

# CABARRUS COUNTY



## BOARD OF COMMISSIONERS WORK SESSION

**November 4, 2019  
4:00 PM**

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- 1. CALL TO ORDER - CHAIRMAN**
- 2. APPROVAL OF WORK SESSION AGENDA - CHAIRMAN**
  - 2.1. BOC - Changes to the Agenda
- 3. DISCUSSION ITEMS - NO ACTION**
  - 3.1. County Manager - Update on Project for Synthetic Turf Playing Fields
  - 3.2. Innovation and Technology - Innovation Report
- 4. DISCUSSION ITEMS FOR ACTION**
  - 4.1. Infrastructure and Asset Management - Courthouse Expansion Project Schematic Design Approval
  - 4.2. County Manager - Arena Capital Purchase
  - 4.3. County Manager - Purchase of Property for a Future High School
  - 4.4. Finance - Contractual Incentive Payment for SMG (Cabarrus Arena)
  - 4.5. Finance - Update of Investment Policy, List of Banking Institutions and List of Investment Officers
  - 4.6. Infrastructure and Asset Management - Offer for Purchase of Surplus Ambulances
  - 4.7. Sheriff's Office - Resolution Approving Bike Safe Grant Funds
- 5. APPROVAL OF REGULAR MEETING AGENDA**
  - 5.1. BOC - Approval of Regular Meeting Agenda
- 6. CLOSED SESSION**
  - 6.1. Closed Session - Pending Litigation, Economic Development and Personnel Matters
- 7. ADJOURN**

*In accordance with ADA regulations, anyone in need of an accommodation to participate in the meeting should notify the ADA coordinator at 704-920-2100 at least 48 hours prior to the meeting.*

# CABARRUS COUNTY



## BOARD OF COMMISSIONERS WORK SESSION

**November 4, 2019  
4:00 PM**

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**AGENDA CATEGORY:**

Approval of Work Session Agenda - Chairman

**SUBJECT:**

BOC - Changes to the Agenda

**BRIEF SUMMARY:**

A list of changes to the agenda is attached.

**REQUESTED ACTION:**

Motion to approve the agenda as amended.

**EXPECTED LENGTH OF PRESENTATION:**

1 Minute

**SUBMITTED BY:**

Lauren Linker, Clerk to the Board

**BUDGET AMENDMENT REQUIRED:**

No

**COUNTY MANAGER'S RECOMMENDATIONS/COMMENTS:**

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**ATTACHMENTS:**

- Changes to the Agenda



**CABARRUS COUNTY BOARD OF COMMISSIONERS  
CHANGES TO THE AGENDA  
NOVEMBER 4, 2019**

**REVISED:**

**Closed Session**

- 6.1 Closed Session – Pending Litigation and Economic Development**
- **Personnel Matters Added**

**REMOVED FROM THE NOVEMBER 18, 2019 REGULAR MEETING:**

**New Business**

- G.1 Economic Development Investment – Project Kiwi – Public Hearing 6:30 p.m.**

# CABARRUS COUNTY



## BOARD OF COMMISSIONERS WORK SESSION

**November 4, 2019  
4:00 PM**

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**AGENDA CATEGORY:**

Discussion Items - No Action

**SUBJECT:**

County Manager - Update on Project for Synthetic Turf Playing Fields

**BRIEF SUMMARY:**

The Convention and Visitors' Bureau (CVB) presented the outline of a project for the installation of synthetic turf fields at two high schools (Cox Mill and Jay M. Robinson) along with the eventual construction of two additional synthetic turf fields. Representatives from the CVB, Cabarrus County and Cabarrus County Schools met to discuss the project. That discussion included proposed locations, timetables, and procurement methods. Staff would like to present some options to the Board of Commissioners for consideration.

**REQUESTED ACTION:**

Discussion and input.

**EXPECTED LENGTH OF PRESENTATION:**

10 Minutes

**SUBMITTED BY:**

Michael K. Downs, County Manager

**BUDGET AMENDMENT REQUIRED:**

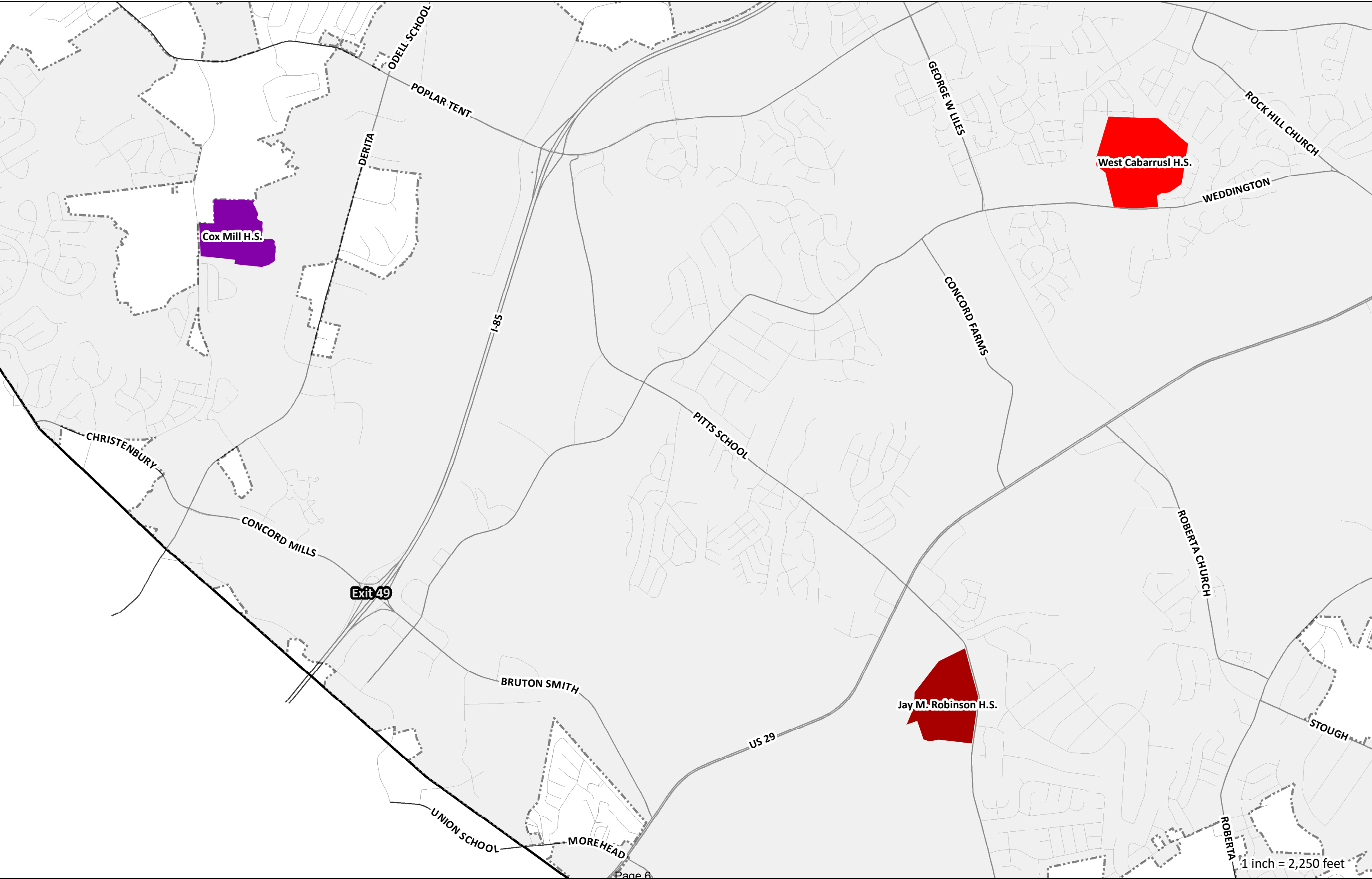
No

**COUNTY MANAGER'S RECOMMENDATIONS/COMMENTS:**

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**ATTACHMENTS:**

- ▣ Map



Cox Mill H.S.

West Cabarrus I H.S.

Jay M. Robinson H.S.

1 inch = 2,250 feet

# CABARRUS COUNTY



## BOARD OF COMMISSIONERS WORK SESSION

**November 4, 2019  
4:00 PM**

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**AGENDA CATEGORY:**

Discussion Items - No Action

**SUBJECT:**

Innovation and Technology - Innovation Report

**BRIEF SUMMARY:**

Monthly report on county employees creating value through innovation.

Innovation through continuous improvement, introducing the new collaborative digital plan room by ePermitHub. The digital plan room is integrated with Accela Citizen Access and provides enhancements requested by staff and the development community. Noted new features include; automatic file validation on upload, revisions tracked at the sheet-level, interactive comments and a project issue list with status tracking.



**REQUESTED ACTION:**

Receive report.

**EXPECTED LENGTH OF PRESENTATION:**

15 Minutes

**SUBMITTED BY:**

Debbie Brannan, Area Manager of Innovation and Technology

**BUDGET AMENDMENT REQUIRED:**

No

**COUNTY MANAGER'S RECOMMENDATIONS/COMMENTS:**

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# CABARRUS COUNTY



## BOARD OF COMMISSIONERS WORK SESSION

**November 4, 2019  
4:00 PM**

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### **AGENDA CATEGORY:**

Discussion Items for Action

### **SUBJECT:**

Infrastructure and Asset Management - Courthouse Expansion Project Schematic Design Approval

### **BRIEF SUMMARY:**

Staff and the design team will provide an update on the Cabarrus County Courthouse Expansion project and request the Board of Commissioners' approval on the schematic design.

### **REQUESTED ACTION:**

Motion to approve the presented schematic design of the courthouse expansion project.

### **EXPECTED LENGTH OF PRESENTATION:**

30 Minutes

### **SUBMITTED BY:**

Kyle Bilafer, Area Manager of Operations  
Tom Potts, Silling Architects  
Jody Driggs, Silling Architects  
Honorable Judge Marty McGee

### **BUDGET AMENDMENT REQUIRED:**

No

### **COUNTY MANAGER'S RECOMMENDATIONS/COMMENTS:**

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**ATTACHMENTS:**

- Funding Plan

**Cabarrus County  
Courthouse Project  
As of 10-30-19**

**Funding Plan**

Category	Project Estimates	Established Funding	Balance needed	GMP #1 Site Enabling Feb 2020	GMP#2 Construction June 2020	GMP#3 Renovation September 2022
<b>Consultant</b>	\$ 223,096	\$ 83,096	\$ 140,000	\$ -	\$ 140,000	\$ -
<b>Engineers</b>	515,000	165,000	350,000	350,000		
<b>Architect</b>						
Main Contract	8,890,408	8,308,000	582,408	582,408		
RFQ - Commissioning	300,000	-	300,000		300,000	
<b>Construction</b>						
Pre-Construction	1,111,000	1,111,000	-	-		
GMP #1 - Site Enabling	6,722,116		6,722,116	6,722,116		
GMP #2 - New Construction	88,221,926		88,221,926		88,221,926	
GMP #3 - Renovation	14,090,357		14,090,357			14,090,357
<b>Other Improvements</b>						
Property Acquisition & Utility Relocation (includes What-A-Burger changes)	2,359,572	2,359,572	-	-		
<b>Equipment and Furnishings</b>						
Furnishing, Fixtures and Equipment Audio Visual	4,000,000		4,000,000		4,000,000	
<b>Contingency</b>	5,600,000	491,803	5,108,197		5,108,197	
<b>Total Project</b>	<b>\$ 132,033,475</b>	<b>\$ 12,518,471</b>	<b>\$ 119,515,004</b>	<b>\$ 7,654,524</b>	<b>\$ 97,770,123</b>	<b>\$ 14,090,357</b>

# CABARRUS COUNTY



## BOARD OF COMMISSIONERS WORK SESSION

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### **AGENDA CATEGORY:**

Discussion Items for Action

### **SUBJECT:**

County Manager - Arena Capital Purchase

### **BRIEF SUMMARY:**

As part of the agreement between Cabarrus County and SMG, SMG contributed \$150,000 to Cabarrus County for capital improvement and capital equipment purchases related to the facility in 2016. Of the total \$150,000 contributed, \$41,437.78 remains unspent. The Arena is requesting to purchase security vestibules to further ensure safety at all events. In order to fund these capital purchases, an appropriation of fund balance is necessary via a budget amendment since the funds haven't been reappropriated since 2016 and therefore have fallen to fund balance. Moving forward, these funds will be placed in a capital project account so they do not have to be reappropriated every budget year.

### **REQUESTED ACTION:**

Motion to adopt the budget amendment and related project ordinance.

### **EXPECTED LENGTH OF PRESENTATION:**

5 Minutes

### **SUBMITTED BY:**

Kenneth Robinson, General Manager, Arena and Event Center  
Kristin Jones, Budget and Performance Manager  
Jonathan Marshall, Deputy County Manager

### **BUDGET AMENDMENT REQUIRED:**

Yes

## COUNTY MANAGER'S RECOMMENDATIONS/COMMENTS:

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### ATTACHMENTS:

- ▣ Arena Agreement
- ▣ Capital Purchases to Date
- ▣ Budget Amendment
- ▣ Project Ordinance

MANAGEMENT AGREEMENT  
BETWEEN  
CABARRUS COUNTY, NORTH CAROLINA  
AND  
SMG

Dated as of July 28, 2015

## MANAGEMENT AGREEMENT

*1st* ~~28th~~ day of July, 2015 by and between Cabarrus County, North Carolina, a political subdivision of the State of North Carolina (the "County"), and SMG, a Pennsylvania general partnership, whose current address is 300 Conshohocken State Road, Suite 770, West Conshohocken, PA 19428 ("SMG").

### BACKGROUND

The County is the owner and current operator and manager of the Cabarrus Arena and Events Center located in the County of Cabarrus, North Carolina ("Facility").

SMG is engaged, among other things, in the business of providing management services, including operations and marketing services for public assembly facilities.

The County desires to engage SMG, and SMG desires to accept such engagement, to provide management services for the Facility on the terms and conditions set forth herein.

The County intends to work in mutual accord with SMG in order to ensure provision of high quality management services, thereby enhancing the use and enjoyment of the Facility.

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

#### 1. Definitions

For purposes of this Agreement, the following terms have the meanings referred to in this Section 1:

"ADA" – the Americans with Disabilities Act, 42 U.S.C. Sections 12101-12213 as amended by the Civil Rights Act of 1991 (42 U.S.C. Section 1981(a)), as it now exists and as it may be amended in the future by statute or judicial interpretation.

"Affiliate" – a Person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified Person. For purposes of this definition, "control" means ownership of equity securities or other ownership interests that represent more than 40% of the voting power in the controlled Person.

"Approved Budget" – any budget submitted by SMG and approved by the County pursuant to Section 5 hereof.

"CERCLA" – the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act.

“Capital Equipment” – any and all furniture, fixtures, machinery or equipment, either additional or replacement, having a per item original cost of \$100,000.00 or more and an expected useful life of more than one year.

“Capital Improvements” – any and all building additions, alterations, renovations, repairs or improvements that have an initial dollar cost of not less than \$100,000.00 per project.

“County” – as defined in this first paragraph of this Agreement.

“Contract Administrator” -- the designated administrative official of the County as from time to time appointed by the County, or such individual person(s) as may from time to time be authorized in writing by such administrative official to act for him/her with respect to any or all matters pertaining to this Agreement.

“Event Expenses” – any and all expenses incurred or payments made by SMG in connection with the occurrence of events at the Facility, including but not limited to costs for event staffing including ushers, ticket takers, security and other event staff, and costs relating to setup and cleanup.

“Facility” – as defined in the first paragraph of the Background section of this Agreement.

“Facility Policy Manual” – the policy manual provided by SMG to the County containing certain operating and employment policies customarily utilized by SMG in connection with the management of a public assembly facility such as the Facility.

“Fair” – as defined in Section 2.6 hereof.

“Fiscal Year” – a one year period beginning July 1 and ending June 30.

“Laws” – all federal, state, local and municipal regulations, ordinances, statutes, rules, laws and constitutional provisions.

“Losses” – any and all losses, liabilities, claims, damages and expenses (including reasonable attorneys’ fees and costs).

“Management Term” – as defined in Section 3.2 hereof.

“Net Operating Loss/Profit -- with respect to a Fiscal Year, the excess, if any, of Operating Expenses for such Fiscal Year over Operating Revenues for such Fiscal Year, in the case of a loss, and the excess, if any, of Operating Revenues for such Fiscal Year over Operating Expenses for such Fiscal Year, in the case of a profit.

“Operating Expenses” – (a) any and all expenses and expenditures of whatever kind or nature incurred by SMG in promoting, operating, maintaining and managing the Facility, provided that the same have been budgeted, are otherwise contemplated by this Agreement (e.g.



an increase over budgeted Operating Expenses due to an increase in event activity) or such expense is otherwise approved in writing by the County, including, but not limited to: employee compensation and related expenses (e.g., base salaries, bonuses, severance and car allowances), employee benefits and related costs (e.g., relocation and other related expenses pursuant to SMG's relocation policy (a copy of which is included in the Facility Policy Manual), parking and other fringe benefits), supplies, material and parts costs, costs of any interns and independent contractors, advertising, marketing and public relations costs and commissions, janitorial and cleaning expenses, data processing costs, dues, subscriptions and membership costs, the costs of procuring, administering and maintaining the insurance referred to in Section 8 below (including, without limitation, the amount of any premium or deductible under any such policy), amounts expended to procure and maintain permits and licenses, charges, taxes, excises, penalties (except where incurred due to SMG's or its employees', agents', licensees', concessionaires', promoters', performers' or contractors' negligent or intentional acts or omissions) and fees, professional fees, printing and stationery costs, Event Expenses, postage and freight costs, equipment rental costs, computer equipment leases and line charges, repairs and maintenance costs (e.g., elevators and HVAC), security expenses, utility and telephone charges, travel and entertainment expenses in accordance with SMG's policies (a copy of which is included in the Facility Policy Manual), the cost of employee uniforms, safety and medical expenses, exterminator and waste disposal costs, costs relating to the maintenance of signage inventory and systems, the cost of annual independent audits of the Facility, the cost of compliance with laws and regulations, costs incurred under agreements, commitments, licenses and contracts executed by SMG as provided in Section 2.3(c) hereof, and the fixed management fees payable to SMG pursuant to Section 4.1 below, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis; provided that Operating Expenses shall not include expenses or expenditures in connection with Capital Improvements and Capital Equipment purchases or the incentive fee payable pursuant to Section 4.2 below and any expenses relating to SMG personnel based in SMG's corporate headquarters in Philadelphia, Pennsylvania or its regional field locations (including the costs of travel by such corporate or regional personnel in connection with SMG's management of the Facility).

(b) Solely for purposes of calculating Net Operating Loss/Profit and SMG's incentive fee hereunder, Operating Expenses shall exclude all interest, income tax, depreciation and amortization expenses.

"Operating Revenues" – any and all revenues of every kind or nature derived from owning, operating, managing or promoting the Facility, including, but not limited to: license, lease and concession fees and rentals, revenues from merchandise sales, advertising and sponsorship sales and renewals, event sponsorship revenues, equipment rentals, utility revenues, box office revenues, ticket surcharges (if any), ticket service fees, parking revenues, food service and concession revenues (however, if such revenues are collected in the first instance by and retained by the concessionaire, only the amount of such revenues paid by the concessionaire to the Facility shall be included as Operating Revenues), commissions or other revenues from decoration and set-up, security and other subcontractors (however, if such revenues are collected in the first instance by and retained by such subcontractors, only the amount of such revenues paid by such contractors to the Facility shall be included as Operating Revenues), miscellaneous operat-

ing revenues, revenues generated from separate agreements with SMG Affiliates pertaining to the Facility, and interest revenues, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis. The parties acknowledge that revenues from the sale of tickets for events at the Facility are not Operating Revenues, but are instead revenues of the promoter and/or performer of each such event. To the extent that SMG collects such ticket sale revenue on behalf of such promoter and/or performer, such ticket sale revenue shall be the source of funds from which SMG collects the rental charges and other event reimbursements due by such promoter and/or performer for use of the Facility, which such charges and reimbursements are Operating Revenues hereunder.

“Operating Revenue Benchmark” – shall equal One Million Thirty-Five Thousand Dollars (\$1,035,000) for the first full Fiscal Year of the Management Term, subject to adjustment for material changes in the manner in which SMG operates food and beverage products at the Facility, if such changes are agreed upon by the parties hereto. The Operating Revenue Benchmark shall automatically adjust on the first day of each subsequent Fiscal Year to equal the amount of three (3) year average of the total Operating Revenues for the previous three Fiscal Years (and the parties agree to take into consideration any agreed upon adjustments relative to material changes in the food and beverage operations of the Facility).

“Person” – any individual, general partnership, limited partnership, limited liability partnership, partnership, corporation, joint venture, trust, business trust, limited liability company, cooperative, or association, and the successors and assigns of any of the foregoing and, unless the context otherwise requires, the singular shall include the plural, and the masculine gender shall include the feminine and the neuter, and vice versa.

“Pre-existing Agreement” – each contract, license, agreement, option, lease and commitment existing as of the date of this Agreement that grants any Person any right (i) to license, use, occupy or rent all or any portion of the Facility, or (ii) to provide services to be used in the management, operation, use, possession, occupation, maintenance, promotion or marketing of all or any portion of the Facility, and that are listed on **Exhibit “A”** hereto.

“Renewal Term” – the additional period for which this Agreement may be renewed at the option of the County in accordance with Section 3.2 hereof beyond the Management Term.

“SMG” – as defined in the first paragraph of this Agreement.

## **2. Engagement of SMG; Scope of Services.**

### **2.1 Engagement.**

(a) General Scope. The County hereby engages SMG to promote, operate and manage the Facility during the Management Term and the Renewal Term, if any, upon the terms and conditions hereinafter set forth, and SMG hereby accepts such engagement.

(b) Manager of the Facility. Subject to the terms of this Agreement, SMG shall be the sole and exclusive manager to manage, operate and promote the Facility during the Management Term and the Renewal Term, if any. In such capacity, SMG shall have exclusive authority over the day-to-day operation of the Facility and all activities therein; provided that SMG shall follow all policies and guidelines of the County hereafter established or modified by the County that the County notifies SMG in writing are applicable to the Facility (including without limitation any methodology pertaining to the allocation of any costs and expenses by the County to the Facility as permitted herein); provided further that to the extent that such policies or guidelines hereafter established or modified by the County adversely affect revenues or expenses at the Facility, then and in that event, the Benchmark and/or the incentive fee formula set forth in Section 4.2 below shall be appropriately adjusted so that it reflects the additional costs or reduced revenues resulting from such established or modified policies or guidelines.

(c) Approval of the County. To the extent that the approval of the County is required under the terms of this Agreement, the written approval of the Contract Administrator shall constitute the approval of the County, except to the extent the approval of another party is expressly required by the terms of this Agreement.

(d) Standards for Measurement of SMG's Performance. The County is entering into this Agreement in part based upon SMG's stated expertise and experience in managing and promoting other facilities similar in nature to the Facility and that SMG will utilize all of its good-faith commercially reasonable efforts to manage the Facility in a first-class, high-quality, fiscally responsible manner and in the County's best interest. It is the intention of the parties hereto that SMG will use its good faith commercially reasonable efforts to accomplish the following performance goals in its management of the Facility:

(i) Decreasing the yearly subsidy required by the County to the expenses of the Facility from the County's General Fund;

(ii) Increasing the number of event days in which the Facility is used;

and

(iii) Improving the quality of events occurring at the Facility.

(e) It is the express intent of the parties hereto that this Agreement be construed to the fullest extent possible in accordance with I.R.S. Revenue Procedure 97-13, relating to management contracts for facilities financed with tax-exempt bonds or Certificates of Participation, and, for purposes of determining the parties' compliance with such Revenue Ruling, all provisions hereof shall be interpreted or applied in such a manner as to provide the greatest compliance with the same. SMG acknowledges and agrees that it shall not be entitled to and does not intend to claim any compensation whatsoever or howsoever measured or denominated hereunder which does not comply with such Revenue Ruling or which could jeopardize such bonds' tax-exempt status. Under no circumstances shall SMG enter into any agreement for use of the Facility where such use exceeds thirty (30) days over such agreement's entire term (including renewal terms), without the prior written consent of the County.

## 2.2 Scope of Services -- Generally.

SMG shall perform and furnish such management services and systems as are appropriate or necessary to operate, manage and promote the Facility in a manner consistent with SMG's and the County's policies and procedures, and the operations of other similar first-class facilities.

## 2.3 Specific Services.

Without limiting the generality of the foregoing, and subject to the provisions hereof, SMG shall provide, and shall have the authority to provide without (except as otherwise expressly provided herein) any prior approval by the County, all of the following management services for the Facility in consideration for the management fees specified in Section 4 hereof:

(a) employ (subject to Section 7.2), supervise and direct all necessary or desirable employees and personnel consistent with the provisions of this Agreement;

(b) administer relationships with all subcontractors, concessionaires and all other contracting parties to the Pre-Existing Agreements, assume responsibility for any and all negotiations, renewals and extensions (to the extent SMG deems any of the foregoing to be necessary or desirable) relating to such Pre-Existing Agreements, and enforce the Pre-Existing Agreements;

(c) negotiate, execute in its own name, deliver and administer any and all licenses, occupancy agreements, rental agreements, booking commitments, advertising agreements, concession agreements, supplier agreements, service contracts (including, without limitation, contracts for cleaning, decorating and set-up, snow removal, general maintenance and maintenance and inspection of HVAC systems, elevators, stage equipment, fire control panel and other safety equipment, staffing and personnel needs, including guards and ushers, and other services which are necessary or appropriate) and all other contracts and agreements in connection with the management, promotion and operation of the Facility, provided that if any such license, agreement, commitment or contract other than those involving the license, lease or rental of the Facility in the ordinary course has a term that extends beyond the remaining Management Term or Renewal Term, as the case may be, such license, agreement, commitment or contract shall be approved and executed by the County (which approval shall not be unreasonably withheld); provided, however, that in the event that SMG desires to propose additional services by SMG or any Affiliate of SMG, SMG shall present all such proposals to the County for its approval;

(d) to the extent that Operating Revenues or funds supplied by the County are made available therefor, maintain the Facility in the condition received, reasonable wear and tear excepted; provided that the County shall be responsible for undertaking all Capital Improvements and Capital Equipment purchases as provided in Section 5.8;

(e) to the extent that Operating Revenues or funds supplied by the County are made available therefor, rent, lease or purchase all equipment and maintenance supplies neces-

sary or appropriate for the operation and maintenance of the Facility, provided that the County shall be responsible for undertaking all Capital Improvements and Capital Equipment purchases pursuant to Section 5.8, subject to the SMG Capital Contribution as provided in Section 5.11;

(f) establish and adjust prices, rates and rate schedules for the aforesaid licenses, agreements and contracts and any other commitments relating to the Facility to be negotiated by SMG in the course of its management, operation and promotion of the Facility. In determining such prices and rate schedules, SMG shall evaluate comparable charges for similar goods and services at similar and/or competing facilities and shall consult with the Contract Administrator about any adjustments to the rate schedules at the Facility to be made by SMG; provided, further, that SMG shall take all commercially reasonable actions to utilize its relationship with Ticketmaster to improve the financial, marketing and technological capacity of the Facility. As set forth in Section 10.2, SMG shall enter into no contract with any Affiliate of SMG unless specifically approved in writing by the County;

(g) to the extent that Operating Revenues or funds supplied by the County are made available therefor, pay, when due all Operating Expenses from accounts established pursuant to Sections 5.6 and 5.7 of this Agreement;

(h) after consultation with the County, institute or defend, at the reasonable expense of the County, with counsel agreed to by both parties, such legal actions or proceedings as SMG shall deem necessary or appropriate in connection with the operation of the Facility, including, without limitation, to collect charges, rents or other revenues due or to cancel, terminate or sue for damages under any license, use, advertisement or concession agreement for the breach thereof or default thereunder by any licensee, user, advertiser, or concessionaire at the Facility;

(i) maintain a master set of all booking records and schedules for the Facility;

(j) provide day-to-day administrative services in support of its management activities pursuant to Approved Budgets and annual plans described herein, including, but not limited to, the acquisition of services, equipment, supplies and facilities; internal budgeting and accounting; maintenance and property management; personnel management; record-keeping; collections and billing; and similar services; and

(k) engage in such advertising, solicitation, and promotional activities as SMG deems necessary or appropriate to develop the potential of the Facility and the cultivation of broad community support (including without limitation selling advertising inventory and securing product rights for the Facility). SMG shall work with the Cabarrus County Convention and Visitor's Bureau to market the Facility for conventions, trade shows and public entertainment shows. In connection with its activities under this Agreement, including without limitation advertising relating to the Facility, SMG shall be permitted to use the terms "Cabarrus Arena and Events Center" and logos for such names in its advertising, subject to the approval of the County.

(l) Market and secure new commercial rights sales for the Facility.

(m) In consultation with the County, evaluate and adjust the operational structure of the Facility as needed.

(n) In consultation with the County, evaluate, and attempt to adhere to contemporary community standards in respect to all events scheduled.

(o) As set forth herein, submit all financial and other reports detailing SMG's activities regarding the Facility to the County in a timely manner.

(p) Prepare and submit proposed budgets and annual plans as further provided herein.

(q) All activities of a corporate nature, including management and marketing activities regarding the Facility occurring at SMG's corporate headquarters in Pennsylvania or other locations, and all costs of travel to or from the Facility by SMG's employees or agents who are not regularly employed at the Facility.

(r) Assist with the marketing, promotion and operation of the Fair as further provided herein.

#### 2.4 Right of Entry Reserved.

Representatives of the County designated in writing by the Contract Administrator shall have the right, upon reasonable advance notice to SMG and at appropriate times, to enter all portions of the Facility to inspect same, to observe the performance by SMG of its obligations under this Agreement, to install, remove, adjust, repair, replace or otherwise handle any equipment, utility lines, or other matters in, on, or about the premises, or to do any act or thing which the County may be obligated or have the right to do under this Agreement or otherwise. Nothing contained in this Section is intended or shall be construed to limit any other rights of the County under this Agreement. The County shall not unreasonably interfere with the activities of SMG hereunder, and the County's actions shall be conducted such that disruption of SMG's work shall be kept to a minimum. Nothing in this Section shall impose or be construed to impose upon the County any independent obligation to inspect, construct or maintain or make repairs, replacements, alterations, additions or improvements or create any independent liability for any failure to do so.

#### 2.5 Confidentiality/Nondisclosure.

(a) Confidentiality/Nondisclosure. In connection with the performance of SMG's services hereunder, the County acknowledges that SMG may provide the County and its employees, agents and subcontractors (including without limitation the architectural and engineering firm retained for the Facility) with Confidential Information (as defined below). In addition, in connection with the performance of the services hereunder, SMG may provide to the County and its employees, agents and subcontractors materials that are protected by copyright of SMG.

(i) The County agrees that it shall keep secret and confidential any and all Confidential Information already disclosed and/or to be disclosed to it by SMG which has been designated as confidential in writing by SMG, and the County shall not divulge any such information, in whole or in part, to any third party except as is expressly permitted below in this Section 2.5 or as may be required by state or federal law.

(ii) The County shall not use any such information, except for the express purpose of utilizing it in connection with the management of the Facility. The County shall not directly or indirectly disclose or discuss any such information with any Person, other than employees, agents and subcontractors of the County who are directly concerned with the management of the Facility, provided, however, that in the event of any such disclosure to its employees, agents and subcontractors, the County (i) shall first inform SMG of its desire to make such disclosure, (ii) if requested by SMG, shall require such employees, agents or subcontractors to execute and deliver to SMG prior to any disclosure by the County to him/her/it, an agreement acknowledging a receipt of a copy of the provisions of this Section 2.5 and agreeing to be bound by such provisions to the same extent as the County, and (iii) in any event, shall advise in writing all such Persons of the existence of the provisions of this Section 2.5 and of their responsibility to comply with such provisions.

(iii) "Confidential Information" means any and all information disclosed (orally, in writing, by inspection or otherwise) to the County by SMG pursuant to this Agreement which has been designated as confidential in writing by SMG. Such information includes, but is not limited to, plans, proposals, and lists of furniture, fixtures and equipment. The restrictions upon confidentiality and use of Confidential Information set forth in this Section 2.5 do not apply to information which the County can demonstrate was publicly available or lawfully in its possession at the time of its disclosure to the County by SMG; however, Confidential Information shall not be deemed in the County's possession or publicly known simply because it is embraced by more general information in the County's possession.

(iv) With respect to any information or material which is protected by copyright of SMG, no part of such materials may be reproduced, stored in a data base and retrieval system or transmitted in any form or by any means - graphic, electronic, photocopying, recording, mechanical or otherwise - without the prior written permission of SMG.

(b) Specific Performance. The County agrees that the provisions of this Section 2.5 are reasonable and necessary to protect the interests of SMG and that SMG's remedies of law for a breach of any of the provisions of this Section 2.5 will be inadequate and that, in connection with any such breach, SMG will be entitled, in addition to any other remedies (whether at law or in equity), to temporary and permanent injunctive relief without the necessity of proving actual damage or immediate or irreparable harm, or of the posting of a bond. Notwithstanding the foregoing, if a court of competent jurisdiction shall determine any of the provisions of this Section 2.5 to be unreasonable, SMG agrees to a reaffirmation of such provisions by such court to any limits which such court finds to be reasonable and the County will not assert that such provisions shall be eliminated in their entirety by such court.

## 2.6 Cabarrus County Fair.

For purposes of this Agreement, all revenues generated by the Cabarrus County Fair (the "Fair") shall not be considered Operating Revenues hereunder. To the extent that SMG employees employed at the Facility can provide regular management services for the Fair within their normal business day, such services shall be provided without extra charges or fees. However, to the extent that SMG employees at the Facility cannot so perform or where SMG is directed by the County to hire additional staff for the Fair, then any and all new wages or overtime payments incurred by the Facility in connection with (i.e. just before, during or just after) the Fair shall be paid for by the County outside of the Facility budget. Any other incremental (i.e. would not have been incurred by the Facility but for the existence of the Fair) charges that are identifiable and quantifiable in connection with the Fair shall also be for the account of the County and not the Facility.

## 3. **Term and Renewal.**

### 3.1 Transition Period.

Intentionally omitted.

### 3.2 Management Term and Renewal Term.

(a) The "Management Term" of this Agreement shall commence on July 1, 2015 and end at midnight on June 30, 2020 unless earlier terminated pursuant to the provisions of this Agreement or extended pursuant to Section 3.2(b).

(b) The County may extend the term hereof on the same terms and conditions for additional five-year periods (each a "Renewal Term") commencing immediately after the Management Term or any Renewal Term, as applicable, by giving not less than one hundred fifty (150) days prior written notice of such extension to SMG; provided, however, that the parties shall mutually agree on the amount, terms and conditions of remuneration for SMG's services hereunder.

### 3.3 New Contract.

If (i) the County intends, upon termination or expiration of the Management Term or Renewal Term to continue to provide management at the Facility through a private provider and (ii) this Agreement has not been terminated upon a default by SMG, then the County will during the final year of the Management Term (unless the County exercises its option to renew under Section 3.2) or Renewal Term, as the case may be, negotiate and discuss in good faith a new contract or arrangement with SMG for the provision of such services following the completion of such term. The obligation to negotiate with SMG is not intended to guarantee any contract rights for a future contract with SMG or any specific terms of a new contract.



#### 4. SMG's Compensation.

##### 4.1 Fixed Fee.

As base compensation to SMG for providing the services herein specified during the Management Term, the County shall pay SMG during the Management Term a periodic fixed fee of \$100,312 per Fiscal Year ("Fixed Fee"), which amount shall be adjusted upward on the first day of each Fiscal Year, commencing with the Fiscal Year ending June 30, 2015, by the percentage change in the Consumer Price Index -- All Urban Consumers (CPI-U) -- U.S. City Average -- All Items, during the one year period ending in June immediately preceding such Fiscal Year, as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or of any revised or successor index hereafter published by the Bureau of Labor Statistics or other agency of the United States Government succeeding to its functions ("CPI"). The foregoing annual fixed compensation shall be payable in equal monthly installments due on or before the last day of each month during such Fiscal Year, and SMG, provided it is not in default (as described in Section 12.1) hereunder, shall be entitled to draw such amounts from the account described in Section 5.6. In the event of a Renewal Term, the parties shall mutually agree upon the amount, terms and conditions of SMG's remuneration under this Section 4 for its performance hereunder.

##### 4.2 Incentive Fee.

(a) Amount. SMG shall be entitled to an annual incentive fee with respect to each Fiscal Year during the Management Term which shall be equal to the amount calculated in accordance with (i) below; provided, however, that in no event shall the total incentive fees for any Fiscal Year exceed 100% of the periodic fixed fee payable pursuant to Section 4.1 for such Fiscal Year, and; provided further, that SMG will not be eligible in any Fiscal Year for the Quantitative Incentive Fee (as defined below) unless the County approved annual budget of net operating income is met or exceeded for such Fiscal Year:

(i) Quantitative Incentive Fee. SMG shall be entitled to an annual quantitative Incentive Fee ("Quantitative Incentive Fee") with respect to each Fiscal Year during the Management Term equal to fifteen percent (15%) of the excess Operating Revenue over the Operating Revenue Benchmark; provided, however, that the Quantitative Incentive Fees shall not exceed seventy-five percent (75%) of the fixed fee payable to SMG for such Fiscal Year pursuant to Section 4.1; and

(ii) Qualitative Incentive Fee. SMG may earn an annual qualitative Incentive Fee ("Qualitative Incentive Fee") with respect to each Fiscal Year during the Management Term up to an amount equal to twenty-five percent (25%) of the fixed fee payable to SMG for such Fiscal Year pursuant to Section 4.1. The amount of the Qualitative Incentive Fee shall be based upon an evaluation of SMG's performance by the County with respect to the following qualitative criteria:

(a) Professional Management. SMG shall demonstrate professional management of staff by above average ratings on mutually approved service de-

livery surveys (a copy of which is attached hereto as Exhibit 4.2(a)(ii)(a)) and a review by the County (up to 40 points).

(b) Maintenance and Operation. SMG shall demonstrate quality maintenance and operation of the Facility based upon a review by the County on a quarterly basis of the condition of the Facility and the equipment therein (up to 20 points).

(c) Customer Service. SMG shall demonstrate quality service to clients of the Project by above average ratings on mutually approved service delivery surveys (a copy of which is attached hereto as Exhibit 4.2(a)(ii)(c)) (up to 40 points).

The amount of the points assigned for such Fiscal Year will be used to calculate the Qualitative Incentive Fee payable to SMG for such year as described below. The Qualitative Incentive Fee for any Fiscal Year shall be an amount equal to the product of (A) 25% of the fixed fee payable under Section 4.1 for such Fiscal Year, and (B) a ratio whose denominator is 100 points and whose numerator equals the number of points earned by SMG for such year in the County's discretion as provided above. The parties will meet periodically, as the County determines to be reasonably necessary, during the course of each Fiscal Year to provide performance updates and to discuss performance issues.

(b) Payment. The incentive fees determined pursuant to Section 4.2(a) above shall be payable to SMG within forty-five (45) days after the County's receipt of an invoice from SMG accompanied by an annual statement certified by one of its officers setting forth the Operating Revenues and Operating Expenses for the previous Fiscal Year and showing the calculation of the incentive fee payable with respect to such Fiscal Year. Provided that the County approves or does not object in writing to SMG's invoice within forty-five (45) days of its receipt of the same, SMG will thereafter be entitled to deduct the amount of such fee from the account described in Section 5.6 below, provided that to the extent that SMG projects that such a deduction would leave insufficient funds in such account to cover Operating Expenses for the remainder of the then-current fiscal quarter, SMG shall be entitled not to deduct all or a portion of such fee from such account, and, upon notice thereof from SMG, the County shall promptly pay SMG the amount of the fee that has not been deducted from such account. Promptly following the availability of the audited annual financial statements described in Section 6.1 hereof for a Fiscal Year, SMG shall recalculate the incentive fee payable for that Fiscal Year; in the event that the amount of the incentive fee which was paid based on SMG's invoice differs from such recalculated amount, SMG shall promptly remit to the County any excess amount which was paid, or the County shall within forty-five (45) days pay (or SMG shall be entitled to deduct from any account specified in Section 5.6 after the lapse of forty-five (45) days without objection by the County) the shortfall, as the case may be.

(c) Revenues and Fees. All revenues generated by, payable in connection with or in any way related to the Facility shall be the sole property and revenue of the County.

SMG's sole remuneration for its performance under this Agreement shall be the Fixed Fee and, if applicable, the Quantitative Incentive Fee and/or the Qualitative Incentive Fee. SMG shall have no claim to any revenues generated by, payable in connection with or in any way related to the Facility except through said fees.

## **5. Funding; Budgets; Bank Accounts.**

### **5.1 Operating Funds.**

Except as otherwise set forth herein and subject to Section 5.2, following the approval of the annual operating budget for a Fiscal Year (including, without limitation, any annual operating budget applicable to the first Fiscal Year during the term hereof), the County shall make available to SMG all funds necessary to pay all approved expenses pursuant to the approved, budgeted Operating Expenses incurred or accrued in such Fiscal Year, to the extent Operating Revenues do not equal or exceed Operating Expenses. To the extent that Operating Revenues during a calendar quarter period are insufficient, or are reasonably expected to be insufficient, to cover Operating Expenses plus, with respect to the first quarter of a Fiscal Year, the amount of the projected incentive fee payable pursuant to Section 4.3(b) for the prior Fiscal Year ("Cash Flow Shortfall") for such period, the County shall deposit funds into the operating account as follows. Thirty (30) days prior to the beginning of each calendar quarter during the Management Term and any Renewal Term, SMG will submit to the County an invoice for the projected Cash Flow Shortfall for such quarter and the County will transfer such funds to the operating account within five (5) days after the start of such calendar quarter. Such funds shall be used to pay Operating Expenses. Should it thereafter be determined that Operating Revenues for the quarter in question were in fact sufficient to cover Operating Expenses for such quarter and that the deposit by the County was not in fact needed, then such deposit shall, at the County's option, be either refunded to the County within ten (10) days of its written request therefor, or shall be deposited into an interest-bearing account to be used only to cover any future Cash Flow Shortfalls. Any cash infusions by the County pursuant to a Cash Flow Shortfall shall not constitute Operating Revenues.

### **5.2 Non-Funding.**

(a) The County shall have no obligation to provide funds for the payment of Operating Expenses incurred or committed for after the date SMG receives written notice (an "Appropriation Deficiency Notice") of the fact that insufficient funds or no funds have been appropriated, or are anticipated to be insufficient or unavailable in the future, for the Facility.

(b) If the Appropriation Deficiency Notice is of insufficient funds, the County shall pay all Operating Expenses incurred or committed for after such date that are within the aggregate level of appropriated funds specified in the Appropriations Deficiency Notice. The County shall pay all Operating Expenses incurred or irrevocably committed for prior to the date SMG receives the Appropriation Deficiency Notice. Any failure by the County to provide funds (beyond the aggregate level of appropriated funds) for the payment of Operating Expenses incurred or committed for after SMG receives an Appropriations Deficiency Notice shall not be a

breach of or default under this Agreement by the County. Any failure by SMG to perform its obligations under this Agreement after SMG's receipt of a Appropriation Deficiency Notice shall not be a breach of or default under this Agreement if such breach or default directly results from such appropriation deficiency, provided that the County has been first given reasonable prior written notice by SMG that such specific breach or default by SMG was likely to result from such appropriation deficiency.

(c) If the County appropriates funds at (or reduces appropriated funds to) a level that, in SMG's reasonable, good faith judgment, renders the management of the Facility by SMG unsafe as a public assembly facility, SMG may provide its concerns in writing to the County and (i) SMG and the County shall, as soon as practicable and in no event later than the next event that SMG has identified as being unsafe to hold (the date of which shall have been included in SMG's notice referenced immediately above), agree on the manner in which the Facility shall be operated or on the increased amount of funding necessary to render the operation of the Facility safe or (ii) SMG may terminate this Agreement pursuant to Section 12.2 (with the effect set forth in Section 12.3). In the event of a termination under this Subsection 5.2(c) and if SMG's concerns are addressed within the twelve (12) month period following such termination, then SMG shall have the right to resume management of the Facility by giving written notice within thirty (30) days of the date such concerns are addressed, provided that this right to resume management shall expire if not exercised in writing within such thirty (30) day period.

### 5.3 Annual Budget; Cash Flow Budget.

(a) As part of the annual plan described in Section 6.2 herein, on or before one hundred twenty (120) days prior to the end of each Fiscal Year, SMG will prepare a proposed annual operating budget for the next Fiscal Year to meet the scope of services and objectives under this Agreement. Such budget shall contain appropriate line items for revenues and expenses and the projected net operating deficit or surplus.

(b) SMG shall prepare and submit to the Contract Administrator on or before one hundred twenty (120) days prior to the end of each Fiscal Year a proposed annual cash flow budget for the succeeding Fiscal Year.

(c) The annual budgets referred to in subparagraphs (a) and (b) above shall be reviewed and are subject to approval by the County. On or before the date of the Cabarrus County Commissioners' last regularly-scheduled meeting prior to the end of each Fiscal Year, the County shall notify SMG of any changes to the annual operating budget and the cash flow funding budget for the succeeding Fiscal Year proposed by SMG and with such changes, if any, as are made by the County. In the event that SMG agrees to such changes, which agreement shall not be unreasonably withheld, conditioned or delayed, such budgets shall be the Approved Budgets for the upcoming Fiscal Year and, if the parties cannot agree on Approved Budgets for the upcoming Fiscal Year, then the previous Fiscal Year's Approved Budgets shall be the Approved Budgets for such upcoming Fiscal Year until a new budget is agreed upon by the parties.

#### 5.4 Budget Modifications Initiated by SMG.

SMG may submit to the Contract Administrator at any time prior to the close of a Fiscal Year a supplemental or revised annual operating budget or cash flow budget for such Fiscal Year. Upon the approval of the County of such supplemental or revised budget, the Approved Budgets for such Fiscal Year shall be deemed amended to incorporate such supplemental or revised budget. The Approved Budgets may only be amended as set forth in Section 5.5 below or in the two preceding sentences except that SMG shall have the right to propose amendments to the Approved Budgets for approval by the County as may be necessary or appropriate as the result of the scheduling by SMG of additional events or activities at the Facility (and the incurrance of additional Operating Expenses arising from the scheduling of additional events or activities at the Facility) as long as prior to the scheduling of such events or activities, SMG had a reasonable good faith belief that the projected Net Operating Loss for the Fiscal Year as set forth in the Approved Budgets would not be increased as a result of such additional events or activities.

#### 5.5 Budget Modifications Initiated by the County.

In the event that it appears reasonably likely, in any year during the term hereof, that the actual Net Operating Loss/Profit for such Fiscal Year will be larger or smaller as the case may be than projected in the annual operating budget for such Fiscal Year, the County may request from SMG a plan for reduction of Operating Expenses to a level consistent with the budgeted Net Operating Loss/Profit amount. SMG shall forthwith comply with any such expense reduction requested by the County, whether such reduction was included in SMG's proposed plan for reduction or not, and the approved budgets for such Fiscal Year shall be modified accordingly, provided that if the County's requested reductions, in SMG's reasonable good faith judgment, could materially interfere, impede or impair the ability of SMG to manage, operate or promote the Facility, SMG shall have the right to terminate this Agreement pursuant to Section 12.2 (with the effect set forth in Section 12.3) and provided further that SMG shall not be construed to have breached its obligations under this Agreement if such alleged breach has been directly caused by the reductions requested by the County, provided that the County has been first given reasonable prior written notice by SMG that such specific breach or default by SMG was likely to result from such reduction.

#### 5.6 Receipts and Disbursements.

SMG shall establish and maintain in one or more depositories designated by the County one or more operating, payroll and other bank accounts for the promotion, operation and management of the Facility, in the name of the County, with SMG having signature authority in such employees of SMG as SMG shall reasonably determine, provided such employees are properly bonded as specified herein. All revenues collected by SMG from the operation of or in any way related to the Facility shall be deposited into such accounts and Operating Expenses shall be paid by SMG from such accounts. All revenues collected by SMG arising from, related to or payable in connection with the Facility, including but not limited to revenues from box office sales, facility or equipment rentals, utility rental agreements, food and beverage concessions,

naming or pouring rights, licensing agreements, sales, marketing, leasing or other commissions, or any other source, are the sole property of the County, held in trust by SMG for the County for application as provided herein. Any amounts remaining in such accounts upon termination or expiration of this Agreement for any reason, after payment of all outstanding Operating Expenses, shall be the sole property of the County and shall be promptly paid by SMG to the County.

5.7 Ticket Sales Revenues.

SMG shall hold in a separate interest-bearing account in a banking institution depository designated by the County any ticket sale revenues which it receives with respect to an event to be held at the Facility pending the completion of the event. Such monies are to be held for the protection of ticket purchasers, the County and SMG, and to provide a source of funds, as required for such payments to performers and promoters and for such payments of Operating Expenses in connection with the presentation of events as may be required to be paid contemporaneously with the event. Following the satisfactory completion of the events, SMG shall make a deposit into the operating account(s) established pursuant to Section 5.6 above of the amount in such account and shall pay from the operating account Event Expenses and provide the County with a full event settlement report along with, upon request of the County, copies of paid receipts from all vendors, promoters, performers and other payees of any portion of the ticket sale revenues, and/or other details of such payments. Interest which accrues on amounts deposited in the operating account(s) referred to in Section 5.6 and the ticket account referred to above shall be considered Operating Revenues. Bank service charges, if any, on such account(s) shall be considered Operating Expenses.

5.8 Capital Improvements; Capital Equipment.

The obligation to pay for, and authority to perform, direct and supervise Capital Improvements and Capital Equipment purchases shall remain with the County, except as otherwise provided in Section 5.12, and will not be considered Operating Expenses. The annual plan submitted pursuant to Section 6.2 shall include SMG's recommendation for Capital Improvements and Capital Equipment purchases to be accomplished during the Fiscal Year and shall be accompanied by an estimate of the cost of all such items and projects and a request that the County budget funds therefor. The County shall retain the sole discretion to determine whether and to what level to fund Capital Improvements and Capital Equipment purchases to the Facility, except as otherwise provided in Section 5.12.

5.9 Funding of Facility.

The parties agree that SMG shall not be considered to have a general community funding obligation (e.g. to fund the operation of the Facility in the event that the County cannot appropriate funds for its operation); provided, however, that this agreement does not in any manner negate any payment obligations of SMG set forth in this Agreement.

5.10 Funds for Emergency Repairs.

SMG shall have the right to act, with the consent of the County, in situations which SMG determines to be an emergency with respect to the safety, welfare and protection of the general public, including spending and committing funds held in the operating account(s) of the Facility, even if such expenses are not budgeted, provided that such funds are reasonably related to addressing the immediate emergency condition only; provided, however, SMG shall have no obligation under any circumstance to spend or commit funds other than funds then available in such accounts for any such purpose. If feasible, SMG shall use reasonable attempts to contact the Contract Administrator or other responsible party at the County prior to taking such actions, and in any event, immediately following such action, SMG shall inform the County of the situation and the action(s) taken, and the County shall pay into such account(s) the amount of funds, if any, reasonably spent or committed by SMG pursuant to this Section 5.10 in excess of budgeted amounts.

5.11 Event Fund.

On or before July 1, 2005, SMG made a Fifty Thousand Dollar (\$50,000) contribution to a segregated interest bearing account established in accordance with Section 5.6 for the purposes of promoting and developing new event activity at the Facility (“**At Risk Event Fund**”). The County made a contemporaneous contribution to the At Risk Event Fund of Fifty Thousand Dollars (\$50,000). SMG shall, subject to periodic consultation with the County, manage and control the At Risk Event Fund. Each party may make requests/recommendations in respect of potential events, or concepts for potential events, which may be funded, in whole or in part, through the At Risk Event Fund. The At Risk Event Fund will be replenished up to a maximum of the original principal amount of \$100,000 from profits, if any, from events in which funds of the At Risk Event Funds are utilized. Any remaining profits from such events will be placed in the Operating Account. Losses, if any, shall be deducted from said Fund without recourse to SMG or the County. Any events developed with any contributions from said Fund shall pay rent (and reimburse expenses) to the Facility consistent with that paid by third party users of the Facility on a “most favored client” basis for similar types of shows. Upon termination or expiration of this Agreement and provided such termination is not due to breach of this Agreement by SMG, SMG shall be entitled to withdraw half of the funds then in the account up to SMG’s \$50,000 (plus a prorated share of any accrued interest) from the At Risk Event Fund.

**5.11 SMG Capital Contributions.**

**(a) Within thirty days after the signing of this agreement, SMG shall provide to the Facility the sum of One Hundred Fifty Thousand Dollars (\$150,000) for Capital Improvements and Capital Equipment purchases relating to the Facility (the “First Capital Contribution”). In addition, in the event that the parties exercise their option to renew this Agreement for the term of 2020-2025, then within thirty days after the exercise of such option, SMG shall provide to the Facility an additional sum of Seventy-Five Thousand Dollars (\$75,000) for Capital Improvements and Capital Equipment purchases relating to the Facility (the “Second Capital Contribution”).**

(b) Amortization of the SMG Capital Contribution. The amount of the First Capital Contribution shall be amortized over a period of one hundred twenty (120) months during the Management Term and the Renewal Term, if any, on a straight-line, non-interest bearing basis. The amount of the Second Capital Contribution shall be amortized over a period of sixty (60) months during the Management Term and the Renewal Term, if any, on a straight-line, non-interest bearing basis. In the event of the expiration or termination of this Agreement for any reason, the County shall pay, or cause any successor management company to pay, to SMG unconditionally and without set-off the unamortized amount of the First Contribution and Second Capital Contribution existing as of such expiration or termination. The payment of any such unamortized amounts shall be made to SMG no later than thirty (30) days following the effective date of such expiration or termination.

## **6. Records, Audits and Reports.**

### **6.1 Records and Audits.**

(a) SMG shall keep full and accurate accounting records relating to its activities at the Facility in accordance with generally accepted United States accounting principles. SMG shall maintain a system of bookkeeping adequate for its operations hereunder and sufficient to allow the County to determine SMG's compliance with this Agreement and the Facility's complete financial status and performance at any time. SMG shall adjust its accounting procedures upon request by the County to conform with any applicable requirements of state or federal law or to the reasonable recommendations of the County's Finance Director, financial advisors or bond underwriters. SMG shall give the County's authorized representatives access to such books and records at any reasonable time. SMG shall keep and preserve for at least three (3) years following each Fiscal Year all sales slips, rental agreements, purchase order, sales books, credit card invoices, bank books or duplicate deposit slips, and other evidence of Operating Revenues and Operating Expenses for such period. In addition, on or before ninety (90) days following each Fiscal Year for which SMG is managing the Facility hereunder, SMG shall furnish to the County a balance sheet, a statement of profit or loss and a statement of cash flows for the Facility for the preceding Fiscal Year, prepared in accordance with generally accepted United States accounting principles. The accounting records maintained by SMG hereunder for the Facility shall be audited annually by the County's independent auditor as part of the County's overall audit process. The County may, from time to time, audit the accounting records maintained by SMG hereunder for the Facility, at any reasonable time. The cost of any such audit shall be deemed an Operating Expenses hereunder.

(b) The County shall have the right at any time, and from time to time, to cause nationally recognized independent auditors to audit all of the books of SMG relating to Operating Revenues and Operating Expenses, including, without limitation, cash register tapes, credit card invoices, duplicate deposit tapes, and invoices. No costs incurred by the County in conducting such audit shall be considered an Operating Expense. If any such audit demonstrates that the Operating Revenues or Operating Expenditures reflected in any financial statements prepared by SMG and audited as specified in the foregoing subparagraph (a) are understated (in the case of Operating Expenses) or overstated (in the case of Operating Revenues), in either case by



more than five percent (5%), or that there were material inaccuracies or omissions of any other nature which were intentional or grossly negligent by SMG, SMG shall pay to the County the reasonable cost of such audit and shall promptly refund to the County any portion of the incentive fee paid for such Fiscal Year which is attributable to the overstatement or understatement, as the case may be. The County's right to have such an audit made with respect to any Fiscal Year and SMG's obligation to retain the above records shall expire three (3) years after SMG's statement for such Fiscal Year has been delivered to the County.

## 6.2 Annual Plan.

(a) SMG shall provide to the County on or before one hundred twenty (120) days prior to the end of each Fiscal Year, an annual management plan, which shall include the annual operating budget described in Section 5.3 for the next Fiscal Year. The annual plan shall include information regarding SMG's anticipated operations for such Fiscal Year, including planned operating maintenance activities by SMG, requested Capital Improvements and Capital Equipment purchases and an anticipated budget therefor, anticipated events at the Facility, anticipated advertising and promotional activities, any planned uses of the At-Risk Event Fund, and planned equipment and furnishings purchases. The annual plan shall be subject to review, revision and approval by the County. Following review and revision by the County, SMG shall have thirty (30) days to incorporate the County's revisions into its plan and resubmit the revised plan for approval. Upon approval by the County, such annual plan shall constitute the operating program for SMG for the following Fiscal Year.

## 6.3 Monthly Reports.

Prior to the Cabarrus County's Commissioners' regularly monthly meeting of each month during the term of this Agreement, SMG shall provide to the County a written monthly report in a form approved by the County and similar to that used in other SMG-managed facilities setting out the Facility's anticipated activities for the upcoming month and reporting on the prior month's activities and finances; provided, however that it shall not be a breach of this agreement if such regular meeting is scheduled on a date too early in a month for SMG to deliver such report. SMG shall include in such report a balance sheet, income statement, and other financial reports (such as a departmental expense report and event accounting).

## 7. **Employees.**

### 7.1 SMG Employees.

(a) Subject to Section 7.2, SMG shall select, train and employ at the Facility such number of employees as SMG deems necessary or appropriate to satisfy its responsibilities hereunder; SMG shall use its best efforts to recruit employees who will be proficient, productive, and courteous to patrons, and, subject to Section 7.2, SMG shall have authority to hire, terminate and discipline any and all personnel working at the Facility. All employee shall be informed of the standards set forth in Section 2.1(d) hereof.

(b) After the parties' agreement regarding the selection process, and the County's opportunity to interview general manager candidates and upon consultation with the County, SMG shall assign to the Facility a competent, full-time general manager. From time to time the general manager may provide assistance in connection with the consulting and/or management services provided by SMG or any of its Affiliates at other facilities managed, owned or leased by SMG or any of its Affiliates, provided that (i) such assistance does not affect in any material respect the responsibilities and duties of the general manager to the Facility and (ii) the cost of the salary and benefits of the general manager for the time spent in connection with providing such assistance shall be reimbursed by SMG to the operating account of the Facility. Prior to SMG's appointment of such general manager, SMG shall consult with the Contract Administrator with respect to the qualifications of the general manager proposed by SMG.

(c) SMG employees at the Facility shall not for any purpose be considered to be employees or agents of the County, and SMG shall be solely responsible for their supervision and daily direction and control and for setting, and paying as an Operating Expense, their compensation (and federal income tax withholding) and any employee benefits, and all costs related to their employment shall be an Operating Expense.

## 7.2 County Employees.

(a) Intentionally Omitted

(b) The County agrees that in the event that SMG is at any time required to make contributions to multiemployer plans (as that term is defined in Section 4001(a)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended), on behalf of or for the benefit of SMG's union employees during the term of this Agreement, the parties will mutually agree in a separate agreement to the effect that County shall hold harmless SMG from any Losses in respect of any withdrawal liability if there are any unfunded vested benefits under any such multiemployer plans in connection with the hiring and firing of such employees by SMG during the term of this Agreement or the termination of this Agreement.

## 7.3 No Solicitation or Employment by County.

During the period commencing on the date hereof and ending one (1) year after the termination or expiration of this Agreement, except with SMG's prior written consent, the County will not, for any reason, solicit for employment, or hire, any of the senior management personnel employed by SMG at the Facility, including, without limitation, the general manager, director-level employees and department heads. In addition to any other remedies which SMG may have, specific performance in the form of injunctive relief shall be available for the enforcement of this provision.

7.4 Termination Effect on Contracts. All contracts relating to the Facility (including all contracts approved by the County and all license, lease or rental contracts pertaining to the Facility) which SMG executed in its own name shall be automatically assigned to, and deemed to be assumed by, the County (without further action by any party) upon termination or

expiration of this Agreement and the County shall indemnify, defend and hold harmless SMG from and against any Losses in respect of any liability under such contracts arising from any act or omission by any party to such contracts (other than due to the gross negligence or intentional acts or omissions of SMG) occurring on or after the effective date of termination or expiration of this Agreement.

## **8. Indemnification and Insurance.**

### **8.1 Indemnification.**

(a) SMG shall indemnify, defend and hold harmless the County, its elected and appointed officials, officers, agents and employees from and against any and all Losses arising from any material default or breach by SMG of its obligations specified herein or other Losses incurred by or threatened against County arising from or in connection with a third party law suit alleging wrongdoing by SMG in connection with SMG's management of the Facility; provided, however, that the foregoing indemnification shall not extend to Losses to the extent such Losses (i) arise from any breach or default by the County of its obligations under Section 8.1(b) below, (ii) arise out of a failure by the County to maintain reasonable commercial insurance covering (A) the Facility and its premises for physical damage or other Loss and (B) business interruption, (iii) are caused by or arise out of the services provided by the architects, engineers and other agents (other than SMG) retained by the County in connection with Capital Improvements or Capital Equipment purchases at the Facility, or (iv) where SMG is not found to have committed the wrongdoing alleged in a third party law suit and the County was not named as a party in the litigation or was found liable for the wrong doing (and such Losses would become Operating Expenses (as defined above and reimbursable to SMG)).

(b) The County shall indemnify, defend and hold harmless SMG, its partners, officers, agents and employees from and against any and all Losses arising from (i) any material default or breach by the County of its obligations specified herein, (ii) the fact that at any time prior to the commencement of the Management Term hereunder the Facility has not been operated, or the Facility and its premises are not or have not been, in compliance with all Laws, including, but not limited to, the ADA, (iii) the fact that prior to, as of, or after the commencement of the Management Term hereunder there is any condition on, above, beneath or arising from the premises occupied by the Facility which might, under any Law, give rise to liability or which would or may require any "response," "removal" or "remedial action" (as such terms are defined under CERCLA), (iv) any structural defect with respect to the Facility or the premises occupied by the Facility prior to, as of or after the commencement of the Management Term hereunder, or (v) any obligation or liability under or in respect of any contract, agreement or other instrument executed by SMG in conformity with the provisions of this Agreement and where SMG has not breached the terms thereof (vi) any non-compliance with any Pre-Existing Agreement on or prior to the commencement of the Management Term, or (vi) any act or omission carried out by SMG at the specific written direction or written instruction of the County and where SMG follows such written direction, its agents or employees; provided, however, that the foregoing indemnification under clauses (i) and (ii) above shall not extend to Losses to the extent such Losses arise from any default or breach by SMG of its obligations specified herein.

(c) The parties acknowledge and agree that SMG has managed the Facility for the past ten years and that SMG has used the Facility and is familiar with its condition and the above indemnification of SMG by the County is limited to the extent that SMG created any condition in the Facility that might give rise to liability on the part of SMG or the County. The provisions set forth in subparagraphs (a) and (b) above shall survive termination of this Agreement; provided, however, that a claim for indemnification pursuant to Section 8.1 shall be valid only if the party entitled to such indemnification provides written notice thereof to the other party prior to three (3) years following the date of termination or expiration of this Agreement.

The terms of all insurance policies referred to in Section 8, including without limitation (i) the property insurance policies of the County, and (ii) the policies of any independent contractors retained by the County or hired by SMG (such as, the food and beverage concessionaire retained by the County and emergency medical technicians who are not employed by SMG), shall preclude subrogation claims against SMG, its partners, the County and their respective officers, directors, employees and agents. SMG and the County hereby release each other from and against any and all loss of or damage to property arising out of or incident to any peril required to be insured against herein. The effect of such release is not limited to the amount of insurance actually carried or required to be carried, to the actual proceeds received after a loss or to any deductibles applicable thereto. Each party shall have the insurance company that issues its property coverage waive any rights of subrogation and shall have the insurance company include an endorsement acknowledging this waiver, if necessary. Either party's failure to carry the required insurance shall not invalidate this waiver.

## 8.2 Liability Insurance.

(a) SMG shall secure and deliver to the Contract Administrator prior to the commencement of the Management Term hereunder and shall keep in force at all times during any period in which SMG has operations at the Facility, a commercial liability occurrence insurance policy, including public liability and property damage, covering the premises and the operations hereunder, in the amount of One Million Dollars (\$1,000,000.00) for bodily injury and One Million Dollars (\$1,000,000.00) for property damage, including products and completed operations and independent contractors.

(b) SMG shall also maintain Comprehensive Automotive Bodily Injury and Property Damage Insurance for business use covering all vehicles operated by SMG officers, agents and employees in connection with the Facility, whether owned by SMG, the County, or otherwise, with a combined single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence (including an extension of hired and non-owned coverage).

(c) SMG shall also maintain Umbrella liability insurance from the these limits up to no less than a limit of Five Million Dollars (\$5,000,000). SMG shall be the named insured under all such policies. The County shall be an additional insured under the foregoing insurance policies, as its interests may appear, and said policies shall contain a provision covering the parties' indemnification liabilities to each other.

(d) Required of SMG hereunder along with copies of the paid receipts therefor shall be delivered to the Contract Administrator prior to the commencement of this Agreement. Notwithstanding the provisions of this Section 8.2, the parties hereto acknowledge that the above policies may contain exclusions from coverage which are reasonable and customary for policies of such type. Each such policy or certificate shall contain a valid provision or endorsement stating, "This policy will not be canceled or materially changed or altered without first giving thirty (30) days' written notice thereof to the County of Cabarrus, North Carolina, Attention: County Manager, 65 Church Street SE, P.O. Box 707, Concord, NC 28026-0707, sent by certified mail, return receipt requested."

(e) With respect to policies procured by it, SMG shall deliver to the Contract Administrator satisfactory evidence of such renewal of such policies prior to a policy's expiration date except for any policy expiring on the termination or expiration date of this Agreement or thereafter.

(f) Except as provided in Sections 8.5(b) and 8.6, all insurance procured by SMG in accordance with the requirements of this Agreement shall be primary over any insurance carried by the County and shall not require contribution by the County.

#### 8.3 Workers Compensation Insurance.

SMG shall at all times maintain worker's compensation insurance (including occupational disease hazards) with an authorized insurance company or through the North Carolina State Compensation Insurance Fund or through an authorized self-insurance plan approved by the State of North Carolina insuring its employees at the Facility in amounts equal to or greater than required under law.

#### 8.4 Fidelity Insurance.

SMG shall maintain during the term of this Agreement Fidelity Insurance covering all of SMG's personnel under this Agreement in the amount of Five Hundred Thousand Dollars (\$500,000.00) for each loss, to reimburse the County for losses experienced due to the dishonest acts of SMG's employees.

#### 8.5 Property Insurance.

SMG shall maintain sufficient property damage or loss insurance to cover personal property owned by SMG at the Facility and shall maintain such insurance beginning as of the date hereof and continuing throughout all periods in which SMG has any operations at the Facility. The County shall maintain its current property insurance covering the premises of the Facility. Certificates evidencing the existence of the policies shall be delivered to SMG prior to the commencement of the Management Term. Notwithstanding the provisions of this Section 8.5(b), the parties hereto acknowledge that the above policies may contain exclusions from coverage which are reasonable and customary for policies of such type. With respect to policies procured by it, the Contract Administrator on behalf of the County shall deliver to SMG satisfactory

evidence of such renewal of such policies at least twenty (20) days after a policy's expiration date except for any policy expiring on the termination date of this Agreement or thereafter.

#### 8.6 Certain Other Insurance.

(a) If any of the Pre-Existing Agreements consist of agreements with independent contractors to provide services in respect of the Facility, the County shall use its best efforts to cause such contractors to name SMG as an additional insured under any insurance maintained by such contractors pursuant to the terms of such Pre-Existing Agreements and in such event to deliver to SMG promptly after request therefor a certified copy of such policy and a certificate evidencing the existence thereof. In addition, if SMG enters into any agreements during the Management Term and any Renewal Term with any independent contractors for the provision of services hereunder, SMG shall have the right to require such contractors to name SMG as an additional insured under any insurance required by SMG thereunder and to deliver to SMG prior to the performance of such services a certified copy of such policy, plus a certificate evidencing the existence thereof, which policy contains the same type of endorsements and provisions as provided in Section 8.5(c).

(b) SMG shall, within ninety (90) days of the date of this Agreement and at least yearly thereafter, review the insurance carried by the County and SMG covering the Facility or any of SMG's or the County's operations at the Facility, or required of third parties using the Facility, with regard to SMG's experiences at other similar facilities, and shall within fifteen (15) days of such review advise the County in writing of the results of its review and of any changes, additions or increases to the insurance requirements hereunder or applicable to third parties which are advisable under best facility management practices.

(c) The parties hereto shall each immediately notify the other, along with any applicable insurance carrier(s), in writing of any occurrence or discovery which could result in an insurance claim hereunder.

(d) SMG shall require reasonable liability insurance from all third-party users of the Facility and shall enforce the provisions contained in all third party contracts entered into in connection with the Facility, including the insurance requirement contained in all County approved event license, concessionaire, subcontractor and other similar agreements.

### 9. **Ownership of Assets.**

#### 9.1 Ownership.

The ownership of buildings and real estate, technical and office equipment and facilities, furniture, displays, fixtures, vehicles and similar tangible property located at the Facility shall remain with the County. Ownership of and title to all intellectual property rights of whatsoever value, related to the Facility in any way shall remain the sole property of the County, with the exception of any proprietary software developed by SMG prior to the date of this Agreement. The ownership of consumable assets (such as office supplies and cleaning materials) purchased with Operating Revenues or County funds shall remain with the County, but such

assets may be utilized and consumed by SMG in the performance of services under this Agreement. The ownership of data processing programs and software owned by the County shall remain with the County, and the ownership of data processing programs and Software owned by SMG shall remain with SMG. SMG shall not take or use, for its own purposes, or for those of third parties, customer or exhibitor lists or similar materials developed by the County for the use of the Facility, unless written consent is granted by the County. Ownership of equipment, furnishings, materials, or fixtures not considered to be real property and other personal property purchased by SMG with County funds for use at and for the Facility shall vest in the County automatically and immediately upon purchase or acquisition. The assets of the County as described herein shall not be pledged, liened, encumbered or otherwise alienated or assigned other than in the ordinary course of business of the Facility without the prior approval of the County.

## 9.2 County Obligations.

Except as herein otherwise set forth, throughout the term of this Agreement, the County will maintain full beneficial use and ownership of the Facility and will pay, keep, observe and perform all payments, terms, covenants, conditions and obligations under any bonds, debentures or other security agreements or contracts relating to the Facility to which the County may be bound, and SMG shall reasonably cooperate with the County in this regard.

## 10. **Assignment; Affiliates.**

### 10.1 Assignment.

Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either party hereto without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld, conditioned or delayed. The parties acknowledge that the foregoing does not preclude the assignment by SMG of its rights to receive its management and incentive fees hereunder to its lender(s) as collateral security for SMG's obligations under any credit facilities provided to it by such lender(s), provided that such collateral assignment shall not in any event cover SMG's rights to manage, promote or operate the Facility hereunder.

### 10.2 SMG Affiliates.

(a) Transactions with Affiliates. In connection with its management responsibilities hereunder relating to the purchase and/or procurement of equipment, materials, supplies, inventories, and services for the Facility, SMG may purchase and/or procure from, or otherwise transact business with, an Affiliate of SMG, subject to review and written approval by the County. In the event SMG purchases and/or procures from, or otherwise transacts business with, an Affiliate of SMG as contemplated by the foregoing sentence, the prices charged and services rendered shall be competitive with those obtainable from others rendering comparable goods and/or services of like kind. To ensure compliance in this respect, SMG agrees to obtain at least two (2) other competitive proposals from Persons other than SMG's Affiliates whenever SMG proposes to transact business with an Affiliate for the provision of such goods or services here-

under, and to provide correct copies of all such proposals to the County prior to entering into the relationship with the Affiliate. In addition, SMG may license the use of the Facility or any part thereof to itself in connection with any event in the promotion of which SMG is involved, so long as the license fee charged is on prevailing rates and terms or such other rates and terms as the County approves.

(b) Conflicts of Interest. The County acknowledges that SMG manages other public assembly facilities which may, from time to time, be in competition with the Facility. The management of competing facilities will not, in and of itself, be deemed a conflict of interest or breach of SMG's duties hereunder; provided, however, in all instances in which the Facility is in competition with other public assembly facilities managed by SMG for the solicitation of certain events, SMG shall not involve its principal office (currently in Philadelphia, Pennsylvania) on behalf of any such other facility in an attempt to influence the decision-making process regarding the selection of a site by such events.

## **11. Laws and Permits.**

### **11.1 Permits, Licenses, Taxes and Liens.**

SMG shall procure any permits and licenses required for the business to be conducted by it hereunder. The County shall cooperate with SMG in applying for such permits and licenses, but the County itself shall not necessarily be a licensee or permittee unless required by the applicable license or permit or unless required by the County for other reasons. SMG shall deliver copies of all such permits and licenses to the Contract Administrator. SMG shall pay promptly, out of the accounts specified in Section 5.6, all taxes, excises, license fees and permit fees of whatever nature arising from its operation, promotion and management of the Facility. SMG shall use reasonable efforts to prevent mechanic's or materialman's or any other lien from becoming attached to the premises or improvements at the Facility, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any mechanic or materialman, so long as the work, labor or material was provided at SMG's direction and the County has supplied funds for the payment of charges therefor in accordance with this Agreement.

### **11.2 Governmental Compliance.**

SMG, its officers, agents and employees shall comply with all Laws applicable to SMG's management of the Facility hereunder. With respect to the ADA, SMG will comply with Title III of the ADA and the provision of such auxiliary aids or alternate services as may be required by the ADA. Nothing in this Section 11.2 or elsewhere in this Agreement shall, however, require SMG to undertake any of the foregoing compliance activity, nor shall SMG have any liability under this Agreement therefor, if (a) such activity requires any Capital Improvements or Capital Equipment purchases, unless the County provides funds for such Capital Improvements and Capital Equipment purchases pursuant to Section 5.8 hereof, or (b) any Pre-Existing Agreement fails to require any licensee, lessee, tenant, promoter or user of any portion of the Facilities to comply, and to be financially responsible for compliance, with Title III of the ADA in connection with any activities of such licensee, lessee, tenant, promoter or user at the Facilities. Fur-



thermore, SMG shall have the right to require any licensee, lessee, tenant, promoter or user of any portion of the Facility to comply, and to be financially responsible for compliance, with Title III of the ADA in connection with any activities of such licensee, lessee, tenant, promoter or user at the Facility.

### 11.3 No Discrimination in Employment.

In connection with the performance of work under this Agreement, SMG shall not refuse to hire, discharge, refuse to promote or demote, or discriminate in matters of compensation against, any Person otherwise qualified, solely because of race, color, religion, gender, age, national origin, military status, sexual orientation, marital status or physical or mental disability.

## **12. Termination.**

### 12.1 Termination Upon Default.

Either party may terminate this Agreement upon a default by the other party hereunder. A party shall be in default hereunder if (i) such party fails to pay any sum payable hereunder within thirty (30) days after same is due and payable, or (ii) such party fails in any material respect to perform or comply with any of the other terms, covenants, agreements or conditions hereof and such failure continues for more than thirty (30) days after written notice thereof from the other party. In the event that a default (other than a default in the payment of money) is not reasonably susceptible to being cured within the thirty (30) day period, the defaulting party shall not be considered in default if it shall within such thirty (30) day period have commenced with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default. SMG acknowledges and agrees that neither it nor any concessionaire, vendor, promoter, licensee or other party with whom SMG may deal in connection with the Facility is a tenant of the Facility or has any leasehold or other similar interest in the land of or in the Facility itself, and summary ejectment procedures shall not be applicable to any termination of SMG's rights to manage the Facility hereunder unless SMG refuses to vacate the Facility after termination of this agreement by the County.

### 12.2 Termination Other than Upon Default.

(a) SMG shall have the right to terminate this Agreement upon sixty (60) days written notice to the County (i) under the circumstances described in Sections 5.2(c) or 5.5 hereof, or (ii) as otherwise set forth herein.

(b) Either party shall have the right to terminate this Agreement under the circumstances specified in Section 13.6(d).

### 12.3 Effect of Termination.

In the event this Agreement expires or is terminated, (i) all Operating Expenses incurred or irrevocably committed for prior to the effective date of expiration or termination, except any such expenses which are incurred due to a default by SMG which resulted in such ter-

mination, shall be paid using funds on deposit in the account(s) described in Sections 5.6 and 5.7 and to the extent such funds are not sufficient, the County shall pay all such Operating Expenses and shall indemnify and hold SMG harmless therefrom, (ii) the County shall promptly pay SMG all fees earned to the effective date of expiration or termination (the fixed and incentive fees described in Section 4 hereof being subject to proration), provided that the County shall be entitled to offset against such unpaid fees any damages directly incurred by the County in remedying any default by SMG hereunder which resulted in such termination (other than the fees or expenses of any replacement manager for the Facility), and (iii) with the cooperation of SMG, the County shall, or shall cause another management company retained by it to, accept the assignment of SMG's rights, and assume and perform all of SMG's obligations, arising after the date of expiration or termination of this Agreement, under any licenses, occupancy agreements, rental agreements, booking commitments, advertising agreements, concession agreements, and any other contracts relating to the Facility which have been executed by SMG hereunder, except (A) to the extent that any such license, agreement, commitment or contract was executed by SMG in violation of any of the restrictions applicable to SMG's right to execute such licenses, agreements, commitments or contracts contained in this Agreement, and (B) for any such license, agreement, commitment or contract to which the consent of the other party thereto is required for such assignment and assumption unless such consent is obtained (in the case of any such consent, SMG will use commercially reasonable efforts to obtain such consent and the County will cooperate in any reasonable manner with SMG to obtain such consent). Upon the expiration of this Agreement or a termination pursuant to Section 12.1 or 12.2, all further obligations of the parties hereunder shall terminate except for the obligations in this Section 12.3 and in Sections 7.2(c), 7.3, 7.4, 8.1 and 12.4; provided, however, that if such termination is the result of an intentional or grossly negligent default, the nondefaulting party exercising its right to terminate this Agreement shall be entitled to recover damages for breach arising from such willful default. Except with respect to a breach of the confidentiality provisions of Section 2.5 above and losses arising from personal or bodily injury, in no event shall either party be liable or responsible for any consequential, indirect, incidental, punitive, or special damages (including, without limitation, lost profits), whether based upon breach of contract or warranty, negligence, strict tort liability or otherwise, and each party's liability for damages or losses hereunder shall be strictly limited to direct damages that are actually incurred by or threatened against the other party.

#### 12.4 Surrender of Premises.

Upon termination of this Agreement (termination shall, for all purposes in this Agreement, include termination pursuant to the terms of this Section 12 and any expiration of the term hereof), SMG shall surrender and vacate the Facility upon the effective date of such termination. The Facility and all equipment and furnishings shall be returned to the County in good repair, reasonable wear and tear excepted, to the extent funds were made available therefor by the County. All reports, records, including financial records, and documents maintained by SMG at the Facility relating to this Agreement other than materials containing SMG's proprietary information shall be immediately surrendered to the County by SMG upon termination.

### **13. Miscellaneous.**

#### **13.1 Use of Facility at Direction of County.**

(a) At the direction of the Contract Administrator, upon reasonable advance notice and subject to any preexisting commitments, SMG shall provide use of the Facility or any part thereof to civic and nonprofit organizations located in the locale of the Facility at reduced rates. All event-related expenses, including but not limited to ushers, ticket-takers, security and other expenses incurred in connection with the use of the Facility by such organizations, if not reimbursed to the Facility operating account by the organization using the Facility, shall be reimbursed by the County to the operating accounts specified in Section 5.6. Within thirty (30) days of the execution of this Agreement, and thereafter yearly as part of the annual plan to be provided pursuant to Section 6.2 hereof, SMG shall supply to the County a schedule listing SMG's standard charges for all regular event-related expenses, and such charges shall be the agreed charges, to the extent applicable, for use of the Facility in the circumstances described in this Section.

(b) The County shall have the right to use the Facility or any part thereof, upon reasonable advance notice and subject to any preexisting commitments, for such purposes as meetings, seminars, training classes or other uses without the payment of any rental or use fee, except that direct out-of-pocket expenses incurred in connection with such uses shall be paid by the County.

(c) Except for the Fair, the County shall not schedule use of the Facility pursuant to subparagraphs (a) and (b) above if such use will conflict with paying events booked by SMG and shall in all instances be subordinate thereto in terms of priority of use of the Facility. Except for the Fair, in all instances when the Facility, or part thereof, is to be used at the County's request or by the County pursuant to subparagraph (a) or (b) above, a rent or use fee which otherwise would be chargeable for such event shall be deemed to have been paid and such deemed payment shall constitute Operating Revenues for the purpose of calculating SMG's incentive fee pursuant to Section 4.3 above.

#### **13.2 Cooperation/Mediation.**

(a) The parties desire to cooperate with each other in the management and operation of the Facility pursuant to the terms hereof. In keeping with this cooperative spirit and intent, any dispute arising hereunder will first be referred in writing to the parties' respective agents or representatives prior to either party initiating a legal suit, who will endeavor in good faith to resolve any such disputes within the limits of their authority and within forty-five (45) days after the commencement of such discussions. If and only if any dispute remains unresolved after the parties have followed the dispute resolution procedure set forth above, the matter will be resolved pursuant to Section 13.2(b) and (c) below.

(b) If any dispute between the parties has not been resolved pursuant to Section 13.2(a) above, the parties will endeavor to settle the dispute by mediation under the American Arbitration Association or other agreed mediator in the Cabarrus County metropolitan area. Within ten (10) business days from the date that the parties cease direct negotiations pursuant to Section 13.2(a) above, the County shall select a neutral third party mediator, who shall be subject to the reasonable approval of SMG. Each party will bear its own cost of mediation; provided, however, the cost charged by any independent third party mediator will be borne equally by the parties.

(c) The parties agree that any mediation proceeding (as well as any discussion pursuant to Section 13.2(a) above) will constitute settlement negotiations for purposes of the federal and state rules of evidence and will be treated as non-discoverable, confidential and privileged communication by the parties and the mediator. No stenographic, visual or audio record will be made of any mediation proceedings or such discussions. All conduct, statements, promises, offers and opinions made in the course of the mediation or such discussion by any party, its agents, employees, representatives or other invitees and by the mediator will not be discoverable nor admissible for any purposes in any litigation or other proceeding involving the parties and will not be disclosed to any third party.

(d) The parties agree that this mediation procedure will be obligatory and participation therein (but not the mediator's decision, if any, unless agreed to by the parties pursuant to subsection (e) below) legally binding upon each of them. In the event that either party refuses to adhere to the mediation procedure set forth in this Section 13.2, the other party may bring an action to seek enforcement of such obligation in any court of competent jurisdiction.

(e) The parties' efforts to reach a settlement of any dispute will continue until the conclusion of the mediation proceeding. The mediation proceeding will be concluded when: (i) a written settlement agreement is executed by the parties, or (ii) the mediator concludes and informs the parties in writing that further efforts to mediate the dispute would not be useful, or (iii) the parties agree in writing that an impasse has been reached. Notwithstanding the foregoing, either party may withdraw from the mediation proceeding without liability therefor in the event such proceeding continues for more than forty-five (45) days from the commencement of such proceeding. For purposes of the preceding sentence, the proceeding will be deemed to have commenced following the completion of the selection of a mediator as provided in Section 13.2(b).

(f) If any dispute has not been resolved pursuant to the foregoing, either party may terminate this Agreement as provided in Section 12 hereof and/or may file suit in the North Carolina state courts sitting in Cabarrus County to enforce its rights hereunder.

(g) The procedure specified in this Section 13.2 shall be the sole and exclusive procedures for the resolution of disputes between the parties arising out of or relating to this Agreement; provided, however, that a party, without prejudice to the above procedures, may file a complaint to seek a preliminary injunction or other provisional judicial relief, if in its sole discretion such action is necessary to avoid irreparable damage or to preserve the status quo ("**Equi-**

**table Litigation**”). Despite such action, the parties will continue to participate in good faith in the procedures specified in this Section 13.2.

(h) Any interim or appellate relief granted in such Equitable Litigation shall remain in effect until the alternative dispute resolution procedures described in this Section 13.2 concerning the dispute that is the subject of such Equitable Litigation result in a settlement. Such written settlement agreement shall be the final, binding determination on the merits of such dispute, shall supersede and nullify any decision in the Equitable Litigation, and shall preclude any subsequent litigation on such merits (except to enforce the settlement agreement), notwithstanding any determination to the contrary in connection with any Equitable Litigation granting or denying interim relief or any appeal therefrom.

(i) All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in this Section 13.2 are pending. The parties will take such action, if any, required to effectuate such tolling.

#### 13.3 No Agency, Partnership or Joint Venture.

SMG is an independent contractor hereunder, and is not intended to be or to act as the agent of the County for purposes of the law of agency. Nothing herein contained is intended or shall be construed in any way to create or establish the relationship of partners or a joint venture between the County and SMG. None of the officers, agents or employees of SMG shall be or be deemed to be employees or agents of the County for any purpose whatsoever.

#### 13.4 Entire Agreement.

This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings with respect thereto. No other agreements, representations, warranties or other matters, whether oral or written, will be deemed to bind the parties hereto with respect to the subject matter hereof, unless in writing executed by the parties after the date hereof and referring to this Agreement.

#### 13.5 Written Amendments.

This Agreement shall not be altered, modified or amended in whole or in part, except in a writing executed by each of the parties hereto.

#### 13.6 Force Majeure.

(a) No party will be liable or responsible to the other party for any delay, damage, loss, failure, or inability to perform caused by “Force Majeure” if notice is provided to the other party within ten (10) days of date on which such party gains actual knowledge of the event of “Force Majeure” that such party is unable to perform. The term “Force Majeure” as used in this Agreement means the following: an act of God, strike, war, public rioting, lightning, fire, storm, flood, inability to obtain materials or supplies due to a Force Majeure, epidemics, landslides, earthquakes, civil disturbances, breakage or accident to machinery or lines of equip-

ment, temporary failure of equipment, freezing of equipment, terrorist acts, and any other cause whether of the kinds specifically enumerated above or otherwise which is not reasonably within the control of the party whose performance is to be excused and which by the exercise of due diligence could not be reasonably prevented or overcome (it being acknowledged that under no circumstances shall a failure to pay amounts due and payable hereunder be excusable due to a Force Majeure).

(b) Neither party hereto shall be under any obligation to supply any service or services if and to the extent and during any period that the supplying of any such service or services or the provision of any component necessary therefor shall be specifically prohibited or rationed by any Law.

(c) Except as otherwise expressly provided in this Agreement, no abatement, diminution or reduction of the payments payable to SMG shall be claimed by the County or charged against SMG, nor shall SMG be entitled to additional payments beyond those provided for in this Agreement for any inconvenience, interruption, cessation, or loss of business or other loss caused, directly or indirectly, by any present or future Laws, or by Force Majeure.

(d) In the event of damage to or destruction of the Facility by reason of fire, storm or other casualty or occurrence of any nature or any regulatory action or requirements that, in either case, is expected to render the Facility materially unusable, notwithstanding the County's reasonable efforts to remedy such situation, for a period estimated by an Architect selected by the County at the request of SMG of at least one hundred eighty (180) days from the happening of the fire, other casualty or any other such event, either party may terminate this Agreement upon written notice to the other. In the event that the Facility becomes either wholly or partially unusable as a result of any of the foregoing, appropriate pro rata adjustments to the Benchmark shall be made.

(e) SMG may suspend performance required under this Agreement, without any further liability, in the event of any Force Majeure, which act or occurrence is of such effect and duration as to effectively curtail the use of the Facility so as effect a substantial reduction in the need for the services provided by SMG for a period in excess of ninety (90) days; provided, however, that for the purposes of this subsection, SMG shall have the right to suspend performance retroactively effective as of the date of the use of the Facility was effectively curtailed. "Substantial reduction in the need for these services provided by SMG" shall mean such a reduction as shall make the provision of any services by SMG economically impractical. No payments of the management fees otherwise due and payable to SMG shall be made by the County during the period of suspension. In lieu thereof, the County and SMG may agree to a reduced management fee payment for the period of reduction in services required.

(f) In the event of a substantial increase in any Operating Expense or a substantial decrease in the Operating Revenues not reasonably within the control of either party, the parties shall mutually negotiate in good faith an adjustment to the Benchmark and/or incentive fee formula set forth in Section 4.3 above to take into account such increased cost or decreased Operating Revenues, as the case may be.

13.7 Binding Upon Successors and Assigns; No Third-Party Beneficiaries.

(a) This Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon, the parties hereto and each of their respective successors and permitted assigns.

(b) This Agreement shall not be construed as giving any Person, other than the parties hereto and their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any of the provisions herein contained, this Agreement and all provisions and conditions hereof being intended to be, and being, for the sole and exclusive benefit of the parties hereto and their successors and permitted assigns and for the benefit of no other Person.

13.8 Notices.

Any notice, consent or other communication given pursuant to this Agreement must be in writing and will be effective either (a) when delivered personally to the party for whom intended, provided a delivery receipt is secured by the deliverer, (b) on the second business day following mailing by an overnight courier service that is generally recognized as reliable, (c) on the fifth day following mailing by certified or registered mail, return receipt requested, postage prepaid, or (d) on the date transmitted by telecopy as shown on the telecopy confirmation therefor as long as such telecopy transmission is followed by mailing of such notice by certified or registered mail, return receipt requested, postage prepaid, 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.

To the County:

Cabarrus County  
Attention: County Manager  
65 Church Street South  
P.O. Box 707  
Concord, North Carolina 28026-0707

With a copy (which shall not constitute notice) to the then-County Attorney.

To SMG:

SMG  
300 Conshohocken State Rd., Suite 770  
West Conshohocken, PA 19428  
Attention: President  
Telecopy: (215) 592-6699

With a copy (which shall not constitute notice) to:

Stradley, Ronon, Stevens & Young  
2600 One Commerce Square  
Philadelphia, PA 19103  
Attention: Steven A. Scolari, Esq.  
Telecopy: (215) 564-8120

13.9 Section Headings and Defined Terms.

The section headings contained herein are for reference purposes only and shall not in any way affect the meaning and interpretation of this Agreement. The terms defined herein and in any agreement executed in connection herewith include the plural as well as the singular and the singular as well as the plural, and the use of masculine pronouns shall include the feminine and neuter. Except as otherwise indicated, all agreements defined herein refer to the same as from time to time amended or supplemented or the terms thereof waived or modified in accordance herewith and therewith.

13.10 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original copy of this Agreement, and all of which, when taken together, shall be deemed to constitute but one and the same agreement.

13.11 Severability.

The invalidity or unenforceability of any particular provision, or part of any provision, of this Agreement shall not affect the other provisions or parts hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions or parts were omitted.

13.12 Non-Waiver.

A failure by either party to take any action with respect to any default or violation by the other of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of such party to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default.

13.13 Consent. Wherever the consent or approval of a party is required under the terms of this Agreement, the party whose consent or approval is required shall not unreasonably withhold, condition or delay such consent or approval.



13.14 Certain Representations and Warranties.

(a) The County represents and warrants to SMG the following: (i) all required approvals have been obtained, and the County has full legal right, power and authority to enter into and perform its obligations hereunder, and (ii) this Agreement has been duly executed and delivered by the County and constitutes a valid and binding obligation of the County, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

(b) SMG represents and warrants to the County the following: (i) all required approvals have been obtained, and SMG has full legal right, power and authority to enter into and perform its obligations hereunder, and (ii) this Agreement has been duly executed and delivered by SMG and constitutes a valid and binding obligation of SMG, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

13.15 No Representation as to Operations Results. The County recognizes that Operating Revenues for the Facility are incapable of being estimated with reasonable certainty given that the entertainment industry as a whole fluctuates based upon general economic conditions, current trends in entertainment, available income of patrons, competitive facilities, and a variety of rapidly changing factors beyond the control of SMG. SMG has made no and disclaims any purported or actual representation or warranty as to the results which can be expected from the ownership and operation of the Facility including, without limitation, the Operating Revenues, or Operating Expenses or the accuracy of its projections and estimates thereof. The County recognizes and accepts that all budgets and projections represent SMG's estimate of the expected expenditures and revenues and that SMG is in no way responsible or liable if the actual expenditures and revenues are more or less than that projected (unless and only to the extent such situation is the result of a breach of this Agreement by SMG).

13.16 Governing Law; Consent to Venue and Jurisdiction.

This Agreement will be governed by and construed in accordance with the internal laws of the State of North Carolina, without giving effect to otherwise applicable principles of conflicts of law. The parties hereby expressly agree that this Agreement is made and is to be performed solely in Cabarrus County, North Carolina, and hereby consent to the subject matter and personal jurisdiction of the North Carolina state courts sitting in Cabarrus County, North Carolina and to venue in Cabarrus County, North Carolina.

SIGNATURES ARE ON THE FOLLOWING PAGE.

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

COUNTY OF CABARRUS, NORTH CAROLINA

By: *Samuel S. Stuber*  
*Senior Deputy* County Manager

ATTEST:

*J. E. Anit*  
Clerk to the Board  
of Commissioners

SMG

By: *John F. Burns*  
Name: John Burns  
Title: Executive VP and CFO

This instrument has been pre-audited in the manner Required by the Local Government Budget and Fiscal Control Act. Subject to approval of Fiscal Year 2017-2020 budget funding.

By: *Austin B. Frank*  
Finance Director / Asst. Finance Director

8-5-15  
Date

**EXHIBIT "A"**

**PRE-EXISTING AGREEMENTS**

EFF DATE	PO/REF2	AMOUNT		VENDOR	COMMENTS
'06/06/2016	'223	\$ 9,627.84	IAM	'HIGH ROCK WATERPROOFING	'PROJ #109 Painting
'06/06/2016	'224	\$ 12,712.04	IAM	'STONE RESTORATION OF AMERICA	Painting Maint & Repairs
'05/17/2016	'224	\$ 27,322.50	IAM	'STONE RESTORATION OF AMERICA	'PROJ #101 Painting
'04/12/2016	'	\$ 779.35	IAM	'BRADSHAW FLOORING & ACCOUSTICAL INC	'PROJ #107 FURNISH & INSTALL F
'04/05/2016	'	\$ 1,219.32	IAM	'JOHNSON'S ROOFING SERVICE	'ARENA MAIN ROOF/IAM
'04/05/2016	'224	\$ 13,661.25	IAM	'STONE RESTORATION OF AMERICA	'PROJ #101 Painting
'03/14/2016	'	\$ 2,937.50	IAM	'FALCON ENGINEERING INC	'PROFESSIONAL SERVICES/ARENA
'03/01/2016	'227	\$ 8,547.00	IAM	'SHEALY ELECTRICAL WHOLESALERS INC	'PROJ #107 LED lights for sid
'02/15/2016	'	\$ 833.42	IAM	'JOHNSON'S ROOFING SERVICE	'PROJ #107 GUTTER REPAIRS/AREN
'02/03/2016	'228	\$ 1,597.86	IAM	'SHEALY ELECTRICAL WHOLESALERS INC	'PROJ #107 LEd lights for Are
'01/07/2016	'125	\$ 1,000.91	IAM	'CITY ELECTRIC SUPPLY COMPANY	'power pedestal
'01/04/2016	'	\$ 1,000.00	IAM	'STONE RESTORATION OF AMERICA	'PROJ #104 WATER TESTING/ARENA
'01/04/2016	'	\$ 1,636.30	IAM	'CAROLINA FIRE CONTROL	'PROJ #107 FIRE SPRINKLER REPA
'12/11/2015	'	\$ 302.85	IAM	'ACME SECURITY SOLUTIONS	'PROJ #107 LOCK REPAIRS/ARENA
'12/07/2015	'	\$ 1,056.00	IAM	'SIEMENS BUILDING TECHNOLOGIES	'PROJ #107 CHILLER REPAIRS/ARE
'12/07/2015	'119	\$ 1,000.91	IAM	'CITY ELECTRIC SUPPLY COMPANY	'PROJ #107 Electrical Accessor
'10/27/2015	'42	\$ 1,015.00	IAM	'H&B FENCING INC	PROJ #107 Fencing Chaing Link
'10/12/2015	'	\$ 775.75	IAM	'A & J CONCRETE	'PROJ #107 SIDEWALK REPAIRS/AR
'09/28/2015	'	\$ 3,833.71	IAM	'ARCHER CONTROLS & ELECTRIC	'ARENA CHILLER CONTROLS/IAM
'09/25/2015	'191	\$ (1,070.98)	IAM	'VINCE VALENTINO	'FAIR - REIMBURSEMENT FOR DAMAG
'09/20/2015	'40	\$ 7,799.94	IAM	'LEFLER ELECTRONICS	'PROJ #106 Fire Alarm Systems
'09/20/2015	'42	\$ 2,648.95	IAM	'H&B FENCING INC	PROJ #107 Fencing Chain Link
'09/08/2015	'	\$ 2,476.00	IAM	'WATSON ELECTRICAL CONSTRUCTION CO. LLC	'PROJ #108 QUOTE/ARENA
'10/20/2015	'63	\$ 7,550.72	IAM	'BRADSHAW FLOORING & ACCOUSTICAL INC	'PROJ #105 Acoustical Ceilings
'09/14/2015	'43	\$ 13,916.28	IAM	'CPSL	'PROJ #103 Video Camera Recor
'06/06/2016	'311	\$ 20,391.37	SMG	'MICHIGAN TUBE SWAGER AND FABRICATORS	'Banquet chairs
'05/17/2016	'183	\$ 40,017.00	SMG	'STAGERIGHT CORPORATION	'CUST #D28026A PIPING & DRAPE
'03/29/2016	'311	\$ 18,841.52	SMG	'MICHIGAN TUBE SWAGER AND FABRICATORS	'50% DEPOSIT Banquet chairs/AR
'03/08/2016	'184	\$ 9,374.80	SMG	'GEORGIA EXPOSITION MFG CORP	'PIPING & DRAPES
'03/08/2016	'189	\$ 4,569.04	SMG	'DENVER EQUIPMENT CO OF CHARLOTTE INC	'ICE MACHINE/ ARENA
'03/01/2016	'186	\$ 13,591.44	SMG	'RESTAURANT MAX INC	'VENTLESS FRYER
'01/19/2016	'187	\$ 1,777.05	SMG	'ZESCO PRODUCTS INC	'FOOD WARMER
		<u>\$ 232,742.64</u>			

<b>Original Budget</b>	\$ 124,065.00
<b>Transfers In (from SMG)</b>	\$ 150,000.00
<b>Transfers In (from County)</b>	<u>\$ 50,000.00</u>
	\$ 324,065.00
<b>Less Amount spent on</b>	
<b>Maint &amp; Repairs (IAM above)</b>	\$ (124,180.42)
<b>Less Amount spent on Capital</b>	
<b>Purchases (SMG above)</b>	<u>\$ (108,562.22)</u>
	\$ 91,322.36

EFF DATE	PO #	AMOUNT	VENDOR	COMMENTS
'06/06/2016	'311	\$ 20,391.37	'MICHIGAN TUBE SWAGER AND FABRICATORS	'Banquet chairs
'05/17/2016	'183	\$ 40,017.00	'STAGERIGHT CORPORATION	'CUST #D28026A PIPING & DRAPE
'03/29/2016	'311	\$ 18,841.52	'MICHIGAN TUBE SWAGER AND FABRICATORS	'50% DEPOSIT Banquet chairs/AR
'03/08/2016	'184	\$ 9,374.80	'GEORGIA EXPOSITION MFG CORP	'PIPING & DRAPES
'03/08/2016	'189	\$ 4,569.04	'DENVER EQUIPMENT CO OF CHARLOTTE INC	'ICE MACHINE/ ARENA
'03/01/2016	'186	\$ 13,591.44	'RESTAURANT MAX INC	'VENTLESS FRYER
'01/19/2016	'187	\$ 1,777.05	'ZESCO PRODUCTS INC	'FOOD WARMER
		<u>\$ 108,562.22</u>		

<b>Contribution from SMG</b>	\$ 150,000.00	
<b>Less Amount Spent</b>	<u>\$ (108,562.22)</u>	Fiscal Year 2016
	<b>\$ 41,437.78</b>	

### Budget Revision/Amendment Request

Date: 11/18/2019

Amount: \$ 41,437.78

Dept. Head: Susan Fearrington, (prepared by Sarah Chesley)

Department: Finance, Fund 343 and 420

Internal Transfer Within Department
  Transfer Between Departments/Funds
  Supplemental Request

**Purpose: This Budget Amendment moves funds in the amount of \$41,437.78, from the Arena Capital Projects Fund 420 into the Construction and Renovation Fund 343 for the purchase of a Security Vestibule.**

Fund	Indicator	Department/ Object/ Project	Account Name	Approved Budget	Increase Amount	Decrease Amount	Revised Budget
420	6	8310-6901	Fund Balance Appropriated	20,000.00	41,437.78		61,437.78
420	9	8310-9708	Cont'b to Capital Projects Fund	-	41,437.78		41,437.78
343	6	8310-6915	Capital from Special Revenue fund	-	41,437.78		41,437.78
343	9	8310-9860	Equipment & Furniture	-	41,437.78		41,437.78

**Budget Officer**

- Approved
- Denied

**County Manager**

- Approved
- Denied

**Board of Commissioners**

- Approved
- Denied

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

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*Date*

\_\_\_\_\_  
*Date*

### Budget Revision/Amendment Request

Date:  Amount:

Dept. Head:  Department:

Internal Transfer Within Department
  Transfer Between Departments/Funds
  Supplemental Request

Purpose:

Fund	Indicator	Department/ Object/ Project	Account Name	Approved Budget	Increase Amount	Decrease Amount	Revised Budget
							0.00
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**Total** 0.00

**Budget Officer**

- Approved
- Denied

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**County Manager**

- Approved
- Denied

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Board of Commissioners**

- Approved
- Denied

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



# CABARRUS COUNTY CONSTRUCTION AND RENOVATION PROJECT BUDGET ORDINANCE

**BE IT ORDAINED** by the Board of Commissioners of Cabarrus County, North Carolina that, Pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

Section I.

- A. The project authorized is the various County construction and renovation related projects. Details of the projects are listed in section C. of this Project Ordinance.
- B. The officers of this unit are hereby directed to proceed with this capital project within the terms of the Generally Accepted Accounting Principles (GAAP) and the budget contained herein.
- C. It is estimated that the following revenues will be available to complete capital projects as listed.

Park & Recreation Trust Fund (PARTF) Grant	\$ 350,000
Rental – Tower Lease	945,978
Sale of Fixed Assets	1,012,442
Contributions and Donations	148,036
General Fund Contribution	8,455,218
Lease Proceeds (Robert Wallace Park)	4,596,394
Capital Projects Fund Contribution	4,319,370
Capital Reserve Fund Contribution	24,561,439
Special Revenue Contribution	41,438

**TOTAL REVENUES** **\$44,430,315**

- D. The following appropriations are made as listed.

Government Center Chiller Replacement	\$175,709
Governmental Center ADA Bathrooms	151,469
Government Management Furniture & Fixtures	11,000
Land Bank	2,200,000
Government Center Skylight/Roof Repairs	2,085,000
County Building Camera Systems	24,099
Enterprise Physical Security	300,000
ITS Fiber Technology Improvements	120,000
County Website Design	283,750
Furniture Replacements	184,501
County Operation Center	4,768,787
Elevator Modernization Government Center	176,000
Multiple building Fall Protection Measures	300,000
Jail Camera Upgrade	172,607
LEC Law Enforcement Technology	791,324
Training & Firing Range Renovation	1,750,000
Sheriff's Admin Roof Repair	113,659
Sheriff Radio Communications Tower	160,000
Courthouse Expansion	12,519,000
Clerk of Court Improvements	68,786
Public Safety Training Center	90,000
EMS Headquarters – Consultants	170,000

EMS Co-location – Concord Fire #11	482,761
EMS Heart Monitors	566,111
Emergency Communications Equip & Ethernet Backhaul	2,819,370
JM Robinson High School Wetlands Mitigation	100,000
Landfill Retaining Wall	230,301
Veterans Services Improvements	92,674
Cooperative Ext. ADA Bathrooms	118,812
RCCC Land for future expansion	1,244,001
NE Area Park – Other Improvements	589,024
NE Area Park - Land	1,000,000
Robert Wallace Park	8,147,965
Frank Liske Park – Barn Restrooms	126,405
Carolina Thread Trail	109,329
Frank Liske park Playground Replacement	100,000
Frank Liske Park – Lower Lot Restrooms	728,506
Frank Liske Park – Water Line Replacement	360,000
Camp Spencer – Vending machine Bldg and overlook	425,000
Library - Midland Furniture	40,786
Library – Concord Office Reno	50,000
Arena – Lighting Control System Replacement	175,000
Arena – Building & Storage Replacement	161,000
Arena – Equipment & Furniture	41,437
Unassigned	106,141

**TOTAL EXPENDITURES** **\$44,430,315**

**GRAND TOTAL – REVENUES** **\$44,430,315**

**GRAND TOTAL – EXPENDITURES** **\$44,430,315**

Section II.

- A. Special appropriations to non-profit organizations shall be distributed after the execution of an agreement which ensures that all County funds are used for statutorily permissible public purposes.
- B. The County Manager or designee is hereby authorized to transfer appropriations within or between funds, or modify revenue and expenditure projections as contained herein under the following conditions:
  1. The Manager may transfer amounts between objects of expenditure and revenues within a function without limitation.
  2. The County Manager may transfer amounts up to \$500,000 between functions of the same fund.
  3. The County Manager may transfer amounts between contingency funds which are set aside for a specific project for budgetary shortfalls or upon the appropriate approval of a change order.
  4. The County Manager is authorized to transfer funds from the General Fund or Capital Reserve Fund to the appropriate fund for projects approved within the Capital Improvement Plan for the current fiscal year.
  5. Upon notification of funding increases or decreases to existing grants or revenues, or the award of grants or revenues, the Manager or designee may adjust budgets to match, including grants that require a County match for which

funds are available.

6. The Manager or designee may adjust debt financing from estimated projections to actual funds received.
7. The County Manager may enter into and execute change orders or amendments to construction contracts in amounts less than \$90,000 when the appropriate annual budget or capital project ordinance contains sufficient appropriated but unencumbered funds.
8. The County Manager may award and execute contracts which are not required to be bid or which G.S. 143-131 allows to be let on informal bids so long as the annual budget or appropriate capital project ordinance contains sufficient appropriated but unencumbered funds for such purposes.
9. The County Manager may execute contracts with outside agencies to properly document budgeted appropriations to such agencies where G.S. 153 A-248(b), 259, 449 and any similar statutes require such contracts.
10. The County Manager may reject formal bids when deemed appropriate and in the best interest of Cabarrus County pursuant to G.S. 143-129(a).
11. The County Manager may reduce revenue projections consistent with prevailing economic conditions, and also reduce expenditures correspondingly.

### Section III.

This ordinance and the budget documents shall be the basis of the financial plan for the County of Cabarrus.

- a. The Finance Director is hereby directed to maintain within the Capital Project Fund sufficient detailed accounting records to satisfy the requirements of the law.
- b. The Finance Director is directed to report, at the request of the Board, on the financial status of each project element in Section I and on the total revenues received or claimed.
- c. Copies of this capital project ordinance shall be furnished to the Clerk to the governing Board, and to the Finance Director for direction in carrying out this project.
- d. At the completion of a construction project, all unrestricted excess funds are transferred to the General Fund and the portion of the Capital Project associated with the project is closed.

Adopted this 18<sup>th</sup> Day of November, 2019.

CABARRUS COUNTY BOARD OF COMMISSIONERS

BY: \_\_\_\_\_  
Stephen M. Morris, Chairman

ATTEST:

\_\_\_\_\_  
Clerk to the Board

# CABARRUS COUNTY



## BOARD OF COMMISSIONERS WORK SESSION

**November 4, 2019  
4:00 PM**

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**AGENDA CATEGORY:**

Discussion Items for Action

**SUBJECT:**

County Manager - Purchase of Property for a Future High School

**BRIEF SUMMARY:**

A site has been reviewed and selected for a future high school. The County, through its real estate consultant, has negotiated the purchase of approximately 101 acres off Kannapolis Parkway. The owners of the combined parcels have agreed on terms and pricing and are ready to enter into a contract for sale. The draft contracts are being completed. Those contracts include a due diligence period to allow for final testing of the property and for a preliminary school layout to be completed; cost is approximately \$5 million. The total cost will depend on the survey. A map of the properties is attached including an inset vicinity map.

**REQUESTED ACTION:**

Motion to approve the purchase contracts and authorize the County Manager to execute those contracts on behalf of Cabarrus County, subject to review or revisions by the County Attorney and authorize the Finance Director to prepare the required budget amendment and project ordinance.

**EXPECTED LENGTH OF PRESENTATION:**

5 Minutes

**SUBMITTED BY:**

Jonathan B. Marshall, Deputy County Manager

**BUDGET AMENDMENT REQUIRED:**

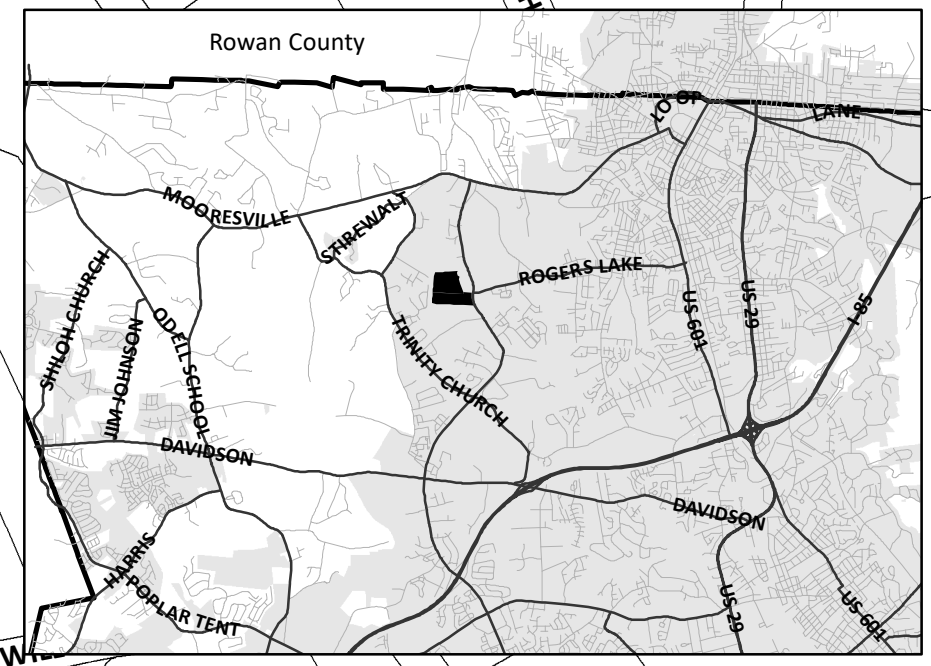
No

## COUNTY MANAGER'S RECOMMENDATIONS/COMMENTS:

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### ATTACHMENTS:

- ▣ Site Map



1 inch = 300 feet

# CABARRUS COUNTY



## BOARD OF COMMISSIONERS WORK SESSION

**November 4, 2019  
4:00 PM**

---

**AGENDA CATEGORY:**

Discussion Items for Action

**SUBJECT:**

Finance - Contractual Incentive Payment for SMG (Cabarrus Arena)

**BRIEF SUMMARY:**

The contract between Cabarrus County and SMG, the operator of the Cabarrus Arena and Events Center, includes annual incentive payments based on quantitative and qualitative measurements, as well as food sale volumes. The attached documents detail the calculations of the incentive amounts. This document has been reviewed by Finance and County Manager staff and is in keeping with the contract. A budget amendment for the incentive payments is included with this agenda item.

**REQUESTED ACTION:**

Motion to approve the incentive payments and adopt the associated budget amendment.

**EXPECTED LENGTH OF PRESENTATION:**

5 Minutes

**SUBMITTED BY:**

Jonathan Marshall, Deputy County Manager  
Susan Fearington, Finance Director

**BUDGET AMENDMENT REQUIRED:**

Yes

**COUNTY MANAGER'S RECOMMENDATIONS/COMMENTS:**

---

**ATTACHMENTS:**

- ▢ Arena Incentive Calculation
- ▢ Incentive Amendment





## Cabarrus Arena Management Fees for FY2019

The management agreement between Cabarrus County and SMG outlines fees for SMG related to certain performance thresholds. This total fee is composed of a quantitative portion relating to Gross Operating Revenue and a qualitative portion relating to more subjective performance measures.

### Quantitative Fee

For the year ending June 30, 2019, SMG surpassed the \$1,455,062 Gross Operating Revenue threshold that triggers the quantitative fee. Gross Operating Revenue for the year was \$1,570,690. In accordance with the management agreement, SMG should receive a quantitative fee which is the lesser of fifteen percent of Gross Operating Revenue in excess of the threshold or a quantitative fee cap equal to seventy-five percent of the base fee.

The calculated quantitative fee based on Gross Operating Revenue in excess of the threshold is as follows:

\$ 1,570,690	Gross Operating Revenue
- \$ 1,455,062	Fee Threshold
\$ 115,627	Gross Operating Revenue in Excess of Fee Threshold
x 15%	Percentage of Excess Revenue Available for Fee
\$ 17,344	Potential Quantitative Fee for FY 2019

The calculation to determine the quantitative fee cap is:

\$106,164	Base Management Fee
x 75%	Cap Percentage
\$79,623	Maximum Possible Quantitative Fee

Based on these calculations and the current management agreement, the quantitative fee due SMG for fiscal year 2019 is \$17,344.

### Qualitative Fee

For the fiscal year ending June 30, 2019, Cabarrus County staff awarded SMG ninety of a possible one hundred points in the subjective performance areas of customer service, maintenance and operations, and overall management. Applying the formulas outlined in the management agreement results in a qualitative fee to SMG of \$23,887.

\$26,541	Maximum Qualitative Fee per Agreement
x 90%	Percentage of Total Points Awarded to SMG
\$23,887	Qualitative Fee Due SMG

### Total Management Fees Due SMG

The total of all the performance-related management fees due SMG is \$41,231. This includes the Quantitative Fee of \$17,344 and Qualitative Fee of \$23,887 described above.



**Cabarrus Arena Food & Beverage Management Fees for FY2019**

The current Food and Beverage Services Agreement between SMG, Cabarrus County, and SMG Food and Beverage, LLC sets a fee schedule if SMG Food and Beverage produces a profit at the Cabarrus Arena location. This schedule ties SMG Food and Beverage fees directly to profitability and provides a method of distributing profits between the parties to the agreement.

**Profitability-Related Fee**

For the fiscal year ending June 30, 2019, SMG Food and Beverage produced \$82,526 Net Operating Income from operations on \$766,072 in Gross Revenue at Cabarrus Arena. Applying the formula specified in the Food and Beverage Services Agreement results in a fee of \$38,304 to SMG Food and Beverage.

\$766,072	Gross Food & Beverage Revenue
x 5%	Percentage of Gross Revenue Due SMG F&B
\$ 38,304	Food & Beverage Fee Due SMG F&B

**Profit Distribution**

The current Food and Beverage Services Agreement defines the term “Positive Net Operating Income” as Net Operating Income for the fiscal year less any profitability-related fee for that year. The agreement specifies that the first \$50,000 of Net Operating Income remains with the facility, the next \$50,000 goes to SMG Food and Beverage, and anything in excess of \$100,000 remains with the facility. This distribution results in a total of \$50,000 remaining with the facility and \$0 to SMG Food and Beverage for the fiscal year ending June 30, 2019.

\$ 82,526	Net Operating Income
<u>-\$ 38,304</u>	SMG F&B Profitability-Related Fee
\$ 44,222	Positive Net Operating Income Available for Distribution
<u>-\$ 44,222</u>	Initial Amount to Remain with Facility
\$ 0	Positive Net Operating Income Distributed to SMG F&B

**Total of Food & Beverage Fees Due SMG**

The total Food & Beverage fees due SMG is \$38,304. This includes the \$38,304 profitability-related fee and \$0 profit distribution described above.

SMG - Cabarrus Arena & Events Center  
Gross Revenue Statement  
For the Twelve Months Ending June 30, 2019

	Current Month Actual	Current Month Budget	Current Month Variance	Year to Date Actual	Year to Date Budget	Year to Date Variance
Gross Ticket Sales	\$ 463,973	\$ 804,719	(340,746)	\$ 463,973	\$ 804,719	(340,746)
Rent	594,024	544,509	49,515	594,024	544,509	49,515
<b>Total Ticket Sales / Rent</b>	<b>1,057,997</b>	<b>1,349,228</b>	<b>(291,231)</b>	<b>1,057,997</b>	<b>1,349,228</b>	<b>(291,231)</b>
<b>Service Revenue</b>						
Advertising Billed	520	1,552	(1,032)	520	1,552	(1,032)
Sponsorship Income	0	0	0	0	0	0
Labor Billed	46,532	75,260	(28,728)	46,532	75,260	(28,728)
Changeover Setup Billed	96,181	116,978	(20,797)	96,181	116,978	(20,797)
Stagehands Billed	15,762	0	15,762	15,762	0	15,762
Security Billed	40,491	55,725	(15,234)	40,491	55,725	(15,234)
Ushers & Ticket Takers Billed	25,253	23,779	1,474	25,253	23,779	1,474
Box Office Billed	2,118	9,289	(7,171)	2,118	9,289	(7,171)
Ticket Services Billed	0	0	0	0	0	0
Utilities Billed	22,660	25,974	(3,314)	22,660	25,974	(3,314)
Police or Fire Billed	0	0	0	0	0	0
Traffic Control Billed	10,775	0	10,775	10,775	0	10,775
EMI Medical Billed	5,487	6,964	(1,477)	5,487	6,964	(1,477)
Production Materials Billed	0	0	0	0	0	0
Supervisors Billed	19,231	0	19,231	19,231	0	19,231
Cleaning Billed	90,521	101,122	(10,601)	90,521	101,122	(10,601)
Other Labor Billed	0	0	0	0	0	0
Insurance Billed	1,180	0	1,180	1,180	0	1,180
License & Permits Billed	13,200	11,513	1,687	13,200	11,513	1,687
Telephone Billed	0	0	0	0	0	0
Equipment Rental Billed	99,534	94,237	5,297	99,534	94,237	5,297
Damages Billed	130	0	130	130	0	130
Other Production Billed	77,298	103,540	(26,242)	77,298	103,540	(26,242)
Talent Billed	45,000	0	45,000	45,000	0	45,000
Other Services Billed	15	240	(225)	15	240	(225)
<b>Total Service Revenue</b>	<b>611,888</b>	<b>626,173</b>	<b>(14,285)</b>	<b>611,888</b>	<b>626,173</b>	<b>(14,285)</b>
<b>Gross Direct Event Revenue</b>	<b>1,669,885</b>	<b>1,975,401</b>	<b>(305,516)</b>	<b>1,669,885</b>	<b>1,975,401</b>	<b>(305,516)</b>
<b>Gross Ancillary Revenue</b>						

An SMG Managed Facility

SMG - Cabarrus Arena & Events Center  
Gross Revenue Statement  
For the Twelve Months Ending June 30, 2019

	Current Month Actual	Current Month Budget	Current Month Variance	Year to Date Actual	Year to Date Budget	Year to Date Variance
F & B Concession Sales	461,485	394,287	67,198	461,485	394,287	67,198
F & B Catering Sales	304,587	205,466	99,121	304,587	205,466	99,121
Novelty Sales	8,036	3,527	4,509	8,036	3,527	4,509
Parking Revenue	216,139	198,972	17,167	216,139	198,972	17,167
<b>Total Ancillary Revenue</b>	<b>990,247</b>	<b>802,252</b>	<b>187,995</b>	<b>990,247</b>	<b>802,252</b>	<b>187,995</b>
Other Event Related Revenue	35,527	17,616	17,911	35,527	17,616	17,911
Other Operating Income	43,585	46,500	(2,915)	43,585	46,500	(2,915)
<b>Total Gross</b>	<b>\$ 2,739,244</b>	<b>\$ 2,841,769</b>	<b>(102,525)</b>	<b>\$ 2,739,244</b>	<b>\$ 2,841,769</b>	<b>(102,525)</b>

~~X <463,973>~~  
 ① <166,072>  
 -----  
 1,509,199  
 ② 82,526  
 -----  
 1,591,725 ③

An SMG Managed Facility

SMG - Cabarrus Arena & Events Center  
Food & Beverage Income Statement  
For the One Month Ending June 30, 2019

	Current Month Actual	Current Month Budget	Last Year Actual	Year to Date Actual	Year to Date Budget	Last Year Actual
<b>REVENUE</b>						
Concession Revenue	\$ 23,014	\$ 9,414	\$ 14,617	\$ 461,485	\$ 394,287	\$ 426,936
Catering Revenue	17,715	6,159	11,366	304,587	205,466	195,540
Total Net Revenue	40,729	15,573	25,983	766,072	599,753	622,476
<b>COST OF GOODS SOLD</b>						
Concession CGS	12,216	3,209	5,682	185,706	143,853	161,624
Catering CGS	8,559	3,030	5,547	121,451	58,275	59,349
Total Cost of Goods Sold	20,775	6,239	11,229	307,157	202,128	220,973
<b>DIRECT COSTS</b>						
Concessions Labor	4,653	2,234	4,324	102,971	103,533	97,912
Catering Labor	7,258	2,064	3,252	79,749	47,304	47,390
Direct Concessions Costs	0	48	0	857	1,387	2,477
Direct Catering Costs	301	160	848	7,876	10,648	8,413
Total Direct Costs	12,212	4,506	8,424	191,453	162,872	156,192
<b>GROSS PROFIT</b>	<b>7,742</b>	<b>4,828</b>	<b>6,330</b>	<b>267,462</b>	<b>234,753</b>	<b>245,311</b>
<b>INDIRECT EXPENSES</b>						
Salaries Administration	7,832	8,028	8,101	103,972	96,336	67,496
General - Part-Time	(2,049)	250	919	1,952	3,000	24,229
Bonus - Performance	0	0	0	0	0	(980)
Auto Allowance	0	0	0	0	0	600
Payroll Taxes	301	797	521	5,274	9,586	4,856
Benefits	642	2,697	634	14,851	32,364	10,008
401 (k)	213	156	263	2,701	1,927	1,034
Workers Compensation Ins.	523	375	384	4,779	4,500	4,595
Other Contracted Services	0	0	0	409	0	0
Meals & Entertainment	82	25	0	370	300	307
Over & Short	0	0	0	22	0	86
Employee Training	635	19	0	635	250	345
Cable Expense	0	0	0	0	0	50
Operating Supplies-F&B	0	0	0	203	0	592

SMG - Cabarrus Arena & Events Center  
 Food & Beverage Income Statement  
 For the One Month Ending June 30, 2019

	Current Month Actual	Current Month Budget	Last Year Actual	Year to Date Actual	Year to Date Budget	Last Year Actual
Flower Decorations-F&B	0	38	0	774	500	758
Renewals & Replacements-F	4,711	163	0	6,020	2,000	853
Laundry & Linen-F&B	0	0	0	0	0	30
Menu Costs-F&B	0	0	0	0	0	307
Repair&Maintenance-F&B	0	0	0	45	0	1,614
Uniforms-F&B	0	0	0	275	0	0
Miscellaneous Operating Exp	252	40	0	1,212	480	0
Uniforms	0	19	0	13	250	0
Kitchen Supplies	886	413	54	3,125	5,000	1,216
F&B Base Fee	2,037	2,499	1,307	38,304	29,988	31,124
Total Indirect Expense	16,065	15,519	12,183	184,936	186,481	149,120
Net Income (Loss)	\$ (8,323)	\$ (10,691)	\$ (5,853)	\$ 82,526	\$ 48,272	\$ 96,191

### Budget Revision/Amendment Request

Date:

Amount:

Dept. Head:

Department:

Internal Transfer Within Department     
  Transfer Between Departments/Funds     
  Supplemental Request

Purpose: This budget amendment appropriates fund balance from the General Fund and allocates funds to pay the Arena performance management fees to SMG Management Company. The fees are calculated per the SMG/Cabarrus County contract dated July 1, 2015 and are related to specific profitability and performance measurements. Fees are composed of a quantitative portion relating to Gross Operating Revenue and a qualitative portion relating to more subjective performance measures. The incentive for the Arena Operations is \$41,231 and the incentive for the Food & Beverage is \$38,304.

Fund	Indicator	Department/ Object/ Project	Account Name	Approved Budget	Increase Amount	Decrease Amount	Revised Budget
001	6	1960-6901	Fund Balance Appropriated	2,500,000.00	79,535.00		2,579,535.00
001	9	1960-9741	Contribution to SMG	723,710.00	79,535.00		803,245.00
420	6	8310-6902	Contribution from General Fund	723,710.00	79,535.00		803,245.00
420	9	8310-9404	Performance Incentives	-	41,231.00		41,231.00
420	9	8310-9404-FSVC	Performance Incentives Food & Beverage	-	38,304.00		38,304.00

**Budget Officer**

Approved  
 Denied

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**County Manager**

Approved  
 Denied

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Board of Commissioners**

Approved  
 Denied

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

# CABARRUS COUNTY



## BOARD OF COMMISSIONERS WORK SESSION

**November 4, 2019  
4:00 PM**

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### **AGENDA CATEGORY:**

Discussion Items for Action

### **SUBJECT:**

Finance - Update of Investment Policy, List of Banking Institutions and List of Investment Officers

### **BRIEF SUMMARY:**

Finance staff worked with the Local Government Commission, the North Carolina Capital Management Trust, and reviewed other jurisdictions to update the County's Investment policy. The policy has not been updated in several years. Some of the updates include 1) a new 40% commercial paper limit, 2) clear descriptions of the Finance Director and Investment Officer responsibilities and roles, and 3) a requirement that investment institutions/brokers be evaluated annually. The updated investment policy, list of banking institutions and list of investment officers are included for your review and approval.

### **REQUESTED ACTION:**

Motion to approve the updated Investment Policy, list of Banking Institutions, and list of authorized Investment Officers.

### **EXPECTED LENGTH OF PRESENTATION:**

5 Minutes

### **SUBMITTED BY:**

Susan Fearington, Finance Director

### **BUDGET AMENDMENT REQUIRED:**

No

### **COUNTY MANAGER'S RECOMMENDATIONS/COMMENTS:**



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**ATTACHMENTS:**

- ▣ County Investment Policy, Banking Institutions and Investment Officer List
- ▣ Marked Up Changes



# Cabarrus County Investment Policy

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## I. Scope

*Applicability.* North Carolina General Statute (NCGS) 159-30 authorizes local governments to invest all or part of the cash balance of any fund. The Board approved Cabarrus County Investment Policy, ("investment policy"), sets forth procedures for the County's investment program in order to ensure all public monies are appropriately and safely invested. The term "investment program" encompasses all investment actions in which the Finance Director along with the assistance of the investment officer(s) engage with the purpose of earning investment revenue on public funds. The investment policy and program refer to the **shorter-term investment of operating monies**. The investment of unspent bond proceeds, employees' retirement monies or other non-operating monies are not within the scope of this policy or managed by this investment program.

*Pooling.* In accordance with NCGS 159-30(e), Cabarrus County consolidates cash balances from numerous funds, with the possible exception of certain restricted or specialized funds, to maximize investment revenue. Quarterly, investment revenues are allocated across funds based on individual average quarterly fund balances.

## II. Objectives

Cabarrus County's investment program objectives, in order of priority, are:

1. *Safety.* Protecting the principal of public monies is the primary objective of the investment program. Careful consideration of credit and interest rate risks help mitigate the risks of principal losses.
  - a. *Credit risk.* The risk of loss of a security's value, due to the failure of the issuer of the security, is defined as credit risk. Cabarrus County mitigates this risk by:
    - i. Investing only in legally authorized securities as defined by NCGS 159-30(c).
    - ii. Transacting only with pre-qualified financial institutions, brokers and dealers.
    - iii. Diversifying its portfolio to minimize the effect of an individual security's loss on the County's portfolio.
  - b. *Interest rate risk.* The risk of loss of a security's market value due to changes in interest rates is defined as interest rate risk. Cabarrus County mitigates this risk by:
    - i. Investing primarily in shorter-term securities. The County will not invest in any security with a maturity date of more the five (5) years from the date of purchase without first receiving approval from the Board of Commissioners.
    - ii. Staggering the maturities of investments using a laddering strategy so that maturities will meet cash requirements, avoiding the need to sell on the open market.



## Cabarrus County Investment Policy

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2. *Liquidity.* Ensuring the County has access to monies to meet anticipated cash needs is defined as liquidity. All investment purchases are made with the intent to hold the investment to maturity. If investment is to be liquidated before maturity, approval of Deputy County Manager or County Manager will be required.  
The risk of an illiquid portfolio, however, can be avoided by ensuring a portion of the investment portfolio is placed in the North Carolina Capital Management Trust (NCCMT) accounts or the custodian sweep account. The NCCMT Government portfolio and custodian sweep account offers same-day liquidity and the NCCMT Term portfolio can be accessed according to established time deadlines for the County's operational needs.
3. *Yield.* The County builds its investment portfolio to obtain the best possible actualized yield after fees & investment costs, once the primary objectives of safety and liquidity are met.

### III. Standards of care

1. *Delegation of authority.* NCGS 159-30(a) authorizes the Finance Director to manage investments subject to whatever restrictions and directions the governing board may impose. The Finance Director shall have the power to purchase, sell, and exchange securities on behalf of the governing board. NCGS 159-25(a)(6) also requires the county Board appointed Finance Director to supervise the investment of idle funds for the County. With the assistance of the designated investment officer(s) [attachment A], the Finance officer will be responsible for managing the investment program in accordance with the Board approved investment policy. No other individual may engage in any investment transactions on behalf of Cabarrus County.
2. *Due diligence.* The Finance Director and authorized investment officers shall be relieved of personal responsibility in the event unexpected circumstances arise causing a loss of principal, provided due diligence was performed when purchasing the investment. Due diligence is evidenced by purchasing and managing the investment program in accordance with this investment policy.
3. *Conflicts of interest.* The Finance Director and authorized investment officers are prohibited from making personal investments with a broker or dealer with whom Cabarrus County utilizes to purchase investments. In addition, they must disclose, to the County Manager (and to the governing board, at the discretion of the County Manager) any material interests in any financial institutions with whom Cabarrus County utilizes in the investment program. The Finance Director and investment officers must refrain from any act that could impair the ability to make unbiased investment decisions, including any action that could result in personal gain.



## Cabarrus County Investment Policy

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### IV. Safekeeping and custody

*Third-party safekeeping.* Cabarrus County will contract with a third-party safekeeping institution who will serve as custodian of investments. Investment trades must be executed on a delivery vs. payment (DVP) method to ensure purchased securities are delivered prior to the release of any funds. Evidence of proper safekeeping will be monitored through online access to the County's custodial account. Also, the custodian must present the County with a monthly safekeeping statement.

As investments produce earnings or are liquidated, the funds shall be directly wired either to a bank delegated by the Cabarrus County Board of Commissioners as an official depository and collateralized as required by G.S.159-31 or to an investment account allowable under G.S. 159-30 such as the NCCMT.

1. *Authorized dealers, brokers and financial institutions.* The Finance Director, or authorized investment officer(s), will maintain a listing of approved financial institutions, dealers (primary or regional), and brokers providing investment services to Cabarrus County. Financial institutions, dealers and brokers are selected by the Finance Director and investment officer(s) based upon the broker's experience, knowledge of NC Local Government Investment law (G.S. 159-30) and the needs of Cabarrus County.
  - a. The Finance Director, or authorized investment officer(s) will be responsible for completing the proper due diligence of the approved and proposed financial institutions, dealers (primary or regional), and brokers providing investment services to Cabarrus County. The following documentation must be reviewed before approval and on an annual basis:
    - i. Audited financial statements
    - ii. FINRA (Broker Check)
    - iii. Credit Ratings from at least two reporting agencies

### V. Authorized investments

*Authorized investments.* NCGS 159-30(c) provides a comprehensive listing of legally authorized investments. Cabarrus County's portfolio may only include the classes of securities specifically authorized by this statute. The following is not an exhaustive list but includes the most common legally authorized investments:

1. Obligations of the United States or obligations fully guaranteed as to principal and interest by the United States.
2. Obligations of the Federal Farm Credit Bank, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, Fannie Mae, and Governmental National Mortgage Association.



## Cabarrus County Investment Policy

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3. Obligations of the State of North Carolina.
4. Bonds and notes of any North Carolina local government or public authority.
5. Prime quality commercial paper bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligation at the date of purchase.
  - a. Examples of nationally recognized rating agencies include Standard & Poors, Fitch and Moody's
6. Participating shares in a mutual fund for local government investment, approved by the Local Government Commission.
  - a. NCCMT Government Portfolio
  - b. NCCMT Term Portfolio
7. Total investment in commercial paper shall not exceed 40% of the total portfolio, the investment of commercial paper of a single issuer shall not exceed 10% of the total portfolio at the time of investment.

### **VI. Internal controls and reporting**

1. *Internal controls.* Adequate segregation of the investment program duties of transacting, approving and reporting will be accomplished by following these internal control procedures:
  - a. The Finance Director will supervise the investment officers to transact directly with financial institutions, brokers and dealers to build and manage the County's investment portfolio.
  - b. The Finance Director or Assistant Finance Director will review, pre-audit and sign documentation of an investment purchase.
  - c. The Finance Director will maintain adequate records to identify all investment purchases and maturities. These records will serve as supporting documentation for all investment journal entries made to the County's general ledger.
  - d. An investment officer will prepare a monthly reconciliation of the County's investment portfolio, supported by a custodial account safekeeping statement, to the County's general ledger.
  - e. The Finance Director or Assistant Finance Director will review the supporting documentation and approve the reconciliation.

At no time may the Finance Director, Assistant Finance Director or any other authorized investment officer perform both the duties of transacting and approving.



## Cabarrus County Investment Policy

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This investment policy shall be reviewed on an annual basis in November. Any changes must be approved by the Finance Director, Deputy County Manager, or County Manager and the County Board.

2. *Reporting.* An investment officer will be responsible for maintaining adequate records for investments.
  - a. *Schedule of investments.* A schedule of investments will be maintained that includes the security name, purchase date, cost, maturity date, and yield. This schedule will be used as supporting documentation for the monthly reconciliation.
  - b. *Mark-to-market.* At the end of the fiscal year, an investment officer will mark the value of investments, when appropriate, to market value in accordance with the guidance promulgated by the Governmental Accounting Standards Board (GASB). On the monthly reconciliation, an investment officer will report the variance between the cost and market value of investment portfolio. If the Finance Director believes this variance is material, and may adversely impact the financial statements, the Finance Director and investment officer will determine what action, if any, is necessary and will report the decision to the County Manager.
  - c. *Semi-annual LGC-203 report.* A semi-annual report of cash and investments will be prepared and submitted by an investment officer each January and July as required by NCGS 159-33. With the report a supplemental schedule of investments will also be submitted that includes the specific security name, purchase date, cost, maturity date and the market value of each investment as of the report date. This required report provides the Local Government Commission division of the North Carolina State Treasurer's Office with all cash and investment balances at December 31 and June 30.

Authorized Investment Officers

Attachment A

Finance Director .....Susan B. Fearrington

Assistant Finance Director .....Suzanne Burgess

Accounting Supervisor .....Katrina Myers-Arnold

**Cabarrus County**  
**Approved Banking Institutions**

<u>Bank</u>	<u>Official</u> <u>Depositories (1)</u>	<u>Investments (2)</u>
Sun Trust	X	
Fifth Third	X	
BB&T	X	X
Regions Bank	X	X
First Bank	X	
North Carolina Cash Management Trust	X	X
Multi-Bank Securities		X
Raymond James		X

(1) Designated as official depositories per G.S.159-31

(2) Approved for investing purposes per G.S.159-30

Updated October 15, 2019

For approval by BOC on November 18, 2019





# Cabarrus County Investment Policy

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    - i. Investing only in legally authorized securities as defined by NCGS 159-30(c).
    - ii. Transacting only with pre-qualified financial institutions, brokers and dealers.
    - iii. Diversifying its portfolio to minimize the effect of an individual security's loss on the County's portfolio.
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    - i. Investing primarily in shorter-term securities. The County will not invest in any security with a maturity date of more the five (5) years from the date of purchase without first receiving approval from the Board of Commissioners.
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## Cabarrus County Investment Policy

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The risk of an illiquid portfolio, however, can be avoided by ensuring a portion of the investment portfolio is placed in the North Carolina Capital Management Trust (NCCMT) accounts or the custodian sweep account. The NCCMT- Government portfolio and custodian sweep account offers same-day liquidity and the NCCMT- Term portfolio can be accessed according to established time deadlines for the County's operational needs.

2-3. *Yield.* The County builds its investment portfolio to obtain the best possible actualized yield after fees & investment costs, once ~~after~~ the primary objectives of safety and liquidity are met.

### III. Standards of care

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2. *Due diligence.* The Finance Director and authorized investment officers shall be relieved of personal responsibility in the event unexpected circumstances arise causing a loss of principal, provided due diligence was performed when purchasing the investment. Due diligence is evidenced by purchasing and managing the investment program in accordance with this investment policy.

3. *Conflicts of interest.* The Finance Director and authorized investment officers are prohibited from making personal investments with a broker or dealer with whom Cabarrus County utilizes to purchase investments. In addition, they must disclose, to the County Manager (and to the governing board, at the discretion of the County Manager) any material interests in any financial institutions with whom Cabarrus County utilizes in the investment program. The Finance Director and investment officers must refrain from any act that could impair the ability to make unbiased investment decisions, including any action that could result in personal gain.

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## Cabarrus County Investment Policy

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### IV. Safekeeping and custody

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~~4.~~ As investments produce earnings or are liquidated, the funds shall be directly wired either to a bank delegated by the Cabarrus County Board of Commissioners as an official depository and collateralized as required by G.S.159-31 or to an investment account allowable under G.S. 159-30 such as the NCCMT.

1. *Authorized dealers, brokers and financial institutions.* The Finance Director, or authorized investment officer(s), will maintain a listing of approved financial institutions, dealers (primary or regional), and brokers providing investment services to Cabarrus County. Financial institutions, dealers and brokers are selected by the Finance Director and investment officer(s) based upon the broker's experience, knowledge of NC Local Government Investment law (G.S. 159-30) and the needs of Cabarrus County.

a. The Finance Director, or authorized investment officer(s) will be responsible for completing the proper due diligence of the approved and proposed financial institutions, dealers (primary or regional), and brokers providing investment services to Cabarrus County. The following documentation must be reviewed before approval and on an annual basis:

i. Audited financial statements

ii. FINRA (Broker Check)

2-iii. Credit Ratings from at least two reporting agencies

~~e.~~

### VI.V. Authorized investments

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1. Obligations of the United States or obligations fully guaranteed as to principal and interest by the United States.



## Cabarrus County Investment Policy

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2. Obligations of the Federal Farm Credit Bank, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, Fannie Mae, and Governmental National Mortgage Association.
3. Obligations of the State of North Carolina.
4. Bonds and notes of any North Carolina local government or public authority.
5. Prime quality commercial paper bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligation at the date of purchase.
  - 5-a. Examples of nationally recognized rating agencies include Standard & Poors, Fitch and Moodys
6. Participating shares in a mutual fund for local government investment, approved by the Local Government Commission.
  - a. NCCMT Government Portfolio
  - 6-b. NCCMT Term Portfolio
7. Total investment in commercial paper shall not exceed 40% of the total portfolio, the investment of commercial paper of a single issuer shall not exceed 10% of the total portfolio at the time of investment.

~~7.~~

### VII.VI. Internal controls and reporting

1. *Internal controls.* Adequate segregation of the investment program duties of transacting, approving and reporting will be accomplished by following these internal control procedures:
  - a. The Finance Director will supervise the investment officers ~~will~~ transact directly with financial institutions, brokers and dealers to build and manage the County's investment portfolio.
  - b. The Finance Director or Assistant Finance Director will review, pre-audit and sign documentation of an investment purchase.
  - c. The Finance Director will maintain adequate records to identify all investment purchases and maturities. These records will serve as supporting documentation for all investment journal entries made to the County's general ledger.
  - d. An investment officer will prepare a monthly reconciliation of the County's investment portfolio, supported by a custodial account safekeeping statement, to the County's general ledger.



# Cabarrus County Investment Policy

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- e. The Finance Director or Assistant Finance Director will review the supporting documentation and approve the reconciliation.

At no time may the Finance Director, Assistant Finance Director or any other authorized investment officer perform both the duties of transacting and approving.

This investment policy shall be reviewed on an annual basis in November. Any changes must be approved by the Finance Director, Deputy County Manager, or County Manager and the County Board.

- 2. *Reporting.* An investment officer will be responsible for maintaining adequate records for investments.

- a. *Schedule of investments.* A schedule of investments will be maintained that includes the security name, purchase date, cost, maturity date, and yield. This schedule will be used as supporting documentation for the monthly reconciliation.

- b. *Mark-to-market.* At the end of the fiscal year, an investment officer will mark the value of investments, when appropriate, to market value in accordance with the guidance promulgated by the Governmental Accounting Standards Board (GASB). On the monthly reconciliation, an investment officer will report the variance between the cost and market value of investment portfolio. If the Finance Director believes this variance is material, and may adversely impact the financial statements, the Finance Director and investment officer will determine what action, if any, is necessary and will report the decision to the County Manager.

b.

- e. *Semi-annual LGC-203 report.* A semi-annual report of cash and investments will be prepared and submitted by an investment officer each January and July as required by NCGS 159-33. With the report a supplemental schedule of investments will also be submitted that includes the specific security name, purchase date, cost, maturity date and the market value of each investment as of the report date. This required report provides the Local Government Commission division of the North Carolina State Treasurer's Office with all cash and investment balances at December 31 and June 30.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c.

# CABARRUS COUNTY



## BOARD OF COMMISSIONERS WORK SESSION

**November 4, 2019  
4:00 PM**

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### **AGENDA CATEGORY:**

Discussion Items for Action

### **SUBJECT:**

Infrastructure and Asset Management - Offer for Purchase of Surplus Ambulances

### **BRIEF SUMMARY:**

After receiving an offer of \$1,000 from joinETA.com for the purchase of County Asset 8357, a 2014 Chevrolet ambulance (VIN: 1GB6G5CL1E1108867) and a second offer of \$1,000 from joinETA.com for the purchase of County Asset 8358, another 2014 Chevrolet ambulance (VIN: 1GB6G5CL6E1108279), a notice for upset bids was published. Staff will provide an update on the status of the bid process.

### **REQUESTED ACTION:**

Motion to accept the offer and proceed with the sale of County Asset 8357, a 2014 Chevrolet ambulance (VIN: 1GB6G5CL1E1108867) and County Asset 8358, another 2014 Chevrolet ambulance (VIN: 1GB6G5CL6E1108279), to joinETA.com.

### **EXPECTED LENGTH OF PRESENTATION:**

1 Minute

### **SUBMITTED BY:**

Michael Miller, Infrastructure and Asset Management Director

### **BUDGET AMENDMENT REQUIRED:**

No

### **COUNTY MANAGER'S RECOMMENDATIONS/COMMENTS:**

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## **ATTACHMENTS:**

- Offer to Purchase



**September 13, 2019**

**Cabarrus County EMS  
31 Willowbrook Road  
Concord, NC 28025**

2219 Bleckley Court  
Charlotte, NC 28270



**Dear Jimmy,**

**Thank you for taking the time to show the two (2) nonfunctioning Ambulance you no longer have use for. Please know that we only have use for the Modules but are willing to get rid of the chassis. Our offer is as follows;**

**1GB6G5CL1E1108867 - \$ 1,000.00  
1GB6G5CL6E1108279 - \$ 1,000.00**



joinETA.com  
Marketplace.



**Sincerely,**

**Eric Vogl Sr.  
President of Sales  
joinETA.COM  
joinETAmarketplace.com  
joinETA.com, LLC**



# CABARRUS COUNTY



## BOARD OF COMMISSIONERS WORK SESSION

**November 4, 2019  
4:00 PM**

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### **AGENDA CATEGORY:**

Discussion Items for Action

### **SUBJECT:**

Sheriff's Office - Resolution Approving Bike Safe Grant Funds

### **BRIEF SUMMARY:**

The Cabarrus County Sheriff's Office, by virtue of this resolution, has participated in Project Bike Safe for the previous four (4) years. Of those four (4) years, we have been reimbursed for this project for the last three (3) years. This resolution gives approval for the Cabarrus County Board of Commissioners to be the governing body for this project and authorizes Lt. Aaron Rankin to oversee this initiative for the upcoming year. The maximum reimbursement for the ensuing year is \$5,000.

### **REQUESTED ACTION:**

Motion to suspend the Rules of Procedure due to time constraints.

Motion to approve the resolution and budget amendment.

### **EXPECTED LENGTH OF PRESENTATION:**

5 Minutes

### **SUBMITTED BY:**

Chief James N. Bailey

### **BUDGET AMENDMENT REQUIRED:**

Yes

### **COUNTY MANAGER'S RECOMMENDATIONS/COMMENTS:**

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**ATTACHMENTS:**

- ▣ Resolution
- ▣ Budget Amendment

# North Carolina Governor's Highway Safety Program LOCAL GOVERNMENTAL RESOLUTION

WHEREAS, the Cabarrus County Sheriff's Office (herein called the "Agency")  
(The Applicant Agency)  
has completed an application contract for traffic safety funding; and that Cabarrus County Board of Commissioners  
(The Governing Body of the Agency)  
\_\_\_\_\_ (herein called the "Governing Body") has thoroughly considered the problem identified and has reviewed the project as described in the contract;

THEREFORE, NOW BE IT RESOLVED BY THE Cabarrus County Board of Commissioners IN OPEN  
(Governing Body)  
MEETING ASSEMBLED IN THE CITY OF Concord, NORTH CAROLINA,  
THIS 4th DAY OF November, 20 19, AS FOLLOWS:

1. That the project referenced above is in the best interest of the Governing Body and the general public; and
2. That Lieutenant Aaron T. Rankin is authorized to file, on behalf of the Governing  
(Name and Title of Representative)  
Body, an application contract in the form prescribed by the Governor's Highway Safety Program for federal funding in the amount of \$ 5000.00 to be made to the Governing Body to assist in defraying  
(Federal Dollar Request)  
the cost of the project described in the contract application; and
3. That the Governing Body has formally appropriated the cash contribution of \$ 0.00 as  
(Local Cash Appropriation)  
required by the project contract; and
4. That the Project Director designated in the application contract shall furnish or make arrangement for other appropriate persons to furnish such information, data, documents and reports as required by the contract, if approved, or as may be required by the Governor's Highway Safety Program; and
5. That certified copies of this resolution be included as part of the contract referenced above; and
6. That this resolution shall take effect immediately upon its adoption.

DONE AND ORDERED in open meeting by \_\_\_\_\_  
(Chairperson/Mayor)

ATTESTED BY \_\_\_\_\_  
(Clerk)

**SEAL**

DATE \_\_\_\_\_

## Budget Revision/Amendment Request

Date:

Amount:

Dept. Head:

Department:

Internal Transfer Within Department
  Transfer Between Departments/Funds
  Supplemental Request

Purpose: Cabarrus County Sheriff's Office is receiving a grant through the Governor's Highway Safety Program. Lt. Rankin serves as the coordinator and organizer for BikeSafeNC in our region of North Carolina. A grant in the amount of \$5,000 will cover the cost of equipment and travel. No local match is required. The Governor's Highway Safety Program (GHSP) supports and oversees statewide BikeSafeNC.

Fund	Indicator	Department/ Object/ Project	Account Name	Approved Budget	Increase Amount	Decrease Amount	Revised Budget
001	6	2110/6606/GHSP	Program Fees/GHSP	-	5,000.00		5,000.00
001	9	2110/9333/GHSP	Safety Equipment/GHSP	9,139.00	5,000.00		14,139.00

**Budget Officer**

Approved  
 Denied

**County Manager**

Approved  
 Denied

**Board of Commissioners**

Approved  
 Denied

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Date*

# CABARRUS COUNTY



## BOARD OF COMMISSIONERS WORK SESSION

**November 4, 2019  
4:00 PM**

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**AGENDA CATEGORY:**

Approval of Regular Meeting Agenda

**SUBJECT:**

BOC - Approval of Regular Meeting Agenda

**BRIEF SUMMARY:**

The proposed agenda for the November 18, 2019 regular Board of Commissioners' meeting is attached.

**REQUESTED ACTION:**

Motion to approve the agenda for the November 18, 2019 regular meeting.

**EXPECTED LENGTH OF PRESENTATION:**

1 Minute

**SUBMITTED BY:**

Lauren Linker, Clerk to the Board

**BUDGET AMENDMENT REQUIRED:**

No

**COUNTY MANAGER'S RECOMMENDATIONS/COMMENTS:**

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**ATTACHMENTS:**

- Proposed November 18, 2019 Agenda

# CABARRUS COUNTY



## BOARD OF COMMISSIONERS REGULAR MEETING

**November 18, 2019  
6:30 PM**

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### MISSION STATEMENT

THROUGH VISIONARY LEADERSHIP AND GOOD STEWARDSHIP, WE WILL ADMINISTER STATE REQUIREMENTS, ENSURE PUBLIC SAFETY, DETERMINE COUNTY NEEDS, AND PROVIDE SERVICES THAT CONTINUALLY ENHANCE QUALITY OF LIFE

### CALL TO ORDER BY THE CHAIRMAN

### PRESENTATION OF COLORS

### INVOCATION

Dr. Tom Cabaniss, First Baptist Church

### A. APPROVAL OR CORRECTIONS OF MINUTES

1. Approval or Correction of Meeting Minutes

### B. APPROVAL OF THE AGENDA

### C. RECOGNITIONS AND PRESENTATIONS

1. Active Living and Parks - Shelter Donation from the Parkers
2. Communications and Outreach - NATOA National Video Awards
3. Risk Management - Recognition for 10 years of Loyal Business with Safety National.
4. Tax Administration - Greg Belk Awards Recognition

### D. INFORMAL PUBLIC COMMENTS

### E. OLD BUSINESS

### F. CONSENT AGENDA

*(Items listed under consent are generally of a routine nature. The Board may take action to approve/disapprove all items in a single vote. Any item may be withheld from a general action, to be discussed and voted upon separately at the discretion of the Board.)*

1. County Manager - Arena Capital Purchase

2. County Manager - Purchase of Property for a Future High School
3. Finance - Contractual Incentive Payment for SMG (Cabarrus Arena)
4. Finance - Update of Investment Policy, List of Banking Institutions and List of Investment Officers
5. Infrastructure and Asset Management - Offer for Purchase of Surplus Ambulances
6. Infrastructure and Asset Management - Courthouse Expansion Project Schematic Design Approval
7. Sheriff's Office - Request to Award a Service Weapon to Sergeant Sara Price Upon Retirement
8. Tax Administration - Refund and Release Reports - October 2019

**G. NEW BUSINESS**

1. Economic Development Investment - Project Rooney - Public Hearing 6:30 p.m.

**H. REPORTS**

1. BOC - Receive Updates From Commission Members who Serve as Liaisons to Municipalities or on Various Boards/Committees
2. BOC - Request for Applications for County Boards/Committees
3. County Manager - Monthly Building Activity Reports
4. County Manager - Monthly New Development Report
5. EDC - October 2019 Monthly Summary Report
6. Finance - Monthly Financial Update

**I. GENERAL COMMENTS BY BOARD MEMBERS**

**J. WATER AND SEWER DISTRICT OF CABARRUS COUNTY**

**K. CLOSED SESSION**

**L. ADJOURN**

**Scheduled Meetings**

<b>December 2</b>	<b>Work Session</b>	<b>4:00 p.m.</b>	<b>Multipurpose Room</b>
<b>December 16</b>	<b>Regular Meeting</b>	<b>6:30 p.m.</b>	<b>BOC Meeting Room</b>

**Mission:** Through visionary leadership and good stewardship, we will administer state requirements, ensure public safety, determine county needs, and provide services that continually enhance quality of life.

**Vision:** Our vision for Cabarrus is a county where our children learn, our citizens participate, our dreams matter, our families and neighbors thrive, and our community prospers.

**Cabarrus County Television Broadcast Schedule  
Cabarrus County Board of Commissioners' Meetings**

The most recent Commissioners' meeting is broadcast at the following days and times. Agenda work sessions begin airing after the 1st Monday of the month and are broadcast for two weeks up until the regular meeting. Then the regular meeting begins airing live the 3rd Monday of each month and is broadcast up until the next agenda work session.

<b>Sunday - Saturday</b>	<b>1:00 P.M.</b>
<b>Sunday - Tuesday</b>	<b>6:30 P.M.</b>
<b>Thursday &amp; Friday</b>	<b>6:30 P.M.</b>

In accordance with ADA regulations, anyone who needs an accommodation to participate in the meeting should notify the ADA Coordinator at 704-920-2100 at least forty-eight (48) hours prior to the meeting.



# CABARRUS COUNTY



## BOARD OF COMMISSIONERS WORK SESSION

**November 4, 2019  
4:00 PM**

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**AGENDA CATEGORY:**

Closed Session

**SUBJECT:**

Closed Session - Pending Litigation, Economic Development and Personnel Matters

**BRIEF SUMMARY:**

A closed session is needed to discuss matters related to pending litigation, economic development and personnel matters as authorized by NCGS 143-318.11(a)(3), (4) and (6)..

**REQUESTED ACTION:**

Motion to go into closed session to discuss matters related to pending litigation, economic development and personnel matters as authorized by NCGS 143-318.11(a)(3), (4) and (6).

**EXPECTED LENGTH OF PRESENTATION:**

30 Minutes

**SUBMITTED BY:**

Mike Downs, County Manager

**BUDGET AMENDMENT REQUIRED:**

No

**COUNTY MANAGER'S RECOMMENDATIONS/COMMENTS:**

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