

AN ORDINANCE 2011-10-20-0871

AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH THE SAN ANTONIO BOWL ASSOCIATION IN AN AMOUNT UP TO \$200,000.00 FOR HOSTING OBLIGATIONS ASSOCIATED WITH THE 2011 VALERO ALAMO BOWL, AUTHORIZING THE EXPENDITURE FROM THE FISCAL YEAR 2012 ADOPTED BUDGET IN ANTICIPATION OF REIMBURSEMENT FROM THE STATE UNDER THE EVENTS TRUST FUND LEGISLATION, AND APPROVING A LOCAL CONTRIBUTION IN THE AMOUNT OF \$95,457.00 TO THE EVENTS TRUST FUND TO QUALIFY FOR REIMBURSEMENT OF ELIGIBLE EXPENSES RELATED TO THE 2011 VALERO ALAMO BOWL.

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WHEREAS, the City of San Antonio and the Alamodome will host the 19th annual 2011 Valero Alamo Bowl (“Event”) on December 29, 2011; and

WHEREAS, the City, as host for the Event, is responsible for buying and producing advertising, producing an economic impact study for the Event, ticketing and providing game-day operations and services and the City is seeking to enter a Professional Services Agreement (“Agreement”) with the San Antonio Bowl Association (“Association”) to provide these services for which they will be reimbursed in an amount up to \$200,000.00; and

WHEREAS, the Events Trust Fund (“Fund”) (Vernon’s Texas Civil Statutes 5190.14, Section 5(C) provides a mechanism for governmental entities to receive reimbursement for expenses related to certain premiere sporting and convention events and this Ordinance proposes that the City utilize this statutory tool to recoup eligible expenses related to the 2011 Valero Alamo Bowl, including the payment under the Agreement; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The terms and conditions of a Professional Services Agreement with the San Antonio Bowl Association, in an amount up to \$200,000.00, for services for the 2011 Valero Alamo Bowl are authorized and approved.

SECTION 2. The City Manager or her designee is authorized to sign the Agreement. A copy of the Agreement, previously executed by the Association, is attached to this Ordinance as Exhibit I.

SECTION 3. Funding in the amount of \$200,000.00 for this Ordinance is available in Fund 29006000, Cost Center 8002070001 and General Ledger 5201040, as part of the Fiscal Year 2012 Budget.

SECTION 4. Payment not to exceed the budgeted amount is authorized to San Antonio Bowl Association and should be encumbered with a purchase order.

SECTION 5. The remittance of up to \$95,457.00 to the Texas State Comptroller of Public Accounts (“Comptroller”) for deposit in the CSEF State Reimbursement fund is authorized and approved.

SECTION 6. City staff is directed to seek reimbursement of all for eligible expenses related to the 2011 Valero Alamo Bowl.

SECTION 7. The amount of \$95,457.00 is appropriated in Fund 29007000, HOT TAX IMPMT AND CONTINGENCY, Internal Order 390000001334, From 29007000 to 29002001 and General Ledger 6102100, Interfund Transfers Out. The amount of \$95,457.00 is authorized to be transferred to Fund 29002001, CSEF State Reimbursement Fund.

SECTION 8. The budget in Fund 29002001, CSEF State Reimbursement Fund, shall be revised by increasing Internal Order 311000001334, From 29007000 to 29002001 and General Ledger 6101100, Interfund Transfers In by the amount \$95,457.00.

SECTION 9. The amount of \$95,457.00 is appropriated in Fund 29002001, CSEF State Reimbursement Fund, Cost Center 8003020001 and General Ledger 5407560. The amount of \$95,457.00 is authorized to be made payable to the Comptroller and shall be encumbered with a purchase order.

SECTION 10. Reimbursement in the amount up to \$95,457.00 received from the Comptroller shall be deposited in Fund 29002001, CSEF State Reimbursement Fund, Cost Center 8003020001 and General Ledger 4401190.

SECTION 11. The remaining reimbursable balance will be deposited to the original funding sources in proportion to the funds utilized to complete projects identified for these events.

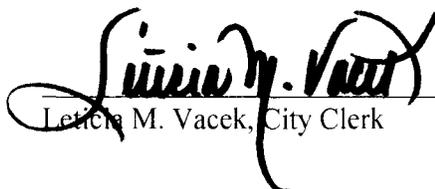
SECTION 12. The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer ("CFO"), City of San Antonio. The CFO may, subject to concurrence by the City Manager, or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 13. This Ordinance shall take effect immediately upon the receipt of eight affirmative votes; otherwise it shall be effective ten days after its passage.

PASSED AND APPROVED this 20th day of October, 2011.

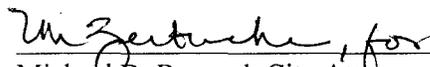

M A I O R
Julián Castro

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Michael D. Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 33B

Name:	6, 7, 8, 9, 10, 12, 15, 16, 17, 18, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33A, 33B, 34, 35						
Date:	10/20/2011						
Time:	02:38:13 PM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a Professional Services Agreement with the San Antonio Bowl Association in an amount up to \$200,000.00 for hosting obligations associated with the 2011 Valero Alamo Bowl, authorizing the expenditure from the FY 2012 Adopted Budget in anticipation of reimbursement from the State under the Events Trust Fund legislation, and approving a local contribution in the amount of \$95,457.00 to the Events Trust Fund to qualify for reimbursement of eligible expenses related to the 2011 Valero Alamo Bowl.						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x			x	
Rey Saldaña	District 4		x				
David Medina Jr.	District 5	x					
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				x

EXHIBIT 1

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF SAN ANTONIO
AND
SAN ANTONIO BOWL ASSOCIATION**

This Professional Services Agreement ("Agreement") is entered into and executed by and between the City of San Antonio, a Texas Municipal Corporation ("CITY"), acting by and through its City Manager, pursuant to Ordinance No. 2011-__-__-_____, passed and approved on _____, 2011, and San Antonio Bowl Association ("AGENCY"), acting by and through its President/CEO, and witness their Agreement as follows:

I. APPOINTMENT

The Director of the CITY'S Convention, Sports, and Entertainment Facilities Department, or his designee, shall administer this Agreement for CITY. In consideration of payment of a sum not to exceed two hundred thousand dollars and no cents (\$200,000.00), and other obligations hereinafter undertaken on part of CITY, the AGENCY agrees to act on behalf of CITY for the 2011 Valero Alamo Bowl ("Event") to be held on December 29, 2011, at the Alamodome by (i) advertising the event; (ii) providing an economic impact study for the Event; (iii) providing game day services for the Event; and (iv) providing ticketing services for the Event. It is agreed that any marketing conducted by the AGENCY pursuant to this Agreement shall complement, to the extent possible, the marketing efforts of the CITY'S Convention, Sports, and Entertainment Facilities Department in order to prevent the duplication of efforts and promote efficiency. All services provided by AGENCY pursuant to this Agreement shall substantially conform to generally accepted standards that are usual and customary between client and promotion agencies in similar relationships.

II. TERM OF AGREEMENT

The term of this Agreement shall commence upon final execution and end January 30, 2012, unless terminated sooner if the CITY reasonably determines that AGENCY has not exercised its best efforts to perform its duties under the Agreement and AGENCY has been informed of such and has failed to satisfactorily renew its efforts within a reasonable time thereafter.

III. DUTIES OF AGENCY

In the execution of its duties, the AGENCY shall perform activities including, but not limited to the following:

3.1 Procure and produce advertising, which shall include, but not be limited to, radio, television, print, social and outdoor advertising and all costs associated with creative, placement, production, trafficking, etc.

3.2 Procure and produce an economic impact study.

3.3 Procure and provide game day operations, including but not limited to staffing, officials, signage, video production, game day services and radios.

3.4 Procure and provide ticket systems, which shall include, but not be limited to,

ticket printing, and all costs associated with ticket distribution, ticket credit card processing and service charge fees, box office fees, etc.

IV. ALLOWABLE EXPENSES

The types of AGENCY costs, which shall be considered for payment by CITY, shall be limited to costs associated with: the creation, production, placement and trafficking of radio, television, print social and outdoor advertising; costs associated with the production of an economic impact survey; costs associated with game day operations, including, but not limited to, staffing, officials, signage, video production, and game day services; and costs associated with ticketing services, including, but not limited to, ticket printing, ticket distribution, ticket credit card processing and service charge fees, Ticketmaster fees, box office fees, etc. AGENCY shall use its best efforts to secure competitive prices for all allowable expenses.

V. BILLINGS

AGENCY shall submit a written invoice(s) to the CITY supported by photocopies of all applicable invoices and/or receipts. Upon receipt, CITY agrees to pay AGENCY'S invoice/s in accordance with the Texas Prompt Pay Statute should CITY find that such invoice(s) represents an allowable expense under this Agreement, as defined by Article IV above.

VI. MEETINGS

Upon request by one party hereto, the other party agrees to meet at such time and place as agreed to by both parties.

VII. REPORTS

AGENCY shall submit written reports to the CITY, upon request, detailing accomplishments and work in progress related to this Agreement.

VIII. EXAMINATION OF AGENCY RECORDS

All contracts, correspondence, books, accounts, and other information relating directly to the AGENCY'S performance of its obligations for the CITY under this Agreement, or to the expenses incurred on the CITY'S behalf, shall be open to inspection and examination at the offices of the AGENCY by an authorized representative of CITY during the AGENCY'S regular business hours.

IX. LIABILITY OF AGENCY TO THIRD PARTIES AND TO CITY

AGENCY shall be solely responsible to parties with whom it shall deal in carrying out the terms of this Agreement and shall save CITY harmless against all claims of whatever nature asserted by third parties in carrying out the terms hereof.

9.1 AGENCY covenants and agrees to INDEMNIFY, DEFEND and HOLD HARMLESS CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is

sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY THE NEGLIGENT ACT, ERROR, OR OMISSION OF AGENCY, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONTRACTOR OR SUBCONTRACTOR OF AGENCY, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES. THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF CITY, ITS ELECTED OFFICIALS, OFFICERS OR EMPLOYEES. IN THE EVENT AGENCY AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

AGENCY shall use commercially reasonable efforts to advise CITY in writing within 24 hours of any claim or demand against CITY or AGENCY known to AGENCY related to or arising out of AGENCY'S activities under this Agreement.

9.2 Defense Counsel - CITY shall have the right to select or to approve defense counsel to be retained by AGENCY in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. AGENCY shall retain CITY approved defense counsel within seven (7) business days of CITY'S written notice that CITY is invoking its right to indemnification under this Agreement. If AGENCY fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and AGENCY shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

9.3 Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of AGENCY, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for AGENCY or any subcontractor under worker's compensation or other employee benefit acts.

X. POLITICAL ACTIVITIES

No funds provided from or through CITY shall be contributed to or used for, in whole or in part, the conduct of political activities or for the benefit of any candidate for elective public office, partisan or non-partisan, nor shall the personnel involved in the administration of any CITY funded activity be required by the AGENCY to work for or on behalf of any partisan or non-partisan political activity or candidate. AGENCY shall be restricted from using the funds provided by the CITY for campaigning or other political purposes.

XI. CONFLICT OF INTEREST

AGENCY certifies (and this Agreement is made on reliance thereon) that this Agreement does not violate Section 2-43 of the City Code of the City of San Antonio.

XII. COMPLIANCE WITH LAWS

AGENCY agrees to comply with all applicable federal, state and local laws in the performance of its duties and services under this Agreement.

XIII. NON-DISCRIMINATION

Discrimination on account of race, color, sex, age, religion, handicap or national origin, directly or indirectly, in employment or contracting practices or in the use of contract funds is strictly prohibited.

XIV. ASSIGNMENT

This Agreement is personal to AGENCY. AGENCY shall not assign this Agreement, but may subcontract, in part, the duties hereunder.

XV. AMENDMENTS

No amendment, modification, or alteration of the terms hereunder shall be binding unless the same be in writing, dated subsequent to the date hereof, duly executed by the parties hereto and authorized by the passage of an ordinance by the City Council of the City of San Antonio, if required.

The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

EXECUTED IN DUPLICATE ORIGINALS, EACH OF WHICH SHALL HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL, BUT BOTH OF WHICH TOGETHER SHALL CONSTITUTE ONE INSTRUMENT, THIS THE _____ DAY OF _____, 2011.

CITY OF SAN ANTONIO

SAN ANTONIO BOWL ASSOCIATION

Sheryl L. Sculley
City Manager



Derrick S. Fox
President/CEO

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney