

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA

CIVIL ACTION

VERSUS

NO. 12-1924

CITY OF NEW ORLEANS

SECTION: "E" (2)

ORDER

CONSIDERING THE FOREGOING Consent Motion to Approve Secondary Employment Agreement with SMG¹ filed by the City of New Orleans ("City") and the Plaintiff, the United States (collectively, the "Parties"):

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion is **GRANTED** and, pursuant to paragraph 487 of the Consent Decree, the Court temporarily suspends certain provisions of the Consent Decree until June 30, 2016, to allow the City to enter into the Memorandum of Understanding ("MOU") with SMG, attached hereto.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent Decree Monitor shall regularly monitor, assess and report to the Parties and the Court concerning whether performance under the MOU is consistent with constitutional policing as set forth in the Consent Decree. In the event the Monitor or either of the Parties determines that performance under the MOU is not consistent with constitutional policing as set forth in the Consent Decree, or that there does not exist a sufficient basis to determine whether performance under the MOU is consistent with constitutional policing as set forth in the Consent Decree, the Parties shall work in good faith to remedy the deficiency. If the Parties remain unable to confirm whether

¹ Rec. Doc. 381.

performance of the MOU is consistent with the requirements of constitutional policing as set forth in the Consent Decree, or remain unable to determine whether the MOU is being implemented in a manner that is consistent with constitutional policing as set forth in the Consent Decree, then either the City or the United States may move the Court to terminate the temporary exemption granted herein.

The Monitor will provide a report to the Court on March 31, 2016 concerning performance under the MOU and whether it should be modified, terminated or extended beyond June 30, 2016.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED the temporary exemption for the MOU between the City and SMG may be terminated by the Court if the Court determines that performance under the MOU is not consistent with the requirements or purposes of the Consent Decree.

New Orleans, Louisiana, this 25th day of July, 2014.



SUSIE MORGAN
UNITED STATES DISTRICT JUDGE

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF NEW ORLEANS
AND
SMG

THIS MEMORANDUM OF UNDERSTANDING (“MOU”), made and entered into this _____ day of _____, 2014, by and between the City of New Orleans (“City”), herein represented by Mitchell J. Landrieu, Mayor, and SMG, herein represented by Alan Freeman (“SMG”) witnesses that,

WHEREAS, the United States District Court for the Eastern District of Louisiana Judge Susie Morgan entered a Consent Decree between the United States and the City of New Orleans in the lawsuit entitled *United States of America v. the City of New Orleans*, E.D. La. Docket No. 12-cv-01924 on January 11, 2013 (“Consent Decree”).

WHEREAS, Judge Morgan appointed Sheppard Mullin Richter & Hampton LLC as Monitor to assess, assist and report on implementation of the Consent Decree’s provisions;

WHEREAS, prior to the entry of the Consent Decree, SMG routinely hired a large number of members of the New Orleans Police Department (“NOPD”) to work secondary employment to provide security at the Mercedes-Benz Superdome, Smoothie King Center, and Champions Square (the “SMG Managed Facilities”).

WHEREAS, the Consent Decree contains nearly 50 paragraphs setting forth a new structure for police secondary employment, including establishing a centralized office within City government (Office of Police Secondary Employment or “OPSE”) to manage the administrative aspects of secondary employment, such as scheduling officers to work secondary employment assignments; invoicing customers for secondary employment work and paying the officers for any such work performed; ensuring that officers and customers have met the Consent Decree requirements for secondary employment before any work is assigned; interfacing with NOPD to promote compliance with NOPD policies with regard to secondary employment, and ensuring compliance with the officer staffing ratios and reporting structures for secondary employment as set forth in the Consent Decree.

WHEREAS, SMG desires to continue to hire NOPD officers for the performance of secondary employment at SMG managed facilities.

WHEREAS, in furtherance of a public purpose pursuant to Article 9-314 of the Home Rule Charter of the City of New Orleans, the City and SMG desire to enter into this MOU to allow New Orleans Police Department (“NOPD”) officers to continue to provide security services at the SMG Managed Facilities through the City’s Office of Police Secondary Employment (“OPSE”) as required by the Consent Decree..

NOW THEREFORE, the City and SMG agree as follows:

1. **CONTEXT AND GENERAL PURPOSE:** This MOU engages the City and SMG in this cooperative purpose in the public interest.

The CITY agrees to the following:

The City shall perform each of the following services as set forth below:

- A. Provide administration of this MOU through the OPSE;
- B. Provide access to all personnel and records deemed necessary for the performance of the obligations by SMG;
- C. Comply with all terms of the Consent Decree, OPSE Policies and Procedures, and NOPD policies
- D. Continue to provide workers' compensation insurance coverage for NOPD officers who might sustain injuries in the course and scope of employment for the NOPD or in the line of duty as an NOPD officer;
- E. Coordinate with SMG to ensure that all positions required at SMG Managed Facilities are filled in accordance with the established policies and rules of OPSE and the NOPD criteria;;
- F. Allow SMG to establish a pay rate of \$29.33 for one year after the effective date of this MOU without applying any increases, premium or high demand rates except as set forth herein;
- G. Allow SMG to establish a holiday premium rate of \$17.00 per hour above non-holiday hourly rates to officers performing secondary employment services for holidays established by SMG as set forth in Attachment B hereto;
- H. Invoice SMG for the administrative fee at rates set forth herein following the completion of any secondary employment assignment.
- I. maintain a roster of officers eligible to perform secondary employment at the SMG Managed Facilities;
- J. Work with SMG to assign officers who have never worked an SMG event to work annual events as set forth herein;
- K. Receive and review time sheets for all officers working secondary employment assignments at the SMG Managed Facilities;
- L. Ensure that officers working secondary employment assignments at the SMG Managed Facilities have received all necessary approvals from NOPD and OPSE to perform such services;
- M. Work with SMG to ensure that SMG is involved in any discussions or negotiations regarding future rate increases for secondary employment assignments at SMG facilities.

SMG agrees to the following:

- A. Pay and maintain payroll for NOPD officers working secondary employment, including

- tax accounting and reporting, for NOPD officers working at the SMG Managed Facilities;
- B. Ensure that pay rates are applied consistently to all officers in a given pay category;
 - C. Provide workers' compensation and liability insurance coverage for NOPD officers working secondary employment assignments at the SMG Managed Facilities consistent with existing SMG practices;
 - D. Set the hourly rate paid to an officer for an event at its discretion, provided officers shall be paid at least \$29.33 per hour;
 - E. Inform OPSE of any increase in hourly rate it intends to establish for any event;
 - F. Provide OPSE with copies of time sheets and payroll records for all officers working secondary employment assignments at SMG managed facilities;
 - G. Work with OPSE to allow OPSE to fill shortages, call-offs, or no-show for secondary employment assignments at SMG managed facilities in accordance with the established policies and rules of OPSE and the NOPD criteria;
 - H. Coordinate with the OPSE to ensure that all secondary employment positions at SMG Managed Facilities are filled in accordance with the established policies and rules of OPSE and the NOPD criteria ;
 - I. Provide OPSE a roster of officers eligible to work secondary employment assignments at the SMG Managed Facilities;
 - J. Comply with all OPSE Policies and Procedures as applicable to SMG pursuant to this MOU;
 - K. SMG Acknowledges that all NOPD personnel are obligated to comply with all applicable NOPD and OPSE policies while working for SMG and that in the event of a conflict between SMG policies or employment requirements and NOPD or OPSE policies or requirements, the NOPD and OPSE policies and requirements govern;
 - L. Report any complaints or allegations of officer misconduct to OPSE and/or NOPD PIB;
 - M. Pay to the City an administrative fee of \$2.75 per hour worked during a secondary employment assignment at an SMG Managed Facility for all officers regardless of rank through June 30, 2015.
 - N. Pay to the City an administrative fee of \$3.05 per hour worked during a secondary employment assignment at an SMG Managed Facility for all officers regardless of rank from July 1, 2015 to June 30, 2016.
 - O. SMG shall not reduce its current levels of supervision for officers working employment at the SMG Managed Facilities (consistent with past practices based on event type) without first obtaining approval from the DOJ and the Monitor;
 - P. Ensure that officers do not supervise higher-ranked officers;
 - Q. Determine which officers will be assigned to each required post during a secondary employment assignment at an SMG Managed Facility.
 - R. Maintain written records sufficient for OPSE, the Monitor and DOJ to determine whether performance under this MOU meets the requirements of the Consent Decree, including but not necessarily limited to a record of the levels of supervision for each event, the number of officers that worked each event by rank and post, and a record of payments made to all officers,
 - S. Use its reasonable best efforts to employ annually at least 40 new officers who have never worked an SMG event to work annual events held at SMG Managed Facilities

according to the schedule below to the extent feasible:

- i. New Orleans Saints –10 new officers for any one game, no more than 20 new officers for a season (10 games)
- ii. New Orleans Pelicans –3 new officers for any one game, no more than 12 for a season (41 games)
- iii. Essence –4 new officers per show date, and no more than 8 per year (3 shows per year)
- iv. Sugar Bowl –6 new officers
- v. Monster Truck Show –6 new officers
- vi. Bayou Classic –6 new officers
- vii. Battle of the Bands –5 new officers
- viii. New Orleans Bowl –6 new officers
- ix. LHSAA football championships –3 new officers per day, and no more than 10 new officers per year (4 game days)

Further, effective August 1, 2015, SMG will not allow any officer to work an SMG event if the officer has not worked at least one non-SMG secondary employment assignment between the effective date of this MOU and August 1, 2015.

2. **TERM:** This MOU shall become effective upon execution by both parties and Court approval and shall terminate on June 30, 2016 unless terminated by the Court upon motion by one or both parties or otherwise.

3. **TERMS AND CONDITIONS:** The City and SMG also expressly bind themselves under the Additional Terms and Conditions made a part hereof as “Attachment A.”

4. **AMENDMENT:** This MOU may not be terminated, amended, modified or otherwise changed except by written amendment executed by the parties hereto and advance notice to and approval by the DOJ, the Monitor and the Court.

5. **EXPENSES:** Each party shall bear its respective expenses and costs (including legal and other advisory fees) concerning the negotiation and execution of this MOU and all activities relating the implementation of the terms hereof.

6. **COUNTERPARTS:** This MOU may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. All parties need not sign the same counterpart.

7. **NO PARTNERSHIP:** No provisions herein shall be construed as creating a partnership, joint venture or other association whereby SMG and the City would be jointly liable or liable as partners or co-venturers.

8. **NO THIRD-PARTY BENEFICIARIES:** This MOU is entered into for the exclusive benefit of the parties, and the parties expressly disclaim any intent to benefit anyone not a party hereto.

9. COMPLETE: This MOU constitutes the entire agreement between the parties with respect to the subject matter hereof and there are no representations, warranties, covenants, agreements or commitments by the parties except as set forth herein.

IN WITNESS WHEREOF the parties hereto have made and executed this MOU effective the day and year first above written:

CITY OF NEW ORLEANS

By: MITCHELL J. LANDRIEU
Mayor

**Form and legality approved:
Law Department**

By: _____

Printed Name: _____

SMG

By: _____
Its: _____

ATTACHMENT A

**ADDITIONAL TERMS AND CONDITIONS
TO MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF NEW ORLEANS
AND
SMG**

1. **EQUAL EMPLOYMENT OPPORTUNITY**: In all hiring or employment made possible by, or resulting from this MOU, there (1) will not be any discrimination against any employee or applicant for employment because of race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, affirmative action will be taken to ensure that SMG's employees are treated during employment without regard to their race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.
2. **ASSIGNABILITY**: Neither party shall assign any interest in this MOU or transfer any interest in the same without prior written consent of the other party. .
3. **JURISDICTION**: SMG hereby consents and yields to the jurisdiction of the United States District Court for the Eastern District of Louisiana, and does hereby formally waive any pleas of jurisdiction on account of the residence elsewhere of SMG.
4. **CHOICE OF LAWS**: This MOU shall be construed and enforced in accordance with the laws of the State of Louisiana, without regard to its conflict of laws provisions.
5. **EXTENSION**: This agreement may be extended should the Court in *United States of America v. the City of New Orleans*, E.D. La. Docket No. 12-cv-01924 permit such an extension, and the extension of the MOU facilitates the continuity of services provided herein. Any extension is subject to Section 9-314(3) of the Home Rule Charter of the City of New Orleans.
6. **TERMINATION FOR CAUSE**: The City may terminate the MOU at any time during the term thereof by giving SMG written notice of said intention to terminate immediately upon giving written notice of the reasons for termination, subject to paragraph 486 of the Consent Decree, which expressly provides that the United State District Court for the Eastern District of Louisiana retains jurisdiction over the Consent Decree. SMG may terminate this MOU with or

without cause at any time during the term hereof by giving the City written notice of such termination at least 5 days prior to the date of termination.

7. SOLICITATION: SMG has not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure the subject MOU. SMG has not paid or agreed to pay any person, other than a bona fide employee working for him, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the subject MOU. (Code Section 70-509)

8. AUDIT AND OTHER OVERSIGHT: SMG will abide by all provisions of City Code § 2-1120, including but not limited to City Code § 2-1120(12), which requires SMG to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall constitute a material breach of the MOU. SMG agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

9. CONVICTED FELON PROVISION: Section 2-8 (c) of the Code of the City of New Orleans shall apply to this agreement. No SMG principal, member, or officer has, within the preceding five years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

ATTACHMENT B
HOLIDAY SCHEDULE

Holiday
New Year's Day
Martin Luther King
Mardi Gras
Memorial Day
Independence Day
Labor Day
Thanksgiving
Christmas Eve
Christmas
New Year's Eve

Attachment C

SMG / OPSE Event Staffing Procedure

1. SMG Public Safety Department (PSD) will send email to OPSE, requesting staffing for an event. This request will include inside, parking and traffic sections.
2. SMG will fill the staffing request and submit same to OPSE for final approval. Priority will be given to NOPD officers who have experience and knowledge of the requirements of the event being staffed. Final approval notification to SMG must be made at a minimum of seventy-two (72) hours prior to reporting time of the status of such staffing.
3. NOPD personnel assigned to detail will arrive and report as directed by SMG.
4. SMG will be responsible for ensuring NOPD personnel clock in using Kronos system under the appropriate event number and activity code along with signing the appropriate sign in / sign out sheet.
5. SMG will determine the placement of the officers, with SMG PSD managers having the final decision in officer placement.
6. When the event is concluded, the NOPD personnel will punch out using the Kronos system and SMG will ensure the sign in / sign out sheets are completed.

Payroll Accounting and Record Keeping

1. Each Monday morning, SMG PSD will receive a Kronos report (detailed payroll printout of hours employees worked for events during the previous pay week of Monday-Sunday) from the SMG Accounting Department.
2. The initial Kronos report will be reconciled by PSD using the NOPD/OPSE sign in / sign out sheets.
3. Not later than 12 noon each Monday, PSD will submit a reconciled Kronos report to SMG Accounting.
4. Once submitted to SMG Accounting, the SMG Accounting Department will make all necessary changes and corrections to produce a final Kronos report no later than COB on Tuesday.
5. Once the final Kronos report is produced by SMG Accounting, a copy will be provided to SMG PSD no later than close of business on Wednesday.
6. PSD will send an electronic copy of the final Kronos report to OPSE no later than 12 noon on Thursday.
7. OPSE will then prepare an invoice for the OPSE hourly administrative fee and submit the invoice to the SMG Accounting for payment. Terms of payment will be net 10 days from submission of an accurate invoice.