

AN ORDINANCE

2012-06-21-0505

**AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH PREMIER PARTNERSHIPS, IN AN AMOUNT NOT TO EXCEED \$78,500.00, FOR THE DEVELOPMENT OF A COMMERCIAL SPONSORSHIP PROGRAM FOR THE HENRY B. GONZALEZ CONVENTION CENTER AND THE ALAMODOME.**

\* \* \* \* \*

**WHEREAS**, a request for proposals was issued for the development of a Commercial Sponsorship Program for the Henry B. Gonzalez Convention Center and the Alamodome and four responses were received; and

**WHEREAS**, an evaluation committee (“Committee”), comprised of City staff and a representative from the Convention and Visitors Commission, convened to evaluate each firm based on experience, background and qualifications and the merits of their proposed plan and the Committee invited all four firms to be interviewed and, based on the evaluations and interviews, the Committee recommends award of this agreement to Premier Partnerships (Premier”); and

**WHEREAS**, under the proposed agreement, Premier will be responsible for creating an inventory of sponsorship and advertising assets, a valuation report of the true market value of the inventory, a strategy report for implementation containing letters of interest from six potential sponsorship partners, an evaluation of the viability of naming rights for the Alamodome; and a list of up to six commercial naming rights prospects; **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 Premier Partnerships, in an amount not to exceed \$78,500.00, for the development of a Commercial Sponsorship Program for the Henry B. Gonzalez Convention Center and the Alamodome are authorized and approved. The City Manager, or her designee, is authorized to execute the Agreement, a copy of which is attached to this Ordinance as **Exhibit I**.

**SECTION 2.** Funding in the amount of \$78,500.00 for this Ordinance is available in Fund 29006000, Cost Center 4201010001 and General Ledger 5201040, as part of the Fiscal Year 2012 Budget.

**SECTION 3.** Payment in the amount of \$78,500.00 is authorized to Premier Partnerships and shall be encumbered with a purchase order.

**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations 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 5.** 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 21<sup>st</sup> day of June, 2012.



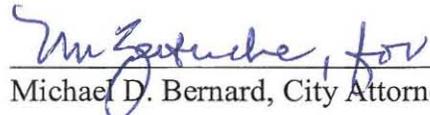
**M A Y O R**  
Julián Castro

**ATTEST:**



\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**



\_\_\_\_\_  
Michael D. Bernard, City Attorney



Request for  
**COUNCIL  
ACTION**



## Agenda Voting Results - 51

<b>Name:</b>	5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25A, 25B, 26, 27, 28, 30, 31, 32A, 32B, 32C, 33, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 49, 50, 51, 52, 53, 54, 56, 57, 58, 59, 60, 62, 63, 65A, 65B						
<b>Date:</b>	06/21/2012						
<b>Time:</b>	10:01:34 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing a Professional Services Agreement with Premier Partnerships in an amount not to exceed \$78,500.00 to develop a Commercial Sponsorship Program for the Henry B. Gonzalez Convention Center and the Alamodome. [Pat DiGiovanni, Deputy City Manager; Michael J. Sawaya, Director, Convention, Sports, and Entertainment Facilities]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x			x	
Leticia Ozuna	District 3	x					
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				x
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

# Exhibit I

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
COMMERCIAL SPONSORSHIP PROGRAM**

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City") acting by and through its City Manager, pursuant to Ordinance No. \_\_\_\_\_ passed and approved on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, and Premier Partnerships by and through its President & CEO (hereinafter referred to as "Consultant"), both of which may be referred to herein collectively as the "Parties".

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

**I. DEFINITIONS**

As used in this Agreement, the following terms shall have meanings as set out below:

- 1.1 "City" is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.2 "Consultant" is defined in the preamble of this Agreement and includes its successors.
- 1.3 "Director" shall mean the director of City's Convention, Sports, and Entertainment Facilities Department.
- 1.4 "Facilities" shall mean the Alamodome (including Illusions Theater) and Henry B. Gonzalez Convention Center (including Lila Cockrell Theatre).

**II. TERM**

2.1 The Commercial Sponsorship Program ("Program") contains two phases: (1) the Development Phase ("Development Phase"), and (2) the Implementation Phase ("Implementation Phase"). The Development Phase will begin upon award ("Commencement Date"), and conclude upon the completion of the items and acceptance of the Commercial Sponsorship Program provided for in Section 3.2 below. The projected timeframe for completion is ninety (90) days after the Commencement Date, and must be completed by September 30, 2012. City shall have the sole option to proceed with the Implementation Phase. If City chooses to utilize Consultant's services for the Implementation Phase, a separate

agreement shall be negotiated by the Parties. If City chooses not to use Consultant's services for the Implementation Phase, this Agreement shall terminate automatically upon City's written acceptance of the Program and notice to Consultant of City's intent not to utilize Consultant for the Implementation Phase.

### **III. SCOPE OF SERVICES**

3.1 Consultant agrees to provide the required services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV Compensation to Consultant. Consultant shall provide all the services outlined in Section 3.2, below, in order to develop the Program.

3.2 Consultant shall perform the following tasks in conjunction with the Development Phase of the Program:

#### **3.2.1 Inventory Catalog**

3.2.1.1 Identify and inventory all existing and proposed sponsorship assets, including commercial advertising locations. These advertising locations include static and digital signage and temporary event signage locations both inside and outside the Facilities.

3.2.1.2 Develop new sponsorship asset concepts.

3.2.1.3 Analyze the naming rights and sponsorship inventory within Consultant's Geographic Management System to extend revenue opportunities for clients to not only the Facilities, but the premises outside the Facilities, district outside the premises of the Facilities but still controlled by the Facilities, and the region outside of the district.

3.2.1.4 Catalog, classify and prioritize the sponsorship inventory utilizing Consultant's Inventory Filter™ into the following Consultant Premier Asset classes.

- 3.2.1.4.1 Acquired Content
- 3.2.1.4.2 Business Development
- 3.2.1.4.3 Database Marketing
- 3.2.1.4.4 Hospitality
- 3.2.1.4.5 Intellectual Property
- 3.2.1.4.6 Landmarks
- 3.2.1.4.7 Media and Technology
- 3.2.1.4.8 Licensed Product and Merchandise
- 3.2.1.4.9 Presenting Sponsorships
- 3.2.1.4.10 Product and Service Integration

3.2.1.4.11 Promotions and In-Game

3.2.1.4.12 Signage

### 3.2.2 Valuation Report

3.2.2.1 Utilize Consultant's Premier Valuator™, which is an analytical market-based methodology, to review, adjust and establish pricing for all sponsorship inventory based on true market value and incorporating the following:

3.2.2.1.1 Multi-dimensional evaluation criteria

3.2.2.1.2 Assessment of the economic environment

3.2.2.1.3 Detailed property characteristics

3.2.2.1.4 Assets and business drivers

3.2.2.1.5 Realistic contrast to a strictly "impression/media-based" methodology

3.2.2.1.6 Incorporation of traditional investment valuation modeling concepts

3.2.2.2 In addition, Consultant shall also utilize its following multi-faceted evaluation criteria, the Premier Value Drivers:

3.2.2.2.1 Activation and Implementation

3.2.2.2.2 Commercial Appeal

3.2.2.2.3 Concentration of Commercial Assets

3.2.2.2.4 Consumer Experience

3.2.2.2.5 Networking and Business Development

3.2.2.2.6 Quality and Quantity of Events

3.2.2.2.7 Seasonality

3.2.2.2.8 Size of Market

3.2.2.2.9 Stature of Venue

3.2.2.2.10 Economic Landscape

### 3.2.3 Strategy Report

3.2.3.1 Develop a tiered sponsorship hierarchy for each facility.

3.2.3.2 Develop baseline rights and benefits packages for each sponsor tier, including naming rights (if determined to be appropriate), based upon the available sponsorship assets.

3.2.3.3 Identify top sponsor industry categories and companies (local, regional, and national) for sales targeting and propose customized sponsorship assets and sales goals for those categories.

- 3.2.3.4 Prepare a Consultant Sponsor Success Matrix tool for the City's sponsorship platform, which allows the sales force to match inventory with sponsors' top marketing goals (sales, strategy and relationship development).
- 3.2.3.5 Develop a strategy for increasing sponsorship assets, including providing a roadmap for acquiring additional City assets to include in sponsorship packages.
- 3.2.3.6 Review, analyze and recommend the appropriate business-to-business opportunities based on the City's current expenses with vendors/business partners.
- 3.2.3.7 Review tenant and special event commercial rights and categories to unlock potential value that should be earmarked to the City.
- 3.2.3.8 Develop an implementation program and tools, including establishing measurable goals and objectives, creating a program budget, forecasting revenue and expenses, establishing policies and procedures, developing a marketing plan, addressing challenges and constraints, and developing key templates for agreements, in conjunction with the City's management and legal counsel, including policies, term sheets, and contracts.
- 3.2.3.9 Create customized founding partner packages.
- 3.2.3.10 Evaluate and provide a total of six (6) letters of interest from target commercial or business-to-business sponsorship partners for the Facilities commensurate with Consultant's Valuation and Strategy Reports.
- 3.2.3.11 Evaluate and test the viability of naming rights for the Alamodome, as well as rooms and spaces comprising the Facilities, with up to six (6) commercial prospects commensurate with Consultant's Valuation and Strategy Reports, and provide a summary report. This shall include interviewing up to six (6) commercial prospects on their viable interest in naming rights partnerships with the Facilities. The summary report shall include summaries of the interviews, including possible partnership consideration and deal points if appropriate and available, and commercial prospect information to the extent they choose to remain anonymous.

3.3 Nothing in this Agreement shall prevent City from electing to implement all or part of the Program on its own. As provided in Section 5.1, below, City shall own the Program

and, therefore, shall have the option, in its sole discretion, as to whether to use, in whole or in part, Consultant's services for implementation. City reserves the right to implement all or part of the Program with another consultant. If City elects to implement all or part of the Program on its own or with another consultant, Consultant will not be eligible for revenue sharing for such implementation.

3.4 All work performed by Consultant hereunder shall be performed to the satisfaction of the Director. The determination made by Director shall be final, binding and conclusive on all Parties. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII Termination, in whole or in part, should Consultant's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

#### **IV. COMPENSATION TO CONSULTANT**

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Consultant the consideration provided in this Article IV Compensation to Consultant. City shall pay Consultant an amount not to exceed SEVENTY-EIGHT THOUSAND FIVE-HUNDRED DOLLARS AND NO CENTS (\$78,500.00) as compensation for the Development Phase.

4.2 The Parties hereby agree that all compensable expenses of Consultant have been provided for in Section 4.1. Consultant cannot exceed the cumulative amount of Section 4.1 without prior approval and agreement of all Parties, evidenced in writing and approved by Director.

4.3 The Parties hereby agree to the following invoice and payment schedule for work completed in accordance with Section 3.2 of this Agreement.

4.3.1 Consultant shall invoice City for 50% of the total fee, or \$39,250.00, upon satisfactory completion and acceptance of all services under Sections 3.2.1 and 3.2.2 Inventory Catalog and Valuation Report.

4.3.2 Consultant shall invoice City for the remaining 50%, or \$39,250.00, upon satisfactory completion and acceptance of all services under Section 3.2.3 Strategy Report.

4.3.3 City shall pay invoices within thirty (30) calendar days of receipt, subject to Sections 3.4 and 4.4.

4.4 Final acceptance of work products and services require written approval by the Director. Payment will be made to Consultant following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to

any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

## **V. OWNERSHIP OF DOCUMENTS**

5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant. It is the understanding of the Parties that Consultant shall retain all intellectual property rights with regard to Consultant's Revenue Maximizer™ and related proprietary formulas and methodology.

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction. City shall reference Consultant in any external reporting of information Consultant provides based on its Revenue Maximizer™ methodology.

## **VI. RECORDS RETENTION**

6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return said documents to City prior to or at the conclusion of said retention.

6.3 Consultant shall notify City immediately in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests. Consultant shall not, under any circumstances, release any records created during the course of performance of this Agreement to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction.

6.4 In accordance herewith, Consultant shall comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof.

6.5 Public Statements. Consultant shall not issue nor cause the issuance of any public statement regarding its services under this Agreement without the City's prior approval.

6.6 Public Release of Information. Consultant shall not release any information concerning the services provided under this Agreement or the Program without City's prior approval.

## VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term, as stated in Article II Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by either party upon thirty (30) calendar days written notice, which notice shall be provided in accordance with Article VIII Notice. Upon receipt of such notice, Consultant shall cease all work and shall provide City with an invoice detailing all services provided under this Agreement. City shall pay Consultant for all such services on a pro rata basis within thirty (30) calendar days of receipt, subject to the provisions of Section 3.4.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of the following event, which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XI Assignment and Subcontracting, below.

7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this Section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have fifteen (15) business days after receipt of the written notice, in accordance with Article VIII Notice, to cure such default. If Consultant fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Failure to comply with the terms and conditions stated in Article XIII

SBEDA;

- 7.4.2 Bankruptcy or selling substantially all of company's assets;
- 7.4.3 Failing to perform or failing to comply with any covenant herein required;
- 7.4.4 Performing unsatisfactorily.

7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition. Consultant shall immediately cease all work and shall provide City with an invoice detailing all services provided under this Agreement. City shall pay Consultant for all such services on a pro rata basis within thirty (30) calendar days of receipt, subject to the provisions of Section 3.4.

7.6 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.

7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

## VIII. NOTICE

8.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt

acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to: City of San Antonio  
Attn: Director  
Convention, Sports, and Entertainment Facilities Department  
P.O. Box 1809  
San Antonio, Texas 78296-1809

If intended for Consultant, to: Premier Partnerships  
Attn: President & CEO  
1148 4<sup>th</sup> Street  
Santa Monica, California 90403

## IX. INSURANCE

9.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish a completed Certificate(s) of Insurance to City's Convention, Sports and Entertainment Facilities Department and City Clerk's Office, and which shall be clearly labeled "Commercial Sponsorship Program" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The certificate(s) or form must have the agent's signature and phone number, and be mailed directly from the agent to City. City shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to City's Asset Management Department and the Clerk's Office, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

9.2 City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement, but in no instance will City allow modification whereupon City may incur increased risk.

9.3 A consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized and admitted to do business in the State of Texas and rated A- (VII) or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises operations * b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage      f. \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Professional Liability (Claims Made Form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.

9.4 As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies. Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided in Section 9.6 herein within ten (10) days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

9.5 Consultant agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

9.5.1 Name City and its officers, employees, volunteers, and elected representatives as additional insureds by endorsement as respects operations and activities of, or on behalf of, the named insured performed under contract with City, with the exception of the workers' compensation and professional liability policies;

9.5.2 Provide for an endorsement that the "other insurance" clause shall not apply to City where the City is an additional insured shown on the policy;

9.5.3 Workers' compensation, employers' liability, general liability and auto liability policies will provide a waiver of subrogation in favor of City.

9.6 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, Consultant shall notify the City of such and shall give such notices prior to the change, if Consultant knows of said change in advance, or ten (10) days notice after the change, if Consultant did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. Notices shall be sent to City as follows:

City of San Antonio  
Convention, Sports, and Entertainment  
Facilities Department  
P.O. Box 1809  
San Antonio, Texas 78296-1809

City of San Antonio  
City Clerk's Office  
P.O. Box 839966  
San Antonio, Texas 78283-3966

9.7 In addition to any other remedies City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

9.8 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.

9.9 It is agreed that Consultant's insurance shall be deemed primary with respect to any insurance or self insurance carried by City for liability arising out of operations under this Agreement.

9.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of City shall be limited to insurance coverage provided.

9.11 Consultant and any subcontractors are responsible for all damage to their own equipment and/or property.

## X. INDEMNIFICATION

10.1 **CONSULTANT 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 CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONTRACTOR OR SUBCONTRACTOR OF CONSULTANT, 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 CONSULTANT 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.

10.2 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.

10.3 Consultant shall advise City in writing within 24 hours of any claim or demand against City or Consultant known to Consultant related to or arising out of Consultant's activities under this Agreement.

10.4 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by Consultant in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Consultant 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 Consultant fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Consultant 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.

10.5 Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of Consultant, 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 Consultant, or any subcontractor under worker's compensation or other employee benefit acts.

## XI. ASSIGNMENT AND SUBCONTRACTING

11.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.

11.2 It is City's understanding, and this Agreement is made in reliance thereon, that Consultant does not intend to use any subcontractors in the performance of this Agreement. Should Consultant require the use of subcontractors for the performance of work under this Agreement, any subcontracting shall be approved by City, subject to the passage of an ordinance by the San Antonio City Council, if required, prior to the provision of any services by said subcontractor.

11.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

11.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.

11.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

## **XII. INDEPENDENT CONTRACTOR**

12.1 Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The Parties understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

### XIII. SBEDA

#### 13.1 SBEDA Program Compliance

13.1.1 City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development (EDD) website page and is also available in hard copy form upon request to City. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by City pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

13.1.2 If the City utilizes the selected Respondent for the Implementation Phase of the Commercial Sponsorship Program (Phase II), then in accordance with the SBEDA Program, the Respondent shall be subject to the SBEDA Affirmative Procurement Initiative and goal as determined by the applicable SBEDA Goal Setting Committee. Upon determining the full scope, terms and conditions for Phase II, the selected Respondent's proposal shall be submitted to the Goal Setting Committee for determination regarding the applicability of an Affirmative Procurement Initiative, relative goal and required date for return of a Subcontractor/Supplier Utilization Plan. Should the selected Respondent be unable or unwilling to contractually commit to meet the goals set by the Goal Setting Committee, the City shall decline the Respondent's proposal and may negotiate with the next favorable Respondent and/or self-perform Phase II services.

#### 13.2 Definitions

13.2.1 **Affirmative Procurement Initiatives (API)** – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise ("S/M/WBE") Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance.)

- 13.2.2 **Certification or "Certified"** – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in Section III.E.6 of Attachment A to the SBEDA Ordinance.
- 13.2.3 **Commercially Useful Function** – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by Consultant to perform such "pass-through" or "conduit" functions that are not commercially useful shall be viewed by City as fraudulent if Consultant attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the Consultant shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the Consultant and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

- 13.2.4 **Evaluation Preference** – an API that may be applied by the Goal Setting Committee (“GSC”) to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime Consultants or Respondents.
- 13.2.5 **Good Faith Efforts** – documentation of the Consultant’s or Respondent’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor’s posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of Consultant’s Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.
- 13.2.6 **HUBZone Firm** – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

- 13.2.7 **Independently Owned and Operated** – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified in Section III.E.6 of Attachment A to the SBEDA Ordinance. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.
- 13.2.8 **Individual** – an adult person that is of legal majority age.
- 13.2.9 **Industry Categories** – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as “business categories.”
- 13.2.10 **Minority/Women Business Enterprise (M/WBE)** – firm that is certified as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.
- 13.2.11 **M/WBE Directory** – a listing of minority- and women-owned businesses that have been certified for participation in City’s M/WBE Program APIs.
- 13.2.12 **Minority Business Enterprise (MBE)** – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by City. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).
- 13.2.13 **Minority Group Members** – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:
- 13.2.13.1 **African-Americans**: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican,

Trinidadian, or West Indian.

- 13.2.13.2 Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.
- 13.2.13.3 Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- 13.2.13.4 Native Americans: Persons having no less than 1/16<sup>th</sup> percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.
- 13.2.14 **Originating Department** – City department or authorized representative of City which issues solicitations or for which a solicitation is issued.
- 13.2.15 **Payment** – dollars actually paid to Consultants and/or Subcontractors and vendors for City contracted goods and/or services.
- 13.2.16 **Points** – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, and Other Services contracts (e.g., up to 10 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).
- 13.2.17 **Prime Contractor** – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for City. For purposes of this Agreement, this term refers to Consultant.
- 13.2.18 **Relevant Marketplace** – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.
- 13.2.19 **Respondent** – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by City. For purposes of this Agreement, Consultant is the Respondent.
- 13.2.20 **Responsible** – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will

assure good faith performance of contract specifications.

- 13.2.21 **San Antonio Metropolitan Statistical Area (SAMSA)** – also known as the Relevant Marketplace, the geographic market area from which City’s MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).
- 13.2.22 **SBE Directory** - a listing of small businesses that have been certified for participation in City's SBE Program APIs.
- 13.2.23 **Significant Business Presence** – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.
- 13.2.24 **Small Business Enterprise (SBE)** – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.
- 13.2.25 **Small Business Office (SBO)** – the office within the Economic Development Department (EDD) of the City that is primarily responsible for general oversight and administration of the S/M/WBE Program.
- 13.2.26 **Small Business Office Manager** – the Assistant Director of the EDD of City that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.
- 13.2.27 **Small Minority Women Business Enterprise Program (S/M/WBE Program)** – the combination of SBE Program and M/WBE Program

features contained in the SBEDA Ordinance.

13.2.28 **Subcontractor** – any vendor or contractor that is providing goods or services to a Prime Contractor or Consultant in furtherance of the Prime Contractor’s performance under a contract or purchase order with City. A copy of each binding agreement between the Consultant and its subcontractors shall be submitted to City prior to execution of this Agreement and any modification of this Agreement.

13.2.29 **Suspension** – the temporary stoppage of the SBE or M/WBE firm’s beneficial participation in the City’s S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of Consultant’s and/or S/M/WBE firm’s performance and payment under City contracts due to City’s imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

13.2.30 **Subcontractor/Supplier Utilization Plan** – a binding part of this Agreement which states Consultant’s commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this Agreement, and states the name, scope of work, and dollar value of work to be performed by each of Consultant’s Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this Agreement, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this Agreement to be approved by the EDD Director or designee.

13.2.31 **Women Business Enterprises (WBEs)** - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term “WBE” as used in this Agreement is not inclusive of MBEs.

### 13.3 SBEDA Program Compliance – General Provisions

13.3.1 As Consultant acknowledges that the terms of the City’s SBEDA

Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the City's SBEDA Policy & Procedure Manual are in furtherance of City's efforts at economic inclusion and, moreover, that such terms are part of Consultant's scope of work as referenced in City's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. Consultant voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this Agreement by City. Without limitation, Consultant further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

- 13.3.2 Consultant shall cooperate fully with the Small Business Office and other City departments in their data collection and monitoring efforts regarding Consultant's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this Agreement including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;
- 13.3.3 Consultant shall cooperate fully with any City or SBO investigation (and shall also respond truthfully and promptly to any City or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of Consultant or its Subcontractors or suppliers;
- 13.3.4 Consultant shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, Agreement-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
- 13.3.5 Consultant shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Consultant's Subcontractor / Supplier Utilization Plan for this Agreement, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Consultant to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Consultant of work previously

designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

13.3.6 Consultant shall immediately notify the Originating Department and SBO of any transfer or assignment of this Agreement with City, as well as any transfer or change in its ownership or business structure.

13.3.7 Consultant shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this Agreement or, in the event of litigation concerning this Agreement, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.

#### 13.4 SBEDA Program Compliance – Affirmative Procurement Initiatives

13.4.1 City has applied the following contract-specific Affirmative Procurement Initiative to this Agreement. Consultant hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

**SBE Prime Contract Program.** In accordance with the SBEDA Ordinance, Section III. D. 5. (d), this Agreement is being awarded pursuant to the SBE Prime Contract Program, and as such, Consultant affirms that if it is presently certified as an SBE, Consultant agrees not to subcontract more than 49% of the contract value to a non-SBE firm.

#### 13.5 Commercial Nondiscrimination Policy Compliance

13.5.1 As a condition of entering into this Agreement, Consultant represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Consultant shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. Consultant shall provide equal opportunity for Subcontractors, vendors

and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in City's Relevant Marketplace. Consultant understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Consultant's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. Consultant shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

### 13.6 Prompt Payment

13.6.1 Upon execution of this Agreement by Consultant, Consultant shall be required to submit to City accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that Consultant's reported subcontract participation is accurate. Consultant shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from City. In the event of Consultant's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to Consultant, and no new City contracts shall be issued to the Consultant until the City's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

### 13.7 Violations, Sanctions and Penalties

13.7.1 In addition to the above terms, Consultant acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

13.7.1.1 Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;

13.7.1.2 Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent

statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;

- 13.7.1.3 Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
  - 13.7.1.4 Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
  - 13.7.1.5 Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.
- 13.7.2 Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:
- 13.7.2.1 Suspension of this Agreement;
  - 13.7.2.2 Withholding of funds;
  - 13.7.2.3 Rescission of Agreement based upon a material breach of Agreement pertaining to S/M/WBE Program compliance;
  - 13.7.2.4 Refusal to accept a response or proposal; and
  - 13.7.2.5 Disqualification of Consultant or other business firm from eligibility for providing goods or services to City for a period not to exceed two years (upon City Council approval).

#### **XIV. CONFLICT OF INTEREST**

14.1 Consultant acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or

employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

14.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of City. Consultant further warrants and certifies that it has tendered to City a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code.

#### **XV. AMENDMENTS**

15.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant, and subject to approval by the City Council, as evidenced by passage of an ordinance, if required.

#### **XVI. SEVERABILITY**

16.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the Parties that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

#### **XVII. LICENSES/CERTIFICATIONS**

17.1 Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

#### **XVIII. INTELLECTUAL PROPERTY**

18.1 Consultant agrees to obtain all necessary licenses and take all other necessary steps to insure that all use of trademarked or copyrighted materials used during the term of the Agreement complies with United States and any other applicable trademark and copyright law.

18.2 Consultant agrees to **INDEMNIFY and DEFEND** at its own expense City, its officials, agents and employees from any and all liability arising from trademark or copyright infringement and/or consequential damages that others may suffer as a result of

**the use by Consultant or its designee of copyrighted materials during the term of this Agreement.**

#### **XIX. COMPLIANCE**

19.1 Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations, including City's Advertising Policy, which is attached to this Agreement and incorporated as Exhibit I.

#### **XX. NONWAIVER OF PERFORMANCE**

20.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XV Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

#### **XXI. LAW APPLICABLE**

**21.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

#### **XXII. LEGAL AUTHORITY**

22.1 The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all of the terms, conditions, provisions and obligations herein contained.

#### **XXIII. PARTIES BOUND**

23.1 This Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, and successors and

assigns, except as otherwise expressly provided for in this Agreement.

**XXIV. CAPTIONS**

24.1 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

**XXV. ENTIRE AGREEMENT**

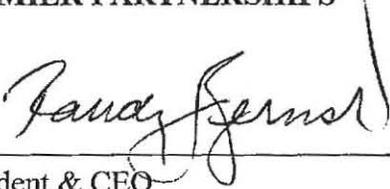
25.1 This Agreement, together with its authorizing ordinance and its exhibits, constitute the final and entire agreement between the Parties and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties, unless same be in writing, dated subsequent to the date hereto, and duly executed by the Parties, in accordance with Article XV Amendments.

**EXECUTED** and **AGREED** to this the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**CITY:**  
**CITY OF SAN ANTONIO**

**CONSULTANT:**  
**PREMIER PARTNERSHIPS**

\_\_\_\_\_  
City Manager

  
\_\_\_\_\_  
President & CEO

**ATTEST:**

Approved as to Form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney

Exhibit I: City's Advertising Policy

## EXHIBIT I

### CITY OF SAN ANTONIO ADVERTISING POLICY: COMMERCIAL ADVERTISING VENUES

#### Definitions

“Commercial Advertising” includes advertisements that:

- a. have as its singular purpose the promotion of a product for sale or a service for hire;
- b. does not convey, whether expressly or implied, intentionally or unintentionally, by inference or innuendo, any message regarding any political, public service, social or public issue or viewpoint of any person or entity, or any message specifically prohibited by this Policy; and
- c. would not cause the City’s public property, if posted individually or in combination with other like advertisements, to become a public forum for the dissemination and/or discussion of political, public service, social or public issues or viewpoints.

“Non-Commercial Advertising” includes any advertisement that:

- a. does not have as its singular purpose the promotion of a product for sale or a service for hire;
- b. attempts to convey, individually or in combination with a commercial advertisement or a prohibited advertisement, messages regarding political, public service, social or public issues or viewpoints of any person or entity.

#### Purpose

The City of San Antonio (“City”) recognizes that there are many opportunities and potential benefits to be gained by the City from commercial advertising. Likewise, access to the City’s facilities and the parties who utilize those facilities is a valuable commodity to advertisers. In keeping with the criteria outlined within this policy, the City supports, in principle, commercial advertising for the purpose of generating revenue to support City programs and services and offset related costs, or fund those that otherwise would not be affordable. The City enacts this Policy for the purposes of:

1. designating specific City facilities as non-public forums for first-amendment purposes, at which only Commercial Advertising will be accepted and in which Non-commercial Advertising is prohibited (“Commercial Advertising Venues”);
2. ensuring that advertising standards are consistent and that the City’s public image is positively maintained;
3. serving as a guide for determining permissible advertising for placement in City-owned Commercial Advertising Venues; and

4. ensuring consistency in decisions to accept or decline related commercial advertising requests.

This policy applies to all paid display advertising in City-Owned Commercial Advertising Venues which include, but are not limited to, the following:

1. The **San Antonio International Airport**, including all property and improvements located thereon;
2. The **Henry B. Gonzalez Convention Center**, including its common areas, meeting rooms and any signage located thereon;
3. The **Alamodome**, including its common areas, private areas and any signage located thereon.

### **General Standards**

All advertising material displayed in a City of San Antonio Commercial Advertising Venue will be reviewed and must conform to all applicable governmental laws and regulations and to these standards and policies. The basic principles of Commercial Advertising acceptance by the City are: (1) advertising should be honest and in good taste, (2) claims should be substantiated and qualifying information about the attributes or use of a product should be disclosed whenever qualifying information is required to avoid misleading consumers. In order to determine the acceptability of advertising material, City of San Antonio has the right to investigate the advertiser and the accuracy of all statements and claims made in advertising copy, including requiring the advertiser to have substantiation or documentation providing a reasonable basis for the claims.

City of San Antonio reserves the right to:

1. accept or reject, at any time, advertising for any product or service submitted for display in its Commercial Advertising Venues;
2. require elimination or revision of any material in advertising copy which violates the City of San Antonio's standards, policies or guidelines; federal, state or local laws or regulations; or is otherwise contrary to the public interest;
3. require revision of any advertising matter to meet emergency circumstances or situations of unusual significance; and
4. reject any advertising that is or might be injurious or prejudicial to the interests of the public, the City or honest advertising and reputable business in general.

## Content Regulations

Advertising to be placed in Commercial Advertising Venues is subject to the following Advertising Content Regulations.

Advertisers may include only commercial material which is lawful and of the highest possible standards of excellence and in this regard Advertisers will ensure that the following conditions are observed with respect to all advertising. There shall be:

1. no material that may violate any rights of any person, firm or corporation;
2. no false, unsubstantiated or unwarranted claims for any product or service, or testimonials that cannot be authenticated;
3. no advertising of any habit-forming drugs, tobacco products, adult-only entertainment, sexually-oriented businesses, firearms or firearm ammunition;
4. no material constituting or relating to a lottery, a contest of any kind in which the public is unfairly treated or any enterprise, service, or product which would tend to encourage, aid, abet, assist, facilitate or promote illegal or legal gambling, except that Advertisers may accept advertising from the official state lottery of the state of Texas;
5. no advertising for a product or service which is illegal per se or has no legal use;
6. no appeal or solicitation for funds or solicitation of volunteer efforts (e.g., "give your time");
7. no advertisement which is in whole or part defamatory, obscene, profane, vulgar, repulsive or offensive, either in theme or in treatment, or that describes or depicts repellantly any internal bodily functions or symptomatic results of internal conditions, or refers to matters that are not considered socially acceptable topics;
8. no false or ambiguous statements or representations that may be misleading to the audience;
9. no advertisement that includes any element of intellectual property without the owner's consent to such use, including but not limited to music master, mechanical, performance and synchronization rights or gives rise to any other colorable claim of infringement, misappropriation or other form of unfair competition;
10. no disparagement or libel of competitors or competitive products;
11. no advertisement that is or may be injurious or prejudicial to the interests of the public, or honest advertising and reputable business in general;
12. no advertisement of adult-only entertainment or sexually-oriented businesses;

13. no advocacy advertisement that supports or opposes a candidate, issue or cause; (e.g., political or issue-oriented); however, advertisements that advocate non-issue oriented messages (e.g., get a colon cancer check-up soon) are permissible on a case by case basis. The City will not accept commercial advertising that consists, in whole or in part, of political advocacy or issue-oriented advertising. All advertisements submitted by or on behalf of advocacy organizations that also engage in consumer-oriented activities, such as the sale of goods and services must be submitted for approval in a timely fashion to ensure that the advertisements are not "advocacy-oriented";
14. no advertising for products that contain distilled liquor or spirits, regardless of the percentage of alcohol, or advertising for nonalcoholic products containing the name of a distilled product or a distiller or company associated with hard liquor. While these products frequently have a legitimate business purpose independent of the hard liquor brand, they invariably promote the hard liquor brand as well. Therefore, Jack Daniels Barbecue Sauce would not be acceptable both because it contains hard liquor (before cooking) and because it serves as a device to promote Jack Daniels brand whiskey. Johnnie Walker clothing would not be acceptable because while it exists both as a chain of retail stores and a line of clothing, it also serves as a means of promoting hard liquor products;
15. no advertising which supports or opposes a religion, denomination, religious creed, tenet or belief;
16. no advertisements promoting 1-900 numbers, massage parlors, sanitary products, non-prescription erectile dysfunction treatments, birth control products, devices or methods, or remedies for sexually transmitted diseases;
17. no advertisements promoting tattoo parlors, pawn shops, or check cashing businesses; and
18. no advertisement shall be permitted that promotes or depicts violence or anti-social behavior or presents a danger of causing riot, disorder or other threat to public safety, peace or order.

In addition to these restrictions the following regulation shall apply in the following specific situations:

1. Advertisements for pharmaceutical products (including NDA products) that are subject to the US Food and Drug Administration (FDA) oversight must comply with FDA regulations regarding advertising and promotion;
2. In the case of trade association or institutional advertisements (e.g., Office of National Drug Control Policy), the City requires not only that the name of the sponsor be clearly disclosed, but that the words "Paid for by" or "Sponsored by" be used. This also applies to advertisements purchased by public service organizations or governmental or quasi-

governmental organizations;

3. Advertisements may not represent a product or service which presents a conflict of interest with any policy, objective or mandate of the City, including these guidelines;
4. Advertisements may not be placed by a firm awaiting approval from the City Council on any matter unrelated to these guidelines, a firm which operates in an industry regulated by the City or a firm with a pending lawsuit against the City;
5. The advertisement of a product or service does not act as the City's endorsement of any such product or service over another.

The City recognizes that in some cases the City will have to exercise judgment in situations as to which the application of the policy may be ambiguous, or as to which it does not fully cover or even contemplate. In these cases, we will look to the intended affect of these policies and act in accordance with its spirit. The City reserves the right to amend and/or revise the foregoing Content Regulations, as it deems necessary, and as social norms within the San Antonio, Bexar County, Texas community may dictate.