

AN ORDINANCE 2008 - 02 - 21 - 0125

APPROVING A TEN-YEAR CONTRACT WITH THE SAN ANTONIO FIESTA COMMISSION, INC. (FIESTA COMMISSION) TO COORDINATE AND OVERSEE FIESTA EVENTS INCLUDING THE PROCESS FOR A CARNIVAL OPERATOR AND PARADES CONCESSIONS.

* * * * *

WHEREAS, the current contract with the Fiesta San Antonio Commission, Inc. ("Fiesta Commission") expires after Fiesta 2008; and

WHEREAS, the Fiesta Commission acts as the central coordinating entity for more than 100 events that occur throughout the 10-day celebration; and

WHEREAS, the city staff and the Fiesta Commission have been negotiating terms and conditions for a new contract; and

WHEREAS, in the new contract, the Fiesta Commission and the City have now agreed to relocate the carnival from its existing footprint at Dolorosa and Santa Rosa to Alamodome Lot C; and

WHEREAS, city staff has worked closely with Council District 2 and the Fiesta Commission to address the concerns from the community; and

WHEREAS, these include developing a security plan for the Alamodome area neighborhood; event parking; Alamodome parking; noise; and identified opportunities for the carnival operator to support the neighborhood schools and organizations; and

WHEREAS, the Fiesta Commission is anticipated to release the Request for Proposal for the carnival operator before Fiesta 2008 and leave it open until after Fiesta; and

WHEREAS, this will provide an opportunity for those possible carnival operators to evaluate the new location, as well as allow the City time to evaluate the relocation to the Alamodome site;

NOW THEREFORE:

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

SECTION 1. The City Manager or her designee, or the Director of the Downtown Operations or her designee is authorized to execute a ten-year contract with the San Antonio Fiesta Commission, Inc. (Fiesta Commission) to coordinate and oversee Fiesta events including the process for a carnival operator and parades concessions. A copy of the contract is attached hereto and incorporated herein for all purposes as Attachment I.

SECTION 2. Funds generated by this ordinance will be deposited into Fund 11001000 General Fund, Internal Order 219000000005 Fiesta San Antonio Commissions, General Ledger 4407702 Fiesta Commissions.

SECTION 3. 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 4. This ordinance shall be effective on and after March 2, 2008.

PASSED AND APPROVED this 21st day of February, 2008.

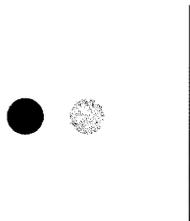


M A Y O R
PHIL HARDBERGER

ATTEST: 
City Clerk

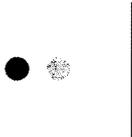
APPROVED AS TO FORM: 
City Attorney

Agenda Item:	5						
Date:	02/21/2008						
Time:	10:12:09 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance approving a ten-year contract with the San Antonio Fiesta Commission, Inc. (Fiesta Commission) to coordinate and oversee Fiesta events including the process for a carnival operator and parades concessions. [Penny Postoak Ferguson, Assistant City Manager; Paula X. Stallcup, Director, Downtown Operations]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x			x	
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5	x					
Delicia Herrera	District 6		x				
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				x
Louis E. Rowe	District 9		x				
John G. Clamp	District 10		x				



Fiesta San Antonio Commission Contract

City Council Meeting
February 21, 2008



Summary

- o Proposed ten-year contract between the City of San Antonio and the Fiesta San Antonio Commission, Inc.
- o Coordinate and oversee Fiesta events including the process for a carnival operator and parades concessions.

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Background Information

- Current contract allows Fiesta Commission to contract with carnival operator to provide Fiesta Carnival and Parade Route Concessions
- Current contract with Fiesta Commission expires after Fiesta 2008.
- Fiesta attracts over 3,000,000 people annually to over 100 events citywide.
- Based on study, Fiesta has an estimated economic impact of \$284 million and estimated \$3.686 million local sales tax dollars generated.

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Background (contd.)

- City supports Fiesta by providing services including public safety, health inspections and general maintenance and clean up for certain events.
- Terms of proposed 10-year contract
 - ✦ Evaluation of new Carnival location after Fiesta 2008
 - ✦ Review of Carnival location after 3rd, 5th and 8th year of contract
 - ✦ Revenue structure
 - Fiesta Commission receives first \$500,000
 - City receives next \$150,000
 - Revenue above \$650,000 is shared equally

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● ● | Background (contd.)

○ Additional contract terms

- ✦ Right to select Carnival operator after RFP with specific criteria
 - Experience/Safety 30%
 - Price Schedule 25%
 - Outreach/Local Participation 20%
 - Financial Consideration 25%
- ✦ Requirement to make changes to any event to ensure public health, safety and welfare

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● ● | Background (contd.)

○ Agreement maintains

- ✦ Specified Fiesta dates
- ✦ Assistance with erection of bleachers
- ✦ Set charge for parade chair pricing
- ✦ Outlines use of City property
- ✦ Cleanup required by Carnival operator
- ✦ Itemized documentation required
- ✦ Fiesta Commission has broadcast rights
- ✦ Requirement of discount carnival pricing and working with non-profit organizations to promote business opportunities

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Recommendation

- o Staff recommends approval.



CMS or Ordinance Number: CN0040002431

TSLGRS File Code:1000-25

Document Title:

CONT - Ten year agreement with Fiesta Commission to coordinate and oversee
Fiesta events for 2009-2018. Ordinance #2008-02-21-0125.

Commencement Date:

1/1/2009

Expiration Date:

12/31/2018

· Revenue structure provides that the Fiesta Commission receives the first \$500,000 of the revenue from their agreement with the carnival operator. The City would get the next \$150,000, and anything above \$650,000 on an annual basis would be shared equally between the City and the Fiesta Commission. The proposed contract will not require that the Request for Proposal (RFP) for the carnival operator have a minimum guarantee.

· Fiesta Commission has the right to select and award a contract with a carnival operator upon going through a request for proposal process to include the following criteria: Experience (30%), Consideration (25%), Local Participation (20%) and Price Schedule (25%).

· Carnival Operator to enter into a separate license agreement for the use of the Alamodome Lot C which would include parking, fencing, cleaning, etc.

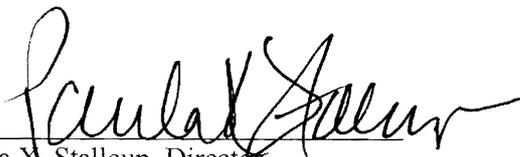
· Requirement for the Fiesta Commission to make changes to any Fiesta event to ensure the public health, safety and welfare of the general public. The agreement maintains:

- o Specified Fiesta dates for the contract term
- o Assistance with the erection of bleachers/risers in Alamo Plaza and through portions of the parade route
- o Set charge for Fiesta parade chair pricing not to exceed \$10.00 for 2009 – 2013 and not to exceed \$12.00 for 2014 – 2018.
- o Outlines use of City property for Fiesta events
- o Clean up required by carnival operator
- o Itemized documentation for accounting of receipts from carnival operator
- o Clarifies that the Fiesta Commission has control of all broadcast rights relating to Fiesta activities
- o Requirement for discount carnival pricing and working with non-profit organizations to promote business opportunities throughout the carnival.

The Fiesta Commission is anticipated to release the RFP for the carnival operator before Fiesta 2008 and leave it open until after Fiesta. This will provide an opportunity for those possible carnival operators to evaluate the new location, as well as allow the City time to evaluate the relocation to the Alamodome site.

POLICY ANALYSIS:

The Fiesta Commission Contract continues the City's commitment to support the development of the downtown business district.



Paula X. Stallcup, Director
Downtown Operations Department



Michael D. Bernard
City Attorney

CITY OF SAN ANTONIO
DEPARTMENT OF DOWNTOWN OPERATIONS
INTERDEPARTMENTAL CORRESPONDENCE SHEET

TO: City Manager's Office
FROM: Paula X. Stallcup, Director
COPIES: File
SUBJECT: Fiesta Commission Contract
DATE: February 22, 2008

PROJECT TYPE: Contract
ORDINANCE: 2008-02-21-0125
ORDINANCE DATE: February 21, 2008

BACKGROUND:

The City of San Antonio currently has a ten-year contract with the Fiesta San Antonio Commission, Inc. (Fiesta Commission) to coordinate and oversee Fiesta events. The current contract with the Commission expires after Fiesta 2008. The contract allows the Fiesta Commission to contract with a carnival operator (currently Reed Exposition Midway) to provide the Fiesta Carnival and Parade Route Concessions which also expires after Fiesta 2008.

The Fiesta Commission acts as the central coordinating entity for more than 100 events that occur throughout the 10-day celebration. Based on the 2007 Economic Impact Study of Fiesta San Antonio, it is estimated that 3,000,000 people attend the events and that Fiesta has a total estimated impact of \$284 million. The study further states that the local sales tax dollars generated were estimated at \$3.686 million. The City supports Fiesta by providing services that include public safety, health inspections, and general maintenance and clean-up.

City staff and the Fiesta Commission have been negotiating terms and conditions for a new contract. One of the major issues was the footprint of the carnival which has been reviewed over the last two years. The current location has been on downtown streets since 1974, however, it is becoming more of a challenge each year as street closures have increased. Therefore, the Fiesta Commission and City staff have evaluated seven sites in an effort to identify a location that could provide additional opportunities for the carnival. Upon review and working through issues with the community, City staff and the Fiesta Commission recommend relocating the carnival from its existing footprint at Dolorosa and Santa Rosa to Alamodome Lot C. The current contract with the Fiesta Commission includes a provision whereby the carnival may be relocated. Therefore, this proposed move is for Fiesta 2008. City staff has worked closely with Council District 2 and Fiesta Commission to address the concerns from the community. These include developing a security plan for the Alamodome area neighborhood; event parking; Alamodome parking; noise; and identified opportunities for the carnival operator to support the neighborhood schools and organizations.

The proposed 10-year contract (Fiesta 2009-2018) with the Fiesta Commission includes the following terms and conditions:

- Allows for new location to be evaluated after 2008 Fiesta, and upon 30 day notice from the City, indicating the City's intent to move the carnival with good cause.
- Ten year term with City's review of the carnival location again after the 3rd, 5th, and 8th year of the contract. This provision provides flexibility for the City and its property at the Alamodome while allowing Fiesta Commission to execute a short-term contract with Carnival operator.

FIESTA® SAN ANTONIO COMMISSION, INC. CONTRACT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This CONTRACT (hereinafter referred to as "Contract") is hereby made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as "City"), a Texas municipal corporation, acting by and through its City Manager, pursuant to Ordinance No. ~~2008-22~~ 21 21 25 dated 12.21, 2008, and FIESTA® SAN ANTONIO COMMISSION, INC. (hereinafter referred to as "Commission"), a Texas non-profit organization, acting by and through its President, hereto duly authorized (collectively the "Parties").

WHEREAS, San Antonio's annual Fiesta® San Antonio celebration (hereinafter referred to as Fiesta®), through the dedicated efforts of many civic-minded persons and nonprofit organizations, has achieved statewide, national and international recognition as one of the outstanding festival events, unique in the world and has three times been named the best festival by the Texas Festivals and Events Association; and

WHEREAS, the City Council of the City of San Antonio recognizes the importance of Fiesta® San Antonio as an integral part of the tradition and culture of this City and as an effective means of drawing attention to the historical, cultural and recreational attractions of this City, thereby enhancing the growth of tourism and convention activities in the City; and consequently desires to support the continuation and growth of Fiesta® San Antonio; and

WHEREAS, the Commission is a nonprofit corporation existing for the purpose of supporting Fiesta® San Antonio by raising funds for the financial support of Fiesta® activities, allocating such funds among nonprofit, civic and patriotic organizations that sponsor official Fiesta® events, and planning, developing and coordinating the events and activities of Fiesta® to present a celebration that is full, diverse, enjoyable, educational and attractive to the public; and

WHEREAS, for more than 117 years Fiesta® has played a significant part in the history and culture of San Antonio, including remembrance of the battles of the Alamo and San Jacinto and the memory of the men and women who so valiantly explored, settled and attained the independence of Texas, through an ever-growing group of diverse, multicultural, family-oriented events that feature music, food, heritage, patriotism, athletics, education, the arts, entertainment and more; and

WHEREAS, the Commission encourages the study of the history and culture of Texas and Latin America and cultivates and enhances the importance of San Antonio as a meeting place for confluence of the Anglo and Latin American cultures; and

WHEREAS, Fiesta® attracts some 3.5 million residents and visitors and contributes more than \$284 million to the San Antonio economy each year, including more than \$3.6 million to the city in sales tax revenue; and

WHEREAS, nearly 200 local nonprofit groups benefit each year from Fiesta®, whether as participating member organizations that produce 100 Fiesta® events (with the help of 75,000 volunteers) or nonprofit civic organizations that raise hundreds of thousands of dollars through the sale of street chairs each year; and

WHEREAS, the Commission supports the community through allocations and grants of more than \$450,000 each year to its member nonprofit organizations and an annual scholarship program benefiting local college students; and

WHEREAS, without the financial support provided by the Commission from and by means of the permits and licenses granted to it by the City, various major events that are essential to the quality and scope of Fiesta® would be curtailed and restricted to the substantial detriment of Fiesta® as a public and civic event; and

WHEREAS, the Commission has for almost 50 years demonstrated a proven record of outstanding administration and coordination of the many elements of Fiesta®, leading to significant growth in the scope and reputation of the festival, efficiently and in accordance with the purposes desired by the City Council; and

WHEREAS, for the foregoing reasons, the granting of the following specific permits, licenses and authority to the Commission for and in connection with the support of Fiesta® is found and deemed to be in the civic and public interest;

NOW THEREFORE, 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.

PURPOSE OF THIS AGREEMENT

This Contract is entered into between the Parties for the purpose of granting a license to the Commission to coordinate, oversee and provide financial support for Fiesta®.

I. TERM

1.01 The term of this Contract shall control all Fiesta® activities beginning with Fiesta® 2009 and shall continue until the date of the final accounting for the Fiesta® held in the year 2018 is complete, unless prior termination occurs as provided herein.

1.02 Notwithstanding any provision herein to the contrary, either Party may terminate this Contract for good cause, within thirty (30) days after the last day of Fiesta® in 2008, 2011, 2013, and 2016. In the event the termination by City relates to the location of the Carnival footprint, the City shall provide an alternate location of the Carnival within ninety (90) days after the last day of Fiesta® in the year in which the termination occurs.

II. LIAISONS AND NOTICES

2.01 Unless written notification by Commission to the contrary is received by City, Commission's President shall be its designated representative responsible for the management of this Contract.

2.02 Unless written notification by City to the contrary is received by Commission, the Director of Downtown Operations of the City shall be City's designated representative responsible for management of this Contract unless otherwise specified in this Contract.

2.03 Communications between City and Commission shall be directed to the designated representatives of each as set forth above.

2.04 For purposes of this Contract, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY: Director, Downtown Operations
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

COMMISSION: Fiesta® San Antonio Commission, Inc.
2611 Broadway
San Antonio, Texas 78215
(210) 227-5191
(210) 227-1139 (fax)
fiesta@fiesta-sa.org

with a copy to:

Frank B. Burney
Martin & Drought, Inc.
300 Convent, #2500
San Antonio, Texas 78205
(210) 227-7591

(210) 227-7924 (fax)
fburney@mdtlaw.com

2.05 Notice of change of address by either party must be made in writing delivered to the other party's last known address within five (5) business days of such change.

III. LEGAL AUTHORITY

3.01 City and Commission each represent, warrant, assure and guarantee that they possess the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Contract and to perform the responsibilities herein set out. Commission further represents, warrants, assures and guarantees that it shall retain sufficient control, either by contract or otherwise, over each participating member organization, contractor, assignee, sublicensee and/or associate of the Commission to implement and enforce the provisions and perform the responsibilities herein set out.

IV. LICENSING OF THE OFFICIAL COORDINATING ENTITY

4.01 Dates of Fiesta®: The Commission is hereby designated as the official organization in the City for the purpose of planning, coordinating, and providing financial support for the events and activities of Fiesta® to be held:

April 17 through 26, 2009
April 16 through 25, 2010
April 08 through April 17, 2011
April 20 through 29, 2012
April 19 through 28, 2013
April 19 through 27, 2014
April 17 through 26, 2015
April 15 through 24, 2016
April 21 through 30, 2017
April 20 through 29, 2018

4.02 Regulations: The Commission is authorized to designate and approve all events, parades, and activities to be held during Fiesta® on such dates and under such sponsorship as the Commission may deem most desirable for the successful presentation of each such parade, event, and activity, and from the standpoint of the overall coordination of the civic activities and celebration of Fiesta®. In its official capacity, the Commission and each participating member organization, contractor, assignee, or associate, acting by or through the Commission, and the City agree as follows:

(a) Fiesta® Events: Fiesta® events shall be defined as any activity occurring during

Fiesta® which is located in and around the City of San Antonio and which is recognized by the Commission as an official Fiesta® event.

(b) Limitation on Use of City Property: The City will not lease, rent, or permit the use of City-owned facilities, parks, or public streets, where a City permit or City approval is required, for any carnival, parade, or other Fiesta® event during the period of Fiesta®, said period being identified in paragraph 4.01 of this Contract, without the approval in writing of the Commission, at least thirty (30) days prior to the first day of Fiesta®. The City-owned facilities affected by this provision are as follows: Convention Center Facilities, Municipal Auditorium, Alamo Plaza, La Villita, Alamodome, Milam Park and all parts of HemisFair Plaza not under lease. Convention Center uses for official Fiesta® activities will be confirmed no earlier than one (1) year prior to Fiesta® in accordance with standard procedures as defined by the Convention Center Director.

It is understood and agreed that the use of Market Square will be under the control of the City or its designee. The Market Square Area is bordered by West Commerce on the north, Santa Rosa on the east, Pecos on the west, and Dolorosa on the south.

(c) Coordination with City Staff: The Commission shall submit to the City a list of all approved events, parades, and activities requiring the use of City-owned facilities or services or of public streets together with their sponsors at least ninety (90) days prior to Fiesta® each year. For any new or substantially enlarged events, occasions, or activities that will require increased City support, the City shall determine if the City can provide such increased support, and shall notify the Commission of the recommendation no later than sixty (60) days prior to Fiesta® each year. This list may be amended by the Commission to add or delete events, parades, or activities subsequent to the initial submission, but the Commission shall make no commitment to any new or substantially enlarged event, parades, or activity requiring increased City support without the City's concurrence.

(d) Alcohol Policy: The possession or sale of any beer, soft drink, or other beverage, other than in a plastic or paper container, shall be prohibited at all public Fiesta® events. All Fiesta® events at which alcoholic beverages are sold after 10:00 p.m. must cease selling such beverages not less than one (1) hour before the end of the event, provided, however, that this provision shall not apply to Night in Old San Antonio so long as it closes at 10:30 p.m. Commission understands and agrees that it is a misdemeanor to violate any requirement or prohibition of this subsection regarding alcohol and upon conviction a violator can be punishable as provided by law.

(e) Existing Tenants: The Commission and all Fiesta® organizations shall guarantee the rights of tenants under existing lease agreements of the City.

(f) Fire Safety: All Fiesta® organizations shall be limited to a maximum crowd limit established by the Fire Department. Such organizations shall be responsible for enforcement of this limit (through the respective Department Head of the facility) and for providing required fire appliances and personnel as prescribed by the Fire Code.

(g) Traffic Control: The Commission and/or Fiesta® organizations shall be responsible for providing all barricades, detour and traffic control signs in conformance with current City standards for all official Fiesta® events. A traffic control plan shall be submitted to and coordinated with the City, for approval, a minimum of thirty (30) days prior to Fiesta® for all events other than parades. The City shall only be responsible for inspecting barricades and signs to ensure compliance with City standards. The City will submit a list of barricade needs for parades to the Fiesta® Commission. The Commission shall be responsible for delivery and removal of barricades for parades. Set-up will be coordinated through and supervised by the City and the Commission as directed in the parade traffic plan.

(h) License/Permit/Inspection Fees or Costs: The Commission and/or Fiesta® organizations shall be responsible for paying all license, permit and inspection fees in accordance with City ordinances.

(i) Clean-up: The Commission shall cause all locations upon which it, its participating member organizations, or its sublicensee/assignee have conducted Fiesta® operations to be restored to at least the same condition existing prior to their operations, said clean-up and restoration to begin no later than 7:00 a.m. on the day following the (i) closing date shown in Paragraph 4.01 or (ii) the conclusion of the Fiesta® activity, whichever is earlier.

(j) Insurance/Indemnity/Liability:

(i) The Commission shall and hereby agrees to both indemnify the City and to secure insurance coverage as set out in Exhibit "A" attached hereto and incorporated herein for all purposes.

(ii) All entities to which the Commission grants a license, sublicense, contract, or subcontract for carnival and parade concessions must agree, in writing, to indemnify the City on the same terms as contained in Exhibit "A-1". In addition, and at a minimum, these entities shall list the City as an additional insured to satisfy their own obligations hereunder.

(iii) Until and unless a certificate of insurance showing compliance with these requirements is on file with the Downtown Operations Department and such policy remains in full force and effect, no Fiesta® activities authorized by this Contract may be conducted.

(iv) Notwithstanding any other provision in this Contract, Commission agrees to and hereby accepts liability for any and all clean-up, damage or destruction to City owned personal and/or real property caused by it or any entity to whom the Commission grants a license, sublicense, contract, or subcontract hereunder. In the event the City-owned property is not promptly restored to its former condition on a timely basis, the City may clean-up and restore, which all costs shall be reimbursed by the Commission to the City. In the event of

such damage, Commission shall pay, in money, the cost of clean-up and/or repairs to completely restore the property to its undamaged condition; or, in the event such restoration is not possible, as determined in the sole discretion of the City, Commission shall pay the full replacement value of the property. Nothing in this paragraph shall restrict the Commission from pursuing reimbursement for any such liability from the party who caused such damage. This provision is not and should not be construed as a limitation of legal remedies available to the City.

(k) Toilets: All organizations which are members of the Commission and any assignee, contractor or sponsoring organization of the Commission or related Fiesta® events shall be responsible for placement and provision of an adequate number of chemical toilets for their respective events.

(l) Convention Facilities and Alamodome: The Commission, its sublicensees, and any Fiesta® event must execute agreements and pay all negotiated rates for use of Convention Facilities and/or Alamodome venue, and must honor and utilize all vendors with which the City has an exclusive contract for these facilities, including, but not limited to, catering, concessions, telephone, ticket sales and electrical work to the extent such exclusive contracts control venue used by the Commission or its assignees.

(m) Health, Safety and Welfare. At any time during a Fiesta® activity, the City may require changes, additions, improvements, or modifications to insure the health, safety and welfare of the general public.

V. LICENSING OF THE CARNIVAL AND CARNIVAL SITE CONCESSIONS

5.01 Carnival: The Commission is hereby granted a carnival license, which includes concessions sold within the "Carnival Site", as hereafter designated, and is authorized and shall conduct a Request for Proposal ("RFP") process for the purposes of assigning such license on terms and conditions to be determined by Commission, for the purpose of conducting carnival activities during Fiesta®, on dates mutually agreed upon by the City and Commission. No City approval is required for Commission to select licensee or to exercise option terms included in RFP process, provided that the parties comply with the provisions hereof. The Commission and its licensee are authorized to occupy the property designated on Exhibit "B", attached hereto and incorporated herein for all purposes (herein referred to as the "Carnival Site") each year of Fiesta® for the term of this Contract, subject to the following terms and conditions:

(a) Carnival Activities: "Carnival" shall be defined as any and all activities operating under the authorization of the carnival contractor selected under the RFP process and designated as such by the Commission.

(b) Carnival Contract: The license hereby granted to the Commission may be assigned to

a contractor by the Commission selected through a RFP process, and such contractor shall agree to conduct a carnival during Fiesta® only as sublicensee/assignee of this license and only upon the Carnival Site approved by the Commission. Any and all carnival contracts resulting from this RFP process shall be submitted to the Director, Downtown Operations Department. The Commission agrees to confer with the City in drafting the carnival contract, including, but not limited to, participation by City in all meetings relating to the RFP and selection process of carnival contractors (including voting).

(c) Site Plan: The carnival contractor shall submit to the City and the Commission the proposed use of the Carnival Site, including proposed locations for all carnival and concession activities, at least sixty (60) days prior to Fiesta® each year to insure the safe operation of the carnival in compliance with all City regulations.

(d) Carnival Contract Prices: The carnival contractor shall agree to set fixed prices for carnival activities and maintain these fixed prices for the term of the Contract, unless changes are approved by the Commission. Such prices must include discounted hours of operation for families. Price increases, if any, for each year of contract shall be identified. No gate fee for admission shall be charged without approval of City.

(e) Obstructions: The placing of any obstructions or conducting of any carnival operations or activities on public streets is prohibited unless specifically authorized by the City. No monuments, trees, landscaping, or directional signage may be removed or altered.

(f) Regulatory Compliance: The Commission and the carnival contractor are to comply with and to require all concessionaires operating under the license granted by this Article V to comply with all provisions of the City's rules, regulations, and ordinances, as well as all health requirements, as they may pertain to the operations being herein permitted.

(g) Insurance: On the same terms and conditions set out under paragraph 4.02 (j), the Commission is to secure or cause to be secured insurance coverage in the amounts of or greater than those defined in Exhibit "A". No commercial carnival activities being authorized by this Contract may be conducted until and unless a certificate of insurance showing compliance with this requirement is on file with the City and such policy remains in full force and effect. The Commission shall ensure that all entities to which it grants a concession or license will secure comprehensive general public liability insurance with coverage for bodily injury (personal injury) and property damage with a combined single limit either under a separate policy or in conjunction with the Commission in amounts that meet minimum requirements defined in Insurance Exhibit A.

5.02 RFP. The Parties agree that, at a minimum, the parameters for implementation of the RFP process for selection of a carnival operator shall be as follows:

(a) the RFP shall be open for a minimum of twenty (20) days for bidding;

- (b) notice of the RFP shall be placed in local media and appropriate trade journals and newsletters;
- (c) price schedule, small, local, and minority-owned participation, and presence in the community shall be factors to be considered in connection with the selection of an operator as set out on attached Exhibit "D";
- (d) the carnival concession shall be awarded for no more than a five (5) year period;
- (e) upon opening of the bids received under the RFP process, the Commission shall:
 - (i) forward copy of all responses/bids received and supporting documentation to the City; and
 - (ii) review/evaluate the responses and make a decision, which may include rejection of all bids;
- (f) upon selection of a bid, provide to the City a copy of the executed contract with an explanation as to the selection process;
- (g) the RFP shall contain a requirement for a letter of credit or other acceptable security as a percentage of the consideration to be paid to insure performance of all contractual provisions in an amount determined by the Commission; and
- (h) the RFP shall require a proposal from the operator for the inclusion and/or outreach to the local community, such as local vendors, operation of booths, or other similar means of participation.

5.03 Clean-up: The carnival contractor shall cause all locations upon which it or its sublicensee/assignee has conducted Fiesta® operations to be restored to at least the same condition existing prior to their operations, said clean-up and restoration to begin no later than 7:00 a.m. on the day following the (i) closing date shown in Paragraph 4.01 or (ii) the conclusion of the Fiesta® activity, whichever is earlier. If the Commission determines that such clean-up and restoration of the parcels are not progressing properly and timely, then the Commission may enter upon such locations and proceed to clean-up and restore them to proper condition, in which event the carnival contractor acknowledges and agrees to reimburse the Commission for all additional expenses, including but not limited to, labor, including all overtime pay, materials, equipment, and supervision in accomplishing a proper and timely clean-up and restoration.

VI. LICENSING OF PARADES

6.01 License: The Commission is hereby granted a parade license, including, but not limited to the exclusive authority to operate and conduct parades and to place, erect, construct, and maintain bleachers, grandstands, chairs, and other seating accommodations upon the streets along designated parade routes for any and all street parades permitted to be held during Fiesta®, being the Battle of Flowers, River Parade, King William (parade licensing conditions applicable to the King William Fair Parade shall be by mutual agreement) and the Flambeau, subject to the following terms and conditions:

(a) Route: The Commission shall assign its rights hereunder to the current organizations hosting the parades provided such organizations comply with the requirements herein and the other conditions of membership of the Commission.

(b) Seating.

(i) Requirements:

(1) The Commission shall submit a parade seating plan to the City no later than sixty (60) days prior to the respective parade. Neither the Commission nor any other concessionaire, person, or agency shall be permitted to use any public sidewalks, street intersections, or sections at any location along such-parade routes designated as free of charge to the general public by the City for the placement of any seating accommodations for sale, hire, or rent. Accommodation should also be made to allow for the construction and placement of grandstands, bleachers, and other seating accommodations for officials, special guests, and spectators of the aforementioned parades by the respective civic organizations directly sponsoring such parades.

(2) Intersections shall remain clear of any barricades, bleachers, or other barrier to allow access for emergency vehicles.

(ii) Ticket Sales: The Commission is authorized to permit religious, civic, fraternal, and welfare organizations or agencies to administer, sponsor, and handle the sale of tickets and the seating of parade spectators in seating accommodations in designated sections or units along such parade routes. The Commission shall give priority to previous license holders of street chair licenses to be sold to organizations and shall place any remaining spaces in a lottery or on a first come, first serve basis. The price of street parade tickets shall not exceed \$10.00 for Fiesta® 2009 – 2013 and \$12.00 for Fiesta® 2014 – 2018.

(iii) Format of Tickets: The sale of such seating accommodations and the rent or hire of such seats shall be made by the use of printed tickets issued by the Commission,

designating the street, block, and side of the street block in which the seating space is located. The number of tickets issued and sold for any street block and side of the street block shall be limited to the number of seats designated for such location by the Commission.

(iv) Striping: The City will place courtesy stripes on the parade routes. No chairs may be placed closer than one (1) foot back of the courtesy line. It shall be the responsibility of the Commission to maintain a 30-foot width between courtesy stripes. Coordination should be by Fiesta® Seating Coordinator and the City. Any reduction of the 30 foot width between courtesy lines shall be approved by the City.

(v) Securing Chairs: All chairs placed on the street parade route by the Commission or other chair concessionaires shall be securely tied with a chain or cables in groups of not less than 20 nor more than 25. No ropes shall be used to secure chairs together.

(vi) Bleachers & Risers: The Commission shall present a plan for the location of bleachers and risers at least 60 days prior to the beginning of the designated period for Fiesta® and such plan shall be subject to City approval and modification. The City shall be responsible for erecting and taking down of bleachers and risers for parade use according to such approved plan. Transport of bleachers and risers shall be performed by the City on trailers provided by the Commission. The Commission shall not be allowed to increase the number of bleachers and risers to be stored, transported and erected and utilized during Fiesta without the prior written approval of the City. The City shall oversee these functions, and will store, and provide for City use of the bleachers (owned by the Commission) and risers (owned by the City), throughout the remainder of the year. To the extent the Parties agree that bleachers need to be replaced due to obsolescence, the Commission will acquire and pay for the costs of replacement bleachers within a period of time sufficient to meet the event demands. The Commission shall be responsible to maintain bleachers.

(vii) Set-up Requirements: No chairs or seats of any kind except permanent or temporary bleachers shall be placed in any street along the parade route more than four (4) hours before the "Vanguard" or five (5) hours before the parade is scheduled to begin, whichever is earlier, and shall be removed from the street within one hour of the time the end of the parade passes. All bleachers, chairs, concession stands, or any Fiesta® facility that could impede vehicular traffic shall be completely removed from the travel roadway no later than eight (8) hours after the conclusion of the last Fiesta® parade on any approved parade route on a public street.

(c) Route: The designated parade route for Fiesta® parades shall be as defined on Exhibit "C" attached hereto and incorporated herein as if fully set out. The route may be amended subject to the prior approval of the City. The designated parades for Fiesta® under this Contract are Battle of Flowers, River Parade, King William and Fiesta® Flambeau (including the Fiesta® Fandango Run).

(d) Parade Requirements: Upon initiation of the parade, excluding the "Vanguards", the City shall take over control of the movement of the parade. Units wishing to perform drill routines shall be placed in the "Vanguard". All bands or marching units shall be required to maintain a forward progress. No participant shall throw or give away candy, gifts, tokens, advertisements, or any other object from any parade unit while the unit is on the parade route. Failure to observe these requirements shall constitute a breach of this Contract, and the City, or his designee, is hereby empowered to remove this unit from the parade immediately.

(e) Floats: All parade floats shall meet requirements of the Fire Code and State law.

(f) Insurance: Subject to the terms and conditions set out under paragraph 4.02(j) of this Contract, the Commission further agrees that, as a condition of its authority to permit and designate the sponsorship and presentation of any parade or parades and concessions under this Contract, it will deposit with the City no later than April 1 of each year an insurance policy (evidence of such insurance to be either original policies of insurance or acceptable certificates of insurance), the limits of said policy or policies shall be in compliance with Exhibit A.

(g) Health Advisory: To avoid cases of heat exhaustion or other medical problems, the Commission will require parade sponsors to advise all participants in parades of health problems which can be caused by rigorous activity and exposure to hot weather conditions in accordance with guidelines to be approved by the City, and remedial actions which may be taken.

(h) Special Provisions for River Parade:

(i) Seating: The placement of seating accommodations for the River Parade shall be done at the direction and with the approval of the City, including seating for sale, hire, or rent and areas to be designated as free of charge to the general public. The approval of River Parade seating and activities may be modified in accordance with scheduled flood control improvements to the San Antonio River during the time period covered by this ordinance.

(ii) Security: For the purpose of Riverwalk access control, the Commission shall require the sponsoring organization to contract for posting of security at the Riverwalk access points beginning at 4:30 p.m. prior to the River Parade.

VII. LICENSING OF CONCESSIONS

7.01 License: The Commission is hereby granted a license for the sale of foods, beverages, merchandise and souvenirs on or upon the public streets and sidewalks along parade routes each year during Fiesta® for the term of this Contract, excluding the concessions sold within the boundaries of the "Carnival Site" designated on Exhibit "B". The License granted by this Article VII may be

assigned by Commission to one or more qualified individuals or entities whom shall be determined through a public RFP process. Licensing hereunder shall be subject to the following terms and conditions:

(a) Location: Location of all concessions shall be determined by and during the RFP process conducted by the Commission.

(b) Concession Safety: All approved concession stands set up on public streets shall be protected by barricades and/or traffic warning devices as necessary to protect them from motorists.

(c) Permits/Licenses: The Commission shall require that every person engaged in the sale of foods, beverages, merchandise, and souvenirs possess a valid license or permit from the the City. All concessionaires shall be licensed without regard to profit or non-profit status.

(d) Public Obstructions: In all cases where concession stands or any other obstructions are placed on public property, the City shall be authorized to remove same if they fail to comply with the provisions of this Contract.

(e) Rules and Regulations: The Commission must provide and issue written rules and regulations of conduct and operations to each sublicensee operating on or upon the public streets, sidewalks and/or along the parade routes. Violation of the rules and regulations may include, but not be limited to, a revocation of the violator's license. Roving concessionaires shall be limited to sales along parade routes.

(f) Existing Vendors: Persons or agencies holding year-round vending licenses in the central business district are entitled to regular vending rights during Fiesta® as provided in such licenses.

(g) Restricted Locations: No sales may be made at Market Square, Riverwalk, Milam Park or the King William Fair area. Violation of this restriction shall result in a vendor losing its license.

(h) Prohibited Activities: Commission shall inform all sublicensees within the written document creating the sublicense that it is unlawful for any person to sell or use a pressurized container of the substance commonly known as "liquid string", "silly string", or "super string" or any quantity of the small explosive devices commonly known as "snappers", "throwdowns", "popping match sticks", and "pop pops", which are paper-wrapped wads of sand coated with a minute quantity of explosive powder and adhesive, producing a small report upon impact with hard surfaces, in any public place or private property where the general public is invited for Fiesta® related events. The Commission shall further inform the sublicensees that a violation of this provision constitutes a criminal act.

(i) Parade Booths: Booths may be set up two (2) hours before the first Fiesta® parade on Friday and shall be removed within two hours after the last Fiesta® parade on Saturday. City shall have the right to require removal of any booth at any time if it is deemed to be a traffic hazard, or if it impairs a driver's ability to see approaching traffic. If any booths remain up between the parades on the actual portion of a city street intended for vehicular traffic, the Commission shall be responsible for barricading in accordance with City standards and instructions.

(j) Insurance: Subject to the terms and conditions set out under paragraph 4.02(j) of this Contract, the Commission is to secure or cause to be secured insurance coverage in the amounts of or greater than those defined in Exhibit "A". Until and unless a certificate of insurance showing compliance with this requirement is on file with the City and such policy remains in full force and effect, no food or novelty concessions authorized by this Article VII may be conducted. The Commission shall ensure that all entities to which it grants a concession or license will secure comprehensive general public liability insurance with coverage for bodily injury (personal injury) and property damage with a combined single limit either under a separate policy or in conjunction with the Commission in amounts that meet minimum requirements defined in Exhibit "A".

(k) Alamo Plaza Booth(s): The City of San Antonio shall permit the Commission to operate a food, souvenirs, merchandise, and beverage booth(s) in Alamo Plaza under the same terms and conditions as set out in this paragraph 7.01.

7.02 RFP: The Parties agree that, at a minimum, the parameters for implementation of the RFP process for selection of food and novelty concessionaires shall be similar to those conditions controlling the Carnival RFP.

7.03 Clean-up. The Commission shall cause all locations upon which the beverage, food, merchandise, and novelty concessionaire has conducted operations to be restored to at least the same condition existing prior to their operations, said clean-up and restoration to commence within twenty-four (24) hours after cessation of operations.

VIII. PARKING PERMITS

8.01 The City may issue special permits to allow parking in commercial zones for a specified amount of time, as determined by the City. Except as allowed herein, all traffic regulations shall be enforced and adhered to by the Commission, its sublicensees, and the public.

IX. BROADCAST RIGHTS

9.01 The Commission in granting any license/permit which it is authorized to grant hereunder is further authorized to reserve the right to contract for television and radio coverage and broadcasting equipment, facilities, and personnel at one or more points on the public streets or sidewalks, or elsewhere upon public property of the City where such events may take place, as shall

be suitable or necessary for the purpose of covering and broadcasting such event. All broadcast rights relating to Fiesta® activities shall be controlled by the Commission. The placement shall not unreasonably interfere with the public use of such streets, sidewalks, or other public property and shall be coordinated with City.

X. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS

10.01 Commission shall account for the receipt and disbursement of any and all monies received for each license granted by the Commission under this Contract and shall require, to the extent applicable, conformity with generally accepted accounting principles in all reports. Itemized documentation shall be provided by licensees to the Commission, and other financial controls and procedures shall be encouraged to insure accurate and transparent accounting of all proceeds. Licensees of the Commission shall account: (i) for all revenues received (including in-kind sales and sales by sub-contractors), directly or indirectly; (ii) payment of sales taxes to appropriate authorities; (iii) market-rate pricing of all subcontracts for revenues generated by games; and (iv) revenues shall not include deductions for payments or expenses of any kind, including, but not limited to, payments by licensees to subcontractors, food and beverages vendors, or other sublicensees.

10.02 Upon ten (10) days written notice, each party agrees to make all its records pertaining to this Contract available to the other party, or any authorized representative, and shall permit the examination of these records, as well as the making of excerpts and/or copies of same.

10.03 Commission shall file with the City, in triplicate by December 31, a complete financial report and audit, prepared by a certified public accountant, including the statement of financial position for the most recent fiscal year and the statements of activities and changes in cash flows for the year then ended, prepared in accordance with generally accepted accounting principles, consistently applied.

XI. REIMBURSEMENT

11.01 Commission hereby agrees to reimburse City for some of its reasonable costs and expenses incurred in connection with Fiesta® from the proceeds it collects per contract year from the carnival and food, beverage and novelty concessionaires as follows:

- | | | |
|----|-------------------------|----------------------------|
| a. | First \$500,000: | Commission |
| b. | \$500,000 to \$650,000: | 100% City |
| c. | Above \$650,000: | 50% City
50% Commission |

11.02 Payments under this Article XI shall be made on or before September 1st, following each Fiesta®.

XII. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

12.01 Commission agrees to comply with all applicable local, state and federal equal employment opportunity and affirmative action rules, regulations and laws.

12.02 In the event of non-compliance by Commission with local, state and federal equal employment opportunity and affirmative action rules, regulations and laws, this Contract may be canceled, terminated, or suspended by City in whole or in part.

XIII. NONDISCRIMINATION

13.01 Commission covenants that it, or agents, employees or anyone under its control, will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin, handicap or familial status, in employment practices, in the use of or admission to premises or in awarding sublicenses, which said discrimination Commission acknowledges is prohibited.

XIV. CONFLICT OF INTEREST

14.01 Commission covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. Commission further covenants that in the performance of this Contract, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

14.02 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Contract shall:

(a) participate in any decision relating to this Contract which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; or

(b) have any direct or indirect interest in this Contract or the proceeds thereof.

XV. PUBLICITY

15.01 In any news release, sign, brochure, or other advertising medium disseminating information prepared or distributed by or for either Party relating to Fiesta®, either party may credit or highlight the efforts of the other party in facilitating the celebration of Fiesta®

XVI. CHANGES AND AMENDMENTS

16.01 Except when the terms of this Contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall only be by written amendment formally approved by the governing body of both Parties.

16.02 It is understood and agreed by the Parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Contract and that any such changes shall be automatically incorporated into this Contract without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

XVII. TERMINATION

17.01 "Termination" of this Contract shall mean termination by expiration of the Contract term or earlier termination pursuant to any of the provisions hereof.

17.02 Notwithstanding any other provision in this Contract, the Parties may terminate this Contract for any of the following reasons:

(a) Neglect or failure to perform or observe any of the terms, conditions, covenants or guarantees of this Contract within thirty (30) days after notice to cure has been received by the non-defaulting Party;

(b) Finding by City that Commission is in such unsatisfactory financial condition as to endanger performance under this Contract;

(c) Appointment of a trustee, receiver or liquidator for all or a substantial part of Commission's property, or institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against Commission;

(d) The entry by a court of competent jurisdiction of a final order providing for the modification or alteration of the rights of Commission's creditors; and

(e) Inability by Commission to conform to changes in applicable local, state and federal rules, regulations and laws.

17.03 Upon a decision to terminate by either City or Commission under this Article XVII, written notice of such, the effective date thereof, and the basis for the decision shall be immediately provided to the other Party.

17.04 Upon receipt of notice to terminate, Commission shall cancel, withdraw, or otherwise

terminate any outstanding orders, subcontracts and/or sublicensing agreements which relate to the performance of this Contract. To this effect, City shall not be liable to Commission or Commission's creditors for any expense, encumbrances or obligations whatsoever incurred after the date of termination.

17.05 Within thirty (30) days after receipt of notice to terminate, Commission shall submit a statement to City, indicating in detail the services performed under this Contract prior to the effective date of termination.

17.06 Any termination of this Contract, as herein provided, shall not relieve the Parties from the payment of any sum(s) that shall then be due and payable or become due and payable as provided for at law or in equity, or any claim for damages then or theretofore accruing against the Parties hereunder or by law or in equity.

XVIII. ASSIGNMENTS

18.01 Except as expressly authorized or required under this Contract, Commission shall not transfer, pledge or otherwise assign this Contract, any interest in and to same, or any claim arising thereunder, without first procuring the written approval of City. Any attempt at transfer, pledge or other assignment shall be void ab initio and shall confer no rights upon any third person. Any concessionaire or subcontractor may not voluntarily assign, transfer, pledge, or hypothecate, in whole or in part, any contract with the Commission relating to rights granted to the Commission by this Agreement, or shall any involuntary transfer or assignment result in a transfer of any rights conferred by this Agreement.

XIX. SEVERABILITY OF PROVISIONS

19.01 If any clause or provision of this Contract 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 hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Contract 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 hereto that in lieu of each clause or provision of this Contract that is invalid, illegal, or unenforceable, there be added as a part of the Contract 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.

XX. NON-WAIVER OF PERFORMANCE

20.01 A waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Contract 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 Contract, 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 hereto of any provision of this Contract shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged.

20.02 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. ENTIRE AGREEMENT

21.01 This Contract constitutes the final and entire agreement between the Parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and duly executed by the parties.

XXII. PARTIES BOUND

22.01 This Contract shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided herein.

XXIII . GENDER

23.01 Words of gender used in this Contract shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXIV. RELATIONSHIP OF PARTIES

24.01 Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the parties hereto.

XXV. TEXAS LAW TO APPLY

25.01 This Contract 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.

XXVI. CAPTIONS

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

XXVII. COMPLIANCE WITH FEDERAL STATE AND LOCAL LAWS

27.01 The Parties assure and certify that they will comply with all Federal, State and Local Laws and regulations.

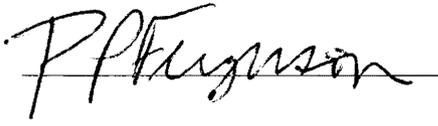
XXVIII. FORCE MAJEURE

28.01 Neither Party shall be required to perform a term, condition or covenant in this Contract so long as such performance is delayed or prevented by force majeure, which shall include acts of God, strikes, terrorism, lockout, civil riot, natural disasters and any other cause not reasonably within the control of the Parties and which by the exercise of due diligence cannot wholly or in part be prevented or overcome.

EXECUTED this the ___ day of _____, 2008 in multiple originals,
each with full force and effect.

CITY OF SAN ANTONIO

FIESTA® SAN ANTONIO COMMISSION, INC.

By: 

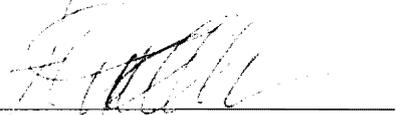
NS
Title:

By: 

JOHN T. STEEN, JR.

Title: President

APPROVED AS TO FORM:


City Attorney

Attachments:

- Exhibit "A" INSURANCE
- Exhibit "A-1" INDEMNITY
- Exhibit "B" CARNIVAL SITE
- Exhibit "C" PARADE ROUTES
- Exhibit "D" RFP Matrix

Attest:

Leticia M. Vaz
City Clerk

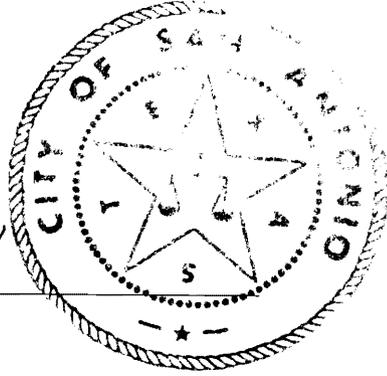


EXHIBIT "A"

INSURANCE

A) COMMISSION, its Concessionaires and Licensees, shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City, which shall be clearly labeled "Fiesta®" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Downtown Operations Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

B) The 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 based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

C) The COMMISSION's financial integrity is of interest to the City; therefore, subject to COMMISSION's right to maintain reasonable deductibles in such amounts as are approved by the City, COMMISSION shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at COMMISSION's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. <u>Workers' Compensation</u> 2. <u>Employers' Liability</u>	<u>Statutory, with a waiver of subrogation in favor of CITY</u> <u>\$100,000/\$100,000/\$500,000</u>
3. <u>Commercial General Liability Insurance (Broad Form) to include coverage for the following:</u> a. <u>Premises operations</u> b. <u>Independent Contractors</u> c. <u>Products/completed operations</u> d. <u>Personal Injury</u>	<u>For Bodily Injury and Property Damage of \$2,000,000 per occurrence;</u> <u>\$5,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage</u>

<u>e. Contractual Liability</u>	
<u>4. Business Automobile Liability</u> <u>a. Owned/leased vehicles</u> <u>b. Non-owned vehicles</u> <u>c. Hired Vehicles</u>	<u>Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence</u>
<u>5. Professional Liability</u> <u>(Claims made form)</u>	<u>\$500,000 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.</u>
<u>6. Liquor Legal Liability</u>	<u>\$1,000,000 per occurrence;</u> <u>\$2,000,000 General Aggregate</u>
<u>7. Property Insurance</u>	<u>Commission, Its Concessionaires and Licensees will be responsible for their own property and equipment at their own expense.</u>

D) COMMISSION agrees to and shall require all sub-licensees, concessionaires and vendors with which it contracts under the authority of this Agreement, to provide and maintain, at their own expense, insurance coverages with minimum limits of not less than those limits delineated in Section C (Insurance Table) from companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII).

E) The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, 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). COMMISSION 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 below within 10 days of the requested change. COMMISSION shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Downtown Operations Department
P.O. Box 839966
San Antonio, Texas 78283-3966

F) COMMISSION agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, 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 the City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

G) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, COMMISSION shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend COMMISSION's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

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

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

J) It is agreed that COMMISSION's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

K) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

EXHIBIT "A-1"

INDEMNITY

COMMISSION covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to COMMISSION's activities under this CONTRACT, including any acts or omissions of COMMISSION, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this CONTRACT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNITY 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. COMMISSION shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or COMMISSION known to COMMISSION related to or arising out of COMMISSION's activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at COMMISSION's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving COMMISSION of any of its obligations under this paragraph.

It is the EXPRESS INTENT of the parties to this CONTRACT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by COMMISSION to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. COMMISSION further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

**EXHIBIT "B"
CARNIVAL SITE**

SEE ATTACHED PAGE

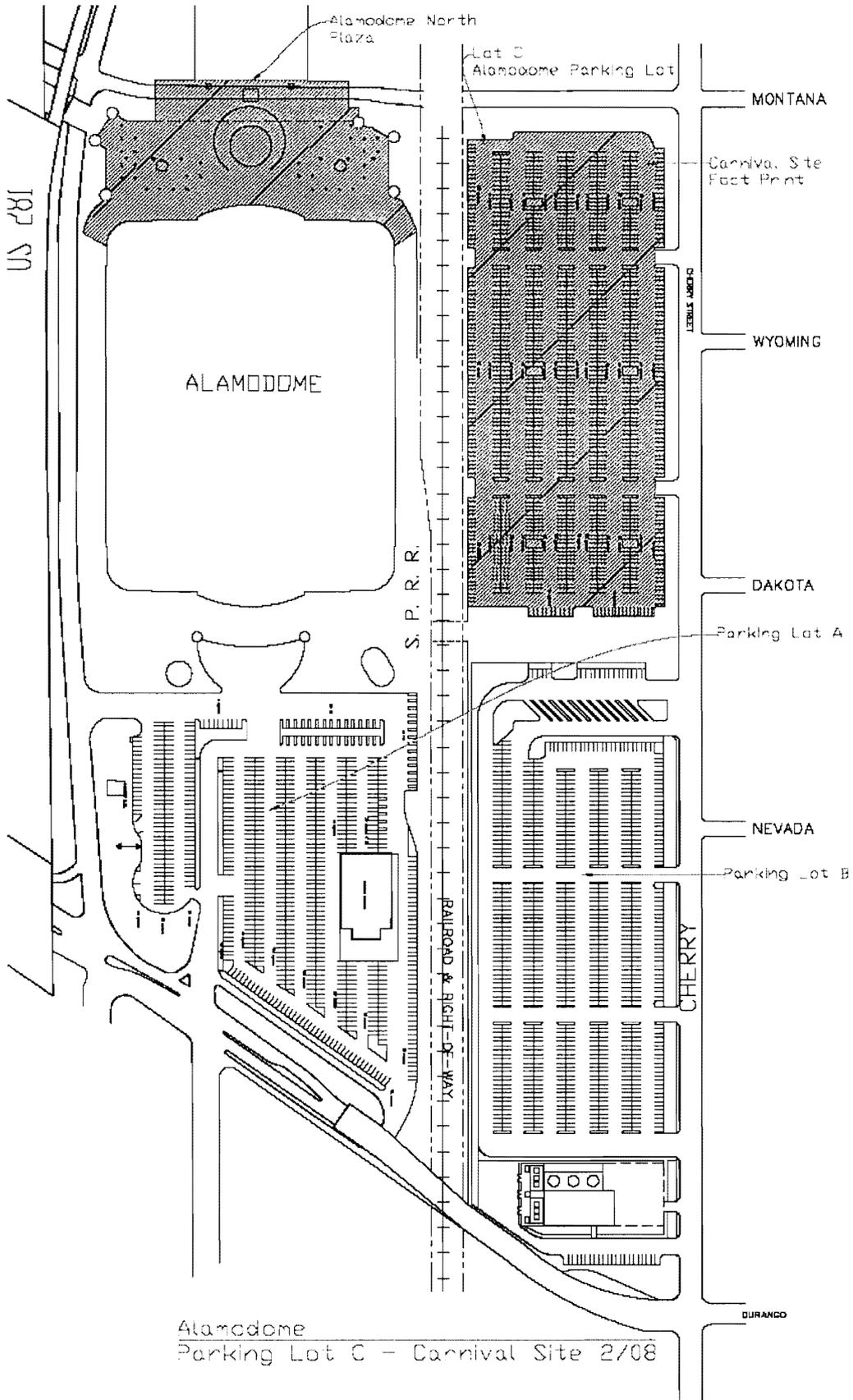


EXHIBIT "D"

RFP MATRIX

The Commission will evaluate the proposals based on the following factors:

A. Experience of the Proposer (30%)

Considerations: experience operating and managing prior carnivals and concessions; safety; successful completion of any previous contract and experience with the Commission; prior or current litigation between proposer and other parties relating to carnivals and concessions or other contract disputes; reputation in communities where carnivals operated; criminal history of employees and officers; past or pending litigation; insurance claims; financial integrity, financial commitment, financial history, and financial references.

B. Proposed Consideration (25%)

Consideration: money to be paid to the Commission.

C. Local Participation (20%)

Considerations: opportunities to participate by local and minority businesses; outreach to the community through partnerships and civic activities.

D. Price Schedule and Affordability (25%)

Considerations: proposed ticket price structure; proposed marketing plan; reduced price "special" events.

1/11



CMS or Ordinance Number: OR00000200802210125

TSLGRS File Code: 1000-05

Document Title:

ORD - Ten year agreement with Fiesta Commission to coordinate and oversee
Fiesta events for 2009-2018. Ordinance #2008-02-21-0125.

Ordinance Date:
2/21/2008

CITY OF SAN ANTONIO
DOWNTOWN OPERATIONS DEPARTMENT
INTERDEPARTMENTAL CORRESPONDENCE

DM# 81208
RECEIVED
FEB 25 2008

City Attorney's Office
San Antonio, Texas

**TO ENSURE PROPER ROUTING PLEASE DO NOT REMOVE
THIS COVER SHEET**

Ordinance Number 2008-02-21-0125 authorizing this Agreement/Contract was passed and approved on February 21, 2008, and becomes effective on March 6, 2008.

It is the goal of Downtown Operations that this fully executed Agreement is delivered to the Consultant/Contractor as near the effective date of the Ordinance as possible. Therefore, it is imperative that this package is circulated as quickly as possible.

Project Name: San Antonio Fiesta Commission Contract

FOR SIGNATURE:

1. City Attorney's Office Hand Delivered On: 2/25/08

****AFTER SIGNATURE - PLEASE CALL STELLA HERNANDEZ
X7-3677 FOR PICK UP**

2. City Manager's Office Hand Delivered On: 2/27/08

****AFTER SIGNATURE - PLEASE CALL STELLA HERNANDEZ
X7-3677 FOR PICK UP**

3. City Clerk's Office Hand Delivered On: 3/12/08

****AFTER SIGNATURE - PLEASE CALL STELLA HERNANDEZ
X7-3677 FOR PICK UP**