94
ER02707		Lowe's	supplies	1.00	119.76	119.76
ER02613	8/12/2015	M8 Unlimited, Inc.	Toilets, sinks and bike rac.	1.00	10,694.00	10,694.00
ER02671	8/25/2015	NES Equipment Services Corp	65' Boom Lift	1.00	450.00	450.00
ER02671	8/25/2015	NES Equipment Services Corp	Delivery Charges	2.00	80.00	160.00
ER02671	8/25/2015	NES Equipment Services Corp	Enviro Fees	1.00	10.00	10.00
ER02644	8/19/2015	New Penn Golf Cart Lease	Golf Carts	15.00	225.00	3,375.00
ER02670	8/25/2015	New Penn Golf Cart Lease	8 passenger golf cart	1.00	500.00	500.00
ER02672		NewClients	Shirts	1.00	60.00	60.00
ER02672		NewClients	Shirts	1.00	638.00	638.00
ER02616	8/17/2015	Northeastern Production	Inside LED Screen	1.00	14,000.00	14,000.00
ER02616	8/17/2015	Northeastern Production	Lawn LED Screen	1.00	16,500.00	16,500.00
ER02616	8/17/2015	Northeastern Production	Lawn Speaker System	1.00	4,500.00	4,500.00
ER02616	8/17/2015	Northeastern Production	NPS Staff	1.00	7,500.00	7,500.00
ER02616	8/17/2015	Northeastern Production	Video Production	1.00	5,000.00	5,000.00
ER02643	8/19/2015	Northeastern Production	Orbitor Followspots	4.00	200.00	800.00
		Nu-Tronics		10.00	30.00	300.00
		Nu-Tronics		2.00	5.00	10.00
ER02652	8/20/2015	Orbis Payment Services, Inc	Credit Card Machines	70.00	100.00	7,000.00
		Party City				77.67
ER02691	8/28/2015	Penske	Truck Rental	1.00	2,900.00	2,900.00
ER02696	8/25/2015	Quality Logo Products	Cooler Bags	50.00	5.48	274.00
ER02696	8/25/2015	Quality Logo Products	Estimated Shipping	1.00	33.76	33.76
ER02698		Rural Metro		1.00	720.00	720.00
ER02698		Rural Metro		1.00	720.00	720.00
ER02698		Rural Metro		1.00	540.00	540.00
ER02698		Rural Metro		1.00	540.00	540.00
ER02698		Rural Metro		1.00	540.00	540.00
ER02698		Rural Metro		1.00	406.00	406.00
ER02688		Syracuse Tech		1.00	5,066.00	5,066.00
ER02677		The Daily Orange		1.00	700.00	700.00
ER02681	8/3/2015	The Mighty Group, LLC	Website Updates for Lake	1.00	1,277.35	1,277.35
ER02654	8/21/2015	Uline, Inc	cardboard trash receptacle	5.00	63.00	315.00
ER02678		United Communication	Radios	1.00	900.00	900.00
ER02683		United Radio		1.00	750.00	750.00
		Valu Home Centers				80.89
		Walmart				14.52
ER02689		Watertown Daily		1.00	1,411.97	1,411.97
ER02685		Westcott	Labor	1.00	17,000.00	17,000.00
ER02710		Whole Me Inc	Interpreters	1.00	750.00	750.00

118,035.88

Total

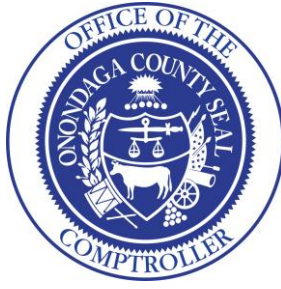


EXHIBIT "D"

© THE ONCENTER

Meet. Play. Celebrate. Syracuse

USE LICENSE AGREEMENT

#OS506

BY AND BETWEEN

SMG and Live Nation Worldwide

Miranda Lambert

Contact: Jim Koplik

Phone: 203-269-8721 Email: jimkoplik@livenation.com

Date of Contract: August 25, 2015

Date of Event: September 3, 2015

Ticketed Events

USE LICENSE AGREEMENT

THIS USE LICENSE AGREEMENT (together with the Exhibits attached hereto, the "Agreement") is dated as of **August 25, 2015** by and between **SMG, a Pennsylvania general partnership**, with an address at 300 Four Falls Corporate Center, 300 Conshohocken State Road, West Conshohocken, PA 19428 ("**SMG**"), and **Live Nation Worldwide, Inc.** whose current address is 95 South Turnpike Road, Wallingford, CT 06492 (the "**Licensee**") for the purpose of conducting **Miranda Lambert**.

BACKGROUND

SMG is the manager of a facility commonly known as the Lakeview Amphitheater (the "**Facility**"), located at 490 Restoration Way, Syracuse, NY 13209, which is owned or leased by Onondaga County (the "**Owner**"). Licensee desires to use all or a portion of the Facility, as set forth below, for the purposes stated herein. Accordingly, SMG desires to grant 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**"). This includes all improvements, furniture, fixtures, and 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 upon completion of load-out after the end-time of the last Event listed on Exhibit A hereto (the "**Expiration Time**"). 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. In addition, a rental fee shall be charged, 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.

(d) SMG shall furnish, without cost to Licensee, overhead lighting on contracted dates, normal heat or air conditioning on open show days, janitorial services consisting of cleaning of common public areas including restroom facilities, and one standard set-up (seating for theater, classroom, u-shape, conference or hollow square) per paid or complimentary meeting room, per event. Classroom set-up is provided with (4) chairs per 8'x18" table. Changeovers shall be charged to Licensee at 50% of the prevailing rental of the meeting room. SMG shall not charge a fee for changeovers required to accommodate a catered function.

(e) Licensee acknowledges that the Facility is one component of a complex (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.

(f) Floor Plans, Descriptions, and Set-Up.

(i) At least sixty (60) days prior to the first Event day, Licensee shall provide to SMG, for SMG's and/or the City of Syracuse Fire Marshall/Onondaga County Code Enforcement approval, five (5) copies of a full and complete floor plan for the Event. Based upon a review by SMG and/or such Fire Marshall of the foregoing plan, SMG may request Licensee, by written notice within ten (10) days after receiving the materials, to make such changes, deletions, and/or additions as SMG may, in its reasonable discretion, deem necessary or desirable.

(ii) In addition to the floor plan delivered under clause (i) above, at least sixty (60) days prior to the first Event, Licensee shall provide to SMG, for SMG's review (and/or the review of any consultant or representative engaged by SMG), five (5) copies of a full and complete description of all set-up (including, without limitation, any staging, lighting, video boards, and/or rigging from or to the physical structure of the Facility or any fixture thereto required for the Event), electrical, communications systems, and plumbing work anticipated to be needed for the Event.

(iii) At least four (4) weeks prior to the first Event day, Licensee shall provide to SMG information relating to room or hall set-up(s), staging, event personnel requirements, and food and beverage requirements. Back stage catering requirements should be forwarded to your SMG Event Manager.

2. Purpose.

(a) The Facility will be used solely for the purpose of the "Miranda Lambert". 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 purpose or in any manner so as to injure persons or property in, on, or near the Facility.

(b) As between SMG and Licensee, Licensee shall be liable for any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, forfeitures, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees, disbursements and court costs, and any and all other reasonable professional, expert or consultants' fees and costs) (collectively, the "Losses") occurring at the Facility (whether within or without an Authorized Area) caused to SMG, Owner and/or persons and/or property in, on, or near the Facility during the term of this Agreement by (i) Licensee's failure to comply with any and all federal, state, foreign, local, and municipal regulations, ordinances, statutes, rules, laws, constitutional provisions, and common laws (collectively, the "Laws") applicable to Licensee's performance of this Agreement and/or activities at the Facility, (ii) any unlawful acts on the part of Licensee or its officers, directors, agents, employees, subcontractors, licensees, or invitees, (iii) the proven negligent acts, errors and/or omissions or the willful misconduct of Licensee or its officers, directors, agents, employees, subcontractors, licensees, or invitees, (iv) the material breach or default by Licensee or its officers, directors, agents, or employees of any provisions of this Agreement, including, without limitation, the provisions of Section 14(m) hereof (relating to intellectual property matters), Section 15 hereof (relating to the Civil Rights Act), and Section 16 hereof (relating to the Americans with Disabilities Act), and (v) 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 performed by Licensee or Licensee's contractors with respect to the Event. The foregoing assumption of liability set forth in this Section 2(b) shall not apply to any negligence or willful misconduct of SMG, Owner or their respective employees or contractors or to Losses resulting from any structural or premises-related defects of the Facility or the Complex.

(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 (which shall be posted or otherwise made available in writing), 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, non-discriminatory grounds, be objected to by SMG and such person's right to use the Facility may be revoked immediately by SMG.

(d) Notwithstanding any other provision of this Agreement, neither SMG, nor Onondaga County, shall be responsible in any way for the acts or omissions of any of Licensee's employees, contractors or volunteers (whether or not authorized by Licensee) working, or otherwise present, at the Facility. Licensee shall indemnify, defend, and/or hold SMG and Onondaga County harmless for the acts or omission of any invitees, staff, and/or volunteers, subject to the provisions contained in Section 11 herein below.

3. Condition of Facility.

(a) Licensee acknowledges that if Licensee has inspected the Facility (which shall only be a cursory, pre-Event inspection in accordance with industry practice), then, unless otherwise provided in writing or verbally to SMG, 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 compliance with all applicable laws and regulations and 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 and documented cost of repair, normal wear and tear excepted. Licensee shall have the right to inspect the Facility prior to and after the Event with a representative of SMG to identify any damages and/or pre-existing conditions. If such damages are not identified on the night of the Event, SMG shall provide written notice of any such damages with supporting documentation no later than (a) forty-eight (48) hours following the Event or (b) the beginning of load-in of the next event at the Facility, whichever is earlier. In no event shall Licensee be responsible for (i) pre-existing conditions, (ii) damages not properly documented and noticed to Licensee in accordance with the prior sentence, (iii) damages caused by use or maintenance of the Facility by Owner, SMG or their respective employees, agents or contractors or (iv) damages caused by any event held by other licensees following Licensee's use of the Facility.

(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 the Owner. SMG may accept, at its election delivery of property addressed to Licensee only as a service to Licensee, and Licensee will indemnify, defend, and hold harmless SMG for any loss or damage to such property in the receipt, handling, care, and custody of such property at any time. SMG assumes no responsibility whatsoever for any property placed in the Facility.

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 12, until the date and time set forth on Exhibit A.

5. License Fee, Broadcast Fee, Merchandise Fee, Additional Equipment and Service Expenses and Complimentary Tickets. In consideration of the grant of the license in Section 1 above, Licensee shall pay to SMG a license fee, broadcast 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 the rental fee ("License Fee") as outlined on Exhibit B in the amount of ~~thirty twenty-nine thousand seven five hundred and fifty dollars~~ (\$39,750.00/29,500.00) plus any additional estimated costs as outlined in the Proposal and listed on Exhibit B.

(b) Intentionally deleted.

(c) Merchandise Fee.

SMG's merchandise Fee is waived. Licensee will coordinate merchandise sales and splits directly with the artist. Licensee will retain any and all merchandise fees negotiated with artist. Licensee is responsible for submitting any and all sales taxes associated with said merchandise sales. Licensee can request merchandise seller(s) from SMG, and reimburse SMG their hours worked at prevailing rates

(d) Additional Equipment and Service Expenses.

(i) SMG shall provide, as required for each Event, the following services (collectively, the "Services"): 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; security personnel; utilities, 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. Licensee shall pay for such Services ("Additional Equipment and Service Expenses") as set forth in Exhibit B or as otherwise agreed in writing by Licensee and SMG.

(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 in connection with the Services as provided in Section 6 below.

(e) Complimentary Tickets. In addition to the License Fee, Broadcast Fee, Merchandise Fee and Additional Equipment and Service Expenses, complimentary tickets shall be available as follows:

(i) Subject to artist approval, SMG shall receive TWENTY (20) complimentary reserved tickets and THIRTY (30) complimentary lawn tickets for the Event.

6. Payment Terms.

(a) License Fee, Broadcast Fee and Merchandise Fee. The License Fee, Broadcast Fee and Merchandise Fee set forth in Sections 5(a), (b), and (c) of this Agreement and the Reimbursable Services Expenses, as applicable, shall be paid to SMG at a final settlement to take place during or immediately after the conclusion of the Event. As soon as reasonably possible after the closing of the Facility box office for the Event, SMG shall furnish Licensee with a final settlement statement and box office statement, and settle with Licensee in accordance with this Agreement. Licensee agrees to pay SMG, at the time of final settlement, any amounts shown to be due to SMG which were not paid to SMG by the application of box office receipts (if such receipts are held by SMG).

(b) Intentionally deleted.

(c) Intentionally deleted.

(d) Intentionally deleted.

7. Revenues and Costs. SMG shall retain one hundred percent (100%) of all revenues generated in connection with parking lot fees and the sale of food and beverages at the Facility. In addition to payment of the Additional Equipment and Service Expenses above, Licensee shall bear all expenses incurred by Licensee in connection with the live performance of copyrighted materials in connection with the Event.

8. Intentionally deleted.

9. 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 (a) as otherwise provided by law, (b) as applicable to revenues in which Licensee does not participate or for which another party is already responsible for collecting and remitting such taxes (e.g. concessionaires) or (c) to the extent SMG has collected taxes and failed to remit same. 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. The foregoing shall not imply that Licensee is liable for any property or real estate taxes or any other taxes based on the value of the Facility or arising out of ownership or management of the Facility by SMG and/or Owner.

10. Insurance.

(a) Licensee shall, at its own expense, secure and deliver an insurance certificate to SMG 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 commercial 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 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: high-risk events (including, without limitation, rap concerts), performers, volunteers, 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).

(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) SMG and Owner shall be named as additional insureds as respects the liabilities assumed herein by Licensee thereunder. 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. In the event of a cancellation of Licensee's insurance, notice thereof will be provided in accordance with Licensee's policy provisions.

(ii) And "**Onondaga County, SMG, their officers, agents, volunteers and employees**" are included as additional insureds as respects the liabilities assumed herein by Licensee. It is further agreed that this insurance is primary to all other similar coverage carried by the Onondaga County, and/or SMG to the extent of the liability assumed herein by Licensee.

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

(iv) Intentionally deleted.

(v) 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 11 below.

(vi) All policies must be issued by companies authorized to do business in the State of New York and assigned a rating of B+VI or better, per Best's Key Rating Guide, latest edition.

(c) Intentionally deleted.

(d) Intentionally deleted.

(e) SMG reserves the right to purchase MVP Insurance (event insurance) on behalf of the Licensee if the Licensee has failed to provide proof of insurance within seventy-two (72) hours of the start time of its event. SMG shall invoice the Licensee for the total charges of the MVP Insurance and Licensee agrees that it will assume responsibility for purchased insurance and pay all charges within 10 business days of receipt of the invoice.

11. Indemnification.

(a) To the fullest extent permitted by law, Licensee shall indemnify, defend (at Licensee's sole cost and expense and with legal counsel that is subject to the reasonable approval of SMG), protect and hold harmless SMG, Owner, and each of their respective officers, directors, officials, employees, agents, and volunteers, and all of each such party's representatives, successors, and assigns (collectively, the "Indemnitees") from and against any and all Losses arising from or in any manner relating (directly or indirectly) to (i) the matters described in Section 2(b) hereof, and/or (ii) proven negligent acts, errors and/or omissions or the willful acts, errors and/or omissions of Licensee, its principals, directors, officers, agents, employees or subcontractors. The foregoing indemnity, defense and hold harmless shall not extend to any Losses arising out of any (iii) negligence or willful misconduct of any of the Indemnitees or their respective contractors or (iv) structural or premises-related defects of the Facility or the Complex.

(b) SMG shall indemnify, defend and hold harmless Licensee and its officers, directors and employees (the "Licensee Indemnitees") from and against any and all Losses arising from or in any manner relating (directly or indirectly) to personal or bodily injury to or death of persons or damage to the property of Licensee to the extent caused by the negligent acts, errors and/or omissions or the willful misconduct of SMG or its officers, directors, agents, employees or contractors. The foregoing indemnity, defense and hold harmless shall not extend to any Losses arising out of any negligence or willful misconduct of any of the Licensee Indemnitees or their respective contractors.

(c) The provisions set forth in subparagraphs (a) and (b) above shall survive termination or expiration of this Agreement.

12. 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 Additional Equipment and Service Expenses) when the same are required to be paid hereunder or (B) to provide the security required under Section 6(a) hereof by the date when due, (ii) Licensee or any of its officers, directors, employees or agents fails to perform or fulfill any other material term, covenant, or condition contained in this Agreement and Licensee fails to commence a cure thereof within five (5) business days (or a reasonable period of time thereafter if a cure is not reasonably capable of being commenced within five (5) business days) after Licensee has been served with written notice of such default providing the particulars of such alleged 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 material term, covenant, or condition contained in this Agreement and SMG fails to commence a cure thereof within five (5) business days (or a reasonable period of time thereafter if a cure is not reasonably capable of being commenced within five (5) business days) after SMG has been served with written notice of such default providing the particulars of such alleged default or SMG makes a general assignment for the benefit of creditors. 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 a party or any of its officers, directors, employees, or agents of such other material term, covenant, or condition is such that it threatens the health, welfare, or safety of any person or property, then the other party 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 12(a) hereof, the non-breaching 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.

(c) Intentionally deleted.

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

13. 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.

14. Covenants. Licensee and/or SMG hereby covenant 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.

(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.
- (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) 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 exit ways shall be maintained in such manner as to be visible at all times.
- (i) Licensee shall use the services of SMG's exclusive ticket contractor, Ticketmaster, SMG's box office and other locations selected by SMG for all event ticket sales, unless otherwise approved in writing by the Oncenter General Manager.
- (j) Licensee shall use the term "Solvay Bank Box Office at The Oncenter" in any and all advertisements for said event.
- (k) Neither party, its officers, directors, employees, agents, members, or other representatives shall "scalp" tickets for an Event, to the extent applicable. Licensee and its representatives shall assist SMG in its efforts to control and prevent such ticket "scalping".
- (l) No collections, whether for charity or otherwise, shall be made, attempted, or announced at the Facility, without first having made a written request and received the prior written consent of SMG which consent shall not be unreasonably withheld if requested by the headline artist.
- (m) Licensee shall abide by and conform to all rules and regulations adopted or prescribed by SMG pursuant to a certain operating handbook titled "**Event Planning Guide**", a copy of which will be provided to Licensee upon request and the terms of which are incorporated by reference herein.
- (n) 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.
- (o) With respect to the Event, 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 live performance of copyrighted 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 any such Works. Licensee specifically agrees, undertakes, and assumes the responsibility to make any and all reports to such agencies and/or parties, as applicable, including specifically by way of example only (and not by way of limitation) ASCAP, BMI, SESAC and other similar agencies. SMG acknowledges that Licensee currently reports and pays royalties to ASCAP, SESAC and BMI on a quarterly basis for its events through its membership in the trade association known as North American Concert Promoters Association, and that Licensee reports and pays royalties to GMR directly. Licensee agrees to indemnify, defend, protect and hold harmless SMG and all other Indemnitees (as defined in this Agreement) of and from all and all manner of Losses arising in any way from the live performance of proprietary intellectual property of third parties (whether such claims are actual or threatened) under the copyright or other laws of the United States.

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

(p) If requested by SMG, Licensee shall use the Facility's logo (the "Facility Logo") in all advertising controlled by or done on behalf of Licensee relating to an Event when applicable, including, but not limited to, television, internet, newspaper, magazine, and outdoor advertising. Licensee's right to use the Facility Logo shall be limited to the specific, express purpose set forth in the foregoing sentence and/or as otherwise authorized by SMG in writing prior to the use thereof. In connection with Licensee's use of the Facility Logo as permitted in this Section 14(p), Licensee shall use only the form of the Facility Logo as provided by SMG to Licensee in any artwork or other depiction thereof.

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. SMG warrants that it is in compliance with the American with Disabilities Act (ADA) and all regulations thereunder and acknowledges and agrees that SMG is responsible for the permanent building access accommodations, such as, but not limited to, wheelchair ramps, elevator standards, door width standards and restroom accessibility. Licensee acknowledges it is responsible for non-permanent accessibility requirements, such as, but not limited to, seating accessibility, auxiliary aids for the visually impaired, hearing impaired and mobility impaired to the extent such aids are not already maintained by the Facility.

17. Use of Information. SMG shall have no 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 without the prior written approval of Licensee and/or the headline artist.

18. LIQUIDATED DAMAGES. IF LICENSEE CANCELS THE EVENT FOR REASONS OTHER THAN DUE TO AN SMG DEFAULT OR A FORCE MAJEURE, LICENSEE AGREES TO PAY TO SMG THE FOLLOWING AMOUNTS AS LIQUIDATED DAMAGES AND NOT AS A PENALTY.

(A) IF LICENSEE CANCELS MORE THAN ONE (1) YEAR BEFORE THE FIRST SCHEDULED DAY OF THE EVENT, TWENTY FIVE PERCENT (25%) OF THE MINIMUM FEE SHOWN IN EXHIBIT B SHALL BE PAYABLE TO SMG AS LIQUIDATED DAMAGES WITHIN TEN (10) DAYS OF INVOICE.

(B) IF LICENSEE CANCELS MORE THAN SIX (6) MONTHS BUT LESS THAN ONE (1) YEAR BEFORE THE FIRST SCHEDULED DAY OF THE EVENT, SIXTY PERCENT (60%) OF THE MINIMUM FEE SHOWN IN EXHIBIT B SHALL BE PAYABLE TO SMG AS LIQUIDATED DAMAGES WITHIN TEN (10) DAYS OF INVOICE.

(C) IF LICENSEE CANCELS LESS THAN SIX (6) MONTHS BEFORE THE FIRST SCHEDULED DAY OF THE EVENT, ONE HUNDRED PERCENT (100%) OF THE MINIMUM FEE SHOWN IN EXHIBIT B SHALL BE PAYABLE TO SMG AS LIQUIDATED DAMAGES WITHIN TEN (10) DAYS OF INVOICE.

19. 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 New York, without giving effect to the conflict of law principles thereof.

(b) Paragraph Headings. The paragraph headings are inserted herein only as a matter of convenience and for reference and in no way are intended to be a part of this Agreement or to define, limit, or describe the scope or intent of this Agreement or the particular paragraphs hereof to which they refer.

(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 OWNER 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.

20. 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. SMG shall be entitled to assign its rights and obligations hereunder to Owner or to any other management company retained by Owner to manage the Facility, provided such party assumes the obligations hereunder in writing, and in such event, SMG shall have no further liability to Licensee hereunder for the performance of any obligations or duties arising after the date of such assignment.

(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 courier services that are generally recognized as reliable (e.g. FedEx or UPS), and the written records maintained by the courier shall be prima facie evidence of delivery, (iii) within three (3) business days of deposit in the United States mail if sent by registered or certified mail, return receipt.

requested, postage prepaid, or (iv) when sent by facsimile capable of confirming transmission (which shall further be confirmed by a writing sent by registered or certified mail or equivalent promptly after such facsimile is sent); 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
800 South State Street
Syracuse, NY 13202
Attention: General Manager
Facsimile: (315) 435-8094

Copy to: SMG
300 Four Falls Corporate Center
300 Conshohocken State Road
West Conshohocken, PA 19428
Attention: Director of Risk Management
Facsimile: (215) 592-6699

If to Licensee: Live Nation Worldwide
95 South Tumpike Road
Wallingford, CT 06492
Attention: Jim Koplik

Copy to: Live Nation
Legal Dept – US Concerts
9348 Civic Center Drive
Beverly Hills, CA 90210
Attn: Jennifer Rawlings
Facsimile: (310) 861-0895

(d) Intentionally deleted.

(e) 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, provided such use does not unreasonably interfere with Licensee's use of the Facility hereunder.

(f) Intentionally deleted.

(g) Force Majeure. If the Facility is damaged from any cause whatsoever or if any other casualty or unforeseeable cause beyond the control of either party, including, without limitation, acts of God, fires, floods, epidemics, artist illness, injury or death (or that of an immediate family member), quarantine restrictions, terrorist acts, strikes, labor disputes, failure of public utilities, or dangerous weather conditions, prevents performance herein by a party then each party hereby releases the other party from any damage so caused thereby, and Licensee shall be refunded any deposits paid prior to such termination (if any).

(h) Intentionally deleted.

(i) Right of Entry. In permitting the use of the Authorized Areas, SMG does not relinquish and does hereby retain the right to enforce all rules for the management and operation of such space. Representatives of SMG and the County may enter the Authorized Areas at any time and on any occasion without any restrictions whatsoever. All space at the Oncenter shall at all times be subject to SMG's right to control.

(j) Intentionally deleted.

(k) Union Agreements. SMG is a party to Union Agreement's with Local 9 of IATSE, Local 150 of Unite Here, Local 158 of IUOE and Local 200 of SEIU, in which the membership has been granted certain work related jurisdictions. The Union Agreement's apply to some event types and all facilities that encompass the Oncenter. Please discuss the applicability of the Union Agreement's to your event with your Sales/Event Manager. The Licensee acknowledges this association; further the Licensee understands and agrees it will comply with the terms and conditions of the Union Agreement's as administered by SMG with respect to the event herein described.

21. Food & Beverage.

(a) Exclusivity. Savor... Syracuse Catering by SMG is the exclusive food and beverage provider for all facilities that encompass the Oncenter. 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 respective officers, directors, officials, employees, agents, volunteers, guests or invitees unless otherwise agreed (e.g. with respect to artist's tour catering, if applicable). 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 the Licensee.

22. Box Office and Ticketing

(a) Exclusivity. Licensee understands that SMG exclusively uses Ticketmaster to provide ticketing services at all facilities that encompass the Oncenter. Licensee is responsible for all costs associated with this service including Box Office administration set-up, ticket printing, credit card fees (at the Facility box office only) and box office staffing.

(b) Capacity. No tickets to any event, entertainment or exhibition shall be sold or distributed in excess of the seating or occupancy capacity. Capacity shall be mutually determined by SMG and the City of Syracuse Fire Marshal or Onondaga County Code Enforcement. The decision as to the number of persons permitted, as decided by the appropriate fire personnel shall be final.

(c) Consignment. Any tickets SMG releases on consignment shall be done so upon SMG's receipt of the rental deposit as outlined in Exhibit B of this Use License Agreement. Prior to release of any consignment tickets Licensee agrees to sign a "Consignment Letter". Any unsold tickets must be reported to and confirmed by SMG 2-hours prior to the opening of the event. Any consignment tickets not returned shall be considered sold and subject to all taxes and fees applicable.

(d) Complimentary Tickets. Licensee agrees to provide complimentary tickets to SMG as outlined in Section 5 (d) of this Use License Agreement. Complimentary tickets are to be delivered to SMG either in-person or via insured mail carrier and must be received prior to the Event.

(e) Ticket Prices. Licensee agrees to sell all tickets at the prices as advertised by Licensee and approved by SMG. Any changes in ticket prices shall require prior written approval of SMG.

(f) Ticket Dispute. All ticket disputes are the responsibility of the Licensee.

(g) Customer Credit. Licensee shall be responsible for the credit-worthiness of its Patrons.

(h) Facility Fees and Taxes. Per ticket Facility Fees and applicable city, state and federal taxes will be deducted from box office receipts and remitted by SMG or SMG's ticketing agent prior to remittance of box office receipts to Licensee.

(i) Event Settlement. All events that have rent based on a percentage of tickets sold are to be settled no later than two (2) hours after the close of the box office unless otherwise agreed upon by both SMG and the Licensee.

SMG may, at its option, retain Licensee's security deposit until all event expenses are determined and the event settlement is finalized.

[Signature page to follow]

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

SMG

By: 

Name: KELLY CARR

Title: General Manager

Date: 9.3.15

Live Nation Worldwide, Inc.

By: 

Name: Jim Koplik

Title: President ONY + CC

Date: 9/3/15

EXHIBIT "A" TO USE LICENSE AGREEMENT

Live Nation Worldwide "Miranda Lambert" Jim Koplik

95 South Turnpike Road, Wallingford, CT 06492

Phone: 203-269-1816 Email: jimkoplik@livenatin.com

<u>Authorized Area</u>	<u>Day</u>	<u>Date</u>	<u>Time of Use</u>	<u>Purpose</u>	<u>Rental Rate</u>
Amphitheater	Wednesday	9/2/15	8:00am-8:00pm	Pre Hang (if needed)	\$0.00
Amphitheater	Thursday	9/3/15	8:00am-5:00pm	Load In	\$39,750.00 29,500.00
Amphitheater	Thursday	9/3/15	7:30pm-10:30pm	Performance	\$0.00
Amphitheater	Thursday	9/3/15	10:30pm-3:30am	Load Out	\$0.00

EXHIBIT "B" FINANCIAL SUMMARY REPORT

Live Nation Worldwide "Miranda Lambert" Jim Koplik
 95 South Turnpike Road, Wallingford, CT 06492
 Phone: 203-269-1816 Email: jimkoplik@livenatin.com

September 3, 2015
 Lakeview Amphitheater

1. **License Fee, Estimated Equipment and Estimated Service Expenses** as required or requested for your event:

RENT	
Rental as outlined in Exhibit A above is \$39,750.00 29,500.00 . Rental includes use of Oncenter house equipment at no additional charge. Labor to set and restore is additional.	\$39,750.00 29,500.00
EQUIPMENT	
Furniture Rental	TBD
Any additional equipment not included in house inventory will be billed to Licensee accordingly.	TBD
PERSONNEL	
Stagehands	TBD
Law Enforcement – normal FOH staffing included in rental	\$0.00
Fire Watch – normal FOH staffing included in rental	\$0.00
Medical/EMT – normal FOH staffing included in rental	\$0.00
Ticket Sellers – included in rental	\$0.00
Ticket Takers – included in rental	\$0.00
Ushers – normal FOH staffing included in rental	\$0.00
Guest Services (security guards) – normal FOH staffing included in rental	TBD
Additional security specific to artist's needs quoted upon request. This is may be an additional expense.	TBD
Any additional event staffing needs can be quoted upon request.	TBD
BOX OFFICE & OTHER	
Box Office Set Up Fee – included in rental	\$0.00
Merchant Credit Card Fee of 3.5% billed on all box office credit card transactions.	TBD
A Facility Fee of \$5.00 will be added to the established ticket price and retained by SMG.	TBD
Licensee may supply a caterer for artist and crew meals. SMG will not charge a buyout.	\$0.00
TOTAL RENTAL ESTIMATE	\$39,750.00 29,500.00 plus TBD's

**Proposal should not be considered the total cost for your event.
 Should you require additional equipment and services, these will be invoiced after the event.**

2. **Payment of License Fee**, plus additional costs as outlined in **Exhibit B** of the License Agreement shall be paid in accordance with the following terms:

Advance Deposit Required for event: (\$0.00)

(a) **Payment Schedule**

Payment Due Dates

Amount due with your contract: (\$0.00)

Due upon signing this Use License Agreement

Balance of Rental Estimate: ~~(\$39,750.00)~~ ~~\$29,500.00~~ plus TBD's proceeds or wire

Due at settlement on September 3, 2015 from box office

- (b) If paying by check, please make out to: The Oncenter/SMG and reference your event name and date on the check.
- (c) **Please note that actual event expenses may differ from the original Proposal. Added charges will apply for additional equipment or service expenses as required or requested, and will be billed after the event.**
- (d) A credit card processing fee of 3.5% – 5%, depending on type of credit card used, will be charged to all deposits or payments. We accept Visa, MasterCard, Discover and American Express.
- (e) **Any outstanding balance will be due 10 days upon receipt of Oncenter invoice.**

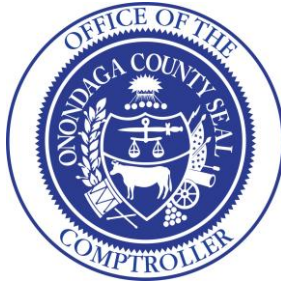


EXHIBIT "E"

Event:

Miranda Lambert

Venue:

Onondaga County Lakeview Amphitheater

Date:

3-Sep-15

Market:

Syracuse, NY

Rent Deal:

\$39,750

Notes:

TBD

Merch Deal:

TBD

CDs:

TBD

Who Sells?:

TBD

Fac. Fee:

\$5.00

State Tax:

None

Ticketing System:

Ticketmaster (Live Nation contract)

Credit Card Charges will be put "on top" of ticket price via TM convenience fee, except at the box office:

Yes

On sale date:

31-Jul-15

On sale time:

10am

Showtime:

7:30PM

Doors:

6:00PM

Curfew:

n/a

Venue event coordinator for this show:

Name

Halay Clint

Phone

315-435-8021

Email:

h.clint@oncenter.org

Is building a partner?

no

Deal terms or add'l incentives:

LN to receive 100% of the Facility Fee collected

LN to receive 100% of the Ticketmaster Rebates

LN to receive 100% of the Merchandise Sales

LN to receive 100% of net Concession. Net Concession defined as Sales

less sales tax, CGS, Labor and F&B Equipment Rental.

LN to pay Onondaga County 10% of VIP Box seats sold by County and Agent, SMG

Add'l Notes:

SMG Approval:

Live Nation Approval:

Onondaga County Executive Offices Approval:

ADMINISTRATION RESPONSE



County of Onondaga
Office of the County Executive

John H. Mulroy Civic Center, 14th Floor
421 Montgomery Street, Syracuse, New York 13202
Phone: 315.435.3516 Fax: 315.435.8582

www.ongov.net

Joanne M. Mahoney
County Executive

Ann Rooney
Deputy County Executive, Human Services

William P. Fisher
Deputy County Executive

Mary Beth Primo
Deputy County Executive, Physical Services

March 4, 2016

Onondaga County Comptroller Robert E. Antonacci II, CPA, Esq.

Re: Auditor's Report on the first Amphitheater Event

Dear Comptroller Antonacci,

Thank you for providing this office with a draft report on the first Amphitheater Event with findings for review and comment. My comments will follow the sequence of the Report Index included on the title page of your report.

I. Background

You have accurately reported my statement that the financial performance of the 9/3/2014 concert was in line with the Pro Forma P&L presented by SMG to the County Legislature in October 2014. As shown in Attachment 1, "Lakeview Amphitheater: Proforma P&L", our forecast was for a net loss of \$95,470 for a single concert in 2015. Thanks to support from the New York State Department of Agriculture & Markets, which agreed to reimburse the County for \$119,035.88 in expenses (see your Exhibit "C"), the General Ledger detail for the period ending 12/31/2015 previously provided to your office (see Attachment 2) shows that the Miranda Lambert concert on 9/3/2015 added \$15,766.74 to Onondaga County's 2015 budget surplus.

II. Executive Summary

In response to an email dated 10/20/2015 from Deputy Comptroller James Maturo asking the Oncenter's Director of Finance to "please send over the P&L for the Miranda Lambert concert" (see Attachment 3), I prepared a report (see your Exhibit "A") showing the income and expenses from the event.

Although you correctly state that the County has not yet received the reimbursement described above, you are wrong to assert that this leaves "...the taxpayers of Onondaga County responsible for the purported..." amount. In fact, we provided your office with clear documentation of New York State's agreement to share some of the costs of bringing the Miranda Lambert to our new amphitheater during this past year's NY State Fair (see your Exhibit "C"). The losses experienced by Grandstand concerts in recent years have been well documented. The benefits to the NYS Fair of live concerts are equally well known. We are grateful for New York State's support of the 9/3/2015 concert and anticipate that, as is the case with millions of dollars of other State dollars flowing into the County budget on a reimbursable

expense basis, the State will complete its reimbursement process in accordance with their own policies and procedures.

III. Scope and Objectives

It is interesting to learn from your report that “The purpose of this audit was to review the Financial Statement presented to the Comptroller’s office and to examine the policies, procedures and Internal Controls over the financial operations of the Miranda Lambert Concert that was held on September 3, 2015”. This statement of the audit objectives was very different than our previous understanding.

In the notice you gave on December 10, 2015, you conveniently failed to mention that your audit’s purpose was, as we learned on February 29, 2016, “to review the Financial Statement presented to the Comptroller’s office and to examine the policies, procedures and Internal Controls over the financial operations of the Miranda Lambert Concert that was held on September 3, 2015.” Instead, on 12/10/2015 you stated only that “Our rationale is to examine the financial results of the Miranda Lambert Concert held at the Lakeview Amphitheater”.

Your failure to communicate this significant modification to the audit objectives and scope is contrary to the professional standards for planning an audit (see GAO-12-331G Government Auditing Standards, Section 6.06 ff. and Section 6.51).

You have also expanded the scope of your audit “to perform a risk assessment to identify any potential risk of material misstatement in the financial statements”.

In implementing your expanded audit scope, you have chosen to overlook the simple fact that the Event Income Statement was never intended to be used as a financial statement. You know as well as anyone that the County does not begin preparing its financial statements in October, when Deputy Comptroller Maturo made his seemingly innocent request.

The real purpose of Mr. Maturo’s request became obvious after you published it on your website and drew the news media’s attention to the document. But even the Syracuse.com reporter realized that this was “an internal profit and losses (sic) sheet”. For you to characterize this document as a “Financial Statement” and then “examine policies, procedures and Internal Controls...” based on your analysis is wholly disingenuous.

IV. Methodology

As with the audit objectives and scope, Generally Accepted Government Auditing Standards call upon auditors to define and document the methodology during the planning process, not when delivering a draft report.

V. Findings

1. It is ludicrous for your report to find that the “Event Income Statement” sent to Deputy Comptroller Maturo on November 20, 2015 “was not presented in accordance with Generally Accepted Accounting Principles” (“GAAP”). As noted above, this was not a financial statement prepared at the end of an accounting period. It was an internal P&L report provided in response to a simple request.

You recommend that "Preparation of financial statements for SMG-handled events should be completed by SMG's Department of Finance". Since the "Event Income Statement" was not prepared or intended for use as a financial statement, this recommendation doesn't make sense.

2. Here again, you are confusing an internal P&L statement with a financial statement. Therefore, your finding that "the second statement still failed to address the exceptions mentioned in the initial statement..." is the same finding as #1, to which I have already responded above.
3. Your next finding is that "the statements were not prepared by SMG; they were prepared by Deputy County Executive William Fisher".

Although this office provided you with a copy of Amendment (1), dated June 11, 2015 (see Attachment 4), to the Management Agreement between the County of Onondaga and SMG, dated July 2, 2012, an explanation of SMG's role with respect to "County-Sponsored Events at Lakeview Amphitheater" should clear up any confusion.

Under Amendment(1), SMG agreed to manage events held at the Lakeview Amphitheater sponsored by the County. As the direct representative of the Sponsor, my role and responsibilities with respect to the first Amphitheater Event included working directly with the concert promoter, Live Nation. As the Deputy County Executive, I exercise "general administrative responsibility on behalf of the County Executive, subject to the direction of the County Executive, overall financial and administrative units of the County government..." (see the Onondaga County Administrative Code).

Therefore, it was well within my authority to provide Oncenter's Director of Finance with an internal P&L statement that he, in turn, sent to Deputy Comptroller Maturo in reply to the email message of 10/20/2014.

4. Your next finding is that a so-called "deal sheet" was not signed. In fact, all relevant agreements were executed by the parties prior to the start of the Miranda Lambert concert. The "deal sheet" is incorporated into the Use License Agreement that was duly signed by representatives of SMG and Live Nation on 9/3/2015 (see your Exhibit "D").
5. Finding #5 is that there was a "lack of cooperation between the Department of Audit and control and SMG..." Please see my letter to you dated January 15, 2016 (see Attachment 5) containing a detailed response to a prior – and equally unwarranted – complaint from your office about a lack of cooperation by this office and SMG.


Your recommendation that "...there must be a clear understanding that all financial operations should answer to the Chief Accountant of the County, the Comptroller..." shows an utter lack of understanding of the Onondaga County Charter and Administrative Code, which clearly establish that financial operations answer to the Chief Fiscal Officer. In fact, the Division of Financial Operations resides entirely within the Finance Department, which is led by CFO Steve Morgan.

6. Finding #6 is that "SMG did not have significant control over the contract negotiations or the 'day to day operations'". You are 100% correct about this. As noted above, the first Amphitheater Event was operated as a "County-sponsored event," with me acting as the direct representative of the Sponsor. As the Deputy County Executive, I had control over the contract negotiations and the 'day to day operations' of the Lakeview Amphitheater as it pertained to the first Amphitheater event.

During 2016 and subsequent years, concerts will not be managed as County-sponsored events. Therefore, you will see SMG – and not me – carrying out the responsibilities that you are accustomed to seeing from them with respect to our Oncenter venues.

In concluding this response, I must tell you that I am puzzled and dismayed by the blatant disregard of professional and governmental auditing standards by your office throughout this process.

Sincerely,



William P. Fisher
Deputy County Executive

cc: T.R. Schepp, Deputy Comptroller for Audit

Attachment 1

Lakeview Amphitheater Proforma P&L

Amphitheater Event Schedule					
Event Type	2015	2016	2017	2018	2019
Concerts (National Promoter)	1	11	13	14	15
Concerts (Local Promoter)	0	2	2	2	2
Tier I - Opera / Symphony / Jazz	0	3	3	3	3
Tier II - Movies / Rentals	0	1	2	3	3
Sporting Events	0	1	1	1	1
Total	1	18	21	23	24

P&L Summary					
	2015	2016	2017	2018	2019
Net Event Income	58,932	1,093,764	1,239,753	1,327,925	1,412,262
Indirect/Overhead Expense	154,401	1,042,801	1,096,900	1,154,338	1,215,335
Net Income/(Loss)	(95,470)	50,963	142,853	173,587	196,927

Key Assumptions

- 1) Rate of inflation assumed to be 2.5%
- 2) Attendance per event for Concerts based on 2014 data from comparable venues
- 3) F&B Per Caps based on comparable venues and by event types listed above
- 4) F&B Costs (as a % of sales) based on current market prices and varied by category
- 5) Merchandise Per Cap based on comparable venues and contracted percentage
- 6) Parking Cost based on comparable market prices for Concerts only with 5% comp tickets
- 7) Ancillary revenue split based on comparable venues and revenue needs for National and Local promoters
- 8) Rental Incomes based on current market value and varied by event type
- 9) Sponsorship dollars based on venue naming rights and additional advertising/sponsorships
- 10) Ticket Rebates and Box Office Surcharges assumed on Concert events only
Assumed 35% of ticket sales were "Premium Reserve" and 65% were "Lawn"
10% of both Premium and Lawn sales were assumed to be over the phone which would eliminate any Box Office fee paid by customers. assumed that 75% of tickets are sold by Ticket Master and 45% of total TM Rebate Revenue flows through to the Box Office
- 11) SMG will be responsible for all event operation functions, County Parks will maintain all ground and assist with event operations/Facilities will maintain equipment and venue repairs similar to the Oncenter model.
- 12) Assumed original project costs include operational equipment & FF&E
- 13) Smaller enclosed perimeter footprint for reduce security costs
- 14) The addition of a fully furnished catering kitchen for Concession and Catering preparation
- 15) No additional VIP seating, parking or catering options
- 16) No "Premium" charges for VIP seating, catering or parking are included

Account Number/Description			Detail Postings for Period 06 Thru 12 Ending 12/31/2015					
Period	Date	Journal	Comments	Beginning Balance	Debit	Credit	Net Change	Ending Balance
1508-00-00			Deferred Event Cost	0.00				
08	8/31/2015	JE-000290	AJE #11 Miranda Deferred		58,462.69			58,462.69
08	8/31/2015	JE-000292	Reverse AJE #11			6,070.60		52,392.09
09	9/1/2015	JE-000290	Reversal: AJE #11 Miranda Deferred			58,462.69		6,070.60
09	9/1/2015	JE-000292	Reversal: Reverse AJE #11		6,070.60			0.00
09	9/3/2015	CR-005723	OS506 Sales 9/3/15 REF:CASH			104,812.06		104,812.06
09	9/3/2015	CR-005723	OS506 Credit Card Deposits REF:V/MC/AMEX			10,845.55		115,457.61
09	9/3/2015	CR-005724	OS506 Over/short 09/03/15 REF:CASH			71.09		115,528.70
09	9/3/2015	TM-000002	Doc: 9/3/2015 09/03/15 OS00-506			39,750.00		155,278.70
09	9/3/2015	TM-000002	Doc: 9/3/2015 09/03/15 OS00-506			6,074.00		161,352.70
09	9/3/2015	TM-000002	Doc: 9/3/2015 09/03/15 OS00-506		51,952.57			109,400.13
09	9/4/2015	CR-005725	OS506 Miranda Lambert - Merch REF:CASH6		6,139.00			103,261.13
09	9/8/2015	CR-005729	OS506 Destiny Sponsorship REF:12352			7,500.00		109,400.13
09	9/10/2015	CR-005745	OS506 REF:V/MC/AMEX			2,226.00		116,900.13
09	9/14/2015	CR-005757	OS506 COR Development Sponsors REF:20472			5,000.00		119,126.13
09	9/14/2015	CR-005757	OS506 Gilberti Stinlano Sponso REF:4943			5,000.00		124,126.13
09	9/15/2015	CR-005766	OS506 Bank Credit REF:CASH			1.00		129,126.13
09	9/15/2015	CR-005766	OS506 Bank Credit REF:CASH2			0.05		129,127.18
09	9/15/2015	CR-005766	OS506 Bank Credit REF:CASH3			2.00		129,129.18
09	9/15/2015	CR-005766	OS506 Bank Credit REF:CASH4			60.00		129,189.18
09	9/23/2015	AP-001689	00LIVE /IN: OS00506 box seat purchases os00-506		5,230.00			123,959.18
09	9/23/2015	JE-000295	2012JE/AJE #1 Recurring SMG			10,000.00		133,959.18
09	9/24/2015	AP-001671	00LIVE /IN: OS00506-A live nation box purchase - adjustment		110.00			133,849.18
09	9/25/2015	CR-005810	OS506 Wegmans REF:3005926			5,000.00		138,849.18
09	9/25/2015	JE-000296				1,945.13		140,794.31
09	9/25/2015	JE-000286			52,392.09			88,402.22
09	9/30/2015	AP-001684	00WASTE /IN: SEPT150123342 450-0123342-0450-5		233.72			88,168.50
09	9/30/2015	AP-001684	00WASTE /IN: SEPT150123344 450-0123344		540.00			87,628.50
09	9/30/2015	AP-001690	00SKENE /IN: 26782 OS00-506		2,710.00			84,918.50
09	9/30/2015	JE-000300	AJE #5		164,204.65			79,286.15
10	10/25/2015	AP-001709	00WASTE /IN: SEPT0123342 450-0123342-0450-5		324.00			79,610.15
10	10/27/2015	JE-000305	2012JE/AJE #1 Recurring SMG			8,500.00		71,110.15
10	10/30/2015	PO-000550	Ansun Graphics, Inc INV:1015091		123.82			71,233.97
11	11/9/2015	CR-006050	OS506 Penske REF:52181488			733.00		70,500.97
11	11/30/2015	JE-000333	AJE #2		733.00			71,233.97
11	11/30/2015	JE-000333	AJE #2		40,543.25			111,777.22
11	11/30/2015	JE-000335	Deferred Adj			733.00		111,044.22
12	12/30/2015	JE-000347	Miranda Reclass			200.00		110,844.22
12	12/30/2015	JE-000347	Miranda Reclass			85.08		110,759.14
12	12/31/2015	AR-003783	NYS Dept of Agricultr REF: OS506C - BATCH: 04019			119,035.88		8,276.74
12	12/31/2015	JE-000349	rclass facility fees			11,990.00		20,266.74
12	12/31/2015	JE-000350	Miranda Fireworks		4,500.00			15,766.74
				0.00	394,289.39	410,036.13	15,766.74	15,766.74
Report Total:				0.00	394,289.39	410,036.13	15,766.74	15,766.74

Attachment 3

From: James Maturo/AC/ONC/ONGOV
To: Peter Casper <p_casper@oncenter.org>,
Cc: "bobantonacci@ongov.net" <bobantonacci@ongov.net>, Kelly Carr
<krc@oncenter.org>
Date: 10/20/2015 07:56 AM
Subject: Re: q3 15 email 3

Hi Pete, please send over the P&L for the Miranda Lambert concert. In addition, please provide the official attendance figure. Thanks.

AMENDMENT (1)

THIS AMENDMENT, by and between the COUNTY OF ONONDAGA, a municipal corporation of the State of New York, by Joanne M. Mahoney, its County Executive, hereinafter called the "County," and SMG, a Pennsylvania general partnership.

WITNESSETH:

WHEREAS, authorized by Resolution No. 102-2012, the County entered into a Management Agreement with SMG, dated July 2, 2012, to provide managerial, operational, and marketing services for county-owned facilities, and it is necessary for the parties to execute a document memorializing the intent to extend such Management Agreement through the Renewal Term, as provided therein;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. Renewal Term

Consistent with the provisions of Section 3.3 of the Management Agreement, the parties hereby agree to extend the term of such Management Agreement for an additional 5-year period commencing January 1, 2017, and ending December 31, 2021, (the "Renewal Term") on terms set forth herein.

2. Management Agreement - Amendments

The Management Agreement is hereby amended as follows:

a. In addition to the changes made herein below, reference within the Management Agreement to "Alliance Bank Stadium" should be stricken and amended so as to read "the Lakeview Amphitheater" in the following sections:

- i. Third paragraph of the preamble;
- ii. Section 5.2(c);
- iii. Section 6.1;
- iv. Section 13.3(l);
- v. Section 13.3(m);
- vi. Exhibit A – "Services".

b. Within Section 1 "DEFINITIONS", the following changes are to be made:

i. Add the following language, inserted as a new paragraph after the definition for "Fiscal Year":

"Lakeview Amphitheater": A facility located on the western shore of Onondaga Lake used to hold concerts and other events.

ii. Strike the definition of "County-Sponsored Events at Alliance Bank Stadium", and substitute therefor the following language, inserted as a new paragraph:

"County-Sponsored Events at Lakeview Amphitheater": Events held at the Lakeview Amphitheater sponsored by the County and to be managed by SMG under the terms of

this Management Agreement, as amended, where such events are held on or prior to October 1, 2015. Notwithstanding any inconsistent term of this Management Agreement, the County reserves the right to grant licenses for the use of the Lakeview Amphitheater to other entities for conducting events, including, but not limited to, concerts. The County intends to conduct a competitive procurement process for facility management services at the Lakeview Amphitheater related to events to be booked and held in 2016 and beyond.

- iii. Within the definitions of "Operating Expenses" and "Operating Revenues", strike the words "County-sponsored events at Alliance Bank Stadium" and substitute therefor "County-sponsored events at the Lakeview Amphitheater held on or prior to October 1, 2015".
- c. Within Section 4 "SMG'S COMPENSATION", the following changes are to be made:
- i. Within Section 4.1 "Management Fees", the following sentence is hereby stricken in its entirety:

As base compensation to SMG for providing the services hereunder, the County shall pay SMG during the Transition Period, Management Term and Renewal Term, if any, a monthly fixed fee of SIXTEEN THOUSAND TWO HUNDRED FIFTY DOLLARS (\$16,250), which amount shall be adjusted upward on the first day of each Fiscal Year beginning January 1, 2014 by the percentage change in the Consumer Price Index -- All Urban Consumers (CPI-U) -- U.S. City Average -- All Items, as published by the Bureau of Labor Statistics of the U.S. Department of Labor (the "Base Fee").

and the following language is to be substituted therefor:

As base compensation to SMG for providing the services hereunder, the County shall pay SMG during the Transition Period and Management Term a monthly fixed fee of SIXTEEN THOUSAND TWO HUNDRED FIFTY DOLLARS (\$16,250), and during the Renewal Term a monthly fixed fee of FIFTEEN THOUSAND FOUR HUNDRED SEVENTEEN DOLLARS (\$15,417), which amounts shall be adjusted upward on the first day of each Fiscal Year during the Management Term and Renewal Term, respectively, by the percentage change in the Consumer Price Index -- All Urban Consumers (CPI-U) -- U.S. City Average -- All Items, as published by the Bureau of Labor Statistics of the U.S. Department of Labor (the "Base Fee").
 - ii. Within Section 4.2 "Incentive Fees", the heading name is to be stricken in its entirety and the following language is to be substituted therefor "Incentive Fees during Management Term", and such section shall be further amended to strike the following language "and Renewal Term, if any".
 - iii. Section 4.2(b) shall be renumbered as Section 4.4, and within such renumbered section, reference to "Section 4.2(a) above" shall be stricken and the following language is to be substituted therefor "Sections 4.2 and 4.3 above".

- iv. Within Section 4, insert a new Section 4.3 as follows:

Incentive Fees during Renewal Term

(a) In addition to the fees described in Section 4.1 above, SMG shall be entitled to an annual incentive fee with respect to each Fiscal Year hereunder during the Renewal Term, if any, as set forth below, provided that (1) SMG shall not be entitled to any of the three components of the annual incentive fee with respect to any Fiscal Year in which SMG does not achieve the Benchmark as agreed upon and (2) any such annual incentive fee shall not exceed the base compensation payable to SMG pursuant to Section 4.1 above. Such annual incentive fee shall be pro-rated for any year in which the contract is terminated prior to the end of the fiscal year. Such annual incentive fee shall be comprised of the following three components:

- (1) SMG shall be entitled to an Exhibit Hall Occupancy incentive, to be established prior to each Fiscal Year by SMG and the County, up to SIXTY-ONE THOUSAND SIX HUNDRED SIXTY-SEVEN DOLLARS (\$61,667).
- (2) For any Fiscal Year in which SMG achieves the Benchmark as agreed upon, SMG shall be entitled to an annual incentive fee of SIXTY-ONE THOUSAND SIX HUNDRED SIXTY-SEVEN DOLLARS (\$61,667).
- (3) Achievement of qualitative key performance indicators, to be established prior to each Fiscal Year by SMG and the County, up to SIXTY-ONE THOUSAND SIX HUNDRED SIXTY-SEVEN DOLLARS (\$61,667). Qualitative key performance indicators shall be agreed upon in writing by SMG and the County prior to any Fiscal Year during the Renewal Term.

Provided however that the incentive fees outlined above in Sections 4.3 (a) (1), (2) and (3) shall at the beginning of each Fiscal Year be subject to the same CPI-U adjustments as provided for in Section 4.1.

2. Continuation of Management Agreement

The parties agree that the Management Agreement is amended to incorporate the provisions of this document, and, that such Management Agreement, dated July 2, 2012, shall continue in effect as amended herein.

(signature page follows)

DEPARTMENT

CONTRACT NO.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment the date and year hereinafter written.

COUNTY OF ONONDAGA

Dated: 6/16 2015 By: Joanne M. Mahoney
Joanne M. Mahoney, County Executive *KMB*

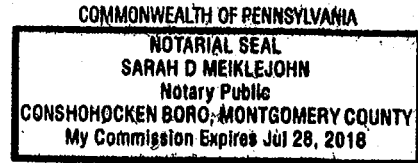
SMG

Dated: June 11, 2015 By: John F. Burns
John F. Burns
Chief Financial Officer

State of Pennsylvania)
County of Montgomery) ss.:

On the 11th day of June in the year 2015 before me personally came John Burns, who, being by me duly sworn, did depose and say that he resides in Montgomery County, Pennsylvania; that he is the Executive Vice President of SMG, the partnership described in and which executed the above instrument; and that he signed his name(s) thereto by authority of the board of directors of said corporation.

Sarah D. Meiklejohn
Notary Public



O:\Legislature\CONTRACT reservoir\SMG\SMG - management agreement - amendment.docx
KMB



County of Onondaga
Office of the County Executive

John H. Mulroy Civic Center, 14th Floor
421 Montgomery Street, Syracuse, New York 13202

Phone: 315.435.3516 Fax: 315.435.8582

www.ongov.net

Joanne M. Mahoney
County Executive

Ann Rooney
Deputy County Executive, Human Services

William P. Fisher
Deputy County Executive

Mary Beth Primo
Deputy County Executive, Physical Services

January 15, 2015

Onondaga County Comptroller Robert E. Antonacci II, CPA, Esq.

Re: *Miranda Lambert Concert*

Dear Comptroller Antonacci,

I am writing in response to your letter of January 14, which grossly mischaracterizes this office's diligent efforts to provide you, through the office of the County's Chief Fiscal Officer and through the Oncenter management team, with the accounting records kept by SMG relating to its activities at the Lakeview Amphitheater for the concert held there on September 3, 2015.

First of all, I would like to express our gratitude for your agreement to our request, in response to your letter of December 10 notifying us of your intention to examine these accounting records on December 16, to begin your examination on January 6, in light of Mr. Peter Casper's engagement in numerous year-end activities including a project to upgrade their booking software against a January 4 deadline.

As you know, under its Facility Management Agreement with the County of Onondaga dated June 2012, SMG is required to "...keep full and accurate accounting records relating to its activities..." and to "...give the County's authorized representatives, including but not limited to the County Comptroller, access to such books and records maintained at the Facilities during reasonable business hours and upon reasonable advance notice..." As we have learned to expect, SMG has done an outstanding job of keeping full and accurate accounting records.

Steve Morgan and I met with Mr. Casper prior to January 6 to ensure that he had prepared a complete set of accounting records related to your request. After reviewing the details of your email of December 10, we felt confident that Mr. Casper had gathered the specific accounting records that you described.

Your characterization that "...the Oncenter provided limited documents and information in response to this Office's request..." is simply untrue. Although I do not have the documents at hand, as they are now in your possession, my recollection is that Mr. Casper provided you with records, invoices, purchase orders, checks written and/or cleared including voided checks, bank statements, internal profit and loss statements, internal balance sheets, and accounts payable. I do not recall seeing any bills of lading or inventory records. But each and every other accounting record in your list was provided to Mr. Maturo and Mr. Schepp on January 6.

I'm sure you will recall your discussions with myself and Deputy County Executive Primo regarding the unusual requests for information that Executive departments and an outside contractor began receiving after Mr. Schepp's tenure began as Deputy Comptroller for Auditing. I'm sure you will also recall the "Notice Protocol" email that you sent on December 10 as a follow-up to a conversation you had with me and email received from Ms. Primo. In your email, you kindly acknowledged and agreed to our request to provide "notice of any audit engagement we are undertaking to the Deputy County Executive in charge of the particular department, as well as Steve Morgan, Chief Fiscal Officer. To the extent possible, we will advise as to documents requested..."

Our instructions to Mr. Casper as to the protocol he should follow in responding to document request is fully consistent with the agreed protocol that your office will advise the Chief Fiscal Office as to documents requested.

My understanding is that subsequent to your meeting on January 6, Mr. Maturo requested certain documents from Mr. Morgan, including a General Ledger detail report that had not been requested in your letter of December 10. Mr. Morgan then instructed Mr. Casper to provide the requested accounting records, which were provided in a meeting on January 14.

Once again, Mr. Maturo asked for additional documents that had not been previously requested of Mr. Morgan. Per the protocol that had been agreed upon, Mr. Casper informed Mr. Maturo that such requests needed to be made to the County CFO.

In yesterday's letter, your office specifically requested the following documents:

- A copy of a document that SMG refers to as a "deal sheet", which describes the rental deal terms with respect to Facility Fees and Ticketmaster rebates. This document is being provided to you today, on the business day following your request.
- A copy of the document in which the NYS Department of Agriculture & Markets acknowledges receipt of a statement of reimbursement of \$119,035.88 in reimbursable expenses – the details of which expenditures were provided to you on January 6 -- and states that processing of this claim has been initiated, with disbursement to follow. This document is being provided to you today, on the business day following your request.
- Documentation of the payment of \$39,147.25 to Live Nation at the time of final settlement of the 9/3/2015 event, which followed the preliminary settlement that had been made earlier. This document is being provided to you today, on the business day following your request.
- A Certificate of Liability Insurance issued by Aon Risk Insurance Services West, Inc. to Live Nation Worldwide, Inc. for the 9/3/2015 concert at the Lakeview Amphitheater. This document is being provided to you today, on the business day following your request.
- You also requested "any and all agreements...concerning the payments resulting from concession sales and facility fees". The aforementioned statement of the deal terms (bullet #1 above) is the document that establishes the agreement that Live Nation will receive 100% of the Net Concessions and 100% of the Facility fees collected.